

RECORD OF THE SENATE

WEDNESDAY, NOVEMBER 10, 1999

OPENING OF THE SESSION

At 3:28 p.m., the President Pro Tempore, Hon. John H. Osmeña, called the session to order.

The President Pro Tempore. The 35th session of the Second Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Loren B. Legarda-Leviste.

Everybody rose for the prayer.

PRAYER

Senator Legarda-Leviste.

Dear Father, may everything we do begin with Your inspiration and continue with Your saving help. Let our work always find its origin in You and through You reach completion.

Dear Lord, pour out on us a spirit of understanding, truth and peace.

Help us to strive with all our hearts to know what is pleasing to You. And when we know Your will, make us determine to do it.

God our Father, work is Your gift to us, a call to reach new heights by using our talents for the good of all.

Guide us as we work and teach us to live in the Spirit that has made us Your sons and daughters in the love that has made us brothers and sisters.

Grant these through Christ our Lord,

Amen.

ROLL CALL

The President Pro Tempore. The Secretary will please call the roll.

The Secretary, reading:

Senator Teresa Aquino-Oreta Present

Senator Robert Z. Barbers Present
Senator Rodolfo G. Biazon Present
Senator Renato L. Compañero Cayetano .. Present
Senator Anna Dominique M.L. Coseteng .. Present
Senator Franklin M. Drilon Present
Senator Juan Ponce Enrile Present
Senator Juan M. Flavier **
Senator Teofisto T. Guingona Jr. Present
Senator Gregorio B. Honasan Present
Senator Robert S. Jaworski **
Senator Loren B. Legarda-Leviste Present
Senator Ramon B. Magsaysay Jr. Present
Senator John Henry R. Osmeña Present
Senator Sergio R. Osmeña III Present*
Senator Aquilino Q. Pimentel Jr. Present
Senator Ramon B. Revilla Present*
Senator Raul S. Roco Present
Senator Miriam Defensor Santiago Present
Senator Vicente C. Sotto III Present
Senator Francisco S. Tatad Present
The President Absent ***

The President Pro Tempore. With 17 senators present, the Chair declares the presence of a quorum.

THE JOURNAL

Senator Drilon. Mr. President, I move that we dispense with the reading of the Journal of the previous session and consider it approved.

The President Pro Tempore. Is there any objection? [Silence] There being none, the reading of the Journal of Session No. 34 is dispensed with and the same is considered approved.

Senator Drilon. I move that we proceed to the Reference of Business.

The President Pro Tempore. Is there any objection? [Silence] There being none, the motion is approved.

The Secretary will now read the Reference of Business.

BILLS ON FIRST READING

The Secretary. Senate Bill No. 1803, entitled

* Arrived after the roll call
** On official mission
*** On account of illness

AND INTERLOCKING MEMBERSHIPS IN THE BOARD OF DIRECTORS OF COMPETING CORPORATE BODIES AND PRICE DISCRIMINATION AMONG CUSTOMERS, PROVIDING PENALTIES THEREFOR, AND FOR OTHER PURPOSES,

to strengthen the legal and institutional framework to combat monopolies that are harmful to public interest.

Best regards.

Very truly yours,

(Sgd.) JOSEPH EJERCITO ESTRADA

cc: HON. MANUEL B. VILLAR
Speaker
House of Representatives
Quezon City

The President Pro Tempore. Referred to the Committee on Rules

The Majority Leader is recognized.

Senator Drilon. Mr. President, before we proceed with the agenda for the day, may I first move that we constitute the representatives of the Chamber to the Bicameral Conference Committee to meet with our counterparts in the House to discuss the disagreeing provisions of Senate Bill No. 1290. This is the proposed legislation amending the charter of the Home Insurance and Guaranty Corporation.

SUSPENSION OF SESSION

Mr. President, I move that we suspend the session for one minute.

The President Pro Tempore. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 3:41 p.m.

RESUMPTION OF SESSION

At 3:42 p.m., the session was resumed.

The President Pro Tempore. The session is resumed.

The Majority Leader is recognized.

Senator Drilon. Mr. President, I withdraw my previous motion in view of the desire of some of our colleagues to join the Senate contingent. As a matter of courtesy, I would like to discuss the matter with Sen. Juan Ponce Enrile, the chairman of the committee.

Therefore, I withdraw my previous motion.

The President Pro Tempore. The motion is withdrawn.

BILL ON SECOND READING S. No. 1519--General Banking Act of 1999 (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1519 as reported out under Committee Report No. 29. This is the proposed law which will amend the General Banking Act.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1519 is now in order.

Senator Drilon. Mr. President, we are still in the period of interpellations. I ask that Sen. Raul S. Roco, the chairman of the Committee on Banks, Financial Institutions and Currencies, be recognized.

The President Pro Tempore. Senator Roco is recognized.

Senator Drilon. Likewise, I ask that Sen. Aquilino Q. Pimentel Jr., who has reserved his right to ask questions of the sponsor, be recognized.

The President Pro Tempore. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President.

Will the gentleman kindly yield for a few questions, Mr. President?

Senator Roco. We will be happy to sing by the light of the silvery moon in lieu of answers to the questions.

Senator Pimentel. So long as there are no more acts of kissing asses, that is okay. [Laughter]

Senator Roco. Thank you. We will certainly exert effort to answer the questions, Mr. President.

Senator Pimentel. Mr. President, I would like to ask the gentleman if it is true that we are the only country that recognizes

two different sets of commercial banks. Meaning to say, we maintain a distinction between commercial banks and universal banks.

Senator Roco. During the martial law period, I think we copied the model of Mexico in terms of universal banks, and I am merely relying on my memory. I thought—and I must review this—Germany allowed something like a universal bank. So, we may not be the only country since then—unless Mexico and Germany have changed their rules—with a concept of a unibank.

As I remember, the departure from the American system is, the American system, which the Americans themselves have modified, kept separate banking money business from commercial business. When we allowed the bigger banks to invest part of their resources on commercial, that would have been a violation of anti-trust. Since then we have modified to have the unibank.

Senator Pimentel. I thank the gentleman for that answer,

Mr. President. The reason I ask is that my information states that apparently, the major distinction between a commercial bank and a universal bank is that a commercial bank cannot directly engage in investments in securities—

Senator Roco. That is correct. That is one of the distinctions.

Senator Pimentel.—while unibanks can do so even by direct purchase of these investment instruments.

Senator Roco. If I am given a little time...

They can acquire readily marketable bonds and other debt instruments. The expanded commercial bank or the unibank can offer “now accounts.” I am not sure whether I know what “now accounts” means. I do not have my staff. So I cannot get enlightenment. But that can also be done by the regular commercial bank.

Senator Pimentel. My notes state that commercial banks may indeed invest in securities through their investment house affiliates and through their trust and investment operations through numbered accounts. Probably this is what the gentleman was referring to, Mr. President. I am not too sure, but in any event, what I would probably recommend is that we abolish the distinction between the two, unless there is really a definite purpose that can be served.

Senator Roco. As of today, the capital requirement of expanded commercial banks is P4.950 billion. As of December 31, 1999 or as of the end of this year, the commercial banks have

a minimum capital requirement only of P2.4 billion. So that may be another distinction. What will happen is either...

I am not averse to the idea; but if we avoid the distinction, then the Bangko Sentral will have to find some other way of requiring a higher minimum capital for the commercial banks.

Senator Pimentel. In any event, this is just a thought that I am trying to place on record.

Senator Roco. Thank you, Mr. President.

Senator Pimentel. I do not know if we are still following the old bill that was discussed, but Section 4 that I am now commenting on reads as follows: “The Bangko Sentral shall provide policy direction in the areas of money, banking and credit.” Is that still the one?

Senator Roco. Yes, Mr. President. That is still the one. There is no other version as of now.

Senator Pimentel. This looks like a good definition of the role that BSP shall take in connection with the business of money, banking and credit. Nonetheless, the banks do not exist in a vacuum. I think that as a government, we have probably the right, if not the obligation, to see to it that the banks contribute also to the national development and not merely provide them with the opportunity to make money on the side. Probably, in the definition of the policy direction in the areas of money, banking and credit, while BSP should be the principal entity charged with that policy direction, it should do so in consultation with NEDA and with the Congress of the Philippines. Again, this is just an idea to broaden the basis for the policy direction that the BSP might provide in this connection.

Senator Roco. Mr. President, may I suggest an input for our distinguished friend. The sentence “The Bangko Sentral shall provide policy direction in the areas of money, banking and credit,” although it is a new provision, is lifted really from the Constitution. In fact, we tried to implement the idea of our distinguished friend through the Bangko Sentral Law in Section 124. If I may read:

Sec. 124. - In order to assure effective coordination between the economic, financial and fiscal policies of the government and the monetary credit and exchange policies of the Bangko Sentral, the deputy governor designated by the governor of the Bangko Sentral shall be an ex officio member of the National Economic and Development Authority Board.

So that was built-in in the Bangko Sentral. If that is not still

satisfactory, the committee is not averse to accepting modifications. Senator Pimentel. Yes, we will then do that at the proper time, Mr. President.

Senator Roco. Thank you, Mr. President.

Senator Pimentel. In the last paragraph of Section 5, Mr. President, which I will read, I do not know if this is still the wording. It states: "Persons or entities found to be performing banking or quasi-banking functions without authority from the Bangko Sentral shall be subject to Section 36 of the New Central Bank Act, and may be referred to the Securities and Exchange Commission for the revocation of their license to do business."

Is that an accurate reading of the provision?

Senator Roco. That is correct, Mr. President. If our distinguished friend again would allow, I can read Section 36 for total context and see if he has already a copy.

Senator Pimentel. Please, Mr. President.

Senator Roco. Just for context, Section 36 reads:

Sec. 36. - Proceedings upon violation of this Act and other banking laws, rules and regulations, orders or instructions. - Whenever a bank or quasi-bank or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall, unless otherwise provided in this Act, be punished by a fine of not less than Fifty Thousand Pesos (P50,000) nor more than Two Hundred Thousand Pesos (P200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years or both at the discretion of the court.

In the second paragraph, it says:

Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unfaithful manner, the Board may, without prejudice to the penalties provided in the preceding paragraph and the administrative sanctions provided in Section 37...

Those can take action under Section 30 of this Act and that is within the powers of the Bangko Sentral.

Senator Pimentel. The distinguished gentleman will notice, Mr. President, that the power to revoke the license of the

offending banking or quasi-banking entity should be done by the Securities and Exchange Commission upon referral of the BSP.

Senator Roco. Yes.

Senator Pimentel. To short-circuit the matters so that immediate action can be taken, why do we not just invest the BSP with that power, Mr. President? In other words, what I am trying to say is instead of the circuitous...

Senator Roco. And take out the SEC?

Senator Pimentel. Yes. In other words, why is there a need to refer it to the SEC when it should be clear that there is already a violation of banking or quasi-banking roles by the institution concerned? Once the BSP finds that out, *huwag nang i-refer pa roon sa* Securities and Exchange Commission.

Senator Roco. Again, in principle, the committee, Mr. President, does not find an immediate objection.

Let me just raise some considerations that our distinguished friend may wish to dwell on. Should we do that, we shall further strengthen the BSP. Some of our colleagues have pointed out that there have been abuses. In fact, I have requested two of our colleagues to give me more details because that requires a balancing factor in the administration of the law.

So while I fully appreciate and may even accept such an amendment after consulting with both SEC and BSP—only because it affects them—I can see a downside danger of giving too much powers to the BSP. I am only saying that let us suspend judgment for now.

Senator Pimentel. Yes, Mr. President.

Senator Roco. Yes, thank you.

Senator Pimentel. I thank the gentleman for that reply, Mr. President.

Section 14 from my notes reads as follows:

There shall be at least seven (7) members of the board of directors of a bank, two (2) of whom shall be independent directors.

What I would just like to really clarify is, who determines whether a person is an independent director?

Senator Roco. We have a very simple definition for an "independent director." He is not an employee of the bank and he is not a related interest.

The term "related interest" can be third-degree consanguinity or affinity, or a stockholder, director or has significant holding in the bank.

Senator Pimentel. All right. That issue of being a director or a stockholder is not found in the definition.

Senator Roco. No, it is in another section. In fact, I was just trying to consult the sense of "independent director." There is also a body of jurisprudence on independent directors. The independent directors can, of course, be the economists, the academe, the practicing lawyers. I must put this on record only because we are both lawyers. For all I care, an artist, maybe, some of the members of the Board of Censors should be sitting in the board of directors of the banks instead of bothering us with the Board of Censors. So long as he is not an employee, he is not a stockholder and not a related interest, then he qualifies.

Senator Pimentel. I thank the gentleman for that reply, Mr. President.

Mr. President, may we go to Section 17. It reads:

To protect the funds of depositors and creditors, the Monetary Board may regulate the payment by the bank to its directors and officers of compensation, allowance, fees, ...

Are the words "bank officers" defined with any definiteness, Mr. President?

Senator Roco. Not expressly in the bill. These are used in the way these are normally understood under the bank regulations.

Senator Pimentel. So there are bank regulations that define who the officers are, Mr. President.

Senator Roco. Yes. So the directors and the bank officers... In fact, I think there are probably—I do not know if it is still in existence—even rules and regulations in terms of promoting to a certain rank certain bank officers.

Senator Pimentel. I will be satisfied with that as long as there is a basis to determine whether or not a person connected with the bank is an officer.

As a matter of fact, we would have proposed that probably a certain level of salary would be a qualification that can be more definite, Mr. President.

Senator Roco. All right. Even that, Mr. President, the committee will certainly not object to.

Senator Pimentel. Section 29, Mr. President, stipulates that commercial banks may invest only in the equities of allied and nonallied enterprises as may be determined by the Monetary Board. Is that a correct reading?

Senator Roco. That is correct, Mr. President.

Senator Pimentel. We have no problem with the term "equity" or "equities"—the plural form is used here—because equity has a very specific meaning in banking circles. To my information, "equity" refers to the capital stock of an enterprise that is in the form of common and preferred shares.

As it is worded now, Mr. President, the section would prevent commercial banks from investing in long-term bonds of an enterprise. To my understanding, a long-term bond is a major security which is actually traded in developed capital markets as well as in short-term commercial papers.

Senator Roco. Yes, Mr. President.

Senator Pimentel. Now, why is it necessary to prevent commercial banks from doing that?

Senator Roco. Mr. President, I will validate this for our distinguished colleague. Right now, they can also purchase bonds and so the concern may not be... But I will validate this. I know for a fact that some bonds are considered equity and some bonds are considered borrowings of the issuer.

Senator Pimentel. Probably, a clarification would go a long way towards addressing this concern.

Senator Roco. Yes, we will do that, Mr. President.

Senator Pimentel. There is a section here which provides fines for the banks which are found to...

Senator Roco. If I may be allowed to give additional information.

Senator Pimentel. Yes, Mr. President.

Senator Roco. Among the powers of the unibank, the expanded commercial banks, and the commercial banks is to acquire readily marketable bonds and other debt securities. But that is covered by the special laws. These laws cover them.

Senator Pimentel. Yes, Mr. President. Probably we can put them here.

Senator Roco. Yes, we can. But in Section 2, we specifically state that... We can refer to the existing law, Mr. President, and incorporate it here.

Senator Pimentel. I would like to thank the gentleman for that, Mr. President.

Mr. President, may we go to Section 75?

Senator Roco. Yes, Mr. President.

Senator Pimentel. It states that the Monetary Board may revoke the license to transact business in the Philippines of any foreign bank, if it finds that the foreign bank is insolvent or in imminent danger thereof or that its continuance in business will involve probable loss to those transacting business with it.

Is that section still found in the bill, Mr. President?

Senator Roco. It is there, Mr. President.

Senator Pimentel. Perhaps we can expand the grounds upon which the Monetary Board may revoke the license of foreign banks transacting business in the Philippines so that it does not appear as if it can only do so if the foreign bank is insolvent or in imminent danger thereof or that its continuance in business will involve probable loss to those transacting business with it.

Mr. President, the idea is to invest the Monetary Board with the power to revoke the said license if, for example, the foreign bank disregards the rules of the Monetary Board, regulations of the Monetary Board, or the foreign bank violates the labor laws, fair trade and nonbanking acts of this country in a manner that is inimical to the national interest?

Senator Roco. We will be hospitable to the idea if only to articulate with better precision the last sentence which says that "the provisions of the New Central Bank Act on sanctions and penalties shall likewise be applicable." That is the last sentence of Section 75. But the standards as well as the ways of sanctioning, the committee can accept them, Mr. President.

Senator Pimentel. Thank you very much, Mr. President. I will go to another point. The current bill, I think Section 5, if I am not mistaken—I am sorry I have to go back to that, Mr. President.

Senator Roco. That is all right. The Minority Leader yesterday started from the back going to the front and this will not be unusual.

Senator Pimentel. That is how the Minority does it, Mr. President.

Senator Roco. I did not say that, Mr. President.

Senator Pimentel. A little more systematic. But I jumped

over this and I would have wanted to take it up earlier. This Section 5 talks about fines for banks and individuals who violate Monetary Board regulations and the fine ranges only from P50,000 to not more than P200,000. Considering inflationary rates Mr. President, this might be too little.

Senator Roco. Maybe we can put the dollar sign instead, Mr. President.

Senator Pimentel. Probably.

Senator Roco. Again, that will be a welcome suggestion, Mr. President. By the way, may I add the information. The staff just called attention to Section 28, on page 11, giving powers to a commercial bank. And in line 23, the matter of acquiring marketable bonds is stated. So maybe that will be dispensed with. It is already there—Section 28, page 11.

Senator Pimentel. In the Central Bank Act or in this particular bill?

Senator Roco. In Section 28 of the bill.

Senator Pimentel. Very good if that should be the case, Mr. President.

Senator Roco. Yes, it is on page 11 of the bill.

Senator Pimentel. Just a thought, Mr. President, about probably compelling the banks to get the services of independent third-party appraisers for purposes of making appraisals of the collaterals that are being submitted to them instead of relying on their own in-house bank appraisers. Normally, I understand that the practice is to peg the value of the collaterals usually by in-house appraisers to a third of its actual value.

To give a little more flexibility on the part of the borrower, to get a little more from his or her collateral, perhaps, a section on the employment of third-party appraisers would be in order especially because Section 56 of this bill talks of independent auditors. Just along that line that we are thinking, Mr. President.

Senator Roco. Yes, Mr. President. It may be a little different and it may be a little difficult to accept the suggestion for now because this judgment on lendings will have to be one of the principal and most important functions of the bank manager. And to the extent that we delegate that to a third-party appraiser, who may not be concerned with the stockholdings, it becomes very difficult to deprive the bank managers of that responsibility.

However, it may make our distinguished colleague happy that the Minority Leader has pressed one of the existing sections

now on lending even without collateral for development projects. There is a provision here which gives incentives to lending for development, for schools, for socialized housing and that may satisfy therefore the need for looking at lendings without the necessary real estate or similar collaterals.

Senator Pimentel. I would like to thank the gentleman for that information, Mr. President, because the Minority Leader seldom makes me happy. At least, this is one instance where his proposal is very constructive.

Thank you, Mr. President.

Senator Roco. Thank you, Mr. President.

Senator Drilon. Mr. President.

The President Pro Tempore. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1519

Senator Drilon. With the permission of Senator Roco, we intended to close the period of interpellations this afternoon, however, Sen. Miriam Defensor Santiago has requested that she be allowed to interpellate on Monday, thus, we would have to once more suspend consideration of Senate Bill No. 1519 under Committee Report No. 29.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, consideration of Senate Bill No. 1519 is hereby suspended.

Senator Roco. Thank you, Mr. President. Thank you, Majority Leader.

CONFERENCE COMMITTEE ON S. NO. 1568/H. NO. 7848 (Extending the Term of the HIGC)

Senator Drilon. Mr. President, I move that we nominate the representatives of the Chamber to the Bicameral Conference Committee to discuss the disagreeing provisions on Senate Bill No. 1568 and its corresponding measure in the House, which proposes to extend the term of the Home Insurance Guaranty Corporation.

May we nominate the following members of the Chamber. To Chair the Senate contingent is Sen. Juan Ponce Enrile, and as members representing the Majority are Senate President Pro Tempore, Sen. John H. Osmeña, Sen. Gregorio B. Honasan, Sen. Rodolfo G. Biazon, Sen. Sergio R. Osmeña III, Sen. Anna Dominique Coseteng. Representing the Minority is Senate

Minority Leader Teofisto Guingona Jr., Sen. Robert Z. Barbers and Sen. Loren B. Legarda-Leviste.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING S. No. 153 -- Retail Trade Liberalization Act of 1998 (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 153 as reported out under Committee Report No. 41.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 153 is now in order.

Senator Drilon. Mr. President, we are still in the period of interpellations. May I ask the Chair to recognize Sen. Sergio R. Osmeña III, the principal sponsor of the bill.

The President Pro Tempore. Sen. Sergio R. Osmeña III, the principal sponsor, is recognized.

Senator Drilon. For the interpellation, may I ask that Sen. Ramon B. Magsaysay Jr. be recognized to continue with his interpellation.

The President Pro Tempore. Sen. Ramon B. Magsaysay Jr. is recognized.

Senator Magsaysay. Thank you, Mr. President.

Continuing our discussion on the measure of the senator from Cebu this afternoon, I would like to focus on these areas: on the rationale of the bill, the issues on the possibility of coming with safety nets, and the bill proper and its substantive contents.

I would like to ask the Sponsor of the measure, Mr. President, if there has been any formal study that he may refer to this representation on the efficiency of bigger department stores as compared to smaller ones or smaller stores?

Senator Osmeña III. Mr. President, before I begin, perhaps I should be asked to yield.

The President Pro Tempore. Please proceed.

Senator Osmeña III. In any case, Mr. President, not even the Philippine Retailers Association has those numbers. As a matter of fact, the Philippine Institute for Development Studies,