

Republic of the Philippines
House Of Representatives
Quezon City, Metro Manila

THIRTEENTH CONGRESS

Second Regular Session

HOUSE BILL NO. 4863



Introduced by Congressmen Mark O. Cojuangco

Explanatory Note

This bill seeks to impose a fifty centavo specific tax to be borne by a cellular phone subscriber, or service provider, on the economic activity of every SMS message the subscriber or service provider sends. The purpose is to generate much needed funds - which will constitute a Special Infrastructure Fund - to upgrade, modernize and improve our country's infrastructure for economic vibrancy and social mobilization, with special emphasis towards the development of "rural urban centers" through a grid system of roads and master planning.

It is deemed important and about time that SMS, as an economic activity, share in the burden of nation building.

Being a substantially foreign exchange based industry, SMS competes with every other industry vis-a-vis their ability to source cheaper foreign exchange, our scarcest national resource. And yet, it contributes too modest a share to the tax burden as compared to its potential.

A tax on SMS would be a ready and broad based source of revenue which would be used to alleviate our fiscal situation whereby each text sender would share in the burden of nation building.

Further, it is also avoidable and not mandatory. In the sense that, a text consumer has the choice, flexibility and discretion in the use of text, a large volume of which is currently used for amusement or entertainment.

The most important benefit from the passage of this bill is the large incremental increase in the discretionary but guided expenditure as far as the national infrastructure's development is concerned. That discretionary portion of our national budget that really produces tangible results.

The need to benchmark the quality of our national infrastructure vis-a-vis our more progressive neighbors need not be belabored. It will allow our nation's competitiveness

and, it is the key engine to economic and social development. It provides the physical foundation for economic and social progress, the basic backbone to generate business activity through local and foreign participation and the opportunity for new jobs.

Infrastructure at par with our more progressive neighbors will make our industries competitive on the world stage and, open up regions, resources, human and otherwise, that would move the country forward especially in these times of ever scarce petroleum supplies.

Imagine if trips could be half as long as they are today. We would consume half as much fuel rather than burning it up in traffic to no useful purpose.

Imagine how attractive our country could be to foreign investors, tourists, or even returning Filipinos if we could vastly improve our infrastructure.

The benefits to our economy and the multiplier effect of such qualitative and quantitative improvements would be unquantifiable.

Infrastructure to my mind is the physical manifestation of the government's and societies' efforts to improve the lives of our countrymen.

What is a government for, if not to achieve this goal?

And how is a government to do this without the necessary wherewithal?

In the end, it is the people we must turn to, so that they could lift themselves up from their situation by their boot straps.

With the advent of new technology, text messaging SMS has become available to everybody. There has been a paradigm shift in our way of life brought about by this technology, at such a low price.

If text is not taxed, then, what other means, as broad based and equitable is there, for them to participate and make a difference in their lives?

Whereas some countries are known as the "steel or aluminum, or financial, or other capitals of the world", our country today is known as "the text capital of the world".

Is this something to be proud of?

Being that we are such a debtor country and yet we are engaged in such a large consumptive economic activity, should we not be borrowing for investment in our country rather than for consumption? Should we not be consuming what we have clearly earned?

It is my belief that this tax bill is progressive, it taxes the rich although it also taxes the poor. But, if you are poor and own a cell phone, are you not then, by definition, from the richer poor?



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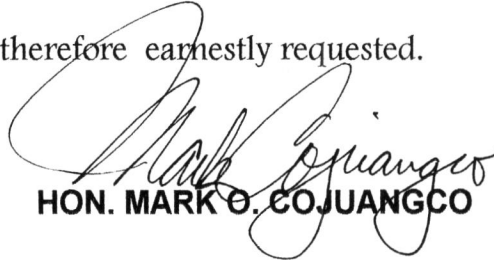


In addition, the bill also seeks to distribute most of the revenues that could be raised, to the countryside. Thus, dispersing resources to where it is needed most.

This bill is, in my humble opinion, one of the means available to us by which we could achieve that end of making a difference for our people.

If we craft it well, I believe it will be the means to an end which our people will be able to see, feel and appreciate.

The immediate approval of this bill is therefore earnestly requested.



HON. MARK O. COJUANGCO

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HOUSE BILL NO. 4863

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AN ACT

IMPOSING A FIFTY CENTAVO (P0.50) SPECIFIC TAX ON THE ECONOMIC ACTIVITY OF SMS MESSAGING, CREATING A SPECIAL INFRASTRUCTURE FUND FOR SPECIFIC PUBLIC WORKS PROJECTS, AND FOR OTHER PURPOSES

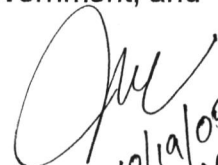
Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Creation of a Special Infrastructure Fund for Specific Public Works Projects.* - There is hereby created a special fund to be known as the Special Infrastructure Fund, hereinafter referred to as the Special Fund, to be administered by the Department of Public Works and Highways, and which shall be constituted from the proceeds of the tax imposed under this Act.

The revenues thereby generated shall be utilized to incrementally increase the traditional financing levels which are utilized in the realization of the nation's physical infrastructure. With the end in view being, that the implementation of such infrastructure will be benchmarked and at par with the country's more progressive regional neighbors, as far as dimensions, capacities and quality of construction is concerned.

This Special Fund shall be expended exclusively for the acquisition of right-of-ways, construction of roads, bridges, flood control and drainage systems. Provided, however, that the Special Fund shall be distinct and separate from and in addition to any appropriation authorized and granted yearly to the DPWH to cover the expenditures for the identified objects of expenditures under this Act. It shall be incremental to previous levels of expenditure to be defined as over and above the government's average annual expenditure in real terms for acquisition of right-of-ways, roads, bridges, flood control and drainage systems, for the last ten years prior to the approval of this Act.

Such average annual expenditure for the last ten years must be determined and converted, once, into actual figures by the Department of Budget and Management, in coordination with the concerned departments and other agencies of the government, and


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included in its annual report to both Houses of Congress. This determination shall be used to establish the base line level of expenditure to be appropriated by Congress for the budget of the DPWH from other traditional sources of revenue outside of that generated by this Act. The appropriations based on the base line may be increased but not decreased and are separate and distinct from the appropriations to be made by Congress from the revenues generated by this Act.

SECTION 2. *Apportionment of the Special Infrastructure Fund.*

- All revenues generated from the collection of a specific tax on the economic activity of SMS messaging shall, for the first six years from the approval of this Act, be set aside for the following purposes:

(a) Eighty percent (80%) thereof shall accrue exclusively to the acquisition of right-of-way to be used for national government projects for roads, bridges, flood control, and drainage systems.

(b) The remaining balance of twenty percent (20%) shall accrue to the civil works in the construction of roads, bridges, flood control and drainage systems.

(c) Expenditure of the Special Fund shall also follow the division of the total fund as hereunder provided:

10%	-----	for highly urbanized areas
70%	-----	for rural "urban" centers (i.e. cities, 1 st and 2 nd class municipalities)
20%	-----	for 3 rd class municipalities and below

Provincial roads which are qualified to be improved by the Special Fund shall be covered as far as such portions thereof wherein they traverse the more densely populated sections of these areas.

All revenues collected after the lapse of the above period of six years shall be allocated based on the above conditions with minor revisions or adjustments not exceeding a fifteen percent (15%) variation and, subject to the review and recommendation of the Oversight Committee herein created. The Oversight Committee shall be tasked to determine and establish such minor and reasonable revisions or adjustments of the above-stated conditions after conducting hearings for the purpose.

SECTION 3. *Expenditure of the Special Infrastructure Fund.*

- Expenditure of the Special Infrastructure Fund shall be in pursuance of appropriation made by law.



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SECTION 4. *Imposition of Specific Tax on the Economic Activity of SMS Messaging.* - There shall be levied, assessed, and collected a fifty centavo (P 0.50) specific tax to be borne by a cellular phone subscriber, or service provider, as the case may be, on the economic activity of every SMS message (Text) the subscriber or service provider makes.

SMS messages made by a service provider which directly affect the performance of SMS services such as those which are in the nature of a billing service notification and the like are not covered by the provision of this section. Marketing and promotional activities and the like which are made by a service provider through the SMS are not covered by this exemption.

The tax herein being imposed shall accrue at the time the SMS message is executed.

It shall be due and payable two (2) days thereafter in the case of pre-paid subscribers.

In the case of post-paid subscribers, the tax being imposed shall be due and payable fifteen (15) days after the receipt of payment from the post-paid subscriber.

In the case of service providers, the same shall be due and payable fifteen (15 days) after the SMS message is sent by the service provider.

The tax herein being imposed shall be separate and distinct from the income and value-added taxes which a cellular phone company remits or pays to the Bureau of Internal Revenue.

SECTION 5. *Prohibition Against the Imposition of Similar Charge on the Economic Activity of SMS Messaging.* - No other tax, fee or any other charge of similar nature, as the specific tax on the economic activity of SMS messaging shall be imposed by any cellular phone service provider, any political subdivision or unit in the country, or any person.

A violation of the immediately preceding paragraph shall make the cellular phone company, political subdivision, or any person, as the case may be, liable for the payment of the amount of the similar or additional tax, fee, or any other charge that is passed on to cellular phone subscribers, plus a surcharge of twenty-five percent (25%) of the total additional amount collected.

This section is not intended to be subject to or interpreted as a "no pass on provision".


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SECTION 6. *Penal Provision.* - Any person, natural or juridical, who fails or refuses to turn over collections of the tax mentioned in this Act within the period prescribed herein, or who delays, obstructs or prevents the same, shall be liable for the payment of interest based on the duration of the delay in the remittance of the tax due at an interest rate equal to the prevailing commercial bank loan rates, plus a surcharge of twice the amount of the interest as computed above. If the offender is an alien, he shall, in addition, be deported after payment of the fine, without further deportation proceedings.

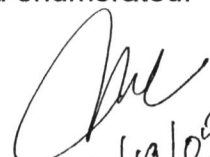
Any public officer who fails or refuses to effect releases from the Special Fund, or who delays, obstructs or prevents the same; or who orders, causes or effects the transfer or diversion of the collections of this Special Fund shall be punished by a fine in the amount of not less than fifty thousand pesos (Php50,000.00) but not more than one hundred thousand pesos (Php100,000.00) or suffer imprisonment of not less than three (3) years but not more than six (6) years or both at the discretion of the Court. He shall, in addition, be dismissed from the service with prejudice to reinstatement and with disqualification for election to any public office.

SECTION 7. *Rules and Regulations.* - The Department of Budget and Management in consultation with the Department of Finance, Department of Public Works and Highways, Department of Transportation and Communications, Bureau of Internal Revenue and with the Oversight Committee created hereunder shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SECTION 8. *Creation of an Oversight Committee* - An Oversight Committee is hereby created which shall be composed of the Chairmen of the Committees on Ways and Means of the Senate and the House of Representatives and four (4) additional members from each House to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall, in addition to the provision of paragraph 4 of Section 2, monitor and ensure the proper implementation of this Act.

SECTION 9. *Annual Report.* - The Secretary of the Department of Public Works and Highways shall, within fifteen days from the opening of the regular session of Congress, submit to the President of the Philippines, to the Senate President and Speaker of the House of Representatives, and to the Chairmen of the Committee on Ways and Means of both Houses of Congress, an annual report which shall include an account of the programs, projects and detailed expenses undertaken pursuant to this Act.

A separate report shall also be prepared and submitted to the above-named officials wherein the planned expenditures of the Special Fund for the short term ie: the next three (3) years, and medium term ie: two (2) years thereafter, shall be listed and enumerated.


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SECTION 10. *Separability Clause.* - If for any reason, any section or provision of this Act is declared to be unconstitutional, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 11. *Repealing Clause.* - All laws, decrees, executive orders, rules and regulations, and other issuances, or any part thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 12. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever comes earlier.

Approved,


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