

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Philippines

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5790



INTRODUCED BY: HON. MARCELINO "MARCY" R. TEODORO

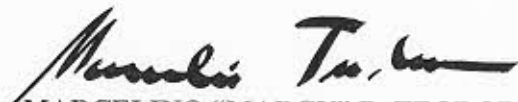
EXPLANATORY NOTE

The proposed measure is a refiled bill which was recommended for immediate approval by the Committee on Oversight in Committee Report No. 1732 dated 27 January 2009. The proposal hopes to cure the ineffectiveness of Metropolitan Waterworks and Sewerage System – Regulatory Office (MWSS – RO) to regulate the two water concessionaires by creating an independent Water Regulatory Commission (WRC).

It must be recalled that when MWSS was privatized and its operations was granted to the two winning concessionaires, namely Manila Water Company, Inc. and Maynilad Water Services, Inc., MWSS retained ownership of all fixed assets and a regulatory office under its wing was created to monitor compliance with the Concession Agreement. Likewise, said regulatory office is tasked to monitor annual rate adjustments and compute for the rate re-basing adjustments every five (5) years to permit the concessionaires to recover over the 25-year period stipulated in their agreements.

However, it is deplorable to point out that the basic water charges being collected today in the country have steadily increase since 1997, underscoring the apparent inefficiency of MWSS – RO to implement its mandate, which may be caused by the fact that MWSS is funded by P100 Million concession fees paid by both Manila Water and Maynilad.

In view of the propositions stated above, the approval of this bill is earnestly requested.


MARCELINO "MARCY" R. TEODORO
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AN ACT
CREATING THE WATER REGULATORY COMMISSION

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

SECTION 1. CREATION OF THE WATER REGULATORY COMMISSION. There is hereby created an independent quasi-judicial regulatory body to be named the Water Regulatory Commission (WRC). For this purpose, the present Regulatory Office (RO) established by the Metropolitan Waterworks and Sewerage System (MWSS) Board of Trustees, in accordance with the concession agreements forged by MWSS with the Manila Water Company, Inc. (MWCI) and Maynilad Water Services, Inc. (MWSI) on February 21, 1997, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, duly licensed professional of recognized competence in any of the following fields: civil engineering and/or sanitary engineering, environmental planning or management, law, economics, finance or commerce, with at least three (3) years of actual and distinguished experience in their respective fields of expertise: Provided, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, one (1) shall be certified public account with at least ten (10) years experience in active practice, and one (1) shall be an engineer with at least (10) years experience in active practice.

Within three (3) months from the creation of the WRC, the chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the WRC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: Provided, That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; Provided, further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: Provided, finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office at the beginning of their terms: *Provided, That*, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of MWSS Regulatory Office (MWSS-RO) shall continue to hold office.

The existing personnel of MWSS-RO, if qualified, shall be given preference in the filling up of plantilla positions created in the WRC, subject to existing civil service rules and regulations.

Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer, director, consultant or employee, in any company or entity engaged in the business of operating and maintaining the waterworks and sewerage systems and developing new water sources and must, therefore, divest through sale or legal disposition of any and all interests in the water utilities sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its quasi-judicial functions: *Provided, That* in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

SEC. 2. Compensation and Other Emoluments for WRC Personnel. The compensation and other emoluments for the Chairman and members of the Commission and the WRC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act". For this purpose, the schedule of compensation of the WRC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided, That* in no case shall the rate be upgraded more than once a year.

The Chairman and members of the WRC shall initially be entitled to the same salaries, allowances and benefits as those of the Chairman and members of the Energy Regulatory Commission (ERC), respectively. The Chairman and the members of the WRC shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and privileges provided for the Chairman and members of the Energy Regulatory Commission, respectively.

SEC. 3. Budget of the WRC. The amount of One Hundred Million Pesos (P100,000,000.00) is hereby allocated from the existing budget of the MWSS-RO for the initial operation of the WRC. Any balance shall initially be sourced from the Office of the President of the Philippines. Thereafter, the annual budget of the WRC shall be included in the regular or special appropriations.

SEC. 4. Enhancement of Technical Competence. The WRC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the WRC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the WRC to adequately perform its duties and functions.

SEC. 5. Promotion of Consumer Interests. The WRC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

SEC. 6. Functions of the WRC. –The WRC shall have the following functions:

- (a) Enforce the implementing rules and regulations of this Act;
- (b) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the WRC. In the event a divestment is required, the WRC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but in no case exceed twelve (12) months from the issuance of the order;
- (c) In the public interest, establish and enforce a methodology for setting rates and fees subject to the limitation of Section 12 of the Charter (R.A. 6234, as amended) taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The WRC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of water without sacrificing delivery of quality service to customers. The rates prescribed shall be non-discriminatory. The WRC shall determine such form or rate-setting methodology, which shall promote efficiency.
- (d) Set a lifeline rate for the marginalized customers;
- (e) Cause the publication of all notices of hearings to be conducted by the WRC for the purpose of fixing rates or fees at least twice for two successive weeks in two (2) newspapers of nationwide circulation.
- (f) Monitor and enforce the awarded Concession Agreements.
- (g) Conduct periodic technical and financial audits of the activities of the concessionaires and review and approve any changes in the terms and conditions of service of the said concessionaires, whenever necessary.
- (h) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers. Take any other action delegated to it pursuant to this Act;
- (i) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the MWSS, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The WRC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The WRC shall publish all its decisions involving rates and fees in at least one (1) newspaper of general circulation, and/or post

electronically and circulate to all interested parties copies of its resolutions to ensure fair and impartial treatment;

(j) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of the concessionaires, at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any abuse and violation of rules and regulations issued by the WRC;

(k) Perform such other regulatory functions as are appropriate and necessary such as, but not limited to, the rules and guidelines under which the concessionaires which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks; Provided, however, That concessionaires or their holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(l) The WRC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the WRC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the water sector.

SEC. 7. Transfer of Powers and Functions. – The powers and functions of the MWSS-RO not inconsistent with the provisions of this Act are hereby transferred to the WRC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

The WRC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard.

SEC. 8. Fines and Penalties. – The fines and penalties that shall be imposed by the WRC for any violation of or non-compliance with this Act or the IRR shall range from a minimum of fifty thousand pesos (P50,000.00) to a maximum of Fifty million pesos (P50,000,000.00).

The members of the Board of Directors of the juridical companies or its concessionaire who violate the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment of one (1) year or two (2) years or both at the discretion of the court. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

The administrative sanction that may be imposed by the WRC shall be without prejudice to the filing of a criminal action, if warranted.

To ensure compliance with this Act, the penalty of *prision correccional* or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), or both, at the discretion of the court, shall be imposed on any person, including but not limited to the president, members of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party to an administrative proceeding may, at any time, make an offer to the WRC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the WRC, nor as a waiver to file any warranted criminal actions.

In addition, Congress may, upon recommendation of the WRC, revoke such franchise or privilege granted to the party who violated the provisions of this Act.

GENERAL PROVISIONS

SEC. 9. Separation Benefits of Officials and Employees of Affected Agencies. Government employees displaced or separated from the service as a result of the creation of the WRC and abolition of the MWSS-RO, pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of this Act.

Displaced or separated personnel resulting from the enactment of this act, if qualified, shall be given preference in the hiring of the manpower requirements of the WRC.

With respect to employees who are not retained by WRC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

SEC. 10. Fiscal Prudence. – To promote the prudent management of government resources, the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of personnel of WRC shall be subject to the approval of the President of the Philippines. The compensation and all other emoluments and benefits of the chairman and members of the WRC shall be subject to the approval of the President of the Philippines.

SEC. 11. Environmental Protection. – Participants in the water sector shall comply with all environmental laws, rules, regulations and standards promulgated by the Department of Environment and Natural Resources including, in appropriate cases, the establishment of an environmental guarantee fund.

SEC. 12. Benefits to Host Communities. – The obligations of water companies and/or water resource developers to communities hosting water generation facilities and/or water resource developers as defined by law and their implementing rules and regulations and

applicable orders and circulars consistent with this Act shall continue: *Provided*, That the obligations mandated by law shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

To ensure the effective implementation of the reduction in cost of water in the communities where the source of water is located, the mechanics and procedures prescribed in the Department of the Interior and Local Government (DILG)-DOE Circulars No. 95-01 and 98-01 dated October 31, 1995 and September 30, 1998, respectively and other issuances related thereto shall be pursued.

In case of any violation or noncompliance by any local government official of any provision thereof, the DILG shall, upon prior notice and hearing, order the project operator, through the WRC, to withhold the remittance of the royalty payment to the host community concerned pending completion of the investigation. The unremitted funds shall be deposited in a government bank under a trust fund.

FINAL PROVISIONS

SEC. 13. Implementing Rules and Regulations. – The MWSS shall, in consultation with relevant government agencies, the water sector participants, non-government organizations and end-users, promulgate the Implementing Rules and Regulations (IRR) of the Act within six (6) months from the effectivity of this Act.

SEC. 14. Injunction and Restraining Order. – The implementation of the provisions of the Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

SEC. 15. Separability Clause – If for any reason, any provision of this act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 16. Applicability and Repealing Clause. – All laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 17. Effectivity Clause. – This Act shall take effect on the fifteenth day following its publication in at least two (2) national papers of general circulation.

Approved,