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CALL TO ORDER

At 3:34 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

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

With 14 senators present, the Chair declared the presence of a quorum.

Senators Osmeña, Pangilinan, Villar and Zubiri arrived after the roll call.

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

Senator Angara was 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. 74 and considered it approved.

**ACKNOWLEDGMENT
OF THE PRESENCE OF GUESTS**

At this juncture, Senator Sotto acknowledged the presence in the gallery of the following guests:

- Participants of the Congressional Internship Program for Young Muslim Leaders;
- BS Psychology Students from the University of Makati;
- Students from the Lyceum of the Philippines University; and
- Nonito "The Filipino Flash" Donaire.

**MANIFESTATION
OF SENATOR CAYETANO (P)**

Senator Cayetano (P) stated that she sponsored Senate Resolution No. 391 on February 28, 2011, commending Nonito "The Flash" Donaire Jr. for dethroning Fernando Montiel of Mexico and winning the World Boxing Council and World Boxing Organization bantamweight crowns. She stated that it was her privilege to stand before the Body to bring honor, commendation and recognition to Mr. Donaire, an adopted son of Taguig City and a very promising Filipino athlete whose time has arrived.

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SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended to enable the Members to witness the presentation of the resolution to Mr. Nonito Donaire Jr.

It was 3:38 p.m.

RESUMPTION OF SESSION

At 3:43 p.m., the session was resumed with Senate President Pro Tempore Ejercito Estrada presiding.

REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following matters and the Chair made the corresponding referrals:

**MESSAGE FROM THE
HOUSE OF REPRESENTATIVES**

Letter from Speaker Feliciano Belmonte Jr., of the House of Representatives, dated 21 September 2010, designating Representatives Limkaichong (J.), Mellana (E.), Villarica (L. R.), Defensor Jr. (A.), Lopez (C.), Batocabe (R.) and Antonio (P.) as Members of the House panel to the Congressional Oversight Committee on the Special Purpose Vehicle Act.

To the Committee on Rules

BILL ON FIRST READING

Senate Bill No. 2743, entitled

AN ACT MOVING THE OBSERVANCE OF RIZAL DAY FROM DECEMBER 30 TO JUNE 19, AMENDING FOR THE PURPOSE SECTION 26, CHAPTER 7, BOOK 1 OF EXECUTIVE ORDER NO. 292, AS AMENDED, OTHERWISE KNOWN AS THE ADMINISTRATIVE CODE OF 1987

Introduced by Senator Marcos Jr.

To the Committee on Constitutional Amendments, Revision of Codes and Laws

RESOLUTION

Proposed Senate Resolution No. 431, entitled

RESOLUTION URGING THE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES AND OTHER APPROPRIATE SENATE COMMITTEES TO CONDUCT A STUDY, IN AID OF LEGISLATION, ON THE STATE OF FRESHWATER FISH SPECIES ENDEMIC TO THE PHILIPPINES AND THE EFFECT OF THE PROLIFERATION OF ALIEN SPECIES IN RIVERS, LAKES, SWAMPS, MARSHES, MUDFLATS, ESTUARIES AND OTHER WATERWAYS, FOR THE PURPOSE OF PROMOTING BIOLOGICAL DIVERSITY AND THE INSTITUTION OF REGULATORY MEASURES TO SAFEGUARD THE SAME

Introduced by Senator Villar

To the Committees on Environment and Natural Resources; and Agriculture and Food

**COMMITTEE REPORT NO. 18
ON SENATE BILL NO. 2701**

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2701 (Committee Report No. 18), entitled

AN ACT EXPANDING THE EXCEPTIONS FROM THE NIGHTWORK PROHIBITION OF WOMEN EMPLOYEES, THEREBY AMENDING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY TWO (PD 442), AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES.

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

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MANIFESTATION OF SENATOR DEFENSOR SANTIAGO

In her manifestation, Senator Defensor Santiago acknowledged that Senate Bill No. 2701 was motivated by the desire to help women. But she expressed the view that the bill is unconstitutional and she proposed that it either be withdrawn and substituted with another bill or referred to a Technical Working Group in order to come out with a compromise bill.

Hereunder is the full text of Senator Defensor Santiago's manifestation:

NIGHT WORK PROHIBITION FOR WOMEN IS UNCONSTITUTIONAL

Bill is unconstitutional

In the past, society was governed by the belief that men were far superior to women. Many times women were not classified as whole persons but as incomplete persons, who were classified together with children and village idiots. Under this mentality, legislatures, which consisted purely of men, passed laws to extend so-called special protection to women and children. This is known as the protectionist approach. The problem with the protectionist approach was that it prevented women from doing certain activities that were open to men. Thus, the so-called protectionist approach was actually discriminatory against women.

One of the most blatant examples of protective but discriminatory laws was the prohibition of night work for women. Today, in the age of gender equality and gender balance, night work prohibition for women in an obsolete concept. This concept, being useless and discriminatory to women, should be completely abolished.

Thus, any bill based on the existing provisions of the Labor Code prohibiting night work for women has already become archaic. There is no question that Senate Bill No. 2701 providing for more exceptions from night work prohibition is motivated by the desire to help women. Unfortunately, because of the paradigm shift giving women equal rights with men, even if the bill apparently seeks to help women, in reality it will still perpetuate the notion that night work for women can be prohibited.

The Constitution provides in Article II, Section 14: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women

and men." I regret to say that Senate Bill No. 2701 violates this constitutional provision, although its purpose is to help women. This bill is based on the concept that men may engage in night work; but women cannot engage in night work, except when the law provides otherwise. This is unequal treatment of the sexes. It is a direct violation of the constitutional mandate on fundamental equality and equal protection of the laws.

Therefore, I am forced to the conclusion that this bill should be withdrawn and should be substituted with another bill repealing the Labor Code, Articles 130 and 131. This repeal is nothing less than a compliance with the Philippine obligation under a treaty called CEDAW to which the Philippines is a party. It is an acronym for the Convention on the Elimination of all Forms of Discrimination Against Women.

Bill is obsolete

The prohibition on night work is impelled by the desire to regulate the harmful effects of night work in general; as well as the protection of the health and welfare of employed women in particular. It seeks to take into consideration their unique reproductive role and traditional, burdensome family responsibilities. However, with the advent of gender equality as an important principle of human rights, night work prohibition is no longer proper, for the following reasons:

First, the harmful effects of night work on women have been largely exaggerated. In any event, the effects are no worse than the effects of such work on men.

Second, there are situations where women want or need to earn income and these prohibitions prevent women from obtaining employment, thus restricting their access to specific jobs, certain occupations, higher wages and premium payments. The prohibitions therefore contravene the principle of equality as they prevent women from exercising their right to equal access to jobs.

Historical background

The Philippines is a party to the ILO Convention No. 89 of 1934, also known as the Women Night Work Convention. This Convention provides: "Women, without distinction, shall not be employed during the night in any public or private industrial undertakings in which only members of the same family are employed." The Convention in Section 4 makes only two exceptions.

Because the Philippines is a party to Convention 89, the Philippine Labor Code Article 130

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prohibits night work for women. The problem is that Article 130 expands the coverage of night work prohibition, to include commercial, non-commercial, and agricultural undertakings.

The mistake in the Philippine Labor Code was compounded by Article 131 by providing exceptions which are more than what was intended by Convention 89. For instance, it added in an exception in Article 130[e] "where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers."

Senate Bill No. 2701, Section 1 retains the expanded coverage of the night work prohibition under the present Article 130, but further redefines the term "industrial undertakings" by essentially incorporating the definition of "industrial undertaking" under Convention 89. Moreover, Section 2 of the bill also seeks to further expand the already expanded exceptions found under the present Article 130.

So in effect, just to put it in layman's terms, these Articles 130 and 131 of our Labor Code are now unconstitutional. But, there is at present in our bill an attempt to make more exceptions from the general rule, they are provided in these two Articles.

In other words, the exceptions now will tend to swallow the rule. Nonetheless, in effect, the result would be the same. We have already disregarded Articles 130 and 131 but we just want to make a formality of it by expressly repealing these two Articles.

With the subsequent adoption of the Convention on the Elimination of All Forms of Discrimination Against Women in 1979, the debate on the appropriateness of the night work grew even more intense.

Finally, after more than seven decades since the adoption of Convention 89, the ILO adopted the new Night Work Convention No. 171 of 1990, revising the discriminatory aspect of Convention 89. The Philippines, unfortunately, has not yet ratified the new Night Work Convention. Convention 171 now provides equal work opportunity for both men and women, while at the same time taking into account the health and safety of workers.

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

Under Convention No. 171, Section 2, night work is allowed for all employed persons except

those employed in agriculture, stock raising, maritime transport, and inland navigation. While allowing night work for all employed persons, the Convention provides, however, for specific measures which seek to protect the health of workers, including the following:

- Health protection (health assessment, suitable first aid facilities)
- Transfer to similar jobs if not fit for night work; protection from dismissal
- Maternity protection (alternative to night work)
- Provision of social services
- Additional compensation (working time, pay or similar benefits).

Under Convention 171, therefore, two objectives are achieved:

1. It provides greater access to women's work opportunity, while at the same time
2. It increases health protection for night work.

Moreover, in line with Convention 171, paragraph 19 of Workers with Family Responsibilities Recommendation No. 163 provides that the special needs of workers, including those arising out of family responsibilities, should be taken into account in shift-work arrangements and assignment to night work.

In sum, in essentially retaining the discriminatory night work prohibition of the Labor Code, Senate Bill No. 2701 carries with it the discriminatory effect of the *old* Convention 89 long adopted in 1934.

Night Work Prohibition is Discriminatory to Women

Senate Bill No. 2701 goes against the prevailing view of an increasing number of states which consider that night work prohibition is discriminatory to women and is contrary to the principle of gender equality.

More than seven decades after the adoption of Convention 89, the prohibition against night work has increasingly been regarded as discriminatory for its adverse effect on women's employment. Many states recognize that the general exclusion of women from night work has a negative effect on their chances in the labor market.

Hence, 21 out of the 67 members of the ILO have denounced Convention 89, because its provisions compromise the principle of equality and opportunity between men women. Under Convention 89, Article 14, a member may

denounce the Convention after the expiration of 10 years from the date on which the Convention first comes into force.

It is significant to note that in 1991, the European Court of Human Rights declared the Convention as incompatible with European standards, noting that Convention 89 directly discriminated against women.

***Bill violates CEDAW
2009 Magna Carta of Women***

Senate Bill No. 2701 would lead to the violation of the Philippine obligations under CEDAW, and would water down the gains the Republic Act No. 9710, otherwise known as the Magna Carta for Women Act of 2009 and its implementing rules.

Since its adoption in 1979 by the U.N. General Assembly, CEDAW has been ratified by 186 countries, including the Philippines. By ratifying the CEDAW, the state parties took the legal obligation to undertake measures to eliminate discrimination, such as the incorporation of gender equality principles in the legal system, the repeal of all discriminatory laws, and the passage of those that prohibit discrimination.

CEDAW adheres to the substantive equality approach. Substantive equality is not simply concerned with equal treatment in law. Rather, it is concerned with equality in terms of actual impact of the law. It takes a paradigm shift from "equal treatment" to "equality of outcomes." It recognizes the difference between men and women, but instead of accepting this difference as given, it examines the assumptions behind the difference in trying to assess the disadvantage resulting from it and to develop a response that dismantles the disadvantage. Substantive equality therefore ensures *de jure* and *de facto* equality between women and men such that it leads to equality of opportunity, equality of access, and equality of results and benefits.

While CEDAW follows the substantive equality approach, it frowns upon the protectionist approach. The protectionist approach recognizes the differences between women and men on grounds of biological and hence immutable differences between them. But in so doing, the protectionist approach justifies a different treatment that reinforces and perpetuates stereotyping.

In continuing to prohibit night work and thus limiting the night work prohibition only to women, Senate Bill No. 2701 takes a protectionist approach that reinforces discriminatory gender stereotypes – that women are weak and vulner-

able to the dangers of night work including health; that the "women's place is in the home." This protectionist effect of the night work prohibition further marginalizes women's access to resources and restricts their economic participation.

The comment of the then secretary of labor, Patricia A. Sto. Tomas, on the discriminatory effects of Article 130 is relevant to Senate Bill No. 2701. She said: "Such well-intentioned laws eventually become tools of discrimination against women and sometimes become counter-productive to all efforts to grant them the freedom to decide their own careers and life patterns." If passed into law, Senate Bill No. 2701 will only sharpen the "tools of discrimination" against women.

In reinforcing the night-work prohibition for women, Senate Bill No. 2701 will put the Philippine government in violation of its human rights obligations under CEDAW, as follows:

Article 2

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, and to this end, undertake:

- (b) to adopt appropriate legislative and other measures, including sanctions where appropriate, *prohibiting all discrimination against women.*
- (f) to take all appropriate measures, including legislation, to *modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.*
- (g) repeal all national penal provisions which constitute discrimination against women.

Article 5

State Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of either of the sexes or on *stereotyped roles for men and women.*

While it may be argued that the Philippines remains a party to ILO Convention 89 of 1934,

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it has since ratified CEDAW in 1981. By ratifying CEDAW, the Philippines renders its obligations under ILO Convention 89 incompatible with its present obligation under CEDAW. Thus, with the Philippine's subsequent ratification of CEDAW, its obligation under CEDAW should take precedence over its obligation under Convention 89, especially that Convention 89 is discriminatory to women.

Moreover, Senate Bill No. 2701 contravenes the policy laid down in Section 2 of Republic Act No. 9710, also known as the Magna Carta of Women. This Magna Carta mandates the state to promote empowerment of women; pursue equal opportunities for women and men; and ensure equal access to resources and to development results and outcome.

It also contravenes Section 22 of the Magna Carta which provides for the protection of the workers' right to equality of opportunity and treatment. The bill also ignores Section 5 which provides for the duty of the state, as primary duty-bearer, to promote and fulfill the rights of women in all spheres, including their rights to substantive equality and non-discrimination.

On this point, it is well to recall that under the Implementing Rules and Regulations of the Magna Carta of Women, Section 15, the State is enjoined to take steps to review and amend or repeal existing discriminatory laws by prioritizing the repeal, among others, of the Labor Code Article 130 on night work prohibition. What Senate Bill No. 2701 aims to do is the exact opposite.

Conclusion

I respectfully conclude that we should refer this bill to a Technical Working Group to consider the following alternatives:

1. Withdraw or substitute Senate Bill No. 2701 with another bill, in order to comply with the Philippine obligation under the CEDAW treaty, by repealing the Labor Code Articles 130 and 131;
2. Ratify ILO Convention 171; and
3. Make a formal denunciation, as allowed by the treaty, of ILO Convention 89.

Senator Defensor Santiago stated that as a constitutional lawyer, she had to raise the constitutional issue with regard to the bill and she hoped that the technical working group would be able to make a compromise bill acceptable to all.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 4:04 p.m.

RESUMPTION OF SESSION

At 4:08 p.m., the session was resumed.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

Senator Sotto acknowledged the presence in the gallery of the 28-member delegation of Young Foreign and Civil Service Officers from Singapore.

The Chair welcomed the guests to the Senate.

MANIFESTATION OF SENATOR EJERCITO ESTRADA

Prefatorily, Senator Ejercito Estrada thanked Senator Defensor Santiago for her inputs.

Thereafter, he proceeded to respond to the recommendations and concerns raised by Senator Defensor Santiago.

As regards the withdrawal or substitution of Senate Bill No. 2701 to comply with the Philippine obligation under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by repealing Articles 130 and 131 of the Labor Code, Senator Ejercito Estrada stated that the CEDAW is the International Bill of Rights for Women as it defines what constitutes discrimination against women and sets up agenda for national action to end such discrimination. He said that countries that ratified or acceded to the Convention are legally bound to put its provision into practice, first by signing and ratifying the Convention, and by so doing, the Philippines commits itself to undertake a series of measures to end all forms of discrimination against women, including the abolition of all discriminatory laws and the adoption of appropriate laws which prohibit discrimination against women.

Senator Ejercito Estrada noted that the obligations of the Philippines under CEDAW were given more emphasis with the enactment into law of the Magna

Carta of Women which spells out, among others, women's right to equal treatment before the law, including State's review and the necessary amendment or repeal of existing laws that are discriminatory to women.

He stated that while Article 130 of the Labor Code could be seen as discriminatory and not in accordance with CEDAW and the Magna Carta of Women, as it stands, Articles 130 and 131 of the Labor Code cannot be repealed without violating the Philippines' obligations to the International Labor Organization (ILO), particularly ILO Convention 89 which the country ratified in 1953. But, he opined that it could be amended in the meantime.

To Senator Defensor Santiago's observation that with the Philippines' subsequent ratification of CEDAW, the country's obligation under CEDAW should take precedence over its obligation under ILO Convention 89, Senator Ejercito Estrada argued that Article 53 of the Vienna Convention on the Law of Treaties defined *jus cogens* as a peremptory norm, accepted and recognized by the international community of states as a whole; as a norm, from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Following this line of argument, he stated that it could therefore be said that discrimination against women has not yet been recognized as a peremptory norm as would render void ILO Convention 89 on night work prohibition. Accordingly, he believed that ILO Convention 89 is still valid and the Philippines, as a signatory to said Convention, is still committed to uphold its obligations thereunder.

He explained that the passage of Senate Bill No. 2701 is in the interim as the Philippines has to fulfill its obligations under ILO Convention 89. He maintained that the bill would ease the night work prohibition on women by limiting the prohibition to work at night to industrial undertaking only and while removing the night work prohibition on commercial and agricultural undertakings, it also expands the exemptions to night work thus giving emphasis on the constitutional mandate of providing equal work opportunities for all.

As regards the recommendation of ratifying ILO Convention 171, Senator Ejercito Estrada clarified that under the Convention, all night workers, not just

females, need protection, and this is consistent with the position that all work should take place in a safe and healthy working environment. He added that the Convention likewise requires the establishment and maintenance of safe and healthy working environment which will facilitate optimal, physical and mental health in relation to work.

Senator Ejercito Estrada revealed that the Department of Labor and Employment (DOLE) had advised against the ratification of ILO Convention 171 at this time because it is still the subject of study by many countries in Europe. He disclosed that there were only 11 countries that ratified ILO Convention 171 and the DOLE has seen it as one of the priority conventions for ratification. Even without ratifying the convention, he said, there already exist occupational safety and health standards that the DOLE formulated as early as 1978, in compliance with the constitutional mandate to safeguard the workers' social and economic well-being as well as the workers' physical safety and health. He said that the standards have been continually revised to make it responsive to the worker's needs.

On Senator Defensor Santiago's recommendation to make a formal denunciation of the Convention, Senator Ejercito Estrada pointed out that Article 15 of the ILO Convention 89 provides that:

1. A member which has ratified this Convention may denounce it after the expiration of 10 years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each member which has ratified this Convention and which does not, within the year following the expiration of the period of 10 years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of 10 years and, thereafter, may denounce this Convention at the expiration of each period of 10 years under the terms provided for in this Article.

Thus, Senator Ejercito stated that the Convention, which was ratified in 1953 and came into force in 1954, can only be denounced in 2013. He said that in the long run, Articles 130 and 131 of the Labor Code of the Philippines would be repealed to comply

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with the country's obligations to CEDAW but this cannot be done at this time in light of the country's obligations to Convention 89. Meanwhile, he agreed to let the technical working group of the Committee on Labor, Employment and Human Resources Development to study the bill further, to make representations with the staff of Senator Defensor Santiago, and to craft a more productive bill in the future.

REMARKS OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago disagreed, pointing out that the comments of Senator Ejercito Estrada were based on a wrong interpretation of basic principles of the International Treaty Law. She explained that the Philippines is a state party to the CEDAW of 1979 which is incompatible with ILO Convention No. 89, which was first released in 1934. As to which should prevail, she said that the new treaty shall prevail over a very old one.

Senator Ejercito Estrada deferred to Senator Defensor Santiago, whom he acknowledged as an expert in international law.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2701

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

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 the period of individual amendments.

Thereupon, the Chair recognized Senator Drilon, Sponsor of the measure.

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

MANIFESTATION OF SENATOR DRILON

Senator Drilon stated that the Body would be using the official version of the bill, incorporating the approved Committee amendments as of March 14, 2011.

DRILON AMENDMENTS

As proposed by Senator Drilon, there being no objection, the Body approved the following amendments, one after the other:

1. On page 14, line 7, change "Section 18" to SECTION 15;
2. On page 15, line 11, change "Section 27" to SECTION 24; and
3. On page 17A, line 19, change "Chapter VI" to CHAPTER VII.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 4:21 p.m.

RESUMPTION OF SESSION

At 5:53 p.m., the session was resumed.

The Chair recognized Senator Drilon, Sponsor of the measure, and Senator Osmeña for his amendments.

Senator Drilon stated that a clean copy of the bill with approved committee amendments as of March 14, 2011 would be used in the period of individual amendments.

OSMEÑA AMENDMENTS

As proposed by Senator Osmeña and accepted

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by the Sponsor, there being no objection, the Body approved, subject to style, the following amendments:

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1. On line 11, after the period, (.) following word "programs," insert a new sentence to read as follows: IT IS FURTHERMORE A STATE POLICY TO ACTIVELY EXERCISE ITS OWNERSHIP RIGHTS IN GOCCS.
2. After line 13, insert a new subparagraph (A) and a new subparagraph (B) to read as follows:
 - (A) THE CORPORATE FORM OF ORGANIZATION THROUGH WHICH GOVERNMENT CARRIES OUT ITS ACTIVITIES IS UTILIZED JUDICIOUSLY;
 - (B) THE OPERATIONS OF GOCCS ARE RATIONALIZED AND MONITORED CENTRALLY IN ORDER THAT GOVERNMENT ASSETS AND RESOURCES ARE USED SUFFICIENTLY AND THAT GOVERNMENT EXPOSURE TO ALL FORMS OF LIABILITIES INCLUDING SUBSIDIES IS WARRANTED AND INCURRED THROUGH PRUDENT MEANS;
3. Reletter the succeeding items accordingly;

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4. On line 1, between the words "reporting" and "system," insert the phrase AND EVALUATION SYSTEM;
5. On line 5, replace the word "board" with BOARDS and the word "is" with ARE; thereafter, insert the phrase AND ITS SUBSIDIARIES after the acronym "GOCC";
6. On line 10, insert the words DIRECTORS/TRUSTEES and a comma (,) between the words "the" and "is"; thereafter, insert the phrase AND ITS SUBSIDIARIES after the acronym "GOCCS";

Senator Osmeña proposed to redefine the word "Affiliate" on page 2, line 20, as follows: "AFFILIATE" REFERS TO A CORPORATION OF LESS THAN 50% OF THE OUTSTANDING CAPITAL STOCK OF WHICH IS OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY THE GOCC.

Senator Drilon explained that an affiliate is a corporation where 50% or less of the capital stock is owned by the GOCC, in which case the GOCC has no control.* Asked whether "50% or more" is also

considered as majority share, Senator Drilon pointed out that "50% plus one" is the majority. Senator Osmeña withdrew his proposed amendment.

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7. On line 9, redefine "Chief Executive Officer" as follows: CHIEF EXECUTIVE OFFICER IS THE HIGHEST CORPORATE OFFICER WHO COULD BE THE PRESIDENT, GENERAL MANAGER, ADMINISTRATOR OR CHAIRMAN OF THE GOCC;
8. On line 12, reword the sentence to read: "GOVERNMENT CORPORATE GOVERNANCE STANDARDS" REFERS TO A SET OF PRINCIPLES, PRACTICES, RULES AND STANDARDS PRESCRIBED BY THE GCG TO DEFINE THE RELATIONSHIPS BETWEEN AND AMONG GOCC'S MANAGEMENT, ITS BOARD, THE GOVERNMENT, GCG AND OTHER STAKEHOLDERS TO IMPROVE PERFORMANCE AND GENERATE LONG-TERM AND DESIRABLE ECONOMIC VALUE FOR THE STATE.

After the word "STATE" and the period (.), insert a new sentence to read as follows: THESE SHALL INCLUDE:

- (A) GUIDELINES ON THE MONITORING OF THE OPERATIONS AND THE EVALUATION OF PERFORMANCE OF GOCCS INCLUDING THEIR RELATED CORPORATIONS, INCLUDING STRATEGY MAPS, CHARTER STATEMENTS, PERFORMANCE EVALUATION SYSTEM, PERFORMANCE SCORECARDS AND SUCH OTHER MECHANISMS;
- (B) DISCLOSURE AND TRANSPARENCY REQUIREMENTS;
- (C) CODE OF ETHICS OF DIRECTORS/TRUSTEES AND OFFICERS;
- (D) CREATION OF BOARD COMMITTEES AND SIMILAR OVERSIGHT BODIES; AND
- (E) SUCH OTHER MATTERS AS THE GCG MAY IDENTIFY;

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9. On line 31d, between the words "ARE" and "EITHER," insert Roman numeral "(I)";
10. On line 31f, after the word "PILIPINAS," replace the period (.) with the following: OR (II) COLLECTING OR TRANSACTING

*As corrected by Senator Drilon on March 16, 2011

FUNDS OR CONTRIBUTIONS FROM THE PUBLIC AND PLACES THEM IN FINANCIAL INSTRUMENTS OR ASSETS SUCH AS DEPOSITS, LOANS, BONDS AND EQUITY RATHER THAN ON TANGIBLE ASSETS SUCH AS, BUT NOT LIMITED TO, THE GOVERNMENT SERVICE INSURANCE SYSTEM AND THE SOCIAL SECURITY SYSTEM;

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11. On lines 29 and 30, delete the words "day to day";
12. On line 31, after the words "Chief Executive Officer" and the comma (,), insert the words CHIEF FINANCIAL OFFICER, CHIEF INVESTMENT OFFICER;
13. On line 33, insert new subparagraphs (R) and (S) as follows:

(R) "OWNERSHIP MANUALS" REFERS TO GUIDELINES AND RULES PERTAINING TO THE OWNERSHIP BY THE STATE OF CORPORATIONS AND ENTERPRISES OR THE EXERCISE OF SUCH OWNERSHIP GOVERNING THE GOCCS OR ANY CLASSIFICATION THEREOF. THIS SHALL BE CONSISTENT WITH THE MEDIUM-TERM PHILIPPINE DEVELOPMENT PLAN AND SHALL INCLUDE:

(1) OBJECTIVES OF STATE OWNERSHIP;

(2) ROLE OF THE NATIONAL GOVERNMENT IN THE GOVERNANCE OF GOCCS;

(3) THE ROLES, RELATIONSHIPS AND RESPONSIBILITIES OF THE STATE, THE GOVERNMENT AGENCIES TO WHICH THE GOCC IS ATTACHED, AND THE GOCC;

(4) STATEMENT OF THE SOCIAL RESPONSIBILITIES OF THE GOCCS; AND

(5) SUCH OTHER MATTERS AS THE GCG MAY DEEM PROPER TO INCLUDE IN THE OWNERSHIP POLICY;

- (S) "PERFORMANCE EVALUATION SYSTEM" REFERS TO THE PROCESS OF APPRAISING THE ACCOMPLISHMENTS OF GOCCS IN A GIVEN FISCAL YEAR BASED ON SET PERFORMANCE CRITERIA, TARGETS, AND WEIGHTS;

Page 4A

14. On line 34, after the word "tool," insert the phrase FORMING PART OF THE PERFORMANCE EVALUATION SYSTEM WHICH;
15. On line 35, replace the word "consisting" with CONSISTS;
16. Reletter the succeeding items accordingly;

Page 5A

17. On line 34, after the word "created," replace the word "a" with the words A CENTRAL;
18. On line 35, delete the word "recommendatory;" thereafter, replace the words "policy-implementing" with OVERSIGHT and insert the phrase WITH AUTHORITY TO FORMULATE, IMPLEMENT AND COORDINATE POLICIES after the words "body" and "to";

Page 6

19. On line 4g, after the word "CATEGORY," insert the phrase AND/OR ANY OTHER CLASSIFICATION BASED ON PARAMETERS AS IT MAY FIND RELEVANT OR MATERIAL SUCH AS, BUT NOT LIMITED TO, INDUSTRY TYPE.
20. On lines 4i and 5, insert a new paragraph to read as follows:

IN CONSULTATION WITH THE RELEVANT GOVERNMENT AGENCIES AND STAKEHOLDERS, PROMULGATE THE RULES AND REGULATIONS IMPLEMENTING THIS ACT WITHIN SIX (6) MONTHS FROM ITS EFFECTIVITY THROUGH THE OWNERSHIP MANUALS AND THE GOVERNMENT CORPORATE GOVERNANCE STANDARDS: *PROVIDED*, THAT, THE GOVERNMENT CORPORATE GOVERNANCE STANDARDS APPLICABLE TO GOCCs SHALL BE NO LESS RIGOROUS THAN THOSE REQUIRED BY THE PHILIPPINE STOCK EXCHANGE OR THE SECURITIES AND EXCHANGE COMMISSION OF LISTED COMPANIES, OR THOSE REQUIRED BY THE BANGKO SENTRAL NG PILIPINAS OR THE INSURANCE COMMISSION OF BANKING INSTITUTIONS AND INSURANCE COMPANIES, AS THE CASE MAY BE.

Asked by Senator Drilon if the amendment would authorize the GCG to adopt rules and regulations within 180 days to implement the Act, subject to conditions as stated therein, Senator Osmeña replied in the affirmative.

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SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was suspended.

It was 6:16 p.m.

RESUMPTION OF SESSION

At 6:17 p.m., the session was resumed.

Senator Drilon clarified that lines 5 to 26 of page 6 are retained.

OSMEÑA AMENDMENTS

(Continuation)

Page 6

21. On line 26, as modified by Senator Drilon, insert a new paragraph to read as follows:

BY APPROPRIATE REGULATIONS, PRESCRIBE AND IMPOSE FINES AND PENALTIES FOR ANY VIOLATION OF OR NONCOMPLIANCE WITH THE OWNERSHIP MANUAL OR THE GOVERNMENT CORPORATE GOVERNANCE STANDARDS RANGING FROM A MINIMUM OF FIFTY THOUSAND PESOS (P50,000.00) TO A MAXIMUM OF FIFTY MILLION PESOS (P50,000,000.00); PROVIDED, THAT, ANY MEMBER OF THE BOARD OF DIRECTORS OR TRUSTEES WHO PARTICIPATED BY COMMISSION OR OMISSION IN THE APPROVAL OF THE ACT, GIVING RISE TO THE VIOLATION OR NON-COMPLIANCE MAY BE METED WITH A SUSPENSION FOR THE REST OF HIS TERM DEPENDING ON THE NATURE AND EXTENT OF DAMAGE CAUSED, DURING WHICH PERIOD, THE DIRECTOR OR TRUSTEE SHALL NOT BE ENTITLED TO ANY EMOLUMENT.

Page 6A

22. On line 32, insert a new paragraph to read as follows:

ESTABLISH THE PERFORMANCE EVALUATION SYSTEMS INCLUDING PERFORMANCE SCORECARDS WHICH SHALL APPLY TO ALL GOCCS IN GENERAL AND/OR TO VARIOUS GOCC CLASSIFICATIONS;

23. On line 33, after the word "study" and the comma (,), insert the word EXAMINATION;

Page 7

24. On line 22, insert the following standards:
5. THE GOCC IS INVOLVED IN AN ACTIVITY BEST CARRIED OUT BY THE PRIVATE SECTOR;
 6. THE FUNCTIONS, PURPOSE OR NATURE OF OPERATIONS OF ANY GROUP OF GOCCS REQUIRE CONSOLIDATION UNDER A HOLDING COMPANY;

Page 8

25. On lines 4 and 5, delete the phrase "at the same time allowing the GOCC to be financially sound and sustainable";

On page 8, lines 33 to 35, Senator Osmeña inquired on the meaning of the phrase "to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions." He noted that the phrase seeks to avoid any conflict between the commercial and regulatory functions of GOCCs when in truth and in fact, there are several GOCCs which have conflicting functions, citing as an example PAGCOR which earns revenues from gambling.

Senator Drilon said that precisely, that kind of a situation should not be tolerated – that GOCCs should not perform both regulatory and commercial functions. Hence, he stated, under the bill, the GCG shall take measures to remove such conflict either by privatizing the commercial activity and just maintaining the regulatory function, or by giving the regulatory function to another agency.

SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was suspended.

It was 6:29 p.m.

RESUMPTION OF SESSION

At 6:30 p.m., the session was resumed.

Senator Drilon stated that conceptually, he agrees that indeed, the regulatory functions of a GOCC should be separated from its commercial functions, if it is performing both. He said that the Committee would review and clarify lines 30 to 35 of page 8.

Asked to define the word "commercial" as used in the bill, Senator Drilon said that it refers to

activities which are not necessary for governance of the populace or which are not essential to government services such as gambling.

Asked about the Manila International Airport Authority (MIAA) which performs an essential government service and, at the same time, collects fees from airlines, passengers and private concessionaires, Senator Drilon opined that airport operations can be privatized.

To the observation that the MIAA also performs regulatory functions with respect to flights, Senator Drilon stated that the landing rights of airlines* are completely separate from the operation of the terminal which includes the collection of fees.

As regards the National Telecommunications Commission and the Land Transportation Office, Senator Drilon said that both are classified as regulatory agencies that collect fees and they perform activities that only the government should do. On the other hand, he stated that in the case of the Philippine Ports Authority (PPA), the operation of the port itself can be privatized and the private operator can pay the PPA a certain fee. He stated that the operation of a port is a non-essential government function.*

To the observation that PhilForest Corporation, a subsidiary of the Department of Environment and Natural Resources, performs a commercial function because it leases out nonalienable and nondisposable lands, Senator Drilon explained that the management of government assets such as forest land, a natural resource, is an essential public service because it involves natural resources.

Senator Osmeña hoped he would be able to come up with a proposed amendment to subsection (j) on lines 30 to 35 of page 8 in the next day's session.

Adverting to Section 6 (*Composition of the GCG*), Senator Osmeña recalled that he wanted to increase the private sector representatives in the original version of the bill from two to seven but the Committee came up with a better idea to make the GCG a line department to be headed by a secretary.

Senator Drilon stated that as amended, Sections 6 and 7 would read as follows:

SECTION 6. *COMPOSITION OF THE GCG.*
– THE GCG SHALL BE COMPOSED OF A

CHAIRMAN WITH THE RANK OF CABINET SECRETARY AND TWO (2) COMMISSIONERS WITH THE RANK OF UNDERSECRETARY, ALL OF WHOM SHALL BE APPOINTED BY THE PRESIDENT.

THEY MUST BE CITIZENS OF THE PHILIPPINES WITH RECOGNIZED COMPETENCE IN THE AREAS OF CORPORATE GOVERNANCE, POLICY ADMINISTRATION, BUSINESS MANAGEMENT, HUMAN RESOURCES MANAGEMENT, FINANCIAL MANAGEMENT, AND OTHER RELATED FIELDS.

SECTION 7. *POWERS AND FUNCTIONS OF THE CHAIRMAN.* – THE MANAGEMENT OF THE GCG SHALL BE VESTED IN THE CHAIRMAN WHO SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

- A. TO PRESIDE OVER THE MEETINGS OF THE GCG;
- B. DIRECT AND MANAGE THE DAY-TO-DAY AFFAIRS AND BUSINESS OF THE GCG;
- C. WITH THE APPROVAL OF THE GCG, DETERMINE THE STAFFING PATTERN AND THE NUMBER OF PERSONNEL OF THE GCG AND DEFINE THEIR POWERS AND DUTIES;
- D. WITH THE APPROVAL OF THE GCG, TO APPOINT REMOVE, SUSPEND, OR OTHERWISE DISCIPLINE, FOR CAUSE, ANY EMPLOYEE OF THE GCG; AND
- E. PERFORM SUCH OTHER DUTIES AS MAY BE DELGATED OR ASSIGNED TO HIM BY THE GCG FROM TIME TO TIME.

Senator Osmeña stated that he wanted to use the titles used by NEDA for officers of the GCG so that the Chairman will be the Director General, unless the Committee meant the GCG to be a collegial body. Senator Drilon affirmed that the GCG is a collegial body and that there are certain functions that the Chairman can only exercise upon authority of the GCG.

As regards Section 10. *Additional allowances and bonuses*, Senator Osmeña observed that in the Philippines, people in government tend to use the word "allowances" almost synonymously with the word "salaries," thus, employees are granted additional allowances and bonuses to get past the withholding tax regulation. In normal corporate practice, he pointed out that allowances are really for expenses that a director or an executive must undertake in order to gain business or close deals for the company, while bonuses are given for outstanding performances.

Asked whether the allowance is given for good performance or to compensate a legitimate business

*As corrected by Senator Drilon on March 16, 2011

expense undertaken by the director or an officer, Senator Drilon said that it is given for good performance.

Asked if it would be possible to limit bonuses to good performance, Senator Drilon replied that the Committee would accept an amendment to delete the word "allowances."

SUSPENSION OF SESSION

Upon motion of Senator Drilon, the session was suspended.

It was 6:43 p.m.

RESUMPTION OF SESSION

At 6:44 p.m., the session was resumed.

DRILON AMENDMENT

To address the concept raised by Senator Osmeña, as proposed by Senator Drilon, there being no objection, the Body approved the rewording of Section 10 on pages 11A and 12, as follows:

Section 10. *ADDITIONAL BONUSES.* – THE GCG MAY RECOMMEND TO THE PRESIDENT BONUSES FOR CERTAIN POSITION TITLES IN CONSIDERATION FOR THE GOOD PERFORMANCE OF THE GOCC: PROVIDED, THAT NO BONUSES SHALL BE GRANTED UNLESS THE GOCC HAS FULLY PAID ALL TAXES....

OSMEÑA AMENDMENTS

As proposed by Senator Osmeña and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

Page 15

1. On line 21, after the word "realized," insert the words AND UNREALIZED.

Senator Osmeña explained that in many accounting practices, unrealized profits refer, for example, to a share of stock given to someone as a bonus but which has not been sold yet.

2. On line 28, before the acronym GOCC, insert the words EXCLUSIVE BENEFIT OF THE;

Page 16

3. On line 22, after the word "President," insert the phrase UPON RECOMMENDATION BY THE GCG;

Page 17

4. After line 4q, insert a new subparagraph to read as follows:

H) SUCH OTHER INFORMATION OR REPORT THE CHAIRMAN MAY REQUIRE;

Page 17A

5. Before line 27, insert a new section, to be numbered accordingly, to read as follows:

STATUTORY CONSTRUCTION. – THIS ACT SHALL BE CONSTRUED IN FAVOR OF UPHOLDING THE POWERS AND AUTHORITY OF THE GCG AND THE CHAIRMAN OVER THE GOCC, ITS DIRECTORS OR TRUSTEES AND EMPLOYEES, AND OF RECOGNIZING THAT THE PROVISIONS HEREIN SHALL BE CONTROLLING IN RELATION TO PROVISIONS IN CHARTERS OF THE GOCCS AND OTHER SPECIAL AND GENERAL LAWS.

Thereafter, Senator Osmeña made reservation to introduce one or two more amendments in the next day's session.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2640

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

CHANGE OF REFERRAL




Upon motion of Senator Sotto, there being no objection, the Chair referred Proposed Senate Resolution No. 426 to the Committee on National Defense and Security, as the primary committee, and to the Committee on Climate Change, as the secondary committee.

ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, the President Pro Tempore declared the session adjourned until three o'clock in the afternoon of the following day.

It was 6:55 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES 
Secretary of the Senate 

Approved on March 16, 2011