



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



TWENTIETH CONGRESS
First Regular Session

House Bill No. 4844

Introduced by *Representative Caroline L. Tanchay, KAMALAYAN Party-List*

EXPLANATORY NOTE

The severity of typhoons and other *force majeure* events across the Philippines in the recent years highlights the need for a more transparent and prudent utilization of public funds, while ensuring the integrity and resilience of flood control projects, national roads, and other infrastructure projects of the Government. This is of transcendental importance especially considering that the source of public funds are the revenues generated from the taxes being paid by the taxpayers across all social classes. Thus, the current legislative and executive investigations on the alleged ghost and substandard projects, as well as the upcoming Congressional deliberations for the enactment of the General Appropriations Act for the year 2026, are intended to address these matters of serious concern.

Aside from government projects, assets that require legislative attention and action are those built and constructed by public utilities and other persons providing public services.

Under the Public Service Act, assets built by these persons form part of their rate base, subject to the determination of the Public Service Commission based on usefulness and necessity of said assets. This means that the funds used for the construction of these assets come from the money of the utilities' customers. Hence, there is a need to ensure that these assets are not only useful and necessary but are also able to withstand the tests of time and calamities.

This is especially true for assets that are built as a reaction to emergency and *force majeure* events, such as typhoons and earthquakes.

Under Section 20(b) of the Public Service Act, as amended by R.A. No. 11659, public utilities and persons providing public services are allowed to construct and repair assets during emergency and extraordinary cases, without prior approval of the Public Service Commission, provided that the application for said action is made within sixty (60) days after the occurrence thereof. Under the same provision, the costs attendant to these constructions and repairs shall

form part of these entities' rate base upon determination of the assets' usefulness and necessity by the Public Service Commission.

While this innovation in the Public Service Act, as amended, is intended to allow the entities to react swiftly to the needs of its customers after the onslaught of a natural calamity or an emergency, the same provision does not squarely address whether the costs used to implement these actions should be entirely passed on to the customers, notwithstanding the fact that these events are not caused by the willful or negligent actions of the consumers.

The present provision, in fact, does not even address the possibility that the assets destroyed by emergencies and *force majeure* events may have been intentionally or negligently substandard or poorly constructed. Consequently, the costs of implementing such projects arising from emergencies and *force majeure* events will be repeatedly and entirely passed on to the customers of public utilities and persons providing public services.

A practical action to prevent the wastage of funds coming from the pockets of paying customers is to amend Section 20(b) of the Public Service Act, as amended, and include as part of the criteria that the projects implemented in emergency and extraordinary cases to form part of the rate base should be determined only upon a sufficient finding that the cause of implementation of the project is entirely due to emergency and/or *force majeure* event, and not due to the willful action or negligence of the public utilities or persons providing public services, or any of their lessee or operators.

This proposed amendment is based on Article 1149 of the Civil Code of the Philippines which states:

ARTICLE 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, *no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.*

In *Saludaga v. Far Eastern University*, G.R. No. 179337, April 30, 2008, the Supreme Court explained that for a person to be deemed not responsible for fortuitous and *force majeure* events, he/she must prove that no negligence or misconduct was committed that may have occasioned the loss. Hence:

xxx An act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of such a loss. One's negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability. *When the effect is found to be partly the result of a person's participation - whether by active intervention, neglect or failure to act - the whole occurrence is humanized and removed from the rules applicable to acts of God.*

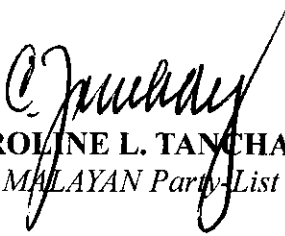
Applying these legal and jurisprudential yardsticks, the loss, destruction, and damages arising from emergency and extraordinary events, if humanized by human intervention, either through willful misconduct or negligence, should not allow the public utilities and/or persons providing public services from passing on the cost attendant to the repair and construction of assets to their customers.

By including this express condition in Section 20(b) of the Public Service Act, as amended, public utilities and persons providing public services are compelled to ensure that

their assets are not only prudent, useful and necessary for the provision of their services, but are also resilient and are not easily vulnerable to emergencies and extraordinary circumstances.

In addition to this proposed additional criterion, a 50%-50% sharing of the cost of constructing or repair of assets damaged, destroyed, or affected by emergencies and extraordinary cases is respectfully proposed, for the simple and logical reason that these expenditures must never be shouldered by the customers alone. The customers are never at fault when public services are suspended due to an emergency or *force majeure* event but are always the victims and the ones suffering the most. Hence, it would be an injustice for the customers to carry the burden of paying for the repair and construction of damaged or destroyed assets alone. To address this injustice, these costs should be shouldered at least equally by the public utilities and providers of public services and their respective customers.

In view of the foregoing explanations, the immediate passage of this bill is respectfully sought.


CAROLINE L. TANCHAY
KAMALAYAN Party-List



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House Bill No. **4844**

Introduced by *Representative Caroline L. Tanchay, KAMALAYAN Party-List*

AN ACT
AMENDING SECTION 20(b) OF THE PUBLIC SERVICE ACT, AS AMENDED BY
REPUBLIC ACT NO. 11659

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

Section 1. Section 20(b) of the Public Service Act, as amended by Section 10 of Republic Act No. 11659, is hereby amended as follows:

Section 20. Acts requiring the approval of the Commission. - Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had:

xxx

(b) To establish, construct, maintain, or operate new units or extend existing facilities or make any other addition to or general extension of the service: *Provided*, That only assets that are useful and necessary for the provision of the public service shall form part of the rate base as determined and approved by the Administrative Agency: *Provided*, further, That construction **and/or repair** of such asset and implementation of such project may be allowed for emergency and other extraordinary cases: *Provided*, **finally furthermore**, That the public service provider files for approval of such extension or construction of facilities within sixty (60) days from implementation of the project, and without prejudice to the final determination by the Administrative Agency **if the emergency or extraordinary case is humanized, fully or partially, by willful action or through negligence of the public**

service, and if said asset is useful and necessary for inclusion in the rate base. **Provided, finally, that the recovery of cost of such asset found useful and necessary shall not be borne fully by the customers of the public service, and instead borne at least equally by the customers and the public service.**

The Administrative Agency may issue regulations prescribing a shorter period than that provided in the preceding paragraphs only in cases of emergency, as may be certified by such Administrative Agency, requiring the installation, construction or maintenance of units, facilities or equipment.

Section 2. All laws, decrees, issuances, rules and regulations, inconsistent with this Act are hereby repealed, amended or modified accordingly.

Section 3. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved.