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S E N A T E

S. No. 468

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

P. D. 1521, otherwise known as the Ship Mortgage Decree of 1978, is considered inadequate with regard to providing the framework for the enforcement of claims on maritime assets because it does not cover maritime liens.

This bill, which drew from the services of maritime law experts from the *Comite Mark Time Internationale* seeks to upgrade the Philippine law covering claims on maritime assets to international standards.

It is said that the efficient operation of free markets is hinged on the existence of legal institutions that assure every individual of his property rights and of a recourse to the legal system for the enforcement of those rights.

This bill provides such a foundation for the effective operation of the shipping industry by defining the various claims against the owner of a maritime asset, and clarifying the order of priorities among those claims. In so doing, the rights of parties involved in the shipping industry, such as workers, shippers, passengers, and banks extending mortgage financing for the acquisition of ships are more adequately defined and protected.

In view of the foregoing, early passage of this bill is earnestly requested.

S. Osmeña III
SERGIO OSMEÑA III
Senator

- 1 b) Maritime Lien – is a claim constituted by virtue of this Act which
2 unconditionally attaches as a privileged claim upon maritime property
3 whether disclosed or not, wherever it maybe found, enforceable by an
4 action in rem.
- 5 c) Preferred Mortgage – is a mortgage validly executed in accordance
6 with the provisions of this Act on the vessel permanently or temporarily
7 registered, enrolled or licensed under the laws of the Philippines.
- 8 d) Foreign Mortgage – is a mortgage which relates to a ship when it is
9 registered in a country other than the Philippines and shall include any
10 hypothec which relates to such a ship validly executed in accordance
11 with the documentation laws of its nations and duly registered in a
12 public register in the port of registry.
- 13 e) Maritime Property – means a vessel in being, its cargo, freight and
14 sub-freight.
- 15 f) Necessaries – means things incorporated or furnished into the vessel
16 because they are required for her ordinary needs after it is built and
17 equipped and starts upon her voyage which includes repairs, needs
18 services and materials required for the maintenance of operation
19 thereof except those which go into its original construction and which
20 are necessary to its completion.
- 21 g) Philippine-registered vessel – means a vessel registered or enrolled or
22 licensed under the laws of the Philippines, whether permanently or
23 temporarily.
- 24 h) Owner – means the registered owner, demise charterer, manager or
25 operator of the vessel against whom claims had been filed in respect of
26 loss of life or personal injury occurring on land or on water in direct
27 connection with the operation of the vessel or claims based on tort and
28 not capable of being used on contract has been filed in respect of loss
29 or damaged to property occurring, whether on land or on water, in

1 direct connection with the operation of the vessel which, in both
2 circumstances, constitute a maritime lien under this Act.

3 SEC. 3. Claims Secured by Maritime Liens –

4 (1) The following claims in relation to a ship shall be secured by maritime
5 liens on the ship:

6 (a) claims for salvage, wreck removal and contribution in general
7 average;

8 (b) claims against the owner with respect to loss of life or personal injury
9 occurring on land and on water, in direct connection with the operation
10 of the ship;

11 (c) wages and other sums due to the master, officers and other members
12 of the ship's crew with respect to their employment on board the ship;

13 (d) claims against the owner based exclusively on tort with respect to loss
14 or damage to property occurring, whether on land or in water, in direct
15 connection with the operation of the ship;

16 (e) port, canal and other waterway dues, tonnage dues, light dues,
17 pilotage dues and other public taxes dues and charges of the same
18 character;

19 (f) cost incurred by the government, national or local, in preventing,
20 mitigating or eliminating pollution by oil, or otherwise, within the
21 territorial waters and exclusive economic zone of the Philippines.

22 2) A ship can still be charged with a maritime lien although it has
23 become derelict or has been reduced to a wreck.

24 3) No maritime lien shall attach to the ship securing any claim which
25 arises out of or results from the radioactive properties or a
26 combination of radioactive properties with toxic, explosive or other
27 hazardous properties of nuclear fuel or of radioactive product or
28 waste.

29 SEC. 4. *Priority Between Maritime Liens.* –

1 (1) The maritime liens set out in paragraph 1 Section 3 hereof shall rank
2 in the order listed therein subject, however, to prior claims which
3 arose out of salvage, wreck removal and contributions to general
4 average;

5 (2) Maritime liens which secure claims for salvage, wreck removal and
6 contributions in general average shall take priority over all maritime
7 liens which have attached to the vessel whether prior or subsequent
8 to the time when the operations giving rise to the said liens were
9 performed: Provided, however, That port, canal and other waterways
10 dues, tonnage, lighthouse and pilotage dues and public taxes and
11 costs incurred by the government for preventing, mitigating or
12 eliminating pollution by oil shall have been initially satisfied;

13 (3) The maritime liens which secure claims for salvage, wreck removal
14 and contributions in general average shall rank in the inverse order of
15 the time when the claims secured thereby accrued. Claims for
16 contributions in general average shall be deemed to have accrued on
17 the date on which the general average act was performed; claims for
18 salvage or wreck removal shall be deemed to have accrued on the
19 date on which the salvage or wreck removal operation were
20 terminated.

21 SEC. 5. *Nature of Maritime Liens* – (1) Maritime liens shall arise whether
22 the claims secured by such liens are against the owner or against the demise
23 charterer, manager or operator of the ship.

24 (2) Maritime liens, whether original, assigned or subrogated, shall follow
25 the ship notwithstanding any change of ownership or of registration.

26 SEC. 6. *Assignment or Subrogation* – The assignment of or subrogation
27 to a claim secured by a maritime lien shall entail the simultaneous assignment of
28 or subrogation to such maritime lien.

1 a) a ship which is registered in the Philippines; or

2 b) a ship which is under construction in the Philippines.

3 SEC. 10. Subject of the Mortgage. – Subject to the terms of the
4 mortgage contract:

5 a) a mortgage in respect of a ship shall include all the property of the
6 mortgagor which is appropriated to the ship and on board at the time
7 when the mortgage contract is entered into, or which is later
8 substituted for such property; and

9 b) a mortgage in respect of a ship under construction shall include all
10 materials, machinery and equipment in the possession of the
11 mortgagor which are within the premises of the builder's yard and
12 distinctly identified as intended to be incorporated in the ship under
13 construction.

14 SEC. 11. Formal Validity. – A mortgage shall not be valid, except as
15 between the parties, unless it is:

16 a) made by or with the consent of the owner of the ship or ship under
17 construction; and

18 b) made in writing and signed by the mortgagor and mortgagee;

19 c) registered in accordance with Section 12 of this Act.

20 SEC. 12. *Registration of Mortgages* – Every mortgage of a vessel which
21 is registered in the Philippines or which is under construction in the Philippines
22 shall be duly registered in the Record of Transfers and Encumbrances of Vessels
23 in order to be valid and enforceable. The application for the registration of
24 mortgage hereunder shall be accompanied by the following:

25 1. An authenticated copy of the mortgage contract or other similar
26 instrument.

27 2. Such forms as the Maritime Industry Authority, hereinafter referred to
28 as the Authority, shall prescribe, signed by the mortgagor and setting
29 out the following:

- 1 a) the name or description of the vessel being mortgaged;
- 2 b) the name, nationality and place of residence of the owner of the
- 3 vessel;
- 4 c) the name of each mortgagor and each mortgagee
- 5 d) the interest of the mortgagor in the vessel being mortgaged;
- 6 e) the date of the mortgage contract;
- 7 f) the extent of the mortgage as specified in the mortgage
- 8 contract; and
- 9 g) the maturity date of the mortgage and the conditions specified in
- 10 the mortgage contract relating to the termination of the
- 11 mortgage debt.

12 3. An authenticated copy of the certificate of registration of the vessel;

13 and

14 4. In the case of a vessel under construction, a declaration stating;

- 15 a) the name and location of the construction yard;
- 16 b) the intended port of registration;
- 17 c) the yard number;
- 18 d) the dimension and approximate deadweight of the vessel on
- 19 completion.

20 Upon registration of a mortgage by the Authority as provided herein, an
21 authenticated copy of the mortgage contract or other instrument shall be
22 submitted to the Bangko Sentral ng Pilipinas.

23 If the mortgage is transferred or materially amended as to any of the
24 particulars in paragraphs (2) and (4) hereof, if one mortgage is substituted for
25 another, the transfer, amendment or substitution shall be registered in the
26 Record of Transfers and Encumbrances of Vessels in the same manner as
27 above provided. Any transfer, amendments or substitution which is not
28 registered as aforesaid shall be invalid and unenforceable.

1 SEC. 13. Annotation of Mortgages. – The Maritime Industry Authority
2 shall, at the request of the mortgagee or his authorized agent, cause the
3 annotation upon the Certificate of Philippine Registry of the Vessel subject to the
4 mortgage the matters set out in paragraph (2) of Sec. 12.

5 If the vessel, in respect of which a mortgage has been made, holds only a
6 Provisional Certificate of Philippine Registry and is abroad at the time of the
7 registration of the mortgage, the annotation shall be made by such consular
8 officer of the Republic of the Philippines as the Maritime Industry Authority shall
9 direct.

10 If a new certificate or a full certificate is issued to a vessel by the Authority
11 any annotation upon the old or provisional certificate of a mortgage, which
12 remains undischarged at the time of the issuance of the new or full certificate
13 shall be transferred to and annotated upon such new or full certificate.

14 SEC. 14. Publication of Mortgage. – The Maritime Industry Authority
15 shall, upon the registration of a mortgage, issue two (2) official copies of the
16 relevant entry in the Record of Transfers and Encumbrances of Vessels relating
17 to the mortgage which has been registered, to the mortgagor named in the
18 application. Each official copy of the entry shall bear the official date of the
19 registration of the mortgage.

20 The mortgagor shall take all reasonable steps to exhibit in a prominent
21 place on board the vessel subject to the mortgage:

- 22 1) at least one of the official copies issued under the first paragraph
23 above; and
- 24 2) an authenticated copy of the vessel's Certificate of Registry duly
25 containing the annotation of the mortgage.

26 Failure to exhibit the copies as specified above shall not affect the validity
27 or enforceability of the mortgage.

1 SEC. 15. Transparency of Records – The mortgagor upon request by the
2 mortgagee before the execution of the mortgage to which they are parties, shall
3 give details in writing to the mortgagee of:

4 1) any prior mortgage on the vessel which is to be the subject of the
5 mortgage; and

6 2) any maritime lien to which the said vessel is subject, which are known
7 to the mortgagor.

8 The Record of Transfers and Encumbrances of vessels kept by the
9 Maritime Industry Authority shall be open to public inspection during ordinary
10 business hours and subject to such reasonable regulations as to access as the
11 Authority may prescribe.

12 The Maritime Industry Authority, at the request of any person and on the
13 payment of such reasonable fees as the Authority shall fix, shall provide:

14 1) Extracts from the Register of Entries contained therein setting out the
15 details mentioned in paragraphs 2 and 4 of Sec. 12 of this Act; and

16 2) Authenticated copies of any document or instrument integrated or
17 referred to therein, which is required to be lodged under paragraphs 1 and 2 of
18 Sec. 12 of this Act.

19 SEC. 16. De-registration of the Ship Subject to a Mortgage. – Except as
20 otherwise provided for in this Act, a ship registered in the Republic of the
21 Philippines shall not be de-registered without the written consent of all holders of
22 registered mortgages.

23 SEC. 17. Right to Enforce the Mortgage. – (1) A mortgagee shall be
24 entitled to foreclose on the security represented by the Ship under a mortgage if:

25 a) the mortgagor defaults in the discharge of the indebtedness or other
26 obligations secured by the mortgage; or

27 b) the mortgagor or any person in possession of the mortgaged property
28 substantially prejudiced the security of the mortgagee by any act or
29 omission; or

1 c) the mortgagor commits any breach of the mortgage contract which, by
2 the terms of the contract, entitles the mortgagee to foreclose on the
3 security.

4 (2) The foreclose on the security under the mortgage contract in the
5 circumstances referred to in paragraph (1) hereof may be affected by:

- 6 a) arresting the ship subject to the mortgage and applying to the court
7 for an order for its forced sale in accordance with this Act; or
8 b) in any other manner permitted by the mortgage contract.

9 SEC. 18. Arrest Leading to Forced Sale. –

10 (1) A mortgagee entitled to enforce his mortgage may bring proceeding in
11 rem against the ship which is the subject of the mortgage before the court having
12 jurisdiction over the ship within one year from the time when the grounds which
13 entitle the mortgagee to enforce the mortgage arose. The mortgagee shall be
14 entitled in such proceedings to apply to the court *ex parte* for an order for the
15 arrest of the mortgaged ship.

16 (2) A mortgage who applies to the court for an order of arrest shall file in
17 support of his claim an affidavit stating the circumstances upon which the
18 mortgagee relies as entitling him to enforce the mortgage. If the affidavit
19 establishes this to the satisfaction of the court, the court shall make an order for
20 the arrest of the mortgaged ship.

21 (3) The court shall require the mortgagee applying for an order to provide
22 a guarantee or other security in a form satisfactory to the court as a pre-condition
23 for the issuance of the order sought. The guarantee or security shall be for such
24 sum, not exceeding the extent of the mortgage debt, as the court considers
25 appropriate.

26 (4) The mortgagor or any person authorized to act on his behalf or any
27 other person interested in the ship may, at any time after the order of arrest has
28 been granted, apply to the court for an order releasing the ship from arrest. The
29 Court shall not order the release of the ship under this paragraph unless the

1 mortgagor provides a counter-guarantee or security in a form satisfactory to the
2 court in an amount equal to the full extent of the mortgage debt: *Provided*, That
3 the full extent of the mortgage shall mean the outstanding balance of the
4 mortgage debt.

5 (5) Subject to paragraph (4), the court, once the mortgaged ship has been
6 arrested pursuant to the court's order, shall make an order for its forced sale in
7 accordance with this Act.

8 (6) Where on an application the mortgagor satisfies the court that the
9 order of arrest was improperly and irregularly made, the court shall order the
10 release of the ship and notwithstanding the paragraph (4) shall not require the
11 provision of a counter-guarantee or security.

12 (7) The Supreme Court pursuant to this Act shall provide for the
13 regulations and the procedure to be applied in respect of applications for the
14 arrest and forced sale of the ship under this section, in particular:

- 15 a) the procedure in relation to the *ex parte* application
- 16 b) the procedure in relation to the provision of a guarantee or security, or
17 of a counter-guarantee or security;
- 18 c) the procedure for the application for the release of a ship from arrest;
- 19 d) the arrangement of and procedure for a forced sale.

20 SEC. 19. After ordering a forced sale, whether under Section 18 above
21 or pursuant to any power vested in court, and prior to the forced sale of a ship,
22 the court shall give, or cause to be given, at least thirty (30) days written notice of
23 the time and place of such sale to:

- 24 a) All holders of registered mortgagors;
- 25 b) Such holders of maritime liens by virtue of this Act whose claims have
26 been notified to the court;
- 27 c) All other persons having an interest in the ship which interest has been
28 notified to the court; and
- 29 d) The registrar of the registry in which the vessel is registered.

1 CHAPTER 3 – Right of Retention

2 SEC. 20. *Rights of Retention.* – (1) The following persons, when in
3 possession of a ship or one which is under construction, shall have the right to
4 retain possession of the same, as follows:

5 a) a shipbuilder, to secure claims arising out of the construction of, or
6 other work carried out in relation to the ship; and

7 b) a ship repairer, to secure claims arising out of the repair of, or other
8 work carried out in relation to the ship, effected during such possession.

9 (2) The right of retention shall be extinguished when:

10 a) the claim in respect of which the said right has been exercised is met
11 or is otherwise discharged, in accordance with the provisions of the
12 new civil code on the extinguishment of obligations;

13 b) the ship ceases to be in the possession of the shipbuilder or ship
14 repairer as the case maybe; or

15 c) the court issues an order that the ship is to be released.

16 CHAPTER 4 – Forced Sale

17 SEC. 21. *Effect of the Forced Sale of Ship.* – (1) In the event of the
18 forced sale of the ship all mortgages except those assumed by the purchaser with
19 the consent of the holders, and all liens and other encumbrances of whatsoever
20 nature, shall cease to attach to the ship but shall be transferred and shall attach to
21 the proceeds of sale: *Provided, That:*

22 a) at the time of sale the ship is in the jurisdiction of the Philippines; and

23 b) the sale has been effected in accordance with the law of the
24 Philippines

25 Any charter party or contract for the use of the ship, in existence at the
26 time of the forced sale, shall deemed to be terminated, without prejudice to any
27 claim the charterer may have against the owner of the ship, at the time of the
28 sale.

1 (2) Unpaid taxes of whatever kind or class which accrues to the vessel
2 and the costs incurred in the arrest and subsequent sale of the vessel shall be
3 paid first out of the proceeds of such sale.

4 CHAPTER 5 – Priority between claims

5 SEC. 22. Preference of Credits. – (1) The balance of the proceeds of
6 sale, in respect of the ship sold, shall be distributed among the holders of
7 maritime liens, the registered mortgagee and the rights of retention in
8 accordance with the provisions of Sections 3, 12 and 19 and the order of priority
9 therein set out to the extent to satisfy their claims as assessed by the court.

10 (2) When a ship registered in the Philippines has been the object of a
11 forced sale in the Philippines, the court having jurisdiction shall, at the written
12 request of the purchaser, issue a certificate to the effect that the ship is sold free
13 of all mortgages and all maritime liens and other encumbrances, except those
14 amused by the purchaser.

15 (3) Upon the production of a certificate given under paragraph (2)
16 hereof, the registrar of Philippine Registry of Ships shall delete all registered
17 mortgages, except those assumed by the purchasers, and register the vessel in
18 the name of the purchasers or issue a certificate of de-registration for the
19 purpose of registration, as the case may be.

20 SEC. 23. **Priority Between Kinds of Claims.** (1) Claims in relation to
21 maritime liens, rights of retention and mortgages under this Act rank in the
22 following order:

- 23 a) maritime liens;
- 24 b) mortgages registered in accordance with this Act;
- 25 c) rights of retention; and
- 26 d) other mortgages.

27 (2) The claims referred to in paragraphs (a), (b) and (c) of paragraph
28 (1) of this Section shall rank before all other claims on, or in respect of, the ship
29 or one under construction to which they relate.

1 CHAPTER 6

2 SEC. 24. **Maritime Liens in Respect of Claims Governed by Foreign**

3 **Law.** – (1) A claim against the owner or against the demise or other charterer,
4 manager or manager or operator of a ship being claim which is governed by the
5 law of a state other than the Philippines and which is recognized by the law as
6 giving rise to a maritime lien, or right of a similar nature shall be recognized by
7 and enforceable in a court of the Philippines in the same manner as the claims
8 set out under this Act.

9 (2) A claim referred to in paragraph (1) shall not be recognized or enforced
10 by any court in the Philippines unless, according to the law of the Philippines,
11 that claim constitutes or corresponds substantially to a claim set out under this
12 Act.

13 (3) Where a claim is recognized and enforced by a court in the
14 Philippines, the provisions of this Act in relation to maritime liens, and in
15 particulars, concerning priority, the ranking of liens between themselves and
16 enforcement, shall apply to such a claim as they apply to claims governed by the
17 law of the Philippines.

18 SEC. 25. **Foreign Mortgages.** – (1) A foreign mortgage shall be
19 recognized and enforceable in a court of the Philippines: *Provided That:*

- 20 a) such mortgage has been affected and registered or otherwise
21 recorded as valid and existing in accordance with the law of the State
22 where the ship is registered;
- 23 b) the registry in which the mortgage is registered or recorded and any
24 instruments or documents which are required to be deposited with
25 the registry in accordance with the laws of the State where the ship is
26 registered, are open to public inspection, and that extracts of the
27 register and copies of such instruments are obtainable from the
28 registrar; and

1 c) either the register or any instrument referred to in paragraph (b)
2 above specifies:

3 i) the name and address of the person in whose favor the
4 mortgage has been effected or that it has been to bearer;

5 ii) either the amount secured by the mortgage or the manner of
6 calculating such amount;

7 iii) the date of the mortgage; and

8 iv) such other particulars which, according to the law of the State
9 where the ship is registered, determine the rank as regards other
10 registered or recorded mortgages.

11 (2) The ranking of registered or recorded mortgages as between
12 themselves and their effect with regard to third parties shall be determined
13 according to the law of the State where the ship is registered.

14 (3) All matters other than ranking of mortgages relating to the procedure
15 for the enforcement of a foreign mortgage in the Philippines shall be governed by
16 the existing and pertinent laws of the Philippines and the provisions of this Act:
17 *Provided, That, foreign mortgages on vessels registered in the Philippines*
18 *pursuant to a bareboat charter agreement but executed prior to such registration*
19 *may or may not be governed by the law of the Philippines.*

20 Sec. 26. **Repealing Clause.** – All law, executive orders, decrees, rules
21 and regulations, or par thereof, contrary to or inconsistent with the provisions of
22 this Act are hereby repealed or modified accordingly.

23 SEC. 27. **Separability Clause.** – If, for any reason or reasons, any part
24 or provision of this Code shall be held to unconstitutional or invalid, other parts or
25 provisions hereof which are not affected thereby shall continue to be in full force
26 and effect.

27 SEC. 28. **Effectivity Clause.** – This Act shall take effect fifteen (15) days
28 after its publication in the Official Gazette or at least two national newspapers of
29 general circulation.