

EIGHTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES  
*First Regular Session*



SENATE

S. No. 13

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Introduced by Senator FRANKLIN M. DRILON

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**AN ACT AMENDING COMMONWEALTH ACT NO. 146,  
OTHERWISE KNOWN AS THE PUBLIC SERVICE LAW, AS AMENDED**

**EXPLANATORY NOTE**

The Public Service Law was enacted in 1936 or 83 years ago, after the inauguration of the Philippine Commonwealth, which marked the period of transition towards the country's complete independence from the United States. This was the prevailing law even before World War II broke out in 1939 and the Japanese occupied the Philippines in 1942. To say that the law is outdated is a gross understatement. Notwithstanding the antiquity of the Public Service Law, it is the law, which defines which entities shall be considered a public service and interchangeably, a public utility. It is being used as basis to define "public utility" under the 1987 Constitution, which was drafted and ratified long after the Commonwealth Act came into existence.

Today, the telecommunication and internet services in the Philippines are among the slowest and most expensive in the region. There are a few options for safe, efficient, and reliable public transportation. Power supply remains a problem, with citizens forced to accept outages as a usual occurrence. Water is available only at limited times during the day, with shortages now part of every Filipino's new normal. Water, electricity, transportation, communication are supposedly basic needs, but their adequate and efficient supply cannot even be guaranteed to the Filipino. This persists due to the absence of choices and competition in the market.

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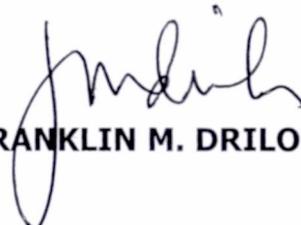
This lack of competition is partly attributable to the law, whose definition of public service is also being used to define public utility, the operation of which is limited only to Filipino citizens or corporations controlled by Filipino citizens. The interchangeable use of "public utility" and "public service" has effectively barred foreign entry into the market for all the services or industries enumerated under the Public Service Law.

The bill provides a limited definition of the term public utility, while opening up other public services to the market. The proposed amendments will transfer the powers of the Public Service Commission to the appropriate administrative agencies.

To be like Singapore is frequently cited as the goal that the Philippines should aspire for. Singapore gained independence from foreign rule even later than the Philippines did. After Singapore's separation from Malaysia and complete independence from Great Britain, aggressive reforms were put in place, which paved the way for its rapid economic growth. A key reform that made the transformation of Singapore possible was the adoption of business-friendly policies to attract foreign direct investments. Singapore, then a small trading port, was transformed into one of the most prosperous countries in the world today.

We want a better life for Filipinos, an important facet of which, is giving them access to better services. Approving the amendments to the Public Service Law is the first and crucial step that we must take.

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



**FRANKLIN M. DRILON**

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

1       Section 1. *Declaration of Policy.* – The State recognizes the role of the private  
2 sector as the main engine for national growth and development. It is hereby  
3 declared the policy of the State to encourage private enterprise and expand the base  
4 of investment in the country, with the goal of providing efficient, reliable and  
5 affordable basic services to all. The State recognizes that economic liberalization  
6 promotes the free flow of capital, efficiently allocates scarce resources, allows the  
7 transfer of advanced technology and facilitates market competition, for the benefit of  
8 the consumers who are given the right to choose between service providers.

9       Sec. 2. *Definition of Terms.* – For purposes of this Act, the following terms  
10 shall mean:

- 11       (a) Common Carrier – persons, corporations, firms or associations engaged  
12           in the business of carrying or transporting passengers or goods or  
13           both, by land, water, or air, for compensation, offering their services to  
14           the public, as defined by Article 1732 of Republic Act No. 386, as  
15           amended;
- 16       (b) Cost-of-Living Adjustment – the percentage by which the Philippine  
17           Statistics Authority (PSA) Consumer Price Index for the month of June  
18           of the calendar year preceding the adjustment exceeds the PSA

- 1 Consumer Price Index for the month of June of the calendar year in  
2 which the maximum amount of the fine was last set or adjusted  
3 pursuant to law;
- 4 (c) Covered Transaction – any proposed or pending merger or acquisition  
5 with, or takeover by any foreign person which could result in foreign  
6 control of a business or entity providing a public service
- 7 (d) Critical Infrastructure – systems and assets, whether physical or  
8 virtual, so vital to the Republic of the Philippines that the incapacity or  
9 destruction of such systems or assets would have a debilitating impact  
10 on national security. Unless otherwise provided in this Act, “critical  
11 infrastructure” shall refer to:
- 12 (i) Transmission of Electricity;  
13 (ii) Distribution of Electricity;  
14 (iii) Water Works and Sewerage Systems; and  
15 (iv) Telecommunications.
- 16 (e) Disgorgement of Profits – refers to the giving up or recapturing of  
17 profits traceable to a certain transaction or wrongdoing upon demand  
18 or by legal compulsion;
- 19 (f) Distribution of Electricity – refers to the conveyance of electric power  
20 by a distribution utility through its distribution system as defined by  
21 Section 4(n) of Republic Act No. 9136;
- 22 (g) Foreign Government-controlled Transaction – any covered transaction  
23 that could result in the control of any person engaged in commerce in  
24 the Republic of the Philippines by a foreign government or an entity  
25 controlled by or acting on behalf of a foreign government.
- 26 (h) Philippine National – citizens, partnerships, associations, and  
27 corporations defined by Section 3(a) of Republic Act No. 7042, as  
28 amended;
- 29 (i) Telecommunications – any process which enables a  
30 telecommunications entity to relay and receive voice, data, electronic  
31 messages, written or printed matter, fixed or moving pictures, words,

1 music or visible or audible signals or any control signals of any design  
2 and for any purpose by wire, radio or other electromagnetic, spectral,  
3 optical or technological means, as defined by Section 3(a) of Republic  
4 Act No. 7925, as amended;

5 (j) Transmission of Electricity – the conveyance of electricity through the  
6 high voltage backbone system;

7 (k) Water Works and Sewerage Systems – the entire systems used to  
8 convey, supply, store, or make use of water to ensure its uninterrupted  
9 and adequate supply and the systems used to collect, treat, dispose of  
10 sewerage, waste and storm water.

11 Sec. 3. *Transfer of Authority to Administrative Agencies.* – The powers of the

12 Public Service Commission under Commonwealth Act No. 146, or the Public Service  
13 Law, as amended, are hereby transferred to the various administrative agencies of  
14 government according to their respective jurisdictions, including but not limited to  
15 the following:

16 (a) Department of Transportation;

17 (b) Land Transportation Franchising Regulatory Board;

18 (c) Land Transportation Office;

19 (d) Civil Aeronautics Board;

20 (e) Civil Aviation Authority of the Philippines;

21 (f) Philippine Ports Authority;

22 (g) Maritime Industry Authority;

23 (h) Philippine Coast Guard;

24 (i) Department of Information and Communications Technology;

25 (j) National Telecommunications Commission;

26 (k) Department of Energy;

27 (l) Energy Regulatory Commission;

28 (m) Department of Environment and Natural Resources;

29 (n) League of Cities;

30 (o) National Water Resources Board;

31 (p) Local Water Utilities Administration;

(q) Philippine Competition Commission.

All references to the Public Service Commission in Commonwealth Act No. 100, as amended, shall be understood to refer to the appropriate administrative body to which the powers and duties of the Public Service Commission were transferred in accordance with their respective charters and related statutes.

Sec. 4. *Public Utility.* – A new Section 13(d) of Commonwealth Act No. 146, intended, 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 SYSTEM OR  
SEWERAGE PIPELINE SYSTEM.**

**NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY  
UNLESS OTHERWISE 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 IS A NATURAL MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE COMMON GOOD SO

1                   **REQUIRES;**

2                   **3) THE COMMODITY OR SERVICE IS NECESSARY FOR**  
3                   **THE MAINTENANCE OF THE LIFE AND OCCUPATION**  
4                   **OF RESIDENTS; AND**

5                   **4) THE COMMODITY OR SERVICE IS OBLIGATED TO**  
6                   **PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON**  
7                   **DEMAND.**

8        Sec. 5. *Authority to Operate.* —Section 15 of Commonwealth Act No. 146, as  
9        amended, is hereby further amended to read as follows:

10                  "With the exception of those enumerated in the preceding  
11        section, no public service shall operate in the Philippines without  
12        possessing a valid and subsisting certificate **OR AUTHORIZATION**  
13        **FOR THE OPERATION OF A PUBLIC SERVICE FROM THE**  
14        **APPROPRIATE ADMINISTRATIVE AGENCY** [from the Public  
15        Service Commission known as "certificate of public convenience, or  
16        certificate of public convenience and necessity," as the case may be,]  
17        to the effect that the operation of said service and the authorization to  
18        do business will promote the public interest in a proper and suitable  
19        manner.

20                  The [Commission] **ADMINISTRATIVE AGENCY** may prescribe  
21        as a condition for the issuance of the certificate **OR AUTHORIZATION**  
22        provided in the preceding paragraph that the service can be acquired  
23        by the Republic of the Philippines or any instrumentality thereof upon  
24        payment of the cost of the price of its **CAPITAL STOCK, OR** useful  
25        equipment, less reasonable depreciation, and likewise, that the  
26        certificate **OR AUTHORIZATION** shall be valid only for a definite  
27        period of time and that the violation of any of these conditions shall  
28        produce the immediate cancellation of the certificate **OR**  
29        **AUTHORIZATION** without the necessity of any express action on the  
30        part of the [Commission] **ADMINISTRATIVE AGENCY**

31                  xxx."

1        Sec. 6. *Proceedings of the Administrative Agency.* - Section 16 paragraphs (a)  
2 and (c) of Commonwealth Act No. 146, as amended, is hereby further amended to  
3 read as follows:

4        "Section 16. Proceedings of the [Commission] **ADMINISTRATIVE**  
5        **AGENCY**, upon notice and hearing. - The [Commission]  
6        **ADMINISTRATIVE AGENCY** shall have **THE** power, upon proper  
7        notice and hearing in accordance with the rules and provisions of this  
8        Act, ~~[subject to the limitations and exceptions mentioned and saving~~  
9        ~~provisions to the contrary]~~:

10       (a) To issue certificates ~~[which shall be known as certificates of~~  
11       ~~public convenience,]~~ authorizing the operation of public service within  
12       the Philippines whenever the [Commission] **ADMINISTRATIVE**  
13       **AGENCY** finds that the operation of the public service proposed and  
14       the authorization to do business will promote the public interest in a  
15       proper and suitable manner. ~~[Provided, That thereafter, certificates of~~  
16       ~~public convenience and certificates of public convenience and necessity~~  
17       ~~will be granted only to citizens of the Philippines or of the United States~~  
18       ~~or to corporations, co-partnerships, associations or joint stock~~  
19       ~~companies constituted and organized under the laws of the Philippines;~~  
20       ~~Provided, That sixty per centum of the stock or paid-up capital of any~~  
21       ~~such corporations, co-partnership, association or joint stock company~~  
22       ~~must belong entirely to citizens of the Philippines or of the United~~  
23       ~~States: Provided, further, That no such certificates shall be issued for a~~  
24       ~~period of more than fifty years.]~~

25       XXX     XXX     XXXX

26       (c) To fix and determine **THE MAXIMUM** individual or joint rates, tolls,  
27       charges, classifications, **REVENUES** or schedules thereof, as well as  
28       commutation, mileage, kilometrage, and other special rates which shall  
29       be imposed, observed, and followed thereafter by any public service  
30       **WHEN THE PUBLIC INTEREST SO REQUIRES:** Provided, That the  
31       [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,

1 approve rates proposed by public services provisionally and without  
2 necessity of any hearing; but it shall call a hearing thereon within thirty  
3 days, thereafter, upon publication and notice to the concerns operating  
4 in the territory affected, **TO RATIFY ITS PRIOR PROVISIONAL**  
5 **APPROVAL OR CHANGE, MODIFY OR ALTER THE APPROVED**  
6 **RATE BASED ON PUBLIC INTEREST:** Provided, further, That in case  
7 the public service equipment of an operator is used principally or  
8 secondarily for the promotion of a private business, the net profits of  
9 said private business shall be considered in relation with the public  
10 service of such operator for the purpose of fixing the rates. **IN THE**  
11 **PUBLIC INTEREST, THE ADMINISTRATIVE AGENCY MAY**  
12 **ESTABLISH AND ENFORCE A METHODOLOGY FOR SETTING**  
13 **RATES, TAKING INTO ACCOUNT ALL RELEVANT**  
14 **CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE**  
15 **REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH AS**  
16 **TO ALLOW THE RECOVERY OF JUST AND REASONABLE COSTS**  
17 **AND A REASONABLE RATE OF RETURN. INCOME TAX SHALL BE**  
18 **ALLOWED AS A CASH OUTFLOW FOR RATE-DETERMINATION**  
19 **PURPOSES. THIS PROVISION SHALL NOT BAR THE**  
20 **APPLICATION OF PERFORMANCE-BASED RATE REGULATION**  
21 **SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH**  
22 **PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC**  
23 **INTEREST.**

24           **THE PHILIPPINE COMPETITION COMMISSION IS**  
25 **HEREBY MANDATED TO CONDUCT REGULAR STUDIES ON**  
26 **WHETHER DEREGULATION IS WARRANTED IN A SECTOR AND**  
27 **SHALL SUBMIT ITS RECOMMENDATION TO CONGRESS.**

28 Sec. 7. *Reasonable Costs.* - Section 17 (b) of Commonwealth Act No. 146, as  
29 amended, is amended to read as follows:

30           "(b) To require any public service to pay the actual expenses incurred  
31 by the [Commission] **ADMINISTRATIVE AGENCY** in any

1 investigation if it shall be found in the same that any rate, toll, charge,  
2 schedule, regulation, practice, act or service thereof is in violation of  
3 any provision of this Act or any certificate, order, rule, regulation or  
4 requirement issued or established by the [Commission]

5 **ADMINISTRATIVE AGENCY.** The [Commission] **ADMINISTRATIVE**  
6 **AGENCY** may also assess against any public service **REASONABLE**  
7 costs ~~[not to exceed twenty-five pesos]~~ with reference to such  
8 investigation."

9 Sec. 8. *Acts Requiring Approval.* - Section 20 (i) of Commonwealth Act No.

10 146, as amended is further amended to read as follows:

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

19 Sec. 9. Section 21 of Commonwealth Act No. 146, as amended, is hereby  
20 further amended to read as follows:

21 "Every public service violating or failing to comply with the terms and  
22 conditions of any certificate or any orders, decisions or regulations of  
23 the [Commission] **ADMINISTRATIVE AGENCY** shall be subject to  
24 **DISGORGEMENT OF PROFITS OR A FINE EQUAL TO TREBLE**  
25 **DAMAGES, OR BOTH** ~~[of not exceeding two hundred pesos]~~ per day  
26 for every day during which such default or violation continues; and the  
27 [Commission] **ADMINISTRATIVE AGENCY** is hereby authorized and  
28 empowered to impose such **PENALTY OR** fine, after due notice and  
29 hearing. The **PENALTIES AND** fines so imposed shall be paid to the  
30 Government of the Philippines through the [Commission]  
31 **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR**

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

9 Sec. 10. *Review of Foreign Direct Investment in Covered Transactions.*—

10 (a) *National Security Reviews, How Initiated.* — The President or the National  
11 Security Council ("Council") shall initiate a review of a covered transaction to  
12 determine its effects on the national security of the Republic of the Philippines if—  
13 (i) the covered transaction is a foreign government-controlled transaction;  
14 and  
15 (ii) the transaction would result in control of any critical infrastructure of or  
16 within the Republic of the Philippines.

17 The authority of the Council to initiate a review may not be delegated to any  
18 person, other than the appropriate Undersecretary of the department or deputy  
19 head of the agency represented in the Council.

20 Any party to a covered transaction may likewise initiate a review under this  
21 paragraph by submitting a written notice to the Chairperson of the Council.

22 The President or the Council shall complete a review under this paragraph  
23 within thirty (30) days from the date the review is initiated.

24 (b) *Submission of Additional Information.* — No provision of this subsection  
25 shall be construed as prohibiting any party to a covered transaction from submitting  
26 additional information while the review is ongoing, including any proposed  
27 restructuring of the transaction or any modification agreements in connection with  
28 the transaction.

29 (c) *Notice of Results to Parties.* — Upon completion of all actions under this  
30 Section, the Council shall promptly notify parties to a covered transaction of the  
31 results of the national security review.

1                   (d) *Confidentiality of Information.* – Any information or documentary material  
2 filed with the President pursuant to this Section shall be exempt from disclosure, and  
3 no such information or documentary material may be made public, except as may be  
4 relevant to any administrative or judicial action or proceeding. Nothing in this  
5 subsection shall be construed to prevent disclosure to Congress or to any duly  
6 authorized committee or subcommittee of Congress, if the Committee provides  
7 assurances of confidentiality, or unless such party otherwise provides written  
8 consent for disclosure.

9                   (e) *Action by the President.* – The President may take such appropriate action  
10 including suspension of a covered transaction involving critical infrastructure that  
11 threatens to impair the national security of the Philippines, subject to the following  
12 conditions:

- 13                   (i) there is credible evidence to support the President's belief that the  
14 foreign interest exercising control might undertake actions that threaten to  
15 impair the national security of the Philippines; and  
16                   (ii) provisions of law, other than this section, do not, in the judgment of the  
17 President, provide adequate and appropriate authority for the President to  
18 protect the national security matter before the President.

19                  For purposes of determining whether to take appropriate action, the President  
20 shall consider the following:

- 21                   (i) the potential national security-related effects on critical infrastructure;  
22                   (ii) whether the covered transaction is a foreign government-controlled  
23 transaction.

24                  The President shall announce the decision not later than fifteen (15) days  
25 from the date the review as described is completed. The actions and findings of the  
26 President shall not be subject to judicial review unless grave abuse of discretion  
27 amounting to lack or excess of jurisdiction was committed.

28                  To implement and enforce this Section, the President may direct the Solicitor  
29 General to seek appropriate relief, including divestment relief, from Philippine  
30 Courts.

31                  No provision of this section shall be construed as altering or affecting any

1 other authority, process, regulation, investigation, enforcement measure, or review  
2 provided by or established under any other provision of law, or any other authority  
3 of the President or the Congress under the Constitution

4 (f) *Mitigation.* To mitigate any threat to national security arising from the  
5 covered transaction, the Council or a Lead agency on behalf of the Council, may  
6 negotiate, enter into, or impose and enforce any agreement or condition with any  
7 party to the covered transaction. Any agreement entered into or condition imposed  
8 under this paragraph shall be supported by a risk-based analysis conducted by the  
9 Council.

10 (g) *Lead Agency for Monitoring and Enforcement.* The Lead Agency shall  
11 negotiate, modify, monitor, and enforce, on behalf of the Council, any agreement  
12 entered into or condition imposed, based on its expertise and knowledge of the  
13 issues related to such transaction. Nothing in this paragraph shall prohibit other  
14 departments or agencies in assisting the lead agency in carrying out the purposes of  
15 this paragraph.

16 The lead agency shall provide periodic reports to the Council on any material  
17 modification to any agreement or condition imposed under paragraph (f).

18 Sec. 12. *Comprehensive Baseline Survey.* — The University of the Philippines  
19 Law Center shall conduct a comprehensive baseline survey of public services  
20 governance within six (6) months from the effectivity of this Act. Copies of the  
21 results of said survey shall be furnished to the Congress, the NEDA and PCC.

22 The PCC, in coordination with NEDA, shall conduct regular studies to  
23 determine whether or not deregulation in a sector is warranted to improve consumer  
24 welfare and shall submit its recommendation to Congress.

25 Sec. 13. *Interpretation.* – This Act shall be subject to and consistent with the  
26 regulatory powers of the State to promote public interest under Article IX-C, Section  
27 4 and Article XII, Section 17 of the Constitution.

28 Unless otherwise included in the definition of public utility under this Act,  
29 persons classified as public utilities under Commonwealth Act No. 146 are hereby  
30 considered as public services which shall continue to be subject to regulation by  
31 relevant administrative agencies under existing laws.

1           Sec. 14. *Performance Audit.* – Administrative agencies must ensure the  
2 annual conduct of performance audit by an independent evaluation team to monitor  
3 cost, the quality of services provided to the public, the ability of the public service  
4 provider to immediately and adequately respond to emergency cases. Metrics for  
5 various types of services must be established to sustain reliability, security, and  
6 safety of the public.

7           Sec. 15. *Implementing Rules and Regulations.* — Administrative agencies  
8 under Section 3 of this Act shall, in coordination with the University of the Philippines  
9 Law Center, promulgate rules and regulations to implement the provisions of this  
10 Act, including the criteria for the determination of imposable fines, as provided for in  
11 this Act, which shall account for the capitalization or other circumstances of the  
12 public service concerned.

13          Sec. 16. *Repealing Clause.* — All laws, decrees, orders, rules and regulations  
14 or other issuances or parts thereof, including Commonwealth Act No. 146, or the  
15 Public Service Law, as amended, inconsistent with the provisions of this Act, as  
16 amended inconsistent with the provisions of this Act are hereby repealed and  
17 modified accordingly.

18          Sec. 17. *Separability Clause.* - If any portion or provision of this Act is  
19 declared unconstitutional, the remainder of this Act or any provision not affected  
20 thereby shall remain in force and effect.

21          Sec. 18. *Effectivity.* – This Act shall take effect after fifteen (15) days  
22 following its publication in the Official Gazette or in a newspaper of general  
23 circulation.

Approved,