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

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SENATE  
S.B. No. 1261

RECEIVED BY: 

Introduced by Senator Richard "Dick" J. Gordon

**AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146  
OR THE PUBLIC SERVICE ACT, AS AMENDED**

**EXPLANATORY NOTE**

Consumers often experience high prices and poor quality of basic services in the Philippines, because only a few local players or oligarchs effectively control the market. Competition and foreign investment are inhibited, because limitations that should only apply to the operation of a public utility are usually also applied to all public services. This situation is caused by the ambiguity in the definition of public utility that is often used interchangeably with public service under Commonwealth Act No. 146 or the Public Service Act. The key to fixing this problem is to develop a clear statutory definition of a public utility by amending the Public Service Act.

The Public Service Act is a law that was crafted in 1936 to govern public services in the Philippines. Understandably, it no longer sufficiently addresses the changes in the economic framework brought about by globalization and rapid technological innovation. Hence, there is a need to adjust the provisions of the law to bring it to the 21<sup>st</sup> century and enable it to fulfil its purpose of truly serving the public.

Notwithstanding numerous amendments, this 80-year old law is still a good law in terms of protecting the public interest, albeit outdated in certain aspects, particularly: 1) the transfer of the functions of the Public Service Commission to various administrative agencies; 2) the definition of public service, which is often used as a proxy for public utility in reference to the 1987 Constitution; 3) the appropriate mechanism for fixing rates based on reasonable rate of return; and 4) the applicable penalties and fees for public services.

This bill proposes to further amend the Public Service Act to effect the necessary changes in the antiquated provisions of the law to increase its relevance to contemporary concerns, in the interest of providing the general public with more choices, better services, and lower prices.

This legislative reform will significantly contribute to increasing competition, as well as protecting the public interest. More competition among providers would result in lower prices and improved quality of basic services in the Philippines creating a more competitive economy towards a better quality of life for all.


  
**RICHARD "DICK" J. GORDON**  
Senator



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

SECTION 1. *Transfer of Functions of the Public Service Commission.* – The relevant provisions of Commonwealth Act No. 146 or the Public Service Act, as amended, referring to the Public Service Commission, its powers and duties, are hereby transferred to the various administrative agencies of the government according to their respective jurisdictions, such as:

- (a) Department of Transportation;
- (b) Land Transportation Franchising and Regulatory Board;
- (c) Land Transportation Office;
- (d) Civil Aeronautics Board;
- (e) Civil Aviation Authority of the Philippines;
- (f) Philippine Ports Authority;
- (g) Maritime Industry Authority;
- (h) Philippine Coast Guard;
- (i) Department of Information and Communications Technology;
- (j) National Telecommunications Commission;
- (k) Department of Energy;
- (l) Energy Regulatory Commission;
- (m) Department of Environment and Natural Resources;
- (n) National Water Resources Board;
- (o) Local Water Utilities Administration;
- (p) Philippine Competition Commission; and others.

All references to the Public Service Commission in Commonwealth Act No. 146 or the Public Service Act, as amended, shall mean any such administrative agencies concerned in accordance with their respective charters.

All administrative agencies to which the powers and duties of the Public Service Commission have been transferred are hereby authorized and ordered to charge and collect from any public service or applicant, as the case may be, reasonable fees as



1 reimbursement of its expenses in the authorization, supervision, and regulation of public  
2 services, and to impose appropriate penalties as provided by law.

3 Sec. 2. *Public Utility.* – A new Section 13 (d) of Commonwealth Act No. 146 or  
4 the Public Service Act, as amended, is hereby inserted to read as follows:

5 “(D) I. *PUBLIC UTILITY DEFINITION.* – THE TERM "PUBLIC  
6 UTILITY" REFERS TO A PUBLIC SERVICE THAT REGULARLY  
7 SUPPLIES THE PUBLIC AND DIRECTLY TRANSMITS AND  
8 DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK ITS  
9 COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE. A PUBLIC  
10 UTILITY IS NECESSARY TO THE PUBLIC AND A NATURAL  
11 MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE PUBLIC  
12 INTEREST SO REQUIRES AS DETERMINED BY CONGRESS.

13 II. *PUBLIC UTILITY ENUMERATION.* – A PUBLIC UTILITY SHALL  
14 MEAN ELECTRIC POWER TRANSMISSION, ELECTRIC POWER  
15 DISTRIBUTION, WATER PIPELINE DISTRIBUTION, AND SEWERAGE  
16 PIPELINE SYSTEM, UNLESS OTHERWISE SUBSEQUENTLY  
17 PROVIDED BY LAW. ANY EXISTING LAW TO THE CONTRARY  
18 NOTWITHSTANDING, NO OTHER BUSINESS OR SERVICE SHALL BE  
19 DEEMED A PUBLIC UTILITY, UNLESS OTHERWISE SUBSEQUENTLY  
20 PROVIDED BY LAW UPON RECOMMENDATION BY THE NATIONAL  
21 ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA).

22 III. *PUBLIC UTILITY EXEMPTIONS.* – ANY EXISTING LAW TO  
23 THE CONTRARY NOTWITHSTANDING, THE FOLLOWING SHALL NOT  
24 BE CONSIDERED A PUBLIC UTILITY OPERATION:

25 (1) ELECTRIC POWER GENERATION IN SECTION 6 OF  
26 REPUBLIC ACT NO. 9136 OR THE ELECTRIC POWER INDUSTRY  
27 REFORM ACT OF 2001;

28 (2) ELECTRIC POWER SUPPLY IN SECTION 29 OF REPUBLIC  
29 ACT NO. 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT  
30 OF 2001;

31 (3) CRUDE OIL AND PETROLEUM PRODUCTS UNDER  
32 REPUBLIC ACT NO. 8479 OR THE DOWNSTREAM OIL INDUSTRY  
33 DEREGULATION ACT OF 1998;

34 (4) TRANSPORTATION IN THIS ACT, EXECUTIVE ORDER NO.  
35 202 (1987), PRESIDENTIAL DECREE NO. 474 (1974) AS AMENDED,  
36 AND REPUBLIC ACT NO. 776 (1951) AS AMENDED;

1 (5) BROADCASTING, TELECOMMUNICATIONS, AND VALUE-  
2 ADDED SERVICES IN REPUBLIC ACT NO. 7925 OR THE PUBLIC  
3 TELECOMMUNICATIONS POLICY ACT OF THE PHILIPPINES; AND  
4 (6) OTHER PUBLIC SERVICES IN THIS ACT."

5 Sec. 3. *Certificate of Authority.* – The first paragraph of Section 15 of  
6 Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby amended  
7 to read as follows:

8 "With the exception of those enumerated in the preceding section, no  
9 public service shall operate in the Philippines without possessing a valid  
10 and subsisting certificate OF AUTHORIZATION OBTAINED  
11 APPROPRIATELY from the Public Service Commission known as  
12 "certificate of public convenience," or "certificate of public convenience and  
13 necessity," as the case may be, to the effect that the operation of said  
14 service and the authorization to do business will promote the public interest  
15 in a proper and suitable manner."

16 All references to a certificate of public convenience or a certificate of public convenience  
17 and necessity in Commonwealth Act No. 146 or the Public Service Act, as amended,  
18 shall mean any authorization obtained appropriately as the case may be.

19 Sec. 4. *Proceedings Upon Notice and Hearing.* – Section 16 (a) and (c) of  
20 Commonwealth Act No. 146 or the Public Service Act, as amended, are hereby  
21 amended to read as follows:

22 "(a) To issue certificates which shall be known as certificates of  
23 public convenience, authorizing the operation of public service within the  
24 Philippines whenever the Commission finds that the operation of the public  
25 service proposed and the authorization to do business will promote the  
26 public interest in a proper and suitable manner. Provided, That thereafter,  
27 certificates of public convenience and certificates of public convenience  
28 and necessity will be granted only to citizens of the Philippines or of the  
29 United States or to corporations, co-partnerships, associations or joint-  
30 stock companies constituted and organized under the laws of the  
31 Philippines; Provided, That sixty per centum of the stock or paid-up capital  
32 of any such corporations, co-partnership, association or joint-stock  
33 company must belong entirely to citizens of the Philippines or of the United  
34 States: Provided, further, That no such certificates shall be issued for a  
35 period of more than fifty years.

36 ...

37 (c) To fix and determine individual or joint rates, tolls, charges,  
38 classifications, or schedules thereof, as well as commutation, mileage,



1 kilometrage, and other special rates which shall be imposed, observed,  
2 and followed thereafter by any public service: Provided, That the  
3 Commission may, in its discretion, approve rates proposed by public  
4 services provisionally and without necessity of any hearing; but it shall call  
5 a hearing thereon within thirty days, thereafter, upon publication and  
6 notice to the concerns operating in the territory affected: Provided, further,  
7 That in case the public service equipment of an operator is used principally  
8 or secondarily for the promotion of a private business, the net profits of  
9 said private business shall be considered in relation with the public service  
10 of such operator for the purpose of fixing the rates: PROVIDED  
11 FURTHERMORE, THAT THE MAXIMUM RATE OF RETURN SHALL BE  
12 EQUAL TO THE POST-TAX WEIGHTED AVERAGE COST OF CAPITAL  
13 FOR THE SAME OR COMPARABLE BUSINESSES COMPUTED USING  
14 ESTABLISHED METHODOLOGIES SUCH AS THE CAPITAL ASSET  
15 PRICING MODEL: PROVIDED ALSO, THAT INCOME TAX SHALL BE  
16 ALLOWED AS A CASH OUTFLOW FOR RATE-DETERMINATION  
17 PURPOSES: PROVIDED FINALLY, THAT THIS PROVISION SHALL NOT  
18 BAR THE APPLICATION OF PERFORMANCE-BASED RATE  
19 REGULATION SHOULD THE ADMINISTRATIVE AGENCY  
20 REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND IN  
21 THE PUBLIC INTEREST."

22 Sec. 5. *Proceedings Without Hearing.* – Section 17 (b) of Commonwealth Act No.  
23 146 or the Public Service Act, as amended, is hereby amended to read as follows:

24 "(b) To require any public service to pay the actual expenses  
25 incurred by the Commission in any investigation if it shall be found in the  
26 same that any rate, toll, charge, schedule, regulation, practice, act or  
27 service thereof is in violation of any provision of this Act or any certificate,  
28 order, rule, regulation or requirement issued or established by the  
29 Commission. The Commission may also assess against any public service  
30 REASONABLE costs ~~not to exceed twenty-five pesos~~ with reference to  
31 such investigation."

32 Sec. 6. *Acts Requiring Approval.* – Section 20 (i) of Commonwealth Act No. 146  
33 or the Public Service Act, as amended, is hereby amended to read as follows:

34 "(i) To sell, alienate or in any manner transfer shares of its capital  
35 stock to any alien if the result of that sale, alienation, or transfer in itself or  
36 in connection with another previous sale shall be the reduction to less than  
37 sixty per centum of the capital stock belonging to Philippine citizens IN  
38 THE OPERATION OF A PUBLIC UTILITY AS REQUIRED BY THE

1       CONSTITUTION. Such sale, alienation or transfer shall be void and of no  
2       effect and shall be sufficient cause for ordering the cancellation of the  
3       certificate."

4       Sec. 7. *Penalties for Violations.* – Section 21 of Commonwealth Act No. 146 or  
5       the Public Service Act, as amended, is hereby amended to read as follows:

6               "Every public service violating or failing to comply with the terms  
7       and conditions of any certificate or any orders, decisions or regulations of  
8       the Commission shall be subject to DISGORGEMENT OF PROFITS,  
9       TREBLE DAMAGES, a fine OF UP TO FIVE MILLION PESOS, OR ALL  
10      OR ANY COMBINATION THEREOF ~~of not exceeding two hundred pesos~~  
11      per day for every day during which such default or violation continues; and  
12      the Commission is hereby authorized and empowered to impose such fine,  
13      after due notice and hearing. THE FINE OF UP TO FIVE MILLION PESOS  
14      SHALL BE INCREASED EVERY FIVE (5) YEARS UPON  
15      CERTIFICATION BY NEDA ON THE COMPUTATION OF THE COST OF  
16      MONEY BASED ON THE CURRENT CONSUMER PRICE INDEX.

17             The PENALTIES AND fines so imposed shall be paid to the  
18      Government of the Philippines through the Commission, and failure to pay  
19      the PENALTY OR fine in any case within the same specified in the order  
20      or decision of the Commission shall be deemed good and sufficient reason  
21      for the suspension of the certificate of said public service until payment  
22      shall be made. Payment may also be enforced by appropriate action  
23      brought in a court of competent jurisdiction. The remedy provided in this  
24      section shall not be a bar to, or affect any other remedy provided in this  
25      Act but shall be cumulative and additional to such remedy or remedies."

26      Sec. 8. *Interpretation.* – Commonwealth Act No. 146 or the Public Service Act, as  
27      amended, shall be interpreted to apply suppletorily to existing sector-specific laws  
28      governing public services and public utilities, unless otherwise expressly provided.

29      Sec. 9. *Comprehensive Baseline Survey.* – The University of the Philippines Law  
30      Center shall conduct a comprehensive baseline survey of public services and public  
31      utilities governance within six (6) months from the effectivity of this Act.

32      Sec. 10. *Rules and Regulations.* – All administrative agencies to which the  
33      powers and duties of the Public Service Commission have been transferred shall, in  
34      coordination with the University of the Philippines Law Center, promulgate rules and  
35      regulations to implement the provisions of this Act.

36      Sec. 11. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or  
37      other issuances or parts thereof, including Commonwealth Act No. 146 or the Public



1 Service Act, as amended, inconsistent with the provisions of this Act are hereby  
2 repealed or modified accordingly.

3 Sec. 12. *Appropriation.* – The initial funding to carry out the provisions of this Act  
4 shall be charged against the current year's appropriation. Thereafter, such sums as may  
5 be necessary shall be included in the General Appropriations Act.

6 Sec. 13. *Separability Clause.* – If any portion or provision of this Act is declared  
7 unconstitutional, the remainder of this Act or any provision not affected thereby shall  
8 remain in force and effect.

9 Sec. 14. *Effectivity.* – This Act shall take effect after fifteen (15) days following  
10 the completion of its publication either in the Official Gazette or in a newspaper of  
11 general circulation in the Philippines.

12 Approved,