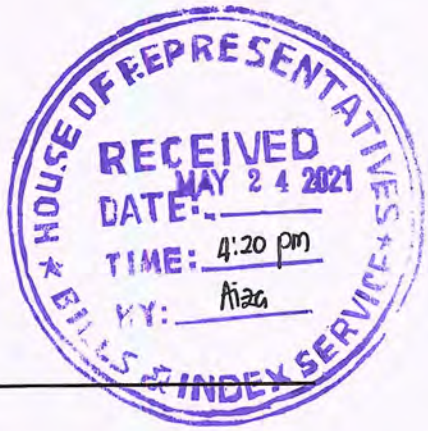
Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session



COMMITTEE REPORT NO. 989

Submitted by the Committee on Legislative Franchises on MAY 24 2021.

Re: House Bill No. 9422

Recommending its approval in substitution of House Bill No. 9367

Sponsors: Representatives Franz E. Alvarez and Alfredo A. Garbin, Jr.

Mr. Speaker:

The Committee on Legislative Franchises to which was referred House Bill No. 9367, authored by Rep. Alfredo A. Garbin, Jr., entitled:

"AN ACT GRANTING MAYNILAD WATER SERVICES, INC. A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A WATER SUPPLY AND DISTRIBUTION SYSTEM AND SEWERAGE AND/OR SANITATION SERVICES IN THE SERVICE AREA WEST"

has considered the same and recommends that the attached House Bill No. 9422 entitled:

"AN ACT GRANTING MAYNILAD WATER SERVICES, INC. A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN A WATER SUPPLY AND DISTRIBUTION SYSTEM AND SEWERAGE AND SANITATION SERVICES IN THE WEST ZONE SERVICE AREA OF METRO MANILA AND PROVINCE OF CAVITE"

be approved in substitution of House Bill No. 9367 with Reps. Alfredo A. Garbin, Jr., Franz E. Alvarez, Janette L. Garin, John Marvin "Yul Servo" C. Nieto, Eleandro Jesus F. Madrona, Eric M. Martinez, Cyrille "Beng" F. Abueg-Zaldivar, Strike B. Revilla and Alyssa Sheena P. Tan as authors thereof.

Respectfully submitted:

FRANZ E. ALVAREZ
Chairperson
Committee on Legislative Franchises

THE HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
QUEZON CITY

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HOUSE BILL NO. **9422**
(In substitution of House Bill No. 9367)

Introduced by **REPS. ALFREDO A. GARBIN, JR., FRANZ E. ALVAREZ, JANETTE L. GARIN, MICAELA S. VIOLAGO, JOHN MARVIN "YUL SERVO" C. NIETO, ELEANDRO JESUS F. MADRONA, ERIC M. MARTINEZ, CYRILLE "BENG" F. ABUEG-ZALDIVAR, STRIKE B. REVILLA and ALYSSA SHEENA P. TAN**

AN ACT
GRANTING MAYNILAD WATER SERVICES, INC. A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN A WATER SUPPLY AND DISTRIBUTION SYSTEM AND SEWERAGE AND SANITATION SERVICES IN THE WEST ZONE SERVICE AREA OF METRO MANILA AND PROVINCE OF CAVITE

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

SECTION 1. ***Nature and Scope of Franchise.*** – Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Maynilad Water Services, Inc., hereunder referred to as the grantee, its successors or assignees, a franchise to establish, operate, and maintain, for commercial purposes and in the public interest, a water supply and distribution system to ensure an uninterrupted and adequate supply, and distribution of potable water for domestic, commercial, and other purposes, and for the establishment and maintenance of sewerage system and sanitation services in the West Zone Service Area of Metro Manila and Province of Cavite, under a concession from the Metropolitan Waterworks and Sewerage System (MWSS), or under an appropriate certificate of public convenience and necessity, license, or permit from the Regulatory Office.

SEC. 2. Definition of Terms. — As used in Act:

(a) *Concession Agreement* refers to the agreement entered into between the grantee (formerly Benpres-Lyonnaise Waterworks, Inc.) and MWSS on 21 February 1997, including its Amendment dated 5 October 2001, and the Memorandum of Agreement and Confirmation dated 22 April 2010, as amended by the Revised Concession Agreement dated 18 May 2021.

(b) *Franchise Area* refers to the Service Area West as defined and delineated under the Concession Agreement including the cities of Manila (except San Andres and Sta. Manila), Pasay, Parañaque, Caloocan, Muntinlupa, Las Piñas, Valenzuela, Navotas, Malabon, and parts of Makati and Quezon City, and cities of Cavite, Bacoor and Imus, and towns of Kawit, Noveleta and Rosario in the Province of Cavite, and subject to applicable laws.

(c) *Regulatory Office* refers to the Regulatory Office established under the Concession Agreement (the "MWSS Regulatory Office") or its legal successor, as may be created or reorganized by Executive Order or by law.

SEC. 3. *Rights and Privileges.* — Without limiting the scope of authority of the grantee provided under Section 1, the grantee shall establish, manage, operate, repair, rehabilitate, expand, and improve the waterworks and sewerage system in the Franchise Area, including the right to bill and collect fees from end-users for water supply and sewerage services.

The grantee shall also have the rights and privileges to:

(a) develop, finance, construct, install, maintain, and operate, as its operations may require, water sources, including new raw water sources, including deep wells, dams, aqueducts, tunnels, treatment plants, reservoirs, pump stations, and facilities for transmission, conveyance and distribution of water including pipelines, machineries, and other waterworks for the purpose of supplying water in the Franchise Area, for domestic, commercial, industrial, and other purposes;

(b) recover, supply, distribute, and reuse treated and grey water, whether in bulk or retail, within Franchise Area for domestic, commercial or industrial and other purposes;

(c) finance, construct, install, maintain, and operate sewerage systems, whether separate or combined, as may be necessary for the proper sanitation and other uses within the Franchise Area: *Provided,* That the grantee may only offer services to non-residential customers for industrial effluents compatible with available treatment processes;

(d) purify water from deep well, reservoirs, dams and other water sources subject to the approval of the Department of Health or any other government agency concerned;

(e) construct works across, over, through or alongside, any stream, water-course, canal, ditch, public places, bridges, street, avenue, highway, or railway, as the location of said works may require: *Provided*, That the works be constructed in a manner as to afford security to life and property, and to the extent reasonably possible not to obstruct traffic: *Provided*, *further,* That the stream, water-course, canal, ditch, public places, bridges, street, avenue, highway, or railway so crossed or intersected shall be restored as provided in Section 6; and

(f) disconnect water supply and discontinue provision of water or wastewater services if customer defaults in the payment of fees for the services provided, or for acts of pilferage pursuant to Republic Act No. 8041 or the "National Water Crisis Act of 1995".

SEC. 4. *Manner of Operation of Stations or Facilities.* – All waterworks and sewerage systems for water and sewerage services owned, maintained, operated, or managed by the grantee, its successors or assignees shall be operated and maintained at all times in accordance with industry standards provided for in RA No. 9275 or the "Philippine Clean Water Act of 2004" and Presidential Decree No. 1067 or "The Water Code of the Philippines", and as specified in the Concession Agreement, certificate of public convenience and necessity, license or permit.

The grantee shall comply with the resolutions, issuances, and standards set, by the Regulatory Office and other concerned government agencies.

It shall be the duty of the grantee, its successors or assignees, whenever required to do so by the Regulatory Office, or any authorized government agency, to modify, improve, and change the waterworks and sewerage system or facilities in a manner and extent as the technological improvements in the water supply and sewerage services shall render beneficial to consumers, and shall promote efficiency and environmental sustainability.

The grantee shall promote water conservation and avoid water wastage. With the approval of the Regulatory Office and considering cost efficiencies, the grantee shall establish water impounding facilities, consider and undertake the recovery and appropriate reuse of wastewater, grey water, industrial water, and reclaimed water. The grantee may adopt waste-to-energy or similar technology utilizing sludge waste from its wastewater facilities to promote energy efficiency in its operations.

SEC. 5. *Certificate of Public Convenience and Necessity, License or Permit.* – For purposes of this Act, the Concession Agreement shall serve as the certificate of public convenience and necessity, license, or permit of the grantee for the operation of its waterworks and sewerage system.

The Concession Agreement between the MWSS and the grantee shall remain valid unless otherwise terminated, after due notice and hearing for reasons provided in the Concession Agreement, or invalidated by a court of competent jurisdiction or by a government agency authorized by law to do so when national security, national emergency, or public interest so requires, or unless modified or amended under this Act or any subsequent law.

The grantee, its successors or assignees, shall apply for a certificate of public convenience and necessity, license, or permit when a new regulatory framework for water service providers is established by law or when required by the Regulatory Office, which will supersede the terms and conditions of the Concession Agreement: *Provided,* That if the public service function and the recovered and retained assets of the MWSS, as defined in the Concession Agreement, are privatized by law, the grantee shall have the right to match the highest compliant bid after a public bidding for MWSS owned assets in the waterworks and sewerage system in the Franchise Area. The right to match shall be exercised within thirty (30) days from receipt of written notice of the amount of the highest compliant bid, and the grantee shall have a period of ninety (90) days to pay the bid price: *Provided, further,* That the bidding process shall be in accordance with the Commission on Audit Circular No. 89-296 or the "Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries" and other related laws or issuances.

SEC. 6. *Excavation and Restoration Works* – For the purpose of erecting and maintaining water pipelines, sewerage line, and other related facilities, it shall be lawful for the grantee, its successors or assignees, with prior approval of the Department of Public Works and Highways (DPWH), Metropolitan Manila Development Authority (MMDA), or the local government units (LGU) concerned, as may be appropriate, to make excavations or lay pipes in any of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges in the Franchise Area: *Provided, however*, That public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered, or changed by reason of erection of water pipelines and other related facilities, shall be repaired or replaced in workmanlike manner by the grantee, its successors or assignees, in accordance with the standards set by the DPWH, MMDA, or the LGU concerned. Should the grantee, its successors or assignees, after a ten (10)-day notice from the said authority, fail, refuse, or neglect to repair or replace any part of a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge altered, changed or disturbed by the grantee, its successors or assignees, then the DPWH, MMDA, or the LGU concerned shall have the right to have the same repaired or replaced in good order and condition and charge the grantee, its successors or assignees at double the amount of the costs and expenses for such repair or replacement.

SEC. 7. *Responsibility to the Public.* – The grantee, its successors or assignees shall conform to the ethics of honest enterprise and shall provide water supply and sewerage services to its service area in a prudent, efficient, and satisfactory manner.

For the public interest, as far as feasible and whenever required by the Regulatory Office, the grantee shall modify, improve, or change its facilities, pipelines, systems, and equipment for the purpose of providing efficient and reliable service at reasonable costs. The grantee shall charge reasonable and just fees for its services to all types of consumers and water users within its franchise area in accordance with Section 8 of this Act.

The grantee, its successors or assignees, shall comply with environmental and sustainability standards, and shall work with the local government units to ensure safe and inclusive development.

SEC. 8. *Setting Tariffs, Rates and Other Charges.* – The Regulatory Office, with the approval of MWSS Board of Trustees under the Concession Agreement, shall establish tariffs, rates and other charges which are fair and reasonable, and ensure economic viability and a fair return on investments.

Tariffs, rates and charges shall be based on and consistent with a rate-setting methodology that the Regulatory Office shall, after due consultation with stakeholders, define and publish, taking into account the following:

(a) reasonable and prudent capital and recurrent costs of providing the service including a reasonable rate of return on capital;
(b) efficiency of the service;
(c) incentives for enhancement of efficiency which shall not exceed the limitations applicable to public utilities;
(d) willingness to pay of the customers/consumers;

(e) equity considerations; and
(f) administrative simplicity.

Tariffs, rates, and charges set by the Regulatory Office, as approved by the MWSS Board of Trustees under the Concession Agreement, shall be presumed valid and reasonable, unless declared otherwise in a proper administrative or judicial proceeding.

SEC. 9. *Protection of Consumer Interests.* – The grantee shall establish a consumer desk that will handle consumer complaints and ensure adequate protection of consumer interests. The grantee shall act with dispatch on all complaints brought before it.

The grantee shall ensure that service interruptions shall be minimal and shall observe the standards imposed by the Regulatory Office

SEC. 10. *Election of Independent Directors* – The Board of Directors of the grantee shall have independent directors constituting at least twenty percent (20%) of its total membership. These independent directors must be elected by a majority of all holders of the outstanding shares who are entitled to vote.

An independent director is a person who, apart from shareholdings and fees received from the corporation, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with the exercise of independent judgment in carrying out the responsibilities as a director.

SEC. 11. *Right of the Government.* – A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or disturbance of peace and order, to temporarily take over and operate the waterworks and sewerage system of the grantee; to temporarily suspend the operation of any portion thereof in the interest of public safety, security, and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of said waterworks and sewerage system during the period when they shall be so operated.

SEC. 12. *Right of Eminent Domain.* – Subject to the limitations and procedures prescribed by law, the grantee, its successors or assignees, is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance, and operation of services. The grantee is authorized to install and maintain its water pipelines and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire private property as is actually necessary for the realization of the purposes for which this franchise is granted, including pipelines, buildings, infrastructure, machineries, and equipment previously, currently, or actually used, or intended to be used, or have been abandoned, unused, or underutilized, or which obstructs its facilities, for the operation

of a waterworks and sewerage system for the conveyance of water supply and sewerage services to end-users in its service area: *Provided*, That expropriation proceedings before the proper court shall have been instituted and just compensation paid.

SEC. 13. *Term of the Franchise.* – This franchise shall be for a term of twenty-five (25) years from the effectivity of this Act, unless sooner cancelled or revoked by Congress when the public interest so requires or when the grantee fails to reasonably comply with regulatory standards.

SEC. 14. *Acceptance and Compliance.* — Acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee, its successors or assignees, shall exercise the privileges granted under this Act. Nonacceptance shall render this franchise void.

SEC. 15. *Warranty in Favor of the National and Local Governments.* — The grantee shall hold the national, provincial, city, and municipal governments of the Philippines free from all claims, liabilities, demands, or actions arising from accidents causing injury to persons or damage to properties, during the construction or operation of the waterworks and sewerage system facilities of the grantee.

SEC. 16. *Liability for Damages.* — The grantee shall be liable for any injury to persons and damage to property caused by any accident arising from defective construction of infrastructure built pursuant to the operation of its business under this franchise, or by neglect or failure to keep its pipelines and other related facilities in safe condition.

SEC. 17. *Sale, Lease, Transfer, Grant of Usufruct, or Assignment of Franchise.* — The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor transfer the controlling interest of the grantee, whether simultaneously or contemporaneously, to any person, firm, company, corporation, or entity without the prior approval of the Congress of the Philippines and compliance with legal requirements stipulated in other statutes: *Provided,* that the foregoing limitations shall not apply to any: (1) transfer or issuance of shares of stock in the implementation of requirements for the dispersal of the grantee's ownership pursuant to Section 19 of this Act; (2) transfer or sale of shares of stock to an investor or investors; (3) issuance of shares of stock to any investor out of the unissued authorized capital stock of the grantee or pursuant to or in connection with any increase in the grantee's authorized capital stock which shall result in the dilution of the stockholdings of the grantee's then existing stockholders; (4) combination thereof where such transfer, sale, or issuance is effected in order to enable the grantee to raise the necessary capital or financing for the provision of any of the services authorized by this Act or carry out any of the purposes for which the grantee has been incorporated or organized; (5) sale, transfer or assignment by the stockholders of the grantee in favor of a holding company, the controlling stockholders of which are the same controlling stockholders of the grantee: *Provided, further*, that any such transfer, sale, or issuance is in accordance with any applicable constitutional limitation: *Provided,*

finally, that Congress shall be informed of any sale, lease, transfer, grant of usufruct, or assignment of franchise or the rights and privileges acquired thereunder, or of the merger or transfer of the controlling interest of the grantee, within sixty (60) days after the completion of the said transaction. The failure to report to Congress such change of ownership shall render the franchise *ipso facto* revoked. Any person or entity to which this franchise is sold, transferred, or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act.

SEC. 18. *Dispersal of ownership.* – In accordance with the constitutional provision to encourage public participation in public utilities, the grantee shall, offer to Filipino citizens at least twenty percent (20%) of its outstanding capital stock, or such other percentage that may hereafter be required by law, in any securities exchange in the Philippines within five (5) years from the effectivity of this Act.

In the event the required dispersal of ownership is not implemented within five (5) years, the holdings of persons, natural or juridical, including directors, officers, stockholders, and related interests in the grantee and its respective holding company, if any, shall not exceed twenty-five percent (25%) of the voting shares of stock unless the grantee or the company holding the shares of the grantee or its controlling stockholders (direct or indirect) are already listed in the Philippine Stock Exchange. Non-compliance therewith shall render the franchise *ipso facto* revoked.

SEC. 19. *Information Dissemination.* — An information dissemination campaign regarding public services and operations of the grantee, as well as the general provisions of the franchise including its term, shall be made known to all end-users in the Franchise Area.

SEC. 20. *Reportorial Requirement.* — The grantee shall submit an annual report on its compliance with the terms and conditions of the franchise and on its operations to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, on or before April 30 of every year during the term of its franchise.

The annual report shall include an update on the development, operation, and expansion of business; audited financial statements; latest GIS officially submitted to the SEC, if applicable; certification of the Regulatory Office on the status of its permits and operations; and an update on its dispersal of ownership required under Section 18.

The Regulatory Office shall, one (1) year from the grant of this franchise, and every five (5) years thereafter, conduct a comprehensive assessment of the grantee's operations and compliance with the conditions imposed hereunder and submit a report thereof to Congress. The grantee shall transmit to the Regulatory Office all information and documents necessary to complete such assessment.

SEC. 21. *Fine.* — Failure of the grantee to submit the requisite annual report to Congress shall be penalized by a fine of Five hundred pesos (P500.00) for each working day of noncompliance. The fine shall be collected separately from the reportorial penalties imposed by the Regulatory Office and it shall be remitted to the Bureau of the Treasury.

SEC. 22. *Equality Clause.* — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or which may hereafter be granted for

water distribution utility, upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided*, That the foregoing shall neither apply to nor affect provisions of waterworks and sewerage system franchises concerning territorial coverage, the term, or the type of service authorized by the franchise.

SEC. 23. *Applicability of Existing Laws.* — The grantee shall comply with and be subject to the provisions of Commonwealth Act No. 146, or the "Public Service Act," as amended, and other pertinent laws relating to the operation of its business.

SEC. 24. *Repealability and Nonexclusivity Clause.* — This franchise shall be subject to amendment, alteration, or repeal by Congress when public interest so requires and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 25. *Separability Clause.* — If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SEC. 26. *Repealing Clause.* — All laws, decrees, orders, resolutions, instructions, rules and regulations, and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 27. *Effectivity.* — This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in any newspaper of general circulation.

Approved,