



**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session

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22 AUG -1 NO 33

RECEIVED BY:

SENATE

S.B. No. 943

Introduced by SEN. WIN GATCHALIAN

**AN ACT
RELAXING INVESTMENT RESTRICTIONS AND AFFORDING EQUAL
OPPORTUNITIES TO ELIGIBLE AND QUALIFIED DOMESTIC AND FOREIGN
BIDDERS TO PARTICIPATE IN THE BIDDING FOR THE GOVERNMENT'S PUBLIC
WORKS PROJECTS, AMENDING COMMONWEALTH ACT NO. 541, AS AMENDED BY
LETTER OF INSTRUCTIONS NO. 630, AND FOR OTHER PURPOSES**

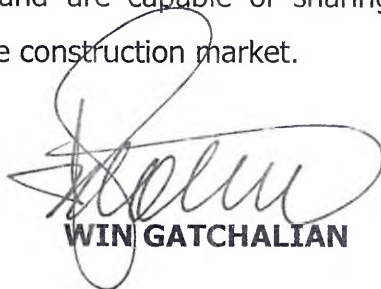
EXPLANATORY NOTE

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 Republic Act No. 10667, otherwise known as 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. From 2016 to 2021, public construction posted an average annual

growth of 13.8%, while private construction grew by 0.9% annually, translating to an overall average annual growth of 4.4%.¹ The growth in public construction is primarily attributable to the Build Build Build program of the previous administration. Despite this development in public construction, the lack of genuine competition in the 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.



WIN GATCHALIAN

¹ PSA National Accounts, using 2018 constant prices

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PUBLIC WORKS PROJECTS, AMENDING COMMONWEALTH ACT 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), also
2 known as "An Act to Regulate the Awarding of Contracts for the Construction or Repair
3 of Public Works," as amended by Letter of Instructions No. 630, is hereby inserted to
4 read as follows:

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

1 IT IS THUS THE POLICY OF THE STATE TO EXTEND EQUAL
2 OPPORTUNITIES TO ELIGIBLE AND QUALIFIED BIDDERS TO PUBLIC
3 WORKS PROJECTS OF THE GOVERNMENT AND TO ATTRACT DOMESTIC
4 AND FOREIGN INVESTMENTS IN THE CONSTRUCTION INDUSTRY TO
5 IMPROVE MARKET DYNAMISM, ENCOURAGE INNOVATION, AND REWARD
6 GOOD PERFORMANCE.”

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

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

24
25 SEC. 3. Section 2 of C.A. 541 is hereby repealed.

26
27 SEC. 4. *Separability Clause.* – If any portion of this Act is declared invalid or
28 unconstitutional, the portions or provisions which are not affected shall remain valid
29 and subsisting.

30
31 SEC. 5. *Repealing Clause.* – All laws, decrees, executive issuances, rules and
32 regulations inconsistent with this Act are hereby repealed or modified accordingly.

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

Approved,