

SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



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SENATE

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COMMITTEE REPORT NO. 186

Submitted by the Committee on Finance on JUN 15 2015

RE: Senate Bill No. 876

Recommending that it be archived

Mr. President:

The Committee on Finance, to which was referred Senate Bill No. 876, introduced by Senator Jinggoy Ejercito Estrada, entitled:

**“AN ACT
RESTORING TO CONGRESS THE POWER TO APPROPRIATE PAYMENTS
ON DEBT SERVICE, REVIVING FOR THE PURPOSE SECTION 6 OF
REPUBLIC ACT NO. 4860 (FOREIGN BORROWING ACT), AND
REPEALING SECTION 7 OF PRESIDENTIAL DECREE NO. 81, SECTION 31
OF PRESIDENTIAL DECREE NO. 1177 AND SECTIONS 1, 2, AND 3 OF
PRESIDENTIAL DECREE NO. 1967”.**

has considered the same and has the honor to report it back to the senate with the following findings and recommendation as a result of the public hearing and Technical Working Group (TWG) conducted on on SBN No. 876, among others, on February 26, 2014 and June 25, 2014, respectively, highlighting the following salient features:

SALIENT FEATURES:

The proposed legislation seeks to restore to congress full power of the purse by reviving Republic act 4860, the foreign Borrowing Act of 1966, which provides:

Sec. 6. The Congress shall appropriate the necessary amount out of any funds in the National treasury not otherwise appropriated, to cover the payment of the principal and interest on such loans, credits or indebtedness as and when they shall become due.

Section 2 of the proposed bill effectively repeals Section 7 of Presidential Decree No. 81, Section 31 of Presidential Decree 1177, and Sections 1, 2 and 3 of Presidential Decree 1967 which provides for automatic appropriation for debt service , quoted as follows:

PD No. 81 (Dec 1972)

Section 7. Section six of the same Act is hereby further amended to read as follows:

"Sec. 6. Any provision of law to the contrary notwithstanding, and in order to enable the Republic of the Philippines to pay the principal, interest, taxes and other normal banking charges on the loans, credits or indebtedness, or on the bonds, debentures, securities or other evidences of indebtedness sold in international markets incurred under the authority of this Act, the proceeds of which are deemed appropriated for the projects, all the revenue realized from the projects financed by such loans, credits or indebtedness, shall be turned over in full, after deducting actual and necessary expenses for the operation and maintenance of said projects, to the National Treasury by the government office, agency or instrumentality, or government-owned or controlled corporation concerned, which is hereby appropriated for the purpose as and when they shall become due. In case the revenue realized is insufficient to cover the principal, interest and other charges, such portion of the budgetary savings as may be necessary to cover the balance or deficiency shall be set aside exclusively for the purpose by the government office, agency or instrumentality, or government-owned or controlled corporation concerned: Provided, That if there still remains a deficiency, such amount necessary to cover the payment of the principal and interest on such loans, credit or indebtedness as and when they shall become due is hereby appropriated out of any funds in the national treasury not otherwise appropriated...

PD 1177

Sec. 31. Automatic Appropriations. – All expenditures for (a) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (b) principal and interests on public debt, (c) national government guarantees of obligations which are drawn upon, are automatically appropriated: Provided, That no obligations shall be incurred or payments made from funds thus automatically appropriated except as issued in the form of regular budgetary allotments.

PD 1967

Section 1. There is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, such amounts as may be necessary to effect payments on foreign or domestic loans, or foreign or domestic loans whereon creditors make a call on the direct and indirect guarantee of the Republic of the Philippines, obtained by:

- a. the Republic of the Philippines the proceeds of which were relent to government-owned or controlled corporations and/or government financial institutions;
- b. government-owned or controlled corporations and/or government financial institutions the proceeds of which were relent to public or private institutions;
- c. government-owned or controlled corporations and/or financial institutions and guaranteed by the Republic of the Philippines;
- d. other public or private institutions and guaranteed by government-owned or controlled corporations and/or government financial institutions.

Section 2. All repayments made by borrower institutions on the loans for whose account advances were made by the National Treasury which revert to the General Fund.

Section 3. In the event that any borrower institution is unable to settle the advances made out of the appropriation provided herein, the Treasurer of the Philippines shall make the proper recommendation to the Minister of Finance on whether such advances shall be treated as equity or subsidy of the National Government to the institution concerned, which shall be considered in the budgetary program of the Government.

The Bangko Sentral ng Pilipinas as well as the Department of Finance have reservations on the enactment of SBN 876 as the passage of it into law would have repercussions on foreign and domestic credit markets. The Department of Budget and Management, likewise, does not recommend the passage of the Bill as it compromises the government's position in honoring its commitments which could eventually impede the country from accessing cheaper trade credits and other credit facilities.

There are provisions in the Constitution which provide that Congress may limit the power of the President to contract or guarantee loans. The authority of the President to contract or guarantee foreign loans on behalf of the Republic of the Philippines is exercised with the concurrence of the Monetary Board. Furthermore, the Constitution provides:

Art VII. Sec. 20 "...The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt ..."

Art. XII, Sec. 21. "Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public."

Section 26, Chapter 4 of the Administrative Code of 1987 or Executive Order No. 292 reiterated Sec. 31 of PD 1177 which explicitly states that principal and interests on public debt form part of Automatic Appropriations.

In the proposed 2008 General Appropriations Bill, interest payments for foreign loans deemed as fraudulent or illegitimate were reduced by the Senate and the House of Representatives. The proposal was vetoed by then President Gloria Macapagal-Arroyo on the following grounds: (1) automatic appropriations for debt service is prescribed by law and has been declared constitutional; (2) the prohibition on disbursement of funds for interest payments on loans challenged as fraudulent, wasteful and/or useless is an encroachment on the constitutional guarantee of non-impairment of contracts; and (3) the government's credits standing needs to be preserved and protected.

Existing budget laws provide that the level of borrowings, domestic and foreign, together with debt servicing requirements should be disclosed in the Budget of Expenditures and Sources of Financing. This is submitted to Congress with the National Expenditure Program for the coming year for review and approval. Approval of the General Appropriations Act by Congress is tantamount to approving the level of borrowings and debt servicing proposed by the Executive branch.

Taking into consideration the arguments presented by the BSP, DOF, and DBM, on the negative international ramifications on the repeal of automatic debt appropriations, as well as the fact that bills of this kind have been re-filed by legislators in various congresses but have never prospered, the Committee on Finance recommends that **SBN 876** be archived.

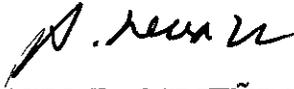
Respectfully submitted:



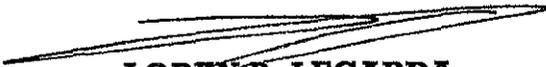
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