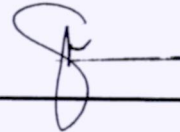


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SENATE

Senate Bill No. 531



Introduced by Senator Juan Miguel F. Zubiri

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

EXPLANATORY NOTE

Every Filipino has the right to accessible and affordable public services. These basic cornerstones of living—such as clean water, effective transport, uninterrupted electricity, and efficient communication services—should be made available to all, in an indiscriminate manner. Yet our people remain saddled by high costs that they are forced to pay monthly, in spite of poor services of these public utilities. They have little choice but to bear it, because of the limited options available to them.

The problem lies in the fact that very few parties dominate control of these public service markets. Competition and foreign investments are inhibited because public services are made to accede to limitations that are applied to public utilities. "Public utility" has grown synonymous to "public service," and that situation is due to the ambiguity in the definition of "public utility" under Commonwealth Act No. 146, or the Public Service Act. To resolve the problem, a policy as to the clear and legal definition of "public utility" must be laid down, amending thereof the Public Service Act.

The said law was enacted in 1936 to govern public services; undeniably it is no longer apt with our current market situation, considering the rapid innovation and technological advancements that have taken place. The cause for its revision is justifiable to fully service its intents and purposes. This proposed measure intends to: 1) transfer functions of the Public Service Commission to various administrative agencies; 2) provide a clear definition of "public service" and "public utility"; 3) provide the appropriate mechanism for fixing rates based on reasonable rate of return; and 4) provide the applicable penalties and fees for public services.

The proposed amendments will cause necessary changes in the antiquated provisions of the law to encourage competition and ensure that the public will have more choices and better services at lower prices.

Thus, approval of this bill is earnestly sought.

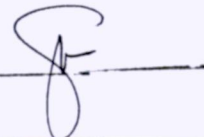


JUAN MIGUEL F. ZUBIRI

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SENATE

Senate Bill No. 531 RECEIVED BY _____



Introduced by Senator Juan Miguel F. Zubiri

**AN ACT
FURTHER AMENDING 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:*

1 **SECTION 1. Transfer of Functions of the Public Service Commission.** – The
2 relevant provisions of Commonwealth Act No. 146 or the Public Service Act, as amended,
3 referring to the Public Service Commission, its powers and duties, are hereby transferred
4 to the various administrative agencies of the government according to their respective
5 jurisdictions, such as:

6

- 7 (a) Department of Transportation;
- 8 (b) Land Transportation Franchising and Regulatory Board
- 9 (c) Land Transportation Office;
- 10 (d) Civil Aeronautics Board;
- 11 (e) Civil Aviation Authority of the Philippines;
- 12 (f) Philippine Ports Authority;
- 13 (g) Maritime Industry Authority;
- 14 (h) Philippine Coast Guard;
- 15 (i) Department of Information and Communications Technology;
- 16 (j) National Telecommunications Commission;
- 17 (k) Department of Energy;
- 18 (l) Energy Regulatory Commission;
- 19 (m) Department of Environment and Natural Resources;
- 20 (n) National Water Resources Board;

- 1 (o) Local Water Utilities Administration;
- 2 (p) Philippine Competition Commission; and others.

3 All references to the Public Service Commission in Commonwealth Act No. 146 or the
4 Public Service Act, as amended, shall mean any such administrative agencies concerned
5 in accordance with their respective charters.

6 **Sec. 2. Public Utility.** – A new Section 13 (d) of Commonwealth Act No. 146 or
7 the Public Service Act, as amended is hereby inserted to read as follows:

8 **“(D) I. PUBLIC UTILITY DEFINITION. – THE TERM “PUBLIC UTILITY”**
9 **REFERS TO A PUBLIC SERVICE THAT REGULARLY SUPPLIES THE PUBLIC AND**
10 **DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC THROUGH A**
11 **NETWORK ITS COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE. A PUBLIC**
12 **UTILITY IS NECESSARY TO THE PUBLIC AND A NATURAL MONOPOLY THAT**
13 **NEEDS TO BE REGULATED WHEN THE PUBLIC INTEREST SO REQUIRES AS**
14 **DETERMINED BY CONGRESS.**

15 **II. PUBLIC UTILITY EXEMPTIONS – ANY EXISTING LAW TO THE**
16 **CONTRARY WITHSTANDING, THE FOLLOWING SHALL NOT BE CONSIDERED A**
17 **PUBLIC UTILITY OPERATION:**

- 18 (1) ELECTRIC POWER GENERATION IN SECTION 6 OF REPUBLIC ACT
19 NO. 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF
20 2001;
- 21 (2) ELECTRIC POWER SUPPLY IN SECTION 29 OF REPUBLIC ACT NO.
22 9136 OR THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001;
- 23 (3) CRUDE OIL AND PETROLEUM PRODUCTS UNDER REPUBLIC ACT
24 NO. 8479 OR THE DOWNSTREAM OIL INDUSTRY DEREGULATION
25 ACT OF 1998;
- 26 (4) TRANSPORTATION IN THIS ACT, EXECUTIVE ORDER NO. 202
27 (1987), PRESIDENTIAL DECREE NO. 474 (1974) AS AMENDED,
28 AND REPUBLIC ACT NO. 776 (1951) AS AMENDED;
- 29 (5) BROADCASTING, TELECOMMUNICATIONS, AND VALUE-ADDED
30 SERVICES IN REPUBLIC ACT NO. 7925 OR THE PUBLIC
31 TELECOMMUNICATIONS POLICY ACT OF THE PHILIPPINES; AND
32 (6) OTHER PUBLIC SERVICES IN THIS ACT.”

1 **Sec. 3. Certificate of Authorization.** – The first paragraph of Section 15 of
2 Commonwealth Act No. 146 or the Public Service Act, as amended, is hereby
3 amended to read as follows:

4 “[With the exception of those enumerated in the preceding section] **No** public
5 service shall operate in the Philippines without possessing a valid and subsisting
6 certificate **OF AUTHORIZATION OBTAINED APPROPRIATELY** [from the
7 Public Service Commission known as “certificate of public convenience”, or
8 “certificate of public convenience and necessity”, as the case may be,] to the effect
9 that the operation of said service and the authorization to do business will promote
10 the public interest in a proper and suitable manner. **WITH THE EXCEPTION OF**
11 **ITEMS NOS. 1 and 3 OF SECTION 2 (D)(II), ALL PUBLIC SERVICES**
12 **CURRENTLY SECURING A LEGISLATIVE FRANCHISE FROM THE**
13 **CONGRESS OF THE PHILIPPINES SHALL CONTINUE TO DO THE SAME.”**

14 All references to a certificate of public convenience or a certificate of public convenience
15 and necessity in Commonwealth Act No. 146 or the Public Service Act, as amended, shall
16 mean any authorization obtained appropriately as the case may be.

17
18 **Sec. 4. Proceedings Upon Notice and Hearing.** – Section 16 (a) and (c) of
19 Commonwealth Act No. 146 or the Public Service Act, as amended, are hereby amended
20 to read as follows:

21 “(a) To issue certificates [which shall be known as certificates of public
22 convenience,] authorizing the operation of public service within the Philippines
23 whenever the Commission finds that the operation of the public service proposed
24 and the authorization to do business will promote the public interest in a proper
25 and suitable manner: *Provided*, That [thereafter, certificates of public convenience
26 and certificates of public convenience and necessity will be granted only to citizens
27 of the Philippines or of the United States or to corporations, co-partnerships,
28 associations or joint stock companies constituted and organized under the laws of
29 the Philippines: *Provided*, That sixty per centum of the stock or paid up capital of
30 any such corporations, co-partnership, association or joint stock company must
31 belong entirely to citizens of the Philippines or of the United States: *Provided*
32 *further*, That] no such certificates shall be issued for a period of more than fifty
33 years.

34 (b) xxx

35 (c) To fix and determine individual or joint rates, tolls, charges, classifications, or
36 schedules thereof, as well as commutation, mileage, kilometrage, and other special

1 rates which shall be imposed, observed, and followed thereafter by any public
2 service: *Provided*, That the Commission may, in its discretion, approve rates
3 proposed by public services provisionally and without necessity of any hearing; but
4 it shall call a hearing thereon within thirty days, thereafter, upon publication and
5 notice to the concerns operating in the territory affected: *Provided further*, That in
6 case the public service equipment of an operator is used principally or secondarily
7 for the promotion of a private business, the net profits of said private business
8 shall be considered in relation with the public service of such operator for the
9 purpose of fixing the rates: **PROVIDED FURTHERMORE, THAT THE**
10 **MAXIMUM RATE OF RETURN SHALL BE EQUAL TO THE POST-TAX**
11 **WEIGHTED AVERAGE COST OF CAPITAL FOR THE SAME OR COMPARABLE**
12 **BUSINESSES COMPUTED USING ESTABLISHED METHODOLOGIES SUCH**
13 **AS THE CAPITAL ASSET PRICING MODE: PROVIDED ALSO, THAT INCOME**
14 **TAX SHALL BE ALLOWED AS A CASH OUTFLOW FOR RATE-**
15 **DETERMINATION PURPOSES: PROVIDED FINALLY, THAT THIS**
16 **PROVISION SHALL NOT BAR THE APPLICATION OF PERFORMANCE-**
17 **BASED RATE REGULATION SHOULD THE ADMINISTRATIVE AGENCY**
18 **REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE**
19 **PUBLIC INTEREST."**

20
21 **Sec. 5. – Proceedings Without Hearing** – Section 17 (b) of Commonwealth Act
22 No. 146 or the Public Service Act, as amended, is hereby amended to read as follows:

23 "(b) To require any public service to pay the actual expenses incurred by
24 the Commission in any investigation if it shall be found in the same that any
25 rate toll, charge, schedule, regulation, practice, act or service thereof is in
26 violation of any provision of this Act or any certificate, order, rule, regulation
27 or requirement issued by the Commission. The Commission may also assess
28 against any public service **REASONABLE** costs [not to exceed twenty five
29 pesos] with reference to such investigation."

30 **Sec. 6. Acts Requiring Approval** – Section 20 (i) of Commonwealth Act No. 146
31 or the Public Service Act, as amended, is hereby amended to read as follows:

32 "(i) To sell, alienate, or in any manner transfer shares of its capital stock to
33 any alien if the result of that sale, alienation, or transfer in itself or in connection
34 with another previous sale shall be the reduction to less than sixty per centum of
35 the capital stock belonging to the Philippine citizens **IN THE OPERATION OF A**

1 **PUBLIC UTILITY AS REQUIRED BY THE CONSTITUTION.** Such sale,
2 alienation or transfer shall be void and of no effect and shall be sufficient cause for
3 ordering the cancellation of the certificate.”

4 **Sec. 7. Penalties for Violations** – Section 21 of Commonwealth No. 146 or the
5 Public Service Act, as amended, is hereby amended to read as follows:

6 “Every public service violating or failing to comply with the terms and
7 conditions of any certificate or any orders, decisions or regulations of the
8 Commission shall be subject to **DISGORGEMENT OF PROFITS, TREBLE**
9 **DAMAGES,** a fine of **UP TO FIVE MILLION PESOS OR ALL OR ANY**
10 **COMBINATION THEREOF,** [of not exceeding two hundred pesos per day for
11 every day] **FOR EACH DAY** during which such default or violation continues; and
12 the Commission is hereby authorized and empowered to impose such fine, after
13 due notice and hearing. **THE FINE OF UP TO FIVE MILLION PESOS SHALL BE**
14 **INCREASED EVERY FIVE (5) YEARS UPON CERTIFICATION BY NEDA ON**
15 **THE COMPUTATION OF THE COST OF MONEY BASED ON THE CURRENT**
16 **CONSUMER PRICE INDEX.**

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

25
26 **Sec. 8. Interpretation.** – Commonwealth Act. No. 146 or the Public Service Act,
27 as amended, shall be interpreted to apply suppletorily to existing sector-specific laws
28 governing public services and public utilities, unless otherwise expressly provided.

29 **Sec. 9 Comprehensive Baseline Survey.** – The University of the Philippines
30 Law Center shall conduct a comprehensive baseline survey of public services and public
31 utilities governance within six (6) months from the effectivity of this Act.

32 **Sec. 10. Implementing Rules and Regulations.** – All administrative agencies
33 to which the powers and duties of the Public Service Commission have been transferred

1 shall, in coordination with the University of the Philippines Law Center, promulgate rules
2 and regulations to implement the provisions of this Act, ninety (90) days upon its
3 effectivity.

4 **Sec. 11. Repealing Clause.** – All laws, decrees, orders, rules and regulations or
5 other issuances or parts thereof, including Commonwealth Act No. 146 or the Public
6 Service Act, as amended, inconsistent with the provisions of this Act are hereby repealed
7 or modified accordingly.

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

11 **Sec. 13. Separability Clause.** – If any portion or provision of this Act is declared
12 unconstitutional, the remained of this Act or any provision not affected thereby shall
13 remain in force and effect.

14 **Sec. 14. Effectivity.** – This Act shall take effect after fifteen (15) days following
15 the completion of its publication either in the Official Gazette or in a newspaper of general
16 circulation in the Philippines.

17 *Approved,*