

SENATE

S.No. 901

INTRODUCED BY SENATOR OSMEÑA

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

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

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

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

5 a) to create an atmosphere of encouragement in order that many
6 small entrepreneurs will develop potential sites for hydroelectric
7 power existing in their respective localities.

8 b) to facilitate hydroelectric power development by eliminating
9 the numerous and overlapping government agencies whose permits,
10 authorities, licenses, etc. are presently required for such development,
11 and to concentrate the absolute and exclusive authority in one
12 agency which is mandated to foster and facilitate the development of

1 small scale hydroelectric power.

2 c) to apportion a part of the economic benefits of the hydroelec-
3 tric power potential to the respective localities where they exist in the
4 nature of realty and franchise taxes.

5 d) to grant incentives for the development of indigenous energy
6 resources.

7 e) to provide a contractual framework wherein some stability
8 of conditions can be relied upon for financing purposes.

9 SEC. 3. *Definition of Terms.* - As used in this Act, the following
10 terms shall be understood, applied and construed as follows:

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

14 b) Hydroelectric power means electric power produced by using
15 the energy of falling and/or running water.

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

19 d) Municipal use refers to the utilization of water for supplying
20 the water requirements of the community.

21 e) Irrigation use refers to the utilization of water for producing
22 agricultural crops.

23 SEC. 4. *Agency in Charge.* - The Office of Energy Affairs is
24 hereby designated as the sole and exclusive entity to administer,
25 endorse and implement this Act.

1 SEC. 5. *Powers and Duties of the Board.* - The Office of Energy
 2 Affairs shall be responsible for the regulation, promotion and
 3 administration of applications for mini-hydroelectric power develop-
 4 ment. Its powers and duties, shall be as follows:

5 a) Promulgate such rules and regulations as may be necessary
 6 for the proper implementation and administration of this Act;

7 b) Process and approve applications for mini-hydroelectric
 8 power development, imposing such terms and conditions as it may
 9 deem necessary to promote the objectives of this Act subject to the
 10 following standards, namely:

11 1) the applicant must be a citizen of the Philippines or a corpo-
 12 ration, co-partnership association or joint stock company,
 13 constituted and organized under the laws of the Philippines,
 14 sixty percent (60%) at least of the stock or paid-up capital
 15 of which belongs to citizens of the Philippines;

16 2) the applicant must prove that the operation of the proposed
 17 mini-hydroelectric project and the authorization to do
 18 business will promote the public interest in a proper and
 19 suitable manner;

20 3) the applicant must be financially capable of undertaking
 21 the proposed mini-hydroelectric project and meeting the
 22 responsibilities incident to its operations.

23 c) Charge reasonable fees in connection with the filing, process-
 24 ing, handling, approval of applications for mini-hydroelectric power
 25 development in all suitable sites in the country;



1 d) After due hearing, decide controversies concerning appli-
 2 cants and oppositors. Oppositors shall be limited exclusively to
 3 individuals or entities who adequately show interest and capability for
 4 an alternate development of the proposed site for mini-hydroelectric
 5 power development or alternative use of the water source. Preference
 6 is given to the utilization of the proposed site for irrigation, domestic
 7 or drinking water uses, provided, however, that substantially equiva-
 8 lent economic benefits can be established.

9 Awardee must give a performance bond in the amount
 10 equivalent to twenty-five percent (25%) of the total cost of installation
 11 or the civil works executed in favor of the Office of Energy Affairs to
 12 ensure completion of the development.

13 e) Simplify and facilitate all systems and procedures involved in
 14 mini-hydroelectric power development such that permits, authorities,
 15 licenses, etc. of other government agencies shall no longer be required.

16 f) Generally, exercise all the powers necessary or incidental to
 17 attain the purposes of this Act and other laws vesting additional
 18 powers on the Office of Energy Affairs.

19 **SEC. 6. Discharge and Relief from Permit, License, Etc.** - An
 20 awardee mini-hydroelectric developer is hereby discharged and re-
 21 lieved from securing any permit, license, authority, or the like from
 22 other government agency or entity, such as the National Water
 23 Resources Council or the National Irrigation Authority, in order to
 24 begin the construction of the mini-hydroelectric project, laws, orders,
 25 decrees, etc., to the contrary notwithstanding.

1 SEC. 7. *Non-Exclusivity of Grant.* - Development of less than
 2 fifty percent (50%) of the hydroelectric power potential of the
 3 proposed site is non-exclusive. The Office of Energy Affairs upon due
 4 application and award, may grant the development of the site to
 5 another qualified applicant who can satisfactorily prove that he can
 6 produce at least twice the existing capacity from the site in terms of
 7 power (KWS.) and energy (kwhrs.): *Provided*, That the original
 8 mini-hydroelectric power developer is reimbursed of the value of his
 9 investment based on the declared value of the development for real
 10 estate tax purposes over the immediately preceding three (3) years
 11 or in case the declared value over said period differ, the average
 12 value thereof.

13 SEC. 8. *Closure or Stoppage of Existing Water Outlets, Etc.* - In
 14 the event the proposed mini-hydroelectric power development entails
 15 the closure or stoppage of existing water outlets, passageway, connec-
 16 tions, conduits, apertures or the like from the water source, the mini-
 17 hydroelectric power developer is obliged, on its account or expense, to
 18 restore or re-engineer the said water outlets, passageways, connec-
 19 tions, conduits, apertures, etc., in such manner that existing users or
 20 appropriators shall not be permanently deprived of their use or
 21 appropriation.

22 SEC. 9. *Incentives to Persons Engaging In Mini-Hydroelec-*
 23 *tric Power Development.* - Any person or persons, natural or
 24 juridical, engaging in mini-hydroelectric power development shall
 25 be granted the following incentive benefits:

1 a) **Income Tax Holiday.** - For seven years from the start of
 2 commercial operation, a registered mini-hydroelectric power
 3 developer shall be fully exempt from income taxes levied by the
 4 national government.

5 b) **Special Franchise Tax Rates.** - The franchise tax payable by
 6 all grantees of franchise to develop potential sites for hydroelectric
 7 power and to generate, transmit and sell electric power shall be two
 8 percent (2%) of their gross receipts received from sale of electric
 9 power and from transactions incident to the generation, transmission
 10 and sale of electric power. Such franchise tax shall be payable to the
 11 Commissioner of Internal Revenue or his duly authorized represen-
 12 tative on or before the 20th day of the month following the end of
 13 each calendar or fiscal quarter.

14 c) **Duty and Tax Exemptions of Equipment, Machinery, and**
 15 **Materials.** - Within seven (7) years from the date of franchise,
 16 importation of machinery and equipment, materials and parts,
 17 shipped with such machinery and equipment including control and
 18 communication equipment shall not be subject to tariff duties and
 19 value-added tax: *Provided*, That said machinery, equipment, materials
 20 and parts (1) are not manufactured domestically in reasonable quan-
 21 tity and quality at reasonable prices; (2) are actually, directly and
 22 exclusively used in the construction and impounding of water,
 23 transformation into energy, and transmission of electric energy to
 24 the point of use; (3) are covered by shipping documents in the name
 25 of duly registered mini-hydroelectric power developer to whom the

1 shipment will be delivered direct by customs authorities; and (4) the
2 prior approval of the Office of Energy Affairs was obtained before the
3 importation of equipment, machinery, materials and parts.

4 d) Tax Credit on Domestic Capital Equipment. - A tax credit
5 equivalent to one hundred percent (100%) of the value of the value-
6 added tax and customs duties that would have been paid on the
7 machinery, equipment, and materials and parts had these items been
8 imported shall be given to registered mini-hydroelectric power
9 developer who purchases machinery, equipment, materials and parts
10 from a domestic manufacturer: *Provided*, (1) That the said
11 machinery, equipment, materials and parts are actually, directly and
12 exclusively used by the registered mini-hydroelectric power developer;
13 (2) That the prior approval of the Office of Energy Affairs was
14 obtained by the local manufacturer; and (3) That the sale is made
15 within seven (7) years from the date of issuance of franchise.

16 e) Tax Credits For Withholding Tax on Interest. - A tax credit
17 for taxes withheld on interest payments on foreign loans shall be given
18 a registered mini-hydroelectric power developer when (1) no such
19 credit is enjoyed by the lender-remitter in his country and (2) the
20 registered mini-hydroelectric developer has assumed the liability
21 for payment of the tax due.

22 f) Special Realty Tax Rates on Equipment, Machinery. - Any
23 provision of the real property tax code or any other law to the contrary
24 notwithstanding, realty and other taxes on civil works, equipment
25 machinery and other improvements of a registered mini-hydroelectric

1 developer shall not exceed two and a half percent (2.5%) of their
2 original cost.

3 g) Additional Deduction for Labor Expense. - For the first seven
4 (7) years from registration, a registered mini-hydroelectric power
5 developer shall be allowed deduction from the taxable income of fifty
6 percent (50%) of the wages corresponding to the increment in the
7 number of direct labor for skilled and unskilled workers directly iden-
8 tifiable with the mini-hydroelectric power project.

9 h) Exemption from Contractor's Tax. - A registered mini-hydro-
10 electric power developer shall be exempt from the payment of
11 contractor's tax, whether national or local, in all contracts it may
12 undertake relating to the development and/or preservation of mini-
13 hydroelectric power sources.

14 SEC. 10. *Disposition and Allotment of Franchise Tax.* -If the
15 mini-hydroelectric power development is located in a city, sixty
16 percent (60%) of the franchise taxes collected shall accrue to the city
17 and forty percent (40%) to the National Government.

18 If the mini-hydroelectric power development is located in a
19 municipality, thirty percent (30%) of the franchise taxes collected
20 shall accrue to the municipality, thirty percent (30%) to the province
21 and forty percent (40%) to the National Government.

22 SEC. 11. *Franchise.* - The awardee mini-hydroelectric power
23 developer herein shall hold the franchise, for a period of twenty-five
24 (25) years, extendible for another twenty-five (25) years under the
25 same original terms and conditions and that said awardee has

1 complied faithfully with all the terms and conditions of the award.

2 SEC. 12. *Repealing Clause.* - All laws, decrees, orders, rules,
3 circulars, as the "Water Code of the Philippines" (Presidential Decree
4 No. 1067) or the "National Irrigation Administration Act" (Republic
5 Act No. 3061, as amended), etc., which are inconsistent with any
6 provisions of this Act are hereby repealed accordingly.

7 SEC. 13. *Effectivity of this Act.* - This Act shall take effect
8 immediately upon its approval.

Approved,

Senate Archives (LRAS)

