



SECOND REGULAR SESSION

RESOLUTION NO. 122

RESOLUTION RESPECTFULLY ASKING THE SENATE COMMITTEE ON GOVERNMENT CORPORATIONS AND PUBLIC ENTERPRISES TO GIVE DUE CONSIDERATION TO THE PROVISIONS OF R.A. NO. 11054 CONCERNING THE RIGHT OF THE BARMM GOVERNMENT OVER THE MANAGEMENT OF INLAND WATERS IN LIGHT OF THE PENDENCY OF SENATE BILLS NO. 90, 389, AND 1015 SEEKING TO CREATE A LAKE LANAO DEVELOPMENT AUTHORITY

WHEREAS, Section 3, Article III of R.A. 11054 otherwise known as *An Act Providing For The Organic Law For The Bangsamoro Autonomous Region In Muslim Mindanao* provides:

*“All inland waters such as lakes, rivers, river systems, and streams within its territorial jurisdiction shall form part of the Bangsamoro Autonomous Region inland waters. The **preservation and management** of the **inland waters** shall be under the Bangsamoro Government as provided for in Section 22, Article XIII of this Organic Law.”*

WHEREAS, Section 9, Article XIII of the same law provides that:

*“The **management and protection** of nature reserves and aquatic parks, forests, watershed reservations, and other protected areas in the territorial jurisdiction of the Bangsamoro that have already been defined and under the authority of the National Government **shall be transferred to the Bangsamoro Government.**” XXX*

WHEREAS, Section 22, Article XII of R.A. No. 11054 further provides that:

*“The Bangsamoro Government shall have exclusive powers over inland waters including lakes, marshes, rivers, and tributaries within its territorial jurisdiction, except those that provide energy to power generating plants. **The parliament shall enact laws on the regulation, conservation, management, and protection of these resources, and may classify inland waters in the Bangsamoro Autonomous Region. It shall create a Bangsamoro Authority and offices for specific inland bodies of water that shall exercise management and regulatory powers over these bodies of water.** If any inland water is a source of energy for areas outside of the Bangsamoro Autonomous Region, the principle of co-management of fossil fuels under Section 10 of this Article and Section 34 of Article XII of this Organic Law shall apply. The Bangsamoro Government shall ensure that the utilization of these waters shall be for the primary benefit of the people in the Bangsamoro Autonomous Region and shall host communities their share from the revenues generated from such utilization.”*

WHEREAS, a careful examination of the above-cited provisions reveals that Section 3 of Article III grants the power to preserve and manage inland waters to the Bangsamoro Government and Section 22 of Article XIII makes it mandatory for the Bangsamoro Parliament to enact laws on the regulation, conservation, management, and protection of such resources evident in the use of the word "shall";

WHEREAS, the sentence "*except those that provide energy to power generating plants*" does not divest the BARMM Government of its power over the inland waters but merely affects the "exclusivity" of the power with respect to the grants of rights, privileges, and concessions in the exploration, development, and utilization of natural resources;

WHEREAS, based on the provisions: "*If any inland water is a source of energy for areas outside of the Bangsamoro Autonomous Region, the principle of co-management of fossil fuels under Section 10 of this Article and Section 34 of Article XII of this Organic Law shall apply,*" the two sections referred thereto reveal the definition of co-management as the "joint exercise of the power to grant rights, privileges, and concession over exploration, development and utilization";

WHEREAS, considering such interpretation, the power of the Bangsamoro Government to preserve and manage its inland waters is unaffected by the principle of co-management as it does not in any way reduce nor diminish the power of the Bangsamoro Government to regulate, conserve, manage, and protect such body of water and it makes it clear that the National Government and the Bangsamoro Government will jointly exercise powers with respect only to energy regulation in light of the principle of co-management;

WHEREAS, to create a regulatory agency for Lake Lanao forming part of the national government would render nugatory the provisions of the Bangsamoro Organic Law which mandatorily requires the Bangsamoro Government to enact laws on the regulation, conservation, management, and protection of its inland waters and to create a Bangsamoro Authority and offices for specific inland bodies of water that shall exercise management and regulatory powers over these bodies of water;

WHEREAS, it is a well-settled rule in statutory construction that the word "shall" means that the requirement is mandatory as it connotes an order, and its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion;

WHEREAS, the mandatory character of these provisions of law behooves the Bangsamoro Transition Authority to adopt a position that would not run counter to the duly enacted law (BOL) by the Philippine Congress and ratified by the Bangsamoro People;

WHEREAS, considering the nature of R.A. 11054, the BTA is left with no discretion but to follow its mandate giving due respect to the enactments of the national legislature mandatorily requiring the parliament to enact laws on the regulation, conservation, management, and protection of such resources, and to create a Bangsamoro Authority and offices for specific inland bodies of water that shall exercise management and regulatory powers over such bodies of water;

WHEREAS, there exists a legal mechanism found in Section 2, Article VI of R.A. No. 11054 which speaks of the creation of National Government-Bangsamoro Government Intergovernmental Relations Body, otherwise referred to as "Intergovernmental Relations Body" duly formed to coordinate and resolve issues on intergovernmental relations through a regular consultation and continuing negotiations in a non-adversarial manner, and Section 7 of the same Article which further created the Intergovernmental Energy Board composed of representatives of the National Government and the Bangsamoro Government from their respective energy regulatory commissions and electrification administrations;

WHEREAS, it behooves the BTA to seek the wisdom of the Senate Committee on Government Corporations and Public Enterprises in the utilization of such a forum to fully discuss the positions of the relevant stakeholders;

NOW, THEREFORE, be it

RESOLVED, as it is hereby resolved by the Bangsamoro Transition Authority, to respectfully ask the Senate Committee on Government Corporations and Public Enterprises to give due consideration to the provisions of R.A. No. 11054 concerning the right of the BARMM Government over the management of inland waters in light of the pendency of Senate Bills No. 90, 389, and 1015 seeking to create a Lake Lanao Development Authority and to consider the utilization of Intergovernmental Relations Body to fully discuss the positions of the relevant stakeholders.

RESOLVED, FURTHER, to forward this Resolution to the office of the Chief Minister Hon. Ahod Balawag Ebrahim and Senate President Vicente Sotto III, for information and appropriate consideration.

ADOPTED, March 25, 2021.

Certified Correct:


PROF. RABY B. ANGKAL
Secretary-General

Attested:


ATTY. ALI PANGALIAN M. BALINDONG
Speaker

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