

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**SEVENTEENTH CONGRESS
First Regular Session**

House Bill No. 4501



Introduced by **Representative ARTHUR C. YAP**

**AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146
OR THE PUBLIC SERVICE ACT, AS AMENDED**

EXPLANATORY NOTE

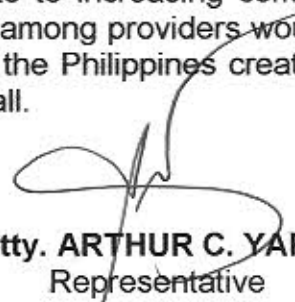
Consumers often experience high prices and poor quality of basic services in the Philippines, because only a few local players or oligarchs effectively control the market. Competition and foreign investment are inhibited, because limitations that should only apply to the operation of a public utility 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numerous amendments, this 80-year old law is still a good law in terms of protecting the public interest, albeit outdated in certain aspects, particularly: 1) the transfer of the functions of the Public Service Commission to various administrative agencies; 2) the definition of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.


Atty. ARTHUR C. YAP
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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1.** *Transfer of Functions of the Public Service Commission.* – The
2 relevant provisions of Commonwealth Act No. 146 or the Public Service Act, as
3 amended, referring to the Public Service Commission, its powers and duties, are hereby
4 transferred to the various administrative agencies of the government according to their
5 respective jurisdictions, such as:

- 6 (a) Department of Transportation;
- 7 (b) Land Transportation Franchising and Regulatory Board;
- 8 (c) Land Transportation Office;
- 9 (d) Civil Aeronautics Board;
- 10 (e) Civil Aviation Authority of the Philippines;
- 11 (f) Philippine Ports Authority;
- 12 (g) Maritime Industry Authority;
- 13 (h) Philippine Coast Guard;
- 14 (i) Department of Information and Communications Technology;
- 15 (j) National Telecommunications Commission;
- 16 (k) Department of Energy;
- 17 (l) Energy Regulatory Commission;
- 18 (m) Department of Environment and Natural Resources;
- 19 (n) National Water Resources Board;
- 20 (o) Local Water Utilities Administration;
- 21 (p) Philippine Competition Commission; and others.

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

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

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

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

16 II. *PUBLIC UTILITY ENUMERATION.* – A PUBLIC UTILITY SHALL
17 MEAN ELECTRIC POWER TRANSMISSION, ELECTRIC POWER
18 DISTRIBUTION, WATER PIPELINE DISTRIBUTION, AND SEWERAGE
19 PIPELINE SYSTEM, UNLESS OTHERWISE SUBSEQUENTLY
20 PROVIDED BY LAW. ANY EXISTING LAW TO THE CONTRARY
21 NOTWITHSTANDING, NO OTHER BUSINESS OR SERVICE SHALL BE
22 DEEMED A PUBLIC UTILITY, UNLESS OTHERWISE SUBSEQUENTLY
23 PROVIDED BY LAW UPON RECOMMENDATION BY THE NATIONAL
24 ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA).

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

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

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

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

1 (4) TRANSPORTATION IN THIS ACT, EXECUTIVE ORDER NO.
2 202 (1987), PRESIDENTIAL DECREE NO. 474 (1974) AS AMENDED,
3 AND REPUBLIC ACT NO. 776 (1951) AS AMENDED;

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

7 (6) OTHER PUBLIC SERVICES IN THIS ACT."

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

11 "With the exception of those enumerated in the preceding section, no
12 public service shall operate in the Philippines without possessing a valid
13 and subsisting certificate OF AUTHORIZATION OBTAINED
14 APPROPRIATELY ~~from the Public Service Commission known as~~
15 ~~"certificate of public convenience," or "certificate of public convenience and~~
16 ~~necessity,"~~ as the case may be, to the effect that the operation of said
17 service and the authorization to do business will promote the public interest
18 in a proper and suitable manner."

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

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

25 "(a) To issue certificates which shall be known as certificates of
26 public convenience, authorizing the operation of public service within the
27 Philippines whenever the Commission finds that the operation of the public
28 service proposed and the authorization to do business will promote the
29 public interest in a proper and suitable manner. Provided, That thereafter,
30 ~~certificates of public convenience and certificates of public convenience~~
31 ~~and necessity will be granted only to citizens of the Philippines or of the~~
32 ~~United States or to corporations, co-partnerships, associations or joint-~~
33 ~~stock companies constituted and organized under the laws of the~~
34 ~~Philippines; Provided, That sixty per centum of the stock or paid-up capital~~
35 ~~of any such corporations, co-partnership, association or joint-stock~~
36 ~~company must belong entirely to citizens of the Philippines or of the United~~
37 ~~States; Provided, further, That no such certificates shall be issued for a~~
38 period of more than fifty years.

1 ...
2 (c) To fix and determine individual or joint rates, tolls, charges,
3 classifications, or schedules thereof, as well as commutation, mileage,
4 kilometrage, and other special rates which shall be imposed, observed,
5 and followed thereafter by any public service: Provided, That the
6 Commission may, in its discretion, approve rates proposed by public
7 services provisionally and without necessity of any hearing; but it shall call
8 a hearing thereon within thirty days, thereafter, upon publication and
9 notice to the concerns operating in the territory affected: Provided, further,
10 That in case the public service equipment of an operator is used principally
11 or secondarily for the promotion of a private business, the net profits of
12 said private business shall be considered in relation with the public service
13 of such operator for the purpose of fixing the rates: PROVIDED
14 FURTHERMORE, THAT THE MAXIMUM RATE OF RETURN SHALL BE
15 EQUAL TO THE POST-TAX WEIGHTED AVERAGE COST OF CAPITAL
16 FOR THE SAME OR COMPARABLE BUSINESSES COMPUTED USING
17 ESTABLISHED METHODOLOGIES SUCH AS THE CAPITAL ASSET
18 PRICING MODEL: PROVIDED ALSO, THAT INCOME TAX SHALL BE
19 ALLOWED AS A CASH OUTFLOW FOR RATE-DETERMINATION
20 PURPOSES: PROVIDED FINALLY, THAT THIS PROVISION SHALL NOT
21 BAR THE APPLICATION OF PERFORMANCE-BASED RATE
22 REGULATION SHOULD THE ADMINISTRATIVE AGENCY
23 REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND IN
24 THE PUBLIC INTEREST."

25 Sec. 5. *Proceedings Without Hearing.* – Section 17 (b) of Commonwealth Act No.
26 146 or the Public Service Act, as amended, is hereby amended to read as follows:

27 "(b) To require any public service to pay the actual expenses
28 incurred by the Commission in any investigation if it shall be found in the
29 same that any rate, toll, charge, schedule, regulation, practice, act or
30 service thereof is in violation of any provision of this Act or any certificate,
31 order, rule, regulation or requirement issued or established by the
32 Commission. The Commission may also assess against any public service
33 REASONABLE costs ~~not to exceed twenty-five pesos~~ with reference to
34 such investigation."

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

37 "(i) To sell, alienate or in any manner transfer shares of its capital
38 stock to any alien if the result of that sale, alienation, or transfer in itself or

1 in connection with another previous sale shall be the reduction to less than
2 sixty per centum of the capital stock belonging to Philippine citizens IN
3 THE OPERATION OF A PUBLIC UTILITY AS REQUIRED BY THE
4 CONSTITUTION. Such sale, alienation or transfer shall be void and of no
5 effect and shall be sufficient cause for ordering the cancellation of the
6 certificate."

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

9 "Every public service violating or failing to comply with the terms
10 and conditions of any certificate or any orders, decisions or regulations of
11 the Commission shall be subject to DISGORGEMENT OF PROFITS,
12 TREBLE DAMAGES, a fine OF UP TO FIVE MILLION PESOS, OR ALL
13 OR ANY COMBINATION THEREOF ~~of not exceeding two hundred pesos~~
14 per day for every day during which such default or violation continues; and
15 the Commission is hereby authorized and empowered to impose such fine,
16 after due notice and hearing. THE FINE OF UP TO FIVE MILLION PESOS
17 SHALL BE INCREASED EVERY FIVE (5) YEARS UPON
18 CERTIFICATION BY NEDA ON THE COMPUTATION OF THE COST OF
19 MONEY BASED ON THE CURRENT CONSUMER PRICE INDEX.

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

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

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

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

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

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

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

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

14 Approved,