

SENATE

S.B. NO. 901

Introduced by Senator John H. Osmeña

EXPLANATORY NOTE

The Philippines is endowed with abundant although seasonal rainfall. Rainfall occurs in areas where adequate elevation differences exist, thereby, making them good sites for hydroelectric power development.

The utilization and development of indigenous and replaceable energy resources, no matter how small, is an essential and imperative component to national survival and progress.

The State considers the private sector as the prime mover for economic growth. In this regard, private initiative is encouraged, hence, in most enterprises, deregulation and self-regulation of business activities have been generally adopted. (Exec. Order 226)

It is likewise the policy of the State to achieve self-reliance in the country's energy requirements primarily through the utilization of indigenous energy resources (PD 1086).

Based on the foregoing, it is incumbent upon the State to grant the private sector the most conducive and encouraging atmosphere for the development of small scale hydroelectric power plants or installations in appropriate or suitable sites in the country.

Moreover, in as much as this bill principally promotes the application of local technology in the utilization of indigenous energy resources by competent private entities, it shall give full meaning and substance to the following pertinent Constitutional provisions:

"Art. XIV.

Sec. 10. x x x It shall support indigenous, appropriate and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life.

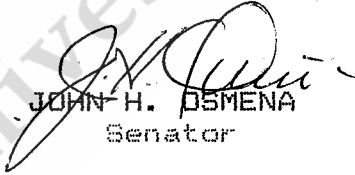
Sec. 11. The Congress may provide for incentives, including tax deductions, to encourage private participation in programs of basic and applied scientific research.

Sec. 12. The State shall regulate the transfer and promote the adaptation of technology

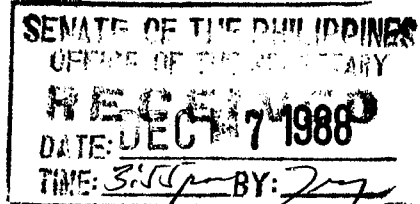
from all sources for the national benefit. It shall encourage widest participation of private groups, local governments, and community-based organizations in the generation and utilization of science and technology."

Finally, it is not the aim of this bill to give preference to power generation over other uses or appropriations of water. This bill recognizes the prior right of appropriators for domestic or drinking water uses or irrigation, provided that substantial economic benefits can be established. However, it cannot be denied that power generation may co-exist simultaneously with the other uses or appropriations of water. After using the energy of falling or running water the same water may be used for domestic, municipal or irrigation purposes.

In view of all the foregoing, the approval of this bill is earnestly sought and recommended.


JOHN H. OSMENA
Senator





S E N A T E

S.B. NO. 901

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AN ACT
PROVIDING FOR THE PRIVATIZATION OF MINI-HYDROELECTRIC
POWER DEVELOPMENT IN THE PHILIPPINES

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

1 Sec. 1. Title. - This Act shall be known as
2 the "The Mini-Hydroelectric Power Development Law".

3 Sec. 2. Declaration of Objectives. - The
4 objectives of the mini-hydroelectric power
5 development herein established are:

6 (1) To create an atmosphere of encouragement
7 in order that many small entrepreneurs will develop
8 potential sites for hydroelectric power existing in
9 their respective localities;

10 (2) To facilitate hydroelectric power
11 development by eliminating the numerous and
12 overlapping government agencies whose permits,
13 authorities, licenses, etc. are presently required
14 for such development, and to concentrate the
15 absolute and exclusive authority in one agency
16 which mandated to foster and facilitate the
17 development of small scale hydroelectric power.

18 (3) To apportion a part of the economic
19 benefits of the hydroelectric power potential to
20 the respective localities where they exist in the
21 nature of realty and franchise taxes;

1 (4) To grant incentives for the development
2 of indigenous energy resources;

3 (5) To provide a contractual framework
4 wherein some stability of conditions can be relied
5 upon for financing purposes.

6 Sec. 3. Definition of Terms. - As used in
7 his Act, the following terms shall be understood,
8 applied and construed as follows:

9 1) Mini-hydroelectric power development means
10 an electric plant or installation in one locality
11 with an energy production capacity of less than
12 10,000 KW.

13 2) Hydro-electric power means electric power
14 produced by using the energy of falling and/or
15 running water.

16 3) Domestic use refers to the utilization of
17 water for drinking, washing, bathing, cooking, or
18 other household needs, home gardens and watering of
19 lawns or domestic animals.

20 4) Municipal use refers to the utilization of
21 water for supplying the water requirements of the
22 community.

23 5) Irrigation use refers to the utilization
24 of water for producing agricultural crops.

25 Sec. 4. Agency in Charge. - The Energy
26 Regulatory Board is hereby designated as the sole
27 and exclusive entity to administer, endorse and
28 implement this Act.

29 Sec. 5. Powers and Duties of the Board. - The
30 Board shall be responsible for the regulation,
31 promotion and administration of applications for
32 mini-hydroelectric power development. Its powers



1 and duties, shall be as follows:

2 (1) Promulgate such rules and regulations as
3 may be necessary for the proper implementation and
4 administration of this Act;

5 (2) Process and approve applications for
6 mini-hydroelectric power development, imposing such
7 terms and conditions as it may deem necessary to
8 promote the objectives of this Act;

9 (3) Charge reasonable fees in connection with
10 the filing, processing, handling, approval of
11 applications for mini-hydroelectric power
12 development in all suitable sites in the country;

13 (4) After due hearing, decide controversies
14 concerning applicants and oppositors. Oppositors
15 shall be limited exclusively to individuals or
16 entities who adequately show interest and
17 capability for an alternate development of the
18 proposed site for mini-hydroelectric power
19 development or alternative use of the water source.
20 Preference is given to the utilization of the
21 proposed site for irrigation, domestic or drinking
22 water uses, provided, however, that substantially
23 equivalent economic benefits can be established.

24 Awardee must give a performance bond in the
25 amount equivalent to 25% of the total cost of
26 installation or the civil works executed in favor
27 of the Board to ensure completion of the
28 development.

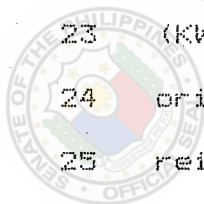
29 (5) Simplify and facilitate all systems and
30 procedures involved in mini-hydroelectric power
31 development such that permits, authorities,
32 licenses, etc. of other government agencies shall
33 no longer be required.

1 (6) Generally, exercise all the powers
2 necessary or incidental to attain the purposes of
3 this Act and other laws vesting additional powers
4 on the Board.

5 Sec. 6. Discharge and Relief from Permit,
6 License, Etc. - Awardee mini-hydroelectric
7 developer is hereby discharged and relieved from
8 securing any permit, license, authority, or the
9 like from other government agency or entity, such
10 as the National Water Resources Council or the
11 National Irrigation Authority, in order to begin
12 the construction of the mini-hydroelectric
13 project, laws, orders, decrees, etc., to the
14 contrary notwithstanding.

15 Sec. 7. Non-Exclusivity of Grant. - Development
16 of less than fifty per cent (50%) of the
17 hydroelectric power potential of the proposed site
18 is non-exclusive. The Board upon due application
19 and award, may grant the development of the site to
20 another qualified applicant who can satisfactorily
21 prove that he can produce at least twice the
22 existing capacity from the site in terms of pwer
23 (KWS.) and energy (kwhrs.) and provided, that the
24 original minihydroelectric power developer is
25 reimbursed of the value of his investment based on
26 the declared value of the development for real
27 estate tax purposes over the immediately preceding
28 three (3) years or in case the declared values over
29 said period differ, the average value thereof.

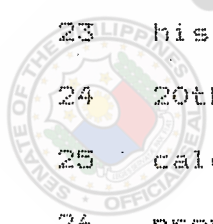
30 Sec. 8. Closure or Stoppage of Existing Water
31 Outlets, Etc. - In the event the proposed mini-
32 hydroelectric power development entails the closure
33 or stoppage of existing water outlets, passageway,



1 connections, conduits, apertures or the like from
 2 the water source, the mini-hydroelectric power
 3 developer is obliged, on its account or expense, to
 4 restore or re-engineer the said water outlets,
 5 passageways, connections, conduits, apertures,
 6 etc., in such manner that existing users or
 7 appropriators shall not be permanently deprived of
 8 their use or appropriation.

9 Sec. 9. Incentives to Persons Engaging In
 10 Mini-hydroelectric Power Development. - Any person
 11 or persons, natural or judicial, engaging in mini-
 12 hydroelectric power development shall be granted
 13 the following incentive benefits:

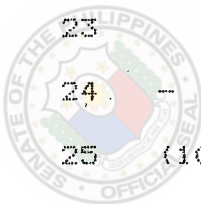
14 a) Special Franchise Tax Rates. - The
 15 franchise tax payable by all grantees of franchise
 16 to develop potential sites for hydro-electric power
 17 and to generate, transmit and sell electric power
 18 shall be 3% of their gross receipts received from
 19 sale of electric power and from transactions
 20 incident to the generation, transmission and sale
 21 of electric power. Such franchise tax shall be
 22 payable to the Commissioner of Internal Revenue or
 23 his duly authorized representative on or before the
 24 20th day of the month following the end of each
 25 calendar or fiscal quarter, and shall, any
 26 provision of the Local Tax Code, the Internal
 27 Revenue Code, or any other law to the contrary
 28 notwithstanding, be in lieu of all taxes and
 29 assessments of whatever nature imposed by the
 30 national or local authority on receipts, income and
 31 privilege of generation, distribution and sale of
 32 electric power, except as herein further provided.
 33 This "in lieu" provision is contractual in nature



1 and may not be impaired.

2 b) Duty and Tax Exemptions of equipment,
3 Machinery and Materials. - Within seven (7) years
4 from the date of franchise, importation of
5 machinery and equipment, materials and parts,
6 shipped with such machinery and equipment including
7 control and communication equipment shall not be
8 subject to tariff duties and value-added tax;
9 Provided, that said machinery, equipment, materials
10 and parts (1) are not manufactured domestically in
11 reasonable quantity and quality at reasonable
12 prices; (2) are actually, directly and exclusively
13 used in the construction and impounding of water,
14 transformation into energy, and transmission of
15 electric energy to the point of use; (3) are
16 covered by shipping documents in the name of duly
17 registered mini-hydroelectric power developer to
18 whom the shipment will be delivered direct by
19 customs authorities; and (4) the prior approval of
20 the Energy Regulatory Board was obtained before
21 the importation of equipment, machinery, materials
22 and parts.

23 c) Tax Credit on Domestic Capital Equipment.
24 - A tax credit equivalent to one hundred per cent
25 (100%) of the value of the value-added tax and
26 customs duties that would have been paid on the
27 machinery, equipment, and materials and parts had
28 these items been imported shall be given to
29 registered mini-hydroelectric power developer who
30 purchases machinery, equipment, materials and parts
31 from a domestic manufacturer; Provided, (1) that
32 the said machinery, equipment, materials and parts
34 are actually, directly and exclusively used by the



1 registered mini-hydroelectric power developer;
2 (2) the prior approval of the Board of Energy was
3 obtained by the local manufacturer; and (3) the
4 sale is made within seven (7) years from the date
5 of issuance of franchise.

6 d) Tax Credits For Withholding Tax on
7 Interest. - A tax credit for taxes withheld on
8 interest payments on foreign loans shall be given
9 a registered mini-hydroelectric power developer
10 when (1) no such credit is enjoyed by the lender-
11 remitter in his country and (2) the registered
12 mini-hydroelectric developer has assumed the
13 liability for payment of the tax due.

14 e) Special Realty Tax Rates on Equipment,
15 Machinery. Any provision of the real property tax
16 code or any other law to the contrary
17 notwithstanding, realty and other taxes on civil
18 works, equipment machinery and other improvements
19 of a registered mini-hydroelectric developer shall
20 not exceed 2.5% of their original cost.

21 f) Tax Allowance for Investments. - An
22 investment allowances to the extent of his actual
23 investment, paid in cash or property shall be
24 allowed as a deduction from his taxable income but
25 not to exceed ten per cent (10%) thereof: Provided,
26 That (1) the investment is made in subscription of
27 shares in the original and/or increased capital
28 stock of the enterprise within seven (7) years from
29 the date of registration with the Board; (2) the
30 shares are held for a period of not less than
31 three (3) years; and (3) the investment is
32 registered with the Board. If the shares are
33 disposed of within the said three (3) year period,

1 the taxpayer shall lose the benefit of his
2 deductions, his income tax liability shall be
3 recomputed, and he shall pay whatever additional
4 sum be due plus interest thereon, within thirty
5 (30) days from the date of disposition.

6 g) Capital Gains Tax Exemption. - Exemption
7 from income tax on the portion of the gains
8 realized from the sale, disposition, or transfer of
9 capital assets, as defined in Section thirty-four
10 of the National Internal Revenue Code, that
11 corresponds to the portion of the proceeds of the
12 sale that is invested in new issues of capital
13 stock of, or in the purchase of stock owned by
14 foreigners in pioneer enterprises, within six (6)
15 months from the date the gains were realized:
16 Provided, That (1) such sale, disposition or
17 transfer and the investment of the proceeds thereof
18 are registered with the Board and the Bureau of
19 Internal Revenue; and (2) the shares of stock
20 representing the investment are not disposed of,
21 transferred, assigned or conveyed for a period of,
22 three (3) years from the date the investment was
23 made. If said shares of stock are disposed of
24 within the said period of three (3) years, all
25 taxes due on the gains realized from the original
26 transfer, sale or disposition of the capital assets
27 shall immediately become due and payable.

28 Sec. 10. Disposition and Allotment of
29 Franchise Tax. - If the mini-hydroelectric power
30 development is located in a city, sixty per cent
31 (60%) of the franchise taxes collected shall accrue
32 to the city and forty per cent (40%) to the
33 national government.

1 If the mini-hydroelectric power development
 2 is located in a municipality, thirty per cent (30%)
 3 of the franchise taxes collected shall accrue to
 4 the municipality, thirty per cent (30%) to the
 5 province and forty per cent (40%) to the national
 6 government.

7 Sec. 11. Franchise. - The awardee mini-
 8 hydroelectric power developer herein shall hold the
 9 franchise, for a period of twenty-five (25) years,
 10 extendible for another twenty-five (25) years under
 12 the same original terms and conditions and
 13 that said awardee has complied faithfully with all
 14 terms and conditions of the award.

15 Sec. 12. Repealing Clause. All laws, decrees,
 16 orders, rules, circulars, as the "Water Code of the
 17 Philippines" (P.D. 1067) or the "National
 18 Irrigation Administration Act" (R.A. 3061, as
 19 amended), etc., which are inconsistent with any
 20 provisions of this Act are hereby repealed
 21 accordingly.

22 Sec. 13. Effectivity of this Act. -This Act
 23 shall take effect immediately upon its approval.

Approved,

gg/lmb.

