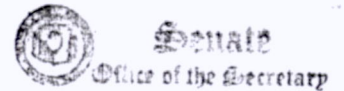


SEVENTEENTH CONGRESS OF THE]
REPUBLIC OF THE PHILIPPINES]
Third Regular Session]



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SENATE

S.B. No. 1907

RECEIVED BY



Introduced by SEN. WIN T. GATCHALIAN

**AN ACT
AMENDING INVESTMENT RESTRICTIONS IN COMMONWEALTH ACT
NO. 541, AS AMENDED BY LETTER OF INSTRUCTIONS NO. 630, AND
FOR OTHER PURPOSES**


EXPLANATORY NOTE

Commonwealth Act No. 541 (C.A. 541), also called "An Act to Regulate the Awarding of Contracts for Construction or Repair of Public Works," was enacted in 1940, a time when the Philippines was still transitioning to full independence, setting-up its own government, promoting local capital and industrialization, and establishing the basis for national defense while World War II was looming. Clearly, the principle of competitiveness enshrined in the 1987 Constitution and in the Philippine Competition Act was diluted and not a priority in the minds of the then National Assembly when a domestic preference policy was adopted by the Government in the awarding of public works projects to the local construction industry.

For seventy-eight years, such domestic preference policy has confined competition in the construction industry within our territorial boundaries and has discriminated in favor of domestic businesses with substantial market power and political influence. Between 2010 and 2015, public construction

grew by 8% while private construction grew by 58%.¹ The lack of genuine competition in the public construction industry impairs public welfare as there are fewer incentives for existing domestic firms to innovate and puts at risk the delivery of reliable, safety-compliant and quality public works.

Accordingly, this bill should be considered in the context of positioning the Philippines more competitively and attracting new investments in the construction industry to enable the Government to deliver the much-needed infrastructure that would support the country's initiatives in providing a business climate conducive to investments in the country. In this light, this bill seeks to provide a more level playing field and extend equal opportunities to eligible and qualified domestic and foreign bidders to participate in the bidding by the Government for public works projects. It is hoped that the enactment of this measure will encourage and attract foreign firms possessing the capacity to construct vital projects and capable of sharing technical expertise with local firms to enter the Philippine construction market.



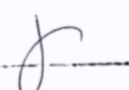
WIN GATCHALIAN

¹ Philippine Competition Commission's Policy Note No. 1, Series of 2017, entitled "Anti-Competitive Effects of Regulatory Restrictions: The Case of the Construction Sector."

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SEVENTEENTH CONGRESS
Third Regular Session

Senate Bill No. 1907

RECEIVED BY _____


Introduced by Senator Sherwin T. Gatchalian

AN ACT
AMENDING INVESTMENT RESTRICTIONS IN COMMONWEALTH ACT
NO. 541, AS AMENDED BY LETTER OF INSTRUCTIONS NO. 630, AND
FOR OTHER PURPOSES

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

1 **SECTION 1.** A new Section 1 of Commonwealth Act No. 541 (C.A.
2 541), also known as "An Act to Regulate the Awarding of Contracts for the
3 Construction or Repair of Public Works," as amended by Letter of
4 Instructions No. 630, is hereby inserted to read as follows:
5

6 "SEC. 1. STATEMENT OF POLICY. – THE STATE RECOGNIZES
7 HOW VITAL THE EFFICIENT DELIVERY OF RELIABLE, SAFETY-
8 COMPLIANT AND QUALITY PUBLIC WORKS TO NATIONAL
9 DEVELOPMENT. IT ALSO RECOGNIZES THAT HEALTHY
10 COMPETITION CAN FURTHER DEVELOP THE CONSTRUCTION
11 INDUSTRY AND OPTIMIZE THE CONSTRUCTION CAPABILITY OF
12 THE COUNTRY TO EFFICIENTLY DELIVER SUCH PUBLIC
13 WORKS.
14

15 IT IS THUS THE STATE'S POLICY TO EXTEND EQUAL
16 OPPORTUNITIES TO ELIGIBLE AND QUALIFIED BIDDERS TO
17 PUBLIC WORKS PROJECTS OF THE GOVERNMENT AND TO
18 ATTRACT DOMESTIC AND FOREIGN INVESTMENTS IN THE
19 CONSTRUCTION INDUSTRY TO IMPROVE MARKET DYNAMISM,
20 ENCOURAGE INNOVATION AND REWARD GOOD
21 PERFORMANCE."
22

23 **SECTION 2.** Section 1 of C.A. 541 is hereby renumbered and
24 amended to read as follows:
25

1 SEC. [1] 2. All Branches, offices, and subdivisions of the
2 Government and all government-owned or controlled companies,
3 authorized to contract and make disbursements for the
4 construction or repair of LOCALLY-FUNDED public works,
5 INCLUDING THE CONSTRUCTION OF DEFENSE-RELATED
6 STRUCTURES, shall EXTEND EQUAL OPPORTUNITIES [~~give~~
7 ~~preferences~~] in awarding OR NEGOTIATING contract for such
8 works to ELIGIBLE AND QUALIFIED FILIPINO AND FOREIGN
9 [~~Filipino or American~~] contractors. [~~and domestic entities when~~
10 ~~the lowest bid of a domestic bidder is not more than fifteen per~~
11 ~~centum in excess of the lowest foreign bid: Provided, However,~~
12 ~~That or the construction of land, air, and sea coast defenses,~~
13 ~~arsenals, barracks, depots, hangars, landing fields, quarters,~~
14 ~~hospitals, and all other buildings and structures required for the~~
15 ~~national defense of the Philippines, no foreign bids shall be~~
16 ~~allowed.]~~

17
18 **SECTION 3.** Section 2 of C.A. 541 is hereby repealed.

19
20 **SECTION 4.** *Separability Clause.* – If any portion of this Act is
21 declared invalid or unconstitutional, the portions or provisions which are
22 not affected shall remain valid and subsisting.

23
24 **SECTION 5.** *Repealing Clause.* – All laws, decrees, executive
25 issuances, rules and regulations inconsistent with this Act are hereby
26 repealed or modified accordingly.

27
28 **SECTION 6.** *Effectivity.* – This Act shall take effect fifteen (15) days
29 after its publication in the Official Gazette or in a newspaper of general
30 circulation.

31
32 *Approved.*