



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 38
Tuesday, December 10, 2013

SIXTEENTH CONGRESS
FIRST REGULAR SESSION

SESSION NO. 38
Tuesday, December 10, 2013

CALL TO ORDER

At 3:21 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Loren Legarda led the prayer, to wit:

Almighty Father, we thank You for Your continuous grace.

Though our nation is recovering from the impact of recent disasters, we are grateful for we are blessed to have fellow Filipinos, and brothers and sisters in other nations, who provide us with their generous help.

In the midst of the challenges, You give us hope through the support of our fellowmen. In the midst of devastation, You shower us with Your generosity and unconditional love. In the midst of adversity, You give us courage to rise again and learn from the painful lessons of yesterday.

As we come near the celebration of Christmas, we continue to pray that our countrymen who are facing the greater challenge of rebuilding their lives all over again may find the true meaning of the

season, which is Your great love for mankind manifested through the birth of Your Son, Jesus Christ.

We pray for Your guidance, O Lord, as we do our share in building safer and resilient communities.

Grant us the wisdom, courage, and willpower to do what is right, and to do it now because our people expect a lot from us.

We ask You these, Almighty Father, as we pray that You continue to bless our nation. Amen.

ROLL CALL

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

Angara, S.	Honasan, G. B.
Aquino, P. B. IV B.	Legarda, L.
Binay, M. L. N. S.	Osmeña III, S. R.
Cayetano, A. P. C. S.	Poe, G.
Drilon, F. M.	Recto, R. G.
Ejercito, J. V. G.	Revilla Jr., R. B.
Escudero, F. J. G.	Sotto III, V. C.
Estrada, J.	Trillanes IV, A. F.
Guingona III, T. L.	Villar, C. A.

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

Senator Marcos arrived after the roll call.

Senators Enrile, Lapid and Pimentel were on official mission.

Senator Cayetano (P) was on official mission abroad.

Senator Defensor Santiago was on sick leave.

APPROVAL OF THE JOURNAL

Upon motion of Senator Cayetano (A), there being no objection, the Body dispensed with the reading of the Journal of Session No. 37, (December 9, 2013) and considered it approved.

REFERENCE OF BUSINESS

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

BILLS ON FIRST READING

Senate Bill No. 2000, entitled

AN ACT CLARIFYING THE LEGAL EFFECT OF VIOLATING THE PROHIBITED ACTS AND MANDATORY PROVISIONS FOR TECHNOLOGY TRANSFER AGREEMENTS, AMENDING FOR THE SAID PURPOSE SECTION 92 OF REPUBLIC ACT 8293 OR THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Trade, Commerce and Entrepreneurship

Senate Bill No. 2001, entitled

AN ACT PRESCRIBING THE RULES AND PROCEDURES FOR THE LEASE OF GOVERNMENT ASSETS, AND FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Public Works

Senate Bill No. 2002, entitled

AN ACT AMENDING REPUBLIC ACT 8424, OR THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES, BY GRANTING FULL DEDUCTION FROM GROSS INCOME THE AMOUNT OF CONTRIBUTIONS MADE TO DISASTER RELIEF, RECOVERY, AND REHABILITATION EFFORTS AND ACTIVITIES, AND FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Ways and Means

Senate Bill No. 2003, entitled

AN ACT AMENDING SECTION 35 OF REPUBLIC ACT NO. 8424, AS AMENDED, OR THE NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES, BY GRANTING ADDITIONAL ALLOWANCE OF PERSONAL EXEMPTION FOR INDIVIDUAL TAXPAYER FOR CONTRIBUTIONS MADE TO DISASTER RELIEF, RECOVERY AND REHABILITATION EFFORTS, AND FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Ways and Means

Senate Bill No. 2004, entitled

AN ACT EXEMPTING FROM DONOR'S TAX AND DOCUMENTARY STAMP TAX GIFTS/DONATIONS/REMITTANCES FOR THE BENEFIT OF VICTIMS OF NATURAL DISASTERS AND OTHER CALAMITIES, AMENDING FOR THE PURPOSE REPUBLIC ACT 8424 OR THE

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NATIONAL INTERNAL REVENUE
CODE AS AMENDED

Introduced by Senator Maria Lourdes Nancy
S. Binay

To the Committee on Ways and Means

Senate Bill No. 2005, entitled

AN ACT STRENGTHENING THE
RIGHTS OF DOMESTIC WORKERS
TO ACCESS TO EDUCATION AND
TRAINING, AND OTHER FORMS OF
ADVANCEMENT, BY GRANTING
EMPLOYERS TAX INCENTIVES,
AND FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committees on Labor, Employment
and Human Resources Development; and Ways
and Means**

Senate Bill No. 2006, entitled

AN ACT GRANTING INCENTIVES TO
PUBLIC SCHOOL TEACHERS IN
ALL LEVELS, INCLUDING STATE
UNIVERSITIES AND COLLEGES,
AND FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committees on Education, Arts and
Culture; and Ways and Means**

Senate Bill No. 2007, entitled

AN ACT STRENGTHENING THE
RIGHTS TO PRIVACY OF VICTIMS
OF ABUSE, VIOLENCE, EXPLOIT-
ATION, AND OTHER OFFENSES,
AND THEIR FAMILIES BY MAN-
DATING THE CONFIDENTIALITY
OF RECORDS OF ACTIONS, SUITS
OR PROCEEDINGS, AND THE
IDENTITY OF VICTIMS AND THEIR
FAMILIES, PROVIDING PENALTIES
THEREFOR

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committee on Justice and Human
Rights**

Senate Bill No. 2008, entitled

AN ACT GRANTING TAX RELIEF TO
DISABLED PERSONS, AND FOR
OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committees on Social Justice,
Welfare and Rural Development; and Ways
and Means**

Senate Bill No. 2009, entitled

AN ACT GRANTING ECONOMIC
RELIEF TO DOMESTIC WORKERS
BY PROVIDING DISCOUNTS ON
AVAILMENT OF MEDICAL AND
DENTAL GOODS AND SERVICES
FOR THE USE AND BENEFIT OF
THE DOMESTIC WORKERS OR
THEIR IMMEDIATE FAMILY, AND
FOR OTHER PURPOSES

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committees on Labor, Employ-
ment and Human Resources Development;
and Social Justice, Welfare and Rural Dev-
elopment**

Senate Bill No. 2010, entitled

AN ACT CLARIFYING THE SCOPE OF
DERIVATIVE WORKS, AMENDING
FOR THE PURPOSE SECTION 173.1
(A) OF REPUBLIC ACT 8293 OR
THE PHILIPPINE INTELLECTUAL
PROPERTY CODE

Introduced by Senator Maria Lourdes Nancy
S. Binay

**To the Committee on Trade, Commerce
and Entrepreneurship**

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RESOLUTIONS

Proposed Senate Resolution No. 410, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, ON THE ISSUANCE OF BIR REVENUE REGULATIONS NO. 13-2013, WHICH PARTICULARLY AMENDS THE DEFINITION OF RAW SUGAR AS PROVIDED IN REVENUE REGULATIONS NO. 13-08 IN RELATION TO THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Ways and Means

Proposed Senate Resolution No. 411, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENERGY, AND OTHER APPROPRIATE SENATE COMMITTEES, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PLANNED BIG-TIME INCREASE IN THE GENERATION COST CHARGED BY THE MANILA ELECTRIC COMPANY (MERALCO) AND TO DETERMINE AND VALIDATE THE REASONS GIVEN TO JUSTIFY THE SAME; AS WELL AS ON THE STATUS OF THE IMPLEMENTATION OF THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2011, WITH THE END IN VIEW OF PROTECTING THE RIGHTS AND INTEREST OF CONSUMERS AND ENSURING AFFORDABLE ENERGY IN THE COUNTRY

Introduced by Senator Trillanes IV

To the Committees on Energy; and Trade, Commerce and Entrepreneurship

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 3:29 p.m.

RESUMPTION OF SESSION

At 3:33 p.m., the session was resumed.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Cayetano (A) acknowledged the presence in the gallery of the following guests:

- Mayor Jomar Hizon of Bacolor, Pampanga accompanied by his brother Darius, and barangay captains of Bacolor, Pampanga; and
- Mayor Lloyd Peter Lopez of Loon, Bohol.

The Senate President welcomed the guests to the Senate.

COMMITTEE REPORT NO. 2 ON SENATE BILL NO. 1733

(Continuation)

Upon motion of Senator Cayetano (A), there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1733 (Committee Report No. 2), entitled

AN ACT IMPLEMENTING THE PEOPLE'S RIGHT TO INFORMATION AND THE CONSTITUTIONAL POLICIES OF FULL PUBLIC DISCLOSURE AND HONESTY IN THE PUBLIC SERVICE AND FOR OTHER PURPOSES.

Senator Cayetano (A) stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Poe, sponsor of the measure.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 3:34 p.m.

RESUMPTION OF SESSION

At 3:35 p.m., the session was resumed.

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INTERPELLATION OF SENATOR CAYETANO (A)

Prefatorily, Senator Cayetano (A) recognized the need for transparency and accountability in government and he stressed the importance of the Freedom of Information bill because it would empower every Filipino particularly the *netizens* of the social media, to be a graftbuster and to see to it that every centavo of the budget is guarded from the time of appropriation until its disbursement and audit.

Asked on the procedure of obtaining information from a government agency, Senator Poe explained that the bill mandates all government agencies to install information desks that would receive requests for information made verbally, online or written, and that the request should be acted upon within 15 days upon receipt. She also cited Section 12 of the bill, to wit:

SEC. 12. *Procedure of Access.*

(a) Any person who wishes to obtain information shall submit, free of charge, a request to the government agency concerned personally, by mail, or through electronic means. A person who is unable, because of illiteracy or due to being a person with disability, to make a written request for information may make an oral request, and the public official who receives the oral request shall reduce it to writing, and include his name and position within the government agency, and give a copy thereof to the person who made the request.

She affirmed that the bill speaks of information not readily available in the agency's website or has not been published yet. She said that once the bill is passed, all government agencies must set up their own websites.

Senator Poe said that basic information such as items up for bidding, vacant plantilla positions and job openings should be posted on the agency's website. She also explained that the computer center is an agency that would ensure that all government agencies comply with this requirement within two years. This being the case, she said that information about the agency's budget and annual projects can be accessed through its official website; in instances where computers are not available, the agency can provide the interested party with a printout of the data.

On whether the bill requires specific information to be posted on the website of these agencies, Senator Poe adverted to Section 8 (a) and (b) which list the items that ought to be uploaded such as the Statement of Assets, Liabilities and Net Worth (SALN) of officials as well as documents of public interest transactions, records and the like.

Senator Cayetano (A) noted that the items that would be posted include information and documents that are allegedly hidden from the public and are often brought into the open in the course of investigations, budget hearings or written requests from high-ranking agency officials. He said that the bill would make it easier for senators, congressmen, the media and even anyone to have access to such data through the Internet.

Asked for the penalties that would be imposed on an agency that does not post this information, Senator Poe stated that while it would be easier to access the data via the website, an agency that does not have this data available online would have 15 days within which to act on such requests for information. In case the agency representative deliberately withholds such information, she explained that the requesting party could appeal to the head of the agency to provide him with the data or, if this proves unsuccessful, the agency could direct the party concerned to an agency that carries this information; and if the agency representative fails to give a reasonable response or maliciously withholds this information, he would be penalized either by being imprisoned for not more than six months or being fined up to P100,000.

On the issue of whether only administrative or even criminal penalties should be imposed on such officials, Senator Cayetano (A) noted that in Section 22(a) there is reference to "any official or employee who falsely denies or conceals the existence of information that is a proper subject for disclosure under the Act," and he believed that non-inclusion of such information on the website is the same as concealment. In reply, Senator Poe explained that aside from the basic information that should be contained in the website, anyone can request access to any obscure information that is not readily available and have the concerned agency/individual respond to the request within the reasonable timeframe of 15 days. For instance, she noted that there are minutes of meetings or proceedings that are in the Archives but would be made available under the FOI bill.

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Senator Cayetano (A) asked if there should be a specific provision that would penalize the agency or the person in possession of a covered transaction, for instance, for failure to post the information on the website within the requisite 30-working day period even without any party requesting it. Senator Poe welcomed the proposal to segregate penalties for directly denying the information or neglecting to fulfill the responsibility of making the same readily available on the Internet.

Senator Cayetano (A) believed that penalizing the non-disclosure of the information regardless of whether such an act is an omission or a concealment would make the law stricter.

Senator Poe agreed that it would be important to study and establish the difference between an omission to provide the information or actually doing so with malicious intent.

Senator Cayetano (A) expressed his intention to amend Section 8 to include a penalty – whether administrative or criminal – for any agency or officer who does not post a covered transaction on its website.

Senator Cayetano (A) also asked whether Section 8 could also be amended to require not only the posting of the summary but also converting it into a digital copy, image or PDF file the bid document containing the signatures of the contracting parties so as to make work less cumbersome for the information desk. He said that using the current “cloud computing” technology makes it cheaper to upload volumes of documents on the Internet. Replying thereto, Senator Poe explained that a report submitted by a resource group which her Committee had consultations with on the FOI bill has pointed out that providing too much information would result in cluttered data which would make it difficult for citizens to access the material they need. She underscored the importance of sorting out the most relevant information and avoid cluttering data on the agencies’ websites. She said that while it is important to make available every contract that affects the public interest, there is also a need to study the feasibility of doing so and how this could be presented through user-friendly software/program. She said that the bill mandates the Department of Science and Technology to ensure that all government agency websites are updated and are using the latest technology.

Senator Cayetano (A) believed that the problem of cluttering could be solved by requiring the agencies

to provide a table of contents on their websites. He expressed concern that some agencies might work around the provision mandating the posting of contracts worth P50 million and above by lowering the contract cost. He proposed that the table of contents could classify these projects per region and per contract cost. Moreover, he noted that in a few years, a P50-million contract would be a much smaller project than what it is at present. He also pointed out the possibility of an official hiding a billion-peso contract by dividing the funding allocation by the millions of pesos to make it much harder to get the actual cost. For her part, Senator Poe acknowledged the possibility of subverting the law, but she stressed that precisely the FOI bill aims to prevent that possibility from happening. She agreed that providing a table of contents on the website would make it easier to access relevant information, with smaller or more obscure topics posted on another website.

Senator Cayetano (A) said that the agency providing information or documents would normally have their regular work operations affected especially when the individual requesting public documents need to be provided with voluminous materials. This, he said, is unlike accessing the same information on the Internet which allows easy and immediate retrieval of the same data even from the comfort of one’s home. Senator Poe explained that since agencies are presently required to make digital copies of their files, all that needs to be done is to ensure that these same copies are also uploaded on the web. She said that there need to be a way to make it easy to locate the necessary data. She also stressed the importance of working with the DOST and all organizations with this kind of technological expertise to ensure that the website is user-friendly and easily accessible.

Senator Poe said that the bill does not intend to unduly burden people with lawsuits and voluminous documents. She said that as pointed out by journalist Maria Ressa, so much information passes through the entire library of Congress website almost every second, so there is need to filter information properly but not to the point of hiding whatever information that is needed to be given out.

Senator Cayetano (A) expressed support for Senator Poe in her quest to marry humanity and technology, agreeing that there was a need to make the provisions of the law user-friendly or researcher-friendly. He noted that the bill does not only intend to make freedom or access to information enshrined

as a right but also to make the law practical so that any Filipino can have access to any information that could be made available. He cautioned, however, that the law should not hamper government workers in the performance of their duties and responsibilities because of too much openness and transparency.

Senator Cayetano (A) recalled that when he was the Chair of the Committee on Public Information and Mass Media, Senators Defensor Santiago and Enrile both had questions about classification of data and information and recommended that there should be an accompanying bill that should classify the data, whether it is confidential or open to the public. He asked whether the bill would simply rely on the general rule that everything is public except for the exceptions.

Senator Poe acknowledged that there are cases where certain rights and privileges like executive privilege, and any matter that would affect national security or investigation of crime should be respected.

Senator Cayetano (A) inquired whether in cases of live operations conducted by the PNP and when there is an instance where certain documents covered this activity, such as a memorandum which, on its face, appears to have nothing to do with the aforementioned operation, but which actually has, the PNP can refuse to divulge the document or information and say that it was confidential in nature because it relates to an activity or transaction which should not be made known to the public as it may affect the outcome of the operation.

Acknowledging the points raised by Senators Defensor Santiago and Enrile, Senator Cayetano (A) said that unless there is a classification system for documents, an ordinary civil servant would not know which documents are confidential. He cited as an example the Food and Drugs Administration which might have in its files the secret formula of Coca Cola or Pepsi. He asked whether these could be considered secret, confidential or an exception to the general rule, and if there was anything in the proposed bill or in its implementing rules and regulations or whether there is an existing protocol to cover this instance.

Responding thereto, Senator Poe pointed out that the archiving system in the country is really deplorable, not just in the case of trade secrets or confidential information but about everything else.

She said that the proposed bill would be one way of "cleaning the house." She explained that every government agency, its sub-agencies or even the precinct would have to rely on its head of agency or office to make that determination whether or not a certain document or information would be confidential.

As regards the classification of documents, Senator Poe said that it is the responsibility of every head of agency to provide continuing education and seminars to its personnel because Congress cannot cover everything in one legislation. She said that there would be instances where common knowledge and expertise in one's field is needed to determine whether documents or information is supposed to be confidential.

Senator Cayetano (A) acknowledged that the proposed bill would not only enshrine the right of freedom of information, it will not only make documents and information available to everyone but would actually repair the country's archiving system and system of storage of documents especially those on the world-wide web.

At this point, Senator Cayetano (A) inquired what penalties would be given should any person in government or in the private sector release any information or document that was supposed to be confidential.

Senator Poe replied that there would be administrative penalties for that instance.

SUSPENSION OF SESSION

Upon motion of Senator Poe, the session was suspended.

It was 4:07 p.m.

RESUMPTION OF SESSION

At 4:08 p.m., the session was resumed.

Upon resumption, Senator Poe replied that "any public officer who divulged or released information that is altered, tampered with or modified to the extent that the release and information materially differs on the original document" is tantamount to committing a grave administrative offense which shall constitute grounds for administrative and disciplinary sanctions against the public official. She opined that the graver penalty would be the

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administrative sanctions because if the person committed a criminal offense such as divulging state secrets or anything confidential under the exceptions, this will be tantamount to committing an administrative offense which could result in his dismissal from the service.

At this point, the Chair asked to be clarified whether in cases of a "confidential" document, the bureaucrat does not have absolute discretion to mark a document as confidential, Senator Poe replied that the bureaucrat has no absolute authority.

Asked by the Chair when a document can be considered confidential, nondisclosure of which is therefore subject to penalties, Senator Poe stated that Section 7 of the proposed legislation enumerates the information that should be deemed as confidential.

Senator Cayetano (A) inquired whether the exceptions enumerated under Section 7 of the proposed bill would be on a per document basis. To illustrate, he cited as an example a Philippine ambassador taking notes during a diplomatic negotiation with the U.S. ambassador, and then writing a covering memorandum that on its face seemed unrelated to the negotiation. He asked if that memorandum would be considered confidential and how the ambassador's staff would know how it was classified.

Responding thereto, Senator Poe said that drafts or notes are not part of the exceptions. However, she pointed out that there would be periods of declassification of information, so that when a person uses an information to cover any wrongdoing or corrupt practice, he would eventually be discovered once the information is declassified.

Senator Cayetano (A) said that the U.S. also has a law which classifies a document either as confidential, secret or state secret, and there are corresponding penalties for each document in case of leaks.

Senator Poe said that the clear and present danger test would be a basis to classify a document or information as confidential. Nonetheless, she agreed with Senator Cayetano (A) that the bill should be more clear about which documents should be classified as confidential and how to classify them as such.

Senator Cayetano (A) again gave an example of two ambassadors, in this case, the Philippines and

China, trying to resolve issues regarding territory, and during the negotiations, they have their respective support staff. He then asked what would happen supposing one of the staff would release or leak document or information to the public, which are not supposed to be released or leaked, for material or financial purposes. Relative thereto, he noted that in the case of the Bank Secrecy Law, the bank and the bank officer who would release information regarding a particular bank account are penalized but in cases of impeachment, these information on the bank accounts are released, in effect, negating the penalties provided for by law.

Senator Poe said that Section 22 of the proposed bill provides for the criminal offenses and their corresponding penalties. She explained that the penalties are not just limited to imprisonment of up to six months and fines of P10,000 to P100,000 because on top of these, there are other penalties which can be imposed by the Civil Service Commission for violation of civil service laws. She said that in cases of members of the diplomatic corps or heads of agencies who violated the provisions of the proposed bill can be charged before the Office of the Ombudsman especially when it can be clearly proved that they released something of confidential nature which can damage national security or public interest.

Senator Cayetano (A) stated said that the government has been very secretive with regard to handling information over the last decades but even as legislation should heed the call of the people for the right to freedom of information, the proposed bill should protect the right of people to access information but at the same time, it should protect the right of the government to information that is confidential, because it would be unfair if the person inducing an official to violate the law is left unaccountable. He added that the penalties defined in the FOI measure should be both for the person and the government to encourage them to be responsible guardians of information.

Senator Poe cited the last proviso of Section 22 (*Criminal Offenses and Penalties*) which states that "If the violation committed in this Act is induced and assisted by a private individual or corporation, partnership or any kind of judicial entity, the penalty provided herein shall be imposed on its executive officer and/or officials responsible therefor." She added that the FOI measure will put in black and

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white the documents that should be considered confidential. As regards the concern on the safety of the individual, she explained that the FOI's main purpose is to uphold public interest, part of which is not just to provide information but to make sure that any information that will be to their detriment, if released, shall also be concealed, for instance, anything that will qualify as legitimate criminal activity investigation, trade secrets, commercial or financial information that is protected and privileged communications in legal proceedings or rules of court. She maintained that the FOI would not only give responsible information but would likewise protect the release of too much information that will hinder the growth of public interest or the people involved.

But Senator Cayetano (A) pointed out that the FOI bill enumerated the violations for people who refuse to give information but not violations for people who are not supposed to give information yet they leak the information. He said that the provisions should maintain a balance.

Asked by the Chair whether a member of the Senate who reveals to the media matters that were taken up in executive sessions of the Senate, would now be covered under the FOI bill, Senator Poe agreed that the senator would be liable for violating not only the Senate Rules but also the proposed law.

INTERPELLATION OF SENATOR SOTTO

Asked by Senator Sotto if she has the latest copy of the FOI law of the United States, Senator Poe replied in the affirmative, adding that she also has a copy of the FOI law of Sweden and Finland as well as New Zealand. She affirmed that Switzerland does not have an FOI law because of its bank secrecy law; in the Asian region, Thailand and Singapore were successful with their FOI law.

Senator Sotto noted the introduction of an information desk which will be manned during office hours and the 15-day limit for the information desk to give the reply to anyone seeking information from any particular government office. Senator Poe confirmed the 15-day limit to reply to the request, but she clarified that the desk officer can either grant or deny the request for information with an accompanying explanation for the denial.

Asked whether information online are readily accessible, Senator Poe answered in the affirmative.

But for information not available online, she said that the concerned agency will have 15 days to upload the information, and she affirmed that information available online would be accessible to anyone.

Senator Sotto asked if there are safeguards for online accessing considering the fact that those accessing information through the website like hackers, cannot be identified. Senator Poe emphasized the need for websites to have security measures so that these will not be hacked. She stated that any information can be published by the media and that even if one is not a citizen of the country, he can obtain that information. She recalled the suggestion that those who can obtain information must be a taxpayer and a citizen of the Philippines, but she pointed out that citizenship cannot be a requirement because information is difficult to contain. She assured the Body that the Committee was very prudent in enumerating the actual exceptions to make sure that the safeguards are in place when it comes to issues of national security.

Senator Sotto said that the identity of the person seeking information and accessing the website should be known. On his suggestion that for certain information, particularly on sensitive issues, an email could be required, Senator Poe stated that the IP address of those accessing the information could be tracked, subject to constitutional limitations. She expressed willingness to accept amendments at the proper time.

Senator Sotto expressed his concern that some pieces of information could be interpreted differently from its original context. He recalled an instance when some projects of a senator were reported in the newspapers which misled the people to believe these were illegal. He lamented that information could also be used negatively.

INTERPELLATION OF SENATOR ANGARA

At the outset, Senator Angara commended Senator Poe and her staff for their work on the FOI bill, given its long history, particularly the difficulty of its passage in the past Congresses.

Regarding Section 12 (*Procedure of Access*), Senator Angara observed that there seemed to be no limit as to the number of appeals the requesting party could avail of. He pointed out that a multi-layered appeals process could hinder the exercise of the right to information by the citizens. To the suggestion

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that a limit on the number of appeals be specified, Senator Poe agreed, stating that the final appeal would be with the Ombudsman. She assured Senator Angara that the appeals process would be doable so that it would not be used to deny information. She affirmed that the last level of appeal in line agencies is the secretary or chairman of the department or agency.

At this juncture, Senate President Drilon asked where Ombudsman would come in in the appeals process. Senator Poe explained that resort to the Ombudsman would be made after the head of the agency had denied the request. She added that the Ombudsman would also have an FOI desk and would have 60 days to resolve FOI cases. She expressed willingness to clarify the process during the period of amendments.

Regarding the denial of requests on the grounds of national security, Senator Angara asked if, after an appeal has been made, a court could overturn the decision of the head of agency or even of the President. Senator Poe surmised that the judge could determine if the information sought is under the category of a national security issue.

Senate President Drilon noted that the Ombudsman is not part of the process that can reverse the ruling of the administrative agency. He asked if the person seeking information could go to the Office of the Ombudsman after the administrative remedies have been exhausted. Senator Poe answered in the affirmative. Senate President Drilon further asked if the Ombudsman can reverse the decision of the head of agency, noting that Section 16 does not indicate that the Ombudsman has the authority to exercise control and supervision over the head of the agency other than to subject the department head to administrative or criminal liability for noncompliance with the law.

Senator Poe assured the Body that the provisions on the roles of the Ombudsman and the courts would be clarified during the period of amendments.

On Section 4 pertaining to the proviso on public service contractors, Senator Angara recalled a suggestion by some of the resource persons during the committee hearing to establish a measure of accountability for people contracting with the government. He suggested that the bill specify the "substantial amount" of the contracts or transactions that would justify litigations. Senator Poe agreed.

Regarding the same provision on public service contractors, Senate President Drilon asked when the information should be available, for example, in the bidding process. He noted that as presently worded, the competitors could demand for the information pending the awarding of the contract.

SUSPENSION OF SESSION

Upon motion of Senator Poe, the session was suspended.

It was 4:57 p.m.

RESUMPTION OF SESSION

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

Upon resumption, Senator Poe replied that the provision on availability of the records of transactions with the public service contractors or any other entity was proposed by the Civil Service Commission and the Office of the Ombudsman.

Senate President Drilon pointed out that there is a certain degree of confidentiality on the submission of bids, but the way the provision on lines 17 to 21 was worded, it would give the right to competitors to inquire into the contracts of the sealed bids. Senator Poe expressed openness to accept amendments at the proper time.

Senate President Drilon suggested that access to all documents submitted as part of the bid be granted after the award is made to protect private interest. Senator Poe gave assurance that all the concerns of the Chair would be incorporated into the bill at the proper time.

Senator Angara asked if the bill has an anti-fire provision like a database stored in a computer or a cloud storage facility to ensure that important documents are not lost to fire. He cited the fertilizer scam, at the Comelec or Land Administration Office where vital documents were lost to fire, and he expressed fear that once the bill becomes a law, there might be numerous cases of fires, floods or even shredding of documents. Senator Poe agreed to the observation, promising to specify some safeguards during the period of amendments.

As regards Section 9 (*Openness and Transparency in Government Agencies*), item nos. 5 and 7, Senator Angara suggested to include "opinions" in the

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10-point list of items which should be posted in government websites, noting that many substantial rights are affected by decisions and opinions of government agencies. He believed that if those opinions are required to be published, there would be transparency as well as an additional safeguard to ensure that the agency is consistent in its interpretation of the laws and the rules. Senator Poe agreed to incorporate the proposals during the period of amendments.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1733

Upon motion of Senator Cayetano (A), there being no objection, the Body suspended consideration of the bill.

ADDITIONAL REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read Proposed Senate Resolution No. 412, introduced by Senators Drilon and Legarda, which the Chair referred to the Committee on Rules, entitled

RESOLUTION EXPRESSING THE CON-
DOLENCES AND SYMPATHIES OF
THE SENATE OF THE PHILIPPINES
ON THE DEATH OF FORMER SOUTH
AFRICA PRESIDENT NELSON
MANDELA.

ACKNOWLEDGMENT OF THE PRESENCE OF GUEST

At this juncture, Senator Cayetano (A) acknowledged the presence in the gallery of Senator Pimentel's guest, Ms Katie Ford, former CEO of Ford Models, Inc. and at present the global ambassador of Free the Slaves and founder of Freedom for All, a very active advocate against trafficking all around the around the world.

Senate President Drilon welcomed the guest to the Senate.

PROPOSED SENATE RESOLUTION NO. 412

Upon motion of Senator Cayetano (A), there being no objection, the Body considered Proposed Senate Resolution No. 412, entitled

RESOLUTION EXPRESSING THE CON-
DOLENCES AND SYMPATHIES OF

THE SENATE OF THE PHILIPPINES ON THE DEATH OF FORMER SOUTH AFRICA PRESIDENT NELSON MANDELA.

Secretary Yabes read the text of the resolution, to wit:

WHEREAS, on 5 December 2013, the world was deeply saddened by the passing of Nelson Rolihlahla Mandela, President of South Africa from 1994 to 1999 and a global symbol of honor, peace, courage and magnanimity;

WHEREAS, the life of the first black President of South Africa and iconic anti-apartheid advocate inspired billions of people all over the world, from state leaders to ordinary individuals, and has sparked collective movements towards genuine socio-political equality across countries regardless of cultural peculiarities;

WHEREAS, having been born in a nation adhering to the dogmatic view that a person's value depends on skin color, Mandela's resistance to this dominant socio-political perspective caused him untold suffering;

WHEREAS, despite the torment that expectedly came with his mission of emancipating a nation from the unjust and inhumane policy of apartheid, Mandela marched on with boundless and unrelenting passion, and in a manner consistent with the rule of law, the principles of fair play, constitutional processes, and minority right;

WHEREAS, after his remarkable feat as a leader who saw through the socio-political metamorphosis of South Africa, Mandela continued to touch the lives of his neighbors as he selflessly devoted the remainder of his life championing causes which aim to improve living conditions in his community, such as raising funds for schools and hospitals, and fighting the spread of HIV/AIDS;

WHEREAS, Mandela's life will eternally be remembered as a testament that one's love for country and its people can bring about unifying change in the world; *Now, therefore, be it*

RESOLVED, AS IT IS HEREBY RESOLVED, That the Senate of the Philippines express its condolences and sympathies on the death of Nelson Mandela with sincere gratitude for his sterling contributions to the promotion of peace and equality in the world.

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ALL MEMBERS AS COAUTHORS

Upon motion of Senator Cayetano (A), there being no objection, all members were made coauthors of Proposed Senate Resolution No. 412.

**ADOPTION OF PROPOSED
SENATE RESOLUTION NO. 412**

Upon motion of Senator Cayetano (A), there being no objection, Proposed Senate Resolution No. 412 was adopted by the Body, subject to style.

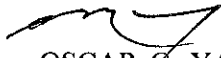
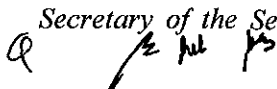
ADJOURNMENT OF SESSION

Upon motion of Senator Cayetano (A), there being no objection, the Chair declared the session

adjourned until three o'clock in the afternoon of the following day.

It was 5:11 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate


Approved on December 11, 2013