



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 81

Monday, May 26, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 81
Monday, May 26, 2008

CALL TO ORDER

At 3:25 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

Sen. Gregorio B. Honasan II led the prayer, to wit:

Lord, these are times that try men's souls.

The nation is facing a food and energy situation. Prices have gone up while real wages and salaries effectively gone down. We are reeling from the ravages of recent calamities – natural and man-made, and as always, Lord, the least of our brethren have borne the brunt of the hardship.

We implore You in Your mercy, to be present in our people's sufferings. Give us the optimism to light torches of hope rather than dwell in the darkness of inaction. Grant us the wisdom and courage to find opportunity in crisis and the audacity to rise from adversity.

Equip us with creativity and faith to promote the level of playing field where equal opportunity, love and compassion are the foundations of a just society.

In the Name of Him who came and died that we all may live.

Amen.

NATIONAL ANTHEM

The UST-AMV Accountancy Chorale led the singing of the national anthem and thereafter rendered the song, entitled "*Isang Dugo, Isang Lahi, Isang Musika.*"

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Emma Lirio-Reyes, called the roll, to which the following senators responded:

| | |
|-----------------------|---------------------|
| Angara, E. J. | Lapid, M. L. M. |
| Aquino III, B. S. C. | Legarda, L. |
| Arroyo, J. P. | Madrigal, M. A. |
| Defensor Santiago, M. | Pangilinan, F. N. |
| Ejercito Estrada, J. | Pimentel Jr., A. Q. |
| Enrile, J. P. | Revilla Jr., R. B. |
| Escudero, F. J. G. | Roxas, M. |
| Honasan, G. B. | Villar, M. |
| Lacson, P. M. | Zubiri, J. M. F. |

With 18 senators present, the Chair declared the presence of a quorum.

Senators Biazon, Cayetano (A), and Cayetano (P) arrived after the roll call.

Senator Gordon was on official mission abroad.

Senator Trillanes was unable to attend the session as he is under detention.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of

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the Journal of Session No. 80 and considered it approved.

REFERENCE OF BUSINESS

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

MESSAGE OF THE PRESIDENT OF THE PHILIPPINES

Letter of Her Excellency, President Gloria Macapagal Arroyo, dated 21 May 2008, certifying to the necessity of the immediate enactment of Senate Bill No. 2293, entitled

AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51 AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997,

to address the urgent need to cushion the adverse impact of the global escalation of commodity prices upon the most vulnerable within the low income group, by providing expanded income tax relief.

To the Committee on Rules

RESOLUTIONS

Proposed Senate Resolution No. 413, entitled

RESOLUTION HONOURING THE LIFE AND LEGACY OF ANAKPAWIS REPRESENTATIVE CRISPIN "KA BEL" BELTRAN AND EXTENDING SYMPATHY AND CONDOLENCE TO HIS BEREAVED FAMILY AND THE ANAKPAWIS PARTYLIST

Introduced by Senator M.A. Madrigal

To the Archives

Proposed Senate Resolution No. 414, entitled

KAPASIYAHANG PAGKILALA SA BUHAY AT ALAALA NG KINATAWAN NG ANAKPAWIS PARTY-

LIST NA SI CRISPIN "KA BEL" BELTRAN AT PAGDADALAM-HATI'T PAKIKIRAMAY SA KANYANG NAIWANG PAMILYA AT KASAMAHAAN SA PARTIDO

Introduced by Senator M.A. Madrigal

To the Archives

Proposed Senate Resolution No. 415, entitled

RESOLUTION DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ANOMALIES IN THE LAND ADMINISTRATION SYSTEM IN THE PROVINCE OF PAMPANGA

Introduced by Senator Jinggoy Ejercito Estrada

To the Committees on Accountability of Public Officers and Investigations; and Agrarian Reform

ADDITIONAL REFERENCE OF BUSINESS

BILLS ON FIRST READING

Senate Bill No. 2315, entitled

AN ACT REQUIRING THE CONCURRENCE OF THE LOCAL SCHOOL BOARD ON THE ASSIGNMENT OF DIVISION SUPERINTENDENTS, DISTRICT SUPERVISORS, SCHOOL PRINCIPALS, AND OTHER SCHOOL OFFICIALS AMENDING FOR THE PURPOSE SECTION 99, PARAGRAPH (D) OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991

Introduced by Senator Miriam Defensor Santiago

To the Committees on Education, Arts and Culture; and Local Government *MS*

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Senate Bill No. 2316, entitled

AN ACT TO REQUIRE MANUFACTURERS OR LABELERS OF PRESCRIPTION DRUGS TO REPORT THEIR ANNUAL MARKETING COSTS

Introduced by Senator Miriam Defensor Santiago

To the Committees on Trade and Commerce; and Health and Demography

Senate Bill No. 2318, entitled

AN ACT TO HASTEN TITLING OF RESIDENTIAL LANDS OF THE PUBLIC DOMAIN BY EXTENDING THE GRANT OF FREE PATENT TO RESIDENTIAL LANDS UNDER CERTAIN CONDITIONS

Introduced by Senator Jinggoy Ejercito Estrada

To the Committees on Constitutional Amendments, Revision of Codes and Laws; and Environment and Natural Resources

Senate Bill No. 2319, entitled

AN ACT PROVIDING FOR A MORE RESPONSIVE AND COMPREHENSIVE REGULATION FOR THE PRACTICE, LICENSING, AND REGISTRATION OF ENVIRONMENTAL AND SANITARY ENGINEERS IN THE PHILIPPINES AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 1364 AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committee on Civil Service and Government Reorganization

Senate Bill No. 2320, entitled

AN ACT AMENDING CERTAIN SECTIONS OF PRESIDENTIAL DECREE NUMBERED NINETY-SEVEN, AS AMENDED, OTHERWISE KNOWN

AS THE PHILIPPINE MERCHANT MARINE OFFICERS LAW

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committee on Civil Service and Government Reorganization

Senate Bill No. 2321, entitled

AN ACT STRENGTHENING AND RATIONALIZING THE CAREER SERVICE OF THE CONGRESS OF THE PHILIPPINES BY ESTABLISHING A LEGISLATIVE CAREER SERVICE AND A LEGISLATIVE ACADEMY AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Accounts; and Finance

COMMITTEE REPORT

Committee Report No. 55, prepared and submitted jointly by the Committees on Youth, Women and Family Relations; and Justice and Human Rights, on Senate Bill No. 2317, with Senators M.A. Madrigal and Francis "Chiz" G. Escudero as authors thereof, entitled

AN ACT PROHIBITING CHILD PORNOGRAPHY, IMPOSING PENALTIES FOR THE COMMISSION THEREOF AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill No. 26.

Sponsors: Senators M.A. Madrigal and Francis "Chiz" G. Escudero

To the Calendar for Ordinary Business

SECOND ADDITIONAL REFERENCE OF BUSINESS

BILL ON FIRST READING

Senate Bill No. 2322, entitled

AN ACT REIMPOSING THE PENALTY OF DEATH ON CERTAIN HEINOUS

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CRIMES, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE REVISED PENAL CODE, AS AMENDED, AND FOR OTHER PURPOSES

Introduced by Senator Juan Miguel F. Zubiri

To the Committees on Justice and Human Rights; and Constitutional Amendments, Revision of Codes and Laws

RESOLUTIONS

Proposed Senate Resolution No. 416, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED IMPENDING ENVIRONMENTAL DISASTER IN THE CORDILLERA ADMINISTRATIVE REGION

Introduced by Senator Miriam Defensor Santiago

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

Proposed Senate Resolution No. 417, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE RISE OF FRAUDULENT ONLINE RECRUITMENT AGENCIES

Introduced by Senator Miriam Defensor Santiago

To the Committees on Labor, Employment and Human Resources Development; and Foreign Relations

PRIVILEGE SPEECH OF SENATOR PIMENTEL

Availing himself of the privilege hour, Senator Pimentel delivered the following speech as a tribute to the late Anak Pawis Partylist Representative Crispin "Ka Bel" Beltran whom he called a firebrand who became a torch bearer:

As a young man growing up in Cagayan de Oro in the '50s and '60s, I hardly knew Crispin Beltran. I read of him now and then in a Manila daily that we got in Cagayan de Oro which, at that time, was at least three hours by propeller planes and at least three days by boat from Manila.

Troublemaker

By the standards of a community that did not want its comfort zone disturbed, Ka Bel was made to look like a born troublemaker.

I was, even then, amazed that such a man could keep on doing what he believed was the right thing to do and that was to fight for the rights of underprivileged no matter what the cost.

Paths crossing

In the early '70s, when I was doing my duties as a delegate to the Constitutional Convention representing my province of Misamis Oriental, now and then our paths would cross in forums and in demonstrations against the inequalities of Philippine society. But, even then, I hardly knew Ka Bel. He was already a veteran of street marches and I was a neophyte just trudging along with marchers.

Then in 1972, Marcos declared martial law. I did not know what happened to Ka Bel. I learned later that a few years after the declaration, he was arrested upon complaint of big business whose cozy relationship with Marcos was being upset by his labor activism. Apparently, he escaped a year or two after his arrest and continued the fight against the Marcos dictatorship underground.

I had my own troubles with the martial law regime and bouts with illegal arrests and detentions. Thus, I lost track of the whereabouts of Ka Bel.

In limelight again

But after we finally succeeded in ousting Marcos in 1986 in the wake of People Power I that Cory Aquino and Cardinal Sin led, and, of course, Manong Johnny Enrile played a vital role in that event, Ka Bel was again in the limelight of the struggle against oppression of the laboring masses. At times, he would be caught in press photographs tangling physically with the police and military officers who invariably wanted to suppress even their peaceful demonstrations for the redress of their grievances, and I understand he was always at the receiving end of some kind of police brutality.

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Bayan Muna

Then, when the party list system was finally implemented, Ka Bel was one of those who ran for and got elected in 2001 to the House of Representatives representing Bayan Muna.

At the House, Ka Bel fiercely demonstrated his independence by espousing causes like anti-globalization positions that were not exactly to the liking of the coalition of traditional parties that governed the House.

Anak Pawis

At the next elections, Ka Bel ran again as a party-list representative but this time under the banner of the party list group, Anak Pawis. Once more, the people voted him to the House of Representatives.

In the House of Representatives, Ka Bel was again a source of embarrassment to those who trudged the easy path to power, pelf and fame. For instance, it was he who exposed bribery attempts by administration partisans to abort the impeachment resolutions against Gloria Macapagal Arroyo.

But even as he continued to pursue his no-nonsense leadership of Anak Pawis in the House, fate intervened to decree that it was now time for Ka Bel to go to his everlasting rest.

Deserved rest

He deserves that rest. In his life, Ka Bel had apparently never been at rest.

In his youth, he had to scrap the bottom of the barrel as it were to keep alive. He worked as janitor, a messenger, a taxi driver and in many other odd jobs.

In his manhood, he had fight for his rights and the rights of his fellow workers to keep his dignity. He is credited with having organized the Confederation of Labor of the Philippines and helped found the Philippine Workers Congress. During the martial law years, he was associated with the KMU, a militant labor organization.

Transition

And in the twilight of his life, he made that smooth transition from being a firebrand – who, in the minds of the conservators of the status quo, meant being an arsonist who would burn anything which stood in the way to liberating his fellow workers – to a torch bearer who, in the minds of all well-meaning citizens, meant illuminating the path of those who search for

the better life in a democratic and peaceful manner. That is a most difficult thing to do. Not too many men could do it but Ka Bel certainly did it. Not only that. He did it with finesse and with verve and vigor unmatchable by ordinary mortals. And he kept his nose clean even as he fought his parliamentary battles in the putrid environment of transactional politics.

Sui generis

Ka Bel could have been bought by the interest of the rich and the establishment. He could have succumbed to threats of the mighty and the powerful. But he resisted all that. And that by itself is sufficient to say that Ka Bel was *sui generis* kind of man. A man alone. A man in the mold of heroes. His life puts to shame many of our brethren in politics and in religion who claim to love and serve the poor.

His word, his bond

Even his widow Ka Sayong, with whom he had 11 children, says that Ka Bel was a man worthy of his word as a married man and as a father. Not too many politicians deserve that accolade from their spouses.

Of Ka Bel, it can truly be said that he was of the poor, stood by the poor and was for the poor. I can say a thousand more words about Ka Bel but they will not add anything substantial to our tribute to him. Let me, then, just address these few last lines to Ka Bel: “You are a martyr to the cause of the poor. You belong to them and only they can rightfully claim you as their very own.”

God speed, Ka Bel! May you enjoy the rest that you never had in this world and may the example of your life now as torchbearer give faith to our people that all is not lost in this country and that there is hope for the better as your life has shown.

PRIVILEGE SPEECH OF SENATOR DEFENSOR SANTIAGO

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

BLACKMAIL AGAINST ADVOCATES OF REDUCED POWER RATES

I denounce in the strongest terms a recent attempt to blackmail me, as chair of the Joint Congressional Power Commission (JCPC) or

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Powercom. In that capacity, I am an advocate of reduced power rates from Meralco, which is part of the giant Lopez business empire. The black-majl attempt was accomplished by means of a derogatory banner headline story in the internet website of ABS-CBN, also part of the giant Lopez empire.

In that website, on May 23, the top story pretending to be news, used the innocuous headline: "RP faces tough challenge in ICJ Campaign for Santiago." But the entire article, consisting of outright falsities, distortions of truth, and gratuitous innuendo, takes all of three pages when downloaded from the website. It is nothing less than a diabolic attempt to ensure that foreign countries will be influenced to vote against me, as the Philippine national candidate to the International Court of Justice (ICJ).

Let me just give two examples of deliberate distortion of facts. As a first example, the article claims: "The Supreme Court gave her zero votes in 2006, when she sought to be the first female chief justice." The truth is that the Philippine Constitution provides: "The [Judicial and Bar Council] shall have the principal function of recommending [to the President] appointees to the judiciary." The Supreme Court has nothing to do with it, because it had no jurisdiction to give me any votes.

Kung hindi ba naman sinungaling iyan. May katotohanaan na ay babaliktarin at babaluktutin pa para lamang makasira ng kapwa.

The Council did not even consider my nomination. It accepted my nomination but it refused to even consider the nomination because under the urging of the previous Chief Justice, without notice or hearing, the Council suddenly decided that they would consider only the nominations of incumbent justices. At the proper time, I shall reveal the political reason why that Chief Justice was so adamant that my nomination should not even be considered.

Following ICJ Rules, I was recommended to the President for nomination by a Nominating Committee composed of a Supreme Court associate justice, a retired Supreme Court associate justice, president of the Integrated Bar of the Philippines, and a law school dean.

As a second example, the offending article claims that "some countries are moving to oppose her."

Papaano niya malalaman iyon? Maski nga ang mga malalaking bansa hindi nila

alam kung sino ang mga supporters at sino ang mga kalaban na mga kandidato sa World Court because all of these is confidential. Kaya maliwanag na nag-iimbento itong dimwit na ito.

This is purely baseless conjecture. *Nilagay lamang nya doon para matanim sa isipan ng nagbabasa.* The article implies that I will be opposed by at least China and Japan. The dimwit and stool pigeon who wrote that article does not know that the resident ambassadors of both countries most recently told me that they hope for positive instructions from the foreign ministries in their capital cities.

The exhaustive article goes on and on in this vein, ranting and raving against me, and yet, when the website editor was contacted, she reportedly claimed with a straight face that she and her staff are full of integrity. The last time I looked, the dictionary defines "integrity" as telling the truth, not twisting it to secure an evil purpose. If they do have integrity, they should publish this speech in full, as their top story.

Does that editor take me for an utter fool? I was chosen after competitive examination to be the first female editor-in-chief of the official student newspaper *Philippine Collegian* in the entire 50-year history of the University of the Philippines. I was for several years an opinion columnist, first of a national daily, then of a national Sunday magazine, and then of another national daily. Hence, I can certainly recognize a negative spin when I see it. *Kung sa Tagalog pa, inangguluhan. Malayo pa naaamoy ko na ang ganyan. Naging editor-in-chief yata ako.* I can spot mental dishonesty when it is foisted on the reader. To that editor and her hack, I say: What a shame to the profession of journalism. What a dishonor to its code of ethics. What a black mark on Philippine internet news websites.

The best proof that I am being blackmailed is found right in the website itself. I chaired the Powercom hearing on May 12. Right afterward, the website published as news, not one, but a series of articles derogating the Powercom, all written by the same hack. Let me give this Body the chronology:

- ◆ May 12 – Powercom hearing, right after that, the following articles began appearing:
- ◆ May 16 – "EPIRA author says power commission may be unlawful." *Sampung taon nang nabubuhay ang power commission na iyon, ngayon lamang nila naalala na baka raw walang base sa ating batas. Kaya maliwanag na malisyoso.* *AK*

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- ◆ May 21 – “Power commission: big budget, excess authority.” *Sinabi ko na, sampung taon nang nagtratrabaho ang Powercom na ito. Bakit ngayon lamang nila naalala na magsumbong?*
- ◆ May 23 – *Ako na ito.* “RP faces tough challenge in ICJ campaign for Santiago.” *Dinamay na ako personal*
- ◆ May 25 – “Santiago says ABS-CBN website piece on her ICJ bid a ‘dirty trick’; editor denies it.” *Of course. Ano pa ang gagawin niya? Nagawa na niya kaya ipagtatang-gol niya.*

In the language of the law on evidence, these series of articles constitute a “scheme” or a “pattern.”

The diabolic attempt to threaten my chances at being a World Court judge, published worldwide on the internet, constitutes either the crime of grave threats, or of libel. Under the Penal Code, blackmail or grave threat is a crime against security. Libel is a crime against honor.

As a lawyer and former trial judge, I believe that the ABS-CBN website is liable for both crimes. The crime of “grave threat,” or “blackmail,” is defined as follows: “Article 282. Any person who shall threaten another with the infliction upon the person, honor, or property of the latter, or of his family, of any wrong amounting to a crime.” *Nananakot, iyon ang krimen ng blackmail.* The crime of “libel” is defined as follows: “Article 353. A libel is a public and malicious imputation...of a vice or defect, real or imaginary,” *maski totoo naman basta nagmalisya ka, libel na iyan,* “or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a person.”

I have nothing personal against the members of the giant Lopez empire. One of their original patriarchs, former Vice-President Fernando Lopez, treated me like a daughter, and was among the first to encourage me to enter politics. The present patriarch, Mr. Oscar Lopez, is a family friend, and attends my small birthday parties.


Just this afternoon I received a letter from Mr. Oscar Lopez as chair of the First Philippines Holding Corporation. In part, he said, “I am providing you with a copy of our 202 reply to the issues against Meralco and the Lopez family that are being rehashed.” And he gave me as an enclosure this pamphlet, setting the record straight, “*The Lopez Family Speaks Out.*” Then Mr. Lopez continued in his letter to me, “In particular it was raised that control of Meralco passed on to the Marcos-Romualdez group after

a legitimate sale in 1974. Perhaps most people have forgotten or are too young to remember that my brother, Eugenio Lopez Jr., was arrested and placed in a military prison in 1972, hence, all transactions with the Marcos regime were done under duress or blackmail as duress, as defined by one columnist.” *Kaya kilala ni Mr. Lopez ang blackmail.* The details of the dictator’s machinations and the partial return of Meralco’s shares to the Lopez family in 1991 or five years after the EDSA revolution are in the attached material.

I have not considered that Mr. Lopez had any participation in the blackmail attempt. Further, Mr. Manolo Lopez is also a family friend, and so is former Rep. Albertito Lopez. I am not complaining against the entire Lopez family, but perhaps only one member. And I understand that this Lopez family member claims that ABS-CBN and its website are out of his hands, and it is management that makes decisions. *Iyon ang ipagtatanggol niya. Pinapasa niya sa mga taong under sa kanya. Kung hindi ba naman duwag at kalahati iyan, sagutin niya kung talagang naniniwala siya sa ginagawang pag-aari niya.*

Be that as it may, it is obvious that the website team is engaged in trying to blackmail me to shut up on the scandalous Meralco issue, and to ignore my duties as Powercom chair to work for the reduction of power rates. My enemies are trying to blackmail me into playing the monkey to their organ grinder, by not seeing, not hearing, and not talking. *Ginagawa nila tayong lahat na mga matsing na hindi nakakakita, hindi nakakarinig, hindi nagsasalita.*

Do they plan also to blackmail all other Powercom members, both from the Senate and from the House? Do they plan to manipulate the Congress of the Philippines by playing on the fear that we might not be reelected, or, in my case, that I might not be elected to the World Court?

Having been goaded and baited beyond endurance, in response I declare to the Filipino people, including the cowards hiding behind fake journalism: I have no fear. If I lose the ICJ seat, if I lose my hard-earned reputation for honest governance, if I lose my very life – I have no fear. I am beyond fear. The greatest fear I had was that politics might harm my family, and that has already come to pass. Due to political persecution from certain UP law professors, I lost my beloved 22-year-old son. I have nothing else to lose. When my son died, I died with him. 

My World Court candidacy is not personal to me, but national to the Philippines. And so I deliver this message to the corrupt website team, or whoever is pulling their strings: Shoot me down, but I will be the last person standing, because you are shooting at the living dead. If I go down, we will all go down in flames together.

And as well, this is my message to all my political enemies: If I win as World Court judge, you would be rid of me for at least nine years. But if I lose, I might just decide to remain in government, and I may just continue to torment the crooks, their sycophants, and the hypocrites. I became a laureate of the Magsaysay Award for government service, the Asian equivalent of the Nobel Prize, for my campaign against the culture of corruption. And while I remain in my country, that campaign shall continue.

As a result of this blackmail attempt against me, together with my co-chair in the Powercom, I shall issue provisional guidelines as authorized by EPIRA, and direct the Energy Regulatory Commission, among others, as follows:

- ◆ Resolve within three months, all pending petitions already submitted for resolution, with the end in view of lowering immediately the Meralco power rates;
- ◆ Uphold consumer protection in resolving the present petition from Meralco and Napocor, requesting permission to pass on to the consumers some P14 billion of the Meralco debt. *Biro mo, mataas na nga dadagdagan pa nila nitong P14 billion dahil hindi sila magkasundo kung sino ang may utang sa kanila, ang Napocor o ang Meralco. Kaya para hindi sila mag-away na dalawa, ipapasa na lamang sa taong bayan.*
- ◆ Announce immediately a cap on systems losses, lower than the existing 9.5 percent cap as mandated by EPIRA;
- ◆ Order Meralco to list all inclusions in their generation cost;
- ◆ Order Meralco to show cause why it should not immediately give refunds to its consumers; and
- ◆ Order Meralco to show cause why it should not immediately give refunds for deposits on billing meters.

Kung magtagumpay ang mga galamay ng mayayaman, at tuluyan akong masiraan at matalo sa World Court, magiging kahinahinayang para sa ating bayan. Pero hindi na

baleng matalo ako sa pamamagitan ng blackmail, kung sa ganoon ay makapagsilbi man lang ako sa taong bayan.

Bayan, masdan ninyo ang katiwalian nitong nasisilaw sa pera!

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:04 p.m.

RESUMPTION OF SESSION

At 4:04 p.m., the session was resumed.

REFERRAL SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the privilege speech of Senator Defensor Santiago was referred to the Committee on Energy.

PRIVILEGE SPEECH OF SENATOR LEGARDA

Also availing herself of the privilege hour, Senator Legarda delivered the following speech:

TWO RECENT CASES OF ABUSES AGAINST OFWs

I would like to bring to the attention of this Chamber the recent disturbing reports on the plight of two of our OFWs in the Middle East.

Ambassador Ricardo M. Endaya, Philippine Ambassador to Kuwait, reported that Fatima Sagadan Maulana, a 42-year old Filipina overseas domestic helper in Kuwait, was found dead in Kabd Desert on May 16. Migrante International claims that Maulana, a native of Carmen, Cotabato City, may have been murdered on May 9, after allegedly being raped.

Migrante International also reports that another Filipina domestic helper, whose name was withheld, was able to call her husband, who lives in Quirino province, to say that she had been a virtual prisoner in the house and had been gang-raped by her employer and four of his friends who even videotaped the incident. She continues to suffer in the hands of her employer in the City of Qatif in Saudi Arabia's Eastern Province.

Migrante has sent a letter to the Philippine Embassy, headed by Ambassador Antonio

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Villamor, on May 21, to inform the office about the plight of the OFW but up to now no reply has been received. The woman, a native of Ifugao, who left for Saudi Arabia, remains in danger to this day.

Our OFWs are made to suffer from the ineptitude of our government to provide sufficient employment opportunities in the country forcing them to seek greener pastures abroad. Their hard work in foreign lands has helped prop our economy through their remittances, which amounts to P110 billion from April to September 2007 alone.

We should not make them suffer further from government's failure to provide timely and adequate protection to them when their personal safety is compromised.

We have had a long list of OFWs whose hapless plight have been exemplified by the exploitation and abuses inflicted on Flor Contemplacion and Sarah Balabagan. It is inexcusable that many of our OFWs continue to suffer in in-humane, abusive and exploitative working conditions. It is high time for government to institute effective interventions to address this problem.

Today, I filed a resolution urging the President take immediate action to provide the necessary support and give justice to these recent reported cases of abuse against OFWs. I also urge the appropriate Senate Committee, perhaps that chaired by Senate President Pro Tempore Senator Jinggoy Ejercito Estrada, the Committee on Labor, Employment and Human Resources Development, to probe these cases to initiate a review and the formulation of appropriate policies to ensure that our OFWs are given the protection and support they rightfully deserve in the long run.

I hope that these issues and concerns will be given utmost priority.

INTERPELLATION OF SENATOR MADRIGAL

Preliminarily, Senator Madrigal lamented that abuse of overseas workers in the Middle East is a deeply-rooted problem that continues to plague the Philippines. She bared that during her last trip to Egypt, she helped bring home ten female overseas Filipino workers (OFWs) who had escaped to that country as they had either been raped, beaten up or their passports withheld by their employers in Saudi Arabia, Kuwait and Jordan. She said that apparently,

these OFWS were recruited by fly-by-night recruitment agencies, smuggled out of the country and made to sign questionable employment contracts.

Senator Madrigal pointed out that the problem lies not only in the recruitment process or in the security measures at the NAIA but also in the level of education of these OFWs as exemplified by the ten female returnees who refuse to file charges against their recruitment agencies but who even want to return to the Middle East. She believed that the vicious cycle of abuse would continue so long as the OFWs are not properly educated about the perils of working overseas.

Asked whether she receives a daily report on the status of the two OFWs, Senator Legarda replied in the negative, adding that she read about them in the newspapers and wanted to call the Senate's attention to their problem. However, she expressed her intention to write the concerned embassies in Kuwait and Saudi Arabia on the matter.

Aside from holding Pre-Departure Orientation seminars (PDOS) for OFWs, Senator Legarda stressed that the Philippines Overseas Employment Administration (POEA) and the Department of Labor and Employment (DOLE) should also institute important measures including briefings about countries of destination; and that the Philippine embassies, especially in volatile labor-recruiting countries, should have quick action, 24/7 response teams to address such problems.

For her part, Senator Madrigal stressed that the POEA should orient departing OFWs, particularly female workers, about the culture of the countries of employment, specifically the Middle East, so as to minimize the risks to their lives. She lamented that due to lack of employment in their own country, these people are willing to work overseas and endure the horrors that others have experienced.

INTERPELLATION OF SENATOR EJERCITO ESTRADA

Asked by Senator Ejercito Estrada whether she had already inquired into the problems of the two maltreated OFWs with the Overseas Workers Welfare Administration (OWWA) and the POEA, Senator Legarda gave assurance that she would, adding that she filed the resolution in the hope that the Committee on Labor, Employment and Human Resources

Development could look not only into these cases but also into the policies and guidelines of the OWWA and POEA, as well as gather information from the concerned embassies.

On whether she would be willing to accompany him during his planned visit to OFWs in death row in Saudi Arabian prison during the recess, Senator Legarda believed that before anything else, the Committee should look into the matter in which undertaking she would be willing to help.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the privilege speech of Senator Legarda and the interpellations thereon were referred to the Committee on Labor, Employment and Human Resources Development.

RECONSIDERATION OF THE APPROVAL ON SECOND READING OF SENATE BILL NO. 2293

Upon motion of Senator Pangilinan, there being no objection, the Body reconsidered the approval of Senate Bill No. 2293 on Second Reading.

As a consequence, upon motion of Senator Pangilinan, there being no objection, the Body reopened the period of interpellations.

Thereafter, the Chair recognized Senator Escudero, Sponsor of the measure, and Senator Defensor Santiago for her interpellation.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago stated that she has further comments on the proposed amendment to Section 24 (A) of the National Internal Revenue Code which might render two additional definitions in the bill unnecessary. She observed that the phrase "AS DEFINED BY THE BUREAU OF LABOR AND EMPLOYMENT STATISTICS (BLES) OF THE DEPARTMENT OF LABOR AND EMPLOYMENT" on lines 9 to 11 of page 1 is unnecessary and superfluous since it is understood that the "statutory minimum wage" is set by the Regional Tripartite Wage and Productivity Board. In response, Senator Escudero stated that he had been informed that the Bureau of Internal Revenue

(BIR) wanted the definition to be so stated to clarify the meaning of the term, as well as to inform and educate BIR officials and employees on the coverage of the exemption. However, he expressed willingness to consider an amendment thereto at the proper time.

Senator Defensor Santiago stated that a minimum wage earner in the private sector, depending on the region where he is working and whether he is in the agricultural or non-agricultural sector, is one who earns P200 per day in the ARMM and P362 per day in Metro Manila; on the other hand, a minimum wage earner in the public sector is one who receives a daily salary between P352 and P418 or P7,747 and P9,209 a month under EO 611 dated 14 March 2007, depending on his salary step.

By relying on the minimum wage as the basis for exemption from withholding tax and on salary grade 5 level of income in the case of public sector employees, Senator Defensor Santiago said that it is easy to see the consequences like the difference in treatment of public sector employees from private sector employees, the former effectively having a higher exemption level; thus, the P250 per day that an employee in the private sector in the ARMM earns is taxable but the P375 per day of his counterpart in government, being within salary grade 5, is tax exempt. She pointed out that there is no rational basis for the distinction between public sector employees and private sector employees but a classification is effectively being made by the definition.

Senator Escudero said that the problem is that minimum wage rates in the private sector are comparatively more flexible because they are adjusted occasionally by the Regional Tripartite Wage Boards, while adjustments in salaries in the public sector are made after long periods of time. The closest approximation of the present minimum wage in the private sector, he said, is Salary Grade 5, Step 5 in the government pay scale.

Senator Defensor Santiago pointed out that the definition of "minimum wage" earner only covers those who are employed and discriminates against those who are self-employed. She said that a minimum wage earner can enjoy exemption on income up to P110,508 a year or multiplying P9,209 x 12 months, while a self-employed individual would pay tax on gross sales, less all allowable deductions of P20,000. She stressed that there seemed to be no rational basis for the distinction between wage earners and

self-employed individual but the definition makes this a classification that might not stand scrutiny under the equal protection clause.

Senator Escudero said that even the NIRC makes a distinction in the tax treatment of compensation income earners and the self-employed, including professionals. With regard to deductions, he pointed out that unless the taxpayers avail of the Optional Standard Deduction (OSD) of 10%, they could include *any and all deductions and whatever remains is taxable income.*

To the observation that the exemption level is being regionalized in the case of private sector employees but it is not in the case of public sector employees, Senator Escudero explained that there is *no difference in the salary grades of government employees, be they in the ARMM or in Metro Manila, but the minimum wage set by the Regional Wage Boards varies from region to region.*

Senator Defensor Santiago stressed that the exemption on the basis of minimum wage also creates an *unwarranted distinction between the taxation of agricultural workers and non-agricultural workers in the same region in the sense that the minimum wage of agricultural workers is lower than the minimum wage of non-agricultural workers.* She cited Region IV-A, with a P275 minimum wage for agricultural workers and P300 minimum wage for non-agricultural workers. She noted that if an agricultural worker earns P280 in said region, that wage is subject to tax as it is P5 higher than the mandated minimum wage; however, the P300 minimum wage of his counterpart in the non-agricultural sector remains tax exempt. In answer, Senator Escudero said that the concern is addressed by the increased personal exemptions and additional exemptions which are provided for in the law. He explained that under the bill, the distinction between a single head of the family and married individual was removed and it provides an across-the-board personal exemption of P50,000 and a P25,000 exemption for each dependent, not exceeding four.

Asked on the basis for pegging the exemption of government employees at Salary Grade 5 and below, Senator Escudero said that Salary Grade 5 up to Step 8 is the closest approximation to the current minimum wage rate in NCR.

At this juncture, Senator Roxas asked whether the Committee would accept a standard definition

that anybody earning minimum wage and below as defined in Metro Manila are exempt so as to obviate the need to go through the salary steps of government employees and calculating the minimum wage per region.

In answer, Senator Escudero explained that while the process would simplify the administrative procedures of the BIR, it would not simplify the distinction between private and public sector workers because the minimum wage rate in NCR, for example, does not have an exact counterpart in the salary grades and steps of government employees, as provided for in the law. Also, he said that the computations made by the DOF with respect to the potential revenue loss was based on the minimum wage rates set per region which would result in a revenue loss of P14.25 billion.

Senator Roxas suggested that the DOF undertake such calculations because the increase would not be that large considering that most paid workers are in NCR and the increase in exemptions would not necessarily translate to higher revenue losses.

Asked by Senator Defensor Santiago on how a person would be taxed if, during the year, he is promoted from Salary Grade 5 to Salary Grade 6 in July and ceases to be a minimum wage employee, Senator Escudero said that the tax computation would be based starting on the new salary in July.

Senator Defensor Santiago observed that there are employees who receive a minimum wage but earn significant amounts of income from sales commissions. For purposes of ascertaining entitlement to tax exemptions, she asked if the basis of taxation would be the base pay or the aggregate compensation inclusive of commissions. Senator Escudero replied that only the base pay would be included and, if any, the hazard pay, holiday pay, overtime pay, and night shift differential received by a minimum wage earner. With regard to commissions, he said that exemptions would be extended only up to P30,000.

Considering that there are several regional wage boards that mandate separate minimum wage per region, Senator Defensor Santiago asked if the BIR is capable of administering/monitoring the different tax exemptions per region. Senator Escudero said that the BIR has revenue districts to oversee the task. *AB*

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Considering that the bulk of the BIR's collection comes from employed individuals subject to withholding tax, Senator Defensor Santiago asked whether the bill is revenue neutral or whether the BIR has any other alternative to generate additional revenue such as imposing new taxes. Senator Escudero replied that based on the DOF computations, revenue loss from the exemption of minimum wage earners is estimated at P3.16 billion; in fact, it is the higher ceiling by way of personal exemption and additional exemption that would generate, if at all, a loss of P11.09 billion. However, he clarified that the bill makes available to individual taxpayers a 40% OSD which, according to conservative estimates of the DOF at 10% availment, would result in a net gain for government of P7.85 billion, and through a 40% OSD available to corporations based on gross income, at a conservative availment of 3.6%, a net gain of P7.18 billion. He said that by subtracting the potential gain from the potential revenue loss, the DOF projects that government would still have a net gain of P780 million on the low side, and on the high side, although highly improbable, approximately P18.08 billion. Based on these estimates, he believed that no revenue loss would be incurred if Congress passed the bill.

On page 3, lines 4 to 9, Section 24(A), Senator Defensor Santiago commented that whether or not the minimum wage or salary grade 5 income is a good basis for exemption remains in question because it is somewhat absurd that the P363 daily wage of a workers that is P1.00 above the daily minimum wage of P362 is already taxable to the full extent. Based on the following computation, she noted that *the individual would pay tax of P4,875:*

| | |
|--------------------------------|----------------|
| P363 x 22 days/mo. x 12 mos. = | P 95,832 |
| Less: Personal Exemption | <u>50,000</u> |
| Taxable Income | P45,832 |
| | |
| Tax on First 30,000 | P 2,500 |
| Tax on Excess (15%) | <u>2,375</u> |
| Total | P 4,875 |

Senator Escudero agreed, saying that he shared the very same concerns when the Committee was discussing the bill as indeed it would create wage distortions up to the level of a person receiving a salary which is only higher by P6,000 than that of a minimum wage earner. Based on the above computation, he noted that the distortion is only apparent if the taxpayer is single or not married without dependents; with two dependents, the

distortion already disappears; at three dependents, it no longer makes a difference because the exemption already covers approximately the wage distortion as far as individual or single taxpayers are concerned. Nevertheless, he said that the Committee has been trying to come up with a solution to the potential wage distortion and the closest to the solution was to provide that, "Any and all income received by a person that is equivalent to the minimum wage for a particular reason shall be exempt and it is only the difference that will be taxed." However, he disclosed that according to the BIR, it would create some administrative problems on enforcement and that the DOF would have to recompute the potential revenue loss given that it had based its computations on the number of minimum wage earners as reported to the BIR. At the proper time, he said, the Committee would be willing to consider suggestions to minimize the potential wage distortion that would be created as far as individual taxpayers with less than three dependents are concerned.

Still on the same provision, Senator Defensor Santiago commented that the tax exemption on holiday pay, overtime, etc. should be applicable to all, whether or not they are minimum wage earners, considering that these are minimal amounts, and are mandatory benefits only to rank-and-file employees. If this is made applicable to all in the same way that SSS and other contributions are excluded from taxable income, she proposed that the proviso be transferred as one of the items under Section 32(b)(7) on exclusions from gross income. Senator Escudero replied that expanding the definition would mean including overtime, holiday, night shift, and the hazard pay to encompass all wage earners. He agreed that the provision be amended, subject to style. He said that he would ask the DOF to compute the potential revenue loss should these items be included to find out if government can afford the potential revenue loss.

On a related matter, Senator Defensor Santiago observed that the proposal to increase the level of tax exemption of individuals to the extent that minimum wage earners are specifically proposed to be tax-exempt is definitely well intentioned. However, she cautioned that the proposal might create a lot of awkward consequences, an intended discrimination and possibly administrative difficulties in view of the resulting varying levels of tax exemptions. That it is evident that the drafters of the amendment are of the position that income equivalent to the minimum wage/salary grade 5 should no longer be taxed as it

is deemed as mere subsistence level of income, and to avoid many of the difficulties that the proposal might create, she suggested an increase in the personal exemption to a level nearer the average minimum wage since it would exempt substantially all of the income of minimum wage earners. This way, she said, there is no need to create distinctions between public and private sector employees, between employees of one region and those of another; and, most importantly, between the self-employed and the employed. She believed that it is less of a challenge to determine what the higher personal exemption level is; it should simply be noted that by exempting minimum wage earners, government is in fact prepared to exempt on an annual basis income ranging from P52,800 (264 days x P200.00 which is the lowest mandated wage applicable to ARMM) to P95,568 (264 days x P362.00 which is the highest mandated wage applicable to NCR) or even P110,508, the maximum rate under Salary Grade 5, regardless of whether the individual is married, single, or head of family. She stated that a provision prescribing a personal exemption of P75,000, therefore, may be more administratively feasible than a provision that uses the minimum wage and salary grade 5 compensation as basis for exemption. She believed that by doing this, the attendant unwarranted classification and unequal treatment across the classes can all be avoided.

Senator Escudero replied that the Committee would look into the computation of a higher exemption of P75,000 from the proposed exemption of P50,000 per individual taxpayer; but the pencil-pushing it did was that P130,000 would prevent or avoid any and/or distortions but that would cost government a revenue loss of approximately P34 billion. He said that he would ask the DOF to make the computation should this be an across-the-board P75,000 exemption. But he expressed apprehension that the outcome might be a loss for government, in which case the measure is no longer revenue neutral and it might have difficulty getting its early passage. He assured the Body that the Committee would make the necessary computations as proposed by Senator Defensor Santiago.

Adverting to page 3, line 22, Section 34(L), Senator Defensor Santiago asked on the basis for increasing the rate of OSD for individuals from 10% to 40%. Senator Escudero replied that among others, the DOF came up with a proposal of 40% OSD based on gross sales or gross receipts, thinking that

it would be more attractive to taxpayers and thereby increase the taxable income base from the existing rate of only 30% given that the average deductions of individual taxpayers reach up to 70%. He said that offering a 40% OSD is, in effect, offering an administrative amnesty whereby an individual taxpayer simply claims deductions not exceeding 40% and the BIR no longer questions his/her claimed deductions and taxes the remaining 60% of gross sales or gross receipts.

On whether the BIR has supporting statistics on the collection generated from those availing of 10% OSD, Senator Escudero replied in the affirmative, adding that 39,871 of 389,719 self-employed availed of 10% OSD.

Asked if there are data for 2007, Senator Escudero replied that the latest statistics is for the year 2004 because of the delay in the reportorial requirements and the filing of returns which was only made in April 15 this year for year 2007.

Asked on the foreseen change in statistics with the proposed increase in the OSD, Senator Escudero replied that the BIR was conservative in computing it at 10% availment; however, the base is increased because under the existing law, it is based on 10% of gross income, while under the bill, it would be 40% of gross sales or gross receipts which would provide for a wider tax base.

Senator Defensor Santiago asked if the Committee has the quantification of the proposed change in the statistics on collection generated from 10% OSD.

As regards the projected gains from the proposed 40% OSD, Senator Escudero stated that the DOF gave a conservative estimate of 10% availment rate — 39,871 taxpayers — that does not include new taxpayers who might be encouraged to file a tax return because of the higher OSD. He said that at 10% availment rate, government stands to gain P7.85 billion because it would be based on gross receipts and gross sales and not on gross income.

Asked for the definition of “gross sales/gross receipts,” Senator Escudero replied that the terms “gross sales” and “gross receipts” have the same definitions as used in Accounting. He explained that “gross sales” apply to a person engaged in a business pertaining to services, while “gross receipts” apply to sales in goods. He said that both terms pertain to any

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income that a person receives without applying deductions.

As regards the OSD for corporations, Senator Escudero clarified that the OSD would improve efficiency and remove the discretion from the BIR to make the computation. He said that individuals can avail of 40% OSD, while corporations can avail of up to 79% OSD.

Still on Section 32, Senator Defensor Santiago observed that the taxable income of corporations is below 25% of gross income. She wondered how corporations would be encouraged to avail of the new exemption when it would mean that their taxable income is 60% of gross income. Senator Escudero stated that there are no hard data on the percentage of availment; however, the DOF computed the level of availment at 3%, targeting smaller corporations which are less sophisticated in keeping track of their deductions. Moreover, he said that corporations, on the average, avail of as much as 79% deductions thereby reducing their taxable income to 21% which is below the proposed 25%. Furthermore, he asserted that corporations would avail of the OSD on the following assumptions: 1) smaller corporations lack the sophistication and have less manpower to keep track of their deductions and/or expenditures; 2) OSD is by nature an administrative amnesty which would free corporations from the hassle of a BIR audit; and 3) a corporate taxpayer can change his mind on a year-to-year basis so he can avail of the OSD this year and decide not to avail of it next year, depending on his circumstances.

On Section 35, Senator Defensor Santiago stated that the increase in the personal exemption from P20,000 to P50,000 and the additional exemption for dependent children are necessary and timely given the increased cost of living. She said that except for the cost of raising children, the equalization of treatment of single individuals at par with married individuals is also appropriate since there is nothing that differentiates their cost of living. However, she believed that the removal of the concept of the "head of family" is inappropriate because there are unmarried individuals who are likely supporting several dependents like their parents and/or siblings.

Citing the Senior Citizens Act as implemented by Revenue Regulation Circular No. 4-06, Senator Defensor Santiago stated that senior citizens are classified as "head of family" and avail of the

corresponding personal exemption. She noted that the deletion of this classification and its higher deductions discriminate against single individuals who are actually spending for the sustenance of their beneficiaries who are not necessarily their children. In view of the proposed increase in personal and additional exemptions, she expressed concern that the government's revenue would suffer.

Senator Escudero explained that the increase in the additional exemption for dependents in Section 35 encompasses the concerns of Senator Defensor Santiago. He stated that "dependent" as defined in Section 35 is "regardless of age, that is incapable of self-support because of a mental or physical defect." He gave assurance that the term would be clarified to include the parents, for instance, of the taxpayers.

As regards revenue loss resulting from the increased exemption, Senator Escudero stated that it is P14.25 billion. However, he maintained that with the conservative estimates of 10% and 3% availment rates of 40% OSD on gross receipts for individuals and 40% OSD on gross income for corporations, government would have a net gain of P15.3 billion on the high side or P780 million on the low side. He indicated that the DOF is not too optimistic as to put a 15% availment rate of OSD for individuals and 10% for corporations, and that it is even skeptical about the P18.08 billion net gain on the high side.

At this juncture, Senate President Villar relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

INTERPELLATION OF SENATOR LEGARDA

Asked by Senator Legarda if bonuses, like the 13th month pay and rice allowances, are tax exempt, Senator Escudero replied that the 13th month pay is non-taxable and additional bonuses, commission and allowances up to P30,000 are tax exempt. He confirmed that there were other remunerations received by a minimum wage earner that are not mentioned because they are already exempt under the present law. He said that the proposed law would exempt a minimum wage earner from paying taxes on holiday pay; overtime pay, for working beyond eight hours; night-shift pay, for working at night given the times provided for in the Labor Code; and hazard pay, depending on his workstation. *AK*

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Senator Legarda asked on the coverage of the total exemption of P30,000.

SUSPENSION OF SESSION

Upon motion of Senator Escudero, the session was suspended.

It was 5:26 p.m.

RESUMPTION OF SESSION

At 5:26 p.m., the session was resumed.

Upon resumption, Senator Escudero adverted to Section 32 (e) of the NIRC, to wit:

(e) *13th Month Pay and Other Benefits.* - Gross benefits received by officials and employees of public and private entities: *Provided, however,* That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (P30,000) which shall cover:

- (i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;
- (ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;
- (iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and
- (iv) Other benefits such as productivity incentives and Christmas bonus: *Provided, further,* That the ceiling of Thirty thousand pesos (P30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

Senator Legarda noted that while the bracket of the minimum wage of a private sector employee changes from time to time as a consequence of rulings issued by the Regional Tripartite Wage and Productivity Board (RTWPB), the bill pegs the minimum wage bracket of government employees at Salary Grade 5. She asked if it would be appropriate to include a proviso in the measure to allow a periodic review similar to the mechanism provided by

the RTWPB so as to determine who in the government sector could be considered minimum wage earners. Senator Escudero replied that the present minimum wage rate for the private sector in Metro Manila is closest to Salary Grade 5, Step 5 in the government sector but the bill provides for an allowance up to Step 8 after projecting the potential increases that might be granted by the RTWPBs in the various regions. He said that the minimum wage rates do not have an exact counterpart or equivalent with the salary grades and steps in the government sector, thereby creating another potential wage distortion for those in the private sector, particularly those receiving even P1.00 higher than the minimum wage rate set by the regional wage boards.

Senator Legarda expressed her full support for the measure.

SUSPENSION OF SESSION

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

It was 5:30 p.m.

RESUMPTION OF SESSION

At 5:33 p.m., the session was resumed.

Upon resumption, Senator Pangilinan said that Senator Cayetano (A) has waived his reservation to interpellate on the measure.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

Upon motion of Senator Pangilinan, there being no objection, the Body closed the period of interpellations.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2293

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

COMMITTEE REPORT NO. 51 ON SENATE BILL NO. 2264

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on

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Second Reading, of Senate Bill No. 2264 (Committee Report No. 51), entitled

AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."

Senator Pangilinan said that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Zubiri, Sponsor of the measure, and Senator Madrigal for her interpellation.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 5:34 p.m.

RESUMPTION OF SESSION

At 5:35 p.m., the session was resumed.

INTERPELLATION OF SENATOR MADRIGAL

Asked by Senator Madrigal on the major rationale for the amendments to the Cooperative Code, Senator Zubiri replied that since the present Cooperative Code was written more than 19 years ago, there are minor amendments that certain cooperative sectors would want to see in place. He pointed out that the present Code, for instance, does not have definitions for other types of cooperatives — electric, transport, agrarian reform and farmers' cooperatives — that are already in existence, but their positions would be strengthened by adding their definitions in the Code.

He stated that among other minor amendments to the Code is the mandatory training for all newly-registered members. He said that the absence of training of many cooperative officials and members have caused many cooperatives to fail.

On whether something has to be defined to include it in the Cooperative Code, Senator Zubiri explained that the absence of definitions would open the provisions of the Code to a lot of interpretations from the different agencies that deal with cooperatives,

whether the Cooperatives Development Authority or other agencies.

Senator Madrigal requested a list of the cooperatives that exist in the country. She said that she could not understand the rationale for redefining them when they are already in existence. Senator Zubiri explained that electric cooperatives were not mentioned in the current Code because they were initially registered under the National Electrification Administration (NEA). He maintained that they should be included in the new Code because among the amendments to the EPIRA, if approved, is to allow electric cooperatives to become full cooperatives. He recalled that in the 1970s, when President Marcos decided to put up electric cooperatives in all the subsidized areas, he placed them under the National Electrification Administration in the guise of cooperatives although they were not.

Asked on the basic rationale for the major amendments, Senator Zubiri replied that that rationale is to identify the coverage of the particular cooperative, because it used to be lumped under multipurpose and service cooperatives.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 5:44 p.m.

RESUMPTION OF SESSION

At 5:45 p.m., the session was resumed.

Senator Zubiri stated that the credit, consumers, producers, marketing, service, and multipurpose cooperatives are the main types of cooperatives that are enumerated under Section 23 of the Cooperative Code. The bill, he explained, is more specific in that it includes advocacy cooperatives, agrarian reform cooperatives, cooperative banks, dairy cooperatives, education cooperatives, electric cooperatives, fishermen cooperatives, and housing cooperatives, thus, giving identities to all the cooperatives in the country. Under the Code, he pointed out that the CDA was having difficulty in identifying the memberships as well as requirements of the cooperatives.

Asked if the rationale of the bill is merely to define "cooperatives" or to change the nature of

certain cooperatives, Senator Zubiri explained that the aim of the bill is to further strengthen existing cooperatives which are registered with the CDA and to ensure transparency and accountability in their management.

Asked if the bill strengthens the regulatory or monitoring functions of the CDA, Senator Zubiri replied in the affirmative, explaining that the bill includes a provision on the creation of a dispute committee within the cooperatives to handle internal conflicts of officers and members before these are elevated to the CDA for mediation.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 5:49 p.m.

RESUMPTION OF SESSION

At 5:50 p.m., the session was resumed.

Upon resumption, Senator Zubiri added that the bill includes a provision requiring all cooperatives to have an external auditor to audit financial performance to ensure efficient and effective management.

Asked how the definitions would strengthen and benefit existing cooperatives, Senator Zubiri explained that, at present, electric cooperatives are under the National Electrification Administration (NEA) but under the bill, all electric cooperatives would have to register with the CDA and the NEA is mandated to provide technical and financial assistance and support to electrical cooperatives that are registered with the CDA. He disclosed that the 119 electric cooperatives have been lobbying for the provisions.

On the number of cooperatives that would not be able to continue if the bill is not enacted into law, Senator Zubiri clarified that no cooperative was removed from the coverage of the bill. He said that the rationale is to promote the idea that a true cooperative is owned, operated and managed by the members of the cooperatives themselves. He pointed out that, at present, out of the 119 electric cooperatives, only 18 are registered with the CDA while the rest refuse to register because they believe that there is no guarantee that they would be able to get benefits from the CDA.

On the benefits that cooperatives will enjoy once the bill is passed into law, Senator Zubiri replied that under the bill, members who are entitled to at least one share of stock, shall be considered as the true owners of the cooperatives, so as to ensure their autonomy and independence from the NEA; moreover, they shall be exempt from real property tax and import duties.

As for the other cooperatives, Senator Zubiri recalled that the agrarian reform communities used to be under the producer's cooperatives but under the bill, agrarian reform beneficiaries could organize themselves into independent agrarian reform cooperatives. He stated that the agrarian reform cooperatives are spread out in several communities and their inclusion in the Code would afford them certain advantages.

Asked how many cooperatives would benefit from the proposed Act and their sizes, Senator Zubiri replied that all 68,000 registered cooperatives would benefit from the amendments to the Code since it strengthens the cooperatives in terms of increased capitalization from P2,000 to P30,000 and the formation of the mediation committee and the training of cooperative officers, among others.

With regard to the definition of "social audit" and how it would be carried out, Senator Zubiri explained that it is intended to determine how well the cooperative is able to fulfill its social responsibilities to its members and community. A "performance audit," he clarified, refers to the audit of the efficiency and effectiveness of the cooperative, its management and its various responsibilities. He added that the results of these audits are required to be presented to the members.

As to the qualifications of a social auditor, Senator Zubiri replied that the auditor would come from a social audit committee within the cooperative. He admitted that the exact qualifications are not specified in the bill as it is a matter that the members of the cooperative have to decide among themselves. The CDA's implementing rules and regulations, he said, could also come up with criteria for the election of the social audit committee. He stated that the Committee inserted Article 3(7) *Concern for Community* to emphasize that members of cooperatives have a social responsibility to the people. He added that the audits are intended to continuously build up human resources.

On the concern that the audits are internal and may not be objective, Senator Zubiri clarified that the CDA would still act as the external auditor and they would receive the audit reports annually.

Asked if every cooperative would be required to submit a financial statement prepared by external auditors after the measure is enacted into law, Senator Zubiri replied in the affirmative, pointing out that the members should be protected from possible abuses of management.

Given that new requirements would have to be followed, Senator Madrigal queried if there are existing cooperatives that would no longer be in operation upon the passage of the bill into law. Senator Zubiri replied that the bill does not prejudice existing cooperatives as it seeks to even strengthen their operation and empower them to be more effective cooperatives.

As regards the 75,000 cooperatives registered with the CDA, Senator Madrigal asked on the percentage of those operating profitably and those operating at a loss.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 6:17 p.m.

RESUMPTION OF SESSION

At 6:18 p.m., the session was resumed.

SUSPENSION OF SESSION

Upon motion of Senator Madrigal, the session was suspended.

It was 6:18 p.m.

RESUMPTION OF SESSION

At 6:20 p.m., the session was resumed.

Senator Zubiri stated that cooperatives are not required to submit a profit and loss statement as it is not a good measure of success. He said that what the Committee has is a list of members and their status: of the 74,000 cooperatives, roughly 21,000 are

of good standing, about the same number are non-operating cooperatives, about 15,000 are dissolved cooperatives, and close to the same figure are cancelled cooperatives.

On another matter, Senator Zubiri agreed to the observation that the cooperative is formed to help the marginalized.

Senator Madrigal disclosed that Asian Spirit, the company that started as a cooperative of airline pilots, was able to lease and buy aircraft and so it cannot be considered as marginalized. She expressed concern that the bill might just encourage rich people to form cooperatives to avoid paying taxes and use them as fronts to operate their corporate businesses.

Senator Zubiri pointed out that Section 61 of the Cooperative Code prohibits cooperatives from transacting business with non-members or the general public. Therefore, he posited that while Asian Spirit was managed like a cooperative, the fact that it made money by dealing with non-members and the general public subjected it to taxation under Article 62 of the Code. He assured Senator Madrigal that he would provide her with documents related to the inception of Asian Spirit and the tax advantage it may have used as a cooperative.

Noting that Asian Spirit had recently been purchased for an estimated one billion pesos, Senator Madrigal expressed concern that cooperatives would be used as a cover by corporations which would take full advantage of the provisions of the bill to marginalize the already marginalized sectors. Senator Zubiri affirmed that there have been attempts to circumvent the law and take advantage of such provisions. However, he disclosed that many such cooperatives had been disbanded or penalized by the BIR and the DOF and, in fact, they have legal cases pending before the courts concerning the non-payment of taxes. He also cited Article 28 (Penal Provisions) of the bill which metes tax evaders with a fine ranging from P30,000 to P100,000 and a maximum of four years' imprisonment.

Adverting to page 11, lines 1 to 3 of the bill, Senator Madrigal asked how licensed educational institutions could be kept within the cooperative. Senator Zubiri explained that some cooperatives such as the San Dionisio Multipurpose Cooperative, run their own schools, in this case, the *Eskuwela de*

San Dionisio which is registered with the Securities and Exchange Commission (SEC) and has its own teachers as members of the cooperative. He noted that since the Education Act specifies that only non-profit corporations could register with the DepEd, the bill provides that particular definition of "education cooperative."

Upon further queries, Senator Zubiri replied that the *Eskuwela de San Dionisio* is an elementary school recognized by the DepEd with children of some 10,000 cooperative members as its students.

To the suggestion that there be limits to the definition of "educational cooperative" since an educational cooperative could be a convenient way of making profits and evading tax payments by *getting outside business through recruiting cooperative members but not serving the needs of the actual cooperative*, Senator Zubiri said that he received information that all educational institutions are exempt from paying taxes.

Asked on the advantage of an educational cooperative, Senator Zubiri said that it would provide cheaper and accessible education for the members of the cooperative and their children. However, Senator Madrigal disagreed and asked that she be given an example.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 6:34 p.m.

RESUMPTION OF SESSION

At 6:35 p.m., the session was resumed.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 6:36 p.m.

RESUMPTION OF SESSION

At 6:36 p.m., the session was resumed.

Senator Zubiri gave assurance that he would provide information on tax provisions for schools.

He also stated that as explained by a resource person who operates an education cooperative, fees paid to the school are considered a revolving fund because it is returned to the cooperative. Therefore, he pointed out that members of the organization ultimately benefit from enrolling their children in schools operated by the cooperative.

Asked what could prevent a highly-capitalized fishing company from forming a fishermen's cooperative, Senator Zubiri explained that profits from the sale of a cooperative's produce to the fishing company would benefit every fisherman, all of them being collective owners of the cooperative. He said that rather than purchasing basic goods like sardines or tuna from one fisherman at a time, many companies, such as those in General Santos and Zamboanga, are relying on cooperatives to provide this service as they are run more efficiently.

Upon further queries, Senator Zubiri said that the CDA would be responsible for preventing a major corporation from masquerading as a cooperative. He explained that although the CDA has about 780 members in different regional offices, it only has a P220 million budget for 2008, which is not sufficient for the purpose. He pointed out that most of the provisions of the bill are meant for self-regulation of the cooperatives.

On whether a health service cooperative could own and earn profits from a hospital, Senator Zubiri replied in the affirmative. He said that in Bukidnon, members of the Del Monte Corporation cooperative own a hospital which services the needs of the company's estimated 10,000 workforce.

Asked if a cooperative hospital owned by doctors and nurses could avail of the organization's tax-free status, Senator Zubiri clarified that as the cooperative owns the hospital and each member is entitled to only a single share and vote, no individual could own a majority share and make a profit.

To the contention that schools run by cooperatives would be serving the general public and yet be exempt from tax payments, Senator Zubiri pointed out that an educational cooperative would service only the children of the members of the cooperative.

To the concern that a group of greedy doctors and nurses could set up a cooperative, claim that they are looking after the health of the community

and its members but even have members from far-off places but still not be subjected to taxes, Senator Zubiri admitted that this is a possibility. He said that precisely, the BIR is always monitoring the activities of different hospitals and other cooperatives because of the possibility of abuses. He pointed out that the idea is to create medical, health and services cooperatives to service the needs of their members as he cited Camp Philips in Manolo Fortich in Bukidnon, which is already servicing its 15,000 members. He said that its members would rather pay the doctors of the cooperatives because the money is revolved within the cooperative. He stressed that he is pushing the cooperative movement to get people involved in services like cheap credit, medical and health services which the government cannot provide.

With regard to housing cooperatives, Senator Madrigal asked if members of the Forbes Park Association could also organize themselves into a cooperative. In the proposed bill, she said that a "housing cooperative" is a service cooperative engaged in assisting or providing access to housing for the benefit of its regular members who actively participate in the savings program for housing. In reply, Senator Zubiri surmised that members of that association would not want to co-own with one another.

Senator Madrigal noted that the new insurance commissioner has raised the insurance capital to P200 million and wondered how a marginalized cooperative could come up with that kind of money. Senator Zubiri pointed out that there are several multipurpose cooperatives that are large enough and can provide insurance to its members to a small extent. He clarified that insurance cooperatives are included in the bill because the insurance is extended only to the members.

Senator Madrigal expressed concern about the insufficient regulation and monitoring of insurance business even as she pointed out that the capital requirement for cooperative insurance which is 50% of the amount required for the regular insurance

companies would be a loophole for people, who do not have enough capital, to continue in the insurance business. Senator Zubiri stated that both the Code and the bill provide that the Insurance Commission and the CDA shall monitor the insurance business.

Senator Madrigal stated that under the Constitution, all revenues of non-stock, non-profit educational institutions are exempt from tax, and privately-owned, profit-oriented educational institutions may be exempted as provided by law. She said that under the NIRC, privately-owned, profit-oriented educational institutions are subject to 10% tax.

She then suspended her interpellation until she shall have received the documents on Asian Spirit.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2264


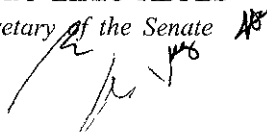
Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Senate President Pro Tempore declared the session adjourned until three o'clock in the afternoon of Tuesday, May 27.

It was 6:57 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate 

Approved on May 27, 2008