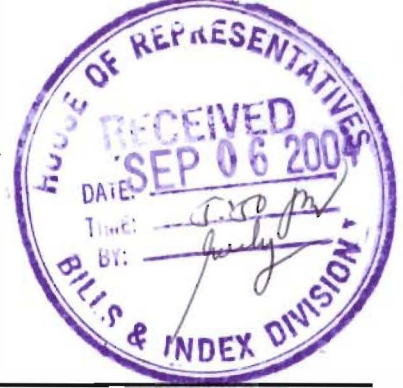


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. 2770



Introduced by REPRESENTATIVE EDCCEL C. LAGMAN

EXPLANATORY NOTE

The looming fiscal crisis has encouraged innovative modes of raising funds from the private sector and government officials and personnel to augment the government's coffers.

First initiated by Speaker Jose C. de Venecia, the campaign for donations and voluntary contributions to the "Pera Para sa Pilipinas Fund" or what is now dubbed by President Gloria Arroyo as the "Bayanihan Fund", has gathered momentum and is expected to generate billions of pesos.

This is a welcome development as the positive response highlights the citizens' civic-consciousness and participation in burden-sharing to help forestall a catastrophic fiscal fiasco.

Nonetheless, this initiative is a peripheral solution to the impending fiscal crisis. It should not distract the government from adequately addressing the twin problems of a ballooning debt service and an exploding population, which both inordinately constrict scarce resources, and consequently cause and aggravate the grave fiscal problem. Verily, no portion of these donations should be diverted to debt service.

However, the pouring in of donations and pledges in cash and in kind raises substantial issues which may lead to serious and contentious problems. The following concerns must be settled:

1. The true nature of donations and contributions as to whether they are private or public funds;
2. The authority and accountability of the persons and agencies collecting and receiving the donations;
3. The need for a central agency as repository of the collections;
4. The procedure for monetizing donations in kind like jewelries and other personal properties and possibly realties;
5. The legal utilization and disposition of the donations; and
6. Whether or not the donations are subject to donor's tax.

The following provisions in the Constitution are relevant:

(1) "The President shall submit to the Congress within thirty days from the opening of the regular session, as the basis of the General Appropriations Bill, a budget of receipts and expenditures and **sources of financing**, including receipts from existing and proposed revenue measures." (Section 22 of Article VII; emphasis supplied);

(2) "All **appropriation**, revenue or tariff bills, bills authorizing the increase of the public debt, bills of local application, and private bills **shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.**" (Section 24 of Article VI; emphasis supplied);

(3) "**No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.**" (Section 29 (1) of Article VI; emphasis supplied); and

(4) "All money collected on any tax levied for a special purpose shall be treated as a **special fund** and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government." (Section 29 (3) of Article VI; emphasis supplied)

Since the intention of the donors is to help build up the financial resources of the country, it is manifest that these donations are impressed with a public character and are considered additional "revenue" or "income" of the government in the nature of the what the Constitution in Section 22 of Article VII categorizes as other "sources of financing".

These donations are like proceeds from loans and grants that are public funds.

Perforce, all of these donations, whether in cash or in kind, must be remitted to the Bureau of the Treasury as the central repository of all revenues, incomes and proceeds of other sources of financing.

The campaign for private donations was initiated by Speaker De Venecia purposely to augment funds allocated for basic services that were depleted because the greater portion of the national budget is devoured by debt service and mandatory allocations for personal services and Internal Revenue Allotment (IRA) for Local Government Units (LGUs). Consequently, a special fund must be constituted in the Bureau of the Treasury to cover these donations. If "all money collected on any tax levied for a special purpose shall be treated as a special fund" pursuant to the Constitution, then the creation of a special fund for these donations is justified by parity of application.

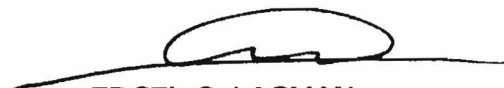
Since there is an unequivocal injunction in the Constitution that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law", these donations cannot be disbursed by the Executive or any other branch or agency of the government without the specific allocation determined by Congress. This Constitutional prohibition is a check and balance mechanism that limits the Executive Department's disbursing authority.

In order to guarantee the integrity and transparency in the collection and receipts of the voluntary contributions, private individuals, public officials and heads of government agencies, people's organizations and nongovernmental organizations collecting the donations shall be responsible as accountable officers.

With respect to donations in kind, the same shall be monetized through public auctions to be conducted by the National Treasurer pursuant to existing laws regulating public auctions.

These donations shall be exempt from the donor's tax under the "Tax Reform Act of 1997".

Approval of this bill is earnestly urged.



EDCEL C. LAGMAN

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Introduced by REPRESENTATIVE EDCEL C. LAGMAN

AN ACT
PRESCRIBING THE MECHANISM FOR THE COLLECTION, REMITTANCE AND
UTILIZATION OF CITIZENS' DONATIONS TO AUGMENT THE FINANCIAL RESOURCES
OF THE GOVERNMENT

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

SECTION 1. **Short Title.** – This Act shall be known as the "Citizens' Donation Act of 2004".

SEC. 2. **Declaration of Policy.** – The National Government shall encourage the private sector, particularly businessmen, professionals and juridical enterprises, as well as government officials with the salary grade 25 and above to voluntarily donate any amount to a *Bayanihan Fund* to augment the financial resources of the government in supporting the adequate and speedy delivery of basic services. This is consistent with the constitutional mandate that the use of property bears a social function and all economic agents shall contribute to the common good.

SEC. 3. **Nature of Donation.** – The donations shall be absolutely voluntary and may be in cash, by payroll deduction and/or in kind.

SEC. 4. **Public Funds.** – All donations shall be treated as public funds and property and shall be remitted in their entirety to the Bureau of the Treasury and shall not be disbursed except in pursuance of an appropriation made by law.

SEC 5. **Special Fund.** – A Special Fund shall be created by the Bureau of the Treasury to cover said donations which shall be appropriated and disbursed for funding the delivery of basic services.

SEC. 6. **Accountable Officers.** – Public officials and private individuals as well as heads or officers of government agencies, people's organizations and nongovernment organizations

who collect the donations shall be responsible like accountable officers and they shall issue proper receipts acknowledging their having collected or received the donations and shall remit their collections to the Bureau of the Treasury within three (3) working days from receipt thereof.

SEC. 7. Exemption from Donor's Tax. – The donations shall be exempt from the donor's tax in accordance with Sec. 101-A (2) of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997".

SEC. 8. Proscription of Donation for Debt Service. – No amount from the donations shall be disbursed for debt service.

SEC. 9. Prohibited Acts. – The following shall be prohibited:

- a) Exacting any compulsory contribution or donation;
- b) Giving and/or receiving any donation given in exchange for official favor or accommodation in violation of the Anti-Graft and Corrupt Practices Act and other pertinent statutes and issuances;
- c) Failure to remit the full amount or a portion of the donation or voluntary contribution collected; and
- d) Delay in the remittance of the collection to the Bureau of the Treasury.

SEC. 10. Penalties. – Any person who shall commit any of the aforesaid prohibited acts shall be subject to a penalty of *prision correccional* or a fine of P50,000.00 or both at the discretion of the proper Court.

If the offender is a juridical person, the penalty shall be imposed upon the President, Treasurer, Secretary or any person or officer responsible for the violation. If the offender is an alien, he/she shall, after service of sentence, be deported immediately without further proceedings in the Bureau of Immigration. If the offender is a public officer or employee, the Court shall, in addition to the penalties hereinabove provided, order his/her dismissal from the government service.

SEC. 11. Implementing Rules and Regulations. – Within thirty (30) days from the effectivity of this Act, the Bureau of the Treasury, the Department of Finance and the Department of Budget and Management shall jointly promulgate the rules and regulations for the effective implementation of this Act and shall ensure the full dissemination of the same to the public

SEC. 12. **Separability Clause.** – If any part, section or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SEC. 13. **Repealing Clause.** – All other laws, decrees, orders, issuances, rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 14. **Effectivity.** – This Act shall take effect upon its approval.

SEC. 15. **Publication.** – This Act shall be published in at least two (2) newspapers of national circulation.

Approved,