

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4789



Introduced by **HON. GUS S. TAMBUNTING**

**AN ACT AMENDING COMMONWEALTH ACT NO.146, OTHERWISE KNOWN AS THE
PUBLIC SERVICE ACT, AS AMENDED, AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

Over the years, consumers have been expressing growing dissatisfaction concerning the delivery of basic services such as electricity, water, transportation, and telecommunications. The dissatisfaction of consumers over poor quality services at high costs can be rooted in the lack of competition and inhibition of foreign investment in the country.

This bill seeks to amend and update the Public Service Act which was passed in 1936. To date, the more than 80-year-old law remains to be the law that governs public services in the Philippines. The Public Service Act has since been amended several times already and many of its sections have been expressly repealed or impliedly repealed, including the Public Service Commission as per Presidential Decree No. 1 in 1972.

This Representation believes that the Public Service Act with its outdated and restrictive provisions no longer serves its true purpose of serving the public. Considering the situation for the past few years, wherein technological innovation has swamped the market and has since allowed for ingenious and new modes of delivery services, a review of the Public Service Act is needed to realign the said law to the realities of the 21st Century.

This proposed measure allows the New Public Service Law to 1) recognize the transfer of functions of the Public Service Commission to various administrative agencies; 2) distinguish and clarify the definition of public services from public utilities; 3) institute an appropriate mechanism for fixing rates; and 4) increase the penalties for violations. I acknowledge Senate Bill 1754 as reported in Senate Committee Report 301 during the 17th Congress upon which this proposal has been based.

On behalf of the people of Parañaque City's Second District, and for the common good of the Filipino people, the approval of the said measure is earnestly sought.


REP. GUS S. TAMBUNTING
2nd District, Parañaque City

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

SECTION 1. *Short Title.* – This Act shall be known as “The New Public Service Law of the Philippines.”

Sec. 2. *Declaration of Policy.* – It is a Constitutionally enshrined policy of the State to promote a just and dynamic social order that will free the people from poverty through measures that promote an improved quality of life for all.

The State recognizes that public utilities are necessary to the public and are natural monopolies that must be regulated as required by public interest. It is the policy of the State to ensure that the consuming public's satisfaction and quality of life shall be the yardsticks for effective regulation of public utility providers without compromising the reasonable rate of return of the latter. It is likewise the policy of the State to encourage private enterprise and provide incentives for needed investments.

The above policies are fulfilled by ensuring: (a) effective regulation of public utilities and public services; (b) a reasonable rate of return to public utilities and public services; and (c) the lifting of foreign equity restrictions by clearly defining what are considered to be public utilities.

Sec. 3. *Definition of Terms.* – For this Act, the terms below shall be defined as follows:

- a) Cost-of-Living Adjustment - refers to the percentage by which the Philippine Statistics Authority (PSA) Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the PSA Consumer Price Index for the month of June of the calendar year in which the maximum amount of the fine was the last set or adjusted under law;
- b) Disgorgement of Profits - refers to the giving up or recapturing of profits traceable to a certain transaction or wrongdoing upon demand or by legal compulsion;

- c) Distribution of Electricity - refers to the conveyance of electric power by a distribution utility through its distribution system under the provisions of RA 9136, under Section 4 (n) of said law;
- d) Transmission of Electricity - refers to the conveyance of electricity through the high voltage backbone system, under Section 4 (ccc) of RA 9136;
- e) Treble Damages - refers to an additional sum, depending on the discretion of the agency or court involved, which is thrice the amount of the monetary award granted; and
- f) Water Works and Sewerage Systems - refers to the entire water systems to ensure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems as defined and referred to in RA 6234, as amended, and PD 198, as amended.

Sec. 4. *Recognition of Previous Transfer of Jurisdiction to Various Administrative Agencies.* – Since the enactment of Commonwealth Act No. 146, the jurisdiction over several public services had been transferred to various administrative agencies such as, but not limited to, the following:

- a) Department of Transportation (DOTr);
- b) Land Transportation Franchising Regulatory Board (LTFRB);
- c) Land Transportation Office (LTO);
- d) Civil Aeronautics Board (CAB);
- e) Civil Aviation Authority of the Philippines (CAAP);
- f) Philippine Ports Authority (PPA);
- g) Maritime Industry Authority (MARINA);
- h) Philippine Coast Guard;
- i) Department of Information and Communications Technology (DICT);
- j) National Telecommunications Commission (NTC);
- k) Department of Energy (DOE);
- l) Energy Regulatory Commission (ERC);
- m) Department of Environment and Natural Resources (DENR);
- n) League of Cities;
- o) National Water Resources Board;
- p) Local Water Utilities Administration;
- q) Philippine Competition Commission (PCC).

For purposes of this act, the term "Administrative Agencies" shall refer to existing agencies with which the powers and duties of the Public Service Commission were transferred, and are hereby authorized and ordered to charge and collect from any public service or public utility or applicant, as the case may be, reasonable fees as reimbursement of its expenses in the exercise of its authorization, supervision, and regulation duties, and to impose appropriate penalties and fines as provided by law. These Administrative Agencies are governed by their respective charters and related statutes.

Sec. 5. *Public Utility.* – A new Section 13 (d) of Commonwealth Act No. 146, as amended, is hereby inserted to read as follows:

"(D) PUBLIC UTILITY. - A SUBSET OF PUBLIC SERVICE, IT REFERS TO THE DIRECT TRANSMISSION DISTRIBUTION, AND DELIVERY THROUGH A NETWORK, A COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE AND IS A NATURAL MONOPOLY THE OPERATION OF WHICH MUST BE RESTRICTED UNDER SECTION 11, ARTICLE XII OF THE 1987 CONSTITUTION.

THE FOLLOWING SHALL BE AN EXCLUSIVE LIST OF PUBLIC UTILITIES:

- (1) TRANSMISSION OF ELECTRICITY;**
- (2) DISTRIBUTION OF ELECTRICITY; AND**
- (3) WATERWORKSORKS AND SEWERAGE SYSTEMS.**

NO OTHER BUSINESS OR SERVICE SHALL BE DEEMED A PUBLIC UTILITY OTHER THAN THOSE LISTED IN THIS SECTION UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW UPON RECOMMENDATION BY THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), THROUGH ITS BOARD, IN CONSULTATION WITH THE PHILIPPINE COMPETITION COMMISSION (PCC) AND THE CONCERNED ADMINISTRATIVE AGENCIES, TAKING INTO CONSIDERATION SECTIONS 2 AND 4 OF THIS ACT AND THE FOLLOWING CRITERIA:

- 1. THE PERSON OR JURIDICAL ENTITY REGULARLY SUPPLIES AND DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK A COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE;**
- 2. THE COMMODITY OR SERVICE IS NECESSARY TO THE PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE COMMON GOOD SO REQUIRES;**
- 3. THE COMMODITY OR SERVICE IS NECESSARY FOR THE MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS; AND**
- 4. THE COMMODITY OR SERVICE IS OBLIGATED TO PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND."**

THIS SECTION AND THIS ACT DO NOT HAVE ANY EFFECT ON THE EXISTING REGULATIONS OF PUBLIC SERVICES AND DO NOT, IN ANY WAY, DIMINISH THE CONSTITUTIONAL RESTRICTIONS PROVIDED UNDER SECTIONS 11 AND 17, ARTICLE XII AND SECTION 4, ARTICLE IX (PART C) OF THE CONSTITUTION. NEITHER DOES THIS SECTION NOR THIS ACT REDEFINE "COMMON CARRIERS" AND ALTER THE EXISTING HIGH STANDARDS ACCORDED TO IT."

Sec. 6. *Authorization to Operate.* - The first paragraph of Section 15 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Except those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting FRANCHISE, certificate, OR ANY OTHER APPROPRIATE FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC SERVICE [~~from the Public Service Commission known as "certificate of public convenience," or certificate of public convenience and necessity,"~~] as the case may be, as the case may be, **FROM THE**

CONGRESS, THE SECURITIES EXCHANGE COMMISSION (SEC) AND/OR THE PROPER ADMINISTRATIVE AGENCY to the effect that the operation of said service and the authorization to do business will promote the public interest properly and suitably."

Sec. 7. Issuance of Authorizations and Fixing of Rates, Tolls, and the like and the Reasonable Rate of Return. - Section 16 (a) and (c) of Commonwealth Act No. 146, 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~~] **ADMINISTRATIVE AGENCY** finds that the operation of the public service proposed and the authorization to do business will promote the public interest properly and suitably. [~~Provided, That thereafter, certificates of public convenience and certificates of public convenience and necessity will be granted only to citizens of the Philippines or 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 corporation, co-partnership, association or joint stock company must belong entirely to the 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.~~]

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(c) To fix and determine **THE MAXIMUM CEILING FOR** 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 **WHEN THE PUBLIC INTEREST SO REQUIRES:** Provided, That the [~~Commission~~] **ADMINISTRATIVE AGENCY** 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~~] **FIFTEEN** days, thereafter, upon publication and notice to the concerns operating in the territory affected, **TO RATIFY ITS PRIOR PROVISIONAL APPROVAL OR CHANGE, MODIFY OR ALTER THE APPROVED RATE BASED ON PUBLIC INTEREST:** 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 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 MODERN AND UP TO DATE METHODOLOGIES SUCH AS THE CAPITAL ASSET PRICING MODEL: PROVIDED ALSO, THAT INCOME TAX BE ALLOWED AS A CASH EXPENDITURE OR OUTFLOW FOR RATE-DETERMINATION PURPOSES: PROVIDED FURTHER, 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; PROVIDED FINALLY, THAT THIS SHALL NOT BE INTERPRETED AS AMENDING OR REPEALING REGULATIONS PROMULGATED BY THESE ADMINISTRATIVE AGENCIES TO DEREGULATE RATES.**

Sec. 8. Reasonable Costs – Section 17 (b) of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"(b) To require any public service to pay the actual expenses incurred by the [Commission] **ADMINISTRATIVE AGENCY** in any investigation if it shall be found in the same that any rate, toll, charge, schedule, regulation, practice, act, or service thereof violates any provision of this Act or any certificate, order, rule, regulation or requirement issued or established the [Commission] by **ADMINISTRATIVE AGENCY**. The [Commission] **ADMINISTRATIVE AGENCY** may also assess against any public service REASONABLE costs [~~not to exceed twenty-five pesos~~] concerning the such investigation."

Sec. 9. Section 20 (i) of Commonwealth Act No. 146, 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 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. 10. Section 21 of Commonwealth Act No. 146, 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] **ADMINISTRATIVE AGENCY** shall be subject to **DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine NOT EXCEEDING FIVE MILLION PESOS (PHP 5,000,000.00) 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] **ADMINISTRATIVE AGENCY** is hereby authorized and empowered to impose such **PENALTY OR** fine, after due notice and hearing.

The **PENALTIES AND** fines so imposed shall be paid to the Government of the Philippines through the [Commission] **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR** fine in any case within the same specified in the order or decision of the [Commission] **ADMINISTRATIVE AGENCY** 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. 11. Section 23 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Any public service corporation that shall perform, commit, or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing herein to be done or performed, shall be punished by a fine not exceeding [~~twenty-five thousand pesos~~] **FIVE MILLION PESOS (PHP 5,000,000.00)**, or by imprisonment [~~not exceeding five years~~] **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both, in the discretion of the court."

Sec. 12. Section 24 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Any person who shall knowingly and willfully perform, commit, or do, or participate in performing, committing, or doing, or who shall knowingly and willfully cause, participate, or join with others in causing any public service corporation or company to do, perform or commit, or who shall advise, solicit, persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to perform, commit, or do any act or thing forbidden or prohibited by this Act, shall be punished by a fine not exceeding [~~two thousand pesos~~] **FIVE MILLION PESOS (PHP 5,000,000.00)**, or imprisonment [~~not exceeding two years~~] **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both, in the discretion of the court. [~~Provided, however, that for operating a private passenger automobile as a public service without having a certificate of public convenience for the same the offender shall be subject to penalties provided for on section sixty-seven (j) of Act numbered thirty-nine hundred and ninety-two.~~]"

Sec. 13. Section 25 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Any person who shall knowingly and willfully neglect, fail, or omit to do or perform, or who shall knowingly and willfully cause or join or participate with others in causing any public service corporation or company to neglect, fail or omit to do or perform, or who shall advise, solicit, or persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to neglect, fail, or omit to do any act or thing required to be done by this Act, shall be punished by a fine not exceeding [two thousand pesos] **FIVE MILLION PESOS (PHP 5,000,000.00)** or by imprisonment [~~not exceeding two years~~] **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both, in the discretion of the court."

Sec. 14. Section 26 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by to in charge of the [~~Commission~~] **ADMINISTRATIVE AGENCIES** or its agents, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine **OF THE AMOUNT EQUIVALENT TO THE ACTUAL MARKET VALUE OF THE APPARATUS OR APPLIANCE DESTROYED OR INJURED PLUS A FINE NOT EXCEEDING ONE MILLION PESOS (PHP 1,000,000.00)** [~~not exceeding one thousand pesos~~] or imprisonment [~~not exceeding six months~~] **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both in the discretion of the court.

[~~Any public service permitting the destruction, injury to, or interference with, any such apparatus or appliances shall forfeit a sum not exceeding for thousand pesos for each offense.~~]"

Sec. 15. Section 28 of Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

"Violations of the orders, decisions, and regulations of the [Commission] **ADMINISTRATIVE AGENCIES** and of the terms and conditions of any certificate issued by the [Commission] **ADMINISTRATIVE AGENCIES** [~~shall prescribe after sixty days,~~] and violations of the provisions of this Act shall [~~prescribe after one hundred and eight days.~~] **BE IMPRESCRIPTIBLE.**"

Sec. 16. *Subsequent Adjustment of Fines imposed under this Act.* – The maximum amounts of fines imposed under this Act, as well those imposed under Commonwealth Act No 146, shall be adjusted by the head of each administrative agency under Section 1 of this Act by a Cost-of-Living Adjustment on January 1 of the year immediately following the date of enactment of this Act and every fifth calendar year thereafter. Each head of the administrative agency shall file copies of the adjustment with the University of the Philippines Law Center by Executive Order No. 292 (1987), as amended.

Any increase shall apply only to fines, including those whose associated violation predated such increase, which is assessed after the date the increase takes effect.

Sec. 17. *Interpretation.* – This Act shall be subject to and consistent with the regulatory powers of the State to promote public interest in Article IX-C, Section 4 and Article XII, Section 17 of the Constitution.

No franchise, certificate, or authorization granted by Congress and the appropriate administrative agencies under Section 3 of this Act shall be (a) exclusive in character, (b) for a longer period than fifty years, and (c) granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires.

The power to grant any franchise, certificate, or any other form of authorization for the operation of public service still belongs to Congress, unless otherwise provided by law to an administrative agency.

Sec. 18. *Non-Impairment of Existing Agreements.* – The application and implementation of the pertinent provisions of this Act shall not impair vested rights or obligations of contracts. Current and subsisting concession agreements and other similar contracts of juridical persons with government agencies or government-owned-and-controlled-corporations covering activities hereunder classified as public utilities shall remain valid and in force, by the existing terms and conditions, the parties agreed to thereunder until expiration or termination thereof.

Sec. 19. *Suppletory Application of Commonwealth Ad No. 146.* – Commonwealth Act No. 146, as amended, shall be construed as a general law that shall apply suppletorily to special laws or existing sector-specific laws governing public services, except for Section 13 (d) of Commonwealth Act No. 146, as amended, created by Section 4 of this Act.

Sec. 20. *Comprehensive Baseline Survey.* – The University of the Philippines Law Center shall conduct a comprehensive baseline survey of public services governance within six (6) months from the effectiveness of this Act. Copies of the results of said survey shall be furnished to Congress, the NEDA, and PCC.

The PCC, in coordination with the NEDA, is mandated to conduct regular studies on whether deregulation is warranted in a sector to improve consumer welfare and to submit its recommendation to Congress.

Sec. 21. *Implementing Rules and Regulations.* – All administrative agencies under Section 3 of this Act shall, in coordination with the NEDA, PCC, and the University of the Philippines Law Center, promulgate rules and regulations to implement the provisions of this Act within ninety (90) days from the effectivity of this Act, including the criteria for the determination of imposable fines, as provided for in this Act, to be based on the capitalization of a public service provider and peculiarities of the public service concerned.

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

Sec. 23. *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. 24. *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. 25. *Effectivity.* – This Act shall take effect to 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,