



HOUSE OF REPRESENTATIVES

H. No. 5828

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BY REPRESENTATIVES MACAPAGAL-ARROYO, SALCEDA, YAP (A.), BELMONTE (F.), BELMONTE (J.C.), DEL ROSARIO, PRIMICIAS-AGABAS, MARCOLETA, BELMONTE (R.), ZAMORA (M.C.), TAMBUNTING, MACEDA, EVARDONE, BULUT-BEGTANG, ROMUALDO, BRAVO (M.V.), BENITEZ, BATOCABE, CHIPECO, NIETO AND DE VENECIA, PER COMMITTEE REPORT NO. 295

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AN ACT PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE "PUBLIC SERVICE ACT", AS AMENDED

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

SECTION 1. *Public Utility.* – Section 13 of Commonwealth Act No. 146, as amended, is hereby further amended to read as follows:

"Section 13. x x x.

"(b) The term 'public service' includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done

1 for general business purpose, x x x canal, PUBLIC MARKET,  
2 irrigation system x x x.

3 "x x x

4 "(D) (1) *PUBLIC UTILITY DEFINITION.* – 'PUBLIC  
5 UTILITY' REFERS TO A PERSON THAT OPERATES, MANAGES AND  
6 CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:

7 "(I) DISTRIBUTION OF ELECTRICITY (AS DEFINED BY  
8 SECTION 4(N) OF REPUBLIC ACT NO. 9136, OTHERWISE  
9 KNOWN AS THE 'ELECTRIC POWER INDUSTRY REFORM ACT  
10 OF 2001') SYSTEM;

11 "(II) TRANSMISSION OF ELECTRICITY (AS DEFINED BY  
12 SECTION 4(CCC) OF REPUBLIC ACT NO. 9136) SYSTEM; AND

13 "(III) WATER PIPELINE DISTRIBUTION SYSTEM OR  
14 SEWERAGE PIPELINE SYSTEM (AS DEFINED BY REPUBLIC ACT  
15 NO. 6234, ENTITLED 'AN ACT CREATING THE METROPOLITAN  
16 WATERWORKS AND SEWERAGE SYSTEM AND DISSOLVING THE  
17 NATIONAL WATERWORKS AND SEWERAGE AUTHORITY; AND  
18 FOR OTHER PURPOSES', AS AMENDED, AND PRESIDENTIAL  
19 DECREE NO. 198, KNOWN AND REFERRED TO AS THE  
20 'PROVINCIAL WATER UTILITIES ACT OF 1973', AS AMENDED).

21 "(2) *AMENDMENT OF PUBLIC UTILITY DEFINITION.* –  
22 NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY  
23 UNDER SECTION 13(D)(1) UNLESS OTHERWISE SUBSEQUENTLY  
24 PROVIDED BY LAW.

25 "THE NATIONAL ECONOMIC AND DEVELOPMENT  
26 AUTHORITY (NEDA) SECRETARIAT, IN CONSULTATION WITH  
27 THE PHILIPPINE COMPETITION COMMISSION (PCC), SHALL  
28 RECOMMEND TO CONGRESS THE CLASSIFICATION OF A PUBLIC  
29 SERVICE AS A PUBLIC UTILITY ON THE BASIS OF THE  
30 FOLLOWING CRITERIA:

1           “(I) THE PERSON REGULARLY SUPPLIES AND  
2 DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC  
3 THROUGH A NETWORK A COMMODITY OR SERVICE OF PUBLIC  
4 CONSEQUENCE;

5           “(II) THE COMMODITY OR SERVICE IS NECESSARY TO  
6 THE PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE  
7 REGULATED WHEN THE COMMON GOOD SO REQUIRES;

8           “(III) THE COMMODITY OR SERVICE IS NECESSARY FOR  
9 THE MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS;  
10 AND

11           “(IV) THE COMMODITY OR SERVICE IS OBLIGATED TO  
12 PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND.”

13           SEC. 2. *Certificate of Authority.* – Section 15 of Commonwealth Act  
14 No. 146, as amended, is hereby further amended to read as follows:

15           “Section 15. With the exception of those enumerated in  
16 the preceding section, no public service shall operate in the  
17 Philippines without possessing a valid and subsisting  
18 FRANCHISE, certificate, OR ANY OTHER APPROPRIATE FORM OF  
19 AUTHORIZATION FOR THE OPERATION OF A PUBLIC SERVICE  
20 [from the Public Service Commission known as ‘certificate of  
21 public convenience’, or ‘certificate of public convenience and  
22 necessity’,] as the case may be, to the effect that the operation of  
23 said service and the authorization to do business will promote the  
24 public interests in a proper and suitable manner.

25           “The [Commission] ADMINISTRATIVE AGENCY may  
26 prescribe as a condition for the issuance of the certificate  
27 provided in the preceding paragraph that the service can  
28 be acquired by the Republic of the Philippines or any  
29 instrumentality thereof upon payment of the cost price of its  
30 CAPITAL STOCK, OR useful equipment, less reasonable  
31 depreciation; and likewise, that the certificate shall be valid only

1           for a definite period of time; and that the violation of any of  
2 these conditions shall produce the immediate cancellation of the  
3 certificate without the necessity of any express action on the part  
4 of the [Commission] ADMINISTRATIVE AGENCY.

5           “x x x.”

6           SEC. 3. *Proceedings Upon Notice and Hearing.* – Section 16 of  
7 Commonwealth Act No. 146, as amended, is hereby further amended to read as  
8 follows:

9           “Section 16. Proceedings of the [Commission]  
10 ADMINISTRATIVE AGENCY, upon notice and hearing. – The  
11 [Commission] ADMINISTRATIVE AGENCY shall have power,  
12 upon proper notice and hearing in accordance with the rules and  
13 provisions of this Act, subject to the limitations and exceptions  
14 mentioned and saving provisions to the contrary:

15           “(a) To issue certificates [which shall be known as  
16 certificates of public convenience,] authorizing the operation of  
17 public service within the Philippines whenever the  
18 [Commission] ADMINISTRATIVE AGENCY finds that the  
19 operation of the public service proposed and the authorization to  
20 do business will promote the public interest in a proper and  
21 suitable manner. [Provided, That thereafter, certificates of public  
22 convenience and certificates of public convenience and necessity  
23 will be granted only to citizens of the Philippines or of the  
24 United States or to corporations, co-partnerships, associations or  
25 joint-stock companies constituted and organized under the laws  
26 of the Philippines; Provided, That sixty per centum of the stock  
27 or paid-up capital of any such corporations, co-partnership,  
28 association or joint-stock company must belong entirely to  
29 citizens of the Philippines or of the United States: Provided,

1 further, That no such certificates shall be issued for a period of  
2 more than fifty years.]

3 "x x x

4 "(c) To fix and determine MAXIMUM individual or joint  
5 rates, tolls, charges, classifications, REVENUES, or schedules  
6 thereof, as well as commutation, mileage, kilometrage, and  
7 other special rates which shall be imposed, observed, and  
8 followed thereafter by any public service WHEN THE PUBLIC  
9 INTEREST SO REQUIRES: *Provided*, That the [Commission]  
10 ADMINISTRATIVE AGENCY may, in its discretion, approve rates  
11 proposed by public services provisionally and without necessity  
12 of any hearing; but it shall call a hearing thereon within thirty  
13 days, thereafter, upon publication and notice to the concerns  
14 operating in the territory affected: *Provided, further*, That in  
15 case the public service equipment of an operator is used  
16 principally or secondarily for the promotion of a private  
17 business, the net profits of said private business shall be  
18 considered in relation with the public service of such operator for  
19 the purpose of fixing the rates.

20 "IN THE PUBLIC INTEREST, THE ADMINISTRATIVE  
21 AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY FOR  
22 SETTING RATES, TAKING INTO ACCOUNT ALL RELEVANT  
23 CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE  
24 REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH  
25 AS TO ALLOW THE RECOVERY OF JUST AND REASONABLE  
26 COSTS AND A REASONABLE RATE OF RETURN TO  
27 ENABLE THE PUBLIC SERVICE TO OPERATE VIABLY. THE  
28 ADMINISTRATIVE AGENCY MAY ADOPT ALTERNATIVE  
29 FORMS OF INTERNATIONALLY ACCEPTED RATE-SETTING  
30 METHODOLOGY AS IT MAY DEEM APPROPRIATE AND WILL  
31 PROMOTE EFFICIENCY. THE RATE-SETTING METHODOLOGY SO

1 ADOPTED AND APPLIED MUST ENSURE A REASONABLE PRICE OF  
2 THE COMMODITY OR SERVICE. THE RATES PRESCRIBED SHALL  
3 BE NONDISCRIMINATORY.

4 "THIS PROVISION SHALL NOT BE INTERPRETED AS  
5 MANDATING RATE REGULATION AND AMENDING OR  
6 REPEALING (1) LAWS PROVIDING A DEREGULATION POLICY,  
7 SUCH AS REPUBLIC ACT NOS. 7925, 8479, 9136, AND  
8 9295 AND (2) REGULATIONS PROMULGATED BY THESE  
9 ADMINISTRATIVE AGENCIES TO DEREGULATE RATES.

10 "THE PCC IS HEREBY MANDATED TO CONDUCT  
11 REGULAR STUDIES ON WHETHER DEREGULATION IS  
12 WARRANTED IN A SECTOR AND SUBMIT ITS RECOMMENDATION  
13 TO CONGRESS.

14 "x x x."

15 SEC. 4. *Proceedings Without Hearing.* - Section 17 of  
16 Commonwealth Act No. 146, as amended, is hereby further amended to  
17 read as follows:

18 "Section 17. Proceedings of [Commission]  
19 ADMINISTRATIVE AGENCY without previous hearing. - The  
20 [Commission] ADMINISTRATIVE AGENCY shall have power  
21 without previous hearing, subject to established limitations and  
22 exception and saving provisions to the contrary:

23 "x x x

24 "(b) To require any public service to pay the actual  
25 expenses incurred by the [Commission] ADMINISTRATIVE  
26 AGENCY in any investigation if it shall be found in the same that  
27 any rate, toll, charge, schedule, regulation, practice, act or  
28 service thereof is in violation of any provision of this Act or  
29 any certificate, order, rule, regulation or requirement issued  
30 or established by the [Commission] ADMINISTRATIVE AGENCY.  
31 The [Commission] ADMINISTRATIVE AGENCY may also assess

1 against any public service REASONABLE costs [not to exceed  
2 twenty-five pesos] with reference to such investigation.

3 "x x x."

4 SEC. 5. *Acts Requiring Approval.* – Section 20 of Commonwealth Act  
5 No. 146, as amended, is hereby further amended to read as follows:

6 "Section 20. Acts requiring the approval of the  
7 [Commission] ADMINISTRATIVE AGENCY. – Subject to  
8 established limitations and exceptions and saving provisions to  
9 the contrary, it shall be unlawful for any public service or for the  
10 owner, lessee or operator thereof, without the approval and  
11 authorization of the [Commission] ADMINISTRATIVE AGENCY  
12 previously had –

13 "x x x

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

23 "x x x."

24 SEC. 6. *Penalties for Violations.* – Section 21 of Commonwealth Act  
25 No. 146, as amended, is hereby further amended to read as follows:

26 "Section 21. Every public service violating or failing to  
27 comply with the terms and conditions of any certificate or any  
28 order[s], decision[s] or regulation[s] of the [Commission]  
29 ADMINISTRATIVE AGENCY shall be subject to **DISGORGEMENT**  
30 **OF PROFITS, TREBLE DAMAGES,** a fine [of not exceeding two

1 hundred pesos] **OF UP TO FIVE MILLION PESOS** per day for every  
2 day during which such default or violation continues[:],  
3 **DIVESTMENT, OR ALL OR ANY COMBINATION THEREOF;** and the  
4 [Commission] ADMINISTRATIVE AGENCY is hereby authorized  
5 and empowered to impose such fine, after due notice and  
6 hearing. **THE MAXIMUM DAILY FINE OF FIVE MILLION PESOS**  
7 **SHALL BE INCREASED EVERY FIVE (5) YEARS UPON**  
8 **CERTIFICATION BY THE NEDA ON THE COMPUTATION OF THE**  
9 **COST OF MONEY BASED ON THE CUMULATIVE THREE HUNDRED**  
10 **SIXTY (360)-DAY TREASURY BILL RATE.**

11 "The PENALTIES AND fines so imposed shall be paid to  
12 the Government of the Philippines through the [Commission]  
13 ADMINISTRATIVE AGENCY, and failure to pay the PENALTY OR  
14 fine in any case within the same specified in the order or decision  
15 of the [Commission] ADMINISTRATIVE AGENCY shall be  
16 deemed good and sufficient reason for the suspension of the  
17 certificate of said public service until payment [shall be] IS  
18 made. Payment may also be enforced by appropriate action  
19 brought in a court of competent jurisdiction. The remedy  
20 provided in this section shall not be a bar to, or affect any other  
21 remedy provided in this Act but shall be cumulative and  
22 additional to such remedy or remedies."

23 SEC. 7. *Administrative Cost Recovery Mechanism.* – Section 40 of  
24 Commonwealth Act No. 146, as amended, is hereby further amended to  
25 read as follows:

26 "Section 40. The [Commission] ADMINISTRATIVE  
27 AGENCY is authorized and ordered to charge and collect from  
28 any public service or applicant, as the case may be, [the  
29 following] REASONABLE fees as reimbursement of its expenses

1 in the authorization, supervision and/or regulation of public  
 2 services[:], AND TO IMPOSE APPROPRIATE PENALTIES AND  
 3 FINES AS PROVIDED BY LAW.”

4 [(a) x x x

5 x x x

6 (i) x x x

7 This section shall not be applicable to the Republic of the  
 8 Philippines, nor to its instrumentalities.

9 Aside from the appropriations for the Commission under  
 10 the annual General Appropriation Act, any unexpended balance  
 11 of the fees collected by the Commission under this section shall  
 12 be constituted receipts automatically appropriated each year, and  
 13 together with any surplus in the standardizing meter laboratory  
 14 revolving fund under Commonwealth Act Numbered Three  
 15 hundred forty-nine, shall be disbursed by the Public Service  
 16 Commissioner in accordance with special budgets to be approved  
 17 by the Department of Justice, the Budget Commission and the  
 18 Office of the President of the Philippines for additional needed  
 19 personal services, maintenance and operating expenses,  
 20 acquisition of urgently needed vehicles, furniture and equipment,  
 21 maintenance of an adequate reference library, acquisition of a lot  
 22 and building for the Commission, and other expenses necessary  
 23 for efficient administration and effective supervision and  
 24 regulation of public services. (As amended by Com. Act  
 25 No. 454 and RA No. 3792, approved June 22, 1963.)]

26 SEC. 8. *Recognition of Administrative Agencies.* – All references to  
 27 the Public Service Commission in Commonwealth Act No. 146, as amended,  
 28 shall mean any administrative agency to which the powers and duties of the  
 29 Public Service Commission were transferred in accordance with their  
 30 respective charters and related statutes.

1 SEC. 9. *Interpretation.* – This Act shall be subject to the regulatory  
 2 powers of the State to promote public interest in Article IX-C, Section 4  
 3 and Article XII, Section 17 of the Constitution. A person classified as a public  
 4 utility prior to the effectivity of this Act and declassified as such under this Act  
 5 shall be considered a public service and a business affected with public interest  
 6 for the purpose of Article XII, Section 17 of the Constitution. Such person  
 7 shall continue to be subject to regulation by relevant administrative agencies  
 8 under existing laws.

9 No franchise, certificate, or authorization granted by the appropriate  
 10 administrative agencies shall be (1) exclusive in character, (2) for a longer  
 11 period than fifty years, and (3) granted except under the condition that it shall  
 12 be subject to amendment, alteration, or repeal by Congress when the common  
 13 good so requires.

14 SEC. 10. *General Law.* – Commonwealth Act No. 146, as amended,  
 15 shall be construed as a general law that shall apply suppletorily to special laws  
 16 or existing sector-specific laws governing public services, except for  
 17 Section 13(d) of Commonwealth Act No. 146, as amended, as further amended  
 18 by Section 1 of this Act.

19 SEC. 11. *Comprehensive Baseline Survey.* – The PCC shall  
 20 commission the University of the Philippines Law Center (UPLC) or such  
 21 other institutions to conduct a comprehensive baseline survey of the regulatory  
 22 governance and regulatory substance of public services within six (6) months  
 23 from the effectivity of this Act.

24 SEC. 12. *Performance Audit.* – Administrative agencies must ensure  
 25 the annual conduct of performance audit by an independent evaluation team to  
 26 ensure cost-norms and the quality of services provided to the public and the  
 27 ability of manpower and system resources of the public service provider to  
 28 immediately respond to emergency cases. Metrics for various types of  
 29 services must be established to sustain reliability, security, and safety of the  
 30 public.

1       SEC. 13. *Rules and Regulations.* – Administrative agencies under  
2 Section 8 of this Act shall, in coordination with the UPLC, promulgate rules  
3 and regulations to implement the provisions of this Act within ninety (90) days  
4 from the effectivity of this Act.

5       SEC. 14. *Separability Clause.* – If any portion or provision of this Act  
6 is declared unconstitutional, the remainder of this Act or any provision not  
7 affected thereby shall remain in force and effect.

8       SEC. 15. *Repealing Clause.* – All laws, decrees, orders, rules and  
9 regulations or other issuances or parts thereof, including Commonwealth Act  
10 No. 146 or the Public Service Act, as amended, inconsistent with the  
11 provisions of this Act are hereby repealed or modified accordingly.

12       SEC. 16. *Effectivity.* – This Act shall take effect fifteen (15) days after  
13 its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,

**O**