

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session



HOUSE BILL NO. 367

Introduced by: **REP. RAUL V. DEL MAR**

EXPLANATORY NOTE

The need to protect the disbursement and expenditure of public funds is a duty enshrined in our Constitution. The Constitution confers upon the Commission on Audit this exclusive and all-important prerogative. And this duty becomes most significant – and its performance must therefore be safeguarded and assured – in the light of the following compelling realities: One, the government needs all the funds it can possibly save and have because of the more than alarming budgetary deficit; two, the government is said to be the “biggest contractor and the heaviest procurer of goods and services,” and three, as one independent study has stated, in the procurement of government goods and services alone, one-fifth (1/5) of the government's budget is lost through graft.

In this light, the attached bill seeks to adopt, as a mandatory requirement, a system of pre-audit in all government transactions: infrastructure projects, procurements of goods and consultancy or consulting services. This means that there must be a pre-audit of any government spending or transaction prior to the disbursement of public money and the absence of such pre-audit will render the transaction null and void. To show the determination of government, a violation of this mandatory pre-audit will render the officials or employees found responsible therefore liable in their personal capacities for any consequent damage to the government of the other private contracting party, without prejudice to the administrative sanctions that may be warranted under the circumstances.

It is recognized that the constitution allows the examination of government transaction of some governmental entities only a post-audit basis. These are reiterated as exceptions to the mandatory pre-audit rule in the proposed legislation, while recognizing that even in such cases a temporary or special pre-audit may be authorized.

The argument that this pre-audit scheme will result in further delays, establishing another unnecessary level of review, that may unduly prejudice implementation of urgent government projects and transactions must now yield to the higher interest to protect and conserve government resources and minimize losses from illegal expenditures in these hard times. Suffice it to say that the pre-audit system is not meant to be unreasonable. Quality pre-audit is what is important and the Commission on Audit may address such issues and other related concerns in the implementing rules.

In this context, approval of the bill is earnestly sought.



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AN ACT
REQUIRING THE MANDATORY PRE-AUDIT OF GOVERNMENT
DISBURSMENTS AND USES OF FUNDS

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

SECTION 1. *Mandatory Pre-Audit.* - Except as provided in Section 2 hereof, The Commission on Audit shall conduct a thorough and complete pre-audit examination of all expenditures and uses of public funds pertaining to infrastructure projects, procurement of goods and consulting services, including lease of goods and real property, of any branch, office agency or instrumentality of the government, including state universities and colleges, government-owned and controlled corporations, government financial institutions and local government units.

The Commission shall determine the scope of the pre-audit and shall adopt such criteria and procedures, techniques and methods as may be required by such auditorial examination.

SEC. 2. *Exceptions* - The mandatory pre-audit required herein shall not apply to the following:

(a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution;

- (b) autonomous state colleges and universities;
 - (c) other government-owned or controlled corporations and their subsidies;
- and
- (d) non-government entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to post-audit as a condition of subsidy or equity.

The Commission, however, shall have the authority to conduct or cause to be conducted a special pre-audit in any of the above agencies should it determine, upon proper examination and in the exercise of its judgment, that the internal control system of the office or agency is deficient or inadequate and such pre-audit authority shall continue until the deficiency is corrected.

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall be understood as follows:

(a) ***"Infrastructure Projects"*** shall include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of government.

(b) ***"Consulting Services"*** refers to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external, technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

(c) ***"Goods"*** shall include all item, supplies, material and general support services except consulting services and infrastructure projects, which may be

needed in the pursuit of any government undertaking, projects or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security and related or analogous services.

SEC. 4. *Absence of Pre-Audit/Certificate of Pre-Audit.* - The absence of pre-audit shall render the government contract or transaction null and void. A Certificate of Pre-audit signed by the accounting official of the agency or office concerned shall be required prior to any disbursement or expenditure of funds. Any disbursement of fund in violation of this provision or where a contract or transaction is declared void because of lack of a Certificate of Pre-audit, the public officers or employees found responsible therefore shall be personally liable to the Government or to the other contracting party for the consequent damage, without prejudice to such administrative sanctions as may be imposed upon such errant officials or employees under existing laws.

SEC. 5. *Full Disclosure/Submission of Documents.* - In all stages of the pre-audit being conducted by the Commission or its duly authorized representative, the government office or entity under pre-audit examination shall ensure that all relevant and necessary information are disclosed and the pertinent papers and documents are submitted for purposes of the said examination. Failure to comply with this provision shall be a ground for disciplinary action of the public official or employee concerned.

SEC. 6. *Implementing Rules and Regulations.* - The Commission on Audit shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 7. *Repealing Clause.* - All laws, decrees and executive issuance or parts thereof which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 8. *Separability Clause.* - If any provision of this Act is declared invalid

or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 9. Effectivity Clause. - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,