

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 3877

Introduced by BAYAN MUNA Rep. CARLOS ISAGANI T. ZARATE

AN ACT
AMENDING PRESIDENTIAL DECREE NO. 910,
ENTITLED "CREATING AN ENERGY DEVELOPMENT BOARD,
DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS,
THEREFOR, AND FOR OTHER PURPOSES" AND MANDATING THE
TRANSFER OF MALAMPAYA FUNDS TO THE GENERAL FUND SUBJECT TO
CONGRESSIONAL APPROPRIATION FOR THE PURPOSE OF
RENATIONALIZING THE COUNTRY'S POWER AND ENERGY INDUSTRY

EXPLANATORY NOTE

The Malampaya Contract has been criticized as a disadvantageous agreement between the Philippine Government and the big oil companies represented by Shell and Chevron. Bayan Muna Rep. Neri J. Colmenares in June 2012 exposed through a Privilege Speech the anomalies in this contract, which in essence defrauded the Philippine Government in terms of profit sharing, as will be briefly explained below. The contract practically favors Shell and Chevron at the expenses of the Filipino people. Other than the "sweetheart deal" that is the Malampaya Contract, the Malampaya fund was subject to various anomalous disbursements. It is a lump sum amount in a special account the disbursement of which is subject solely to the president's discretion, which makes its disbursements very vulnerable to corruption and patronage politics.

The object of this House Bill will touch on the government misuse and abuse of the revenues collected from this contentious and highly profitable Malampaya Contract, which misuse and abuse principally springs from the unfettered presidential discretion over the funds. Presidential Decree (PD) No. 910 promulgated during the Marcos regime authorizes the to use the funds not only to finance energy resource development and exploitation programs and projects, but also for such other purposes as may be directed by the President.

Because of these facts, the Makabayan bloc is prompted to put a stop to the presidential power over this fund by repealing the presidential decree gives sole power to the to use these

funds, and recommends that the income collected by the Department of Energy (DOE) from its service contractors be taken up as income of the General Fund pursuant to EO No. 292 and PD 1445, which would make the proceeds part of the national treasury and become once and for all subject to congressional scrutiny so that it could be allocated to the most important needs of the people including basic social services for health and education.

This was in fact the recommendation of the Commission on Audit (COA) as early as 2011 when it publicly stated that:

“It would be favorable to the government if subject funds were transferred to the unappropriated surplus and made available for appropriation by the Congress of the Philippines. This will not only augment depleting funds of the National Government and greatly ease current financial pressures but will also facilitate the fair allocation of resources to agencies in accordance with their identified plans/programs/activities,” the COA said.

From 2002 to 2009, the MNGP project generated gross proceeds of US\$8,920.26 Million from which cost recovery worth US\$3,221.03 Million was deducted and yielded net proceeds of US\$5,699.23 Million. In 2014, the Malampaya fund has accrued a total of P173 Billion but the Department of Energy admitted during the deliberation of their 2014 budget that only P132 Billion of the fund remains. According to Marites Vitug “This whopping amount is unimaginable to many government departments: 30 times more than the budget of the energy department (P4.5 billion), 8 times more than the judiciary budget (P15 billion), and 6 times more than the agrarian reform department budget (P21 billion)”.

In its 2010 Annual Report, the Commission on Audit (COA) observed that out of the total releases to NGAs, only P250 Million or 1.27% were given to DOE while P19.39 Billion or 98.73% were given to other agencies for other purposes not related to energy.

No.	Name of Agency	Total amount released
1	DA	P5,824,000,000.00
2	DAR	900,000,000.00
3	Dept. of Science & Technology - PAG-ASA	400,000.00
4	Dept. of Finance – National Housing Authority	1,398,860,000.00
5	DPWH	7,073,806,659.00
6	DBM	62,000,000.00
7	Dept. National Defense	1,198,093,418.00
8	DILG	2,140,000,000.00
9	DOTC – Philippine Coast Guard	50,000,000.00
10	Dept. of Health	745,926,000.00
11	DOE	250,000,000.00
12	Province of Palawan	3,958,508,492.51
	TOTAL RELEASES AS OF Dec. 31, 2010	P23,601,594,569.51

Source: COA Memorandum June 27, 2011

COA in the 2010 Annual Report further observed that the fund allocation were solely determined by the Executive Department and made through Administrative Orders, Executive Orders and other presidential directives.

This prompted COA to recommend, as early as 2010, that the provisions of PD No. 910 be revisited, and that the income collected by the DOE from its Service Contractors be taken up as income of the General Fund pursuant to EO No. 292 and PD 1445, which respectively provides:

Sec. 44, Chapter 5, Book VI of EO 292:

“All income accruing to the departments, offices and agencies by virtue of the provisions of existing laws, orders and regulations shall be deposited in the National Treasury or in the duly authorized depository of the Government.”

Sec. 65 of PD 1445:

“Unless otherwise specifically provided by law, income accruing to the agencies by virtue of the provisions of law, orders and regulations shall be deposited to the National Treasury or in any duly authorized government depository and shall accrue to the unappropriated surplus of the General Fund of the Government.”

A look at how former President Gloria Macapagal-Arroyo dispensed with the Malampaya funds from 2002-2010 is aptly described by an audit report of the Department of Energy itself in 2010:

“Analysis of the fund releases from SAGF-Malampaya Funds revealed that, out of the P19.643 Billion released to national government agencies, only P250 Million or 1.27% represented release to DOE for electrification of 211 barangays while P19.393 Billion or 98.73% was released to other national government agencies for various purposes other than exploration, development and exploitation of energy resources. Further, huge increasing balances of the fund with year-end balance amounting to P77.187 Billion, for Malampaya alone, remained continuously idle for the past 8 years.”

President Arroyo handed out projects to various districts of her allies totaling about P7.094 Billion through the Department of Public Works and Highways (DPWH), all in 2009 just before the 2010 elections. Where these went and how they were spent, or whether the projects were ghost projects remain unclear until now.

This abuse is highlighted by the fact that in one year alone (2009) 138 Statements of Allocation and Release Order (SARO) were released to the DPWH for non-energy related expenses amounting to P7,094,806,659.00 Billion. This will swell up to P8.003 Billion if we include the DPWH SAROS amounting to P909 Million released for the first and second districts of Palawan in 2006-2008.

Meanwhile, a huge amount of the funds have been released for Palawan as early as 2006 through the provincial government, the city government, DPWH and Department of Transportation and Communication (DOTC) in the total amount of P3.961 Billion broken down as follows:

P1.6 Billion - Philippine National Police (PNP) and another for

P 540 Million - PNP

P2.140 Billion - Department of the Interior and Local Government (DILG)-PNP

The **P2.14 Billion** given to DILG-PNP was for “disaster preparedness” which according to reports were spent on rubberized boats and other overpriced projects in 2009. This was exposed during the budget deliberation of the DILG in the 2012 budget upon the interpellation of Bayan Muna. Then DILG Secretary Jesse Robredo promised an immediate investigation during the plenary when he cannot explain how or where these funds were spent. No information was given for the same up until now.

The Department of Agriculture (DA) was given a lump sum amount of P5.82 Billion for again, a vague purpose called the “Agricultural Guarantee Fund” and to “rehabilitate areas affected by typhoon Ondoy and Pepeng.”

The Department of Agrarian Reform (DAR) was given a lump sum amount of P900 Million, again for the vague purpose of giving “*support services to Agrarian Reform Communities (ARC) as assistance in the recovery of losses/damages brought about by typhoons Ondoy & Pepeng.*”. The P 900 Million was reportedly siphoned to the fake NGOs and non-existent beneficiaries of Janet Lim-Napoles,

The DND also managed to get P1 Billion for its modernization fund in 2009, again, just before the election. Strangely, there is no SARO number for this account because according to the DOE, no SARO was found on the records. Another P198 Million was spent to buy a “generator set” and repair the roofs and structures of the Philippine Military Academy.

President Aquino continued the practice in 2011 after he assumed the presidency. According to the records, so far, he disbursed the Malampaya fund in the following projects:

- (1) Lump sum given to the National Power Corporation (NPC) - P2 billion
- (2) Lump sum for the Public Transport Assistance Program (PTAP) - Pantawid Pasada, P300 million
- (3) Another Lump sum for PTATP - Pantawid Pasada, P150 million
- (4) Acquisition of US Coast Guard Cutter Hamilton, P423,063,900
- (5) Fuel requirement, lease/rental and half of capital expenditures requirements of NPC-SPUG, P1,624,500,000
- (6) Given to the AFP-DND P4,954,580,167
- (7) Sitio Electrification Project, P814,411,357
- (8) Payment for NPC's short term loan facility P3 billion
- (9) Barangay Line Enhancement Projects, P1,108,245,890
- (10) Transfer, dry-docking and hull maintenance costs of Coast Guard Cutter ship, P880,615,176

According to Deputy Spokesperson Abigail Valte admitted that Pres. Aquino has actually disbursed P 15,255,416,490 Million in his three years in office or P5 Billion each year, so much more than Pres. Arroyo's average Malampaya spending of P2.4 Billion per year.

Commission on Audit (COA) Chairperson Grace Pulido-Tan revealed, during a 2014 Senate Committee hearing regarding the use of Malampaya, that among the agencies where there were red flags were the Dept. of Agriculture which received P5.8 billion in 2008 and 2009; the Dept. of Public Works and Highways, P7.6 billion in 2009; and the Dept. of Interior and Local Government with P2.3 billion received in 2009 and 2011.

Agrarian Reform Secretary Virgilio de los Reyes also revealed that an in-house review showed that P900 Million from the operation of gas and oil fields in the waters off Palawan province coursed through his department in 2009 went to ghost projects of businesswoman Lim-Napoles. The DAR component is included in the COA special audit. De los Reyes said that the P900 Million meant for victims of Tropical Storms “Ondoy” and “Pepeng” in 2009 in agrarian reform communities in 97 municipalities had gone instead to Lim-Napoles’ 12 NGOs.

For all the anomalies and irregularities related to the use and abuse of the Malampaya Fund, some of which have just been recently uncovered and others have yet to be disclosed, such a Special Fund is clearly vulnerable to abuse because of the law that grants the President authority to spend the funds even beyond the ambit of energy and at his whim. It is also a clear violation of the constitutional power of Congress over the purse because said funds are disbursed without the approval or knowledge of Congress.

As it stands, Malampaya has about P167.8 billion of accounting balance, and according to the Bureau of Treasury, the fund is growing at an estimate of P2 billion a month in recent years, and this income, according to former National Treasurer and now Department of Education Secretary Leonor Briones, as long as we are using electricity, shall have no end. With such income stream, it is but necessary that the funds coming from the gas exploration project be put into appropriate use, and be subject to Congressional appropriation, in line with renationalizing and developing the country’s power and energy industries, through either buying back disposed assets related and vital to said renationalization.

It is time that a Martial Law decree crafted by the deposed President Ferdinand Marcos be put to an end. Thus, that provision in PD 910 granting the President sole authority to disburse energy related revenues must be struck down.

Approved,


Rep. CARLOS ISAGANI T. ZARATE
Bayan Muna Party-list

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 3877

Introduced by BAYAN MUNA Rep. CARLOS ISAGANI T. ZARATE

AN ACT
AMENDING PRESIDENTIAL DECREE NO. 910,
ENTITLED "CREATING AN ENERGY DEVELOPMENT BOARD,
DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS,
THEREFOR, AND FOR OTHER PURPOSES" AND MANDATING THE
TRANSFER OF MALAMPAYA FUNDS TO THE GENERAL FUND SUBJECT TO
CONGRESSIONAL APPROPRIATION FOR THE PURPOSE OF
RENATIONALIZING THE COUNTRY'S POWER AND ENERGY INDUSTRY

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

SECTION 1. *Policy.*—Public funds must be effectively and efficiently allocated for the actual needs of the people. It must be subject to the collective deliberation of communities, local government units and Congress instead of being solely left to the discretion of a single public official.

SECTION 2. *Amendment.*—Section 8 of Presidential Decree No. 910, entitled "Creating An Energy Development Board, Defining Its Powers And Functions, Providing Funds, Therefor, And For Other Purposes" is hereby amended to read as follows:

"SECTION 8. Appropriations. — The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall [form part of a Special Fund to be used to finance energy resource development and

exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President] **BE TRANSFERRED TO THE UNAPPROPRIATED SURPLUS OF THE GENERAL FUND AND SHALL BE APPROPRIATED BY CONGRESS FOR THE PURPOSE OF RENATIONALIZING AND DEVELOPING THE POWER AND ENERGY INDUSTRY."**

SECTION 3. *Repealing Clause.* – All laws, executive and administrative orders or parts thereof, inconsistent with any provision of this Act are hereby repealed or modified accordingly.

SECTION 4. This Act shall take effect after fifteen (15) days following the completion of its publication in the Official Gazette or in a national newspaper of general circulation.

Approved,