



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 78

Monday, May 19, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 78
Monday, May 19, 2008

CALL TO ORDER

At 3:35 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

Sen. Juan Ponce Enrile led the prayer, to wit:

Dear Father,
Benevolent God,
We promise our words and deeds
To the eternal glory of Your Name.

Let truth prevail
Like a light in the dark
Like a beacon that lends comfort
To the weary and confused.

We open our hearts
To lend benevolence
For causes beyond our own:
 Better working conditions
 for the hardworking;
 Equal rights between men and women;
 A more secure and humane future
 for the young of this generation.

We open our minds
And see what is real:
 The imperfection of this world
 and the possibility of transformations.

Let us not be dismayed
 by the faults of others
Nor give in to the easy acceptance
 of our own.
Do not let our hope be depleted
By disappointments of the past
Teach us to ignore people
 who say that we cannot.

Instead, impel us to persevere;
To tilt against the windmills of injustice;
To open our embrace as wide as the universe;
As varied as the planets that circle the galaxies
That balance each other on precise harmony.

In this persistence we shall create
The face You intended us to have:
 eternal and transcendental
 Marked by truth, compassion, hope and love.

Amen.

NATIONAL ANTHEM

The Philippine Normal University Chorale led the singing of the national anthem and thereafter rendered the song, entitled *Lupang Hinirang*.

ROLL CALL

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

Aquino III, B. S. C.	Lacson, P. M.
Arroyo, J. P.	Lapid, M. L. M.
Biazon, R. G.	Legarda, L.
Cayetano, A. P. C. S.	Madrigal, M. A.
Cayetano, C. P. S.	Pangilinan, F. N.
Defensor Santiago, M.	Pimentel Jr., A. Q.
Ejercito Estrada, J.	Villar, M.
Enrile, J. P.	Zubiri, J. M. F.
Escudero, F. J. G.	

With 17 senators present, the Chair declared the presence of a quorum.

Senators Angara, Gordon, Honasan and Roxas were on official mission abroad.

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Senator Revilla was absent.

Senator Trillanes was unable to attend the session as he is under detention.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 77 and considered it approved.

REFERENCE OF BUSINESS

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

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Letters from the Secretary General of the House of Representatives, informing the Senate that on May 12, 2008, the House of Representatives passed the following House bills in which it requested the concurrence of the Senate:

House Bill No. 1409, entitled

AN ACT PROHIBITING AND PENALIZING THE PILFERAGE AND THEFT, UNAUTHORIZED USE, INTERCONNECTION OR RECEPTION OF ANY SIGNAL OR SERVICE OFFERED OVER A CABLE TELEVISION (CATV) OR CABLE INTERNET SYSTEM AND/OR NETWORK OR THROUGH ANY UNAUTHORIZED INSTALLATION, ACCESS OR CONNECTION THERETO THROUGH THE USE OF CABLE OR OTHER EQUIPMENT AND PRESCRIBING PENALTIES THEREFOR

To the Committees on Public Information and Mass Media; and Justice and Human Rights

House Bill No. 3732, entitled

AN ACT IMPLEMENTING THE RIGHT TO ACCESS TO INFORMATION ON MATTERS OF PUBLIC CONCERN

GUARANTEED UNDER SECTION TWENTY-EIGHT, ARTICLE II AND SECTION SEVEN, ARTICLE III OF THE 1987 CONSTITUTION AND FOR OTHER PURPOSES

To the Committee on Public Information and Mass Media

House Bill No. 3791, entitled

AN ACT RATIONALIZING THE INCOME REQUIREMENTS FOR THE DECLARATION OF HIGHLY URBANIZED STATUS IN THE CASE OF COMPONENT CITIES AND FOR THE CREATION OF A PROVINCE, AMENDING FOR THE PURPOSE SECTIONS 452 AND 461 OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991

To the Committee on Local Government

House Bill No. 3793, entitled

AN ACT TO AMEND REPUBLIC ACT NO. 9189, OTHERWISE KNOWN AS THE OVERSEAS ABSENTEE VOTING ACT OF 2003

To the Committees on Constitutional Amendments, Revision of Codes and Laws; Foreign Relations; and Finance

BILLS ON FIRST READING

Senate Bill No. 2279, entitled

AN ACT CREATING THE MINDANAO DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Government Corporations and Public Enterprises; Economic Affairs; Ways and Means; and Finance

Senate Bill No. 2280, entitled

AN ACT TO REGULATE THE PRACTICE OF CLINICAL PSYCHOLOGY AND PSYCHOMETRICS CREATING FOR THIS PURPOSE A PROFESSIONAL REGULATORY BOARD OF CLINICAL PSYCHOLOGY AND PSYCHOMETRICS, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Civil Service and Government Reorganization; and Finance

Senate Bill No. 2281, entitled

AN ACT PROVIDING FOR THE PAYMENT OF ARREARS IN THE VETERANS' PENSIONS AND BENEFITS MANDATED PURSUANT TO REPUBLIC ACT NO. 7696, AS AMENDED, OTHERWISE KNOWN AS AN ACT STANDARDIZING AND UPGRADING THE BENEFITS FOR MILITARY VETERANS AND THEIR DEPENDENTS AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on National Defense and Security; and Finance

Senate Bill No. 2282, entitled

AN ACT STRENGTHENING THE REGULATORY FUNCTIONS OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995

Introduced by Senator Miriam Defensor Santiago

To the Committees on Labor, Employment and Human Resources Development; and Foreign Relations

Senate Bill No. 2283, entitled

AN ACT TO PROMOTE THE SPIRITUAL, PHYSICAL AND MORAL WELL BEING FOR THE FILIPINO YOUTH, AMENDING SECTIONS 329, 389 AND 426 OF THE LOCAL GOVERNMENT CODE

Introduced by Senator Miriam Defensor Santiago

To the Committees on Youth, Women and Family Relations; and Social Justice, Welfare and Rural Development

Senate Bill No. 2284, entitled

AN ACT FURTHER STRENGTHENING THE PAG-IBIG FUND AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Banks, Financial Institutions and Currencies; Urban Planning, Housing and Resettlement; and Ways and Means

Senate Bill No. 2285, entitled

AN ACT AMENDING SECTION 2 OF REPUBLIC ACT NO. 1827 SO AS TO IMPOSE HIGHER PENALTIES FOR THOSE ENGAGED IN UNFAIR AND UNETHICAL LOBBYING PRACTICES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committee on Civil Service and Government Reorganization

Senate Bill No. 2286, entitled

AN ACT INCREASING THE QUARTERS ALLOWANCE OF OFFICERS AND ENLISTED PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

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To the Committees on National Defense and Security; and Finance

Senate Bill No. 2287, entitled

AN ACT ESTABLISHING A CORRECTIONAL NURSERY PROGRAM IN ALL CORRECTIONAL INSTITUTIONS FOR WOMEN, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

To the Committees on Public Order and Illegal Drugs; Youth, Women and Family Relations; and Finance

Senate Bill No. 2288, entitled

AN ACT PROVIDING FOR THE AUTOMATIC REVOCATION OR CANCELLATION OF THE LICENSE OF A PLACEMENT OR RECRUITMENT AGENCY WHICH RECRUITED OR DEPLOYED AN UNDERAGE MIGRANT WORKER AND THE MANDATORY REFUND OF ALL FEES PAID BY REPATRIATED MINOR OFWs, AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995

Introduced by Senator Manny Villar

To the Committees on Labor, Employment and Human Resources Development; and Foreign Relations

Senate Bill No. 2289, entitled

AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SEVENTY-EIGHT THIRTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994

Introduced by Senator Loren Legarda

To the Committee on Public Services

RESOLUTIONS

Proposed Senate Resolution No. 396, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE DETERIORATION OF THE LAGUNA LAKE AND ITS POSSIBLE RAMIFICATION ON THE SURROUNDING COMMUNITIES

Introduced by Senator Miriam Defensor Santiago

To the Committees on Environment and Natural Resources; and Economic Affairs

Proposed Senate Resolution No. 397, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE FORMULATION OF PROACTIVE AND SUSTAINABLE SOLUTIONS TO THE COUNTRY'S GARBAGE WOES

Introduced by Senator Miriam Defensor Santiago

To the Committees on Environment and Natural Resources; and Local Government

Proposed Senate Resolution No. 398, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED KILLING AND MAIMING OF FILIPINO CHILDREN IN AREAS OF ARMED CONFLICT, AND FOR THE PEACE AND CEASEFIRE NEGOTIATIONS BETWEEN THE GOVERNMENT AND REBEL GROUPS TO INCLUDE SPECIFIC PROVISIONS FOR THE PROTECTION OF CHILDREN

Introduced by Senator Miriam Defensor
Santiago

**To the Committees on Youth, Women and
Family Relations; and National Defense and
Security**

Proposed Senate Resolution No. 399, entitled

RESOLUTION DIRECTING THE PROPER
SENATE COMMITTEE TO CONDUCT
AN INQUIRY, IN AID OF LEGIS-
LATION, ON THE IMPROPER USE
OF BFAD UNAPPROVED AQUAGEL
FOR PENIS ENLARGEMENT
SURGERY

Introduced by Senator Miriam Defensor
Santiago

**To the Committee on Health and
Demography**

Proposed Senate Resolution No. 400, entitled

RESOLUTION COMMENDING THE
DEPARTMENT OF HEALTH FOR ITS
EXEMPLARY EFFORTS IN PROVID-
ING OUR COUNTRY WITH THE BEST
CHILD HEALTH CARE AMONG 55
DEVELOPING COUNTRIES

Introduced by Senator Miriam Defensor
Santiago

To the Committee on Rules

Proposed Senate Resolution No. 401, entitled

RESOLUTION URGING THE SENATE
COMMITTEES ON YOUTH, WOMEN
AND FAMILY RELATIONS; HEALTH
AND DEMOGRAPHY; AND SOCIAL
JUSTICE, WELFARE AND RURAL
DEVELOPMENT TO LOOK INTO
THE STATUS OF IMPLEMENT-
ATION OF REPUBLIC ACT 8980,
OTHERWISE KNOWN AS THE
EARLY CHILDHOOD CARE AND
DEVELOPMENT ACT, WITH THE
END IN VIEW OF LOWERING THE
COUNTRY'S INFANT MORTALITY
RATE

Introduced by Senator Loren Legarda

**To the Committees on Education, Arts and
Culture; and Youth, Women and Family Relations**

Proposed Senate Resolution No. 402, entitled

RESOLUTION DIRECTING THE COM-
MITTEE ON LOCAL GOVERNMENT
TO INVESTIGATE, IN AID OF
LEGISLATION, ON THE IMPLEMENT-
ATION OF REPUBLIC ACT NO. 7279,
OTHERWISE KNOWN AS THE
URBAN DEVELOPMENT AND
HOUSING ACT (UDHA) OF 1992,
PRINCIPALLY ON THE MANDATE
OF LOCAL GOVERNMENT UNITS
TO CONDUCT INVENTORY OF ALL
LANDS WITHIN THEIR RESPEC-
TIVE LOCALITIES AND IDENTIFY
SITES FOR SOCIALIZED HOUSING
AND RESETTLEMENT AREAS

Introduced by Senator Benigno S. Aquino III

**To the Committees on Local Govern-
ment; and Urban Planning, Housing and
Resettlement**

**COMMITTEE REPORT NO. 42
ON SENATE BILL NO. 2121
(Continuation)**

Upon motion of Senator Pangilinan, there being
no objection, the Body resumed consideration, on
Second Reading, of Senate Bill No. 2121 (Committee
Report No. 42), entitled

AN ACT AMENDING SECTIONS 4,
9, 20, 21, 23, 25, 26, 30, 31, 32, 33,
34, 35, 38, 41, 43, 45, 48, 51
OF REPUBLIC ACT NO. 9136
ENTITLED AN ACT ORDAINING
REFORMS IN THE ELECTRIC
POWER INDUSTRY AND FOR
OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Enrile,
Sponsor of the measure, and Senator Aquino for his
interpellation.

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INTERPELLATION OF SENATOR AQUINO

Asked by Senator Aquino if he would agree that under Commonwealth Act No. 120 and Republic Act No. 6395, the National Power Corporation (Napocor) was created primarily for the generation of power using hydroelectric resources, Senator Enrile stated that the policy with respect to the purposes of the Napocor as well as the distribution of electricity might have been changed because of intervening events, one of which was when Meralco was taken over after the Lopezes sought the assistance of government in the early '70s, and, thereafter, the generation and distribution of electricity were merged almost in the hands of government handling generation and, at the same time, Meralco was being handled by Meralco Foundation which was supposedly owned by electricity consumers.

He said that there was a synergy between generation and distribution as far as the supply and demand components of the industry were concerned.

To the proposition that power generated through hydroelectric resources would be one of the cheapest modes in generating electrical power after removing the initial capitalization cost, Senator Enrile replied in the affirmative, pointing out that water is free and the only major expenditure would be on the installation of the dam and the turbines to convert water power into electrical energy.

Senator Aquino asked how much of the current electricity generated by the entire industry comes from hydroelectric resources.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 3:36 p.m.

RESUMPTION OF SESSION

At 3:38 p.m., the session was resumed.

In reply, Senator Enrile stated that as of 2007, based on Napocor record, the quantities were as follows:

Coal-fired plants

Luzon	-	42.92%
Visayas	-	6.59%
Mindanao	-	20.32%
Nationwide	-	31.37%

Geothermal

Luzon	-	13.76%
Visayas	-	85.31%
Mindanao	-	11.22%
Nationwide	-	24.98%

Hydroelectric

Luzon	-	20.54%
Visayas	-	.03%
Mindanao	-	50.57%
Nationwide	-	16.34%

Natural Gas

Luzon	-	20.80%
Visayas	-	0
Mindanao	-	0
Nationwide	-	19.24%

Oil-Based

Luzon	-	5.16%
Visayas	-	8.07%
Mindanao	-	19.90%
Nationwide	-	8.07%

Senator Enrile said that he was unaware if there are private generators who are authorized to own hydroelectric power system primarily because the Constitution limits ownership only to Filipinos, and that the use of water is limited.

As contrasted to the Commonwealth Act and the Republic Act that created Napocor, Senator Aquino noted that the emphasis seems to have gone from hydroelectric being the primary source of generating power because from the figures enumerated by Senator Enrile, it ranks fourth out of five sources of fuel for generating electricity, as opposed to the original mandate of being the first among the priorities for energy sources.

Senator Enrile said that the Commonwealth Act that created Napocor defined the direction of Napocor at that time; however, he was unaware if there are legislative or presidential issuances that thereafter changed its direction. He said that he

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would ask Napocor to submit a written answer to the query.

On whether he is aware that all government offices are mandated to procure their electricity requirements once available from the Napocor, Senator Enrile replied that he is not familiar with the law that created Napocor, but if that is the law then government should take judicial notice of existing statutes unless the statute concerned is repealed.

Senator Aquino stated that by virtue of Presidential Decree No. 40, Napocor was authorized to own and operate all generating facilities that were supplying power to the areas embraced by its grid setup, and it was envisioned to be the sole entity responsible for electrification of the entire country.

Senator Enrile agreed, as he recalled that there was a financial debacle that happened with Meralco in the hands of private stockholders and government had to intervene in order not to disrupt the service it provides to the nation, but when government intervened and restructured the system, all generating units of Meralco were transferred to Napocor; it was also at this time when the Marcos administration created the Department of Energy precisely to synchronize the demand and supply of power in relation to the country's economic growth.

On a related matter, Senator Enrile confirmed that Letter of Instruction No. 2 directed him, as then Secretary of the Department of National Defense, to take over all important public utilities such as PLDT, Meralco, three airlines, and NAWASA, among others, so as not to disrupt their services which were then under the control of private interests. However, he clarified that the Department of National Defense was not involved in the planning, but only in safeguarding the security and availability of said services.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 4:08 p.m.

RESUMPTION OF SESSION

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

Upon further queries, Senator Enrile clarified that while the Letter of Instruction (LOI) directed the Secretary of National Defense, the duly designated representative of the Commander-in-Chief, to take over the companies, he did not personally run the corporations because that task was delegated to military officials who reported to the Chief of Staff. He stated that in the case of Meralco, General Gatmaitan took over the company for a brief time but it was eventually turned over to Meralco Foundation.

Asked whether the Napocor enjoys a wide-range of benefits by virtue of the law that created it, Senator Enrile stated that he has not read the Napocor franchise but he was sure it provided for all the benefits Napocor is enjoying in terms of exemptions from taxes and fees. He confirmed that the loans of Napocor are, in effect, loans of the national government, noting that Napocor was a thinly capitalized corporation and without a government cover, it would not have secured any loan. He emphasized that being a government instrumentality, Napocor is not operated for profit.

Senator Aquino asserted that Napocor should be solvent because it has a guaranteed clientele, it owns all of the generating capacities, and it enjoys tax benefits. However, he noted that there have been five instances when its capitalization was increased so that it could expand its services. He stated that during the Marcos regime, Napocor increased its capitalization, to wit:

- ♦ September 1971, by virtue of Republic Act No. 6395, Napocor's charter was revised and its initial capital was raised to P300 million;
- ♦ January 1974, by virtue of P.D. No. 380, its capitalization was raised to P2 billion;
- ♦ May 1976, by virtue of P.D. No. 938, its capitalization was raised to P8 billion; and
- ♦ April 1978, by virtue of P.D. 1360, its capitalization was increased to P50 billion.

He asked why President Marcos gave Napocor an increase in capital almost every year since 1971 when it was not even proportionate to the increase in population. Senator Enrile surmised that it could be that government was then in the process of building new geothermal plants and rehabilitating obsolescent plants owned by Meralco.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:16 p.m.

RESUMPTION OF SESSION

At 4:17 p.m., the session was resumed.

Senator Enrile stated that he was not in a position to give the historical evolution of Napocor which would be provided when its officials are present in the session hall. He presumed that the increases could have been provided in order to develop the country's self-reliance on electricity.

Senator Enrile stated that according to Napocor, the following plants were built since 1979:

- ♦ **For Luzon** – Tiwi and MakBan;
- ♦ **For Visayas** – Bohol Diesel and the Panay DPP I 1979 to 1983, Panay DPP III in 1981, Power Barge in 101 and Power Barge 102 1981, Power Barge 103 in 1985;
- ♦ **For Mindanao** – Agos 6 in 1977, Agos 7 1982 to 1983, Polangui 1985 to 1986.

Senator Enrile stressed that all these plants were built and paid for by the Napocor. He said that the history as to how the increases in capital were spent would be provided if the Body would request it.

At this juncture, Senator Enrile read Letter of Instruction No. 2, dated September 22, 1972, to wit:

The Secretary
Department of National Defense
Quezon City

In view of the present national emergency which has been brought about by the activities of those who are actively engaged in a criminal conspiracy to seize political state power in the Philippines and to take over the government by force and violence, the extent of which has now assumed the proportion of an actual war against our people and their legitimate government.

And pursuant to Proclamation No. 1081 dated September 21, 1972, and in my capacity as Commander-in-Chief of all the Armed Forces of the Philippines and in order to prevent any

disruption of vital public services during the duration of the present national emergency, you are hereby ordered forthwith to take over or cause the take-over of the management, control and operation of the Manila Electric Company, the Philippine Long Distance Telephone Company, the National Waterworks and Sewerage Authority, the Philippine National Railways, the Philippine Airlines, Air Manila, Pilipinas Orient Airways and such other public utilities which in your sound judgment you consider essential for the successful prosecution by the government of its effort to contain, solve and end the present national emergency.

Senator Enrile stated that the direction of the instruction was to protect vital facilities from any intrusion of lawless elements and in order not to disturb services to the public. He said that the financial aspect was handled by other personalities.

Senator Aquino pointed out that the LOI was addressed to then Secretary Enrile and further states:

"You are to continue handling and directing the management, control and operation of the aforesaid public utilities and those you would deem also necessary for government take over for the duration of the present national emergency or until otherwise ordered by me or by my designated representative."

As regards the dispossession of the owners of the corporations, Senator Enrile stated that the instruction was given by virtue of a constitutional provision that "in times of emergency, public utilities may be taken over." He pointed out that the LOI was very clear that the President can appoint people other than the Secretary of National Defense to control and operate the utilities which eventually happened.

Adverting to the take-over of the Marcos government of the Jacinto Group of Companies, Senator Aquino stated that the Jacintos did not remove its participation from the affairs of their companies. Senator Enrile stated that at the time of the take-over, the Jacintos were out of the country. He recalled that Rose Jacinto asked permission to leave the country and she was allowed to do so, the last of the Jacintos to leave the country. He stated that he does not have any knowledge about what happened to PLDT, Philippine National Railways and the other companies.

He stated that at the onset of martial law, there was already a negotiation for government to take over Meralco which was handled by Alejandro Melchor who dealt with Peding Montelibano and Mr. Emilio Abello, representatives of the Lopezes.

Asked why the government took one year to bail out the Lopezes, Senator Enrile replied that 60% of the Lopezes' debt was already maturing at that time. He said that the Lopezes were having a hard time finding a solution so its assets would not be foreclosed. He added that he was not privy to the plans that were presented to the government. He recalled that there were some plans that were not accepted until government accepted a third proposal presented by Tony Ozaeta, Tony Ayala, Christian Monsod and Oscar Lopez which paved the way for the creation of the Meralco Foundation.

As regards the Bataan Nuclear Power Plant, Senator Enrile stated that the power plant was supposed to be commissioned in 1986; however, President Aquino decommissioned it because of the fear that it was constructed along a fault line and there was danger of a nuclear accident. Napocor, he said, lost money.

Senator Aquino pointed out that the Aquino government enumerated 4,000 defects in the Bataan Power Plant while Assemblyman Raffy Recto reported 3,000 defects in the plant.

Senator Enrile stated that money was wasted on a fear that never materialized. He said that it would take P10 billion to put up a nuclear power plant of the same capacity today. He said that the power plant would have benefited the Filipino people with lower electricity rate.

At this point, Senator Aquino challenged Senator Enrile's statement that the decision was an unwise move and against national interest as he posed to reconsider Presidential Decree No. 938 which granted an P8-billion increase in capitalization to Napocor, earmarked specifically for the generation of electricity solely, if not primarily, through nuclear power generation.

Senator Aquino wondered why Napocor, with all its many advantages, not the least of which is having the monopoly of selling a product that everybody needs and with increasing capitalization on a yearly basis, is continuing up to this day in its trail of

seemingly never-ending debts that the national government and, eventually, the Filipino people has to shoulder.

Senator Enrile replied that an analysis of the financial performance of Napocor would show that its seeming losses were not because it was not making money out of operation but simply because it was doing a capital outlay in order to provide capacities for the country as they saw fit at that time, given their notion of the economic performance of the country. He said that unlike today under a regime of deregulation where even public utilities like Meralco earn 23% on their capital investment, Napocor at that time was not operated as a private corporation for profit and was not saddling the people with too much financial burden by way of profit margin because public utilities were limited to not more than 12% Return On Rate Base (RORB). He added that at that time when the industry was not deregulated, the performance-based rate making has not yet been invented by the Energy Regulatory Commission.

At this point, Senator Enrile suggested that Senator Aquino make a financial analysis of Napocor from the time it was created and determine whether indeed Napocor was foolishly managed in its operation. He said that Senator Aquino would be surprised that Napocor was in the black, not in the red. Senator Aquino took exception to the insinuation that he has not been studying the subject matter. He said that despite the lack of cooperation between entities in the course of gathering information, they were able to peruse Napocor's financial records from 1998 to 2004. He said that during the period, Napocor's financial statements show a continuous progression of figures in parenthesis which are indicative of negative results from operations of the firm, from a low of 3,617,000 to a high of 107,704,000 losses in operations in 2003.

To be able to do an in-depth analysis of the management of such public entities, Senator Enrile underscored the need to compare their performances against each other. For instance, he said, Napocor's performance should be compared from its inception up to September 22, 1972, and from September 23, 1972 to February 25, 1986 when President Aquino took over the management of the nation.

In the same manner, Senator Enrile said that Meralco's performance should be compared from the time it was organized up to the time it was sold

by General Public Utilities to the Lopezes in January 1962, from 1962 to 1969, from 1970 to September 22, 1972, and from September 23, 1972 to February 25, 1986.

Asked if he agrees with the fundamental business principle that one should not produce something that there is no market for, Senator Enrile replied in the affirmative. He said that the Department of Energy was established during the Marcos regime supposedly to synchronize demand with supply with some reserves; however, it was abolished after the EDSA revolution and was reduced into a bureau under the Office of the President doing nothing. Since nobody was planning the power requirement of the nation after the EDSA revolution, he said that this resulted in brownouts in the country which caused President Ramos to sign a number of exorbitant power supply contracts.

Senator Aquino questioned the projections done that necessitated a yearly capitalization increase at the rate of 600%. Senator Enrile said that he would not know the answer because he was not in any way connected with Napocor at that time.

Asked if he agrees that the spate of 600% increases 30 years ago was perhaps too optimistic of the growth of the Filipino market for electricity, Senator Enrile replied in the negative, stating that there are too many reasons for the capital infusion and there is no explanation yet whether the increases in capitalization of Napocor were for operation or for capital expenditure.

Asked if the money was meant to fund all of the generating plants especially after 1979, Senator Enrile reiterated that he was not bright enough to understand the power industry at that time. He intimated that it was only during the time of President Estrada that he understood the power industry when Energy Secretary Tiaoqui and then Napocor president Freddie Puno asked him to be their spokesman in the Senate. He said that he was surprised that he was being asked because he did not know anything about power and was familiar with it only because of his participation during the martial law years in having Meralco under the charge of the department. He said that it was only then that he gained knowledge of the power industry, read all the literatures available, but was not bright enough to go as far as studying the laws and the injection of capital.

While increases in the capitalization of a typical private firm would be used to purchase capital goods or capital equipment, training for personnel, or any endeavor that would lead to more profits, Senator Aquino said that a 600% increase normally does not seem prudent, especially if it is done on a continuous basis on a year end, then another 600% on top of the initial 600%. He believed that no market would grow that big, assuming that it already exists. Senator Enrile believed that the question was misleading, as it assumes that Napocor was a profit center when on the contrary, it was a government instrument for executing policy.

Asked if he was still of the opinion that Napocor, as a government entity and with all the benefits it is getting, is a monopoly, Senator Enrile stated that he does not give an opinion, as, he only answers factual situations.

Senator Aquino asked if the coal purchases of Napocor are subjected to the Procurement law.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:52 p.m.

RESUMPTION OF SESSION

At 4:52 p.m., the session was resumed.

Upon resumption, Senator Enrile said that Napocor complies with the Procurement law.

Senator Aquino asked whether the coal purchases are normally done on long-term contractual basis or primarily done through emergency purchases.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:53 p.m.

RESUMPTION OF SESSION

At 4:53 p.m., the session was resumed.

Upon resumption, Senator Enrile replied that 50% of Napocor's coal procurement is from the spot market and 50% is covered by long-term contracts. *100*

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Senator Aquino asked on the rationale for splitting the coal purchases into such proportion.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:53 p.m.

RESUMPTION OF SESSION

At 4:54 p.m., the session was resumed with Senate President Pro Tempore Ejercito Estrada presiding.

Senator Enrile explained that to ensure supply, and to get a bargain, the policy of Napocor is to buy 70% of fuel for its coal-fired plants from long-term supply contracts and the remaining 30% from the spot market which is used whenever there is a price fluctuation. However, he pointed out that the policy was altered when the government started the privatization of some of the major plants because it did not want to be locked in long-term supply contracts especially for plants that are ready for disposition, adding that this also gave the buyers the chance to negotiate their own supply contracts.

Asked if Napocor also sources fuel from the NPC-IPP power plants, Senator Enrile replied that it is the contractual obligation of Napocor with the IPPs.

Senator Aquino asked if there has been a lot of volatility in the prices of coal in the spot market in the past ten years.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:57 p.m.

RESUMPTION OF SESSION

At 4:57 p.m., the session was resumed.

Upon resumption, Senator Enrile replied that the price of coal in the world market was stable until the mid-2000 when China started to use much of the coal supply. He noted that in 2003, the price of coal

in the world market was US\$23 per ton but it started to move in the middle of the same year; in the middle of 2003, it peaked to over US\$60 per ton and started to go down until the end of 2005; thereafter, it started to rise again below US\$60 per ton, reached US\$60 per ton at the end of 2006, and suddenly shot up to US\$165 per ton in the early part of 2008. He presumed that the planners of Napocor were unprepared for the sudden exorbitant rise in coal price in 2007.

On whether it would have been more prudent if Napocor had entered into locked-in supply contracts given the huge Chinese demand for coal, Senator Enrile explained that Napocor was constrained by its plan to privatize some of its plants, admitting that Napocor could have made money if it locked in to a certain quantity and price of coal.

On a related matter, Senator Aquino asked if the coal supply for the Masinloc power plant was indeed diverted to the Sual plant in Pangasinan which was in danger of shutting down for lack of coal supply.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:04 p.m.

RESUMPTION OF SESSION

At 5:04 p.m., the session was resumed.

Senator Enrile confirmed that a shipment of coal with a value of US\$3 million for the Masinloc plant was diverted to Sual plant. But Senator Aquino asked why there was a sudden shortage of coal in Sual when for years, it has been using a certain amount of coal to generate a certain amount of electricity.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:06 p.m.

RESUMPTION OF SESSION

At 5:07 p.m., the session was resumed. *ms*

ms

Senator Enrile explained that the Sual plant has a 30-day lead time but the supplier in Indonesia was unable to deliver the coal due to *force majeure*. He stated that the vessel carrying the coal for the Masinloc plant was notified to proceed and discharge its cargo in Sual.

On the claim that it would have been more prudent if the coal for the Sual plant came from Zambales, Senator Enrile opined that it was a management decision where to source the supply.

Asked if the 50% coal supply requirement is always done through the emergency purchase system, Senator Enrile replied that it is done through the spot market.

On another matter, Senator Aquino stated that the EPIRA mandates that Napocor's geothermal plants and their steam fields should be sold as one package through public bidding. However, he pointed out that the privatization of Palinpinon has been put on hold because the supply service agreement for the plant has not been acted upon by the government.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:10 p.m.

RESUMPTION OF SESSION

At 5:12 p.m., the session was resumed.

Upon resumption, Senator Enrile recalled that the specific provision in the EPIRA was introduced by Sen. Sergio Osmena III; however, when it was brought to the attention of the Joint Congressional Power Commission, there was a consensus to authorize the sale of the power plant separate from the steam fields provided that a steam supply contract is concluded between the buyer of the plant and the government. He added that the matter is pending before the Power Commission.

On the assertion that the sale of Palinpinon plant was shelved because of the valid question over the availability of supply from the steam fields, Senator Enrile stated that the consensus in the Power Commission is that the sale of the plant shall be authorized provided it is accompanied by a validly concluded steam supply contract.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:16 p.m.

RESUMPTION OF SESSION

At 5:17 p.m., the session was resumed.

Asked about the sale of Energy Development Corporation (EDC), a subsidiary of PNOC, which was supposed to exploit the steam fields, Senator Enrile stated that PNOC-EDC was sold to the Lopez-owned First Gen Corporation and while PNOC-EDC owns the power it generates from Palinpinon steam fields, the fields cannot be owned by anybody except by the government.

Senator Aquino said that the problem with a continued supply from the steam field would not have arisen had the government retained control of PNOC-EDC. He noted that government showed lack of coordination in its effort to reform the power industry because it sold PNOC-EDC and made the privatization of Napocor more difficult. Senator Enrile replied that there is no parity between the sale of the Palinpinon plant and PNOC-EDC because the latter is a private corporation represented by shares of stocks that can easily be sold, while the former is a direct asset of Napocor and its shares of stocks cannot be sold. He stressed that the plant has to be sold accompanied by a steam supply contract.

Senator Aquino asked what PNOC-EDC previously supplied to Palinpinon.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:23 p.m.

RESUMPTION OF SESSION

At 5:25 p.m., the session was resumed.

Thereupon, Senator Enrile confirmed that PNOC owns EDC, which owns the steam fields, which supply power to Palinpinon.

Senator Aquino asked why Napocor followed a privatization policy which did not adhere to the EPIRA that directs the sale of the steam fields and generating plants as one entity; instead, PNOC-EDC was sold which made Palinpinon less attractive to potential buyers. Senator Enrile replied that he does not know the answer and assumed government locked itself in a position of either keeping the Palinpinon plant or selling it to the Lopezes for a song.

But Senator Aquino insisted that the sale of PNOC-EDC violated Section 47 of the EPIRA which provides, "The steam field assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include but not limited to Tiwi-MakBan, Leyte A and B (Tongonan), Palinpinon and Mt. Apo." Senator Enrile explained that during the Joint Congressional Power Commission meeting, the PNOC requested an exemption to allow the transfer of the plant as long as there is an assured supply contract with the plant.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:31 p.m.

RESUMPTION OF SESSION

At 5:32 p.m., the session was resumed.

Senator Enrile stated that the Power Commission should be the one to clarify the validity of the sale.

Asked why there is no proposed amendment to Section 47 of the EPIRA if it is indeed cumbersome, Senator Enrile stated that the Power Commission, with its oversight powers, is supposed to indicate any weaknesses in the law, if any. He expressed openness to an amendment at the proper time. Senator Aquino said that he would have wanted to introduce such an amendment but he has no access to the data as he is not a member of the Power Commission.

Asked for the rationale behind the reduced privatization requirement of the Napocor to 50%

from the original 70%, Senator Enrile pointed out that since it would take a long time before a 70% privatization level of the Napocor could be attained prior to the introduction of open-access, privatizing only 50% of the power firm would not only help hasten the introduction of open-access but would also lower electricity costs for commercial, industrial and residential consumers. Secondly, he noted that since the Philippines is moving towards a competitive regime in the power generation and distribution industry, Meralco might be open to the possibility of cutting up its bloated franchise area to prevent a monopoly of the sector. He believed it would be prudent not to rush the sale of Napocor's generating assets particularly in light of the fact that Meralco could commit predatory activities in the market since the capital interest controlling the distribution utility and the generating plants supplying its power are amassing capacities in its franchise areas. In this regard, he recalled that the government acquired the Limay refinery of Exxon and Mobil Oil precisely to prevent giant oil firms, such as Caltex and Shell, from abusing their power over the fuel market.

Asked to confirm the statement made by PSALM that the Napocor generating companies and its IPP contracts would be privatized by September this year, Senator Enrile clarified that the IPPs would not yet be privatized, rather management of 50% of the IPPs would be transferred to an IPP administrator by August 2008, although none have undergone this process.

Senator Aquino wondered how it would be possible for the Napocor to complete at least 50% of the privatization of its IPP contracts in only four months this year when it has failed to do so even after the EPIRA's enactment in 2001. Senator Enrile posited that this might be the culmination of the Napocor's work for the past seven years.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:42 p.m.

RESUMPTION OF SESSION

At 5:43 p.m., the session was resumed.

Senator Enrile said that the Asian Development Bank has been helping the Napocor and the ~~AF~~

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PSALM in working out the modalities for handing over some of their IPPs to the IPP administrator. He offered to provide Senator Aquino with a document detailing the procedure for the former's perusal.

Asked whether Napocor is prohibited only from participating in the Wholesale Electricity Spot Market (WESM) as regards open-access, Senator Enrile replied in the negative.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 5:46 p.m.

RESUMPTION OF SESSION

At 5:51 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2121

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

ADDITIONAL 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. 2290, entitled

AN ACT REQUIRING DISCLOSURE OF ENVIRONMENTAL RECORD OF APPLICANTS FOR AN ENVIRONMENTAL COMPLIANCE CERTIFICATE

Introduced by Senator Miriam Defensor Santiago

To the Committee on Environment and Natural Resources

Senate Bill No. 2291, entitled

AN ACT REQUIRING THE EXPRESS, WRITTEN CONSENT OF A PATIENT

OR HIS AUTHORIZED REPRESENTATIVE TO AUTHORIZE THE PRESENCE OF NON-MEDICAL PERSONNEL DURING SURGERY

Introduced by Senator Miriam Defensor Santiago

To the Committee on Health and Demography

Senate Bill No. 2292, entitled

AN ACT TO FACILITATE THE DEVELOPMENT, DEMONSTRATION, AND IMPLEMENTATION OF TECHNOLOGY FOR USE IN REMOVING GREENHOUSE GASES FROM THE ATMOSPHERE AND CREATING A GREENHOUSE GAS EMISSION ATMOSPHERIC REMOVAL COMMISSION

Introduced by Senator Miriam Defensor Santiago

To the Committees on Energy; Environment and Natural Resources; and Finance

COMMITTEE REPORT

Committee Report No. 53, prepared and submitted by the Committee on Ways and Means, on Senate Bill No. 2293, with Senators MAR Roxas, Enrile, Jinggoy Ejercito Estrada, Manny Villar, Gordon, Juan Miguel F. Zubiri, Ramon "Bong" Revilla Jr. and Francis "Chiz" G. Escudero as authors thereof, entitled

AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997,

recommending its approval in substitution of House Bill No. 3971, taking into consideration Senate Bill Nos. 103, 125, 126, 302, 419, 448, 568, 1576, 1615, 1616, 2177 and 2217.

Sponsor: Senator Francis "Chiz" G. Escudero

To the Calendar for Ordinary Business *As*

15

PRIVILEGE SPEECH OF SENATOR PIMENTEL

Availing himself of the privilege hour, Senator Pimentel directed the Body's attention to a news report on the Senate's alleged spending of almost a million pesos for the security of ZTE-NBN witnesses (un Lozada and Dante Madriaga. He clarified that he has no objection to providing Senate protection to the two witnesses, but incurring such a huge expense for the purpose in so short a time is unconscionable.

Senator Pimentel stated that the Senate should not be shouldering the cost of Mr. Lozada's out-of-town speaking engagements as this is not provided under the Witness Protection, Security and Benefit Act. He recalled that in the past, a woman who was testifying in the *jueteng* case was provided with a car while she was in the Senate. He urged the appropriate committee to investigate the Senate personnel handling the protection of witnesses, saying that the Senate should not allow the wanton misuse of the people's money.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Pimentel to the Committee on Accounts and directed the Secretariat to submit a report on witness protection-related expenditures to said committee.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:59 p.m.

RESUMPTION OF SESSION



At 5:59 p.m., the session was resumed.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, 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 6:00 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate 

Approved on May 20, 2008