



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 51
Monday, February 10, 2014

SIXTEENTH CONGRESS
FIRST REGULAR SESSION

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CALL TO ORDER

At 3:03 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

NATIONAL ANTHEM

The MCU Chorale led the singing of the National Anthem and thereafter rendered the song, entitled *Paruparong Bukid*.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Oscar G. Yabes, called the roll, to which the following senators responded:

Angara, S.	Guingona III, T. L.
Aquino, P. B. IV B.	Honasan, G. B.
Binay, M. L. N. S.	Lapid, M. L. M.
Cayetano, P. S.	Legarda, L.
Drilon, F. M.	Osmeña III, S. R.
Ejercito, J. V. G.	Sotto III, V. C.
Escudero, F. J. G.	Trillanes IV, A. F.
Estrada, J.	Villar, C. A.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Cayetano (A), Enrile, Pimentel, Poe, Recto, and Revilla arrived after the roll call.

Senator Marcos was on official mission.

Senator Defensor Santiago was on sick leave.

APPROVAL OF THE JOURNAL

Upon motion of Senator Aquino, there being no objection, the Body dispensed with the reading of the Journal of Session No. 50 (February 5, 2014) and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2104, entitled

AN ACT ALLOWING ONE PERSON CORPORATIONS, AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF BATAS PAMBANSA BLG. 68 OR THE CORPORATION CODE OF THE PHILIPPINES, AS AMENDED

Yabes

Introduced by Senator Escudero

Introduced by Senator Sonny Angara

To the Committee on Trade, Commerce and Entrepreneurship

To the Committee on Rules

Senate Bill No. 2105, entitled

RESOLUTION

AN ACT TO GIVE JURIDICAL PERSONALITY TO THE PRESENT VETERANS MEMORIAL MEDICAL CENTER (VMMC) AND FOR OTHER PURPOSES

Proposed Senate Resolution No. 483, entitled

RESOLUTION CALLING THE APPROPRIATE SENATE COMMITTEES TO INVESTIGATE, IN AID OF LEGISLATION, THE GROWING NUMBER OF NEW CASES OF THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)

Introduced by Senator Honasan II

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committees on Government Corporations and Public Enterprises; Health and Demography; and Finance

To the Committee on Health and Demography

Senate Bill No. 2106, entitled

AN ACT DESIGNATING CASINO OPERATORS AS COVERED PERSONS UNDER REPUBLIC ACT NO. 9160 (ANTI-MONEY LAUNDERING ACT OF 2001), AS AMENDED, FOR THE PURPOSE OF STRENGTHENING THE ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM REGIME OF THE PHILIPPINES, AND FOR OTHER PURPOSES

APPROVAL OF SENATE BILL NO. 2043 ON THIRD READING

Upon motion of Senator Aquino, there being no objection, the Body considered, on Third Reading, Senate Bill No. 2043, printed copies of which were distributed to the senators on February 4, 2014.

Introduced by Senator Guingona III

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Aquino, there being no objection, Secretary Yabes read only the title of the bill, to wit:

To the Committees on Banks, Financial Institutions and Currencies; and Justice and Human Rights

AN ACT ESTABLISHING THE MARITIME INDUSTRY AUTHORITY (MARINA) AS THE SINGLE MARITIME ADMINISTRATION RESPONSIBLE FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE 1978 INTERNATIONAL CONVENTION ON THE STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING FOR SEAFARERS, AS AMENDED, AND INTERNATIONAL AGREEMENTS OR COVENANTS RELATED THERETO.

Senate Bill No. 2107, entitled

AN ACT GRANTING PHILIPPINE CITIZENSHIP TO JAVALE MCGEE

Introduced by Senator Sonny Angara

To the Committee on Rules

Senate Bill No. 2108, entitled

AN ACT GRANTING PHILIPPINE CITIZENSHIP TO ANDRAY BLATCHE

Secretary Yabes called the roll for nominal voting.

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RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Angara	Lapid
Aquino	Legarda
Binay	Osmeña
Cayetano (P)	Pimentel
Drilon	Poe
Ejercito	Recto
Enrile	Revilla
Escudero	Sotto
Estrada	Trillanes
Guingona	Villar
Honasan	

Against

None

Abstention

None

With 21 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 2043 approved on Third Reading.

PARLIAMENTARY INQUIRY OF SENATOR ESCUDERO

Senator Escudero asked why the two citizenship bills were referred to the Committee on Rules when as the practice in the previous Congress, they were supposed to be referred to the Committee on Justice and Human Rights.

Senate President Drilon explained that bills granting citizenship are considered private bills that must be approved first by the House of Representatives, while similar bills filed in the Senate are referred to the Committee on Rules in the meantime until the House versions are transmitted to the Senate, at which time, they would all be referred to the Committee on Justice and Human Rights.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Aquino acknowledged the presence in the gallery of Senator Richard Yung of the Republic of France, Representative of French

Constituents Living Abroad; and His Excellency Gilles Garachon, Ambassador of the Republic of France to the Philippines.

Senate President Drilon welcomed the guests to the Senate.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 3:13 p.m.

RESUMPTION OF SESSION

At 3:21 p.m., the session was resumed.

MANIFESTATION OF SENATOR ESTRADA

Senator Estrada stated that recently, he was again in the headlines when Ms. Ruby Tuason, upon her arrival, implicated him and Senator Enrile in the PDAF case. Specifically, he said that in her affidavit, Ms. Tuason claimed that he received kickbacks or money from her in the basement parking lot of the Senate.

Senator Estrada then requested the Senate President to instruct General Balajadia of the Office of the Sergeant-At-Arms (OSAA), to release the CCTV footage which would show the presence of Mrs. Tuason in the Senate.

Senate President Drilon asked if Senator Estrada could provide the dates as to when Mrs. Tuason claimed to have been in the Senate Building. Senator Estrada admitted that he did not know when she came to the Senate or his office. He explained that he just wanted to show proof that she did not deliver any money to him either in his residence or in the Senate.

Senate President Drilon requested Senator Estrada to give the OSAA some time to look through all the CCTV footages. He then instructed General Balajadia to comply with the request.

Senator Estrada insisted that he had nothing to hide, and he appealed that the CCTV footage be released because they were being tried by publicity.

Senate President Drilon said that there was no problem with the request as he already directed the

OSAA to provide the footages. However, since the approximate date and time could not be provided, he said that compliance could take some time.

Senator Cayetano (A) said that he consulted with General Balajadia who confirmed that there are CCTV footages in storage because the OSAA keeps them for about 10 years. He assured the Body, as well as the media, that there will be no surprise statements that there are no CCTV footages. He said that the Sergeant-at-Arms would need help and enough time to review the real-time CCTV footages because the Senate has no facial recognition software.

Senator Estrada requested Senator Cayetano (A) to inquire from Mrs. Tuason during the Blue Ribbon Committee hearing on Thursday, February 13, 2013, on the dates that she came to the Senate so that the OSAA could facilitate the immediate release of the CCTV footages.

Senator Guingona, the chairman of the Blue Ribbon Committee, took cognizance of the request of Senator Estrada.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

Senator Cayetano (A) acknowledged the presence in the gallery of the following guests:

- Mayor Bernard Dy of Cauayan, Isabela;
- Students from Don Bosco Academy of Mabalacat, Pampanga, with teachers-in-charge Mr. Gino Bognot and Ms. Cel Liwanag, and class president Marlo Eduardo Manalo;
- Students from the Polytechnic University of the Philippines — College of Communications, led by Ayessa Bandagosa;
- Students of Business Administration and HRM from La Consolacion College of Valenzuela City, accompanied by Professor Janet Brijjiga; and
- Dean Carlton Kramer, Chris Kutzma, and Bob Goodwin from the Asia-Pacific Center for Security studies.

PRIVILEGE SPEECH OF SENATOR CAYETANO (P)

Availing herself of the privilege hour and rising

on a matter of personal and collective privilege, Senator Cayetano (P) delivered her report on the course she attended recently and formally welcomed her guests to the Senate.

Senator Cayetano (P) said that she was given the privilege to attend a course on Transnational Security Cooperation at the Asia-Pacific Center for Security Studies (APCSS), an institute that addresses regional and global security issues by educating, connecting and empowering security practitioners of the United States and Asia Pacific nations in order to advance Asia Pacific security. She informed the Body that she was in a male-dominated company of 28 other participants from the Asia-Pacific region composed mainly of security and intelligence experts.

Senator Cayetano (P) stated that she began the course thinking that the discussion would focus mostly on terrorism, transnational crime and armed conflict. But she pointed out that the discussion went beyond the topics, as she soon realized that there was more to security than armed conflict, which is the more traditional definition, and that what she has been working on in the Senate are actually security issues.

She said that the Reproductive Health laws which she defended and sponsored in the last few years, was criticized for being a population measure so that every reference to population in the law was deleted. However, she said that the transnational security cooperation course that she took included discussions on how demographic changes and their implications affect the population, the food supply, the environmental impact, the rapid growth of urban centers, and the capacity to provide health care and other social services, affecting not only the security of the country but also regional and international security cooperation.

Senator Cayetano (A) said that the security issues which are relevant to the country are the subject matters of two pending Senate investigations, to wit: 1) the rice smuggling which affects the country's food security and economic security; and 2) price hike and electricity shortage which affect economic security on both macro and micro levels. She said that as she explained during the hearing on January 23, the Body must view the availability of adequate electricity supply as vital to the well-being and survival of every family, every business entity, and the nation as a whole.

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Citing the case of Bohol which was struck by a 7.2-magnitude earthquake and by Super Typhoon *Yolanda* a month later, she said that although it was not badly hit by the storm, the province experienced power outage for a longer period since it derives electricity from Leyte, the province hardly hit by said typhoon. Due to lack of security planning, she said the Philippines does not have a back-up power plan not only for Bohol but for many islands in the country as well.

Senator Cayetano (P) informed the Body that she had benefited immensely from the course and that although she could not claim to be a security expert by any standard, she would like to think that she could contribute more to the debates and discussions especially in crafting legislation and policy that would promote national and regional security.

At this point, Senator Cayetano (P) expressed her gratitude to the faculty and staff of the Asia-Pacific Center for Security Studies.

REFERRAL OF SPEECH TO COMMITTEE

Senator Cayetano (A) said that the issue is so encompassing that it is not only a specialization but also a convergence of different interests and expertise.

Upon motion of Senator Cayetano (A), there being no objection, the speech of Senator Cayetano (P) was referred to the Committee on Rules.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 3:33 p.m.

RESUMPTION OF SESSION

At 3:33 p.m., the session was resumed.

PRIVILEGE SPEECH OF SENATOR SOTTO

Availing himself of the privilege hour, Senator Sotto spoke on the recent vehicular accidents in the country and called the attention of the relevant agencies that are concerned with road safety.

Thereupon, Senator Sotto cited the following vehicular accidents:

- On November 14, 2013, involving an MGB Transport passenger bus and Elena Bus Line at the EDSA Magallanes Interchange, Makati City, which killed six and injured 33 because of loose brakes;
- On December 2, 2013, in NLEX Bulacan, involving a Philippine Rabbit passenger bus and a dump truck which killed one and injured 26 ;
- On December 11, 2013, in Concepcion Uno, Marikina City, involving a passenger jeep and a truck which killed four and injured 14;
- On December 16, 2013, in Bicutan, Taguig City Skyway, involving Don Mariano passenger bus and a closed van which killed 21 and 20 injured; and
- On February 7, 2014, in Mountain Province, involving a Florida passenger bus with Plate No. TXT 872 falling into a ravine at around 7:20 a.m., on Friday, February 7, which killed 14 and injured 32 because of loose brakes.

Senator Sotto said that according to the police investigators, some witnesses that they interviewed said that the bus had engine problems. However, he believed that the possibility of human error cannot be discounted.

Senator Sotto noted that the Florida bus accident came just two months after the horrific fall from a Metro Manila skyway of a Don Mariano transit that was also found to have fraudulent chassis number, revealing that it belongs to another vehicle. He said that after the skyway crash, the Land Transportation Franchising and Regulatory Board (LTFRB) vowed to impose stricter control over passenger bus.

Following the Florida bus accident, Senator Sotto said that LTFRB's legal team served the suspension order at the Florida transport's Sampaloc terminal on Saturday, February 8 at 9:20 a.m., and at their Cubao terminal on the same day at 10:30 a.m. He said that the suspension order covers all 238 units of the Florida Transport, Incorporated, of which, the LTFRB discovered, 10 were registered under the name of Mountain Province Cable Tours owned by a certain Norberto Que Sr. He disclosed that no application for

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approval of sale and transfer has been filed by Que in favor of Florida transport. He added that the ill-fated Florida bus was one of the 10 units mentioned above.

Moreover, Senator Sotto revealed that both the chassis and engine numbers of the Florida bus were tampered and were not registered with the LTO, and that it was not authorized to operate as a "for hire" vehicle. He added that among the bus companies that were suspended by LTFRB due to multiple violations, Florida Transport had the most violations. He stated that such blatant violations should not be tolerated because it puts people's lives in danger. He said that there are enough merits to immediately recall the whole fleet of G.V. Florida and Mountain Province Cable Tours, and to temporarily suspend their operations until the permits of their respective units have been verified.

Senator Sotto said that both companies were given 72 hours from the receipt of the order to explain why their certificates of conveyance should not be suspended, cancelled or revoked. He said that the LTFRB has set the hearing on February 19, 2013.

Relative to the ongoing inspection by the LTO and the LTFRB, Senator Sotto enumerated the LTFRB's requirements for the issuance of extension of franchise, as enumerated by a Mrs. Cruz, a senior transportation development officer of the LTFRB, to wit: 1) valid franchise, or one that is not yet expired; 2) application form; 3) valid government issued ID; 4) Official Receipt and Certification of Registration; 5) Financial Capacity; 6) Copy of Business Name; 7) Business Permit; 8) Photo of Garage; 9) Photo of the Unit Plate; and 10) Proof of Publication.

As for the Land Transportation Office (LTO), Senator Sotto said that the Office of the Motor Vehicle Inspection enumerated the following requirements: 1) the first three years of the motor vehicle and every year thereafter; and 2) inspection of the buses for identification, lights, wiper, condition roadworthiness, engine, chassis, and emission test.

Senator Sotto said that almost all the buses that he mentioned, excluding the other eight major bus accidents in 2013 killing a total of about 60 people, did not pass all the requirements of the LTO-Motor Vehicle Inspection System (MVIS). He questioned how the bus companies can operate without passing the LTO-MVIS.

At this point, Senator Sotto called on the appropriate committee to look into the matter and to find out who is responsible for all the negligence.

INTERPELLATION OF SENATOR CAYETANO (A)

Senator Cayetano (A) congratulated Senator Sotto for standing up and speaking about the recent incidents, as he suggested the filing of a case against the negligent government agencies that are responsible for the vehicular accidents to prevent their recurrence.

As to the status of bus franchises, Senator Sotto informed the Body that most of the bus companies that were involved in accidents have expired franchises. He said that he sourced out the information from *www.gmanetwork.com* and *www.abs-cbnnews.com*.

Senator Cayetano (A) said that it is a known fact that the DOTC could issue a regulation, or Congress can enact a law, that would impose higher penalties whenever bus companies are caught operating without a franchise. However, he believed that it would be useless to impose a penalty of P250,000 which a bus company could easily afford as it makes P5 million to P10 million in a year. He pointed out that other countries impose very high penalties that may cause the company's closure.

On another matter, Senator Cayetano (A) said that even assuming that the LTFRB and the DOTC do not have enough manpower to inspect every bus, they could have established a computerized system that would sound off an alarm when a certain franchise has expired or is about to expire, after which an inspector would proceed to the depot or terminal to inspect the buses. He said that in other countries, a contraption is attached to the tires of the buses of an expired franchise and the operators are not allowed to remove them; if the contraption is removed, an even higher penalty is imposed and they are not allowed to operate unless the fine has been paid.

Senator Cayetano (A) stated that the DOTC sounds inane whenever it claims that all that it could afford to do is cancel the franchise of an erring company. He said that in reality, the agency could be more proactive in ensuring the public's safety by conducting random testing of public utility and private vehicles. He said that everyone knows that a vehicle

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cannot be registered without a certificate coming from a smoke emission testing center. However, he noted that there are still vehicles that pass the emission test by just idling the vehicle and not pressing on the gas pedal to avoid failing the test. He said that in some instances, a franchise owner who has 10 buses would only let one bus undergo testing, the rating of which would be applied to the rest of the units.

Senator Cayetano (A) underscored the need for government to not only find fault in erring vehicle owners but to also penalize those conducting the tests as well as the officials of the agencies concerned. He stated that in registering vehicles, vehicle owners complain about several things when going through certain requisites, one of which is the high cost of registration because the road user's tax is high, resulting also in rising expectations of good service. He said that another complaint is that government does not run after its own people who violate the laws.

Senator Cayetano (A) said that even as he lauds Commissioner Henares for her efforts to run after all the tax evaders, he has never seen her run after her own people at the BIR. He revealed that seven out of 10 businessmen that he talked to opine that corruption is more rampant today more than ever.

Senator Cayetano (A) said that while newspapers are reporting that the LTFRB and DOTC would run after bus companies involved in accidents, the agencies do not seem bent on going after the officials who have neglected their duties.

Concurring with Senator Cayetano (A), Senator Sotto reiterated the need for the LTFRB to monitor franchises through the computer, adding that it is absurd for them to be only inspecting the companies when accidents happen.

Relative thereto, Senator Sotto stated that on several occasions, he had personally caught on video smoke-belchers not only in EDSA but in other areas of the metropolis. He said that it would be a good idea to study what penalties to impose on people who conduct inspections and grant certificates of road-worthiness, as he reminded those who engage in the business of public transportation to prioritize public safety over profit-earning. He likewise noted that some franchise owners prefer using old and reconditioned vehicles instead of buying new units to cut losses. He said that such do not deserve to be in the transportation business.

Senator Cayetano (A) recalled that during budget season, the LTO and LTFRB people would go to Congress and lobby for a higher budget for their computerization program. He stated that what used to be a request for P50 million for computerization, for instance, has ballooned to a few hundred million and now to billions of pesos. He said that it is hard to believe that a billion-peso computerization program would not include an alert system for public transportation, as he stressed that even a single unregistered unit should be enough to alert the agency.

Senator Cayetano (A) believed that if the government has been able to continue providing efficient mass transportation like LRT, MRT, Ro-Ro and the Love Bus as it did in the past, it would have not allowed the private sector to enter into a franchise which is a mere privilege to the latter. He said it is double jeopardy when government cannot provide efficient mass transportation system but cannot use the equipment it has acquired for computerization. He noted that the LTO and LTFRB have used their computerization programs mainly for revenue collection in the same manner the private sector considers public transportation as a source of profit and not as a form of public service.

Asked how serious the problem of illegal drug use in the transportation business, Senator Sotto replied that indeed its use by drivers is one of the major causes of accidents, reason why RA 10586, the Anti-Drunk and Drugged Driving Law was enacted. Under this law, he said, drug testing has ceased to be mandatory in securing a license but is only being required when a person is involved in a vehicular accident. On the other hand, he said that RA 9165 mandates that companies conduct random drug testing of their employees, as indeed records would show that drivers admit to taking *shabu* to keep them awake when driving.

Senator Cayetano (A) agreed that even if only one driver uses illegal substance, the lives of many passengers and of his fellow motorists are put at risk. Senator Sotto added that if indeed a driver proves to himself that drug use keeps him awake, its use would become a habit.

Senator Cayetano (A) recalled that back in 1998 when he was still a congressman, he read in a study that more people had died in American freeways than soldiers who died in World War II. He said that while the focus of the study was on drunk drivers

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and not those who are under substance abuse, it revealed that one drunk driver alone could cause an accident that could affect so many lives. He said that he was shocked to read in a recent newspaper report that more than 100 soldiers have tested positive for illegal substance during a random drug testing in the AFP.

Senator Cayetano (A) recalled that several decades ago, while the cause of addiction was being studied and debated in America, Singaporean President Lee Kuan Yew declared that as a small city-state that was fighting for survival, his government does not have the time for such debates but would rather embark on drug testing so that those who are found positive for illegal substance would be dealt with by government decisively.

Pointing out that 70% or seven out of 10 inmates are being detained by the BJMP due to drug-related cases, Senator Cayetano (A) inquired if it would be too much to ask the franchise owners to subject their drivers to monthly drug testing, aside from the mandatory random testing. He said that if during these tests at least two to three drivers are tested positive, two severe penalties could be enforced: 1) to slap a fine on the driver; and 2) to cancel the franchise. He said that he is not aware of any violation to a person's right if a franchise owner subjects his employees to drug testing everyday.

On another matter, Senator Cayetano (A) stated that since bus drivers earn on a commission basis, they would always compete with other drivers to make as many trips as possible, using *shabu* in the process to stay awake and exposing many people to accidents. He said that it was for said reason that his father, while at the Batasang Pambansa, filed a bill for drivers to be given salaries instead of a commission.

As regards franchising, Senator Cayetano (A) noted that the buses in Penang, Malaysia are relatively new and beautiful because the government would bid out to the public the franchise to run the bus system every five or seven years. He said that a franchisee could easily realize a return on investment in four years, and realize a profit in the remaining three years. He added that on the seventh year, the old buses would have to be sold or thrown away and new buses would have to be purchased to keep up with the other bidders, the idea of which is to outbid the competition by offering a better, newer and more modern fleet. He added that those who win the bids are given economic incentives.

Senator Cayetano (A) lamented that in the Philippines, the franchise lasts until the units are dilapidated, and this can be renewed even without re-investing in better units. He said that those who would want to invest in a new franchise would find it hard to have a return on their investment when old franchises are still running despite having rundown units and expired franchises. He likened the matter to smuggled luxury cars for which customs duties have not been paid, while good investors who pay their taxes are on the losing end.

Senator Cayetano (A) believed that there still remain decent bus companies but they are not given incentives by the government for doing what is right. He said that the old players are always ahead of the new ones as they resort to lavishing officials with gifts and perks without improving their services. He likewise noticed that the bus franchises in the provinces are controlled by prominent families, some of whom improve their units while others do not care at all. He said that the LTRFB should not confine itself to the idea of simply cancelling the franchise of a company but should also look into its system of granting and regulating franchises, as well as its computerization.

Lastly, Senator Cayetano (A) suggested that the Philippine government make a comparative study between its transportation system and that of its neighboring countries like Vietnam, Malaysia, Indonesia and Singapore, particularly regarding statistics on the number of accidents, salaries of drivers, and incentives.

At this point, Senator Sotto suggested that the interpellations be likewise referred to the proper committee so that all suggestions would also be considered.

Incidentally, Senator Sotto clarified that he was referring only to the bus companies which continue to operate illegal franchises and broken-down buses, saying that there are also companies which operate buses which are in good condition along EDSA and in Luzon. He urged the commuters not to ride in buses which are obviously dilapidated.

On the issue of the use of dangerous drugs by bus drivers, Senator Sotto noted that in Singapore, a drug user is automatically admitted for rehabilitation, and the driver's family is educated on how to help a family member hooked on drugs. He said that this law in Singapore appears to have effectively discouraged

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drug traffickers to enter the country. He lamented that in the Philippines, mere drug testing is vehemently opposed and lambasted by human rights advocates.

As to why *shabu* is popular among drivers, Senator Sotto explained that the main component of *shabu* is methamphetamine hydrochloride, the use of which originated during the World War II, specifically for the use of Japanese *kamikaze* pilots to keep them awake. He added that the content of the drug was developed in the 1960s and was known as "speed" which has effectively kept the user awake for a few days.

Senator Cayetano (A) said that the substance also heightens the senses of the user. Senator Sotto agreed, stating that it makes the drivers bolder in maneuvering vehicles along the roads. Senator Cayetano (A) said that the drug affects judgment and gives a false sense of bravery. He emphasized that there are good drivers who, lamentably, are unnecessarily made to suffer similar scrutiny because of erring drivers.

Senator Cayetano (A) noted that in London, a person has to ride a bicycle for one year and memorize the roads of the whole city, before he could obtain a license to drive a taxi. He lamented that despite the number of accidents that have claimed lives of many Filipinos, the Philippines has not really implemented the proper evaluations and examinations for drivers. In closing, he said that while some parts of the speech need to be legislated, some are merely for implementation of the agencies.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Cayetano (A), there being no objection, the Chair referred the speech of Senator Sotto and the interpellations thereon to the Committee on Public Services.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 4:11 p.m.

RESUMPTION OF SESSION

At 4:12 p.m., the session was resumed.

COMMITTEE REPORT NO. 2 ON SENATE BILL NO. 1733 (Continuation)

Upon motion of Senator Cayetano (A), there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1733 (Committee Report No. 2), entitled

AN ACT IMPLEMENTING THE PEOPLE'S RIGHT TO INFORMATION AND THE CONSTITUTIONAL POLICIES OF FULL PUBLIC DISCLOSURE AND HONESTY IN THE PUBLIC SERVICE AND FOR OTHER PURPOSES.

Senator Cayetano (A) stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Poe, sponsor of the measure, and Senator Pimentel for his interpellation.

INTERPELLATION OF SENATOR PIMENTEL

Preliminarily, Senator Pimentel commended Senator Poe as well as the authors for coming up with a well-written bill.

Asked whether the bill would create a new right for beneficiaries, Senator Poe explained that the right to freedom of information is already enshrined in the Constitution, and the bill merely seeks to provide a framework for an organized way of exercising said right.

As to whether the objectives of the bill could be achieved through existing laws, Senator Poe believed that the intention of the phrase "as may be provided by law" in Section 7, Article III of the Constitution was for Congress to eventually define the proper exemptions so that other rights guaranteed in the Constitution would be balanced with the right to information.

Noting that the bill seeks to give a government agency a period of 15 days within which to comply with the request, Senator Pimentel noted that there is already a law which mandates the government agency's compliance within the same period. Senator Poe explained that the bill intends to reinforce the law considering that the penalties attached to non-

compliance in present laws do not encourage action on the request. She stated that the present penalty imposes imprisonment of not more than one month and a fine not exceeding P10,000. She also noted that no other remedial measures are made available like the possibility of appeal to the person of a higher position, or the remedy to seek the intervention of the court through a petition for *mandamus*. She confirmed that she was referring to the Code of Conduct and Ethical Standards for Public Officials and Employees or Republic Act No. 6713.

Asked whether RA 6713 could already be considered an FOI law or whether it failed to provide for the new rights and remedies available under the FOI Act of 2013, Senator Poe acknowledged that while RA 6713 covers a facet of the FOI bill, the compliance of a public servant to provide information is only one aspect of the freedom of information. She said that while there are provisions that exempt information from being divulged to the public, there is no uniform procedure or process. Hence, she stated that the bill seeks to institutionalize the procedure by giving 15 days for the government agency to comply, five days to appeal, and another five days from denial within which to file a case before the court or the Ombudsman.

At this point, Senator Poe agreed with Senator Pimentel that the country does not have an FOI law since the Constitution merely mandates the proper exercise of the right to information. Agreeing that the bill could become a landmark law, she expressed hope that it could make the right to information an effective right.

Senator Pimentel said that if there would be no sufficient remedies, the rights would become rights only on paper. At this point, he said that he liked the provision in the bill which states that “the failure of the agency, through its personnel, to decide on something within a certain period of time should be considered already a denial of the request so that the requesting party can already start the remedial process.” He noted that once an administrative remedy within the agency is exhausted, the only remedy available for the requesting party is to go to court.

Senator Pimentel noted further that Section 16(a)(2) of the bill states that: “Upon denial of the appeal with the government agency, the requesting party may file a verified petition for *mandamus* in the proper court xxx. The procedure for such petition

shall be summary in nature.” Stressing that the procedure for the filing of a petition for *mandamus* is already laid down in the Rules of Court, he asked where the provision defining the procedure of *mandamus* as summary in nature was based. In response, Senator Poe commended Senator Pimentel for pointing out the matter and expressed willingness to amend the provision for proper wording and to make it more effective.

Also on the same Section 16(a)(2), Senator Pimentel noted that a portion thereof reads as follows: “xxx The court hearing the case is empowered to receive the information subject of a claim of exception under Section 7 herein and examine then in camera xxx”. He opined that the use of the word “then” was out of place. In response, Senator Poe said that the word should instead be “them.”

Asked on the meaning of the word “cumulative” as used on Section 16 (d), Senator Poe said that the provision intends that all remedies should be exhausted first before proceeding to the proper courts. She welcomed any suggestion that could render the provision more effective.

Senator Pimentel suggested that the word “cumulative” be avoided if its use would, in effect, introduce a new concept.

Asked why the bill is mandating that the provisions of Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004 shall not apply to cases filed under Section 16, Senator Poe explained that the ADR law provides for settlement, while the FOI bill merely says whether the information will or will not be provided. But Senator Pimentel said that people would resort to the ADR law, a mechanism precisely to shorten the time and rigid proceedings within which to resolve an issue pending in court.

However, Senator Poe clarified that in an alternative dispute resolution, there would be compromises depending on the agreements of both parties. Nonetheless, she gave assurance that the Committee would be open to suggestions during the period of amendments.

Senator Pimentel said that the general rule is that all information should be available to the public but under the bill, it seems that the person responsible for the release of information is actually being given the discretion whether to release the inform-

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ation or not which, he believed, would encourage compromises.

Senator Poe stressed that to show seriousness in enforcing said right, under the bill, it is not allowed to bargain away the constitutional right of the people to information as in settlement proceedings under the ADR law.

On whether the provision is looking at the possibility that the requesting party may enter into a compromise, Senator Poe replied that the responsible person or official would determine what type of information would be given to the requesting party based on the exceptions provided under Section 7.

Senator Pimentel expressed hope that a government official withholding the information would be given all the time to rethink his position and review his initial denial of the request and release the same consistent with the general rule of free access to public information.

Senator Poe pointed out that the head of the agency is given five working days to evaluate his or her decision on whether it was really necessary to deny the request based on the exemptions or it was merely done due to negligence or lack of initiative.

To the suggestion that paragraph (e) of Section 16 be reviewed, Senator Poe gave assurance that she would consider the proposal at the proper time to ensure a more applicable FOI law.

Senator Pimentel said that the shining feature of the bill is enabling the public access to information but Section 7 provides several exceptions which could result in loopholes and nullification of the right.

Senator Poe believed that it is not the number but the quality of exceptions in view of so much information or data available in the Internet. She said that unless Senator Pimentel can point out a specific exception that may be detrimental to the bill, the provision can stand as it is so that there would be no confusion as to which information can be granted or withheld.

With regard to Section 7(a)(1), Senator Pimentel noted that the exception used the phrase "national security or internal and external defense" but Section 7(c) also used the words "internal and/or external defense, law enforcement, and border control,"

meaning that internal defense connotes something else other than law enforcement.

Senator Poe said that internal defense is anything that can secure the well-being of the country or, as stated by Harvard Professor Charles Meyer, national security is the capacity of the state to control domestic and foreign conditions that the public opinion of a community believes necessary to enjoy its own self-determination or autonomy. She stated that any information, for example, that will lead to speculations in the market and bank runs may also be withheld under the bill.

Senator Pimentel explained that he was pointing out that the internal defense concept is already contained in the words "national security." Senator Poe said that the Committee would accept the proposal of Senator Pimentel during the period of amendments to remove redundancies and avoid confusion in the bill.

On Section 5, Senator Pimentel asked if only Filipinos have the right or access to public information, Senator Poe replied that the right is guaranteed to every Filipino citizen, however, since a lot of information are also available in the Internet, it does not prohibit an individual from sharing information to other nationals.

On whether a Filipino corporation or NGO can exercise the same right, Senator Poe replied that a corporation, through a representative, who is a Filipino citizen, can avail of such right. She said that it would not be a problem if Senator Pimentel would like the right to information to be extended to Filipino groups, organizations, party-lists, political parties, among others.

On whether "drafts" are treated as covered information, Senator Poe stated that the word "draft" would be removed during the period of amendments. However, Senator Pimentel said that the section refers to drafts upon which decisions would be based. In such a case, Senator Poe said that the type of draft to be covered should be defined in the bill.

With regard to Section 7(k)(16), Senator Pimentel noted that the request for information would merely promote cases before the Ombudsman or a competent court which would entail long legal proceedings.

Senator Poe explained that the provision is just a reinforcement of the remedial procedure to settle

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whether a particular information should be withheld or not. Senator Pimentel suggested that a simplified procedure be created to make the right effective because the information may be released after so many years when it is already not relevant or obsolete.

Senator Poe gave assurance that she would support the suggestion of Senator Pimentel at the proper time.

Asked if penalties or sanctions shall be provided against officials who fail to notify a party whose request was denied, Senator Poe replied that a mere denial in good faith is not subject to penalties but if it can be proven before the Ombudsman or the court that it was due to negligence or there was malice, the official would be held liable.

Asked if an officer who ignores a request would also be sanctioned, Senator Poe replied that it is an act of negligence or an offense under the bill.

At this point, Senate President Drilon expressed concern over Senator Poe's response that if the denial is done in good faith, criminal liability is not incurred. He said that all lawyers are aware that in criminal law, "good faith" is not a defense. He added that in the principle of *mala prohibita* under criminal law, where a person fails to accede to, or deny the demand for disclosure, it would make him/her liable even if acting in good faith. Thereupon, he requested Senator Poe to review and possibly recast the provision.

In reply, Senator Poe asked if it would be advisable to define in the measure the allowable parameters by which a government official might be considered acting in good faith. Senate President Drilon suggested the enumeration of the circumstances under which the criminal liability would not attach, instead of simply stating that denial in good faith would exempt the official from liability.

Senator Poe cited, for instance, the non-availability of information when the records have been destroyed by flood. Senator Pimentel added that if the government official denies the request, he must be able to justify the reason as falling under the exceptions enumerated in Section 7(a) to (k).

Senator Poe, however, cited conditions other than those provided in Section 7, such as when the

document is no longer available due to poor record-keeping, or when there was no archiving capability during the period requested. She expressed openness to suggestions at the proper time that would help define the parameters through which denial in good faith can be accepted.

If sloppy record-keeping would be accepted as an exception, Senator Pimentel also proposed to include a penal provision for poor record-keeping. Senator Poe concurred, proposing that a separate case be filed to reprimand the offender inasmuch as the National Archives of the Philippines Act of 2007 requires the proper filing, protection and preservation of all public records with archival value such as the SALN, the budget, or items to bid which should never be destroyed but should always be filed properly.

Asked on the purpose of the second paragraph in Section 18, Senator Poe explained that the provision basically affirms that the *Official Gazette* could be used to comply with the mandatory disclosure of information.

As to the purpose of the paragraph where Article 2 of the Civil Code was mentioned, Senator Poe stressed that the provision does not seek to amend the Civil Code of the Philippines but merely states which information are considered as official publication.

Senator Pimentel said that he perceived the paragraph as tackling another subject matter notwithstanding its reference to Supreme Court decisions. Thus, he suggested the deletion of the second paragraph of Section 18 if such would not impair the purpose of bill.

Senator Poe expressed willingness to accept amendments at the proper time.

MOTION TO CLOSE THE PERIOD OF INTERPELLATIONS

There being no reservation for interpellation, Senator Poe moved to close the period of interpellations.

Asked by Senator Cayetano (A) if there are other members who have manifested their desire to interpellate on the measure, Senator Poe said that she has spoken to all the members who said that they would not interpellate anymore.

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SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 4:52 p.m.

RESUMPTION OF SESSION

At 4:53 p.m., the session was resumed.

MANIFESTATION OF SENATOR CAYETANO (A)

In consultation with Senator Poe, Senator Cayetano (A) asked that the motion to close the period of interpellations be deferred until the next session day to ensure that all the senators are informed of the status of the bill.

INQUIRY OF THE CHAIR

Asked by Senate President Drilon if the period of interpellations would be closed the next day if no senators have reserved the right to avail of it, Senator Cayetano (A) replied in the affirmative. However, he said that he received a note expressing Senator Estrada's desire to interpellate the following day.

At this point, Senator Cayetano (A) explained that there are senators who do not register to interpellate yet as they would like to listen first to the queries of those who have earlier reserved their right to interpellate.

On the suggestion of Senate President Drilon to request Senator Estrada to avail of the period of

interpellations the next session day, Senator Cayetano (A) assured that he would do the proper coordination. He reiterated the commitment of the Chamber to Senator Poe and the public to push for the approval of the bill before the adjournment of the 16th Congress.

Senator Cayetano (A) said that the period of interpellations would be closed the following day and that the Body would proceed to the period of amendments if no senator would register to interpellate other than Senator Estrada.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1733

Upon motion of Senator Cayetano (A), there being no objection, the Body suspended consideration of the bill.

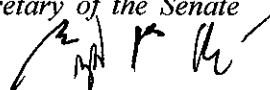
ADJOURNMENT OF SESSION

Upon motion of Senator Cayetano (A), there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

It was 4:56 p.m.

I hereby certify to the correctness of the foregoing.

OSCAR G. YABES
Secretary of the Senate



Approved on February 11, 2014