

SENATE
S. No. 580

'19 JUL 17 P5:49

Introduced by Senator Grace Poe

RECEIVED

AN ACT
REQUIRING MANDATORY ENVIRONMENT INSURANCE COVERAGE TO
PROMOTE ECOLOGICAL PROTECTION

Explanatory Note

The primacy of the environment is enshrined in Article II, Section 8 of the 1987 Philippine Constitution, which mandates the state to "...protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." In the landmark environmental case of *Oposa vs Factoran* (G.R. No. 101083), the Supreme Court ruled that "the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment."

The "duty to refrain from impairing the environment" is spelled out in several laws such as the Revised Forestry Code (P.D. No. 705); the Water Code of the Philippines (P.D. No. 1067); the Philippine Mining Act of 1995 (R.A. 7942); the Philippine Fisheries Code of 1998 (R.A. 8550); the Philippine Clean Air Act of 1999 (R.A. 8749); the Ecological Solid Waste Management Act of 2000 (R.A. 9003); and the Wildlife Resources Conservation and Protection Act (R.A. 9147).

However, there remain lapses in the protection of the people's right to a healthy and balanced ecology. In particular, environmental degradation and man-made disasters which arise from economic activities are extremely under-regulated.

There have been many instances of man-made environmental damages like the 1996 Marcopper Mining tragedy in Marinduque which led to the biological death of the Boac and Makalupnit rivers, and destroyed hectares of farmlands and displaced families. The 2005 and 2007 massive fish kills in Rapu-Rapu, Albay caused by cyanide spills from the mining operations of Lafayettes, Philippine, Inc. also caused severe damage to the community. More detailed cases are listed below:

- In 2012, 20 million metric tons of sediments flowed into water channels from the Philex tailings pond in Itogon, spilling tons of sediments into the Agno River and Balog Creek. An investigation by the Samahan ng Nagtataguyod ng Agham at Teknolohiya Para sa Sambayanan (AGHAM) reported that Balog Creek is now "biologically dead". The livelihoods of residents near the spill were also severely affected.
- In August 2013, a mishap between 2GO Group Incorporated and Philippine Span Asia Carrier Corporation ships claimed twenty-four (24) lives and imperilled the Cordova marine environment in Talisay, Cebu. One of the sunken ships was loaded with 120,000 liters of bunker oil, 20,000 liters of lube oil, and 20,000 liters of Diesel. Days after the collision, oils from wrecked and sunken ships had reached 12 villages of Cordova town. The marine ecosystem of the affected areas was affected causing the residents to lose their livelihoods.
- According to a study by Greenpeace, the Chemphil Manufacturing Corporation has contributed to the wastewater in Pasig River. Sediments found in their channels that drain into the river were found to have high-levels of copper, manganese, lead, nickel, and zinc.

Environmental degradation due to economic activities is a form of "negative externality" or the unintended and indirect negative effects of economic activities on other producers and consumers. It is characterized as a social cost that is greater than the cost borne by private producers. Without prudent government regulation, producers of negative externalities will have no incentive to either absorb or account

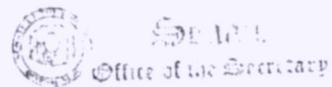
for the social costs which they impose upon the Filipino people. This is particularly important given the steady economic growth due to commercial and industrial development.

As a remedy, this bill proposes Mandatory Environmental Insurance Coverage (MEIC) as a measure to somehow compensate the people and rehabilitate the environment from the environmental damages caused by certain economic activities. It requires mandatory environmental insurance coverage for owners and operators of environmentally-critical businesses. The said insurance will be used to compensate for damages and to rehabilitate any environmental impairment caused by their operation. The MEIC is designed to relieve a business firm of the financial burden to spend for environmental loss or damage as a consequence of its project's construction or operation. It will answer for all claims for the payment of damages to health and property; and the environmental rehabilitation, remediation and clean-up costs and expenses.

Although the government recognizes the indispensable role of the private sector and encourages private enterprise and provides incentives to needed investments, it also protects and advances the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. This bill is essential, therefore, to protect the business sector, the people and the environment.

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


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

1 Section 1. *Mandatory Environment Insurance Coverage.* – All owners and
2 operators of environmentally-critical businesses shall be required to secure a
3 Mandatory Environmental Insurance Coverage (MEIC) to compensate for damages
4 to health and property, and remunerate environmental rehabilitation, remediation
5 and clean-up costs and expenses as a result of environmental impairment arising
6 from their operations.

7 For the purposes of this Act, environmentally-critical businesses refer to
8 commercial and industrial establishments and enterprises, among others, that could
9 pose serious risks to people and the environment.

10 Sec. 2. *Forms of Mandatory Environment Insurance Coverage.* – The MEIC
11 shall be obtained only from bonding or insurance companies duly accredited by the
12 Department of Environment and Natural Resources (DENR) in the following forms:

13 a) Environmental Performance Bond – which shall be required for all
14 ongoing activities or projects and applications for Environmental Compliance
15 Certificate or Certificate of Non-coverage to guarantee adequate and timely
16 compliance with the environmental standards and the terms and conditions set forth
17 by the DENR during the pre-development, development and construction phases of
18 the project. The Environmental Performance Bond shall answer for all

1 environmental damages, penalties and legal obligations which may arise from the
2 failure of the project proponent to comply with its undertakings during the
3 aforementioned phases; and

4 b) Environmental Pollution, Impairment and Clean-Up Liability Insurance –
5 which shall be required for all existing and future activities or projects to cover
6 operational phases, including those that have been issued an Environmental
7 Compliance Certificate or Certificate of Non-coverage. The Environmental Pollution,
8 Impairment and Clean-Up Liability Insurance shall answer for all claims arising from
9 damages to the environment, bodily injury, and property damage arising from a
10 pollution event including environmental rehabilitation, clean-up or remediation costs
11 and expenses for contamination or impairment of the environment.

12 The DENR shall determine which businesses or industries shall be classified as
13 environmentally-critical and shall be required to obtain an Environmental
14 Performance Bond or an Environmental Pollution, Impairment and Clean-Up Liability
15 Insurance.

16 *Sec. 3. Pre-requisite for the Issuance of Environmental Compliance Certificate*
17 *or Certificate of Non-coverage.* – Owners and operators of environmentally-critical
18 businesses shall not be issued an Environmental Compliance Certificate or Certificate
19 of Non-coverage by the DENR without first obtaining the MEIC required by this Act.

20 *Sec. 4. Environmental Risk Inspector.* – During the insurance coverage
21 period, an environmental risk inspector from the DENR shall conduct quarterly, bi-
22 annual or annual visits to the business firm's project to evaluate and recommend
23 measures to prevent environmental disasters.

24 *Sec. 5. Beneficiaries.* – The beneficiaries of the MEIC include affected
25 communities, stakeholders and local government units within the projects' primary
26 impact areas. Beneficiaries also include government departments, bureaus and
27 agencies which are tasked under law to undertake the rehabilitation, clean-up and
28 monitoring of the projects affected by the pollution event for which no responsible
29 private or public entity is specified.

1 The beneficiaries shall be represented by the government, particularly the
2 DENR, which shall identify the affected areas and prescribe rehabilitation or
3 remediation measures.

4 *Sec. 6. Payment of Claims.* – The insurance company shall place all payments
5 of claims into special escrow accounts in government depository banks which shall,
6 in turn, disburse corresponding payments to beneficiaries only upon the advice of
7 the Environmental Management Bureau of the DENR (EMB-DENR) and after proper
8 documentation.

9 The EMB-DENR may create a multi-sectoral body composed of
10 representatives from the business, labor, government, and civil society groups, and
11 other stakeholders to assure that claims are verified and rightful parties are
12 compensated and the environment is properly rehabilitated, cleaned-up, remediated,
13 stabilized and protected.

14 The EMB-DENR shall not receive and handle payments of claims for
15 environmental damages, penalties and charges, except for the claim component
16 which properly accrues to it as an insurance beneficiary.

17 The government agency tasked with rehabilitation and is beneficiary of the
18 MEIC as provided under Section 5 of this Act shall undertake the same with funds
19 coming from the insurance claim upon the recommendation of the EMB-DENR or the
20 multi-sectoral body created by EMB-DENR and the approval of the Secretary of
21 Environment and Natural Resources.

22 *Sec. 7. Penalties.* – The failure of the owner and operator of environmentally-
23 critical businesses to secure MEIC in violation of this Act shall be punished with a
24 fine of five hundred thousand pesos (P500,000.00) but not more than two million
25 pesos (P2,000,000.00) or imprisonment of not less than six (6) years but not more
26 than twelve (12) years, or both, at the discretion of the court.

27 In the case of a partnership, association, corporation or any juridical entity,
28 the fine shall be imposed upon the president, treasurer or any other officer or
29 person responsible for the violation.

1 If the offender is a foreigner, the offender shall be deported immediately
2 without further proceedings in the Bureau of Immigration after the service of
3 sentence.

4 Government officials, employees and agents who shall approve the issuance
5 of certificates to owners or operators of environmentally-critical businesses without
6 the necessary MEIC, in violation of this Act, shall suffer the penalty of suspension of
7 not less than thirty (30) days but not more than six (6) months after due notice and
8 hearing in the appropriate administrative proceedings.

9 *Sec. 8. Implementing Rules and Regulations.* – Within sixty (60) days from
10 the approval of this Act, the Secretary of Environment and Natural Resources shall,
11 in coordination with the Commissioner of the Insurance Commission, promulgate the
12 necessary rules and regulations for the effective implementation of this Act.

13 *Sec. 9. Repealing Clause.* – All laws, decrees, orders, rules and regulations,
14 and other issuances inconsistent with the provisions of this Act are repealed,
15 amended or modified accordingly.

16 *Sec. 10. Effectivity.* – This Act shall take effect fifteen (15) days after its
17 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,