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SENATE

P.S. Res. No. 365

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Introduced by **SENATOR LEILA M. DE LIMA**

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**RESOLUTION**  
**DIRECTING THE APPROPRIATE SENATE COMMITTEE TO**  
**CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE**  
**VERACITY OF THE REPORTED MALPRACTICES IN THE**  
**PROCUREMENT OF GOODS AND SUPPLIES, AS ALLEGED IN THE**  
**THIRD WEEKLY REPORT OF THE PRESIDENT TO THE JOINT**  
**CONGRESSIONAL OVERSIGHT COMMITTEE PURSUANT TO SECTION 5**  
**OF REPUBLIC ACT NO. 11469, OTHERWISE KNOWN AS THE**  
**“BAYANIHAN TO HEAL AS ONE ACT”**

1           WHEREAS, on 11 March 2020, the World Health Organization (WHO)  
2 declared COVID-19 as a global pandemic.<sup>1</sup> Since then, the numbers have continued to  
3 increase exponentially with 2,172,031 confirmed cases and 146,201 deaths in more  
4 than 110 countries as of 17 April 17, 2020;<sup>2</sup>

5           WHEREAS, on 17 March 2020, President Rodrigo R. Duterte issued  
6 Presidential Proclamation No. 929 declaring a nationwide State of Calamity in the  
7 Philippines as a result of the unabated increase in the number of COVID-19 positive  
8 cases despite government intervention;<sup>3</sup>

9           WHEREAS, on 23 March 2020, the Senate and the House of Representatives  
10 convened in special session to tackle the pressing issues relating to the pandemic.  
11 Subsequently, Republic Act No. 11469, otherwise known as the “Bayanihan to Heal as  
12 One Act” (the “Bayanihan Act”) was enacted on 25 March 2020, which granted

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<sup>1</sup> Ducharme, J. (11 March 2020) “World Health Organization Declares COVID-19 a ‘Pandemic.’ Here’s What That Means”  
Retrieved from: <https://time.com/5791661/who-coronavirus-pandemic-declaration/>. Accessed last 13 March 2020

<sup>2</sup> Gutiérrez, P (16 April 2020) Coronavirus world map: which countries have the most cases and deaths?. Retrieved from:  
<https://www.theguardian.com/world/2020/apr/16/coronavirus-world-map-which-countries-have-the-most-cases-and-deaths>.  
Accessed last 17 April 2020

<sup>3</sup> CNN Philippines (17 March 2020) *Philippines under state of calamity due to COVID-19*. Retrieved from:  
<https://cnnphilippines.com/news/2020/3/17/ph-state-of-calamity-coronavirus.html> Accessed last 18 March 2020

1 President Duterte the power to undertake extraordinary measures to contain COVID-  
2 19;

3 WHEREAS, Section 4 (k) of the same allows the President to undertake the  
4 procurement of goods, which may include personal protective equipment and other  
5 medical equipment and devices, in the most expeditious manner, as exemptions from  
6 the provisions of Republic Act No. 9184, or the Government Procurement Reform Act,  
7 and other relevant laws;

8 WHEREAS, Section 4 (q) of the said law empowers the President to “require  
9 businesses to prioritize and accept contracts for materials and services necessary to  
10 promote the herein declared national policy”;

11 WHEREAS, Article XII, Section 1 of the Constitution states that among the  
12 goals of the national economy is “a sustained increase in the amount of goods and  
13 services produced by the nation for the benefit of the people”;

14 WHEREAS, under Article XII, Section 6 of the Constitution, “[t]he use of  
15 property bears a social function, and all economic agents shall contribute to the  
16 common good...”. It commands that the right to own, establish, and operate economic  
17 enterprises of “[i]ndividuals and private groups, including corporations, cooperatives,  
18 and similar collective organizations” shall be “subject to the duty of the State to  
19 promote distributive justice and to intervene when the common good so demands”;

20 WHEREAS, Article XII, Section 22 of the Constitution on National Economy  
21 and Patrimony, declares that “[a]cts which circumvent or negate any of the provisions  
22 of this Article shall be considered inimical to the national interest and subject to  
23 criminal and civil sanctions, as may be provided by law”;

24 WHEREAS, the third weekly report of the President to the Joint Congressional  
25 Oversight Committee, pursuant to Section 5 of Republic Act No. 11469, revealed that  
26 despite the provisions in Section 4 (k) of the same law on undertaking to procure the  
27 enumerated supplies in the most expeditious manner, “suppliers tend to prioritize  
28 buyers who are willing to make partial or full payment upon placing their orders”.  
29 According to the report, such prioritization has become one of the most pressing  
30 concerns in the procurement of medical supplies and Personal Protective Equipment  
31 (PPEs). As a response thereto, the Government Procurement Policy Board (GPPB)

1 chaired by the Secretary of the Department of Budget and Management issued  
2 Resolution No. 06-2020 on 06 April 2020 which increased the allowable amount of  
3 advance payment from 15% to 30% on specific COVID-19-related procurement  
4 activities;

5 WHEREAS, Section 6 (d) of Republic Act No. 11469 imposes the penalty of  
6 “imprisonment of two (2) months or a fine of not less than Ten thousand pesos  
7 (P10,000.00) but not more than One million pesos (P1,000,000.00), or both, such  
8 imprisonment and fine, at the discretion of the court” in case of “[r]efusal to prioritize  
9 accept contracts for materials and services necessary to promote the herein declared  
10 national policy”;

11 WHEREAS, paragraph 10.3 of Circular 01-20 issued by the GPPB on 06 April  
12 2020 authorizes Procurement Entities (PEs) to impose “imprisonment of two (2)  
13 months or a fine of not less than Ten Thousand Pesos (P10,000.00) but not more than  
14 One Million Pesos (P1,000,000.00), or both” for [r]efusal to prioritize and accept  
15 contracts for materials and services necessary to promote the declared national policy  
16 under the Bayanihan Act”;

17 WHEREAS, these businesses are imbued with public interest especially so  
18 because their services are essential in our country’s fight against COVID-19 – a global  
19 pandemic that has created crisis all over the world;

20 WHEREAS, combatting the COVID-19 crisis demands a dynamic and  
21 synergetic partnership between the State and the private sector so that the flow of  
22 essential goods and services will be left unrestricted especially during these times  
23 where time is of the essence, and when a second of delay could cost the life of an  
24 individual;

25 WHEREAS, the allegations in both the third weekly report and in the Circular  
26 issued by the GPPB raise serious concerns that the government should not tolerate,  
27 considering the gravity of the public health emergency brought about by the virus that  
28 has wreaked havoc worldwide;

29 WHEREAS, the allegations, having appeared nowhere else but the third weekly  
30 report and the Circular issued by the GPPB, must be looked into through an inquiry,  
31 in aid of legislation, to determine whether there is veracity in them. Such investigation

1 must ascertain whether there is truth in the allegations or whether the private sector  
2 has been unjustly blamed for the inefficient and slow procurement of essential goods  
3 and services;

4 WHEREAS, should the investigation reveal that the private sector has  
5 hampered the efficient flow of essential goods and services by failing to prioritize  
6 government contracts, the provisions imposing penalties on the refusal to prioritize  
7 contracts for materials and services necessary to promote the declared national policy  
8 under the Bayanihan Act cannot be rendered useless;

9 WHEREAS, the private sector, especially those imbued with public services,  
10 and those involved in the production and supply of essential goods, must be reminded  
11 that their existence is but an imprimatur from the State, and that along with their  
12 existence, is their social responsibility;

13 WHEREAS, the State, with all the powers already made available to it, must be  
14 faithful to its mandate to provide the most expeditious response required, and to  
15 ensure the safety of both medical frontliners and the COVID-19 patients who are in  
16 dire need of medical supplies and equipment;

17 WHEREAS, the State must assert the powers granted under the Bayanihan Act  
18 given the present situation which the Philippines has to face, endure and survive as  
19 one united nation;

20 WHEREAS, the government must uphold and insist on the penal provisions of  
21 the Bayanihan Act, and exact accountability for the abusive and inconsiderate actions  
22 of certain businesses which hampers the efforts of the government to outpace and  
23 address this pandemic, compromises the strategies conceived and set in place by the  
24 Inter-Agency Task Force on Emerging Infectious Diseases (IATF-EID), and which  
25 could further aggravate the crisis and delay government response;

26 **NOW THEREFORE, BE IT RESOLVED, AS IT IS HEREBY**  
27 **RESOLVED**, to direct the appropriate Senate Committee to conduct an inquiry, in  
28 aid of legislation, into the veracity of the reported malpractices in the procurement of  
29 goods and supplies as alleged in the third weekly report of the President to the Joint  
30 Congressional Oversight Committee pursuant to Section 5 of Republic Act No. 11469,  
31 otherwise known as the “Bayanihan to Heal as One Act”.

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*Adopted,*

*Lilade Lima*  
LEILA M. DE LIMA