


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
First Regular Session

HOUSE BILL NO. **778**

HOUSE OF REPRESENTATIVES	
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Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT CREATING THE PUBLIC-PRIVATE PARTNERSHIP AUTHORITY,
FURTHER AMENDING 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"
FOR THIS PURPOSE

EXPLANATORY NOTE

RA No. 6957, as amended: An Offshoot of the Important Role of the Private Sector in Nation Building. The private sector is an indispensable component in sustainable development. Recognizing the contribution of the private sector to nation building, Section 20, Article II of the 1987 Philippine Constitution explicitly provides that "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments."

Pursuant to this declared State policy, two primary laws were enacted by Congress namely: Republic Act No. 9184 or the Government Procurement Reform Act (RA 9184) for the procurement of goods, supplies and services, and Republic Act No. 6957 as amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law allowing for a more focused framework in PPP infrastructure development. R.A. No. 9184 was enacted to, among others, promote transparency in the procurement process and in the implementation of procurement contracts. Republic Act No. 6957 allows for LGUs to enter into contractual arrangements with the private sector to implement infrastructure projects thru a Built-Operate-And-Transfer and Build-Transfer-and-Operate. Eventually, R.A. No. 6957 was amended by Republic Act No. 7718 or the Philippine Build-Operate-and-Transfer (BOT) Law broadened the list of PPP government implementing government entities to include government owned and controlled corporations (GOCCs), government financing institutions (GFIs) and state universities and colleges (SUCs); putting up incentives for attracting private sector investments to venture into PPP projects; and allowing negotiated unsolicited

proposals provided that these comply with conditions outlined in the Law. More importantly, RA 7718 allowed for other contractual arrangements or schemes to implement PPP projects.

Under existing law, the overall policy making body for all PPP-related matters is lodged with the PPP Governing Board (PPPGB), composed of the Secretary of Socio-Economic Planning as chairperson, the Secretary of Finance, as vice-chairperson and as members, the Secretary of Budget and Management, Secretary of Justice, Secretary of Trade and Industry, Executive Secretary and the Private Sector Co-Chairman of the National Competitiveness Council.

Salient Features of the Proposed Bill. This proposed bill further enhances and reinforces the provisions of R.A. 6957, as amended to engender transparency in transactions, efficiency in the performance of project obligations, and putting additional thrust and impetus to the PPP program through a more robust cooperation between the public and private sectors. With these in mind, the bill proposes the following additional amendments to RA 6957, as amended, to wit:

Section 1, as proposed, emphasizes the role of the private sector as “prime mover” for national growth and development. It expresses in a categorical and explicit terms the bounden obligation of the government to provide support to allow the private sector to achieve reasonable rate of return on investments (ROI) in financing the construction etc. through a competitive and transparent selection process. It also makes it the declared policy of the state to abide by the principle of transparency with the end in view of protecting the interest of the public by ensuring fair and reasonable pricing and timely delivery of quality services.

Amendments to *Section 2. (Definition of Terms)* under the proposed bill are hereunder enumerated, to wit:

- a) Inclusion of “bulk grains handling facility or logistic support system” among the list of Public-Private Infrastructure or Development Projects or “projects” enumerated in R.A. 6957 as amended.
- b) Inclusion of a definition of “PPP Infrastructure AND Development Plan (PLAN)”.
- c) Under RA6957 as amended, the definition of “Facility operator” spells out in specific terms that Filipino ownership of the public utility franchise should be at least 60% which is reflective of the wording of Sec. 11 Art. XII of the 1987 Constitution. However, under the proposed bill “Facility operator” as defined makes reference not only to the nationality and equity requirements as stated in the Constitution but also to include requirements under all applicable laws.
- d) Allows for a more specific and expanded definition of “Government guarantee” to include “full or partial responsibility” by the government.
- e) The definition of “Return on Investment” as proposed specifies the factors to be considered in determining the ROI. The definition of ROI in RA6957 is more restrictive and does not take into account the aforementioned factors.
- f) More detailed definition of the “Project Cost.”

As proposed, *Section 3. Private Initiative in Infrastructure* includes a proviso that specifically requires the submission to the BOT Authority for approval of all national and local government projects; with the exception of projects that require national government guarantee or undertaking, in which case the project shall be recommended by the BOT Authority Board to the president for approval.

A new section, to be numbered as *Section 4*, defines contractual arrangements.

The previous *Section 4*, renumbered as *Section 5* in the proposed bill, makes it a requirement for government agencies and LGUs to submit to the PPP authority list of projects for possible listing in the plan and harmonized investment promotion.

Section 4-A of Republic Act No. 6957, as amended, renumbered as *Section 5-A* in the proposed bill, makes it a requirement for Unsolicited Proposals accepted by any appropriate government agencies / LGUs to be submitted to the PPP Authority for evaluation and approval, subject to certain conditions.

Section 5, to be renumbered as *Section 6* in the proposed bill, requires that projects under the law shall be done through competitive and transparent public bidding.

A new section (*Section 8*) is introduced establishing a Project Development Facility (PDF) to serve as a revolving fund to, among others, finance the proper identification, study, validation, development, and preparation for public bidding.

Section 9, as proposed, spells out the consequences of contract terminations as a result of the fault or non-fault of the project proponent. Notice that RA No. 6957, as amended, envisages two situations for contract termination, namely:

- 1) it is the government that initiates contract termination without the fault of the proponent, or
- 2) the government defaults on certain major obligations.

The proposed provision however shifts the emphasis and perspective to the project proponent's fault or non-fault which, for all intents and purposes, will have substantial bearing on the burden of proof.

Section 10 of the RA 6957, as amended, renumbered as *Section 12* in the proposed bill, removes the one billion peso (P1,000,000,000) threshold for projects entitled to incentives. As proposed, projects, except unsolicited projects, are entitled to incentives regardless of cost.

A new section, to be numbered as *Section 13* in the proposed bill, makes it the obligation of the Republic of the Philippines or LGUs to uphold the validity and enforceability of a duly executed contract, unless proven otherwise.

A new section (*Section 15*), which we will consider as the most substantive, allows for the creation and establishment of the Public-Private Partnership Authority to serve as the central body of the government for BOT, Private Sector Participation (PSP) or Public-Private Partnership projects (PPP), attached to the Department of Trade and Industry (DTI). This is a significant departure from the organizational structure under RA 6957 which vests upon the PPP Governing Board the power to set the policy direction of the PPP. As envisioned under the proposed bill however, the PPP Authority institutionalizes the policy-making body of the government for BOT and other contractual arrangements. This will make for a more consistent policy direction for the PPP programs. Subsequent provisions as proposed concern the composition of the Authority including its powers and functions, budget, and appointment

of its personnel. To give more teeth to the proposed bill, a penalty clause is also introduced, defining the penalties and sanctions for the violation of any provision of the law and its implementing rules and regulations.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above the printed name.

JOEY SARTE SALCEDA

