

RECORD OF THE SENATE

MONDAY, NOVEMBER 9, 1992

RESUMPTION OF THE SESSION

At 3:37 p.m. the session was resumed, with the Honorable Neptali A. Gonzales, President of the Senate, presiding.

The President: The session is hereby resumed.

The Majority Leader is recognized.

Senator Romulo: Mr. President, this is a continuation of our suspended session. Therefore, may I ask the Secretary to read the Third Additional Reference of Business.

THIRD ADDITIONAL REFERENCE OF BUSINESS

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Secretary:

October 30, 1992

The Honorable
NEPTALI A. GONZALES
President of the Senate
Manila

Mr. President:

I have been directed to inform the Senate that on October 29, 1992, the House of Representatives approved the Conference Committee Report on the disagreeing provisions of House Bill No. 317, entitled

AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT

and Senate Bill No. 132, entitled

AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY

PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT.

Very truly yours,

(Sgd.) CAMILO L. SABIO
Secretary General

The President: To the Archives.

The Secretary:

October 30, 1992

The Honorable
NEPTALI A. GONZALES
President of the Senate
Manila

Mr. President:

I have been directed to inform the Senate that in view of the disagreeing provisions of House Bill No. 2581, entitled

AN ACT CONSTITUTING THE NATIONAL ECONOMIC CONSULTATIVE AND ADVISORY COUNCIL

passed by the House of Representatives on October 29, 1992 and Senate Bill No. 704, entitled

AN ACT CONSTITUTING THE LEGISLATIVE-EXECUTIVE DEVELOPMENT COUNCIL, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES,

which was passed by the Senate on October 12, 1992, the House of Representatives requests a conference on these two bills and has designated Representatives Felicito C. Payumo, Cirilo Roy G. Montejo, Raul V. del Mar, Eduardo R. Gullas, Oscar M. Orbos, Roilo Golez, Manuel B. Villar Jr., Ralph G. Recto, Dominador N. Venegas, Margarito B. Teves, and Ramon S. Bagatsing Jr., as its conferees.

Very truly yours,

(Sgd.) CAMILO L. SABIO
Secretary General

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