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

SENATE

S. B. No. 3250

Introduced by Senator Sergio R. Osmeña III

EXPLANATORY NOTE

The Electric Power Industry Reform Act of 2001 or the EPIRA created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) with the principal purpose of managing the sale, disposition and privatization of the National Power Corporation (NPC) assets and IPP contracts with the greater objective of managing the NPC financial obligations in an optimal manner.

Ten (10) years thereafter, PSALM Corp. has privatized more than seventy percent (70%) of the NPC generation assets and IPP contracts, and has optimally liquidated US$5.62 Billion of the NPC financial obligations out of the sales proceeds of the privatized assets amounting to US$5.51 Billion as of the end of 2011 (excluding interest income from its placements). The outstanding financial obligations still stand at US$17.14 billion as of June 2011, broken down into US$8.49 billion debts and US$8.65 billion IPP obligations. The calculated Stranded Contract Costs for 2007 to 2010, and Stranded Debts for 2011 to 2026 are estimated to reach a total Php140.29 billion after deducting the Php200 billion NPC obligations assumed by the National Government and expected privatization proceeds. Extending the corporate life of PSALM by ten (10) years, or until 2036, will allow the Corporation to better manage its remaining liabilities and IPP contract obligations.

Despite the fact that there was privatization and National Government absorption, total financial obligations have not decreased significantly since the EPIRA was enacted due to the following factors:

- Continuous operations of NPC generating assets at a loss, which consequently resulted in new debts;

- Power rates/tariff not reflective of true cost of electricity;
- Commissioning of new IPPs in 2001-2003 and in 2006;
- Delay in privatization (2004) due to conditions precedent required to complete the sale process (e.g., resolution of plant-specific issues);
- Foreign exchange losses; and,
- Mismatch between the maturity profile of the financial obligations and the schedule of collection of the privatization proceeds.

The EPIRA provides that PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of the Act which shall be up to the year 2026. All outstanding NPC debts transferred to PSALM will mature by the year 2036 while the longest term for the NPC-IPP Contracts transferred to PSALM will end in 2031. After 2026, all outstanding debts and IPP contract costs will revert to and be assumed by the National Government, including the management of the remaining IPP contracts and/or their administration under the IPPA.

In the performance of its functions and for the attainment of its objectives, additional powers for the PSALM Corp. are being proposed, to wit:

- The power to reorganize, as it may deem appropriate, to effect economy and promote efficiency by right sizing the PSALM organization in proportion to the scale, scope and nature of its corporate programs and priorities. It is submitted that the exercise of the power to reorganize must be expressly granted/authorized by law, based on several CSC Rulings on the implementation of Government Reorganization.
- The power to reassign officials and employees in accordance with the changes in its existing functions shall provide the Corporation with the basis to implement job rotation which is the sequential or reciprocal movement of an employee from one government office to another or from one division to another within the same agency as a means of developing and enhancing the potentials of personnel by exposing them to the other work functions of the Corporation.

Consistent with the proposed power of the Corporation to reorganize, the President and CEO of PSALM Corp. shall also have the additional power to submit a reorganization plan to the Board for its approval, consistent with its mandate under the EPIRA, and to implement the said plan within six (6) months from approval of the Board thereof, subject to the guidelines and policies set by the Board. This is to expressly authorize the PSALM President and CEO to plan, secure the Board approval and implement the reorganization within a specified time period and in accordance with Board-approved policies and guidelines.

The implementation of any approved reorganization plan for PSALM Corp. will result in the displacement or separation of its employees from the service, hence, it is proposed that PSALM employees displaced or separated from the service shall be entitled to avail of the privileges provided under a separation plan and all other benefits in accordance with existing laws, rules and regulations and in no case shall there be any diminution of benefits under the separation plan until the full implementation of the approved Reorganization Plan. The proposed separation plan is consistent with what has been provided under the EPIRA to NPC and other government agencies affected by the electricity industry restructuring.

SERGIO OSMEÑA III
Senator

FIFTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES)
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S.B. No. 3250

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AN ACT EXTENDING THE LIFE OF, STRENGTHENING AND REORGANIZING THE POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9136, AND FOR OTHER PURPOSES

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

SECTION 1. Section 50, Chapter VI of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or EPIRA, is hereby amended to read as follows:

"SEC. 50. *Purpose and Objective, Domicile and Term of Existence* – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate, and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and standard contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of THIRTY FIVE (35) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government."

SECTION 2. Section 51(h), Chapter VI of the EPIRA is hereby amended to read as follows:

"SEC. 51. *Powers* – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

x x x

(h) To appoint or hire, transfer, remove and fix the compensation of its personnel IN ACCORDANCE WITH ITS FUNCTIONS AND APPLICABLE RULES AND REGULATIONS, AND TO REORGANIZE THE CORPORATION OR REASSIGN OFFICIALS AND EMPLOYEES, AS IT MAY DEEM PROPER: *Provided, however,* That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;"

SECTION 3. Section 53(g), Chapter VI, of the EPIRA is hereby amended and a new section, to be designated as Section 53(h), Chapter VI, is hereby inserted to read as follows:

"SEC. 53. *Powers of the President of PSALM Corp.* – The President of the PSALM Corp. shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over Board meetings.

The President of the PSALM Corp. shall be the Chief Executive Officer of the PSALM Corp. and shall have the following powers and duties:

x x x

(g) TO SUBMIT A REORGANIZATION PLAN TO THE BOARD FOR THE PSALM CORP. CONSISTENT WITH ITS MANDATE UNDER THIS ACT AND UPON APPROVAL THEREOF, TO IMPLEMENT THE SAID PLAN SUBJECT TO THE GUIDELINES AND POLICIES SET BY THE BOARD. THE PLAN SHALL BE IMPLEMENTED WITHIN SIX (6) MONTHS FROM THE BOARD'S APPROVAL; and

(H) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SECTION 4. Section 6, Chapter VIII, of the EPIRA is hereby amended to read as follows:

" SEC. 63 - *Separation Benefits of Officials and Employees of Affected Agencies.* – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, AND EMPLOYEES OF THE PSALM CORP. SEPARATED AS A RESULT OF THE IMPLEMENTATION OF THE APPROVED REORGANIZATION PLAN, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government, AND ALL OTHER BENEFITS IN ACCORDANCE WITH EXISTING LAWS, RULES OR REGULATIONS: *Provided, however,* That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization of NPC ASSETS, AND THE APPROVED REORGANIZATION PLAN FOR PSALM EMPLOYEES.

Displaced or separated personnel as a result of privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act".

With respect to SEPARATED employees OF THE NATIONAL GOVERNMENT, NPC OR PSALM CORP., the Government, through the Department of Labor and Employment, shall endeavor to implement retraining, job counseling, and job placement programs."

SECTION 5. *Separability Clause*. – If any part or section of this Act is declared unconstitutional, such declaration shall not affect in any manner other parts or sections of this Act.

SECTION 6. *Repealing Clause*. – The provisions of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" shall continue to have full force and effect except insofar as they are inconsistent with this Act.

SECTION 7. *Effectivity Clause*. – This Act shall take effect on the fifteenth day following its publication in at least two (2) national papers of general circulation.

Approved,