

RECORD OF THE SENATE

THURSDAY, AUGUST 27, 1998

RESUMPTION OF THE SESSION

At 10:16, the session was resumed with Sen. Vicente C. Sotto III, presiding.

The Presiding Officer [Sen. Sotto]. The session is resumed. The Majority Leader is recognized.

Senator Drilon. Mr. President, may we ask the Secretary to read the Reference of Business.

The Presiding Officer [Sen. Sotto]. The Secretary will read the Reference of Business.

SECOND ADDITIONAL REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Secretary. Senate Bill No. 1140, entitled

AN ACT AMENDING REPUBLIC ACT NO. 7432, OTHERWISE KNOWN AS THE LAW MAXIMIZING THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES

Introduced by Senator Cayetano

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Social Justice, Welfare and Rural Development

The Secretary. Senate Bill No. 1141, entitled

AN ACT AMENDING SECTION 4, PARAGRAPH "A" OF REPUBLIC ACT NO. 8049, OTHERWISE KNOWN AS THE ANTI-HAZING LAW, INCREASING THE PENALTY OF HAZING RESULTING IN DEATH, RAPE, SODOMY OR MUTILATION FROM *RECLUSION PERPETUA* TO DEATH

Introduced by Senator Cayetano

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws

The Secretary. Senate Bill No. 1142, entitled

AN ACT PROHIBITING TELECOMMUNICATIONS FRAUD AND DESTRUCTION OF

TELECOMMUNICATIONS FACILITIES, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Sotto III

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Public Services

The Secretary. Senate Bill No. 1143, entitled

AN ACT CREATING THE BAKERY INDUSTRY DEVELOPMENT BOARD AS AN ATTACHED AGENCY OF THE DEPARTMENT OF TRADE AND INDUSTRY, AMENDING FOR THAT PURPOSE TITLE X, BOOK IV OF EXECUTIVE ORDER 292, THE ADMINISTRATIVE CODE OF 1987, AND FOR OTHER PURPOSES

Introduced by Senator Sotto III

The Presiding Officer [Sen. Sotto]. Referred to the Committees on Trade and Commerce; Health and Demography; and Finance

The Secretary. Senate Bill No. 1144, entitled

AN ACT AMENDING REPUBLIC ACT NO. 7610, OTHERWISE KNOWN AS THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT, AND FOR OTHER PURPOSES

Introduced by Senator Sotto III

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Youth, Women and Family Relations

The Secretary. Senate Bill No. 1145, entitled

AN ACT LIBERALIZING THE LICENSING OF TRAVEL AND TOUR AGENCIES

Introduced by Senator Sotto III

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Tourism

The Secretary. Senate Bill No. 1146, entitled

AN ACT LIMITING CERTAIN LIABILITIES OF

AN ACT AMENDING SECTION 20 OF PRESIDENTIAL DECREE NUMBERED 1638, AS AMENDED BY PRESIDENTIAL DECREE NUMBERED 1650, OTHERWISE KNOWN AS "THE ARMED FORCES OF THE PHILIPPINES RETIREMENT LAW" AND SUBSECTION (a) SECTION 27 OF COMMONWEALTH ACT NUMBERED 1, OTHERWISE KNOWN AS THE "NATIONAL DEFENSE ACT"

Introduced by Senator Magsaysay Jr.

The Presiding Officer [Sen. Sotto]. Referred to the Committee on National Defense and Security

The Secretary. Senate Bill No. 1154, entitled

AN ACT REORGANIZING AND MODERNIZING THE NATIONAL BUREAU OF INVESTIGATION (NBI) AND PROVIDING NECESSARY FUNDS THEREFOR, AND FOR OTHER PURPOSES

Introduced by Senator J. Osmeña

The Presiding Officer [Sen. Sotto]. Referred to the Committees on Justice and Human Rights; Civil Service and Government Reorganization; and Finance

The Secretary. Senate Bill No. 1155, entitled

AN ACT AMENDING REPUBLIC ACT NO. 6849 THE "MUNICIPAL TELEPHONE ACT OF 1989"

Introduced by Senator J. Osmeña

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Public Services

The Secretary. Senate Bill No. 1156, entitled

AN ACT TO AMEND REPUBLIC ACT NO. 776, AS AMENDED, THE CIVIL AERONAUTICS ACT OF THE PHILIPPINES PARTICULARLY CHAPTER III SECTION 5 THEREFOR

Introduced by Senator J. Osmeña

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Public Services

RESOLUTION

The Secretary. Proposed Senate Resolution No. 150, entitled

RESOLUTION DIRECTING THE APPROPRIATE COMMITTEES TO INQUIRE, IN AID OF LEGISLATION, ON REPORTED VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS (CBAs), AND UNFAIR LABOR PRACTICES, IN INDUSTRIES AFFECTED WITH NATIONAL INTEREST TO DETERMINE THE ADEQUACY OR INADEQUACY OF GOVERNMENT AGENCIES IN THE IMPLEMENTATION OF LABOR LAWS

Introduced by Senators Flavier and Legarda-Leviste

The Presiding Officer [Sen. Sotto]. Referred to the Committee on Labor, Employment and Human Resources Development

COMMUNICATION

The Secretary. Letter from Mr. Jose C. Policarpio Jr., Presidential Legislative Adviser and Head, PLLO, transmitting to the Senate two (2) copies of Republic Act No. 8729, entitled

AN ACT GRANTING THE PRINCESS URDUJA COMMUNICATIONS, INC., A FRANCHISE TO CONSTRUCT, ESTABLISH, INSTALL, MAINTAIN AND OPERATE LOCAL EXCHANGE NETWORK IN THE PROVINCES OF PANGASINAN, PAMPANGA AND BULACAN,

which lapsed into law in accordance with Article VI, Section 27 (1) of the Constitution.

The Presiding Officer [Sen. Sotto]. To the Archives

The Majority Leader is recognized.

BILL ON SECOND READING
S. No. 1136 - Special Economic Zones Act of 1995
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1136.

The Presiding Officer [Sen. Sotto]. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1136 is now in order.

Senator Drilon. May we ask the Chair to recognize the sponsor, Sen. Sergio R. Osmeña III for purposes of continuation of the period of interpellations. May we also ask the Chair for that purpose to recognize the Minority Leader, Sen. Teofisto T. Guingona Jr.

The Presiding Officer [Sen. Sotto]. Senator Osmeña III and Senator Guingona are recognized.

Senator Osmeña III. Thank you, Mr. President.

Senator Guingona. Mr. President, will the distinguished Mr. Debonair yield for some questions?

Senator Osmeña III. We are earning a lot of nicknames in the process of sponsoring this bill, but gladly to the legitimate, with the permission of Senator Tatad, Minority Leader.

Senator Guingona. Thank you. The intended amendatory bill does not disturb the functions and powers of the PEZA board in the existing law, does it?

Senator Osmeña III. No, it does not. It does not expand; it does not diminish; it just changes the composition of the board by removing the Governor of the Bangko Sentral ng Pilipinas and by adding five additional members whom we feel would give the PEZA board the wider reach in establishing special economic zones all over the country.

Senator Guingona. I am sorry I had to step out in the latter part of the gentleman's interpellation last night and so, if there is any question that has already been covered, please bring the same to my attention and I will go to another topic.

In the existing law, in Section 12, subsection (c), there is this power of the board to regulate and undertake the establishment, operation and maintenance of utilities, other services and infrastructure in the ecozone such as heat, light, power, water supply, telecommunications, et cetera. Does this include the power to grant franchise for telecommunications?

Senator Osmeña III. This was not covered by the bill but from my knowledge, it does not bestow the power to PEZA to grant franchises. Those franchises can only be granted by Congress, Mr. President.

Senator Guingona. And yet, the distinguished sponsor of the amendatory bill will agree that for business, telecommunications is a vital component.

Senator Osmeña III. That is correct, Mr. President.

Senator Guingona. And in the composition as proposed for amendment, the Secretary of the DOTC is not included.

Senator Osmeña III. Mr. President, in the original proposed bill, the DOTC was included. But during our hearings, there were suggestions to include additional departments, like the DENR, the Agrarian Reform, the Public Works, and one or two others. When we went over the entire list, we found out we were coming to 15.

The director general opined that it would be very difficult to obtain a quorum with a 15-man board. So we decided to cut it down but we could go no lower than 13. They themselves have decided that the DOTC, which originally, maybe four or five years ago, would have been critical in board membership, is not as critical now because the telecommunications expansion has been going on very nicely and it is not difficult anymore to obtain telephone connections in the various economic zones, Mr. President.

Senator Guingona. I remember correctly that in Subic and in Clark—of course, they are covered by special laws different from the existing one—the authority in those areas invoked their right to grant franchises for communication. I am sure the gentleman is aware of this.

Senator Osmeña III. Yes, Mr. President.

Senator Guingona. Was this authority recognized by the government to extend to linkages beyond the zone?

Senator Osmeña III. Mr. President, we are discussing there Republic Act No. 7227 and I believe that even if Subic had successfully argued that under RA No. 7227 the authorities have the right to grant telephone franchises, I am sure it does not extend beyond the scope of their geographical boundaries.

Senator Guingona. So in lieu of having the power to grant franchises, should the DOTC not be logically represented in these ecozones?

Senator Osmeña III. One can make a case for the representation of DOTC, Mr. President. It is just a matter of priority.

In the list that we have, the DOTC would have been No. 14, the Bangko Sentral as No. 15. But because of the need felt by the director-general of the PEZA to cut down on the number of the members of the board in order to obtain a quorum during their meetings, she herself opined that the DOTC and the Bangko Sentral were the least important among these.

Again, the reason is that it is not difficult to get telephone connections. The telephone companies operating within those service areas where the economic zones would be located would be more than happy to link up the place to their telephone system because that would mean more revenues for the service provider.

Senator Guingona. The establishment of ecozones carry with it privileges that are granted by government to the ecozones, does it not?

Senator Osmeña III. Yes, Mr. President, that is one of the attractions for locators to locate their factories in ecozones and for developers to develop ecozones.

Senator Guingona. And in exercising those privileges the government has a vital interest in seeing to it that the privileges are not abused, misused or invoked contrary to the very purpose of the law?

Senator Osmeña III. That is correct, Mr. President.

Senator Guingona. And yet the gentleman would like to exempt under the proposal privately owned and managed or operated ecozones from interference by a government executive committee?

There are already indications of abuses in the past when, for example, there were importations of wine into ecozones; there are importation of finished goods that are not to be processed which are sold outside not only within the zone. And these, with supervision by the government. Would the gentleman not consider that if we leave out the privately run ecozones, these privileges could be further abused?

Senator Osmeña III. I thank the gentleman for his question. That is a very perceptive question. Unfortunately, this particular phrase has been misunderstood.

Yesterday, I answered the very same question when it was propounded by some of our colleagues here in the Chamber. Let me just go back a little bit, Mr. President.

In the original law, there is a section there that says—that is Section 45.

Senator Guingona. The original law.

Senator Osmeña III. Yes, Republic Act No. 7960.

Section 45 provides:

Relationship of PEZA to Privately owned Industrial Estates. Privately owned industrial estates shall retain

their autonomy and independence and shall be monitored by the PEZA for the implementation of incentives.

Now, this is just in consonance with the spirit of the law, not only the spirit but the letter of the law. Unfortunately, this particular section was not taken into consideration in the section that we now seek to amend.

Now, allow me to explain, Mr. President.

The PEZA controls the entry and exit of vehicles and goods going into the special economic zone. It has its own guards; it has powers of regulation and supervision. But the private developer would like to be able to have hands on management of the development of the zone. Unfortunately, the wording that was in the original bill forgot to take this into consideration.

The government only owns, Mr. President, four out of the 101 special economic zones today. The others have been developed by the private sector upon the encouragement, of course, of the government and the creation of the PEZA in 1995. Therefore, the management of a privately developed special economic zone can be done by the private sector. However, the police powers, the customs, the BIR and the entry and exit of goods to and from the special economic zone will still be under the PEZA.

Senator Guingona. I would like to thank the sponsor for that. But nonetheless, the privileges granted, which includes an amendment here that the salary scale will be exempt from the Standardization Law as well as other privileges embedded into the PEZA economic zones, would still need monitoring and not actual management.

To this extent, would the distinguished sponsor not agree to having at least a committee where the private managers recommend one from amongst the PEZA directors or the deputies to sit in that committee so that they can adequately monitor all the actuations; so that the importation of wine, vehicles, and even the importation of airplanes that may violate the law would not be abused?

Senator Osmeña III. Mr. President, these PEZAs are not free ports.

Senator Guingona. Yes, I did not... Well, I was going to ask later what is the difference between free port and ecozones. But nonetheless, the privileges granted to the ecozones basically need government monitoring, not management, not operations, just monitoring so that they comply with the law.

Senator Osmeña III. We have no objection to that,

Mr. President. If during the period of amendments, the gentleman would want to say that in the executive committee or the board, there shall be a member from PEZA, this representation would certainly not have any objection.

But to further explain our earlier reply, let me just inform the Chamber the difference between an ecozone and a free port.

Mr. President, while an ecozone has the nature of a separate customs territory, there are no duty-free exemptions on a lot of things that we would allow in a free port. The duty-free exemptions and tax exemptions are granted only to enterprises entitled thereto under PEZA rules and not granted outright by virtue of location in the ecozone. In other words, one may have a bank branch there to service the locators in the ecozone but he still has to pay all taxes and duties therein.

Duty-free shops are not allowed in the ecozone area. The sale of products to another enterprise inside the ecozone is duty and tax free only if the buyer enterprise is entitled to duty and tax exemptions. In other words, if that commercial establishment that was set up there, like, again, we will use the same example, if a bank were to purchase goods from one of the locators, the bank would have to pay the duties and taxes on those goods because it is not entitled to duties and tax-free exemptions. Importation of vehicles are subject to payment of duties and taxes.

On the other hand, in a free port, goods are brought into the area duty and tax free. Duty-free shops are allowed. Goods sold to another entity within the free port are tax free including to residents therein. This is the anomaly in Subic. Duty- and tax-free importation of vehicles is allowed if used within the free port area.

Those are, more or less, the differences between an ecozone and a free port.

Senator Guingona. I would like to thank the gentleman for that answer, Mr. President. But as far as the duty-free items are concerned, there is practically no difference. In other words, the duty-free good which is necessary for the business or the operation under the concept of ecozone should be utilized only within the ecozone itself.

Senator Osmeña III. That is correct, Mr. President. Actually, in reality, while there are four types of ecozones—(1) the industrial estates; (2) the export processing zone; (3) the free ports; and (4) the tourism estates—the PEZA has only concentrated on the second category, which is the export processing zone. It has not declared any of the industrial estates special economic zone. In other words, not one has been entitled to any tax privilege in order to keep a level playing field between domestic market enterprises located outside these industrial estates and within the new industrial estates.

The PEZA has only granted these tax incentives to locators inside export processing zones, which means, they must export at least 70 percent of their production. The duty and tax-free exemptions of production requirements is the way it is worded.

In other words, if we bring in a Rolex watch or a Mercedes car, that will not be allowed. The owner of the factory will have to pay taxes thereon. Many of them enjoy income tax holidays from four to eight years, depending upon what the PEZA board decides. They are exempt from all local taxes, licenses, and fees, except for real property tax. After income tax holiday is over, whether for six or eight years, they are exempt from all national taxes and in lieu thereof, they pay a 5 percent tax on gross income.

At this juncture, Sen. Vicente Sotto III relinquished the Chair to Sen. Ramon Magsaysay Jr.

Senator Guingona. In the case of the export processing zone, is the 70-30 allowed by law, or is that a resolution of the PEZA?

Senator Osmeña III. I believe it is allowed by a law.

Senator Guingona. I remember the tennis balls from Bataan. There were tennis balls that were being processed in the export processing zone in Bataan but a lot of them—I do not know whether they were limited to 30 percent—were sold in the domestic market.

Senator Osmeña III. May I ask for a one-minute suspension of the session, Mr. President.

SUSPENSION OF SESSION

The Presiding Officer [Sen. Magsaysay]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 10:45 a.m.

RESUMPTION OF SESSION

At 10:46 a.m., the session was resumed.

The Presiding Officer [Sen. Magsaysay]. The session is resumed. Senator Osmeña III is recognized.

Senator Osmeña III. Actually, Mr. President, in answer to the question of the distinguished gentleman, Republic Act No. 7916, Section 26, provides:

Domestic Sales. - Goods manufactured by an ECOZONE enterprise shall be made available for

immediate retail sale in the domestic market, subject to payment of corresponding taxes on raw materials and other regulations that may be adopted by the Board of the PEZA.

However, in order to protect the domestic industry, there shall be a negative list of industries that shall be drawn up by the PEZA. Enterprises engaged in industries included in the negative list shall not be allowed to sell their products locally. Said negative list shall be regularly updated by PEZA.

The PEZA, in coordination with the Department of Trade and Industry and the Bureau of Customs, shall jointly issue the necessary implementing rules and guidelines for the effective implementation of this section.

Now, this law should be taken in conjunction with our BOI laws and rules and regulations.

The rules and regulations to implement Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, Section 1, subsection 10(i), defines "registered enterprise" as an enterprise engaged or proposing to engage in an area of activity listed in the Investments Priority Plan. If not so listed, at least 50 percent of its production is for export, if a Filipino national, or at least 70 percent of its production is for export, if foreign-owned.

So the authorities take this in conjunction with other laws in existence before they come up with their guidelines, Mr. President.

Senator Guingona. Yes. I would like to thank the distinguished gentleman for that, Mr. President. Can a private organization establish, under the gentleman's proposal, an export processing zone?

Senator Osmeña III. An export processing zone is established in this manner, Mr. President. I mentioned this yesterday. A private developer does its feasibility study, consolidates the land, then he applies with the PEZA board for special economic zone status.

The PEZA board has certain guidelines. In Republic Act No. 7916, there are guidelines listed.

If the PEZA board decides that the application is meritorious, then it goes to the President of the Republic to issue a proclamation declaring an area, with the physical description accurately recorded, as a special economic zone. The PEZA shall henceforth begin to regulate, supervise and monitor the establishment of that economic zone.

Senator Guingona. So that the gentleman will agree that the PEZA should really be part of the monitoring team and not leaving the operation of the export processing zone entirely to the private managers.

Senator Osmeña III. Mr. President, again, perhaps there is a misunderstanding on how this is worded. This does not in any way remove from PEZA its responsibility of watching the zone. SBMA *po ito*. If the SBMA were privately owned, Gordon would be the private developer, but the Bureau of Customs, the BIR and the PEZA would be at the gates. The Bureau of Customs, the BIR and the PEZA would be monitoring the sales and collecting taxes thereon.

Therefore, I think that physically, the development, the maintenance of water, the roads, and the invitation to investors to come into the zone will be left to the private developer and not to the PEZA administrator.

Senator Guingona. Yes, we agree to that, Mr. President, except that since we are amending the law in order not to have a misunderstanding, that committee, I hope, will find favor with the distinguished sponsor.

Senator Osmeña III. Yes, Mr. President. But in addition to what I just said, each ecozone, including privately developed ecozones, has a PEZA zone manager, examiners and police personnel. And this was not being removed. What was being transferred is the day-to-day operation, marketing, and the maintenance of the physical facilities of the special economic zone.

Senator Guingona. We will craft an amendment for the committee.

Senator Osmeña III. I would be very glad to entertain such an amendment, Mr. President.

Senator Guingona. The operations also has an advisory committee under the existing law.

Senator Osmeña III. That is correct, Mr. President.

Senator Guingona. But there is no chairman of that advisory committee. Will the distinguished sponsor agree to just correcting that, making it the highest official of the local government unit?

Senator Osmeña III. Making it the highest official of the local government unit?

Senator Guingona. The highest official in the local government unit affected who will chair the advisory committee. And this is important, Mr. President.

Senator Osmeña III. The mayor is already included in the advisory committee, Mr. President. If the governor of the province is included, it may not be proper for the mayor to be the chairman.

Senator Guingona. Yes, Mr. President, the mayor can be included. What I mean is, amongst the officials in the advisory committee, there is no head.

Senator Osmeña III. The gentleman is correct, Mr. President.

Senator Guingona. Could we just, perhaps, include an amendment to that effect? This is important because labor of the zone would come from the recommendations of the local governments, and there must be harmonious relation between the manager of the economic zone and the local government units concerned, otherwise we may have labor unrest and it will not achieve the purpose of the ecozone.

Senator Osmeña III. If we have good local government officials, I will agree with the gentleman. But in many areas, such an amendment might open itself to abuses by local government units. As the gentleman and I are aware of, without going into specifics, when an ecozone opens, or even a foreign locator just puts up a factory in a municipality in this country, automatically the mayor or the congressman is swamped with requests for letter of recommendation for employment in the new locator. Of course, the mayor always tries to please his constituents and will sign any and all letters of recommendation. But it might not be advisable or appropriate to give the mayor any more powers than being a member of the ecozone advisory body.

At this juncture, Senator Magsaysay relinquished the Chair to the Senate President.

An ecozone might also be composed of two or three towns. For example, if we were to call SBMA an ecozone that encompasses Subic, Olongapo, Morong and a couple of other towns, there might be quarreling and this would become a political football. So, perhaps, the governor might be a better chairman of the advisory board.

Senator Guingona. Yes. Perhaps just to state that it be the highest official amongst the group.

At any rate, may I know the record of the economic zones as far as the application of eminent domain is concerned? Because they started way back during the martial law days, and I do not know what is the performance, and track record of the EPZA, the predecessor of PEZA, as far as eminent domain is concerned. It is in the nature of things that when an ecozone is established, the

real estate prices go up and there is a temptation for collusion, for expanded areas and haggling for the correct price.

So, may we know if the gentleman is aware of the track record of the EPZA, the predecessor of PEZA as far as the application of eminent domain is concerned?

Senator Osmeña III. Yes, Mr. President. The eminent domain powers had originally been granted to EPZA under Presidential Decree No. 66. It was overlooked and the word was changed from EPZA to "government" in the PEZA law, which is something we seek to correct in this amendatory bill.

But since EPZA only actually developed four export processing zones—the rest have been done by the private sector—there have been no applications of eminent domain to our knowledge, on behalf of the private developers. However, EPZA itself has about 11 lists of expropriation cases pending in various RTC branches, and out of the 11, 10 are in Lapu-Lapu City which is part of the Mactan Export Processing Zone.

There are also two ejectment cases against a locator, but this is done by the owner of the land or the claimant of ownership of the land with the export processing zone. Both are in Lapu-Lapu City also. This is *Rural Bank of Subangdako vs. NEC Electronics* and *Rural Bank of Subangdako vs. EPZA*.

Mr. President, we have about 13 cases with regard to the eminent domain situation.

Senator Guingona. I understand that some of the properties in Cebu have not been totally paid up to the present.

Senator Osmeña III. That is correct, Mr. President. I am not up-to-date on the details of the particular cases. But now we have ejectment cases or threats of ejectment filed by General Milling Corporation on locators who have already been there for several years operating within the export processing zone in Cebu.

Senator Guingona. So this power of eminent domain, which is a power that should be frugally used, should be coursed through the Solicitor General under the gentleman's proposal?

Senator Osmeña III. I do not know how this works, Mr. President. In the past, as I mentioned yesterday, Congress has given the powers of eminent domain even to private franchise holders, like PLDT and other telecommunications companies, in order to set up their lines, like cable TV companies. In this particular case, we merely seek to bring back to PEZA that power that it enjoyed as EPZA.

Since PEZA is merely an agency of government, this bill merely seeks to identify the agency that will be exercising the power of eminent domain since there is absolutely no debate at all that the government has the power of eminent domain.

Senator Guingona. Yes, but will the gentleman agree to just clarify it, that the same should be done through the Solicitor General?

Senator Osmeña III. I do not know how that works, Mr. President. The Office of the Solicitor General (OSG) handles all PEZA expropriation cases. I just got a note.

Senator Guingona. We would like to just ask—I think this has already been answered—but the rank of the director general here is as undersecretary, is that correct?

Senator Osmeña III. I believe he or she enjoys the rank of undersecretary.

Senator Guingona. So all the representatives of the 13 members—and we will propose an amendment to make it 15, if possible, including the DOT—should be undersecretaries at least?

Senator Osmeña III. There was such a proposal yesterday and I said I would gladly entertain that during the period of amendments.

Senator Guingona. Yes, because the reality of the situation is that secretaries really do not go to such meetings, very seldom, and so therefore, undersecretaries can have an assignment and then they can attend to the problems of the PEZA in particular. At least that will be their field of expertise.

Would the gentleman agree to that?

Senator Osmeña III. I would agree to that, Mr. President.

Senator Guingona. Thank you, Mr. President.

The President. The Chair would like to thank the Minority Leader.

The Majority Leader is recognized.

Senator Drilon. May we ask the Chair to recognize Sen. Robert Barbers for the next interpellation?

The President. Sen. Robert Barbers is hereby recognized for interpellation.

Senator Barbers. Thank you very much, Mr. President.

I am just concerned with the interest of our local government units in possible conflict with that of the economic zones.

For my education, Mr. President, may I know if the gentleman from Cebu would yield to three or four clarificatory questions?

Senator Osmeña III. With pleasure to our dashing new addition from Surigao del Norte, Mindanao, Mr. President.

Senator Barbers. Thank you, Mr. President. In one of the proposed amendments, I came across a provision that delegates the power of eminent domain of the Legislature to the PEZA. Now, I could foresee, Mr. President, that in the future, there might rise a conflict between the PEZA and the local government unit because the PEZA and the local government unit might be eyeing the same land area but for a different purpose. The LGU can always claim that the acquisition of this particular piece of property or particular land is for public interest.

Now, in the event, Mr. President, of conflicts of this nature between the PEZA and the LGU, which will now prevail with respect to the exercise of the power of eminent domain?

Senator Osmeña III. Mr. President, under the Local Government Code, I believe that the PEZA is to get a clearance from the local government before it can expropriate anything. So I believe that the local government would have the power to stop the expropriation of any property within its jurisdiction.

Senator Barbers. I brought this to the attention of the gentleman, Mr. President, because we already have some experiences on conflicts between one agency of the government and that of the local government unit.

Now, in the event, for example, that one particular piece of property is what the economic zone needs and the LGU will strongly object by saying, "You cannot get this particular piece of property because we have a proposed project, and that this project is for public interest," is there a committee or is there a forum where this particular conflict might be settled in order not to jeopardize the programs of the PEZA and the programs of the local government units?

Senator Osmeña III. Mr. President, I would repeat. I believe the Local Government Code already gives the power to the local government unit to veto any expropriation proceedings done by a government agency within the municipality. So there is no need for a body because if the local government says "No," then it is a no.

Senator Barbers. So in other words, if there is a conflict between the local government unit and the economic zone, that

of the local government unit will prevail over the economic zone.

Senator Osmeña III. That is the way I understand it. Yes, Mr. President.

Senator Barbers. Mr. President, another amendment which I came across also is the exemption of the economic zone from the Salary Standardization Law.

It bothers me, Mr. President, because the amendment provides that the Board of Directors shall determine the amount of salaries and other emoluments of the officers, directors and employees of PEZA commensurate with private industry standards. This provision might be subject to abuse later.

May I know if there are safeguards inherent in this proposal to prevent the board members from taking advantage and giving themselves large amount of salaries or emoluments. Because as it is, the provision authorizes the Board of Directors with the power to determine their remuneration and salaries.

Senator Osmeña III. I thank the gentleman for that question. Yesterday, the gentleman from Bicol also brought up the same point, and it is a good point, Mr. President.

But let me just try to read the dispositive portion of Republic Act No. 8291, which amended the GSIS Charter, and Section 43 thereof defining the powers and functions of the Board of Trustees, it says: Subsection

D. Upon the recommendation of the President and General Manager to approve the GSIS organizational and administrative structures and staffing pattern and to establish, review, revise a just and appropriate compensation packages for the officers and employees of the GSIS with reasonable allowances, incentives, bonuses, privileges and other benefits as may be necessary or proper for the effective management, operation and administration of the GSIS which shall be exempt from Republic Act No. 6758, otherwise known as the "Salary Standardization Law."

That is all it says, Mr. President—upon recommendation of the President and General Manager.

The same thing happened in the SSS Law, the Bangko Sentral and the Land Bank.

What I did is went a step farther, Mr. President, and made it subject to the veto of the Secretary of Trade and Industry.

If the distinguished senator would like to contribute further improvements, this representation would certainly welcome them.

Senator Barbers. Thank you. Mr. President, I am likewise concerned with the same provision where the salaries of the directors are fixed by themselves. Considering that majority of the members of the board are Cabinet secretaries, the Secretary of the Department of Public Works, the Secretary of Agriculture, the Secretary of Environment and Natural Resources, fixing their salaries and other emoluments might be in violation of existing laws that we have today on double compensation.

May I ask the distinguished senator if the Cabinet members sitting in this board act as regular directors or as *ex officio* directors. Could I be clarified on this matter, Mr. President?

Senator Osmeña III. Mr. President, the members of the board receive P10,000 honoraria per meeting which is twice a month. What the gentleman can do is to fix this in the law, but the exemption from the Salary Standardization Act does not imply that honoraria will also be increased. Therefore, for purposes of clarification, the gentleman might want to propose an amendment.

Senator Barbers. I brought this out because I would like to find out if no violation would ever be incurred in the grant of these allowances to Cabinet members with respect to a provision on double compensation.

Senator Osmeña III. Mr. President, with all due respect to the gentleman from Surigao del Norte, that is an issue that can be addressed by amending this law.

The gentleman from the Cordilleras has a pending bill that will cover the entire spectrum of double compensation for various types of government employees, starting from the level of cabinet all the way down. Certainly, I would be supportive of Senator Flavier's bill, but whatever amendment the gentleman from Surigao del Norte would wish to add to this particular provision would certainly be considered seriously by this representation.

Senator Barbers. Thank you very much, Mr. President. I congratulate the gentleman from Cebu and I compliment him for this measure. But I have some reservations, especially in the appointment of Cabinet secretaries to the board.

Recently, I filed a resolution inquiring into our practice of appointing or designating cabinet members to several *ex officio* memberships. I filed this because during my stint as the DILG secretary, I experienced a lot of difficulties in focusing on some primary functions at that time. Just imagine I was holding 20 different *ex officio* positions.

Will the appointment of these different Cabinet members not affect their performance in their primary functions in the economic zones?

Senator Osmeña III. Their primary functions in the economic zones?

Senator Barbers. As member of the board of directors.

Senator Osmeña III. Let me see if I heard that right, Mr. President. Would this affect their performance in their primary functions as department secretaries?

Senator Barbers. As department secretaries and as members of the board of directors at the same time—

Senator Osmeña III. If they were members of the board?

Senator Barbers. —if they discharge also their duties as members of the board.

Senator Osmeña III. That would be a definite yes, Mr. President. The more duties and responsibilities we heap upon a person, the less likely he is going to be able to find the time or the energy to perform all of them well.

Senator Barbers. If that is the case, Mr. President, we could not expect an efficient performance of the Cabinet members' functions, considering that their attention and their concentration will be divided as Cabinet secretary, divided as a member of the board, and divided in the discharge of some *ex officio* chairmanships. That is the reason I brought this out.

As I mentioned a while ago, this is a sad experience on my part. Not only on my part when I was a Cabinet member, but I think it goes on with all the other Cabinet secretaries.

If only we could strategize or find a way whereby the efficiency of a particular member of the board will not be affected in the discharge of his functions, I think there will be no problem.

Senator Osmeña III. The point is well-taken, Mr. President. Perhaps, the gentleman from Surigao del Norte would like to suggest that undersecretaries instead of the departments concerned be the ones made members of the PEZA board.

Mr. President, from this representation's point of view, I remember the original PEZA board and the additions to its membership were done for coordination purposes, not to give extra pay to the secretaries of the Department of Agrarian Reform, or the DPWH or the other additional members to the board. That was not the intention of this bill. The intention of this bill was to make sure that the PEZA would have better coordination with the other departments or line agencies that are critical

in the organization, establishment and operation of a special economic zone.

But certainly, the gentleman has a very important point. A department secretary certainly cannot be running around the whole week or the whole month attending 20 or more board meetings. If the gentleman wishes, an amendment requiring that it is the undersecretary who will represent the department would certainly help clarify matters.

Senator Barbers. I support that proposed amendment, Mr. President. I am satisfied with the response of the gentleman from Cebu, Mr. President, although as I mentioned a while ago, I have a reservation on this particular aspect.

Thank you very much, Mr. President.

The President. Thank you, Senator Barbers.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Senator Roco yesterday reserved his right to pose additional questions. He is now in the Hall. May we therefore ask the Chair to recognize Senator Roco.

The President. Sen. Raul S. Roco is recognized to continue with his interpellation.

Senator Roco. Thank you, Mr. President. With the indulgence of the distinguished sponsor, we....

Senator Osmeña III. May I seriously consider whether I would like to yield to the senator from Bicol.

The President. If he so desires.

Senator Osmeña III. I yield gladly to the dashing, handsome senator from Bicol and Camarines Sur, Mr. President.

Senator Roco. Mr. President, as I always say, flattery will always get you somewhere. With that, may we proceed.

The President. Please proceed.

Senator Roco. Let me just acknowledge, Mr. President, receiving the information I sought and I think the Legal Department of the EPZA has shown what I thought they could really show. They have produced the list of expropriation cases and ejectment against locator. There are 11 and two against locator. Maybe these should be distributed later on so that the members

of the Chamber will all be acquainted as to who will benefit or who will be affected by this proposed law.

I have also received, Mr. President, a list of special economic zones. Yesterday, I was given the special economic zones as of 25 August showing the developer-operator and the preferred industries, 101 of them. I understand this to be the private ecozones. Is this correct, these were the private economic zones, the list of the 101?

Senator Osmeña III. Yes, Mr. President. As a matter of fact, in one zone we might have several business parks.

Senator Roco. Yes, Mr. President.

Senator Osmeña III. So there are actually less than that.

Senator Roco. The proposed bill will cover all these 101 economic zones?

Senator Osmeña III. Well, the proposed bill will cover the PEZA, Mr. President, which is the regulatory agency for special economic zones in this country.

Senator Roco. In the *Ipsa Facto Clause*, when we speak of all privileges, benefits, advantages and exemptions, what specifically are we referring to? What are these privileges, benefits and advantages? Is the gentleman referring to the advantages under Republic Act No. 7227 and any other law that may have such advantages?

Senator Osmeña III. I can only give it to the gentleman generally now, Mr. President.

Senator Roco. Yes, Mr. President.

Senator Osmeña III. There are certain advantages. Actually, this is in comparison with the privileges granted Subic and Clark vis-a-vis the privileges granted to locators in the special economic zones outside Subic and Clark.

Senator Roco. And these advantages then will accrue and will be enjoyed by the public. Last night, we were told of four public economic zones and 101 special economic zones. Will this be correct?

Senator Osmeña III. That is correct, Mr. President. It is not as simple as it looks, but we have asked the PEZA to delineate what these special privileges are that have been applied. All we were looking for to do was to make sure that there would be a level playing field between other special economic zones which have their special laws or charters granting them certain powers

because the problem in marketing the Philippines abroad is when we say, "Well, you know, if you go to Cagayan, you will have a better break than if you go to Cavite or you go to Cebu or Mindanao." We just wanted to ensure a level playing field.

I am not quite happy with the comparative matrix that was just given to me which I asked them to prepare the other day. Perhaps, I can refine this and give it to him on Monday, Mr. President.

Senator Roco. Yes, we will welcome this, Mr. President. In fact, I may be of a little help. Because effectively then, for instance, in Subic, we have a separate customs territory, ensuring free flow or movement of goods. And presumably, this special customs territory will now be enjoyed also by the special economic zones.

Senator Osmeña III. The special economic zone is a special customs territory already, Mr. President. It is policed by the PEZA. However, if the gentleman will look at the last line, page 4, we made sure...it says, "The free port status shall not be vested upon the new special economic zones."

Senator Roco. Yes.

Senator Osmeña III. So why does the gentleman not give us time to give him a better rendering of the specific advantages that might be now enjoyed by the PEZA zones if they were accorded other privileges granted to other special economic zones except for the free port status?

Senator Roco. I appreciate that, Mr. President. And then, we will also look at the matrix that will be available on Monday. But the no-taxes, local or national, will be enjoyed by the special economic zones. The tax exemptions, in other words.

Senator Osmeña III. I do not believe we touched on tax exemptions in the amendatory bill. However, in the original law, Republic Act No. 7916, the locators inside the special economic zone enjoy certain tax privileges, depending upon the level that is granted to them by the PEZA Board.

Senator Roco. In fact, in Republic Act No. 7227, it is an express exemption.

Senator Osmeña III. The gentleman is talking about Republic Act No. 7227. I was talking about Republic Act No. 7916.

Senator Roco. No, they both appear. But what I am now trying to apply and call the attention of the Chamber is all these privileges will now be enjoyed, for instance, by PhilOil Special Economic Zone headed by Jose Leviste—I do not know who.

Senator Osmeña III. Mr. President, on second thought, perhaps, this is better addressed in another amendatory bill and I would rather move to strike this particular amendment because it seems to be too broad.

However, what was troubling the private developers of the economic zones was something that went like this. In the franchises granted by Congress to various service providers, each franchise seems to be tailored to what the sponsor wanted. So one franchise would have a little more advantage over another franchise, and Congress passed about three years ago a law included in Republic Act No. 7925, the Telecommunications Act of 1995, which said:

One privilege granted to one franchisee will *ipso facto* be granted to all existing franchises already.

Therefore, it became a smorgasbord, and if tomorrow, we grant one franchisee an additional favor that is not heretofore enjoyed by other franchisees by virtue of that particular provision in Republic Act No. 7925, all the other franchisees will now be able to enjoy that particular favor.

Senator Roco. Including the power, in fact, on tourism-related activities which includes games and amusements, except horse racing, dog racing and casino gambling. That I guess will be—unless we delete this provision.

Senator Osmeña III. Let us delete this provision. It was not my intention to put in dog racing and casino gambling since I despise these, Mr. President.

Senator Roco. I am sure it was not the intention of the gentleman. Especially when we look, Mr. President, at all the names and all these people who will be involved and we will have 101 new powers to license gambling or, I will except dog racing. I am not sure that is very popular.

If that is deleted, Mr. President, we will be relieved by a multitude of constitutional objections—including the rider—because it is in the nature of a rider, and it is in the nature of an exemption that does not qualify with the standards of the Constitution. Because tax exemptions—and the chairman of the Ways and Means Committee here will validate my statement—must originate from the House of Representatives and must be approved by an absolute majority of all the members of Congress.

So, Mr. President, these blanket privileges extended, and our distinguished friend mentions blanket privileges given in franchises, are constitutionally infirm and should not be allowed. I think the 11th Congress under our distinguished former Supreme Court Chief Justice should not allow it; and we have a

Secretary of Justice, two, both from the Majority and the Minority. Not to mention another Minority—that is three.

I am sorry, this is the full history of the Philippines, Mr. President, and if with three justice secretaries we allow this, it is not good nor prudent legislative practice to have a cavalier disregard for constitutional precepts.

Since the distinguished sponsor is now willing to remove this *ipso facto* clause, we will now concentrate our question on the power of eminent domain, because the power of eminent domain, we are told is one of the great powers of government. It should not be granted without data; it should not be granted without factual support.

So we look at it, Mr. President, since the right of eminent domain will also be enjoyed by all these 103—try to imagine this—just so some people will be interested. Angeles is by Nepomuceno; Cebu Life is by Luchangco; Cocomem is by Oscar Torralba and all these.

Senator Osmeña III. May I just humbly interrupt.

Senator Roco. Yes, yes.

Senator Osmeña III. The power of eminent domain will not be enjoyed by the private developers of the special economic zones. We spoke yesterday, and the PEZA officials clarified with me that the power of eminent domain really refers to the four zones that they have developed and any other zones that Congress may require PEZA to develop in the future. If in the future, Congress says, “We want PEZA to develop Corregidor into a special economic zone,” then I suppose PEZA will be required to exercise the power of eminent domain in Corregidor.

So, it does not mean that these private developers can use the name of PEZA or the power of PEZA in order to expropriate land to develop into a special economic zone or industrial park, Mr. President.

Senator Roco. The power of eminent domain will not be enjoyed by any other. That is good to hear. Let me try to be more precise then and more focused on the query.

When in the proposed Section 29 we say, “The areas comprising an ecozone...,” does the term “ecozone” refer only to the four government economic zones, or does it include this special economic zone? The term “ecozone” here, does it include the 101?

Senator Osmeña III. “Ecozone” is the nickname for special economic zone. Under Republic Act No. 7916, special

economic zone covers four types: industrial estates, export-processing zones, free ports and tourism centers or estates.

Senator Roco. So what is the answer, Mr. President? Does the term "ecozone" as used in the proposed Section 29 include these 101 special economic zones?

Senator Osmeña III. Yes, Mr. President. Those are ecozones.

Senator Roco. Yes, that is where my premise is therefore valid.

If this term "ecozone" covers the 101 special economic zones, then these 101 special economic zones led by Dennis Belmonte in Benguet, Andrew de los Reyes in Gateway, Elena Lim in Laguna, Dakila Fonacier in Leyte, Araneta in Luisita Industrial, et cetera, including Jose Yap and Sobrepeñas for Fil-Estate and Filinvest—if ecozones Fil-Estate and Filinvest are also included, these are also the more popular—General Santos City has Atty. Malcolm Sarmiento Jr.—I do not know who he is—but if the term "ecozone" covers these, then these special economic zones as the term of Section 29 says, "may be expanded or reduced when necessary."

So, if for some reason, Peter Nepomuceno—and he may have the best reason; he may be the most patriotic—feels the need to expand or reduce his area, he can resort to asking PEZA to exercise the right of eminent domain.

Am I reading the section correctly? Because that is what it says.

Senator Osmeña III. Mr. President, I was not a member of the Senate when this law was passed. The gentleman from Bicol was a member of the Senate when this law was passed. So perhaps, he can explain what the Senate meant, what it put in this phrase.

Senator Roco. Well and good. Then it means exactly what it says, Mr. President. And that is why there is a danger to having this power of eminent domain transferred from government to PEZA.

When it was the government exercising sovereign powers, that is understandable. But when we have 101 special economic zones being autonomous and independent with a definite territory that can be expanded through the right of eminent domain, these become mini-states. These comply with the definition of a "state" in Political Science I. That is why if we will rely on my understanding, Mr. President, then this proposal to transfer that power of eminent domain from

government to PEZA should not be allowed.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Drilon. May we have a one-minute suspension of the session, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 11:33 a.m.

RESUMPTION OF SESSION

At 11:34 a.m., the session was resumed.

The President. The session is resumed.

Senator Osmeña III. Mr. President, I believe that the gentleman from Bicol is correct. Because as worded in Section 29 under Eminent Domain, it seems that if the eminent-domain power is granted to PEZA, any ecozone, whether it is owned by the government or owned by private developers, will enjoy this right and it could step on the rights of others.

So this representation believes that, perhaps, an additional amendment saying that the PEZA shall not be entitled to exercise the right of eminent domain on behalf of any private party or developer would be in order.

Senator Roco. Yes. Those modifications certainly will improve and will define the powers, Mr. President. But we continue then even with that welcome development.

We are told that eminent power should always be construed very strictly since the right to life, liberty and property cannot be denied without due process. This is one of the exceptions.

May we also suggest to the distinguished sponsor that the staff be requested to define legislative standards. The lawyers in the staff will know what the legislative standards are. I do not pretend to know more but a research should be made so that if, at all, we decide to continue this grant, it must be with definite legislative standards.

But the purposes now or the objective of consolidation of lands, that I can understand, Mr. President. Acquisition of right of way to the ecozone is debatable but understandable. But (c),

since it is now again granted to the ecozone, the protection of watershed areas and natural assets valuable to the prosperity of the ecozone has to be explained. What were the factual antecedents that led the committee to conclude that this protection of watershed and natural assets are valuable to the prosperity of the ecozone—ecozone is what is marked here—unless we also exempt the special economic zones?

May we ask the sponsor what was the factual basis for suggesting this particular objective in the exercise of eminent domain power for ecozone.

Senator Osmeña III. Mr. President, I was not a member of the Senate, much less the committee that passed this in previous two congresses. I do not know what they meant by this. It does not make too much sense to me either. However, it could make sense—just off the top of my head—if we refer to tourism estates.

Essentially, watersheds are protected areas under the NIPAS law. There is a specific law that deals with the protection of watersheds aside from other rules or regulations that have been given out by the Office of the President or the DENR on how watersheds should be protected. Also, much of the watersheds probably should not be titled because they were declared watersheds some decades ago. However, some very smart people have been able to obtain title to land within watersheds even in places like Cebu, Montalban Dam, Angat Dam, Miray Dam, and other very critical watersheds in the Metro Manila area.

While this might not make sense with regard to export processing zone, it might make sense with regard to tourism estates. Although, again, I would like to repeat I was not privy, I was not part of the committee that passed this.

Senator Roco. The word “ECOZONE” here in all caps is the proposed amendment in the original law?

Senator Osmeña III. In the original law, the word “ECOZONES” were really capitalized.

Senator Roco. I am just misled because in line 10, the word “ecozones” is not capitalized.

Senator Osmeña III. Is the gentleman looking at the committee report?

Senator Roco. I am looking at page 4 of the committee report. That is why I posed the question because we seem to be amending it.

Senator Osmeña III. Yes, that would tend to throw the gentleman off. In the law, the word “ECOZONES” is

capitalized. So, that is not an amendment, Mr. President.

Senator Roco. But as I understand it now, the committee is willing also to modify this so that when we say Ecozone here, we do not necessarily give this objective to the special economic zones.

Senator Osmeña III. I beg the gentleman’s pardon.

Senator Roco. Because if Ecozone in line 10, as earlier discussed, will cover the special economic zones and ECOZONE in these watershed areas, et cetera, will also cover special economic zones, I would imagine, when this is modified by the committee, the definition of ECOZONE here will not include or will exclude PEZA when the distinguished sponsor mentioned that we will not include the special economic zones in enjoying, expanding or reducing their territory.

Senator Osmeña III. We will include the special economic zones that are owned by the government, Mr. President. Right now there are four, not the privately developed ones.

Senator Roco. That is correct. Now it looks more promising, Mr. President.

May we just ask now, again for purposes on Monday, the distinguished sponsor to request the staff to also propose a legislative standard for the standardization. I think this is the key element here. I mean all of us should be willing to support this so that they can become competitive.

If we modify eminent domain and delete the *ipso facto* clause, then maybe we just have this small administrative debate of the composition of the board.

So if the distinguished sponsor allows, we may go back to the original point. That is really what started me on this one.

Yesterday, Mr. President, we manifested that if the EPZA and the director-general is doing so well, why are we demoting the person from chairman to vice chairman when the conclusion should be, if they are doing so well, promote them? But I was told that there was an anomaly and there was difficulty when the boss is just a member of the board.

May I now ask, Mr. President. Maybe we can try to determine what prompted such noble sentiments on the part of the director-general, because I understand the director-general herself is the one who asked this. Right now, who is the immediate superior of the director-general? To whom does she report?

Senator Osmeña III. She heads an agency that is attached

to the DTI. So she considers the Secretary of the Department of Trade and Industry as her immediate superior.

Senator Roco. In the discussion, there was mention of directly reporting to the President. Is there a direct reporting to the President?

Senator Osmeña III. It is an attached agency of the Department of Trade and Industry (DTI), Mr. President.

Senator Roco. So the director superior is really the DTI Secretary.

Senator Osmeña III. I would say the answer would be yes, Mr. President.

Senator Roco. So we are saying that there is really no change. That under the bill, the direct superior will still be the DTI secretary.

Senator Osmeña III. That is correct, Mr. President.

Senator Roco. If that is so, Mr. President, I was wondering. I was reading some of the the newspapers, and they were saying that there is a turf war. Maybe this is just a question of determining turf. But if it is the same boss, maybe there is no turf war.

There were additions to the members of the board. Let me just ask the question: Are there additions to the board of directors?

Senator Osmeña III. Yes, Mr. President. There are five additions and one deduction for a net addition of four members to the board.

Senator Roco. And these additions are DOF...

Senator Osmeña III. The five additions are the secretaries of the Departments of Agriculture; Environment and Natural Resources; Agrarian Reform; and Public Works; and the president of the Philippine Industrial Estates Association. The deduction is the Governor of the Bangko Sentral.

Senator Roco. The Bangko Sentral is always there, or this is also an addition.

Senator Osmeña III. The Bangko Sentral was there, but we deleted it.

Senator Roco. May I ask now, Mr. President: In my readings—I do not know whether this is official—one of the priorities of President Estrada was a government reorganization to cut the fat and make the bureaucracy lean and efficient. It was even the subject of one of his speeches.

If this is so, Mr. President, may the distinguished sponsor tell us whether this kind of reorganization proposed in the bill is already within the guidelines of the presidential priority, or whether they were proposed without the presidential guidelines on how to streamline the government?

Senator Osmeña III. I have not seen the presidential guidelines on how to streamline the government, Mr. President. This was determined without having seen those guidelines, if those guidelines exist.

Senator Roco. Would it not be efficient, therefore, to wait for those guidelines? Because even as the executive department is trying to streamline, we are also trying to complicate. Will we not be at odds or at loggerheads with the objective of the Executive?

Why would we want to add burdens—and this is tangent to the point of Senator Barbers—why do we want to add burdens to the Cabinet members when we are told very clearly by the President that he proposes to streamline the departments? Why are we now complicating when we may be told later on to uncomplicate? If the PEZA or this export zone has been run so well by the director-general without these additional Cabinet members, what guarantee do we have that by having additional people, it will improve?

Their record of success speaks for retention. Why do we want a change? What policy reasons do we have or can be suggested to us that says "All these Cabinet members should now sit in the board at P10,000 a meeting?" I will be meeting every day at P10,000 a meeting, Mr. President.

Senator Osmeña III. There are no guarantees, Mr. President. We can even add the Pope here, and there is no guarantee that he will perform better. But essentially, we look at the original composition of the board—the Secretary of Trade and Industry, the Secretary of Finance, the Secretary of Labor and Employment, the Secretary of Interior and Local Government, the Secretary of Socioeconomic Planning, and representatives of the labor sector and investors.

It was suggested by those who attended our hearings that this be expanded to include very important departments in establishing special economic zones, which are environment and natural resources, agrarian reform, public works and agriculture.

Therefore, if they were able to work so well with the original members coming from trade and industry, finance, labor and employment, and interior and local government, I believe that with the new additions, it will work even better. But if the gentleman is asking for guarantees, no one can give guarantees.

Senator Roco. That is correct, Mr. President. In the hearing, who suggested these additions?

Senator Osmeña III. I do not remember, Mr. President. We were bantering back and forth. I did suggest agriculture since agriculture is a new priority of the administration. I am, as chairman of the Committee on Agriculture, encouraging the establishment of agro-industrial estates in this country. I felt that the Department of Agriculture would be a welcome addition to the PEZA board.

SUSPENSION OF SESSION

Senator Drilon. I ask for a one-minute suspension of the session, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

It was 11:48 a.m.

RESUMPTION OF SESSION

At 11:50 a.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, I would just want to manifest that in discussing with the Majority Leader and the distinguished sponsor, we visited some of the Supreme Court rulings and the difficulty of these proposed amendments. So the distinguished sponsor, together with the staff, will work out modifications to this provision so that we have less difficulties that only these lawyers can cook up.

But they have valid points, Mr. President. So, may we leave it on that basis and wait for the proposed amendments on Monday. We can probably modify this to everybody's satisfaction.

May we now go to what looks to me like the last point that I have. Yesterday, the distinguished sponsor was candid in mentioning cases in Cebu and they seem to comprise 11 expropriation cases. As a matter of fact, all the 13 cases that involve EPZA, involving different parties, appear to be all in Lapu-Lapu City.

Senator Osmeña III. Except one in Cavite, Mr. President.

Senator Roco. Except one in Cavite, No. 1, the *EPZA vs. Pulido* case.

Will the distinguished sponsor tell us the effect of this bill? Should it be approved now, what will be the effect on the *Pulido* case, for instance?

Senator Osmeña III. I have no idea. I am not a lawyer, Mr. President.

Senator Roco. But we rely on the judgment of the Chair. Obviously, this Chamber cannot rely on lack of knowledge to approve a bill, that is why we have staff. If that is the excuse, Mr. President, then there is no responsibility to be a chairman, and we shall therefore allow ignorance to be an excuse. But it is fundamental that ignorance does not excuse. In fact we are all presumed to know the law. It is not only the lawyers who do not know the law.

So that excuse may be nice for a repartee but it is not responsive to the duties of the Chamber, and we will ask the gentleman to request his staff to clarify the effect.

Imagine, Mr. President, there are 12 cases involved in Cebu. I guess, if I ask about each case, the answer would be the same—he is not a lawyer.

But we are making laws. That is part of the functions and considerations of the Chamber. So we will just ask the gentleman to ask the legal staff, and if there are no legal staff...

Senator Osmeña III. I have. My legal staff tells me that one of the bases in law is that laws are prospective, not retroactive. Since these cases are five to 10 years old, I believe that the court is not going to take this particular amendment to the PEZA law as an additional power for PEZA to expropriate since law is supposed to be prospective.

Senator Roco. Yes, Mr. President. In this particular case, fortunately the sponsor is not a lawyer because, as his legal staff will tell him, in criminal cases, it must be prospective. In civil cases, it can retroact; in matters of law when it favors, it can retroact; in matters of contract, it can retroact; in matters of political law when there is a change of system, it can nullify.

And so it is nice for the legal staff to sit there, prompting the gentleman with wrong answers. But I suggest that the legal staff restudy his proposed answer because the sponsor should not be embarrassed by his legal staff.

Mr. President, I do not try to have advantage as a lawyer, and everybody will notice that when they have questions of law, I already explain the question of law. Because we who are, fortunately or unfortunately, lawyers in this Chamber have certain advantages of training so we should not bandy it around. But they are legitimate concerns and nonlawyers still have to concern themselves because we are making laws. That is why I admire the spirit of Dr. Flavier because by the time he finishes his term here, he will be Atty. Flavier.

I will close there, Mr. President, then just ask for the additional papers, the opinion and the study so that we can be guided accordingly.

Thank you, Mr. President.

The President. Is there any other interpellation?

Senator Drilon. There are no more interpellations and we can...

The President. Before we suspend consideration—

Senator Drilon. No, we are not suspending, Mr. President.

The President. —the Chair would like to ask a few clarificatory questions.

The Chair would like to know what prompted the committee to include the Secretary of Environment and Natural Resources and the Secretary of Agrarian Reform to be among the members of the PEZA Board of Directors?

Senator Osmeña III. Mr. President, the normal or usual or average size of a special economic zone can go anywhere from 50 to 500 hectares. Of course, there are some larger ones that are being planned. This requires Environmental Clearance Certificates. As we all know, it has been quite difficult to obtain an ECC from the DENR inside of one year or sometimes it takes as long as three years. So it would be easier if a representative from the DENR is already on the board, who is privy to what is going on, so that the additional inputs into the investigation done by the DENR in approving an ECC approval will be easier. Therefore, the various resource persons thought that the Department of Environment and Natural Resources would be critical in approving an ECC in a timely fashion.

As far as the Department of Agrarian Reform is concerned, I think there have been several disputes which brought in the DAR because these were conversions from agricultural lands to industrial, and the chairman of the committee felt that it was justified that the DAR have a permanent representative in the PEZA board.

The President. The Chair would like to thank the gentleman for that clarification.

The Chair is aware that the distinguished sponsor is not a member of the Bar.

But after consulting with the PEZA officials, is the committee

sponsoring Committee Report No. 2 aware of the Supreme Court decision in the *Civil Liberties Union vs. Executive Secretary* regarding multiple positions not only of Cabinet secretaries, undersecretaries and assistant secretaries where the Court ruled that the Constitution prohibits not only Cabinet secretaries, undersecretaries and assistant secretaries from holding a position other than that of Cabinet secretary unless the position is *ex-officio*, related and is part of the primary function of their office and there is no additional compensation?

Senator Osmeña III. Yes, we are aware of that, Mr. President. Earlier, when we suspended the session, the distinguished Majority Leader and the gentleman from Bicol agreed to a couple of amendments which would: (1) call for a permanent representative; (2) reduce or eliminate compensation if it is already disallowed by law; and (3) make sure that it is for coordinative efforts rather than to gain additional compensation for the representative from the departments concerned to the PEZA board.

Yes, we took that into consideration, Mr. President, and amendments are going to be prepared along those lines.

The President. In order not to collide with this ruling which is part of the law of the land, it might be in order to qualify on page 4, line 2, the sentence that starts on line 2, Section 4—the salaries, benefits and other emoluments of the officers, directors and employees of PEZA shall be commensurate with private industry standards to be determined by the Board of Directors of PEZA and approved by the Secretary of Trade and Industry.

In other words, if the term “directors” here also includes the Board of Directors, then it might be a good idea to qualify. That is the suggestion coming from the Chair.

Senator Osmeña III. I thank the Chair for that.

The President. Thank you, Senator Osmeña III.

The Majority Leader is recognized.

Senator Drilon. Mr. President, there are no more reservations for interpellation. We therefore move that we close the period of interpellations, without prejudice however to reopening it upon the request of Senator Roco, if he finds it necessary on Monday.

The President. Is there any objection? [*Silence*] There being none, the period of interpellations is closed subject to the condition that it may be reopened if there is a need to do so.

Senator Drilon. That is correct, Mr. President.

SUSPENSION OF CONSIDERATION
OF S. NO. 1136

Mr. President, may we now move for the suspension of the consideration of Senate Bill No. 1136 under Committee Report No. 2.

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

Senator Drilon. Mr. President, during the session of August 25, this representation manifested for the record that Sen. Ramon B. Magsaysay Jr. has joined the LAMP after having resigned from the Lakas-NUCD. As a result, the Majority alliance in this Chamber has now 11 members and Lakas now has six members. Lakas, given that situation, will now have three seats in the Commission on Appointments allotted to it. On the other hand, the Majority alliance would have six members allocated to the alliance.

MOTION OF SENATOR DRILON
(Nomination of Senator Magsaysay to the
Commission on Appointments)

We therefore nominate under these circumstances as the sixth member of the majority alliance Sen. Ramon B. Magsaysay Jr. to the Commission on Appointments, and I so move that he be elected as such by this Chamber.

The President. Is there any objection? *[Silence]* There being none, the motion nominating Sen. Ramon B. Magsaysay Jr. to a seat in the Commission on Appointments is hereby approved.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

MANIFESTATION OF SENATOR GUINGONA
(Senators Barbers, Legarda-Leviste and
Cayetano as Lakas Members and
Commendation of Senator Revilla)

Senator Guingona. We just would like to manifest that the members representing the Lakas are Senators Barbers, Legarda-Leviste and Cayetano.

We would like to commend Sen. Ramon Revilla for having waived his right to a seat in the Commission on Appointments to give way to the realities of shifting alliances. We commend him, Mr. President.

Thank you.

The President. The Minority Leader's comments are duly noted and recorded.

Senator Roco. Mr. President.

The President. Senator Roco is recognized.

STATEMENT OF SENATOR ROCO
(Comments on Arrangements with the CA)

Senator Roco. I was quiet, Mr. President, because I thought it was a beginning of an eulogy, but my comments has nothing to do with that.

I do appreciate it, Mr. President, by arrangements of the different members of the Chamber, because of the rotation so that there is a spread, not only of the work, but also of some participation. I have discussed this with the Senate President, with the Majority Leader, with Senator Osmeña and with the Senate President Pro Tempore.

In some committees, for instance, if Senator Flavier or this representation, I am not a member, but if with the consent of Senator Osmeña I should decide to attend—because he cannot attend all the meetings—a meeting in representation of Senator Osmeña, for instance, in the Committee on Finance, then we can inquire. But I cannot vote in that plenary. Apparently, the Commission on Appointments rules allows this.

I am opening this interpretation on this possible practice to help our colleagues from the Minority alleviate their anguish because there are those who sacrificed. Maybe those who have sacrificed are not altogether deprived, and there is a possibility that there is life after the CA.

With that, Mr. President, and with the consent of the members of the CA and the Chamber, we can proceed with deliberate speed and reject or approve.

The President. The comments of Senator Roco are well-taken. What does the Majority Leader say?

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, since there are no other business in our Calendar, we, therefore, move to adjourn our session for today until Monday, August 31, 1998 at 3:00 p.m.

May I inform our colleagues that on Monday, we will resume consideration of Senate Bill No. 763. Senator Santiago has the floor for her additional interpellation after which we shall proceed with the committee amendments and individual amendments.