

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

'04 JUN 30 P12:03

S E N A T E

S. NO. 16

RECEIVED BY: 

Introduce by Senator Juan M. Flavio

EXPLANATORY NOTE

This bill introduces amendments to the Public Service Law, Commonwealth Act No. 146, amended. The amendments redefine the term "public service" in the said law to exclude certain activities from the protection and regulation of the law, including the burden of obtaining the certificate of public convenience.

The public service law requires an enterprise engaged in a public service to obtain a certificate of public convenience, or of public convenience and necessity as the case maybe. Issuance of such certificate effectively grants a franchise to the enterprise, guaranteeing it a fixed rate of return, based on the value of the assets it employs in the public service. Reciprocally, it should comply with the rules and requirements imposed by the regulatory agency, which at present is either the Department of Transportation and Communications or the Energy Regulatory Board.

Activities classified in the existing law as "public service" include the following:

- a. Common Carriers – railroad, street and traction railways, subway motor vehicle, whether for freight or passenger;
- b. Express Service;
- c. Steamboat, steamship line, portines, ferries and water craft, transporting freight and/or passengers;
- d. Shipyard, marine railway, marine repair shop, wharf or dock;
- e. Ice plant, ice refrigeration plant;
- f. Canal, irrigation system;
- g. Gas, electric lights, heat and power, water supply and power;
- h. Petroleum, sewerage system;
- i. Wire or wireless communications system, wire or wireless broadcasting stations.

Many advances in technology, and changes in the industrial and economic situation have taken place since CA 146 was enacted in November 1936. These technological and industrial changes have made it easier and cheaper to put up the facilities required to render some of the "public services". These changes remove the need to create the regulated monopolies/oligopolies that franchises imply, thus putting into question the continued inclusion of some of the above activities as franchised public services with a guaranteed rate of return. For the foregoing reasons, the amendments in this bill would exclude from the above activities the following:

EXPRESS SERVICE

At present there are several express services in operation. They deliver messages and parcels domestically and/or internationally.

SHIPYARD, MARINE RAILWAY, MARINE REPAIR SHOP, WHARF OR DOCK

These activities are already under the jurisdiction of either MARINA or PPA. There is no longer any reason for the first three activities, under the MARINA jurisdiction, to be considered a public service; they are not so considered in any market economy country that we know of. Wharves and docks are under the jurisdiction of the PPA.

ICE PLANT, ICE-REFRIGERATION PLANT

Tremendous advances have been made in the ice-making, refrigeration cold storage and food preservation industries and their technologies in the last 50 years. These advances have brought down the cost of refrigeration, reduced the economic size of ice plants and refrigeration plants, greatly widened the uses of and need for refrigeration, particularly in food preservation, storage and processing. Ice making equipment in the last 50 years have become so small, inexpensive and simple that an ice plant may be viable in a small fishing village. This possibility could not have been thought of with the state of technology in the 1920's.

Thus ice and refrigeration plants should be allowed to proliferate as private businesses to serve the needs of farmers, fishermen and general public instead of being limited by franchises and regulation.

CANAL, IRRIGATION SYSTEMS

Instead of limiting establishment of irrigation systems, by private organizations with franchise requirement, they should be encouraged to relieve government's burden of widening the irrigated area in the country. This liberalization will not remove the need to apply with the appropriate government agency for the rights to impound and distribute the water from source.

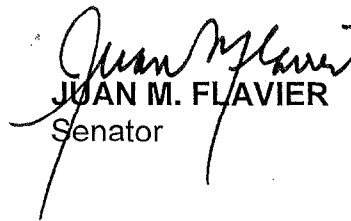
PETROLEUM

The petroleum industry is subject to regulation with respect to selling prices of finished products by the Energy Regulatory Board. The industry itself is not presently considered as a public utility, nor subject to any other regulation as such.

The bill also provides that purely freight ships, without a fixed route, should not be considered a public service. We believe they should be subject to regulation only with respect to the maximum freight rates they may charge. We suggest that the ceiling rates should be equal to those allowed to ships and shipping lines carrying both passengers and freight.

Another important provision of the bill allows the regulatory agencies to establish maximum charges for any public service as may be determined to be better suited to ceiling rather than fixed rates. The law only allows the regulatory agencies to fix definite rates for the public service. If for example the freight rate fixed per ton of cargo from Manila to Lucena is P500, and a trucker were to charge only P480, he would theoretically be in violation of his license. The amendment we propose would allow the Board of Transportation to establish P500 as the maximum, not the fixed rate. On this rate setting, the trucker could not charge any rate he chooses, provided the P500 rate is not exceeded. This would induce competition into the operation of a number of public services with expected consequent benefits to the general public.

In view of the foregoing, passage of this bill is earnestly requested.


JUAN M. FLAVIER
Senator

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SENATE

RECEIVED BY: 

S. NO. 16

Introduce by Senator Juan M. Flavier

AN ACT
DEREGULATING CERTAIN PUBLIC SERVICES, AMENDING FOR THE
PURPOSE COMMONWEALTH ACT NO. 146 AS AMENDED, AND FOR
OTHER PURPOSES

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

SECTION 1. Statement of Policy on Public Services – Public services are essential services rendered to the general public for a fee by one (1) or a limited number of enterprises in a specific area. Government is responsible for ensuring that these services are rendered adequately, extensively, continuously, and fairly. Wherever private enterprise is able to render the public services satisfactorily, government shall encourage private enterprises to do so.

Franchises to render specific public services may be extended to one (1) or a limited number of private enterprises in a specified service area, if necessary to encourage private enterprises to render such public service. The best qualified and most capable to render such public service shall be selected in the required number from among competing applicants. Such franchises have the effect of limiting normal competition in rendering public service, and there are therefore subjected to regulation by the designated agency of government.

Continuing review is required of the public services presently franchised by government to determine whether the public interest is better served by releasing these public services from the franchising requirement, and/or by subjecting them to full or limited price competition.

Pursuant to the above policy, this Act revises the definition of "public service" in order to deregulate certain activities, and allows regulatory agencies to impose maximum fee or charge ceilings in addition to their authority to fix definite fee or charges for the public service.

SECTION 2. To carry out the purposes of this Act, Section 13 (b), Section 14 and Section 16 (c) of Commonwealth Act No. 146 as amended, otherwise known as the Public Service Law, are hereby further amended to read as follows:

"SECTION 13 (b) . The term "public service includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general [or limited] clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class [express service,] PASSENGER steamboat, or steamship line, pontines, ferries; and water craft engaged in the transportation of passengers [or freight] or both PASSENGERS AND FREIGHT; [shipyard, marine railways, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system,] gas, electric light, heat and power, water supply and power [petroleum,] sewerage system, wire or wireless broadcasting stations and other similar public services. Provided, however, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third parties engaged in agriculture , not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purpose of this Act.

"SECTION 14. The following are exempted from the provisions of the preceding section:

- (a) Warehouse [;], INCLUDING COLD STORAGE PLANTS;
- (b) Vehicles drawn by animals and bancas moved by oar or sail, and tugboats and lighters;
- (c) Airships within the Philippines except as regards the fixing of their maximum rates on freight and passengers;
- (d) INTERISLAND CARGO VESSELS WHICH DO NOT CARRY PAYING PASSENGERS, REGULARLY OR OTHERWISE, AND HAVE NO FIXED ROUTE, EXCEPT AS REGARDS THE FIXING OF THEIR MAXIMUM RATES ON FREIGHT ;
- (e) [D] Radio companies except with respect to the fixing of rates;
- (f) [e] Public Services owned or operated by any instrumentality of the National Government or by any government owned or controlled corporation, except with respect to the fixing of rates."

"SECTION 16 (c). To fix and determine, OR TO FIX MAXIMUM CEILINGS OF, individual or joint rates, toll, charges, classification, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty (30) days thereafter, upon publication and notice to the concerns operating in the territory affected : Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates."

SECTION 3 All laws, acts, executive orders, rules and regulations and other issuances inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 4 This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,