

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 2130



**Introduced by: REPRESENTATIVES EDGAR L. VALDEZ, ERNESTO C.
PABLO AND SUNNY R.A. MADAMBA**

EXPLANATORY NOTE

The total electrification of the country, which has been dubbed as “The Impossible Dream”, has still remained as the avowed goal of the national government since there are still millions of households in barangays and municipalities that remain to be energized. This goal would have been easy if energizing these barangays promised return of investment—these barangays are considered viable. Had this been the case, in an “open access” regime, private utilities would grab the business opportunity. Since this had not been the case, the task is left to the Electric Cooperatives (ECs). Because these far-flung barangays and municipalities are considered unviable, the Investor-Owned-Utilities (IOUs) kept their distance.

To fulfill the goal towards total electrification, electric cooperatives (ECs) have been given the mission to fulfill that “impossible dream”.

Sincere in its intent to look into the problem of the power industry, government initiated activities to address the spiraling cost of electricity. Just barely two years ago, Congress passed the Electric Power Industry Restructuring Act (EPIRA). Congress has been hailed because of its action to lower cost of electricity through the passage of the EPIRA. Congress has also been praised as it acted timely to arrest the issue on the Power Purchased Adjustment (PPA) that could have caused civil disobedience in Metro Manila and the rest of the country. With the recent developments on the matter of rate reduction in the franchises of electric cooperatives due to rural electrification loans absorption, the people are grateful. All these efforts though will be put to naught – all these will become insignificant and useless, as the effects of taxation on ECs are serious and burdensome. True, taxing the power coops now will immensely spiral the price of electricity.

Rural Electrification now looks toward private investment and international financing to defray the costs. But still, no private investor dares to infuse capital as this remains unprofitable, and if investment and capital come in, conditions of control and

management intervention are part of the package. Government appears to have shifted its paradigm by treating the ECs like their counterpart business and profit oriented IOUs. In this case, it must be asked on whether or not the thrust on total electrification of the entire country as mandated by P.D. 269 is being abandoned?

The basic law on total electrification must be strengthened: Presidential Decree 269. This program started in 1969 when Congress enacted into law, Republic Act 6038, to carry out the national policy thereby establishing the National Electrification Administration (NEA). Realizing the inadequacy of R.A. 6038, and in order to accelerate rural electrification, P.D. 269 known as the “National Electrification Decree”, amended the former. P.D. 269 hastened the organization of rural electric cooperatives providing available loans needed for the program and extended them tax exemption, privileges and other assistance. (Section 39, P.D. 269).

At this point however, the pertinent portion of the provision of Section 39, P.D. 269, has overtaken some Electric Cooperatives’ existence. The thirty year exemption for some Electric Cooperatives has come up particularly for those organized on or before 1972. In this case, the framers though (albeit erroneously) that thirty (30) years would have been enough to see total electrification of the countryside, but it was not to be so, hence the need to rectify such error.

Under the present provision (Section 39, P.D. 269) an Electric Cooperative is exempted.

“(a) Provided that it operates in conformity with the purposes and provisions of this Decree,

- 1. Shall be permanently exempt from paying income taxes; and*
- 2. For a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative organization or conversion hereunder, xxx.*

Further, aside from the erroneous timetable estimate, the provision on tax exemption was also found to be wanting by the BIR contrary to the intent and spirit of the Decree. Section 39 (a) 2, of the same Decree, states the ECs shall be exempted from paying: “A. all National, local government and municipal taxes and fees, including franchise filing, recordation, license or permit fees or taxes and any fees, xxx.” This “vagueness” has been utilized by the BIR especially on franchise and business taxes even when clarification has been made by various agencies on this score.

Despite clarification made on tax exemption relative to Section 39 of P.D. 269, there are other regulations that aggravated the confusion. First among these laws are those provisions, enunciated under P.D. No. 1995 promulgated on October 15, 1984 which confused the issue that ECs are included in those businesses granted tax exemption privileges, which P.D. 1995 has withdrawn.

But upon the representation by ECs, the FISCAL INCENTIVES REVIEW BOARD of Department of Finance, in their Resolution No. 24-87, resolved to restore the tax exemption of ECs, which took effect on July 14, 1987.

Then, in 1990 and 1992, came the Local Government Code (R.A. 7160), Cooperative Code of the Philippines (R.A. 6938) and Cooperative Development Authority Law (R.A. 6939), which in some ambiguous terms tried to impose and levy taxes on ECs. The actions attempted by the Department of Finance and its agencies and the CDA impositions has resulted in the filing by the agencies, ad bureau officers until restrained by the Supreme Court in the case of "PHILRECA, ANECO I, ILECO I and ISELCO I vs. The Secretary, Department of Interior and Local Government, and The Secretary, Department of Finance. (G.R No. 143076)

In the case of R.A. 7160, which appeared to be the only tax law for electric cooperatives, it was inadvertently passed intending to increase revenues, to add to the essence of empowerment of the local government units. While the perceived intent is reached - - - as truly the LGUs feel empowered when their power of taxation is enhanced, the framers realized that this balances off the weight against public welfare.

Waking up with this reality, the LGUs gladly set aside this right as they know they would be doing a disfavor to their local constituencies. Majority of the LGUs refused even to pass the enabling local ordinance to tax electric cooperatives. No less than the Supreme Court ruled in favor of this reality when it restrained the local government units from imposing these taxes.

In the case of the passage of R.A. 6938 and R.A. 6939, transcripts would prove that it was never the intention of Congress to take away the tax exemption of electric cooperatives. As a matter of fact, the repealing clause of R.A. 6938 does not apply to P.D. 269, as amended, pursuant to Article 127 of the said R.A. 6938 which expressly states that "Provided however, that nothing in this code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree 269; xxx." Moreover, to help the ECs from being pressured by the employment of the erratic interpretation of the law, a number of distinguished Congressmen like Representatives Ciriaco R. Alfelor, Dante Tinga, Leovenigildo Banaag, Constantino Jaraula, to name a few, filed bills in 10th and 11th Congresses, to resolve this issue.

In this sense, certain laws must be amended, and others have to be repealed, if only to speed up the thrust of finally realizing full energization of the nation. The collection of the franchise, business, property, value-added and other forms of taxes and imposts on the electric cooperatives by the BIR and some local governments, will deplete the ECs' scarce resources rendering it incapable of pursuing its missionary role, which our poor rural inhabitants so well deserve.

Taxing electric cooperatives of whatever kind is indirectly taxing the poor rural electric cooperative consumers.

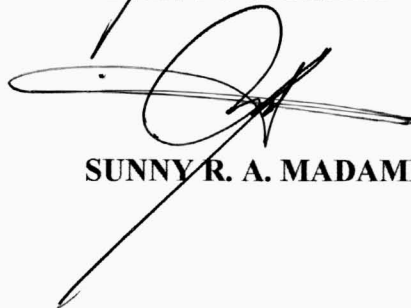
It is therefore ripe to amend Section 39 of P.D. 269 and to repeal confusing laws to quiet down those issues on taxing ECs.

A handwritten signature in black ink, appearing to be 'Edgar L. Valdez', written in a cursive style.

EDGAR L. VALDEZ

A handwritten signature in black ink, appearing to be 'Ernesto C. Pablo', written in a cursive style.

ERNESTO C. PABLO

A handwritten signature in black ink, appearing to be 'Sunny R. A. Madamba', written in a cursive style.

SUNNY R. A. MADAMBA

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 2130

Introduced by: REPRESENTATIVES EDGAR L. VALDEZ,
ERNESTO C. PABLO AND SUNNY R.A. MADAMBA

AN ACT
EXTENDING TAX EXEMPTION, PRIVILEGES AND ASSISTANCE TO
RURAL ELECTRIC COOPERATIVES AS A MATTER OF STATE POLICY
TO AID THE PROGRAM IMPLEMENTATION ON TOTAL
ELECTRIFICATION

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

1 Section 1. It is hereby declared as a state policy to aid the total electrification
2 of the country by extending tax exemption, privileges and assistance to rural electric
3 cooperatives.

4
5 Section 2. To clearly promote this policy, Section 39 of P.D. 269 is hereby
6 amended to read as follows:

7 Section 39. Assistance to Cooperatives, Exemption from
8 Taxes, Impost, Duties, Fees Assistance from the National Power
9 Corporation. – Pursuant to the national policy declared in Section
10

2, the Congress hereby finds and declares that the following
assistance to cooperatives is necessary and appropriate.

(a) Provided that it operates in conformity with the purposes
and Provisions of this Decree, a cooperative.

1. Shall be permanently exempt from paying income taxes, and
2. **SHALL FOR A PERIOD OF FIFTY YEARS FROM THE
DATE OF COOPERATIVE ORGANIZATION AS A NON
STOCK ENTITY OPERATING AS A PUBLIC UTILITY,**
be exempt from the payment of

*(A) All National Government, local government and
municipal taxes and fees, INCLUDING BUT NOT
LIMITED TO FRANCHISE, REALTY AND
BUSINESS TAXES. Also fees for franchise filing,
recordation, license or permit fees or taxes and any
fees, charges or costs involved in any court or
administrative proceeding in which it may be a party,
and*

*(B) All duties or imposts on foreign MATERIALS
EQUIPMENT AND GOODS ACQUIRED FOR
THE OPERATIONS OF SAID RURAL*

***ELECTRIC COOPERATIVE, PROVIDED** that the Board of Administrators of NEA shall, after consultation with the **DEPARTMENT OF FINANCE PARTICULARLY THE BUREAU OF INTERNAL REVENUE**, promulgate rules and regulations for the proper implementation of the tax exemption provided for in this decree.*

Section 3. The Cooperatives Code of the Philippines (R.A. 6938), The Local Government Code of 1996 (R.A. 7160), and Tax Reform Act (R.A. 8424), as amended, are hereby modified to be consistent with the foregoing provision amending P.D. 269, and to be interpreted in favor of extending tax exemption, privileges and other assistance to rural electric cooperatives.

Section 4. Repealing Clause. – All other laws, ordinances, rules, regulations, other issuances, or parts thereof, which are inconsistent with this act are hereby repealed or modified accordingly.

Section 5. Effectivity. This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspaper of general circulation.

Approved.