

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



13 JUL 17 P3:18

SENATE

Senate Bill No. 876

RECEIVED BY: *ju*

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. (Sec. 29 (1) Art. VI, Constitution). The power of appropriation is described by James Madison as the "spending power." Thus, it is the most important prerogative of Congress. Indeed, while the power of the "sword" is attributed to the Executive and the power of the "pen" to the Judiciary, the power of the "purse" belongs to the Legislature.

Unfortunately, that power of the "purse" has been diluted by Presidential Decree Nos. 81, 1177 and 1967 because they mandated the automatic appropriation of debt payment and converted Congress into a mere rubber-stamp.

Ironically, debt service had been eating up a big chunk of our budget. Currently, of the P1.8 trillion national budget, P367 billion, or 20%, has been earmarked for debt service (interest payment), thus, leaving Congress with authority to scrutinize only the remaining 72% but leaving debt service as is.

Several attempts in the past had been exerted even by distinguished members of this august body to seek judicial nullification of these Presidential Decrees but to no avail as the consistent response of the Supreme Court even to members of this Branch of the Government had been that if we want to rid ourselves of these bad laws (P.D. Nos. 81, 1177 and 1967), we must repeal them. In the case of *Teofisfo T. Guingona, Jr. and Aguilino Q. Pimentel, Jr. vs. Hon. Guillermo Carague*, 196 SCRA 221 (1991), the High Court ruled:

"The Court, therefore, finds that R.A. No. 4860, as amended by P.D. No. 81, Section 31 of P.D. 1177 and P.D. No. 1967 constitute lawful authorizations or appropriations, unless they are repealed or otherwise amended by Congress. The Executive was thus merely complying with the duty to implement the same.

There can be no question as to the patriotism and good motive of petitioners in filing this petition. Unfortunately, the petition must fail on the constitutional and legal issues raised. As to whether or not the country should honor its international debt, more especially the enormous amount that had been incurred by the past administration, which appears to be the ultimate objective of the petition, is not an issue that is presented or proposed to be addressed by the Court. Indeed, it is more of a political decision for

Congress and the Executive to determine in the exercise of their wisdom and sound discretion. "[At p. 238]"

The subsequent case of *Philconsa, Wigberto Tanada, Alberto Romulo, Raul S. Roco, Neptali A. Gonzales, Edgardo J. Angara vs. Hon. Salvador Enriquez*, 235 SCRA 506 (1994), reiterated the same pronouncement and went on further to state that "a provision in an appropriations act cannot be used to repeal or amend other laws."

Yes, these PDs were crafted during the one-man rule of Pres. Marcos and, thus, should be stricken off our statute books now and forever.


A noted Constitutionalist and Professorial Lecturer in the University of the Philippines, Bartolome C. Fernandez, Jr., in his dissertation *Congressional Power of the Purse Vis-A-Vis Automatic Appropriations for Debt Servicing*, Vol. XVII, *The Lawyers Review* No. 1, p. 4, Jan. 1993, posed the following questions:

xxx.

4. Will the operationalization of the automatic appropriation scheme continue in perpetuity given the seemingly blind obeisance to the questioned decrees on the part of both the Legislative and the Executive? When will it end, if at all?
5. Will not the time come around when items under the all-encompassing automatic appropriation would comprise the bulk of the GAA, thereby virtually emasculating Congress regarding its power of appropriation?
6. When will Congress come around to regaining and reasserting its power of the purse under the 1987 Constitution regarding such automatic appropriations?
7. When will Congress come around reasserting its role as the policy-determining body of the government as envisioned under the Constitution by determining by itself, in the course of the legislative process, the proper appropriations for debt servicing which, admittedly, is a matter of policy?
8. How long will Congress allow itself to be rendered impotent by anachronistic presidential decrees of martial law vintage which, according to the dissenting opinion of Justice Isagani A. Cruz in the Guingona case, "are on the whole tainted with authoritarianism and enfeebled by lack of proper study and draftsmanship, let alone suspect motives."?
9. Will the present Congress be emboldened to demonstrate political will and strike down once and for all these decrees and consign them to oblivion?

x x x. [at p. 7]

Verily, the bill will once and for all cleanse our statute books of remaining vestiges of martial rule and restore to Congress its enviable, absolute and exclusive "power of the purse."


JINGGOY EJERCITO ESTRADA
Senator

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Senate
Office of the Secretary

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AN ACT

RESTORING TO CONGRESS THE POWER TO APPROPRIATE PAYMENTS ON DEBT SERVICE, REVIVING FOR THE PURPOSE SECTION 6 OF REPUBLIC ACT NO. 4860 (FOREIGN BORROWING ACT), AND REPEALING SECTION 7 OF PRESIDENTIAL DECREE NO. 81, SECTION 31 OF PRESIDENTIAL DECREE NO. 1177 AND SECTIONS 1,2 AND 3 OF PRESIDENTIAL DECREE NO. 1967

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Statement of Policy.* - The Constitution vests upon and mandates Congress to enact appropriation measures for government expenditure whether domestic or foreign. However, because of the continued effectivity of certain Presidential Decrees of former Pres. Ferdinand Marcos providing for the automatic appropriation of amounts as payments for foreign debts in the annual budget without need of congressional action since 1972 up to the present, Congress is revoking these presidential decrees and restoring to it full power to exercise its authority in determining the necessary but reasonable amount as part of the annual budget that may be appropriated to service the country's foreign debts with due regard to domestic but equally vital government services that need equal appropriation to bring about a balanced government expenditure program.

SEC. 2. *Revival of the Original Text of Section 6 of Republic Act No. 4860.* - Section 6 of Republic Act No. 4860 otherwise known as the "Foreign Borrowing Act" as amended by Republic Act No. 6142 which had been amended by Section 7 of Presidential Decree No. 81, Section 31 of Presidential Decree No.1177 and Sections 1, 2 and 3 of Presidential Decree No. 1967 is hereby revived as follows:

"Section 6. Any provision of law to the contrary notwithstanding, and in order to enable the Republic of the Philippines to pay the principal, interest, taxes and other normal banking charges on the loans, credits or indebtedness, or on the bonds, debentures, securities or other evidences of indebtedness sold in international markets under the authority of this Act, all the revenue realized from the projects financed by such loans, credits or indebtedness, or on the bonds, debentures, securities or other evidences of indebtedness, shall be turned over in full, after deducting actual and necessary expenses for the operation and

maintenance of said projects, to the National Treasury by the government office, agency or instrumentality, or government-owned or controlled corporation concerned, which is hereby appropriated for the purpose as and when they shall become due. In case the revenue realized is insufficient to cover the principal, interest and other charges, such portion of the budgetary savings as may be necessary to cover the balance or deficiency shall be set aside exclusively for the purpose by the government office, agency or instrumentality, or government-owned or controlled corporation concerned: *Provided*, That, if there still remains a deficiency, the Congress shall appropriate the necessary amount of any funds in the National Treasury not otherwise appropriated, to cover the payment of the principal and interest on such loans, credits or indebtedness as and when they shall become due: *Provided*, *further*, That the Monetary Board shall make provisions out of current foreign exchange receipts for the foreign exchange requirements to service the external debt."

SEC. 3. *Repeal of Section 7 of Presidential Decree No. 81, Section 31 of Presidential Decree No. 1177 and Sections 1, 2 and 3 of Presidential Decree No. 1967.* - Section 7 of Presidential Decree No. 81, Section 31 of Presidential Decree No. 1177 and Sections 1, 2 and 3 of Presidential Decree No. 1967 and other provisions of said decrees which are inconsistent herewith are hereby REPEALED.

SEC. 4. *Effectivity.* - This Act shall take effect upon its approval.

Approved,