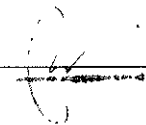


FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
OFFICE OF THE SECRETARY

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SENATE
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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The series of oil price hikes has led to public clamor for the review of Republic Act No. 8479, otherwise known as the Downstream Oil Industry Deregulation Law of 1998. Upon the directive of President Gloria Macapagal Arroyo, the Department of Energy created an Independent Review Committee (IRC) consisting of professionals from the private sector who are respected in their fields, to review and assess whether the Oil Deregulation Law has been effective and whether it has attained its goals under the prevailing economic circumstances and conditions in the country.

Among the findings of the IRC, effective enforcement of the law is the key issue. The reported malpractices and illegal activities, such as substandard service stations and petroleum product smuggling demoralize legitimate investors. It is in this area where it is believed most of the problems arise.

Deregulation of the oil industry does not necessarily mean absence of any form of government intervention. It is consistent with the government's mandate to supervise the industry and regulate those aspects where market forces may not operate satisfactorily and thus more active intervention may be justified to ensure a truly competitive market, under a regime of fair prices, and adequate and continuous supply of environmentally clean and high-quality petroleum products.

The IRC finds that jurisdiction over the oil industry is spread out to many government agencies under Executive Order No. 377 (Providing the Institutional Framework for the Administration of the Deregulated Downstream Oil Industry), which makes coordination and enforcement very difficult, with each agency trying to protect one's turf.

Thus, enforcement of laws, rules and regulations is one of the critical issues in monitoring the downstream sector particularly in the retailing of LPG and Liquid Fuels. Removing certain powers from the DOE, under Republic Act No. 8479 has led to the proliferation of illegal, unsafe, unfair practices in the LPG and liquid fuel (“botebote”) sectors of the oil industry, especially in the retailing sector.

Most of the players favor reinstatement and even strengthening of the DOE’s authority to register and issue certifications for qualified industry participants so that the DOE can effectively enforce compliance with rules and regulations on product quality, facility standards, and safety.

This bill, therefore, seeks to provide definitive rules and regulations to restore the DOE’s authority and police power to suspend operations and revoke licenses of violators and erring players in the industry in the context of a deregulated environment.¹²

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MIRIAM DEFENSOR SANTIAGO

¹ As a result of a public hearing and consultations during the 13th Congress, this is the DOE-proposed substitute bill that seeks to amend Republic Act No. 8479.

² This bill was originally filed during the Fourteenth Congress, First Regular session.

1 (A) CERTIFICATE OF COMPLIANCE/STANDARD COMPLIANCE
2 CERTIFICATE - THE COC/SCC PROVIDED UNDER SECTION 5 J HEREOF SHALL
3 BE A MANDATORY REQUIREMENT FOR THE GRANT OR RENEWAL OF ANY
4 LOCAL GOVERNMENT LICENSE OR PERMIT (LE. BUSINESS/MAYOR'S
5 PERMIT) TO ENGAGE IN ANY ACTIVITY IN THE DOWNSTREAM OIL
6 INDUSTRY. NO BUSINESS PERMIT SHALL BE ISSUED OR RENEWED
7 WITHOUT FIRST SECURING COC/SCC FROM THE DOE. THE COC/SCC SHALL
8 INDICATE THAT THE PERSON/ENTITY APPLYING THEREFOR HAS COMPLIED
9 WITH THE SUBMISSION OF ALL INFORMATION REQUIRED UNDER
10 PERTINENT DOE CIRCULARS AND GUIDELINES AND SHALL STATE THAT
11 THE FACILITIES OF SAID PERSON/ENTITY WAS SUBJECTED TO AND PASSED
12 THE INSPECTION, BACKGROUND INVESTIGATION AND EVALUATION OF
13 EQUIPMENT, PRODUCTS AND FACILITIES TO ENSURE COMPLIANCE WITH
14 STANDARDS ON QUALITY, HEALTH, SAFETY AND ENVIRONMENTAL
15 PROTECTION. THE SCC FOR PERSON/ENTITY INVOLVED IN THE RETAILING
16 OF LPG SHALL INCLUDE THE SPECIFIC BRAND/S A RETAILER IS ALLOWED
17 TO SELL AS PROVIDED FOR IN THE CERTIFICATION SUBMITTED BY THE
18 BRAND OWNERS TO THE DOE.

19 THE DOE SHALL NOT ISSUE OR RENEW ANY COC/SCC IF, BASED ON
20 ITS RECORDS, THE APPLICANT IS SUBJECT OF A COMPLAINT OR CASE
21 FILED FOR NON-COMPLIANCE OF THE PROVISIONS OF THIS ACT AND
22 RULES AND REGULATIONS ISSUED BY THE DOE IN RELATION THERETO,
23 UNLESS SUCH COMPLAINT OR CASE HAS BEEN DISMISSED OF
24 COMPLETELY RESOLVED THROUGH THE PAYMENT OF THE
25 CORRESPONDING ADMINISTRATIVE FINES OR PENALTIES, AMONG
26 OTHERS, PROVIDED, FURTHER, THAT THE DOE SHALL REVOKE A COC/SCC
27 AND DISQUALIFY FOR ISSUANCE OF NEW COC/SCC ANY PERSON/ENTITY
28 FOUND TO HAVE COMMITTED THE SAME VIOLATION AT LEAST THREE (3)
29 TIMES WITHIN A PERIOD OF TWELVE (12) SUCCEEDING MONTHS,

1 REGARDLESS OF THE PAYMENT OF THE CORRESPONDING
2 ADMINISTRATIVE FINE OR PENALTY FOR EACH VIOLATION.

3 THE COC SHALL BE VALID FOR FIVE (5) YEARS AND THE SCC SHALL
4 BE VALID FOR ONE (1) YEAR FROM THE DATE OF ISSUANCE THEREOF,
5 UNLESS SOONER REVOKED OR SUSPENDED. THE REVOCATION OR
6 SUSPENSION OF A COC/SCC SHALL BE A GROUND FOR THE REVOCATION
7 AND/OR SUSPENSION BY THE LGU CONCERNED OF THE PERMIT AND
8 OPERATION OF ERRING PERSON/ENTITY.

9 (B) *MONITORING AND STANDARDS COMPLIANCE INSPECTION* - THE
10 DOE, BY ITSELF OR IN PARTNERSHIP WITH OTHER CONCERNED
11 GOVERNMENT AGENCIES, SHALL CONDUCT REGULAR MONITORING AND
12 INSPECTION OF PERSON/ENTITY INVOLVED IN THE DOWNSTREAM OIL
13 ACTIVITIES TO ENSURE THAT CLEAN, ENVIRONMENTALLY-SAFE AND
14 WORKER-BENIGN TECHNOLOGIES ARE APPLIED AND TO ENSURE
15 CONFORMITY WITH QUALITY AND SAFETY STANDARDS AND OTHER
16 MANDATORY REQUIREMENTS OF THE LAW. THE DOE SHALL NOT ISSUE
17 COC/SCC UNLESS IT IS SHOWN UPON PROPER CONDUCT OF STANDARD
18 COMPLIANCE INSPECTION, THAT THE PERSON/ENTITY ENGAGED IN THE
19 DOWNSTREAM OIL ACTIVITIES HAS COMPLIED WITH THE PROVISIONS OF
20 THIS ACT, THE PNS ON PETROLEUM PRODUCTS AND FACILITIES AND SUCH
21 OTHER RULES AND REGULATIONS AS MAY BE PRESCRIBED BY THE DOE.

22 SPECIFIC TO THE LPG SECTOR, THE DOE SHALL CONFISCATE
23 CYLINDERS FOUND TO BE IN VIOLATION OF RULES AND REGULATIONS ON
24 SAFETY, MEASUREMENT OR VOLUME STANDARDS, MARKINGS AND
25 RELATED MATTERS (I.E. UNDERFILLED, UNBRANDED, POSSESSION OF
26 TAMPERED, ALTERED OR MODIFIED LPG CYLINDERS, AND THE LIKE) AND
27 SHALL FILE NECESSARY ADMINISTRATIVE AND/OR CRIMINAL CHARGES IN
28 COOPERATION WITH CONCERNED GOVERNMENT AGENCIES. THE DOE
29 SHALL FORMULATE RULES, IN CONSULTATION WITH INDUSTRY

1 PARTICIPANTS, FOR THE DISPOSITION OF CONFISCATED, SEIZED AND
2 IMPOUNDED LPG CYLINDERS.

3 THE DOE SHALL REQUIRE PERSON/ENTITY ENGAGED IN THE
4 DOWNSTREAM OIL ACTIVITIES TO REGULARLY SUBMIT INFORMATION
5 SUCH AS, BUT NOT LIMITED TO, NATURE OF BUSINESS, TRADE
6 NAME/BRAND NAME OWNERS, LIST AND ADDRESS OR LOCATION OF
7 FACILITIES AND EQUIPMENT AND SUCH OTHER RELEVANT INFORMATION
8 AS MAY BE DETERMINED BY THE DOE. THE DOE SHALL ESTABLISH A
9 CENTRAL DATABASE WITH ONE (1) YEAR FROM EFFECTIVITY OF THIS ACT.
10 THE DOE SHALL MAINTAIN THE DATABASE AND UPDATE THE SAME ON A
11 QUARTERLY BASIS. THE DATABASE SHALL BE MADE AVAILABLE TO THE
12 PUBLIC UPON REQUEST, SUBJECT TO THE LIMITATIONS PROVIDED IN
13 SECTION 15 (G) OF THIS ACT AND THE APPROVAL OF THE DOE.

14 (C) *REPORTS AND DISCLOSURE TO DOE* - THE DOE SHALL HAVE THE
15 AUTHORITY TO REQUIRE ANY PERSON/ENTITY ENGAGED IN THE
16 DOWNSTREAM OIL ACTIVITIES TO SUBMIT WRITTEN, ELECTRONIC OR
17 OTHER FORM OF REPORTS OR DISCLOSURES, AS MAY DEEM REASONABLE
18 AND NECESSARY TO EFFECTIVELY PERFORM THEIR FUNCTIONS UNDER
19 THIS ACT. ANY PERSON/ENTITY WHO FAILS TO SUBMIT ANY SUCH REPORT
20 OR DISCLOSURE WITHIN THE PERIOD AND IN THE MANNER PRESCRIBED
21 BY THE DOE SHALL BE PENALIZED UNDER THIS ACT.

22 (D) *MONITORING OF DOWNSTREAM OIL INDUSTRY ACTIVITY-*

23 (I)(a)] The DOE shall monitor and publish daily international crude oil prices, as
24 well as follow the movements of domestic oil prices. FOR THIS PURPOSE, THE
25 GENERAL APPROPRIATIONS ACT (GAA) SHALL PROVIDE FOR THE DOE
26 SUCH FUNDS, BUDGET OR ALLOCATION FOR THE DOE'S SUBSCRIPTION TO
27 INTERNATIONAL OIL PRICE WIRE SERVICES. It shall likewise monitor the quality
28 of petroleum products and stop the operation of businesses involved in the sale of
29 petroleum products which do not comply with the national standards of quality that are

1 aligned with the international standards/protocols of quality. The Bureau of Product
2 Standards of the DTI, together with the Department of Environment and Natural
3 Resources (DENR), the DOE, the Department of Science and Technology (DOST),
4 representatives of the fuel and automotive industries and the consumers, shall set the
5 specifications for all types of fuel and fuel-related products to improve fuel composition
6 for increased efficiency and reduced emissions. The BPS shall also specify the allowable
7 content of additives in all types of fuels and fuel-related products.

8 (11) [(b)] The DOE shall monitor the refining and manufacturing processes of
9 local petroleum products to ensure that clean and safe (environment and worker-benign)
10 technologies are applied. This shall also apply to the process of marketing local and
11 imported petroleum products. FOR THIS PURPOSE, THE GAA SHALL FURTHER
12 PROVIDE FOR ADDITIONAL BUDGETARY SUPPORT TO THE DOE FOR THE
13 ACQUISITION AND MAINTENANCE OF THE APPROPRIATE MOBILE TESTING
14 FACILITIES AND EQUIPMENT.

15 (III) [(c)] The DOE shall maintain a periodic schedule of present and future total
16 industry inventory of petroleum products for the purpose of determining the level of
17 supply. To implement this, the importers, refiners, and marketers are hereby required to
18 submit monthly to the DOE their actual importations, local purchases, sales and/or
19 consumption, and inventory on a per crude/product basis.

20 (IV) [(d)] Any report from any person of an unreasonable rise in the prices of
21 petroleum products shall be immediately acted upon. For this purpose, the creation of the
22 DOE-DOJ Task Force is hereby mandated to determine within thirty (30) days the merits
23 of the report and initiate the necessary action warranted under the circumstance:
24 *Provided*, That nothing herein shall prevent the said task force from investigating and/or
25 filing the necessary complaint with the proper court or agency *motu proprio*.

26 Upon the effectivity of this Act, the Secretaries of Energy and Justice shall jointly
27 appoint the members of a committee who shall be tasked with the drafting of the rules
28 and guidelines to be adopted by the Task Force in the performance of its duty. These
29 guidelines shall ensure the efficiency, promptness, and effectiveness in the handling of its

1 cases. The Task Force shall be organized and its members appointed within one (1)
2 month from the effectivity of this Act.

3 (V) [(e)] In times of national emergency, when the public interest so requires, the
4 DOE may, during the emergency and under reasonable terms prescribed by it,
5 temporarily take over or direct the operation of any person or entity engaged in the
6 Industry.

7
8 SECTION 3. Section 15 of Republic Act No. 8479 is hereby amended to read as
9 follows:

10 Section 15. *Additional Powers of the DOE Secretary.* - In connection with the
11 enforcement of this Act, the DOE Secretary shall have the following powers:

12 (a) To gather and compile appropriate information concerning, and to investigate
13 from time to time the organization, business, conduct, practices, and management of any
14 person or entity in the Industry;

15 (b) To require, by general or special orders, persons or entities engaged in a
16 particular activity of the industry: (i) to file an annual or special report, or both in such
17 form as the Secretary may prescribe, or (ii) to answer specific questions in writing,
18 furnishing to the Secretary such information as he may require as to the organization,
19 business, conduct, practices, management, and relation to other corporations,
20 partnerships, and individuals of the respective persons or entities filing such reports or
21 answer. Such reports and or answer shall be filed with the Secretary under oath and
22 within such reasonable time as the Secretary may prescribe;

23 (c) Upon the direction of the President or either House of Congress, to investigate
24 and report the facts relating to any alleged violation of this Act by any person or
25 corporation;

26 (d) Upon the application of the Secretary of Justice, to investigate and make
27 recommendations for the readjustment of the business of any person or entity alleged to
28 be violating this Act in order that such person or entity may thereafter maintain his or its
29 organization, management, and conduct of business in accordance with law;

1 (e) [To recommend to the proper government agency the suspension or revocation
2 and termination of the business permit of an offender;] FOR ANY VIOLATION OR
3 NON-COMPLIANCE WITH THIS ACT OR SUCH RULES AND REGULATIONS
4 ISSUED BY THE DOE IN RELATION THERETO, TO IMPOSE AND COLLECT
5 ADMINISTRATIVE FINES AND PENALTIES WHICH SHALL RANGE FROM A
6 MINIMUM OF TEN THOUSAND PESOS (PHP 10,000.00) TO A MAXIMUM OF
7 FIVE HUNDRED THOUSAND PESOS (PHP 500,000.00) FOR EACH VIOLATION
8 OR NON-COMPLIANCE, REVOKE/SUSPEND A COC/SCC AND CAUSE
9 CORRESPONDING ACTION BY LGU ON THE SUSPENSION OR REVOCATION
10 AND TERMINATION OF THE BUSINESS PERMIT OR LICENSE OF AN
11 OFFENDER, PROVIDED THAT, THE ADMINISTRATIVE FINE OR PENALTY
12 THAT MAY BE IMPOSED BY THE DOE SHALL BE WITHOUT PREJUDICE TO
13 THE FILING OF ANY CRIMINAL ACTION, IF WARRANTED UNDER THE
14 CIRCUMSTANCES;

15 (f) Concomitant with the policy of ensuring a continuous, adequate and economic
16 supply of energy to exercise his powers and functions provided under Section 5 (c) of
17 Republic Act No. 7638;

18 (g) To make public from time to time such portions of the information obtained
19 by him hereunder as are in the public interest; and to make annual and special reports to
20 Congress and to submit therewith recommendations for additional legislation; and to
21 provide for the publication of his reports and decisions in such form and manner as may
22 be best adapted for public information and use: *Provided*, That the Secretary shall have
23 any authority to make public any trade secret or any commercial or financial information
24 which is obtained from any person or entity which is privileged or confidential, except
25 that the Secretary may disclose such information to officers and employees of appropriate
26 law enforcement agencies or to any officer or employee of any such law enforcement
27 agency upon the prior certification by an officer of any such law enforcement agency that
28 such information will be maintained in confidence and will be used only for official law
29 enforcement purposes; [and]

1 (h) Whenever a final order has been entered against any defendant in any suit
2 brought by the government to prevent and restrain any violation of the antitrust
3 provisions of this Act to make investigation, upon his initiative, of the manner in which
4 the decree has been or is being carried out, and upon the application of the Secretary of
5 Justice, it shall be his duty to make such investigation. He shall transmit to the Secretary
6 of Justice a report embodying his findings and recommendations as a result of any such
7 investigation, and the report shall be made public at the discretion of the Secretary; AND

8 (I) PERFORM SUCH OTHER POWERS AND FUNCTIONS AS MAY BE
9 NECESSARY IN FURTHERANCE OF THE OBJECTIVES OF THIS ACT.

10
11 SECTION 4. *Separability Clause.* - If any provision of this Act is held invalid or
12 unconstitutional, the remainder of the Act or the provision not otherwise affected shall
13 remain valid and subsisting.

14
15 SECTION 5. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after
16 its publication in at least two (2) newspapers of general circulation.

17
18 Approved.