

SENATE
S. No. 318

19 JUL 10 A9:45

Introduced by Senator Grace Poe

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

Explanatory Note

One of the "State Policies" enshrined in the 1987 Constitution of the Philippines states that "the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and **free the people from poverty** through policies that provide adequate social services, promote full employment, **a rising standard of living, and an improved quality of life for all.**"¹

Unfortunately, high prices and poor quality of basic services in the Philippines have become the unfortunate norm for consumers. Such sad reality is due to the fact that 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 a "public utility" that is often used interchangeably with "public service" under Commonwealth Act No. 146 or the Public Service Act ("PSA"). The key to fixing this problem is to develop a clear statutory definition of a "public utility" by amending the PSA.

The PSA 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 this 80-year old law to bring it to the 21st century and enable it to fulfill its purpose of truly serving the public, and to make it more responsive to market developments, advances in technology and recent Supreme Court decisions.

This Bill particularly seeks to amend the PSA by: (a) clarifying the definition of "public services" and "public utilities"; (b) instituting an appropriate mechanism for

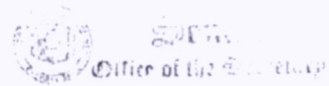
¹ Article II, Section 9 of the Constitution.

fixing rates based on a reasonable rate of return; (c) increasing applicable penalties and fees to realistically deter violations of the law; and (d) recognizing the transfer of functions of the Public Service Commission to various administrative agencies as provided by various laws.

The above-mentioned amendments shall be introduced in the interest of providing the general public with more choices, better services, and lower prices. 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. Furthermore, government regulation, effective and stringent guarding of national security and interest, Congressional power and oversight over franchise holders, and applicable and pre-existing Constitutional restrictions, among others, shall not, in any way, be diminished or relaxed.

In view of the foregoing, the immediate enactment of this legislative measure is hereby earnestly sought.


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

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

1 Section 1. *Short Title.* – This Act shall be known as "*The New Public Service*
2 *Law of the Philippines.*"

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

6 The State recognizes that public utilities are necessary to the public and
7 natural monopolies that must be regulated as required by public interest. It is the
8 policy of the State to ensure that the consuming public's satisfaction and quality of
9 life shall be the yardsticks for an effective regulation of public utility providers
10 without compromising the reasonable rate of return of the latter. It is likewise the
11 policy of the State to encourage private enterprise and provide incentives for needed
12 investments.

13 These policies are fulfilled by: (a) ensuring effective regulation of public
14 utilities and public services; (b) ensuring reasonable rate of return to public utilities
15 and public services, where applicable; and (c) instituting processes which protect
16 national security.

1 Sec. 3. *Definition of Terms.* – For the purposes of this Act, the terms below
2 shall be defined as follows:

3 a.) *Administrative Agency* – refers to existing agencies to which the
4 powers and duties of the Public Service Commission were transferred;

5 b.) *Common Carrier* – refers to persons, corporations, firms or associations
6 engaged in the business of carrying or transporting passengers or goods or both, by
7 land, water, or air, for compensation, offering their services to the public, as defined
8 by Article 1732 of Republic Act No. 386, as amended;

9 c.) *Cost-of-Living Adjustment* – refers to the percentage by which the
10 Philippine Statistics Authority (PSA) Consumer Price Index for the month of June of
11 the calendar year preceding the adjustment exceeds the PSA Consumer Price Index
12 for the month of June of the calendar year in which the maximum amount of the
13 fine was last set or adjusted pursuant to law;

14 d.) *Disgorgement of Profits* – refers to the giving up or recapturing of
15 profits traceable to a certain transaction or wrongdoing upon demand or by legal
16 compulsion;

17 e.) *Distribution of Electricity* – refers to the conveyance of electric power
18 by a distribution utility through its distribution system as defined by Section 4 (n) of
19 Republic Act No. 9136;

20 f.) *Philippine National* – refers to citizens, partnerships, associations, and
21 corporations defined by Section 3(a) of Republic Act No. 7042, as amended;

22 g.) *Telecommunications* – refers to any process which enables a
23 telecommunications entity to relay and receive voice, data, electronic messages,
24 written or printed matter, fixed or moving pictures, words, music or visible or audible
25 signals or any control signals of any design and for any purpose by wire, radio or
26 other electromagnetic, spectral, optical or technological means, as defined by
27 Section 3(a) of Republic Act No. 7925, as amended

28 h.) *Transmission of Electricity* – refers to the conveyance of electricity
29 through the high voltage backbone system, as defined by Section 4 (ccc) of Republic
30 Act No. 9136;

1 i.) *Treble Damages* – refers to an additional sum, depending on the
2 discretion of the agency or court involved, which is thrice the amount of the
3 monetary award granted; and

4 j.) *Water Pipeline Distribution Systems and Sewerage Pipeline Systems* –
5 refers to the operation and maintenance of water pipeline distribution systems to
6 ensure an uninterrupted and adequate supply and distribution of potable water for
7 domestic and other purposes and the operation and maintenance of sewerage
8 pipeline systems to ensure public health and safety, as regulated by Republic Act No.
9 6234, as amended, and Presidential Decree No. 198, as amended.

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

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

31 All references to the Public Service Commission in Commonwealth Act No.
32 146, as amended, shall mean any administrative agencies, such as those

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

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

9 Sec. 5. *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 REFERS TO A PERSON THAT OPERATES,**
13 **MANAGES AND CONTROLS FOR PUBLIC USE ANY OF THE**
14 **FOLLOWING:**

- 15 1) **DISTRIBUTION OF ELECTRICITY;**
16 2) **TRANSMISSION OF ELECTRICITY; AND**
17 3) **WATER PIPELINE DISTRIBUTION SYSTEMS AND**
18 **SEWERAGE PIPELINE SYSTEMS**

19 **NO OTHER PERSON SHALL BE DEEMED A PUBLIC**
20 **UTILITY UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY**
21 **LAW.**

22 **THE NATIONAL ECONOMIC AND DEVELOPMENT**
23 **AUTHORITY (NEDA) THROUGH ITS BOARD, IN**
24 **CONSULTATION WITH THE PHILIPPINE COMPETITION**
25 **COMMISSION (PCC) AND THE CONCERNED ADMINISTRATIVE**
26 **AGENCIES, MAY RECOMMEND TO CONGRESS THE**
27 **CLASSIFICATION OF A PUBLIC SERVICE AS A PUBLIC UTILITY**
28 **ON THE BASIS OF THE FOLLOWING CRITERIA:**

- 29 1) **THE PERSON OR JURIDICAL ENTITY REGULARLY**
30 **SUPPLIES AND DIRECTLY TRANSMITS AND DISTRIBUTES TO**
31 **THE PUBLIC THROUGH A NETWORK A COMMODITY OR**
32 **SERVICE OF PUBLIC CONSEQUENCE;**

1 2) THE COMMODITY OR SERVICE IS NECESSARY TO
2 THE PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE
3 REGULATED WHEN THE COMMON GOOD SO REQUIRES;

4 3) THE COMMODITY OR SERVICE IS NECESSARY FOR
5 THE MAINTENANCE OF LIFE AND OCCUPATION OF
6 RESIDENTS; AND

7 4) THE COMMODITY OR SERVICE IS OBLIGATED TO
8 PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND."

9 Sec. 6. *Authorization to Operate.* – The first paragraph of Section 15 of
10 Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

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

23 Sec. 7. *Issuance of Authorizations and Fixing of Rates, Tolls and the like and*
24 *the Reasonable Rate of Return.* – Section 16 (a) and (c) of Commonwealth Act No.
25 146, as amended, are hereby amended to read as follows:

26 "(a) To issue certificates [~~which shall be known as certificates of~~
27 ~~public convenience,~~] authorizing the operation of public service within
28 the Philippines whenever the [~~Commission~~] **ADMINISTRATIVE**
29 **AGENCY** finds that the operation of the public service proposed and
30 the authorization to do business will promote the public interest in a
31 proper and suitable manner. [~~Provided, That thereafter, certificates of~~
32 ~~public convenience and certificates of public convenience and necessity~~

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

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10 (c) To fix and determine **THE MAXIMUM CEILING FOR**
11 individual or joint rates, tolls, charges, classifications, or schedules
12 thereof, as well as commutation, mileage, kilometrage, and other
13 special rates which shall be imposed, observed, and followed
14 thereafter by any public service **WHEN THE PUBLIC INTEREST SO**
15 **REQUIRES:** Provided, That the [Commission] **ADMINISTRATIVE**
16 **AGENCY** may, in its discretion, approve rates proposed by public
17 services provisionally and without necessity of any hearing; but it shall
18 call a hearing thereon within [thirty] **FIFTEEN** days, thereafter, upon
19 publication and notice to the concerns operating in the territory
20 affected , **TO RATIFY ITS PRIOR PROVISIONAL APPROVAL OR**
21 **CHANGE, MODIFY OR ALTER THE APPROVED RATE BASED ON**
22 **PUBLIC INTEREST:** Provided, further, That in case the public service
23 equipment of an operator is used principally or secondarily for the
24 promotion of a private business, the net profits of said private business
25 shall be considered in relation with the public service of such operator
26 for the purpose of fixing the rates; **PROVIDED FURTHER, THAT IN**
27 **THE PUBLIC INTEREST, THE ADMINISTRATIVE AGENCY MAY**
28 **ESTABLISH AND ENFORCE A METHODOLOGY FOR SETTING**
29 **RATES, TAKING INTO ACCOUNT ALL RELEVANT**
30 **CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE**
31 **REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH AS**
32 **TO ALLOW THE RECOVERY OF JUST AND REASONABLE COSTS**

1 AND A REASONABLE RATE OF RETURN TO ENABLE THE
2 PUBLIC SERVICE TO OPERATE VIABLY. THE ADMINISTRATIVE
3 AGENCY MAY ADOPT ALTERNATIVE FORMS OF
4 INTERNATIONALLY ACCEPTED RATE-SETTING METHODOLOGY
5 AS IT MAY DEEM APPROPRIATE AND WILL PROMOTE
6 EFFICIENCY. THE RATE-SETTING METHODOLOGY SO
7 ADOPTED AND APPLIED MUST ENSURE A REASONABLE PRICE
8 OF THE COMMODITY OR SERVICE. THE RATES PRESCRIBED
9 SHALL BE NONDISCRIMINATORY.; PROVIDED FURTHER,
10 THAT INCOME TAX BE ALLOWED AS A CASH EXPENDITURE OR
11 OUTFLOW FOR RATE-DETERMINATION PURPOSES.;
12 PROVIDED FURTHER, THAT THIS PROVISION SHALL NOT BAR
13 THE APPLICATION OF PERFORMANCE-BASED RATE
14 REGULATION SHOULD THE ADMINISTRATIVE AGENCY
15 REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND
16 IN THE PUBLIC INTEREST.; PROVIDED FINALLY, THAT THIS
17 SHALL NOT BE INTERPRETED AS AMENDING OR REPEALING
18 (1) LAWS PROVIDING A DEREGULATION POLICY, SUCH AS
19 REPUBLIC ACT NOS. 7925, 8479, 9136, AND 9295 AND (2)
20 REGULATIONS PROMULGATED BY THESE ADMINISTRATIVE
21 AGENCIES TO DEREGULATE RATES.

22 Sec. 8. *Reasonable Costs.* – Section 17 (b) of Commonwealth Act No. 146, as
23 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~~] **ADMINISTRATIVE AGENCY** in any
26 investigation if it shall be found in the same that any rate, toll, charge,
27 schedule, regulation, practice, act or service thereof is in violation of
28 any provision of this Act or any certificate, order, rule, regulation or
29 requirement issued or established by the [~~Commission~~]
30 **ADMINISTRATIVE AGENCY.** The [~~Commission~~]
31 **ADMINISTRATIVE AGENCY** may also assess against any public

1 service **REASONABLE** costs [~~not to exceed twenty-five pesos~~] with
2 reference to such investigation.”

3 Sec. 9. Section 20 (i) of Commonwealth Act No. 146, as amended, is hereby
4 amended to read as follows:

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

13 Sec. 10. 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
16 terms and conditions of any certificate or any orders, decisions or
17 regulations of the [~~Commission~~] **ADMINISTRATIVE AGENCY** shall
18 be subject to **DISGORGEMENT OF PROFITS, TREBLE DAMAGES,**
19 a fine **NOT EXCEEDING FIVE MILLION PESOS**
20 **(PHP5,000,000.00) OR ALL OR ANY COMBINATION THEREOF**
21 [~~of not exceeding two hundred pesos~~] per day for every day during
22 which such default or violation continues; and the [~~Commission~~]
23 **ADMINISTRATIVE AGENCY** is hereby authorized and empowered to
24 impose such **PENALTY OR** fine, after due notice and hearing.

25 The **PENALTIES AND** fines so imposed shall be paid to the
26 Government of the Philippines through the [~~Commission~~]
27 **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR**
28 fine in any case within the same specified in the order or decision of
29 the [~~Commission~~] **ADMINISTRATIVE AGENCY** shall be deemed
30 good and sufficient reason for the suspension of the certificate of said
31 public service until payment shall be made. Payment may also be
32 enforced by appropriate action brought in a court of competent

1 jurisdiction. The remedy provided in this section shall not be a bar to,
2 or affect any other remedy provided in this Act but shall be cumulative
3 and additional to such remedy or remedies."

4 Sec. 11. Section 23 of Commonwealth Act No. 146, as amended, is hereby
5 amended to read as follows:

6 "Any public service corporation that shall perform, commit, or
7 do any act or thing forbidden or prohibited or shall neglect, fail or omit
8 to do or perform any act or thing herein to be done or performed, shall
9 be punished by a fine not exceeding ~~[twenty-five thousand pesos]~~
10 **FIVE MILLION PESOS (PHP5,000,000.00)**, or by imprisonment
11 ~~[not exceeding five years]~~ **OF NOT LOWER THAN SIX (6) YEARS**
12 **AND NOT HIGHER THAN TWELVE (12) YEARS**, or both, in the
13 discretion of the court."

14 Sec. 12. Section 24 of Commonwealth Act No. 146, as amended, is hereby
15 amended to read as follows:

16 "Any person who shall knowingly and willfully perform, commit,
17 or do, or participate in performing, committing, or doing, or who shall
18 knowingly and willfully cause, participate, or join with others in causing
19 any public service corporation or company to do, perform or commit,
20 or who shall advice, solicit, persuade, or knowingly and willfully
21 instruct, direct, or order any officer, agent, or employee of any public
22 service corporation or company to perform, commit, or do any act or
23 thing forbidden or prohibited by this Act, shall be punished by a fine
24 not exceeding ~~[two thousand pesos]~~ **FIVE MILLION PESOS**
25 **(PHP5,000,000.00)**, or imprisonment ~~[not exceeding two years]~~ **OF**
26 **NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN**
27 **TWELVE (12) YEARS**, or both, in the discretion of the court~~;~~
28 ~~Provided, however, that for operating a private passenger automobile~~
29 ~~as a public service without having a certificate of public convenience~~
30 ~~for the same the offender shall be subject to the penalties provided for~~
31 ~~in section sixty-seven (j) of Act numbered thirty-nine hundred an~~
32 ~~ninety-two]."~~

1 Sec. 13. Section 25 of Commonwealth Act No. 146, as amended, is hereby
2 amended to read as follows:

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

15 Sec. 14. Section 26 of Commonwealth Act No. 146, as amended, is hereby
16 amended to read as follows:

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

28 ~~[Any public service permitting the destruction, injury to, or~~
29 ~~interference with, any such apparatus or appliances shall forfeit a sum~~
30 ~~not exceeding four thousand pesos for each offense.]"~~

31 Sec. 15. Section 28 of Commonwealth Act No. 146, as amended, is hereby
32 amended to read as follows:

1 “Violations of the orders, decisions, and regulations of the
2 ~~[Commission]~~ **ADMINISTRATIVE AGENCIES** and of the terms and
3 conditions of any certificate issued by the ~~[Commission]~~
4 **ADMINISTRATIVE AGENCIES** ~~[shall prescribe after sixty days,]~~ and
5 violations of the provisions of this Act shall ~~[prescribe after one~~
6 ~~hundred and eighty days.]~~ **BE IMPRESCRIPTIBLE.”**

7 Sec. 16. *Adjustment of Fines.* – The maximum amounts of fines imposed
8 under Commonwealth Act No. 146 as further amended by this Act, shall be adjusted
9 by the head of each administrative agency under Section 4 of this Act by a Cost-of-
10 Living Adjustment on January 1 of the year immediately following the date of
11 enactment of this Act and every fifth calendar year thereafter. Each head of the
12 administrative agency shall file copies of the adjustment with the University of the
13 Philippines Law Center in accordance with Executive Order No. 292 (1987), as
14 amended.

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

18 Sec. 17. *Interpretation.* – This Act shall be subject to and consistent with the
19 regulatory powers of the State to promote public interest in Article IX-C, Section 4
20 and Article XII, Section 17 of the Constitution.

21 A person classified as a public utility prior to the effectivity of this Act and
22 declassified as such under this Act shall be considered a public service and a
23 business affected with public interest for the purpose of Article XII, Section 17 of the
24 Constitution. Such person shall continue to be subject to regulation by relevant
25 administrative agencies under existing laws. This Act does not redefine the term
26 “common carrier” or alter its obligation to exercise extraordinary diligence.

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

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

4 Sec. 18. *Non-Impairment of Existing Agreements.* – The application and
5 implementation of the pertinent provisions of this Act shall not impair vested rights
6 or obligations of contracts. Current and subsisting concession agreements and other
7 similar contracts of juridical persons with government agencies or government-
8 owned and -controlled corporations covering activities hereunder classified as public
9 utilities shall remain valid and in force in accordance with the existing terms and
10 conditions the parties agreed to thereunder until the expiration or termination
11 thereof.

12 Sec. 19. *Review of Foreign Direct Investment in Covered Transactions.* –

13 (a) Definitions. — For purposes of this section, the following definitions shall
14 apply:

15 (1) *Council; chairperson* — The terms ‘Council’ and ‘chairperson’
16 mean the National Security Council and the chairperson thereof or the
17 President’s designee, respectively.

18 (2) *Control* — The term “control” has the meaning given to such term
19 in regulations which the Council shall prescribe.

20 (3) *Covered transaction* — The term “covered transaction” means any
21 merger, acquisition, or takeover that is proposed or pending after the
22 effectivity of this law, by or with any foreign person which could result in
23 foreign control of any person engaged in commerce in the Republic of the
24 Philippines.

25 (4) *Foreign government-controlled transaction* — The term “foreign
26 government-controlled transaction” means any covered transaction that could
27 result in the control of any person engaged in commerce in the Republic of
28 the Philippines by a foreign government or an entity controlled by or acting
29 on behalf of a foreign government.

30 (5) *Critical infrastructure* — The term “critical infrastructure” means,
31 subject to rules issued under this section, systems and assets, whether
32 physical or virtual, so vital to the Republic of the Philippines that the

1 incapacity or destruction of such systems or assets would have a debilitating
2 impact on national security. Unless otherwise provided by the rules, "critical
3 infrastructure" shall refer to:

4 (A) Transmission of Electricity, as defined by Section 4 (CCC) of
5 Republic Act No. 9136;

6 (B) Distribution of Electricity, as defined by Section 4 (N) of Republic
7 Act No. 9136;

8 (C) Water Pipeline Distribution Systems and Sewerage Pipeline
9 Systems – refers to the operation and maintenance of water pipeline
10 distribution systems to ensure an uninterrupted and adequate supply
11 and distribution of potable water for domestic and other purposes and
12 the operation and maintenance of sewerage pipeline systems to ensure
13 public health and safety, as regulated by Republic Act No. 6234, as
14 amended, and Presidential Decree No. 198, as amended; and

15 (D) Telecommunications, as defined by Republic Act No. 7925, as
16 amended

17 (6) *Lead agency* — The term "lead agency" means the agency, or agencies,
18 designated by the President, or his designee, to be the lead agency or
19 agencies on behalf of the Council—

20 (A) for each covered transaction, and for negotiating any mitigation
21 agreements or other conditions necessary to protect national security;
22 and

23 (B) for all matters related to the monitoring of the completed
24 transaction, to ensure compliance with such agreements or conditions
25 and with this section.

26 (b) National Security Reviews. —

27 (1) National security reviews. —

28 (A) In general. — The President or the Council shall initiate a
29 review of a covered transaction to determine its effects on the national
30 security of the Republic of the Philippines if—

31 (i) the covered transaction is a foreign government-controlled
32 transaction; and

1 (ii) the transaction would result in control of any critical
2 infrastructure of or within the Republic of the Philippines.

3 Any party or parties to any covered transaction may likewise
4 initiate a review of the transaction under this paragraph by
5 submitting a written notice of the transaction to the Chairperson
6 of the Council.

7 (B) Timing. — Any review under this paragraph shall be
8 completed before the end of the 30 day period beginning on the date
9 of the initiation of the review in accordance with subparagraph (A).

10 (C) Limit on delegation of certain authority. — The authority of
11 the Council to initiate a review under subparagraph (A) may not be
12 delegated to any person, other than the appropriate Undersecretary of
13 the department or deputy head of the agency represented on the
14 Council.

15 (2) Submission of additional information. — No provision of this
16 subsection shall be construed as prohibiting any party to a covered
17 transaction from submitting additional information concerning the transaction,
18 including any proposed restructuring of the transaction or any modifications
19 to any agreements in connection with the transaction, while any review of the
20 transaction is ongoing.

21 (3) Notice of results to parties. — The Council shall notify the parties to
22 a covered transaction of the results of a review under this section, promptly
23 upon completion of all action under this section.

24 (c) Confidentiality of information. — Any information or documentary material
25 filed with the President or the President's designee pursuant to this section shall be
26 exempt from disclosure, and no such information or documentary material may be
27 made public, except as may be relevant to any administrative or judicial action or
28 proceeding. Nothing in this subsection shall be construed to prevent disclosure to
29 either House of Congress or to any duly authorized committee or subcommittee of
30 the Congress if the committee provides assurances of confidentiality, unless such
31 party otherwise consents in writing to such disclosure.

32 (d) Action by the President. —

1 (1) In general. — Subject to paragraph (4), the President may take
2 such action for such time as the President considers appropriate to suspend
3 or prohibit any covered transaction involving critical infrastructure that
4 threatens to impair the national security of the Republic of the Philippines.

5 (2) Announcement by the President. — The President shall announce
6 the decision on whether or not to take action pursuant to paragraph (1) not
7 later than 15 days after the date on which a review described in subsection
8 (b) is completed.

9 (3) Enforcement. — The President may direct the Solicitor General of
10 the Republic of the Philippines to seek appropriate relief, including divestment
11 relief, in the courts of the Republic of the Philippines, in order to implement
12 and enforce this subsection.

13 (4) Findings. — The President may exercise the authority conferred by
14 paragraph (1), only if—

15 (A) there is credible evidence that leads the President to believe that
16 the foreign interest exercising control might take action that threatens
17 to impair the national security of the Republic of the Philippines; and

18 (B) provisions of law, other than this section, do not, in the judgment
19 of the President, provide adequate and appropriate authority for the
20 President to protect the national security in the matter before the
21 President.

22 (5) Factors to be considered. — For purposes of determining whether
23 to take action under paragraph (1), the President shall consider the following:

24 (A) the potential national security-related effects on critical
25 infrastructure;

26 (B) whether the covered transaction is a foreign government-controlled
27 transaction;

28 (6) Actions and Findings Non-reviewable. — The actions of the
29 President under paragraph (1) of subsection (d) and the findings under
30 paragraph (4) of subsection (d) by the President shall not be subject to
31 judicial review unless grave abuse of discretion amounting to lack or excess of
32 jurisdiction was committed.

1 (e) Effect on Other Law. — No provision of this section shall be construed as
2 altering or affecting any other authority, process, regulation, investigation,
3 enforcement measure, or review provided by or established under any other
4 provision of law, or any other authority of the President or the Congress under the
5 Constitution of the Republic of the Philippines.

6 (f) Mitigation and Post-Consummation Monitoring and Enforcement. —

7 (1) Mitigation. —

8 (A) In general. — The Council or a lead agency may, on behalf
9 of the Council, negotiate, enter into or impose, and enforce any
10 agreement or condition with any party to the covered transaction in
11 order to mitigate any threat to the national security of the Republic of
12 the Philippines that arises as a result of the covered transaction.

13 (B) Risk-based analysis required. — Any agreement entered into
14 or condition imposed under subparagraph (A) shall be based on a risk-
15 based analysis, conducted by the Council, of the threat to national
16 security of the covered transaction.

17 (2) Negotiation, modification, monitoring, and enforcement. —

18 (A) Designation of lead agency. — The lead agency shall
19 negotiate, modify, monitor, and enforce, on behalf of the Council, any
20 agreement entered into or condition imposed under paragraph (1) with
21 respect to a covered transaction, based on the expertise with and
22 knowledge of the issues related to such transaction on the part of the
23 designated department or agency. Nothing in this paragraph shall
24 prohibit other departments or agencies in assisting the lead agency in
25 carrying out the purposes of this paragraph.

26 (B) Reporting by designated agency. — The lead agency in
27 connection with any agreement entered into or condition imposed with
28 respect to a covered transaction shall provide periodic reports to the
29 Council on any material modification to any such agreement or
30 condition imposed with respect to the transaction.

31 (g) Congressional Oversight and Periodic Review. — A Congressional
32 Oversight Committee shall be created that will conduct a periodic review every five

1 (5) years commencing from the effectivity of this Act. The Congressional Oversight
2 Committee shall be composed of the Chairperson of the Senate Committee on Public
3 Services, the Chairperson of the House of Representatives Committee on Public
4 Services, and representatives of other relevant congressional committees.

5 Sec. 20. *Suppletory Application of Commonwealth Act No. 146.* –
6 Commonwealth Act No. 146, as amended, shall be construed as a general law that
7 shall apply suppletorily to special laws or existing sector-specific laws governing
8 public services, except for Section 13(d) of Commonwealth Act No. 146, as
9 amended, created by Section 4 of this Act.

10 Sec. 21. *Comprehensive Baseline Survey.* – The University of the Philippines
11 Law Center shall conduct a comprehensive baseline survey of public services
12 governance within six (6) months from the effectivity of this Act. Copies of the
13 results of said survey shall be furnished to the Congress, the NEDA and PCC.

14 Sec. 22. *Implementing Rules and Regulations.* – All administrative agencies
15 under Section 3 of this Act shall, in coordination with the University of the Philippines
16 Law Center, promulgate rules and regulations to implement the provisions of this
17 Act, including the criteria for the determination of imposable fines, as provided for in
18 this Act, to be based on the capitalization of a public service provider and
19 peculiarities of the public service concerned.

20 Sec. 23. *Repealing Clause.* – All laws, including Commonwealth Act No. 146,
21 as amended, decrees, orders, rules and regulations, or other issuances or parts
22 thereof inconsistent with the provisions of this Act are hereby repealed or modified
23 accordingly. This includes:

24 (a) Section 2(a) of Republic Act No. 6957, as amended, insofar as the clause
25 limiting investment in a facility operator where a public utility franchise is required;

26 (b) Section 3(c) of Republic Act No. 9295, as amended, insofar as the clause
27 limiting investment in a Domestic Ship Operator or Domestic Ship Owner; and

28 (c) Section 44 of Republic Act No. 9497, as amended, insofar as the clause
29 limiting registration of aircraft which are owned or leased by non-Philippine
30 nationals.

1 Sec. 24. *Appropriation.* – The initial funding to carry out the provisions of this
2 Act shall be charged against the current year’s appropriation. Thereafter, such sums
3 as may be necessary shall be included in the General Appropriations Act.

4 Sec. 25. *Separability Clause.* – If any portion or provision of this Act is
5 declared unconstitutional, the remainder of this Act or any provision not affected
6 thereby shall remain in force and effect.

7 Sec. 26. *Effectivity.* – This Act shall take effect after fifteen (15) days
8 following the completion of its publication either in the Official Gazette or in a
9 newspaper of general circulation in the Philippines.

Approved,