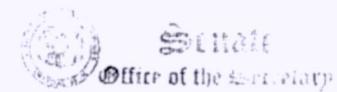


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

19 JUL 15 A8:57

Senate Bill No. 419

RECEIVED BY: [Signature]

Introduced by Senator FRANCIS N. PANGILINAN

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

EXPLANATORY NOTE

It is the responsibility of the State to ensure that the highest quality of public services at the most reasonable rates are provided to the Filipino consumers.

Commonwealth Act No. 146 or the Public Service Act, enacted in 1936, is the principal law governing public utilities and public services. The 82-year old law was then based on old statutes in the United States and in the Philippines. More than eight decades after its passage, substantial changes in the modes of delivery of public services and in ways of doing business have taken place. Technology and various innovations have also reshaped the delivery of services. In light of these, this representation submits that the amendment of the Public Service Act is long overdue.

This legislation seeks to improve the quality of public services and lower its costs by: 1) providing clarity to the definition of "public utility" in the law, limiting the term exclusively to public services that are natural monopolies; 2) making other forms of public services unbound by constitutional restrictions on foreign investment, thereby allowing more players and fostering free and fair competition; and 3) ensuring its effective enforcement through increased penalties; among others.

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



FRANCIS N. PANGILINAN

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AN ACT
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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 Law
2 of the Philippines.”

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

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

12 The above policies are fulfilled by ensuring: (a) effective regulation of public utilities
13 and public services; (b) a reasonable rate of return to public utilities and public services;
14 and (c) the lifting of foreign equity restrictions by clearly defining what are considered to
15 be public utilities.

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

- 1 (a) *Cost-of-Living Adjustment* refers to the percentage by which the Philippine
2 Statistics Authority (PSA) Consumer Price Index for the month of June of the
3 calendar year preceding the adjustment that exceeds the PSA Consumer Price
4 Index for the month of June of the calendar year in which the maximum
5 amount of the fine was last set or adjusted pursuant to law;
- 6 (b) *Disgorgement of Profits* refers to the giving up or recapturing of profits traceable
7 to a certain transaction or wrongdoing upon demands or by legal compulsion;
- 8 (c) *Distribution of Electricity* refers to the conveyance of electric power by a
9 distribution utility through its distribution system pursuant to the provisions
10 of RA 9136, pursuant to Section 4 (n) of said law;
- 11 (d) *Transmission of Electricity* refers to the conveyance of electricity through the
12 high voltage backbone system, pursuant to Section 4 (ccc) of RA 9136;
- 13 (e) *Treble Damages* refers to an additional sum, depending on the discretion of the
14 agency or court involved, which is thrice the amount of the monetary award
15 granted; and
- 16 (f) *Water Works and Sewerage Systems* refers to the entire water systems to ensure
17 an uninterrupted and adequate supply and distribution of portable water for
18 domestic and other purposes and the proper operation and maintenance of
19 sewerage systems as defined and referred to in RA 6234, as amended, and PD
20 198, as amended.

21 **SEC. 4. Recognition of Previous Transfer of Jurisdiction to Various Administrative**

22 **Agencies.** – Since the enactment of Commonwealth Act No. 146, the jurisdiction over
23 several public services had been transferred to various administrative agencies such as,
24 but not limited to, the following:

- 25 (a) Department of Transportation (DOTr);
26 (b) Land Transportation Franchising Regulatory Board (LTFRB);
27 (c) Land Transportation Office (LTO);

- 1 (d) Civil Aeronautics Board (CAB);
2 (e) Civil Aviation Authority of the Philippines (CAAP);
3 (f) Philippine Ports Authority (PPA);
4 (g) Maritime Industry Authority (MARINA);
5 (h) Philippine Coast Guard (PCG);
6 (i) Department of Information and Communications Technology (DICT);
7 (j) National Telecommunications Commission (NTC);
8 (k) Department of Energy (DOE);
9 (l) Energy Regulatory Commission (ERC);
10 (m) Department of Environment and Natural Resources (DENR);
11 (n) League of Cities;
12 (o) National Water Resources Board;
13 (p) Local Water Utilities Administration; and
14 (q) Philippine Competition Commission (PCC).

15 For purposes of this Act, the term "Administrative Agencies" shall refer to existing
16 agencies with which the powers and duties of the Public Service Commission were
17 transferred, are hereby authorized and ordered to charge and collect from any public
18 service or public utility or applicant, as the case may be, reasonable fees as reimbursement
19 of its expenses in the exercise of its authorization, supervision, and regulation duties, and
20 to impose appropriate penalties and fines as provided by law. These administrative
21 Agencies are governed by their respective charters and related statutes.

22 **SEC. 5. *Public Utility.*** - A new Section 13 (d) of the Commonwealth Act No 146, as
23 amended, is hereby inserted to read as follows:

24 **"(D) *Public Utility.* - A SUBSET OF PUBLIC SERVICE, IT REFERS**
25 **TO THE DIRECT TRANSMISSION DISTRIBUTION, AND**
26 **DELIVERING THROUGH A NETWORK, A COMMODITY OR**
27 **SERVICE OF PUBLIC CONSEQUENCE AND IS A NATURAL**

1 MONOPOLY, THE OPERATION OF WHICH MUST BE RESTRICTED
2 PURSUANT TO SECTION 11, ARTICLE XII OF THE 1987
3 CONSTITUTION.

4 THE FOLLOWING SHALL BE AN EXCLUSIVE LIST OF PUBLIC
5 UTILITIES:

- 6 1) TRANSMISSION OF ELECTRICITY;
- 7 2) DISTRIBUTION OF ELECTRICITY; AND
- 8 3) WATER WORKS AND SEWERAGE SYSTEMS.

9 NO OTHER BUSINESS OR SERVICE SHALL BE DEEMED A
10 PUBLIC UTILITY OTHER THAN THOSE LISTED IN THIS SECTION
11 UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW UPON
12 RECOMMENDATION BY THE NATIONAL ECONOMIC
13 DEVELOPMENT AUTHORITY (NEDA), THROUGH ITS BOARD, IN
14 CONSULTATION WITH THE PHILIPPINE COMPETITION
15 COMMISSION (PCC), AND THE CONCERNED ADMINISTRATIVE
16 AGENCIES, TAKING INTO CONSIDERATION SECTIONS 2 AND 4
17 OF THIS ACT AND THE FOLLOWING CRITERIA:

- 18 1) THE PERSON OR JURIDICAL ENTITY REGULARLY
19 SUPPLIES AND DIRECTLY TRANSMITS AND
20 DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK
21 OF COMMODITY OR SERVICE OF PUBLIC
22 CONSEQUENCE;
- 23 2) THE COMMODITY OR SERVICE IS NECESSARY TO THE
24 PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO
25 BE REGULATED WHEN THE COMMON GOOD SO
26 REQUIRES;

- 1 3) THE COMMODITY OR SERVICE IS NECESSARY FOR THE
2 MAINTENANCE OF LIFE AND OCCUPATION OF
3 RESIDENTS; AND
4 4) THE COMMODITY OR SERVICE IS OBLIGATED TO
5 PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON
6 DEMAND.

7 THIS SECTION AND THIS ACT DO NOT HAVE ANY EFFECT
8 ON THE EXISTING REGULATIONS OF PUBLIC SERVICES AND DO
9 NOT, IN ANY WAY, DIMINISH THE CONSTITUTIONAL
10 RESTRICTIONS PROVIDED UNDER SECTIONS 11 AND 17, ARTICLE
11 XII AND SECTION 4, ARTICLE IX (PART C) OF THE CONSITUTION.
12 NEITHER DOES THIS SECTION NOR THIS ACT REDEFINE
13 ‘COMMON CARRIERS’ AND ALTER THE EXISTING HIGH
14 STANDARDS ACCORDED TO IT.”

15 SEC. 6. *Authorization to Operate.* – The first paragraph of Section 15 of
16 Commonwealth Act No. 146, as amended, is hereby amended to read as follows:

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

1 SEC. 7. *Issuance of Authorizations and Fixing of Rates, Tolls, and the like and*

2 *Reasonable Rate of Return.* – Section 16 (a) and (c) of Commonwealth Act No. 146, as
3 amended, are hereby amended to read as follows:

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

18 xxx

19 xxx

20 xxx

21 (c) to fix and determine the **MAXIMUM CEILING FOR** individual or
22 joint rates, tolls, charges, classifications, or schedules thereof, as well as
23 commutation, mileage, kilometrage, and other special rates which shall be
24 imposed, observed, and followed thereafter by any public service **WHEN**
25 **THE PUBLIC INTEREST SO REQUIRES:** Provided, That the
26 [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,
27 approve rates proposed by the 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

1 operating in the territory affected, TO RATIFY ITS PRIOR
2 PROVISIONAL APPROVAL OR CHANGE, MODIFY, OR ALTER THE
3 APPROVED RATE BASED ON PUBLIC INTEREST: Provided, further,
4 That in case the public service equipment of an operator is used principally
5 or secondarily for the promotion of a private business, the net profits of said
6 private business shall be considered in relation with the public service of
7 such operator for the purpose of fixing the rates; PROVIDED, THAT THE
8 MAXIMUM RATE OF RETURN SHALL BE EQUAL TO THE POST-TAX
9 WEIGHTED AVERAGE COST OF CAPITAL FOR THE SAME OR
10 COMPARABLE BUSINESS COMPUTED USING ESTABLISHED
11 MODERN AND UP TO DATE METHODOLOGIES SUCH AS THE
12 CAPITAL ASSET PRICING MODEL; PROVIDED ALSO, THAT
13 INCOME TAX BE ALLOWED AS A CASH EXPENDITURE OR
14 OUTFLOW FOR RATE-DETERMINATION PURPOSES; PROVIDED
15 FURTHER, THAT THIS PROVISION SHALL NOT BAR THE
16 APPLICATION OF PERFORMANCE-BASED RATE REGULATION
17 SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH
18 PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC
19 INTEREST; PROVIDED FINALLY, THAT THIS SHALL NOT BE
20 INTERPRETED AS AMENDING OR REPEALING REGULATIONS
21 PROMULGATED BY THESE ADMINISTRATIVE AGENCIES TO
22 DEREGULATE RATES.

23 SEC. 8 *Reasonable Costs*. - Section 17 (b) of Commonwealth Act No. 146, as
24 amended, is hereby amended to read as follows:

25 "(b) To require any public service to pay the actual expenses incurred
26 by the [Commission] ADMINISTRATIVE AGENCY in any investigation
27 if it shall be found in the same that any rate, toll, charge, schedule,

1 regulation, practice, act, or service thereof is in violation of any provision of
2 this Act or any certificate, order, rule, regulation, or requirement issued or
3 established by the [Commission] ADMINISTRATIVE AGENCY. The
4 [Commission] ADMINISTRATIVE AGENCY may also assess against any
5 public service **REASONABLE** costs [~~not to exceed twenty five pesos~~] with
6 reference to such investigation."

7 **SEC. 9.** Section 20 (i) of Commonwealth Act No.146, as amended, is hereby
8 amended to read as follows:

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

17 **SEC. 10.** Section 21 of Commonwealth Act No. 146, as amended, is hereby amended
18 to read as follows:

19 "Every public service violating or failing to comply with the terms and
20 conditions of any certificate or any order[s], decision[s], or regulation[s] of
21 the [Commission] ADMINISTRATIVE AGENCY shall be subject to
22 **DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine NOT**
23 **EXCEEDING FIVE MILLION PESOS (PHP5,000,000.00) OR ALL OR**
24 **ANY COMBINATION THEREOF** [~~of not exceeding two hundred pesos~~]
25 per day for every day during which such default or violation continued;
26 and the [Commission] ADMINISTRATIVE AGENCY is hereby

1 authorized and empowered to impose such **PENALTY OR** fine, after due
2 notice and hearing.

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

14 **SEC. 11.** Section 23 of Commonwealth Act No. 146, as amended, is hereby amended
15 to read as follows:

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

23 **SEC. 12.** Section 24 of Commonwealth Act No. 146, as amended, is hereby amended

24 to read as follows:

25 "Any person who shall knowingly and willfully perform, commit, or
26 do, or participate in performing, committing, or doing, or who shall
27 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 MORE 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 and 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 or 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 with 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 MORE THAN TWELVE (12) YEARS**, or both, in the discretion of the court.”

1 **SEC. 14.** Section 26 of Commonwealth Act No. 146, as amended, is hereby amended
2 to read as follows:

3 “Any person who shall destroy, injure, or interfere with any apparatus
4 or appliance owned or operated by or in charge of the [Commission]
5 **ADMINISTRATIVE AGENCIES** or its agents, shall be deemed guilty of a
6 misdemeanor and upon conviction shall be punished by a fine **OF THE**
7 **AMOUNT EQUIVALENT TO THE ACTUAL MARKET VALUE OF THE**
8 **APPARATUS OR APPLIANCE DESTROYED OR INJURED PLUS A**
9 **FINE NOT EXCEEDING ONE MILLION PESOS (PHP1,000,000.00)** [not
10 exceeding one thousand pesos] or imprisonment [not exceeding six months]
11 **OF NOT LOWER THAN SIX (6) YEARS AND NOT HIGHER THAN**
12 **TWELVE (12) YEARS**, or both in the discretion of the court.

13 [Any public service permitting the destruction, injury to, or
14 interference with, any such apparatus or appliances shall forfeit a sum not
15 exceeding four thousand pesos for each offense.]”

16 **SEC. 15.** Section 28 of Commonwealth Act. 146, as amended, is hereby amended to
17 read as follows:

18 “Violations of the orders, decisions, and regulations of the
19 [Commission] **ADMINISTRATIVE AGENCIES** and of the terms and
20 conditions of any certificate issued by the [Commission]
21 **ADMINISTRATIVE AGENCIES** [shall prescribe after sixty days,] and
22 violations of the provisions of this Act shall [prescribe after one hundred
23 and eighty days.] **BE IMPREScriptible.**”

24 **SEC. 16. Subsequent Adjustment of Fines Imposed Under this Act.** – The maximum
25 amounts of fines imposed under this Act, as well as those imposed under Commonwealth
26 Act No. 146, shall be adjusted by the head of each administrative agency under Section 1
27 of this Act by a Cost-of-Living Adjustment on January 1 of the year immediately

1 following the date of enactment of this Act and every fifth calendar year thereafter. Each
2 head of the administrative agency shall file copies of the adjustment with the University
3 of the Philippines Law Center in accordance with Executive Order No. 292 (1987), as
4 amended.

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

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

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

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

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

25 **SEC. 19. Suppletory Application of Commonwealth Act No. 146.** – Commonwealth
26 Act No. 146, as amended, shall be construed as a general law that shall apply suppletorily
27 to special laws or existing sector-specific laws governing public services, except for

1 Section 13 (d) of Commonwealth Act No. 146, as amended, created by Section 4 of this
2 Act.

3 **SEC. 20. *Comprehensive Baseline Survey.*** – The University of the Philippines Law
4 Center shall conduct a comprehensive baseline survey of public services governance
5 within six (6) months from the effectivity of this Act. Copies of the results of said survey
6 shall be furnished to the Congress, NEDA, and PCC.

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

10 **SEC. 21 *Implementing Rules and Regulations.*** – All administrative agencies under
11 Section 3 of this Act shall, in coordination with NEDA, PCC and the University of the
12 Philippines Law Center, promulgate rules and regulations to implement the provisions
13 of this Act within ninety (90) days from the effectivity of this Act, including the criteria
14 for the determination of imposable fines, as provided for in this Act, to be based on the
15 capitalization of a public service provider and peculiarities of the public service
16 concerned.

17 **SEC. 22. *Appropriations.*** – The initial funding to carry out the provisions of this Act
18 shall be charged against the current year's appropriation. Thereafter, such sums as may
19 be necessary shall be included in the General Appropriations Act.

20 **SEC. 23. *Separability Clause.*** – If any portion or provision of this Act is declared
21 unconstitutional, the remainder of this Act or any provision not affected thereby shall
22 remain in force and effect.

23 **SEC. 24. *Repealing Clause.*** – All laws, including Commonwealth Act No. 146, as
24 amended, decrees, orders, rules and regulations, or other issuances or parts thereof
25 inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

1 **SEC. 25. Effectivity.** – This Act shall take effect after fifteen (15) days following the
2 completion of its publication either in the Official Gazette or in two (2) newspapers of
3 general circulation.

Approved,