

SENATE

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S. B. No. 2358

DEPT. OF

INTRODUCED BY SENATOR CHRISTOPHER LAWRENCE "BONG" T. GO

**AN ACT
ESTABLISHING A NATIONAL FRAMEWORK FOR THE MANDATORY
ENVIRONMENTAL INSURANCE COVERAGE OF ENVIRONMENTALLY CRITICAL
PROJECTS**

EXPLANATORY NOTE

The 1987 Philippine Constitution mandates the State to "protect and advance the right of the people to a balance and healthful ecology in accord with the rhythm and harmony of nature." Indeed, it is the duty of the State to uphold the quality of life of its people through the protection of the environment they live in.

However, over the years, the responsibility of man to take care of its only home seems to be overlooked, especially in the wake of the blinding pace of modern industrialization. This has led to almost irreparable damage to the environment, seriously jeopardizing future generations. The Philippines is no exception to this high cost.

The world is evolving, and so must our country. While we cannot stop the advancement of industrialization, we cannot sacrifice our environment at the altar of modernization. In addition to ensuring that our projects are environmentally-friendly as far as practicable, we should also ensure that we have the means to recover if these projects inevitably damage the environment.

This bill seeks to establish a National Framework for Mandatory Environmental Insurance Coverage which shall guarantee sufficient funding coverage for the needed restoration and compensation for damages on the environment caused by owners and operators of environmentally-critical projects which activities have the potential to harm the environment and everything that depends on it.

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



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

1 **SECTION 1. *Title.*** — This Act shall be known as the "Mandatory Environmental
2 Insurance Coverage Act."

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

4 a) *Environmentally Critical Project* refers to a project that has high potential
5 for significant negative environmental impact and is listed as such under
6 Presidential Proclamation (P.P.) No. 2146, series of 1981, and P.P. No. 803,
7 series of 1996, as well as other projects which the President may proclaim
8 as environmentally critical in accordance with Section 4 of P.D. 1586 or the
9 Philippine Environmental Impact Statement System;

10 b) *Heavy industries* refer to non-ferrous metal industries, iron and steel mills,
11 petroleum, and petrochemical industries, including oil and gas smelting
12 plants;

13 c) *Infrastructure projects* refer to major dams, major power plants, major
14 reclamation projects, and major roads and bridges; and,

15 d) *Resource Extractive Industries* refer to major mining and quarrying

1 projects; forestry projects involving logging, major wood processing
2 projects, introduction of fauna or exotic animals in public or private
3 forests, forest occupancy, extraction of mangrove products, and grazing;
4 and fishery projects, specifically fishpond development projects and dikes
5 for such projects.

6 **SEC. 3. Establishment of a National Framework for Mandatory**
7 **Environmental Insurance Coverage.** - Within one (1) year following the effectivity of
8 this Act, a national framework for Mandatory Environmental Insurance Coverage (MEIC)
9 shall be established. The framework shall consider the following:

10 a) **Coverage.** All owners and operators of environmentally critical projects
11 (ECPs) shall be required to secure MEIC for ECPs as prescribed under this
12 Section, to compensate for the adverse environmental consequences which
13 include damage to health and property, and costs for environmental
14 rehabilitation, remediation, cleanup, and other environmental impairments
15 arising from their operations. For purposes of this Act, ECPs shall include heavy
16 industries, major manufacturing industries, major resource-extractive
17 industries, major infrastructure projects, and other similar projects that could
18 pose serious risks to people and the environment.

19 b) **Forms of MEIC.** - The MEIC shall be in the form of:

- 20 1. Environmental guarantee cash fund established pursuant to existing
21 environmental laws; or
- 22 2. Environmental insurance policy (EIP) obtained from bonding or insurance
23 companies, whenever the environmental guarantee cash fund is
24 insufficient to cover the said adverse environmental consequences, upon
25 determination and recommendation of the Inter-Agency Technical
26 Committee created pursuant to Section 5 of this Act.

27 The EIP may take the form of the following:

- 28 i. Environment performance bond (EPB) - which shall be required for all

1 ongoing activities or projects issued with Environmental Compliance
2 Certificate (ECC) pursuant to P.D. 1586, to guarantee adequate and
3 timely compliance with the environmental standards and the terms
4 and conditions set forth by the Department of Environment and
5 Natural Resources (DENR) during the pre-development,
6 development, and construction phases of the project. The EPB shall
7 answer for all environmental damages, penalties, and legal
8 obligations, which may arise from the failure of the project proponent
9 to comply with its undertakings during the aforementioned phases;
10 and

- 11 ii. Environment pollution, impairment, and cleanup liability insurance
12 (EPICLI) - which shall be required for all existing and future activities
13 or projects issued with ECC pursuant to P.D. 1586, to cover the
14 operational phases. The EPICLI shall answer for all claims arising
15 from damages to the environment; bodily injury and property
16 damage arising from a pollution event; and for the cost of
17 environmental rehabilitation, cleanup, or remediation responses to
18 address the contamination or impairment of the environment.

19 **SEC. 4. *Pre-requisite To The Construction Or Operational Phase.*** - Owners
20 and operators of ECPs shall not be allowed to commence construction or commercial
21 operation without initially obtaining the MEIC required under Section 3 of this Act.

22 **SEC. 5. *Creation of an Inter-Agency Technical Committee.*** - Within one (1)
23 year following the effectivity of this Act, the Secretary of the DENR shall establish and
24 chair an Inter-Agency Committee (IATC), with the Commissioner of the Insurance
25 Commission and representatives of the insurance industry, the mining industry, and other
26 stakeholders that the DENR may deem fit, as members. Within the same period, the IATC
27 shall:

- 28 a) Identify the perils or possible negative environmental impacts, activities,
29 processes or undertakings that need to be mandatorily insured as provided in
30 Section 3 hereof;

- 1 b) Conduct risk assessment to determine the appropriate insurance coverage for
2 different ECPs and activities;
- 3 c) Formulate guidelines for the identification of primary impact areas and
4 prescription of rehabilitation or remediation measures in cases of
5 environmental damages;
- 6 d) Formulate cleanup guidelines;
- 7 e) Formulate guidelines for the identification of beneficiaries of the MEIC;
- 8 f) Ensure that the premium rates of the EIP are commensurate to the risks
9 covered;
- 10 g) Formulate guidelines for the determination of veracity of claims;
- 11 h) Accredite insurance companies; and
- 12 i) Undertake such activities as may be necessary to fulfill the objectives of this
13 Act.

14 For purposes of paragraph (h) of this Section, the Insurance Commission, in
15 coordination with the DENR, shall formulate guidelines for the accreditation of insurance
16 companies, within one (1) year following the effectivity of this Act.

17 The beneficiaries shall be represented by the government, particularly the DENR.
18 The IATC shall identify the affected areas and prescribe rehabilitation or remediation
19 measures pursuant to Sec. 5 of this Act.

20 **SEC. 6. *Beneficiaries.*** - The beneficiaries of the MEIC include affected
21 communities, stakeholders, and local government units within the projects' primary
22 impact areas. Also included as beneficiaries are government departments, bureaus, and
23 agencies which are tasked under the law to undertake the rehabilitation, cleanup, and
24 monitoring of sites affected by the pollution or insurable event, for which no responsible
25 private or public entity is specified.

26 The beneficiaries shall be represented by the government, particularly the DENR.
27 The IATC shall identify the affected areas and prescribe rehabilitation or remediation
28 measures pursuant to Sec. 5 of this Act.

29 **SEC. 7. *Payment of Claims.*** - The insurance company shall place all payments of

1 claims into special escrow accounts in government depository banks, which shall in turn
2 disburse the corresponding payment to beneficiaries, upon advice of the DENR and with
3 proper documentation.

4 The DENR may create an ad-hoc body composed of representatives from business,
5 labor, government, civil society, and other stakeholders to assure that claims are verified
6 and rightful parties are compensated and the environment is properly rehabilitated,
7 cleaned up, remediated, stabilized, and protected.

8 The DENR shall not receive and handle payment of claims for environmental
9 damages, penalties, and charges, except for the claims component which properly
10 accrues to it as an insurance beneficiary.

11 The government agency tasked with rehabilitation and assigned as the beneficiary
12 of the MEIC as provided under Section 6 of this Act, shall undertake the same utilizing
13 funds coming from the insurance claim upon approval of the DENR.

14 **SEC. 8.** The failure of the owner and operator of an ECP to secure an MEIC as
15 prescribed under Section 3 hereof, or of the insurance company to pay a verified claim in
16 violation of the provisions of this Act and within reasonable time, shall be punished with
17 a fine of Five hundred thousand pesos (P 500,000.00) but not more than Two million
18 pesos (P 2,000,000.00) or imprisonment of not less than six (6) years but not more than
19 twelve (12) years, or both, at the discretion of the court.

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

23 If the offender is a foreigner, the offender shall, after the service of sentence, be
24 deported immediately without further proceedings by the Bureau of Immigration.

25 Government officials, employees, and agents who approve the construction or
26 operation of environmentally-critical projects without the necessary MEIC, in violation of
27 the provisions of this Act, shall suffer the penalty of suspension of not less than thirty
28 (30) days, but not more than six (6) months after due notice and hearing in the

1 appropriate administrative proceedings.

2 **SEC. 9. *Implementing Rules and Regulations.*** - Within sixty (60) days from
3 the approval of this Act, the DENR shall, in coordination with the Insurance Commission,
4 promulgate the necessary rules and regulations for the effective implementation of this
5 Act.

6 **SEC. 10. *Repealing Clause.*** - All laws, decrees, orders, rules, and regulations,
7 and other issuances inconsistent with the provisions of this Act are repealed, amended,
8 or modified accordingly.

9 **SEC. 10. *Effectivity.*** - This Act shall take effect fifteen (15) days after its
10 publication in the Official Gazette or in a newspaper of general circulation.

11 Approved,