

REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 22

Wednesday, September 21, 2005

**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

SESSION NO. 22
Wednesday, September 21, 2005

CALL TO ORDER

At 4:23 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Mar Roxas led the prayer, to wit:

“Lord, I am not worthy to receive you but only say the word and I shall be healed.”

Every Sunday, when we worship we say these words.

Lord, daily we struggle and do our best to be worthy of Your grace. Sometimes we succeed, other times we fail.

Stay and be with us, guide us. Imbue us with Your Holy Spirit. Help us to be worthy of You. We may thus be instruments of Your will and do good work for our nation.

All these we ask through Christ our Lord.

Amen.

ROLL CALL

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

Angara, E. J.	Lim, A. S.
Arroyo, J. P.	Madrigal, M. A.
Biazon, R. G.	Magsaysay Jr., R. B.
Defensor Santiago, M.	Osmeña III, S. R.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada, L. L. P.	Recto, R. G.
Enrile, J. P.	Roxas, M.
Flavier, J. M.	Villar, M.
Lacson, P. M.	

With 19 senators present, the Chair declared the presence of a quorum.

Senator Gordon arrived after the roll call.

Senators Cayetano and Lapid were on official mission abroad.

Senator Revilla was absent.

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. 21 and considered it approved.

REFERENCE OF BUSINESS

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

**MESSAGE OF THE PRESIDENT
OF THE PHILIPPINES**

Letter of Her Excellency, President Gloria Macapagal Arroyo, dated 19 September 2005, certifying to the necessity of the immediate enactment of Senate Bill No. 1402, entitled

AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE SYSTEM AND DELINQUENCY PREVENTION PROGRAM, CREATING THE OFFICE OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES,

to urgently address youth delinquency, a worsening social problem that threatens the future of our nation, by instituting a paradigm shift in dealing with youth offenders accenting

restorative justice consistent with the UN Convention on the Rights of the Child.

To the Committee on Rules

COMMUNICATION

Letter from Governor Armando M. Tetangco Jr. of the *Bangko Sentral ng Pilipinas*, dated 8 September 2005, submitting to the Senate the 2004 Report on the Status of Implementation of Republic Act No. 9178 "Barangay Micro Business Enterprises (BMBEs) Act of 2002" pursuant to Section 14 of the Act.

To the Committees on Trade and Commerce; Ways and Means; and Local Government

ADDITIONAL REFERENCE OF BUSINESS

BILL ON FIRST READING

Senate Bill No. 2124, entitled

AN ACT ESTABLISHING THE
PHILIPPINE GOAT AND SHEEP
CENTER

Introduced by Senator Jinggoy Ejercito
Estrada

To the Committees on Agriculture and Food; and Finance

PROPOSED SENATE RESOLUTION NO. 335

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 335, entitled

A RESOLUTION COMMENDING BRIAN VILORIA, REY BAUTISTA, AND MANNY PACQUIAO FOR WINNING THEIR RESPECTIVE MATCHES IN THE 10 SEPTEMBER 2005 BOXING CONTESTS HELD AT STAPLES CENTER IN LOS ANGELES, CALIFORNIA, UNITED STATES OF AMERICA, BRINGING HONOR AND PRIDE TO THE PHILIPPINES AND AFFIRMING FILIPINO EXCELLENCE IN THE SPORTS OF BOXING.

With the permission of the Body, the Secretary of the Senate read only the title of the resolution without prejudice to the insertion of its text into the *Record of the Senate*.

Senator Pangilinan stated that Senator Lapid had also filed a similar resolution, Proposed Senate Resolution No. 337.

**ADOPTION OF PROPOSED
SENATE RESOLUTION NO. 335**

Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 335, taking into consideration Proposed Senate Resolution No. 337, was adopted by the Body.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:28 p.m.

RESUMPTION OF SESSION

At 4:29 p.m., the session was resumed.

**COMMITTEE REPORT NO. 18
ON SENATE BILL NO. 1967
(Continuation)**

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1967 (Committee Report No. 18), entitled

AN ACT REDEFINING THE TERM
"VETERAN" THEREBY AMENDING
FURTHER REPUBLIC ACT NO. 6948
AS AMENDED.

Senator Pangilinan stated that the parliamentary status was the period of amendments.

The Chair recognized Senator Biazon, Sponsor of the measure, who informed the Body that the Committee had adopted the proposed amendment of Senator Defensor Santiago.

COMMITTEE AMENDMENT

On page 1, line 6, after the word "territory," as proposed by Senator Biazon, there being no

objection, the Body approved the deletion of the phrase "and foreign nationals who served in the Philippine forces."

TERMINATION OF THE PERIOD OF AMENDMENTS

There being no other committee or individual amendment, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of amendments.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:34 p.m.

RESUMPTION OF SESSION

At 4:34 p.m., the session was resumed.

APPROVAL OF SENATE BILL NO. 1967 ON SECOND READING

Submitted to a vote, there being no objection, Senate Bill No. 1967 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1967

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:35 p.m.

RESUMPTION OF SESSION

At 4:35 p.m., the session was resumed.

COMMITTEE REPORT NO. 17 ON SENATE BILL NO. 1956

(Continuation)

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

on Second Reading, of Senate Bill No. 1956 (Committee Report No. 17), entitled:

AN ACT ESTABLISHING REFORMS IN THE REGULATION OF RENTALS OF CERTAIN RESIDENTIAL UNITS, PROVIDING THE MECHANISMS THEREFOR AND FOR OTHER PURPOSES.

Senator Pangilinan stated that the parliamentary status was still the period of individual amendments.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:36 p.m.

RESUMPTION OF SESSION

At 4:36 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1956

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

RESUMPTION OF THE PRIVILEGE HOUR

Upon motion of Senator Pangilinan, there being no objection, the privilege hour (privilege speech of Senator Gordon) was resumed.

INTERPELLATION OF SENATOR BIAZON

Asked by Senator Biazon if smuggling was a problem during his term as chairman of the Subic Bay Metropolitan Authority (SBMA), Senator Gordon replied in the affirmative, stating that his administration took several measures to protect and secure the free port from such activities by, among other things, even paying workers to take down the license plates of all vehicles entering and leaving the area.

As to how long his term as SBMA chairman was, Senator Gordon replied that he headed the SBMA until 1998. *He*

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Asked if Republic Act No. 8506 has addressed the problem of car smuggling, Senator Gordon stated that during his time, right-hand drive cars were not allowed in the free port and various heavy equipment such as farm, road and construction equipment that were auctioned, were duly taxed unlike what is happening at present. He recalled that aside from having a respected international auctioneer Ritchie Brothers in Subic, SBMA also had an environment consultant from the World Bank. He stated that in spite of the law, 90,000 right-hand drive vehicles were brought into Subic in the last three years, some of them smuggled outright.

Senator Biazon recounted that in 2002, then Justice Secretary Perez issued Department of Justice Opinion No. 086 allowing the Bureau of Customs to auction forfeited right-hand drive vehicles if they are converted into left-hand drive, in effect, removing them from the coverage of R.A. No. 8506 and as consequence, allowing them to be registered and used in the country without violating any law.

Senator Gordon replied that DOJ Opinion No. 086 applies only to vehicles seized by the BOC. Senator Biazon agreed, saying that the DOJ issuance distinguishes between vehicles seized by government and vehicles brought in by private entities.

Senator Gordon stated that DOJ Opinion No. 086 was preceded by DOJ Opinion No. 101, series of 1999, which provides that right-hand drive vehicles could be brought into the special economic zone provided they are reexported. Clearly, he posited, such vehicles were meant to be transshipped to another destination.

Asked whether right-hand drive vehicles that were converted in Subic into left-hand drive vehicles could be sold outside the country, Senator Gordon emphasized that the importation of right-hand drive vehicles, in itself, is banned and, therefore, government has every right to seize them.

Asked whether he agrees with DOJ Opinion No. 086, Senator Gordon remarked that in a transactional society, people would lobby with administration officials who, in turn, would come up with an opinion or a position that is contrary to the spirit of the law. Hence, he said, government can seize right-hand drive vehicles, convert them to left-hand vehicles and then auction them off. On the

other hand, he stated that private individuals who bring in right-hand drive vehicles into the free port should be prosecuted outright as they are violating the law.

Upon query, Senator Gordon stated that smuggling of vehicles into Subic began in 1998 and it has worsened since then. He then presented the following LTO data on the volume of smuggling from 1998-2004:

	<i>Units</i>
1998	- 477
1999	- 604
2000	- 1,718
2001	- 7,943
2002	- 7,648
2003	- 15,605
2004 (Oct)	- 34,750

Senator Gordon recalled that shortly after President Macapagal Arroyo assumed office in 2001, he warned her about the widespread smuggling of vehicles and other items into Subic which was also ongoing in other areas. He bared that at the height of EDSA II, the vice mayor of Olongapo City interdicted the shipment of 300 brand-new Starex cars out of Subic. He attributed the sudden increase in the volume of smuggling to the existence of a market among the rich and the poor, as well as to the lobbying of local and SBMA officials who found the business lucrative, claiming that it was good for the country.

On whether there was a change in the national policy on these banned items, Senator Gordon lamented that the sudden wash of money blinds good men, big and small. He stated that car smuggling became so lucrative that the importers could give each barangay captain one car, one van and P40,000 bribe and still reap enormous profits from the cars left to be sold.

Asked to explain the sudden increase in smuggling during the watch of President Arroyo, Senator Gordon surmised that the President could have been pressured by local leaders. He added that in fairness to the President, she issued Executive Order No. 156 to protect the car industry. He noted that while there are still attempts to bring in right-hand drive vehicles, the incidence has gone down since the President appointed certain persons to Subic.

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In view of the magnitude of smuggling, on whether R.A. No. 8506 should be repealed to allow the entry of right-hand drive vehicles under certain conditions, Senator Gordon replied that the law should be clarified and strengthened, and it should also provide for certain conditions like safety standards and the types of vehicles to be sold. For instance, he said, reconditioned vans and pick-ups could be sold to farmers who need them for business.

Upon query, Senator Gordon clarified that the 90,000 vehicles were mostly cars and vans. He said that tractors, buses, water tankers and trailers that are being brought into the country with taxes not being paid in full are a separate issue altogether.

Asked if the committee hearings on the matter have already been terminated, Senator Gordon replied in the negative. He stated that auctioning *per se* is not bad if the vehicles/equipment are for construction and agricultural businesses. He said that international auctions are done in Subic quarterly with the participation of foreigners but since the time second-hand cars were brought in, it has been an all-Filipino affair.

Senator Biazon commended Senator Gordon for bringing into the open a very significant issue that merits some examination.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:14 p.m.

RESUMPTION OF SESSION

At 5:21 p.m., the session was resumed.

INTERPELLATION OF SENATOR EJERCITO ESTRADA (J)

Asked by Senator Ejercito Estrada (J) if the importation of vehicles through the Subic free port has an adverse effect on the local automotive industry in terms of employment, industry growth, economic growth and international image, Senator Gordon replied in the affirmative. He stated that in terms of employment, 6,000 workers have already been laid off and the layoffs have an impact on

taxes; and business with the international community has been affected.

Senator Gordon informed the Body that when car manufacturers were invited to invest in the Philippines, they were able to reexport some of the products and create downstream industries in car parts. He asserted that smuggling in Subic has caused investments to go down horrendously with companies like Fedex relocating elsewhere because they did not want to invest in a place where bribery is rampant.

Asked further about Fedex, Senator Gordon stated that Fedex entered the Subic free port during his term as SBMA chair. He revealed that Fedex would be relocating to China in 2008 because the subsequent SBMA leadership failed to sustain the favorable investment climate he had started. He disclosed that when he was Secretary of Tourism, he expressed his concern to the President about the plan of Fedex to pull out.

On the matter of taxes, Senator Gordon informed the Body that local car assemblers contribute about P11 billion-P12 billion every year in addition to the P330 million in withholding taxes of their employees. He said that the automotive industry creates a multiplier effect on hundreds of dealerships, subcontractors and advertising agencies. On the other hand, he said, importation of used right-hand drive vehicles hardly creates employment and has cost the government a lot in terms of unpaid taxes.

Moreover, Senator Gordon revealed that the SBMA has allowed the entry of these vehicles which are all "tax fixed" and with ready plates so that they go out of Subic like a production line; and that, in fact, 48,000 such cars came out of Subic in 2004 alone. He acknowledged that Filipino mechanics inside Subic are the ones converting these right-hand drive cars. But he stressed that Subic, although it is a free port, is not exempt from R.A. No. 8506.

Asked who are the key players in the importation of used cars in Subic, Senator Gordon replied that the three major auctioneers operating in Subic are United Auctioneers, Asia International Auctioneers, and Subic Bay Motors.

Furthermore, Senator Gordon noted that Malacañang pretends that it does not allow the

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importation but in reality it hides behind the defense that Subic is a free port and the cars would be 100% reexported. In reality, he pointed out, only 128 cars were reexported in the entire history of Subic. He asserted that the right-hand drive cars are contrabands, but he clarified that it is not President Arroyo but the SBMA and the customs people in Subic who should be held liable for allowing the importation. He said that he had filed a resolution seeking an investigation of the matter which he hoped Senator Ejercito Estrada (J) would coauthor.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred Senator Gordon's privilege speech and the interpellations thereon to the Committee on Government Corporations and Public Enterprises.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:36 p.m.

RESUMPTION OF SESSION

At 5:37 p.m., the session was resumed.

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 22 to the Calendar for Special Orders.

CONSIDERATION OF COMMITTEE REPORT NO. 22

Upon motion of Senator Pangilinan, there being no objection, the Body considered Committee Report No. 22, re:

MOTION OF SENATOR JUAN PONCE ENRILE THAT HIS PRIVILEGE SPEECH DELIVERED ON MONDAY, 14 FEBRUARY 2005 CONCERNING THE LOAN AGREEMENT ON THE NORTH RAIL PROJECT BE REFERRED TO A COMMITTEE OF

THE WHOLE; AND THE RECOMMENDATIONS AND POLICIES OF THE COMMITTEE ON RULES AS TO WHEN THE SENATE, AS A WHOLE, COULD INQUIRE INTO A PARTICULAR MATTER.

Thereupon, the Chair recognized Senator Pangilinan for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR PANGILINAN

In sponsoring Committee Report No. 22, Senator Pangilinan delivered the following speech:

This committee report, which was submitted by the Committee on Rules on 3 May 2005, is with respect to the motion of Sen. Juan Ponce Enrile that the privilege speech he delivered on February 14, 2005, concerning the loan agreement on the North Rail project be referred to the Committee of the Whole.

The Senate constituted itself as a Committee of the Whole for a total of nine times from the First until the Twelfth Congress. It is the recollection of this Representation that the debt aspect of the Bataan Nuclear Power Plant was brought before the Committee of the Whole in 1987 by four privilege speeches on the same issue. Considering the multidisciplinary matter of the BNPP, multiple referrals will be redundant. The Committee of the Whole was therefore constituted to discuss, investigate and study the foreign debt problem.

The second time that the Committee of the Whole was convened was for the Power Crisis Act in 1993. This sought to authorize the President to exercise powers necessary and proper to effectively and decisively address the energy crisis. Other than being a committee concerned for expediting the study of an urgent matter, the Senate convened as a Committee of the Whole. In 1995, on the matter of the General Agreement on Tariffs and Trade, discussion of the terms, conditions and timetable of our country's accession to the new economic order was placed before a Committee of the Whole because the GATT was to take effect in a few months then.

The Committee on Rules invoked Section 11, which is now Section 14, Rule X of the Rules of the Senate, upon the motion of then Senator Romulo, that whenever necessary, special committees shall be organized, the membership and jurisdiction of which shall be determined by the Senate President. Because the

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Philippines was a signatory to GATT, we quote Senator Romulo, "We do not have the luxury of time on our side."

The Senate constituted itself into the Committee of the Whole in succeeding Congresses for the following matters: Magna Carta for Migrant Workers in 1995; the demonstration of Comelec on the operation of a computer and electronic equipment for voting, counting and canvassing of votes; the Southern Philippine Council for Peace and Development; in 2003, the Anti-Money Laundering Act amendments; the deliberation on the budget of the Department of National Defense; and the Oakwood Mutiny.

The circumstances stated reveal that the Committee of the Whole has been traditionally based on the power of the Senate to form special committees. Section 14, Rule X of the Rules of the Senate indicates that the validity of the Committee of the Whole rests on solid grounds aside from the fact that the move to constitute the said committee is always supported unanimously.

Allow me to reiterate for emphasis the factors underlying the creation of the Committee of the Whole in the past:

- 1) The involvement of a subject matter of transcendental importance as illustrated by the issue on foreign debt, GATT, AMLA amendments and the Oakwood mutiny;
- 2) Multiple jurisdictions where subjects covering many issues fall within the jurisdiction of two or more committees because the issues are too complex for a select number of committees to handle like in the case of the foreign debt and the migrant workers as well as the SPCPD; and
- 3) The interest of expediting deliberations. The Senate found it advantageous to sit as a committee for better understanding of the mechanics and operation of the proposed computerized election system which expedited deliberation on the bill on computerized automated elections.

In previous Congresses, the decision to convene the Committee of the Whole was always left to the discretion and wisdom of the Senate, sitting in plenary. The Committee on Rules wishes not to deviate from this tradition. Therefore, it deems it best to leave to the better understanding and discretion of the entire Body whether an issue is of such great significance that it ought to be referred to the Committee of the Whole.

The motion of Sen. Juan Ponce Enrile that the Senate constitute itself as a Committee of the Whole to discuss the North Rail project is therefore best left to the collective wisdom of the Senate. Said motion is now on the floor.

APPROVAL OF THE MOTION TO CONSTITUTE A COMMITTEE OF THE WHOLE

Thereupon, there being no objection, Senator Enrile's motion that the Senate constitute itself as a Committee of the Whole to discuss the North Rail project was approved by the Body.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:43 p.m.

RESUMPTION OF SESSION

At 6:16 p.m., the session was resumed.

ADOPTION OF COMMITTEE REPORT NO. 22

Upon resumption, the Chair stated that Committee Report No. 22, which was earlier reported out, was deemed formally adopted.

CHANGE OF REFERRAL

Upon motion of Senator Pangilinan, there being no objection, the Body approved the change of referral of Proposed Senate Resolution No. 336 from the Committee on Rules to the Committee on Accountability of Public Officers and Investigations (on the criminal aspect) and to the Committee on Foreign Relations (review on the application of international laws and policies on the Venable contract).

MANIFESTATION OF SENATOR PANGILINAN

With the permission of the Body and in consultation with Senator Biazon, as manifested by Senator Pangilinan, the Secretariat was authorized to make the necessary corrections in form and style on Senate Bill No. 1967 before Third Reading copies thereof are distributed.

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ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon Monday, September 26, 2005.

It was 6:18 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
to clerk

Approved on September 26, 2005