



REPUBLIC OF THE PHILIPPINES
Senate
Pasay City

Journal

SESSION NO. 60
Tuesday, February 8, 2011

FIFTEENTH CONGRESS
FIRST REGULAR SESSION

SESSION NO. 60
Tuesday, February 8, 2011

CALL TO ORDER

At 3:42 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

PRAYER

Sen. Antonio "Sonny" F. Trillanes IV led the prayer, to wit:

Almighty Father, recent events in our country have led our countrymen to grow despair and misery in their hearts. The spate of bombings and violence occurring everyday, the malady of corruption plaguing our country — these coupled with natural disasters and calamity have grown sadness and hopelessness among Your people.

Today, we ask for Your Divine Light to cast away the cloud of darkness whirling over our nation. Let Your spirit touch the hearts of Your people and let the light of Your goodness and righteousness be the spark of hope for our country.

Please remind Your people that through Your glory and guidance, there is always a light at the end of the tunnel.

We implore Your aid that we may get our acts together and do what is best for the common good.

We also ask You to lend us Your

guiding hand, grant us wisdom, and bless our proceedings today as we do what is right for the benefit of Your people, in accordance with Your will.

Everything we do, we return all up to You— for Your glory and honor.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Emma Lirio-Reyes, called the roll to which the following senators responded:

Arroyo, J. P.	Lapid, M. L. M.
Cayetano, P. S.	Osmieña III, S. R.
Defensor Santiago, M.	Revilla Jr. R. B.
Drilon, F. M.	Sotto III, V. C.
Ejercito Estrada, J.	Trillanes IV, A. F.
Enrile, J. P.	Villar, M.
Escudero, F. J. G.	Zubiri, J. M. F.
Honasan, G. B.	

With 15 senators present, the Chair declared the presence of a quorum.

Senators Angara, Marcos, Pangilinan and Recto arrived after the roll call.

Senators Cayetano (A) and Legarda were on official mission.

pb AS

Senator Guingona was likewise on official mission abroad.

Senator Lacson was absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 59 (February 7, 2011) and considered it approved.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Sotto acknowledged the presence of political science students from Misamis University and the Siena Historical Society of the Siena College of Quezon City.

Senate President Enrile welcomed the guests to the Senate.

At this juncture, the Senate President relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2676, entitled

AN ACT DEFINING TERRORIST FINANCING AS A CRIME AND PROVIDING PENALTIES THEREFOR

Introduced by Senator Angara

To the Committees on Public Order and Dangerous Drugs; and Justice and Human Rights

Senate Bill No. 2677, entitled

AN ACT MANDATING SCHOOLS, COLLEGES AND UNIVERSITIES TO CREATE ANTI-BULLYING POLICIES IN THEIR INSTITUTIONS

Introduced by Senator Defensor Santiago

To the Committee on Education, Arts and Culture

RESOLUTIONS

Proposed Senate Resolution No. 370, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED NEED TO INVESTIGATE THE CORRUPT PRACTICES AND EXTORTION OF MILLIONS OF PESOS BY CERTAIN LAW ENFORCEMENT OFFICERS FROM COMPANIES BELONGING TO THE BUSINESS PROCESS OUTSOURCING INDUSTRY

Introduced by Senator Defensor Santiago

To the Committees on Accountability of Public Officers and Investigations; and Economic Affairs

Proposed Senate Resolution No. 371, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY TO CONDUCT A STUDY AND ASSESSMENT, IN AID OF LEGISLATION, ANENT THE EFFECTIVENESS OF EXISTING STATUTES AND PROGRAMS ON HIV-AIDS PREVENTION AND CONTROL FOR THE PURPOSE OF HALTING ITS CONTINUOUS SPREAD AND TIGHTENING LAWS ON THE MATTERS

Introduced by Senator Villar

To the Committee on Health and Demography

Proposed Senate Resolution No. 372, entitled

RESOLUTION URGING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND OTHER CONCERNED GOVERN-

Handwritten mark

MENT AGENCIES TO SUBMIT A STATUS REPORT ON THE IMMEDIATE CLEANUP AND RESTORATION OF MANILA BAY IN COMPLIANCE WITH A SUPREME COURT RULING TO UPGRADE ITS WATER QUALITY

Introduced by Senator Villar

To the Committees on Environment and Natural Resources; and Public Works

**QUESTION OF PRIVILEGE
OF SENATE PRESIDENT ENRILE**

On a question of personal and collective privilege, Senate President Enrile said that he was saddened by the unfortunate demise of a good friend, former Armed Forces chief and Defense Secretary Angelo Reyes, who had taken his life in the course of an investigation being conducted by one of the committees of the Senate. Nonetheless, he stressed that as Senate President, it was his duty to uphold the right of the Senate to conduct an investigation in aid of legislation and perform a work for the people and the nation in order to help in its development.

He stated that anyone who is haled to the Senate to answer questions must be prepared to defend himself, but he emphasized that in the course of these inquiries, any act that would inflict indignities to any member of the public who will be invited would never be tolerated. He said that should a similar incident occur, the Senate should not give up its prerogative to conduct its investigations lest this lead to a breakdown in its democratic tradition to ferret out the truth no matter how painful this would be.

In closing, Senate President Enrile expressed hope that his colleagues would also share his position regarding the issue.

**COMMITTEE REPORT NO. 15
ON SENATE BILL NO. 2640**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2640 (Committee Report No. 15), entitled

AN ACT TO PROMOTE FINANCIAL

VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES.

Senator Sotto stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Drilon, Sponsor of the measure, and Senator Defensor Santiago for her interpellation.

**MANIFESTATION
OF SENATOR DEFENSOR SANTIAGO**

Commenting on Senate Bill No. 2640, Senator Defensor Santiago expressed concern that the broad repealing clause in Section 31 of the measure would result in a fragmented regulatory framework. She said that the repeal would be unprecedented since there are more than 100 government corporations with separate charters. She noted that the bill seeks to establish the following:

- a) An oversight/regulatory body known as the Governance Commission for GOCCs;
- b) A uniform position and compensation structure for all GOCCs; and
- c) Guidelines for the determination of qualifications for appointive directors/ trustees/officers of GOCCs.

Senator Defensor Santiago explained that the bill intends to repeal, revoke or modify the GOCC charters and all other laws, executive orders, administrative orders, rules, regulations, decrees and other issuances or parts which are inconsistent with it. However, she expressed concern that passing the bill in its original form would cause many regulatory voids or pockets of vacuums in existing laws. She pointed out that there are various rules and regulations that treat items (b) and (c) more comprehensively than Senate Bill No. 2640, such as:

- a) Memorandum Circular 2, Series of 2002, otherwise known as the Code of Corporate Governance, issued by the Securities and Exchange

- Commission (SEC) under Resolution No. 135 dated April 4, 2002;
- b) Presidential Decree No. 2029 (1986) defining GOCCs and identifying their role in national development;
 - c) Letters of Instruction No. 1340 (July 1, 1983) on borrowings;
 - d) Memorandum Order Nos. 177 (May 31, 1988), 252 (January 13, 1995) and Memorandum Circular No. 6 (September 1, 1992) on compensation structure;
 - e) Corporate Compensation Circular No. 10-99 (February 15, 1999) issued by the Department of Budget Management;
 - f) Memorandum Order No. 320 (September 21, 1990) on integrated corporate reporting system; and
 - g) Executive Order No. 596 (May 15, 2007) which includes government instrumentality with corporate powers in definition of GOCCs.

As regards the first item, Senator Defensor Santiago explained that the Government Corporate Monitoring Committee (GCMC) was established under Executive Order No. 936 (February 29, 1984), but it was eventually reconstituted as the Government Corporate Monitoring and Coordinating Committee (GCMCC) under Memorandum Order No. 10 (May 19, 1986), which was further strengthened under Executive Order Nos. 236 (July 22, 1987) and 55 (February 8, 1993), and implemented with the guidelines under Memorandum Circular No. 64 (August 16, 1993). She stated that the GCMCC was created to monitor, coordinate and evaluate the performance of GOCCs for the purpose of enhancing the public accountability; promoting the efficient allocation and use of resources; instilling financial discipline and promoting financial self-sufficiency; and integrating the plans and programs with the requirements and goals of government policy.

However, she pointed out that by virtue of Administrative Order No. 16 (August 21, 2001) the GCMCC was abolished and its functions were transferred to the Department of Finance (DOF) in order to eliminate redundancies and focus responsibility; as a result, the DOF was mandated to monitor, coordinate and evaluate principally the fiscal performance of GOCCs, formulate policies and guidelines, and recommend to the President actions to be taken in relation to GOCC performance.

Senator Defensor Santiago said there are currently more than 700 GOCCs (including more than 500 water districts) exercising diverse functions, but with the abolition of the GCMCC, the functions it exercised outside of those enumerated as transferred to the DOF under Administrative Order No. 24, particularly the central coordinating, monitoring and performance evaluation function, were left without an implementing body.

On the issue of how the bill intends to resolve the fragmented regulatory framework that would be left in the wake of a broad repeal such as that as provided in Section 31, Senator Defensor Santiago averred that such repeal would be unprecedented considering that there are more than 100 government corporations with separate charters. Thus, she proposed that the bill focus the functions of the proposed Governance Commission for Government-Owned and Controlled Corporations (GCG) on those formerly exercised by the GCMCC but were not transferred to the DOF, including but not limited to the task of enhancing the operational public accountability of GOCCs; promoting the efficient allocation and use of its resources; instilling financial discipline and promoting financial self-sufficiency; integrating the plans and programs of GOCCs with the requirements and goals of government policy; and acting as a policy-formulating and recommending body accountable to the President on matters concerning the government corporate sector. She expressed her intention to formally propose these amendments at the proper time.

As regards the operational flexibility aspect of the GOCC, Senator Defensor Santiago stated that Presidential Decree No. 2029 of 1986 defined government-owned and -controlled corporations and identified their role in national development, and Section 7 thereof recognized the need for GOCCs to be operationally flexible. She then quoted Section 7, to wit:

Government corporations shall be provided with adequate operational flexibility in order to function properly and efficiently, especially under conditions of market competition. Such flexibility shall nevertheless be consistent with the requirements of public accountability.

Operational flexibility for this purpose shall mean the ability of the corporation to act promptly on its own on individual transactions or matters, without need for further prior clearance from

40
P

supervisory authority external to the corporation, provided such actions are within the purview of their respective charters, explicit general policies, programs, and guidelines, including budgetary constraints provided by external supervising authorities.

Senator Defensor Santiago stated that the bill does not have a similar section which provides for operational flexibility of GOCCs and that, at the proper time, she would propose an amendment on that subject.

On another matter, Senator Defensor Santiago observed that the additional layers of approval imposed by the measure could undermine the fiscal viability of GOCCs, and that the bill does not appear to take into account the particularities of each GOCC. She noted that Section 8 of PD 2029 recognizes that GOCCs perform functions that are particular to them and, consequently, they must be treated with due consideration to these differences. She proceeded to quote Section 8 of PD 2029, to wit:

Differential treatment. — To implement the concept of greater flexibility, government corporations in general shall be accorded differential treatment which is more consistent with corporate organizational requirements as distinguished from regular government agencies, with respect to the exercise by the various service-wide agencies, such as the Civil Service Commission, the Commission on Audit, and the Office of Budget and Management, of their respective jurisdiction. The establishment of such differential treatment shall be guided by comparable and appropriate industry practices and standards.

She noted the intent of the bill to impose several uniform measures intended to instill fiscal discipline in GOCCs and their governing boards, which, she said, is similar to prior laws that mandate the development of uniform criteria for members of the governing boards of affected GOCCs. Even as she acknowledged that the intent of the bill is laudable, she believed that the additional layers of approvals and uniformly imposed controls may not be responsive to the particularities of each GOCC. She pointed out that under Section 5(a) of PD 2029, the corporate form may be used only “where there exists a demonstrated need for greater flexibility in its operations, and which by the nature of the good or service to be provided cannot be effectively undertaken by the regular line agency form of organization.” She feared

that the additional restrictive impositions under the bill may work to defeat the goal as found in prior laws. She indicated that at the proper time, she would propose an amendment that would attempt to make sure that the goal of greater flexibility and operations would not be defeated by the restrictions in the bill.

Senator Defensor Santiago stated that the term “*Performance Scorecards*” was defined in Section 3(o) as, “Governance and management tool consisting of a set of measures, targets and initiatives that facilitate the achievement of breakthrough results xxx”. However, she noted that “breakthrough results” was not defined elsewhere in the bill, and she opined that without an indicative definition, the term becomes highly subjective. She suggested that it would be best to peg the definition with the achievement of corporate goals or other performance indicators as determined by the GOCC itself or its supervising agency.

On Section 20, *Performance Criteria for Appointive Directors*, Senator Defensor Santiago noticed that there was reference to such criteria but there was no definition or indication as to which body, GCG or any other body existing or to be created, would be responsible for the criteria.

On Sections 18 to 20, she said that a reading of these sections gave her the impression that there seemed to be a lack of differential treatment of *ex-officio* board members, because the bill broadly regulates the appointment of directors and officer of GOCCs without due consideration of the fact that many GOCCs operate under the inter-agency board wherein secretaries of certain departments sit as *ex-officio* directors as in the case of the Napocor, National Transmission Corporation, Power Sector Assets and Liabilities Management Corporation. In particular, she stated that Section 20 provides for a limited term for each director, without distinction, and it is vague as to succession.

As regards Section 25 (*Power of the Board of Directors/Trustees to Discipline, Remove Officers of GOCCs*), Senator Defensor Santiago noted that the provision seemed to imply that a committee composed of members of the board would conduct an investigation for disciplinary charges against directors or officers, subject to civil service laws, rules and regulations, but it is not clear as to who would conduct an investigation on erring directors and officers.

She emphasized that the Office of the Government Corporate Counsel is authorized to conduct disciplinary investigations of GOCCs under current rules and regulations, and the board of directors of the concerned GOCC does not take part in the investigation. She said that by implication, no board member is qualified to vote for any disciplinary action being investigated.

Lastly, Senator Defensor Santiago stated that Section 27 provides for the restitution of monies and properties found by the COA to be improperly in the possession of board directors and officers, and that failure to return such monies and properties would be punished by imprisonment of one year and a fine. However, she observed that the bill does not have a provision for due process in favor of the accused official and did not indicate the time period for the restitution. She said that at the proper time, she would propose that due process requirements be clearly set forth in the measure.

Senator Drilon expressed gratitude for Senator Defensor Santiago's insights, saying that he was looking forward to her proposed amendments in order to strengthen the bill and fill in the gaps that the Senator saw.

INTERPELLATION OF SENATOR PANGILINAN

At the onset, Senator Pangilinan expressed support for the measure that attempts to rationalize the governance of GOCCs not only in terms of compensation or benefits but also in terms of the national government's programs and priorities.

Asked if the bill covers all the 157 GOCCs that were mentioned in his sponsorship speech, Senator Drilon replied in the affirmative, but he acknowledged the possibility that there could be more than 157 GOCCs because the DOF data might not have included the subsidiaries of GOCCs, or it could be less than 157 if the inactive corporations were removed.

Senator Pangilinan stressed that it was important to know the working number of GOCCs, active or inactive. He stated that since he started his term as chair of the Committee on Agriculture six months ago, he has been trying to figure out how many corporations are attached to the Department of Agriculture. He expressed concern that without the

exact figure, the Committee might not be able to exercise its oversight powers over all these corporations.

Senator Drilon stated that the general principles of the bill would govern the GOCCs, government financial institutions (GFIs), government instrumentalities with corporate functions, and government corporate entities as defined by the Supreme Court, excluding only the *Bangko Sentral ng Pilipinas*, the local water utilities and cooperatives. He clarified that the figure 157 was just an indicative number.

Senator Pangilinan stated that there should be at least a working list of corporations and subsidiaries to be covered by the proposed Act. He informed the Body that the DA forwarded to his Committee a list of 42 attached agencies but he was not sure if these were included in the list of 157 GOCCs.

Senator Drilon gave assurance that Senator Pangilinan would be provided the list of the 157 GOCCs that was attached to the August 11, 2010 letter of the DOF addressed to Senator Recto, chair of the Committee on Government Corporations and Public Enterprises, although it did not include corporations that were subsequently acquired.

To emphasize the need for a working list of GOCCs that would be covered by the measure, Senator Pangilinan cited a news item two days ago that the Office of the President appointed members to the board of an agricultural council which, he found out, was not part of the 42 agencies attached to the DA. Senator Drilon stated that the bill proposes the creation of a Governance Commission for GOCCs and among its first tasks is to make an inventory of all the GOCCs, GFIs, etc., that would be monitored and governed by the bill.

Senator Drilon shared the frustration of Senator Pangilinan for the inability to obtain an accurate listing of GOCCs, and he explained that the bill was precisely crafted to monitor the GOCCs which have more assets than the national government. He pointed out that Section 28 of the bill prohibits the creation of subsidiaries without the prior the approval of the President, but he admitted that the bill failed to include not only the creation of GOCCs but also the acquisition of corporations as in the case of LWUA acquiring a rural bank in Laguna that was about to collapse even without the consent of the Monetary Board.

Senator Pangilinan said that he has been trying to figure out how to get more information on corporations, specifically corporations in the agriculture and fisheries sector.

Asked if it would be possible to put in the bill a provision mandating the GCG to come up, within a specific period, with a list of all corporations and subsidiaries that would fall under its jurisdiction, Senator Drilon replied it can be done as part of the duties of the GCG. Besides, he said that the GCG would be duty-bound to regularly update and report to Congress on the number of GOCCs being created, the reasons therefor, as well as the acquisition of existing corporation and subsidiaries.

For his part, Senator Pangilinan clarified that one of the reasons why he wanted to have a list of the corporations and subsidiaries is that many of their boards of directors use their charters as an excuse to be exempt from the coverage of one law or another.

As regards the provision for a new compensation and position classification system, Senator Drilon explained that at present, there are 27 GOCCs that are exempt from the Salary Standardization Law, and that they have extended and expanded that exemption by refusing to submit their budgets to the Office of the President and the DBM. He said that this is an issue that is squarely addressed in the bill because there can no longer be any exemption from it.

Asked by Senator Pangilinan whether the bill, which would become a general law, would supersede or prevail over the special laws or charters which created the GOCCs, Senator Drilon expressed the view that the specific provision of the general law can amend the charters. He remarked that it would be simply impossible for Congress to look into all the 82 special charters that created the GOCCs, and so what the Committee did was to delegate to the President the authority to reorganize, merge, streamline, abolish or privatize the GOCCs under a reasonable set of standards.

Senator Pangilinan pointed out that he just wanted to make it clear that this was the intent of the law so that in the future, none of the GOCCs could claim that their charters have not been amended and therefore, they do not fall under the proposed Act. In reaction, Senator Drilon said that he expected


challenges to come up but he expressed confidence that he can defend the general provisions that have been placed in the law, and all those which are inconsistent with such specific provisions in the general law would be sustained as constitutional.

On a related matter, Senator Pangilinan cited newspaper reports that Malacañang was preparing an executive order to address the compensation package of the GOCCs. Asked how the executive fiat can be reconciled with the legislative initiative, Senator Drilon stated that the bill would go beyond the executive order on salary standardization for the GOCCs. He believed that the proposed Act would, in fact, supersede the executive order because the GCG would be recommending a salary standardization system in accordance with its specific mandate.

Asked by Senator Pangilinan why the DBM would be the *ex-officio* chair of the GCG and not the DOF since fiscal management and corporate responsibility or corporate key governance are the mandates of the Commission, Senator Drilon explained that as repeatedly pointed out by Senator Osmeña, the DBM, pursuant to its mandate, should manage the bureaucracy. He also recognized that the GOCCs consist not only of government financial institutions but also developmental GOCCs that have nothing to do with finances. Thus, he said, the Committee decided to put the DBM as the *ex-officio* chair with the DOF as vice chair so that there would no overemphasis on the financial aspect.

To Senator Pangilinan's view that it is not the DBM but the DOF that has the expertise, Senator Drilon said that he was open to any amendments as he reiterated that the Committee, in fact, grappled with this issue.

Asked whether the President is empowered by the proposed Act to abolish a GOCC created by law, Senator Drilon replied in the affirmative, as he pointed out that the bill delegates to the President the power to streamline, abolish, privatize a GOCC on the basis of reasonable standards. He explained that it is no different from the other cases in the past, among which was the Asset Privatization Trust to which Congress delegated the power to reorganize corporations and dispose of them later, which was based on the principle of delegation of powers by the Legislative branch to the Executive branch under a reasonable set of standards, as defined in the law.



Asked whether the President, after going through the requirements as identified in the law, can abolish, for instance, the NFA, reorganize its functions, merge or streamline and then allocate its powers and mandate to other offices, Senator Drilon replied that it is the view of the Executive branch that under the Revised Administrative Code, it has the continuing power to reorganize the Executive department, albeit without any standard. He said that another way in which the Executive branch can abolish offices without the appropriate legislation or delegated authority from Congress is to give them zero budgets.

Senator Pangilinan agreed, saying that it is Congress that has the power to create offices and it would do well for Congress to ensure that the delegated authority is clear and the criteria put in place. Senator Drilon pointed out that bill provides the standards required by law and puts restrictions on that otherwise unlimited power of the President under the Revised Administrative Code and the power of the budget.

On the sunset clause which states, "the order for such reorganization, merger or abolition must be issued by the President on or before June 30, 2015," Senator Drilon replied that the proposal was to put a limit on the delegated power of the President to reorganize. He said that after the period provided for under the law, the power to reorganize should go back to Congress notwithstanding the view of the Executive branch that it has the continuing power to reorganize under the Revised Administrative Code. He further clarified that it was intended to limit the power of the Executive both in terms of its otherwise unrestricted authority to reorganize and the period within which to exercise that authority.

Senator Pangilinan stated that this, in effect, gives the President a tool to streamline, organize and strengthen the bureaucracy as he or she deems fit, given the requisites.

Citing a conflict of interest in a government corporation that has regulatory and commercial functions, Senator Pangilinan asked how an office, exercising both functions, could be regulated.

Senator Drilon stated that it was in recognition of that conflict of interest and leveling of the playing field that lines 30 to 35 were inserted in the measure. He said that there must be a plan of action so that the regulator does not, at the same time, exercise

commercial and proprietary functions in competition with those engaged in the same field. He cited PAGCOR which is both a regulatory agency and an operator of casinos unlike in other jurisdictions where the gambling authorities, particularly the Nevada Gaming Commission in Las Vegas, Nevada and the Gaming Inspection and Coordination Bureau in Macau, only issue licenses and do not operate casinos. He stated that pursuant to Section 2, the intent of the measure is to clearly delineate the parameters under which the GOCCs can operate.

Senator Pangilinan said that the NFA is another example of a corporation that has regulatory and proprietary functions – it regulates the importation of rice, issues permits, and, at the same time, imports rice. He stated that the matter on the issuance of permits by the NFA to the private sector needs to be reviewed further and more evidence have to be secured in light of the questions being raised in this regard.

Senator Drilon asserted that being a regulator and, at the same time, an operator of the same activity is a classic example of a conflict of interest which should not be tolerated.

Asked if there had been deliberations on whether or not a representative of the Civil Service Commission (CSC) should be included in the GCG, Senator Drilon replied that the Committee decided against it because some constitutional boundaries might be transgressed if the CSC, which is a constitutional agency, would be included in the GCG, which makes recommendations to the President.

Asked if there would be a new set of members of the board every year, Senator Drilon stated that the members would have to be elected and they can hold over until an election is held, which is similar to the practice in the private sector where the members of the board of directors would be subject to elections on a yearly basis by the stockholders. He said that the same principle should be followed in the case of GOCCs because these are corporations. Given that some GOCCs have no specific term of office for directors, he stated that on a yearly basis, the government, as the stockholder, must be given the prerogative to elect them or not. He explained that the measure intends to make the directors accountable, on a yearly basis, to the stockholders, which is the public as represented by the President.

Asked on the effect of the provision on existing terms of the members of the board, Senator Drilon stated that the terms of the members shall end on July 1, 2011, so that, henceforth, the term will be on a yearly basis.

On the possible effect of the provision on the current dispute before the Supreme Court questioning midnight appointments, Senator Drilon stated that all those issues will become moot and academic once the bill becomes a law because terms of office will expire on July 1, 2011. He assured that when it crafted the bill, the Committee took into consideration the cases pending before the Supreme Court and the provisions in the GOCC charters. He believed that this is necessary for reform and consistent with the fiduciary relationship between the stockholder and the members of the Board.

Recalling that there had been criticisms on the qualifications of those appointed to government corporations in the past administrations, Senator Pangilinan believed that such criticisms could have been the rationale why it was provided in Section 18 that the shortlist, from which an appointive director shall be appointed by the President of the Philippines, would be prepared by the GCG so that the qualifications can be scrutinized and the capacity and capabilities of the nominees would be double-checked, to ensure that only the best and most qualified would be nominated and eventually appointed.

Senator Drilon agreed, pointing out that Sections 18 and 19 would address the concerns raised by Senator Pangilinan. He explained that the “fit and proper” rule was imposed so that the President can appoint only from the shortlist that the GCG will prepare and if the President does not see fit to appoint the nominees included in the list, he can always ask the GCG to submit an additional list.

To the concern of some senators that the provision might limit the exercise by the President of his power to appoint, Senator Drilon explained that this is not a new provision as he pointed out that the Constitution limits the choice of the President for appointment to the members of the Judiciary from a list prepared by the Judicial and Bar Council. He also cited a number of statutes which also contain a similar limitation on the appointing authority of the President:

- Republic Act No. 6734 (The Organic Act for the Autonomous Region in Muslim Mindanao) – The members of the Shari’a Appellate Court

shall be appointed from a list of three nominees prepared by the Judicial and Bar Council;

- Republic Act No. 3601 (Charter of the National Irrigation Administration) – The two members of the NIA shall be appointed by the President, first, on the recommendation of any national rice and corn organization of good standing, and second, upon the recommendation of the minority party through its duly authorized officers;
- Republic Act No. 7104 (Creation of the Commission on the Filipino Language Act) – The commissioners are appointed by the President from a list of nominees to be submitted by the different ethno-linguistic regions in the country;
- Republic Act No. 10029 (Philippine Psychology Act of 2009) – The two members of the Professional Board of Psychology shall be appointed by the President from a list of three nominees to be submitted to the Commission by the integrated and accredited national organization of psychologists.

He said that a similar provision is found in the Philippine Nursing Act (RA 9173) and the Philippine Mechanical Engineering Act (RA 8495).

Senator Pangilinan pointed out that precisely, the bill was filed and submitted for the Senate’s consideration because of the excesses and abuses committed by those appointed to the boards of executive offices. Clearly, he said, the administration in power can appoint anyone to the board out of gratitude or friendship even though the individual might be unqualified and has no concern for the organization. He pointed out that this practice has contributed to the mismanagement of the organization and the dissipation of its assets through obscene compensation packages.

Asked whether he would be amenable to putting additional safeguards in the bill, for instance, the creation of a search committee within the organization, Senator Drilon replied that he would welcome it.

Senator Pangilinan pointed out that the experience with a search committee is that the people can participate, for example, by opposing nominees who might lack the qualification to be appointed to the board of an organization. In response, Senator Drilon stated that professional organizations that are authorized by law to nominate candidates to the boards do have search committees.

Adverting to the provision that provides that the boards of directors shall be elected when their term ends every year, Senator Pangilian asked whether this imposes an administrative challenge to the organizations that have to come up with a number of nominees for their boards of directors. Senator Drilon agreed that it is administratively challenging but while it is theoretically possible to overhaul the boards of 157 corporations every year, he clarified that there will be no wholesale changes in the boards. He stated that the boards will be in holdover capacity if the nominations are done when the term expires. He said that the provision can stand because the boards should be held accountable since they hold public assets.

Asked whether the Compensation and Position Classification System to be developed by the GCD would, in effect, be an amendment to the Salary Standardization Law (SSL), Senator Drilon said that the measure indeed provides for a Salary Standardization System exclusively for the GOCCs, taking into account their functions, so that they could be competitive with the private sector in areas where a competition in the private sector is a fact of life. He said that there is a possibility that the standardized salary for the GFIs would be different from the standardized salary of a purely developmental GOCC.

Senator Pangilinan expressed hope that the intent of the measure as regards separate standardized salaries for GOCCs would be expressly provided therein to leave no room for any other interpretation. Senator Drilon expressed openness to the suggestion.

In the course of Senator Pangilinan's interpellation, President Pro Tempore Ejercito Estrada relinquished the Chair to Senator Zubiri.

RESERVATIONS TO INTERPELLATE

Senator Sotto said that the following senators with reservations to interpellate on the bill, have manifested their desire to defer their interpellations on a later date: Senator Osmeña, who was awaiting some appurtenant documents; Senator Arroyo, who would interpellate on Monday; and Senator Angara, who wished to interpellate after Senators Osmeña and Arroyo.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2640

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

COMMITTEE REPORT NO. 5 ON SENATE BILL NO. 1052

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1052 (Committee Report No. 5), entitled

AN ACT AMENDING ARTICLE 26 OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE FAMILY CODE OF THE PHILIPPINES, AS AMENDED.

Senator Sotto stated that the parliamentary status was the period of committee amendments.

The Chair recognized Senator Cayetano (P), Sponsor of the measure.

REMARK OF SENATOR CAYETANO (P)

Senator Cayetano (P) stated that the bill merely intends to clarify the confusion created by the current working of Article III of the family code.

TERMINATION OF THE PERIOD AMENDMENTS

There being no committee and individual amendment, upon motion of Senator Sotto, there being no objection, the Body closed the period of amendments.

APPROVAL OF SENATE BILL NO. 1052 ON SECOND READING

Submitted to a vote, there being no objection, Senate Bill No. 1052 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1052

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

**COMMITTEE REPORT NO. 6
ON SENATE BILL NO. 480**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 480 (Committee Report No. 6), entitled

AN ACT AMENDING EXECUTIVE ORDER NO. 209 ALSO KNOWN AS THE FAMILY CODE OF THE PHILIPPINES, ARTICLE III.

Senator Sotto stated that the parliamentary status was the period of committee amendments.

The Chair recognized Senator Cayetano (P), Sponsor of the measure.

**TERMINATION OF THE PERIOD
AMENDMENTS**

There being no committee and individual amendment, upon motion of Senator Sotto, there being no objection, the Body closed the period of amendments.

**APPROVAL OF SENATE BILL NO. 480
ON SECOND READING**

Submitted to a vote, there being no objection, Senate Bill No. 480 was approved on Second Reading.

**SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 480**

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

**COMMITTEE REPORT NO. 16
ON SENATE BILL NO. 2671**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2671 (Committee Report No. 16), entitled

AN ACT ESTABLISHING THE CAREER EXECUTIVE SYSTEM.

Senator Sotto stated that the parliamentary status was still the period of interpellations.

The Chair recognized Senator Trillanes, Sponsor of the measure, and Senator Drilon for his interpellation.

INTERPELLATION OF SENATOR DRILON

At the outset, Senator Drilon congratulated Senator Trillanes for filing the bill and submitting the committee report that gave the Body the opportunity to review the structure of the Career Executive Service Board (CESB), an issue that occupied the newspaper headlines in the recent months in view of an executive order that dismissed hundreds of career executives for failure to secure appointments to rank.

Thereupon, Senator Drilon presented certain legal principles relative to the Career Executive System. He said that Sections 2 and 3, Article IX-B of the 1987 Constitution provide:

Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. x x x

Senator Drilon pointed out that the cited constitutional provisions on the Civil Service never mentioned a Career Executive Service Board; instead, all authority relative to the Civil Service was vested in the Civil Service Commission.

He said that the CESB was a creation of Presidential Decree No. 1, issued during martial law, which reorganized the Executive Branch of the National Government through the Integrated Reorganization Plan, Sections 2 and 5 (G) of which were later on amended by Presidential Decree No. 336, to wit:

“Sec. 2. A Career Executive Service Board, hereinafter referred to as the Board, is created to serve as the governing body of the Career Executive Service. xxx

Senator Drilon pointed out that the basis of both Presidential Decree Nos. 1 and 336, which limited the powers of the Civil Service Commission, was the 1973 Constitution, apart from the fact that then President Marcos can amend the Constitution as he willed. He explained that in the 1973 Constitution, it was provided that "The Civil Service Commission shall, subject to such limitations as may be provided by law, establish a career service and adopt measures to promote morale, efficiency and integrity in the Civil Service."

However, Senator Drilon noted that nothing in the 1987 Constitution allows limitations on the power of the Commission because the phrase "subject to such limitations as may be provided by law" was deleted. He believed that by virtue of the 1987 Constitution, the authority of the Civil Service Commission over the career service cannot be limited by law, and the establishment of a Career Executive Service System as envisioned by the proposed measure would take out from the CSC jurisdiction the third-level executives. He then proposed to re-craft the measure to align it with the 1987 Constitution.

Senator Trillanes stated that, precisely, the bill would rectify the infirmities of the present system given the fact that the CESB exists and has, in fact, an annual budget under the GAA. Moreover, he pointed out that in the *Aida Eugenio vs. Civil Service Commission* case, the Supreme Court acknowledged the existence of the CESB when it ruled that only an act of legislation can abolish the board. Senator Drilon agreed that indeed only Congress can abolish the CESB, but he pointed out that in the case of *Aida Eugenio vs. Civil Service Commission*, it was the CSC that tried but failed to abolish the CESB through an administrative order. He said that at the appropriate time, he would propose that all actions of the CESB could only be effective upon the approval of the CESB, otherwise, the measure would take away from the CSC the jurisdiction over third-level executives which would be unconstitutional.

Senator Trillanes clarified that the Committee would propose an amendment that would require that all the decisions of the CESB shall be appealable to the CSC. Senator Drilon, however, pointed out that an appeal would not satisfy the constitutional prohibition against the diminution of the powers of the CSC. He feared that in the absence of an appeal, the decision of the CESB would stand. This, he said,

cannot stand constitutional scrutiny because only the CSC can rule on any issue regarding the civil service.

He stressed that the limitation on the powers of the Civil Service Commission found in the 1973 Constitution was not reiterated in the 1987 Constitution, therefore, Congress cannot pass a law which shall diminish the powers of the CSC. He stated that in order to resolve the constitutional problem, he would propose during the period of amendments that the decision of the CESB could only take effect upon the approval of the CSC, and that the CSC shall have direct supervision and control over the CESB.

Senator Trillanes clarified that the measure does not aim to create a separate board that would contradict or undermine the constitutional authority of the CSC because the CESB would be put under its control. He said that it is not likely that there would be a scenario whereby the board would rule against its chairman because the chairman of the CSC, who would also act as the *ex-officio* chairman of the CESB, has the power to appoint the executive director and the members of the secretariat. He believed that the CESB and the CSC would be in unison as far as crafting policies is concerned, but in case of disagreement, the chairman may overturn a decision through the appeal provision of the measure.

Senator Drilon disagreed, pointing out that CESB is a board and acts as a collegial body. He stated that the mere fact that the chairman of the CSC shall also act as the chairman of the CESB would not change the legal situation because the chair would only have one vote and since it is a collegial body, the other four members could overrule the chairman. He opined that this decision cannot be supported by the Constitution. Assuming another situation where the chairman and the members are not in disagreement, they adopt a rule and no appeal is done, and the rule becomes effective, he said that this is not authorized under the Constitution because it is not the action of the CSC as distinguished from the action of its chairman.

Senator Drilon pointed out that Section 6 only indicates administrative supervision of the CSC for purposes of policy and program coordination which, based on administrative law and practice, only means the submission of the CESB's budget to the CSC. He said that at the proper time, he would propose to extend CSC's authority over CESB beyond administrative supervision. He stressed that the powers of

the CSC, which are defined under the Constitution, particularly that over third-level positions, could not be ceded to the CESB. He said that in order to solve the problem, the CESB should be under the supervision and control of the CSC. He believed that unless the provisions on Sections 6 and 7 are amended, the grant of authority to the CESB would be unconstitutional.

In reply, Senator Trillanes stated that he would consider Senator Drilon's proposed amendments which, he said, are integral to the bill. He added that he would coordinate with Senator Drilon regarding the proposal.

TERMINATION OF THE PERIOD OF INTERPELLATIONS

There being no further interpellation, upon motion of Senator Sotto, there being no objection, the Body closed the period of interpellations.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2671


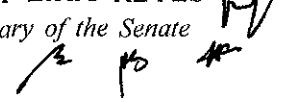
Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Wednesday, February 9, 2011.

It was 5:29 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate


Approved on February 9, 2011