

REPUBLIC ACT NO. 7638

AN ACT CREATING THE DEPARTMENT OF ENERGY RATIONALIZING THE ORGANIZATION AND FUNCTIONS OF GOVERNMENT AGENCIES RELATED TO ENERGY AND FOR OTHER PURPOSES

CHAPTER I

GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the "*Department of Energy Act of 1992.*"

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State:

(a) to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources, and through the judicious conservation, renewal and efficient utilization of energy to keep pace with the country's growth and economic development and taking into consideration the active participation of the private sector in the various areas of energy resource development; and

(b) to rationalize, integrate, and coordinate the various programs of the Government towards self-sufficiency and enhanced productivity in power and energy without sacrificing ecological concerns.

SEC. 3. Definition of Terms. –

(a) "Energy projects" shall mean activities or projects relative to the exploration, extraction, production, importation-exportation, processing, transportation, marketing, distribution, utilization, conservation, stockpiling, or storage of all forms of energy products and resources.

(b) "Board" shall mean the Energy Regulatory Board.

SEC. 4. Department of Energy. – To carry out the above-declared policy, there is hereby created the Department of Energy, hereinafter referred to as the Department, which shall prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation.

SEC. 5. Powers and Functions. – The Department shall have the following powers and functions:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation

and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update the existing Philippine energy program which shall provide for an integrated and comprehensive exploration, development, utilization, distribution and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The program shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry and reduction of dependency on oil-fired plants. Said program shall be updated within nine (9) months from its completion and not later than the fifteenth day of September every year thereafter;

(c) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or non-conventional;

(d) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of this Act;

(e) Regulate private sector activities as provided under existing laws: *Provided*, that the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities.

At the end of four (4) years from the effectivity of this Act, the Department shall, upon approval of the President, institute the programs and timetable of deregulation of appropriate energy projects and activities of the energy industry;

(f) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

(g) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(h) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization on its applications;

(i) Devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and people affected, and equitable and preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(j) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(k) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(l) Exercise such other power as may be necessary or incidental to attain the objectives of this Act.

CHAPTER II

THE DEPARTMENT PROPER

SEC. 6. Composition. – The Department Proper shall be composed of the Office of the Secretary and the Offices of the Undersecretaries and Assistant Secretaries, and the bureaus and services of the Department.

SEC. 7. Office of the Secretary. – The Office of the Secretary shall consist of the Secretary and his immediate staff.

SEC. 8. The Secretary. – The Secretary shall be appointed by the President, subject to confirmation by the Commission on Appointments.

No officer, external auditor, accountant, or legal counsel of any private company or enterprises primarily engaged in the energy industry shall be eligible for appointment as Secretary within two (2) years from his retirement, resignation, or separation therefrom.

The Secretary shall have the following functions:

(a) Establish policies and standards for the effective, efficient, and economical operation of the Department in accordance with the programs of the Government;

(b) Exercise direct supervision and control over all functions and activities of the Department, as well as all its officers and personnel;

(c) Devise a program of international information on the geological and contractual conditions obtaining in the Philippines for oil and gas exploration in order to advance the industry;

(d) Create regional offices and such other service units and divisions as may be necessary;

(e) Create regional or separate grids as may be necessary or beneficial; and

(f) Perform such other functions as may be necessary or proper to attain the objectives of this Act.

The Secretary shall be an *ex officio* member of the Board of the National Economic and Development Authority (NEDA). He shall also be a member of the NEDA's Committee on Infrastructure (INFRACOM) and the Investment Coordinating Council (ICC). For this purpose, the provisions of Executive Order No. 292, otherwise known as the Administrative Code of 1987, relative to the creation and organization of the NEDA and its component agencies and offices are hereby modified accordingly.

The Secretary shall also be a member of the body authorized to formulate, prescribe, or amend the necessary guidelines for the financing, construction, operation, and

maintenance of the infrastructure projects by the private sector, under Republic Act No. 6957, otherwise known as the Build-Operate-Transfer Law.

SEC. 9. *The Undersecretaries.* – The Secretary shall be assisted by three (3) Undersecretaries who shall be appointed by the President upon the recommendation of the Secretary. They shall have the powers and functions as provided for in Section 10, Chapter 2, Book IV of the Administrative Code of 1987.

The Office of the Undersecretaries shall consist of the Undersecretaries and their respective immediate staff.

SEC. 10. *Assistant Secretaries.* – The Secretary shall also be assisted by three (3) Assistant Secretaries, one (1) for operations, one (1) for policy and programs, and another for administrative services. The Assistant Secretaries shall be appointed by the President upon the recommendation of the Secretary.

SEC. 11. *Qualifications.* – No person shall be appointed Secretary, Undersecretary, or Assistant Secretary of the Department unless he is a citizen and resident of the Philippines, of good moral character, and of proven competence in any of the following fields: (a) energy or utility economics; (b) public administration; (c) physical or engineering sciences; (d) management; or (e) law.

SEC. 12. *Bureaus and Services.* – Subject to the power of the Secretary, with the approval of the President, to reorganize, restructure, and redefine the functions of the bureaus and services for the effective discharge of the powers and functions of the Department under this Act, the Department shall have the following bureaus and services: Energy Resource Development Bureau; Energy Utilization Management Bureau; Energy Industry Administration Bureau; Energy Planning and Monitoring Bureau; and Administrative Support Services.

The bureaus and services shall have the following powers and functions:

(a) *Energy Resource Development Bureau* –

(1) Assist in the formulation and implementation of policies to develop and increase the domestic supply of local energy resources like fossil fuels, nuclear fuels, and geothermal resources;

(2) Assist in the formulation of sectoral programs and plans relative to the exploration, development, and extraction of local energy resources and implement, monitor, and regularly review said program;

(3) Conduct energy research and studies in support of the abovementioned activities;

(4) Provide consultative training and advisory services to practitioners and institution sin the areas of regulated activities; and

(5) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operation of service contractors and implement and enforce said policies.

(b) *Energy Utilization Management Bureau –*

(1) Assist in the formulation and implementation of policies for the efficient and economical transformation, conversion, processing, refining, marketing, distribution, transportation, and storage of petroleum, coal, natural gas, geothermal, and other non-conventional energy resources such as wind, solar, biomass, and others; and ensure their efficient and judicious utilization;

(2) Monitor sectoral energy consumption and conduct energy audits, technical training, energy management advisory services, and technology application on efficient energy utilization;

(3) Develop, promote and commercialize applications of biomass, solar, small hydro, wind, wood, and charcoal and other non-conventional energy systems including new and more efficient and economical transformation, conversion, processing, refining, marketing, distribution, transportation, and storage technologies for conventional energy resources;

(4) Assist in the formulation of an integrated rural energy program to effectively address the needs of rural development and environmental programs and implement, monitor, and regularly review said program;

(5) Assist in the formulation of an operational plan for the allocation of oil, fuel, and energy sources in the event of the declaration of critically low-energy supply provided for in Section 25 of this Act;

(6) Provide information on energy technology and develop middle and long-term energy technology development in cooperation with the Department of Science and Technology;

(7) Monitor the implementation of energy projects in coordination with the Department of Environment and Natural Resources to ensure compliance with prescribed environmental standards;

(8) Recommend appropriate courses of action to resolve major issues may impede energy project siting or result in adverse environmental impact;

(9) Require industrial, commercial, and transport establishments to collect or cause the collection of waste oil for recycling as fuel or lubricating oil; and

(10) Develop and implement a continuing energy conservation program designed to optimize energy utilization, including a nationwide information campaign on energy conservation.

(c) *Energy Industry Administration Bureau –*

(1) Assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, electricity distribution, as well as the importation, exportation, stockpiling, storage, shipping, transportation,

refinement, processing, marketing, and distribution of all forms of energy products, whether conventional or non-conventional;

(2) Draw up plans to cope with contingencies of energy supply interruptions; and

(3) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distribution entities, independent power producers, and all other entities involved in conventional supply activities and implement and enforce said policies.

(d) *Energy Planning and Monitoring Bureau* –

(1) Assist in the development and updating of an integrated energy plan for the short, medium, and long-term periods to provide a comprehensive assessment on the demand scenarios and supply options as well as the impacts of energy policies on the economy, poverty, and environment;

(2) Develop and maintain a centralized, comprehensive, and unified data and information program to ensure the efficient collection, evaluation, analysis, and dissemination of data and information on reserves of various energy resources, production, demand, development technology, and related economic and statistical information which are required for policy formulation, program planning and implementation;

(3) Supervise, coordinate, and integrate the formulation, monitoring, and review of programs and plans for energy supply development such as power development, local energy resource development and production, and energy importation;

(4) Regularly review and analyze past and current patterns of energy consumption vis-à-vis growth and development performance of the various economic sectors to evaluate current and foreseeable trends in energy demand; and conduct energy supply-demand balancing studies to define energy supply and utilization strategies, estimate the resources required, and assess the energy program's economic, environmental, social, and political impact;

(5) Assume the incorporation of national environmental goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety; and

(6) Conduct studies on international energy issues that have a direct impact on negotiations involving energy resources and technologies.

(e) *Administrative Support Services* – The Administrative Support Services shall be composed of the Office of the Legal counsel and the Financial and Management Services.

The Office of the Legal Counsel shall be responsible for providing legal advice and services on all policies, programs, and operational matters of the Department. It shall provide legal counseling services in cases where the Department is a party and shall also handle administrative cases against any personnel of the Department and submit recommendations pertaining to them.

The Financial and Management Services, which shall consist of the Human Resources Management Division, General Services Divisions, and the Financial Management Division, shall be responsible for providing the Department with services relative to personnel information, records, supplies, equipment, collection and disbursements, security, and custodial works. It shall also be responsible for providing the Department with staff advice and assistance on budgetary, financial, and management improvement matters.

CHAPTER III

ATTACHED AGENCIES AND CORPORATIONS

SEC. 13. *Attached Agencies and Corporations.* – The Philippine National Oil Company (PNOC), the National Power Corporation (NPC), and the National Electrification Administration (NEA) are hereby placed under the supervision of the Department, but shall continue to perform their respective functions insofar as they are not inconsistent with this Act. Their annual budget shall be submitted to Congress for approval. The Secretary shall, in a concurrent capacity, be the *ex officio* chairman of the respective boards of the PNOC, NPC, and NEA, unless otherwise directed by the President: *Provided*, That in no case shall the Secretary be the chief executive officer or chief operating officer of the said agencies or their subsidiaries, any law to the contrary notwithstanding.

To this end, Section 6, paragraph (3) of Presidential Decree No. 927 and Section 8 of Presidential Decree No. 334, providing that the Chairman of the PNOC shall be the president and chief executive officer thereof, are accordingly repealed.

The Secretary may recommend to the President the reorganization of the boards of directors of the PNOC, NPC, and NEA.

SEC. 14. *Council of Energy Advisers.* – A council of advisers on energy affairs consisting of five (5) members and appointed from the industry, labor, and consumer sectors shall advise the President on the overall energy program, especially on private sector initiatives and proposals.

The President shall convene the council within thirty (30) days upon approval of this Act.

CHAPTER IV

TRANSITORY PROVISIONS

SEC. 15. *Abolition of Agencies.* – The Office of Energy Affairs and the Energy Coordinating Council are hereby abolished subject to Section 17 of this Act.

SEC. 16. *Transfer of Powers and Functions.* – The powers and functions of the Energy Coordinating Council and the Office of Energy Affairs are hereby transferred to the Department.

The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property, and personnel as may be necessary.

The same shall apply to agencies and government units which have not been abolished but whose functions have been transferred to the Department.

As the successor-in-office of the Office of Energy Affairs, the Department shall administer the activities of the Technology Transfer for Energy Management (TTEM) project. For this purpose, the Department shall continue the utilization of all funds, monies, interests, reflows, and properties outstanding and accruing from the TTEM project upon its termination for the following purposes:

(a) To finance energy conservation projects of industrial and commercial establishments;

(b) To monitor implemented sub-projects and document the actual energy savings generated; and

(c) To disseminate information on implemented sub-projects through case studies and seminars/workshops so as to encourage replication by other industrial and commercial establishments.

Sec. 17. *Transfer of Rights, Assets, and Liabilities.* – The Department shall, by virtue of this Act, be subrogated to all the rights and assume all the liabilities of the Office of Energy Affairs, the Energy Coordinating Council, and all other agencies, or government units whose functions and powers have been transferred to the Department, and all their funds, records, property, assets, equipment, and such personnel as necessary, including unexpended appropriations and/or allocations. All contracts and liabilities of said offices, agencies, and government units are hereby transferred to and assumed by the Department and shall be acted upon in accordance with the *Auditing Code* and other pertinent laws, rules, and regulations: *Provided*, That the officers and employees of said offices, agencies, and government units shall continue in a holdover capacity until such time as the new officers and employees of the Department shall have been duly appointed pursuant to the provisions of this Act.

SEC. 18. *Rationalization or Transfer of Functions of Attached or Related Agencies.* – The non-price regulatory jurisdiction, power and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.

The foregoing transfer of power and functions shall include all applicable funds and appropriations, equipment, property, and such personnel as may be necessary: *Provided*, That only each amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said Board of its non-price regulatory powers and functions shall be affected by such transfer.

The power of the NPC to determine, fix and prescribe the rates being charged to its customers under Section 4 of Republic Act No. 6395, as amended, as well as the power of electric cooperatives to fix rates under Section 16 (o), Chapter II of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same nature provided for under Executive Order No. 172.

SEC. 19. Structure and Staffing Pattern. – The organizational framework and staffing pattern of the Department shall be prescribed and approved by the Secretary within sixty (60) days after the approval of this Act and the authorized positions created therein shall be filled by regular appointments by the President or the Secretary as the case may be: *Provided, That, in the filling of positions created, preference shall be given to the personnel of the Office of Energy Affairs, the Energy Coordinating Council, and the Energy Regulatory Board: Provided, however, That if such individuals possess the same qualifications, seniority shall be given priority.*

SEC. 20. Separation from Service. – Employees separated from the service as a result of this reorganization shall, within six (6) months from their separation from the service, receive the retirement benefits to which they may be entitled under existing laws, rules, and regulations.

CHAPTER IV

APPROPRIATIONS

SEC. 21. Appropriations. – Such sums as may be necessary for the implementation of this Act shall be taken from the current fiscal year appropriations of the Office of Energy Affairs, the Office of Energy Affairs' special fund created under Section 8 of Presidential Decree No. 910, and such amounts as the President of the Philippines may allocate from other resources in accordance with law: *Provided, That the total amount shall not exceed Three hundred million pesos (P 300,000,000). Thereafter, the amount needed for the operation and maintenance of the Department shall be included in the annual General Appropriations Act.*

Subject to existing rules and regulations, the funds and monies collected or which the otherwise come into the possession of the Department and its bureaus from fees, surcharges, fines, and penalties which the Department and its bureaus may impose and collect under this Act, as well as an amount to be determined at the beginning of every calendar year representing twenty percent (20%) of the outstanding balance of the funds and monies forming part of the special fund under Section 8 of Presidential Decree No. 910, shall be disbursed for expenses necessary for the effective discharge of the powers and functions of the Department under this Act.

CHAPTER VI

MISCELLANEOUS PROVISIONS

SEC. 22. Disclosure and Divestment of Financial Interest. – Before assumption of office, the Secretary of the Department, the Undersecretaries, and the Assistant Secretaries shall submit to the Civil Service Commission a list of all companies, partnerships, or business enterprises, including nonprofit organizations, in which he or any

immediate member of their families within the second degree of consanguinity or affinity have any form of financial interests or employment relationship, including consultancy: *Provided, however,* That all other forms of employment relationship held by the heads of the offices of the Department shall be immediately upon assumption of office.

Within thirty (30) days thereafter, complete divestments of financial interests in any institution, firm, or company which fall under the supervisory or regulatory jurisdiction of the Department shall be made: *Provided, however,* That in cases where confirmation of appointment by the Commission on Appointments is required, the divestment mandated herein shall be complied with within thirty (30) days after such confirmation.

The divestment prescribed in the preceding paragraph shall likewise apply to the member of the immediate family within the second degree of consanguinity having interest in any institution or activity which falls under the regulatory jurisdiction or supervision of the Department and the attached agencies.

SEC. 23. Relationship with Other Government Departments. - The Department and its priority projects shall enjoy preferential treatment to the exploration, development, exploitation, and extraction of petroleum, coal, and other geothermal resources, and in the matter of providing technical support necessary for the establishment of power-generating plants.

Upon request of the Department or any of its bureaus, all government agencies with functions relative to the approval of the projects of the Department or its duly authorized and endorsed entities, whether government or private, shall act upon and resolve the matter within ten (10) calendar days. Toward this end, the Secretary, with the approval of the President, may establish an interagency secretariat for the purpose of expediting the approval of said projects.

SEC. 24. Visitorial Powers. - The Secretary of the Department or his representative shall have visitorial and examining authority over non-government entities with contracts for the exploration, development, or utilization of the natural resources for energy purposes in order to determine the share of the Government in the revenue or product thereof, and to ascertain all funds collectible and products due the Government, and that all such funds collectible and products due the Government have actually been collected or delivered.

During such examination, the non-government entity concerned shall produce all the reports, records, books of accounts, and other papers that may be required.

The refusal by any such non-government entity to allow an examination of its books of accounts and pertinent records or its concealment of any material information concerning its financial status shall be a breach of its contract with the Government and shall constitute a legal ground for the cancellation thereof.

SEC. 25. Contingency Powers. - In time of critically low-energy supply or imminent danger thereof, the President may, upon the determination and recommendation of the Secretary, issue a declaration of the same. Thereafter, the Secretary is hereby authorized to implement the fuel and energy allocation plan provided in Section 12 (b) (5) of this Act, and to formulate other measures for the conservation of energy including, but not limited to, power or fuel rationing, load curtailments, and restrictions on the use of government vehicles and resources.

SEC. 26. *Repealing Clause.* – All laws, presidential decrees, executive orders, and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

However, in no case are the provisions of Republic Act No. 6969 repealed, amended, or modified by the provisions of this Act.

SEC. 27. *Separability Clause.* – If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 28. *Effectivity Clause.* – This Act shall take effect after its complete publication in at least two (2) national newspapers of general circulation.

Approved, December 9, 1992.