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SENATE

S. No. 459

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Introduced by Senator Ralph G. Recto

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#### Explanatory Note

President Benigno Aquino III's 'Daang Matuwid' envisions a country that has high sustainable growth, generates mass employment and reduces poverty. Consistent with the President's commitment to transformational leadership is the government's considerable efforts in encouraging public-private partnerships (PPPs) as a means to develop the country's infrastructure in all sectors and secure our economic global ranking.

With very little fiscal space in the national budget to even make a dent in the country's infrastructure backlog, President Aquino has declared that strengthening laws that provide incentives to PPPs will be a priority legislative policy during his administration.

It is therefore of utmost importance to revisit Republic Act No. 6957, as amended by Republic Act No. 7718, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" or what is otherwise called the "Build-Operate-Transfer" (BOT) law.

This bill is aimed at further improving the BOT law by expanding its coverage and providing more incentives to the private sector who become partners of the government in infrastructure projects.

One salient feature of this bill is the classification of infrastructure projects as "Projects of National Significance" which, when classified as such, will enjoy incentives such as exemption from real property tax, restrictions on imposable local taxes and automatic grant of business permits, among others.

This bill also protects these projects from being the subject of judicial reliefs such as temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions.

Another feature of the measure is the creation of a so-called "Public-Private Partnership Guaranty Fund" with an initial funding of P5 billion aimed at defraying the cost of compensation to project proponents in the event that the government agency or government-owned-and-controlled corporation (GOCC) concerned fails to comply or is prevented from complying with its obligations.

The bill also states that unsolicited project proposals may be submitted but the government agency or GOCC can do the following: use the unsolicited proposal as the basis for public bidding; accept the unsolicited proposal on a negotiated basis; or reject the proposal.

All of these features work to strengthen the BOT law and encourage more PPPs in national and local infrastructure projects.

With these in mind, the passage of this bill is earnestly sought.

*[Signature]*  
RALPH G. RECTO



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AN ACT

**ENCOURAGING MORE PUBLIC-PRIVATE PARTNERSHIP (PPP) PROJECTS, CREATING THE PUBLIC-PRIVATE PARTNERSHIP (PPP) GUARANTY FUND, AND FOR OTHER PURPOSES, THEREBY AMENDING REPUBLIC ACT NO. 6957, AS AMENDED BY REPUBLIC ACT NO. 7718, OTHERWISE KNOWN AS THE "BUILD-OPERATE-TRANSFER" (BOT) LAW**

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

1           **SECTION 1.** Section 4-A of Republic Act (R.A.) No. 6957, as amended by Republic Act  
2 (R.A.) No. 7718, is hereby further amended to read as follows:

3           "SEC. 4-A. *Unsolicited proposals.* – Unsolicited proposals for projects may  
4 be [accepted by any government agency or local government unit on a negotiated  
5 basis: *Provided*, That, all the following conditions are met: (1) such projects involve  
6 a new concept or technology and/or are not part of the list of priority projects, (2)  
7 no direct government guarantee, subsidy or equity is required, and (3) the  
8 government agency or local government unit has invited by publication, for three  
9 (3) consecutive weeks, in a newspaper of general circulation, comparative or  
10 competitive proposals and no other proposal is received for a period of sixty (60)  
11 working days: *Provided, further*, That in the event another proponent submits a  
12 lower price proposal, the original proponent shall have the right to match that price  
13 within thirty (30) working days] SUBMITTED. THE GOVERNMENT AGENCY,  
14 GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC), OR  
15 LOCAL GOVERNMENT UNIT (LGU) CONCERNED MAY EITHER:

16           (1) USE THE UNSOLICITED PROPOSAL AS THE BASIS  
17 FOR PUBLIC BIDDING AS PROVIDED IN SECTION 5 OF THIS ACT.  
18 IF A FINAL AWARD TO A WINNING BIDDER IS MADE ON THE  
19 BASIS OF THE UNSOLICITED PROPOSAL WITHIN ONE (1) YEAR  
20 FROM THE SUBMISSION THEREOF, AS DETERMINED BY THE  
21 NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY  
22 (NEDA), THE ORIGINAL PROPONENT OF THE UNSOLICITED  
23 PROPOSAL MAY BE REIMBURSED FOR COSTS INCURRED IN ITS

1 PREPARATION, INCLUDING, BUT NOT LIMITED TO, THE COST OF  
2 ANY FEASIBILITY STUDIES UNDERTAKEN: *PROVIDED*, THAT  
3 SUCH REIMBURSEMENT: (A) SHALL BE IN THE AMOUNT TO BE  
4 DETERMINED BY NEDA, BUT NOT EXCEEDING THREE PERCENT  
5 (3%) OF THE TOTAL PROJECT COST, EXCLUDING ANY PROJECT  
6 COSTS WHICH WILL BE BORNE BY THE GOVERNMENT SUCH AS,  
7 BUT NOT LIMITED TO, THE COST OF RIGHT-OF-WAY  
8 ACQUISITIONS; AND (B) SHALL BE PAID IN FULL BY THE  
9 WINNING BIDDER AS A REQUIREMENT FOR THE AWARD OF THE  
10 PROJECT;

11 (2) ACCEPT THE UNSOLICITED PROPOSAL ON A  
12 NEGOTIATED BASIS: *PROVIDED*, THAT, THE FOLLOWING  
13 CONDITIONS ARE MET: (A) SUCH PROJECTS INVOLVE A NEW  
14 CONCEPT IN TECHNOLOGY AND/OR ARE NOT PART OF THE LIST  
15 OF PRIORITY PROJECTS; (B) NO DIRECT GOVERNMENT  
16 GUARANTEE, SUBSIDY OR EQUITY OR ANY FORM OF PAYMENT  
17 OR SECURITY FROM THE GOVERNMENT IS REQUIRED AS  
18 PROVIDED IN THE IMMEDIATELY SUCCEEDING SECTION; AND  
19 (3) THE GOVERNMENT AGENCY OR LGU HAS INVITED BY  
20 PUBLICATION FOR THREE (3) CONSECUTIVE WEEKS, IN A  
21 NEWSPAPER OF GENERAL CIRCULATION, COMPARATIVE OR  
22 COMPETITIVE PROPOSALS AND NO OTHER PROPOSAL IS  
23 RECEIVED FOR A PERIOD TO BE DETERMINED BY NEDA, BUT  
24 NOT TO EXCEED ONE (1) YEAR: *PROVIDED, FURTHER*, THAT IN  
25 THE EVENT ANOTHER PROPONENT SUBMITS A PROPOSAL  
26 LOWER IN PRICE, THE ORIGINAL PROPONENT SHALL HAVE THE  
27 RIGHT TO MATCH THAT PRICE WITHIN THIRTY (30) WORKING  
28 DAYS; OR

29 (3) REJECT THE PROPOSAL.”

30 **SEC. 2.** R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by  
31 inserting a new section after Section 4-A to read as follows:

32 “SEC. 4-B. *PROHIBITION AGAINST GOVERNMENT GUARANTEES OR*  
33 *PAYMENTS.* – NOTWITHSTANDING ANY AGREEMENT TO THE  
34 CONTRARY, THE PROJECT PROPONENT OF AN UNSOLICITED  
35 PROPOSAL ACCEPTED BY THE GOVERNMENT ON A NEGOTIATED  
36 BASIS IN ACCORDANCE WITH SECTION 4-A (2) SHALL NOT, AT  
37 ANYTIME, BE ENTITLED TO ANY FORM OF PAYMENT OR SECURITY  
38 FROM THE GOVERNMENT, INCLUDING, BUT NOT LIMITED TO, COST

1 SHARING, CREDIT ENHANCEMENT, DIRECT OR INDIRECT  
2 GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY.”

3 **SEC. 3.** R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by  
4 inserting a new section after Section 10 to read as follows:

5 “SEC. 10-A. *PROJECTS OF NATIONAL SIGNIFICANCE.* - UPON  
6 CERTIFICATION AND RECOMMENDATION OF NEDA, THE PRESIDENT  
7 MAY CLASSIFY CERTAIN PROJECTS UNDERTAKEN UNDER THIS ACT  
8 AS PROJECTS OF NATIONAL SIGNIFICANCE, WHICH SHALL BE  
9 ENTITLED TO THE FOLLOWING INCENTIVES:

10 A. ALL REAL PROPERTIES WHICH ARE ACTUALLY  
11 AND DIRECTLY USED FOR THE PROJECT SHALL BE EXEMPT  
12 FROM ANY AND ALL REAL PROPERTY TAXES LEVIED UNDER  
13 REPUBLIC ACT NO. 7160;

14 B. ALL LOCAL TAXES IMPOSED BY A PROVINCE, CITY  
15 OR MUNICIPALITY IN METRO MANILA PURSUANT TO REPUBLIC  
16 ACT NO. 7160 ON THE PROJECT PROPONENT SHALL NOT EXCEED  
17 FIFTY PERCENT (50%) OF ONE PERCENT (1%) OF GROSS SALES  
18 OR RECEIPTS OF THE PRECEDING CALENDAR YEAR;

19 C. THE NECESSARY BUSINESS PERMITS, INCLUDING  
20 ANY RENEWALS THEREOF, SHALL BE DEEMED TO HAVE BEEN  
21 AUTOMATICALLY GRANTED OR ISSUED TO THE WINNING  
22 PROJECT PROPONENT UPON TENDER OF THE REQUIRED TAXES  
23 AND FEES TO THE APPROPRIATE LGU.

24 FOR PURPOSES OF THIS SECTION, IN ORDER FOR A PROJECT TO  
25 QUALIFY AS A PROJECT OF NATIONAL SIGNIFICANCE, THE  
26 FOLLOWING CONDITIONS MUST BE SATISFIED:

27 1. THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE  
28 BILLION PESOS (PHP5,000,000,000.00); AND

29 2. THE PROJECT IS LOCATED IN OR WILL DIRECTLY BENEFIT  
30 AT LEAST TWO (2) PROVINCES.”

31 **SEC. 4.** R.A. No. 6957, as amended by R.A. No. 7718, is hereby further amended by  
32 inserting a new Section 11 to read as follows:

33 “SEC. 11. *PROHIBITION ON THE ISSUANCE OF TEMPORARY*  
34 *RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND PRELIMINARY*  
35 *MANDATORY INJUNCTIONS.* - NO COURT, EXCEPT THE SUPREME  
36 COURT, SHALL ISSUE ANY TEMPORARY RESTRAINING ORDER,  
37 PRELIMINARY INJUNCTION AND PRELIMINARY MANDATORY  
38 INJUNCTION AGAINST THE GOVERNMENT, OR ANY OF ITS

1 SUBDIVISIONS, OFFICIALS OR ANY PERSON OR ENTITY, WHETHER  
2 PUBLIC OR PRIVATE, ACTING UNDER THE GOVERNMENT'S  
3 DIRECTION, TO RESTRAIN, PROHIBIT OR COMPEL THE FOLLOWING  
4 ACTS WITH REGARD TO PROJECTS OF NATIONAL SIGNIFICANCE  
5 UNDER THE IMMEDIATELY PRECEDING SECTION:

6 A. ACQUISITION, CLEARANCE AND DEVELOPMENT OF  
7 THE RIGHT-OF-WAY AND/OR SITE OR LOCATION;

8 B. BIDDING OR AWARDING;

9 C. COMMENCEMENT, PROSECUTION, EXECUTION,  
10 IMPLEMENTATION AND OPERATION;

11 D. TERMINATION OR RESCISSION OF THE CONTRACT;  
12 AND

13 E. THE UNDERTAKING OR AUTHORIZATION OF ANY  
14 OTHER LAWFUL ACTIVITY NECESSARY OR IN CONNECTION  
15 WITH THE EXECUTION OR IMPLEMENTATION OF THE PROJECT.

16 THIS PROHIBITION SHALL APPLY IN ALL CASES, DISPUTES OR  
17 CONTROVERSIES INSTITUTED BY A PRIVATE PARTY, INCLUDING, BUT  
18 NOT LIMITED TO, CASES FILED BY BIDDERS OR THOSE CLAIMING TO  
19 HAVE RIGHTS THROUGH SUCH BIDDERS INVOLVING PROJECTS OF  
20 NATIONAL SIGNIFICANCE. THIS PROHIBITION SHALL NOT APPLY  
21 WHEN THE MATTER IS OF EXTREME URGENCY INVOLVING A  
22 CONSTITUTIONAL ISSUE, SUCH THAT UNLESS A TEMPORARY  
23 RESTRAINING ORDER IS ISSUED, GRAVE INJUSTICE AND  
24 IRREPARABLE INJURY WILL ARISE. THE APPLICANT SHALL FILE A  
25 BOND, IN AN AMOUNT TO BE FIXED BY THE COURT, WHICH BOND  
26 SHALL ACCRUE IN FAVOR OF THE GOVERNMENT IF THE COURT  
27 SHOULD FINALLY DECIDE THAT THE APPLICANT WAS NOT ENTITLED  
28 TO THE RELIEF SOUGHT.

29 ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY  
30 INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION ISSUED IN  
31 VIOLATION OF THIS SECTION IS VOID AND OF NO FORCE AND  
32 EFFECT."

33 **SEC. 5.** The succeeding sections of R.A. No. 6957, as amended by R.A. No. 7718, are  
34 hereby renumbered accordingly.

35 **SEC. 6.** *Public-Private Partnership (PPP) Guaranty Fund.* – A PPP Guaranty Fund is  
36 hereby created to defray the cost of compensation to project proponents which enter into BOT  
37 contracts, concession agreements or other contractual agreements with any national government  
38 agency or GOCC pursuant to the provisions of Republic Act No. 6957, as amended, in the event

1 that the government agency or GOCC fails to comply, or is prevented from complying, with its  
2 obligations under the aforementioned contracts or agreements as a result of any act of another  
3 agency or branch of government: *Provided*, That no compensation shall be paid out of the PPP  
4 Guaranty Fund if the contract or agreement has been determined to be unlawful or  
5 unconstitutional by a final judgment of a court of competent jurisdiction.

6 The initial funding in the amount of Five Billion Pesos (P5,000,000,000.00) for the  
7 creation of the Fund shall be charged against the overall savings of the National Government.  
8 Thereafter, the PPP Guaranty Fund may be replenished or increased by such amount as may be  
9 deemed necessary in subsequent General Appropriations Act.

10 **SEC. 7. *Implementing Rules and Regulations.*** – The NEDA, Departments of Finance  
11 and Budget and Management shall promulgate the implementing rules and regulations within sixty  
12 (60) days from the effectivity of this Act.

13 **SEC. 8. *Separability Clause.*** - If any part or provision of this Act shall be held to be  
14 unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall  
15 continue to be in full force and effect.

16 **SEC. 9. *Repealing Clause.*** – All laws, decrees, executive orders, rules and regulations  
17 and other issuances or parts thereof which are inconsistent with this Act are hereby repealed or  
18 modified accordingly.

19 **SEC. 10. *Effectivity.*** This Act shall take effect fifteen (15) days from the date of  
20 publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,