Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 7623

Introduced by Representative Sharon S. Garin

EXPLANATORY NOTE

This bill seeks to increase the private sector participation in the infrastructure industry, further amending Republic Act (RA) No. 6957, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes," as amended.

The 1987 Philippine Constitution recognizes the indispensable role of the private sector as a partner of the government in growth and development.

In response to this State policy, the Eight Congress of the Philippines enacted RA 6957, also known as the "Build-Operate-and-Transfer (BOT) [1]Law" and signed by then Pres. Corazon S. Aquino on July 9, 1990. The law significantly increased private investment in infrastructure in the Philippines by promoting private sector participation.

In 1994, the law was further amended by Republic Act No. 7718 in order to provide for an increased number of variants of BOT contractual arrangements. Two decades later, there is still a need to enhance policy framework that is responsive to the current economic environment. There is also a need to raise the effectiveness of the participation of the private sector and to keep policies attuned to the changing business environment. This will also enable the private sector to support the government as it rolls out "game-changing" flagship infrastructure projects in the country.

During the Seventeenth Congress, Representative Gary C. Alejano filed a measure on the same subject matter, but it was not passed into law.
Among the proposed amendments to the BOT Law are: (1) adoption of new approaches on unsolicited proposals to ensure transparency and competition, without sacrificing speed; (2) introduction of the "projects of national significance" as a classification of infrastructure projects 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; and (3) protection of these projects from being the subject of judicial reliefs such as temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions.

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

[Signature]

SHARON S. GARIN
AAMBIS-Owa Party-list
Republic of the Philippines
HOUSE OF REPRESENTATIVES
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HOUSE BILL NO. 7623

Introduced by Representative Sharon S. Garin

AN ACT INCREASING THE PRIVATE SECTOR PARTICIPATION IN THE INFRASTRUCTURE INDUSTRY, AMENDING FURTHER REPUBLIC ACT NO. 6957, ENTITLED "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES," AS AMENDED

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

SECTION. 1. Section 4-A of the same Act, as amended is hereby further amended to read as follows:

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

(1) USE THE UNSOLICITED PROPOSAL AS THE BASIS FOR PUBLIC BIDDING AS PROVIDED IN SECTION 5 OF THIS ACT AND IF A FINAL AWARD TO A WINNING BIDDER IS MADE ON THE BASIS OF THE UNSOLICITED PROPOSAL WITHIN ONE (1) YEAR FROM THE SUBMISSION THEREOF, AS DETERMINED BY THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), THE ORIGINAL PROponent OF THE UNSOLICITED PROPOSAL MAY BE REIMBURSED FOR COSTS INCURRED IN ITS PREPARATION, INCLUDING, THE COST OF ANY FEASIBILITY STUDY UNDERTAKEN: PROVIDED, THAT SUCH REIMBURSEMENT IS (A) EQUIVALENT TO THE AMOUNT DETERMINED BY NEDA, BUT NOT EXCEEDING THREE PERCENT (3%) OF THE TOTAL PROJECT COST, EXCLUDING ANY PROJECT
COST BORNE BY THE GOVERNMENT SUCH AS THE COST OF
RIGHT-OF-WAY ACQUISITIONS, AND (B) PAID IN FULL BY THE
WINNING BIDDER AS A REQUIREMENT FOR THE AWARD OF
THE PROJECT;

(2) ACCEPT THE UNSOLICITED PROPOSAL ON A
NEGOTIATED BASIS SUBJECT TO THE FOLLOWING
CONDITIONS: (A) THE PROJECTS INVOLVE A NEW CONCEPT IN
TECHNOLOGY AND ARE NOT PART OF THE LIST OF PRIORITY
PROJECTS; (B) NO DIRECT GOVERNMENT GUARANTEE,
SUBSIDY OR EQUITY, OR ANY FORM OF PAYMENT OR SECURITY
FROM THE GOVERNMENT IS REQUIRED AS PROVIDED IN THE
IMMEDIATELY SUCCEEDING SECTION; AND (C) THE
GOVERNMENT AGENCY OR LGU HAS INVITED BY PUBLICATION
FOR THREE (3) CONSECUTIVE WEEKS, IN A NEWSPAPER OF
GENERAL CIRCULATION, COMPARATIVE OR COMPETITIVE
PROPOSALS, AND NO OTHER PROPOSAL IS RECEIVED FOR A
PERIOD TO BE DETERMINED BY NEDA, BUT NOT TO EXCEED
ONE (1) YEAR: PROVIDED, THAT IN THE EVENT ANOTHER
PROPOSBENT SUBMITS A PROPOSAL LOWER IN PRICE, THE
ORIGINAL PROPOSAL SHALL HAVE THE RIGHT TO MATCH
THAT PRICE WITHIN THIRTY (30) WORKING DAYS; OR

(3) REJECT THE UNSOLICITED PROPOSAL.”
SEC. 2. A new section is hereby added after Section 4-A of the same Act, as amended, and denominated as Section 4-B to read as follows:

"SEC. 4-B. PROHIBITION AGAINST GOVERNMENT GUARANTEES OR PAYMENTS. — NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, THE PROJECT PROponents OF AN UNSOLICITED PROPOSAL ACCEPTED BY THE GOVERNMENT ON A NEGOTIATED BASIS IN ACCORDANCE WITH SECTION 4-A (2) SHALL NOT, AT ANYTIME, BE ENTITLED TO ANY FORM OF PAYMENT OR SECURITY FROM THE GOVERNMENT INCLUDING COST SHARING, CREDIT ENHANCEMENT, DIRECT OR INDIRECT GOVERNMENT GUARANTEE, SUBSIDY OR EQUITY."

SEC. 3. A new section is hereby added after Section 10 of the same Act, as amended and denominated as Section 10-A to read as follows:

"SEC. 10-A. PROJECTS OF NATIONAL SIGNIFICANCE. — UPON CERTIFICATION AND RECOMMENDATION OF NEDA, THE PRESIDENT MAY CLASSIFY CERTAIN PROJECTS UNDERTAKEN UNDER THIS ACT AS PROJECTS OF NATIONAL SIGNIFICANCE. PROJECTS OF NATIONAL SIGNIFICANCE ARE ENTITLED TO THE FOLLOWING INCENTIVES:

(A) ALL REAL PROPERTIES WHICH ARE ACTUALLY AND DIRECTLY USED FOR THE PROJECT ARE EXEMPT FROM ANY AND ALL REAL PROPERTY TAXES LEVIED UNDER THE LOCAL GOVERNMENT CODE;
(B) ALL LOCAL TAXES IMPOSED IN METRO MANILA OR BY A PROVINCE, CITY OR MUNICIPALITY UPON THE PROJECT PROPONENT PURSUANT TO THE LOCAL GOVERNMENT CODE SHALL NOT EXCEED FIFTY PERCENT (50%) OF ONE PERCENT (1%) OF GROSS SALES OR RECEIPTS OF THE PRECEDING CALENDAR YEAR;

(C) THE NECESSARY BUSINESS PERMITS, INCLUDING ANY RENEWAL THEREOF, SHALL BE GRANTED OR ISSUED TO THE WINNING PROJECT PROPONENT UPON TENDER OF THE REQUIRED TAXES AND FEES TO THE APPROPRIATE LGU.

FOR PURPOSES OF THIS SECTION, IN ORDER FOR A PROJECT TO QUALIFY AS A PROJECT OF NATIONAL SIGNIFICANCE, THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH:

(1) THE TOTAL COST OF THE PROJECT IS AT LEAST FIVE BILLION PESOS ($5,000,000,000,00); AND

(2) THE PROJECT MAY DIRECTLY BENEFIT AT LEAST TWO (2) PROVINCES.”

SEC. 4. A new section to be numbered as Section 11 of the same Act is hereby added to read as follows:

“SEC. 11. PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS AND PRELIMINARY MANDATORY INJUNCTIONS.”
– EXCEPT FOR THE SUPREME COURT, NO COURT SHALL ISSUE
ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION OR PRELIMINARY MANDATORY INJUNCTION
AGAINST THE GOVERNMENT, OR ANY OF ITS SUBDIVISIONS,
OFFICIALS OR ANY PERSON OR ENTITY, WHETHER PUBLIC OR
PRIVATE, ACTING UNDER THE AUTHORITY OF THE
GOVERNMENT, TO RESTRAIN, PROHIBIT OR COMPEL ANY OF
THE FOLLOWING ACTS WITH REGARD TO PROJECTS OF
NATIONAL SIGNIFICANCE UNDER THE IMMEDIATELY
PRECEDING SECTION:

(A) ACQUISITION, CLEARANCE AND DEVELOPMENT OF
THE RIGHT-OF-WAY AND SITE OR LOCATION;

(B) BIDDING OR AWARDING;

(C) COMMENCEMENT, PROSECUTION, EXECUTION,
IMPLEMENTATION AND OPERATION;

(D) TERMINATION OR RESSION OF THE CONTRACT;

OR

(E) THE UNDERTAKING OR AUTHORIZATION OF ANY
OTHER LAWFUL ACTIVITY NECESSARY OR IN CONNECTION
WITH THE EXECUTION OR IMPLEMENTATION OF THE PROJECT.

THIS THE PROHIBITION SHALL APPLY IN ALL CASES,
DISPUTES OR CONTROVERSIES INSTITUTED BY A PRIVATE
PARTY, INCLUDING CASES FILED BY BIDDERS OR THOSE 
CLAIMING TO REPRESENT SUCH BIDDERS INVOLVING 
PROJECTS OF NATIONAL SIGNIFICANCE. THIS PROHIBITION 
SHALL NOT APPLY WHEN THE MATTER IS OF EXTREME 
URGENCY INVOLVING A CONSTITUTIONAL ISSUE, SUCH THAT 
UNLESS A TEMPORARY RESTRAINING ORDER IS ISSUED, 
GRAVE INJUSTICE AND IRREPARABLE INJURY MAY ARISE. THE 
APPLICANT SHALL FILE A BOND, IN AN AMOUNT TO BE FIXED 
BY THE COURT, WHICH BOND SHALL ACCRUE IN FAVOR OF THE 
GOVERNMENT IF THE COURT RENDERS A DECISION THAT THE 
APPLICANT IS NOT ENTITLED TO THE RELIEF SOUGHT. 
ANY TEMPORARY RESTRAINING ORDER, PRELIMINARY 
INJUNCTION AND PRELIMINARY MANDATORY INJUNCTION 
ISSUED IN VIOLATION OF THIS SECTION IS VOID AND OF NO 
FORCE AND EFFECT.”

SEC. 5. Sections 11, 12 and 13 of the same Act, as amended are hereby 
renumbered as Sections 12, 13 and 14 accordingly.

SEC. 6. Within sixty (60) days from the effectivity of this Act, the Secretary of 
Public Works and Highways shall, in coordination with the Secretary of Finance, 
Secretary of Local Government, Director General of the National Economic and 
Development Authority, and duly authorized representative from the private Philippine 
construction industry, issue the necessary rules and regulations for the effective 
implementation of this Act.
SEC. 7. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,