
Introduced by Senator Loren Legarda

EXPLANATORY NOTE

This bill seeks to institutionalize the systematic review and evaluation of government-owned and controlled corporations (GOCCs) to oversee their financial condition and ensure that they contribute to the progress of the country.

GOCC, as defined under Presidential Decree No. 2029, is "a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by special law or, if organized under the general corporation law, is owned or controlled by the government directly or indirectly through a parent corporation or subsidiary corporation, the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock." E.O. No. 64 of 1993 expanded the definition to include "a corporation created by special law or incorporated and organized under the Corporation Code and in which government, directly or indirectly, has ownership of the majority of the capital stock."

In a paper done by the Senate Economic Planning Office (SEPO) on the profile of selected Philippine GOCCs released in 2006, there were 133 GOCCs as of June 2004. Its consolidated total assets amounted to P4.5 trillion, which grew by 0.24 percent from the previous year while its total liabilities declined by 4.97 percent to P3.7 trillion during the same year from the P3.9 trillion balance in 2003. According to SEPO, studies have shown that public corporations generally perform poorly compared to private corporations. A World Bank (1995) study identified three reasons why GOCCs or state-owned enterprises (SOEs) perform poorly:

1.) No one has a clear stake in generating positive returns because there is no single identifiable owner since government can be the ministries, or parliament or the general public;

2.) Many SOEs have multiple or conflicting objectives. Government creates a corporation to address social objectives such as lowering the price of a socially-sensitive good, yet the corporation is expected to maximize returns; and

3.) Access to subsidies, transfers and guaranteed loans create a moral hazard such that there is no incentive to be efficient since there is no threat of bankruptcy.

The same paper reveals that the poor financial condition of GOCCs studied arises from operational factors and inconsistent policy objectives of government. Most of the 14 GOCCs are mandated to provide services with social objectives, which result in losses. In these cases, government is obliged to subsidize their

operations. Likewise, some of the GOCCs' operations require huge capital investments which government cannot afford given its budgetary constraints. The consequence is that there is heavy reliance on debt, particularly on foreign loans. The high foreign debt exposure, in turn, makes these GOCCs vulnerable to foreign exchange and interest rate risks. Another factor is the moral hazard problem in the operations of GOCCs and their conduits. Many of the GOCCs have less incentive to perform efficiently because government guarantees their debt. In some instances, there is little restraint in spending. Finally, there is no single entity that exercises the ownership function of the State over the GOCCs. The rights and functions of the State as an owner are largely exercised through the department to which they are attached. The monitoring of the overall performance of GOCCs is also dispersed among the various departments to which they are attached.

This bill mandates all GOCCs to submit regularly to a sunset review by both the Committees of the Senate and the House of Representatives having legislative jurisdiction over the said corporations, the interval between each review to be not more than a period of five (5) years. Under this proposed measure, sunset review shall refer to the systematic evaluation by Committees of the Senate and the House of Representatives having legislative jurisdiction over government-owned or controlled corporations to determine if the said corporations merit continued government participation and/or subsidy.

In view of the benefits that will be gained by the efficient operations of GOCCs, immediate passage of this bill is earnestly requested.



LOREN LEGARDA
Senator

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AN ACT
PROVIDING FOR A SYSTEMATIC AND PERIODIC REVIEW OF THE
ECONOMY, EFFICIENCY AND VIABILITY OF GOVERNMENT-OWNED OR
CONTROLLED CORPORATIONS AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

1 **SECTION 1. Title.** - This Act shall be known as the "**Philippine Sunset Act of**
2 **2010.**"

3
4 **SEC. 2. Declaration of Policy.** - It is hereby declared the policy of the State to
5 promote economy and efficiency of government-owned or controlled corporations
6 shall be subjected to the interest of the common good and the test of economic
7 viability.

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9 Toward this end, the State, in order to promote private sector initiative, shall
10 only engage in business areas where private sector is not in participation, or when
11 the public good so requires.

12
13 **SEC. 3. Definition of Terms.** - For purposes of this Act:

14
15 a. "Sunset Review" shall refer to the systematic evaluation by Committees of the
16 Senate and the House of Representatives having legislative jurisdiction over
17 government-owned or controlled corporations to determine if the said
18 corporations merit continued government participation and/or subsidy;

19
20 b. "Government-owned or Controlled Corporation" or subsequently referred to
21 as "GOCCs", shall refer to a stock or non-stock corporation, performing
22 governmental or proprietary functions directly chartered by special law or if

1 otherwise formed, is owned or controlled by the government directly or
2 indirectly, through a parent corporation or subsidiary corporation to the
3 extend of at least majority of its outstanding capital stock in the case of a stock
4 corporation, or by being represented by at least the majority of its voting
5 members, in the case of a non-stock corporation: *Provided*, That an acquired
6 asset corporation as defined hereunder shall not be considered a government-
7 owned or controlled corporation.

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9 For purposes of this Act, a corporation created by special law and explicate
10 intended for ultimate transfer to private ownership under certain specified
11 conditions shall be considered a government-owned or controlled
12 corporation until it is transferred to private ownership.

13
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15 intended for ultimate transfer to private ownership under certain specified
16 conditions shall be considered a government-owned or controlled
17 corporation until it is transferred to private ownership.

18
19 c. "Acquire Asset Corporation" shall refer to a corporation which is:

20
21 1. Under private ownership, with at least the majority of its outstanding
22 capital stock:

23 (a) Conveyed to the government, or any of its agencies or
24 instrumentalities including government-owned or controlled
25 corporations, in satisfaction of debts whether by foreclosure *or*
26 otherwise; or

27 (b) Duly acquired by the government through final judgment in
28 sequestration proceeding; or

29
30 2. Subsidiary of a government-owned or controlled corporation formed
31 exclusively to own and manage, or lease, or operate specific physical
32 assets acquired by a government financial institution in satisfaction of
33 debts incurred therewith.

34
35 **SEC. 4. Conduct of Review.** - GOCCs shall be regularly subjected to a sunset
36 review by both the Committees of the Senate and the House of Representatives

1 having legislative jurisdiction over the said corporations, the interval between each
2 review to be not more than a period of five (5) years.

3
4 **SEC. 5. *Scope of Review.*** - The concerned committees of the Senate and of the
5 House of Representatives shall review the economy, efficiency and the need to
6 maintain the GOCCs using the following:

- 7
8 a. Their efficient allocation and use of investment resources made available to
9 them by the government;
10 b. Instances where there is needless duplication or overlap of functions with
11 other GOCCs;
12 c. Accomplishment of set goals for the GOCCs in case their charter provides for
13 such;
14 d. Financial and social investment returns and productivity;
15 e. Existence of private sector participation in the field of operation or industry;
16 and
17 f. The interest of the common good.

18
19 **SEC. 6. *Consolidated Recommendation.*** - The concerned committees of the
20 Senate and the House of Representatives, at the termination of their respective
21 sunset reviews, shall submit a consolidated recommendation to the Senate Finance
22 Committee and the House of Committee on Appropriations for appropriate action.

23
24 **SEC. 7. *Possible Actions or Recommendation.*** - the concerned committees of
25 the Senate and the House of Representatives may recommend:

- 26 a. The continued existence of and the corresponding budgetary allocation for
27 the subject GOCC;
28 b. The termination of the existence of, or budget allocations for, the GOCC by
29 either privatizing the said subject GOCC or dissolving the said GOCC; and
30 c. Such other recommendation or course of action they may deem as necessary.

31
32 **SEC. 8. *Duty of Disclose.*** - GOCCs under sunset review shall be duty-bound
33 to disclose all pertinent information and make available all relevant documents to
34 the reviewing committees of Congress.

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36 The officers and directors of the GOCC shall be primarily tasked to perform

1 all the necessary acts under this Section. Failure on their part to disclose all the
2 pertinent information required by the reviewing congressional committees, or any
3 intentional attempt to delay the proceedings, for what ever purpose, shall subject
4 such officers and directors to administrative, civil and criminal sanctions under
5 existing laws.

6
7 **SEC. 9. *Separability Clause.*** - If any provision of this Act is declared invalid,
8 the remainder of this Act or any provision not affected thereby shall remain in force
9 and effect.

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11 **SEC. 10. *Repealing Clause.*** - All laws, presidential decrees, executive orders
12 and their implementing rules, inconsistent with the provisions of this act are hereby
13 repealed, amended or modified accordingly.

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15 For purposes of this Act, the Government Corporate Monitoring and
16 Coordinating Committee created under Executive Order No. 936 dated 26 February
17 1984, reconstituted under Memorandum Circular No. 10 dated 19 May 1986, and
18 strengthened under Executive Order No. 236 dated 22 July 1987, shall continue to
19 exercise its powers and functions, and shall complement the congressional review
20 mechanism created under this Act.

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22 **SEC. 11. *Effectivity.*** - This Act shall take effect fifteen (15) days after its
23 publication in at least two (2) newspapers of general circulation.

24
25 Approved,