



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH (18th) CONGRESS
First Regular Session

HOUSE BILL NO. 0540

Introduced by **MAGSASAKA Party-List Representative**
ARDEL JOSEPH T. CABATBAT

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

EXPLANATORY NOTE

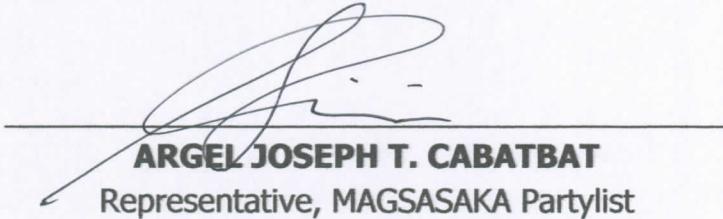
The Act amending Commonwealth Act No. 146 or the Public Service Act has been initially filed in the 17th Congress separately by Hon. Arthur C. Yap, Hon. Feliciano Belmonte, Jr. and Hon. Jose Christopher Y. Belmonte. It seeks to amend a law passed in 1936, and to update and enable it to address the dynamic political, social and economic environment of contemporary times.

The recent century has almost completed the privatization of these supposedly publicly-owned utilities and services. As effective monopolies affecting the lives of all citizens, public utilities and services are indefeasibly imbued with public interest and must be subject to greater and more effective government regulatory control and supervision. The advent of the recent Metro Manila water crisis has highlighted this much needed stronger regulatory oversight power to public utilities, to prevent corporate abuses and negligence. The public should never be at the mercy of profit-driven private interests.

The proposed amendments also seek to effect necessary and timely changes to otherwise antiquated provisions of the old Public Service Act to ensure that the general public will have more choices, enjoy better services and

lower prices.

In view of the foregoing reasons, the approval of this bill is earnestly sought.



ARNEL JOSEPH T. CABATBAT
Representative, MAGSASA KA Partylist



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

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

1 **Section 1. Short Title** - This Act shall be known as "*The New Public Service*
2 *Law of the Philippines.*"

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

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

13 The above policies are fulfilled by ensuring:
14 (a) effective regulation of public utilities and public services;
15 (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 the purposes of 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 last set or adjusted pursuant to 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 pursuant to the provisions of RA 9136, pursuant to Section 4 (n) of said law;
 - d. Transmission of Electricity - refers to the conveyance of electricity through the high voltage backbone system, pursuant to 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 portable 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, 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 DELIVERING THROUGH A NETWORK, A COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE AND IS A NATURAL MONOPOLY THE OPERATION OF WHICH MUST BE RESTRICTED PURSUANT TO 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;**
- (3) WATER WORKS AND SEWERAGE SYSTEMS; AND**
- (4) TELECOMMUNICATION SERVICES.**

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

1 **COMMISSION (PCC) AND THE CONCERNED ADMINISTRATIVE AGENCIES,**
2 **TAKING INTO CONSIDERATION SECTIONS 2 AND 4 OF THIS ACT AND THE**
3 **FOLLOWING CRITERIA:**

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

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

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

23 "With the exception of those enumerated in the preceding section, no public
24 service shall operate in the Philippines without possessing a valid and subsisting
25 **FRANCHISE, certificate, OR ANY OTHER APPROPRIATE FORM OF**
26 **AUTHORIZATION FOR THE OPERATION OF A PUBLIC SERVICE** (from
27 the Public Service Commission known as "certificate of public convenience," or
28 "certificate of public service and necessity,") as the case may be, **FROM THE**
29 **CONGRESS, THE SECURITIES EXCHANGE COMMISSION (SEC)**
30 **AND/OR THE PROPER ADMINISTRATIVE AGENCY** to the effect that the
31 operation of said service and the authorization to do business will promote the
32 public interest in a proper and suitable manner."

33 ***Sec. 7. Issuance of Authorizations and Fixing of Rates, Tolls and the***
34 ***like and the Reasonable Rate of Return.*** — Section 16 (a) and (c) of
35 Commonwealth Act No. 146, as amended, are hereby amended to read as follows:

- 36 a) To issue certificates [Which shall be known as certificates of public
37 convenience] authorizing the operation of public service within the

1 Philippines whenever the [Commission] **ADMINISTRATIVE AGENCY**
2 finds that the operation of the public service proposed and the
3 authorization to do business will promote the public interest in a proper
4 and suitable manner. [Provided, that thereafter, certificates of public
5 convenience and necessity will be granted only to citizens of the
6 Philippines or of the United States or to corporations, co partnerships,
7 associations or joint stock companies constituted or organized under the
8 laws of the Philippines; Provided, that sixty per centum of the stock or
9 paid up capital of any such corporations, co partnership, association or
10 joint stock company must belong entirely to citizens of the Philippines or
11 of the United State: Provided, further, that no such certificates shall be
12 issued for a period of more than fifty years.]

13 XXX

14 XXX

15 XXX

16 (c) To fix and determine **THE MAXIMUM CEILING FOR** individual or joint
17 rates, tolls, charges, classifications, or schedules thereof, as well as
18 commutation, mileage, kilometrage, and other special rates which shall be
19 imposed, observed, and followed thereafter by any public service **WHEN**
20 **THE PUBLIC INTEREST SO REQUIRES:** Provided, That the
21 [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,
22 approve rates proposed by public services provisionally and without
23 necessity of any hearing; but it shall call a hearing thereon within [thirty]
24 **FIFTEEN** days, thereafter, upon publication and notice to the concerns
25 operating in the territory affected, **TO RATIFY ITS PRIOR**
26 **PROVISIONAL APPROVAL OR CHANGE, MODIFY OR ALTER THE**
27 **APPROVED RATE BASED ON PUBLIC INTEREST:** Provided, further,
28 That in case the public service equipment of an operator is used principally
29 or secondarily for the promotion of a private business, the net profits of
30 said private business shall be considered in relation with the public service
31 of such operator for the purpose of fixing the rates; **PROVIDED THAT**
32 **THE MAXIMUM RATE OF RETURN SHALL BE EQUAL TO THE POST-**
33 **TAX WEIGHTED AVERAGE COST OF CAPITAL FOR THE SAME OR**
34 **COMPARABLE BUSINESSES COMPUTED USING ESTABLISHED**
35 **MODERN AND UP TO DATE METHODOLOGIES SUCH AS THE**
36 **CAPITAL ASSET PRICING MODEL: PROVIDED ALSO, THAT**
37 **INCOME TAX BE ALLOWED AS A CASH EXPENDITURE OR**
38 **OUTFLOW FOR RATE- DETERMINATION PURPOSES: PROVIDED**
39 **FURTHER, THAT THIS PROVISION SHALL NOT BAR THE**
40 **APPLICATION OF PERFORMANCE-BASED RATE REGULATION**
SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH

1 **PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC**
2 **INTEREST; PROVIDED FINALLY, THAT THIS SHALL NOT BE**
3 **INTERPRETED AS AMENDING OR REPEALING REGULATIONS**
4 **PROMULGATED BY THESE ADMINISTRATIVE AGENCIES TO**
5 **DEREGULATE RATES.**

6 **Sec. 8. Reasonable Costs.** — Section 17 (b) of Commonwealth Act No. 146,

7 as

8 amended, is hereby amended to read as follows:

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

18 **Sec. 9. Section 20 (i) of Commonwealth Act No. 146**, as amended, is
19 hereby amended to read as follows:

20 "(i) To sell, alienate or in any manner transfer shares of its capital stock to any
21 alien if the result of that sale, alienation, or transfer in itself or in connection
22 with another previous sale shall be the reduction to less than sixty per centum
23 of the capital stock belonging to Philippine citizens **IN THE OPERATION OF**
24 **A PUBLIC UTILITY AS REQUIRED BY THE CONSTITUTION**. Such sale,
25 alienation or transfer shall be void and of no effect and shall be sufficient cause
26 for ordering the cancellation of the certificate."

27 **Sec. 10. Section 21 of Commonwealth Act No. 146**, as amended, is
28 hereby amended to read as follows:

29 "Every public service violating or failing to comply with the terms and conditions of
30 any certificate or any orders, decisions or regulations of the [Commission]
31 **ADMINISTRATIVE AGENCY** shall be subject to **DISGORGEMENT OF PROFITS,**
32 **TREBLE DAMAGES**, a fine **NOT EXCEEDING FIVE MILLION PESOS**
33 (**PHP5,000,000.00**) **OR ALL OR ANY COMBINATION THEREOF** [~~ef—not~~
34 exceeding two hundred pesos] per day for every day during which such default or
35 violation continues; and the [Commission] **ADMINISTRATIVE AGENCY** is hereby
36 authorized and empowered to impose such **PENALTY OR** fine, after due notice and
37 hearing.

1 The **PENALTIES AND** fines so imposed shall be paid to the Government of the
2 Philippines through the [Commission] **ADMINISTRATIVE AGENCY**, and failure to
3 pay the **PENALTY OR** fine in any case within the same specified in the order or
4 decision of the [Commission] **ADMINISTRATIVE AGENCY** shall be deemed good
5 and sufficient reason for the suspension of the certificate of said public service until
6 payment shall be made. Payment may also be enforced by appropriate action brought
7 in a court of competent jurisdiction. The remedy provided in this section shall not be
8 a bar to, or affect any other remedy provided in this Act but shall be cumulative and
9 additional to such remedy or remedies."

10 **Sec. 11. Section 23 of Commonwealth Act No. 146**, as amended, is
11 hereby amended to read as follows:

12 "Any public service corporation that shall perform, commit, or do any act or
13 thing forbidden or prohibited or shall neglect, fail or omit to do or perform any
14 act or thing herein to be done or performed, shall be punished by a fine not
15 exceeding [twenty five thousand pesos] **FIVE MILLION PESOS**
16 (**PHP5,000,000.00**), or by imprisonment [not exceeding five years] **OF NOT**
17 **LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12)**
18 **YEARS**, or both, in the discretion of the court."

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

21 "Any person who shall knowingly and willfully perform, commit, or do, or
22 participate in performing, committing, or doing, or who shall knowingly and
23 willfully cause, participate, or join with others in causing any public service
24 corporation or company to do, perform or commit, or who shall advice, solicit,
25 persuade, or knowingly and willfully instruct, direct, or order any officer, agent,
26 or employee of any public service corporation or company to perform, commit,
27 or do any act or thing forbidden or prohibited by this Act, shall be punished by
28 a fine not exceeding [two thousand pesos] **FIVE MILLION PESOS**
29 (**PHP5,000,000.00**), or imprisonment [not exceeding two years] **OF NOT**
30 **LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE (12)**
31 **YEARS**, or both, in the discretion of the court. [Provided, however, that for
32 operating a private passenger automobile as a public service without having a
33 certificate of public convenience for the same the other offender shall be
34 subject to the penalties provided for in section sixty seven (j) of Act numbered
35 nine hundred and ninety two.]"

36 **Sec. 13. Section 25 of Commonwealth Act No. 146**, as amended, is
37 hereby

38 amended to read as follows:

1 "Any person who shall knowingly and willfully neglect, fail, or omit to do or
2 perform, or who shall knowingly and willfully cause or join or participate with
3 others in causing any public service corporation or company to neglect, fail or
4 omit to do or perform, or who shall advise, solicit, or persuade, or knowingly
5 and willfully instruct, direct, or order any officer, agent, or employee of any
6 public service corporation or company to neglect, fail, or omit to do any act or
7 thing required to be done by this Act, shall be published by a fine not exceeding
8 [two thousand pesos] **FIVE MILLION PESOS (PHP5,000,000.00)** or by
9 imprisonment [not exceeding two years] **OF NOT LOWER THAN SIX (6)**
10 **YEARS AND NOT HIGHER THAN TWELVE (12) YEARS**, or both, in the
11 discretion of the court."

12 **Sec. 14. Section 26 of Commonwealth Act No. 146**, as amended, is
13 hereby

14 amended to read as follows:

15 "Any person who shall destroy, injure, or interfere with any apparatus Or
16 appliance owned or operated by to in charge of the [Commission]
17 **ADMINISTRATIVE AGENCIES** or its agents, shall be deemed guilty of a
18 misdemeanor and upon conviction shall be punished by a fine **OF THE**
19 **AMOUNT EQUIVALENT TO THE ACTUAL MARKET VALUE OF THE**
20 **APPARATUS OR APPLIANCE DESTROYED OR INJURED PLUS A FINE**
21 **NOT EXCEEDING ONE MILLION PESOS (PHP1,000,000.00)** [not
22 exceeding one thousand pesos] or imprisonment [not exceeding six months]
23 **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN TWELVE**
24 **(12) YEARS**, or both in the discretion of the court.

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

27 "Violations of the orders, decisions, and regulations of the [Commission]
28 **ADMINISTRATIVE AGENCIES** and of the terms and conditions of any certificate
29 issued by the [Commission] **ADMINISTRATIVE AGENCIES** [shall prescribe after
30 sixty days], and violations of the provisions of this Act shall [prescribe after one
31 hundred and eighty days] **BE IMPREScriptible.**"

32 **Sec. 16. Subsequent Adjustment of Fines imposed under this Act**- The
33 maximum amounts of fines imposed under this Act, as well those imposed under
34 Commonwealth Act No 146, shall be adjusted by the head of each administrative
35 agency under Section 1 of this Act by a Cost-of-Living Adjustment on January 1 of the
36 year immediately following the date of enactment of this Act and every fifth calendar
37 year thereafter. Each head of the administrative agency shall file copies of the

1 adjustment with the University of the Philippines Law Center in accordance with
2 Executive Order No. 292 (1987), as amended.

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

6 **Sec. 17. Interpretation.** — This Act shall be subject to and consistent with
7 the regulatory powers of the State to promote public interest in Article IX-C, Section
8 4 and Article XII, Section 17 of the Constitution.

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

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

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

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

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

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

36 **Sec. 21. Implementing Rules and Regulations.** — All administrative
37 agencies under Section 3 of this Act shall, in coordination with the NEDA, PCC and the

1 University of the Philippines Law Center, promulgate rules and regulations to
2 implement the provisions of this Act within ninety (90) days from the effectivity of this
3 Act, including the criteria for the determination of imposable fines, as provided for in
4 this Act, to be based on the capitalization of a public service provider and peculiarities
5 of the public service concerned.

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

10 **Sec. 23. Appropriation.** — The initial funding to carry out the provisions of
11 this Act shall be charged against the current year's appropriation. Thereafter, such
12 sums as may be necessary shall be included in the General Appropriations Act.

13 **Sec. 24. Separability Clause.** — If any portion or provision of this Act is
14 declared unconstitutional, the remainder of this Act or any provision not affected
15 thereby shall remain in force and effect.

16 **Sec. 25. Effectivity.** - This Act shall take effect after fifteen (15) days following the
17 completion of its publication either in the Official Gazette or in a newspaper of general
18 circulation in the Philippines.

19 Approved,