

SENATE

'19 SEP -4 P1 :23

S.B. No. 1009

RECEIVED

Introduced by SEN. WIN GATCHALIAN

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

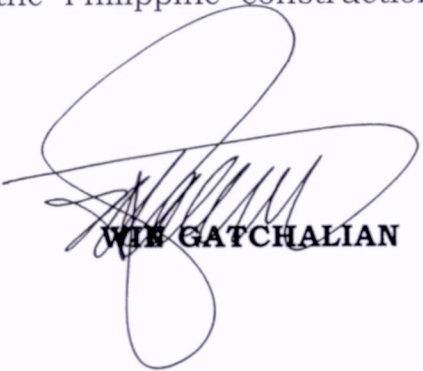
EXPLANATORY NOTE

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 as enshrined today in the 1987 Constitution and 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.

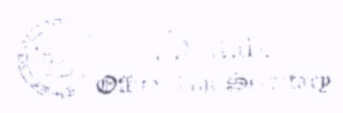
Accordingly, this bill should be considered in the context of positioning the Philippines more competitively and attracting new investments in the construction industry to enable the Government to deliver the much-needed infrastructure that would support the country's initiatives in providing a business 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 that possess the capacity to construct vital projects and are capable of sharing technical expertise with local firms to enter the Philippine construction market.



WIE 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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**AN ACT
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NO. 541, AS AMENDED BY LETTER OF INSTRUCTIONS NO. 630, AND
FOR OTHER PURPOSES**

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

1 Section 1. A new Section 1 of Commonwealth Act No. 541 (C.A. 541),
2 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 Instructions
4 No. 630, is hereby inserted to read as follows:

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

13

14 IT IS THUS THE POLICY OF THE STATE TO EXTEND EQUAL
15 OPPORTUNITIES TO ELIGIBLE AND QUALIFIED BIDDERS TO

1 PUBLIC WORKS PROJECTS OF THE GOVERNMENT AND TO
2 ATTRACT DOMESTIC AND FOREIGN INVESTMENTS IN THE
3 CONSTRUCTION INDUSTRY TO IMPROVE MARKET DYNAMISM,
4 ENCOURAGE INNOVATION, AND REWARD GOOD
5 PERFORMANCE.”

6
7 Sec. 2. Section 1 of C.A. 541 is hereby renumbered and amended to
8 read as follows:

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

25
26 Sec. 3. Section 2 of C.A. 541 is hereby repealed.

27
28 Sec. 4. *Separability Clause.* – If any portion of this Act is declared invalid
29 or unconstitutional, the portions or provisions which are not affected shall
30 remain valid and subsisting.

1 Sec. 5. *Repealing Clause.* – All laws, decrees, executive issuances, rules
2 and regulations inconsistent with this Act are hereby repealed or modified
3 accordingly.

4

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

7

8 Approved,