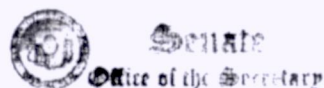


SEVENTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
Third Regular Session )



'19 MAY 14 P 6:05

SENATE  
S.B. No. 2222

RECEIVED: 

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Introduced by SEN. WIN GATCHALIAN

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AN ACT  
CREATING THE ENERGY CONSUMER ADVOCATE OFFICE,  
PROVIDING FUNDS THEREFOR,  
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA), heralded the transition from a public sector vertically-integrated monopoly to a private sector led 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.*”<sup>1</sup> 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 as well as reasonable return, and ensuring consumer protection.<sup>2</sup> These duties result to a delicate balancing act of the regulator in deciding its cases. However, the lack of representation for consumers as a whole is glaring in cases before the ERC.

Hence this measure. This bill creates an Energy Consumer Advocate Office (ECAO) led by the Energy Consumer Advocate. The ECAO acts as the independent consumer 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 ECAO aims to attain what jurisdictions with an institutionalized consumer advocate have, such as the postponement of utilities’ rate increase applications, a decrease in the income of utilities, and lower electricity retail prices.<sup>3</sup>

Given the foregoing, the immediate passage of this measure is sought.



WIN GATCHALIAN

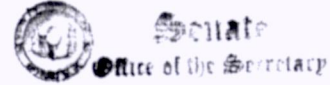
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<sup>1</sup> Section 2(j). Republic Act No. (RA) 9136. (2001).

<sup>2</sup> Id. at Section 43.

<sup>3</sup> 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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AN ACT  
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*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 Consumer  
2 Advocate Act.”  
3

4 **SECTION 2. Declaration of Policy.** – It is hereby declared the policy of the  
5 State to recognize the right of energy consumers to reasonable rates, adequate  
6 and reliable services, and to transparent processes involving these rates and  
7 services. Towards this end, there is a need for institutionalized and independent  
8 consumer representation in rate-setting, rule-making, and other energy related  
9 cases and proceedings before government agencies including judicial and quasi-  
10 judicial bodies.  
11

12 **Section 3. The Energy Consumer Advocate Office (ECAO).** – The ECAO is  
13 hereby created which shall be an independent and autonomous office attached  
14 to the Department of Justice (DOJ) in accordance with Section 38(3), Chapter 7,  
15 Book IV of Executive Order No. 292, otherwise known as the Administrative Code  
16 of 1987, as amended.  
17



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

7 (1) Initiate, intervene, and represent all consumers, in rate-setting, rule-  
8 making, and other energy related cases, complaints, proceedings, and  
9 consultations before the Department of Energy (DOE), Energy Regulatory  
10 Commission (ERC), National Electrification Administration (NEA),  
11 Philippine Competition Commission (PCC), and other judicial and quasi-  
12 judicial bodies;

13 (2) Initiate, intervene, and represent all consumers in actions before any trial  
14 or appellate court, including the Supreme Court, which involve the validity  
15 of any decision, memoranda, rule, regulation, circular, or order of the  
16 DOE, ERC, NEA, PCC, and other departments, commissions, and agencies  
17 insofar as these decisions and policy issuances affect energy rates and  
18 services;

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

22 (4) Engage in regular information, education, and communication programs  
23 for all consumers on laws, rules, regulations, decisions, circulars, and  
24 orders that affect energy rates and services, including consumer rights and  
25 remedies;

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

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

35 (a) Personnel information;

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

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

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

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

11  
12 **Section 5. The Energy Consumer Advocate and Deputy Energy Consumer**

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

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

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

34  
35 The ECA and Deputy ECA shall have the same rank, salaries, allowances, and  
36 retirement benefits as the Prosecutor General and Senior Deputy State  
37 Prosecutor of the National Prosecution Service respectively: *Provided*, That their



1 retirement benefits shall be prorated in accordance with Section 21 of Republic  
2 Act No. 10071, otherwise known as the Prosecution Services Act.

3  
4 **Section 7. Prohibitions.** – The ECA and Deputy ECA shall be prohibited from:

5 (1) Serving as a member of the board, officer, employee, or consultant of any  
6 energy company in the course of their respective terms of office: *Provided*,  
7 That this prohibition shall also apply to their family members up to the  
8 fourth degree of consanguinity or affinity;

9 (2) Having any interest, ownership, or stake in any energy company in the  
10 course of their respective terms of office: *Provided*, That this prohibition  
11 shall also apply to their family members up to the fourth degree of  
12 consanguinity or affinity;

13 (3) Representing any government agency, government –owned or –controlled  
14 corporation, or private company in any energy related case, proceeding, or  
15 consultation before any department, commission, agency, or court, in the  
16 course of one (1) year after the end of their respective terms of office; and

17 (4) Being members of a political party and committee, or engaging in any  
18 partisan political activity in the course of their respective terms of office.

19  
20 **Section 8. Organizational Structure and Plantilla Positions.** – The ECAO,  
21 upon approval of the DOJ, shall submit its organizational structure and plantilla  
22 positions to the Department of Budget and Management (DBM) not later than  
23 six (6) months from the effectivity of this Act: *Provided*, That the DBM shall  
24 approve the final organizational structure and plantilla positions of the ECAO  
25 not later than three (3) months from submission.

26  
27 The ECAO, upon approval of the DOJ, may request the DBM for any change in  
28 the organizational structure and plantilla positions after a comprehensive review  
29 resulting to a finding that any alteration will improve the discharge of the ECAO's  
30 powers and functions: *Provided*, That the DBM shall render a decision on such  
31 request within three (3) months from submission.

32  
33 The ECAO shall have legal, technical, and administrative personnel in its  
34 organizational structure and staffing complement, and may hire consultants as  
35 expert witnesses or technical advisors as it finds necessary for the full and  
36 efficient discharge of its powers and functions. All employees and consultants  
37 shall be subject to civil service laws, rules, and regulations: *Provided*, That all

1 employees shall be subject to Republic Act No. 6758, otherwise known as the  
2 Salary Standardization Act.

3  
4 **Section 9. Removal and Vacancy.** – The ECA and Deputy ECA shall not be  
5 removed or suspended, except for cause provided by law. The President may  
6 remove the ECA or the Deputy ECA for malfeasance, misfeasance, or  
7 nonfeasance in office, or for any cause which renders any of them ineligible for  
8 appointment, or incapable, or unfit to discharge the mandate, powers, and  
9 functions of the ECAO.

10  
11 In case of death, permanent incapacity, removal, or resignation of the incumbent  
12 ECA or Deputy ECA, the President may appoint or designate one, as the case  
13 may be, in an acting capacity until a new ECA or Deputy ECA has been  
14 appointed: *Provided*, That the new appointment shall only be for the unexpired  
15 term of the predecessor.

16  
17 **SECTION 10. Exemption from Fees and Costs of Suits.** – The ECAO shall be  
18 exempt from payment of docket and other fees incidental to instituting an action  
19 in court and other quasi-judicial bodies, as an original proceeding or on appeal.

20  
21 **SECTION 11. Costs of Suit.** – The costs of the suit, attorney’s fees, and  
22 contingent fees imposed upon adversarial parties of the ECAO after a successful  
23 litigation shall be deposited in the National Treasury.

24  
25 **Section 12. Grant of Special Allowances.** – The ECA, Deputy ECA, service or  
26 division heads, and lawyers shall be granted special allowances in amounts to  
27 be determined by the DBM: *Provided*, That the grant of said special allowances  
28 shall not exceed one hundred percent (100%) of the basic salary of the ECAO  
29 officials and lawyers: *Provided further*, That special allowances shall be paid from  
30 costs of suit, attorney’s fees and contingent fees deposited in the National  
31 Treasury pursuant to Section 11 of this Act: *Provided finally*, That whenever the  
32 funding source is insufficient, the special allowance shall be paid through the  
33 General Appropriations Act.

34  
35 **Section 13. Appropriations.** – The amount necessary for the initial  
36 implementation of this Act in the amount of two hundred million pesos  
37 (P200,000,000.00) shall be taken from the budget of the DOJ. Thereafter, the



1 amount of two hundred million pesos (P200,000,000.00) shall be automatically  
2 appropriated and included in the annual General Appropriations Act every year  
3 which may be increased as may be necessary for the continued implementation  
4 of this Act.

5  
6 **Section 14. Amendatory Clause.** – Section 41, Chapter 10, Book I and Section  
7 4, Chapter 1, Title III, Book IV of Executive Order No. 292, otherwise known as  
8 the Administrative Code of 1987, as amended, is hereby further amended.

9  
10 **SECTION 15. Implementing Rules and Regulations.** – Within ninety (90)  
11 calendar days from the approval of this Act, the DOJ, in consultation with the  
12 DBM, government energy agencies, and private energy stakeholders, shall adopt  
13 and issue the rules and regulations for the effective implementation of this Act.

14  
15 **SECTION 16. Congressional Oversight.** – The Joint Congressional Energy  
16 Commission shall exercise oversight powers over implementation of this Act.

17  
18 **SECTION 17. Separability Clause.** – Any portion or provision of this Act, which  
19 may be declared unconstitutional or invalid shall not have the effect of nullifying  
20 other portions or provisions hereof.

21  
22 **SECTION 18. Repealing Clauses.** – All laws, ordinances, rules, regulations and  
23 other issuance or parts thereof, which are inconsistent with this Act, are hereby  
24 amended, modified, or repealed accordingly.

25  
26 **SECTION 19. Effectivity Clause.** – This Act shall take effect fifteen (15) days  
27 after its publication in at least two (2) newspaper of general circulation.

*Approved,*