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SENATE

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S. BILL NO. 2159

Introduced by Senator Ralph G. Recto

EXPLANATORY NOTE

This bill seeks to promote the use of indigenous alternative fuels to reduce the country's dependence on imported oil and to promote it as an alternative to the high-cost crude oil thereby alleviating the worsening energy crisis plaguing our country.

This legislation shall be known as the "National Biofuels Development Act of 2005" in consonance with the State policy to pursue energy independence consistent with the country's sustainable economic growth. Also, this measure is in line with the Clean Air Act of 1999, which seeks to formulate a holistic national program of air pollution management.

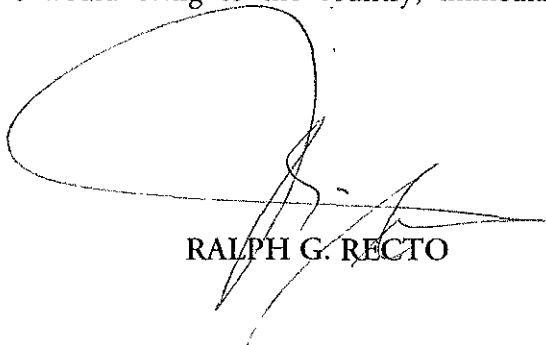
In pursuance of the above-stated policy, the Department of Energy (DOE) is directed to immediately adopt a National Biofuels Development Program which aims to encourage the use of domestically produced fuel ethanol to promote cleaner air and to increase rural employment and income. The DOE is further empowered to implement a mandated blending of gasoline with bioethanol as motor fuel and spearhead the continuing phase out of harmful gasoline additives and/or oxygenates found detrimental to human health and the environment.

Government statistics showed that the mandatory five percent (5%) bioethanol blend within two (2) years could result in gasoline displacement of 236 million liters equivalent to \$129 million in foreign exchange savings per year.

This measure provides for fiscal and non-fiscal incentives in order to entice private entities to invest in the production and distribution of biofuels. These incentives include: reduction of tariff duty on the importation of equipment, machineries and inputs to only one percent (1%) for a period of ten (10) years; VAT zero-rated sale of biofuels as provided for in R.A. No. 9337; and high priority financial services to be extended by Government Financial Institutions.

The consumers are expected to benefit largely from this bill because the use of alternative indigenous fuels could bring a very substantial lowering of the cost of gasoline, which is a major input in a majority of businesses and industries.

With the expected benefits this measure would bring to the country, immediate passage of this bill is earnestly sought.



RALPH G. RECTO

1 (c) "Bioethanol Fuel" shall refer to hydrous or anhydrous bioethanol suitably denatured
2 for use as motor fuel.

3 (d) "Biofuels" shall refer to a liquid fuel produced from biomass and primarily used to
4 fuel vehicles, but can also fuel engines or fuel cells for electricity generation and may include
5 bioethanol and biodiesel, among others.

6 (e) "Biomass" shall refer to any organic matter, particularly cellulosic or ligno-cellulosic
7 matter, which is available on a renewable or recurring basis, including trees, crops and
8 associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and
9 the biodegradable component of municipal solid waste.

10 (f) "DA" shall refer to the Department of Agriculture created under Executive Order
11 No. 116, as amended.

12 (g) "DOE" shall refer to the Department of Energy created under Republic Act No.
13 7638, as amended.

14 (h) "DENR" shall refer to the Department of Environment and Natural Resources
15 created under Executive Order No. 192, as amended.

16 (i) "DOF" shall refer to the Department of Finance created under Executive Order No.
17 127.

18 (j) "DOST" shall refer to the Department of Science and Technology created under
19 Executive Order No. 192.

20 (k) "DOTC" shall refer to the Department of Transportation and Communications
21 created under Executive Order No. 125-A, as amended.

22 (l) "Feedstock" shall refer to organic sources such as molasses, sugarcane, cassava or
23 other biomass used in the production of bioethanol.

24 (m) "Gasohol" shall refer to gasoline blended with ethanol that meets the motor fuel
25 specification standards developed by the Technical Committee on Petroleum Products and
26 Additives, and promulgated by the Bureau of Product Standards of the Department of Trade
27 and Industry (DTI).

1 (n) "Gasoline" shall refer to a complex mixture of relatively volatile hydrocarbons with
2 or without small quantities of additives, blended to form a fuel suitable for use in spark-
3 ignition engines with Research Octane Number (RON) of 93 or above.

4 (o) "Motor fuel" shall refer to all volatile and inflammable liquids produced, blended or
5 compounded for the purpose of, or which are suitable or practicable for, operating motor
6 vehicles.

7 (p) "NBDB" or "Board" shall refer to the National Biofuels Development Board created
8 under Section 8 hereof.

9 (q) "Oxygenate" shall refer to substances, which, when added to gasoline, increase the
10 amount of oxygen in that gasoline blend.

11 (r) "Renewable Energy Sources" shall refer to energy sources that do not have an upper
12 limit on the total quantity to be used. Such resources are renewable on a regular basis, and
13 whose renewal rate is relatively rapid to consider availability over an indefinite period of time.

14 (s) "WTO" shall refer to the World Trade Organization which is the only global
15 international organization, created by the Uruguay Round of Negotiations from 1986 to 1994
16 and established in Geneva, Switzerland on January 1, 1995, dealing with the rules of trade
17 among nations to help producers, exporters and importers of goods and services conduct their
18 businesses, and which operates within the framework of the two agreements, negotiated and
19 signed by the bulk of the world's trading nations and ratified by their respective
20 congresses/parliaments.

21 SEC. 4. *Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates.* –
22 Within five (5) months from the effectivity of this Act, the DOE shall gradually phase out the
23 use of harmful gasoline additives and/or oxygenates found to be detrimental to human health
24 and the environment such that within two and a half (2 ½) years from the effectivity of this
25 Act, such harmful gasoline additives and/or oxygenates shall have been totally phased out
26 nationwide.

27 SEC. 5. *Mandatory Use of Bioethanol.* – In pursuance of the above policy, the DOE is
28 hereby directed to immediately adopt a National Biofuels Development Program that will
29 implement a mandated blending of gasoline with bioethanol as motor fuel. Within two years

1 from the effectivity of this Act, a minimum of seven and a half percent (7 ½ %) bioethanol by
2 volume shall be blended into all gasoline to be distributed, sold and used as motor fuel.
3 Thereafter, the NBDB shall periodically review and assess the impact of the use of bioethanol
4 as well as the availability of local supply of bioethanol fuel and shall recommend, as
5 appropriate, an increase in the mandated minimum blend by up to five percent (5%) every
6 two years thereafter until such time when the NBDB shall determine a higher limit: *Provided,*
7 *however,* That the octane rating of the gasohol shall in no case be lower than ninety (90).

8 SEC. 6. *Incentive Scheme.* – To encourage private entities to invest in the production
9 and distribution of biofuels, the following incentive scheme is hereby provided:

10 (a) Fiscal Incentives -

11 (1) All entities engaged in the production, storage, handling and transport of biofuels
12 and feedstock, including the blending of biofuel with petroleum and other fuels, as may be
13 certified by the DOE shall, for a period of ten (10) years from the effectivity of this Act, be
14 subject to a duty of one percent (1%) in the importation of all types of inputs, machinery,
15 equipment, and planting and breeding materials as duly certified by the DA: *Provided,* That
16 the imported inputs, machinery, equipment, and planting and breeding materials shall be for
17 the exclusive use of the importing entity: *Provided, further,* That such duty rate shall not
18 apply to imported biofuels and feedstock; and

19 (2) The sale of biofuels shall be VAT zero-rated, pursuant to Section 6, paragraph B,
20 sub-paragraph 7 of Republic Act No. 9337.

21 (b) Non-Fiscal Incentives -

22 (1) Subject to the rules and regulations of the Board of Investments, all investments in
23 the production and blending of biofuels and biofuel feedstocks as provided under the
24 Philippine Energy Program shall enjoy the applicable fiscal and non-fiscal incentives provided
25 for under the Omnibus Investment Code, as amended; and

26 (2) All water effluents such as, but not limited to, distillery slops from the production of
27 biofuels used as liquid fertilizer, or for other agricultural purposes are considered reuse and are
28 therefore not covered under Section 13 of Republic Act No. 9275, the Philippine Clean
29 Water Act: *Provided, however,* That such application shall be in accordance with the

1 guidelines issued pursuant to Republic Act No. 9275, subject to the monitoring and
2 evaluation by the DENR and approval of the DA.

3 (c) Financial Assistance -

4 Government Financial Institutions such as the Development Bank of the Philippines,
5 Land Bank of the Philippines, Quedancor and such other government institutions providing
6 financial services shall in accordance with and to the extent allowed by the enabling provisions
7 of their respective charters or applicable laws, accord high priority to extend financing to
8 entities that shall engage in activities involving production of biofuels and feedstocks such as,
9 but not limited to, sugarcane, coconut palm, jatropha, cassava, sweet sorghum and corn.

10 SEC. 7. *Powers and Functions of the Department of Energy.* – In addition to its existing
11 powers and functions, the DOE is hereby mandated to take appropriate and necessary actions
12 to implement the National Biofuels Development Program. In pursuance thereof, the DOE
13 shall:

14 (a) Prepare the National Biofuels Development Program consistent with the Philippine
15 Energy Plan;

16 (b) Within five months from the effectivity of this Act:

17 (1) establish standards for the minimum alcohol content of anhydrous bioethanol fuel,
18 denaturing, addition of color, blending and labeling of bioethanol fuel and gasohol for motive
19 fuel; and

20 (2) establish the guidelines for the transport and handling of bioethanol fuel;

21 (c) Impose fines and penalties against persons or entities found to have committed any
22 of the prohibited acts under Section 11 (b) through (e) hereof;

23 (d) Confiscate gasoline and gasohol sold in the market that are found to be not
24 compliant with the specifications provided for under Sections 4 and 5 hereof and
25 corresponding issuances of the DOE;

26 (e) Monitor the production and importation of bioethanol and other biofuels intended
27 for motor fuel use through the Bureau of Internal Revenue (BIR) and the Bureau of Customs
28 (BOC);

29 (f) Propose a national program for biofuels other than bioethanol; and

1 (g) Conduct an information and education campaign (IEC) to promote the use of
2 gasohol and other biofuels.

3 SEC. 8. *Creation of the NBDB.* – The NBDB is hereby created. It shall be composed of
4 the Secretary of the DOE or his designated undersecretary as chairman and the secretaries or
5 the designated undersecretaries or assistant secretaries of the DTI, the DOF, the DOTC, the
6 DOST, the DA, the DENR, the Department of Labor and Employment (DOLE), the
7 Administrator of the Sugar Regulatory Administration (SRA), the Administrator of the
8 Philippine Coconut Authority (PCA), and one representative each from the feedstock
9 producers for bioethanol, distillery industry, petroleum industry and automotive
10 manufacturers, duly endorsed by their respective industry associations and appointed by the
11 President of the Republic of the Philippines, as members.

12 The DOE secretary or his designated undersecretary, in his capacity as chairperson,
13 shall, within one month from the effectivity of this Act, convene the NBDB.

14 The Board shall be assisted by a technical secretariat whose personnel shall be on detail
15 from the DOE and/or other departments/agencies comprising the Board. The Technical
16 Secretariat shall be attached to the Office of the Secretary or the Undersecretary of the DOE.

17 SEC. 9. *Powers and Functions of the NBDB.* – The NBDB shall have the following
18 powers and functions:

19 (a) Formulate, within six months from the effectivity of this Act, the implementing
20 rules and regulations (IRR) under Section 14 hereof for approval by the Congressional
21 Biofuels Development Oversight Committee;

22 (b) Approve the National Biofuels Development Program and other biofuels programs
23 as may be proposed by the DOE;

24 (c) Approve the DA Program to ensure the availability of feedstock for the production
25 of biofuels for motor fuel;

26 (d) Monitor and review the implementation of the National Biofuels Development
27 Program and other biofuels programs;

1 (e) Monitor the supply and utilization of bioethanol fuel and gasohol and recommend
2 appropriate measures in cases of shortage of feedstock supply for approval by the Secretary of
3 the DOE;

4 (f) Monitor the development and implementation of a research and development
5 (R&D) program supporting a sustainable improvement in bioethanol fuel and other biofuels
6 production and utilization technology by the DOST through the Philippine Council for
7 Industry and Energy Research Development (PCIERD);

8 (g) Evaluate plans for further expansion of the National Biofuels Development Program
9 and other biofuels programs;

10 (h) Review and increase the minimum mandated bioethanol blend for gasoline as it
11 deems appropriate; and

12 (i) Recommend specific actions concerning the implementation of the National
13 Biofuels Development Program and other biofuels programs to be executed by the DOE and
14 other appropriate agencies of government.

15 SEC. 10. *Role of Government Agencies.* – To ensure the effective implementation of this
16 program, concerned agencies shall perform the following functions:

17 (a) The DOF shall:

18 (1) in coordination with the Tariff Commission, create and classify a tariff line for
19 bioethanol fuel and gasohol and other biofuels;

20 (2) review provisions of the Tax Code covering transactions related to the sale/purchase
21 of denatured and undenatured bioethanol intended for motor fuel use. In addition, review
22 existing levels of specific tax on petroleum products, and re-align to consider the gasohol
23 blend vis-à-vis other petroleum products;

24 (3) identify suitable incentives to encourage investments in domestic production of
25 bioethanol fuel and other biofuels and cause the petroleum companies operating in the
26 Philippines to blend and retail ethanol-gasoline blended fuel and other biofuels-blended
27 gasoline; and

1 (4) through the BIR and the BOC, impose fines and penalties to any person or juridical
2 entity committing the prohibited act under Section 11(a) of this Act and coordinate with the
3 DOE on enforcement of bioethanol fuel and gasohol specifications and standards.

4 (b) The DOST and the DA shall coordinate in identifying and developing viable
5 feedstock for the production of bioethanol fuel such as cassava, sweet sorghum, sugarcane,
6 sugar syrups, molasses and cellulose materials, and viable feedstock for the production of other
7 biofuels.

8 (c) The DOST through the PCIERD shall develop and implement a R&D program
9 supporting a sustainable improvement in bioethanol fuel and other biofuels production and
10 utilization technology. It shall also publish and showcase related technologies developed
11 locally and abroad.

12 (d) The DA through its relevant agencies shall:

13 (1) within five months from the effectivity of this Act, develop a national program for
14 the production of crops for use as feedstock including but not limited to sugarcane, cassava,
15 sweet sorghum and corn to ensure availability of feedstock for production of bioethanol for
16 motor fuel;

17 (2) within five months from the effectivity of this Act, develop a national program for
18 the production of crops for use as feedstock including, but not limited to, coconut and
19 jatropha to ensure availability of feedstock for production of biofuels for motor fuel;

20 (3) ensure increased productivity and sustainable supply of bioethanol feedstock. It
21 shall institute a program, which would guarantee sufficient and reliable supply of feedstock for
22 fuel ethanol production. Towards this end, the Secretary of the DA shall instruct the
23 Administrator of the SRA and other DA-attached agencies within their authority to develop
24 and implement policies supporting the National Biofuels Development Program; and

25 (4) publish information on available and suitable areas for cultivation and production of
26 such crops.

27 (e) The LGUs shall assist the DOE in monitoring the distribution, sale and use of
28 bioethanol fuel and gasohol.

29 SEC. 11. *Prohibited Acts.* – The following acts shall be prohibited:

1 (a) Diversion of bioethanol, whether locally produced or imported, to non-fuel uses;

2 (b) Distribution, sale and use of gasoline without bioethanol blend and gasohol with
3 bioethanol concentration level not complying with the requirement under Section 5 of this
4 Act;

5 (c) Distribution, sale and use of automotive fuel containing harmful additives and/or
6 oxygenates at such concentration exceeding the limits to be determined by the NBB;

7 (d) Noncompliance with the established standards and guidelines of the DOE; and

8 (e) Inappropriate and fallacious labeling of bioethanol and gasohol products.

9 SEC. 12. *Penal Provisions.* – Any person or entity that commits any of the prohibited
10 acts or any provision of this Act and its IRR shall be subject to the following sanctions:

11 (a) Fine of not less than Fifty thousand pesos (P50,000.00) but not more than One
12 hundred thousand pesos (P100,000.00) per day of violation;

13 (b) Confiscation of gasoline not complying with the specifications provided for under
14 Sections 4 and 5 hereof and corresponding issuances of the DOE; and

15 (c) Closure of distribution facilities for nonpayment of fines and blatant disregard of
16 DOE orders.

17 SEC. 13. *Appropriations.* – The fund necessary for the initial implementation of this Act
18 shall be charged against the current appropriations of the DOE. Thereafter, the fund
19 necessary to carry out the provisions of this Act shall be included in the annual General
20 Appropriations Act.

21 SEC. 14. *Implementing Rules and Regulations.* – The DOE, through the NBDB, in
22 consultation with the Committees on Energy of the Senate and the House of Representatives,
23 the stakeholders and other agencies concerned, shall, within five months after the effectivity of
24 this Act, promulgate the IRR of this Act: *Provided,* That the draft of the IRR shall be posted
25 in the DOE Website for one month prior to the approval by the Congressional Biofuels
26 Development Oversight Committee: *Provided, further,* That the approved IRR shall be
27 published in at least two newspapers of general circulation.

28 SEC. 15. *Congressional Oversight Committee on Biofuels Development.* – In order to
29 monitor the implementation of this Act, a Congressional Oversight Committee on Biofuels

1 Development is hereby created to be composed of seven (7) members from the Senate and
2 seven (7) members from the House of Representatives, to be designated respectively by the
3 President of the Senate and the Speaker of the House of Representatives, who shall endeavor
4 to have the various sectors and regions of the country represented.

5 The Chairmen of the Committee on Energy of the Senate and the House of
6 Representatives shall be co-chairmen of the Oversight Committee.

7 SEC. 16. *Repealing Clause.* – All laws, presidential decrees, executive orders, presidential
8 proclamations, rules and regulations or parts thereof inconsistent with the provisions of this
9 Act are hereby repealed or modified accordingly.

10 SEC. 17. *Separability Clause.* – If any provision of this Act is declared unconstitutional,
11 the same shall not affect the validity and effectivity of the other provisions hereof.

12 SEC. 18. *Effectivity.* – This Act shall take effect upon its approval and publication in at
13 least two newspapers of general circulation.

14 Approved,