

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

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SENATE

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S. No. 742

INTRODUCED BY SENATOR MANUEL B. VILLAR, JR.

EXPLANATORY NOTE

In 1974, the Philippine Ports Authority (PPA) was created by virtue of Presidential Decree (PD) 857, as amended, to implement an integrated program for the planning, development, financing and operation of piers or port districts for the entire country. However, twenty-five years later, PPA established a highly centralized port system consisting of roughly 115 major and minor ports scattered throughout the archipelago.

Through the years, the port users (e.g., domestic shippers, exporters and importers) have complained of low service levels, inefficient port operations and ever-increasing port charges. As such, the high cost of transport serves as an effective barrier to increased trade (both local and foreign) and undermines the country's export competitiveness.

The failure of the PPA to accomplish its objectives is an indication of a need to reform the country's ports administration policy by introducing further amendments to certain provisions of the PPA Charter with the aim of: 1) promoting inter-port and intra-port competition as a means of encouraging port operators to provide higher levels of service; 2) increasing private sector participation in port policy formulation by increasing representation in the PPA Board; 3) promoting greater private sector participation in the development and operation of the port itself and; 4) separating the port development and regulatory functions of the PPA by removing its rate-setting function.


MANUEL B. VILLAR, JR.

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
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PRIVATE
OFFICE OF THE SECRETARY

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INTRODUCED BY SENATOR MANUEL B. VILLAR, JR.

AN ACT PROVIDING FOR THE OMNIBUS AMENDMENTS TO PRESIDENTIAL DECREE NO. 857, OTHERWISE KNOWN AS THE REVISED CHARTER OF THE PHILIPPINE PORTS AUTHORITY (PPA), AS AMENDED, TO RATIONALIZE THE FUNCTIONS OF THE PPA, AND FOR OTHER PURPOSES

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

Section 1. Section 2, Article II on Declaration of Policies is hereby amended by adding paragraphs (g) and (h) to read as follows:

- (G) FOSTER VIABLE COMPETITION AMONG AND WITHIN PORTS AND ENSURE EFFICIENT PROVISION OF PORT SERVICES TAKING INTO CONSIDERATION THE PHYSICAL CONFIGURATION OR CONSTRAINTS OF THE PORTS, VESSEL AND CARGO TRAFFIC AND SUCH OTHER RELEVANT FACTORS; AND
- (H) TO ENCOURAGE GREATER PRIVATE SECTOR PARTICIPATION IN THE DEVELOPMENT, MANAGEMENT AND OPERATIONS OF PORTS THRU THE BOT SCHEME OR ITS VARIANTS, JOINT VENTURES OR SUCH OTHER SCHEMES AUTHORIZED BY THIS ACT OR OTHER LAWS AND EXISTING POLICIES, PROVIDED THAT PORT PRIVATIZATION SHALL NOT INCLUDE THE SALE OR TRANSFER OF OWNERSHIP OF PORT ASSETS OR FACILITIES.

Section 2. Section 3, Article II on Definitions, is hereby amended to include paragraphs (v), (w) and (x), the definitions of Joint Venture, Port System and PPA Subsidiary, respectively, as follows:

- (V) "JOINT VENTURE" OF THE AUTHORITY AND THE PRIVATE SECTOR REFERS TO CORPORATION OR ENTITY ORGANIZED UNDER EXISTING LAWS, WITH THE AUTHORITY AS THE MINORITY STOCKHOLDER AND THE PRIVATE SECTOR AS THE MAJORITY STOCKHOLDER, AND/OR PRIVATE CORPORATION WHERE THE MAJORITY STOCKHOLDER IS A NATURAL FILIPINO CITIZEN AND NOT MORE THAN FORTY PERCENT (40%) FOREIGN STOCKHOLDER TO DEVELOP, MAINTAIN, MANAGE AND OPERATE PORTS OR PORT SERVICES AS COMMERCIAL ENTERPRISES.
- (W) "PORT SYSTEM" INCLUDES GOVERNMENT PORTS, WHICH, AS DETERMINED BY THE AUTHORITY ON THE BASIS OF CARGO, VESSELS AND PASSENGER TRAFFIC, STRATEGIC LOCATION AND DEVELOPMENT POTENTIALS, CAN PROVIDE, EFFECTIVE AND ECONOMICAL TRANSPORT FOR GOODS AND PASSENGERS.

(X) "SUBSIDIARY" REFERS TO CORPORATION ORGANIZED BY THE AUTHORITY IN ACCORDANCE WITH THE CORPORATION LAW TO DEVELOP, MAINTAIN, MANAGE AND OPERATE PORTS AND PORT SERVICES AS A FINANCIALLY AUTONOMOUS ENTITY.

Section 3. Subsection (ix) of Section 6 (b), Article 4 on Corporate Powers of the Authority, is hereby amended to read as follows:

(IX) To levy dues, rates or charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority or any other organization concerned with port operations, SUBJECT TO THE DETERMINATION BY AN INDEPENDENT REGULATORY COMMISSION AFTER DUE PROCESS AND PUBLIC HEARINGS CONDUCTED BY SAID COMMISSION

Section 4. Section 7 (a), Article 7 on Board of Directors, is hereby amended by the redesignation of sub-paragraph (ix) as sub-paragraph (x) and inserting a new sub-paragraph (ix) to read as follows:

- (IX) THE MINISTER (NOW SECRETARY) OF AGRICULTURE;
- (X) SEVEN (7) OTHER PERSONS WHO SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES AND NOMINATED BY THEIR RESPECTIVE SECTORS REPRESENTING: 1) THE BUSINESS SECTOR OR THE LOCAL CHAMBER OF COMMERCE AND INDUSTRY; 2) A MAJOR SHIPPERS ASSOCIATION; 3) EXPORT AND IMPORT SECTOR; 4) DOMESTIC SHIPPING COMPANIES; 5) INTERNATIONAL SHIPPING COMPANIES; 6) CARGO-HANDLING COMPANIES AND; 7) LABOR, WHO BY REASON OF THEIR KNOWLEDGE AND EXPERIENCE ARE COMPETENT TO BE MEMBERS OF THE BOARD OF DIRECTORS. Provided, That in the absence of the Director appointed in subsections (iii) to (x) the Director concerned shall designate the officer next in rank to him in his department of office to act on his behalf as Director.

Section 5. Section (19), Article VII on Dues and Rates, is hereby amended to read as follows:

(19) The President of the Philippines ON ITS OWN OPTION OR upon recommendation of the INDEPENDENT REGULATORY COMMISSION may increase or decrease such dues, collectible by the Authority to protect the interest of the Government AND MOST ESPECIALLY OF THE GENERAL PUBLIC, and to provide a satisfactory reasonable return on the Authority's assets, and may adjust the schedule of such dues so as to reflect the costs of providing the services WHICH IS COST-BASED OR BASED ON ACTUAL SERVICES RENDERED. Provided, however, that the rates of dues on all the ports of the Philippines upon the coming into operation of this ACT shall be those now provided under Parts 1, 2, 3 and 6 of Title VII of Book II of the Tariff and Customs Code, until such time that the President upon recommendation of the Board may order that the adjusted schedule of dues are in effect.

Section 6. Section 20, Article VII on Dues and Rates, is hereby amended to read as follows:

(A) THE CHARGES OR FEES FOR THE USE OF PORT PREMISES, WORKS, APPLIANCES OR EQUIPMENT BELONGING TO THE AUTHORITY AND PORT FACILITIES PROVIDED, AND FOR SERVICES RENDERED BY THE AUTHORITY OR BY ANY PRIVATE ORGANIZATION WITHIN A PORT DISTRICT SHALL BE

RATIONALIZED TO ELIMINATE ANY DOUBLE CHARGES TO THE SHIPPER, CARGO OWNERS AND/OR THE GENERAL PUBLIC.

- (B) THE CHARGES FOR PORT SERVICES OR PORT-RELATED SERVICES SHALL BE COST-BASED (OR BASED ON ACTUAL SERVICES RENDERED) AND DETERMINATION OF SUCH CHARGES OR RATES SHALL BE MADE BY AN INDEPENDENT REGULATORY COMMISSION UNDER THE JURISDICTION OF DOTC.
- (C) THE COMMISSION SHALL BE COMPOSED OF A CHAIRMAN AND FOUR MEMBERS TO BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES. THE CHAIRMAN AND THE MEMBERS OF THE COMMISSION SHALL BE NATURAL-BORN CITIZENS AND RESIDENTS OF THE PHILIPPINES, PERSONS OF GOOD MORAL CHARACTER, AT LEAST THIRTY-FIVE (35) YEARS OF AGE, AND OF RECOGNIZED COMPETENCE IN ANY OF THE FOLLOWING FIELDS: MARITIME TRANSPORT, LAW, ECONOMICS, FINANCE, COMMERCE OR ENGINEERING, WITH AT LEAST THREE (3) YEARS OF ACTUAL AND DISTINGUISHED EXPERIENCE IN THEIR RESPECTIVE FIELDS OF EXPERTISE. PROVIDED, THAT OUT OF THE FOUR (4) MEMBERS OF THE COMMISSION, AT LEAST ONE SHALL BE A MEMBER OF THE PHILIPPINE BAR WITH AT LEAST TEN (10) YEARS EXPERIENCE IN THE ACTIVE PRACTICE OF LAW, AND ONE (1) SHALL BE A CERTIFIED PUBLIC ACCOUNTANT WITH AT LEAST TEN (10) YEARS EXPERIENCE IN ACTIVE PRACTICE.
- (D) THE COMMISSION WILL CONDUCT PUBLIC HEARINGS FOR ANY PETITION FOR RATE INCREASES (FOR WHICH SEPARATE GUIDELINES WILL BE DEVELOPED).
- (E) THE AUTHORITY SHALL IMPLEMENT THE RATES, CHARGES, OR FEES FOR THE USE OF PORT PREMISES, WORKS; APPLIANCES OR EQUIPMENT BELONGING TO THE AUTHORITY AND PORT FACILITIES PROVIDED AND FOR SERVICES AS APPROVED BY THE SAID REGULATORY COMMISSION.
- (F) THE PPA SHALL HAVE NOT JURISDICTION TO CONDUCT NOR PARTICIPATE IN ANY PUBLIC HEARING FOR THE PETITION FOR AN INCREASE IN CARGO HANDLING RATES ON THE GROUND OF "CONFLICT OF INTEREST" DUE TO PPA'S TEN PERCENT (10%) SHARE FROM THE CARGO HANDLING OPERATIONS GROSS REVENUE GENERATED OR COLLECTED THEREFROM.
- (G) The government share from all cargo-handling contractors and port-related service operators shall be at a rate not less than 10% taken from their gross income earned from such services. HOWEVER, THE PRESIDENT MAY REDUCE THE SAME AS IT MAY AS DEEMED NECESSARY AND PROPER FOR REASON OF PUBLIC INTEREST.

Section 7. Repealing Clause- All laws, decrees, executive orders, rules and regulations, policies, programs, or parts thereof, inconsistent with or contrary to any of the provisions of this Act are hereby repealed or modified accordingly.

Section 8. Separability Clause- If, for any reason, any section or provision of this Act is declared to be unconstitutional or invalid, the other sections or provisions of this Act which are not affected thereby shall continue to be in full force and effect.

Section 9. Effectivity Clause- This Act shall take effect fifteen (15) days after its publication in the Official Gazette or a newspaper of general circulation.

Approved,