


THIRTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES }  
*First Regular Session*

5 JUL -6 110:44

SENATE

S. No. 2063

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INTRODUCED BY HON. MANNY VILLAR

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**EXPLANATORY NOTE**

The condition of the times when the Oil Deregulation Act of 1998 was enacted into law is now very different to present conditions. Worldwide, petroleum prices reached highest in history. The political situation in the Middle East and the worldwide occurrence of terrorist acts helped constrained supply and propelled prices upward. The wars in Kuwait, Iraq, and some African nations damaged their oil depots or crippled their supply transport structures. In Asia, Indonesia's oil supply was also affected by the Islamic upheaval. In a matter of months, the oversupply enjoyed at the start of the century suddenly reversed - and oil prices reacted accordingly.

In the Philippines, domestic prices have indeed increased at much lower and slower rates; remaining the lowest fuel prices of any non oil-exporting Asian country. The public complaints though have something to do with the absence of relief measures from the government. Real wages in the country have been declining. So while prices in the country are relatively low compared to the rest of the region, they are high in absolute terms as far as the average Filipino is concerned - particularly when his basket of goods shrinks every day.

The complaints from the Philippine consuming public focus on the seemingly unfair trade practices observed by the oil firms - whether new or old player in the industry. There is much to be desired in the way government is enforcing the policing provisions of the Oil Deregulation Law, such as the price monitoring and anti-trust clauses. The Joint Task Force have not been actively seen as ensuring that prices remain fair and reasonable, and that the public is very well advised of any change in oil prices.

This proposed Bill, therefore, seeks to provide definitive rules and sanctions in the policing of ranks, not only within the oil industry, but also among the government agencies tasked under the law to police the industry.

The proposed Bill also seeks to rationalize the fiscal incentives provided to the industry so they will redound to the general economy's benefit and not contribute negatively to public revenue collection.

Passage of this Bill is earnestly sought.

  
MANUEL B. VILLAR, JR.

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**AN ACT  
PROVIDING FOR FURTHER RESPONSIBILITIES  
ON FAIR TRADE PRACTICE AND INVESTMENT PROMOTION  
WITHIN THE DOWNSTREAM OIL INDUSTRY,  
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8749,  
OTHERWISE KNOWN AS THE DOWNSTREAM OIL DEREGULATION  
ACT OF 1998**

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

SECTION 1. Chapter II, Section 7 of Republic Act No. 8749 is hereby amended as **Chapter III, Section 10 of the same Act**, and the remaining sections shall be renumbered accordingly.

SECTION 2. Section 9 of Chapter II is hereby amended to read as follows:

*"Sec. 8 [9]. Incentives for New Investments.* To the extent applicable, persons with new investments as determined by the DOE and registered with the BOI in refining, storage, marketing and distribution of petroleum products, shall be extended the same incentives granted to BOI-registered enterprises engaged in a preferred area of investments as provided by law.

Any provision of the law to the contrary notwithstanding, the said incentives may be availed by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That is the storage, marketing and distribution of petroleum products, only the investments if new industry participants shall be entitled to incentives provided by law. As used herein, *"marketing of petroleum products"* shall include the establishment of gasoline stations.

For this purpose, the industry shall be included in the annual Investment Priorities Plan (IPP), until otherwise determined by the DOE and BOI, and upon which the incentives to be enjoyed shall be coincided with the industry's new status **AS PROVIDED BY LAW**. [pursuant to Executive Order No. 226, otherwise known as the "omnibus Investment Code of 1987".

Such incentives shall include:

- (1) Income tax holiday;
- (2) Additional deduction for labor expenses;

- (3) Minimum tax and duty of three percent (3%) and value-added tax (VAT) on imported equipment;
- (4) Tax credit on domestic capital equipment;
- (5) Exemption from contractor's tax;
- (6) Unrestricted use of consigned equipment;
- (7) Exemption from the real property tax on production equipment or machineries;
- (8) Exemption from taxes and duties on imported spare parts; and
- (9) Such other applicable incentives under Article 39 of Executive Order No. 226.]

Any provision of the law to the contrary notwithstanding, the said incentives may be availed by persons with new investments for a period of five (5) years from registration with the BOI: *Provided, however,* That in the storage, marketing and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives provided **BY LAW** [in the said Code]. As used herein, "*marketing of petroleum products*" shall include the establishment of gasoline stations.

For this purpose, the industry shall be included in the annual Investments Priorities Plan (IPP), **UNTIL OTHERWISE DETERMINED BY THE DOE AND BOI UPON WHICH INCENTIVES TO BE ENJOYED SHALL BE COINCIDED WITH THE INDUSTRY'S PRIORITY STATUS AS PROVIDED BY LAW.** [: *Provided,* That nothing herein contained shall preclude qualified persons or entities as provided under the "Omnibus Investments Code" from applying from or continue enjoying incentives and benefits under the said Code.]"

SECTION 3. The title of Chapter III is hereby amended to read as follows:

**"REGULATIONS ON FAIR TRADE PRACTICES, Anti-Trust Safeguards, AND other Prohibited Acts [and Remedies]"**.

SECTION 4. Chapter III, Section 11 (b) is hereby amended to read as follows:

"(b) *Predatory pricing* which means selling or offering to sell any oil product at a price below the seller's or offeror's average variable cost for the purpose of destroying competition, eliminating a competitor or discouraging a potential competitor from entering the market: *Provided, however,* That pricing below average variable cost in order to match the lower price of the competitor and not for the purpose of destroying competition shall not be deemed predatory pricing. For purposes of this provision, "*variable cost*" as distinguished from "*fixed cost*", refers to costs such as utilities or raw materials, which vary as the output increases or decreases and "*average variable cost*" refers to the sum of all variable costs divided by the number of units of outputs.

Any person, including but not limited to the chief operating officer, chief executive officer or chief finance officer of the partnership, corporation or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of three (3) to seven (7) years imprisonment, and a fine ranging from One Million Pesos (P1,000,000.00) to Two Million Pesos (P2,000,000.00) **PER VIOLATION PER PERSON.**"

SECTION 5. Chapter III, Section 12, last paragraph is hereby amended to read as follows:

“Any person, including but not limited to the chief operating officer or chief executive officer of the partnership, corporations or any entity involved, who is found guilty of any of the said prohibited acts shall suffer the penalty of imprisonment for two (2) years and a fine ranging from Two Hundred Fifty Thousand Pesos (P250,000.00) to Five Hundred Thousand Pesos (P500,000.00) **PER VIOLATION PER PERSON.**”

SECTION 6. Chapter III, Section 13 is hereby amended as follows:

“Sec. 13. *Remedies.* – (a) Government Action. – Whenever it is determined by the Joint Task Force created under Section 14 ~~(E) [(d)]~~ of this Act that there is a threatened or imminent violation or actual violation of Sections 11 **AND/OR 12** of this Act, it shall direct the provincial or city prosecutors having jurisdiction to institute an action to prevent or restrain such violation with the Regional Trial Court of the place where defendants reside or has his place of business. Pending hearing of the complaint and before final judgment, the court may at any time issue a temporary restraining order or an injunction as shall deemed just within the premises, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Whenever it is determined by the Joint Task Force that the Government or any of its instrumentalities or agencies, including government-owned or-controlled corporations, shall suffer loss or damage in its business or property by reason of violation of Sections 11 **AND/OR 12** of this Act, such instrumentality, agency or corporation may file an action to recover damages and the costs of the suit with the Regional Trial Court which has jurisdiction as provided above.

(b) *Private Complaint.* – Any person or entity shall report any violation of Sections 11 **AND/OR 12** of this Act to the Joint Task Force. The Joint Task Force shall investigate such reports in aid of which the DOE Secretary may exercise the powers under Section 15 of this Act. The Joint Task Force shall prepare a report embodying its final findings and recommendations as a result of any such investigation, and the report shall be made at the discretion of the Joint Task Force. In the event that the Joint Task Force determines that there has been a violation of Sections 11 **AND/OR 12** of this Act, the private person or entity shall be entitled to sue for and obtain injunctive relief, as well as damages, in the Regional Trial Court having jurisdiction over any of the parties, under the same conditions and principles as injunctive relief is granted under the Rules of Court.”

SECTION 7. Chapter IV, Section 14 (d) and (e) are hereby amended to read as follows:

“(d) Any report from any person of an unreasonable rise in the prices of petroleum products shall be immediately acted upon. For this purpose, [the creation of] the DOE [-] **AND THE DOJ** [Task Force is], **ARE** hereby mandated to determine within thirty (30) days the merits of the report and initiate the necessary actions warranted under the circumstance:

*Provided*, That nothing herein shall prevent the said **AGENCIES** [task force] from investigating and/or filing the necessary complaint with the proper court or agency *motu proprio*.]; **PROVIDED FURTHER, THAT FAILURE OF THE CONCERNED DOE AND DOJ OFFICIALS TO SUBMIT THE INVESTIGATIVE REPORT WITHIN THE 30-DAY PRESCRIBED PERIOD AND/OR FILE THE APPROPRIATE CASE, SHALL BE DEEMED A DERELICTION OF DUTY AND THE SAID OFFICIALS SHALL BE SUBJECTED TO ADMINISTRATIVE SANCTIONS.**

(e) [Upon the effectivity of this Act,t] The Secretaries of Energy and Justice shall jointly appoint the members of a [committee who shall be tasked with the drafting of the rules and guidelines to be adopted by the] **JOINT** Task Force that shall ensure the efficiency, promptness, and effectiveness in the handling of [its] cases **AND COMPLAINTS**. [The Task Force shall be organized and its members appointed within one (1) month from the effectivity of this Act.]”

SECTION 8. Chapter VII, Section 24 is hereby amended to read as follows:

“Sec. 24 *Penal Sanction*. – Any person who violates any of the provisions of this Act shall suffer the penalty of three (3) months to one (1) year imprisonment and a fine ranging from Fifty Thousand Pesos (P50,000.00) to Three Hundred Thousand Pesos (P300,000.00) **PER VIOLATION PER PERSON.**”

SECTION 9. *Effectivity Clause*. – This Act shall take effect fifteen (15) days after its publication in a newspaper of general circulation.