

**Republic of the Philippines
House of Representatives
Quezon City**

**Eighteenth Congress
First Regular Session**

House Bill No. 4167



**Introduced by Representatives
ESTRELLITA B. SUANSING and HORACIO P. SUANSING, JR.**

EXPLANATORY NOTE

This bill seeks to further amend Commonwealth Act No. 146 or the Public Service Act, clarifying the definition of public utilities in order to open up certain industries to more competition and providing a mechanism for rate fixing that allows a reasonable rate of return to attract investments into public utilities.

The Public Service Act, an 80-year old law governing public services in the Philippines, needs to be further amended in order to bring its provisions to reflect the current era in order to enable its purpose of truly serving the public.

The proposed bill now provides for a clear definition of 'public utility', which is often interchanged with 'public service', limiting it to 3 sectors: (a) distribution of electricity system, (b) transmission of electricity system, and (c) water pipeline distribution system and sewerage pipeline system. The new definition would pave the way for more competition in other industries not listed as public utilities.

Other salient features of the bill include the retainment of the National Economic and Development Authority (NEDA), in consultation with the Philippine Competition Commission (PCC), as the recommendatory authority to Congress in the classification of a person, business or service as a public utility; recognizes the administrative agencies to which the powers and duties of the Public Service Commission were transferred in accordance with their respective charters and related statutes; provides an appropriate mechanism for fixing rates based on reasonable rate of return; and strengthens the enforcement remedies of administrative agencies.

The bill envisions the entry of more players competing to provide the general public with more choices, improved quality of basic services, and

lower prices, resulting in a more competitive economy towards a better quality of life for all.

This bill has been previously approved on third and final reading during the 17th Congress. In view of the foregoing, the immediate passage of this bill is earnestly sought.


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AN ACT
PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER
AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 146,
OTHERWISE KNOWN AS THE "PUBLIC SERVICE ACT", AS AMENDED

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

1 **SECTION 1. Public Utility.** – Section 13 of Commonwealth Act No. 146, as
2 amended, is hereby further amended to read as follows:

3 "Section 13. – x x x

4 "(b) The term 'public service' includes every person that now or
5 hereafter may own, operate, manage, or control in the Philippines, for
6 hire or compensation, with general or limited clientele, whether
7 permanent, occasional or accidental, and done for general business
8 purpose, x x x canal, **PUBLIC MARKET**, irrigation system x x x.

9 "x x x

10 "(D) (1) **PUBLIC UTILITY DEFINITION** – 'PUBLIC UTILITY'
11 **REFERS TO A PERSON THAT OPERATES, MANAGES, AND**
12 **CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:**

13 **"(I) DISTRIBUTION OF ELECTRICITY (AS DEFINED BY**
14 **SECTION (4)(N) OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN**
15 **AS THE 'ELECTRIC POWER INDUSTRY REFORM ACT OF 2001')**
16 **SYSTEM;**

17 **"(II) TRANSMISSION OF ELECTRICITY (AS DEFINED BY**
18 **SECTION 4(CCC) OF REPUBLIC ACT NO. 9136) SYSTEM; AND**

1 “(III) WATER PIPELINE DISTRIBUTION SYSTEM OR
2 SEWERAGE PIPELINE SYSTEM (AS DEFINED BY REPUBLIC ACT
3 NO. 6234, ENTITLED ‘AN ACT CREATING THE METROPOLITAN
4 WATERWORKS AND SEWERAGE AUTHORITY; AND FOR OTHER
5 PURPOSES’, AS AMENDED, AND PRESIDENTIAL DECREE NO. 198,
6 KNOWN AND REFERRED TO AS THE ‘PROVINCIAL WATER
7 UTILITIES ACT OF 1973’, AS AMENDED).

8 “(2) *AMENDMENT OF PUBLIC UTILITY DEFINITION.* – NO
9 OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY UNDER
10 SECTION 13(D)(1) UNLESS OTHERWISE SUBSEQUENTLY
11 PROVIDED BY LAW.

12 “THE NATIONAL ECONOMIC AND DEVELOPMENT
13 AUTHORITY (NEDA), IN CONSULTATION WITH THE PHILIPPINE
14 COMPETITION COMMISSION (PCC), SHALL RECOMMEND TO
15 CONGRESS THE CLASSIFICATION OF A PUBLIC SERVICE AS A
16 PUBLIC UTILITY ON THE BASIS OF THE FOLLOWING CRITERIA:

17 “(I) THE PERSON REGULARLY SUPPLIES AND DIRECTLY
18 TRANSMITS AND DISTRIBUTES TO THE PUBLIC THROUGH A
19 NETWORK A COMMODITY OR SERVICE OF PUBLIC
20 CONSEQUENCE;

21 “(II) THE COMMODITY OR SERVICE IS NECESSARY TO THE
22 PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE
23 REGULATED WHEN THE COMMON GOOD SO REQUIRES;

24 “(III) THE COMMODITY OR SERVICE IS NECESSARY FOR
25 THE MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS;
26 AND

27 “(IV) THE COMMODITY OR SERVICE IS OBLIGATED TO
28 PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND.”

29 **SEC. 2. *Certificate of Authority.*** – Section 15 of Commonwealth Act No.
30 146, as amended, is hereby further amended to read as follows:

31 “Section 15. With the exception of those enumerated in the
32 preceding section, no public service shall operate in the Philippines
33 without possessing a valid and subsisting **FRANCHISE**, certificate, **OR**
34 **ANY OTHER APPROPRIATE FORM OF AUTHORIZATION FOR THE**
35 **OPERATION OF PUBLIC SERVICE** [from the Public Service
36 Commission known as “certificate of public convenience,” or “certificate
37 of public convenience and necessity,”] as the case may be, to the effect

1 that the operation of said service and the authorization to do business
2 will promote the public interest in a proper and suitable manner.”

3 “The [Commission] **ADMINISTRATIVE AGENCY** may prescribe
4 as a condition for the issuance of the certificate provided in the
5 preceding paragraph that the service can be acquired by the Republic
6 of the Philippines or any instrumentality thereof upon payment of the
7 cost price of its **CAPITAL STOCK, OR** useful equipment, less
8 reasonable depreciation; and likewise, that the certificate shall be valid
9 only for a definite period of time; and that the violation of any of these
10 conditions shall produce the immediate cancellation of the certificate
11 without the necessity of any express action on the part of the
12 [Commission] **ADMINISTRATIVE AGENCY**.

13 “x x x.”

14 **SEC. 3. Proceedings Upon Notice and Hearing.** – Section 16 of
15 Commonwealth Act No. 146, as amended, are hereby further amended to read
16 as follows:

17 “Section 16. Proceedings of the [Commission] **ADMINISTRATIVE**
18 **AGENCY**, upon notice and hearing. – The [Commission]
19 **ADMINISTRATIVE AGENCY** shall have power, upon proper notice and
20 hearing in accordance with the rules and provisions of this Act, subject
21 to the limitations and exceptions mentioned and saving provisions to
22 the contrary:

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

38 “x x x

1 “(c) To fix and determine **MAXIMUM** individual or joint rates,
2 tolls, charges, classifications, **REVENUES**, or schedules thereof, as well
3 as commutation, mileage, kilometrage, and other special rates which
4 shall be imposed, observed, and followed thereafter by any public
5 service **WHEN THE PUBLIC INTEREST SO REQUIRES: Provided, That**
6 the [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,
7 approve rates proposed by public services provisionally and without
8 necessity of any hearing; but it shall call a hearing thereon within thirty
9 days, thereafter, upon publication and notice to the concerns operating
10 in the territory affected: *Provided, further,* That in case the public service
11 equipment of an operator is used principally or secondarily for the
12 promotion of a private business, the net profits of said private business
13 shall be considered in relation with the public service of such operator
14 for the purpose of fixing the rates.

15 **“IN THE PUBLIC INTEREST, THE ADMINISTRATIVE AGENCY**
16 **MAY ESTABLISH AND ENFORCE A METHODOLOGY FOR SETTING**
17 **RATES, TAKING INTO ACCOUNT ALL RELEVANT**
18 **CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE**
19 **REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH AS TO**
20 **ALLOW THE RECOVERY OF JUST AND REASONABLE COSTS AND**
21 **A REASONABLE RATE OF RETURN TO ENABLE THE PUBLIC**
22 **SERVICE TO OPERATE VIABLY. THE ADMINISTRATIVE AGENCY**
23 **MAY ADOPT ALTERNATIVE FORMS OF INTERNATIONALLY**
24 **ACCEPTED RATE-SETTING METHODOLOGY AS IT MAY DEEM**
25 **APPROPRIATE AND WILL PROMOTE EFFICIENCY. THE RATE-**
26 **SETTING METHODOLOGY SO ADOPTED AND APPLIED MUST**
27 **ENSURE A REASONABLE PRICE OF THE COMMODITY OR**
28 **SERVICE. THE RATES PRESCRIBED SHALL BE**
29 **NONDISCRIMINATORY.**

30 **“THIS PROVISION SHALL NOT BE INTERPRETED AS**
31 **MANDATING RATE REGULATION AND AMENDING OR REPEALING**
32 **(1) LAWS PROVIDING A DEREGULATION POLICY, SUCH AS**
33 **REPUBLIC ACT NOS. 7925, 8479, 9136, AND 9295 AND (2)**
34 **REGULATIONS PROMULGATED BY THESE ADMINISTRATIVE**
35 **AGENCIES TO DEREGULATE RATES.**

36 **“THE PCC IS HEREBY MANDATE TO CONDUCT REGULAR**
37 **STUDIES ON WHETHER DEREGULATION IS WARRANTED IN A**
38 **SECTOR AND SUBMIT ITS RECOMMENDATION TO CONGRESS.**

39 “xxx.”

1 **SEC. 4. *Proceedings Without Hearing.*** – Section 17 of Commonwealth Act
2 No. 146, as amended, is hereby further amended to read as follows”

3 “Section 17. Proceedings of [Commission] **ADMINISTRATIVE**
4 **AGENCY** without previous hearing. – The [Commission]
5 **ADMINISTRATIVE AGENCY** shall have power without previous
6 hearing, subject to established limitations and exception and saving
7 provisions to the contrary:

8 “x x x

9 “(b) To require any public service to pay the actual expenses
10 incurred by the [Commission] **ADMINISTRATIVE AGENCY** in any
11 investigation if it shall be found in the same that any rate, toll, charge,
12 schedule, regulation, practice, act or service thereof is in violation of
13 any provision of this Act or any certificate, order, rule, regulation or
14 requirement issued or established by the [Commission]
15 **ADMINISTRATIVE AGENCY**. The [Commission] **ADMINISTRATIVE**
16 **AGENCY** may also assess against any public service **REASONABLE**
17 costs [not to exceed twenty-five pesos] with reference to such
18 investigation.”

19 “x x x.”

20 **SEC. 5. *Acts Requiring Approval.*** – Section 20 of Commonwealth Act No.
21 146, as amended, is hereby further amended to read as follows:

22 “Section 20. Acts requiring the approval of the [Commission]
23 **ADMINISTRATIVE AGENCY**. – Subject to established limitations and
24 exceptions and saving provisions to the contrary, it shall be unlawful
25 for any public service or for the owner, lessee or operator thereof,
26 without the approval and authorization of the [Commission]
27 **ADMINISTRATIVE AGENCY** previously had –

28 “x x x

29 “(i) To sell, alienate or in any manner transfer shares of its capital
30 stock to any alien if the result of that sale, alienation, or transfer in
31 itself or in connection with another previous sale shall be the reduction
32 to less than sixty per centum of the capital stock belonging to Philippine
33 citizens **IN THE OPERATION, MANAGEMENT AND CONTROL OF A**
34 **PUBLIC UTILITY AS REQUIRED BY THE CONSTITUTION**. Such sale,
35 alienation or transfer shall be void and of no effect shall be sufficient
36 cause for ordering the cancellation of the certificate.”

37 “x x x.”

1 **SEC. 6. Penalties for Violations.** – Section 21 of Commonwealth Act No.
2 146, as amended, is hereby further amended to read as follows:

3 “Section 21. Every public service violating or failing to comply
4 with the terms and conditions of any certificate or any order[s],
5 decision[s] or regulation[s] of the [Commission] **ADMINISTRATIVE**
6 **AGENCY** shall be subject to **DISGORGEMENT OF PROFITS, TREBLE**
7 **DAMAGES**, a fine [of not exceeding two hundred pesos] **OF UP TO FIVE**
8 **MILLION PESOS** per day for every day during which such default or
9 violation continues[:], **DIVESTMENT, OR ALL OR ANY COMBINATION**
10 **THEREOF**; and the [Commission] **ADMINISTRATIVE AGENCY** is
11 hereby authorized and empowered to impose such fine, after due notice
12 and hearing. **THE MAXIMUM DAILY FINE OF FIVE MILLION PESOS**
13 **SHALL BE INCREASED EVERY FIVE (5) YEARS UPON**
14 **CERTIFICATION BY THE NEDA ON THE COMPUTATION OF THE**
15 **COST OF MONEY BASED ON THE CUMULATIVE THREE HUNDRED**
16 **SIXTY (360)-DAY TREASURY BILL DATE.**

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

28 **SEC. 7. Administrative Cost Recovery Mechanism.** – Section 40 of
29 Commonwealth Act No. 146, as amended, is hereby further amended to read
30 as follows:

31 “Section 40. The [Commission] **ADMINISTRATIVE AGENCY** is
32 authorized and ordered to charge and collect from any public service or
33 applicant, as the case may be, [the following] **REASONABLE** fees as
34 reimbursement of its expenses in the authorization, supervision and/or
35 regulation of public services[:], **AND TO IMPOSE APPROPRIATE**
36 **PENALTIES AND FINES AS PROVIDED BY LAW.”**

37 [(a) x x x

38 x x x

1 (i) x x x

2 This section shall not be applicable to the Republic of the
3 Philippines, nor to its instrumentalities,

4 Aside from the appropriations for the Commission under the
5 annual General Appropriations Act, any unexpended balance of the fees
6 collected by the Commission under this section shall be constituted
7 receipts automatically appropriated each year, and together with any
8 surplus in the standardizing meter laboratory revolving fund under
9 Commonwealth Act Numbered Three hundred forty-nine, shall be
10 disbursed by the Public Service Commissioner in accordance with
11 special budgets to be approved by the Department of Justice, the
12 Budget Commission and the Office of the President of the Philippines
13 for additional needed personal services, maintenance and operating
14 expenses, acquisition of urgently needed vehicles, furniture and
15 equipment, maintenance of an adequate reference library, acquisition
16 of a lot and building for the Commission, and other expenses necessary
17 for efficient administration and effective supervision and regulation of
18 public services. (As amended by Com. Act. No. 454 and RA No. 3792,
19 approved June 22, 1963.)]

20 **SEC. 8. Recognition of Administrative Agencies.** – All references to the
21 Public Service Commission in Commonwealth Act No. 146, as amended, shall
22 mean any administrative agency to which the powers and duties of the Public
23 Service Commission were transferred in accordance with their respective
24 charters and related statutes.

25 **SEC. 9. Interpretation.** – This Act shall be subject to the regulatory powers
26 of the State to promote public interest in Article IX-C, Section 4 and Article
27 XII, Section 17 of the Constitution. A person classified as a public utility prior
28 to the effectivity of this Act and declassified as such under this Act shall be
29 considered a public service and a business affected with public interest for
30 the purpose of Article XII, Section 17 of the Constitution. Such person shall
31 continue to be subject to regulation by relevant administrative agencies under
32 existing laws.

33 No franchise, certificate, or authorization granted by the appropriate
34 administrative agencies shall be (1) exclusive in character, (2) for a longer
35 period than fifty years, and (3) granted except under the condition that it shall
36 be subject to amendment, alteration, or repeal by Congress when the common
37 good so requires.

38 **SEC. 10. General Law.** – Commonwealth Act No. 146, as amended, shall be
39 construed as a general law that shall apply suppletorily to special laws or

1 existing sector-specific laws governing public services, except for Section 13(d)
2 of Commonwealth Act No. 146, as amended, as further amended by Section
3 1 of this Act.

4 **SEC. 11. Comprehensive Baseline Survey.** – The PCC shall commission the
5 University of the Philippines Law Center (UPLC) or such other institutions to
6 conduct a comprehensive baseline survey of the regulatory governance and
7 regulatory substance of public services within six (6) months from the
8 effectivity of this Act.

9 **SEC. 12. Performance Audit.** – Administrative agencies must ensure the
10 annual conduct of performance audit by an independent evaluation team to
11 ensure cost-norms and the quality of services provided to the public and the
12 ability of manpower and system resources of the public service provider to
13 immediately respond to emergency cases. Metrics for various types of services
14 must be established to sustain reliability, security, and safety of the public.

15 **SEC. 13. Rules and Regulations.** – Administrative agencies under Section
16 of this Act shall, in coordination with the UPLC, promulgate rules and
17 regulations to implement the provisions of this Act within ninety (90) days
18 from the effectivity of this Act.

19 **SEC. 14. Separability Clause.** – If any portion or provision of this Act is
20 declared unconstitutional, the remainder of this Act or any provision not
21 affected thereby shall remain in force and effect.

22 **SEC. 25. Repealing Clause.** – All laws, decrees, orders, rules and regulations
23 or other issuances or parts thereof, including Commonwealth Act No. 146 or
24 the Public Service Act, as amended, inconsistent with the provisions of this
25 Act are hereby repealed or modified accordingly.

26 **SEC. 26. Effectivity.** – This Act shall take effect fifteen (15) days after its
27 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,