

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Twentieth Congress
Second Regular Session

HOUSE BILL NO. 11108



Introduced by **REPRESENTATIVE CHEENO MIGUEL D. ALMARIO**

EXPLANATORY NOTE

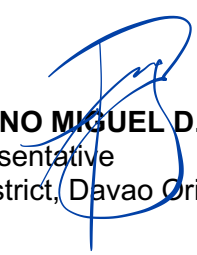
Delicadeza is a Spanish word which means “delicateness, fineness or tact, or showing regard for the feelings of others, or sensitive in action or operation.” However, in Filipino culture, it is the character of holding oneself into a higher moral and ethical standard which is a burden of a public office. For the longest time in Philippine politics, delicadeza is no longer the standard. Rather, it is considered as a nuisance, an unwanted word word shall be kept out of the spotlight.

Delicadeza should not only extend to public officials but also to their relatives. The past couple of months highlighted the outrageous luxury that these contractors possess. If they are so comfortable at public flaunting their wealth, then they must also be held accountable over how they made these luxuries. They shall be held into the same moral and ethical standards which public officials are being held to account.

Under Section 79 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, no person shall be appointed in the career service of the local government if he or she is related to the appointing authority within the fourth civil degree of consanguinity or affinity.

The proposed bill barring relatives within the 4th civil degree in from participating in government contracts is consistent with the policy against nepotism already recognized under Local Government Code. If the existing law prohibits an appointing authority from favoring a relative within the fourth civil degree in public employment, then there is a similar, if not stronger, reason to prohibit public officials from participating in, approving, recommending, or awarding government contracts where the contractor, supplier, beneficial owner, incorporator, officer, or controlling stockholder is related to them within the same prohibited degree.

No longer shall relatives of public officials make money out of government contract. This bill seeks to disqualify them from making money out of the hard-earned tax money of Filipinos.


CHEENO MIGUEL D. ALMARIO
Representative
2nd District, Davao Oriental

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Twentieth Congress
Second Regular Session

HOUSE BILL NO. 11108

Introduced by **REPRESENTATIVE CHEENO MIGUEL D. ALMARIO**

AN ACT
DISQUALIFYING RELATIVES OF PUBLIC OFFICIALS WITHIN THE FOURTH
CIVIL DEGREE OF CONSANGUINITY OR AFFINITY FROM PARTICIPATING
IN GOVERNMENT CONTRACTS

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

1 **SECTION 1. Short Title.** - This Act shall be known as the “*Delicadeza Act*.”

2 **SEC. 2. Declaration of Policy.** - It is hereby declared the policy of the State to
3 uphold the highest standards of integrity, transparency, accountability, impartiality,
4 and fairness in all government procurement and contracting activities. Public office
5 is a public trust. Towards this end, the State shall adopt proactive measures to
6 prevent actual, potential, or perceived conflicts of interest arising from familial
7 relationships between public officials and private entities participating in
8 government contracts, safeguard public resources, and strengthen public trust in
9 government transactions.

10 **SEC. 3. Definition of Terms.** - As used in this Act:
11

12 (a) “*Beneficial Owner*” refers to a natural person who ultimately owns, controls, or
13 exercises ultimate effective control over the management or policies of a juridical
14 entity. An individual shall be considered a beneficial owner from the time such
15 individual qualifies under any of the following categories:

- 1
- 2 (i) Category A (Ownership) - Natural person owning, directly or indirectly
- 3 through a chain of ownership, at least twenty percent (20%) of the voting
- 4 rights, voting shares, or capital of the entity;
- 5
- 6 (ii) Category B (Contractual Control) - Natural person who exercise control over
- 7 the entity through any contract, understanding, relationship, intermediary, or
- 8 tiered entity;
- 9
- 10 (iii) Category C (Board Election Power) - Natural person having the ability to
- 11 elect a majority of the board of directors/trustees, or any similar body, of the
- 12 entity;
- 13
- 14 (iv) Category D (Dominant Influence) - Natural person having the ability to exert
- 15 dominant influence over the management or policies of the entity;
- 16
- 17 (v) Category E (Direction of Board) - Natural person whose directions,
- 18 instructions, or wishes in conducting the affairs of the entity are carried out
- 19 by a majority of the board members;
- 20
- 21 (vi) Category F (Property Stewardship) - Natural person acting as stewards of
- 22 properties of the entity, where such properties are under the care
- 23 or administration of said natural person;
- 24
- 25 (vii) Category G (Nominee Arrangements) - Natural person who actually own or
- 26 control the entity through nominee shareholders or nominee directors acting
- 27 for or on behalf of such natural persons;
- 28
- 29 (viii) Category H (Other Control Mechanisms) - Natural person ultimately owning
- 30 or controlling or exercising ultimate effective control through other means not
- 31 falling under any of the foregoing categories including substantial benefits
- 32 such as exclusive use of the entity's assets, receipt of profits and liquidating
- 33 dividends, among others;

1
2 (ix) Category I (Senior Management) - Natural person exercising control through
3 senior management positions within the entity. This category is applicable
4 only when no natural person is identifiable under Categories A through H after
5 exhausting reasonable means of identification. If there are multiple persons
6 in the same level of seniority, all such persons shall be identified as beneficial
7 owners.
8

9 (b) “*Corporate Officer*” refers to the president, treasurer, secretary, compliance
10 officer, or such other officers as may be provided in the bylaws of a juridical entity
11 in accordance with Republic Act No. 11232 or the Revised Corporation Code of
12 the Philippines;
13

14 (c) “*Covered Public Officials and Personnel*” refers to the Head of the Procuring
15 Entity (HOPE); members of the Bids and Awards Committee (BAC), Technical
16 Working Group (TWG), and BAC Secretariat; the head of the Project Management
17 Officer or the End-Used Unit or Implementing Unit; project consultants and
18 procurement agents, whichever is applicable; and other elective or appointive
19 officials and personnel of the Procuring Entity who have direct participation in,
20 authority over, access to information on, or ability to influence the procurement
21 activity concerned;
22

23 (d) “*Local Agency*” refers to a local government or a distinct unit therein.
24

25 (e) “*Government Contract*” refers to any agreement between a private entity and
26 any local agency involving: (1) goods and services; (2) infrastructure projects; (3)
27 consulting services; (4) joint ventures; (5) public-private partnership projects; (6)
28 subcontracting, consortium, or similar business arrangements connected to
29 government projects; and (7) any analogous undertaking where public funds or
30 public property are involved;

(f) “*Relative*” refers to any person related to a covered public official or personnel within the fourth civil degree of consanguinity or affinity.

SEC. 4. Disqualification on the Basis of Relationship. - Notwithstanding any provision of law to the contrary, relatives within the fourth civil degree of consanguinity or affinity of any covered public official or personnel shall be prohibited from directly or indirectly participating in, entering into, benefitting from, or performing any government contract or from engaging in subcontracting, consortium, joint venture, or other similar business arrangements for the performance of any government contract. Provided, That such prohibition shall apply only when the covered public official or personnel and the relative concerned are related within prohibited degree and the government contract is to be performed within the province where the covered public official or personnel holds office or exercises jurisdiction.

The prohibition shall likewise apply to corporations, partnerships, associations, cooperatives, joint ventures, or other juridical entities where such relatives:

(a) are beneficial owners;

(b) hold controlling interests or management positions;

(c) serve as corporate officers or members of the board of directors or trustees; or

(d) directly or indirectly benefit from the government contract.

The disqualification shall apply throughout the tenure of the covered public official or personnel and for a period of three (3) years after separation from office.

SEC. 5. Scope and Application. - This Act shall apply to all government contracts entered into by the Procuring Entity where the covered public official or personnel has direct role in, or influence over, the procurement activity concerned, including

1 subcontracting, consortiums, joint ventures, and similar business arrangements
2 related to government projects.

3
4 *Provided*, That this Act shall not apply to contracts that are highly technical,
5 proprietary, exclusive, or confidential in nature, where exclusion is necessary to
6 protect public interest, as determined by the Procuring Entity or implementing
7 agency concerned.

8
9 *Provided, further*, That the exemption shall not apply where fraud, manifest
10 partiality, evident bad faith, or gross inexcusable negligence is present.

11
12 **SEC. 6. Conflict of Interest and Recusal.** - Covered public officials and personnel
13 shall have a continuing obligation to disclose any relationship within the prohibited
14 degree and shall immediately recuse themselves from any participation,
15 recommendation, approval, supervision, or decision-making process involving any
16 government contract where such relationship exists.

17
18 **SEC. 7. Mandatory Disclosure and Sworn Certification.** - (a) All bidders,
19 proponents, contractors, and private entities seeking to enter into any government
20 contract shall submit, as a mandatory requirement for eligibility, a sworn
21 certification under oath declaring that neither they nor their beneficial owners,
22 corporate officers, board members, trustees, or partners are related within the
23 prohibited degree to any covered public official or personnel;

24
25 (b) Covered public officials and personnel shall disclose annually, through their
26 Statements of Assets, Liabilities and Net Worth (SALN) or through such forms as
27 may be prescribed under the Implementing Rules and Regulations, the names of
28 relatives within the prohibited degree who have existing, pending, or prospective
29 government contracts;

30
31 (c) Any material misrepresentation, concealment, or omission in the required
32 disclosures or sworn certifications shall constitute grounds for automatic

1 disqualification, blacklisting, termination of contract, and the filing of appropriate
2 administrative, civil, and criminal actions.

3
4 **SEC. 8. Responsibilities of Private Entities.** - Private entities participating in
5 government contracts shall bear the continuing responsibility to ensure compliance
6 with this Act throughout the duration of the contract.

7
8 In the event that any beneficial owner, corporate officer, director, trustee, or partner
9 of the private entity subsequently becomes related within the prohibited degree to
10 a covered public official or personnel, the private entity shall disclose such
11 relationship within fifteen (15) days from discovery thereof and undertake the
12 necessary divestment, resignation, or corrective action within a reasonable period
13 to be prescribed by the Implementing Rules and Regulations.

14
15 **SEC. 9. Conflict-of-Interest Registry and Oversight.** - The GPPB, in
16 coordination with the Civil Service Commission (CSC), Commission on Audit
17 (COA), Department of the Interior and Local Government (DILG), Governance
18 Commission for GOCCs (GCG), and the PPP Center, shall establish and maintain
19 a centralized electronic Conflict-of-Interest Registry within one (1) year from the
20 effectivity of this Act.

21
22 The Registry shall contain:

- 23
24 (a) the names of covered public officials and personnel;
25
26 (b) the names of their relatives within the prohibited degree;
27
28 (c) disclosures relating to beneficial ownership; and
29
30 (d) records of contracts, bids, negotiations, and procurement activities
31 involving such persons or entities.
32

33 The Registry shall be in accordance with Republic Act No. 10173, otherwise known
34 as the Data Privacy Act and shall be published and accessed based on the
35 implementing rules and regulations to be issued by the GPPB.

1
2 **SEC. 10. Penalties.** - (a) Any public official or personnel who knowingly allows,
3 facilitates, approves, or participates in a government contract in violation of this Act
4 shall suffer:

- 5
6 (1) imprisonment of six (6) years and one (1) day to twelve (12) years;
7 (2) a fine of not less than Five Hundred Thousand Pesos (Php500,000.00)
8 but not more than Two Million Pesos (Php2,000,000.00);
9 (3) dismissal from service, forfeiture of benefits, and perpetual disqualification
10 from holding public office; and
11 (4) prosecution under Republic Act No. 3019, Republic Act No. 6713,
12 Republic Act No. 12009, and other applicable laws.

13
14 (b) Any private individual or juridical entity that knowingly enters into or benefits
15 from a government contract in violation of this Act shall suffer:

- 16
17 (1) imprisonment of one (1) year to three (3) years for responsible officers
18 pursuant to Section 171 of Republic Act No. 11232, otherwise known as the
19 Revised Corporation Code of the Philippines;
20 (2) a fine of not less than One Hundred Thousand Pesos (Php100,000.00);
21 (3) perpetual disqualification from participating in any government
22 procurement activity, public-private partnership, or joint venture; and
23 (4) forfeiture of bid securities, performance bonds, and termination of the
24 government contract.

25
26 (c) Juridical entities found liable under this Act may, in addition, be subject to
27 dissolution or revocation of corporate registration in accordance with law.

28
29 **SEC. 11. Transitory Provision.** – Government contracts validly executed prior to
30 the effectivity of this Act shall remain valid and enforceable. The disqualification of
31 parties under this Act shall apply prospectively and shall not impair rights,
32 obligations or remedies available under the law. However, renewals, extensions,

1 amendments, or modifications thereof after the effectivity of this Act shall be
2 subject to its provisions.

3
4 **SEC. 12. Relation to Other Laws.** - The provisions of this Act shall be construed
5 in harmony with Republic Act No. 12009, Republic Act No. 3019, Republic Act No.
6 6713, and other procurement and anti-graft laws. In case of irreconcilable conflict,
7 the provisions of this Act shall prevail.

8
9 **SEC. 13. Implementing Rules and Regulations.** - Within sixty (60) days from the
10 effectivity of this Act, the GPPB, DILG, GCG, CSC, and COA, in consultation with
11 PPP Center and other concerned government agencies, shall jointly promulgate
12 the necessary rules and regulations for the effective implementation of this Act.

13
14 **SEC. 14. Separability Clause.** - If any provision of this Act is declared
15 unconstitutional or invalid, the remaining provisions not affected thereby shall
16 remain in full force and effect.

17
18 **SEC. 15. Repealing Clause.** - All laws, decrees, executive orders, rules and
19 regulations, and other issuances or parts thereof inconsistent with the provisions
20 of this Act are hereby repealed, amended, or modified accordingly.

21
22 **SEC. 16. Effectivity.** - This Act shall take effect fifteen (15) days after its complete
23 publication in the Official Gazette or in a newspaper of general circulation.

24
25 Approved,