



HOUSE OF REPRESENTATIVE

H.B. No. 6377

Introduced by **Representative TEODORICO T. HARESCO, JR.**

EXPLANATORY NOTE

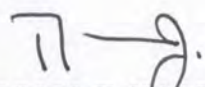
Extensive and efficient infrastructure is critical for ensuring the effective functioning of the economy. Effective modes of transport enable entrepreneurs to get their goods and services to market in a secure and timely manner and facilitate the movement of workers to the most suitable jobs. Economies also depend on electricity supplies that are free from interruptions and shortages so that businesses and factories can work unimpeded. Finally, a solid and extensive telecommunications network allows for a rapid and free flow of information, which increases overall economic efficiency. Generally, inadequate infrastructure is the second most problematic factor in doing business.

This bill seeks to amend Commonwealth Act No. 146 or the Public Service Act (PSA). The salient features of the bill are:

- Clarifies the definition of public services and public utilities;
- Institutes an appropriate mechanism for fixing rates based on a reasonable rate of return;
- Increases applicable penalties and fees; and
- Establishes a process for vetting investments in critical infrastructure, and empowers the President to suspend or prohibit transactions involving critical infrastructure (i.e. electricity transmission, electricity distribution, water pipeline distribution, sewerage pipeline system, and telecommunications) that threaten to impair the national security of the Republic of the Philippines.

The bill also provides safeguards should any investor pose a potential threat to national security. The President is empowered to suspend or prohibit transactions involving critical infrastructure (i.e. electricity transmission, electricity distribution, water pipeline distribution, sewerage pipeline system, and telecommunications) that threaten to impair the national security of the Republic of the Philippines.

In view of the foregoing, the passage of this bill is immediately sought.


TEODORICO T. HARESCO, JR.

HOUSE OF REPRESENTATIVES

H.B. No. 6377

Introduced by **Representative TEODORICO T. HARESCO, JR.**

AN ACT
TO DEFINE PUBLIC UTILITIES, PROMOTE INVESTMENT, IMPROVE REGULATION,
AND ENSURE NATIONAL SECURITY BY AMENDING COMMONWEALTH ACT NO. 146,
OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED, AND OTHER
RELATED LAWS, AND FOR OTHER PURPOSES

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

Section 1. *Short Title* – This act shall be known as the “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 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 an 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.

These policies are fulfilled by: 1) ensuring effective regulation of public utilities and public services; 2) ensuring reasonable rate of return to public utilities and public services, where applicable; 3) harmonizing foreign equity restrictions with the global average by clearly defining what are public utilities; and 4) instituting processes which protect national security.

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

- a) Administrative Agency - refers to existing agencies to which the powers and duties of the Public Service Commission were transferred;

- b) Common Carrier – refers to persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public, as defined by Article 1732 of Republic Act No. 386, as amended;
- c) 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 last set or adjusted pursuant to law;
- d) 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;
- e) Distribution of Electricity – refers to the conveyance of electric power by a distribution utility through its distribution system as defined by Section 4 (n) of Republic Act No. 9136;
- f) Philippine National – refers to citizens, partnerships, associations, and corporations defined by Section 3(a) of Republic Act No. 7042, as amended;
- g) Telecommunications – refers to any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means, as defined by Section 3(a) of Republic Act No. 7925, as amended
- h) Transmission of Electricity – refers to the conveyance of electricity through the high voltage backbone system, as defined by Section 4 (ccc) of Republic Act No. 9136;
- i) 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
- j) Water Pipeline Distribution Systems and Sewerage Pipeline Systems – refers to the operation and maintenance of water pipeline distribution systems to ensure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the operation and maintenance of sewerage pipeline systems to ensure public health and safety, as regulated by Republic Act No. 6234, as amended, and Presidential Decree No. 198, as amended.

Sec. 4. Recognition of Transfer of Jurisdiction to Various Administrative Agencies. – Since the enactment of Commonwealth Act No. 146, jurisdiction over public services has been transferred to various administrative agencies. These agencies are authorized 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.

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 – REFERS TO A PERSON THAT OPERATES, MANAGES AND CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:

- 1) DISTRIBUTION OF ELECTRICITY;**
- 2) TRANSMISSION OF ELECTRICITY; AND**
- 3) WATER PIPELINE DISTRIBUTION SYSTEMS AND SEWERAGE PIPELINE SYSTEMS**

NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW.

THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA) THROUGH ITS BOARD, IN CONSULTATION WITH THE PHILIPPINE COMPETITION COMMISSION (PCC) AND THE CONCERNED ADMINISTRATIVE AGENCIES, MAY RECOMMEND TO CONGRESS THE CLASSIFICATION OF A PUBLIC SERVICE AS A PUBLIC UTILITY ON THE BASIS OF 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."**

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:

"With the exception of 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, FROM THE CONGRESS, THE SECURITIES AND EXCHANGE COMMISSION 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 in a proper and suitable manner.”

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 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.~~]

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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 FURTHER, THAT IN THE PUBLIC INTEREST, THE ADMINISTRATIVE AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY FOR SETTING RATES, TAKING INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH AS TO ALLOW THE RECOVERY OF JUST AND REASONABLE COSTS AND A REASONABLE RATE OF RETURN TO ENABLE THE PUBLIC SERVICE TO OPERATE VIABLY. THE ADMINISTRATIVE AGENCY MAY ADOPT**

ALTERNATIVE FORMS OF INTERNATIONALLY ACCEPTED RATE-SETTING METHODOLOGY AS IT MAY DEEM APPROPRIATE AND WILL PROMOTE EFFICIENCY. THE RATE-SETTING METHODOLOGY SO ADOPTED AND APPLIED MUST ENSURE A REASONABLE PRICE OF THE COMMODITY OR SERVICE. THE RATES PRESCRIBED SHALL BE NONDISCRIMINATORY.; PROVIDED FURTHER, 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 (1) LAWS PROVIDING A DEREGULATION POLICY, SUCH AS REPUBLIC ACT NOS. 7925, 8479, 9136, AND 9295 AND (2) 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 is in violation of any provision of this Act or any certificate, order, rule, regulation or requirement issued or established by the [Commission] **ADMINISTRATIVE AGENCY**. The [Commission] **ADMINISTRATIVE AGENCY** may also assess against any public service **REASONABLE** costs [not to exceed twenty-five pesos] with reference to 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 in 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 (PHP5,000,000.00) 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 (PHP5,000,000.00)**, 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 advice, 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 (PHP5,000,000.00)**, 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 the penalties provided for in section sixty-seven (j) of Act numbered thirty-nine hundred an 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 (PHP5,000,000.00)** 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 the [~~Commission~~] **ADMINISTRATIVE AGENCIES** or their 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 (PHP1,000,000.00)** [~~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 four 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 **ADMINISTRATIVE AGENCIES** [Commission shall prescribe after sixty days,] and violations of the provisions of this Act shall [prescribe after one hundred and eighty days.] **BE IMPRESCRIPTIBLE.**"

Sec. 16. *Adjustment of Fines.* – The maximum amounts of fines imposed under Commonwealth Act No. 146 as further amended by this Act, shall be adjusted by the head of each administrative agency under Section 4 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 in accordance with Executive Order No. 292 (1987), as amended.

Any increase shall apply only to fines, including those whose associated violation predated such increase, which are 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.

A person classified as a public utility prior to the effectivity of this Act and declassified as such under this Act shall be considered a public service and a business affected with public interest for the purpose of Article XII, Section 17 of the Constitution. Such person shall continue to be subject to regulation by relevant administrative agencies under existing laws. This Act does not redefine the term "common carrier" or alter its obligation to exercise extraordinary diligence.

No franchise, certificate, or authorization granted by the appropriate administrative agencies under Section 4 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 a 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 in accordance with the existing terms and conditions the parties agreed to thereunder until the expiration or termination thereof.

SEC. 19 - REVIEW OF FOREIGN DIRECT INVESTMENT IN COVERED TRANSACTIONS. -

(a) DEFINITIONS. — FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(1) COUNCIL; CHAIRPERSON. — THE TERMS 'COUNCIL' AND 'CHAIRPERSON' MEAN THE NATIONAL SECURITY COUNCIL, WITH THE ADDITION OF THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY, SECRETARY OF THE DEPARTMENT OF FINANCE, AND DIRECTOR-GENERAL OF THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, AND THE CHAIRPERSON THEREOF OR THE PRESIDENT'S DESIGNEE, RESPECTIVELY.

- (2) **CONTROL.** — THE TERM “CONTROL” HAS THE MEANING GIVEN TO SUCH TERM IN REGULATIONS WHICH THE COUNCIL SHALL PRESCRIBE.
- (3) **COVERED TRANSACTION.** — THE TERM “COVERED TRANSACTION” MEANS ANY MERGER, ACQUISITION, OR TAKEOVER THAT IS PROPOSED OR PENDING AFTER THE EFFECTIVITY OF THIS LAW, BY OR WITH ANY FOREIGN PERSON WHICH COULD RESULT IN FOREIGN CONTROL OF ANY PERSON ENGAGED IN COMMERCE IN THE REPUBLIC OF THE PHILIPPINES.
- (4) **FOREIGN GOVERNMENT-CONTROLLED TRANSACTION.** — THE TERM “FOREIGN GOVERNMENT-CONTROLLED TRANSACTION” MEANS ANY COVERED TRANSACTION THAT COULD RESULT IN THE CONTROL OF ANY PERSON ENGAGED IN COMMERCE IN THE REPUBLIC OF THE PHILIPPINES BY A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY OR ACTING ON BEHALF OF A FOREIGN GOVERNMENT.
- (5) **CRITICAL INFRASTRUCTURE.** — THE TERM “CRITICAL INFRASTRUCTURE” MEANS, SUBJECT TO RULES ISSUED UNDER THIS SECTION, SYSTEMS AND ASSETS, WHETHER PHYSICAL OR VIRTUAL, SO VITAL TO THE REPUBLIC OF THE PHILIPPINES THAT THE INCAPACITY OR DESTRUCTION OF SUCH SYSTEMS OR ASSETS WOULD HAVE A DEBILITATING IMPACT ON NATIONAL SECURITY. UNLESS OTHERWISE PROVIDED BY THE RULES, “CRITICAL INFRASTRUCTURE” SHALL REFER TO:
- (A) TRANSMISSION OF ELECTRICITY, AS DEFINED BY SECTION 4 (CCC) OF REPUBLIC ACT NO. 9136;
 - (B) DISTRIBUTION OF ELECTRICITY, AS DEFINED BY SECTION 4 (N) OF REPUBLIC ACT NO. 9136;
 - (C) WATER PIPELINE DISTRIBUTION SYSTEMS AND SEWERAGE PIPELINE SYSTEMS – REFERS TO THE OPERATION AND MAINTENANCE OF WATER PIPELINE DISTRIBUTION SYSTEMS TO ENSURE AN UNINTERRUPTED AND ADEQUATE SUPPLY AND DISTRIBUTION OF POTABLE WATER FOR DOMESTIC AND OTHER PURPOSES AND THE OPERATION AND MAINTENANCE OF SEWERAGE PIPELINE SYSTEMS TO ENSURE PUBLIC HEALTH AND SAFETY, AS REGULATED BY REPUBLIC ACT NO. 6234, AS AMENDED, AND PRESIDENTIAL DECREE NO. 198, AS AMENDED; AND
 - (D) TELECOMMUNICATIONS, AS DEFINED BY REPUBLIC ACT NO. 7925, AS AMENDED

(6) LEAD AGENCY. — THE TERM “LEAD AGENCY” MEANS THE AGENCY, OR AGENCIES, DESIGNATED BY THE PRESIDENT, OR HIS DESIGNEE, TO BE THE LEAD AGENCY OR AGENCIES ON BEHALF OF THE COUNCIL—

(A) FOR EACH COVERED TRANSACTION, AND FOR NEGOTIATING ANY MITIGATION AGREEMENTS OR OTHER CONDITIONS NECESSARY TO PROTECT NATIONAL SECURITY; AND

(B) FOR ALL MATTERS RELATED TO THE MONITORING OF THE COMPLETED TRANSACTION, TO ENSURE COMPLIANCE WITH SUCH AGREEMENTS OR CONDITIONS AND WITH THIS SECTION.

(b) NATIONAL SECURITY REVIEWS. —

(1) NATIONAL SECURITY REVIEWS. —

(A) IN GENERAL. — THE PRESIDENT OR THE COUNCIL SHALL INITIATE A REVIEW OF A COVERED TRANSACTION TO DETERMINE ITS EFFECTS ON THE NATIONAL SECURITY OF THE REPUBLIC OF THE PHILIPPINES IF—

(i) THE COVERED TRANSACTION IS A FOREIGN GOVERNMENT-CONTROLLED TRANSACTION; AND

(ii) THE TRANSACTION WOULD RESULT IN CONTROL OF ANY CRITICAL INFRASTRUCTURE OF OR WITHIN THE REPUBLIC OF THE PHILIPPINES.

ANY PARTY OR PARTIES TO ANY COVERED TRANSACTION MAY LIKEWISE INITIATE A REVIEW OF THE TRANSACTION UNDER THIS PARAGRAPH BY SUBMITTING A WRITTEN NOTICE OF THE TRANSACTION TO THE CHAIRPERSON OF THE COUNCIL.

(B) TIMING. — ANY REVIEW UNDER THIS PARAGRAPH SHALL BE COMPLETED BEFORE THE END OF THE 90 DAY PERIOD BEGINNING ON THE DATE OF THE INITIATION OF THE REVIEW IN ACCORDANCE WITH SUBPARAGRAPH (A).

(C) LIMIT ON DELEGATION OF CERTAIN AUTHORITY. — THE AUTHORITY OF THE COUNCIL TO INITIATE A REVIEW UNDER SUBPARAGRAPH (A) MAY NOT BE DELEGATED TO ANY PERSON, OTHER THAN THE APPROPRIATE UNDERSECRETARY OF THE DEPARTMENT OR DEPUTY HEAD OF THE AGENCY REPRESENTED ON THE COUNCIL.

(2) SUBMISSION OF ADDITIONAL INFORMATION. — NO PROVISION OF THIS SUBSECTION SHALL BE CONSTRUED AS PROHIBITING ANY PARTY TO A COVERED TRANSACTION FROM SUBMITTING ADDITIONAL INFORMATION CONCERNING THE TRANSACTION, INCLUDING ANY PROPOSED RESTRUCTURING OF THE TRANSACTION OR ANY MODIFICATIONS TO ANY AGREEMENTS IN CONNECTION WITH THE TRANSACTION, WHILE ANY REVIEW OF THE TRANSACTION IS ONGOING.

(3) NOTICE OF RESULTS TO PARTIES. — THE COUNCIL SHALL NOTIFY THE PARTIES TO A COVERED TRANSACTION OF THE RESULTS OF A REVIEW UNDER THIS SECTION, PROMPTLY UPON COMPLETION OF ALL ACTION UNDER THIS SECTION.

(c) CONFIDENTIALITY OF INFORMATION. — ANY INFORMATION OR DOCUMENTARY MATERIAL FILED WITH THE PRESIDENT OR THE PRESIDENT'S DESIGNEE PURSUANT TO THIS SECTION SHALL BE EXEMPT FROM DISCLOSURE, AND NO SUCH INFORMATION OR DOCUMENTARY MATERIAL MAY BE MADE PUBLIC, EXCEPT AS MAY BE RELEVANT TO ANY ADMINISTRATIVE OR JUDICIAL ACTION OR PROCEEDING. NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PREVENT DISCLOSURE TO EITHER HOUSE OF CONGRESS OR TO ANY DULY AUTHORIZED COMMITTEE OR SUBCOMMITTEE OF THE CONGRESS IF THE COMMITTEE PROVIDES ASSURANCES OF CONFIDENTIALITY, UNLESS SUCH PARTY OTHERWISE CONSENTS IN WRITING TO SUCH DISCLOSURE.

(d) ACTION BY THE PRESIDENT. —

(1) IN GENERAL. — SUBJECT TO PARAGRAPH (4), THE PRESIDENT MAY TAKE SUCH ACTION FOR SUCH TIME AS THE PRESIDENT CONSIDERS APPROPRIATE TO SUSPEND OR PROHIBIT ANY COVERED TRANSACTION INVOLVING CRITICAL INFRASTRUCTURE THAT THREATENS TO IMPAIR THE NATIONAL SECURITY OF THE REPUBLIC OF THE PHILIPPINES.

(2) ANNOUNCEMENT BY THE PRESIDENT. — THE PRESIDENT SHALL ANNOUNCE THE DECISION ON WHETHER OR NOT TO TAKE ACTION PURSUANT TO PARAGRAPH (1) NOT LATER THAN 15 DAYS AFTER THE DATE ON WHICH A REVIEW DESCRIBED IN SUBSECTION (B) IS COMPLETED.

(3) ENFORCEMENT. — THE PRESIDENT MAY DIRECT THE SOLICITOR GENERAL OF THE REPUBLIC OF THE PHILIPPINES TO SEEK APPROPRIATE RELIEF, INCLUDING DIVESTMENT RELIEF, IN THE COURTS OF THE REPUBLIC OF THE PHILIPPINES, IN ORDER TO IMPLEMENT AND ENFORCE THIS SUBSECTION.

(4) FINDINGS. — THE PRESIDENT MAY EXERCISE THE AUTHORITY CONFERRED BY PARAGRAPH (1), ONLY IF—

- (A) THERE IS CREDIBLE EVIDENCE THAT LEADS THE PRESIDENT TO BELIEVE THAT THE FOREIGN INTEREST EXERCISING CONTROL MIGHT TAKE ACTION THAT THREATENS TO IMPAIR THE NATIONAL SECURITY OF THE REPUBLIC OF THE PHILIPPINES; AND
 - (B) PROVISIONS OF LAW, OTHER THAN THIS SECTION, DO NOT, IN THE JUDGMENT OF THE PRESIDENT, PROVIDE ADEQUATE AND APPROPRIATE AUTHORITY FOR THE PRESIDENT TO PROTECT THE NATIONAL SECURITY IN THE MATTER BEFORE THE PRESIDENT.
- (5) FACTORS TO BE CONSIDERED. — FOR PURPOSES OF DETERMINING WHETHER TO TAKE ACTION UNDER PARAGRAPH (1), THE PRESIDENT SHALL CONSIDER THE FOLLOWING:
 - (A) THE POTENTIAL NATIONAL SECURITY-RELATED EFFECTS ON CRITICAL INFRASTRUCTURE;
 - (B) WHETHER THE COVERED TRANSACTION IS A FOREIGN GOVERNMENT-CONTROLLED TRANSACTION;
- (6) ACTIONS AND FINDINGS NONREVIEWABLE. — THE ACTIONS OF THE PRESIDENT UNDER PARAGRAPH (1) OF SUBSECTION (D) AND THE FINDINGS UNDER PARAGRAPH (4) OF SUBSECTION (D) BY THE PRESIDENT SHALL NOT BE SUBJECT TO JUDICIAL REVIEW UNLESS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WAS COMMITTED.
- (e) EFFECT ON OTHER LAW. — NO PROVISION OF THIS SECTION SHALL BE CONSTRUED AS ALTERING OR AFFECTING ANY OTHER AUTHORITY, PROCESS, REGULATION, INVESTIGATION, ENFORCEMENT MEASURE, OR REVIEW PROVIDED BY OR ESTABLISHED UNDER ANY OTHER PROVISION OF LAW, OR ANY OTHER AUTHORITY OF THE PRESIDENT OR THE CONGRESS UNDER THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES.
- (f) MITIGATION AND POST-CONSUMMATION MONITORING AND ENFORCEMENT. —
 - (1) MITIGATION. —
 - (A) IN GENERAL. — THE COUNCIL OR A LEAD AGENCY MAY, ON BEHALF OF THE COUNCIL, NEGOTIATE, ENTER INTO OR IMPOSE, AND ENFORCE ANY AGREEMENT OR CONDITION WITH ANY PARTY TO THE COVERED TRANSACTION IN ORDER TO MITIGATE ANY THREAT TO THE NATIONAL

SECURITY OF THE REPUBLIC OF THE PHILIPPINES THAT
ARISES AS A RESULT OF THE COVERED TRANSACTION.

(B) RISK-BASED ANALYSIS REQUIRED. — ANY AGREEMENT
ENTERED INTO OR CONDITION IMPOSED UNDER
SUBPARAGRAPH (A) SHALL BE BASED ON A RISK-BASED
ANALYSIS, CONDUCTED BY THE COUNCIL, OF THE THREAT
TO NATIONAL SECURITY OF THE COVERED TRANSACTION.

(2) NEGOTIATION, MODIFICATION, MONITORING, AND
ENFORCEMENT. —

(A) DESIGNATION OF LEAD AGENCY. — THE LEAD AGENCY
SHALL NEGOTIATE, MODIFY, MONITOR, AND ENFORCE, ON
BEHALF OF THE COUNCIL, ANY AGREEMENT ENTERED INTO
OR CONDITION IMPOSED UNDER PARAGRAPH (1) WITH
RESPECT TO A COVERED TRANSACTION, BASED ON THE
EXPERTISE WITH AND KNOWLEDGE OF THE ISSUES
RELATED TO SUCH TRANSACTION ON THE PART OF THE
DESIGNATED DEPARTMENT OR AGENCY. NOTHING IN THIS
PARAGRAPH SHALL PROHIBIT OTHER DEPARTMENTS OR
AGENCIES IN ASSISTING THE LEAD AGENCY IN CARRYING
OUT THE PURPOSES OF THIS PARAGRAPH.

(B) REPORTING BY DESIGNATED AGENCY. — THE LEAD
AGENCY IN CONNECTION WITH ANY AGREEMENT ENTERED
INTO OR CONDITION IMPOSED WITH RESPECT TO A
COVERED TRANSACTION SHALL PROVIDE PERIODIC
REPORTS TO THE COUNCIL ON ANY MATERIAL
MODIFICATION TO ANY SUCH AGREEMENT OR CONDITION
IMPOSED WITH RESPECT TO THE TRANSACTION.

(g) CONGRESSIONAL OVERSIGHT AND PERIODIC REVIEW. — UPON
EFFECTIVITY OF THIS ACT, A JOINT CONGRESSIONAL OVERSIGHT
COMMITTEE SHALL BE CREATED THAT WILL CONDUCT A PERIODIC
REVIEW EVERY FIVE (5) YEARS OF THIS ACT. THE CONGRESSIONAL
OVERSIGHT COMMITTEE SHALL BE COMPOSED OF THE CHAIRPERSON OF
THE SENATE COMMITTEE ON PUBLIC SERVICES, THE CHAIRPERSON OF
THE HOUSE OF REPRESENTATIVES COMMITTEE ON ECONOMIC AFFAIRS,
AND REPRESENTATIVES OF OTHER RELEVANT CONGRESSIONAL
COMMITTEES TO BE DESIGNATED BY THE SENATE PRESIDENT AND
SPEAKER OF THE HOUSE OF REPRESENTATIVES, RESPECTIVELY.

Sec. 20. *Suppletory Application of Commonwealth Act 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. 21. *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 effectivity of this Act. Copies of the results of said survey shall be furnished to the Congress, the NEDA and PCC.

The PCC, in coordination with 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. 22. Implementing Rules and Regulations. - All administrative agencies under Section 4 of this Act shall, in coordination with the University of the Philippines Law Center, promulgate rules and regulations to implement the provisions of this Act, including the criteria for the determination of imposable fines, as provided for in this Act, which shall account for the capitalization or other circumstances of the public service concerned.

Sec. 23. 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. This includes:

(a) Section 2(a) of Republic Act No. 6957, as amended, insofar as the clause limiting investment in a facility operator where a public utility franchise is required;

(b) Section 3(c) of Republic Act No. 9295, as amended, insofar as the clause limiting investment in a Domestic Ship Operator or Domestic Ship Owner; and

(c) Section 44 of Republic Act No. 9497, as amended, insofar as the clause limiting registration of aircraft which are owned or leased by non-Philippine nationals.

Sec. 24. 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. 25. 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. 26. Effectivity. - This Act shall take effect 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,