



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

'17 JAN 11 P3:29

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SENATE  
S. No. 1291

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Introduced by JUAN MIGUEL F. ZUBIRI

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

**EXPLANATORY NOTE**

It has been a norm in our society that when it comes to basic and public services, consumers often get poor quality of services priced at a high cost and it has been an accepted reality being a developing country in Asia. Public has a limited choice when it comes to service providers because very few parties are dominating control of the market. Competition and foreign investment are inhibited because limitations that are rightly applied to public utilities are usually also applied to all public services. Public utility has been synonymous to public service and that situation is due to the ambiguity in the definition of public utility under Commonwealth Act No. 146 or the Public Service Act. To resolve such problem, a policy as to the clear and legal definition of public utility must be laid down, amending thereof the Public Service Act.

The said law was enacted in 1936 to govern public services; undeniably it is no longer apt with our current market situation considering the rapid innovation and technological upgrade that took place. The cause for its revision is justifiable to fully serve its intents and purposes. This proposed measure intends to: 1) transfer functions of the Public Service Commission to various administrative agencies; 2) provide a clear definition of public service and public utility; 3) the appropriate mechanism for fixing rates based on reasonable rate of return; and 4) the applicable penalties and fees for public services.

The proposed amendments will cause the necessary changes in the antiquated provisions of the law to ensure that the general public will have more choices, better services and enjoy lower prices. It will significantly change the competition game of public services and utilities and thereby creating a more competitive economy in the country.

  
**JUAN MIGUEL F. ZUBIRI**



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OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED**

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

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

- 6 (a) Department of Transportation;
- 7 (b) Land Transportation Franchising and Regulatory Board;
- 8 (c) Land Transportation Office;
- 9 (d) Civil Aeronautics Board;
- 10 (e) Civil Aviation Authority of the Philippines;
- 11 (f) Philippine Ports Authority;
- 12 (g) Maritime Industry Authority;
- 13 (h) Philippine Coast Guard;
- 14 (i) Department of Information and Communications Technology;
- 15 (j) National Telecommunications Commission;
- 16 (k) Department of Energy;
- 17 (l) Energy Regulatory Commission;
- 18 (m) Department of Environment and Natural Resources;
- 19 (n) National Water Resources Board;
- 20 (o) Local Water Utilities Administration;
- 21 (p) Philippine Competition Commission; and others.

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

1 All administrative agencies to which the powers and duties of the Public Service  
2 Commission have been transferred are hereby authorized and ordered to charge and  
3 collect from any public service or applicant, as the case may be, reasonable fees as  
4 reimbursement of its expenses in the authorization, supervision, and regulation of  
5 public services, and to impose appropriate penalties as provided by law.

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

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

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

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

27 (1) ELECTRIC POWER GENERATION IN SECTION 6 OF REPUBLIC  
28 ACT NO. 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF  
29 2001;

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

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

1 (4) TRANSPORTATION IN THIS ACT, EXECUTIVE ORDER NO. 202  
2 (1987), PRESIDENTIAL DECREE NO. 474 (1974) AS AMENDED, AND  
3 REPUBLIC ACT NO. 776 (1951) AS AMENDED;

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

7 (6) OTHER PUBLIC SERVICES IN THIS ACT."

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

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

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

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

25 "(a) To issue certificates ~~which shall be known as certificates of~~  
26 ~~public convenience,~~ authorizing the operation of public service within the  
27 Philippines whenever the Commission finds that the operation of the  
28 public service proposed and the authorization to do business will promote  
29 the public interest in a proper and suitable manner. Provided, That  
30 ~~thereafter, certificates of public convenience and certificates of public~~  
31 ~~convenience and necessity will be granted only to citizens of the~~  
32 ~~Philippines or of the United States or to corporations, co-partnerships,~~  
33 ~~associations or joint-stock companies constituted and organized under the~~  
34 ~~laws of the Philippines; Provided, That sixty per centum of the stock or~~

1       ~~paid up capital of any such corporations, co-partnership, association or~~  
2       ~~joint stock company must belong entirely to citizens of the Philippines or~~  
3       ~~of the United States: Provided, further, That no such certificates shall be~~  
4       issued for a period of more than fifty years.

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

27               *Sec. 5. Proceedings Without Hearing.* – Section 17 (b) of Commonwealth Act No.  
28      146 or the Public Service Act, as amended, is hereby amended to read as follows:

29               “(b) To require any public service to pay the actual expenses  
30      incurred by the Commission in any investigation if it shall be found in the  
31      same that any rate, toll, charge, schedule, regulation, practice, act or  
32      service thereof is in violation of any provision of this Act or any certificate,  
33      order, rule, regulation or requirement issued or established by the  
34      Commission. The Commission may also assess against any public service

1 REASONABLE costs ~~not to exceed twenty five pesos~~ with reference to  
2 such investigation."

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

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

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

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

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

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

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

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

11           Sec. 11. *Repealing Clause.* – All laws, decrees, orders, rules and regulations or  
12 other issuances or parts thereof, including Commonwealth Act No. 146 or the Public  
13 Service Act, as amended, inconsistent with the provisions of this Act are hereby  
14 repealed or modified accordingly.

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

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

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

24           Approved,