

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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'04 JUN 30 P11:18

SENATE

RECEIVED BY: AlvS. No. 741

INTRODUCED BY HON. MANUEL B. VILLAR JR.

EXPLANATORY NOTE

The emergence of growth centers in Mindanao like the BIMP-EAGA, the Socsargen Growth Quadrangle, the Cagayan-Iligan Corridor, and the Zamboanga Special Economic Zone have spurred the demand for efficient, globally competitive and reliable land transportation for passengers as well as cargo.

This bill seeks to establish the Mindanao Railways Corporation as a means to hasten and support development in the area.

The experience of Japan, Canada, the United States and most of Europe shows how railroad networks have spurred national development. Railroads opened up traffic of passengers and cargo in vast land areas. Higher productivity resulted as economic activities are stimulated and sustained due to increased accessibility.

The Philippines has about 478 kilometers of operating railroad tracks, a far cry from Indonesia which has 7,000 kilometers of railroad, Thailand with 3,900 kilometers and Malaysia with 2,200 kilometers.

It is further recognized that rail transportation is capital-intensive and requires subsidy. However, the rail, as a mass transit system, should be pursued because of its high multiplier effect. It is therefore crucial that the project structure for a railway project is both sustainable/viable and, at the same time, allows risk sharing with private sector proponents.

The intended project scheme is to establish a government-owned Mindanao Railways Corporation and allow/encourage private sector participation under BOT, BLT, BT, joint venture or other arrangements. The government's participation may be in the provision of right-of-way and/or track infrastructure.

The Mindanao Railways Corporation is envisioned as part of the overall program of laying down an integrated public transport system for Mindanao as well as for the whole country.

Passage of this measure is strongly urged.


MANUEL B. VILLAR, JR.

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**AN ACT CREATING THE MINDANAO RAILWAYS CORPORATION PRESCRIBING
ITS POWERS, FUNCTIONS AND DUTIES, AND PROVIDING FOR THE NECESSARY
FUNDS FOR ITS OPERATION**

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

SECTION 1. Name. Duration and Domicile. - A corporation to serve as the instrumentality of the Government in providing a railroad and transportation system for the whole island of Mindanao is hereby created, to be known as the Mindanao Railways Corporation, which for purposes of this Act shall be called the Corporation. The Corporation shall exist for a term of Fifty (50) years from the date of approval of this Act. It shall have such branches and agencies within or outside the Philippines as may be necessary for the proper conduct of its business.

SECTION 2. Purpose and Specific Powers. - The Corporation shall have the following purposes and specific powers:

a) To own or operate railroads, tramways, and other kinds of land transportation, vessels and pipelines, for the purpose of transporting for consideration, passengers, mails, property and cargo between any point in Mindanao; and

b) As an auxiliary to its main purpose, to own, lease and develop real estate and, where appropriate, operate powerhouses, hotels, restaurants, terminal, warehouses, timber concessions, coal mines, iron and other mineral properties; to manufacture rolling stocks, equipment, tools and

other appliances, to construct and operate in connection with its railroad lines, toll viaducts, toll tunnels and the like.

SEC. 3. General Powers. - The Corporation shall have the following general powers:

a) To do all such other things and to transact all business directly necessary, incidental or conducive to the attainment of the purpose of the corporation;

b) To establish subsidiary corporations or holding companies necessary for the efficient performance of its business and for the efficient operation of the Corporation;

c) To exercise the power of eminent domain and effect just compensation for affected land, assets and property in the acquisition of right-of-way and in the clearing of land necessary for the operations and projects of the Corporation; and

d) Generally, to exercise all powers of a corporation under the Corporation Law.

SEC. 4. Authorized Capital Stock of the Corporation. - The authorized capital stock of the Corporation shall be Two Billion Pesos (P2,000,000,000.00) divided into Twenty Million (20,000,000) shares at par value shares of One Hundred Pesos (P100.00) each, which shall be subscribed by the government, twenty percent (25%) of which or Five Hundred Million Pesos (500,000,000.00) shall be initially paid-up and the balance shall be paid from a continuing annual appropriation of not less than Two Hundred Million Pesos (P200,000,000.00) which is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated. The said amount shall be programmed and released by the Department of Budget and Management in accordance with the schedule of cash requirements to be prepared and submitted by the Corporation.

SEC. 5. Loans. - The Corporation is hereby authorized to contract loans, credits and indebtedness in any domestic or convertible foreign currency, or capital goods, from foreign governments, their agencies, instrumentalities or financial institutions, or any non-governmental national or international financial institutions or firms extending suppliers credit deferred

payment arrangement or other fund sources, or to issue bonds, the total outstanding amount of which, exclusive of interests shall not exceed Two Hundred Million U.S. dollars (\$200,000,000) or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purpose and to enter into and execute documents specifying such terms and conditions.

The President, through and upon recommendation of the Secretary of Finance, is hereby authorized to guarantee, absolutely and unconditionally as primary obligor and not as mere surety, in the name and on behalf of the Republic of the Philippines, the payment of the loans, credits indebtedness and bonds issued up to the amount herein authorized which shall be over and above the amount which the President is authorized to guarantee under Republic Act Numbered Sixty-one hundred and forty-two, as amended, as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

The loans, credits and indebtedness contracted under this Section and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall be exempted from all taxes, import tariffs and duties, charges and restrictions previously and presently imposed and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions.

SEC. 6. Board of Directors, Composition and Appointment. - The corporate powers of the Corporation shall be vested in and exercised by a Board of Directors consisting of a chairman, vice chairman and nine (9) members who shall be appointed by the President with the consent of the Commission on Appointments. The members of the Board shall serve as designated by the 01 President in their appointments for the terms of six (6) years from the date they qualify and assume office except that any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds. For actual attendance of board meetings,

each such member shall receive a per diem of Five Thousand Pesos (P5,000.00). The board meetings may not exceed four (4) times a month.

SEC. 7. Qualifications of Officials. - The Chairman, Vice Chairman, members of the Board of Directors and the General Manager of the Corporation shall be Filipino citizens, at least thirty five (35) years of age at the time of their appointments and holders of degrees in the field of engineering, economics, business management, law and related courses. In addition, a Masters Degree in the same field and/or experience in railway management and operations for at least five (5) years prior to the appointments-is required.

SEC. 8. Powers and Duties of the Board of Directors. - The Board of directors shall have the following powers and duties:

a) To prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the general business of corporation may be exercised, including provisions for the formation of such committee or committees as the Board of Directors may deem necessary to facilitate its business;

b) To appoint and fix the compensation of the General Manager and to appoint and fix the compensation of the other officers of the Corporation subject to the approval of the President. The compensation structure of the Corporation shall be exempt from the Salary Standardization Law or any other law, rule or regulation restricting the compensation and benefits of government agencies, instrumentalities or corporations. The Board by a majority vote of all the members may, for cause, suspend and/or remove the General Manager; and

c) To approve, the annual and/or such supplemental budgets of the Corporation which may be submitted to it by the General Manager from time to time.

SEC. 9. Suspension and Removal of Directors. - Any member of the Board of Directors may for cause be suspended or removed by the President.

SEC. 10. Prohibition for Board Members. - No Chairman or member of the Board of Directors of the Corporation shall at the same time serve in the Corporation in any capacity whatsoever other than as Chairman or member thereof, unless otherwise authorized by law.

SEC. 11. Managing Head. - The management of the Corporation shall be vested in the General Manager.

SEC. 12. Powers and Duties of the General Manager. - The General Manager shall have the following powers and duties:

a) To direct and manage the affairs and business of the Corporation on behalf of the Board of Directors, and subject to its control and supervision;

b) To sit in all meetings of the Board of Directors, as Vice- Chairman, and participate in its deliberations with the right to vote and to preside any meetings for or in the absence of the Chairman;

c) To submit within sixty (60) days after the close of each fiscal year an annual report, through the Board of Directors, to the Office of the President and to the Congress;

d) To appoint and fix the number and the salaries, with the approval of the Board of Directors of such subordinate personnel as may be necessary for the proper discharge of the duties and functions of the Corporation, and with the approval of the Board of Directors, to remove, suspend, or otherwise discipline, for cause, any subordinate employee of the Corporation; and

e) To perform such other duties as may be assigned to him by the Board of Directors from time to time.

SEC. 13. Appointment and Promotion of Personnel. - In the appointment and promotion of officers and employees of the Corporation, merit and efficiency shall serve as basis, and no political test or qualification shall be prescribed and considered for such appointments or promotions.

SEC. 14. Exemption from Taxes, Duties and Port Charges. - The Corporation is hereby exempt from payment of all taxes of every name and nature -- municipal, city, provincial, or national -- upon its capital stock, franchise, right of way, earnings, and all other property owned and operated by it and all duties on all railway materials, supplies and equipment imported to the Philippines for and/or by the said Corporation and this exemption shall extend to port charges upon vessels whose entire cargo consists of materials for the construction of the prescribed port charges on other vessels as the tonnage of materials for such construction or equipment may bear to the tonnage of the entire cargo of the vessel.

SEC. 15. Private Sector Participation. -- Upon recommendation of the Secretary of Finance, the President of the Philippines shall approve the structure for the Mindanao railway project to be undertaken by the Corporation under the following parameters:

a) Where necessary, the Philippine Government, through the Mindanao Railway Corporation, may provide the resources for the acquisition of the right-of-way and the provision and financing of track infrastructure;

b) The private sector shall be allowed and encouraged to be actively involved in the project in areas such as but not limited to planning, construction, development, financing, management and operation of the railway; various schemes like the Build-Operate-Transfer (BOT), Build-Lease-Transfer (BLT), Build-Transfer (BT), joint venture and the like shall be considered in active private sector participation in the project;

c) A project structure and plan for private sector participation shall first be prepared in consultation with the government of the Autonomous Region for Muslim Mindanao, the Southern Philippines Council for Peace and Development (SPCPD) and/or any other body responsible for the development of Mindanao or any part thereof; thereafter, it shall be approved by the President of the Philippines;

d) The project structure and plan for private sector participation shall be to the best advantage of the government and clients of the Corporation; and

e) The selection of the private proponent shall be undertaken in a transparent process with clear rules and guidelines.

SEC. 16. Audit Personnel and Report. -

a) Personnel - The Commission on Audit shall appoint a representative who shall be the Auditor of the Corporation, and the necessary personnel to assist said representative in the performance of his duties. The number and salaries of the Auditor and said personnel shall be determined by the Commission on Audit, subject to appropriation by the Board of Directors. In case of disagreement, the matter shall be submitted to the President whose decision shall be final. Said salaries and all other expenses of maintaining the Auditor's office shall be paid by the Corporation.

b) Report - The financial transactions of the Corporation shall be audited in accordance with law, administrative regulations and the principles and procedures applicable to commercial corporate transactions. A report of audit for each fiscal year, by the representative of the Commission on Audit, through the latter, to the Board of Directors of the Corporation, and copies thereof shall be furnished the President, the Secretary of Transportation and Communications and the Presiding Officers of the two (2) Houses of Congress. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement and surplus or deficit analysis; statement of income and expenses; a statement of sources and application of funds; and such comments and information as may be necessary, together with such recommendations with respect thereto as may be advisable, including a report of any impairment of capital noted in the audit. The report also shows specifically any program, expenditures or other financial transaction or undertaking observed in the course of audit, which in the opinion of the Auditor, has been carried on or made without authority of law.

SEC. 17. Legal Counsel. - The Corporation shall have its own legal department, the chief and members of which shall be appointed by the Board of Directors.

SEC. 18. Exemption from the Land Transportation Office. - The Corporation shall not be subject to the authority and supervision of the Land Transportation Office. The Corporation shall be attached to, report directly to and be under the supervision and control of the Office of the President. It shall closely coordinate with the Department of Transportation and Communications, the government of the Autonomous Region for Muslim Mindanao and Southern Philippines Council Peace and Development (SPCPD) or any such body or agency responsible for the development of Mindanao or any part thereof.

SEC. 19. Liquidation. - When its term or period of existence has expired in accordance with the provision of this Act, the Corporation shall, nevertheless, continue as a body corporate for three (3) years after the time of its dissolution for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of any, convey its properties, but not for the purpose of continuing the business for which it was established. In order to carry out its liquidation, upon the dissolution of the Corporation, a Board of Liquidators shall be appointed by the President to take charge of winding up its corporate affairs and effecting its liquidation.

SEC. 20. Strikes during the National Emergency. - The provisions of law to the contrary notwithstanding, in cases of national emergency, or when in the opinion of the President, the national security or interest is in imminent danger, employees and laborers of the Corporation shall not strike for the purpose of securing changes or modification in their terms and conditions of employment during said period of emergency.

SEC. 21. Reversion of General Funds. - All funds resulting from dissolution and liquidation of the Corporation as herein provided shall revert to the general funds of the government. "

SEC. 22. Applicability of the Corporation Law. - The provisions of the Corporation Law which are not inconsistent with the provisions of this Act, shall be applicable to the Corporation created hereby.

SEC. 23. Repeal or Modification. - The provisions of Republic Act No. 4156, as amended, creating the Philippine National Railways and all Acts, executive orders, administrative orders, and proclamations or parts thereof inconsistent with any of the provisions of this Act, are hereby repealed or modified accordingly.

SEC. 24. reparability Clause. - In the event any provision of this Act of the application of such provision to any person or circumstances is declared unconstitutional, the remainder of this Act or the application of said provision to other persons or circumstances shall not be affected thereby.

SEC. 25. - Effectivity. - This Act shall take effect upon its approval.

Approved,