

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

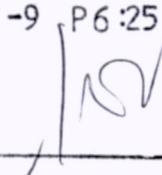


Senate
Office of the Secretary

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SENATE

Senate Bill No. **1441**

RECEIVED BY: 

Introduced by Senator Grace Poe

**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 21st century and enable it to fulfill 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numerous amendments, this 80-year old law is still a good law in terms of protecting the public interest, albeit outdated in certain aspects, particularly: 1) the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 for violations.

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.

In view of the foregoing, immediate enactment of this measure is respectfully sought.


GRACE POE



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

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

SECTION 1. Short Title – This Act shall be known as the “PSA Amendments Act of
2017”.

SECTION 2. Declaration of Policy – It is a Constitutionally enshrined policy of the
State to promote a just and dynamic social order that will free the people from poverty
through measures that promote an improved quality of life for all.

The State recognizes that public utility is necessary to the public and a natural
monopoly that needs to be regulated as required by public interest. It is the policy of the State
to ensure that the consuming public’s satisfaction and quality of life shall be the yardsticks
for an effective regulation of public utility providers without compromising the reasonable
rate of return of the latter.

1 **SECTION 3.** – *Recognition of Previous Transfer of Jurisdiction to Various*
2 *Administrative Agencies.* – Since the enactment of Commonwealth Act No. 146, the
3 jurisdiction over several public services had been transferred to various administrative
4 agencies such as, but not limited to, the following:

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

22 All references to the Public Service Commission in Commonwealth Act No. 146, as
23 amended, shall mean any administrative agencies, such as those enumerated above, to which

1 the powers and duties of the Public Service Commission were transferred in accordance with
2 their respective charters and related statutes.

3 In addition, all administrative agencies, such as those enumerated above, to which the
4 powers and duties of the Public Service Commission were transferred, are hereby authorized
5 and ordered to charge and collect from any public service or public utility or applicant, as the
6 case may be, reasonable fees as reimbursement of its expenses in the exercise of its
7 authorization, supervision, and regulation duties, and to impose appropriate penalties and
8 fines as provided by law.

9 **SECTION 4. *Public Utility.*** – A new Section 13 (d) of Commonwealth Act No. 146,
10 as amended, is hereby inserted to read as follows:

11 **“(D) *PUBLIC UTILITY.* –**

12 **PUBLIC UTILITY IS NOT SYNONYMOUS TO PUBLIC SERVICE AS**
13 **THE FORMER IS A SUB-SET OF THE LATTER. PUBLIC UTILITY**
14 **REGULARLY SUPPLIES AND DIRECTLY TRANSMITS AND**
15 **DISTRIBUTES TO THE PUBLIC, THROUGH A NETWORK, A**
16 **COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE AND IS A**
17 **NATURAL MONOPOLY THE OPERATION OF WHICH MUST BE**
18 **RESTRICTED PURSUANT TO SECTION 11, ARTICLE XII OF THE**
19 **1987 CONSTITUTION.**

1 THE FOLLOWING SHALL BE AN EXCLUSIVE LIST OF PUBLIC
2 UTILITIES:

3 (1) TRANSMISSION of ELECTRICITY AS DEFINED BY
4 SECTION 4 (CCC) OF REPUBLIC ACT NO. 9136;

5
6 (2) DISTRIBUTION OF ELECTRICITY AS DEFINED BY
7 SECTION 4 (N) OF REPUBLIC ACT NO. 9136; AND

8
9 (3) WATER WORKS AND SEWERAGE SYSTEMS AS DEFINED
10 BY REPUBLIC ACT NO. 6234, AS AMENDED, AND
11 PRESIDENTIAL DECREE NO. 198, AS AMENDED.

12 PUBLIC UTILITIES MAY USE AGENTS, CONTRACTORS OR
13 SERVICE PROVIDERS IN THE PERFORMANCE OF THEIR
14 FUNCTIONS. NEVERTHELESS, THE PUBLIC UTILITIES SHALL
15 REMAIN FULLY RESPONSIBLE FOR THEIR FUNCTIONS, AND
16 THEIR AGENTS, CONTRACTORS OR SERVICE PROVIDERS
17 SHALL NOT BE CONSIDERED PUBLIC UTILITIES.

18
19 NO OTHER BUSINESS OR SERVICE SHALL BE DEEMED A
20 PUBLIC UTILITY OTHER THAN THOSE LISTED IN THIS
21 SECTION UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY
22 LAW UPON RECOMMENDATION BY THE PHILIPPINE
23 COMPETITION COMMISSION (PCC) IN CONSULTATION WITH

1 **THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY**
2 **(NEDA)."**

3
4 **SECTION 5.** *Authorization to Operate.* – The first paragraph of Section 15 of
5 Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

6
7 “With the exception of those enumerated in the preceding section, no public
8 service shall operate in the Philippines without possessing a valid and
9 subsisting **FRANCHISE**, certificate, **OR ANY OTHER APPROPRIATE**
10 **FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC**
11 **SERVICE** [from the Public Service Commission known as "certificate of
12 public convenience," or "certificate of public convenience and necessity,"] as
13 the case may be, **FROM THE PROPER ADMINISTRATIVE AGENCY** to
14 the effect that the operation of said service and the authorization to do
15 business will promote the public interest in a proper and suitable manner.”

16
17 **SECTION 6.** *Issuance of Authorizations and Fixing of Rates, Tolls and the like and*
18 *the Reasonable Rate of Return.* – Section 16 (a) and (c) of Commonwealth Act No. 146, as
19 amended, are hereby amended to read as follows:

20
21 “(a) To issue certificates [which shall be known as certificates of public
22 convenience,] authorizing the operation of public service within the
23 Philippines whenever the [Commission] **ADMINISTRATIVE AGENCY**
24 finds that the operation of the public service proposed and the authorization to
25 do business will promote the public interest in a proper and suitable manner.

1 [Provided, That thereafter, certificates of public convenience and certificates
2 of public convenience and necessity will be granted only to citizens of the
3 Philippines or of the United States or to corporations, co-partnerships,
4 associations or joint-stock companies constituted and organized under the
5 laws of the Philippines; Provided, That sixty per centum of the stock or paid-
6 up capital of any such corporations, co-partnership, association or joint-stock
7 company must belong entirely to citizens of the Philippines or of the United
8 States: Provided, further, That no such certificates shall be issued for a period
9 of more than fifty years.]

10 xxx

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xxx

11 (c) To fix and determine **THE MAXIMUM CEILING FOR** individual or
12 joint rates, tolls, charges, classifications, or schedules thereof, as well as
13 commutation, mileage, kilometrage, and other special rates which shall be
14 imposed, observed, and followed thereafter by any public service **WHEN**
15 **THE PUBLIC INTEREST SO REQUIRES:** Provided, That the
16 [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,
17 approve rates proposed by public services provisionally and without necessity
18 of any hearing; but it shall call a hearing thereon within thirty days, thereafter,
19 upon publication and notice to the concerns operating in the territory affected:
20 Provided, further, That in case the public service equipment of an operator is
21 used principally or secondarily for the promotion of a private business, the net
22 profits of said private business shall be considered in relation with the public
23 service of such operator for the purpose of fixing the rates; **PROVIDED**

1 **THAT THE MAXIMUM RATE OF RETURN SHALL BE EQUAL TO**
2 **THE POST-TAX WEIGHTED AVERAGE COST OF CAPITAL FOR**
3 **THE SAME OR COMPARABLE BUSINESSES COMPUTED USING**
4 **ESTABLISHED METHODOLOGIES SUCH AS THE CAPITAL**
5 **ASSET PRICING MODEL: PROVIDED ALSO, THAT INCOME TAX**
6 **MAY BE ALLOWED AS A CASH EXPENDITURE OR OUTFLOW**
7 **FOR RATE-DETERMINATION PURPOSES: PROVIDED FURTHER,**
8 **THAT THIS PROVISION SHALL NOT BAR THE APPLICATION OF**
9 **PERFORMANCE-BASED RATE REGULATION SHOULD THE**
10 **ADMINISTRATIVE AGENCY REGULATING SUCH PUBLIC**
11 **SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC INTEREST;**
12 **PROVIDED FINALLY, THAT THIS SHALL NOT BE INTERPRETED**
13 **AS AMENDING OR REPEALING REGULATIONS PROMULGATED**
14 **BY THESE ADMINISTRATIVE AGENCIES TO DEREGULATE**
15 **RATES.**

16 **SECTION 7. *Reasonable Costs*** – Section 17 (b) of Commonwealth Act No. 146, as
17 amended, is hereby amended to read as follows:

18 “(b) To require any public service to pay the actual expenses incurred by the
19 [Commission] **ADMINISTRATIVE AGENCY** in any investigation if it
20 shall be found in the same that any rate, toll, charge, schedule, regulation,
21 practice, act or service thereof is in violation of any provision of this Act or
22 any certificate, order, rule, regulation or requirement issued or established by
23 the [Commission] **ADMINISTRATIVE AGENCY**. The [Commission]

1 **ADMINISTRATIVE AGENCY** may also assess against any public service
2 **REASONABLE** costs [not to exceed twenty-five pesos] with reference to
3 such investigation.”

4 **SECTION 8.** Section 20 (i) of Commonwealth Act No. 146, as amended, is hereby
5 amended to read as follows:

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

13 **SECTION 9.** Section 21 of Commonwealth Act No. 146, as amended, is hereby
14 amended to read as follows:

15 “Every public service violating or failing to comply with the terms and
16 conditions of any certificate or any orders, decisions or regulations of the
17 [Commission] **ADMINISTRATIVE AGENCY** shall be subject to
18 **DISGORGEMENT OF PROFITS, TREBLE DAMAGES,** a fine **NOT**
19 **EXCEEDING FIVE MILLION PESOS (PHP5,000,000.00) OR ALL OR**
20 **ANY COMBINATION THEREOF** [of not exceeding two hundred pesos]
21 per day for every day during which such default or violation continues; and

1 the [Commission] **ADMINISTRATIVE AGENCY** is hereby authorized and
2 empowered to impose such **PENALTY OR** fine, after due notice and hearing.

3 The **PENALTIES AND** fines so imposed shall be paid to the Government of
4 the Philippines through the [Commission] **ADMINISTRATIVE AGENCY**,
5 and failure to pay the **PENALTY OR** fine in any case within the same
6 specified in the order or decision of the [Commission] **ADMINISTRATIVE**
7 **AGENCY** shall be deemed good and sufficient reason for the suspension of
8 the certificate of said public service until payment shall be made. Payment
9 may also be enforced by appropriate action brought in a court of competent
10 jurisdiction. The remedy provided in this section shall not be a bar to, or affect
11 any other remedy provided in this Act but shall be cumulative and additional
12 to such remedy or remedies.”

13 **SECTION 10.** Section 23 of Commonwealth Act No. 146, as amended, is hereby
14 amended to read as follows:

15 “Any public service corporation that shall perform, commit, or do any act or
16 thing forbidden or prohibited or shall neglect, fail or omit to do or perform
17 any act or thing herein to be done or performed, shall be punished by a fine
18 not exceeding [twenty-five thousand pesos] **FIVE MILLION PESOS**
19 **(PHP5,000,000.00)**, or by imprisonment [not exceeding five years] **OF NOT**
20 **LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE**
21 **(12) YEARS**, or both, in the discretion of the court.”

1 **SECTION 11.** Section 24 of Commonwealth Act No. 146, as amended, is hereby
2 amended to read as follows:

3 “Any person who shall knowingly and willfully perform, commit, or do, or
4 participate in performing, committing, or doing, or who shall knowingly and
5 willfully cause, participate, or join with others in causing any public service
6 corporation or company to do, perform or commit, or who shall advice, solicit,
7 persuade, or knowingly and willfully instruct, direct, or order any officer,
8 agent, or employee of any public service corporation or company to perform,
9 commit, or do any act or thing forbidden or prohibited by this Act, shall be
10 punished by a fine not exceeding [two thousand pesos] **FIVE MILLION**
11 **PESOS (PHP5,000,000.00)**, or imprisonment [not exceeding two years] **OF**
12 **NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN**
13 **TWELVE (12) YEARS**, or both, in the discretion of the court[: Provided,
14 however, that for operating a private passenger automobile as a public service
15 without having a certificate of public convenience for the same the offender
16 shall be subject to the penalties provided for in section sixty-seven (j) of Act
17 numbered thirty-nine hundred an ninety-two.]”

18 **SECTION 12.** Section 25 of Commonwealth Act No. 146, as amended, is hereby
19 amended to read as follows:

20 “Any person who shall knowingly and willfully neglect, fail, or omit to do or
21 perform, or who shall knowingly and willfully cause or join or participate
22 with others in causing any public service corporation or company to neglect,

1 fail or omit to do or perform, or who shall advise, solicit, or persuade, or
2 knowingly and willfully instruct, direct, or order any officer, agent, or
3 employee of any public service corporation or company to neglect, fail, or
4 omit to do any act or thing required to be done by this Act, shall be punished
5 by a fine not exceeding [two thousand pesos] **FIVE MILLION PESOS**
6 **(PHP5,000,000.00)** or by imprisonment [not exceeding two years] **OF NOT**
7 **LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE**
8 **(12) YEARS**, or both, in the discretion of the court.”

9 **SECTION 13.** Section 26 of Commonwealth Act No. 146, as amended, is hereby
10 amended to read as follows:

11 “Any person who shall destroy, injure, or interfere with any apparatus or
12 appliance owned or operated by to in charge of the Commission or its agents,
13 shall be deemed guilty of a misdemeanor and upon conviction shall be
14 punished by a fine **OF THE AMOUNT EQUIVALENT TO THE**
15 **ACTUAL MARKET VALUE OF THE APPARATUS OR APPLIANCE**
16 **DESTROYED OR INJURED PLUS A FINE NOT EXCEEDING ONE**
17 **MILLION PESOS (PHP1,000,000.00)** [not exceeding one thousand pesos]
18 or imprisonment [not exceeding six months] **OF NOT LOWER THAN SIX**
19 **(6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both
20 in the discretion of the court.

1 [Any public service permitting the destruction, injury to, or interference with,
2 any such apparatus or appliances shall forfeit a sum not exceeding four
3 thousand pesos for each offense.]”

4 **SECTION 14.** Section 28 of Commonwealth Act No. 146, as amended, is hereby
5 amended to read as follows:

6 “Violations of the orders, decisions, and regulations of the Commission and of
7 the terms and conditions of any certificate issued by the Commission [shall
8 prescribe after sixty days,] and violations of the provisions of this Act shall
9 [prescribe after one hundred and eighty days.] **BE IMPRESCRIPTIBLE.**”

10 **SECTION 15.** *Subsequent Adjustment of Fines imposed under this Act* – The
11 maximum amounts of fines imposed under this Act, as well those imposed under
12 Commonwealth Act No 146, shall be adjusted by the head of each administrative agency
13 under Section 1 of this Act by a Cost-of-Living Adjustment on January 1 of the year
14 immediately following the date of enactment of this Act and every fifth calendar year
15 thereafter. Each head of the administrative agency shall file copies of the adjustment with the
16 University of the Philippines Law Center in accordance with Executive Order No. 292
17 (1987), as amended.

18 The Cost-of-Living Adjustment shall mean the percentage by which the Philippine
19 Statistics Authority (PSA) Consumer Price Index for the month of June of the calendar year
20 preceding the adjustment exceeds the PSA Consumer Price Index for the month of June of

1 the calendar year in which the maximum amount of the fine was last set or adjusted pursuant
2 to law.

3 Any increase shall apply only to fines, including those whose associated violation
4 predated such increase, which are assessed after the date the increase takes effect.

5 **SECTION 16.** *Interpretation.* – This Act shall be subject to and consistent with the
6 regulatory powers of the State to promote public interest in Article IX-C, Section 4 and
7 Article XII, Section 17 of the Constitution.

8 No franchise, certificate, or authorization granted by the appropriate administrative
9 agencies under Section 3 of this Act shall be (a) exclusive in character, (b) for a longer period
10 than fifty years, and (c) granted except under the condition that it shall be subject to
11 amendment, alteration, or repeal by Congress when the public interest so requires.

12 The power to grant any franchise, certificate, or any other form of authorization for
13 the operation of a public service belongs to Congress, unless otherwise provided by law to an
14 administrative agency.

15 **SECTION 17.** *Suppletory Application of Commonwealth Act No. 146.* –
16 Commonwealth Act No. 146, as amended, shall be construed as a general law that shall apply
17 suppletorily to special laws or existing sector-specific laws governing public services, except
18 for Section 13 (d) of Commonwealth Act No. 146, as amended, created by Section 4 of this
19 Act.

1 **SECTION 18.** *Comprehensive Baseline Survey.* – The University of the Philippines

2 Law Center shall conduct a comprehensive baseline survey of public services governance
3 within six (6) months from the effectivity of this Act.

4 **SECTION 19.** *Implementing Rules and Regulations.* – All administrative agencies

5 under Section 3 of this Act shall, in coordination with the University of the Philippines Law
6 Center, promulgate rules and regulations to implement the provisions of this Act, including
7 the criteria for the determination of imposable fines, as provided for in this Act, to be based
8 on the capitalization of a public service provider and peculiarities of the public service
9 concerned.

10 **SECTION 20.** *Repealing Clause.* – All laws, including Commonwealth Act No. 146,

11 as amended, decrees, orders, rules and regulations, or other issuances or parts thereof
12 inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

13 **SECTION 21.** *Appropriation.* – The initial funding to carry out the provisions of this

14 Act shall be charged against the current year's appropriation. Thereafter, such sums as may
15 be necessary shall be included in the General Appropriations Act.

16 **SECTION 22.** *Separability Clause.* – If any portion or provision of this Act is

17 declared unconstitutional, the remainder of this Act or any provision not affected thereby
18 shall remain in force and effect.

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

Approved,