

REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 64

Monday, February 28, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 64
Monday, February 28, 2005

CALL TO ORDER

At 3:33 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 Senate Choir led the singing of the national anthem and thereafter rendered the song entitled *Bayan Ko*.

ROLL CALL

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

Angara, E. J.	Gordon, R. J.
Arroyo, J. P.	Lacson, P. M.
Defensor Santiago, M.	Lapid, M. L. M.
Drilon, F. M.	Osmeña III, S. R.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada, L. L. P.	Pimentel Jr., A. Q.
Enrile, J. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.

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

Senators Biazon, Lim, Magsaysay, Recto and Villar arrived after the roll call.

Senator Cayetano was on official mission abroad.

Senator Madrigal was absent on account of illness.

**APPROVAL OF THE JOURNAL
OF SESSION NO. 57**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 57 (January 31, February

1, 2, 3, 4, 7, 8, 9 and 10, 2005) and considered it approved.

**APPROVAL OF THE JOURNAL
OF SESSION NO. 63**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 63 and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matter and the Chair made the corresponding referral:

**MESSAGE FROM THE
HOUSE OF REPRESENTATIVES**

Letter from the Secretary General of the House of Representatives, informing the Senate that on 15 February 2005, the House of Representatives elected Representatives Puntevella, Iggy Arroyo, Jaraula, Roman, Villafuerte, Castro, Mercado and Garcia (alternate), on the part of the Majority and Representatives Suplico and Noel (alternate), on the part of the Minority, as additional conferees of the House of Representatives to the Bicameral Conference Committee on the disagreeing provisions on House Bill No. 3154, entitled

AN ACT APPROPRIATING FUNDS FOR
THE OPERATION OF THE
GOVERNMENT OF THE REPUBLIC
OF THE PHILIPPINES FROM
JANUARY ONE TO DECEMBER
THIRTY-ONE, TWO THOUSAND
FIVE, AND FOR OTHER PURPOSES.

To the Committee on Rules

ADDITIONAL REFERENCE OF BUSINESS

BILLS ON FIRST READING

Senate Bill No. 1930, entitled

AN ACT REQUIRING THE SUB-
MISSION TO CONGRESS OF THE

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CORPORATE BUDGET OF ALL GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, THEIR SUBSIDIARIES AND AFFILIATES, AMENDING FOR THE PURPOSE, SECTION 13 OF PD 1177, OTHERWISE KNOWN AS THE BUDGETARY REFORM ACT OF 1977

Introduced by Senator Angara

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

Senate Bill No. 1931, entitled

AN ACT TO PROMOTE RURAL HEALTH BY PROVIDING FOR AN ACCELERATED PROGRAM FOR THE CONSTRUCTION OF A POTABLE WATER SUPPLY SYSTEM IN EVERY BARANGAY IN THE COUNTRY WITHIN THREE YEARS

Introduced by Senator Jinggoy Ejercito Estrada

To the Committees on Health and Demography; Environment and Natural Resources; and Finance

Senate Bill No. 1932, entitled

AN ACT CREATING THE OIL SPILL LIABILITY FUND

Introduced by Senator Jinggoy Ejercito Estrada

To the Committee on Environment and Natural Resources

RESOLUTIONS

Proposed Senate Resolution No. 197, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON PUBLIC SERVICES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE EMERGENCE OF VOICE OVER INTERNET PROTOCOL,

TO RESOLVE REGULATORY UNCERTAINTY THAT CONTINUES TO IMPEDE ITS FULL DEVELOPMENT AND UTILIZATION AS AN ALTERNATIVE TO TRADITIONAL TELECOMMUNICATION SERVICES

Introduced by Senator Mar Roxas

To the Committee on Public Services

Proposed Senate Resolution No. 198, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON EDUCATION, ARTS AND CULTURE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE DISMAL PASSING RATE OF HIGHER LEARNING INSTITUTIONS ON LICENSURE AND ELIGIBILITY EXAMINATIONS

Introduced by Senator Mar Roxas

To the Committee on Education, Arts and Culture

**PRIVILEGE SPEECH
OF SENATOR DEFENSOR SANTIAGO**

Availing herself of the privilege hour, Senator Defensor Santiago delivered the following speech:

P2.5B SCAM IN THE CAVITE COASTAL ROAD PROJECT

Investigation of the Toll Regulatory Board (TRB)

Expressway toll fees, both north and south of Manila, have made quantum leaps. In the North Expressway, effective 10 February 2005, the tolls were increased by some 400 percent. For example, from Balintawak to Tabang, the toll fee for cars used to be ₱14, but it is now ₱75. From Balintawak to Dau, the fee is now ₱203.

In the South Expressway, effective 1 January 2005, the toll fees were increased by some 33 percent for all three classes of vehicles. Let us just take as an example,

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two points, from Magallanes to Calamba. The toll fee for Class 1 vehicles (car/jeepneys) used to be ₱57, but it is now ₱76. The toll fee for Class 2 vehicles (buses/trucks) used to be ₱114, but it is now ₱151. The toll fee for Class 3 vehicles (heavy and multi-axled bus and trailers) used to be ₱171, but is now ₱227.

In the Manila-Cavite expressway, more popularly known as Coastal Road, the fee was already raised in 2003 to ₱15 for Class 1 vehicles, ₱30 for Class 2 vehicles, and ₱45 for Class 3 vehicles.

The increases in toll fees for these three expressways took the public by unfair surprise. Hence, I propose that this Senate should conduct an inquiry, in aid of legislation, on the policies and procedures of the Toll Regulatory Board (TRB), a little-known agency created in 1977 by P.D. No. 1112. The TRB is supposed to protect public interest, closely supervising and regulating the operation of toll facilities by the private sector, and most specially the collection of toll fees.

It is entirely possible that because of its low profile, the TRB is susceptible to bribery such as, for example, would prompt its officials to approve what appear to be exorbitant increases in toll fees, without giving the public full advance information on the hearings that it is required by law to hold, prior to toll increases.

But there is a much more serious reason for investigating the TRB. It has apparently lent itself as party to a scam which allegedly costs our government ₱2.52 billion in losses from collection of toll fees in the Manila-Cavite Coastal Road.

Investigation of Coastal Road Corporation (CRC)

In addition to the investigation of the Toll Regulatory Board, I propose even more strongly an immediate investigation, under the Anti-Graft and Corrupt Practices Act, of the Public Estates Authority (PEA), now known as the Philippine Reclamation

Authority (PRA), under the Department of Finance; and of the PEA-Tollway Corporation (PEATC) under the National Development Company. I seek investigation of the PRA and PEATC, in connection with the management and operation of the Coastal Road by the Coastal Road Corporation (CRC), a Philippine holding company established in 1999. CRC's main shareholder is Luis Virata, and its general manager is Jennifer Enano Bote.

It is alleged that CRC was able to insinuate itself as a partner in the Coastal Road project, without using any money of its own, and without any track record in operating a toll facility. It did not undergo the competitive bidding process mandated by law, but purportedly bought out the Malaysian investors, using the proceeds of a bank loan, which it paid with another bank loan. It is said to make ₱25 million a month in toll collections.

I am prompted to call for investigation of the CRC on allegations that in operating the Coastal Road, it has been incurring and will continue to incur losses to our government of some ₱2.52 billion, until the year 2018.

History of the Coastal Road Project

The Coastal Road Project is formerly known as the R-1 Expressway, and the R1 Expressway Extension, connecting Metro Manila to Cavite. It is more commonly known as the Manila-Cavite Toll Expressway (MCTE). Since Cavite is a key export-processing zone, the Coastal Road is important because it links Cavite directly to the Ninoy Aquino International Airport and to the Port of Manila. Initially, the Coastal Road was a simple two-way asphalt road stretching from MIA Road to Pamplona Road. Today, it operates under the jurisdiction of the Philippine Reclamation Authority. Under P.D. No. 1084, the predecessor agency, PEA, was granted authority to reclaim lands and, among others, to collect fees or tolls for their use. Consequently, in 1990, the TRB granted to PEA a Toll Operation Certificate (TOC).

with the "authority to operate the R-1 Expressway ... presently known as the Manila-Cavite Coastal Road with the obligation to construct, operate, and maintain with its own financing, portions of the Expressway...."

Under the terms of the Certificate, the PEA has the right to collect toll fees for a period of not more than 25 years from direct users of the toll expressways at the rates approved by the TRB. Upon expiration of the Certificate, the PEA has to turn over to the TRB the toll facilities. To finance the completion of the Manila-Cavite Coastal Road, the PEA issued bonds with the guarantee of the Philippine government.

Although the Certificate generally stated that the PEA shall not transfer its rights, in 1994, the PEA entered into a Joint Venture Agreement (JVA) with two Malaysian companies, following an exchange of state visits between President Ramos and the Malaysian Prime Minister, Dr. Mahathir Mohamad. The parties agreed to develop the MCTE which by that time already included the C5 Link Expressway, and provided for a period of 35 years. The proportionate share in the project income was to be initially 10-90 percent in favor of the Malaysian partner; thereafter, it would be 60-40 percent in favor of PEA.

The two Malaysian companies were:

- ♦ Mara, a corporate agency of the Malaysian government; and
- ♦ Renong, a public listed company incorporated in Malaysia.

However, in 1995, under a novation agreement, Renong was replaced by United Engineers Malaysia (UEM), a public company incorporated in Malaysia. The JVA was accompanied by a Government Support Letter signed by the Secretary of Finance; and a letter from the Secretary of Justice, confirming that the JVA and supporting documents constitute legal, valid, and binding obligations of the Philippine government.

The Sharing Scheme under the Joint Venture Agreement (JVA)

The sharing scheme is provided in the JVA Part B, entitled "The Project," as follows, and everything I read will be in quotation marks because they are lifted directly from the provisions of the Joint Venture Agreement:

"Proportionate Shares

3.2 Subject to the provisions of this Agreement, Project Income after meeting Operation and Maintenance Costs shall be shared by the parties hereto in the following manner:

- (a) during the period from the completion of the Design and Construction Works for Phase I to the repayment in full of loans and interest costs. Cost Advances, capital investment of both the Malaysian Parties and PEA and the Return on Equity to each of the parties hereto pursuant to clause 4.3:

PEA	:	10%
Malaysian Parties	:	90%

For the purposes of determining the aforesaid Proportionate Shares, the parties hereto shall cause the Project Cash Flow to be prepared, which Project Cash Flow shall form the basis for the compilation of the repayment in full of the above; and

- (b) thereafter, during the remainder of the Toll Collection Period:

PEA and/or Philippines stockholders	:	60%
Malaysian Parties	:	40%

and PEA shall accordingly pay to the Malaysian Parties their Proportionate Share of Project Income less the Operation and Maintenance Costs in accordance with the provisions of this Agreement."

In short, under this provision, during Stage A, the sharing is 10 percent for the Filipinos and 90 percent for the Malaysians;

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while during Stage B, the sharing is 60 percent for the Filipinos, and 40 percent for the Malaysians. The shift from Stage A to Stage B will occur when both parties receive their return of equity, based on the Project Cash Flow. PRA estimated that the shift to Stage B would take place in May 2004. By contrast, the Malaysians estimated that the shift to Stage B would take place after 12 years, when they would be able to recoup their alleged investment of P1.10B. Originally, the Malaysians had projected a toll collection of P575,000 a day.

Mas mabuti pa palang maging toll collector kaysa maging senador dahil sila ay kumikita ng P575,000 a day.

On this basis, the Malaysians projected a 12-year period for recouping their investment. But it is alleged that they made a killing because the target of daily collections was exceeded; the actual daily toll collection was allegedly P750,000 to P800,000 per day.

But until now, we have not reached Stage B. In fact, critics claim that the government will eventually lose P2.52 billion because the JVA failed to specify when Stage A ends, and Stage B begins.

Originally, the JVA was executed between PEA and two Malaysian companies, Mara and Renong. Subsequently, Renong was replaced by UEM. Eventually, the two companies established themselves as UEM – Mara Philippines Corp. (UMPC).

In 1996, The Toll Regulatory Board entered into a Toll Operation Agreement (TOA) with the PEA and the UMPC. It provided that the design and construction of the expressways and their financing shall be the primary and exclusive privilege, responsibility, and obligation of the Malaysian parties. It also provided that the PEA would be responsible for the operation and maintenance of the expressways. The franchise period for all expressways shall be 35 years, calculated from the final operation date, or from 1 October 1998, whichever was earlier.

Under the TOA, the PEA was obligated to incorporate a subsidiary company, of which PEA would be the sole stockholder. The subsidiary company has the power and function to perform the obligations of the PEA. Hence, in 1997, PEA Tollway Corporation (PEATC) was incorporated with the primary purpose described as follows: “to manage, operate, monitor, maintain, construct, and repair the Manila Cavite Toll Expressway (MCTE) Project including the construction of the feeder roads, interchanges, and other facilities at any point of MCTE Tollroads and to collect toll fees therefrom.”

With your indulgence, I will have to take a drink of water because I need some fluids in my system, just shortly before I will shock the conscience of every God-fearing, law-abiding decent citizen by what these extremely lucky people are doing and they are walking down the streets of Metro Manila as if they owned it when instead they should have been killed a long time ago or at least hit.

Malaysian Ownership was Transferred to CRC

Ang suwerte talaga nitong CRC na ito, ang lakas ng loob. In 1999, there was a quietly suspicious and apparently fraudulent transfer of ownership, without public bidding, of UMPC owned by the Malaysian investors, to the Coastal Road Corporation (CRC), owned by Virata, who was apparently capable of pulling very strong strings in Malacañang. No less than the Office of the President directed the CRC, which by then had taken over the management of the project from its Malaysian owners, to complete immediately the unfinished portions of the MCTE Project. Accordingly, in 2001, CRC requested PEA for official acknowledgment of its acquisition of UMPC. *Ang sabi nitong korporasyon, “Ang partner ng gobyerno ay hindi na ang mga Malaysian investors dahil binili na namin. Ngayon, aminin ninyo na kami na ang partners ninyo.” Nabili nila ang Malaysians dahil nanghiram sila ng pera sa isang bangko,*

Metrobank, at ang ibinayad nila sa bangkong iyon ay ang hiniram din nila sa IFC or International Finance Corporation. Ganoon sila kagaling. Nangutang sila at ang ibinayad nila ay panibagong utang, at hindi lamang panibagong utang kundi naging utang pa ng gobyerno.

In 2001, CRC requested PEA for official acknowledgment of its acquisition of UMPC, the Malaysian consortium.

By 2002, the PEA Acting General Manager was retired Gen. Diomedio P. Villanueva, and he strongly opposed the transfer of ownership from the Malaysians to CRC.

Mr. Villanueva had good reason for opposing the transfer to CRC. On 30 October 2002, the PEA corporate legal counsel, Atty. Mary Ann Diccion, issued a legal opinion on the sharing scheme over the toll collections. She noted that from the start of the toll collection period in November 1998, the sharing scheme was 90%-10% in favor of UEM-Mara, which shall be observed until Stage A ends. Then she opined:

"To date, however, only a part of Phase 1 is completed, that is, the R1 Expressway and the design and construction of the C5 Link Expressway is not yet completed."

"Thus, the aforesaid sharing of 90 percent of UEM-MARA and 10 percent for PEA may be said to be not yet in accord with the provisions of the JVA. And the present 90 percent sharing of UEM-MARA on toll collections (after deducting Operations and Maintenance expenses) since November 1998 up to September 2002, which amounts to P735,925,617.67 may not have sufficient legal basis pursuant to the provisions of Section 3.2 of the JVA."

Hindi pa pala sila puwedeng makihati sa collections, pero nag-umpisa na silang kumuha ng 90% at nag-iiwan lamang ng 10% para sa ating gobyerno. Kaya bawat

pagdaan natin pala doon sa Cavite Coastal Road, halos lahat ng ibinabayad natin ay pumupunta sa korporasyon.

Only 10% went to our government, and they did this at a time when it was legally questionable whether they have the right to do so. *Iyan ang sinabi ng abogado ng PEA. At ano ang nangyari sa kanya? Bigla siyang nag-resign.* Meaning to say, she was forced to resign. So powerful is Coastal Road Corporation led by Luis Virata and Jennifer Inano Bote.

Biro ninyo, wala naman silang kinalaman sa kontrata ng gobyerno natin at ng mga Malaysians, bigla na lang sila ang naging kapalit ng Malaysians. Pinapasok natin ang Malaysians dahil kailangan natin ang investments nila. Pero itong kapalit na korporasyong Pilipino, wala man lang ni piso na in-invest sa proyektong ito. Laway lamang ang kapital nila. Namghiram sila ng pera para mabili nila ang Malaysians, tapos nanghiram uli sa International Finance Corporation at ang unang installment na nakuha nila sa IFC ay siyang ibinayad nila sa Metrobank.

At ayaw sana ng PEA General Manager na sila ang pumalit doon sa Malaysian dahil pinag-aralan niya ang mga papeles at nakita niya na wala pala silang karanasan sa tollway operation. Pero heto na sila, nangongolekta na sila ng 90% to 10% in favor of themselves. Nang sinabi ng isang abogado sa PEA, "Mukhang malabo ito, baka may sabit tayo," kaagad napa-resign nila ang abogado. Ganoon sila kalakas.

It is said that after issuing this legal opinion, Atty. Diccion was forced to resign from the PEA.

In his letter dated 18 December 2002 to the Executive Director of the Toll Regulatory Board, Mr. Villanueva, then the head of the PEA, argued that CRC lacked financial capacity and lacked technical capability. *Ang sabi ng general manager, "Bakit natin sila papapasukin sa*

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proyekto kung nakikita natin na, una, wala silang pera; pangalawa, wala silang alam o karanasan tungkol sa ginagawang ito.

As PEA acting general manager, Mr. Villanueva concluded: "It may not be prudent for PEA to favorably endorse the acceptance of CRC as the new owner of UMPC. To do so would place PEA and the national government at a very disadvantageous position considering the imminent impairment of the rights of PEA as the 'Grantee' under the TOA" -- remember, this is the technical authority to operate the expressways -- "if the TOA will be used by CRC as security for the IFC loan."

It is said that shortly after sending this letter, Mr. Villanueva was transferred to Philpost, and has since been replaced by another. In other words, the whistle-blower is now jobless.

It appears that CRC bought the shares of the Malaysian company UEM, by borrowing money from Metrobank. It further appears that CRC plans to repay the loan for the 90 percent share of UMPC, from the income of the existing Coastal Road.

The normal procedure for obtaining government authority to operate and maintain a public utility is through competitive bidding, but this basic COA rule was simply sidestepped, apparently with the collusion of Malacañang, whose functionaries must have been richly rewarded for their cooperation. What CRC did was ostensibly to buy the Malaysian shares, and then to present itself as the new owner of the corporation, attempting to prove its financial capability by using a conditional loan application with the International Finance Corporation (IFC). The IFC loan approval stipulated certain conditions that have certainly prejudiced the rights of PEA and our government.

In the course of events, the Philippine government itself negotiated a loan from the IFC for the construction of the R1 Expressway Extension. Because the tollway project

needed \$117 million, the Philippines borrowed \$70 million from the IFC. Apparently, CRC plans to pay its loan to Metrobank in full by tapping the IFC loan. The first drawdown of the IFC loan was apparently used to fully repay CRC's bank loan with Metrobank, which it obtained to acquire UEM. In other words, it appears that CRC gained control of a public utility, not by public bidding, but by getting a bank loan, which it paid by using part of another loan from the IFC. To put it simply, CRC, without releasing any money of its own, without making any capital infusion, is now collecting 90 percent of the toll fees on the Coastal Road.

Mga estudyante, nakikinig ba kayo? Ayan, ganoong paraan yumayaman ang ibang tao sa ating lipunan. Hindi dahil naging honor graduate sila sa elementary school or high school or nag-magna cum laude sila sa college, kung hindi nag-aaral silang magmaniobra, at ito ay hindi itinuturo sa eskuwela. Diyan pumupunta ang pera natin. Tapos ay tinatanong ninyo ang Kongreso: "Bakit walang pera itong aming proyekto dito, proyekto naming doon?" Iyan ang sagot. Kasi yumayaman ang iba sa sobrang galing nila. Kung pakukuhain mo kami ng test nitong CRC, siguradong zero, lagpak ako.

Critics allege that under the 90-10 sharing ratio in favor of CRC, every month CRC earns ₱25 million, while PEA earns only ₱2.80 million. If the project had moved to Stage B last May 2004, as projected then by the PEA, it would be earning every month not only ₱2.80 million, but ₱16.80 million, or an increase of ₱14 million a month. Since the IFC loan agreement will be effective until 2018, under its many loan conditions, we shall reach Stage B only in 2018, meaning a loss to the government of ₱2.52 billion for the next 15 years.

In any event, in July 2003, CRC reportedly took over the operation of the expressway from PEATC. Remember PEATC or the Public Estates Authority Tollway Corporation? *Ang pangumahing*

tungkulin nito ay mangolekta ng toll fees. Pero ngayon, ang nakikita natin, sa 2005, hindi na ang PEATC ang mangongolekta kundi ang CRC na.

The PEA owns 49,993 out of the 50,000 shares of PEATC. The primary purpose of PEATC is to collect toll fees. However, the IFC loan shall be paid from the toll collections, from both the Coastal Road and the proposed R1 Extension. Hence, one of the loan conditions is that PEA had to transfer to CRC the operation and maintenance of the Coastal Road and the subsequent phases of the toll roads.

Hayan, mayroon tayong sariling batas. Sino ang kokolekta ng pera sa mga expressway at tollways? Mayroon tayong batas na sasagot niyan. Pero kayang-kaya tayong diktahan ng IFC na palitan iyong mga sinasabi natin sa ating sariling batas.

This and other stringent conditions of the IFC loan are a direct result of the financial limitations of CRC.

On the one hand, PEA, on behalf of the TRB, obtained an FCDU loan of \$68 million to acquire the right-of-way for the C-5 Link. Until now, the TRB has not remitted to PEA the repayment of this loan. The total project cost of the Coastal Road (R1 Expressway) upgrade is P1.1 billion. But because TRB has failed to compensate PEA for repayment of the loan of \$68 million, PEA's exposure has remained to almost P5.5 billion.

On the other hand, lucky, lucky CRC has allegedly collected some P950 million as its share in the toll collection. The recovery of full costs and return on equity investment is expected between 2004 and 2007.

Ito ay hindi isang kuru-kuro o gumagawa lamang ako ng istorya, kundi kumuha ako ng isang fact dito, isang fact diyari at pinagdugtong-dugtong ko sila. That is why we come to this heading.

The Scam:

*Commission on Audit (COA)
Findings 2003*

I have been able to obtain COA reports on the financial position of PEA Tollway Corporation for 2002, 2003, and 2004. In any court of laws, these COA reports would be accepted as clear and convincing proof of plunder.

The first incriminatory COA report was for 2002 and 2003 and was released in 2004. Under "Comments and Observations," the COA listed at least 10 financial sins of PEATC. The numbers clearly show that TRB has willingly lent itself to a scam engineered by CRC. In 2003, the total fund for distribution was some P300 million. The PEA received only 10%, or some P30 million. The UEM-Mara or CRC -- because UEM-Mara is a wholly owned subsidiary of CFC -- received 90%, or some P273 million. If the TRB had only done its duty and insisted that the Coastal Road Project should already have entered Stage B, our government would have received P273 million, instead of only P30 million.

But there is a section of the 2003 COA report which is utterly damning of the PEATC and all others involved in the Coastal Road scam. It is so categorical that I shall read it in full. Henceforth, for the next few minutes, everything I say will be in quotation marks. This is what the COA said:

"The capital contributions of PEA and UEM-MARA were not properly disclosed in the Joint venture agreement and in the notes to financial statements.

"Section 5 of SFAS No. 31, (presumably these are rules and regulations of the COA) states that the contractual arrangement maybe evidenced in a number of ways, for example by a contract between the venturers or minute discussion between the venturers. In some cases, the arrangement is incorporated in the articles or other by-laws of the joint venture. Whatever its form, the contractual agreement is usually in writing and deals with such matter as:

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- a. the activity, duration and operating obligations of the joint venture;
- b. the appointment of the board of directors or equivalent governing body of the joint venture and the voting rights of the venturers;
- c. capital contributions by the venturers; and
- d. the sharing by the venturers of the output, income, expenses or results of the joint venture.

The COA goes on to say:

"In our review of the Joint Venture agreement between PEA and UEM-MARA and/or the notes to the financial statements, we noted that the capital contributions of the venturers were not disclosed contrary to the above cited provision of SFAS No. 31, thus, making it difficult to determine the reasonableness of the agreed revenue sharing.

Saan kayo nakakita ng kontrata na ang nagnenegosyong dalawang tao o dalawang lupon o grupo ay hindi nila sinasabi kung magkano ang capital na ibinigay ng bawat isa? Where in the world? Dito lamang sa Pilipinas. Magku-kontrata kayo pero hindi ninyo sinasabi kung magkanong perang ilalagay sa negosyo at ganoon din ang kakontrata mo. Ano silang dalawa, lasing? If they are not drunk and if they are not stoned, then they are perfectly, absolutely, exclusively and conclusively corrupt.

The COA added:

Also, the revenue sharing clause in the agreement which states that subject to the provision of this agreement, Project Income after meeting Operation and Maintenance Costs shall be shared by the parties hereto in the following manner and proportion:

- "(a) during the period from the completion of the design and construction works for Phase 1 to the repayment in full of loans and interest cost. Cost Advances, capital investments of both the Malaysian parties and

PEA and the Return on Equity to each of the parties hereto pursuant to clause 4.5:

PEA : 10%
 Malaysian Parties : 90%

- (b) thereafter, during the remainder of the Toll Collection Period :

PEA : 60%
 Malaysian Parties : 40%

And COA said:

"This is vague because it could not be specifically determined when the 90%-10% revenue sharing in favor of UEM-MARA will stop and the 60% to 40% in favor of PEA will begin.

Ano ang sinasabi ng COA? Niloloko nila tayong lahat. Umaasa sila na hindi makakalkal itong mga papeles na ito o kung may makakapansin man, hindi nila maintindihang mabuti.

COA added:

"Comply strictly with the requirements under Section 5 of SFAS No. 31 and disclose in the notes to the financial statements the capital contributions of each venturer and the specific dates when to stop the 90-10 revenue sharing in favor of UEM-MARA and when to begin the 60%-40% revenue sharing in favor of PEA.

"Management was informed that pursuant to the mandate contained in the PEA Charter and the Memorandum of Understanding dated February 3, 1994 executed between Mara, Renong and PEA, PEA entered into a Joint Venture Agreement dated December 27, 1994, for the development of critical infra-structure projects.

"There is no specific capital contributions of PEA and UEM-MARA in the creation of PEATC. Complying with the Toll Operating Agreement, PEA incorporated a subsidiary company named PEA Tollway Corporation or PEATC which is to manage, operate and maintain the project. PEATC is duly incorporated with the SEC, thus, having a separate legal/judicial personality.

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"The Joint Venture agreement is an unregistered agreement between PEA and Malaysian Parties.

"Parties entered into this joint venture agreement which provided that the basis on which the project will be carried out is the spirit of mutual cooperation. It was also in this JVA that the Project Income after meeting operation and maintenance costs will be divided between the parties until such time that the Malaysian parties have recouped or recovered its equity and investment into the project. The basis for the initial 90%-10% sharing is the total expenditures by PEA of about P.6 billion and the estimated project cost of about P6 billion by the Malaysian parties. Thereafter, the sharing of Project Income is reversed in favor of PEA at 60% and 40% in favor of the Malaysian parties until the end of the concession period of 35 years.

As a rejoinder, we informed Management that the agreement between PEA and the Malaysian parties is legal and binding, hence, should be in accordance with the existing government rules and regulations.

If the basis of the revenue-sharing scheme is the total expenditures incurred by each party in the project, then it is imperative that the actual and not the estimated expenditures of the Malaysian party are disclosed.

Pag nagkuwenta pala tayo, hindi pala natin alam kung magkano talaga ang pera ang ini-invest ng Malaysia sa atin. Hinuhulaan lang nila.

"In that manner, there will be a basis in determining whether the said expenditures were already recouped or recovered and the 90%-10% revenue sharing in favor of UEM-MARA will stop and the 60%-40% in favor of PEA will begin. It was noted that the total estimated cost of the project is P6 billion but to date only R-1 Expressway with an estimated cost P1.06 billion was completed, and yet the 90%-10% revenue sharing in favor of UEM-MARA is being implemented. Hence, it is recommended that further review of the revenue sharing be done."

Biro mo iyon, gumastos lamang sila ng P1 billion pero palagi nila tayong kinukuwentuhan na gumastos na sila ng P6 billion kaya dapat sa kanila ang mas malaking parte nitong mga kinukulekta sa expressway dahil P6 billion nga naman ang nagastos nila. Pero nang i-check sila ng COA, P1 billion lamang pala ang nagastos nila.

Ano ang ginagawa ng Toll Regulatory Board? Iyon lamang ang kaisa-isang layunin nitong Toll Regulatory Board na eksaminin kung tama ang ibinayad sa gumawa ng kalsada at kung kailan sila magkakaroon ng parte doon sa mga ibinabayad ninyo at ibinabayad ko. Mukhang natutulog ang TRB. Kasi, sabi ni Sen. Juan Ponce Enrile, nangungulekta sila ng komisyon. That is the inevitable conclusion.

The Scam: COA Findings 2004

I will proceed to another scam. The COA Findings 2004. *Ito ang pinaka-latest na finding ng COA*, in fact, they released it only a few days ago.

The second incriminatory COA report was for 2004, and was released only this month, February 2005. It is in the form of an Audit Observation Memorandum concerning the PEA Tollway Corporation. It is addressed to PEATC President Teodorico Taguinod and Vice-President Manuel Francisco Jr., requesting their comments on the audit observations concerning three topics, as follows:

1. *Revenue Sharing*

COA said:

"The revenue sharing scheme between UEM-MARA and PEA was not revised or amended even if it was disadvantageous to the government considering that only R1 Expressway was completed."

Ang usapan ay tatlong kalsada ang gagawin ng mga Malaysians kaya kapag kumita na, mas malaki ang tatanggapin nila. Ngunit isang kalsada lamang ang

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natapos nila, pero iyong mas malaki ganoon pa rin ang tinatanggap nila ngayon.

COA reasoned that the basis for the initial 90%-10% revenue sharing is the total expenditures by PEA of about P.6 billion and the estimated project cost of about P6 billion by the Malaysian parties. However, after verification, COA found that the P6 billion claimed to have been incurred by the Malaysian parties pertaining to three projects, namely: R1 Expressway, R1 Extension, and C5 Link. However, only the R1 Expressway has been completed, at a cost of P1.061 billion.

This being so, the equity contribution of UEM-MARA is only P460 million, or only 43% higher than the PEA contributions. This is why the 90%-10% revenue sharing scheme is disadvantageous to the government.

The COA report stated explicitly:

“As a result, to date or seven years after the operation of R1 Expressway, UEM-MARA accumulated earnings amounting to P1.350 billion, or P289 million more than its investment.

O, nakita na ninyo? Kinakaya-kaya tayo ng ating mga kapit-bansa. Kunwari, mag-iinvest sila rito, magdadala sila ng pera, tutulong sila sa atin, iyon pala nakuha na nila ang kapital nila, sumobra ng P289 million in round figures P300 million, pero hanggang ngayon, iyong kapalit nilang mga Pilipino ay kumukuha pa rin ng 90% sa ibinabayad natin pag dumaraan tayo sa Cavite Coastal Road. Hindi na ito highway robbery. This is a mortal sin. It is a violation, every single one of the Ten Commandments. This is an insult to Moses who brought down the tablets containing the Ten Commandments from Mount Sinai. It certainly is an insult to the intelligence of the Filipino public.

Grabe namang mag-isip itong mga taong ito. Ganoon ba kababa ang pagtingin nila sa atin? Na magpripisinta sila ng ganitong dokumento na maliwanag na maliwanag na nagnanakaw

sila ng pera. Hindi ba sila nahihiya? Wala silang takot. Sino ba ang nasa likod nila at napakatapang nila sa ginagawa nila? Eh, di iyong mga taga-Malacañang, kasi nag-umpisa ito doon.

PEA's accumulated earnings amounted only to P150 million. *Di maganda. Iyong mga Malaysians kumita sa ating mga Filipino ng P300 million samantalang iyon mismong gobyerno natin kumita lang ng P150 million. Ang galing naman nitong mga Malaysians, mayroon silang kapit-bansa na handang magpayaman sa kanila. Hindi nga tayo magkasundo kung magkakaroon tayo ng dagdag na VAT, nagpapakamatay ang masa dahil ayaw nila. O kaya anong klaseng budget ang ipapa-iral natin sa bicameral conference committee. Pero, dito ipinamimigay lang natin mga milyun-milyon, mga daang milyon, mga daang bilyon.*

2. Advances to UEM-MARA

Said the COA:

“PEATC could have earned as much as P78,000 interest income, net of tax, had it placed all the cash advances granted to UEM-MARA during the calendar year 2004, in money market placement.”

Akala ko investors itong mga Malaysians na ito. Ngayon, mayroong dokumento ang COA na ang gobyerno pala -natin namimigay ng tinatawag na cash advances dito sa mga Malaysians. Akala ko pumunta sila rito dahil bibigyan nila tayo ng pera, pero tayo pala ang nagbibigay ng pera sa kanila.

COA discovered that PEATC granted to UEM-MARA total cash advances of P13,500,000, of which P8 million was outstanding as of 31 December 2004. The outstanding balance of P8 million will be deducted from their profit-sharing on a monthly basis amounting to P1.5 million starting January 2005.

I submit that PEATC, a government agency, had no legal basis for giving cash advances to UEM-MARA, a private

advances in the money market, government could have earned as much as P78,000. Why do government agencies give to UEM-MARA such special, extraordinary, outstanding treatment? What is the secret of the financial wizardry of Luis Virata and Jennifer Bote?

3. Corporate Giveaways

“Advances to UEM-MARA amounting to P700,000 were liquidated as corporate giveaways to various government officials, thus making these expenses unnecessary, excessive, and extravagant.

Sabi ng COA: Namigay sila ng P1 milyon. Itong ating gobyerno binigyan itong dayuhang korporasyon na hawak na ngayon ng Pilipino ng P1 milyon. Sabi ng COA, “Bigyan mo ako’ ng listahan at resibo kung anong ginawa doon sa P1 milyon.” Ngayon nagbigay sila ng listahan ng mga Christmas at birthday presents na ipinamigay daw nila sa mga opisyal ng gobyerno. Iyon daw ang liquidation nila of the cash advances. Tiningnan ko ang listahan ng mga regalo nila, mga ashtray at mga serving tray, kalendaryo, P1 milyon? Magbibigay sila ng pera ng gobyerno, iyon ang kanilang dahilan na namigay sila ng regalo? Mamimigay ka na rin lang ng regalo, di pagandahin mo na para makuha mo ang gusto mo. Namimigay ka ng ashtray, nang-iinsulto ka pa.

COA said:

“Liquidation of cash advances to UEM-MARA amounting to P700,000 was not valid and not authorized under government expenditure rules and regulations. Therefore, said liquidation is disallowed since it is deemed to be excessive, extravagant, and unnecessary expense. Management should collect the amount of P700,000 from UEM-MARA to settle the advances made.”

‘Sus! Grabe itong CRC na ito! CRC ang may-ari nitong UEM-MARA.

4. Consultancy Services

“PEATC incurred unnecessary and irregular expenses for consultancy services amounting to P1,186,438.78.”

Probable Cause for Plunder

Under the Anti-Graft and Corrupt Practices Act, it is a corrupt practice to cause any undue injury to the government or to give any private party – in this case the CRC-MARA—any unwarranted benefits through manifest partiality, evident bad faith, or gross inexcusable negligence. Under the same law, it is also a corrupt practice to enter, on behalf of the government, into any contract manifestly and grossly disadvantageous to the government.

Further, under the Anti-Plunder law, if a public officer and a participating person amasses ill-gotten wealth in the total value of at least P50 million, they are guilty of plunder and shall be punished by *reclusion perpetua* to death.

Hence, I respectfully submit that the proper Senate Committees – presumably the Committee on Government Corporations and Public Enterprises; and the Committee on Public Services – should investigate, in aid of legislation, the criminal culpability for plunder of the following, among others:

1. Luis Virata, Jennifer Enano Bote, other participating officers of the Coastal Road Corporation, and the Malacañang officials who acted and conspired with them, without public bidding, to own and control a Malaysian holding company which has already earned P289 million more than its investment, but continues a profit-sharing scheme of 90%-10% in favor of CRC.
2. The TRB executive director, Engineer Jaime Dumlao, and the Technical Division head, Ramon Dumaul, for apparently favoring CRC, without public bidding, in taking over from the Malaysian investors, thus acquiring the power to operate, manage, and maintain the expressway, which under law belongs to PEATC.
3. The then PEA general manager, now PEATC president, Atty. Teodorico C. Taguinod, and the PEATC vice-president Manuel Francisco, Jr., who approved and otherwise abetted the takeover of CRC over the Coastal Road

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tollway operation, and knowingly showed manifest partiality to CRC by, among others, granting it cash advances which PEATC tried to liquidate as corporate giveaways.

Reportedly, in the recent past, a certain Atty. Ernesto Francisco filed with the Ombudsman a plunder case against Luis Virata of CRC, against TRB, and against PEA. The Ombudsman dismissed the case for being premature, without prejudice to its refiling. Now that TRB and PEA have apparently given their categorical final approval on the takeover of CRC from the Malaysian proponent; and now that the Commission on Audit reports on the PEA Tollway Corporation for 2003 and 2004 incriminate these individuals with documented evidence, I strongly propose that the complaint for plunder should be refiled against these suspects for reprehensible acts of corruption which is costing government the sum of ₱2.5 billion in lost toll collections.

I humbly submit that the investigating committees should particularly ensure the following remedial measures:

1. Determine the actual capital investment of PRA and the CRC as the two parties in the Coastal Road project, and accordingly revise the existing revenue sharing scheme of 90%-10% in favor of CRC headed by Virata and Bote;
2. Stop the monthly distribution of PEATC earnings to the UEM-MARA and PRA;
3. Stop PEATC from granting cash advances to UEM-MARA.
4. Order PEATC to collect ₱700,000 from UEM-MARA as part of the settlement of cash advances;
5. Rescind immediately the consultancy contract between PEATC and UEM-MARA at an annual rate of ₱1 million, and order the latter to refund ₱1,186,438.78 in spurious consultancy fees.

That is the end of the speech which if I am unlucky will cause my premature death because I have just recovered from

flu and reading these pages, detailing the unconscionable acts of corruption of people who pretend to be human beings when actually they are the lowest in the food chain, is enough to make any patient terminal.

I am ashamed that I belong to this country where people can do these things with impunity, commit them in written form and elicit a report from the Commission on Audit so incriminatory that in any country they would immediately be hanged from the nearest tree. Yet in our country, I am sure that they will have their own voluminous explanation in the media tomorrow.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:36 p.m.

RESUMPTION OF SESSION

At 4:36 p.m., the session was resumed.

DEFERMENT OF INTERPELLATIONS ON SENATOR DEFENSOR SANTIAGO'S PRIVILEGE SPEECH

Thereupon, Senator Pangilinan informed the Body that Senator Defensor Santiago had agreed to the request of Senator Lacson to defer his interpellation on the speech to a later date as he would like to go over the same.

APPROVAL OF SENATE BILL NO. 1286 ON THIRD READING

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 1286, printed copies of which were distributed to the senators on February 22, 2005.

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

AN ACT CREATING THE RANK OF
FIRST CHIEF MASTER SERGEANT/

FIRST MASTER CHIEF PETTY OFFICER IN THE ENLISTED RANKS OF THE ARMED FORCES OF THE PHILIPPINES (AFP), APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Secretary Yabes called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Arroyo	Lim
Biazon	Magsaysay
Defensor Santiago	Osmeña
Drilon	Pangilinan
Ejercito Estrada (J)	Pimentel
Ejercito Estrada (L)	Recto
Enrile	Revilla
Flavier	Roxas
Lapid	Villar

Against

None

Abstention

None

With 18 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 1286 approved on Third Reading.

SECOND ADDITIONAL 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. 1933, entitled

AN ACT PROVIDING FOR THE AUTOMATIC RETENTION BY THE BARANGAY OF ITS FIFTY PERCENT (50%) SHARE IN THE COMMUNITY TAX COLLECTED BY SAID BARANGAY, AMENDING SECTION 164 OF THE LOCAL GOVERNMENT CODE OF 1991

Introduced by Senator Angara

To the Committees on Local Government; and Ways and Means

Senate Bill No. 1934, entitled

AN ACT TO PREVENT GRAFT AND CORRUPTION BY PROVIDING MECHANISM TO CUT BUREAUCRATIC RED TAPE IN THE DELIVERY OF BASIC GOVERNMENT SERVICES

Introduced by Senator Angara

To the Committee on Civil Service and Government Reorganization

Senate Bill No. 1935, entitled

AN ACT CREATING THE PHILIPPINE EDUCATION REHABILITATION CORPORATION, ESTABLISHING THE SPECIAL EDUCATION REVITALIZATION FUND, AND FOR OTHER PURPOSES

Introduced by Senator Gordon

To the Committees on Education, Arts and Culture; Government Corporations and Public Enterprises; and Ways and Means

COMMUNICATION

Letter from Secretary Romulo L. Neri of the National Economic and Development Authority, respectfully submitting to the Senate the updated list of foreign retailers selling high-end or luxury goods pursuant to Section 8 of Republic Act No. 8762 otherwise known as the Retail Trade Liberation Act of 2000.

To the Committee on Trade and Commerce

COMMITTEE REPORT

Committee Report No. 13, prepared and submitted by the Committee on Banks, Financial Institutions and Currencies on Senate Bill No. 1936 with Senator Angara and the Members of the Committee as authors thereof, entitled

AN ACT ESTABLISHING A CREDIT
INFORMATION SYSTEM, AND FOR
OTHER PURPOSES,

recommending its approval in substitution of
Senate Bill No. 1843.

Sponsors: Senators Angara and Enrile

To the Calendar for Ordinary Business

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being
no objection, the Body approved the transfer of
Committee Report No. 13 on Senate Bill No. 1936
to the Calendar for Special Orders.

**COMMITTEE REPORT NO. 13
ON SENATE BILL NO. 1936**

Upon motion of Senator Pangilinan, there being
no objection, the Body considered, on Second
Reading, Senate Bill No. 1936 (Committee Report
No. 13), entitled

AN ACT ESTABLISHING A CREDIT
INFORMATION SYSTEM, AND FOR
OTHER PURPOSES

Pursuant to Section 67, Rule XXIII of the Rules
of the Senate, with the permission of the Body, upon
motion of Senator Pangilinan, only the title of the bill
was read without prejudice to the insertion of its full
text into the Record of the Senate.

Thereupon, the Chair recognized Senator Angara
for the sponsorship.

**SPONSORSHIP SPEECH
OF SENATOR ANGARA**

In sponsoring Senate Bill No. 1936,
Senator Angara delivered the following speech:

Today, I stand to introduce the first of
several measures that at the end, we hope,
will strengthen our financial system.

At the beginning of the session, we have
devoted most of our time to strengthening
our fiscal situation, putting our fiscal house
in order. But I think it is now long overdue

that we look at the financial system because
without a strong financial system, we will
not be able to generate savings. We will not
be able to increase our tax collection.

And therefore, I am very pleased to
stand here and introduce this first of several
financial measures that will strengthen our
financial system.

Overview of the Financial Sector

To start with, let me say that banks and
capital markets play extraordinary roles in
generating the savings needed to finance
and sustain investments in the country.
As such, their stability must be ensured.
However, when we look at the key
indicators that show whether the financial
system is strong or weak, we can conclude
that we have a long way to go before we
can call our financial system strong. And I
will explain why.

Around 95% to 98%—I would like to
emphasize that 95% to 98%—of the
financing of enterprises and businesses in
this country is through bank borrowing. That
is a phenomenon unique to the Philippines.
When a country relies substantially on bank
debt to stimulate its economy, business
activity naturally would be restricted to those
who are creditworthy, simply because we
have not developed other channels of
financing, or our capital market.

The market for corporate bonds, the
market for equities – these have not been
well-developed in our country. Therefore,
small and medium-sized businesses, the
inventors and the entrepreneurs have
difficulty accessing credit. They will never
prosper in a financial atmosphere where
access to credit is limited to those who own
physical collateral.

The extreme reliance on debt is brought
about by an underdeveloped capital market.
We resort more and more to bank
borrowing. Our stock exchange is probably
the smallest in the region, with the smallest
market capitalization. On the other hand,
our domestic debt market consists mainly of

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government bonds. About 95% of the bond market is government's. In essence, we are not able to mobilize sufficient capital for businesses and entrepreneurs. To the Filipino people, this simply means less capital, less jobs, less income and, therefore, more poverty.

Our financial sector, particularly the banking system, also suffers from a weak regulatory framework. This is reflected by the high frequency of bank failures in our country. There were 221 bank closures from 1981 to 1990; 137 from 1991 to 2000; and 49 from 2001 to January 2005. To a large extent, this lessens the confidence of depositors on banks.

Moreover, the banking sector suffers from asset quality problems. Among the ASEAN neighbors, only the Philippines has not significantly reduced the banks' Non-Performing Asset since the ASEAN financial crisis of 1997. With the banks' resources tied up on uncollectible loans, funds which could have been available for relending to businesses are vastly diminished.

There are other major concerns which affect our financial sustainability. These are probably fit for another occasion, but let me just cite two of them: (1) the proliferation of financial scams that led to losses and diversion of funds away from legitimate surviving financial intermediaries; and (2) the poor financial health of the public pension system.

Financial Reform Agenda for the Thirteenth Congress

With all these challenges, the Committee on Banks, Financial Institutions and Currencies has identified specific areas of reform in order to improve the Philippine Financial System. It prioritizes the following measures for enactment during the Thirteenth Congress not necessarily in this order of priority.

First, the regulatory framework of the financial sector must be strengthened. This calls for a review and amendment of the New Central Bank Act, the Securities

Regulations Code, the Corporation Code and the Insurance Code, as well as the establishment of regulatory framework for lending and pre-need companies.

Second, the mobilization of savings will be enhanced and encouraged with the enactment of the Pre-Need Code and the Personal Equity Retirement Act or the PERA.

Third, the development of the capital market will be promoted through the revision of the Investment Code and the rationalization of the financial sector taxes.

Fourth, the exposure of financial institutions to nonperforming assets will be reduced if this Body decides to extend the Special Purpose Vehicle Act. Future exposure to nonperforming loans will also be controlled by minimizing credit risk through the establishment of a Credit Information System.

Fifth, the framework for the quick resolution of financially-distressed enterprises will be strengthened through the passage of the Corporate Recovery Act.

And finally, the government pension schemes will have to be rationalized by introducing major reforms to the Social Security System and the Government Service Insurance System.

With this overview of the financial sector and the action plan as I have outlined above, I would like now to introduce and sponsor the first measure – the Credit Information System Act of the Financial Reform Agenda.

The Proposed Credit Information System Act

I need not state that the ability to borrow money to be able to engage in an enterprise or sustain a business is largely affected by one's perceived creditworthiness or one's supposed ability to pay back the loan. To assess a borrower's creditworthiness, the lending institutions, normally, will have to gather vast amount of

information which is, at present, difficult and costly. Worse, the information gathered may either be incomplete or erroneous.

As a result, lenders are constantly exposed to excessive and unnecessary credit risk, thereby increasing their portfolio of uncollectible loans or nonperforming assets.

Meanwhile, credit becomes costly, if not completely inaccessible to small borrowers who are required to present valuable physical collateral before being allowed to utilize credit facilities. Further, they are charged with high interest rates. This worsens the plight of our masses, leaving them at the mercy of scrupulous loan sharks.

The exposure to credit risk by lenders and the cost of credit to borrowers may be minimized if the financial institutions would have ready access to a reliable and comprehensive credit database.

In the Philippines, the absence of a source of comprehensive credit data is a deterrent to the development of our financial system—hence, the essential need for our country to have a centralized credit information system.

The Structure of the Credit Information System

At the heart of this proposal is the Credit Information Bureau.

The proposed credit bureau will gather credit information from financial institutions such as banks, credit card companies, and government lending institutions. In effect, financial institutions shall consolidate their records and contribute their credit experience on consumers to the system. To ensure the effectiveness and comprehensiveness of the system, banks and their subsidiaries and affiliates will become mandatory providers of credit information.

The bureau will process the information and distribute them to the “accessing entities,” who are likewise the primary providers of credit data, and that is, banks.

Credit rating agencies can source information from the bureau and may use them for creating credit reports and ratings, and may add whatever value to the reports required by their customers.

Access to the system will be basically limited to the credit institutions which are likewise the contributors of information.

The Credit Information System will cover all borrowers. It will gather both positive and negative information.

To avoid damage to one's financial reputation, borrowers would have the absolute right to know the credit information about them and shall be able to dispute and correct inaccurate information about them. There are also safeguards to be imposed against breach of confidentiality and misuse of borrower information. Protection of the public and confidentiality of information are importantly considered.

A Tool for Financial Development

The establishment of a centralized credit information system will improve the availability of credit especially to small yet responsible borrowers, as their good track record in paying their obligations will be made known to the financial community. Currently, the absence of reliable credit information makes financial institutions hesitant in granting credit to small borrowers, leaving the latter no choice but to resort to what is commonly known as “five-six” borrowing.

Good and efficient credit information will lower the cost of financing. Since the cost of gathering credit information will be less, the amount to be passed on to borrowers will likewise be minimized. Thus, banks will no longer charge high interests to known responsible borrowers as the credit risk will be much reduced. Excessive dependence on physical collateral to secure credit facilities will be avoided.

And from the regulatory perspective, a centralized credit information system will

contribute to a healthier and more stable financial system. Since the lending institutions would have access to accurate and reliable credit information, they will be able to make sound credit decisions. Moreover, this will encourage responsible borrowing attitude as debtors will know that a negative credit record will be perpetuated and is detrimental.

In view of the huge benefits of a centralized credit information system, and in the hope of creating a better financial sector for this country and our people, I ask our colleagues to consider and pass this urgent measure. This is the first building block of a strong financial system.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:57 p.m.

RESUMPTION OF SESSION

At 4:58 p.m., the session was resumed.

INTERPELLATION OF SENATOR ENRILE

Upon query of Senator Enrile if the proposed Credit Information Bureau (CIB) is a private organization or a government entity, Senator Angara replied that while the CIB would be publicly chartered, it would intrinsically be a private entity owing to the fact that 49% of its equity would be held by the *Bangko Sentral* and the remaining 51% by private parties. However, he explained that because of the sensitive information that would be handled by the CIB, it is not likely that its shares would be listed in the Philippine Stock Exchange.

Asked whether banks and other financial institutions are qualified to be shareholders of the CIB, Senator Angara replied in the affirmative, even as he expressed hope that the Bankers Association of the Philippines would also subscribe to a significant portion of the equity since the banking system is both the supplier and consumer of credit information.

Assuming that the CIB shall be a profit-making entity, Senator Enrile asked what its market would

be. Senator Angara said the CIB would have a largely specialized clientele in the banking community and its subsidiaries and affiliates, along with most financial institutions as well as some credit rating agencies.

Upon further queries, Senator Angara affirmed that the databank created by the CIB would be made available to end-users. Further, he clarified that unlike Moody's, Standard and Poor's and Fitch, the CIB will neither cover the credit standing of the Philippines nor grade the financial condition of entities. However, he said that the CIB could provide information needed by credit rating agencies to classify and grade borrowers.

Senator Enrile observed that the CIB would merely be an information gatherer and that its data would be made available to lending institutions to determine the credit standing of a borrower. Additionally, Senator Angara said that this would result in a better risk management since the lenders would know the risks better. On the other hand, he noted that the CIB would make it easier for a borrower with a good track record to borrow money due to greater accessibility to his credit information.

Asked whether business institutions would be compelled to supply a copy of its financial statements to the CIB, Senator Angara replied in the negative, as he pointed out that it would be in the best interest of these companies to supply the CIB with all their financial and pertinent data.

Queried if the creditworthiness of individuals would be included in the information offered by the CIB, Senator Angara replied in the affirmative, adding that this would be advantageous to individual entrepreneurs as they would have easier access to credit.

Asked about the responsibility that the CIB would assume for the mistake of its information gatherers in the event it causes injury to the potential borrower, Senator Angara explained that the bill imposes a very strict burden of accuracy on the part of the CIB. For instance, he said that any borrower not only has the absolute right to look at his own credit information, but also has the right to have the CIB correct any inaccuracy or false statement about his record.

Senator Enrile asked what recourse a potential borrower, who was the subject of a credit

background check, has against the CIB if the inaccurate information was not brought to his attention but was inadvertently made available to potential lenders. Senator Angara replied that the CIB would be held civilly liable and criminally responsible for any unauthorized disclosure.

Asked about the measure of damage and the penalty imposed if there was a deliberate, malicious revelation of a false credit-unworthiness of a potential borrower, Senator Angara replied that the penalties would range from a fine of P50,000 to P1 million or not less than one to five years imprisonment. However, Senator Enrile suggested that the penalties be reexamined in the light of the peso depreciation.

As to the liability of the CIB to the lending bank or financial institution in the event that it releases false credit information that resulted in injury to the bank, Senator Angara replied that the liability would be measured by the actual damage incurred along with some moral and exemplary damage to set a deterrence, provided that the CIB released the information in bad faith, with malice or with gross negligence.

Asked how much the CIB would charge for credit information, Senator Angara said that the bill does not fix any fee or charge since such matters shall be left to the CIB Board of Directors along with possible guidance from the Central Bank. Senator Enrile suggested that a cap be placed on this fee lest it become an open-ended amount that could dampen borrowing. However, Senator Angara pointed out that considering the volatility of the peso, rather than placing a cap, a formula could be prescribed for the CIB to charge only such reasonable fee and charges as warranted.

Upon further queries, Senator Angara affirmed that non-government financial and foreign financial institutions such as the Asian Development Bank and the World Bank would be allowed to become stockholders of the CIB provided that these are multilateral international institutions. Further, he affirmed that private domestic banks could be shareholders. However, he clarified that while foreign banks could not hold shares, foreign banks doing business in the Philippines through a separate subsidiary or through a branch could become stockholders because they are deemed local banks.

As to whether the CIB would be subject to the regulatory powers and supervision of the *Bangko Sentral*, Senator Angara replied in the affirmative, as he pointed out that the activities of the CIB would impact on the operations of the banking system. However, Senator Enrile noted that the CIB is a private corporation that does not lend money and only supplies information. Senator Angara clarified that it is not the CIB itself that is subject to Central Bank supervision and control but its activities which include gathering of credit information and the performance of fiduciary duty.

On whether the board officials and members should be inhibited from dealing with banks, quasi-banks and other financial institutions either as borrowers or lenders, Senator Angara replied that the CIB officers and members should not be prohibited from borrowing from banks. While the CIB officers and members shall be subject to strict fiduciary obligations, he said that they should not be overburdened so that they could get the best from the financial institutions. On a related query, he believed that the CIB members and officials should not be allowed to sit in the boards of banks or corporations.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1936

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:17 p.m.

RESUMPTION OF SESSION

At 5:18 p.m., the session was resumed.

COMMITTEE REPORT NO. 7 ON SENATE BILL NO. 1862 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1862 (Committee Report No. 7), entitled

**AN ACT PRESCRIBING A FIXED TERM
OF OFFICE FOR THE CHIEF OF**

STAFF AND THE MAJOR SERVICE COMMANDERS OF THE ARMED FORCES OF THE PHILIPPINES (AFP) AND FOR OTHER PURPOSES.

Senator Pangilinan stated that the parliamentary status was the period of individual amendments.

The Chair recognized Senator Biazon, Sponsor of the measure.

BIAZON AMENDMENTS

On page 1, as proposed by Senator Biazon, there being no objection, the Body approved the changing of the word "positions" to POSITION on line 2, and the deletion of the words "and the Major Service Commanders" on line 3.

PIMENTEL AMENDMENT

As a matter of style, as an omnibus amendment, Senator Pimentel proposed the deletion of the words "of the Philippines" after the words "Armed Forces." He said it is understood that the Philippine Congress is enacting a law precisely for the Armed Forces of the Philippines.

Senator Biazon explained that the phrase "of the Philippines" is part of the title of the position "Chief of Staff, Armed Forces of the Philippines (AFP)."

To the observation that the phrase sought to be deleted is a surplusage, Senator Biazon proposed that the words "Armed Forces of the Philippines" be deleted but the acronym "(AFP)" after the words "Chief of Staff" be retained so that the phrase would read CHIEF OF STAFF, (AFP).

As a compromise, Senator Pimentel proposed that the words "Armed Forces of the Philippines" be retained in Section 1 but the phrase "of the Philippines" should be removed in the subsequent sections. Senator Biazon replied that the Committee would be amenable to replacing the whole phrase with the acronym, "(AFP)."

There being no objection, the Pimentel amendment, as amended, was approved by the Body.

PROPOSED AMENDMENT OF SENATOR BIAZON

Still on page 1, Section 2, Senator Biazon proposed the rewording of lines 5 and 6 as follows:

SECTION 2. *TERM OF OFFICE.* – THE CHIEF OF STAFF (AFP) SHALL HAVE A FIXED TERM OF OFFICE OF THREE (3) YEARS WHICH SHALL COMMENCE ON THE DATE OF THE APPOINTMENT BY THE PRESIDENT.

ENRILE AMENDMENTS

As proposed by Senator Enrile and accepted by the Sponsor, there being no objection, the Body approved the rewording of Senator Biazon's proposed amendment, to wit:

- 1) SECTION 2. *TERM OF OFFICE.* – THE CHIEF OF STAFF (AFP) SHALL HAVE A FIXED TERM OF THREE (3) YEARS, WHICH SHALL COMMENCE ON THE DATE OF HIS APPOINTMENT BY THE PRESIDENT, REGARDLESS OF THE DATE OF CONFIRMATION BY THE COMMISSION ON APPOINTMENTS.; and
- 2) Delete the rest of the section.

PROPOSED AMENDMENT OF SENATOR BIAZON

After the Enrile amendment, Senator Biazon proposed the insertion of a sentence to read as follows:

WHEN THE OFFICER SO APPOINTED UNDER THIS SECTION REACHES THE COMPULSORY RETIREMENT AGE BEFORE THE END OF HIS TERM, HE SHALL BE ALLOWED TO COMPLETE HIS TERM BUT SHALL BE DEEMED COMPULSORY RETIRED UPON COMPLETION OF THE SAME.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:33 p.m.

RESUMPTION OF SESSION

At 5:34 p.m., the session was resumed.

ENRILE-BIAZON AMENDMENTS

As proposed by Senator Enrile, and accepted by the Sponsor, there being no objection, the Body approved the rewording of Senator Biazon's proposed amendment as follows: WHEN THE OFFICER APPOINTED TO THE POSITION OF CHIEF OF STAFF (AFP) REACHES THE COMPULSORY RETIREMENT AGE BEFORE THE END OF HIS THREE-YEAR TERM, THE STATUTORY COMPULSORY RETIREMENT OF THE CHIEF OF STAFF (AFP) SHALL BE DEFERRED UNTIL THE COMPLETION OF HIS PRESCRIBED TERM OF THREE YEARS.

Thereafter, Senator Enrile proposed the addition of a proviso to read as follows:

PROVIDED, HOWEVER, THAT THE CHIEF OF STAFF (AFP) MAY BE REMOVED BY THE PRESIDENT AS COMMANDER IN CHIEF FOR LOSS OF CONFIDENCE EVEN BEFORE THE END OF HIS TERM OF THREE YEARS.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:36 p.m.

RESUMPTION OF SESSION

At 5:37 p.m., the session was resumed.

Senator Biazon accepted the proposed amendment of Senator Enrile.

At this juncture, Senator Pimentel inquired what the effect of the amendment would be on the prohibition against appointing an officer whose compulsory retirement may be reached before the end of the three-year term. Senator Enrile stated that the Chief of Staff is the only officer in the Armed Forces who was given a specific term of three years in spite of the fact that he is retirable at 56 years old or after rendering 30 years of service, whichever comes later. The assumption, he said, is that the President is authorized by the Constitution to select from a field of eligible officers a Chief of

Staff who is about to retire from the service, but since the officer is appointed to the position of Chief of Staff, his retirement is deferred pending the completion of his three-year term.

Senator Pimentel doubted if the compulsory retirement of any member of the Armed Forces could be legally extended.

Senator Enrile stated that an opinion of the Secretary of Justice reconciles the provision granting the Chief of Staff a term of three years with the provision which says that retirement laws for members of the Armed Forces of the Philippines shall not allow any extension.

Senator Pimentel requested that the matter be reviewed.

Senator Enrile stated that he would propose amendments to the bill without prejudice to the request of Senator Pimentel.

Senator Pimentel underscored that as much as possible, the intention of the Constitution relative to these high officials of the government who wield power far beyond their compulsory retirement age should not be minimized.

Senator Biazon clarified that the Constitution does not prescribe the retirement age for any officer in the AFP; the retirement age is provided for in a presidential decree. He pointed out that deliberations in the Constitutional Commission show that the Chief of Staff was supposed to have a term of three years; however, he said, some have interpreted this as a limitation on the tour of duty. He opined that the proposed amendment, in effect, prescribes the conditions upon which a Chief of Staff is being retired.

Senator Pimentel pointed out that Article XVI, Section 5, paragraph (5) of the Constitution states that, "Laws on retirement of military officers shall not allow extension of their service," while paragraph (7) provides that, "The tour of duty or the Chief of Staff of the armed forces shall not exceed three years." He said that the Constitution does not state that the tour of duty must necessarily be three years. He posited that paragraph (7) presupposes a situation where the Chief of Staff has to be compulsorily retired even if he has been appointed to the position. Further, he noted that paragraph (7)

also covers the necessity of extending the tour of duty only in times of war or other national emergencies. He argued that stretching the meaning of the term "tour of duty," to mean that the Chief of Staff should have a three-year term of office might not be sanctioned by paragraph (7).

SUSPENSION OF SESSION

Upon motion of Senator Biazon, the session was suspended.

It was 5:45 p.m.

RESUMPTION OF SESSION

At 5:49 p.m., the session was resumed.

Senator Pangilinan stated that the members agreed to proceed to other individual amendments without prejudice to the submission of the opinion of the Secretary of Justice on the matter.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:50 p.m.

RESUMPTION OF SESSION

At 6:04 p.m., the session was resumed.

LACSON AMENDMENTS

As proposed by Senator Lacson and accepted by the Sponsor, there being no objection, the Body approved the following amendments:

1. Reword Section 2, as amended by Senator Enrile, as follows:

SECTION 2. *TERM OF OFFICE.*
 – THE CHIEF OF STAFF (AFP) SHALL HAVE A FIXED TERM OF OFFICE OF THREE (3) YEARS WHICH SHALL COMMENCE ON THE DATE OF HIS/HER FIRST APPOINTMENT BY THE PRESIDENT REGARDLESS OF THE DATE OF CONFIRMATION BY THE COMMISSION ON APPOINTMENTS; and

2. Thereafter, insert a new sentence, to wit:

THE FIXED TERM PROVIDED FOR HEREIN SHALL APPLY TO THE CHIEF OF STAFF (AFP) APPOINTED BY THE PRESIDENT AFTER THE EFFECTIVITY OF THIS ACT.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that Senator Pimentel, after reading the opinion of the Justice Secretary, would no longer pursue his reservation on the extension of the compulsory retirement of the Chief of Staff nor introduce individual amendments.

APPROVAL OF ENRILE AMENDMENT

Thereafter, upon motion of Senator Pangilinan, there being no objection, the Body approved the proviso introduced by Senator Enrile, as follows: PROVIDED, HOWEVER, THAT THE CHIEF OF STAFF (AFP) MAY BE REMOVED BY THE PRESIDENT AS COMMANDER-IN-CHIEF FOR LOSS OF CONFIDENCE EVEN BEFORE THE END OF HIS TERM OF THREE YEARS.

AMENDMENT TO THE TITLE

As proposed by Senator Biazon, there being no objection, the Body approved the rewording of the title of the bill as follows: AN ACT PRESCRIBING A FIXED TERM OF OFFICE FOR THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP) AND FOR OTHER PURPOSES.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan stated that Senator Defensor Santiago had made reservation to introduce individual amendments to the bill. He requested that the Secretariat prepare a clean copy of the bill for the next day's session.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1862


Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

ADJOURNMENT OF SESSION

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

It was 6:09 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
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Approved on March 1, 2005

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