

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

SENATE

S. No. 1530



Introduced by Senator FRANKLIN M. DRILON

**AN ACT AMENDING SECTION 18, BOOK VII, CHAPTER 3 OF THE
ADMINISTRATIVE CODE OF THE PHILIPPINES**

EXPLANATORY NOTE

Aristotle, in Nichomachean Ethics has said, "the laws in their enactments on all subjects aim at the common advantage either of all or of the best or of those who hold power, or something of the sort; so that in one sense we call those acts just that tend to produce and preserve happiness and its components for the political society. And the law bids us do both the acts of a brave man, and those of a temperate man, and those of a good-tempered man, and similarly with regard to the other virtues and forms of wickedness, commanding some acts and forbidding others; and the rightly-framed law does this rightly, and the hastily conceived one less well." In the same treatise, he also wrote, "For where it is in our power to act, it is also in our power not to act."

The Constitution gives the government the power to regulate commerce. More stringent rules apply to public utilities, which render services to the public. Protection of public welfare underlies the requirement to obtain licenses, authorizations or franchises. Like it or not, entities are at the mercy of licensing authorities. There is little choice left, except to rely in good faith that such powers will be exercised judiciously, not arbitrarily, capriciously, or oppressively against anyone.

While it is recognized that a franchise, license or certificate is not a privilege, this rule must be tempered with considerations of equity, fairness, due process, and equal protection, particularly when the service being provided

has been so woven into everyday life, that its abrupt cessation could give rise to devastating consequences.

The bill provides that where a licensee or franchisee has made a timely and sufficient application for renewal of a franchise or license, the same shall not expire until after finally determined by the relevant department, agency or branch of government. The bill amends an existing provision under the Revised Administrative Code to also include franchises. This makes it incumbent upon the issuing authority to act on an application and avoid situations where silence or inaction could effectively bar the operations of an enterprise.

The bill will not violate the power of the Congress with regard to franchises under the Constitution. *Article XII, Section 11* of the Constitution provides that no franchise, certificate or authorization shall be granted "except under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the common good so requires". While the Constitution reserves to Congress the right to amend, alter or repeal a franchise, it does not say that a Congressional franchise is required before each and every public utility may operate. This was the ruling in the case of *Albano v. Reyes*.¹

The Supreme Court, in the case of *Associated Communications & Wireless Services v. National Telecommunications Commission*² has recognized that there are existing statutes which delegate to agencies the power to issue a franchise, certificate or authorization for certain classes of public utilities. It noted that there is a modern trend in legislation toward that direction. Therefore, the requirement of an existing and valid franchise is not Constitutional but merely statutory.

The Court has even gone as far as saying that there is no reason for imposing a prior congressional franchise except to impose added burden and expenses on the part of the applicant. It even quoted "the forceful denunciation of Justice Holmes against a stubborn adherence to an anachronistic rule of law" where Holmes has described it as "revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV."

¹ 175 SCRA 264

² G.R. No. 144109, 17 February 2003

The criticism of the Court notwithstanding, the bill does not propose to do away with the license or franchise requirement. The amendment we propose would merely encourage the concerned agency or branch of government to act decisively on an application for renewal, and to express its decision in clear, unmistakable terms, to ensure that the applicant is not punished for the authority's indecision or inaction.

In view of the foregoing, the urgent approval of this bill is earnestly sought.



FRANKLIN M. DRILON

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

1 SECTION 1. Section 18, Book VII, Chapter 3 of Executive Order No. 292, is
2 hereby amended to read as follows:

3 "SECTION 18. Non-expiration of License **OR FRANCHISE**.—
4 **ANY PROVISION OF LAW TO THE CONTRARY**
5 **NOTWITHSTANDING**, where the licensee **OR FRANCHISEE** has
6 made timely and sufficient application for the renewal of a license **OR**
7 **FRANCHISE** with reference to any activity of a continuing nature, the
8 existing license **OR FRANCHISE** shall not expire until the application
9 shall have been finally determined by the agency, **DEPARTMENT, OR**
10 **BRANCH OF GOVERNMENT THAT GRANTS OR RENEWS SUCH**
11 **LICENSE OR FRANCHISE.**

12 **THERE IS FINAL DETERMINATION WHEN AN**
13 **APPLICANT IS GIVEN WRITTEN NOTICE OF APPROVAL OR**
14 **DENIAL OF ITS APPLICATION FOR RENEWAL. INACTION ON**
15 **A PENDING APPLICATION SHALL NOT BE CONSIDERED A**
16 **DENIAL THEREOF."**

17 SEC. 2. Separability Clause. – If any provision of this Act is declared
18 unconstitutional or invalid, the provisions not affected thereby shall continue to be in
19 full force and effect.

1 SEC. 3. Repealing Clause. – All laws, decrees, orders, rules and regulations
2 inconsistent with the provisions of this Act are hereby repealed or modified
3 accordingly.

4 SEC. 4. Effectivity. – This Act shall take effect upon its publication in the
5 Official Gazette or in a newspaper of general circulation.

Approved,