

REPUBLIC ACT NO. **10752**

AN ACT FACILITATING THE ACQUISITION OF RIGHT-OF-WAY SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS

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

SECTION 1. *Short Title.* – This Act shall be known as “The Right-of-Way Act”.

SEC. 2. *Declaration of Policy.* – Article III, Section 9 of the Constitution states that private property shall not be taken for public use without just compensation. Towards this end, the State shall ensure that owners of real property acquired for national government infrastructure projects are promptly paid just compensation for the expeditious acquisition of the required right-of-way for the projects.

SEC. 3. *National Government Projects.* – As used in this Act, the term “national government projects” shall refer to all national government infrastructure projects and its public service facilities, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the “Build-Operate-and-Transfer Law”, and other related and necessary activities, such as site acquisition, supply or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. Subject to the provisions of Republic Act No. 7160, otherwise known as the “Local Government Code of 1991”, local government units (LGUs) may also adopt the provisions of this Act for use in the acquisition of right-of-way for local government infrastructure projects.

SEC. 4. *Modes of Acquiring Real Property.* – The government may acquire real property needed as right-of-way site or location for any national government infrastructure project through donation, negotiated sale, expropriation, or any other mode of acquisition as provided by law.

In case of lands granted through Commonwealth Act No. 141, as amended, otherwise known as “The Public Land Act”, the implementing agency shall:

(a) Follow the other modes of acquisition enumerated in this Act, if the landowner is not the original patent holder and any previous acquisition of said land is not through a gratuitous title; or

(b) Follow the provisions under Commonwealth Act No. 141, as amended, regarding acquisition of right-of-way on patent lands, if the landowner is the original patent holder or the acquisition of the land from the original patent holder is through a gratuitous title.

The implementing agency may utilize donation or similar mode of acquisition if the landowner is a government-owned or government-controlled corporation.

When it is necessary to build, construct, or install on the subsurface or subterranean portion of private and government lands owned, occupied, or leased by other persons, such infrastructure as subways, tunnels, underpasses, waterways, floodways, or utility facilities as part of the government's infrastructure and development project, the government or any of its authorized representatives shall not be prevented from entry into and use of the subsurface or subterranean portions of such private and government lands by surface owners or occupants, if such entry and use are made more than fifty (50) meters from the surface.

SEC. 5. *Rules on Negotiated Sale.* – The implementing agency may offer to acquire, through negotiate sale, the right-of-way site or location for a national government infrastructure project, under the following rules.

(a) The implementing agency shall offer to the property owner concerned, as compensation price, the sum of:

- (1) The current market value of the land,
- (2) The replacement cost of structures and improvements therein; and
- (3) The current market value of crops and trees therein.

To determine the appropriate price offer, the implementing agency may engage the services of a government financial institution with adequate experience in property appraisal, or an independent property appraiser accredited by the Bangko Sentral ng Pilipinas (BSP) or a professional association of appraisers recognized by the BSP to be procured by the implementing under the provisions of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" and its implementing rules and regulations pertaining to consulting services.

If the property owner does not accept the price offer, the implementing agency shall initiate expropriation proceedings pursuant to Section 6 hereof.

The property owner is given thirty (30) days to decide whether or not to accept the offer as payment for his property. Upon refusal or failure of the property owner to accept such offer or fails anchor refuses to submit the documents necessary for payments, the implementing agency shall immediately initiate expropriation proceedings as provided in Section 6 herein.

(b) Subparagraph (a)(2) of Section 5 hereof shall also apply to all owners of structures and improvements who do not have legally recognized rights to the land, and who meet all of the following criteria:

- (1) Must be a Filipino citizen;
- (2) Must not own any real property or any other housing facility, whether in an urban or rural area; and

(3) Must not be a professional squatter or a member of a squatting syndicate, as defined in Republic Act No. 7279, otherwise known as the "Urban Development and Housing Act of 1992".

(c) With regard to the taxes and fees relative to the transfer of title of the property to the Republic of the Philippines through negotiated sale, the implementing agency shall pay, for the account of the seller, the capital gains tax, as well as the documentary stamp tax, transfer tax and registration fees, while the owner shall pay any unpaid real property tax.

(d) If requested by the property owner, the implementing agency shall remit to the LGU concerned the amount corresponding to any unpaid real property tax, subject to the deduction of this amount from the total negotiated price. *Provided, however,* That the said amount is not more than the negotiated price.

(e) The property owner and the implementing agency shall execute a deed of absolute sale: *Provided,* That the property owner has submitted to the implementing agency the Transfer Certificate of Title, Tax Declaration, Real Property Tax Certificate, and other documents necessary to transfer the title to the Republic of the Philippines. The implementing agency shall cause the annotation of the deed of absolute sale on the Transfer Certificate of Title.

(f) Upon the execution of a deed of sale, the implementing agency shall pay the property owner:

(1) Fifty percent (50%) of the negotiated price of the affected land, exclusive of taxes remitted to the LGU concerned under subparagraph (d) herein; and

(2) Seventy percent (70%) of the negotiated price of the affected structures, improvements, crops and trees, exclusive of unpaid taxes remitted to the LGU concerned under subparagraph (d) herein.

(g) The implementing agency shall, at the times stated hereunder, pay the property owner the remaining fifty percent (50%) of the negotiated price of the affected land, and thirty percent (30%) of the affected structures, improvements, crops and trees, exclusive of unpaid taxes remitted to the LGU concerned under subparagraph (d) herein: *Provided,* That the land is already completely cleared of structures, improvements, crops and trees.

(1) At the time of the transfer of title in the name of the Republic of the Philippines, in cases where the land is wholly affected; or

(2) At the time of the annotation of a deed of sale on the title, in cases where the land is partially affected.

The provisions of subparagraph (a) herein shall also apply to outstanding claims for right-of-way payments, except that the amount to be offered shall be the price at the time of taking of the property, including legal interest until fully paid.

SEC. 6. *Guidelines for Expropriation Proceedings.* – Whenever it is necessary to acquire real property for the right-of-way site or location for any national government infrastructure through expropriation, the appropriate implementing agency, through the Office of the Solicitor General, the Office of the Government Corporate Counsel, or their deputize government or private legal counsel, shall immediately initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint or at any time thereafter, and after due notice to the defendant, the implementing agency shall immediately deposit to the court in favor of the owner the amount equivalent to the sum of:

(1) One hundred percent (100%) of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR) issued not more than three (3) years prior to the filing of the expropriation complaint subject to subparagraph (c) of this section;

(2) The replacement cost at current market value of the improvements and structures as determined by:

(i) The implementing agency;

(ii) A government financial institution with adequate experience in property appraisal; and

(iii) An independent property appraiser accredited by the BSP.

(3) The current market value of crops and trees located within the property as determined by a government financial institution or an independent property appraiser to be selected as indicated in subparagraph (a) of Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

If, within seven (7) working days after the deposit to the court of the amount equivalent to the sum under subparagraphs (a)(1) to (a)(3) of this section, the court has not issued to the implementing agency a writ of possession for the affected property, the counsel of the implementing agency shall immediately seek from the court the issuance of the writ of possession. The court shall issue the writ of possession *ex parte*; no hearing shall be required.

The court shall release the amount to the owner upon presentation of sufficient proofs of ownership.

(b) In case the owner of the property cannot be found, if unknown, or deceased in cases where the estate has not been settled, after exerting due diligence, or there are conflicting claims over the ownership of the property and improvements and structures thereon, the implementing agency shall deposit the amount equivalent to

the sum under subparagraphs (a)(1) to (a)(3) of this section to the court for the benefit of the person to be adjudged in the same proceeding as entitled thereto.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

If, within seven (7) working days after the deposit to the court of the amount equivalent to the sum under subparagraphs (a)(1) to (a)(3) of this section, the court has not issued to the implementing agency a writ of possession for the affected property, counsel of the implementing agency shall immediately seek from the court the issuance of the writ of possession.

The court shall release the amount to the person adjudged same expropriation proceeding as entitled thereto.

(c) In provinces, cities, municipalities, and other areas where there is no land classification, the city or municipal assessor is hereby mandated, within the period of sixty (60) days from the date of filing of the expropriation case, to come up with the required land classification and the corresponding declaration of real property and improvement for the area. In provinces, cities, municipalities, and other areas where there is no zonal valuation, or where the current zonal valuation has been in force for more than three (3) years, the BIR is mandated, within the period of sixty (60) days from the date of filing of the expropriation case, to conduct a zonal valuation of the area, based on the land classification done by the city or municipal assessor.

(d) With reference to subparagraph (a)(1) of this section, in case the completion of a government infrastructure project is of utmost urgency and importance, and there is no land classification or no existing zonal valuation of the area concerned or the zonal valuation has been in force for more than three (3) years, the implementing agency shall use the BIR zonal value and land classification of similar lands within the adjacent vicinity as the basis for the valuation.

(e) In any of the cases in subparagraphs (a) to (d) of this section, upon its receipt of the writ of possession issued by the court, the implementing agency may take possession of the property and start the implementation of the project.

(f) In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

(g) With regard to the taxes and fees relative to the transfer of title of the property to the Republic of the Philippines through expropriation proceedings, the implementing agency shall pay the documentary stamp tax, transfer tax and registration fees, while the owner shall pay the capital gains tax and any unpaid real property tax.

SEC. 7. *Standards for the Assessment of the Value of the Property Subject to Negotiated Sale.* – In order to facilitate the determination of the market value of the property, the following relevant standards shall be observed:

- (a) The classification and use for which the property is suited;
- (b) The development cost for improving the land,
- (c) The value declared by the owners;
- (d) The current selling price of similar lands in the vicinity,
- (e) The reasonable disturbance compensation for the removal and demolition of certain improvements on the land and for the value of improvements thereon;
- (f) The size, shape or location, tax declaration and zonal valuation of the land;
- (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
- (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The implementing rules and regulations (IRR) to be prepared under Section 13 hereof shall include, among other things, the terms of reference which shall be used by the government financial institutions and independent property appraisers in the determination of the market value of the land. The terms of reference shall define in detail the standards stated herein.

SEC. 8. *Ecological and Environmental Concerns.* – In cases involving the acquisition of right-of-way site or location for any national government infrastructure project, the implementing agency shall take into account the ecological and environmental impact of the project. Before any national government project could be undertaken, the implementing agency shall consider environmental laws, land-use ordinances, and all pertinent provisions of Republic Act No. 7160.

SEC. 9. *Relocation of Informal Settlers.* – The government, through the Housing and Urban Development Coordinating Council (HUDGC) and the National Housing Authority (NHA), in coordination with the LGUs and implementing agencies concerned, shall establish and develop resettlement sites for informal settlers, including the provision of adequate basic services and community facilities, in anticipation of informal settlers that have to be removed from the right-of-way site or location of future infrastructure projects, pursuant to the provisions of Republic Act No. 7279, otherwise known as the “Urban Development and Housing Act of 1992”. Whenever applicable, the concerned LGUs shall provide and administer the resettlement sites.

In case the expropriated land is occupied by informal settlers who refuse or are unable to demolish their structures and other improvements therein despite the writ of possession issued by the court under Section 6 hereof, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279.

SEC. 10. Appropriations for Acquisition of Right-Of-Way Site or Location for National Government Infrastructure Projects in Advance of Project Implementation. – The government shall provide adequate appropriations that will allow the concerned implementing agencies to acquire the required right-of-way site or location for national government infrastructure projects in advance of project implementation. These appropriations shall cover the funds needed to cover the following expenses for activities directly related to right-of-way acquisition for the projects as provided in this Act:

- (a) Cost of parcellary surveys and appraisal of properties affected by the projects;
- (b) Compensation for the project-affected land, structures, improvements, crops and trees;
- (c) Cost of development and implementation of resettlement projects covered by this Act, including planning, social preparation, and other activities under the resettlement action plan; and
- (d) Related expenses of the implementing agency, including capital gains tax in the case of negotiated sale under Section 5 hereof documentary stamp tax, transfer tax and registration fees for the transfer of titles, and other relevant administrative expenses for right-of-way management.

In public-private-partnership (PPP) projects, the modalities of which are defined in Republic Act No. 6957 as amended by Republic Act No. 7718, the implementing agency may, as part of the contract terms and conditions, require the project proponent to:

- (1) Advance the funds covering the cost of the right-of-way which shall be reimbursed later by the implementing agency, except for unsolicited proposals; or
- (2) Finance the right-of-way cost which shall be recovered partly or fully by the proponent from the tolls, fees, or tariffs to be charged to the users of the completed project.

SEC. 11. Regulation of Developments Within Declared Right-of. Way. – Upon the approval of an infrastructure project by the head of the implementing agency concerned, with funding authorized in the General Appropriations Act and with defined right-of-way, no national government agency or LGU shall, within two (2) years from date of notice of taking, allow any development or construction, or issue any building,

construction, development, or business permit, which is contrary to the approved plans and purposes of the project, within the right-of-way, unless explicitly authorized by the head of the implementing agency for justifiable reasons.

SEC. 12. *Sanctions.* – Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil, or criminal sanctions, including suspension or dismissal from the government service and forfeiture of benefits in accordance with the provisions of the law.

SEC. 13. *Implementing Rules and Regulations (IRR).* – A committee shall prepare, in consultation with key stakeholders, the IKE. for the proper implementation of this Act within sixty (60) days from its approval.

The committee shall be composed of the following officials or their duly designated representatives:

- (a) The Secretary of the Department of Public Works and Highways as Chairperson;
- (b) The Secretary of the Department of Transportation and Communications as member;
- (c) The Secretary of the Department of Energy as member;
- (d) The Secretary of the Department of Justice as member;
- (e) The Secretary of the Department of Budget and Management as member;
- (f) The Director General of the National Economic and Development Authority as member;
- (g) The Chairperson of the HUDCC as member; and
- (h) Other representatives of concerned entities as determined by the committee as members.

SEC. 14. *Transitory Clause.* – The provisions of this Act shall apply to all right-of-way transactions, except ongoing transactions which, as of the effectivity of this Act, have been concluded satisfactorily by the parties concerned and who have signed a written agreement as to the price to be paid to the property owner.

SEC. 15. *Separability Clause.* – If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SEC. 16. *Repealing Clause.* – Republic Act No. 8974 is hereby repealed and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 17. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,

(Sgd.) **FRANKLIN M. DRILON**
President of the Senate

This Act which is a consolidation of House Bill No. 5588 and Senate Bill No. 3004 was passed by the House of Representatives and the Senate on May 25, 2015 and December 14, 2015, respectively.

(Sgd.) **OSCAR G. YABES**
Secretary of the Senate

Approved: **MAR 07 2016**

(Sgd.) **BENIGNO S. AQUINO III**
President of the Philippines