

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **4389**



Introduced by Representative GLORIA MACAPAGAL ARROYO

**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 fulfil 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numerous amendments, this 80-year old law is still a good law in terms of protecting the public interest, albeit outdated in certain aspects, particularly: 1) the transfer of the functions of the Public Service Commission to various administrative agencies; 2) the definition of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 and fees for public services.

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.



GLORIA MACAPAGAL ARROYO
2nd District, Pampanga

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

SECTION 1. *Transfer of Functions of the Public Service Commission. –*

The relevant provisions of Commonwealth Act No. 146 or the Public Service Act, as amended, referring to the Public Service Commission, its powers and duties, are hereby transferred to the various administrative agencies of the government according to their respective jurisdictions, such as:

- (a) Department of Transportation;
- (b) Land Transportation Franchising and Regulatory Board;
- (c) Land Transportation Office;
- (d) Civil Aeronautics Board;
- (e) Civil Aviation Authority of the Philippines;
- (f) Philippine Ports Authority;
- (g) Maritime Industry Authority;
- (h) Philippine Coast Guard;
- (i) Department of Information and Communications Technology;
- (j) National Telecommunications Commission;
- (k) Department of Energy;
- (l) Energy Regulatory Commission;
- (m) Department of Environment and Natural Resources;
- (n) National Water Resources Board;

- (o) Local Water Utilities Administration;
- (p) Philippine Competition Commission; and others.

All references to the Public Service Commission in Commonwealth Act No. 146 or the Public Service Act, as amended, shall mean any such administrative agencies concerned in accordance with their respective charters.

All administrative agencies to which the powers and duties of the Public Service Commission have been transferred are hereby authorized and ordered to charge and collect from any public service or applicant, as the case may be, reasonable fees as reimbursement of its expenses in the authorization, supervision, and regulation of public services, and to impose appropriate penalties as provided by law.

Sec. 2. Public Utility. – A new Section 13 (d) of Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby inserted to read as follows:

“(D) I. *PUBLIC UTILITY DEFINITION.* – THE TERM “PUBLIC UTILITY” REFERS TO A PUBLIC SERVICE THAT REGULARLY SUPPLIES THE PUBLIC AND DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK ITS COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE. A PUBLIC UTILITY IS NECESSARY TO THE PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE PUBLIC INTEREST SO REQUIRES AS DETERMINED BY CONGRESS.

II. *PUBLIC UTILITY ENUMERATION.* – A PUBLIC UTILITY SHALL MEAN ELECTRIC POWER TRANSMISSION, ELECTRIC POWER DISTRIBUTION, WATER PIPELINE DISTRIBUTION, AND SEWERAGE PIPELINE SYSTEM, UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW. ANY EXISTING LAW TO THE CONTRARY NOTWITHSTANDING, NO OTHER BUSINESS OR SERVICE SHALL BE DEEMED A PUBLIC UTILITY, UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW UPON

RECOMMENDATION BY THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA).

III. *PUBLIC UTILITY EXEMPTIONS.* – ANY EXISTING LAW TO THE CONTRARY NOTWITHSTANDING, THE FOLLOWING SHALL NOT BE CONSIDERED A PUBLIC UTILITY OPERATION:

(1) ELECTRIC POWER GENERATION IN SECTION 6 OF REPUBLIC ACT NO. 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001;

(2) ELECTRIC POWER SUPPLY IN SECTION 29 OF REPUBLIC ACT NO. 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001;

(3) CRUDE OIL AND PETROLEUM PRODUCTS UNDER REPUBLIC ACT NO. 8479 OR THE DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998;

(4) TRANSPORTATION IN THIS ACT, EXECUTIVE ORDER NO. 202 (1987), PRESIDENTIAL DECREE NO. 474 (1974) AS AMENDED, AND REPUBLIC ACT NO. 776 (1951) AS AMENDED;

(5) BROADCASTING, TELECOMMUNICATIONS, AND VALUE-ADDED SERVICES IN REPUBLIC ACT NO. 7925 OR THE PUBLIC TELECOMMUNICATIONS POLICY ACT OF THE PHILIPPINES; AND

(6) OTHER PUBLIC SERVICES IN THIS ACT."

Sec. 3. *Certificate of Authority.* – The first paragraph of Section 15 of Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby amended to read as follows:

"With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting certificate OF AUTHORIZATION OBTAINED APPROPRIATELY as the case may be, to the effect that the operation of said service and the

authorization to do business will promote the public interest in a proper and suitable manner."

All references to a certificate of public convenience or a certificate of public convenience and necessity in Commonwealth Act No. 146 or the Public Service Act, as amended, shall mean any authorization obtained appropriately as the case may be.

Sec. 4. *Proceedings Upon Notice and Hearing.* – Section 16 (a) and (c) of Commonwealth Act No. 146 or the Public Service Act, as amended, are hereby amended to read as follows:

"(a) To issue certificates authorizing the operation of public service within the Philippines whenever the Commission finds that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner. Provided, That no such certificates shall be issued for a period of more than fifty years.

...

(c) To fix and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days, thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates: PROVIDED FURTHERMORE, THAT THE MAXIMUM RATE OF RETURN SHALL BE EQUAL TO THE POST-TAX WEIGHTED AVERAGE COST OF CAPITAL FOR THE SAME OR COMPARABLE

BUSINESSES COMPUTED USING ESTABLISHED METHODOLOGIES SUCH AS THE CAPITAL ASSET PRICING MODEL: PROVIDED ALSO, THAT INCOME TAX SHALL BE ALLOWED AS A CASH OUTFLOW FOR RATE-DETERMINATION PURPOSES: PROVIDED FINALLY, THAT THIS PROVISION SHALL NOT BAR THE APPLICATION OF PERFORMANCE-BASED RATE REGULATION SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC INTEREST."

Sec. 5. *Proceedings Without Hearing.* – Section 17 (b) of Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby amended to read as follows:

"(b) To require any public service to pay the actual expenses incurred by the Commission in any investigation if it shall be found in the same that any rate, toll, charge, schedule, regulation, practice, act or service thereof is in violation of any provision of this Act or any certificate, order, rule, regulation or requirement issued or established by the Commission. The Commission may also assess against any public service REASONABLE costs with reference to such investigation."

Sec. 6. *Acts Requiring Approval.* – Section 20 (i) of Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby amended to read as follows:

"(i) To sell, alienate or in any manner transfer shares of its capital stock to any alien if the result of that sale, alienation, or transfer in itself or in connection with another previous sale shall be the reduction to less than sixty per centum of the capital stock belonging to Philippine citizens IN THE OPERATION OF A PUBLIC UTILITY AS REQUIRED BY THE CONSTITUTION. Such sale, alienation or transfer shall be void and of no effect

and shall be sufficient cause for ordering the cancellation of the certificate."

Sec. 7. Penalties for Violations. – Section 21 of Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby amended to read as follows:

"Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine OF UP TO FIVE MILLION PESOS, OR ALL OR ANY COMBINATION THEREOF per day for every day during which such default or violation continues; and the Commission is hereby authorized and empowered to impose such fine, after due notice and hearing. THE FINE OF UP TO FIVE MILLION PESOS SHALL BE INCREASED EVERY FIVE (5) YEARS UPON CERTIFICATION BY NEDA ON THE COMPUTATION OF THE COST OF MONEY BASED ON THE CURRENT CONSUMER PRICE INDEX.

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

Sec. 8. Interpretation. – Commonwealth Act No. 146 or the Public Service Act, as amended, shall be interpreted to apply suppletorily to existing sector-specific laws governing public services and public utilities, unless otherwise expressly provided.

Sec. 9. Comprehensive Baseline Survey. – The University of the Philippines Law Center shall conduct a comprehensive baseline survey of public services and public utilities governance within six (6) months from the effectivity of this Act.

Sec. 10. Rules and Regulations. – All administrative agencies to which the powers and duties of the Public Service Commission have been transferred shall, in coordination with the University of the Philippines Law Center, promulgate rules and regulations to implement the provisions of this Act.

Sec. 11. Repealing Clause. – All laws, decrees, orders, rules and regulations or other issuances or parts thereof, including Commonwealth Act No. 146 or the Public Service Act, as amended, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 12. Appropriation. – The initial funding to carry out the provisions of this Act shall be charged against the current year's appropriation. Thereafter, such sums as may be necessary shall be included in the General Appropriations Act.

Sec. 13. Separability Clause. – If any portion or provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in force and effect.

Sec. 14. Effectivity. – This Act shall take effect after fifteen (15) days following the completion of its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,