

REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 48

Monday, January 10, 2005

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 48
Monday, January 10, 2005

CALL TO ORDER

At 3:42 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Edgardo J. Angara led the prayer, to wit:

God Almighty, You have called us today
Your servants, and as we come back from
the merriment of the holidays, give us a
renewed spirit so that with our work in the
Senate, we might be able to give hope to our
country.

Teach us to become peacemakers in an
environment of contention and dissent.

Grant us the strength of heart and of
will so that we may become instruments of
genuine change for our people.

This we ask in Jesus' Name,

Amen.

NATIONAL ANTHEM

The Senate Choir led the singing of the national
anthem and thereafter rendered the song entitled
"Rosas Pandan."

ROLL CALL

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

Angara, E. J.	Lapid, M. L. M.
Arroyo, J. P.	Lim, A. S.
Cayetano, C. P. S.	Madrigal, M. A.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Flavier, J. M.	Revilla Jr., R. B.
Gordon, R. J.	Villar Jr. M. B.
Lacson, P. M.	

With 15 senators present, the Chair declared the
presence of a quorum.

Senators Osmeña and Recto arrived after the
roll call.

Senators Biazon, Defensor Santiago, Ejercito
Estrada (L) and Enrile were on official mission.

Senator Magsaysay and Roxas were absent, the
latter on account of sickness.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being
no objection, the Body dispensed with the reading of
the Journal of Session No. 47 and considered it
approved.

REFERENCE OF BUSINESS

The Senate Legal Counsel 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 30 November 2004
submitting to the Senate for its consideration and
concurrence, a certified true copy of the
*Cartagena Protocol on Biosafety to the
Convention on Biological Diversity*, which
was signed by the Republic of the Philippines on
24 May 2004.

To the Committee on Foreign Relations

**MESSAGES FROM THE HOUSE
OF REPRESENTATIVES**

Letter from the Secretary General of the House of
Representatives, transmitting to the Senate the
letter of the Honorable Speaker Jose De
Venecia Jr. dated 09 December 2004, addressed
to the Honorable Senate President Franklin M.

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Drilon, informing the Senate of the designation of Representatives Jesli A. Lopus, Exequiel B. Javier, Arrel R. Olano, Mark O. Cojuangco and Joseph A. Santiago as members of the House Panel in the Congressional Oversight Committee on the Internal Revenue Code of 1997 created pursuant to Section 9 of Republic Act No. 8240.

To the Committee on Rules

Letter from the Secretary General of the House of Representatives informing the Senate that on 15 December 2004 the House of Representatives approved the Bicameral Conference Committee Report on the disagreeing provisions of House Bill No. 3174, entitled

AN ACT INCREASING THE SPECIFIC TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS AMENDING FOR THE PURPOSE SECTIONS 141, 142, 143, 144 AND 145 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

and Senate Bill No. 1854, entitled

AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

To the Archives

Letter from the Secretary General of the House of Representatives, transmitting to the Senate a copy of Resolution No. 27, entitled

RESOLUTION INFORMING THE SENATE THAT A QUORUM BEING PRESENT, THE HOUSE OF REPRESENTATIVES HAS ENTERED UPON THE EXERCISE OF ITS FUNCTIONS,

which was adopted by the House of Representatives on January 5, 2005

To the Archives

Letter from the Secretary General of the House of Representatives informing the Senate that on January 5, 2005, the House of Representatives concurred with Senate Concurrent Resolution No. 6, entitled

CONCURRENT RESOLUTION
CREATING A JOINT COMMITTEE
OF BOTH HOUSES TO NOTIFY THE
PRESIDENT OF THE PHILIPPINES
THAT CONGRESS HAS CONVENED
ITS FIRST SPECIAL SESSION AND
THERE BEING A QUORUM, SAID
CONGRESS HAS ALREADY
ENTERED UPON THE EXERCISE
OF ITS FUNCTIONS

To the Archives

Letter from the Secretary General of the House of Representatives, informing the Senate that on January 6, 2005, the House of Representatives elected Representatives Suarez, Cua, Teves, Javier, Lopus, Lagman, Tanada III, Mercado, Remulla, Gullas, Villafuerte, Macarambon Jr., Marcos, Angara, Plaza, Zamora, Suplico and Paras as its conferees should the Senate approve its counterpart version of House Bill No. 2996, entitled

AN ACT PROVIDING FOR OPTIMUM PERFORMANCE IN REVENUE COLLECTION THROUGH THE GRANT OF SPECIAL INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE AND THROUGH LATERAL ATTRITION IN REVENUE-GENERATING AGENCIES OF GOVERNMENT AND FOR OTHER PURPOSES.

To the Committee on Rules

Letter from the Secretary General of the House of Representatives, informing the Senate that on January 7, 2005, the House of Representatives elected Representatives Nepomuceno, Andaya Jr. and Juan Miguel M. Arroyo as additional conferees on the part of the House of Representatives should the Senate approve its counterpart version of House Bill No. 2996, entitled

AN ACT PROVIDING FOR OPTIMUM PERFORMANCE IN REVENUE

COLLECTION THROUGH THE GRANT OF SPECIAL INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE AND THROUGH LATERAL ATTRITION IN REVENUE-GENERATING AGENCIES OF GOVERNMENT AND FOR OTHER PURPOSES

To the Committee on Rules

BILLS ON FIRST READING

Senate Bill No. 1875, entitled

AN ACT TO SUPPORT BUSINESS INCUBATION IN ACADEMIC SETTINGS

Introduced by Senator Defensor Santiago, Miriam

To the Committees on Education, Arts and Culture; Trade and Commerce; and Finance

Senate Bill No. 1876, entitled

AN ACT TO MAKE A SEPARATE COURSE ON ETHICS COMPULSORY AT ALL LEVELS OF GRADE SCHOOL, HIGH SCHOOL, AND EVERY DEGREE COURSE IN ANY COLLEGE OR UNIVERSITY

Introduced by Senator Defensor Santiago, Miriam

To the Committee on Education, Arts and Culture

Senate Bill No. 1877, entitled

AN ACT EXEMPTING THE BANK DEPOSITS OF SENIOR CITIZENS FROM THE TWENTY PERCENT (20%) WITHHOLDING TAX ON INTEREST INCOME, AMENDING REPUBLIC ACT NO. 7432

Introduced by Senator Defensor Santiago, Miriam

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

Senate Bill No. 1878, entitled

AN ACT IMPOSING CIVIL PENALTIES ON UNREASONABLE PRICE INCREASES FOR CRUDE OIL, RESIDUAL FUEL OIL, OR REFINED PETROLEUM PRODUCTS

Introduced by Senator Defensor Santiago, Miriam

To the Committees on Energy; and Trade and Commerce

RESOLUTION

Proposed Senate Resolution No. 149, entitled

RESOLUTION URGING THE COMMITTEE ON SCIENCE AND TECHNOLOGY AND THE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES TO JOINTLY HOLD A PUBLIC INQUIRY THAT WILL LEAD TO THE PHILIPPINES' PARTICIPATION IN AN INTERNATIONAL EFFORT TO CREATE A TSUNAMI WARNING SYSTEM

Introduced by Senator Angara

To the Committees on Science and Technology; and Environment and Natural Resources

COMMUNICATION

Letter from Director Fe Lioaoa S. Baun of the Office of the President of the Philippines, transmitting to the Senate two (2) original copies of Republic Act No. 9334, entitled

AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED,

which was approved and signed on 21 December 2004 by Her Excellency, President Gloria Macapagal Arroyo

To the Archives *h*

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QUESTION OF PRIVILEGE OF SENATOR PIMENTEL

Rising to a question of personal and collective privilege, Senator Pimentel made the following remarks:

At our last session, I prefaced the amendments that I was trying to introduce to the lateral attrition bill by saying that I was fumigated out of the lounge of the Senate by too much cigarette smoke. All the smokers in this Chamber are our friends, every single one of them. Yet, I have to take up this matter because it transcends considerations of friendship. As a matter of fact, this matter involves the health of people who are nonsmokers, and more to the point, it also involves respect for the law.

I understand that upon the sponsorship of Senator Flavier, no smoking in enclosed premises, particularly even in government offices, was enacted into law, approved by all the members of the Twelfth Congress, including Senator Blas F. Ople who, if there was any person who smoked from dawn to dusk, was that person, and yet he respected the will of the majority that such a law had to be passed. I believe that all the Members of the Chamber, when they pass a law, are duty bound to respect that law. And what I see today is that the Senate lounge has become a smoking haven not only for the senators concerned but also for their *alalays*. And that, to my mind, is a blatant disregard of the respect that is due to this Chamber and, of course, to the law that we had passed. And therefore I am asking that there should be absolutely "no smoking" in the lounge. And if some senators want to smoke to their hearts' content, they should be placed in a small room with no ventilation. Let them inhale each others' smoke and hasten their appointment with destiny if they want to.

As a representative of this Chamber, I have just been to an international conference in New Zealand. And in New Zealand, they were already discussing a ban on smoking throughout the nation,

including the pubs. And so there is a big debate going on whether smoking should be allowed in those public places where people go for a drink and also for a smoke. They are trying to do that now in New Zealand. They have done it in England. They do it in Italy, I think, and in Makati. And therefore, what I would like to say is that if we don't have respect for one another, let us at least respect the law and show the country that when we pass a law we expect that law to be observed.

I would really like to put this in the record and ask the proper committee of this Chamber to investigate this issue. And I would like to say that all employees of the Senate who contravene the "no smoking" law should be fired. I think that we should allow no exceptions to this kind of standard that we are trying to impose.

REMARKS OF SENATOR CAYETANO

At the outset, Senator Cayetano thanked Senator Pimentel for freeing her from the burden of discussing the matter with their colleagues. She stated that she understands that a lot of people need to smoke when they are under duress or are thinking; however, she also needs a clean flow of oxygen to her brain in order to concentrate. She added that she too had to leave one caucus as she was unable to think clearly because of the smoke.

Moreover, she noted that as Senator Pimentel had pointed out, top executives in other countries would even go to open spaces outside their office building to smoke so as not to inconvenience those who need clean air as well as follow local laws. Hence, she believed that the Senate should be the first to uphold the law not only for health reasons, but also because it is the law.

Senator Cayetano lamented the fact that while she wants to eat and meet people at the lounge, she has been avoiding it because she can no longer breathe there.

Senator Pimentel observed that if a senator smokes in the lounge, the people around him are induced to do likewise, thereby increasing the pollution in the place. Unless the senators "put their

foot down," he said that the violations of the smoking ban would become more rampant.

Senator Cayetano said that her friends in media had asked her to do something about the problem. She pointed out that while she recognized the need of some people, especially the members of the press, to smoke while they work, there is also a need to protect those who do not smoke. She proposed that there be separate rooms for smoking and nonsmoking members of the press corps.

Senator Pimentel welcomed the suggestion, expressing appreciation for Senator Cayetano's comments on the issue.

Senator Cayetano stated that she is in possession of very recent studies on methods and devices that can help smokers stop smoking if they so wish, which she would make available to everybody.

REMARKS OF SENATOR LIM

Senator Lim made the following remarks on Senate Bill No. 1871:

Last Friday, we are all aware that Senator Pimentel and I lost the vote. *Sport lang naman ito. Okey lang. Talo kami.* We accepted it. *At nananahimik na po ako sa aking opisina.* When somebody showed me this morning a press release and I quote: "Even a high school student will know that a policeman or a soldier does not collect taxes," I thought there was something wrong in that press release because nowhere in my interpellations, comments or observation did I say that soldiers, policemen and teachers are duty bound to collect taxes. I think the gentleman can check the minutes to find out that I did not make such a remark.

Well, I thought this is already over but I learned that the Bicameral Conference was not able to materialize this morning.

When I made my objection, it was done extemporaneously. And to formalize my objection, I would like to call the attention of my esteemed colleagues to certain provisions of the Constitution, also, a provision in Presidential Decree No. 6, and Article 210 of the Revised Penal Code

which are being violated by this proposed law.

Article XI of the Constitution provides:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

" This is the principle of accountability.

To implement the above-named constitutional provision, Congress adopted Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act." Republic Act No. 3019 incorporated crimes committed by public officers under the Revised Penal Code. In the law, a public officer can commit crimes in relation to his office in three ways, namely, malfeasance, misfeasance, and nonfeasance.

In particular, Republic Act No. 3019 prohibits any public officer to give any unwarranted benefit, advantage or preference to any party in the performance of his official duties.

This is what I am driving at – the unjust discrimination and prejudice to other officers and members of the different departments of this government. It also prohibits causing undue injury to any party.

The proposed lateral attrition bill gives incentive or reward to a public officer and in particular to an employee of the Bureau of Customs or the Bureau of Internal Revenue for the faithful performance of his duties.

The proposed bill is apparently being enacted to solve our present economic crisis. All of us want to cooperate in solving the financial crisis. But while it has an altruistic objective and in our haste to solve an emergency, we might have overlooked certain provisions of the Revised Penal Code, particularly, Article 210, which provides:

Article 210. *Direct Bribery*. Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties in consideration of any offer, promise, gift or present, received by such officer personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

That is the first paragraph.

The second paragraph is the most appropriate and relevant to the present proposed lateral attrition law.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph, and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of less than the value of such gift. If the object for which the gift was received or promised was to make the public officer refrain from doing something which was his official duty, he shall suffer the penalties of *prision correccional* in its maximum period and a fine of not less than the value of the gift not less than three times the value of such gift.

I would like to call the attention of my colleagues to this section of Presidential Decree No. 6, *Amendment on Certain Rules and Discipline of Government Officials and Employees*:

Section 1. Grounds for Disciplinary Action. The following shall be grounds for disciplinary action:
i) Receiving for personal use a fee, gift, or other valuable thing in

the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws.

This is very explicit.

We also have to consider the provision of the Constitution particularly, Article III on the Bill of Rights. Section 1 provides:

Section 1. – No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

I repeat, “equal protection of the laws” which will be denied to other members and officers of other department of this government. Why focus on BIR and Customs people? This is rank discrimination.

It is my humble submission that the lateral attrition bill, while it has a noble and lofty purpose, may suffer some constitutional infirmities, particularly in view of Article XI on the Accountability of Public Officers, the provisions of Republic Act No. 3019 of the Anti-Graft and Corrupt Practices Act, the provisions of Article 210 of the Revised Penal Code, and the equal protection clause under Article III, the Bill of Rights.

I have no prejudice against the employees of the Bureau of Customs and the BIR. I do not like to be misunderstood as one advocating a cause against their personal interest. What I am advocating is the rule of law. “The law shall apply to all, otherwise, none at all.” *Walang malakas, walang mahina, walang mayaman, walang mahirap, walang BIR, Customs*, as against the military, the soldiers, the teachers, and members of the PNP.

I have been told since my childhood and during the best years of my life in law enforcement – “Crime Does Not Pay.” This is an adage as old as crime itself. A deterrent. A foreboding. A warning to

those who entertain thoughts of committing any reprehensible act which is not only confined to violence and lawlessness, but generally, to any misdeed contrary to mankind's basic value of goodness, especially honesty and integrity. And it does not extend only to criminals, it also includes government officials and employees, public officers and public servants on the streets, mountains or jungle, in any facet of endeavor in this mortal lifetime.

It is ironic but there are men and women in the Bureau of Internal Revenue and the Bureau of Customs, heralded as No. 2 and No. 3 most corrupt offices in the country, who are excluded from this avowal and thus, exceptionally lucky. Why? Because they go scot-free and unpunished, they are free to commit acts of corruption, crimes, dominated by clandestine dishonesty, bribery, and corruption.

Through mere savage strokes of their pens and impositions in the guise of taxes and duties for the government, yet, ridiculously intended with this pending bill to be pampered and rewarded with incentives and bonus under the camouflage of compelled dedication to a vigorous, intensified and increased collection to benefit the citizenry of the financially distressed government coffers.

This pending bill, sad to say, is nothing but a class legislation. Yes, it is designed perhaps, to dissuade corruption in the said graft-ridden offices. No objection to that. But it is a farce. It can only ruin the aspirations of the unjustly discriminated and lowly compensated teachers, soldiers and policemen.

These uniformed soldiers gallantly fight in the mountains and countryside, paupers compared to these BIR and Customs men who are embellished in wealth, although similarly fighting, yet, not for the country, but against those who reluctantly yield to their corrupt impositions satiating themselves in the comfort of first-class eateries, hotels, resorts, and nightclubs with sensual teenage girls and hostesses around them.

These soldiers are akin to most of our less fortunate men and women in uniform of the police force. Admittedly, there are few devotees in the same dishonest breed of corrupt officials in the BIR and Customs. But generally, being a policeman is synonymous to danger. One foot, every time he leaves his home and family, is in the grave. Just like a soldier in a war-like situation, many of these men in uniform abhor crimes especially corruption. They do not sell their values, the integrity of public service, because they believe that public office is a public trust which is an obsession with their ideals as they remain poor, always struggling for a decent living. Most of them do not have houses of their own and still failing because like you and me, they are victims of irony and pretense.

What indeed can we call a bill which showers those publicly branded as "dishonest and corrupt" with bonus and incentives of about not 20%, but up to 40%, deducted from their rejected grease money to augment the government funds?

To the teachers who sell everything and anything but legally to increase their take-home pay without being enriched unlawfully, this is nothing but sheer hypocrisy wherein those to be condemned and jailed are destined to be bestowed with added pecuniary rewards for an imposition to be honest. Majority of these teachers lamentedly forget, deliberately or otherwise, even the bliss of romance and matrimony. They grow old as spinsters because of their dedication and devotion to the chosen task of educating our youth, in being married to their never-ending lesson plans and thankless teaching job, wearing their tattered uniforms.

You may not be shocked to know their common disgust, their dissent to this bill and their concern that one day even their pupils, the youths who are the future of this country, will get the wrong signal about dishonesty in contrast to the moral standards and values in public service, will someday boast that, on the contrary, crime does pay by just emulating the notoriety of

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the known bribe-achievers and receivers at the BIR and the Customs.

Napakasarap madestino sa Customs at BIR. Beyond cavil, this intention which may capsule into a law, thwarts any attempt of the administration to instill honesty, prestige, and integrity in any young mind. It is a blow to the ever expecting hope of our people to improve not only the ruined public image of most of our public officials but also public service itself. This bill can never assuage the pains and frustrations of our other laboring classes, who indubitably feel the unkind and unjust disfavor, discrimination, prejudice of this proposed law against them. This is one legislation which will invite dissension, an upheaval of different sentiments from all walks of life, a cause for depression and frustration for the labor class.

It is an insult to human credulity and logic why an akin bill is an impossibility to appropriate funds for the teachers, soldiers and policemen who are languishing in abject poverty. The present fiscal crisis is not an excuse especially to those INP-retirees who are nearing death, my former comrades, whose numbers barely survive.

They are now in their 70s or 80s and sickly. There are also soldiers who are now deaf to oft-repeated advice of "no available funds" in the finance department. Of course, their demands may be dispensable because they can no longer hold their service firearms and exchange their lives in the fight against crimes. But like retired soldiers and teachers, they have fulfilled the more risky, hazardous and life-demanding jobs than the corrupt officials in the BIR and the Customs. Must we continue to be callous and insensitive to their plight? Must we not care? My only entreaty, therefore, is let us be cautious, prudent and discreet in saying no to this bill, in denying this mass bribery for the sacred cows in the BIR and the Customs. Let us not concede to the thrust of this intended law that rejecting bribery deserves a reward in the form of incentive because honesty is always an imperative duty of any public

official, because no matter, bribery is always a crime, plain and simple. We cannot afford to be pretenders and hypocrites here. We must not fail unless we concede to those public officials who are now aspiring to be in second and third places of being tagged as the most corrupt in the Philippines, to be worthy of added incentives and bonuses; unless we are ready to justify another nationwide criticism about injustice, inequity, insensitivity, and partiality; unless we can arrest ominous popular protest from other graft-exposed offices in the government who are not embraced in this frustrating bill. Who will then be? I will not, and let us not yield with a consenting pen to the doom of honesty in this government.

What price dedication? What price devotion to public service? For whom do the bell tolls? For the soldiers, for these teachers, for these policemen who will not receive any shadow of these revenues, of this reward? Although the bell tolls for them, the bells are ringing all the time, the ringing of the coins of money in the ear of the BIR and the Customs, they never have it so good.

I cast a negative vote on Senate Bill No. 1871, now submitted to the bicameral committee for final version because I consider the measure riddled with unconscionable and unjust provisions but more important, would bring more economic, political and moral disaster to our sinking ship.

The passage of the bill only brings to light that democracy is at times a confluence of numerical superiority, rather than a venue for enlightened, dispassionate, intelligent and ethical deliberation to achieve a goal for a better legislation.

I do not begrudge that Senator Nene Pimentel and I lost in the voting. That is part of life. We have to face reality. But I know this is the time to prove to everyone that in our own humble way, we were not a party to the approval of the Lateral Attrition Law which we are sure will henceforth encounter popular protests and difficult legal sailing.

Our country is like a patient suffering from a highly contagious ailment that is almost impossible to cure and undergoing treatment in an Intensive Care Unit.

Unfortunately, we in the legislature instead of providing care have opted to place the patient in another ICU, this time the acronym for (...)*.

RULING OF THE CHAIR

At this point, the Chair ruled that the portion of the remarks of Senator Lim describing the legislation be stricken off the Record. It opined that the Members are not party to such an act.

Senator Lim objected as he asked Senate President Drilon to yield the Chair so that they could debate on the statement. He insisted that he was entitled to his opinion.

The Chair pointed out that the attribution of an immoral act to the Senate is not proper.

Senator Lim stated that his statement was his personal opinion as he asked why he should not be allowed to say it.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:26 p.m.

RESUMPTION OF SESSION

At 4:37 p.m., the session was resumed.

REMARKS OF SENATOR LIM

(Continuation)

I voted against the measure because I believe it will promote immorality, corruption and it is unjust. It is immoral because it not only provides erroneous rewards, but even bestows them to underserving officials.

How about the coast guard who apprehends a ship full of smuggled goods?

How about the PNP if they arrest big-time smugglers and seize contraband drugs and other smuggled goods? Are they not entitled even to a teeny-weeny share of these 20% to 40% incentives?

Undeniably and as reported in reliable surveys, the BIR and the Bureau of Customs are among the most corrupt agencies in the entire government machinery. Yet, the lateral attrition bill selected these two agencies as the recipients of the benefits.

Under the Lateral Attrition Law, if the BIR or BOC meets and exceeds its collection target, the officials will be entitled to a reward of 20% to 40% of the increment. And, if the official fails, the ax will fall on the deficient-collecting head. *Okey lang iyon. Pagtatanggalin na natin lahat iyan mga corrupt officials na iyan.*

In the first place, why should we give the BIR or BOC officials added bonanza on top of their pay when that would only amount to double compensation that constitutes direct bribery?

The law prohibits any public officer from receiving compensation for work performed other than that to which he is entitled. Providing a bonus or incentive or reward to the BIR or BOC personnel for increased tax take will, in effect, be double compensation.

In fact under the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended by R.A. No. 77 and B.P. Blg. 195), such practice constitutes graft practice:

“...causing any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantages or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government

*Stricken off the Record upon the ruling of the Chair

corporations charged with grant of licenses or permits or other concessions.”

More than that, a public officer, like a BIR or BOC personnel, must perform his work with utmost diligence, honesty and integrity. If only these BIR or BOC people exerted efforts in performing their work in accordance with these criteria, there is no doubt taxes would have been efficiently and effectively collected without rewarding them with a single centavo. Yet, because the law wittingly or unwittingly recognized the complacency, indolence, and dishonesty of the said BIR or BOC personnel that had accounted for their dismal failure in generating revenue targets, an evil way was devised to give them bonus or incentive so they can perform better from now on, if not at par with what their calling compels them to do.

Is this not direct bribery? We know that when a public officer does not do what he ought to do but agrees to do so only for money, he is liable for bribery. In the same manner, when he does something prohibited but agrees to do so for monetary consideration, he is also guilty of direct bribery.

Yes, the situation exactly fits the acts that constitute bribery as defined and penalized under Art. 210 of the Revised Penal Code which reads:

“If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act doing his duty, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *arresto mayor* in its maximum period and a fine of not less than the value of the gift and not more than twice such value.

If the object for which the gift was received or promised was to make the public officer refrain from

doing something which was his official duty to do so, he shall suffer the penalties of *arresto mayor* in its medium and maximum periods and a fine of not less than the value of the gift and not more than three times such value.”

This exactly is the situation that the Lateral Attrition Law seeks to establish. What an immoral and detestable environment and atmosphere!

The system of rewards breeds dishonesty, lack of decency and corruption.

A civic-minded citizen or an honest public official can maintain his dignity and uprightiness in performing his duty through honest and diligent means, without having to demand money or other consideration, just plain dedication and devotion to duty.

Look at the kidnapping cases in the south. Many gang members asked for rewards in order to track down, spill the beans on their fellow kidnappers or capture suspected kidnappers. Does that make them heroes? I am of the belief that they are as immoral as the gang members whom they have sold for money because what they could have rendered for the capture of the menace to society through voluntary means, they did so only in exchange for money if the price is right.

Even granting, without conceding, that there is some merit in providing rewards, the lateral attrition bill is nonetheless unjust because it provides rewards only exclusively to BIR or BOC personnel.

What about other public servants who perform even better and provide even dignified public service? Are they not entitled to some rewards?

Of course, we know that the BIR and the BOC are the prime sources of government revenue. But that should not put them in better footing than ordinary public servants who equally contribute significantly to the country's development and operation.

The BIR or BOC people who sit in swivel chairs in air-conditioned offices, who come to office on their own sweet time and who never encounter a single threat or danger in their lives, except probably those involved in corrupt practices — why are they given rewards without sweat, when those doing the worst and most difficult kind of jobs in this part of the world are not?

Take the case of the armed forces and members of the Philippine National Police. No one can challenge that their task and mission require more heroic, hazardous, but patriotic pursuits — the defense of the nation and maintenance of peace and order.

Can revenue collection guarantee and assure the people of security and safety if the army and the police are starving to death? What security can the BIR or the BOC people provide with their collections, with themselves enjoying their fat rewards, when the members of the army and police who risk their lives when fighting in the mountains, lowlands and even in cities do not get any reward, except a bronze, silver or gold star or a step higher as promotion, but remain as poor as ever?

There is obviously a mistaken sense of discrimination in singling out BIR or BOC personnel as the only recipients of these rewards.

More important, it should be stressed that it is not the BIR or BOC alone which are the sources of revenue.

According to Senator Recto, our target collection for this year is about P900 billion. With the approval of the law, the BIR is expected to generate P470 billion in taxes and the BOC P120 billion in customs duties, or a total of P590 billion. What about the balance of P310 billion or the remaining 34% of the expected collection to cover the entire budget? Where shall we get this money? From other agencies of government! How come? Thirty percent of the expected revenues are derived from these 130 agencies and they are not given a share of this reward?

In short, other administrative government agencies, local governments, the judiciary, including the army and the police, who equally share in generating fees, charges or revenues must contribute in filling up the 34% void that the lateral attrition bill is expected to generate through its favorite, the BIR and BOC.

Are the public officials in those agencies not entitled to any reward once they meet the collection target or surpass their expectations by intensive collection of fees?

Indeed, the baneful, unjust and sordid discrimination that favors the BIR or the BOC personnel becomes ineluctably obvious.

This bill is a class legislation per se for it violates Sec. 1, Art. III of the Constitution which provides:

“No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law.”

Lastly, the lateral attrition bill, contrary to our colleagues' perception, will be an even better, if not bigger opportunity for corruption.

Here, we know that the BIR or the BOC will work double time to catch up with their revenue targets, feats that they ignored to do in the past, because of complacency, indolence or lack of zeal, but they are willing to do now because of the dangled rewards, incentives and bonuses.

Very patently, these public servants had violated Sec. 1, Art. XI of the Constitutional Provision on accountability of public officers which reads:

“Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”

That a reward system has been established does not improve nor make their moral fibers better. On the contrary, with the rewards system, they are being rewarded for dishonesty, for sleeping on the job, for corruption and make them more emboldened than ever to perpetrate, if not expand, their areas of corruption and money-making ventures.

This is the first time in our history that the BIR and BOC personnel are being rewarded for their inefficiency and corruption.

So concerned was former President Marcos about the standard of morality that he even outlawed receiving extra compensation for services beyond legal earnings as expressed in P.D. No. 6, a portion of which reads:

“...receiving for personal use a fee, gift, or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws.”

The MMDA instituted years ago a rewards system whereby its traffic enforcers are entitled to a certain percentage from collection from those they apprehended.

We heard of numerous complaints, left and right, that those apprehended did not commit any violation but were charged probably to increase collection of fines which the enforcers would share.

Years later, we heard and saw that traffic enforcers continued to milk money, this time bigger amounts, despite the rewards, obviously indicating that those corrupt MMDA enforcers who were there ever since had not improved but continued their depraved acts with higher takes. This is what I am afraid of.

I can only foresee that the same scenario and experience would befall the BIR and BOC.

My complaints and cries, it seems, are unheeded. I can only surmise that those voting for the passage of the bill had to heed the call of their conscience, perhaps, because of the pressure that the IMF had dictated and demanded that we increase our revenues.

No less than President Arroyo vetoed a similar measure shortly after she took over because of legal infirmities attendant to the bill. I cannot understand why she has now pressed for the passage of the bill which she abhorred then, although, because of the brilliant work of the Sponsor, that lack of due process was cured and I take off my hat to him.

I can only surmise the reason why, that is, the dictates of the IMF or other international institutions which are rating us.

The IMF may be right. But if we are to raise revenue, let us do it the proper way, acceptable to men of good conscience but not through means that are foul, for I do not believe in the tenet that “the end justifies the means.”

In any event, can not the President of this Republic ask the IMF to spare us for a while from the heavy financial burden that we are carrying and provide us momentary relief from the payment of our debt while we are facing serious financial problems?

We must break from the past and chart a new direction in negotiating our public debt. Many nations have faulted the IMF for imposing its policy of obliging debtor nations to balance their budgets at the price of sacrificing their development and subjecting their peoples to undue hardship. This policy offers no hope to debtor nations. Malaysia has shown us that the IMF can be made to listen. There is now a trend critical of IMF prescriptions because they ignore the impact on the populations of debtor countries. Already, CNN has suggested that the

countries in Asia affected by the catastrophic tsunami disaster should be given debt relief. The scale of the Philippines' natural disasters in 2004 was of an equivalent magnitude.

We must break from the past and chart a new direction. We should watch closely Argentina's tough negotiations with the IMF. Our government should renegotiate and place the interests of Juan de la Cruz above all in our renegotiations with the IMF and other creditor nations.

PARLIAMENTARY INQUIRY OF SENATOR ARROYO

Replying to the query of Senator Arroyo on the parliamentary status, Senator Pangilinan replied that indeed, interpellations on the speech of Senator Pimentel and its corresponding referral to committee should have been disposed of before proceeding to the other matters, specifically the remarks of Senator Lim.

As to the ruling of the Chair, Senator Pangilinan said that a part of the privilege speech of Senator Lim would be stricken off the record, although the latter had clarified his statement.

MOTION OF SENATOR PANGILINAN

Senator Pangilinan moved to refer the privilege speech of Senator Pimentel to the Committee on Health and Demography.

The Chair proposed to merely reiterate the previous circular of then Senate President Pimentel, and which is still a standing edict of the Office of the Senate President, declaring the entire Senate Building as a "no-smoking" area.

SUSPENSION OF SESSION

Upon motion of Senator Arroyo, the session was suspended.

It was 4:59 p.m.

RESUMPTION OF SESSION

At 5:06 p.m., the session was resumed.

Thereupon, Senator Pangilinan withdrew the motion to refer Senator Pimentel's privilege speech to the Committee on Health and Demography.

INQUIRY OF SENATOR EJERCITO ESTRADA (J)

As regards the privilege speech of Senator Pimentel, Senator Ejercito Estrada (J) inquired what penalties are to be imposed on a senator who is caught smoking within the Senate building.

Senator Pimentel stated that it would not need any specific sanction as he appealed to the good sense of the senators concerned. He stressed that there would be no need to pass a resolution either.

MOTION OF SENATOR EJERCITO ESTRADA (J)

Senator Ejercito Estrada (J) moved that the privilege speech be converted into a Senate resolution which he would coauthor.

Senator Lapid expressed gratitude to Senator Pimentel for the "no smoking" admonition as he seconded the motion of Senator Ejercito Estrada (J).

INQUIRY OF SENATOR MADRIGAL

Senator Madrigal stressed that the law should be followed through and through. She then inquired whether all senators are banned from smoking in their offices.

Senator Pimentel said that such is the intention of the law, so that if a senator is caught smoking inside his office, the penalty is a fine as provided for in the law.

The Chair noted that it is up to the conscience of every senator to consider the health of his colleagues.

Senator Madrigal stated that she wanted to make sure that the law is applied equally, hence, there should be no exceptions.

On the suggestion of Senator Lapid that smoking be allowed inside the office of a senator,

Senator Pangilinan said that open windows might not inconvenience the other senators.

Asked by Senator Madrigal if senators who have balconies could be allowed to smoke thereon, Senator Pangilinan replied in the affirmative.

APPROVAL OF THE MOTION

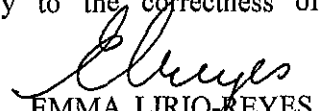
There being no objection, the motion of Senator Ejercito Estrada (J), to convert the privilege speech of Senator Pimentel into a resolution, was approved by the Body, subject to style.

ADJOURNMENT OF SESSION

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

It was 5:13 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Acting Senate Secretary

Approved on January 11, 2005