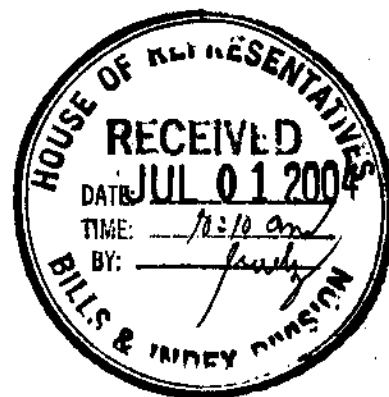


Republic of the Philippines
HOUSE OF REPRESENTATIVES
QUEZON CITY

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 129



Introduced by Representative **JOEY SARTE SALCEDA**

EXPLANATORY NOTE

This idea of a Subsidy Oversight Council germinated from a seminal work on redefining the role of government in the economy by Mr. Joseph Stiglitz, former chief economist of the World Bank. He principally concluded that there is a need for greater transparency in the decision-making process behind government intervention in the market place in order to reduce the rents it generally engenders. And the grant of incentives is one of the most prevalent, albeit less obvious, of these interventions.

The proposal acquired urgency as the government seeks new revenue measure to prime an economic recovery. Hence, the need to rationalize the government's grant of incentives, being one of the main revenue leakages. The World Bank, citing the Board of Investment (BOI) and Philippine Economic Zone Authority (PEZA) investment incentives in 1999, estimates foregone revenues at PHP124 billion. But we need to look at the entire system of fiscal incentives to appreciate its pervasive role in our economy which policymakers now tend to overlook.

- **Customs Collections.** Presently, 60% of imports are non-dutiable although 25% of these are eventually re-exported. Given an average tariff of 15% the foregone revenue on the non-reexported imports (45% of total) could reach PHP101 billion. Considering income tax shield at 35%, the aggregate net impact is PHP67 billion, an amount more than enough to close the national government's budget deficit. This comes close to the World Bank estimate.
- **Implied Subsidies / Incentives to Agriculture.** The agricultural sector is currently not being taxed. Thus, even without taking into account the impact of the Agricultural and Fisheries Modernization Act (AFMA), the government is already investing PHP57 billion in foregone sales/VAT tax and income tax of about PHP24 billion assuming a 12% pre-tax return on sales and 35% income tax rate. In short, conversely, these amount to PHP81 billion in government's subsidy to farming. Nonetheless, this is not subject of this bill.
- **Implied Subsidies / Incentives to Exports.** Like agriculture, this sector is also essentially exempt from sales tax as the country is pursuing an export-oriented strategy. At 10% sales tax and 35% income tax, the total implied subsidy to the export sector amount to PHP143 billion. However, this is not the subject of this bill.

- **Other forms of hidden subsidies.** This include the implied government subsidy in the provision of national guarantee for the loans of certain GOCCs like National Power Corporation (NAPOCOR). And the bill provides the appropriate formula for its estimation. The bill also seeks to cover the implied subsidy in Bangko Sentral ng Pilipinas bailout of private banks.

FISCAL INCENTIVES AS SUBSIDY

Far too often, the public reads the glowing BOI and PEZA reports but they are not informed of what the country has given up in order to compete for global resources and markets. The public also reads about the excellent export growth numbers but the question is how much have we given up to achieve these.

All told, excluding implicit subsidies to agriculture and exports, it is reasonably estimated that these incentives or "occult subsidies" now reach more than PHP100 billion annually. Thus, the bill seeks a re-orientation of our perspective on tax incentives into an ordinary item of budget expenditure. While it must be seen within the total context of the government's subsidy programme in the pursuit of its socio-economic development goals, it should properly be recognized as a trade-off or as a cost.

Thus, the name - "Subsidy Oversight Council" - was consciously chosen over the equally appealing alternative name, "Incentive Council", precisely to send the signal to economic players that foregone revenues or incentives are a scarce resource just like government expenditures. Thus, it should promote a more efficient and effective allocation, thus possibly generating savings particularly from exceptional grants.

THE SUBSIDY OVERSIGHT COUNCIL

An important feature of this measure is the creation of the Subsidy Oversight Council as a supervisory and recommendatory commission which will monitor exclusively the grant of tax incentives, government loan guarantees, debt condonation, and concessional loans. All government agencies, which are empowered to grant subsidies, will regularly report on such activities to the Council. The Council shall then summarize such reports and prepare its own Quarterly report to be published in at least six (6) national broad sheets.

THREE VERSIONS

A stronger Subsidy Corporation, a superbody on subsidies/incentives, was initially conceptualized. It would have full and direct allocative powers, similar to congressional appropriations, over incentive subsidies, thereby acquiring powers to direct and override the decisions of line agencies but within the parameters set by Congress for such subsidies.

A softer version was for a subsidy policy council, like the Agriculture Credit Policy Council (ACPC), which would focus mainly on conducting policy studies and recommending appropriate action to the Executive as well as Congress.

The proposed version seeks a Subsidy Oversight Council which would essentially monitor and report all grants of subsidies by the government agencies. However, it can recommend indicative

ceilings on subsidies or incentive ceilings for a certain economic activity as well as for the aggregate national level. It may also recommend presidential revocation of individual grant of incentive/subsidy.

ROLE OF TRANSPARENCY

The bill also gives economic flesh to Article III, Section 7 of the Constitution states that "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

Providing the people with the vital information on the incentive system and subsidy schemes to support and motivate socially desirable activities should enhance people's participation in government's economic policy directions. In this time of fiscal consolidation, it becomes more critical to devise a system of transparency to enable the public to know where government takes pile on what and where public welfare truly counts.

This measure will encourage prudential behavior among public institutions. It re-establishes the link of public accountability in governance by enabling the public to check government's commitments along with its excesses. Inasmuch as government intervention is supposedly welfare enhancing, transparency reinforces this maxim to all levels of understanding and possibly disrupts tendencies for rent seeking activities.

Based on the foregoing considerations, approval of this measure is urgently sought.



JOEY SARTE SALCEDA

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

House Bill No. 129

Introduced by Representative **JOEY SARTE SALCEDA**

AN ACT
CREATING THE SUBSIDY OVERSIGHT COUNCIL AND PROVIDING THE RULES FOR
A RATIONAL MANAGEMENT OF THE GOVERNMENT SUBSIDY SYSTEM

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

SECTION 1. *Title.* This Act shall be known as "The Subsidy Oversight Council Act of 2004."

SEC. 2. *Declaration of Policy.* - It is the policy of the State to ensure transparency and equity in all of its functions of governance, enterprise and regulation in order to build full public trust and confidence in the pursuit of national economic development.

SEC. 3. *Definition.* - For purposes of this Act, the term subsidy shall refer to the following:

(a) reasonable estimates of foregone government revenues arising from tax incentives, such as but not limited to duty-free importation of capital equipment and raw materials, tax credits, tax holidays, tax breaks and tax shields arising from accelerated depreciation of fixed assets and net operating loss carry over (NOLCO), granted by the government agencies such as but not limited to the Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), the Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Special Economic Zone Authority (CSEZA), the Zamboanga Special Economic Zone (ZSEZA), all existing Special Economic Zones (SEZ) and those created under Republic Act No. 7916; and

the Department of Finance (DOF). This shall include the incremental interest costs or foregoing interest income arising from such revenue losses;

(b) foregone income arising from debt condonation, debt restructuring, debt moratorium and concessional loans granted by government financial institution (GFIs) such as but not limited to the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP) and the Philippine National Bank (PNB). This includes the revenue or cost impact of the Sugar Restitution Law. It shall also cover the costs of concessional debt accommodations granted by the National Electrification Administration (NEA) to electric cooperatives, the National Irrigation Administration (NIA) to irrigators' associations, the Cooperative Development Authority (CDA) to cooperatives, the Department of Trade and Industry (DTI) under the Tulong-sa-Tao and similar programmes as well as all other concessional loans made by non-financial government agencies;

(c) the foregone interest income or additional interest costs arising from advances and other accommodations by the Bangko Sentral ng Pilipinas (BSP) on bailouts of private and government financial institutions which shall be computed on the outstanding balance and the difference between the average overnight lending rate of the BSP and the interest rate on the accommodation during the period covered;

(d) costs arising from government loan guarantee granted by government agencies such as but not limited to the Small Business Guarantee and Finance Corporation (SBGFC), Guarantee Fund for Small and Medium Enterprises (GFSME) and the Quedan and Rural Credit Guarantee Corporation (QUEDANCOR) which shall be computed as premium revenues and recoveries less costs of operations and net reimbursements/payments to participating private and government banks;

(e) the actual cost of servicing loans guaranteed by the National Government or its agencies for such cases as Philippine Phosphate Fertilizer Corporation and the Philippine Associated Smelting and Refining Corporation;

(f) the implied cost national government (NG) guarantees for loans incurred by government-owned and operated corporations (GOCCs), particularly the National Power Corporation (NAPOCOR), including and other acquired/sequestered firms which shall be computed on the outstanding contingent liability and the difference between the average Philippine Interbank Offering Rate (Phibor) for the period and the average carrying interest rates for peso-

denominated loans and the difference between average yields on comparable instruments of the domestic private enterprises and the carrying interest rates for foreign-denominated loans;

(g) direct or indirect costs to government, particularly on sovereign guarantees, on Build-Operate-Transfer projects as provided under Republic Act No. 7718 as amended or the BOT Law;

(h) all other forms of subsidy which may be defined or identified by the Subsidy Oversight Council, as herein constituted.

SEC. 4. *Transparency.* - All government agencies shall submit a quarterly report to the Subsidy Oversight Council on all subsidies, as defined by this Act or as may be considered by the agency as constituting a subsidy, granted either to public or private corporations, their affiliates, branches, and other entities directly or indirectly controlled by them. The Council shall submit to the President a Quarterly Subsidy Oversight Report summarizing all subsidies granted by the entire government bureaucracy within the period. The Council shall cause the publication of each quarterly report in at least six (6) newspapers of general circulation. The Annual Subsidy Oversight Report shall cover its fourth quarter operations and a copy shall be submitted to Congress.

SEC. 5. *Subsidy Oversight Council.* - To carry out the objectives of this Act, there is hereby created an independent Subsidy Oversight Council which shall have the following powers and authority:

(a) To monitor all subsidies and other incentive programs being granted by the government benefiting both private and public entities;

(b) To provide the rules, regulations and the procedures for the reporting of the grant of subsidies;

(c) To analyze, report and recommend policies, on the aggregate level and sectoral allocation of government subsidies, to the President, the Congress as well as to pertinent government agencies;

(d) To develop an annual as well as a 6-year subsidy strategy in coordination with the National Economic and Development Authority (NEDA), the Department of Finance (DOF), the Department of Trade and Industry (DTI) after consultations with the representatives of the private sector and non-government organizations;

- (e) To recommend indicative ceilings, in coordination with NEDA and in consultation with the concerned agency, on the amount of subsidies that may be granted under a programme for a particular economic activity and to seek clarification from the concerned agency when such ceilings are substantially exceeded;
- (f) To recommend to the President the suspension or revocation of an individual grant or an entire program of subsidy by any government agency as may be considered, after proper deliberations and consultation, unreasonable and inappropriate to public policy by the Council;
- (g) To set and implement a system of negative clearance or other voluntary compliance mechanisms for government agencies and their constituent firms;

SEC. 6. *Composition.* - The Council shall be composed of a Chairman, a Vice-Chairman and five (5) members who shall be appointed by the President with the consent of the Commission on Appointments.

SEC. 7. *Qualification.* - The Chairman and his members shall be natural born citizens of the Philippines, at least forty (40) years of age, of recognized probity and integrity and competence in the field of law, economics finance, banking, commerce, industry, and/or consumer welfare and must not have been a candidate for an elective national or local office in the immediate preceding election, whether regular or special.

SEC. 8. *Term of Office.* - The Chairman and his members shall serve for a period of seven (7) years without reappointment. The Chairman first shall be appointed for seven (7) years; the Vice-Chairman and one (1) member first appointed shall serve for a period of five (5) years; and four (4) members first shall serve for a period of three (3) years, without reappointment. In the event a vacancy occurs during the incumbency of any Member, such vacancy shall be filled only for the unexpired portion of the term.

In no case shall the Chairman or any of his members be designated or appointed in a temporary or acting capacity.

SEC. 9. **Rank and Salary.** - The members of the Council shall have the same rank, privileges and salaries as the Chairman and members of a constitutional commission. Their salaries shall not be decreased during their term of office.

SEC. 10. **Prohibitions and Disqualification.** - The Chairman, the council members and the Executive Director shall not during their tenure, directly or indirectly, practice any profession, participate in any business, or be financially interested in any business or be financially interested in any contract or any franchise, or special privilege granted by the government or any subdivision, agency or instrumentally thereof, including government owned and controlled corporation or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of office. They shall not be qualified to run for any office in the election immediately preceding their cessation from office. They shall not be allowed to appear or practice before the Council for two (2) years following their cessation from office.

SEC. 11. **Meetings; Notice; Quorum.** - The Council shall meet as often as may be necessary on such days as the Chairman or his absence a majority of the members may fix. The notice of meeting shall be given to all members at least three (3) days before the scheduled date of the meeting. The presence of at least four (4) shall constitute a quorum. In the absence of the Chairman, the Vice-Chairman shall act as the presiding officer of the meeting.

SEC. 12. **Secretariat.** - To assist the Council in the implementation of this Act there will be a Secretariat with a staff and personnel to be determined by the Council in coordination with the Department of Budget and Management (DBM) and subject to the approval of the President. This would include at least ten (10) policy analysts. The Secretariat shall be headed by an Executive Director who shall be appointed by the President, upon the recommendation of the Council Chairman, and shall have the rank of an Assistant Secretary. He shall act as the Secretary of the Council and shall be responsible for the effective implementation of the policies, rules and standards promulgated by the Council; to coordinate and supervise the activities of the different operating units; to report to the Chairman the operations of such units and to perform such functions as may be assigned to him by the Chairman or the Council.

SEC. 13. **Penalties.** - Imposition of Administrative Fines. - Failure to comply with the provisions of the Act shall mean imposition of Administrative fines in such amount deemed reasonable

by the Council, which, in case of an official of a government agency, shall not be less than Three Hundred Thousand Pesos (300,000.00) nor more than Five Hundred Pesos (500,000.00) and other administrative penalties as provided for under the Administrative Code of 1987.

SEC. 14. *Appropriations.* - The amount necessary to carry out the provisions of this act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 15. *Repealing Clause.* - All laws, decrees, orders, rules, and regulations and all others issuance or parts thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SEC. 16. *Separability Clause.* - If any part or provision of this Act is held unconstitutional or invalid, other parts or provision hereof which are not affected thereby shall remain in full force and effect.

SEC. 17. *Effectivity Clause.* - This act shall take immediately upon publication in the Official Gazette or at least two (2) newspapers of general circulation approved.

Approved,