

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 10423



Introduced by REPRESENTATIVE MANUEL ANTONIO F. ZUBIRI

EXPLANATORY NOTE

Public utility has been synonymous to public service and that situation is due to the ambiguity in the definition of public utility under Commonwealth Act No. 146 or the Public Service Act. To resolve the problem, a policy as to the clear and legal definition of public utility must be laid down, amending thereof of the Public Service Act.

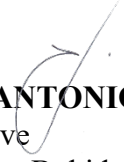
The said law was enacted in 1936 to govern public services; undeniably it is no longer apt with our current market situation considering the rapid innovation and technological upgrade that took place. The law being left undisturbed to adjust to modern times, it has become a sad reality that our society has accepted that basic and public services are of poor quality but expensive.

This leaves consumers with little to no choice especially that very few parties are dominating the market. On another hand, competition and foreign investment are likewise inhibited because limitations that are rightly applied to public utilities are usually also applied to public services.

Revising the said law is justifiable to fully service its intents and purposes. This proposed measure intends to: 1) transfer functions of the Public Service Commission to various administrative agencies; 2) provide a clear definition of public service and public utility; 3) the appropriate mechanism for fixing rates based on reasonable rate of return; and 4) the applicable penalties and fees for public services.

With the proposed amendments, the general public will have more choices, better services and enjoy lower prices. It will significantly change the competition game of public services and utilities and thereby creating a more competitive economy in the country.

Thus, approval of this bill is earnestly sought.


MANUEL ANTONIO F. ZUBIRI
Representative
Third District, Bukidnon

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Introduced by REPRESENTATIVE MANUEL ANTONIO F. ZUBIRI

AN ACT
FURTHER AMENDING 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:

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.

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 MONOPOLOY THAT NEEDS TO BE REGULATED WHEN THE PUBLIC INTEREST SO REQUIRES AS DETERMINED BY CONGRESS.

II. PUBLIC UTILITY EXEMPTIONS – ANY EXISTING LAW TO THE CONTRARY WITHSTANDING, 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 [from the Public Service Commission known as “certificate of public convenience”, or “certificate of public convenience and necessity”], 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 [which shall be known as certificates of public convenience], 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 [thereafter, certificates of public convenience and certificates of public convenience and necessity will be granted only to citizens of the Philippines or of the United States or to corporations, co-partnerships, associations or joint stock companies constituted and organized under the laws of the Philippines: Provided, That sixty per centum of the stock or paid up capital of any such corporations, co-partnership, association or joint stock company must belong entirely to citizens of the Philippines or of the United States: Provided further, That] no such certificates shall be issued for a period of more than fifty years.

(b) xxx

(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 MODE: 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 by the Commission. The Commission may also assess against any public service REASONABLE costs [not to exceed twenty five pesos] 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 the 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 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, [of not exceeding two hundred pesos] 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, executive orders, rules and regulations inconsistent with or contrary to this Act are hereby deemed accordingly repealed or amended.

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 provision of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

Sec. 14. Effectivity. – This Act shall take effect after fifteen (15) days from publication in at least two (2) newspapers of general circulation.

Approved,