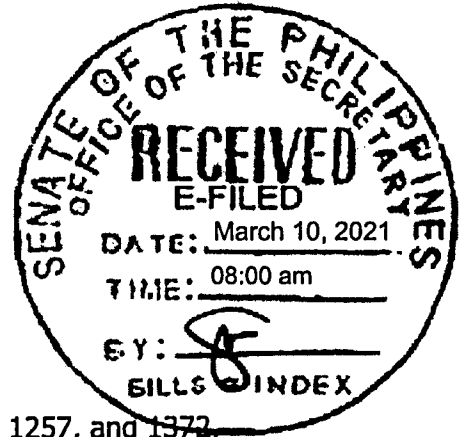


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE

S. No. 2094

(In Substitution of Senate Bill Nos. 13, 318, 419, 531, 1257, and 1373,
taking into consideration House Bill No. 78)

Prepared and submitted jointly by the Committees on Public Services; Economic Affairs; and Finance, with **Senators Drilon, Poe, Pangilinan, Zubiri, and Marcos** as authors thereof

AN ACT
AMENDING COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE
PUBLIC SERVICE ACT, AS AMENDED

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

1 Section 1. *Declaration of Policy.* –The State recognizes the role of the private
2 sector as the main engine for national growth and development. It is hereby declared
3 the policy of the State to encourage private enterprise and expand the base of
4 investment in the country, with the goal of providing efficient, reliable and affordable
5 basic services to all. The State recognizes that economic liberalization promotes the
6 free flow of capital, efficiently allocates scarce resources, allows the transfer of
7 advanced technology and facilitates market competition, for the benefit of the
8 consumers who are given the right to choose between service providers.

9 Sec. 2. *Definition of Terms.* – For the purposes of this Act, the terms below
10 shall be defined as follows:

11 a.) *Common Carrier* – refers to persons, corporations, firms or associations
12 engaged in the business of carrying or transporting passengers or goods or both, by
13 land, water, or air, for compensation, offering their services to the public, as defined
14 by Article 1732 of Republic Act No. 386, as amended;

1 b.) *Covered transaction* — refers to any merger, acquisition, or takeover
2 that is proposed or pending after the effectivity of this law, by or with any foreign
3 person which could result in foreign control of a business or entity providing a private
4 a public service;

5 c.) *Critical infrastructure* — refers to systems and assets, whether physical
6 or virtual, so vital to the Republic of the Philippines that the incapacity or destruction
7 of such systems or assets would have a debilitating impact on national security. It
8 shall specifically refer to:

- 9 (i) Transmission of Electricity;
- 10 (ii) Distribution of Electricity;
- 11 (iii) Water Pipeline Distribution Systems and Sewerage Pipeline Systems;
- 12 (iv) Telecommunications; and
- 13 (v) Common Carrier

14 d.) *Disgorgement of Profits*— refers to the giving up or recapturing of profits
15 traceable to a certain transaction or wrongdoing upon demand or by legal compulsion;

16 e.) *Distribution of Electricity*— refers to the conveyance of electric power by
17 a distribution utility through its distribution system as defined by Section 4 (n) of
18 Republic Act No. 9136;

19 f.) *Foreign government-controlled transaction* — refers to any covered
20 transaction that could result in the control of any person engaged in commerce in the
21 Republic of the Philippines by a foreign government or an entity controlled by or acting
22 on behalf of a foreign government.

23 g.) *Foreign State-owned enterprise* - refers to an entity in which a foreign
24 state:

- 25 (i) directly owns more than fifty percent (50%) of the capital;
- 26 (ii) controls, through ownership interests, the exercise of more than fifty
27 percent (50%) of the voting rights; or
- 28 (iii) holds the power to appoint a majority of members of the board of
29 directors or any other equivalent management body.

30 h.) *Telecommunications* — refers to any process which enables a
31 telecommunications entity to relay and receive voice, data, electronic messages,
32 written or printed matter, fixed or moving pictures, words, music or visible or audible

1 signals or any control signals of any design and for any purpose by wire, radio or other
2 electromagnetic, spectral, optical or technological means, as defined by Section 3(a)
3 of Republic Act No. 7925, as amended;

4 i.) *Transmission of Electricity* – refers to the conveyance of electricity
5 through the high voltage backbone system, as defined by Section 4 (ccc) of Republic
6 Act No. 9136;

7 j.) *Water Pipeline Distribution Systems and Sewerage Pipeline Systems* –
8 refers to the operation and maintenance of water pipeline distribution systems to
9 ensure an uninterrupted and adequate supply and distribution of potable water for
10 domestic and other purposes and the operation and maintenance of sewerage pipeline
11 systems to ensure public health and safety, as regulated by Republic Act No. 6234, as
12 amended, and Presidential Decree No. 198, as amended.

13 **Sec. 3. *Transfer of Jurisdiction to Various Administrative Agencies.*** –The powers
14 of the Public Service Commission under Commonwealth Act No. 146, or the Public
15 Service Law, as amended, are hereby transferred to the various administrative
16 agencies of government according to their respective jurisdictions, including but not
17 limited to the following:

- 18 a. Civil Aeronautics Board (CAB);
- 19 b. Civil Aviation Authority of the Philippines (CAAP);
- 20 c. Department of Energy (DOE);
- 21 d. Department of Environment and Natural Resources (DENR);
- 22 e. Department of Information and Communications Technology (DICT);
- 23 f. Department of Transportation (DOTr);
- 24 g. Energy Regulatory Commission (ERC);
- 25 h. Land Transportation Franchising and Regulatory Board (LTFRB);
- 26 i. Land Transportation Office (LTO);
- 27 j. Local Water Utilities Administration (LWUA);
- 28 k. Maritime Industry Authority (MARINA);
- 29 l. Metropolitan Waterworks and Sewerage System (MWSS);
- 30 m. National Telecommunications Commission (NTC);
- 31 n. National Water Resources Board (NWRB);

- 1 o. Philippine Coast Guard (PCG);
- 2 p. Philippine Ports Authority (PPA); and
- 3 q. Toll Regulatory Board (TRB).

4 Sec. 4. A new Section 13 (d) of Commonwealth Act No. 146, as amended, is
5 hereby inserted to read as follows:

6 **"(D) PUBLIC UTILITY. –**

7 **PUBLIC UTILITY REFERS TO A PERSON THAT OPERATES,**
8 **MANAGES AND CONTROLS FOR PUBLIC USE ANY OF THE**
9 **FOLLOWING:**

- 10 **1) DISTRIBUTION OF ELECTRICITY;**
- 11 **2) TRANSMISSION OF ELECTRICITY; AND**
- 12 **3) WATER PIPELINE DISTRIBUTION SYSTEMS AND**
13 **SEWERAGE PIPELINE SYSTEMS**

14 **NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY**
15 **UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW.**

16 **THE NATIONAL ECONOMIC AND DEVELOPMENT**
17 **AUTHORITY (NEDA) THROUGH ITS BOARD, IN CONSULTATION**
18 **WITH THE PHILIPPINE COMPETITION COMMISSION (PCC)**
19 **AND THE CONCERNED ADMINISTRATIVE AGENCIES, MAY**
20 **RECOMMEND TO CONGRESS THE CLASSIFICATION OF A**
21 **PUBLIC SERVICE AS A PUBLIC UTILITY ON THE BASIS OF THE**
22 **FOLLOWING CRITERIA:**

23 **1) THE PERSON OR JURIDICAL ENTITY REGULARLY**
24 **SUPPLIES AND DIRECTLY TRANSMITS AND DISTRIBUTES TO**
25 **THE PUBLIC THROUGH A NETWORK A COMMODITY OR**
26 **SERVICE OF PUBLIC CONSEQUENCE;**

27 **2) THE COMMODITY OR SERVICE IS A NATURAL**
28 **MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE**
29 **COMMON GOOD SO REQUIRES;**

30 **3) THE COMMODITY OR SERVICE IS NECESSARY FOR**
31 **THE MAINTENANCE OF LIFE AND OCCUPATION OF THE PUBLIC;**
32 **AND**

1 **4) THE COMMODITY OR SERVICE IS OBLIGATED TO**
2 **PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND."**

3 **UNLESS OTHERWISE INCLUDED IN THE DEFINITION OF**
4 **PUBLIC UTILITY UNDER THIS ACT, PERSONS CLASSIFIED AS**
5 **PUBLIC UTILITIES UNDER COMMONWEALTH ACT NO. 146 ARE**
6 **HEREBY CONSIDERED AS PUBLIC SERVICES WHICH SHALL**
7 **CONTINUE TO BE SUBJECT TO REGULATION BY RELEVANT**
8 **ADMINISTRATIVE AGENCIES UNDER EXISTING LAWS.**

9 Sec. 5. The first paragraph of Section 15 of Commonwealth Act No. 146, as
10 amended, is hereby amended to read as follows:

11 "With the exception of those enumerated in the preceding
12 section, no public service shall operate in the Philippines without
13 possessing a valid and subsisting certificate [~~from the Public Service~~
14 ~~Commission known as "certificate of public convenience," or "certificate~~
15 ~~of public convenience and necessity," as the case may be,]~~ **FROM THE**
16 **PROPER ADMINISTRATIVE AGENCY** to the effect that the operation
17 of said service and the authorization to do business will promote the
18 public interest in a proper and suitable manner."

19 The [Commission] **ADMINISTRATIVE AGENCY** may prescribe
20 as a condition for the issuance of the certificate **OR AUTHORIZATION**
21 provided in the preceding paragraph that the service can be acquired by
22 the Republic of the Philippines or any instrumentality thereof upon
23 payment of the cost of the price of its **CAPITAL STOCK, OR** useful
24 equipment, less reasonable depreciation, and likewise, that the
25 certificate **OR AUTHORIZATION** shall be valid only for a definite
26 period of time and that the violation of any of these conditions shall
27 produce the immediate cancellation of the certificate **OR**
28 **AUTHORIZATION** without the necessity of any express action on the
29 part of the [Commission] **ADMINISTRATIVE AGENCY.**

30 **FOR PURPOSES OF THIS ACT, THE TERM 'CERTIFICATES'**
31 **SHALL INCLUDE FRANCHISES OR ANY OTHER APPROPRIATE**
32 **FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC**

1 **SERVICE. ALL PROVISIONS OF COMMONWEALTH ACT NO. 146**
2 **CONTAINING SUCH TERM ARE HEREBY AMENDED TO REFLECT**
3 **SUCH CHANGE.**

4 Sec. 6. Section 16 (a) and (c) of Commonwealth Act No. 146, as amended, are
5 hereby amended to read as follows:

6 Section 16. *Proceedings of the ~~{Commission,}~~*
7 **ADMINISTRATIVE AGENCY Upon Notice and Hearing.** – The
8 ~~[Commission]~~ **ADMINISTRATIVE AGENCY** shall have **THE** power,
9 upon proper notice and hearing in accordance with the rules and
10 provisions of this Act, ~~[subject to the limitations and exceptions~~
11 ~~mentioned and saving provisions to the contrary]:~~

12 “(a) To issue certificates ~~[which shall be known as certificates of~~
13 ~~public convenience,]~~ authorizing the operation of public service within
14 the Philippines whenever the ~~[Commission]~~ **ADMINISTRATIVE**
15 **AGENCY** finds that the operation of the public service proposed and the
16 authorization to do business will promote the public interest in a proper
17 and suitable manner. ~~[Provided, That thereafter, certificates of public~~
18 ~~convenience and certificates of public convenience and necessity will be~~
19 ~~granted only to citizens of the Philippines or of the United States or to~~
20 ~~corporations, co-partnerships, associations or joint stock companies~~
21 ~~constituted and organized under the laws of the Philippines; Provided,~~
22 ~~That sixty per centum of the stock or paid up capital of any such~~
23 ~~corporations, co-partnership, association or joint stock company must~~
24 ~~belong entirely to citizens of the Philippines or of the United States;~~
25 ~~Provided, further, That no such certificates shall be issued for a period~~
26 ~~of more than fifty years.]~~

27 xxx

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28 (c) To fix and determine **THE MAXIMUM** individual or joint
29 rates, tolls, charges, classifications, **REVENUES** or schedules thereof,
30 as well as commutation, mileage, kilometrage, and other special rates
31 which shall be imposed, observed, and followed thereafter by any public
32 service **WHEN THE PUBLIC INTEREST SO REQUIRES:** Provided,

1 That the [~~Commission~~] **ADMINISTRATIVE AGENCY** may, in its
2 discretion, approve rates proposed by public services provisionally and
3 without necessity of any hearing; but it shall call a hearing thereon
4 within [~~thirty~~] **FIFTEEN (15)** days, thereafter, upon publication and
5 notice to the [~~concerns-operating~~] **AFFECTED PARTIES** in the territory
6 affected, **TO RATIFY ITS PRIOR PROVISIONAL APPROVAL OR**
7 **CHANGE, MODIFY OR ALTER THE APPROVED RATE BASED ON**
8 **PUBLIC INTEREST:** Provided, further, That in case the public service
9 equipment of an operator is used principally or secondarily for the
10 promotion of a private business, the net profits of said private business
11 shall be considered in relation with the public service of such operator
12 for the purpose of fixing the rates. **IN THE INTEREST OF THE**
13 **PUBLIC, THE ADMINISTRATIVE AGENCY MAY ESTABLISH AND**
14 **ENFORCE A METHODOLOGY FOR SETTING RATES, TAKING**
15 **INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING**
16 **THE EFFICIENCY OF THE REGULATED PUBLIC SERVICE. THE**
17 **RATES MUST BE SUCH AS TO ALLOW THE RECOVERY OF**
18 **PRUDENT AND EFFICIENT COSTS AND A REASONABLE RATE OF**
19 **RETURN. INCOME TAX SHALL BE ALLOWED AS A CASH**
20 **EXPENDITURE OR OUTFLOW FOR RATE-DETERMINATION**
21 **PURPOSES. THIS PROVISION SHALL NOT BAR THE**
22 **APPLICATION OF PERFORMANCE-BASED RATE REGULATION**
23 **SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH**
24 **PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC**
25 **INTEREST.**

26 Sec. 7. Section 17 (b) of Commonwealth Act No. 146, as amended, is hereby
27 amended to read as follows:

28 "(b) To require any public service to pay the actual expenses
29 incurred by the [~~Commission~~] **ADMINISTRATIVE AGENCY** in any
30 investigation if it shall be found in the same that any rate, toll, charge,
31 schedule, regulation, practice, act or service thereof is in violation of any
32 provision of this Act or any certificate, order, rule, regulation or

1 requirement issued or established by the [Commission]
2 **ADMINISTRATIVE AGENCY**. The [Commission] **ADMINISTRATIVE**
3 **AGENCY** may also assess against any public service **REASONABLE**
4 costs [~~not to exceed twenty five pesos~~] with reference to such
5 investigation."

6 Sec. 8. Section 20 (i) of Commonwealth Act No. 146, as amended, is hereby
7 amended to read as follows:

8 "(i) To sell, alienate or in any manner transfer shares of its capital
9 stock to any alien if the result of that sale, alienation, or transfer in itself
10 or in connection with another previous sale shall be the reduction to less
11 than sixty per centum of the capital stock belonging to Philippine citizens
12 **IN THE OPERATION OF A PUBLIC UTILITY AS REQUIRED BY**
13 **THE CONSTITUTION**. Such sale, alienation or transfer shall be void
14 and of no effect and shall be sufficient cause for ordering the
15 cancellation of the certificate."

16 Sec. 9. Section 21 of Commonwealth Act No. 146, as amended, is hereby
17 amended to read as follows:

18 "Every public service violating or failing to comply with the terms
19 and conditions of any certificate or any orders, decisions or regulations
20 of the [Commission] **ADMINISTRATIVE AGENCY** shall be subject to
21 **DISGORGEMENT OF PROFITS OR FINE EQUAL TO TREBLE**
22 **DAMAGES, OR BOTH** [~~of not exceeding two hundred pesos~~] per day
23 for every day during which such default or violation continues; and the
24 [Commission] **ADMINISTRATIVE AGENCY** is hereby authorized and
25 empowered to impose such **PENALTY OR** fine, after due notice and
26 hearing.

27 The **PENALTIES AND** fines so imposed shall be paid to the
28 Government of the Philippines through the [Commission]
29 **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR**
30 fine in any case within the same specified in the order or decision of the
31 [Commission] **ADMINISTRATIVE AGENCY** shall be deemed good and
32 sufficient reason for the suspension of the certificate of said public

1 service until payment shall be made. Payment may also be enforced by
2 appropriate action brought in a court of competent jurisdiction. The
3 remedy provided in this section shall not be a bar to, or affect any other
4 remedy provided in this Act but shall be cumulative and additional to
5 such remedy or remedies."

6 Sec. 10. Section 23 of Commonwealth Act No. 146, as amended, is hereby
7 amended to read as follows:

8 "Any public service corporation that shall perform, commit, or do
9 any act or thing forbidden or prohibited or shall neglect, fail or omit to
10 do or perform any act or thing herein to be done or performed, shall be
11 punished by a fine not exceeding ~~[twenty-five thousand pesos]~~ **TWO**
12 **MILLION PESOS (P2,000,000.00)**, or imprisonment ~~[not exceeding~~
13 ~~five years]~~ **OF NOT LOWER THAN SIX (6) YEARS AND NOT**
14 **HIGHER THAN TWELVE (12) YEARS**, or both, in the discretion of
15 the court."

16 Sec. 11. Section 24 of Commonwealth Act No. 146, as amended, is hereby
17 amended to read as follows:

18 "Any person who shall knowingly and willfully perform, commit,
19 or do, or participate in performing, committing, or doing, or who shall
20 knowingly and willfully cause, participate, or join with others in causing
21 any public service corporation or company to do, perform or commit, or
22 who shall advice, solicit, persuade, or knowingly and willfully instruct,
23 direct, or order any officer, agent, or employee of any public service
24 corporation or company to perform, commit, or do any act or thing
25 forbidden or prohibited by this Act, shall be punished by a fine not
26 exceeding ~~[twenty-five thousand pesos]~~ **TWO MILLION PESOS**
27 **(P2,000,000.00)**, or imprisonment ~~[not exceeding five years]~~ **OF**
28 **NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN**
29 **TWELVE (12) YEARS**, or both, in the discretion of the court ~~[-];~~
30 ~~Provided, however, that for operating a private passenger automobile~~
31 ~~as a public service without having a certificate of public convenience for~~
32 ~~the same the offender shall be subject to the penalties provided for in~~

1 ~~section sixty seven (j) of Act numbered thirty nine hundred an ninety~~
2 ~~two]."~~

3 Sec. 12. Section 25 of Commonwealth Act No. 146, as amended, is hereby
4 amended to read as follows:

5 "Any person who shall knowingly and willfully neglect, fail, or omit
6 to do or perform, or who shall knowingly and willfully cause or join or
7 participate with others in causing any public service corporation or
8 company to neglect, fail or omit to do or perform, or who shall advise,
9 solicit, or persuade, or knowingly and willfully instruct, direct, or order
10 any officer, agent, or employee of any public service corporation or
11 company to neglect, fail, or omit to do any act or thing required to be
12 done by this Act, shall be punished by a fine not exceeding ~~[twenty five~~
13 ~~thousand pesos]~~ **TWO MILLION PESOS (P2,000,000.00)**, or
14 imprisonment ~~[not exceeding two years]~~ **OF NOT LOWER THAN SIX**
15 **(6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or
16 both, in the discretion of the court."

17 Sec. 13. Section 26 of Commonwealth Act No. 146, as amended, is hereby
18 amended to read as follows:

19 "Any person who shall destroy, injure, or interfere with any
20 apparatus or appliance owned or operated by the [Commission]
21 **ADMINISTRATIVE AGENCIES** or its agents, shall be ~~[deemed guilty~~
22 ~~of a misdemeanor and upon conviction shall be]~~ punished by a fine **OF**
23 **THE AMOUNT EQUIVALENT TO THE ACTUAL MARKET VALUE OF**
24 **THE APPARATUS OR APPLIANCE DESTROYED OR INJURED**
25 **PLUS A FINE NOT EXCEEDING TWO MILLION PESOS**
26 **(PHP2,000,000.00)** ~~[not exceeding one thousand pesos]~~ or
27 imprisonment ~~[not exceeding six months]~~ **OF NOT LOWER THAN SIX**
28 **(6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both
29 in the discretion of the court.

30 ~~[Any public service permitting the destruction, injury to, or~~
31 ~~interference with, any such apparatus or appliances shall forfeit a sum~~
32 ~~not exceeding four thousand pesos for each offense.]"~~

1 **Sec. 14. *Review of Foreign Direct Investment in Covered Transactions.* –**

2 **(a) National Security Reviews, How Initiated.** – The President or the National
3 Security Council ("Council") shall initiate a review of a covered transaction to
4 determine its effects on the national security of the Republic of the Philippines if—

5 (i) the covered transaction is a foreign government-controlled
6 transaction; and

7 (ii) the transaction would result in control of any critical infrastructure of
8 or within the Republic of the Philippines.

9 The authority of the Council to initiate a review may not be delegated to any
10 person, other than the appropriate Undersecretary of the department or deputy head
11 of the agency represented in the Council.

12 Any party to a covered transaction may likewise initiate a review under this
13 paragraph by submitting a written notice to the Chairperson of the Council.

14 The President or the Council shall complete a review under this paragraph
15 within thirty (30) days from the date the review is initiated.

16 **(b) Submission of Additional Information.** – No provision of this subsection shall
17 be construed as prohibiting any party to a covered transaction from submitting
18 additional information while the review is on-going, including any proposed
19 restructuring of the transaction or any modification agreements in connection with the
20 transaction.

21 **(c) Notice of Results to Parties.** – Upon completion of all actions under this
22 Section, the Council shall promptly notify parties to a covered transaction of the results
23 of the national security review.

24 **(d) Confidentiality of Information.** – Any information or documentary material
25 filed with the President and Council pursuant to this Section shall be exempt from
26 disclosure, and no such information or documentary material may be made public,
27 except as may be relevant to any administrative or judicial action or proceeding.
28 Nothing in this subsection shall be construed to prevent disclosure to Congress or to
29 any duly authorized committee or subcommittee of Congress, if the Committee
30 provides assurances of confidentiality, or unless such party otherwise provides written
31 consent for disclosure.

1 (e) Action by the President. – The President may take such appropriate action
2 including the suspension of a covered transaction involving critical infrastructure that
3 threatens to impair the national security of the Philippines, subject to the following
4 conditions:

5 (i) there is credible evidence to support the President's belief that the
6 foreign interest exercising control might undertake actions that threaten
7 to impair the national security of the Philippines; and

8 (ii) provisions of law, other than this section, do not, in the judgment of
9 the President, provide adequate and appropriate authority for the
10 President to protect the national security matter before the President.

11 For purposes of determining whether to take appropriate action, the President
12 shall consider the following:

13 (i) the potential national security-related effects on critical infrastructure;

14 (ii) whether the covered transaction is a foreign government-controlled
15 transaction.

16 The President shall announce the decision not later than fifteen (15) days from
17 the date the review as described is completed.

18 No provision of this section shall be construed as altering or affecting any other
19 authority, process, regulation, investigation, enforcement measure, or review provided
20 by or established under any other provision of law, or any other authority of the
21 President or the Congress under the Constitution.

22 (f) Mitigation. – To mitigate any threat to national security arising from the
23 covered transaction, the Council or a Lead agency on behalf of the Council, may
24 negotiate, enter into, or impose and enforce any agreement or condition with any
25 party to the covered transaction. Any agreement entered into or condition imposed
26 under this paragraph shall be supported by a risk-based analysis conducted by the
27 Council.

28 (g) Lead Agency for Monitoring and Enforcement. – The Lead Agency shall
29 negotiate, modify, monitor, and enforce, on behalf of the Council, any agreement
30 entered into or condition imposed, based on its expertise and knowledge of the issues
31 related to such transaction. Nothing in this paragraph shall prohibit other departments
32 or agencies in assisting the lead agency in carrying out the purposes of this paragraph.

1 The lead agency shall provide periodic reports to the Council on any material
2 modification to any agreement or condition imposed under paragraph (f).

3 **Sec. 15. *Investments by Foreign State-owned Enterprises.*** – Foreign state-
4 owned enterprises shall be prohibited from owning capital in any public service
5 classified as critical infrastructure: *Provided*, that the prohibition shall apply only to
6 investments made after the effectivity of this Act: *Provided further*, that state-owned
7 enterprises which own capital prior to the effectivity of this law are prohibited from
8 investing in additional capital upon the effectivity of this Act.

9 **Sec. 16. *Reciprocity Clause.*** – Foreign nationals shall not be allowed to own
10 more than 40 per centum of capital in public services engaged in the operation and
11 management of critical infrastructure unless the country of such foreign national
12 accords reciprocity to Philippine nationals as may be provided by foreign law, treaty
13 or international agreement. Reciprocity may be satisfied by any form or arrangement
14 of exchange that is beneficial to Filipinos, including according rights of similar value in
15 other economic sectors, as may be determined by the Director-General of the National
16 Economic and Development Authority.

17 Unless otherwise provided by law, or by any international agreement, a public
18 service shall employ a foreign national only after the determination of nonavailability
19 of a Philippine National who is competent, able and willing to perform the services for
20 which the foreign national is desired; provided, that in no case shall the employed
21 foreign nationals comprise more than twenty five percent (25%) of the total
22 employees of the public service.

23 Any foreign national seeking admission to the Philippines for employment
24 purposes and any public service which desires to engage a foreign national for
25 employment in the Philippines must obtain an employment permit pursuant to
26 Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines,
27 as amended.

28 **Sec. 17. *Information Security.*** – Public services in critical infrastructure shall
29 obtain and maintain certifications from an accredited certification body attesting to
30 compliance with relevant ISO standards on information security: *Provided*, that the
31 maintenance of these certifications shall be a continuing qualification for retention of
32 franchise or other authority to operate.

1 **Sec. 18. *Performance Audit.*** – Administrative agencies must ensure the annual
2 conduct of performance audit by an independent evaluation team to monitor cost, the
3 quality of services provided to the public, and the ability of the public service provider
4 to immediately and adequately respond to emergency cases. Metrics for various types
5 of services must be established to sustain reliability, security, and safety of the public.

6 **Sec. 19. *Conduct of Regular Studies and Comprehensive Baseline Survey.*** –
7 The PCC, in coordination with NEDA, shall conduct regular studies to determine
8 whether or not deregulation in a sector is warranted to improve consumer welfare and
9 shall submit its recommendation to Congress.

10 The University of the Philippines Law Center shall conduct a comprehensive
11 baseline survey of public services governance within six (6) months from the effectivity
12 of this Act. Copies of the results of said survey shall be furnished to the Congress, the
13 NEDA and PCC.

14 **Sec. 20. *Congressional Oversight and Periodic Review.*** — A Congressional
15 Oversight Committee shall be created that will monitor and evaluate the
16 implementation of this Act every five (5) years commencing from the effectivity of this
17 Act. The Congressional Oversight Committee shall be composed of the Chairperson of
18 the Senate Committee on Public Services, the Chairperson of the House of
19 Representatives Committee on Economic Affairs, and representatives of other relevant
20 congressional committees.

21 **Sec. 21. *Interpretation.*** – This Act shall be subject to and consistent with the
22 regulatory powers of the State to promote public interest in Article IX-C, Section 4 and
23 Article XII, Section 17 of the Constitution.

24 **Sec. 22. *Repealing Clause.*** – All laws, decrees, orders, rules and regulations or
25 other issuances or parts thereof inconsistent with the provisions of this Act, are hereby
26 repealed and modified accordingly.

27 **Sec. 23. *Separability Clause.*** – If any portion or provision of this Act is declared
28 unconstitutional, the remainder of this Act or any provision not affected thereby shall
29 remain in force and effect.

30 **Sec. 24. *Effectivity.*** – This Act shall take effect immediately after its publication
31 in the Official Gazette or in a newspaper of general circulation.

Approved,