

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

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SENATE
S.B. No. **2164**

RECEIVED BY:

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 3, Section 4, provides:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Freedom of assembly is one of the cornerstones of democracy and a well-functioning civil society. Together with the rights of expression and association, it is at the heart of classic fundamental rights because they form the basis for people's societal influencing and organization. As such, they have been ensured in the Universal Declaration of Human Rights and in many general or group-related Conventions on human rights.

However, such right, though fundamental and constitutionally protected, is not absolute. Reasonable "time, place and manner" regulations may be necessary to further significant governmental interests, and are permitted. The nature of a place, "the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable." *Cox v. Louisiana*, 379 U.S. 559 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966). For instance, making a speech in a library would certainly infringe upon the convenience and welfare of others, but that same speech should be perfectly appropriate in a park.

Restrictions on the exercise of this right are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. These restrictions may be placed if they are prescribed by law.

In the Philippines, *Batas Pambansa Bilang 880* (B.P. Blg. 880) entitled, "An Act Ensuring the Free Exercise by the People of their Right to Peaceably Assemble and Petition the

Government and for other purposes provides the policy framework by which all local ordinances and issuance of permits for assemblies must be guided. The law, however, is deficient in two aspects. First, while it recognizes the right of demonstrators to assemble and petition the government, it does not take into account the protection of the unwilling listener. Second, it does not contain any provisions on “public events” – those amusements, contests, performances and other comparable events that are open to the public, which, though not considered as public assemblies, must still be regulated.

This bill seeks to address the deficiencies of B.P. Blg. 880.

BP Blg. 880 leaves residents vulnerable to harassment in the guise of free speech. The US Supreme Court, whose decisions have certainly influenced our own interpretation of constitutional issues, has had the opportunity to address cases where the right to peaceably assemble was weighed against residential privacy. In the case of *Carey v. Brown* 447 US 455, the Court held that:

The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." Our prior decisions have often remarked on the unique nature of the home, "the last citadel of the tired, the weary, and the sick," *Gregory v. Chicago*, 394 U.S. 111, 125 (1969) (Black, J., concurring), and have recognized that "[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value.

This bill seeks to address the mass or concerted action that is narrowly directed at the household, not the public. The type of picketers or rallyists banned by the new section are those who do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way.

The protection of the unwilling listener is an important aspect of residential privacy. The home should offer security from those who seek to enforce their opinions and conduct upon other persons. "That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere." *Rowan v. Post Office Dept.*, 397 U.S. 728, 738 (1970). Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions.

The reason for the second deficiency is that the authors of B.P. Blg. 880 focused on the regulation of public assemblies and hence failed to take into consideration other forms of

assemblies such as “public events” or amusements, contests, performances and other comparable events not considered public assemblies – which must necessarily be regulated to ensure public order. This bill addresses the problems by incorporating provisions regulating such public events.


MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

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SENATE
S.B. No. 2164

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
ENSURING THE FREE EXERCISE BY THE PEOPLE OF THEIR RIGHT
PEACEABLY TO ASSEMBLE AND PETITION THE GOVERNMENT

CHAPTER 1 – GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Public Assembly Code of 2005.”

SECTION 2. *Declaration of policy.* – The constitutional right of the people to peaceably assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law.

SECTION 3. *Definition of terms.* – For purposes of this Act:

(A) “Public assembly” means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.

The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances: *Provided*, that the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.

The definition shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code and by the Batas Pambansa Bilang 227. It shall also not include political meetings or rallies held during any election campaign period as provided in Section 4 of Batas Pambansa Bilang 880.

(B) “Public event” is defined as amusements, contests, performances and other comparable events that are open to the public, but not considered to be public assemblies.

If participation in an event requires an invitation or membership in a given organization, the provisions of this act on public events shall apply thereto, unless the event, owing to the number of participants, the type of the event and other specific circumstances, is considered to be of a private nature.

The definition shall not include official events arranged by public corporations, nor to the events of religious communities where these are arranged for the purpose of public worship in the community’s own premises or in a comparable place.

- (C) "Public place" shall include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza, square, and/or any open space of public ownership where the people are allowed access.
- (D) "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.
- (E) "Modification of permit" shall include the change of the place and time of the public assembly, rerouting of the parade or street march, the volume of loud-speakers or sound system and similar changes.

CHAPTER 2 – PUBLIC ASSEMBLIES

SECTION 4. *Right to arrange public assemblies.* – Any private person with full legal capacity may arrange a public assembly. A person who is without full legal capacity but who has attained fifteen (15) years of age may arrange a public assembly, unless it is evident that he or she will not be capable of fulfilling the requirements that the law imposes on the arranger of an assembly. A person without full legal capacity may arrange a public assembly with another person with full legal capacity.

SECTION 5. *Right to participate in a public assembly.* – Any person, regardless of legal capacity, has the right to participate in any public meeting or assembly.

SECTION 6. *Restrictions relating to the meeting place.* – Subject to the provisions of section 17, the following restrictions shall apply to the meeting place where the public assembly is sought to be held:

- (A) If several public meetings are to be arranged at the same time, and their simultaneous arrangement is not possible, the arranger who first submitted the application shall have precedence unless the meeting place is traditionally or contractually to be used for another meeting. In this event, the mayor of the city where the assembly is sought to be held may, after negotiating with the arrangers of simultaneous meetings, move the other meeting or meetings to be held at another time or to another place suitable in view of the purpose of the meeting.
- (B) If the arrangement of a public meeting in the place where it is sought to be held will compromise the safety of people, or cause considerable damage to the surrounding area, to an international conference arranged by a public corporation, or to another event requiring similar security arrangements, the mayor may move the meeting to another place suitable in view of the purpose of the meeting after having negotiated with the arranger the public assembly.
- (C) The mayor may undertake the measures referred to in this section without negotiating with the arranger of the public assembly if such arranger cannot be reached.

SECTION 7. *Meeting equipment.* – Banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. The arranger shall see to it that no danger and unreasonable inconvenience or damage is thereby caused to the participants, bystanders, or the surrounding area.

CHAPTER 3 – PUBLIC EVENTS

SECTION 8. *Arrangement of public events.* – Any private person with full legal capacity may arrange a public event. A person without full legal capacity may arrange a public event with persons with full legal capacity.

SECTION 9. *Consent of the owner or holder of the venue of the event.* – The arranger of a public event shall obtain the consent of the owner or holder of the venue of the event for it to be used for this purpose. Such owner or holder may also restrict the use of such a place for assembly purposes, if it is to be anticipated that the arrangement of the event will cause unreasonable inconvenience to the owner or holder, or unreasonable damage to the surrounding area.

SECTION 10. *Prohibition of a public event.* – The mayor of the place where the public event is sought to be held may prohibit the arrangement of such event if other measures are not enough and it is evident that:

- (A) The event is illegal or its arrangement essentially violates this act or the orders issued by virtue of this act;
- (B) Order and security cannot be maintained in the event;
- (C) The arrangement of the event will endanger health or cause damage to property; or
- (D) The arrangement of the event will cause significant inconvenience to bystanders and damage to the surrounding area.

SECTION 11. *Liability insurance.* – If the arrangement of the event may cause reasonable damage to persons or property, the mayor may order it to be a prerequisite of the arrangement of the public event that the arranger has adequate insurance to cover any possible liability for damages.

CHAPTER 4 – APPLICATION PERMITS

SECTION 12. *Permit when required and when not required.* – A written permit shall be required for any person to organize and hold a public assembly or event in a public place.

However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution.

SECTION 13. *Prohibition of focused public assembly in residential areas.* – No permit shall be granted for public assemblies which shall be held before or about the residence or dwelling of a particular individual

SECTION 14. *Application requirements.* – All applications for permits shall comply with the following guidelines:

- (A) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.

- (B) The application shall incorporate the duty and responsibility of applicant under chapters 2 and 3.
- (C) The application shall be filed at least five (5) working days before the scheduled public assembly, with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held.
- (D) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building.

SECTION 15. *Action to be taken on the application.* –

- (A) It shall be the duty of the mayor, or any official acting in his behalf, to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.
- (B) The mayor, or any official acting in his behalf, shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason, the mayor, or any official acting in his behalf, refuse to accept the application for a permit, the application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.
- (C) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.
- (D) The action on the permit shall be in writing and served on the application within twenty-four hours.
- (E) If the mayor, or any official acting in his behalf, denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.
- (F) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, or the Regional Trial Court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying it in terms satisfactory to the applicant shall be immediately executory.
- (G) All cases filed in court under this section shall be decided within twenty-four (24) hours from date of filing. They shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.
- (H) In all cases, any decision may be appealed to the Supreme Court.
- (I) Telegraphic appeals to be followed by formal appeals are allowed.

SECTION 16. *Use of public thoroughfare.* - Should the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

CHAPTER 5 – MAINTENANCE OF ORDER

SECTION 17. *Responsibility of the permit applicant or arranger.* – It shall be the duty and responsibility of the permit applicant, arranger or other leaders and organizers of a public assembly or event to take all reasonable measures and steps to the end that the intended public assembly or event shall be conducted peacefully in accordance with the terms of the permit. These shall include but not be limited to the following:

- (A) To inform the participants of their responsibility under the permit;
- (B) To police the ranks of the demonstrators in order to prevent non-demonstrators from disrupting the lawful activities of the public assembly;
- (C) To confer with local government officials concerned and law enforcers to the end that the public assembly or event may be held peacefully;
- (D) To see to it that the public assembly or event undertaken shall not go beyond the time stated in the permit; and
- (E) To take positive steps that demonstrators or participants do not molest any person or do any act unduly interfering with the rights of other persons not participating in the public assembly or event.

SECTION 18. *Non-interference by law enforcement authorities.* – Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meters away from the area of activity ready to maintain peace and order at all times.

SECTION 19. *Police assistance when requested.* – It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

- (A) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance";
- (B) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;
- (C) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

SECTION 20. *Interruption and dispersal of public assembly with permit.* – No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

- (A) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the permit applicant, arranger leaders and organizers of the public assembly and ask the latter to prevent any possible disturbance. The latter shall interrupt or order it to disperse, if continuing the

assembly would cause immediate danger to the safety of the people, property or the surrounding area;

- (B) If actual violence starts to a point where rocks or other harmful objects from the demonstrators or participants are thrown at the police or at the non-demonstrators or non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly or event will be dispersed;
- (C) If the violence or disturbances prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly or event, and after allowing a reasonable period of time to lapse, shall immediately order it to disperse;
- (D) No arrest of any permit applicant, arranger, leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this act. Such arrest shall be governed by Article 125 of the Penal Code;
- (E) Isolated acts or incidents of disorder or breach of the peace during the public assembly shall not constitute a group for dispersal.

SECTION 21. *Prevention, interruption and dispersal of a public event with a permit.* — Under the circumstances enumerated in Section 10 of the act, the permit applicant or arranger of a public event shall cancel or interrupt the event or order it to disperse. Under the same circumstances, the ranking officer of the law enforcement contingent has the right to prevent or interrupt the public event or order it to disperse, if other measures have not proven adequate. The provisions of the preceding section shall also apply to public events.

SECTION 22. *Dispersal of public assembly or event without permit.* — When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

CHAPTER 6 - SANCTIONS

SECTION 23. *Prohibited acts.* — The following shall constitute violations of this act:

- (A) The holding of any public assembly as defined in this act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: *provided*, that no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;
- (B) Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this act by the mayor or any other official acting in his behalf;
- (C) The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;
- (D) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;
- (E) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;
- (F) Acts in violation of section 20 hereof;

(G) The following acts, if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:

- (1) The carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;
- (2) The carrying of a bladed weapon and the like;
- (3) The malicious burning of any object in the streets or thoroughfares;
- (4) The carrying of firearms by members of the law enforcement unit or participants in the public assembly or event;
- (5) The interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

SECTION 24. *Penalties.* – Any person found guilty and convicted of any of the prohibited acts defined in the immediately preceding section shall be punished as follows:

- (A) Violation of subparagraph (A) shall be punished by imprisonment of one month and one day to six months;
- (B) Violations of subparagraphs (B), (C), (D), (E), (F), and item 4, subparagraph (G) shall be punished by imprisonment of six months and one day to six years;
- (C) Violation of item 1, subparagraph (G) shall be punished by imprisonment of six months and one day to six years without prejudice to prosecution under presidential decree no. 1866;
- (D) Violations of item 2, item 3, or item 5 of subparagraph (G) shall be punished by imprisonment of one day to thirty days.

CHAPTER 7 – MISCELLANEOUS PROVISIONS

SECTION 25. *Freedom parks.* – Every city and municipality in the country shall within six months after the effectivity of this act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the *poblacion* where demonstrations and meetings may be held at any time without the need of any prior permit.

In the cities and municipalities of metropolitan manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity of this act.

SECTION 26. *Separability clause.* – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 27. *Repealing clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this act is hereby repealed, modified or amended accordingly.

SECTION 28. *Effectivity.* – This act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,