

HOUSE OF REPRESENTATIVES  
Quezon City

Eighteenth Congress  
First Regular Session

HOUSE BILL NO. 4319



Introduced by Rep. Bernadette Herrera-Dy

**AN ACT AMENDING THE PROVISIONS OF COMMONWEALTH ACT NO. 146, OTHERWISE  
KNOWN AS THE "PUBLIC SERVICE ACT," TOWARDS PUBLIC INTEREST AND OTHER  
PURPOSES**

**Explanatory Note**

The EU - Philippines Business Network (EPBN) determined that the country ranks as one of the worst in the region in two public services: mass transportation and telecommunications. In the same report, it was found that Filipinos have the longest commute in the world with at least 2.2 hours of productive time wasted on traffic. EPBN also reported that the Philippines has one of the slowest internet connections in the world with a download speed that is half the global average. The country also has one of the most expensive internet connectivity plans compared to other Asian countries with similar economies. Despite this, the Philippines is reported to have a huge and increasing economic potential mainly because of its big population, estimated at 108 million as of mid-2018 and the 13th largest in the world. This means that there are more entrepreneurs, workers, producers, and consumers. With this advantage, the public should be given more opportunities to explore and to maximize in order to remedy the effects of the aforementioned issues.

Commonwealth Act No. 146 or the "Public Service Act" have served its purpose for more than 80 years. It is more than necessary to update the law to cater to the ever-changing needs of the public. The law gave such a broad definition of "public service" which is not currently applicable to the needs of the citizens. Over the years, various agencies have also been created by law to administer such services. Thus, there is a need to redefine sectors and to develop various means in order to adjust to the "signs of the times." Furthermore, there is a lack of healthy competition among public service providers that must be addressed. To further boost the economy, reforms must be pursued in order to give quality service to Filipinos.

In accordance with the joint letter of the Department of Finance (DOF), Department of Budget and Management (DBM), and the National Economic and Development Authority (NEDA) which urges congress "to push for better economic reforms," it is only necessary for the state to push for the amendment of the Public Service Act. This proposal seeks to revise the outdated law on public services. Public service and public utility have been used interchangeably which have caused various loopholes in the implementation of the current law. Through this bill, such differences will be determined and appropriate measures shall be pursued. Also, rates and fees shall be adjusted and the functions of administrative agencies shall be duly recognized. The bill also seeks to give enough leeway for healthy competition among public service providers. Lastly, the proposed amendments shall also revise penalties and fines to further regulate erring agencies.

It is the government's responsibility to prioritize its citizens through the review of policies that no longer benefit the citizens' needs. To this end, the state shall pursue a policy that shall amend the

provisions of Commonwealth Act No. 146, otherwise known as the "Public Service Act," towards public interest and other purposes.

In view of the foregoing, the passage of the bill is earnestly sought.

  
**BERNADETTE HERERRA-DY**



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13 KNOWN AS THE "PUBLIC SERVICE ACT" TOWARDS PUBLIC INTEREST AND OTHER  
14 PURPOSES

15 **Section 1. *Transfer of Functions of the Public Service Commission to Administrative***  
16 ***Agencies.*** Currently, the mandate of the Public Service Commission has been delegated to  
17 various administrative agencies that manage several public services. This Act shall abolish the  
18 Public Service Commission as a single entity and recognize the transfer of jurisdiction from the  
19 Commission to various administrative agencies as prescribed by law. These agencies shall be  
20 determined by Congress.

21 For the purposes of this Act, administrative agencies shall refer to agencies with which the  
22 authoritative, administrative, and management powers of the Public Service Commission were  
23 transferred. These agencies also work in accordance to their charters and mandates as  
24 prescribed by law. This shall be done in order to rationalize and to consolidate the functions of  
25 administrative agencies in their management of public services and public utilities in the  
26 Philippines.

27 **Section 2.** A new section "Section 13 (d)" shall be added to Section 13 of Commonwealth Act  
28 No. 146 and this is further amended to read as follows:

29 "(d) Public Utility: is subset of public services, with much smaller in scope than the latter. It refers  
30 to the direct transmission or distribution, and delivery through a network, of a commodity or service  
31 of public consequence. Public utilities shall be classified into four categories: 1. the transmission  
32 of electricity; 2. distribution of electricity; 3. water works and sewerage systems; and 4.  
33 telecommunications. These shall be regulated pursuant to Article XII, Section 11 and 17, and  
34 Article IX-c, Section 4 of the Constitution.

35  
36 Concessionaires who operate by virtue of Concession Agreements with any administrative  
37 agency are also deemed and considered, for all intents and purposes, as public utilities. As public  
38 utilities, the concessionaires are put to a higher degree of responsibility in the provision of services  
39 to the public. Other effects include: (a) the concessionaires' cannot declare their income tax as  
40 part of operating expenses (opex), as such are not expenses which contribute to or are incurred  
41 in connection with the production of profit of a public utility; (b) payment of income taxes are solely  
42 the responsibility and burden of the concessionaires as public utilities, and such taxes are not  
43 transferrable to consumers; and (c) the determination of what formulas to use to compute a  
44 reasonable return for the public utility is purely and exclusively the discretion of the government,  
45 who may determine through consultations with the concessionaires and other stakeholders and  
46 regulatory bodies and in accordance to Section 4 of this Act. The classification of the

1 concessionaires as mere agents and contractors of administrative agencies are considered only  
2 applicable insofar as the infrastructure-related powers granted by law to the administrative  
3 agency.

4 No other business or service shall be classified as a public utility unless otherwise subsequently  
5 provided by law, approved by Congress and the appropriate agencies, and upon recommendation  
6 by the Philippine Competition Commission (PCC) and the National Economic and Development  
7 Authority (NEDA)."

8 **Section 3.** The first paragraph of Section 15 of Commonwealth Act No. 146 is hereby further  
9 amended to read as follows:

10 "Section 15. With the exception of those enumerated in the preceding section, no public service  
11 shall operate in the Philippines without possessing a valid franchise or certificate or authorization  
12 to operate as a public service from Congress or the administrative agency as prescribed by law,  
13 to the effect that the operation of said service and the authorization to do business will promote  
14 the public interests in a proper and suitable manner."

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16 **Section 4.** Section 16 (a) and (c) of Commonwealth Act No. 146 is hereby further amended to  
17 read as follows:

18 "Section 16. Proceedings of administrative agencies upon notice and hearing. - The administrative  
19 agencies shall have power, upon proper notice and hearing in accordance with the rules and  
20 provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions  
21 to the contrary:

22 (a) To issue certificates/franchises authorizing the operation of public service within the  
23 Philippines whenever the administrative agency finds that the operation of the public service  
24 proposed and the authorization to do business will promote the public interest in a proper and  
25 suitable manner.

26 (c) To fix and determine the maximum ceiling individual or joint rates, tolls, charges,  
27 classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other  
28 special rates which shall be imposed observed and followed thereafter by any public service as  
29 required by public interest: Provided, that the administrative agency may, in its discretion, approve  
30 rates proposed by public services provisionally and without necessity of any hearing; but it shall  
31 call a hearing thereon within thirty days, thereafter, upon publication and notice to the concerns  
32 operating in the territory affected, to modify or alter the approved rate as required by public interest  
33 Provided, further, That in case the public service equipment of an operator is used principally or  
34 secondarily for the promotion of a private business, the net profits of said private business shall  
35 be considered in relation with the public service of such operator for the purpose of fixing the  
36 rates, provided that the maximum rate of return shall be equal to the post-tax weighted average  
37 cost of capital for the same or comparable businesses computed using established methodologies  
38 such as the capital asset pricing model. This provision shall not bar the application of  
39 performance-based rate regulation should the administrative agency regulating such public  
40 service deem it efficient and in the public interest.

41 The Philippine Competition Commission (PCC) is hereby mandated to conduct regular studies on  
42 whether deregulation is warranted in a sector and submit its recommendations to Congress  
43 annually."

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1 **Section 5.** Section 17 (b) of Commonwealth Act No. 146 is hereby further amended to read as  
2 follows:

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4 "Section 17. Proceedings of administrative agencies without previous hearing. - The  
5 administrative agencies shall have power without previous hearing, subject to established  
6 limitations and exception and saving provisions to the contrary:

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8 (b) To require any public service to pay the actual expenses incurred by the administrative agency  
9 in any investigation if it shall be found in the same that any rate, tool, charge, schedule, regulation,  
10 practice, act or service thereof is in violation of any provision of this Act or any certificate, order,  
11 rule, regulation, or requirement issued or established by the administrative agency. The  
12 administrative may also assess against any public reasonable costs with reference to such  
13 investigation."

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15 **Section 6.** Section 20 (i) of Commonwealth Act No. 146 is hereby further amended to read as  
16 follows:

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

22  
23 (i) To sell, alienate or in any manner transfer shares of its capital stock to any alien if the result of  
24 that sale, alienation, or transfer in itself or in connection with another previous sale shall be the  
25 reduction to less than sixty per centum of the capital stock belonging to Philippine citizens in the  
26 management and operation of a public utility as required by the Constitution. Such sale, alienation  
27 or transfer shall be void and of no effect and shall be sufficient cause for ordering the cancellation  
28 of the certificate."

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30 **Section 7.** Section 21 of Commonwealth Act No. 146 is hereby further amended to read as  
31 follows:

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33 "Section 21. Every public service violating or failing to comply with the terms and conditions of  
34 any certificate or any orders, decisions or regulations of the administrative office shall be subject  
35 to disgorgement of profits, treble damages, a fine not less than three million pesos  
36 (P3,000,000.00) and not exceeding five million pesos (P5,000,000.00) or all or any combination  
37 of, for every day during which such default or violation continues; and the administrative office is  
38 hereby authorized and empowered to impose such penalty or fine after due notice and hearing.

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40 The penalties and fines so imposed shall be paid to the Government of the Philippines through  
41 the administrative agency, and failure to pay the penalties and fines in any case within the same  
42 specified in the order or decision of the administrative agency shall be deemed good and sufficient  
43 reason for the suspension of the certificate/franchise/authorization of said public service until  
44 payment shall be made. Payment may also be enforced by appropriate action brought in a court  
45 of competent jurisdiction. The remedy provided in this section shall not be a bar to, or affect any  
46 other remedy provided in this Act but shall be cumulative and additional to such remedy or  
47 remedies."

**Section 8.** Section 23 of Commonwealth Act No. 146 is hereby further amended to read as follows:

"Section 23. 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 less than three million pesos (P3,000,000.00) and not exceeding five million pesos (P5,000,000.00), or by imprisonment of not lower than ten (10) years, or both, in the discretion of the court."

**Section 9.** Section 24 of Commonwealth Act No. 146 is hereby further amended to read as follows:

"Section 24. 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 less than three million pesos (P3,000,000.00) and not exceeding five million pesos (P5,000,000.00), or by imprisonment of not lower than ten (10) years, or both, in the discretion of the court."

**Section 10.** Section 25 of Commonwealth Act No. 146 is hereby further amended to read as follows:

"Section 25. 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 fine not less than three million pesos (P3,000,000.00) and not exceeding five million pesos (P5,000,000.00), or by imprisonment of not lower than ten (10) years, or both, in the discretion of the court."

**Section 11.** Section 26 of Commonwealth Act No. 146 is hereby further amended to read as follows:

"Section 26. Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by to in charge of the administrative agency or its agents, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of the doubled amount of the equivalent market value of the item, apparatus, or appliance destroyed or injured plus a fine not less than five hundred thousand pesos (P500,000.00) or by imprisonment of not lower than ten (10) years, or both in the discretion of the court."

**Section 12.** Section 28 of Commonwealth Act No. 146 is hereby further amended to read as follows:

"Section 28. Violations of the orders, decisions, and regulations of the administrative agencies and of the terms and conditions of any certificate issued by the said agencies and violations of the provisions of this Act shall be inalienable."



**Section 13. Powers of the Congress.** The power to grant or authorize any certificate or franchise or authorization for the operation of a public service and such conditions of approval shall be vested with the Congress unless otherwise provided by law to an administrative agency.

Provisions of this Act shall be in accordance to the promotion of public interest as prescribed by the Constitution. Specifically, the Act shall strictly adhere to Article XII, Section 11 and 17 and Article IX-c, Section 4 of the Constitution.

**Section 14. Creation of a Utilities Audit Office (UAO).** The Commission on Audit (COA) is hereby instructed to create a separate and independent Utilities Audit Office (UAO) that is empowered to audit the tariff and rate setting processes as well as the actual tariffs and rates charges to the Filipino consumers of all public utilities. The audit shall likewise include the efficiency and prudence of the incurred capital investments.

**Section 15. Performance Audit and Monitoring and Evaluation (M&E).** Administrative agencies shall conduct an annual performance audit and evaluation of their functions, quality of service, workforce management, and resources by an independent evaluation team to determine appropriate changes to ensure proper service delivery to the public as well as appropriate security and safety measures of the agency.

The academe, appropriate agencies, and other stakeholders shall evaluate the status and functions of existing public service providers and public utilities and shall prescribe recommendations to the Congress within one (1) year upon effectivity of this Act.

**Section 16. Transparency Measures.** Any and all recommendations, reviews, policy implementation measures, and other similar steps involving the administrative agency and its concessionaires shall not be considered valid unless: (a) an unbiased third party or entity had witnessed and participated (b) and the resulting effect shall be embodied in a document which shall be published as a pre-requisite for effectivity.

**Section 17. Implementing Rules and Regulations.** Within ninety (90) days from the effectivity of this Act, the Congress, the approved administrative agencies, the Philippine Competition Commission (PCC), the Commission on Audit (COA), and the National Economic and Development Authority (NEDA) in consultation with appropriate government agencies and other stakeholders, shall promulgate the necessary rules and regulations to implement this Act.

**Section 18. Separability Clause.** If, for any reason or reasons, any part of the provision of this Act shall be held to be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**Section 19. Repealing Clause.** All laws, decrees, orders, rules, and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

**Section 20. Effectivity Clause.** This Act shall take effect after fifteen (15) days following its publication in the Official Gazette and at least two (2) newspapers of general circulation.

Approved,