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SENATE

Senate Bill No. 774

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Access to food is a fundamental human right. It is therefore the government's responsibility to ensure an adequate food supply for the people at affordable costs. Two years ago, the country experienced a shortage of rice yet the Executive has not admitted the crisis and failed to make a clear statement as to the true state of demand and supply for rice or for other basic commodities.

In order to reinforce and guarantee the right of the people to affordable food and adequate food supply, the government must be transparent in all its transactions involving food and basic commodities. This information is necessary in taking necessary actions, whether families budgeting their daily expenses, law enforcers running after hoarders and price colluders, private enterprises in planning for the medium-term, or national agencies and local governments directing their efforts to solve impending supply problems.

This bill seeks to adopt and implement a policy of full public disclosure of all government transactions involving food and basic commodities, consistent with the Constitutional right of the people to information on all matters of public concern, by requiring all government bodies, specifically, but not limited to, the Department of Agriculture and Department of Trade and Industry, to grant written requests for information on food and food supply, and prescribing the penalty in the event of violations thereof. The bill also requires the Department of Agriculture to publish all relevant information on the importation of basic food commodities, such as rice and corn, as well as to maintain records and a database containing said information.

In view of the foregoing, the immediate enactment of this measure is earnestly sought


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT

MANDATING THE GOVERNMENT TO PROVIDE ACCESS TO INFORMATION ON FOOD AND OTHER BASIC COMMODITIES TO GUARANTEE THE RIGHT OF THE PEOPLE TO AFFORDABLE FOOD AND ADEQUATE FOOD SUPPLY, PRESCRIBING GUIDELINES THEREFOR, AND FOR OTHER PURPOSES

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

SECTION 1. Short Title. This Act shall be known as the "**Affordable Food Transparency Act.**"

SEC. 2. Declaration of Policy. The State recognizes as a matter of policy the fundamental right of the people to an affordable food and food supply. The State therefore recognizes its obligation to the people to ensure adequate supply of food and other basic commodities, as well as to ensure transparency in all its transactions relative thereto, and to prevent any and all forms of collusion and cartel that would restrict the people's access to affordable food and adequate food supply. In order to reinforce the right of the people to affordable food and food supply, the State shall adopt and implement a policy of full public disclosure of all government transactions involving food and basic commodities, consistent with the Constitutional right of the people to information on all matters of public concern.

To guarantee the people's fundamental human right to affordable food and food supply, the State shall afford to citizens, non-government organizations (NGO), civil society groups, and other private entities access to official records, and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, except for such information which may jeopardize the right against self-incrimination of individuals and matters affecting national security, especially those information dealing with foreign diplomatic relations.

SEC. 3. Definition of Terms.

(a) "**Basic commodities**" for purposes of this Act includes: rice; corn; bread; fresh, dried and canned fish and other marine products, fresh pork, beef and poultry meal; fresh eggs; fresh and processed milk; fresh vegetables; root crops; coffee; sugar; instant noodles; salt;

(b) "**Government body**" shall mean any Executive, specifically, but not limited to, the Department of Agriculture (DA) and Department of Trade and

Industry (DTI), Legislative, Judicial or Constitutional body of the Government of the Republic of the Philippines, including local government units, the Armed Forces of the Philippines and the Philippine National Police, government financial institutions and government-owned and controlled corporations, whether created by its own charter or by registration with the Securities and Exchange Commission (SEC), and all such other entities where the government has substantial interest in.

(c) **“Information”** shall mean all documents, papers, letters, minutes and transcripts of official meetings, maps, books, photographs, films, sound and video recordings, magnetic or other tapes, electronic data processing records, computer stored data, electronic mail messages, or any other like or similar data or material, recorded, stored or archived in whatever form or format, which are made, received or kept in or under the control and custody of any government body pursuant to law, executive order, rules and regulation, ordinance or in connection with the performance or transaction of official business by any government body.

(d) **“Requesting person”** shall mean a natural person, whether on his own or as a representative of another natural person or a juridical person, who makes a request to obtain, have a copy of or have access to information from any government body as defined in this Section.

(e) **“Trade secret”** shall mean any information, including a formula, pattern, compilation, program, device, product, method, technique or process, that is used, or may be used, in business or for any commercial advantage; derives independent economic value, actual or potential, from not being generally known to the public or to persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.

SEC. 4. Publication of Importation Permits. In the spirit of transparency and accountability, the Department of Agriculture shall cause the publication of the following information on all basic commodities, especially rice, corn, and sugar importation permits that it has granted:

- (a) Name and address of importer, either as a natural or juridical entity;
- (b) Name and address of supplier from whom importation is sourced;
- (c) Country of origin of the import per shipment;
- (d) Date of contract of import;
- (e) Date of arrival of import per shipment;
- (f) Schedule, cargo or vessel, and maximum tonnage per shipment;
- (g) Contracted and actual volume of import per shipment;
- (h) Specification of import per shipment;
- (i) Contracted price of import per shipment;
- (j) Value or cost of import per volume and for each source;
- (k) Mode of purchase of import per shipment;
- (l) Drop-off points or ports per shipment shipment; and
- (m) Such other information that may be necessary to ensure a complete and proper inventory of imported rice and corn.

The Department of Agriculture shall also prepare, keep and maintain records and a database containing the above-enumerated information, which shall be made readily available to the public.

SEC. 5. Coverage and Limitations. All information, as herein defined, which are in the custody or under the control of a government body shall be made accessible and available for public scrutiny, copying and reproduction, except when:

(a) The information pertains to personal information on a third party natural person, but only when its revelation would constitute a violation of an individual's right against self-incrimination, including, but not limited to, records or information subject to attorney-client or doctor-patient relationship;

(b) The information has been specifically authorized to be kept secret or considered classified in the interest of national security by the President through an Executive Order duly published in the Official Gazette and in at least two (2) newspapers of general circulation, subject to the following provisions:

(i) The Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for the President's determination;

(ii) Such information shall be reviewed every five (5) years by the head of the appropriate agency concerned for purposes of declassification and making available to the public; and

(iii) Such information shall finally be deemed declassified and open to the public after a period of fifteen (15) years from the date of publication of the said Executive Order in the Official Gazette or in a newspaper of general circulation, whichever was first.

(c) The information is maintained by law enforcement agencies for criminal law enforcement, or, relates to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency: *Provided* that the disclosure of such public record or information:

(i) Could reasonably be expected to interfere with the prevention, detection, suppression, or investigation of any criminal activity or with law enforcement operations;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(vi) Could reasonably be expected to disclose the identity of a confidential source, including a foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions;

(vi) Could reasonably be expected to endanger the life or physical safety of any individual, harm the security of any property or system, including a building; or

(vii) Could harm the security of any property or system, including, but not limited to, a building, vehicle, computer or communications system: *Provided, however,* that records or information relating to the administration, management and direction of a law enforcement agency shall be public.

(d) The information is maintained by the Department of Foreign Affairs and other relevant government bodies on another sovereign state, and the disclosure of such records or information could reasonably be expected to jeopardize the diplomatic relations of the Government of the Republic of the Philippines with the said sovereign state: *Provided,* that treaties, trade agreements, contracts between agencies and/or government-owned and controlled corporations, and implementing agreements, annexes, side letters and other such documents and records pertaining to or related to the same, and any other documents pertaining to dealings entered into by, the Government of the Republic of the Philippines with another sovereign State and binds the Government to uphold such transactions under international and local law, shall not be covered by this exception;

(e) The information pertains to trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature; or

(f) The information is exempted from disclosure by another law or by the Rules of Court, including, but not limited to, information considered as privileged communication or gathered by any government body in closed or executive session.

In cases where access is requested to a portion of a record or information that is exempt from disclosure pursuant to this Act, the public shall have the right of access to the remainder of the record *Provided,* that the exempt portion of the record can be reasonably separated, severed, deleted or concealed from the record.

Nothing in this Act shall, however:

(a) Authorize the withholding of information from, or limit the availability of records to, Congress or any of its committees;

(b) Affect the power of any court, tribunal, investigative body, or any government body exercising quasi-judicial functions to compel a witness to testify or to compel the production of documents;

(c) limit the information otherwise available by law to a party to litigation including a civil, criminal or administrative proceeding;

(d) prohibit the transfer, storage or destruction of any record pursuant to law, decree, order, ordinance or rules and regulations;

(e) prevent access to records maintained in a public office for the purpose of providing the public access to information; or

(f) restrict disclosure of information for the purpose of an investigation or prosecution of a criminal case or a case of graft and corruption.

SEC. 6. Procedure for Access. Any person who seeks to obtain, have a copy of or have access to any information shall file a request in writing, as much as practicable, to the government body concerned, reasonably describing the information being sought, and stating details on how he could be contacted by the said government body.

The government body shall comply with the said request within two (2) working days after the receipt of the request, or within a reasonable period of time mutually agreed upon by the requesting person and the government body's employee concerned, but not to exceed five (5) working days.

The time for compliance may, with due notice to the requesting person, be extended by the head of the government body to a period not exceeding fifteen (15) days if:

(a) The requesting person failed to give enough details about the information or record sought to be obtained.

(b) A large number of records is sought to be obtained in a single request, or when it has received voluminous requests, that compliance within the prescribed period under this Act would unreasonably interfere with its operations;

(c) The request requires search and collation of records from its field offices;

(d) Additional time is needed to consult with another government body having material or substantial interest in the determination of the request; and

(e) There are fortuitous events or other events from *force majeure*, or other analogous cases.

SEC. 7. Payment of Reasonable Fees. Copies or reproductions of information, whether in print or electronic media, may be obtained by the requesting person whose request has been approved upon payment of a reasonable fee which shall not exceed the actual cost of reproduction plus a reasonable margin not exceeding ten percent (10%); *Provided*, that proceeds from the reproduction fees charged shall be used exclusively for the purchase and maintenance of equipment and supplies required to produce copies or reproductions of the said records.

Upon request, the government body shall provide a detailed itemization of the costs charged for the reproduction. No government body may, however, require the advanced payment of any reproduction fee.

SEC. 8. Transfer of Request. If the government body to which the request was filed determines that the information being sought is not in its custody or control, it shall, within two (2) days, notify the requesting person of the same, through writing or other contact channels that the requesting person has provided, and shall then either: 1) transmit the said request to the government body which has the possession or custody of the information being sought; or 2) provide the requesting person with a referral letter, signed by its head and addressed to the head of the government body which has the possession or custody of the information being sought.

The government body receiving of such transmittal or referral letter shall then act on such request in the manner set forth in Section 5 hereof.

SEC. 9. Denial of Request. If the government body decides to deny the request, in whole or in part, it shall within two (2) working days from the receipt of the request notify the requesting person of such denial in writing, signed by the head of the government body, and the specific grounds for the denial and the corresponding legal basis, as allowed in Section 4 hereof.

SEC. 10. Remedies to Compel Disclosure. Every denial of any request for access to information may be appealed before the Office of the Ombudsman by filing, within fifteen (15) days from receipt of a letter of denial, a prayer for the disclosure of the information being sought.

If the Office of the Ombudsman upholds such denial or fails to act on such prayer within sixty (60) days, the requesting person may then file a verified petition for mandamus before the Regional Trial Court with jurisdiction over the government body's office receiving the request for information. A decision of the court granting the request for information shall be subject to the proper judicial remedies available to the affected government body, following the procedure provided under the Rules of Court.

Nothing in this Section shall prejudice any other available administrative, civil or criminal remedy.

SEC. 11. Mandatory Disclosure of Food Information. Each government body that possesses any significant information that affects food supply and prices shall readily disseminate the same to the public and regularly update said information. The means of disclosure and dissemination of such information shall include, but not be limited to: (a) manuals, pamphlets, brochures, bulletins, posters, announcements, or any other printed collaterals, for distribution or for posting by the government body concerned in conspicuous places in its central and field offices; and (b) electronically uploading of such information on its website.

SEC. 12. Mandatory Disclosure for Public Interest. Any government body which is in possession or has knowledge of any information, not otherwise declared classified or exempt pursuant to this Act, about the existence of a factor or risk significant to food supply and prices, or which clearly affects public's right to affordable food and adequate food supply, shall without delay disclose such information to the public.

SEC.13. Penal Provisions. Any official or employee of the government body which has possession of any significant information on food supply and prices found guilty by final judgment of the proper court of denying access to information, or parts thereof, without a valid legal ground as provided for in this Act, or who shall knowingly release false and/or misleading information, shall be punished with a fine of not less than Twenty Thousand Pesos (P20,000.00) but not more than Forty Thousand Pesos (P40,000.00), and/or imprisonment of not less than one (1) year but not more than three (3) years, including all the accessory penalties provided by law, upon the discretion of the court.

Any official or employee who shall fail to respond to a request due to negligence, or fail to meet the time limits for response set forth in this Act, without reasonable reasons for such, shall be punished with a fine of not less than Ten Thousand Pesos (P10,000.00) but not more than Twenty Thousand Pesos (P20,000.00), and/or imprisonment of not less than six (6) months but not more than one (1) year, including all the accessory penalties provided by law, upon the discretion of the court.

Any official or employee who shall deliberately and knowingly refuse, or because of negligence fail, to update any information his or her office is required to disclose under Section 10 of this Act shall be penalized administratively with suspension from service, without pay, of at least six (6) months but not more than *one* (1) year. A subsequent offense shall cause his dismissal from service.

SEC.14. *Implementing Guidelines.* Each government body shall, within sixty (60) days from the effectivity of this Act, promulgate guidelines specifying the office, and employees from whom, and the methods and process whereby, the public may request access to or obtain information which are kept in or held under its custody or control.

SEC. 15. Reports. On or before March 1 of each calendar year, each government body shall submit a report covering the preceding year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of Congress. The report shall include:

(a) A copy of the implementing guidelines and rules crafted by such government body in the implementation of this Act;

(b) A copy of the reproduction fee schedule under Section 6 of this act, the total proceeds collected from such fees and the use of such proceeds by the government body;

(c) The number of determinations made by such government body to refuse the requests for information made to such government body under Section 8, the reasons for such determination;

(d) The names and titles or positions of officials responsible for the refusal of requests under this Act, and the number of instances of participation of each;

(e) The number of refused requests wherein the requesting person sought remedies before the Office of the Ombudsman or before the regular courts, and the names and titles or positions of officials concerned in these cases;

(f) A copy of the information disclosed by the government body pursuant to Section 10 of this act, including a description of the collaterals, whether print or electronic, used in the dissemination of the said disclosed information.

(g) A summary of other initiatives made by the government body, whether or not mandated by this Act or any other law, that sought to enhance and assist the implementation of this Act: and

(h) Such other information which the government body deems as necessary to disclose in relation to the implementation of this Act.

The Office of the Ombudsman shall submit an annual report on or before March 1 of each calendar year, listing the number of cases filed before it under Section 9 of this Act and the disposition of each case. The Solicitor General shall likewise submit an annual report on or before March 1 of each calendar year, listing the number of cases filed before the regular courts under Section 9 of this Act, the disposition of each case, the names and positions or titles of the officials penalized and the penalties assessed.

SEC. 16. *Oversight Committee.* For the effective implementation of this Act, there shall be a Congressional Oversight Committee consisting of five (5) members each from the Senate and House Representatives, which shall be

composed of the Chairpersons and members of the Committees on Agriculture, Trade and Commerce, and Justice and Human Rights of both the Senate and House of Representatives, which shall meet bi-annually to oversee its implementation. The Congressional Oversight Committee shall be jointly chaired by the Chairpersons of the Committees on Agriculture and Trade and Commerce of the Senate and House and Representatives and shall be jointly vice-chaired by the Chairpersons of the Committees on Justice and Human Rights of the Senate and House and Representatives.

SEC. 17. Separability Clause. If for any reason, any part, section or provision of this Act shall be held unconstitutional or invalid, no other part, section or provision shall be affected thereby.

SEC. 18. Repealing Clause. All laws, decrees, executive orders, rules and regulations, issuances or any parts thereof inconsistent with the provisions of this Act are deemed repealed or amended accordingly.

SEC 19. Effectivity Clause. This Act shall take effect immediately after its publication in at least two (2) national newspapers of general circulation.

Approved,