

TRANSFER OF TRUST FUNDS TO THE REPUBLIC OF THE
PHILIPPINES

MARCH 23, 1971.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 1330]

The Committee on Finance, which has under consideration a proposal to implement an executive agreement concluded with the Government of the Philippines relating to payment of certain outstanding bonds issued before May 1, 1934, reports favorably an original bill to implement such executive agreement, and recommends that the bill do pass.

PURPOSE

The principal purpose of the bill is to effect the transfer to the Government of the Republic of the Philippines of money which the Secretary of the Treasury holds in a special trust account to make principal and interest payments on outstanding matured bonds of the Philippines and its political subdivisions issued before 1934 pursuant to acts of Congress. The amount in the special trust account that would be transferred is \$138,739.21, and consists of funds originally furnished by the Philippine Government.

BACKGROUND

By the first section of the act of August 7, 1939, the Congress amended section 6 of the act of March 24, 1934 (which act provided for the independence of the Philippine Islands) to direct the establishment before July 4, 1946 of a special trust account in the Treasury to meet principal and interest payments on "bonds of the Philippines to which a moral obligation of the United States might have been attached" (H. Rept. 1058, 76th Congress, 3 (1939) and S. Rept. 453, 76th Congress, 3 (1939)), and to specify the Secretary of the Treasury as the person authorized to make such payments when the amount in

the account was adequate. The bonds on which payments were to be made were in particular those issued prior to May 1, 1934, by the Philippines, its provinces, cities and municipalities, in accord with congressional authorizations. The account was to consist of sinking funds maintained by the Government of the Philippines for the payment of the bonds, and of a supplementary sinking fund which the Treasurer of the United States held for the same purpose consisting of the proceeds of export taxes imposed and collected by the Philippine Government after the enactment date of the 1939 act.

The special trust account was established in the Treasury and the sinking funds covered into it; the account was supplemented by yearly payments by the Philippine Government between 1946 and 1951. In 1951 the Secretary of the Treasury determined that the trust account balance was sufficient to meet principal and interest payments on all outstanding bonds, and he began to make all interest and principal payments from the account. Also, in accord with the congressional direction that, whenever the Secretary determined that the trust account balance was in excess of an amount adequate to meet interest and principal payments on all such obligations, such excess be turned over to the Treasurer of the Philippines, the Secretary determined to be excess and returned to the Philippines an aggregate of \$1,838,000, consisting of \$1 million in May 1964, \$600,000 in February 1962, and \$238,000 in August 1965.

Accordingly, the provisions of the 1939 act have either been fulfilled or have expired, except for the authorization of the Secretary of the Treasury to make the principal and interest payments on the pre-1934 bonds. Bonds denominated in dollars are presented for payment to the Treasurer of the United States through Federal Reserve banks, or to the Treasurer of the Philippines. Bonds denominated in pesos are presented for payment only through the Central Bank of the Philippines.

All of the bonds for which the special trust account is liable had matured by 1963. The liability for the total outstanding amount of principal and interest on the bonds has been determined which as of December 31, 1970 was \$138,733.69. As of the same date, the account held \$138,739.21. There have been few payment transactions during the past several years. Further, the Department of the Treasury cannot determine when, if ever, all the outstanding matured bonds and interest coupons will be presented for payment. The Treasury considers, therefore, that it is unnecessary for it to continue to maintain indefinitely the amounts in the special trust account.

The Government of the Republic of the Philippines has agreed to accept the sums which the bill proposes to transfer and thereafter to assume full responsibility for the principal and interest payments on the bonds in an executive agreement with the Government of the United States, dated November 26, 1969, which by its terms will enter into force upon receipt by the Philippine Government of advice from the U.S. Government that appropriate legislation has been enacted. Therefore, enactment of this noncontroversial legislation is necessary to implement the executive agreement.

EXPLANATION OF BILL

The first section of the committee's bill would repeal subsection (g) of section 6 of the act of March 24, 1934 (48 Stat. 456), as added by the first section of the act of August 7, 1939 (53 Stat. 1226, 1228) and amended by section 104(1) of the act of September 22, 1959 (73 Stat. 621, 622), codified at 22 U.S.C. 1393(g), which provides the specific statutory authority of the Secretary of the Treasury to make principal and interest payments on pre-1934 Philippine bonds and prescribes the conditions for setting up the special trust account and its authorized uses.

The second section would authorize the Secretary of the Treasury to transfer to the Government of the Republic of the Philippines whatever money remains on the effective date of the bill in the special trust account held by the Secretary. The transfer would implement the executive agreement between the Governments of the United States and of the Philippines, dated November 26, 1969, whereby the Philippine Government undertook to assume responsibility for making payments on the pre-1934 Philippine bonds.

The third section provides a disclaimer of U.S. liability for payment of the pre-1934 Philippine bonds as of the date of the Secretary's transfer authorized by section 2.

The fourth section provides for an effective date 60 days after enactment in order to allow the Department of the Treasury adequate time to make the fiscal arrangements required.

EXECUTIVE COMMUNICATION

The legislation was recommended in an executive communication from the Secretary of the Treasury dated January 29, 1971. The communication, together with an accompanying memorandum, is set forth below.

THE SECRETARY OF THE TREASURY,
Washington, D.C., January 29, 1971.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a proposed bill, to authorize the Secretary of the Treasury to transfer to the Government of the Republic of the Philippines funds for making payments on certain pre-1934 bonds of the Philippines, and for other purposes.

The proposed bill authorizes the Secretary of the Treasury to transfer to the Government of the Philippines, 60 days after the date of enactment, the money then held in a special trust account in the Treasury for making payment on certain Philippine bonds issued before 1934, all of which have matured. The Philippine Government would assume the responsibility for such payments and, as of the date of transfer, the United States would cease to be liable for them. As of December 31, 1970, the total outstanding amount of principal

and interest on the bonds was \$138,733.69. As of the same date, the special trust account held \$138,739.21. There have been few payment transactions during the past several years.

Enactment of the proposed bill would be in the best interests of this Government and of the Government of the Republic of the Philippines for the following reasons. The special trust account was established in 1946 with money received from the Philippine Government in effect to guarantee that payment on its obligations would be made. Those obligations have now matured and the exact liability therefor determined. However, it cannot be said when, if ever, all the outstanding matured bonds and interest coupons will be presented for payment, and the Department of the Treasury considers therefore that it is unnecessary for it to continue to maintain indefinitely the special trust account on the books of the Treasury. Finally, the Philippine Government, by an executive agreement dated November 26, 1969, has agreed to assume sole responsibility for the payments on its bonds if and when presented.

I enclose herewith an analysis which offers more detailed information concerning the provisions of the draft bill and the reasons for its proposal.

It would be appreciated if you would lay the proposed bill before the Senate. An identical bill has been transmitted to the Speaker of the House of Representatives.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the administration's program to the submission of this proposed legislation to the Congress.

Sincerely yours,

DAVID M. KENNEDY.

ANALYSIS OF THE TREASURY PROPOSED BILL

The proposed bill, to authorize the Secretary of the Treasury to transfer to the Government of the Republic of the Philippines funds for making payments on certain pre-1934 bonds of the Philippines, and for other purposes, authorizes the Secretary of the Treasury to transfer to the Government of the Republic of the Philippines the money held in a special trust account in the Treasury to make principal and interest payments on outstanding bonds of the Philippines, its provinces, cities, and municipalities, issued before May 1, 1934, pursuant to congressional authorizations (those bonds are hereafter referred to as pre-1934 Philippine bonds for ease of reference). The Philippine Government would assume responsibility for the payments. The United States would not be liable therefor as of the date of transfer.

In order to accomplish this purpose, the proposed bill repeals subsection (g) of section 6 of the act of March 24, 1934 (48 Stat. 456), as added by the act of August 7, 1939 (53 Stat. 1226, 1228) and amended by the act of September 22, 1959 (73 Stat. 621, 622), codified at 22 U.S.C. 1393(g), which provides the specific statutory authority of the Secretary of the Treasury to make principal and interest payments on pre-1934 Philippine bonds and prescribed the conditions for setting up the special trust account and its authorized investment.

The bill provides for an effective date 60 days after enactment to allow the Treasury adequate time for making the necessary fiscal arrangements.

By 1963 all of the obligations for which the special trust account is liable had matured. The total outstanding liability for principal and interest was \$138,733.69 on December 31, 1970. More than enough money, \$138,739.21 on the same date, remains in the special trust account to satisfy that liability. The Treasury Bureau of Accounts maintains \$57,174.21 of the amount on hand for payments on the peso denominated bonds and the Office of the Treasurer of the United States administers the remainder for payments on the dollar denominated bonds.

The trust account to which the bill refers was set up by the first section of the act of August 7, 1939 (53 Stat. 1226), which added subsection (g) to section 6 of the act of March 24, 1934 (48 Stat. 456). That subsection provided for the establishment before July 4, 1946, of a special trust account in the Treasury for the purpose of meeting principal and interest payments on "bonds of the Philippines to which a moral obligation of the United States might have been attached" (H. Rept. 1058, 76th Congress, 3 (1939) and S. Rept. 453, 76th Congress, 3 (1939)), and specified the Secretary of the Treasury as the person authorized to make such payments when the amount in the account was adequate. The account was to consist of all sinking funds maintained by the Government of the Philippines itself for the payment of its bonds, one of which consisted of the proceeds of taxes imposed on exports to the United States, pursuant to section 6(e) of the 1934 act. The trust account was to consist also of the supplementary sinking fund on deposit with the Treasurer of the United States held for the same purpose, consisting of quarterly payments by the Philippine Government of the proceeds of export taxes imposed and collected by it after August 7, 1939, pursuant to section 6(g)(1) as added to the 1934 act by the 1939 act. Pursuant to an agreement between the Government of the Philippines and the Secretary of the Treasury, that Government also made annual payments into the trust account between 1946 and 1951.

All provisions of section 6(g) of the 1934 act have either been fulfilled or have expired, except for the provision in subsection (g)(5) authorizing the Secretary of the Treasury to make principal and interest payments on pre-1934 Philippine bonds. In particular, in accord with subsection (g)(5) in November 1951 the Secretary determined that the trust account balance was sufficient to meet principal and interest payments on all outstanding bonds, and all interest and principal payments began to be paid from the account; up to that time the independent Philippine Government had made all principal and interest payments. Also, in accord with the provisions of subsection (g)(5) that, whenever the Secretary determined that the trust account balance was in excess of an amount adequate to meet interest and principal payments on all such obligations, such excess be turned over to the Treasurer of the Philippines, the Secretary determined to be excess and returned to the Philippines an aggregate of \$1,838,000, consisting of \$1 million in May 1954, \$600,000 in February 1962, and \$238,000 in August 1965.

The Government of the Republic of the Philippines has agreed to accept the sums which the bill proposes to be transferred and thereafter to assume full responsibility for principal and interest payments in an executive agreement with the Government of the United States, dated November 26, 1969, which by its terms will enter into force upon receipt by the Philippine Government of advice from the U.S. Government that the proposed bill has been enacted. Therefore, enactment of the proposed bill is necessary to implement the executive agreement.

The Department of State Legal Adviser's Office, in a 1969 memorandum of law, concurred in the Treasury conclusion that enactment of the proposed bill was necessary because section 6(g)(5) of the 1934 act specifies the Secretary of the Treasury as the official authorized to make principal and interest payments on pre-1934 Philippine bonds.

COST OF CARRYING OUT THE BILL, EFFECT ON THE REVENUES OF THE BILL, AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the committee informs the Senate there will be no costs incurred in enacting this legislation.

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee informs the Senate that there was no roll-call vote on this legislation; it was ordered reported without objection.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE ACT OF MARCH 24, 1934, AS AMENDED (22 U.S.C. 1393)

SEC. 6. * * *

[(g)(1) The Philippine Government shall pay to the Secretary of the Treasury of the United States, at the end of each calendar quarter, all of the moneys received during such quarter from export taxes (less refunds), imposed and collected in accordance with the provisions of this section, and said moneys shall be deposited in an account with the Treasurer of the United States and shall constitute a supplementary sinking fund for the payment of bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress: *Provided, however,* That moneys received from any export tax imposed on any article which is shipped from the Philippines to the United States prior to July 4, 1946, and which is entered, or withdrawn from warehouse for consumption, on or after July 4, 1946, shall be refunded by the independent Government of the Philippines.

[(2) The said Secretary of the Treasury is authorized to accept the deposits of the proceeds of the export taxes referred to in subdivision (1) of this subsection in accordance with the Act of June 11, 1934 (48 Stat. 929).

[(3) The Secretary of the Treasury of the United States, with the approval of the Philippine Government, is authorized to purchase with such supplementary sinking-fund bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress and to invest such fund in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Whenever the Secretary of the Treasury finds that such fund is in excess of an amount adequate to meet future interest and principal payments on all such bonds, he may, with the approval of the Philippine Government, purchase with such excess any other bonds of the Philippines, its Provinces, cities, municipalities, and instrumentalities. For the purpose of this subsection obligations may be acquired on original issue at par, or by purchase of outstanding obligations at the market price. Any obligations acquired by the fund may, with the approval of the Philippine Government, be sold by the Secretary of the Treasury at the market price and the proceeds of such sale and the proceeds of the payment upon maturity or redemption of any obligations held in the supplementary sinking fund, as well as all moneys in any manner earned by such fund or on any obligations acquired by said fund, shall be paid into the said fund.

[(4) During the three months preceding July 4, 1946, the Philippine Government and the Secretary of the Treasury of the United States shall confer to ascertain that portion of the bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress, which will remain outstanding on July 4, 1946; and the Philippine Government shall turn over to the Secretary of the Treasury of the United States for destruction all such bonds that are then held, canceled, or uncanceled, in any of the sinking funds maintained for the payment of such bonds. After such outstanding portion of this indebtedness is thus determined, and before July 4, 1946, (i) there shall be set up with the Treasurer of the United States a special trust account in the name of the Secretary of the Treasury of the United States to pay future interest and principal payments on such bonds; (ii) the Philippine Government shall pay to the Secretary of the Treasury of the United States for deposit in this special trust account all of the sinking funds maintained for the payment of such bonds; and (iii) the Secretary of the Treasury of the United States shall transfer into this special trust account all of the proceeds of the supplementary sinking fund referred to in subdivision (1) of this subsection. Any portion of such special trust account found by the Secretary of the Treasury of the United States on July 4, 1946, to be in excess of an amount adequate to meet future interest and principal payments on all such outstanding bonds shall be turned over to the Treasury of the independent Government of the Philippines to be set up as an additional sinking fund to be used for the purpose of liquidating and paying all other obligations of the Philippines, its Provinces, cities, municipalities, and instrumentalities. To the extent that such special trust account is determined by the Secretary of the Treasury of the United States to be insufficient to pay interest and principal on the outstanding bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress, the Philippine Government shall,

on or before July 3, 1946, pay to the Secretary of the Treasury of the United States for deposit in such special trust account an amount which said Secretary of the Treasury determines is required to assure payment of principal and interest on such bonds: *Provided, however,* That if the Secretary of the Treasury of the United States finds that this requirement would impose an undue hardship upon the Philippines, then the Philippine Government shall continue to provide annually the necessary funds for the payment of interest and principal on such bonds until such time as the Secretary of the Treasury of the United States determines that the amount in the special trust account is adequate to meet interest and principal payments on such bonds.

[(5) On and after July 4, 1946, the Secretary of the Treasury of the United States is authorized, with the approval of the independent Government of the Philippines, to purchase at the market price for the special trust account bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress. The Secretary of the Treasury of the United States is also authorized, with the approval of the independent Government of the Philippines, to invest all or any part of such special trust account in any interest-bearing obligations of the United States or in any obligations guaranteed as to both principal and interest by the United States. Such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price, and any obligations acquired by the special trust account may, with the approval of the independent Government of the Philippines, be sold by the Secretary of the Treasury at the market price, and the proceeds of the payment upon maturity or redemption of such obligations shall be held as a part of such special trust account. Whenever the special trust account is determined by the Secretary of the Treasury of the United States to be adequate to meet interest and principal payments on all outstanding bonds of the Philippines, its Provinces, cities, and municipalities, issued prior to May 1, 1934, under authority of Acts of Congress, the Secretary of the Treasury is authorized to pay from such trust account the principal of such outstanding bonds and to pay all interest due and owing on such bonds. All such bonds and interest coupons paid or purchased by the special trust account shall be canceled and destroyed by the Secretary of the Treasury of the United States. From time to time after July 4, 1946, any moneys in such special trust account found by the Secretary of the Treasury of the United States to be in excess of an amount adequate to meet interest and principal payments on all such bonds shall be turned over to the treasurer of the independent Government of the Philippines.]

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