

SEVENTEENTH CONGRESS OF THE]

REPUBLIC OF THE PHILIPPINES]


Second Regular Session]

Office of the Secretary

'17 SEP 21 P6:19

SENATE

S.B. No. 1594

RECEIVED 

Introduced by SEN. WIN GATCHALIAN

**AN ACT
PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER
AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 146,
OTHERWISE KNOWN AS THE "PUBLIC SERVICE ACT," AS AMENDED**

EXPLANATORY NOTE

This is a bill amending Commonwealth Act No. 146, otherwise known as the "Public Service Act" (PSA), which governs public services in the Philippines. Enacted in 1936, this 80-year old law can no longer sufficiently address contemporary concerns and economic changes brought about by globalization and technological innovation.¹ As a consequence, consumers continually experience high prices and poor quality of basic services in the country due to limited competition in the operation of public services. For one, the entry of foreign investments in these operations is limited by the 1987 Constitution under its foreign equity restrictions on public utilities. Due to the ambiguity in the definition of a "public utility" and its being often used interchangeably with "public service", the same limitations on foreign

¹ Angeles, Joseph Emmanuel L., Policy Paper - "Increasing Competition and Foreign Investment in Public Utilities". Paper written pursuant to the Memorandum of Agreement dated November 15, 2016 between the Foundation for Economic Freedom and the University of the Philippines Law Center.

ownership that are applied to public utilities are also applied to public services.

This amendatory legislation clarifies the public utility definition to remove relevant industries from the classification and exempt them from foreign capital restrictions under the Constitution. It likewise seeks to achieve the following objectives:

1. formalize the transfer of functions of the Public Service Commission to the various administrative agencies;
2. give the pertinent administrative agency, upon notice and hearing and in the public interest, the power to establish and enforce a methodology for setting rates; and,
3. improve the enforcement remedies of administrative agencies through the increase of penalties for non-compliance, the indexation of such penalties to inflation, and the inclusion of disgorgement of profits and payment of treble damages, among others, as penalties for violation.

These amendments will not only bring about the necessary changes in the antiquated provisions of the Public Service Act. They are aligned with the current focus on providing competition and creating a more conducive investment climate in the operation of public services so the general public will have more choices, better services and enjoy lower prices.



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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. Public Utility.** – Section 13 of Commonwealth Act No.
2 146, as amended, is hereby amended to read as follows:

3 "Section 13. xxx.

4 (B) The term "public service" includes xxx canal, PUBLIC
5 MARKET, irrigation system xxx.

6 xxx

7 (D) I. *PUBLIC UTILITY DEFINITION.* – "PUBLIC UTILITY"
8 REFERS TO A PERSON THAT OPERATES, MANAGES AND
9 CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:

10 (1) DISTRIBUTION OF ELECTRICITY (AS DEFINED
11 BY SECTION 4 (N) OF REPUBLIC ACT NO. 9136,
12 OTHERWISE KNOWN AS THE "ELECTRIC
13 POWER INDUSTRY REFORM ACT OF 2001")
14 SYSTEM;

- 1 (2) TRANSMISSION OF ELECTRICITY (AS DEFINED
2 BY SECTION 4 (CCC) OF REPUBLIC ACT NO.
3 9136) SYSTEM; AND,
4 (3) WATER PIPELINE DISTRIBUTION SYSTEM OR
5 SEWERAGE PIPELINE SYSTEM (AS DEFINED
6 BY REPUBLIC ACT NO. 6234, ENTITLED "AN
7 ACT CREATING THE METROPOLITAN
8 WATERWORKS AND SEWERAGE SYSTEM AND
9 DISSOLVING THE NATIONAL WATERWORKS
10 AND SEWERAGE AUTHORITY; AND FOR
11 OTHER PURPOSES," AS AMENDED, AND
12 PRESIDENTIAL DECREE NO. 198, KNOWN AND
13 REFERRED TO AS THE "PROVINCIAL WATER
14 UTILITIES ACT OF 1973," AS AMENDED).

15 II. *AMENDMENT OF PUBLIC UTILITY DEFINITION.* - NO
16 OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY
17 UNDER SECTION 13 (D) I UNLESS OTHERWISE
18 SUBSEQUENTLY PROVIDED BY LAW.

19 THE NATIONAL ECONOMIC AND DEVELOPMENT
20 AUTHORITY (NEDA) SECRETARIAT, IN CONSULTATION WITH
21 THE PHILIPPINE COMPETITION COMMISSION (PCC), SHALL
22 RECOMMEND TO CONGRESS THE CLASSIFICATION OF A
23 PUBLIC SERVICE AS A PUBLIC UTILITY ON THE BASIS OF
24 THE FOLLOWING CRITERIA:

- 25 (1) THE PERSON REGULARLY SUPPLIES AND
26 DIRECTLY TRANSMITS AND DISTRIBUTES TO
27 THE PUBLIC THROUGH A NETWORK A
28 COMMODITY OR SERVICE OF PUBLIC
29 CONSEQUENCE;
30 (2) THE COMMODITY OR SERVICE IS NECESSARY
31 TO THE PUBLIC AND A NATURAL MONOPOLY
32 THAT NEEDS TO BE REGULATED WHEN THE
33 COMMON GOOD SO REQUIRES;

- 1 (3) THE COMMODITY OR SERVICE IS NECESSARY
2 FOR THE MAINTENANCE OF LIFE AND
3 OCCUPATION OF RESIDENTS; AND,
4 (4) THE COMMODITY OR SERVICE IS OBLIGATED
5 TO PROVIDE ADEQUATE SERVICE TO THE
6 PUBLIC ON DEMAND.”
7

8 **SEC. 2. Certificate of Authority.** – Section 15 of Commonwealth Act
9 No. 146, as amended, is hereby further amended to read as follows:

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

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

32 xxx.”
33

1 **SEC. 3. *Proceedings Upon Notice and Hearing.*** – Section 16 of
2 Commonwealth Act No. 146, as amended, is hereby further amended to read
3 as follows:

4 “Section 16. Proceedings of the [Commission]
5 ADMINISTRATIVE AGENCY, upon notice and hearing. – The
6 [Commission] ADMINISTRATIVE AGENCY shall have power,
7 upon proper notice and hearing in accordance with the rules
8 and provisions of this Act, subject to the limitations and
9 exceptions mentioned and saving provisions to the contrary:

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

27 xxx

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

1 ADMINISTRATIVE AGENCY may, in its discretion, approve rates
2 proposed by public services provisionally and without necessity
3 of any hearing; but it shall call a hearing thereon within thirty
4 days, thereafter, upon publication and notice to the concerns
5 operating in the territory affected: *Provided, further,* That in case
6 the public service equipment of an operator is used principally
7 or secondarily for the promotion of a private business, the net
8 profits of said private business shall be considered in relation
9 with the public service of such operator for the purpose of fixing
10 the rates.

11 IN THE PUBLIC INTEREST, THE ADMINISTRATIVE
12 AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY
13 FOR SETTING RATES, TAKING INTO ACCOUNT ALL RELEVANT
14 CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE
15 REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH
16 AS TO ALLOW THE RECOVERY OF JUST AND REASONABLE
17 COSTS AND A REASONABLE RATE OF RETURN TO ENABLE
18 THE PUBLIC SERVICE TO OPERATE VIABLY. THE
19 ADMINISTRATIVE AGENCY MAY ADOPT ALTERNATIVE FORMS
20 OF INTERNATIONALLY-ACCEPTED RATE-SETTING
21 METHODOLOGY AS IT MAY DEEM APPROPRIATE AND WILL
22 PROMOTE EFFICIENCY. THE RATE- SETTING METHODOLOGY
23 SO ADOPTED AND APPLIED MUST ENSURE A REASONABLE
24 PRICE OF THE COMMODITY OR SERVICE. THE RATES
25 PRESCRIBED SHALL BE NON-DISCRIMINATORY.

26 THIS PROVISION SHALL NOT BE INTERPRETED AS
27 MANDATING RATE REGULATION AND AMENDING OR
28 REPEALING (1) LAWS PROVIDING A DEREGULATION POLICY,
29 SUCH AS REPUBLIC ACT NOS. 7925, 8479, 9136, AND 9295
30 AND (2) REGULATIONS PROMULGATED BY THESE
31 ADMINISTRATIVE AGENCIES TO DEREGULATE RATES.

32 THE PHILIPPINE COMPETITION COMMISSION (PCC) IS
33 HEREBY MANDATED TO CONDUCT REGULAR STUDIES ON

1 WHETHER DEREGULATION IS WARRANTED IN A SECTOR
2 AND SUBMIT ITS RECOMMENDATION TO CONGRESS.

3 xxx.”

4
5 **SEC. 4. *Proceedings Without Hearing.*** – Section 17 of
6 Commonwealth Act No. 146, as amended, is hereby further amended to read
7 as follows:

8 “Section. 17. Proceedings of [Commission]
9 ADMINISTRATIVE AGENCY without previous hearing. – The
10 [Commission] ADMINISTRATIVE AGENCY shall have power
11 without previous hearing, subject to established limitations and
12 exception and saving provisions to the contrary:

13 xxx

14 (b) To require any public service to pay the actual
15 expenses incurred by the [Commission] ADMINISTRATIVE
16 AGENCY in any investigation if it shall be found in the same
17 that any rate, toll, charge, schedule, regulation, practice, act or
18 service thereof is in violation of any provision of this Act or any
19 certificate, order, rule, regulation or requirement issued or
20 established by the [Commission] ADMINISTRATIVE AGENCY.
21 The [Commission] ADMINISTRATIVE AGENCY may also assess
22 against any public service REASONABLE costs [not to exceed
23 twenty-five pesos] with reference to such investigation.

24 xxx.”

25
26 **SEC. 5. *Acts Requiring Approval.*** – Section 20 of Commonwealth
27 Act No. 146, as amended, is hereby further amended to read as follows:

28 “Section 20. Acts requiring the approval of the [Commission]
29 ADMINISTRATIVE AGENCY. – Subject to established limitations and
30 exceptions and saving provisions to the contrary, it shall be unlawful
31 for any public service or for the owner, lessee or operator thereof,
32 without the approval and authorization of the [Commission]
33 ADMINISTRATIVE AGENCY previously had –

1 xxx

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

11 xxx.”

12
13 **SEC. 6. Penalties for Violations.** – Section 21 of Commonwealth Act
14 No. 146, as amended, is hereby further amended to read as follows:

15 “Section 21. Every public service violating or failing to
16 comply with the terms and conditions of any certificate or any
17 order[s], decision[s] or regulation[s] of the [Commission]
18 ADMINISTRATIVE AGENCY shall be subject to
19 DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine [of
20 not exceeding two hundred pesos] OF UP TO FIVE MILLION
21 PESOS per day for every day during which such default or
22 violation continues, DIVESTMENT, OR ALL OR ANY
23 COMBINATION THEREOF; and the [Commission]
24 ADMINISTRATIVE AGENCY is hereby authorized and
25 empowered to impose such fine, after due notice and hearing.
26 THE MAXIMUM DAILY FINE OF FIVE MILLION PESOS SHALL
27 BE INCREASED EVERY FIVE (5) YEARS UPON
28 CERTIFICATION BY NEDA ON THE COMPUTATION OF THE
29 COST OF MONEY BASED ON THE CUMULATIVE 360-DAY
30 TREASURY BILL RATE.

31 The PENALTIES AND fines so imposed shall be paid to the
32 Government of the Philippines through the [Commission]
33 ADMINISTRATIVE AGENCY, and failure to pay the PENALTY OR

1 fine in any case within the same specified in the order or
2 decision of the [Commission] ADMINISTRATIVE AGENCY shall
3 be deemed good and sufficient reason for the suspension of the
4 certificate of said public service until payment [shall be] IS
5 made. Payment may also be enforced by appropriate action
6 brought in a court of competent jurisdiction. The remedy
7 provided in this section shall not be a bar to, or affect any other
8 remedy provided in this Act but shall be cumulative and
9 additional to such remedy or remedies.”

10
11 **SEC. 7. Administrative Cost Recovery Mechanism.** – Section 40 of
12 Commonwealth Act No. 146, as amended, is hereby further amended to read
13 as follows:

14 “Section 40. The [Commission] ADMINISTRATIVE
15 AGENCY is authorized and ordered to charge and collect from
16 any public service or applicant, as the case may be, [the
17 following] REASONABLE fees as reimbursement of its expenses
18 in the authorization, supervision and/or regulation of public
19 services[:], AND TO IMPOSE APPROPRIATE PENALTIES AND
20 FINES AS PROVIDED BY LAW.”

21
22 **SEC. 8. Recognition of Administrative Agencies.** – All references to
23 the Public Service Commission in Commonwealth Act No. 146, as amended,
24 shall mean any administrative agency to which the powers and duties of the
25 Public Service Commission were transferred in accordance with their
26 respective charters and related statutes.

27
28 **SEC. 9. Interpretation.** – This Act shall be subject to the regulatory
29 powers of the State to promote public interest in Article IX-C, Section 4 and
30 Article XII, Section 17 of the Constitution. A person[, business or service]
31 classified as a public utility prior to the effectivity of this Act and declassified
32 as such under this Act shall be considered a public service and a business
33 affected with public interest for the purpose of Article XII, Section 17 of the

1 Constitution. Such person[, business or service] shall continue to be subject
2 to regulation by relevant administrative agencies under existing laws.

3 NO FRANCHISE, CERTIFICATE, OR AUTHORIZATION GRANTED BY
4 THE APPROPRIATE ADMINISTRATIVE AGENCIES SHALL BE (1)
5 EXCLUSIVE IN CHARACTER, (2) FOR A LONGER PERIOD THAN FIFTY
6 YEARS, AND (3) GRANTED EXCEPT UNDER THE CONDITION THAT IT
7 SHALL BE SUBJECT TO AMENDMENT, ALTERATION, OR REPEAL BY
8 CONGRESS WHEN THE COMMON GOOD SO REQUIRES.

9
10 **SEC. 10. General Law.** – Commonwealth Act No. 146, as amended,
11 shall be construed as a general law that shall apply suppletorily to special
12 laws or existing sector-specific laws governing public services, except for
13 Section 13 (d) of Commonwealth Act No. 146, as amended, as further
14 amended by Section 1 of this Act.

15
16 **SEC. 11. Comprehensive Baseline Survey.** – The PCC shall
17 commission the University of the Philippines Law Center (UPLC) or such
18 other institutions to conduct a comprehensive baseline survey of the
19 regulatory governance and regulatory substance of public services within six
20 (6) months from the effectivity of this Act.

21
22 **SEC. 12. Performance Audit.** – Administrative agencies must ensure
23 the annual conduct of performance audit by an independent evaluation
24 team to ensure cost-norms and the quality of services provided to the public
25 and the ability of manpower and system resources of the public service
26 provider to immediately respond to emergency cases. Metrics for various
27 types of services must be established to sustain reliability, security, and
28 safety of the public.

29
30 **SEC. 13. Rules and Regulations.** – Administrative agencies under
31 Section 8 of this Act shall, in coordination with the UPLC, promulgate rules
32 and regulations to implement the provisions of this Act within ninety (90)
33 days from its effectivity.

1 **SEC. 14. *Separability Clause.*** – If any portion or provision of this
2 Act is declared unconstitutional, the remainder of this Act or any provision
3 not affected thereby shall remain in force and effect.

4
5 **SEC. 15. *Repealing Clause.*** – All laws, decrees, orders, rules and
6 regulations or other issuances or parts thereof, including Commonwealth
7 Act No. 146 or the Public Service Act, as amended, inconsistent with the
8 provisions of this Act are hereby repealed or modified accordingly.

9
10 **SEC. 16. *Effectivity.*** – This Act shall take effect after fifteen (15) days
11 following its publication in the Official Gazette or in a newspaper of general
12 circulation.

Approved,