



**REPUBLIC OF THE PHILIPPINES  
CONGRESS OF THE PHILIPPINES  
SENATE**

# **Record of the Senate**

**FIRST REGULAR SESSION  
JULY 27 TO OCTOBER 14, 1992**

**VOLUME I, NOS. 1-28**

**SPECIAL SESSION  
NO. 1**

Prepared by the Debate Reporters Division  
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under the supervision of  
**SECRETARY ANACLETO D. BADOY, JR.**

# Table of Contents

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## PLENARY SESSIONS

Session No.		Page
1	Monday, July 27, 1992 .....	1
2	Tuesday, July 28, 1992 .....	25
3	Wednesday and Thursday, July 29-30, 1992 .....	39
4	Monday, August 3, 1992 .....	75
5	Tuesday, August 4, 1992 .....	109
6	Wednesday and Thursday, August 5-6, 1992 .....	139
7	Monday, August 10, 1992 .....	189
8	Tuesday, August 11, 1992 .....	219
9	Wednesday and Thursday, August 12-13, 1992 .....	243
10	Monday, August 17, 1992 .....	287
11	Tuesday, August 18, 1992 .....	323
12	Wednesday and Thursday, August 19-20, 1992 .....	349
13	Monday, August 24, 1992 .....	407
14	Tuesday, August 25, 1992 .....	435
15	Wednesday, Thursday and Monday, August 26, 27 and 31, 1992 .....	463
16	Monday and Tuesday, August 31 and September 1, 1992 .....	507
17	Tuesday, September 1, 1992 .....	561
18	Wednesday and Thursday, September 2-3, 1992 .....	603

19	Friday, September 4, 1992 .....	707
20	Monday, September 28, 1992 .....	819
21	Tuesday, September 29, 1992 .....	855
22	Wednesday and Thursday, September 30 and October 1, 1992 .....	893
23	Monday, October 5, 1992 .....	941
24	Tuesday, October 6, 1992 .....	965
25	Wednesday and Thursday, October 7-8, 1992 .....	989
26	Monday, October 12, 1992 .....	1035
27	Tuesday, October 13, 1992 .....	1065
28	Wednesday and Thursday, October 14-15, 1992 .....	1097

### SPECIAL SESSION

#### Session No.

1	Thursday, Friday, Monday and Tuesday, September 17, 18, 21 and 22, 1992 .....	719
---	--	-----

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In this connection, too, it is my privilege to know and inform that the President of whom President Aquino spoke has an unpublished manuscript for a book on his economic policies and views entitled, "Building Prosperity for the Greatest Number."

We conclude the sponsorship of our bill with a quotation from this manuscript to which we subscribe.

Under our constitutional system, the Executive and Legislative share the common responsibility for administering the affairs of the nation as well as providing the guidance, service and leadership required by our democratic way of life.

In view of this constitutional scheme of collective responsibility, we submitted to Congress at the beginning of our term a blueprint for national development known as the Five-Year Integrated Socio-economic Development Program. By this program we address ourselves specifically to the three-fold objective of accelerating the development of our economy, improving the living conditions of our people, and providing a strong basis for dynamic growth.

We can say with sincerity that the decisions of the administration have been solely guided by considerations of public welfare. We have not hesitated to cross party lines in the appointment of individuals to vital office when it was deemed that the general public should profit from the merits of these individuals. In conformity with the traditional features of a democratic society we have necessarily to stand on the platform of a definite political party but we have also pledged the commitment of this party not to a group or an institution but to the well-being of the whole Filipino nation.

We appeal to the patriotism of all leaders and people to act in concert and cooperation, to continue the tasks that have already been done in the interest of all and to join the government in the implementation of those projects and programs necessary to national growth and development. Political parties, if they are to be representative of the general will and interest, should not allow themselves to be divided on intentions that seek the betterment of human life in the national society.

Mr. President, it is in this spirit that we urge our Colleagues to approve Senate Bill No. 704 as incorporated in Committee Report No. 10 of the Committees on Economic Affairs and Finance.

Thank you, Mr. President.

#### SUSPENSION OF THE SESSION

The President. The session is suspended, if there is no objection. [*There was none.*]

*It was 6:31 p.m.*

#### RESUMPTION OF THE SESSION

*At 6:36 p.m., the session was resumed.*

The President. The session is resumed.

The Majority Leader is recognized.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 704

Senator Romulo. Mr. President, I move that we suspend consideration of Senate Bill No. 704.

The President. Is there any objection? [*Silence*] Hearing none, the motion is approved.

#### BILL ON SECOND READING Senate Bill No. 556 — OPSF Transfer

Senator Romulo. Mr. President, I move that we consider Senate Bill No. 556, as reported out under Committee Report No. 6.

The President. Consideration of Senate Bill No. 556 is now in order.

With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Senate Bill No. 556, entitled

AN ACT AUTHORIZING THE TRANSFER OF FIVE (P5B) BILLION PESOS FROM THE OIL PRICE STABILIZATION FUND (OPSF) TO THE NATIONAL TREASURY FOR THE PURPOSE OF FINANCING POWER PROJECTS OF THE GOVERNMENT.

*The following is the full text of Senate Bill No. 556:*

#### EXPLANATORY NOTE

One of the primary causes considered by economic experts to have hindered the economic growth of the country is the insufficiency or inadequacy of power supply. The administration of former President Corazon C. Aquino has witnessed the worst power failures largely due to lack of power supply from the National Power Corporation

(NAPOCOR). Thus occurred regular brownouts lasting to as long as 10 hours daily. The effects of all these power shortages on the economic recovery efforts of the country were disasters by themselves in the sense that many manufacturing establishments relying on electric power from the NAPOCOR had to reduce their operation hours and, consequently, their production. Many laborers or employees had to be laid off as a consequence.

Moreover, the tragic situation brought about by the power crisis in the country has discouraged a lot of foreign and local investors, thereby frustrating the projected economic growth of the nation for the past six years. To meet this very serious problem, the previous administration had to resort to purchases of electric turbine generators to augment electric power by a few hundred megawatts. This scheme did not prove to be a permanent remedy inasmuch as after a brief period, many of these turbine generators have reportedly broken down or conked out.

There are many propositions on how to generate more electric power, such as building hydroelectric power plants and operating the Bataan Nuclear Power Plant.

All these plans, however, will need so much funding which the present government does not have. Foreign and domestic borrowings to raise the necessary funds for this purpose are being discouraged because of the enormous debts the previous government had contracted and incurred.

By way of solving this problem of funding, this bill is being introduced to authorize the transfer of at least Five Billion Pesos (P5,000,000,000.00) from the Oil Price Stabilization Fund (OPSF) which, based on the latest estimate, has a balance of no less than Nine Billion Pesos (P9,000,000,000.00) in order to use the same for financing the power projects of the government.

It is our submission that the proposed transfer of Five Billion Pesos (P5,000,000,000.00) from the Oil Price Stabilization Fund is justifiable in the light of the fact that on May 17, 1990, the Eighth Congress has passed Republic Act No. 6952, entitled An Act Establishing the Petroleum Price Standby Fund to Support the Oil Price Stabilization and Appropriate Funds Therefor.

As embodied in the Act, the amount of Five Billion Pesos (P5,000,000,000.00) was appropriated by Congress from the excess revenues coming from ad valorem tax and/or import duty on crude oil and finished petroleum products, among other things. It was a Congressional act to meet the projected increase in the price of imported crude oil and the adjustment of exchange rate in order to prevent further increases in the prices of gasoline and other petroleum products.

Now that the price of crude oil in the international market is down and has remained as such for sometime now,

and considering the growing strength of Philippine Peso vis-a-vis the US Dollar, the chance that the price of gasoline and other petroleum products will increase in the near future is almost nil. Consequently, it is but fair and just that the Five Billion Pesos (P5,000,000,000.00) appropriated for the Petroleum Price Standby Fund under RA No. 6952 be returned and transferred to the National Treasury for the use of the National Government in solving the power problems which is the main objective of this bill.

In view of the foregoing, the immediate approval of this Bill is hereby requested.

**AN ACT AUTHORIZING THE TRANSFER OF FIVE (P5B) BILLION PESOS FROM THE OIL PRICE STABILIZATION FUND (OPSF) TO THE NATIONAL TREASURY FOR THE PURPOSE OF FINANCING POWER PROJECTS OF THE GOVERNMENT**

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

**SECTION 1.** The sum of Five Billion Pesos (P5,000,000,000.00) out of the Oil Price Stabilization Fund is hereby authorized to be transferred to the General Fund in the National Treasury for the purpose of financing the power projects of the National Government.

**SEC. 2.** The Department of Finance and Department of Budget and Management shall prescribe the necessary rules and regulations to implement this Act.

**SEC. 3.** All laws, decrees, executive orders and rules and regulations which are inconsistent with the provisions of this Act are hereby considered repealed, amended or modified accordingly.

**SEC. 4.** This Act shall take effect immediately upon its approval.

**Senator Romulo.** Mr. President, I ask that the Senate President Pro Tempore be recognized for the sponsorship speech.

**The President.** The Senate President Pro Tempore is hereby recognized.

**SPONSORSHIP SPEECH OF SENATOR MACEDA**

**Senator Maceda.** Mr. President, if there is anything that 62 million Filipinos agree on is that, something has to be done about the brownout problem or, in a more technical term, the energy and power problem.

Mr. President, reams and reams of editorial column comment, as well as radio and television comment, has called for a fast track

solution to this problem. Many hours of emergency Cabinet and technical committee meetings have been expended to find out how this problem could be solved.

The problem, taking the cue from no less than the new administration, as stated in the State of the Nation address, is proposed to be solved by the creation of the Department of Energy and also by assuring that the National Power Corporation, principally, be made more capable of applying the fast track solutions.

The meaning of all of these, is that we have to give the NAPOCOR more money to solve the problem. *Sa madaling salita, para ma-solve iyong* brownout problem, we have to look for funds to implement the solution.

The NAPOCOR, in several hearings before this Chamber and in letters as well as press releases, has projected a capital budget. Meaning to say, a budget to implement power projects in the amount of P11.950 billion for 1992; P41.221 billion for 1993; P28.491 billion in 1994. That is how much is required. Fortunately, the greater portion of it will be funded by so-called foreign loans or ODA-type of loans or grants, in a few cases. But the fact remains that as early as 1988, four years ago, then NAPOCOR President, Ernesto Aboitiz, appeared before our Committee on Finance to say that at that time, 1988, the minimum amount that he needed from the Republic of the Philippines fund was P6 billion — 1988 *pa po*. And the truth of the matter, and the fact and the record show that neither the Executive Department nor Congress really gave it to him.

There have been budgetary appropriations in the amount of P1 billion, P600 million, P800 million, and even the proposed 1993 Budget only provides for P1 billion for the NAPOCOR.

We have from the NAPOCOR and from Mr. Malixi a testimony that for all of these major energy projects to be finished by 1995, roughly three years from now, they must be started next month or this month. And if we start them next month or this month — because this statement was made last August — then the cost of these projects would be maintained at the lower rate of P1.30 per kilowatt hour. But if for one reason or another, these are delayed, meaning to say, starting this month or within the immediate term is the absolute deadline, then the cost of operation would go up all the way to P2.85 per kilowatt hour.

Meaning to say, we have to decide taking away all the rhetoric and all the technical and financial debates, if we want the NAPOCOR to have a fighting chance to solve this power problem which has been time and again stated as one of the more basic reasons why we do not have real foreign investments coming into this country. Besides the peace and order situation, they always point to the power problem, and, as a third but faraway matter, the communications problem.

Whether it is from the viewpoint of foreign investments, whether it is from the viewpoint of retaining the present level of employment — because we have Raul Concepcion, the Philippine Chamber of Commerce and Industry, and the business sector testifying over and over again that the brownouts have, for the last eight months, from January to today, resulted in over P20 billion of business losses, resulted in thousands of layoffs. So whether it is from the viewpoint of foreign investments or even from the viewpoint of domestic investments and business just to keep the present operating companies and businesses going and to prevent layoffs and even from the viewpoint of public convenience, Mr. President, with everyone of us — our neighbors, our friends, our relatives, our critics — complaining, I guess the bottomline is, we have to give the NAPOCOR the minimum amount it needs.

In short, what does it need, Mr. President? Five billion pesos. Where are we going to get the P5 billion? Certainly, not from the revenues. If we have to wait for that, it will take us one year before those revenues will come, even if we pass a tax measure when we get back next month.

If we go by the usual foreign loans route, we know that that takes a lot of feasibility studies, that takes a lot of NEDA approvals, Cabinet approvals, foreign government approvals, back and forth, and back and forth.

Fortunately, Mr. President, we have sitting in the bank between P8 to P9 billion in the OPSF funds, not to mention that there is another potential of P1.9 billion that could be added to that fund if the Supreme Court finally rules in favor of the government or the ERB not paying certain claims of the oil companies. While we are paying so much in domestic interest on treasury bills, we have this amount, as I said, lying dormant in the OPSF account.

To go direct to the point so as to immediately dispel the doubts or hesitations of those who have made some comments. They are saying that if we take P5 billion out of the P9 billion of the OPSF, and suddenly the prices of oil go up and the foreign exchange goes up which, as we know, has now gone down to 23 when, more or less, the present level of crude oil procurements is at the level of between P26 and P27 to one, we have to increase the oil prices again *kung mangyayari iyon*.

Mr. President, we are fortunate that our experience of the last three years here is a good guide. First, if we get the P5 billion from OPSF and about P4 billion is left, that P4 billion would be sufficient cushion for six months.

Second, the oil companies really have a reimbursement waiting period of six months. We do not even have to pay them right away in six months time after there is an increase in the price of crude oil or a deterioration in the exchange rate, because they have, after importing, to finalize their documents, their charges.

First, submit it to OEA, then submit it to COA, and that whole process takes about six months before a bill that is presented by the oil companies is paid off.

So if we have a six months' buffer in terms of funds, and a six months' buffer in terms of processing time, we really have a one year buffer period.

The other thing, Mr. President, is: In 1988, when we appropriated for the first time from the general fund which we even objected to because it was taking away funds from schools, medicines, doctors and other social services, at that time the arrears to the oil companies was at least two years. Meaning to say, *kahit na hindi sila nabayaran ng dalawang taon, hindi naman po sila nalugi at ang laki pa ng kanilang kita.*

Worse comes to worst, in addition to the one year buffer period, because of the balance that will remain, because of the processing time, even if we delay the payment by one year or one year and a half, it is not going to be more than what they have already been able to absorb and survive in the past. But that is very unlikely that they will have to wait that long.

Mr. President, the House has a counterpart version. In the *Business Star* of September 1, we have here a story where the ERB itself — I do not know under what authority — is proposing and I quote:

ERB Chairman Rex Tantiogco said, the agency wanted to take out P5 billion from the OPSF to subsidize the National Power Corporation.

I do not believe that the ERB has this power, Mr. President. But there is. Even from the quasi-judicial body that is determining the levels of the OPSF and monitoring the prices of oil, they themselves are in favor of this idea of using P5 billion of OPSF funds to help the NAPOCOR.

Mr. President, while we have here a long list of projects from Bataan Geo-Plant I, Calaca II, Sucat Gas Turbine, Gas Turbine Barge, Tiwi Mechanical Gas Extraction, and the like, we did not provide in the bill that the P5 billion would be transferred to the NAPOCOR. Instead, what we really wanted to do, first of all, as a matter of financial equity, was to return this to the Treasury, because this P5 billion was given to OPSF as a special standby fund in 1988. So *binabalik lamang natin.*

Although in the bill itself, we said: "To be transferred to the General Fund in the National Treasury," or if there is a technical improvement like to a special account in the National Treasury, that is also fine with us, for the purpose of financing the power projects of the National Government. Which means to say that,

maybe, we may not even need the P5 billion, depending on the circumstances that will arise in the future. In which case then, it is up to the President, who will subsequently have to act on this after the NAPOCOR — or for that matter, even NEA — to submit a special budget to apply for funding from this P5 billion to decide at that time, first, whether the NAPOCOR request is meritorious; secondly, whether it should be funded by the Treasury; and thirdly, whether at that time the amount would be granted from the financial viewpoint, and at that time, the prices of oil and the exchange rate.

That, in brief, Mr. President, is the rationale for this bill. We have a problem which everybody has been crying out for solution. The brownout problem, or the power problem or the power crisis. There is no doubt in everybody's mind that NAPOCOR has to act fast. There is no doubt that the NAPOCOR does not have the money to act fast at the moment, unless — and this is the kicker, Mr. President — we allow them to increase their prices again by P0.17 per kilowatt hour that it is proposing.

It is my understanding, and this is the fringe benefit or the icing on this bill, that if we approve this bill, we will save our people from the misery of having to suffer another P0.17 per kilowatt hour price increase, and all the problems that it will bring, the labor sector asking for higher wages, the businessman taking advantage of that to raise prices, and so on down the line.

That is the final argument, Mr. President, why we feel that all around, this is the only route that we can adopt, especially in view of the fact that, as admitted by the distinguished Chairman of the Committee on Energy, the Energy Bill is a medium-term to a long-term solution. And as shown by what has transpired, it will take us time to pass that bill.

In the meantime, the immediate solution of the immediate problem which is supposed to be the basic problem that we have in this country today is, bottomline, Mr. President, let us give the NAPOCOR this P5 billion or whatever the Executive Department decides is necessary for them to fast track their projects so as to solve the problem at the lowest cost and at the fastest possible time.

Thank you, Mr. President.

Senator Romulo. Mr. President, there are reservations for interpellation by the Minority Leader, by the Chairman of the Committee on Finance and by Senator Osmeña. Therefore, I move that...

The President. Before the Majority Leader does so, may the Chair put certain inputs so that we can think on this matter during our recess.

The Chair would want to know whether the Oil Price Stabilization Fund is in the nature of a trust fund.

**Senator Maceda.** Mr. President, my understanding is that it is not, strictly speaking, a trust fund in the sense that GSIS or SSS funds are trust funds. It is a reserved fund or a special account fund to take care of the contingency of higher prices of crude oil importations that disturbs the pricing of the oil companies which is regulated by the ERB under its powers.

**The President.** Because if it is admitted or established that it is a trust fund, then the following provision of the Constitution becomes pertinent. And this is Section 29, paragraph (3), of Article VI which provides:

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.

Admittedly, under the bill we are considering, we are not abandoning this Oil Price Stabilization Fund which, at present, is estimated to have accumulated the amount of P8.5 billion.

What we are merely taking from the fund is the amount of P5 billion to revert to the General Fund.

So I think we have to satisfy ourselves, that this is not really a trust fund, because we will be forced either to declare that the fund be abolished because its purposes have already been fulfilled or we are already abandoning the purpose of the fund in order that any balance therein can be reverted to the General Fund.

Is that a correct statement in the light of this provision?

**Senator Maceda.** That is a correct statement, Mr. President, premised on the idea that it is a trust fund. My opinion is, strictly speaking, it is not a trust fund in the sense that it is a fund that belongs to the consumers who paid it. It is not meant to be held in trust for the consumers who paid the fund.

**The President.** The only purpose of the Chair is we put a study on the very nature of this fund.

And then, I notice that the provision of the bill is merely that the sum of P5 billion out of the Oil Price Stabilization Fund is hereby authorized to be transferred to the General Fund in the National Treasury for the purpose of financing the power projects of the National Government.

I think transferring it or reverting it to the General Fund is one thing, but that does not automatically appropriate it for a specific purpose unless there be an appropriation provision.

**Senator Maceda.** That is correct, Mr. President. We did not specify a specific purpose like making it available to the NAPOCOR, but just limiting the purpose to a general statement of financing the power projects of the National Government.

**The President.** This merely comes to my mind that probably we can specify that it is to be transferred to the General Fund in the National Treasury, and is hereby appropriated for the exclusive purpose of financing the power projects of the National Government.

**Senator Maceda.** Certainly, we are willing to accept that amendment, Mr. President.

**The President.** Yes. And the point is, under that provision, would it be possible for the government to use the amount appropriated as an additional equity to the National Power Corporation which actually has been urging the National Government to increase its equity by P5 billion?

**Senator Maceda.** I believe that is proper, Mr. President. It is a matter, however, for Executive decision. Whether they want to infuse equity into the NAPOCOR, or actually use it as appropriation for specific projects without making the same as an infusion to equity.

It seems that the NAPOCOR is requesting it to be in the form of an infusion of equity, considering that the authorized capital of the NAPOCOR is P50 billion since it started decades ago, and according to them, at this point in time, only P14 billion has been infused equity-wise into the corporation.

**The President.** The Chair merely is putting forth the idea that one of the purposes probably, an enabling proviso, be included in this provision. That is all.

The purpose is merely so that we can set our minds on these points during our recess.

**Senator Osmeña.** Mr. President.

**The President.** The Gentleman from Cebu and Cebu City is recognized.

**Senator Osmeña.** With the permission of the sponsor.

I just want to put on record, Mr. President, number one, that there is a case in the Supreme Court which I filed against the ERB precisely on this issue, on whether or not the OPSF is a trust fund.

Furthermore, Mr. President, the origin of all of these is Republic Act No. 6137, the Oil Industry Commission Act, which was approved by Congress when the President and I were



members of the Lower House at that time. After that, President Marcos approved Presidential Decree No. 455, further amending it to 456, and further amended by another presidential decree.

In that decree, he said, "Whenever an unauthorized increase in prices of petroleum products would result in an extraordinary gain from existing inventories, the Commission is hereby empowered to take measures including the payment by persons or companies benefit to a special fund which is hereby created, of such amounts as the Commission may determine in an appropriate order."

This is the origin of the OPSF, Mr. President, Presidential Decree No. 457. And then, it says, "The Commission is hereby empowered to require for appropriate order the payment to the fund." Now, the fund shall be administered by the President under Presidential Decree No. 457.

Later on, this power was transferred to the Minister of Energy and later on transferred by Executive Order No. 137 by President Aquino to the Office of Energy Affairs. So the issue of whether it is a special fund or not is really an issue that has not been resolved until today.

**The President.** But on the basis of what the Gentleman from Cebu has read, there is much to support the contention of the Senate President Pro Tempore that it is not, in reality, a trust fund. It may be a special fund because the fund here is not derived exclusively from the proceeds of a tax levied for that purpose. It may be a special fund but, certainly, it would not be a trust fund within the meaning of the constitutional provision that I have read into the *Record*.

**Senator Guingona.** Mr. President.

**The President.** The Minority Leader is recognized.

**Senator Guingona.** Mr. President, our study shows that it is a special fund, but there is a way out here.

Last year, we enacted a law to grant P5 billion to the OPSF, without in any way going into the funding at present. We can just rule that the purpose of that appropriation of P5 billion has been met and we are now, in accordance with the Constitution — to meet the constitutional standards — getting back the P5 billion so that we can in turn appropriate it for the NAPOCOR.

**Senator Romulo.** Mr. President.

**The President.** The Majority Leader is recognized.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 556

**Senator Romulo.** Mr. President, obviously, there is still a lot of debate to be made on this bill. Therefore, with the reservations for interpellation previously made, I now ask that we suspend consideration of Senate Bill No. 556 under Committee Report No. 6.

**The President.** Is there any objection to this motion? [*Silence*] There being none, the consideration of Senate Bill No. 556 is hereby suspended.

#### ADJOURNMENT OF THE SESSION

**Senator Romulo.** Mr. President, since there are no other matters to be taken up this evening, I ask that we adjourn tonight's session until 10 o'clock tomorrow morning.

**The President.** Is there any objection? [*Silence*] There being none, the session is adjourned until 10 o'clock tomorrow morning.

*It was 7:08 p.m.*

CONGRESS OF THE PHILIPPINES  
SENATE  
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NOT TO BE CONFUSED WITH THE  
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# Table of Contents

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## PLENARY SESSIONS

Session No.		Page
29	Monday, October 19, 1992.....	1
30	Tuesday, October 20, 1992.....	35
31	Wednesday and Thursday, October 21-22, 1992 .....	47
32	Tuesday, October 27, 1992.....	89
33	Wednesday, Thursday and Monday, October 28, 29 and November 9, 1992 .....	123
34	Tuesday, November 10, 1992 .....	233
35	Wednesday, Thursday and Monday, November 11, 12 and 16, 1992 .....	255
36	Monday, November 16, 1992 .....	333
37	Tuesday, November 17, 1992 .....	375
38	Wednesday and Thursday, November 18-19, 1992 .....	399
39	Monday and Tuesday, November 23-24, 1992 .....	455
40	Tuesday, November 24, 1992 .....	503
41	Wednesday, Thursday, Monday and Tuesday, November 25, 26, December 7 and 8, 1992 .....	531
42	Tuesday, December 8, 1992 .....	609
43	Wednesday and Thursday, December 9-10, 1992 .....	631
44	Monday, Tuesday, Wednesday, Thursday and Friday, December 14, 15, 16, 17 and 18, 1992 .....	687

**Senator Blazon:** In the withdrawal of the US forces from their bases, and related to the Bases Conversion Program, there is this need for us to establish some air bases and naval bases all over the country to suit the demands of a redefined national defense concept, and since the Philippine Air Force has been removed from Mactan and Villamor Air Base, will the Gentleman also support a move to declare part of either Clark Air Base or Subic Base as either naval or air force base?

**Senator Tatad:** I would have no opposition to the idea, but I would like to consult with some experts on the matter before I indicate an affirmative answer to that question.

**Senator Blazon:** Mr. President, there is also this concept we are using for multi-year appropriations to support the programs of the Department of Public Works and Highways. Would the Gentleman support a similar arrangement to undertake the modernization of the Armed Forces of the Philippines?

**Senator Tatad:** Subject to the necessary safeguards, Mr. President, I would support that.

**Senator Blazon:** Thank you, Mr. President. Thank you, distinguished Colleague.

**Senator Tatad:** Thank you very much, Mr. President.

**The President:** Thank you, Senator Tatad.

The Majority Leader please is recognized.

**MOTION OF SENATOR ROMULO  
(Referral of Senator Tatad's Speech to the  
Foreign Relations Committee)**

**Senator Romulo:** Mr. President, I move that we refer the privilege speech of Senator (Francisco "Kit") Tatad to the Committee on Foreign Relations.

**The President:** Is there any objection? [Silence] The Chair hears none; the motion is approved.

**SUSPENSION OF THE SESSION**

**Senator Romulo:** Mr. President, before we consider the measures this afternoon, may I ask for a one-minute suspension so I can ask the Authors to be here.

**The President:** The session is suspended, if there is no objection. [There was none.]

*It was 5:02 p.m.*

**RESUMPTION OF THE SESSION**

*At 5:03 p.m., the session was resumed.*

**The President:** The session is resumed.

**BILL ON SECOND READING  
Senate Bill No. 556 - OPSF Transfer  
(Continuation)**

**Senator Romulo:** Mr. President, I ask that we now resume consideration of Senate Bill No. 556, as reported out under Committee Report No. 6.

**The President:** Resumption of the consideration of Senate Bill No. 556 is now in order.

**Senator Romulo:** We are still in the period of interpellations, Mr. President. I ask that the Author and Sponsor, the Senate President Pro Tempore, Senator Maceda, be recognized.

**The President:** The Senate President Pro Tempore, Senator Ernesto Maceda is hereby recognized.

Is there any interpellation?

**Senator Maceda:** Mr. President, before I accept interpellations, may I just update the record.

Since this Committee Report was issued in August, Mr. President, there have been a few developments.

First of all, both Houses of Congress have passed the Department of Energy Bill, which as we know, does not really have any fund-raising provision. This bill, therefore, is, in a sense, the companion measure to the DOE bill.

Second, Mr. President, since the Committee Report came out, there has already been a reduction in the prices of gasoline plus, subsequently, another announcement of a possible reduction before December 31, because of the fact that the prices of crude oil have consistently been on a downward trend.

Mr. President, that is important in terms of our earlier projection that over 1993, if worse comes to worst, there is no reason to expect that prices would shoot up to a point where there would be a substantial need for OPSF funds. The more

reasonable prognostication is that for the whole of 1993, we do not even need to use this OPSF fund.

Next, Mr. President, is the fact that since August up to now, the balances in the OPSF fund have remained at around P9.163 billion, which is the actual end-of-August report as per the September letter dated September 3, submitted to each Member of the Senate by the Office of Energy Affairs.

Then the other development, Mr. President. Since the Committee Report came out, there has been a continuous downward trend also in our foreign exchange rate. So that as of last Friday, it was at P24.57 to \$1.00. As we know, the other component of the oil-pricing policy is the foreign exchange rate, the previous prices having been computed on a P27 to \$1.00 rate.

So even from the viewpoint of foreign exchange, the banking experts predict that for the whole of 1993, it should stabilize between P24 and P26, more at around P25. Again, that matter has been solidly enhanced into the scene.

The last point that has happened, Mr. President, is the fact that the administration pushed, and if Congress approves, a P10 billion fund for Mt. Pinatubo which is a calamity or a crisis situation that affects only one region of the country.

I believe there is a consensus that the real crisis that affects the entire country from Manila to Mindanao is the energy crisis. And if we are willing to appropriate P10 billion for Central Luzon, there is no reason, Mr. President, why we should hesitate to appropriate P5 billion for a crisis that is of nationwide proportion.

Now, Mr. President, to update the Senate on the NAPOCOR situation. Actually, to solve the problem of the energy crisis... As a matter of fact, since after October 8, the 100-days mark, the brownouts have come back with full force, whether it was because they run the equipment rugged without maintenance, but the fact is, as of today, this morning, the whole morning, my office was under brownout.

Again, we are back to the point where we were when this administration started on June 30, because the real solution is a financial infusion into the NAPOCOR.

As of this morning, Mr. President, when we had a hearing of the budget of the DENR to which the NAPOCOR at present is attached, the financial requirements of NAPOCOR to solve the problem over the immediate medium and long-term is P32 billion. That is the total amount that is necessary. And over the immediate term, between now and next year,

their immediate requirement is P10 billion or so.

Mr. President, I was informed by the NAPOCOR, and I was also informed by the Executive Secretary that it is the stance of the Executive Department that the P2 billion that was approved by the House is not sufficient, and that they really feel that this P5 billion is the better figure.

Because of all of that, Mr. President, and now that we are back to this brownout situation where people are again focusing on something that we swept under the rug for the last 100 days, I feel that, more than ever, it is again time to consider this seriously, especially in the light of the fact, as I said, that we waited until we passed the DOE bill. The significance of which being that under the Department of Energy complex, under which we are putting the NAPOCOR, and in effect made the Secretary of Energy as the Chairman of the NAPOCOR Board, there is more assurance that this P5 billion, if infused into NAPOCOR, will be better utilized. And there will now be a new institutional guarantee of the Department of Energy to make sure that the NAPOCOR will perform better than in the past.

For all those reasons, Mr. President, I reiterate my sponsorship of this measure.

**The President:** May the Chair seek some clarification before the interpellation.

Section 1 of Senate Bill No. 556 provides that the sum of P5 billion out of the Oil Price Stabilization Fund is hereby authorized to be transferred to the General Fund in the National Treasury for the purpose of financing the power projects of the government. The word "authorization" in budgetary and fiscal jargon actually has a specific meaning. Would it not be better if we just provide outright that the sum of P5 billion of the Oil Price Stabilization Fund is transferred, instead of being merely authorized?

**Senator Maceda:** It would be correct, Mr. President.

**The President:** Because, apparently, this requires a further action.

**Senator Maceda:** Yes. As a matter of fact, if the Senate President prefers, we can even change the word "transfer" to RETURN. It is hereby returned to the General Fund.

**The President:** Then, what I want is something that is self-executing that would not require any further action.

Second, if it is transferred or returned to the General

Fund, would that not require a subsequent appropriation since it constitutes part of the General Fund and, therefore, by itself it cannot be spent for the purpose of financing the power projects of the National Government? Or would the distinguished Gentleman create this into a nature of a special fund so that it would be used exclusively? Because, once it becomes part of the General Fund, I am afraid that it might be diverted for other purposes.

**Senator Maceda:** That would also be acceptable as more appropriate, Mr. President. Because in the beginning, we were not really sure whether this fund should be used by the NAPOCOR or should be used for some other program, as long as it was for power or energy projects of the government.

**The President:** The last question is this: Is this bill apart from an administration bill that would seek to increase the capitalization of the NAPOCOR by P5 billion?

**Senator Maceda:** It is apart, Mr. President, but we can also provide, if it is the desire of the Senate, that the P5 billion be in effect an infusion into...

**The President:** ...of the equity.

**Senator Maceda:** Of the equity, which, at the moment, out of the P50 billion equity authorized, only P14 billion has been paid up so far.

**The President:** That is right.

**Senator Maceda:** And they are really trying to increase that to P20 billion.

**The President:** Those are the concerns of the Chair, and I hope that we can go into certain specific direction on these matters.

**Senator Maceda:** I suppose in the provision on the Special Fund, we can make the Special Fund for purposes of either financing the power projects of the National Government or infusion of additional equity into NAPOCOR.

**Senator Angara:** Mr. President.

**The President:** Senator Angara is recognized.

**Senator Angara:** Thank you, Mr. President. Will the distinguished Sponsor care to answer some questions to clarify some of the points here?

**Senator Maceda:** Willingly, to the Chairman of the

Committee on Finance.

**Senator Angara:** Mr. President, this proposal was presented to the Senate before the NAPOCOR announced the rate increase.

**Senator Maceda:** Yes, Mr. President.

**Senator Angara:** The 18-centavo increase, as I understand--please correct the figure if I am wrong--would generate for NAPOCOR an amount close to P5 billion in 1993.

**Senator Maceda:** The figure given to me, in effect, is even higher, Mr. President--P6.7 billion. However, I said earlier that their funding requirements for projects for the next year or so is P10 billion according to them.

**Senator Angara:** Yes, I think they added to it, Mr. President. But the letter sent to this Representation by President Malixi on August 27, 1992 states that their capital funding for 1993 would be approximately P8.591 billion. It is possible that there was an acquired adjustment of this figure, and they are now saying that they needed something close to P10 billion. But when they generate P7 billion out of the rate increase--

**Senator Maceda:** P6.7.

**Senator Angara:** Yes, P6.7, close to P7, Mr. President. And the House already appropriated P2 billion, that is pretty close to their estimate of their capital outlay needs for 1993.

Thus, I wonder whether it is still worth considering this transfer to NAPOCOR at this stage, because I can imagine other uses that we can find for these funds.

**Senator Maceda:** Mr. President, it is a matter of policy choice for the Senate. Although my impression is that, the proper thing to do is to devote these funds, transferred or returned, principally for energy development. As long as it is within that field, then there would be hardly any objection from the hesitation, sometimes, that this is some sort--although it is not actually a trust fund, it is supposed to stabilize the pricing structure and related matters of oil or energy products.

**Senator Angara:** I am about to bring up that second point, Mr. President, whether the Gentleman sees the merit of converting this fund exclusively as a trust fund for energy development not necessarily earmarked for NAPOCOR, but for all the energy development projects of government.

**Senator Maceda:** As I said, Mr. President, that would be acceptable, however, leaving to the Executive Department some leeway as to what purpose or priority they would adopt. Because the bottom line is, to begin with, for us to solve the present energy crisis. And my impression is that, the first line of attack really is to solve the problems of NAPOCOR.

**Senator Angara:** Yes, I agree, Mr. President. But it seems to me that based on historical experience, we are having problems because of financing in the first place. And if there is a dedicated fund--the fund earmarked exclusively for energy development projects such as this--then perhaps we can begin to solve the energy crisis frontally, and together with the change in rate structure, perhaps NAPOCOR may even have a better chance of funding its own requirements rather than relying heavily on government subsidy and infusion of equity.

But the main point I want to ask of the Gentleman's opinion is whether it is now timely to convert this fund and make it exclusively earmarked for energy developments rather than continue using this fund as a subsidy measure.

**Senator Maceda:** Mr. President, the question of whether it is a subsidy or not really depends on one's interpretation. Because I would think that if, a long time ago, it was thought that P50 billion would be the necessary capital for NAPOCOR, one way of looking at it is, technically, it would only be a subsidy if it is beyond the capital requirements. But if we were to accept the fact that the P14 billion equity already paid up out of the P50 billion is really insufficient for the present expanded services necessitated by the expanded population, then it is really a matter of just like a private business putting additional capital into an expanding operation with the expectation that there would be, in the long term, some financial returns out of the investment.

**Senator Angara:** Part of the hesitancy of giving more money to NAPOCOR is the perception. I am not saying it is a reality--that the system in NAPOCOR is so inefficient and possibly corrupt that no matter how much we give to it, it is like a bottomless pit. We might just throw good money after bad.

Whereas, if the money, for instance, goes to PNOC exploration that is involved in geothermal exploration and drilling or to the same outfit that is drilling oil and gas in Palawan, they have more confidence in the money being spent wisely and more efficiently. Is this not part of the problem of NAPOCOR?

**Senator Maceda:** Yes, Mr. President. However, as I said, actually, all of this really requires much more than P5

billion. So, again, it is a matter of prioritization for the Government from whatever basket we get it. Whatever funds, special, general or otherwise, there is, certainly, better use of this P5 million rather than keeping it in the bank as where it is now.

As I said, in creating this special fund, I would be happy to accommodate all possible purposes provided they are related to energy development or to the power projects field as possible recipients of this money, leaving it to the President to decide what to do with it.

**Senator Angara:** So the Gentleman is open to earmarking this money to energy projects in general and not exclusively to NAPOCOR.

**Senator Maceda:** Certainly, Mr. President. That is the thrust.

**Senator Angara:** We are in agreement then, Mr. President, on the thrust, and that we should dedicate now this special funding exclusively to energy projects, whether by NAPOCOR, PNOC, or even contributions to foreign-funded energy projects that may come our way.

But in this specific proposal of transferring P5 million from the special fund to the NAPOCOR coffers, will this go directly to NAPOCOR?

**Senator Maceda:** That was one of the original intentions. But as I have agreed with the Gentleman and the Senate President, we shall now constitute it into a special fund for purposes of financing the energy development, including power projects of the National Government or for the purpose of infusing additional capital into the National Power Corporation, as may be determined by the President of the Philippines.

**Senator Angara:** What about the future of the OPSF, Mr. President? Would the Gentleman also agree that future collections by the OPSF be channelled into this special fund for energy projects?

**Senator Maceda:** We have not gone that far, Mr. President. As I said earlier, the oil prices are on a downtrend and the foreign exchange rate has also taken a downtrend and there is no reason for expecting that the situation will change, at least, for the whole of '93. But still it would seem that it would be the better part of discretion to leave about P3 billion to P4 billion as well as any future infusions, still as an OPSF until the OPSF machinery is dismantled which will require legislation. At that time we can then provide what happens to what balances there are left with the OPSF fund.

**Senator Angara:** Mr. President, would the Gentleman grant a standby authority to the President that when those contingencies occur, then the President is hereby authorized by us to make the necessary transfer?

**Senator Maceda:** If that is the feeling of the Body, I have no objection to it, although it would tie our hands in the future as to what other purposes might come up for which there might be a greater need.

**Senator Angara:** Yes, Mr. President. In effect, that will foreclose debate on the future use of this fund.

On the other hand, Mr. President, the Gentleman is talking of flexibility to the Executive. I can think of no better flexibility and a better source of funding for energy than this fund.

**Senator Maceda:** A suggestion coming from the incoming--if my Colleagues believe the reports--President of the LDP is very generous to the President who belongs to the Lakas-NUCD party.

**Senator Angara:** The report is premature, Mr. President. Thank you very much.

**Senator Guingona:** Mr. President.

**The President:** The Minority Leader is recognized.

**Senator Guingona:** Mr. President, will the distinguished Sponsor yield to some questions?

**Senator Maceda:** Willingly, Mr. President, with the information which I already stated before the Gentleman came in. So that this is not meant to be for his ears only--that I have received a phone call from Executive Secretary Edelmiro Amante expressing the support of the President for this measure in its present amount.

**Senator Guingona:** Mr. President, the House has approved P2 billion for the same purpose and we have under this proposal, P5 billion. May we know how much NAPOCOR really needs for the purpose of resolving the crisis?

**Senator Maceda:** The earlier figure given to the Chairman of the Finance Committee was P8.591 billion. However, there was some sort of a caveat early in July and August. That is, if they are given the funds immediately and they could keep their construction cost therefore to a point where the price per kilowatt hour would be something like P1.78 or P1.80. But that any delay in the release of these funds, as it is in public

works projects, increases the costs. And so, we were really talking in terms of realistically what they need is an immediate infusion of P10 billion.

**Senator Guingona:** Ten billion.

**Senator Maceda:** Ten billion for projects.

**Senator Guingona:** Yes. Are these new projects, or do they constitute the repair or rehabilitation of the old plants?

**Senator Maceda:** These are basically new projects or continuation of existing unfinished projects or plant projects, I think, with a very small amount, if any, for repairs.

**Senator Guingona:** Would the distinguished Gentleman know of the figure, more or less, required for the reopening of the 10 plants that are not operating, and to the restoration of their capacity to at least proximate maximum levels? Just an approximate figure, Mr. President.

**Senator Maceda:** Mr. President, I do not know if I can answer the question accurately.

Just to go through this. For ongoing and new generation projects--which is therefore not for repairs--the total amount needed for 1993 is P41.221 billion, total package, of which P8.591 billion--that is the amount referred to earlier--is in pesos.

The next item is for transmission lines. It is P1.425 billion, and the technical answer to the distinguished Gentleman's question probably is this third category, which is really for--it says--rehabilitation work and spares, P1.286 billion; Sucat II and III rehabilitation, P323 million; PGI expenditures, P1.125 billion.

For rehabilitation and works, including spares, is P2.734 billion. This is not included in the P8.591, which is the amount earlier mentioned for construction of new projects and completion of ongoing new projects.

**Senator Guingona:** So, more or less, would it be accurate to say that the repair and rehabilitation would cost about P2.7 billion?

**Senator Maceda:** Yes, Mr. President. Therefore, if we add the P8.591 and the P2.7, it really now is--instead of P10 billion, which was my ballpark estimate--the actual figure is P11.325 billion.

**Senator Guingona:** Yes, Mr. President. Because as we



understand it, the new plants, new projects, are already covered by separate financing. The previous administration authorized five fast-track build-operate-transfer projects, and the government is not spending a centavo, supposedly although, I have my doubts on that. The other projects like Bacon-Manito, Calaca II are already financed under the OECF programs, foreign funded in the main, Mr. President.

So this amount that we are appropriating--considering the amount approved by the House--I think is really intended for the repair and rehabilitation basically rather than for new plants. Because as the distinguished Sponsor himself said, the new plants will cost about P8.5

**Senator Maceda:** Only for 1993, Mr. President. The new plants really cost, as the Gentleman said, since 1991, just to give him the complete picture is P6.4 billion for 1991; P11.9 billion for 1992; P41.2 billion for 1993 and P28.4 billion for 1994 which for 1991 and 1992, were really funded more by, as the Gentlemen said, either foreign loans or through BOT arrangements. But the way these figures go, it seems that for 1993 and 1994, there is less of foreign funding and other arrangements and more of government peso requirements.

**Senator Guingona:** So that most likely, if we appropriate between P2 and P5 billion, which is P2 billion from the House and P5 billion from here, and it might end up in a compromise of P2.7 or P3 billion, most likely, it will go to the repair and rehabilitation of existing plants that are now shut off or completely shut down.

**Senator Maceda:** Mr. President, at least P2.7.

The other category that I did not mention are the so-called transmission lines.

**Senator Guingona:** Yes. Does the distinguished Gentleman know of any concrete plan or project by NAPOCOR for the rehabilitation and repair and within a certain time frame? Because we are disbursing these funds principally for that, but if they do not have a workable plan which will not repeat the mistakes of the past, then I think we should demand for such plan.

**Senator Maceda:** We have been treated to several hearings in the Senate where they have submitted these plans in chart form with all kinds of colored lines going higher or lower than what is needed at a certain period. In all these hearings, there have been submitted these plans based even on a time or period basis as to when they have started, when they will come on line and the corresponding amount of megawatts that

comes on line at certain points in time.

**Senator Guingona:** Did they give any time period for the repair and rehabilitation, Mr. President?

**Senator Maceda:** The immediate repairs, which according to them will result in the immediate solution of the present brownout problem would be accomplished by June 1993. But after that, to keep pace with the expanding requirements, especially in terms of hopefully increased economic activity, then this will be continuous on an annual basis from June 1993.

**Senator Guingona:** Correct me if I am wrong, Mr. President. But I assume that the June 1993 goal was for the additional plants, the fast-track projects, but not for the repair and rehabilitation.

Because unless we repair and rehabilitate these existing plants that are shut down, even if we build the new ones, we would still face a lack of megawatts--practically one-half.

**Senator Maceda:** That is correct, Mr. President. The repair, as I said, is a continuing matter that has to be planned out. But I believe, based on the charts that I saw, that they have indeed this plan. Although, to be very candid, I do not know how this alleged maximum running of the plants over the first 100 days have upset that time schedule.

**Senator Guingona:** In other words, the repair and rehabilitation will take from now to June.

**Senator Maceda:** Some will be finished, Mr. President. I understand that they hope to have Ambuklao finally started by the end of the year even if it will only produce 25 megawatts and then goes up to 75 megawatts by the end of June. They have all of these partial completions or repairs accomplished in relation to capacities from time to time.

**Senator Guingona:** And the Gentleman is convinced that with this infusion, we can repair and rehabilitate those plants.

**Senator Maceda:** I am convinced, Mr. President, that without any infusion of funds, no matter how good Mr. Lazaro or Mr. Malixi is or no matter how well we come out with a Department of Energy law, I do not think we will have any chance of solving this problem.

To me, the solution is basically financial at this point, and we are aware of the delays that are incurred when it comes to completing BOT proposals or getting foreign loans, especially if they are World Bank sectoral loans. It takes time. To me,

the P5 billion is some sort of a bridge financing that is needed to get things going at present time schedules and at cheaper costs.

I believe that denying them this direct infusion from the Treasury at this time will only serve to delay and to make costlier the projects that they have planned. After all, I believe them when they said that really, the total amount that they need--and they must be referring up to 1994--is P32 billion *in toto*.

**Senator Guingona:** Mr. President, I was listening with interest to the exchange in the interpellation of Senator Angara, and I heard the distinguished Sponsor say that he is agreeable to making this fund available for any energy development project. Whereas, in our view, we thought it was intended for the repair and rehabilitation so that we can pinpoint responsibility. And if NAPOCOR, in spite of this infusion, does not give us the necessary repair and rehabilitation, then we will lay the blame squarely on NAPOCOR.

If we broaden the scope, they may use the money for other projects which they think is just as important. But in the light of the experience of the past, it may not solve or resolve the immediate power crisis that we are facing.

**Senator Maceda:** We are giving that policy decision for the President to decide, and if he feels that there is no need to give NAPOCOR P2.7 billion out of this fund, maybe because they have gotten it from other sources, then the law would so allow him.

But I have a very strong feeling depending on what the representatives of the Executive Department have told me that they really feel that at the moment, all of it should go to NAPOCOR to get things really off the ground faster.

**Senator Guingona:** May I go now to the nature of the funds. The distinguished Sponsor is aware of the constitutional provision, namely: "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."

The distinguished Sponsor agrees that the OPSF is a special fund, does he not?

**Senator Maceda:** Yes, Mr. President.

**Senator Guingona:** Since it is a special fund, it can only

be paid out for the purpose for which it was appropriated. Does the distinguished Sponsor believe that in line with the second sentence: "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", are we saying now that the purpose for which the OPSF was established has now been fulfilled? Or, are we abandoning the purpose for which the OPSF was created?

**Senator Maceda:** The answer to both questions is no, Mr. President. But I would like to believe that we can adopt a less technical view of the situation, in the sense that as already shown by experience, the key word here is "stabilization" and part of the stabilization procedure, I think, is to stabilize NAPOCOR. What has happened is that, in the oil pricing mix, there has been a bias towards reducing the price of bunker fuel or fuel oil, precisely, just to assist NAPOCOR, and that affects the pricing of gasoline, of kerosene, of liquid petroleum gas. So that, from a very broad interpretation of the purpose of stabilization, I think as long as we, precisely, stick to this general area of energy development, including the infusion of capital to NAPOCOR, we will still be, in effect, promoting the cause of stabilization for which the OPSF was established.

**Senator Guingona:** As I understand it, Mr. President, the Oil Price Stabilization Fund was created under Presidential Decree 1956, as amended by Executive Order No. 137. Then in 1989, we passed an appropriation measure together with the House of Representatives of P5 billion.

**Senator Maceda:** That is the other aspect of this, Mr. President. That is why I was suggesting that in Section 1, we can use the word "return", and that again strengthens our case for using this in the proposed way, because we can liberally say that we lend this money for OPSF purposes by that legislation which appropriated P5 billion for exactly the same purpose as the OPSF was set up.

**Senator Guingona:** The law which established the Petroleum Price Standby Fund of P5 billion, Republic Act No. 6952, was also a special fund. The purpose of the special fund under Republic Act No. 6952 was to cover claims and transactions up to November 30, 1989. And then it had another purpose. Whenever feasible, to maintain oil prices at December 1, 1989 retail pump-price level.

So we have here a situation where there are two laws, one creating the OPSF which is a special fund, and the other appropriating P5 billion which is also a special fund. The purpose of one is to set up the stabilization fund, and the purpose of the other is to replenish the claims of oil companies and maintain fuel prices at the December 1, 1989 level.

In both cases, they being special funds, does not the distinguished Sponsor believe that we should adhere to the constitutional requirement that there be an express determination, either in the first or in the second bill, namely, Republic Act No. 6952, which would say that the purpose for which the special fund was collected has already been fulfilled or abandoned?

**Senator Maceda:** I would not be willing to do that, Mr. President, because that is, in effect, abolishing the OPSF and going into a regime of deregulation of oil pricing which I am not quite ready to agree to at this time.

**Senator Guingona:** I am with the distinguished Sponsor in not abolishing the OPSF, Mr. President, but I cannot see how we can pass a bill appropriating P5 billion from the OPSF in the light of this constitutional mandate without declaring first that the purpose for which the bill was passed has already been abandoned and reverting the balance to the General Fund and then appropriating it for the energy projects because both are special funds. We do not want this bill to be challenged constitutionally because we have violated that provision.

**Senator Maceda:** I think it is quite a reasonable risk to take. We are willing to take that risk of its being constitutionally challenged. After all, the principal purpose of the bill is for the general welfare which is to solve our present energy crisis causing dislocation not only to the business community but also to the citizens nationwide including, of course, dislocation and causing of problems to their daily schedules and to their daily lives.

**Senator Guingona:** The distinguished Sponsor will agree with me that, perhaps, there may be a way out.

Republic Act No. 6952 appropriated P5 billion. That one can be declared as having accomplished its purpose, and we can say that we will now return the P5 billion to the General Fund, but without abolishing the OPSF, because that was a special fund designed to cover the claims which the distinguished Sponsor has stated.

**Senator Maceda:** But how about the reality that there is no longer any P5 billion in that fund?

**Senator Guingona:** Mr. President, that is an assertion that goes against the general nature of money. Money is fungible. The specific P5 billion is not supposed to be earmarked. As a matter of fact, claims have been made out of those funds, and whether it was replenished or not, we just have it returned. Because if we do not comply with this provision, on two counts, they may raise the issue of our

inability to pass an appropriation measure in spite of the clear constitutional mandate, and even the OPSF taxpayers may question and say: "Why are you diminishing the OPSF? That was intended to stabilize prices."

As a matter of fact, I read about a month-and-a-half ago that the oil dealers were protesting against the intent of diverting P2 billion from the OPSF to energy projects.

But if we adhere to this, we do not abolish the OPSF. It continues. And I do not know what is the price level as of December 1, 1989, but I think it is lower now. So we have achieved the purpose of Republic Act No. 6952.

**Senator Maceda:** I still do not see, Mr. President, how by declaring the PPSF under Republic Act No. 6952 as having achieved its purpose that Act can produce the P5 billion that we want to return to the National Treasury.

Realistically, the P5 billion is only available from the OPSF, which now has in the bank P9.163 billion, and there is really no immediate projection that for 1993 we will need any of that amount for purposes of stabilization.

So that is my honest reaction to the suggestion of the Gentleman.

**Senator Guingona:** May we know how much is the balance in the OPSF?

**Senator Maceda:** It is P9.163 billion as of the end of August, pursuant to a communication that we received today, which I think the Gentleman was also sent a copy of.

**Senator Guingona:** What is the balance that would be considered safe for the OPSF as a buffer?

**Senator Maceda:** I guess for a one-year period, we are talking about P5 billion, Mr. President.

**Senator Guingona:** Yes, P5 billion. I understand there is a Supreme Court case pending where about P3 billion of claims has been made by oil companies, and if we add to this the disallowances by COA, the amount of the OPSF may reduce to less than P5 billion, and therefore it may be the subject of complaints by the taxpayers and the oil dealers who will say that we are prejudicing the purpose for which the special fund was created.

**Senator Maceda:** Mr. President, the actual amount is P1.8 billion.

**Senator Guingona:** How much?

**Senator Maceda:** It is P1.8 billion.

**Senator Guingona:** The actual amount of claims:

**Senator Maceda:** Yes, Mr. President, for the amount of representing financing charges that are being questioned by the oil companies and pending resolution.

As we know, this was decided in favor of the government, the ERB. What is pending is a motion for reconsideration.

**Senator Guingona:** Yes.

**Senator Maceda:** Now, in any event, I would like to refresh the Gentleman's memory that at the time we approved the P5 billion, PPSF, the oil companies were unpaid for a period of two years, and still were able to survive. Meaning to say, even if in the unlikely event that the OPSF fund goes to a point where the oil companies' claims will not be paid promptly, and it usually takes six months from the time they present the claims to the time that the OEA-COA procedures are adopted, there is every time again, within a period of six months to one year, to appropriate an amount which the government may then easily afford if the projected success that the Gentleman and his party is projecting in this administration will happen. There is no problem of appropriating another P5 billion in 1994 in the unlikely event that that happens.

**Senator Guingona:** Since there is enough fund, the claims of the oil companies have been amply covered, and that was the purpose of Republic Act No. 6952. In other words, the purpose of that special law has already been fulfilled.

**Senator Maceda:** That is correct, Mr. President.

**Senator Guingona:** Then if that is correct, why can we not state so?

**Senator Maceda:** We can state so, but that does not automatically make P5 billion available because there is no P5 billion left anymore in RA No. 6952. Now if what the Gentleman is suggesting is we state so, then he still agrees that the P5 billion can come from the OPSF, there is no problem.

**Senator Guingona:** Yes, we have to state so in adherence to the constitutional mandate, because this is a special fund, and if we appropriate from a special fund, we must adhere to the Constitution.

**Senator Maceda:** As I said, Mr. President, as far as the OPSF is concerned, I think as long as it is for what is obviously a measure that will help stabilize oil prices, we are adhering to the uses of the special fund.

**Senator Guingona:** Yes.

**Senator Maceda:** If the ERB that is a creation of law or of Congress, so to speak, can even appropriate the P5 billion as subsidy to the NAPOCOR. I read Mr. Tanchongco say that. Of course, if it can be done indirectly, by way of fully subsidizing bunker oil prices, I do not see why Congress cannot do what its agent, the ERB can do.

**Senator Guingona:** Congress can do so, Mr. President, but since the purpose for which Republic Act No. 6952 has been fulfilled, then should it not be logical that we adhere to the requirement that when a special fund has already fulfilled its purpose, then Congress states so, and the balance reverts.

**Senator Maceda:** Yes, Mr. President, again I say I have no problem with that but for the Gentleman's information the actual balance of PPSF is P249.3 million, so we put a special paragraph for that...

**Senator Guingona:** OPSF.

**Senator Maceda:** Yes, P4,750.7 billion was used from the PPSF funds. So, if we agree, as the Gentleman is willing to agree, to put a special additional section on what is left unspent to revert to the General Fund is P249.3.

What I am raising is the point that what we are trying to appropriate by way of creating a special fund is P5 billion, and that could only be taken from the OPSF.

I have no problem with declaring PPSF--RA No. 6952--as fully complied with and return the balance, but the appropriation of P5 billion from the OPSF will still have to be appropriated in this bill.

**Senator Guingona:** It is a matter of computation, Mr. President, but we will treat it as if the entire P5 billion has already accomplished its purpose.

**The President:** With the permission of the two Gentlemen on the Floor, may the Chair seek some clarification. Are special funds and trust funds synonymous?

**Senator Maceda:** My impression, Mr. President, is that they are not synonymous.

**Senator Guingona:** May we have that answer again, please?

**Senator Lina:** The crime involved is hazing if we pass this bill into law. The penalties will vary depending on the result of the hazing, Mr. President. Senator Guingona. The same elements of the crime of homicide would be the same elements except for organization, except for fraternities or sororities; but the same basic elements of homicide, for example, would also prevail in the crime of hazing if this bill were to be approved.

**Senator Lina:** No, Mr. President. What will have to be proved are the elements of hazing. The results of the act of hazing will have their corresponding penalties.

For example, if death occurs as a result of hazing, the penalty is *reclusion perpetua*. If there is no crime of hazing and, given the present law, death occurs because of the physical initiation, then the charge can either be murder or even homicide depending on the circumstances which the prosecution has to prove.

So when the crime that is charged is hazing, the elements that must be proved are the elements involved in the crime of hazing and not murder or homicide.

**Senator Guingona:** Would the defendant in a criminal case of hazing no longer prove...

**Senator Lina:** The defendant need not prove, Mr. President. The defendant will have to defend himself.

**Senator Guingona:** I am not finished yet.

Will the prosecution, rather, in the crime of hazing no longer prove that it was the accused who knowingly and willfully caused the beatings that led to the death of the victim?

**Senator Lina:** Definitely, Mr. President. The prosecution has to prove that the act of hazing was committed; and that the accused was present during the initiation rites where hazing was conducted.

To be specific, Mr. President, when death, rape, mutilation, permanent insanity or mental illness or permanent physical disability or deformity result from said hazing, the person or persons who participated therein shall suffer the penalty of *reclusion perpetua*. So those who participated therein shall be punished and, therefore, the prosecution will have to prove that the accused participated in the act of hazing.

But there is this presumption, Mr. President--and this presumption is on page 4--that a fraternity or sorority adviser who is present at the hazing shall be liable as principal. The officers, alumni of the organization, group, fraternity or sorority, who actually planned the hazing, although not present at the time of the hazing, shall be liable as principals. The presence of any person during the hazing is *prima facie* evidence of participation therein as a principal.

So the prosecution will have to prove those facts before the accused can be held liable for hazing.

**Senator Guingona:** So the prosecution will have to prove the same elements for homicide, the same elements for serious physical injuries, the same elements for rape and acts of lasciviousness as if they were independent from the offense of an organization being formed to initiate members.

The act of having an organization to initiate is not the offense. It is the act of killing, the act of raping, the act of inflicting injuries that is punishable, but the mere fact of organizing a legitimate society, club or organization is not punishable for as long as its immediate objectives are not illegal. They did not organize to kill, they did not organize to rape, they did not organize to inflict injuries--these need not be proven.

**Senator Lina:** Mr. President, I agree with the Minority Leader 100 percent on that latter portion of his statement.

We are not penalizing the organizing of a legitimate organization. What we are penalizing is the act of the officers or members of the organization when they inflict physical, mental, psychological pain and suffering on a person as part of initiation rites. That is what we are penalizing, Mr. President.

Now, going back to the first portion of his statement that the prosecution will still have to prove the elements of murder, homicide, acts of lasciviousness or even rape, that is not necessary, Mr. President, to execute the penalty of *reclusion perpetua* for murder.

If the elements of murder will have to be proved, then what are those elements? There must be premeditation, use of superior strength, all those qualifying circumstances. Those need not be proved nor even be alleged, Mr. President.

When death occurs and his death is in connection with hazing, then the prosecution will have to prove that there was an act of hazing; that it was a requirement for acceptance in the organization; that it was part of the initiation rites, and the recruit died. Ergo, if all those can be proved, the impossible

**The President:** The Chair wishes to know whether the original fund of the OPSF has been the money appropriated by Congress or has it been raised for a tax for a specific purpose?

**Senator Guingona:** Is it the OPSF, Mr. President?

**The President:** Yes.

**Senator Guingona:** The original was for a specific purpose.

**The President:** The question is: Was it money appropriated by Congress?

**Senator Guingona:** There was a PD originally, Mr. President.

**The President:** But the question is: Was there an appropriation to the fund? Or was the fund entirely the result of the collection of a tax or levy that has been imposed for a special purpose?

**Senator Guingona:** I understand that it was established by the PD, contributing a certain amount, and the rest came from special levies.

**Senator Osmeña:** Mr. President.

**The President:** Senator Osmeña is recognized.

**Senator Osmeña:** With the permission of the Gentlemen on the Floor, may I contribute the history of the OPSF. It was first created on October 10, 1984 by then President Marcos who issued Presidential Decree No. 1956, which created a Special Account in the General Fund. This account was funded by collections from the sale of oil products. However, on May 9, 1985, the President issued Executive Order No. 1024, which reclassified the OPSF from a Special Account in the General Fund to a Trust Liability Account.

Now, to complicate matters further, President Aquino issued Executive Order No. 137 which, in effect, made the OPSF a Trust Account. So there was a succession of changes, from a Special Account in the General Fund to a Trust Liability Account to a Trust Account as provided for in EO No. 137, and that is where it is now. It is a Trust Account in the Office of Energy Affairs, as a result of EO No. 137.

**Senator Maceda:** Be that as it may, Mr. President, how about this formulation: SECTION 1 WILL CREATE A SPECIAL FUND OF P5 MILLION FOR ENERGY DEVELOPMENT AND/OR FOR INFUSION AS EQUITY INTO NA-

POCOR.

Then, following the usual form, one of the last paragraphs will read: THAT THE AMOUNT SHALL BE TAKEN FROM THE GENERAL FUND FROM THE OPSF FROM THE PPSF--that has already accomplished its purpose--OR FROM ANY OTHER SOURCE THAT THE PRESIDENT MAY SO SOURCE IT FROM, subject to style.

Would that solve the problem of the distinguished Minority Leader?

That is the usual formulation. We can throw in PAGCOR, whatever it is as we have done in a lot of bills. The idea is, first, to create the fund, the purposes, and then to put in the appropriation section which can be done at this point, because the House has already approved a P2-billion appropriation. So this is not being discussed by the Senate independently of the House.

**Senator Osmeña:** Mr. President, I have a suggestion--let us convert this bill into a bill amending PD No. 1956, to add to the two categories to which the collection of the fund may be used, first, a third category to suit the requirements of this bill.

So, in effect, the bill, PD No. 1956 as amended by EO No. 137, is just amended. Because in PD No. 1956, the OPSF may be used, for one, to adjust prices as a result of changes in foreign exchange values; second, to adjust the prices to compensate for increases in the price of crude; and the third, which was added by President Aquino and which I am questioning in the Supreme Court on its constitutionality, is to reimburse oil companies for under recoveries. If we want to maintain that third provision, we can add a fourth, which says, that this fund may also be used to an amount not exceeding P5 billion to support an energy program, whatever we want to call it.

**The President:** With the permission of the three Gentlemen --we have three now--I think Senator Aquino is seeking recognition.

**Senator Aquino:** Mr. President, I just want to ask one question. Assuming that we agree with this proposed bill conceptually, thereby it will be amending the previous laws on the OPSF. Is that not the case? If we approve this, it will amend the law creating the OPSF.

**Senator Maceda:** That is one effect or interpretation. The other interpretation which we are really trying to push as the principal reason for the bill is, this is just a return, *iyong* P5 *bilyon na pinahiram natin* for the purposes for which the

OPSF should have paid *dahil wala silang kuwarta noon*. Those are really the two situations.

**Senator Aquino:** My point, Mr. President, is, if we agree with this bill conceptually, then it will naturally amend the existing laws to make all of these possible.

**The President:** It is not that simple, Senator Aquino. Because I think that the issue being raised by the Minority Leader is whether or not this bill can meet the constitutional test. Because there are also some limitations to the legislative power of Congress.

I think the provision being invoked by the Minority Leader is found in Section 29, paragraph (3), and I will read it into the record:

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.

Is this the provision that the Minority Leader is referring to?

**Senator Guingona:** Yes, Mr. President.

**The President:** That is the provision which we are trying to hurdle..

**Senator Maceda:** Mr. President, thank you for reading that provision.

May we now ask from the distinguished Minority Leader whether the formulation of Senator Osmeña which seeks to just amend the Presidential Decree creating the OPSF, as amended, is acceptable to him.

**Senator Guingona:** Yes, Mr. President. It is acceptable, provided that we delete the third purpose mentioned in the Executive Order which was to allow oil companies to recover financing charges, because the need for financing charges is no longer existent. There is no more forward importation of oil. There is no shortage of dollars.

**Senator Maceda:** In which case, Mr. President, we will request that we suspend consideration of this bill so that the committee can redraft the bill in accordance with the interpellations made by the Gentlemen who have spoken, including Senator Angara.

**The President:** The Majority Leader is recognized.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 556

**Senator Romulo:** Mr. President, in view of the manifestation made by the Sponsor and Author of the bill, I move that we suspend consideration of Senate Bill No. 556 so that the provisions suggested or recommended can be incorporated therein.

**The President:** Is there any objection to the suspension of consideration of this bill? [*Silence*] There being none, the motion is approved.

**Senator Romulo:** Mr. President, before we move on to the next item, may I ask that the additional Reference of Business be read by the Secretary.

**The President:** The Secretary will please do so.

#### FOURTH ADDITIONAL REFERENCE OF BUSINESS

##### RESOLUTIONS

**The Secretary:** Proposed Senate Resolution No. 204, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEE(S) TO REVIEW EXISTING LEGISLATIVE AND NON-LEGISLATIVE FRANCHISES WITH THE END IN VIEW OF ENSURING COMPLIANCE WITH THE PURPOSES THEREOF.

Introduced by Senator Coseteng.

**The President:** Referred to the Committee on Public Services.

**The Secretary:** Proposed Senate Resolution No. 205, entitled

RESOLUTION URGING THE APPROPRIATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, TO LOOK INTO THE ALLEGED PARTICIPATION IN CRIMINAL ACTIVITIES, AS WELL AS IN THE GROSS INCOMPETENCE OF OFFICIALS AND EMPLOYEES OF THE BUREAU OF IMMIGRATION AND

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# Table of Contents

---

## PLENARY SESSIONS

Session No.		Page
29	Monday, October 19, 1992.....	1
30	Tuesday, October 20, 1992.....	35
31	Wednesday and Thursday, October 21-22, 1992 .....	47
32	Tuesday, October 27, 1992.....	89
33	Wednesday, Thursday and Monday, October 28, 29 and November 9, 1992 .....	123
34	Tuesday, November 10, 1992 .....	233
35	Wednesday, Thursday and Monday, November 11, 12 and 16, 1992 .....	255
36	Monday, November 16, 1992 .....	333
37	Tuesday, November 17, 1992 .....	375
38	Wednesday and Thursday, November 18-19, 1992 .....	399
39	Monday and Tuesday, November 23-24, 1992 .....	455
40	Tuesday, November 24, 1992 .....	503
41	Wednesday, Thursday, Monday and Tuesday, November 25, 26, December 7 and 8, 1992 .....	531
42	Tuesday, December 8, 1992 .....	609
43	Wednesday and Thursday, December 9-10, 1992 .....	631
44	Monday, Tuesday, Wednesday, Thursday and Friday, December 14, 15, 16, 17 and 18, 1992 .....	687

speech of Senator Osmeña to the appropriate committees, Mr. President.

**The President:** May I know the appropriate committees?

**Senator Romulo:** Mr. President, to the Committees on Economic Affairs, Banks, and Ways and Means.

**The President:** Is there any objection? [Silence] The Chair hears none, the motion is approved.

**Senator Romulo:** Mr. President, I move that the privilege hour be extended for tomorrow because there will be a speaker, Senator Tolentino.

**BILL ON SECOND READING**  
**Senate Bill No. 556--OPSF Transfer**  
*(Continuation)*

Mr. President, I move that we resume consideration of Senate Bill No. 556 as reported out under Committee Report No. 6.

**The President:** Resumption of consideration of Senate Bill No. 556 is now in order.

**Senator Romulo:** Mr. President, we are still in the period of interpellations. I ask that the distinguished Senate President Pro Tempore, the sponsor and author, be recognized.

**The President:** Senator Maceda is recognized.

May we know the parliamentary status of this bill?

**Senator Romulo:** Mr. President, we are still in the period of interpellations.

**Senator Maceda:** Mr. President, when we asked for the suspension of this measure, it was to submit a new substitute bill in compliance with the suggestions of Senator Guingona, the Minority Leader, and Senator Osmeña, with the end in view of adopting an approach which would be to just expand the purposes for which the OPSF, according to PD No. 1956 as amended by Executive Order No. 137, could be used for.

So with the permission of the Senate--and we have distributed copies of this substitute bill--may I move, Mr. President, that in lieu of the original Senate Bill No. 556, that the substitute bill be used as a basis for continuing the discussion on this particular subject matter.

**The President:** Is there any objection to that motion?

[Silence] The Chair hears none; the motion is approved.

**Senator Maceda:** Mr. President, thank you.

May I just therefore read briefly the pertinent provisions. The title is now "AN ACT EXPANDING THE PURPOSES FOR WHICH THE OIL PRICE STABILIZATION FUND (OPSF) MAY BE USED, AMENDING FOR THE PURPOSE SECTION 8 OF PD NO. 1956 AS AMENDED BY EXECUTIVE ORDER NO. 137, SERIES OF 1987, AND FOR OTHER PURPOSES."

Section 8 is then amended to read as follows--I will indicate the amended portion, it is in capital letters in the printed copy.

"SECTION 8. THERE IS HEREBY CREATED A SPECIAL ACCOUNT IN THE GENERAL FUND TO BE DESIGNATED AS OIL PRICE STABILIZATION FUND FOR THE PURPOSE OF MINIMIZING FREQUENT PRICE CHANGES BROUGHT ABOUT BY EXCHANGE RATE ADJUSTMENTS AND/OR AN INCREASE IN WORLD MARKET PRICES OF CRUDE OIL AND IMPORTED PETROLEUM PRICES."

And this is the amendatory portion--

AND FOR THE PURPOSES OF FINANCING ENERGY DEVELOPMENT PROJECTS, AND FOR INFUSING ADDITIONAL CAPITAL INTO THE NATIONAL POWER CORPORATION AS MAY BE DETERMINED BY THE PRESIDENT OF THE PHILIPPINES. That is the amendatory portion.

Mr. President, in the later part of this section where there is again a specification of what the fund may be used for, the old section says, "the fund herein created shall be used for the following:

1. To reimburse the oil companies for cause, increases, et cetera.
2. To reimburse the oil companies for possible cause under recovery, et cetera.

Then, the amendatory portion under No. 3: TO FINANCE ENERGY DEVELOPMENT PROJECTS AND FOR INFUSING ADDITIONAL CAPITAL INTO THE NATIONAL POWER CORPORATION AS MAY BE DETERMINED BY THE PRESIDENT OF THE PHILIPPINES.

That, Mr. President, is now the status of the bill.

**The President:** May the Chair seek some clarification?

**Senator Maceda:** Yes, Mr. President.

**The President:** I have gone over this substitute bill, and I notice that while there is an addition to the purposes for which the special account known as the "Oil Price Stabilization Fund" may be utilized, to include financing energy development projects and/or infusing additional capital into the National Power Corporation, the amount of P5 million which had been stated in the original bill as reported out by the committee has not been stated.

Does it mean, therefore, that under this new formulation, the entire fund may, wholly or partially, be used for the purpose of financing energy development projects and/or infusing additional capital into the National Power Corporation?

**Senator Maceda:** Mr. President, we did think about that particular matter. The Chair is correct that under the present formulation, the entire fund may be used. I hasten to add, however, that if it is so desired by any Member of this Body and concurred in by the Senate, purpose No. 3 on page 2 could carry a limit of not to exceed P5 billion.

**The President:** I see. The Chair is clarified already on this point. Is the Minority Leader seeking recognition?

**Senator Guingona:** Yes, Mr. President.

**The President:** The Minority Leader is recognized.

**Senator Guingona:** Mr. President, some clarificatory questions only.

**Senator Maceda:** Willingly, Mr. President.

**Senator Guingona:** The proposed bill, as amended now, does not state that the purpose for which the special fund was created has been fulfilled or abandoned. Will the distinguished Sponsor agree to either having this place on record or be incorporated in the bill whatsoever may be his desire, just to have something on record along that line so that we obviate any possible objection that may arise in the future.

**Senator Maceda:** Mr. President, we did not overlook that point which was raised by the Minority Leader the other night. However, we felt that it was not possible under the one subject rule to be placing that particular matter in today's new version of the bill which is just to amend PD 1986, as amended. If the Gentleman is willing, I believe it might be sufficient to just spread that into the record.

**Senator Guingona:** Yes, Mr. President.

For the record, may I state that the proceeds of Republic Act 6952 have been substantially fulfilled already, and that there is an existing balance of about P8 billion in the OPSF which have not yet been claimed. I just do not know the exact amount.

**Senator Maceda:** OPSF is P8.2 billion.

**Senator Guingona:** P8.2 billion. And at the proper time, Mr. President, I think the sum of P5 billion can be inserted as suggested by the Chair. Thank you, Mr. President.

**Senator Osmeña:** Mr. President.

**The President:** Senator Osmeña is recognized.

**Senator Osmeña:** Mr. President, will the distinguished Sponsor yield for just one question?

**Senator Maceda:** Willingly, Mr. President, to the Gentleman who originally suggested this and whom I have asked to be a coauthor of this measure.

**Senator Osmeña:** Mr. President, I am concerned with subparagraph iii of paragraph 2, page 2, under the existing executive order.

It reads: "Other factors as may be determined by the Ministry of Finance to result in underrecovery."

This is the same provision that was included in Executive Order No. 137. This is the so-called underrecovery which has now caused a number of complaints filed with the Supreme Court.

Recently, Mr. President, Caltex lost a P3 billion case on this underrecovery because, to my observation, this has been abused by the oil companies.

Has the Gentleman any objection if in the period of amendments, we will ask that this be deleted?

**Senator Maceda:** I will accept the amendment, Mr. President.

**Senator Osmeña:** Thank you, Mr. President. In view of that, there is no need to belabor the point.

**Senator Romulo:** Mr. President, I move that the period of interpellations be closed.

**The President:** Is there any objection? [*Silence*] There being none, the period of interpellations is closed.

**Senator Romulo:** I ask that we now consider the Committee amendments, Mr. President.

#### COMMITTEE AMENDMENTS

**Senator Maceda:** Mr. President, on page 1 and also on the additional number three on page 2, as noticed by the Senate President, there should be a word OR after "and", so that it will read: "and/OR for infusing additional capital", et cetera.

So the amendment is the slash (/)OR.

**The President:** Is there any objection to this amendment? [*Silence*] There being none, the amendment is approved.

**Senator Maceda:** Mr. President, on page 2, number 3 at the bottom, remove the period after "Philippines" and add the words IN AN AMOUNT NOT TO EXCEED A TOTAL OF FIVE BILLION PESOS.

**The President:** Is there any objection to the amendment? [*Silence*] There being none, the amendment is approved.

**Senator Mercado:** Now, we are ready for the Osmeña amendment, Mr. President.

**The President:** Senator Osmeña is recognized.

#### OSMEÑA AMENDMENT

**Senator Osmeña:** Mr. President, the amendment is to delete subparagraph iii of paragraph 2 which reads: "iii. Other factors as may be determined by the Ministry of Finance to resolve in underrecovery".

**Senator Maceda:** We accept the deletion, Mr. President.

**Senator Osmeña:** Thank you, Mr. President.

**The President:** Is there any objection to the amendment? [*Silence*] There being none, the amendment is approved.

As a result of the approval of that amendment, would it not be grammatically correct that in the end of subparagraph ii, the semicolon be deleted and changed to a period?

**Senator Maceda:** That is correct, Mr. President.

**The President:** Is there any objection? [*Silence*] There being none, the amendment is approved.

#### ROMULO AMENDMENT

**Senator Romulo:** Mr. President, I would like to propose an amendment, if it is acceptable to the distinguished Sponsor, to lower the amount to not more than P4 billion.

**Senator Maceda:** Mr. President, we accept the amendment for two reasons: First, because there has been a proposed price increase, and second, because there is P1 billion being proposed in the General Appropriations Act. We will discuss that P1 billion in the GAA.

**The President:** So this will be in the nature of an amendment to the amendment.

**Senator Maceda:** Yes, Mr. President, to reduce the amount from P5 billion to P4 billion.

**The President:** Is there any objection? [*Silence*] There being none, the amendment is approved.

**Senator Romulo:** Mr. President, since there are no more committee and individual amendments, I move that we close the period of amendments.

**The President:** Is there any objection? [*Silence*] There being none, the period of amendments both committee and individual is hereby closed.

#### APPROVAL OF SENATE BILL NO. 556 ON SECOND READING, AS AMENDED

**Senator Romulo:** Mr. President, I move that we vote on Senate Bill No. 556, as amended, on Second Reading.

**The President:** We shall now vote on the bill, as amended, on Second Reading. As many as are in favor of the bill, as amended, will please say *Aye*. [*Several Senators: Aye*] As many as are against will please say *Nay*. [*Silence*] Senate Bill No. 556 is approved on Second Reading.

**Senator Maceda:** Mr. President, may I make it of record that Senators Lina, Herrera and Sotto have joined as coauthors of the bill.

**The President:** Thank you.

#### BILL ON SECOND READING Senate Bill No. 35 - Large Taxpayers Unit

**Senator Romulo:** Mr. President, I move that we consider

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# Table of Contents

---

## PLENARY SESSIONS

Session No.		Page
29	Monday, October 19, 1992.....	1
30	Tuesday, October 20, 1992.....	35
31	Wednesday and Thursday, October 21-22, 1992 .....	47
32	Tuesday, October 27, 1992.....	89
33	Wednesday, Thursday and Monday, October 28, 29 and November 9, 1992 .....	123
34	Tuesday, November 10, 1992 .....	233
35	Wednesday, Thursday and Monday, November 11, 12 and 16, 1992 .....	255
36	Monday, November 16, 1992 .....	333
37	Tuesday, November 17, 1992 .....	375
38	Wednesday and Thursday, November 18-19, 1992 .....	399
39	Monday and Tuesday, November 23-24, 1992 .....	455
40	Tuesday, November 24, 1992 .....	503
41	Wednesday, Thursday, Monday and Tuesday, November 25, 26, December 7 and 8, 1992 .....	531
42	Tuesday, December 8, 1992 .....	609
43	Wednesday and Thursday, December 9-10, 1992 .....	631
44	Monday, Tuesday, Wednesday, Thursday and Friday, December 14, 15, 16, 17 and 18, 1992 .....	687

**BILL ON THIRD READING**  
**Senate Bill No. 556 - OPSF Transfer**

**Senator Romulo:** Mr. President, I move that we vote on Third Reading on Senate Bill No. 556.

**The President Pro Tempore:** Voting on Third Reading on Senate Bill No. 556 is now in order.

The Secretary will please read only the title of the bill, if there is no objection. [*There was none.*]

**The Secretary:** Senate Bill No. 556, entitled

AN ACT AUTHORIZING THE TRANSFER OF FIVE (P5B) BILLION PESOS FROM THE OIL PRICE STABILIZATION FUND (OPSF) TO THE NATIONAL TREASURY FOR THE PURPOSE OF FINANCING POWER PROJECTS OF THE GOVERNMENT.

**The President Pro Tempore:** The Senate will now proceed to vote on the bill. The Secretary will please call the roll.

*The Secretary called the roll and the result of the voting was as follows:*

**YES - 14**

Senator Aquino  
 Senator Angara  
 Senator Coseteng  
 Senator Guingona  
 Senator Maceda  
 Senator Mercado  
 Senator Ople

Senator Osmeña  
 Senator Shahani  
 Senator Roco  
 Senator Romulo  
 Senator Tatad  
 Senator Tolentino  
 Senator Webb

**NO - 0**

**ABSTENTION - 0**

**RESULT OF VOTING**

**The President Pro Tempore:** With 14 affirmative votes, no negative vote, and no abstention, Senate Bill No. 556 is approved on Third Reading.

**CONFERENCE COMMITTEE ON SENATE BILL NO. 556**  
**(Financing Power Projects of the Government)**

**Senator Romulo:** Mr. President, may I also ask that the following be named and appointed to the Senate panel in the Bicameral Conference Committee: Senators Maceda, Herrera, Sotto, Osmeña and Guingona.

**The President Pro Tempore:** Is there any objection? [*Silence*] The Chair hears none; the motion is approved.

**MANIFESTATION OF SENATOR ROMULO**

**Senator Romulo:** Mr. President, may I also manifest that the printed copies of Senate Bill No. 35, entitled "An Act Further Amending Certain Provisions of the Internal Revenue Code as Amended, Authorizing the Commissioner of Internal Revenue to Prescribe Venue for Filing of the Returns and Payment of Tax," were distributed this morning and are on the desk of each of the Senators.

**The President Pro Tempore:** It is noted.

**ADJOURNMENT OF THE SESSION**

**Senator Romulo:** Mr. President, there being no other matters to be taken up in this morning's session, I move that we adjourn until four o'clock this afternoon.

**The President Pro Tempore:** The session is adjourned to reconvene at four o'clock this afternoon, if there is no objection. [*There was none.*]

*It was 12:03 p.m.*

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**CONGRESS OF THE PHILIPPINES**  
**SENATE**

# Record of the Senate

**FIRST REGULAR SESSION**  
**OCTOBER 19 TO DECEMBER 18, 1992**

**VOLUME II, NOS. 29-44**

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**SECRETARY ANACLETO D. BADOY, JR.**

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# Table of Contents

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## PLENARY SESSIONS

Session No.		Page
29	Monday, October 19, 1992.....	1
30	Tuesday, October 20, 1992.....	35
31	Wednesday and Thursday, October 21-22, 1992 .....	47
32	Tuesday, October 27, 1992.....	89
33	Wednesday, Thursday and Monday, October 28, 29 and November 9, 1992 .....	123
34	Tuesday, November 10, 1992 .....	233
35	Wednesday, Thursday and Monday, November 11, 12 and 16, 1992 .....	255
36	Monday, November 16, 1992 .....	333
37	Tuesday, November 17, 1992 .....	375
38	Wednesday and Thursday, November 18-19, 1992 .....	399
39	Monday and Tuesday, November 23-24, 1992 .....	455
40	Tuesday, November 24, 1992 .....	503
41	Wednesday, Thursday, Monday and Tuesday, November 25, 26, December 7 and 8, 1992 .....	531
42	Tuesday, December 8, 1992 .....	609
43	Wednesday and Thursday, December 9-10, 1992 .....	631
44	Monday, Tuesday, Wednesday, Thursday and Friday, December 14, 15, 16, 17 and 18, 1992 .....	687

reason for the bill.

**The President:** Would the Lady Senator rather have that provided for in this separate bill or could that be incorporated in this bill as now proposed by Senator Tañada?

**Senator Macapagal-Arroyo:** While I am accepting the amendment, Mr. President, of course, my own preference is to have it in a separate bill so that we can have a simpler bill here and a simpler bill also on the other subject matter.

**The President:** Is Senator Tañada insisting on his amendment?

**Senator Tañada:** Mr. President, what I can do is go over the bill filed by Senator Macapagal-Arroyo and see if it may be better to have this covered by a separate bill, as she is now suggesting. So if I can be given up to tomorrow, Mr. President, I will go over her bill and I will then decide whether to still propose this amendment or not.

**The President:** All right. Would it not then be advisable to defer consideration of at least this particular amendment?

**Senator Tañada:** Yes, Mr. President. I just have one more question with regard to the transfer of patents or formula or other technological rights of processes.

Would this mean transferring this patent or formula or technological rights of processes to the Philippine Company?

**Senator Macapagal-Arroyo:** Yes, Mr. President, if the investment is a transfer of patent, that would belong to the Philippine Company.

**Senator Tañada:** I am glad to hear that, Mr. President. Thank you very much.

#### SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 356

**Senator Romulo:** Mr. President, in view of the reservation made by Senator Tañada for a possible individual amendment to this bill, I move that we suspend consideration of Senate Bill No. 356 until tomorrow.

**The President:** Is there any objection? [Silence] The Chair hears none; the motion is hereby approved.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL NO. 2139/SENATE BILL NO. 556 (Oil Price Stabilization Fund)

**Senator Romulo:** Mr. President, I move that we now

consider the Conference Committee Report on the disagreeing provisions of House Bill No. 2139 and Senate Bill No. 556 on the Oil Price Stabilization Fund.

I ask that the distinguished Senate President Pro Tempore, the Author and Sponsor of Senate Bill No. 556, be recognized.

**The President:** The Senate President Pro Tempore is hereby recognized.

#### SPONSORSHIP SPEECH OF SENATOR MACEDA

**Senator Maceda:** Thank you, Mr. President.

The Senate Conference Committee is privileged to report back to the Senate the Conference Committee Report on what may be considered as one of the most important achievements of the Congress during its first six months. This is on the amendment of the OPSF Law or Presidential Decree, allowing the use of the Oil Price Stabilization Fund for the infusion of the capital into the NAPOCOR.

Mr. President, the two bills were substantially the same. The only changes are, between the P2 billion of the House, payable in two tranches, and the P4 billion of the Senate, payable even in one lump sum, we agreed on a compromise amount of P3 billion, which could be paid out in one lump sum. But, of course, since the power of release belongs to the Executive, if the Executive wanted to release the amount in less than the total amount of P3 billion at any one time, then there is no prohibition from doing so.

We adopted part of the House's conditions to the effect that the amount shall be released if the terminal balance that will be left in the OPSF shall be less than P3 billion.

Considering that the total amount now in the OPSF is over P8 billion, with the downtrend in prices and exchange rates, and after the P3 billion is released, there will be over P5 billion left. That should still the fears of some people that they may have to pay higher oil prices in the immediate future or next year if this is approved. So that is in the law.

We also agreed to the House proviso that the National Power Corporation shall utilize the said payments on its capital stock to finance its capital expenditures for energy projects only. It is for capital expenditures for energy projects only.

Mr. President, Section 1 of the proposed law clearly spells out that the P3 billion is going to be for an additional infusion into the NAPOCOR of capital. And this makes it doubly significant because, for the first time in more than 30 years, I

believe, after an initial infusion of a total of P14 billion out of P50 billion, this is the first time that there will be an infusion of a substantial amount, which is P3 billion.

The Conference Committee hopes that with this report, we have aptly and conclusively demonstrated to the Executive our sense of cooperation in solving any major problem that is of priority consideration, especially in terms of the time element.

**APPROVAL OF CONFERENCE COMMITTEE REPORT ON HOUSE BILL NO. 2139/SENATE BILL NO. 556**

And so, Mr. President, I ask that this Conference Committee Report, which was signed by all the five Members of the Conference Committee, including two Members of the Minority in this Chamber, be approved.

**The President:** Is there any objection to the approval of the Conference Committee Report on the disagreeing provisions of the consolidated House Bill No. 2139 and Senate Bill No. 556?

**Senator Aquino:** Mr. President.

**The President:** Senator Aquino is recognized.

**Senator Aquino:** Mr. President, just for clarification. On page 3, Mr. President, this Price Stabilization Fund shall be administered by the Office of Energy Affairs, is that correct?

**Senator Maceda:** That is correct, Mr. President, because, as of now, the bill creating the Department of Energy is not yet formally signed into law. So, eventually, the Office of Energy Affairs will be abolished by the Department of Energy bill. This will automatically then mean the Department of Energy.

**Senator Aquino:** So that, at present, the people handling the funds...

**Senator Maceda:** This is the present office handling the fund.

**Senator Aquino:** Thank you, Mr. President.

**The President:** All right. Is there any objection to the previous motion? [Silence] There being none, said Conference Committee Report is hereby approved.

*The following is the full text of Conference Committee*

*Report on House Bill No. 2139/Senate Bill No. 556:*

**CONFERENCE COMMITTEE REPORT**

The Conference Committee on the disagreeing provisions of House Bill No. 2139, entitled

**AN ACT PROVIDING FOR THE PAYMENT IN PART OF THE SUBSCRIPTION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO THE CAPITAL STOCK OF THE NATIONAL POWER CORPORATION OUT OF THE OIL PRICE STABILIZATION FUND, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NUMBERED NINETEEN HUNDRED FIFTY-SIX, AS AMENDED**

and Senate Bill No. 556, entitled

**AN ACT EXPANDING THE PURPOSES FOR WHICH THE OIL PRICE STABILIZATION FUND (OPSF) MAY BE USED, AMENDING FOR THE PURPOSE SECTION 8 OF PRESIDENTIAL DECREE NO. 1956; AS AMENDED BY EXECUTIVE ORDER NO. 137, SERIES OF 1987, AND FOR OTHER PURPOSES,**

having met, after full and free conference, have agreed to recommend and do hereby recommend to their respective Houses, the approval of the consolidated House Bill No. 2139 and Senate Bill No. 556, entitled

**AN ACT PROVIDING FOR THE PAYMENT IN PART OF THE SUBSCRIPTION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO THE CAPITAL STOCK OF THE NATIONAL POWER CORPORATION OUT OF THE OIL PRICE STABILIZATION FUND, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NUMBERED NINETEEN HUNDRED FIFTY-SIX, AS AMENDED.**

Approved,

**CONFEREES ON THE PART OF THE SENATE**

(Sgd.) HON. ERNESTO M. MACEDA

(Sgd.) HON. ERNESTO F. HERRERA

(Sgd.) HON. VICENTE V. SOTTO III

(Sgd.) HON. JOHN H. OSMEÑA

(Sgd.) HON. TEOFISTO T. GUINGONA, JR.

**CONFEREES ON THE PART OF THE  
HOUSE OF REPRESENTATIVES**

(Sgd.) HON. DANTE O. TINGA

(Sgd.) JEROME V. PARAS

(Sgd.) HON. RENATO A. YAP

(Sgd.) HON. RAUL V. DEL MAR

(Sgd.) HON. PACIFICO M. FAJARDO

(Sgd.) HON. AMADO S. BAGATSING

**REPUBLIC ACT NO. \_\_\_\_\_**

**AN ACT PROVIDING FOR THE PAYMENT IN PART OF THE SUBSCRIPTION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO THE CAPITAL STOCK OF THE NATIONAL POWER CORPORATION OUT OF THE OIL PRICE STABILIZATION FUND, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NUMBERED NINETEEN HUNDRED FIFTY-SIX, AS AMENDED**

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

**SECTION 1.** The subscription of the Government of the Republic of the Philippines to the capital stock of the National Power Corporation, as provided for in Republic Act No. 6395, otherwise known as the Revised Charter of the National Power Corporation, as amended by Presidential Decrees No. 758, 1360 and 1443, shall be paid in part out of the Oil Price Stabilization Fund in the amount of Three Billion Pesos (P3,000,000,000.00) in accordance with Section 2 of this Act.

**Sec. 2.** Section 8 of Presidential Decree No. 1956, as amended by Executive Order No. 137, is hereby further amended to read as follows:

“Sec. 8. There is hereby created a Trust Account in the books of accounts of the (Ministry of Energy) OFFICE OF ENERGY AFFAIRS to be designated as the Oil Price Stabilization Fund (OPSF) for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or changes in [W]world market prices of crude oil and imported petroleum products. The Oil Price Stabilization Fund (OPSF) may be sourced from any of the following:

“[(a) Any increase in the tax collection from *ad valorem* tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;]

[(b)](A) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the [Minister] DEPARTMENT of Finance in consultation with the [Board of Energy] ENERGY REGULATORY BOARD;

“[(c)](B) Any additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate [O]order that may be issued by the [Board of Energy] ENERGY REGULATORY BOARD requiring payment of persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;

“[(d)](C) Any resulting peso cost[s] differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the [Board of Energy] ENERGY REGULATORY BOARD.

“The Fund herein created shall be used for the following:

“(1) To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or FROM THE increase in world market prices of crude oil;

“(2) To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the [Ministry] DEPARTMENT of Finance. Cost underrecovery shall include the following:

“i. Reduction in oil company take as directed by the

[Board of Energy] ENERGY REGULATORY BOARD without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;

“ii. Reduction in internal [ad valorem] SPECIFIC taxes as a result of the foregoing government-mandated price reductions; AND

“iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.]

“(3) TO COVER THE PAYMENT IN PART OF THE SUBSCRIPTION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO THE CAPITAL STOCK OF THE NATIONAL POWER CORPORATION IN THE AMOUNT OF THREE BILLION PESOS (P3,000,000,000.00). SAID AMOUNT SHALL BE RELEASED TO THE NATIONAL POWER CORPORATION UPON THE EFFECTIVITY OF THIS ACT: *PROVIDED*, THAT SUCH AMOUNT SHALL BE RELEASED ONLY IF, ON THE SAID DATE, THE OPSF TERMINAL BALANCE SHALL NOT BE LESS THAN THREE BILLION PESOS (P3,000,000,000.00), AS CERTIFIED BY THE OFFICE OF ENERGY AFFAIRS: *PROVIDED, FURTHER*, THAT THE NATIONAL POWER CORPORATION SHALL UTILIZE THE SAID PAYMENTS ON ITS CAPITAL STOCK TO FINANCE ITS CAPITAL EXPENDITURES FOR ENERGY PROJECTS ONLY.

“The Oil Price Stabilization Fund (OPSF) shall be administered by the [Ministry of Energy] OFFICE OF ENERGY AFFAIRS.”

SEC. 3. All laws inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 4. This Act shall take effect upon its publication in Two (2) national newspapers of general circulation.

Approved,

Senator Romulo: Mr. President, may I manifest that Senate Bill No. 287, entitled

AN ACT CREATING AND ESTABLISHING THE

INSTITUTE FOR ADVANCED STRATEGIC AND INTERNATIONAL STUDIES TO RESEARCH AND OPTIONS FOR NATIONAL ECONOMIC SECURITY AND FOREIGN POLICIES,

be also referred to the Committee on Foreign Relations.

The President: Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Romulo: Mr. President, may I just manifest that the printed copies of Senate Bill No. 929, extending the Rent Control Law, have just been distributed to each Senator.

Mr. President, tomorrow, our session will start at three o'clock in the afternoon. In addition to the caucus on the amnesty proclamation and the heinous crime bills, and, perhaps, the condominium bill, we shall also take up the sponsorship speech on Senate Bill No. 968, under Committee Report No. 2, on the VAT bill, entitled

AN ACT AUTHORIZING THE COMMISSIONER OF INTERNAL REVENUE TO REQUIRE THE PAYMENT OF THE VALUE ADDED TAX EVERY MONTH AND TO ALLOW LOCAL GOVERNMENT UNITS TO SHARE IN VAT REVENUE, AMENDING FOR THESE PURPOSES SECTIONS 110 AND 282 OF THE NATIONAL INTERNAL REVENUE CODE.

Of course, we shall also resume consideration of Senate Bill No. 356 on Long-term Lease of Lands to Foreign Investors. We are in the period of individual amendments. Senator Tañada will be proposing some amendments.

#### ADJOURNMENT OF THE SESSION

Mr. President, since there are no other matters to be taken up in this evening's session, I move that we adjourn the session until three o'clock tomorrow afternoon.

The President: Is there any objection to this motion? [*Silence*] There being none, the session is adjourned until three o'clock tomorrow afternoon.

It was 7:00 p.m.