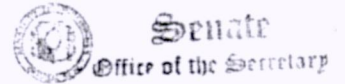


EIGHTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )



'19 JUL -2 P1:11

**SENATE**  
**S.B. No. 173**

RECEIVED BY

**Introduced by SEN. WIN GATCHALIAN**

**AN ACT**  
**PROVIDING FOR A NATIONAL POLICY**  
**AND FRAMEWORK FOR ENERGY ADVOCACY**

EXPLANATORY NOTE

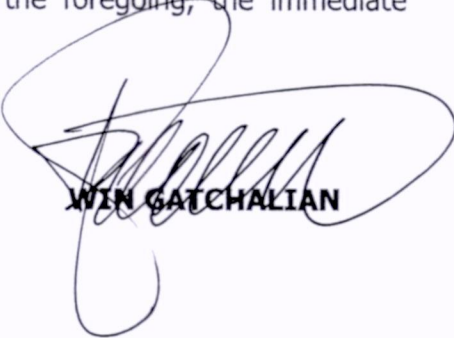
Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), heralded the transition from a vertically integrated monopoly to a competitive but regulated industry. One of the declared policies of the EPIRA is to *"establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market."*<sup>1</sup> This regulatory body is the Energy Regulatory Commission (ERC). It is responsible for setting performance standards and retail rates, allowing recovery of just and reasonable costs, and ensuring end-user protection.<sup>2</sup> These duties result to a delicate balancing act by the regulator in deciding its cases. However, the lack of representation for end-users, as a whole, is glaring in cases before the ERC.

Hence this measure. This bill creates an Energy Advocate Office (EAO) led by the Energy Advocate. The EAO acts as the independent end-user representative in all rate-setting, rule-making, and other energy related cases and proceedings before government agencies including judicial and quasi-judicial bodies. The creation of the EAO aims to attain what jurisdictions with an institutionalized energy advocate have: the postponement of utilities' rate increase applications, a decrease in the income of

<sup>1</sup> Section 2(j). Republic Act No. (RA) 9136. (2001).

<sup>2</sup> Id. at Section 43.

utilities, and lower electricity retail prices.<sup>3</sup> Given the foregoing, the immediate passage of this measure is sought.



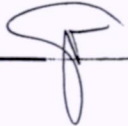
**WIN GATCHALIAN**

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<sup>3</sup> Fremeth, Adam; Holburn, Guy L.F.; Spiller, Pablo; "The impact of consumer advocates on regulatory policy in the electric utility sector" Public Choice. Vol. 161, No.1/2 (October 2014)

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**AN ACT  
PROVIDING FOR A NATIONAL POLICY  
AND FRAMEWORK FOR ENERGY ADVOCACY**

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

1 Section 1. *Short Title.* – This Act shall be referred to as the “Energy Advocate  
2 Act.”  
3

4 Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to  
5 recognize the right of energy end-users to reasonable rates, adequate and reliable  
6 services, and to transparent processes involving these rates and services. Towards  
7 this end, there is a need for institutionalized and independent end-user  
8 representation in rate-setting, rule-making, and other energy related cases and  
9 proceedings before government agencies including judicial and quasi-judicial bodies.  
10

11 Sec. 3. *The Energy Advocate Office (EAO).* – The EAO is hereby created  
12 which shall be an independent and autonomous office attached to the Department of  
13 Justice (DOJ) in accordance with Section 38(3), Chapter 7, Book IV of Executive  
14 Order No. 292, otherwise known as the Administrative Code of 1987, as amended.  
15

16 Sec. 4. *Powers and Functions.* - The EAO shall be the representative of all  
17 end-users in energy sector matters affecting the public interest before any  
18 department, commission, agency, or court. It shall independently discharge its



1 mandate towards the best interest of all end-users, ensuring least cost without  
2 compromising safety, reliability, and sufficient service. Towards this end, the EAO  
3 shall:

- 4 (1) Initiate, intervene, and represent all end-users, in the following:
  - 5 a. Rate-setting, rule-making, and other energy related cases, complaints,  
6 proceedings, and consultations before the Department of Energy  
7 (DOE), Energy Regulatory Commission (ERC), National Electrification  
8 Administration (NEA), Philippine Competition Commission (PCC), and  
9 other judicial and quasi-judicial bodies; and
  - 10 b. Actions before any trial or appellate court, including the Supreme  
11 Court, which involve the validity of any decision, memoranda, rule,  
12 regulation, circular, or order of the DOE, ERC, NEA, PCC, and other  
13 departments, commissions, and agencies insofar as these decisions  
14 and policy issuances affect energy rates and services;
- 15 (2) Monitor all issuances of the DOE, ERC, NEA, PCC, and other departments,  
16 commissions, and agencies insofar as these affect energy rates and services;
- 17 (3) Engage in regular information, education, and communication programs for all  
18 end-users on laws, rules, regulations, decisions, circulars, and orders that  
19 affect energy rates and services, including end-users rights and remedies;
- 20 (4) Be furnished or served, as the case may be, by departments, commissions,  
21 and agencies with all documents, notices, petitions, applications, complaints,  
22 answers, motions, and other pleadings in all energy related cases, complaints,  
23 proceedings, and consultations;
- 24 (5) Have the right to access, free of charge, all files, records, and documents in  
25 the DOE, ERC, NEA, PCC and other departments, commissions, and agencies  
26 pertaining to energy related cases, complaints, proceedings, and  
27 consultations: *Provided*, That the files, records, and documents do not pertain  
28 to the following:
  - 29 (a) Personnel information;
  - 30 (b) Confidential communications between commissioners, judges, or justices  
31 and general counsels on records relating to proceedings in which the EAO  
32 is a party to; or

1 (c) Confidential information declared as such by the ERC; and

2 (6) Be free of charge in its use of ordinary mail, registered mail, or courier service  
3 for the transmittal of official communications and papers directly connected  
4 with the conduct of its powers, functions, or exercise of administrative  
5 supervision over its personnel.

6 EAO lawyers shall have the authority to administer oaths in connection with  
7 the performance of their duty.

8  
9 *Sec. 5. The Energy Advocate and Deputy Energy Advocate.* – The Energy  
10 Advocate (EA) shall head the EAO, shall have the primary authority and  
11 responsibility for the effective exercise of its mandate and the discharge of its  
12 powers and functions, and shall be assisted by a Deputy EA. In case of temporary  
13 absence of the EA, the Deputy EA shall be designated as the Officer-in-Charge of the  
14 EAO.

15 The EA and Deputy EA shall be natural-born citizens of the Philippines, at  
16 least forty (40) years of age, with at least fifteen (15) years of practice in law, and  
17 with proven competence, integrity, probity, and independence: *Provided*, That the  
18 EA shall have at least six (6) years of practice in the field of energy, and the Deputy  
19 EA shall have at least four (4) years of practice in the field of energy. Both of them  
20 shall not be affiliated with any energy company, as member of the board, officer,  
21 employee, or consultant, at least one (1) year before their respective appointments.

22  
23 *Sec. 6. Appointment, Term, and Rank.* – The EA and Deputy EA shall be  
24 appointed by the President: *Provided*, That the appointment of the Deputy EA shall  
25 be upon the recommendation of the EA. They shall both serve for a term of six (6)  
26 years and may be reappointed: *Provided*, That for the first appointees, the EA and  
27 Deputy EA shall hold office until the end of term of the appointing President.

28 The EA and Deputy EA shall have the same rank, salaries, allowances, and  
29 retirement benefits as the Prosecutor General and Senior Deputy State Prosecutor of  
30 the National Prosecution Service respectively: *Provided*, That their retirement  
31 benefits shall be prorated in accordance with Section 21 of Republic Act No. 10071,  
32 otherwise known as the Prosecution Services Act.



1           Sec. 7. *Prohibitions.* – The EA and Deputy EA shall be prohibited from:

- 2           (1) Serving as a member of the board, officer, employee, or consultant of any  
3           energy company in the course of their respective terms of office: *Provided,*  
4           That this prohibition shall also apply to their family members up to the fourth  
5           degree of consanguinity or affinity;
- 6           (2) Having any interest, ownership, or stake in any energy company in the course  
7           of their respective terms of office: *Provided,* That this prohibition shall also  
8           apply to their family members up to the fourth degree of consanguinity or  
9           affinity;
- 10          (3) Representing any government agency, government – owned or – controlled  
11          corporation, or private company in any energy related case, proceeding, or  
12          consultation before any department, commission, agency, or court, in the  
13          course of one (1) year after the end of their respective terms of office; and
- 14          (4) Being members of a political party and committee, or engaging in any  
15          partisan political activity in the course of their respective terms of office.

16

17          Sec. 8. *Organizational Structure and Plantilla Positions.* – The EAO, upon  
18          approval of the DOJ, shall submit its organizational structure and plantilla positions  
19          to the Department of Budget and Management (DBM) not later than six (6) months  
20          from the effectivity of this Act: *Provided,* That the DBM shall approve the final  
21          organizational structure and plantilla positions of the ECAO not later than three (3)  
22          months from submission.

23          The EAO, upon approval of the DOJ, may request the DBM for any change in  
24          the organizational structure and plantilla positions after a comprehensive review  
25          resulting to a finding that any alteration will improve the discharge of the EAO's  
26          powers and functions: *Provided,* That the DBM shall render a decision on such  
27          request within three (3) months from submission.

28          The EAO shall have legal, technical, and administrative personnel in its  
29          organizational structure and staffing complement, and may hire consultants as  
30          expert witnesses or technical advisors as it finds necessary for the full and efficient  
31          discharge of its powers and functions. All employees and consultants shall be subject  
32          to civil service laws, rules, and regulations: *Provided,* That all employees shall be

1 subject to Republic Act No. 6758, otherwise known as the Salary Standardization  
2 Act.

3  
4       Sec. 9. *Removal and Vacancy.* – The EA and Deputy EA shall not be removed  
5 or suspended, except for cause provided by law. The President may remove the EA  
6 or the Deputy EA for malfeasance, misfeasance, or nonfeasance in office, or for any  
7 cause which renders any of them ineligible for appointment, incapable, or unfit to  
8 discharge the mandate, powers, and functions of the EAO.

9       In case of death, permanent incapacity, removal, or resignation of the  
10 incumbent EA or Deputy EA, the President may appoint or designate one, as the  
11 case may be, in an acting capacity until a new EA or Deputy EA has been appointed:  
12 *Provided,* That the new appointment shall only be for the unexpired term of the  
13 predecessor.

14  
15       Sec. 10. *Exemption from Fees and Costs of Suits.* – The EAO shall be exempt  
16 from payment of docket and other fees incidental to instituting an action in court  
17 and other quasi-judicial bodies, as an original proceeding or on appeal.

18  
19       Sec. 11. *Costs of Suit.* – The costs of the suit, attorney's fees, and contingent  
20 fees imposed upon adversarial parties of the EAO after a successful litigation shall be  
21 deposited in the National Treasury.

22  
23       Sec. 12. *Grant of Special Allowances.* – The EA, Deputy EA, service or division  
24 heads, and lawyers shall be granted special allowances in amounts to be determined  
25 by the DBM: *Provided,* That the grant of said special allowances shall not exceed one  
26 hundred percent (100%) of the basic salary of the EAO officials and lawyers:  
27 *Provided further,* That special allowances shall be paid from costs of suit, attorney's  
28 fees and contingent fees deposited in the National Treasury pursuant to Section 11  
29 of this Act: *Provided finally,* That whenever the funding source is insufficient, the  
30 special allowance shall be paid through the General Appropriations Act.

31



1           Sec. 13. *Appropriations.* – The amount needed for the initial implementation  
2 of this Act in the amount of two hundred million pesos (P200,000,000.00) shall be  
3 taken from the budget of the DOJ. Thereafter, such sums as may be necessary for  
4 its continued implementation shall be included in the annual General Appropriations  
5 Act.

6  
7           Sec. 14. *Amendatory Clause.* – Republic Act No. 7638, otherwise known as  
8 the Department of Energy Act of 1992, as amended, is hereby further amended.

9  
10          Sec. 15. *Implementing Rules and Regulations.* – Within ninety (90) calendar  
11 days from the approval of this Act, the DOJ, in consultation with the DBM,  
12 government energy agencies, and private energy stakeholders, shall adopt and issue  
13 the rules and regulations for the effective implementation of this Act.

14  
15          Sec. 16. *Congressional Oversight.* – The Joint Congressional Energy  
16 Commission shall exercise oversight powers over the implementation of this Act.

17  
18          Sec. 17. *Separability Clause.* – If any portion or provision of this Act is  
19 declared unconstitutional, the remainder of this Act or any provisions not affected  
20 thereby shall remain in force and effect.

21  
22          Sec. 18. *Repealing Clauses.* – Any law, presidential decree or issuance,  
23 executive order, letter of instruction, rule or regulation inconsistent with the  
24 provisions of this Act is hereby amended, modified, or repealed accordingly.

25  
26          Sec. 19. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after  
27 its complete publication in the Official Gazette or a newspaper of general circulation.

*Approved,*