

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

**FIFTEENTH CONGRESS
First Regular Session**

HOUSE BILL No. 4355

**Introduced by Reps. TEDDY A. CASIÑO, NERI JAVIER COLMENARES,
RAFAEL V. MARIANO, LUZVIMINDA C. ILAGAN, EMMI A. DE JESUS,
RAYMOND V. PALATINO, and ANTONIO L. TINIO**

EXPLANATORY NOTE

The recent turmoil in the oil producing countries of the Middle East and Northern Africa have yet again given oil companies an added reason to let their greed dictate the rapid price hikes of all oil products in the Philippines.

Since January 2011, oil companies led by Shell, Chevron and Petron have raised pump prices eight (8) times to a total of a P5.25 increase for a liter of gasoline and a P5.00 increase for a liter of diesel in Metro Manila. The pump prices in the Visayas and Mindanao are higher by P5.00 to P8.00 per liter compared to Metro Manila.

Oil companies cite the rapid upswing of international market oil prices wherein the Asian benchmark Dubai crude averaged more than \$100 a barrel in February 2011, from an average of US\$92.52 a barrel in January, hitting a two year-and-a-half high of nearly US\$112 a barrel on February 24.

What oil companies do not reveal to the government and the public is the true inventory of oil products in the country that ranges from a 40 to 54 day reserve, and the actual costs of the crude and refined oil products being imported. If there is really a reason for the increase other than currency considerations in the world oil price shocks, why raise pump prices immediately when the oil supplies in the so-called inventory were bought with the cheaper international market rates? When there is a need for oil price rollbacks, oil companies fidget and refuse to implement the same immediately compared to their alacrity in increasing prices.

The deregulation of the oil industry that was brought about by Republic Act 8479, or the "Downstream Oil Industry Deregulation Act of 1998", completely failed to ensure a truly competitive market under a regime of fair prices through the liberalization and the deregulation of the local downstream oil industry.

Deregulation has allowed oil price increases to go unchecked. R.A. 8479 surrendered government controls on oil prices, rendering the Department of Energy (DOE) as an apologist – if not de facto spokesperson – for oil companies each and every time that oil prices are pushed upward. Crude oil and petroleum products are sensitive commodities since its prices directly affect the cost of almost all other commodities and services such as food, housing, social services, as transportation.

Even without factoring in increases in the world demand for oil, the artificial effects of speculation, and the turmoil in oil producing countries, world oil prices are unjustifiably high because they are under the control of

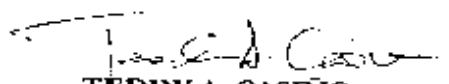
monopolistic transnational oil corporations. Given this set-up, the State has a responsibility to promote social justice and an equitable national economy for its people. It must regulate the vital downstream oil industry if it wants to give immediate and medium-term relief to the people.

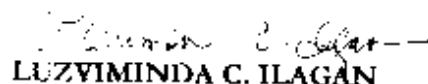
This bill is a comprehensive measure to immediately address the problematic downstream oil industry in light of the abovementioned facts by requiring the following:

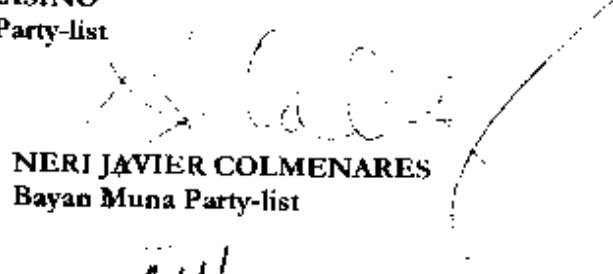
- a) the regulation of the petroleum industry through the creation of a Petroleum Regulatory Council;
- b) a Buffer Fund that shall solely serve to cushion consumers against drastic increases in petroleum prices, unlike the old Oil Price Stabilization Fund (OPSF) that reimbursed oil companies for dubious "cost under-recoveries;"
- c) the government's reacquisition of a majority stake in the Petron Corporation to regain market leveraging and price stability;
- d) a centralized procurement of oil and petroleum products; and
- e) the repeal of RA 8479 or the Downstream Oil Industry Deregulation Act of 1998.

In view of the foregoing, the immediate approval thereof is highly recommended.

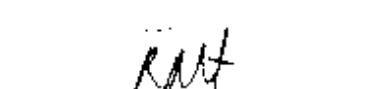
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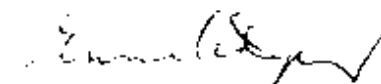

TEDDY A. CASINO
Bayan Muna Party-list

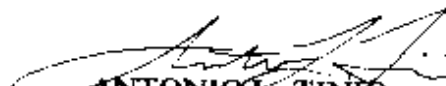

LUZVIMINDA C. ILAGAN
Gabriela Women's Party


NERI JAVIER COLMENARES
Bayan Muna Party-list


RAFAEL V. MARIANO
Anakpawis Party-list


RAYMOND V. PALATINO
Kabataan Party-list


EMMI A. DE JESUS
Gabriela Women's Party


ANTONIO L. TINIO
ACT Teachers Party-list

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AN ACT
REGULATING THE DOWNSTREAM PETROLEUM INDUSTRY, REPEALING REPUBLIC
ACT NO. 8479 OR THE DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998,
AND FOR OTHER RELATED PURPOSES

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

CHAPTER I
GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Downstream Oil Industry Regulation Act of 2011”.

SECTION 2. *Declaration of Policy.* – Oil and petroleum products being vital to national security and their supply at reasonable prices being essential to the general welfare consistent with Article II (Social Justice) and Article XII (National Economy and Patrimony) of the 1987 Constitution, it is hereby declared the policy of the State that the business of importing, exporting, re-exporting, marketing, distributing, and selling, both at wholesale and retail, crude oil, gasoline, kerosene, diesel and other socially and economically sensitive refined petroleum or petroleum products, as well as operations and activities of natural and juridical persons, firms, and entities engaged in such activities, shall be regulated and carried out in a manner consistent with the public interest so as to attain the following objectives:

- (a) To ensure a proper, adequate, and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible, considering all available sources of supply;
- (b) To ensure reasonable and transparent prices for petroleum products and to prevent monopoly, combinations in restraint of trade, unfair competition, and economic domination in the industry; and
- (c) To minimize the cost and the outflow of foreign exchange involved in the operations of the oil and petroleum industry.

SECTION 3. *Coverage.* – This Act shall apply to all natural and juridical persons, firms, and entities engaged in any and all activities of the petroleum industry, as well as persons or companies directly importing

or exporting crude or refined petroleum products for their own use or for the use of other natural and juridical persons, firms, and entities engaged in any and all activities of the petroleum industry.

These activities include the act and business of importing, exporting, re-exporting, storing, distributing, and selling, both at wholesale and retail, of crude oil, gasoline, kerosene, gas, and other refined petroleum products.

SECTION 4. *Definition of Terms.*

- (a) *Crude Oil* shall refer to oil in its natural state before the same has been refined or otherwise treated, but excluding water, bottoms, sediments and foreign substances. Crude oil or *Oil* shall be used interchangeably with *Petroleum*;
- (b) *Downstream Oil Industry or Industry* shall refer to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum products;
- (c) *Exchange* shall mean the Philippine National Oil Company-National Petroleum Exchange Corporation (PNOC-NPEC);
- (d) *Logistics Company* shall mean the Philippine National Oil Company Shipping, Transport, and Storage Corporation (PSISC);
- (e) *Petroleum* shall refer to the naturally occurring mixture of compounds of hydrogen and carbon with a small proportion of impurities and shall include any mineral oil, petroleum gas, hydrogen gas, bitumen, asphalt, mineral wax, and all other similar or naturally-associated substances, with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits;
- (f) *Petroleum products* shall mean products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment, coming out as primary stocks from the refinery like: liquefied petroleum gas (LPG), naphtha, gasolines, solvents, kerosenes, aviation turbine fuels, automatic/industrial diesel oils, industrial/residual fuel oils, waxes and petrolatums, asphalts, bitumens, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically defined compounds in a pure or commercially pure state; and to which various substances may have been added to render them suitable for particular uses, provided that the resultant product contains not less than 50% by weight of such petroleum products;
- (g) *Philippine national* shall mean a citizen of the Philippines, or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and the entitlement to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and the entitlement to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided, That* where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national; and
- (h) *Plan* shall refer to the Centralized Petroleum Procurement Plan.

CHAPTER II PRICE REGULATION

SECTION 5. *The Petroleum Regulatory Council.* – There is hereby created an independent, quasi-judicial regulatory body to be named the Petroleum Regulatory Council (PRC), hereafter referred to as the Council, whose function it is to strictly regulate the pricing of crude oil and socially and economically sensitive petroleum products at the levels of marketing, distribution, wholesale, and retail in the operations and activities of natural and juridical persons, firms, and entities engaged in such activities.

SECTION 6. *Composition of the Council.* – (a) The Council shall be composed of a Chairperson and six (6) Members to be appointed by the President of the Philippines. The Chairperson and the Council Members shall be natural born citizens and residents of the Philippines; persons of good moral character; at least thirty-five (35) years of age; of recognized competence in any of the following fields: energy, law, economics, finance, commerce and industry, and management; or the transportation and consumer sectors; and with at least five (5) years of actual and distinguished experience in their respective fields of expertise or sectors: *Provided, That* out of the six (6) members of the Council, at least one (1) shall have had (10) years experience in the fields of management, economics, or commerce and industry; one (1) shall be a certified public accountant with at least ten (10) years experience in active practice; and one (1) shall be a recognized leader who has been active for at least ten (10) years in the transportation, consumer, or industrial sector.

(b) The term of office of the Chairperson and the Council Members shall be four (4) years: *Provided, That* for the first appointees, the Chairperson shall hold office for four (4) years, two (2) Members shall hold office for four (4) years, another two for three (3) years, and the remaining two (2) Members shall hold office for two (2) years: *Provided, further, That* for subsequent appointees, the successor of each Member shall have the same tenure as his predecessor: *Provided, further, That* appointment to any vacancy shall only be for the unexpired term of the predecessor: *Provided, finally, That* in no case shall any member serve for more than four (4) years in the Council.

(c) The Chairperson and Members of the Council shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer, or director, in any company or entity engaged in the business of exploring, exploiting, importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, marketing, distributing, and selling both at wholesale and retail any petroleum resource. In case they do, they must divest through sale or legal disposition of any and all interest in the petroleum industry upon assumption of office.

Former Chairpersons and members of the Council are prohibited from working directly or indirectly in any firm engaged in the petroleum industry or any other entity whose main business is directly or indirectly related to any such firm within one (1) year from the time they have ceased to be officially connected with the Council.

(d) The Chairperson and Members of the Council shall assume office upon their appointment and the administration of their respective oaths of office. They shall devote their full time to the Council and shall not accept any other employment while in office.

SECTION 7. *General Jurisdiction, Powers, Functions, and Duties of the Council.* The general jurisdiction, powers, functions, and duties of the Council shall include the following:

(a) Price monitoring and compilation of the prices involved in the movement of raw materials or finished products in the marketing, distribution, and sale both at wholesale and retail, of petroleum and socially and economically sensitive petroleum based resources. In order that no unnecessary costs may be included in the pricing of petroleum and its derivatives, price monitoring and compilation shall also be done

at the stages of shipment, transport, and storage. This shall be conducted in coordination with existing, independent monitoring bodies. These records shall be submitted weekly, or upon request, for the review of the Council. For cases where persons, firms, or entities refuse such information, the Council shall issue *subpoenas* and *subpoenas duces tecum* to compel such parties;

(b) Compilation and analysis of information hereby required from local importers of crude oil and socially and economically refined petroleum products, refiners, dealers, and petroleum marketing companies on the following:

- 1) Comprehensive sales reports;
- 2) Inventories;
- 3) Prices of all involved products at various time intervals, as determined by the Council for petroleum and petroleum products; and
- 4) Demand forecasts for subsequent time intervals, as determined by the Council for involved petroleum and petroleum products.

(c) The Council shall pursue systematized, random statistical sampling surveys to determine adherence to and violations of price regulation by the Council. These surveys shall be done by technical groups formed by the Council, in close coordination with Council-accredited organizations that undertake their own petroleum price surveys;

(d) Issue *subpoena* and *subpoena duces tecum* in any inquiry, study, hearing, investigation, or proceedings which it may decide to undertake in the exercise of its powers, functions, and duties under this Act; and

(e) Promulgate rules and regulations relevant to procedures governing hearings before it and enforce compliance, through the imposition of penalties, with any rule, ruling, regulation, order, resolution, decision, or other requirements of this Act or acts of the Council in the exercise of its quasi-judicial functions; Provided That said rules and regulations take effect fifteen (15) days after publication in the Official Gazette.

SECTION 8. *Setting of Oil Prices.* – Upon the effectivity of this Act, industry averages of prevailing market prices of socially and economically sensitive petroleum and petroleum products shall serve as the starting point for the determination of prices. Any succeeding modification shall hereby be required to undergo public hearings, convened by the Council, before such become effective.

The Council shall revise oil prices only upon proper notice and hearing, in the exercise of its powers and functions, as follows:

(a) In revising prices, the Council shall be guided by the following considerations:

- 1) Whether claimed increases or decreases in costs, sales, or profits are real or simulated;
- 2) Whether expenses and costs which are claimed to have been incurred, or are being incurred, or are to be incurred are reasonable;
- 3) The impact of the proposed prices or change therein on the economy and on the consuming public, particularly low income groups and industries essential to the national welfare or security, given the daily cost of living and predominant wages;

- 4) The component costs and the profit levels or rates of return not only of the petroleum industry but also of other manufacturing industries in the country; and
 - 5) The ability of the levels of the Oil Price Buffer Fund to maintain, through subsidy disbursements, current oil price levels until the next resetting.
- (b) Hearings must have in attendance organizations from different sectors affected by the following regulations, including but not limited to consumer groups, the transport sector, other representative people's organizations, producers, and sellers, as well as independent experts.
- (c) Advance details of these public hearings, as well as for hearings required by Section 7 of this Act, shall be published in at least two (2) newspapers of major circulation at least two (2) weeks before the scheduled consultations.
- (d) In exercise of its duties, the Council shall, for every hearing convened:
- 1) Present a concise report on the operations regarding the administration of the Oil Price Buffer Fund, including its complete sources and disbursements, since the last hearing or oil price adjustment;
 - 2) Summarize data justifying and supporting the last oil price adjustments and how these have changed and contributed to the necessity to revise oil prices; and
 - 3) Publish the proceedings of concluded hearings in at least two (2) newspapers of national circulation at least one month before the implementation of newly set oil prices, for which period the Council shall be open to petitions and appeals subject for review by the Council.

SECTION 9. *Procedures of the Council.* – All inquiries, studies, hearings, investigations, and proceedings conducted by the Council shall be governed by rules adopted by the Council, and in the conduct thereof the Council shall not be bound by the technical rules of evidence: *Provided, That* the Council may summarily punish for contempt by a fine not exceeding five thousand pesos or by imprisonment not exceeding thirty (30) days or both, any person guilty of such misconduct in the presence of the Council or so near thereto as to seriously interrupt any hearing or session or any proceedings before it, including cases in which a person willfully fails or refuses, without just cause, to comply with summons, *subpoena ad testificandum*, *subpoena duces tecum*, decision or order, rules and regulations legally issued or promulgated by the Council; or being present at a hearing, session, or investigation, refuses to be sworn as a witness or to answer questions when lawfully required to do so, or to furnish information required by the Council. The sheriff and other police agencies of the place where the hearing or investigation is conducted shall, upon request of the Council, assist it to enforce the provisions of this Section.

The Council may, in any inquiry, study, hearing, investigation, or proceeding, by order in writing, cause the deposition of witnesses within or without the Philippines to be taken in the manner prescribed by the Rules of Court.

SECTION 10. *Petitions for Hearings.* – Local oil subsidiaries, wholesalers and retailers are hereby required to file a petition with the Council every time they intend to implement oil price adjustments. People's organizations, non-government organizations, and citizens may as well file petitions with the Council proposing to adjust oil prices.

SECTION 11. *Organizational Structure.* Within three (3) months from the creation of the Council, it shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the Council, as well as its rules and regulations as provided for in this Act. The Chairperson and the Members of the Council shall appoint and maintain

adequate officers, staff, and personnel, including technical boards, to be maintained according to the functions, powers, and duties of the Council.

SECTION 12. *Compensation and Other Emoluments of the Council.* – (a) The compensation and other emoluments for the Chairperson, Members, staff, and personnel of the Council shall be covered by Republic Act No. 6758, otherwise known as the “Salary Standardization Act”.

(b) The Chairperson of the Council shall be entitled to the same salaries, allowances, and benefits equal to those of a Department Secretary while the Council Members shall receive the same equal to those of a Department Undersecretary. The Chairperson and the other members of the Council shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for Department Secretaries and Department Undersecretaries, respectively.

SECTION 13. *Budget of the Council.* – The amount of one hundred fifty million pesos (PhP150,000,000.00) is hereby allocated from the General Fund not otherwise appropriated for the initial operations of the Petroleum Regulatory Council. Thereafter, the annual budget of the Council shall be included in the regular or special appropriations under the General Appropriation Act.

CHAPTER III THE OIL PRICE BUFFER FUND

SECTION 14. *Creation of the Oil Price Buffer Fund.* – (a) There is hereby created a trust fund directly under the custody and administration of the Petroleum Regulatory Council as an account booked under its liabilities. The trust fund shall be designated as the Oil Price Buffer Fund (OPBF), hereon referred to as the Fund, for the strict and unique purpose of cushioning consumers against the frequent and drastic price increases of local petroleum and petroleum products.

(b) In its initial period of operation, funds for the OPBF shall be provided for in the annual General Appropriations Act.

SECTION 15. *Disbursement of the Fund.* – The Fund shall solely and strictly release disbursements to subsidize local market oil price fluctuations between price resettings, as settled at hearings conducted by the Council under Section 7 of this Act. The Fund shall disburse as subsidies, initially on the first year upon the effectivity of this Act, 2.5% of cumulative increases in market prices across all socially and economically sensitive petroleum and petroleum products, between public hearings, which decide on the modification of previously set prices. Revised amounts shall become the new basis for Fund disbursements. When world oil prices decrease, the Council shall retain its existing prices, accrue all differences in set prices and market prices to the Fund, and maintain current prices until the next hearing modifies such. Modifications of this subsidy percentage shall likewise undergo public hearings before approval, and shall mainly depend on the needs of consumers and industries and on the present levels of the Fund.

The Oil Price Buffer Fund shall be strictly prohibited from being disbursed for the following purposes:

- (a) To reimburse persons, firms, and entities engaged in the petroleum industry for cost increases on crude oil and imported petroleum products resulting from exchange rate adjustment and/or increases in world market prices of crude oil;
- (b) Cost “underrecoveries” incurred by persons, firms, and entities engaged in the petroleum industry as a result of fuel oil sales to the National Power Corporation (NPC);
- (c) Projects relating to the consumption or use of crude oil, gas, and other petroleum products;

- (d) For the development of other sources of energy;
- (e) For exploration and researches on conservation, anti-pollution, and other similar studies to subsidize importation of crude oil and refined petroleum products by government agencies, or government owned or controlled corporations (GOCCs); and
- (f) For any such purpose other than cushioning consumers against the high prices of local petroleum and petroleum products.

The President of the Philippines is hereby prohibited from sourcing from the OPBF, through Executive Order, any projects, programs, and other activities whatsoever.

SECTION 16. *Fund Investments.* – The Petroleum Regulatory Council may, after the first five years of the existence of the Fund, invest part of the proceeds from the Fund in secure bank deposits like regular savings accounts, current accounts, and time deposits: *Provided*, That these deposits are insured for the maximum insurable amounts in the banking industry: *Provided*, further, That the Chairperson and all the Members of the Council are informed and approve of each and every Fund investment, in specific amounts: *Provided*, further, That proceeds from the Fund may only be invested when the size of the Fund has reached a minimum amount wherein it is ten (10) times the average disbursement for the preceding five years: *Provided, finally*, That all earnings from such placements shall strictly and solely redound to the Fund.

SECTION 17. *Extraordinary Gains.* – Whenever an authorized increase in the prices of petroleum products will result in an extraordinary gain from existing inventories, the Council is hereby empowered to take measures, including the payment in the full amount of the extraordinary gain by the persons, firms, or entities benefited to the OPBF.

SECTION 18. *Annual Reports of the Council.* – The Council shall publish an annual report, with or without the convening of hearings, on the administration of the OPBF, including its complete sources and disbursements; data that justify and support any and all adjustments in petroleum prices in the past year; information on the general state and prospects of the local downstream petroleum industry; and other such vital information derived from inquiries, studies, and investigations by the Council in the exercise of its powers, functions, and duties.

CHAPTER IV PETRON CORPORATION

SECTION 19. *Buy-back of Petron Corporation.* (a) The Philippine National Oil Company (PNOC) shall, upon the first year of effectivity of this Act, reacquire equity in Petron Corporation by at least 51% of its total subscribed stocks. PNOC shall initially buy back the shares at the Philippine Stock Exchange. If the minimum shares to establish control is not repurchased from the PSE, the PNOC shall cause the expropriation, subject to just compensation, of Petron stocks from whoever/whichever has possession/ownership/control/custody thereof;

(b) Thereafter, PNOC shall reacquire 100% ownership of Petron Corporation within a period of four (4) years. Reacquisition costs shall mainly be funded by the National Government, through annual budget appropriations. The secondary source for the full repurchase shall be the expanding earnings of PNOC from its increasing stake in Petron Corporation over the period of reacquisition; and

(c) To achieve this objective, the PNOC is hereby required to aggressively and consistently improve the operations and income of Petron Corporation in line with the policies of this Act. The eventual corporate merger of the PNOC and Petron Corporation shall hereby be a matter of policy.

SECTION 20. *Policy Objectives of Petron.* – Petron Corporation shall have the following policy objectives:

- (a) To adopt a pricing policy that keeps the prices of crude oil and petroleum products, especially socially and economically sensitive products such as liquefied petroleum gas (LPG), naphtha, kerosene, diesel, as low as possible as allowed by the fulfillment of the objectives of this Act;
- (b) To control cartel and monopoly pricing, and thus check unreasonably high prices;
- (c) To raise and promote the local capacity for exploration, refining and exploitation, processing, and development of petroleum;
- (d) Before or after the full nationalization of Petron, or once deemed feasible and cost-effective by the Board of Directors of Petron, to invest, through partnerships, joint-ventures, mergers, or acquisitions, in entities involved in activities directly related to the policies of Petron provided under this Act. Such investments shall prioritize local Philippine nationals and government agencies such as the Philippine National Oil Company (PNOC);
- (e) To encourage the participation of local private capital by prioritizing such investments in joint ventures it shall undertake consistent with the provisions of this Act; and
- (f) To prioritize Filipino capital, technology, and labor through the investment decisions and conduct of operations of Petron.

CHAPTER V CENTRALIZED PROCUREMENT OF OIL AND PETROLEUM PRODUCTS

SECTION 21. *Creation of the National Petroleum Exchange Corporation.* – There is hereby created the National Petroleum Exchange Corporation (NPEC), hereafter referred to as the Exchange, with the primary objective of enabling the country to get the best prices, and adequate and stable supplies for its requirements of crude oil and petroleum products. The National Petroleum Exchange Corporation shall be a subsidiary company of the Philippine National Oil Company (PNOC), making Philippine National Oil Company-National Petroleum Exchange Corporation (PNOC-NPEC) the company's formal corporate name.

SECTION 22. *Board of Directors of the Exchange.* – (a) The Board shall be composed of a Chairperson and six (6) Directors to be appointed by the Board of Directors of the Exchange's mother corporation, the PNOC. The Chairperson and the Board Directors shall be natural-born citizens and residents of the Philippines; persons of good moral character; at least thirty-five (35) years of age; of recognized competence in any of the following fields: energy, law, economics, finance, commerce and industry, and management; or the transportation and consumer sectors; and with at least five (5) years of actual and distinguished experience in their respective fields of expertise or sectors: Provided That of the six (6) Directors of the Board, at least one (1) shall have had (10) years experience in the fields of management, economics, or commerce and industry; one (1) shall be a certified public accountant with at least ten (10) years experience in active practice; and one (1) shall be a sector leader who has been active for at least ten (10) years in the transportation, consumer, or industrial sector.

The Chairperson and Directors of the Board shall be prohibited from holding any interest whatsoever, except for the Chairperson of the PSTSC, either as investor, stockholder, officer, or director, in any company or entity engaged in the business of exploring, exploiting, importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, marketing, distributing, and selling both at wholesale and retail any

petroleum resource and must, therefore, divest through sale or legal disposition of any and all interest in the petroleum industry upon assumption of office.

Former Chairpersons and members of the Board are prohibited from working directly or indirectly in any firm engaged in the petroleum industry or any other entity whose main business is directly or indirectly related to any such firm within one (1) year from the time they have ceased to be officially connected with the Exchange.

The five (5) appointed Board Directors shall devote their full time to the Board and shall not accept any other employment while sitting in the Board.

(b) The term of office of the Chairperson and the Board Directors shall be four (4) years: *Provided*, That for the first appointees, the Chairperson shall hold office for four (4) years, one Director shall hold office for four (4) years, another two for three (3) years, and the remaining two Directors shall hold office for two (2) years: *Provided further*, That for subsequent appointees, the successor of each Director shall have the same tenure as his predecessor: *Provided further*, That appointment to any vacancy shall only be for the unexpired term of the predecessor: *Provided finally*, That in no case shall any member serve for more than four (4) years in the Board.

(c) Within three (3) months from the creation of the Exchange, the Chairperson shall submit for the approval by the PNOB Board of Directors the new organization structure and plantilla positions necessary to carry out the powers and functions of the Exchange.

SECTION 23. Jurisdiction, Powers, Functions, and Duties of the Exchange. – The Exchange shall centralize and strictly regulate the movement of petroleum and petroleum products at the stages of importation, exportation, re-exportation, distribution, storage, and selling both at wholesale and retail of crude oil, gasoline, kerosene, gas, and other refined petroleum products.

For this purpose, the general jurisdiction, powers, functions, and duties of the Exchange shall include the following:

- (a) Instituting a centralized procurement system, which shall take over all importation of crude oil and petroleum products and shall be the sole supplier of crude and petroleum for the local markets—for all local oil subsidiaries, wholesalers, retailers, as well as to all natural and juridical persons, firms, and entities engaged in the act and business of importing, marketing, distributing, and selling both at wholesale and retail crude oil and petroleum products for their own use or for the use of other natural and juridical persons, firms, and entities engaged in any and all activities of the petroleum industry;
- (b) Determining and supplying the country's total annual requirement for crude oil, gasoline, diesel, kerosene, fuel oil, liquefied petroleum gas, and other oil products;
- (c) Determining and sourcing the most economic, stable, and adequate foreign sources of crude oil and petroleum products, based on the following criteria:
- (d) Ownership of petroleum suppliers: shares of small private investors, national governments, and transnational oil corporations; and the
- (e) Inclusion of mutually advantageous commodity swaps and/or foreign exchange arrangements in bilateral petroleum trade agreements.
- (f) Ensuring that locally extracted crude oil, locally refined petroleum, and locally processed petroleum products primarily and singularly serve the country's local petroleum requirements.

SECTION 24. *Staff of the Exchange.* – The Chairperson and the Directors of the Exchange board shall appoint and maintain their adequate officers, staff, and personnel, including technical boards, to be maintained according to the functions, powers, and duties of the PNOC NPEC.

SECTION 25. *Centralized Petroleum Procurement Plan.* – (a) Complete procurement of 100% of the national petroleum needs, as determined by the NPEC, shall be effected over a period of not less than four (4) years and not more than five (5) years, for which each year shall cover 20 to 25 percent more than the previous year of the national petroleum needs.

The pace and the time frame of the Centralized Petroleum Procurement Plan shall be based on the following criteria:

- 1) Total national demand forecasts on crude oil and petroleum products, on a weekly, monthly, quarterly, and yearly basis, to be organized and undertaken by the Exchange, which shall be based on the requirements of the local petroleum marketing companies, independent demand projections, and demand forecasts by the Exchange;
 - 2) Actual total national requirements on crude oil and petroleum products, for previous months, quarters, and years, to be organized and undertaken by the Exchange, which shall be based on actual sales of local petroleum marketing companies and separate investigations by the Exchange;
 - 3) Actual total importations of crude oil and petroleum products, for previous months, quarters, and years, to be organized and undertaken by the Exchange, which shall be based on the records of the Bureau of Customs, actual sales of local petroleum marketing companies, and separate investigations by the Exchange;
 - 4) Effective control of the Exchange over shipping, transport, and storage facilities of crude oil and petroleum products, as detailed under Section 12 of this Act;
 - 5) Levels of the sources of funding, as delineated under Section 17 of this Act;
 - 6) Efficacy of Commodity Swaps and other bilateral trade negotiations between PNOC NPEC and state-owned oil companies from oil-producing countries as delineated under Sections 10 and 11 of this Act; and
 - 7) Forecasts, feasibility studies, and planning sessions by the Board of the Exchange.
- (b) For the first year upon the effectivity of this Act, the Exchange shall utilize the shipping, transport, and storage facilities of Petron Corporation, as renationalized under Sections 19 and 20 of this Act, and of the PSTSC, and shall progressively augment such facilities and capabilities, for the succeeding years of the Centralized Petroleum Procurement Plan, as delineated under the provisions of Section 12 of this Act.
- (c) The ability of the exchange to procure a surplus of imported petroleum over the actual total national requirements, as delineated under Section 15 of this Act as the Buffer Supply, marks the last period of the Centralized Petroleum Procurement Plan.
- (d) At the conclusion of the Plan, the Exchange shall be the sole source of the country's total requirement for petroleum and refined petroleum products. All petroleum marketing companies, petroleum dealers and traders, and all other importers of petroleum and refined petroleum products shall thereby be prohibited to procure by themselves or through other natural and juridical persons, firms, and entities, through importation or any such transportation, shipment, and freight activity, petroleum and refined

petroleum products. They shall likewise be prohibited from exporting or re-exporting crude oil and petroleum products within the period of the plan, from which time they will be required to apply for exporting and re-exporting licenses from the Exchange.

(e) Violations of these provisions shall be dealt with by the penalties under Section 19 of this Act.

SECTION 26. *Supply Contracts with State-Owned Companies.* – (a) When bidding out supply contracts to prospective exporters of crude oil and refined petroleum products, the Exchange shall prioritize, and if possible, restrict supply contracts to 100 percent (100%) state-owned oil companies from oil-producing countries, which have the least influence from transnational oil corporations: *Provided, That the Exchange shall, by policy, pursue commodity swaps and other trade agreements as delineated under Section 27 of this Act.*

(b) The Exchange shall minimize, as much as possible and within the limits of annual appropriations under Section 17 of this Act, cash outlays for performing its procurement activities.

SECTION 27. *Commodity Swaps and Other Bilateral Agreements.* (a) When bidding out supply contracts to prospective importers of crude oil and refined petroleum products, the Exchange shall, as a matter of policy and especially in trade with state-owned oil companies from oil-producing countries, pursue commodity swaps where the Exchange shall push for special terms in supply contracts of crude oil and refined petroleum products in exchange for equally favorable concessions to exporting countries. Such swaps shall include the trade of products without the exchange of foreign currencies to minimize the impact of fluctuations in the U.S. Dollar-Philippine Peso exchange rate on the price of oil. An alternative practice shall include the Exchange purchasing petroleum imports using the Philippine Peso, which oil-exporting countries can subsequently use to pay for their imports from the Philippines. These trade practices shall be subject to actual negotiations.

(b) The Exchange, in consultation with the Secretary of the Department of Trade and Industry (DTI), is tasked to spearhead activities relating to commodity swaps and other bilateral trade agreements. It shall conduct studies on which petroleum exporting countries would such arrangements be most feasible before commencing with the bidding and negotiations. The Exchange shall likewise explore previously untapped trade partners for crude oil and refined petroleum products for which commodity swaps and other bilateral trade agreements may be feasible.

SECTION 28. *Shipping, Transport, and Storage.* – (a) For the Exchange to centralize and strictly regulate the movement of petroleum and petroleum products at shipping, transport, and storage, as well as enable it to get the best shipping, transport, and storage prices for its imported crude oil and petroleum products, Petron Corporation, as renationalized under Chapter IV of this Act, with the PSTSC, another subsidiary company of the Philippine National Oil Company, are hereby tasked to fulfill, in the first year upon the effectivity of this Act, the shipping and transportation needs of the Exchange. Any and all deficiencies in the ability of Petron and the PSTSC to fulfill the shipping and transport needs of the Exchange shall be resolved by the Exchange by acquiring, leasing, or renting private shipping and transport facilities, through supplementary appropriations.

(b) To respond to the storage needs of the Exchange, the mandate of the PSTSC is hereby extended to include storage, besides shipping and transport. The PSTSC is thus renamed as the PNOC Shipping, Transport, and Storage Corporation (PSTSC), hereon referred to as the Logistics Company.

(c) To effectively empower the Exchange, together with the use of the oil depots and storage facilities of Petron Corporation, the newly established PSTSC shall hereby acquire majority equity control over vital, national oil storage facilities through the purchase of stock. PSTSC shall initially acquire, through supplementary appropriations and succeeding general appropriations, majority stake in the top three (3) to

five (5) oil depots in the country; *Provided That* PSISC shall acquire more stock in these corporations and shall likewise take control of, lease, or rent other vital oil storage facilities as the need arises for the Exchange and as is feasible according to the Centralized Petroleum Procurement Plan under Section 25 of this Act; *Provided further*, That the Logistics Company shall initially attempt to buy back the shares at the Philippine Stock Exchange. If the minimum 51 percent (51%) equity from the involved corporations is not purchased, the Exchange shall cause the expropriation, subject to just and fair compensation, of shares from foreign investors or from local investors, or whoever/whichever has possession/ownership/control/custody thereof.

SECTION 29. *Buffer Supply*. – (a) Once the Exchange has reached procurement levels where 100 percent of the previous year's actual total importation is already being procured for the current year, the Exchange shall procure greater volume than the present year's total national demand or importation forecasts, if warranted by the availability of funds. Any surplus inventories from present year's petroleum procurement shall serve as stock for the Buffer Supply of the Exchange.

(b) Buffer supplies shall be maintained and expanded during periods of relatively low world prices of oil, lower levels of consumption, and during periods where commodity swaps and bilateral trade negotiations bear extraordinary levels of supply; *Provided*, That these supplies shall be withdrawn during periods of extremely high global prices of oil and during shortages in order to delay any necessary price increases and bridge the gap between import levels and actual domestic demand.

(c) The Exchange shall set minimum Buffer Supply levels at the conclusion of the Centralized Petroleum Procurement Plan. At this point, the Exchange shall set a program to progressively increase the minimum Buffer Supply level until a suitable floor level can be maintained. Minimum Buffer Supply levels and subsequent modifications shall be set by the Board of the Exchange.

(d) When Buffer Supply minimum floor levels have been maintained for at least five (5) years, extraordinary gains from existing inventories due to extremely large increases in global prices can be plowed back, by recommendation of the Board of the Exchange, into the funding resources of the Exchange.

SECTION 30. *Petroleum Security Procedures*. – The Exchange shall draw up plans to cope with such contingencies as may arise should prevailing sources of supply become closed or inaccessible, and enter into such preliminary negotiations or arrangements with possible alternative sources as may be necessary to assure a stable, adequate, and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible.

SECTION 31. *Waiving of Tariff Duties on Imported Oil*. The PNOC-National Petroleum Exchange Corporation shall hereby be exempted from import tariffs on crude oil and petroleum products, thus amending Section 106 of Presidential Decree No. 1464, otherwise known as the "Tariff and Customs Code of 1978", as follows:

"Sec. 106. Drawbacks. —

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On Petroleum Oils and Oils Obtained from Bituminous Minerals, Crude Eventually Used for Generation of Electric Power and for the Manufacture of City Gas. On petroleum oils and oils obtained from bituminous materials, crude oils imported by non-electric utilities, sold directly or indirectly, in the same form or after processing, to electric utilities for the generation of electric power and for the manufacture of city gas, a refund or tax credit shall be allowed not exceeding fifty percent (50%) of the duty imposed by law upon such oils, which shall be paid or credited under such rules and regulations as may be prescribed by the Commissioner of Customs with the approval of the Secretary of Finance:

PROVIDED, THAT IMPORT TARIFFS FOR SUCH PETROLEUM PRODUCTS SHALL BE WAIVED FOR IMPORTS BY THE PHILIPPINE NATIONAL OIL COMPANY-NATIONAL PETROLEUM EXCHANGE COMPANY (PNOC-NPEC).

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CHAPTER VI PROHIBITED ACTS AND PENALTIES

SECTION 32. *Penalties for Violations.*

(a) Any person who gives false or misleading data or information or willfully or through gross negligence, conceals or falsifies a material fact, in any investigation, inquiry, study, or other proceeding held pursuant to this Act, shall be punished with imprisonment of not less than two but not more than six months, and with a fine of not less than one thousand but not more than ten thousand pesos: *Provided*, That if the false or misleading data or information shall have been given under oath, the maximum penalty for giving false testimony or perjury shall be imposed;

(b) Any person who violates any provision of this Act or any order, decision, ruling, or regulation of the Council shall, upon conviction, be sentenced for a period of not less than six months but not more than five years and a fine of not less than ten thousand pesos but not more than fifty thousand pesos. If the offender be a corporation, partnership, or juridical person, the penalty shall be imposed on the officer or officers responsible for permitting or causing a violation by the corporation, partnership, or juridical person of the provisions of this Act;

(c) If the offender is a government official or employee, the maximum penalty prescribed in paragraph (b) shall be imposed and the offender shall suffer the additional penalty of perpetual disqualification from public office without prejudice to any administrative action against him;

(d) If the offender is a member of the Petroleum Regulatory Council or any of its attached agencies and companies, and the commission of the offense is attended by clear abuse of discretion on his part, or by any corrupt practice defined in Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", or other similar irregularity, the penalty imposed shall be a fine of one hundred thousand pesos and imprisonment of not less than ten years. A similar penalty shall be imposed upon any private person, whether in the government service or not, who induces, aids, or abets the offender in the commission of the offense;

(e) It shall be an offense, penalized as provided in paragraph (c) or (d) above, whichever may be applicable, for any person serving in the Petroleum Regulatory Council or any of its attached agencies and companies, either as a Chairperson, Member, or as a member of the staff to directly or indirectly be employed by, or to receive any compensation from, or to have any direct or indirect financial interest in, any firm engaged in the business of exploring, exploiting, importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, marketing, distributing, and selling both at wholesale and retail any petroleum resource;

- (f) Any alien violating this Act shall, in addition to the penalty herein provided, be deported after service of sentence and shall not be permitted reentry into the Philippines; and
- (g) All monetary penalties shall directly accrue to the OPBF.

CHAPTER VII FINAL PROVISIONS

SECTION 33. *Implementing Rules and Regulations.* – The Petroleum Regulatory Council, in coordination with the Department of Energy, shall formulate and issue the necessary implementing rules and regulations within thirty (30) days after the effectivity of this Act.

SECTION 34. *Budgetary Appropriations.* – Such amount as may be necessary to effectively implement this Act shall be provided for by Congress in the annual General Appropriations Act.

SECTION 35. *General Repealing Clause.*

- (a) Republic Act No. 8479, also known as the *Downstream Oil Industry Deregulation Act of 1998* is hereby repealed.
- (b) All other laws, decrees, executive orders, issuances, rules and regulations, or parts thereof inconsistent with any of the provisions of this Act, are hereby repealed or amended accordingly.

SECTION 36. *Separability Clause.* – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, such other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 37. *Effectivity.* – This Act shall take effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation.

Approved.