



REPUBLIC OF THE PHILIPPINES
Senate
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Journal

SESSION NO. 58
Tuesday, February 25, 2014

SIXTEENTH CONGRESS
FIRST REGULAR SESSION

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CALL TO ORDER

At 3:18 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Teofisto "TG" L. Guingona III led the prayer, to wit:

Dear Lord, today we gather as the nation commemorates the triumph of our people's aspiration for the restoration of democracy, freedom and human dignity.

On this day, we aptly remember the words of the Scripture which reminds us of the faithfulness of our God who restores.

From the Book of Deuteronomy 30:3,

"God, your God, will restore everything you lost; He will have compassion on you; He will come back and pick up the pieces from all the places where you were scattered."

God, our Father, today we thank You for Your generous and unending fidelity to the people of our beloved nation.

Twenty-eight years ago, You showed us in ways beyond our imagination the magnitude of that fidelity. You restored to us those precious ideals that were taken

away from us – freedom, democracy and dignity.

Lord, the work of restoration is not over. Today, therefore, we come before You to ask that You anoint our hands and human efforts. Anoint them so that they may be used in the work of restoration:

Restore, Oh Lord, our esteem for ourselves and for one another; restore our respect for the natural resources which You have given us in abundance to be stewards of;

Restore our passion for our mission as public servants and for the vision of a prosperous nation; restore our commitment to and zeal for the service of our constituents and those whom we represent in this legislature.

In a special way, we pray for the restoration of our people's trust in our institutions of government, in particular, for this Chamber where we carry out our mandate.

Lord, You have shown us Your marvelous and miraculous ways; may our eyes never be blind to these marvels and miracles.

All these we pray in Your Name, our faithful God who restores.

Amen.

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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.	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.	Poe, G.
Enrile, J. P.	Revilla Jr., R. B.
Escudero, F. J. G.	Sotto III, V. C.
Estrada, J.	Villar, C. A.
Guingona III, T. L.	

With 17 senators present, the Chair declared the presence of a quorum.

Senators Aquino and Recto arrived after the roll call.

Senators Cayetano (A), Marcos and Pimentel were on official mission.

Senators Defensor Santiago was on sick leave.

Senator Trillanes was absent.

APPROVAL OF THE JOURNAL OF SESSION NO. 57

Upon motion of Senator Angara, there being no objection, the Body dispensed with the reading of the Journal of Session No. 57 (February 24, 2014) and considered it approved.

REFERENCE OF BUSINESS

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

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

Letter from the Secretary General of the House of Representatives, informing the Senate that on 17 February 2014, the House of Representatives passed House Bill No. 3785, entitled

AN ACT STRENGTHENING AND INSTITUTIONALIZING DIRECT

CREDIT SUPPORT OF THE LAND BANK OF THE PHILIPPINES TO AGRARIAN REFORM BENEFICIARIES, SMALL FARMERS AND FISHERFOLK, FURTHER AMENDING REPUBLIC ACT NO. 3844, OTHERWISE KNOWN AS THE "AGRICULTURAL LAND REFORM CODE," AS AMENDED

in which it requested the concurrence of the Senate.

To the Committee on Banks, Financial Institutions and Currencies

BILLS ON FIRST READING

Senate Bill No. 2135, entitled

AN ACT PROHIBITING THE MANUFACTURE, DISTRIBUTION, AND SALE OF PERSONAL COSMETIC PRODUCTS CONTAINING MICRO-BEADS

Introduced by Senator Defensor Santiago

To the Committees on Trade, Commerce and Entrepreneurship; and Environment and Natural Resources

Senate Bill No. 2136, entitled

AN ACT IMPROVING AND ENHANCING RESEARCH AND PROGRAMS ON CHILDHOOD CANCER SURVIVORSHIP

Introduced by Senator Defensor Santiago

To the Committees on Health and Demography; Youth; and Finance

Senate Bill No. 2137, entitled

AN ACT PROVIDING A FRAMEWORK FOR THE RIGHT TO ADEQUATE FOOD

Introduced by Senator Defensor Santiago

To the Committees on Agriculture and Food; and Finance

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Senate Bill No. 2139, entitled

AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 4200, OTHERWISE KNOWN AS AN ACT TO PROHIBIT AND PENALIZE WIRETAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION, AND FOR OTHER PURPOSES

Introduced by Senator Grace Poe

To the Committees on Public Order and Dangerous Drugs; and National Defense and Security

RESOLUTIONS

Proposed Senate Resolution No. 519, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PERPETUATION OF ILLEGAL TRANSPORTATION OF ENDANGERED WILD ANIMALS IN THE COUNTRY DESPITE THE IMPLEMENTATION OF VARIOUS LAWS PROTECTING ENDANGERED SPECIES

Introduced by Senator Defensor Santiago

To the Committee on Environment and Natural Resources

Proposed Senate Resolution No. 520, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED SHORTAGE OF PHYSICIANS IN THE COUNTRY, ESPECIALLY IN RURAL AREAS

Introduced by Senator Defensor Santiago

To the Committee on Health and Demography

Proposed Senate Resolution No. 521, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT

AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED NEED TO PREVENT AND STOP FOREIGN CORPORATIONS FROM MINING AND SMUGGLING OUT BLACK SAND FROM THE CAGAYAN PROVINCE

Introduced by Senator Defensor Santiago

To the Committee on Environment and Natural Resources

Proposed Senate Resolution No. 522, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PROLIFERATION OF CYBERSEX DENS POSING AS SCHOOLS, CALL CENTER AGENCIES, AND THE LIKE, IN THE PHILIPPINES

Introduced by Senator Defensor Santiago

To the Committees on Public Information and Mass Media; and Justice and Human Rights

Proposed Senate Resolution No. 523, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED ADVERSE EFFECT TO THE ENVIRONMENT OF TREE-BURNING FOR CHARCOAL MAKING IN ARAYAT, PAMPANGA

Introduced by Senator Defensor Santiago

To the Committees on Environment and Natural Resources; and Local Government

Proposed Senate Resolution No. 524, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, TO INTENSIFY ORGANIC FERTILIZER USE IN THE COUNTRY'S AGRICULTURAL SECTOR

Introduced by Senator Defensor Santiago

To the Committee on Agriculture and Food

Proposed Senate Resolution No. 525, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS AND SUCH OTHER COMMITTEES DEEMED PROPER, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED EXTRAVAGANT LIFESTYLE OF RICH PRISONERS AND THE DOUBLE STANDARD APPLIED IN TREATING INMATES AT THE NEW BILIBID PRISON MAXIMUM SECURITY COMPOUND

Introduced by Senator Defensor Santiago

To the Committees on Justice and Human Rights; and Public Order and Dangerous Drugs

Proposed Senate Resolution No. 526, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORT THAT THE SMUGGLING OF AGRICULTURAL PRODUCTS IN THE COUNTRY IS A BILLION DOLLAR INDUSTRY

Introduced by Senator Defensor Santiago

To the Committees on Trade, Commerce and Entrepreneurship; and Agriculture and Food

Proposed Senate Resolution No. 527, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTS OF VANDALISM FOUND IN CORAL REEFS IN LAPU-LAPU CITY

Introduced by Senator Defensor Santiago

To the Committees on Agriculture and Food; and Environment and Natural Resources

Proposed Senate Resolution No. 528, entitled

RESOLUTION HAILING AND COMMENDING THE ORGANIZERS AND PARTICIPANTS OF THE IGLESIA NI CRISTO (INC) WORLDWIDE WALK FOR CONDUCTING AND COORDINATING THE LARGEST ONE-DAY CHARITY WALK IN SINGLE AND MULTIPLE VENUES IN THE WORLD ON FEBRUARY 15, 2014, WHICH SET NEW WORLD RECORDS AND RAISED FUNDS FOR THE BENEFIT OF THE SURVIVORS OF SUPERTYPHOON YOLANDA

Introduced by Senator Cayetano (A)

To the Committee on Rules

Proposed Senate Resolution No. 529, entitled

RESOLUTION CONGRATULATING AND COMMENDING FIGURE SKATER MICHAEL CHRISTIAN MARTINEZ FOR REPRESENTING THE PHILIPPINES IN THE 2014 WINTER OLYMPICS HELD IN SOCHI, RUSSIA, FROM FEBRUARY 7 TO 23, 2014 AND FOR BEING THE FIRST FIGURE SKATER TO REPRESENT A SOUTHEAST ASIAN COUNTRY IN THE WINTER OLYMPICS

Introduced by Senator Cayetano (A)

To the Committee on Rules

COMMITTEE REPORT

Committee Report No. 15, prepared and submitted by the Committee on Justice and Human Rights, on Senate Bill No. 2138, with Senators Drilon, Guingona III and Pimentel III as authors thereof, entitled

AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED,

recommending its approval in substitution of Senate Bill Nos. 470 and 472.

Sponsor: Senator Pimentel III

To the Calendar for Ordinary Business

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PRIVILEGE SPEECH OF SENATOR OSMEÑA

Availing himself of the privilege hour, Senator Osmeña delivered the following speech questioning the manner the bidding process for the construction of the new Mactan-Cebu International Airport Passenger Terminal and the renovation of the existing terminal was conducted:

SHADES OF PIATCO

I rise on a matter of personal and collective privilege.

Personal because my brothers and sisters in Cebu and the Visayas and Mindanao may be negatively affected by the issue I am about to discuss.

Collective, because this is a matter of ensuring the proper management of the public bidding process particularly that which covers multi-billion peso, multi-year infrastructure which our economy requires so badly.

Some 60 years ago, in late 1954, the forces of the Red Chinese under the leadership of Mao Tse-tung began its incessant artillery bombardment of a chain of islands, prominent among which were the islands group of Quemoy and Matsu, merely two kilometers off the coast of mainland China.

Those islands had been heavily garrisoned by the retreating forces of Gen. Chiang Kai Shek who had established his government-in-exile on the large island of Formosa, now known as Taiwan. Formosa was about 106 miles further from the mainland than Quemoy and Matsu.

Because President Truman had earlier deployed three aircraft carrier battle fleets to position themselves between the mainland and Formosa, the whole world was expecting a new war to break out on the Asian front merely a year after the Korean War had ended.

At the time, the U.S. Armed Forces maintained in the Philippines its two largest military bases outside the continental United States: Subic Naval Base composed of 24,000 hectares in Zambales; and Clark Air Force Base composed of about 28,000 hectares in Pampanga.

Both bases were about 90 minutes flying time by jet bombers from the mainland. The Reds were supplied with Russian MIG jets. It was assumed that if hostilities were to break out, Subic and Clark would become primary targets of the Red Chinese forces.

Subic then was home port covering the 3Rs – rest, resupply and repair – and 3Cs – communications, command and control of the largest U.S. Naval fleet better known as the 7th fleet. Clark was the home base of the 13th Air Force.

At the same time, the governor of Cebu Province was becoming increasingly concerned that his provincial aerodrome, known as the Lahug Airport, had no further room for expansion and definitely would become obsolete in a dozen years with the advent of large pure jet passenger airliners.

It was a sunny weekend when he asked his 10-year old son to drop him off at the airport. The so-called airport was a Quonset Hut in Nichols Air Base (now known as Villamor Air Base) and served as the Presidential Airport lounge.

President Ramon Magsaysay arrived in an unmarked car and he, his military aide, his pilot and the governor took off in a small twin-engine, four-seater civilian aircraft known as the Cessna Model 310.

The group of four returned about four hours later and in another month, the same trip was undertaken.

The governor told his inquisitive son that he was attempting to convince the President to propose to the U.S. government to construct a back-up aerodrome on Mactan Island for the joint use of Philippine and American aircraft. Mactan Island was another 60-minute flying time from Clark and Subic and would serve as a safer haven for U.S. Air Force.

President Magsaysay was able to get the Americans to agree. He authorized the governor to purchase 300 hectares, and the U.S. Department of Defense hired an American contractor in Cebu named Paul Keiner to build the aerodrome.

The succeeding president, Carlos Garcia, came from Bohol and his wife, Lenida Arimataga, was a native of the town of Opon, now known as Lapu-Lapu City, in Mactan Island. Thus, the first airport terminal was authorized and built. It was the Mactan Airport which jump-started the tourism boom in Cebu.

I rise to try to prevent a grievous injury from being inflicted upon the people of Cebu, and all future travelers to and from the Visayas and Mindanao.

The grievous injury which I refer to is a possible award for the construction and a 25-year management of the terminal at the Mactan-

Cebu International Airport (MCIA) to a foreign firm with a questionable operating background and a currently unstable financial position.

As a Cebuano, I am very much concerned because this project, if done well, could send the people of Cebu soaring to higher levels of economic activity, tourism and other commercial ventures and would result in more jobs and higher incomes for tens of thousands.

If done badly, it could send our hopes and aspirations crashing to the ground, with serious repercussions on the national economy and on our international image.

Should the project falter like the infamous PIATCO Terminal 3 of the Ninoy Aquino International Airport (NAIA), it is not only the people of Cebu province but all Filipinos who would suffer the consequences.

Thus, everything will depend on how judiciously the Department of Transportation will select the project concessionaire. I express at this time very serious misgivings about this foreign firm, the GMR Infrastructure Ltd. of India which is partnered with the Filipino-owned Megawide Construction Corporation in bidding for the construction of the new Mactan-Cebu International Airport Passenger Terminal and the renovation of the existing terminal.

The GMR-Megawide consortium submitted a bid of ₱14.4 billion and was declared last month as having submitted the highest financial bid. The next highest bid is ₱13.99 billion submitted by the joint venture of Changi International Airport of Singapore and the Filinvest Development Corporation. Placing third was the consortium of SM Investments Corporation and Zurich Airports whose bid was ₱12.5 billion.

There were four other participants with lower bids.

The MCIA terminal is under the jurisdiction of the Department of Transportation and Communications, or DOTC, and is part of the Public-Private Partnership infrastructure program of the Aquino administration.

The cost of the construction itself will be ₱17.5 billion, and coupled with the GMR-Megawide bid of ₱4.4 billion would bring the total overall cost to ₱32 billion.

The ₱400-million difference between the two highest bids amounts to 1¼ % of the total upfront cost to the concessionaire.

The bid process calls for the DOTC's Pre-Qualification Bids and Awards Committee or

PBAC to conduct a post-qualification review and if all is well, to issue a Notice of Award to the highest qualified bidder.

The Changi-Filinvest group had filed on January 2, 2014, a formal written protest against the GMR-Megawide bid because the GMR had violated the Conflict of Interest provision in the Bidding Rules.

Aside from this, it further appears that GMR's corporate finances currently stand on very shaky grounds if we are to believe reports from prestigious foreign publications and large financial institutions abroad.

These are solid grounds for the disqualification of GMR Infrastructure but I will cover these issues a little later.

For the moment, let me focus on something which I consider more disturbing.

GMR currently is part of a consortium operating two airports in India: the Delhi Airport and the Hyderabad Airport. It recently lost the Maldives Airport contract and was forced to sell its share in the Istanbul Airport project.

One of GMR's partners in the Delhi International Airports Ltd. (DIAL) project in India is the German firm Frankfurt Airport Services Worldwide, also known to us as FRAPORT. This information is included in GMR Infrastructure's Annual Report for 2011-12. Fraport is not merely an investor but the operator of Delhi airport project.

By the way, Fraport is now quitting the Delhi joint venture after only seven years, while at the same time questioning the competence of the Indian government.

Now, I believe we all know who Fraport is. Fraport was the operator partner and majority beneficial owner of the Philippine International Air Terminals Company, Inc. or PIATCO consortium of the NAIA Terminal 3 which has become notorious because of the numerous post-award amendments, flaws and shortcomings, many of which remain unresolved to this date. Amidst charges of kickbacks, bribes and numerous illegal changes in the contract, the original Concession Agreement in 1997 morphed into four ARCA's (Amended and Restated Concession Agreement) by 2001, with the connivance of certain officials of the DOTC. Fraport, through corporate layering, also violated the Constitution by being the beneficial owner of 64% of PIATCO. The Constitution limits them to 40%.

The Senate Blue Ribbon Committee in 2002, after having conducted seven hearings on the PIATCO contract, filed a committee report on

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December 10, 2002, found substantial evidence of irregularities, and referred the matter to the Department of Justice and the Ombudsman.

In 2004, the Supreme Court of the Philippines declared the PIATCO-Fraport contract null and void.

The International Centre for Settlement of Investment Disputes (ICSID) ruled in favor of the Republic of the Philippines in the arbitration case filed by Fraport in Washington, D.C.

The International Chamber of Commerce in Singapore ruled in favor of the Philippines in the arbitration case filed by PIATCO.

So, if a person were to be judged by the company that he or she keeps, what does GMR's association with Fraport tell us? And did GMR learn any tricks from Fraport? Let us take a look.

A report of the Comptroller and Auditor General of India found that GMR-Delhi International Airport enjoyed post-contractual benefits that violated the tendering process that had selected its joint venture partner. Shades of PIATCO!

The audit report also claimed that GMR failed to bring additional funds to the project which resulted in the levy of an Airport Development Fee on passengers amounting to 27% of project cost. So, instead of raising the money internally, they decided to charge the passengers. The report discovered delayed payments of retirement compensation, highly concessional lease agreements, *irregular withdrawal from an escrow account*, and the diversion of funds from a passenger service fee escrow account for the purchase of security equipment. We have more details that are just too long to include in this speech.

As for its financial standing, GMR's own Audited Financial Statements reveal that the company had suffered operating losses for the past three years, from 2011 to 2013.

There is also a damning article in the August 13, 2013 issue of *Forbes*, entitled "House of Debt," which stated that the GMR Group was one of the companies "that cannot even pay the interest on their debt on time."

Equally disturbing is the report from the *Wall Street Journal* just two weeks ago which stated, among other things, that:

1. The GMR Group is one of the three biggest companies that India's banks have been pressuring to sell their assets to enable them to pay their debts;
2. The GMR Group agreed to sell three major

assets, including its 40% holdings in its international airport in Istanbul, Turkey to Malaysian Airport;

3. The *Wall Street Journal* also said that GMR has a US\$6.2 billion debt, with a debt-to-equity of 4.9 to 1, which is considered very risky;
4. GMR sold its 50% equity share in InterGen of Denmark, one of the largest power companies in Europe for US\$1.2 billion.

By the way, InterGen was one of the developers of the Quezon Power Plant in Mauban.

5. GMR sold its 70% equity in a Singapore power station development for US\$482 million.

By the way, the buyer was Meralco.

6. Recently, GMR sold its 74% stake in the 73-kilometer Ulundurpet Highway for US\$110 million;
7. GMR recently sold its Jadcherla Expressway for US\$44 million;
8. GMR just placed on the market its 600-megawatt Warora Power Plant.

There was no price involved but this power plant costs an average of US\$2 million per megawatt, so we can assume it will try to sell it for US\$1.2 billion;

9. The Istanbul Airport for US\$225 million; and
10. GMR also recently cancelled its US\$350 million IPO for GMR infrastructure.

Quoting from a *Credit Suisse* report, entitled "*House of Debt*," the *Forbes* article further revealed: "While many of these groups have projects including several infrastructure projects under construction, the net debt increase has outpaced the capital expenditure during this period." Meaning, they are borrowing more than they are investing.

GMR has a history of not staying for the "long haul."

In fact, with its deluge of asset sales, the GMR Chair, in his message to shareholders, stated that the company planned to change its strategic direction and implement an "Asset Light, Asset Right (ALAR)" approach. In other words, it is rationalizing now its multi-sales by saying that they just want less assets and they want to take their profits early.

The Asset Right strategy builds upon the group's strength as a developer, where it follows

the principle of “Develop, Build, Create Value, Divest, and Reinvest.” Through regular portfolio reviews, the group identifies those assets which have already created maximum value, as well as those whose value is eroding or are eroding. Divesting of these assets releases capital for better opportunities and also improves the quality of its portfolio.

Considering GMR’s ALAR strategy, it therefore becomes imperative that its partner in the Philippines — in Cebu — should have experience in managing airports. Unfortunately, Megawide is a new company and it has no such experience.

The GMR chairman admitted that liquidity is the key to financial success when he stated in his message to the GMR shareholders in 2013. He said:

“The GMR Group has recognized that the environment has changed over the last few years, and will continue to be volatile in the foreseeable future. In this context, profitability and liquidity will prove to be the critical differentiators for sustained financial performance.”

I fear that with its financial situation, GMR should not even be remotely considered a dependable investor to be entrusted with a long-term involvement in our Mactan Airport. I fear that GMR might merely flip its equity in this project for a profit. And where would that leave the Cebuanos?

On the other hand, Changi-Filinvest’s protest may have been providential for us. It provides the DOTC’s Bids and Awards Committee the distinct opportunity to conduct a more diligent evaluation not only of the capability and qualifications of GMR but of its conduct and corporate ethics as well.

Fortunately, the bidding rules clearly provide for a post-qualification process whereby the bidder is subjected to further scrutiny to verify and validate the representations the bidder had made, including checking on conflicts of interest before any award can be made.

It is inevitable that post-qualification review and the petition to disqualify GMR-Megawide have resulted in a delay in the implementation of the project. But the delay has been too long. On January 2, they were given, under the rules, three days. We are now February 25. The reason is that the GMR tried to put one over the other bidders by disregarding the conflict of interest rule.

The reason is that GMR was less than forthcoming with respect to its interlocking interests in two separate bids and we refer to the participation of its airport partner, Malaysian Airports Holdings Berhad in the bidding of another consortium. Because of the involvement of a board member of GMR’s affiliates in the bid of another consortium, this official, Tan Sri Bashir Ahmad, who is managing director of Malaysian Airports Holding Berhad, was also holding a directorship in four other GMR airport projects abroad.

The rule on conflict of interest may not be easily understandable to the layman. But for what it is worth, this is what it states:

“A member of the board of directors or partner ... of a bidder, of any Consortium Member, or any of their Affiliates (of either the bidder or any of its Consortium Members), is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder....”

The violation is clear, the director and partner of GMR’s airport affiliate Malaysia Airport is also directly involved in the bid of the First Philippine-Malaysia Airport consortium.

From the above, it is clear that:

1. A board member or partner of one bidder or its affiliates cannot be directly involved in the bid of another bidder.
2. There is no requirement that you actively participate in the bids of both bidders – you just need to be a director of one bidder and participate in the bid of another bidder. That is why the rule extends two years before and one year after.

GMR represents that their partner Mr. Bashir Ahmad was not actively involved in the bid of GMR. But that is not the point.

The DOTC-PBAC itself already issued a clarification of the conflict of interest rule in its special bid bulletin 11-2013. The PBAC had rejected a suggestion from one of the bidders to spell out that involvement in both bids is required to establish a conflict of interest. It makes one wonder why, with such clarification and evidence of the conflict of interest, PBAC is delaying the disqualification of GMR. They have been conducting their post-qualification review for over a month and a half now.

The conflict of interest issue is not to be taken lightly as the provision is embedded in all government auctions. It aims to protect the

government from colluding parties or related entities submitting several bids for one project. The mere existence of the relationship is enough to cause a conflict and the government is not required to prove collusion as the provision is preventive in nature.

I therefore appeal to this Body to look into this matter and to add its voice to ensure a speedy resolution of the conflict of interest issue so that an award can be made to the highest qualified bidder.

We appeal to the DOTC's PBAC and MCIAA to follow the PPP bidding rules. That would be "*Daang Matuwid*" at its finest.

Finally, we also appeal to President Aquino to take an official interest in this matter since it is the Office of the President that ultimately bears the responsibility for maintaining the admirable growth in economic development that we have thus far attained.

Sixty years ago, a President with wisdom and foresight, Ramon Magsaysay, gifted generations of Cebuanos and Filipinos with the Mactan International Airport.

We pray that President Benigno Aquino, for whose family the people of Cebu have always been overwhelmingly supportive, will not saddle the Cebuanos for the next 25 years with a terminal that looks like a poultry farm managed by a consortium prone to operational and financial shortcuts, but to reward the Cebuano people with the best airport manager in the world, if possible, the Changi Airport of Singapore, the number one airport in the world.

The people of Cebu, the Visayas and Mindanao, deserve no less.

I respectfully move that this speech be referred to the Committee on Public Services for an inquiry, in aid of legislation, to ascertain, among other things, whether the current process in undertaking public bidding fully protects the public interest.

INTERPELLATION OF SENATOR GUINGONA

At the outset, Senator Guingona noted that the protest against the GMR-Megawide Consortium was based on two grounds, namely: 1) violation of the conflict of interest rule; and 2) the supposed shaky financial status of GMR. He then asked why these issues were not brought up during the pre-qualification stage. In reply, Senator Osmeña said that he was likewise perplexed as to why the issue did not come up during the pre-qualification stage

when a simple Google search could have resulted in the discovery of the issues. He added that the DOTC has retained the services of Deloitte Touche Tohmatsu India Ltd. as transaction advisor, whose fee was reportedly in the amount of US\$1.94 million.

As regards the issue of conflict of interest, Senator Osmeña explained that the original partner of First Philippine Airports was the New Zealand Authority, but it was replaced by Malaysia Airports at the last minute when the bid was submitted. He said that nobody knew that Malaysia Airports was one of the consortium bidders even until the submission of the financial bids. He added that the matter was revealed only when it was published in the newspapers on December 2. He expressed hope that the matter could be taken up during the hearing to be conducted by the Committee on Public Services.

Asked whether the retention of New Zealand Authority in the bid could have avoided the issue of conflict of interest, Senator Osmeña answered in the affirmative, explaining that the president of Malaysia Airports Berhad sits on the board of four subsidiaries of GMR, namely: Hyderabad International Airport, Delhi International Airport, Istanbul Airport and Maldives Airport.

Asked if the last-minute switch was made three days before the bidding, Senator Osmeña clarified that the switch was discovered when it was published in the *Standard Today* on December 2, or three days after the submission of the financial bids on November 28.

Noting that the issue of conflict of interest was raised by Filinvest more than a month ago, Senator Guingona pointed out that under the bidding rules, a violation of the provision on conflict of interest could result in the disqualification of the concerned bidder. He said that the controversy has resulted in unnecessary delay in the implementation of the project.

Asked why the DOTC's PBAC has not yet handed down a decision, Senator Osmeña said the DOTC was supposed to render a decision on January 2. He noted that while newspaper articles have quoted the head of the PPP Division of the DOTC as saying that the project would be awarded to GMR, the decision has not been issued, resulting in a 1 ½ month delay.

Senator Guingona asked how the financial capability of GMR could be determined now that

there are serious questions on its financial status, Senator Osmeña replied that even the best-managed companies could get into trouble, as in India's case when ten of its largest corporate conglomerates over-extended themselves by bidding in all existing projects, and when they win, they borrow but could not service the loans taken.

Senator Osmeña explained that in business accounting, one must be able to cover the debt that one has to service for the year at a loan to income ratio of 1.5 to 2:1. To illustrate, he said that if one owes \$1 million, he should have an income of \$1.5 million to \$2 million to be able to pay the loan. He disclosed that GMR could not pay its debt having the debt service ratio of only 0.9, prompting the banks of India to pressure the ten conglomerates to start unloading their assets, sensing that they would not be able to service their debt that would expose India to a systemic risk. Because of the devaluation of the Indian rupee by 13% within the last year or so, he said that the conglomerates that have borrowed abroad in amounts that were in U.S. dollars or Japanese yen saw their debts increase without any indication as to when the devaluation would slow down considering India's serious financial difficulty.

Senator Guingona said that, apparently, the GMR Group was in financial difficulty because they went into a bidding frenzy, and when they were awarded the contracts, they borrowed from the banks.

Senator Osmeña affirmed, saying that what they did was called "project financing." But he pointed out that the situation is more serious. For instance, he said, the company constructed a new 600-megawatt Warora plant but later on realized that the whole region overbuilt power plants; as a consequence, the company was losing money and it wanted to get rid of the plant for lower than what it had cost the company. He further disclosed that the GMR group has also been suffering continuous operational losses for the last three years. He, however, clarified that it is not a bad company *per se*, but had the government known about GMR's issues, it would have not qualified it as a bidder.

To Senator Guingona's observation that the German firm Fraport AG was not involved in the bidding nor a member of any of the seven groups which submitted a bid for the airport terminal, Senator Osmeña disclosed that from year 2000-2002, he was part of the Senate Blue Ribbon Committee,

then headed by Senator Joker Arroyo, that investigated Fraport. He recalled that the contract with Fraport was signed in 1997 but 17 substantial amendments to the contract were made a year later. He said that these amendments were questionable because the winning bidder should not have been allowed to amend the terms of the contract because it would be unfair to the losing bidder, Asia's Emerging Dragon Corporation (AEDC). He added that Fraport made two more amendments in 2000 and a third amendment in 2001; in all, Fraport had five contracts — the original Concession Agreement and four Amended and Restated Concession Agreements (RCAs) — which were later declared null and void by the Supreme Court.

Senator Osmeña said that as reported by the comptroller and auditor general of India for the year ending March 2012, GMR operated the two largest airport projects in India, namely: the New Delhi International Airport (named after Indira Gandhi), and the Hyderabad International Airport (named after Indira Gandhi's son, Rajiv Gandhi), and when it was losing, it asked the regulator to charge part of the equity portion amounting to about 30% of what it should have put into the project to the passengers as special development fee, and it got away with it.

Senator Osmeña said that bidders like GMR are very good at regulatory capture so they can easily get favors just like PIATCO which obtained favors through three DOTC secretaries. He said that in the Philippines, the Civil Aviation Authority of the Philippines (CAAP) is the regulatory agency as far as the technical aspects of airline flying is concerned, although MCIAA has its own regulations pursuant to its own charter.

Asked if his apparent opposition to the GMR/Megawide consortium means an endorsement of the bid of the Filinvest-Changi Consortium, Senator Osmeña replied in the affirmative. He stated that the Changi International Airport in Singapore is the number one airport operator in the world, and has been around for 20 years. Considering how well-managed Changi airport is and the Singaporeans' reputation for excellence, he said that he would like to see it happen in Cebu as well. He said that he would like Changi to win the bid but that he could not say if this would happen because the rules mandate that the next qualified bidder will be determined by the DOTC.

Senator Guingona agreed with the statement of Senator Osmeña, as he recalled that since the

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Cory Aquino administration, the Changi Airport of Singapore has always been regarded as “the template” to be emulated by other airports.

In addition, Senator Osmeña noted that Changi International Airport also has international management contracts in the Middle East and Saudi Arabia which reflects a reputation equal to none. The Philippines, he said, has to overcome the reputation of having the worst airport in the world with the NAIA Terminal 1 constantly being voted as the worst in the world. He expressed hope that the Philippines could use a partner like Changi to make the airports at least number one among the smaller airports in Asia.

Asked if the DOTC has a transaction advisor or consultant to assist in the bidding process, Senator Osmeña said that it has engaged the service of Deloitte Touche Tohmatsu, the largest accounting firm in the world which used to be known as Deloitte, Haskins & Sells but changed its name after taking as partner Tohmatsu, a Japanese firm. He said that this particular branch is the Indian branch which supported other questionable firms like India Incorporated. He clarified that he was not saying that Deloitte Touche Tohmatsu is dishonest but was merely asking they exercise due diligence to see all the shortcomings in the operational and financial record of the GMR infrastructure which was not exercised sufficiently.

Senator Guingona said that he looks forward to the hearings of the committee so that all issues would be properly ventilated. He added that he would join Senator Osmeña in his inquiry for the good, not only of the people in Cebu and Mindanao, but of the entire Philippines.

Senator Osmeña further disclosed that Senator Escudero had intimated to him an even bigger inquiry on the reasons why the DOTC has been remiss in many of its projects, not just with the Mactan Airport project, but also regarding the issues on the new car plates and other controversies. He said all these issues could be merged in a joint hearing if the Body would approve.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Angara, there being no objection, the speech of Senator Osmeña and the interpellations thereon were referred to the Committee on Public Services.

SUSPENSION OF SESSION

Upon motion of Senator Angara, the session was suspended.

It was 4:12 p.m.

RESUMPTION OF SESSION

At 4:15 p.m., the session was resumed.

COMMITTEE REPORT NO. 2 ON SENATE BILL NO. 1733

(Continuation)

Upon motion of Senator Angara, 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 Angara stated that the parliamentary status was still the period of individual amendments.

Thereupon, the Chair recognized Senator Poe, sponsor of the measure, and Senator Recto for his amendments.

AMENDED COPY AS OF FEBRUARY 24 AS WORKING DRAFT

At this juncture, Senate President Drilon placed on record that the Body would use the February 24, 2014 amended copy of the bill in order to make proper references for the amendments.

Senator Recto affirmed that he was using the same amended copy.

RECTO AMENDMENTS

As proposed by Senator Recto and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 10, delete lines 13 to 20, and renumber the succeeding paragraphs accordingly; and

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2. On page 16, line 20, insert a new sentence after the word "activities," to read:

THESE LIKEWISE INCLUDE INFORMATION SUBMITTED BY PUBLIC SERVICE CONTRACTORS TO THE GOVERNMENT AGENCY CONCERNED SUCH AS RECEIPTS, IDENTITIES OF THE SUPPLIERS, PURCHASE ORDERS, CASH VOUCHERS, RELATED AGREEMENTS WITH OTHER PRIVATE ENTITIES, AND OTHER DOCUMENTS RELATED TO THE EXECUTION OR THE IMPLEMENTATION OF THEIR TRANSACTIONS OR CONTRACTS WITH THE GOVERNMENT AGENCY INVOLVED.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 4:20 p.m.

RESUMPTION OF SESSION

At 4:30 p.m., the session was resumed.

Thereupon, the Chair recognized Senator Cayetano (P) for her amendments.

CAYETANO (P) AMENDMENTS

As proposed by Senator Cayetano (P) and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 4, line 15, after the word "FORMULATION," insert the phrase INCLUDING EXCHANGES WHEN THE CHIEF EXECUTIVE WAS NOT PRESENT, IF;
2. On page 5, after line 19, insert a new subparagraph (d) to read:

(D) THE INFORMATION REQUESTED PERTAINS TO MATTERS OF HUMAN SECURITY SUCH AS, BUT NOT LIMITED TO, FOOD, HEALTH, MONEY AND TRADE. *PROVIDED*, THAT SUCH DISCLOSURE OR PREMATURE DISCLOSURE WILL IMPERIL OUR WELL-BEING OR DEGRADE THE QUALITY OF LIFE OF OUR PEOPLE BY CAUSING UNNECESSARY PANIC AND CONFLICT AND THREATENING TO LIMIT THE RANGE OF POLICY CHOICES AVAILABLE TO THE

CONCERNED IMPLEMENTING AND REGULATING AGENCIES. *PROVIDED*, *FURTHER*, THAT THIS EXCEPTION SHALL APPLY ONLY UNTIL SUCH TIME THAT THE CONFIDENTIALITY REQUIREMENT OF THE ACTION PLAN OF SAID AGENCY IS NO LONGER NECESSARY IN ADDRESSING THE SAID SECURITY ISSUE;

3. Reletter the succeeding subsections accordingly;
4. On page 7, line 4, after the word "Commissions," insert the phrase WITH A MAJORITY VOTE OF THE BODY IN ACCORDANCE WITH THEIR OWN RULES OF PROCEDURE WHEN APPLICABLE;
5. On page 9, line 19, delete the phrase "regularly publish, print and disseminate at no cost," and in lieu thereof, insert MAKE AVAILABLE UPON THE REQUEST OF ANY CITIZEN;

Senator Cayetano (P) noted that some types of information, such as an outline of procedures, need to be conspicuously displayed through other media like posters. However, she said that in cases where the document contains a thick wad of instructions which cannot be conspicuously displayed, then the information ought to be published in the newspaper as provided by RA 9485. She said her proposal was simpler since the phrase "shall regularly publish, print and disseminate at no cost" might be construed to apply to all the circumstances enumerated. She added that her proposal would give more leeway to the proper release of the information in any of the forms mentioned.

For the sake of consistency, Senator Cayetano (P) said she wanted to amend the word "cost" which appears in a subsequent section of the bill as the term would have been deleted in her amendment.

6. On page 10, line 12, after the word "processes," insert a comma (,) and the word DEADLINES;
7. On page 11, line 11, after the word "Manual," insert the phrase WITHIN SIX MONTHS FROM THE EFFECTIVITY OF THIS ACT.

SUSPENSION OF SESSION

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

It was 4:39 p.m.

RESUMPTION OF SESSION

At 4:40 p.m., the session was resumed.

Upon resumption, Senator Cayetano (P) stated that she was trying to reconcile her earlier amendment which deleted the phrase "at no cost," with Section 12(d) on page 13. She pointed out that reproduction of copies of maps, requiring special machines, would be very costly while archived documents or books might not be that easy to replicate. She asked whether it is the intention of the bill to make all kinds of information available at no cost.

Senator Poe adverted to Section 13 (*Access and Processing Fees*) which allows government agencies to charge a reasonable fee to reimburse the actual cost of reproduction, copying or transcription and the communication of the information requested but an agency may waive the fees if it is satisfied that the requester is an indigent, or that the cost of the reproduction is negligible, or that it is pursuant to a program for proactive disclosure.

RECONSIDERATION OF THE CAYETANO (P) AMENDMENT ON SECTION 9

Upon motion of Senator Cayetano (P), there being no objection, the Body reconsidered the approval of the previous amendment on Section 9.

CAYETANO (P) AMENDMENT

On page 9, as proposed by Senator Cayetano (P), there being no objection, the Body approved the amendment to line 19, which shall now read: AGENCY SHALL MAKE AVAILABLE UPON THE REQUEST OF ANY CITIZEN AT NO COST AND IN AN ACCESSIBLE FORM.

SUSPENSION OF SESSION

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

It was 4:47 p.m.

RESUMPTION OF SESSION

At 4:47 p.m., the session was resumed.

PROPOSED AMENDMENT OF SENATOR CAYETANO (P)

On page 15, line 1, Senator Cayetano (P) inquired

whether the phrase "In all government agencies" would include the Office of the President. She recalled that during the debates on the measure, she and Senator Poe were under the impression that the phrase included the Office of the President. However, she said that further research made by her office revealed that the President is immune from suit because he should not be haled to court by anyone as this may impair him in the exercise of the functions of the Office of the President. She said that if the intent of the bill is to restrict the President from being haled to court, then the phrase "In all government agencies" should not include the Office of the President. On the other hand, she pointed out that based on the principles of the bill, information within the Office of the President would still be covered under the provision. She said that if the intention of the bill is clear that information which are not subject of any exceptions would be covered, whether they are in the custody of the President, the Executive Secretary, or any Cabinet member, then she would no longer introduce an amendment to the provision.

SUSPENSION OF SESSION

Upon motion of Senator Poe, the session was suspended.

It was 4:51 p.m.

RESUMPTION OF SESSION

At 5:01 p.m., the session was resumed.

MANIFESTATION OF SENATOR CAYETANO (P)

Senator Cayetano (P) stated that Section 16 is only procedural in nature and does not affect executive privilege or create any substantive right. She explained that Section 16 just laid down the remedies for persons whose access to information has been denied, thus the title "*Remedies in Cases of Denial of Request for Information.*" Senator Poe affirmed the observation of Senator Cayetano (P) regarding the preservation of presidential communications privilege and that the section was merely procedural.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1733

Upon motion of Senator Angara, there being no

objection, the Body suspended consideration of the bill.

COMMITTEE MEMBERSHIPS

Upon nomination by Senator Angara, the following senators were elected to the following committees hereunder indicated:

Committee on Public Services

Vice Chairman : Osmeña

Congressional Oversight Committee on Quality Affordable Medicines

Chairman : Aquino
Vice Chair : Guingona
Members : Pimentel
Poe
Binay

Senate President Drilon asked if Senator Osmeña is already a member of the Committee on Public Services so that the number of its members would not be affected.

Senator Angara affirmed that Senator Osmeña is a member of the Committee on Public Services.

Joint Congressional Oversight Committee on the Comprehensive Tax Reform Program

Chairman : Angara
Members : Villar
Guingona
Aquino
Sotto

SUSPENSION OF SESSION

With the permission of the Body, the session was suspended.

It was 5:05 p.m.

RESUMPTION OF SESSION

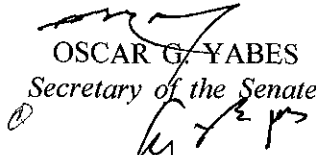
At 5:07 p.m., the session was resumed.

ADJOURNMENT OF SESSION

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

It was 5:08 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate

Approved on February 26, 2014