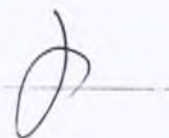


25 JUL 15 P2:01

SENATE
S.B. No. 640

RECEIVED BY



Introduced by Senator WIN GATCHALIAN

**AN ACT
PROVIDING FOR A NATIONAL POLICY AND FRAMEWORK FOR ENERGY
ADVOCACY**

EXPLANATORY NOTE

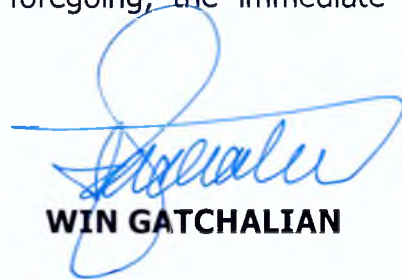
Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), heralded the transition from a vertically integrated monopoly to a competitive but regulated industry. One of the declared policies of the EPIRA is to *"establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market market."*¹ This regulatory body is the Energy Regulatory Commission (ERC). It is responsible for setting performance standards and retail rates, allowing recovery of just and reasonable costs, and ensuring end-user protection.² These duties result to a delicate balancing act by the regulator in deciding its cases. However, the lack of representation for end-users, as a whole, is glaring in cases before the ERC.

Hence this measure. This bill creates an Energy Advocate Office (EAO) led by the Energy Advocate. The EAO acts as the independent end-user representative in all rate-setting, rule-making, and other energy related cases and proceedings before government agencies including judicial and quasi-judicial bodies. The creation of the EAO aims to attain what jurisdictions with an institutionalized energy advocate have;

¹ Section 2(j). Republic Act No. (RA) 9136. (2001).

² Id. at Section 43.

the postponement of utilities' rate increase applications, a decrease in the income of utilities, and lower electricity retail prices.³ Given the foregoing, the immediate passage of this measure is sought.

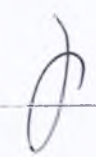


WIN GATCHALIAN

³ Fremeth, Adam; Holburn, Guy L.F.; Spiller, Pablo; "The impact of consumer advocates on regulatory policy in the electric utility sector" Public Choice. Vol. 161, No.1/2 (October 2014)

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SENATE

RECEIVED BY: 

S.B. No. 640

Introduced by SEN. WIN GATCHALIAN

AN ACT
PROVIDING FOR A NATIONAL POLICY AND FRAMEWORK FOR ENERGY
ADVOCACY

*Be it enacted by the Senate and the House of Representatives of the Philippines
in Congress assembled:*

1 SECTION 1. *Short Title.* – This Act shall be referred to as the "Energy Advocate
2 Act."

3
4 Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to
5 recognize the right of energy end-users to reasonable rates, adequate and reliable
6 services, and to transparent processes involving these rates and services. Towards
7 this end, there is a need for institutionalized and independent end-user representation
8 in rate-setting, rule-making, and other energy related cases and proceedings before
9 government agencies including judicial and quasi-judicial bodies.

10
11 Sec. 3. *The Energy Advocate Office (EAO).* – The EAO is hereby created which
12 shall be an independent and autonomous office attached to the Department of Justice
13 (DOJ) in accordance with Section 38(3), Chapter 7, Book IV of Executive Order No.
14 292, otherwise known as the Administrative Code of 1987, as amended.

1
2 Sec. 4. *Powers and Functions.* - The EAO shall be the representative of all end-
3 users in energy sector matters affecting public interest before any department,
4 commission, agency, or court. It shall independently discharge its mandate towards
5 the best interest of all end-users, ensuring least cost without compromising safety,
6 reliability, and sufficient service. Towards this end, the EAO shall:

7 (1) Initiate, intervene, and represent all end-users, in the following:

8 a. Rate-setting, rule-making, and other energy related cases, complaints,
9 proceedings, and consultations before the Department of Energy (DOE),
10 Energy Regulatory Commission (ERC), National Electrification
11 Administration (NEA), Philippine Competition Commission (PCC), and
12 other judicial and quasi-judicial bodies; and

13 b. Actions before any trial or appellate court, including the Supreme Court,
14 which involve the validity of any decision, memoranda, rule, regulation,
15 circular, or order of the DOE, ERC, NEA, PCC, and other departments,
16 commissions, and agencies insofar as these decisions and policy
17 issuances affect energy rates and services;

18 (2) Monitor all issuances of the DOE, ERC, NEA, PCC, and other departments,
19 commissions, and agencies insofar as these affect energy rates and services;

20 (3) Engage in regular information, education, and communication programs for all
21 end-users on laws, rules, regulations, decisions, circulars, and orders that affect
22 energy rates and services, including end-users' rights and remedies;

23 (4) Be furnished or served, as the case may be, by departments, commissions, and
24 agencies with all documents, notices, petitions, applications, complaints,
25 answers, motions, and other pleadings in all energy related cases, complaints,
26 proceedings, and consultations;

27 (5) Have the right to access, free of charge, all files, records, and documents in
28 the DOE, ERC, NEA, PCC and other departments, commissions, and agencies
29 pertaining to energy related cases, complaints, proceedings, and consultations:
30 *Provided, That the files, records, and documents do not pertain to the*
31 following:

32 (a) Personnel information;

1 (b) Confidential communications between commissioners, judges, or justices
2 and general counsels on records relating to proceedings in which the EAO
3 is a party to; or

4 (c) Confidential information declared as such by the ERC; and

5 (6) Be free of charge in its use of ordinary mail, registered mail, or courier service
6 for the transmittal of official communications and papers directly connected
7 with the conduct of its powers, functions, or exercise of administrative
8 supervision over its personnel.

9 EAO lawyers shall have the authority to administer oaths in connection with the
10 performance of their duty.

11
12 Sec. 5. *The Energy Advocate and Deputy Energy Advocate.* – The Energy
13 Advocate (EA) shall head the EAO, shall have the primary authority and responsibility
14 for the effective exercise of its mandate and the discharge of its powers and functions,
15 and shall be assisted by a Deputy EA. In case of temporary absence of the EA, the
16 Deputy EA shall be designated as the Officer-in-Charge of the EAO.

17
18 The EA and Deputy EA shall be natural-born citizens of the Philippines, at least
19 forty (40) years of age, with at least fifteen (15) years of practice in law, and with
20 proven competence, integrity, probity, and independence: *Provided*, That the EA shall
21 have at least six (6) years of practice in the field of energy, and the Deputy EA shall
22 have at least four (4) years of practice in the field of energy. Both of them shall not
23 be affiliated with any energy company, as member of the board, officer, employee, or
24 consultant, at least one (1) year before their respective appointments.

25
26 Section 6. *Appointment, Term, and Rank.* – The EA and Deputy EA shall be
27 appointed by the President: *Provided*, That the appointment of the Deputy EA shall
28 be upon the recommendation of the EA. They shall both serve for a term of six (6)
29 years and may be reappointed: *Provided*, That for the first appointees, the EA and
30 Deputy EA shall hold office until the end of term of the appointing President.

1 The EA and Deputy EA shall have the same rank, salaries, allowances, and
2 retirement benefits as the Prosecutor General and Senior Deputy State Prosecutor of
3 the National Prosecution Service respectively: *Provided*, That their retirement benefits
4 shall be prorated in accordance with Section 21 of Republic Act No. 10071, otherwise
5 known as the Prosecution Services Act.

6
7 Section 7. *Prohibitions.* – The EA and Deputy EA shall be prohibited from:

- 8 (1) Serving as a member of the board, officer, employee, or consultant of any
9 energy company in the course of their respective terms of office: *Provided*,
10 That this prohibition shall also apply to their family members up to the fourth
11 degree of consanguinity or affinity;
- 12 (2) Having any interest, ownership, or stake in any energy company in the course
13 of their respective terms of office: *Provided*, That this prohibition shall also
14 apply to their family members up to the fourth degree of consanguinity or
15 affinity;
- 16 (3) Representing any government agency, government –owned or –controlled
17 corporation, or private company in any energy related case, proceeding, or
18 consultation before any department, commission, agency, or court, in the
19 course of one (1) year after the end of their respective terms of office; and
- 20 (4) Being members of a political party and committee, or engaging in any partisan
21 political activity in the course of their respective terms of office.

22
23 Section 8. *Organizational Structure and Plantilla Positions.* – The EAO, upon
24 approval of the DOJ, shall submit its organizational structure and plantilla positions to
25 the Department of Budget and Management (DBM) not later than six (6) months from
26 the effectivity of this Act: *Provided*, That the DBM shall approve the final organizational
27 structure and plantilla positions of the ECAO not later than three (3) months from
28 submission.

29
30 The EAO, upon approval of the DOJ, may request the DBM for any change in
31 the organizational structure and plantilla positions after a comprehensive review
32 resulting to a finding that any alteration will improve the discharge of the EAO's powers

1 and functions: *Provided*, That the DBM shall render a decision on such request within
2 three (3) months from submission.

3
4 The EAO shall have legal, technical, and administrative personnel in its
5 organizational structure and staffing complement, and may hire consultants as expert
6 witnesses or technical advisors as it finds necessary for the full and efficient discharge
7 of its powers and functions. All employees and consultants shall be subject to civil
8 service laws, rules, and regulations: *Provided*, That all employees shall be subject to
9 Republic Act No. 6758, otherwise known as the Salary Standardization Act.

10
11 Section 9. *Removal and Vacancy.* – The EA and Deputy EA shall not be removed
12 or suspended, except for cause provided by law. The President may remove the EA or
13 the Deputy EA for malfeasance, misfeasance, or nonfeasance in office, or for any
14 cause which renders any of them ineligible for appointment, incapable, or unfit to
15 discharge the mandate, powers, and functions of the EAO.

16 In case of death, permanent incapacity, removal, or resignation of the
17 incumbent EA or Deputy EA, the President may appoint or designate one, as the case
18 may be, in an acting capacity until a new EA or Deputy EA has been appointed:
19 *Provided*, That the new appointment shall only be for the unexpired term of the
20 predecessor.

21
22 Sec.10. *Exemption from Fees and Costs of Suits.* – The EAO shall be exempt
23 from payment of docket and other fees incidental to instituting an action in court and
24 other quasi-judicial bodies, as an original proceeding or on appeal.

25
26 Sec. 11. *Costs of Suit.* – The costs of the suit, attorney's fees, and contingent
27 fees imposed upon adversarial parties of the EAO after a successful litigation shall be
28 deposited in the National Treasury.

29
30 Sec. 12. *Grant of Special Allowances.* – The EA, Deputy EA, service or division
31 heads, and lawyers shall be granted special allowances in amounts to be determined
32 by the DBM: *Provided*, That the grant of said special allowances shall not exceed one

1 hundred percent (100%) of the basic salary of the EAO officials and lawyers: *Provided*
2 *further*, That special allowances shall be paid from costs of suit, attorney's fees and
3 contingent fees deposited in the National Treasury pursuant to Section 11 of this Act:
4 *Provided finally*, That whenever the funding source is insufficient, the special
5 allowance shall be paid through the General Appropriations Act.
6

7 Sec. 13. *Appropriations.* – The amount needed for the initial implementation of
8 this Act in the amount of two hundred million pesos (P200,000,000.00) shall be taken
9 from the budget of the DOJ. Thereafter, such sums as may be necessary for its
10 continued implementation shall be included in the annual General Appropriations Act.
11

12 Sec. 14. *Amendatory Clause.* – Republic Act No. 7638, otherwise known as the
13 Department of Energy Act of 1992, as amended, is hereby further amended.
14

15 Sec. 15. *Implementing Rules and Regulations.* – Within ninety (90) calendar
16 days from the approval of this Act, the DOJ, in consultation with the DBM, government
17 energy agencies, and private energy stakeholders, shall adopt and issue the rules and
18 regulations for the effective implementation of this Act.
19

20 Sec. 16. *Congressional Oversight.* – The Joint Congressional Energy
21 Commission shall exercise oversight powers over implementation of this Act.
22

23 Sec. 17. *Separability Clause.* – If any portion or provision of this Act is declared
24 unconstitutional, the remainder of this Act or any provisions not affected thereby shall
25 remain in force and effect.
26

27 Sec. 18. *Repealing Clauses.* – Any law, presidential decree or issuance,
28 executive order, letter of instruction, rule or regulation inconsistent with the provisions
29 of this Act is hereby amended, modified, or repealed accordingly.
30

31 Sec. 19. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
32 complete publication in the Official Gazette or a newspaper of general circulation.