

RECORD OF THE SENATE

THURSDAY, SEPTEMBER 3, 1992

RESUMPTION OF THE SESSION

At 10:31 a.m., the session was resumed with the Honorable Neptali A. Gonzales, President of the Senate, presiding.

The President. Session No. 18 of the Senate is hereby resumed.

The Secretary will please read the third additional Reference of Business.

THIRD ADDITIONAL REFERENCE OF BUSINESS

MESSAGES OF THE PRESIDENT OF THE PHILIPPINES

The Secretary.

1 September 1992

Honorable Neptali A. Gonzales
Senate President
Senate, Manila

Dear Senate President Gonzales:

I have the honor to certify Senate Bill No. 356, entitled

**AN ACT PROVIDING FOR LONG-TERM LEASE
ON PRIVATE LANDS TO FOREIGN INVES-
TORS,**

as a priority administration measure.

My best regards.

Very truly yours,

(Sgd.) FIDEL V. RAMOS

The President. Referred to the Committee on Economic Affairs.

The Secretary.

1 September 1992

Honorable Neptali A. Gonzales
Senate President
Senate, Manila

Dear Senate President Gonzales:

I have the honor to certify Senate Bill No. 355, entitled

**AN ACT EXPANDING THE CONCEPT OF CON-
DOMINIUM AND FOR OTHER RELATED
PURPOSES, THEREBY AMENDING REPUBLIC
ACT NUMBERED FORTY-SEVEN HUNDRED
AND TWENTY-SIX, ENTITLED AN ACT TO
DEFINE CONDOMINIUM, ESTABLISH
REQUIREMENTS FOR ITS CREATION, AND
GOVERN ITS INCIDENTS,**

as a priority administration measure.

My best regards.

Very truly yours,

(Sgd.) FIDEL V. RAMOS

The President. Referred to the Committee on Rules.

BILLS ON FIRST READING

The Secretary. Senate Bill No. 715, entitled

**AN ACT TO PROMOTE THE DEVELOPMENT OF
THE MANUFACTURING ENGINEERING
INDUSTRY, AND FOR OTHER PURPOSES.**

Introduced by Senator Shahani.

The President. Referred to the Committee on Trade and Commerce.

The Secretary. Senate Bill No. 716, entitled

**AN ACT AMENDING SECTIONS 110 AND 282 OF
THE NATIONAL INTERNAL REVENUE CODE,
AS AMENDED, AND FOR OTHER PURPOSES.**

Introduced by Senator Romulo.

The President. Referred to the Committee on Ways and Means.

The Secretary. Senate Bill No. 717, entitled

**AN ACT TO DISCONTINUE AUTOMATIC APPROP-
RIATIONS FOR DEBT SERVICE BY FURTHER
AMENDING PRESIDENTIAL DECREE NO.
1177, REVISING THE BUDGET PROCESS IN
ORDER TO INSTITUTIONALIZE THE**

In this connection, too, it is my privilege to know and inform that the President of whom President Aquino spoke has an unpublished manuscript for a book on his economic policies and views entitled, "Building Prosperity for the Greatest Number."

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

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

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

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

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

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

Thank you, Mr. President.

SUSPENSION OF THE SESSION

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

It was 6:31 p.m.

RESUMPTION OF THE SESSION

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

The President. The session is resumed.

The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 704

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

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

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

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

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

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

The Secretary. Senate Bill No. 556, entitled

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

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

EXPLANATORY NOTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPONSORSHIP SPEECH OF SENATOR MACEDA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. President.

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

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

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

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

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

All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Osmeña. Mr. President.

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

Senator Osmeña. With the permission of the sponsor.

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

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

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

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

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

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

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

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

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

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

Senator Romulo. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 556

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

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

ADJOURNMENT OF THE SESSION

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

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

It was 7:08 p.m.