

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
SECOND REGULAR SESSION)

5 NOV 21 19:24

Senate
S. B. No. 2165

RECEIVED BY: 

Introduced by Sen. Juan Ponce Enrile

EXPLANATORY NOTE

For more than 30 years now, the Local Water Utilities Administration (LWUA) has been mandated by law to establish, finance and administer as well as promote and develop potable water supply systems used nationwide. Since 1973, LWUA has been working in close cooperation with local government units in creating water districts to supply provincial residents with safe, dependable, sufficient and affordable water supply for their daily needs.

As a result of this, more than 400 water districts have been formed covering 680 cities and towns throughout the country. Potable water supply is being directly served to some 12.6 million Filipinos thereby bringing health, economic and other benefits to these communities. However, some 55%, or 820 towns and cities all over the Philippines are still not yet serviced by water districts.

Under its charter, LWUA's authorized capital stock in the form of national government subscription is P2 billion and, as early as 1990, this has already been fully subscribed by the agency. Since then, LWUA has been largely dependent on government subsidy for peso counterpart to their foreign loans. Cognizant of the urgent necessity and the vital role that improved water supply systems play in the overall socio-economic progress of the nation, there is indeed a need for LWUA to increase its capitalization.

This bill, therefore, seeks to, among others, increase the authorized capitalization of LWUA from P2 billion to P10 billion to enable it to further spread the benefits of improved potable water systems particularly to the yet unserved areas of the country. Moreover, the bill proposes to restore provisions on tax exemptions, as originally provided for in Presidential Decree 198, to enable LWUA to establish and activate about 100 more water districts by the year 2010.

Apart from strengthening its financial capacity to implement its programs, other amendments proposed herein will effect a smoother and a more precise dispensation of LWUA functions and activities.


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


JUAN PONCE ENRILE
Senator

THIRTEENTH CONGRESS OF THE)
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AN ACT
FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN
AS THE PROVINCIAL WATER UTILITIES ACT, AS AMENDED, PROVIDING
FUNDS THEREFOR AND FOR OTHER PURPOSES

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

SECTION 1. Section 3(b) of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 3. *Definitions.* - As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any of its variants.

- (a) *Act* – This Provincial Water Utilities Act of 1973.
- (b) *Appointing Authority* – [The person empowered to appoint the majority members of the Board of Directors of a local water district depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located: Provided, That if the existing waterworks system in the city or municipality established as a water district under this Decree is operated and managed by the province, initial appointment shall be extended by the governor of the province. Subsequent appointments shall be as specified therein.

If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governor, then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province as the greatest number of service connections exists.] **THIS SHALL REFER TO THE AUTHORITY TO APPOINT THE BOARD OF DIRECTORS WHICH IS HEREBY VESTED IN THE ADMINISTRATION AND IN THE CITY OR MUNICIPAL MAYOR, AS THE CASE MAY BE.**

- (b) *Administration.* – The Local Water Utilities Administration chartered in Title II of this Decree.
- (d) *NEDA* – The National Economic and Development Authority.
- (e) *Board or Board of Directors.* – The Board of Directors of a district.

- (f) Contracts. – All agreements, including leases, conveyances and obligations.
- (g) Districts. – A local water district formed pursuant to Title II of this Act.
- (h) *Local Water Utility* – Any district, city, municipality, province, investor-owned public utility or cooperative corporation which owns or operates a water system serving an urban center in the Philippines, except that said term shall not include the Metropolitan Waterworks and Sewerage System (MWSS) or any system operated by the Bureau of Public Works as successor to the Wells and Springs Department of the National Waterworks and Sewerage Authority.
- (i) Person – A natural person, corporation, cooperative, partnership, association, city, municipality or other juridical entry.
- (j) Property. – All real and personal property, including but not limited to: water, water rights, works, easements, rights of way.
- (k) Street - Includes road, alley, avenue, highway of other public way.
- (l) Trustees of Board of Trustees. – The Board of Trustees of the Administration.

SEC. 2. Section 8 of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 8. COMPOSITION [Number] and Qualifications OF THE BOARD OF DIRECTORS. – The Board of Directors of a WATER district, **DEPENDING ON THE CLASSIFICATION OF SUCH WATER DISTRICT AS DETERMINED BY THE ADMINISTRATION**, shall be composed of:

- A) five (5) MEMBERS FOR AREAS WHICH ARE CLASSIFIED AS SMALL, AVERAGE, MEDIUM AND BIG WATER DISTRICTS;
OR,
- B) SEVEN (7) MEMBERS FOR AREAS WHICH ARE CLASSIFIED AS LARGE AND VERY LARGE.

THE DIRECTORS MUST BE [who are] OF VOTING AGE AND MUST BE residents [within] OF THE AREA(S) COVERED BY THE WATER DISTRICT AND THEY SHALL BE APPOINTED BY THE ADMINISTRATION: PROVIDED, THAT TWO (2) DIRECTORS SHALL BE APPOINTED BY THE CITY OR MUNICIPAL MAYOR, AS THE CASE MAY BE.

THE ADMINISTRATION, IN COORDINATION WITH THE CITY OR MUNICIPAL MAYOR, SHALL ENSURE THAT THE FOLLOWING SECTORS SHALL BE ADEQUATELY REPRESENTED IN THE BOARD OF DIRECTORS:

- A) [one member shall be a representative of] **PROFESSIONAL ASSOCIATIONS;**
- B) [one member a representative of] **BUSINESS, COMMERCIAL, OR FINANCIAL ORGANIZATIONS;**
- C) [one member of] **EDUCATIONAL INSTITUTIONS; AND,**

D) [one member a representative of] WOMEN'S ORGANIZATIONS: PROVIDED, THAT IN CASES WHERE THERE IS ALREADY A WOMAN REPRESENTATIVE, THE SLOT ALLOTTED FOR THE WOMEN SECTOR SHALL AUTOMATICALLY BE RESERVED FOR THE YOUTH SECTOR.

No public official shall serve as director: *Provided, however,* that if the district has availed of the financial assistance of the *Administration*, the Administration may appoint any of its personnel to sit in the Board of Directors, **IN AN INTERIM CAPACITY**, with all the rights and privileges as pertaining to a regular member, **DURING** [for] such period as the indebtedness remains unpaid, in which case the Board shall be composed of six (6) **OR EIGHT (8)** members, **AS THE CASE MAY BE.**

IN CASE OF NEWLY FORMED WATER DISTRICTS OR WATER DISTRICTS WHICH ARE SUFFERING FINANCIAL LOSSES, THE ADMINISTRATION SHALL HAVE THE RIGHT TO NAME AS DIRECTOR OF THE BOARD ANY INDIVIDUAL WITH SUPERIOR MANAGERIAL SKILLS AND EXPERIENCE WHO MAY NOT BE RESIDENT/S OF THE AREA/S COVERED BY THE WATER DISTRICT AND MAY NOT NECESSARILY BE EMPLOYEES OF THE ADMINISTRATION.

SEC. 3. Section 9 of Presidential Decree 198 is hereby deleted.

SEC. 4. All succeeding provisions shall be hereby renumbered accordingly.

SEC. 5. Section 10 of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 10. Nominations – [On or before October 1 of each even numbered year, t]The secretary of the district shall contact [each known] **OR NOTIFY ON OR BEFORE OCTOBER 1 OF EACH EVEN-NUMBERED YEAR**, the association, organization, institution or sector being represented by the director whose term will expire on December 31 and solicit nominations from these [organizations] **SECTOR/S** to fill the position/S for the ensuing term. [One] [n]Nomination[/s] may be submitted [in writing by each such organizations] to the secretary of the district on or before November [2] 1 of such year. The list of nominees shall be transmitted by the secretary of the district to the office of the appointing authority, **AS THE CASE MAYBE**, on or before November 15 of such year and he shall make his appointment [from the list submitted] on or before December 15 **FROM THE SUBMITTED LIST.** [In the event the appointing authority fails to make his appointments on or before December 15, selection shall be made from said list of nominees by majority vote of the seated directors of the district constituting a quorum. Initial nominations for all five seats of the board shall be solicited by the legislative body or bodies at the same time of adoption of the resolution forming the district. Thirty days thereafter, a list of nominees shall be submitted to the provincial governor in the event the resolution forming the district is by a provincial board, or the mayor of the city or municipality in the event the resolution forming the adoption of the district is by the city or municipality board of councilors, who shall select the initial directors therefrom within 15 days after receipt of such nominations.]

THE NAMES OF THE TWO (2) DIRECTORS, WHO SHALL BE NOMINATED AND APPOINTED BY THE CITY OR MUNICIPAL MAYOR, AS THE CASE MAY BE, SHALL BE SUBMITTED TO THE ADMINISTRATION FOR APPROVAL AND CONFIRMATION: PROVIDED, HOWEVER, THAT THE ADMINISTRATION MAY

DISALLOW ANY DIRECTOR FROM ASSUMING HIS OR HER OFFICE IF HE OR SHE IS FOUND TO HAVE ANY PENDING CRIMINAL OR ADMINISTRATIVE CASE.

FOR NEWLY FORMED WATER DISTRICTS, THE ADMINISTRATION AND THE CITY OR MUNICIPAL MAYOR SHALL NOMINATE, SCREEN AND APPOINT ONLY FIVE (5) BOARD OF DIRECTORS, UPON RECOMMENDATION BY THE CONCERNED SECTORS.

IF NO NOMINATIONS ARE SUBMITTED, THE APPOINTING AUTHORITY SHALL APPOINT ANY QUALIFIED PERSON OF THE CATEGORY TO THE VACANT POSITION.

SEC. 6. Section 11 of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 11. *Term of Office* – [Of the initial directors of each newly-formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for six years commencing on January 1 of odd-numbered years. Directors may be removed for a cause only, subject to review and approval of the Administration.]
FOR NEWLY-FORMED WATER DISTRICTS, TWO (2) OF THE BOARD OF DIRECTORS SHALL SERVE FOR ONLY TWO (2) YEARS, ONE (1) DIRECTOR SHALL SERVE FOR A MAXIMUM OF FOUR (4) YEARS, AND THE OTHER TWO (2) SHALL SERVE FOR A MAXIMUM OF FIVE (5) YEARS.

IN CASE OF THE EXISTING WATER DISTRICTS, THOSE WITH FIVE (5) DIRECTORS, ONE (1) SHALL SERVE FOR A PERIOD OF THREE YEARS (3), ANOTHER SHALL SERVE FOR FOUR (4) YEARS AND THE THIRD MEMBER SHALL SERVE FOR FIVE (5) YEARS, RESPECTIVELY, WHILE THE TENURE OF THE TWO (2) DIRECTORS APPOINTED BY THE MAYOR SHALL BE CO-TERMINUS WITH THAT OF THE MAYOR'S.

IN WATER DISTRICTS WITH SEVEN (7) DIRECTORS, FIVE (5) OF THE BOARD OF DIRECTORS WHO SHALL BE APPOINTED BY THE ADMINISTRATOR SHALL SERVE AS FOLLOWS: THE FIRST THREE (3) DIRECTORS SHALL SERVE THE TERMS SIMILAR TO THOSE INDICATED IN THE PREVIOUS PARAGRAPH, WHILE THE OTHER TWO (2) SHALL BOTH SERVE FOR A MAXIMUM OF FIVE (5) YEARS. THE TWO (2) DIRECTORS APPOINTED BY THE MAYOR SHALL BE CO-TERMINUS WITH THAT OF THE MAYOR'S.

IN THE CASE OF THE TWO (2) CO-TERMINUS DIRECTORS, THEIR TENURE SHALL NOT EXCEED MORE THAN THREE (3) YEARS: PROVIDED, THAT THE CITY OR MUNICIPAL MAYOR MAY REPLACE THEM ANY TIME IF, IN HIS ASSESSMENT, ANY OR BOTH OF THEM FAILED TO MEET HIS EXPECTATIONS: PROVIDED, HOWEVER, THAT SUCH REPLACEMENT SHALL BE PRECEDED BY A THIRTY (30) -DAY NOTICE DULY RECEIVED BY THE PARTY CONCERNED WITH COPIES FURNISHED TO THE SECRETARY OF THE DISTRICT AND THE ADMINISTRATION.

BOARD OF DIRECTORS MAY BE RE-APPOINTED: PROVIDED, HOWEVER, THAT NO DIRECTOR SHALL SERVE FOR MORE THAN TEN (10) CONSECUTIVE YEARS.

SEC. 7. Section 39 of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 39. Production Assessment. - In the event that the Board of a district finds, after notice and hearing, that production of groundwater by other entities within the district for commercial or industrial uses is injuring or reducing the district's financial condition, the Board may **REQUEST INTERVENTION BY THE ADMINISTRATION WHICH THE LATTER SHALL ACT ON WITHIN THIRTY (30) DAYS FROM NOTICE AND SHALL CONDUCT AN EVALUATION AND ASSESSMENT OF THE SITUATION. THEREAFTER, THE ADMINISTRATION** may adopt and levy a groundwater production assessment to compensate for such loss. In connection therewith, the [district may] **ADMINISTRATION SHALL** require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the water of the district and shall entitle this district to an injunction and damages pursuant to Section 31 of this Title.

ASSESSMENT FEES AND LEVIES WHICH MAYBE IMPOSED BY THE ADMINISTRATION SHALL BE PAID TO AND COLLECTED BY THE DISTRICT: PROVIDED, THAT SEVENTY-FIVE PER CENT (75%) OF SUCH COLLECTION SHALL BE RETAINED BY THE DISTRICT AS INCOME WHILE TWENTY-FIVE PER CENT (25%) SHALL BE REMITTED TO THE ADMINISTRATION AS SERVICE AND ASSESSMENT FEE AS PRODUCTION APPROVING AUTHORITY.

DECISIONS OF THE ADMINISTRATION ON PRODUCTION ASSESSMENTS AND/OR WATER RATES SHALL NOT BE SUBJECT TO ANY APPEAL BEFORE ANY COURT, EXCEPT TO THE NATIONAL WATER RESOURCES BOARD.

SEC. 8. Section 46 of Presidential Decree 198, as repealed by Presidential Decree 1177 and Presidential Decree 1955, shall now be adopted under this Act to read as follows:

SEC. 46. Exemption from Taxes. - A **WATER** district **CREATED UNDER THIS PRESIDENTIAL DECREE, AS AMENDED,** shall **BE EXEMPT FROM THE PAYMENT OF:**

[(1)] **(A)** [be exempt from paying] income taxes[; and], **EXCEPT TAXES ON INTEREST INCOME FROM DEPOSITS AND ON INVESTMENTS THAT HAVE NO DIRECT RELATION WITH WATER SERVICE OPERATIONS;**

[(2)] **(B)** [shall be exempt from payment of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and any fees, charges or costs involved in any court or administrative proceeding which it may be a party] **FRANCHISE TAXES; AND,**

(C) duties and taxes on imported machinery, equipment and materials required for its operations: **PROVIDED, THAT SUCH MACHINERY, EQUIPMENT AND MATERIALS ARE NOT DOMESTICALLY MANUFACTURED AT COMPARABLE AND COMPETITIVE PRICES AND QUALITY.**

ALL LANDS, BUILDINGS, AND OTHER REAL PROPERTY, INCLUDING EQUIPMENT ATTACHED THERETO, THAT ARE USED FOR WATER SUPPLY GENERATION AND DISTRIBUTION SHALL BE EXEMPTED FROM REAL PROPERTY TAXES: PROVIDED, THAT THE LAND OR BUILDING IS NOT USED FOR OFFICE OR ANY OTHER COMMERCIAL PURPOSES.

THE TAX EXEMPTION PRIVILEGES PROVIDED FOR IN THIS SECTION TO ALL EXISTING WATER DISTRICTS SHALL BE ENJOYED ONLY FOR A PERIOD OF FIVE (5) YEARS FROM THE EFFECTIVITY OF THIS ACT: PROVIDED, HOWEVER, THAT NEWLY FORMED OR NEWLY ACTIVATED WATER DISTRICTS SHALL BE GRANTED TAX EXEMPTION PRIVILEGES FOR A PERIOD OF TEN (10) YEARS: PROVIDED, FURTHER, THAT THE WATER DISTRICTS SHALL ADOPT INTERNAL CONTROL REFORMS THAT WOULD BRING ABOUT THEIR ECONOMIC AND FINANCIAL VIABILITY: PROVIDED, FURTHERMORE, THAT, FOR A WATER DISTRICT TO BE ENTITLED TO THE TAX EXEMPTION, ITS APPROPRIATION FOR PERSONAL SERVICES, AS WELL AS TRAVEL, TRANSPORTATION, OR REPRESENTATION EXPENSES AND PURCHASE OF MOTOR VEHICLES, SHALL NOT BE INCREASED BY MORE THAN TWENTY-FIVE PERCENT (25%) A YEAR DURING THE PERIOD OF EXEMPTION.

SEC. 9. Section 52 of Presidential Decree 198, as amended, is hereby amended to read as follows:

SEC. 52. *Appointment and Term of Office.* – [The Trustees, with the exception of the ex-officio member shall be appointed by the President of the Philippines. They shall have a term of five years each: Provided, That of the first four initially appointed, one shall serve a term of five years, another for four years, the third for three years, and the fourth for two years, the third for three years, and the fourth for two years. Trustees may be removed for cause only.

The incumbent trustees holding office as such upon the effectivity of this amendment shall continue to hold such office until the expiration of their original terms as defined in their appointments.]

THE BOARD OF TRUSTEES OF THE ADMINISTRATION SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES AND SHALL BE COMPOSED OF FIVE (5) MEMBERS, INCLUDING THE ADMINISTRATOR WHO SHALL AUTOMATICALLY BE DESIGNATED AS THE VICE PRESIDENT. THE TRUSTEES SHALL SERVE FOR FIVE YEARS, EXCEPT FOR THE ADMINISTRATOR WHO SHALL SERVE AT THE PLEASURE OF THE PRESIDENT OF THE REPUBLIC.

SEC. 10. A new paragraph under section 58 of Presidential Decree 198, as amended, is hereby introduced to read as follows:

SEC. 58. *The General Manager and Other Employees.* – The Trustees shall not come from the appointed trustees. The general manager shall receive compensation in an amount as may be fixed by the Board, subject to the approval of the President of the Philippines, but in no case less than fifty-four thousand pesos per annum. The general manager shall employ and appoint all additional personnel: Provided, that the appointment of personnel in the supervisory level shall be subject to confirmation by the Board.

The incumbent manager holding office as such upon the effectivity of this amendment shall continue to hold such office unless sooner terminated by competent authority.

The regular professional and technical personnel of the Administration shall be exempt from WAPCO and Civil Service rules and regulations; Provided, That the personnel shall be entitled to the benefits and privileges normally accorded to government employees, such as retirement, GSIS insurance, leave and similar matters.

THE ADMINISTRATION AND WATER DISTRICTS SHALL BE EXEMPT FROM THE PROVISIONS OF REPUBLIC ACT NOS. 8244 AND 9137, OR THE SALARY STANDARDIZATION LAWS, AND INSTEAD THE ADMINISTRATION SHALL HAVE THE AUTHORITY TO DETERMINE ITS OWN SALARY GRADE SYSTEM AS WELL AS ESTABLISH SALARY STANDARDS FOR THE OFFICERS AND EMPLOYEES OF THE WATER DISTRICTS CREATED UNDER THIS ACT.

SEC. 11. A new section 67 is hereby introduced to read as follows:

SEC. 67. TRANSFER OF WATER WORKS PROJECTS TO LWUA – ALL WATER WORKS PROJECTS, INCLUDING FUNDS AND EQUIPMENT, BEING UNDERTAKEN BY OTHER GOVERNMENT AGENCIES OUTSIDE METRO MANILA SHALL BE TRANSFERRED TO THE ADMINISTRATION ONE YEAR AFTER THE EFFECTIVITY OF THIS ACT.

SEC. 12. Section 67 of Presidential Decree 198, as amended, is also amended to read as follows:

SEC. 67. Capital Stock – The authorized capital stock of the Local Water Utilities Administration is [Two] **TEN** billion [Five Hundred Thousand] pesos divided into [Twelve] **FIFTY** million [Five Hundred Thousand] shares of stock with a par value of [Two] **FOUR** Hundred Pesos per share which shall be subscribed by the National Government Financial Institutions [and opened to subscription by private investors or government financial institutions.]: **PROVIDED, HOWEVER, THAT GOVERNMENT FINANCIAL INSTITUTIONS SHALL INVEST NOT LESS THAN THREE PER CENT (3%) BUT NOT MORE THAN FIVE PER CENT (5%) OF THEIR NET INCOMES FOR STOCK SUBSCRIPTION AS PROVIDED FOR UNDER THIS ACT.**

SEC. 13. Section 72 of Presidential Decree 198 shall be hereby amended to read as follows:

SEC. 72. Domestic Borrowing Authority. The Administration shall have the authority to borrow money from all domestic loan sources whether government or private: Provided, that its loans outstanding from domestic sources at any one time shall not exceed [One] **TEN** billion pesos, **AND IN THE CASE OF FOREIGN LOANS, THE CEILING SHALL BE TWO BILLION (US) DOLLARS (US\$2,000,000,000.00): PROVIDED, HOWEVER, THAT THE ADMINISTRATION MAY ONLY PROCEED OR AVAIL OF FOREIGN LOANS WITH PRIOR CLEARANCE AND APPROVAL OF THE DEPARTMENT OF FINANCE: PROVIDED, FURTHERMORE, THAT THE ADMINISTRATION MAY CONVERT ITS AUTHORIZED FOREIGN DEBT INTO PESO OR LOCAL LOANS WHENEVER IT DEEMS NECESSARY.**

SEC. 14. Section 78 of Presidential Decree 198, as repealed by Presidential Decree 1177 and Presidential Decree 1955, shall now be adopted under this Act to read as follows:

Sec. 78. Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government. – [To enable the Administration to pay its indebtedness and obligations, and in furtherance and effective implementation of the policies and objectives of this Decree, t]The Administration is hereby declared exempt **FROM THE FOLLOWING FOR A PERIOD OF TEN (10) YEARS UPON EFFECTIVITY OF THIS ACT:**

- (A) From the payment of all taxes, fees, imposts, charges, costs and restrictions by the Government of the Republic of the Philippines, its provinces, cities, municipalities, and filing and service fees and other charges or costs in any court or administrative proceedings in which it may be a party;
- (B) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities; and,
- (C) From all import duties, compensating taxes, wharfage fees on import of foreign goods and equipment required for its operations and projects.

SEC. 15. *Repealing Clause* – All or any provisions of the Provincial Water Utilities Act of 1973 which are contrary or inconsistent to any provisions hereof are hereby deemed repealed or modified accordingly.

SEC. 16. *Effectivity* – This Act shall take effect after fifteen (15) days following its publication in two (2) newspapers of general circulation.

APPROVED