


FOURTEENTH CONGRESS OF THE REPUBLIC }
 OF THE PHILIPPINES }
First Regular Session }

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SENATE
 S. B. No. 1721

RECEIVED BY: 

Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

The weakest link in the country's innovation system is the process of transferring and commercializing the results of research and development (R&D) particularly those undertaken by government-funded R&D institutions. The reasons for this are many. For one, the *technology transfer* process requires a conducive policy environment with strong support from public and private sectors.

In many developed countries, technology transfer and innovation policy are very much at the center of their policies on economic development. Thus, the strong productivity growth recorded in the United States, Japan, European countries and recently India was underpinned by technological innovations that emanated from high-quality scientific research institutions. Their innovation activities are supported by sufficient investment in research and development, highly capacitated research institutions, strong university-industry research collaboration, promotion of entrepreneurship and economic activities across broad spectrum of society, and well defined intellectual property rights regime.

Comparatively, the Philippines has yet to achieve high level of technological readiness and innovative capacity that typify well-developed economies and those entering the developed phase like India. The 2006-2007 Global Competitiveness Report places the Philippines in the 71st ranking out of 125 countries in terms of technological readiness or ability to adopt technologies from home or abroad to enhance the productivity of its industries. This is in contrast with the high rankings of our Asian neighbors like Singapore (2nd), Hong Kong (13th), Korea (18th), Japan (19th), Malaysia (28th) and Thailand (48th). In the area of innovation or the ability to produce brand new technologies, the country ranks a dismal 79th. Compared to emerging innovation powerhouses in the ASEAN like Singapore (9th), Malaysia (21st), Indonesia (37th) and Thailand (33rd), the Philippines clearly has a lot of catching up to do in terms of innovation. It has to become responsive to opportunities of knowledge-based economies characterized by growing innovation and heightened dependence on intellectual property assets as a key source of economic value and competitive advantage.

Worldwide, there is a growing recognition of the importance of intellectual property (IP) in encouraging innovation, diffusing scientific and technical knowledge, and in enhancing market entry and firm creation. The experiences of other countries show that in order to enhance the impact of publicly-funded R&D on the economy, the protection of intellectual property

assets arising from R&D projects funded fully or in part by national government agencies have encouraged the commercialization of publicly-funded R&D results bringing about significant private and social benefits. IP rights, of which patents, industrial designs, copyrights and trademarks are among the most widespread, reward investment in R&D and innovation by granting inventors and creators market power over competitors.


In many countries, governments have recognized that placing the outputs of publicly funded research in the public domain is not sufficient to generate social and economic benefits from R&D. Granting R&D institutions the rights to IP generated with public funds can lead to better use of research results that might otherwise remain unexploited as well as to the creation of academic spin-offs or start-ups that create employment. For R&D institutions, the benefits may include increased licensing and royalty revenues, more contract research and greater cross-fertilization between entrepreneurial faculty and industry. Equally important, however, are the intangible benefits to an institution's reputation and to the quality of its research that closer interaction with the private sector can generate.

The challenge, therefore, is to address the basic weakness in our technology transfer process, and to provide the enabling mechanism to facilitate the flow of knowledge and technologies to industry, i.e., a coherent policy on which to base the negotiation of terms for the transfer of technologies between public and private sectors.

This proposed legislation hopes to presage a stronger and closer private-public collaboration or closer relationship to industry; provide the framework that will promote coordination, integration and harmonization of all technology transfer efforts by various agencies in the country; resolve issues on technology ownership, and provide the institutional mechanism for developing a creative technology transfer capability.

It underscores the importance of technology transfer as an engine to move the country forward and establishes the scheme that will make possible the emergence of the Philippines as another ASEAN innovation powerhouse.


Endorsed by the Departments of Science and Technology, Agriculture, Environment and Natural Resources, Health, Trade and Industry, and Interior and Local Governments, Commission on Higher Education, and Intellectual Property Philippines, this bill is recommended for immediate enactment.


EDGARDO J. ANGARA
Senator

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SENATE

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Introduced by SENATOR EDGARDO J. ANGARA

**AN ACT PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM
FOR THE OWNERSHIP, MANAGEMENT, USE, AND
COMMERCIALIZATION OF INTELLECTUAL PROPERTY
GENERATED FROM RESEARCH AND DEVELOPMENT FUNDED BY
GOVERNMENT.**

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

ARTICLE I

**TITLE, DECLARATION OF POLICY, OBJECTIVES
AND SCOPE OF PRACTICE**

SECTION 1. *Short Title.* – This Act shall be known as the
“Technology Transfer Act of 2007.”

SECTION 2. *Declaration of Policy.* The State fully recognizes that
science and technology are essential for national development and progress.
It shall, therefore, give priority to research and development, invention,
innovation, and their utilization. It shall also encourage the widest and
systematic participation of all stakeholders in policy making related to
science and technology, and in the generation, transfer and utilization of
intellectual property.

To harness the opportunities brought by globalization, the State shall
facilitate the transfer and promote the utilization of intellectual property
from all sources for the national benefit. It shall protect and secure the
exclusive rights of scientists, inventors, and other gifted citizens to their
intellectual property particularly when beneficial to the people.

SECTION 3. *Objective.* This Act aims to promote more effective
use, management, and commercialization of intellectual property resulting
from research and development funded by government to the benefit of
national economy and taxpayers and consistent with the needs of government
to disseminate, diffuse and transfer economically relevant knowledge and
technologies.

SECTION 4. *Definition of Terms.* For purposes of this Act,

- a) ***“Intellectual property (IP)”*** is the term used to describe intangible assets resulting from the creative work of an individual or organization. They form the basis of legal rights as defined in Republic Act 8293 (Intellectual Property Code of the Philippines). These legal rights provide protection to the creator of the original material. They can be traded in the same way as physical assets and can be extremely valuable.
- b) ***“Intellectual Property Rights (IPR)”*** refer to the entitlement and enjoyment of the attributes of ownership over intellectual properties as defined by law.
- c) ***“Government Funding Agency (GFA)”*** refers to any executive agency that provides research grants from government appropriations including government-managed Official Development Assistance (ODA) funds.
- d) ***“Research and development institute (RDI)”*** refers to a public or private Filipino organization, association, partnership, joint venture, or a corporation that performs research funded by GFAs.
- e) ***“Research Funding Agreement”*** refers to a contract entered into by and among the GFA, RDI, and researcher. It governs ownership of IP, duties of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization, establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization.
- f) ***“Spin off firm”*** refers to an independent business technology taker created through the initiative of the researcher-employee who generated the technology.
- g) ***“Technology”*** refers to knowledge and know-how, skills, products, processes, and/or practices.
- h) ***“Technology transfer”*** refers to the process by which one party gains access to technology of another party, and successfully learns it and applies it for productive ends.

SECTION 5. *Scope of Practice.* This Act shall cover the following:

- a) All R&D activities carried out by research and development institutions on behalf of the Philippine Government;
- b) All intellectual properties derived from R&D activities funded by government that have commercial potential;
- c) All government agencies that fund R&D activities; and
- d) All R&D institutions including higher education institutions that implement government funded R&D.

ARTICLE II

INTELLECTUAL PROPERTY OWNERSHIP

SECTION 6. *Ownership of Intellectual Property* generated from research funded by GFA shall, in general, be vested in the RDI that actually performed the research, unless there are valid and compelling reasons to the contrary (as may be defined in Chapter X, Part 1 of RA 8293- Intellectual Property Code, and the mandated functions of the GFA). This is in recognition of the fact that RDIs are in a better position to identify the potential for economic utilization of intellectual property, subject to their having the right skills and management capability.

It should also be recognized that the GFAs need not own the IP generated in the research they fund to be able to use it for Government purposes. The RDI owning the IP can license it for the use of the GFA.

In case of joint funding, the RDIs shall own the IPs but R&D funding agreements should consider the policies of contracting parties whether local private or international parties.

ARTICLE III

RIGHTS AND RESPONSIBILITIES

SECTION 7. *Rights and Responsibilities of Government Funding Agency.* Under this Act the GFA shall:

- a) protect government interest in the IP generated from the R&D that it funded through suitable provisions in the R&D funding agreement;
- b) monitor efforts and effectiveness of the RDI in securing IP protection and pursuing IP commercialization, as well as provide alternative solutions in case of shortfall in RDI's performance in utilizing and commercializing the IP;
- c) ensure adequate freedom to use the IP for its policy and business needs including its use for further research to expand the knowledge frontier, and requirements for publication of information as appropriate in accordance with government policy; and
- d) allow sharing of revenues from IP commercialization in a way that is not onerous to discourage commercialization.

SECTION 8. *Rights and Responsibilities of the Research and Development Institutes.* The following are the rights and responsibilities of the RDIs that availed of research funds from GFAs:

- a) identify, protect, and manage the IP generated from R&D funded by GFA and pursue commercial exploitation diligently as a required performance stipulated in the R&D funding agreement;

- b) provide a means for addressing any shortfall of its performance in utilizing and commercializing the IP;
- c) notify GFA of all patent applications and assignments made;
- d) report to GFA progress of IP commercialization efforts and of all licenses granted;
- e) keep account of revenues and payments to the GFA if revenue sharing is provided in the R&D funding agreement;
- f) ensure that they have access to the skills and management capability to effectively perform their responsibilities of owning, managing, and exploiting the IP. Smaller RDIs that may need external advice are encouraged to pool and share resources; and
- g) accord their staff with incentives consistent with existing laws to sustain efforts in identifying valuable IP and in pursuing IP commercialization.

ARTICLE IV

MANAGEMENT OF IPs FROM R&D PERFORMED BY GOVERNMENT RDIs THROUGH THEIR OWN BUDGET

SECTION 9. *Responsibilities of RDI Performing R&D with their Own Budget.* All government RDIs performing R&D through annual budget provided by the government shall submit intellectual property management report to the national government agencies that they are attached to. The report shall contain plans for securing protection on IPs with commercial promise, the technology transfer approaches to be pursued, and the progress of on going commercialization of technologies derived from R&D funded from their own budget

SECTION 10. *Responsibilities of the Concerned National Government Agencies.* Concerned government agencies shall monitor efforts and effectiveness of their RDIs in securing IP protection and pursuing IP commercialization, based on the annual statement of plans and actions of managing the IPs submitted by the RDIs.

ARTICLE V

REVENUE SHARING

SECTION 11. *Revenue Sharing.* All revenues from the commercialization of IPs from R&D funded by GFA shall accrue to the RDI, unless there is a revenue sharing provision in the R&D funding agreement. In all cases, GFA and RDI shall negotiate whether a revenue sharing scheme will be included as entitlement clauses in the R&D funding agreement.

Sharing of revenues between RDI and researcher shall be governed by an employer-employee contract.

ARTICLE VI

ESTABLISHMENT OF SPIN-OFF FIRMS

SECTION 12. *Commercialization by Researchers/Technology Generators.* On meritorious cases, an RDI shall allow its researcher-employee to commercialize the IP generated from R&D funded by GFA through the creation of a spin-off firm provided that its researcher- employee takes a leave of absence for a period not exceeding two years.

The RDIs shall properly manage any possible conflict of interest by issuing/establishing appropriate guidelines for its researcher/employee. Mechanisms for handling conflicts are the following:

- a) RDIs shall ensure that its staff are made fully accountable for their researches and that commercial objectives do not divert the staff from carrying out the RDI's core research program;
- b) Heads of RDI should ensure that where a member of the staff has a financial interest in a spin-off company (e.g. shareholding, personal directorship, or consultancy agreement), this individual should not also act as an RDI contact with that company on day-to-day matters;
- c) Where staffs are nominated as non-executive directors to the board of a spin-off company in which the RDI or its sponsor holds an equity stake, they should have a clear duty to ensure that the RDI's interests are not compromised by their role; and
- d) RDIs should take steps to ensure that collaborative undertaking with a spin-off company is governed by a formal agreement.

ARTICLE VII

COMPULSORY LICENSING

SECTION 13. *Applicability of Compulsory Licensing.* This law shall adopt the grounds, terms and conditions of Chapter X (Compulsory Licensing) Part I of RA 8293, Intellectual Property Code of the Philippines on the granting of license to exploit a protected IP, even without the agreement of the IP owner, in favor of any person who has shown his capability to exploit the IP.

ARTICLE VIII

USE OF INCOME FROM COMMERCIALIZATION OF IP ASSETS

SECTION 14. *Use of Income* – Public RDIs undertaking technology transfer shall be vested with the authority to use the income derived from commercialization of IP generated from R&D funded by GFAs. Income from commercialization shall be used to compensate the researcher-employee; and to fund R&D, S&T capability building, and technology transfer activities including the establishment and management of technology licensing offices.

All income from IP commercialization shall be deposited in a revolving fund established by the RDI and shall be exempted from the duty of remitting such income to the Bureau of Treasury. The revolving fund shall be subjected to regular auditing of the Commission on Audit.

ARTICLE IX

INSTITUTIONAL MECHANISM

SECTION 15. *Establishment of Technology Information Access Facility*. The Department of Science and Technology (DOST) shall establish a common access facility for all technologies generated from R&D funded by GFAs and those generated by RDIs through their own budget. All RDIs shall contribute to this Technology Information Access Facility.

SECTION 16. *Development of Internal IP Policies and Establishment of technology licensing offices (TLOs) and/or technology business development offices* - All public RDIs with substantial R&D capacity involved in technology transfer activities are encouraged to establish their own TLOs in whatever form they may deem appropriate and develop their own IP policies in accordance/in support with the policies of the Intellectual Property Philippines.

ARTICLE X

MISCELLANEOUS, TRANSITORY, AND FINAL PROVISIONS

SECTION 17. *Funding*. The activities and operational expenses related to the implementation of this Act shall be funded from the budget appropriations of GFAs and RDIs.

SECTION 18. *Periodic review*. Every three (3) years from the effectivity of this Act, an independent review panel to be appointed by the President shall review the policies and programs on technology transfer under this Act and shall recommend appropriate measures to the President and to both Houses of Congress.

SECTION 19. *Implementing Rules and Regulations.* The Department of Science and Technology, in collaboration with Intellectual Property Philippines, shall lead GFAs in formulating the IRR for the effective implementation of this Act. The DOST Secretary shall chair the drafting committee. The IRR shall be issued within 90 days after the effectivity of this Act. Copies of the IRR shall be submitted to the committees on Science and Technology of both Houses of Congress within (30) days after its promulgation, as well as to other appropriate agencies as may be required by law.

SECTION 20. *Repealing Clause.* All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or part thereof which may be contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 21. *Separability Clause.* If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 22. *Effectivity.* This Act shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

Approved,