

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
— Regular Session

HOUSE BILL NO. **5256**



Introduced by: HON. MANUEL T. SAGARBARRIA (Negros Oriental, 2nd District)

EXPLANATORY NOTE

Under R.A. 7080, the crime of plunder is defined and punished, but despite this law, convictions are few and far in between. It is a reactive approach which implicitly depends on COA post-audits but eventually fails at recovering the plundered public funds. It is thus proposed that the better way to ensure that public funds are used for legitimate purposes is through a pre-audit which checks the legality and financial soundness of a particular expenditure.

Historically, however, there has been no consistent COA policy with regard to pre-audits. As one news article¹ observes:

The COA issued Circular No. 82-195 on October 26, 1982 lifting the system of pre-audit of government financial transactions. The circular emphasized the state policy to use government resources in accordance with law and regulation.

The circular said the responsibility to ensure faithful adherence to the state policy rested directly with the chief or head of the government agency concerned.

Four years later, in 1986, the COA through Circular No. 86-257 reinstated the pre-audit of selected government transactions. In 1989, the COA once more lifted the pre-audit system through Circular No. 89-299, which is the circular that Llana assailed in his petition with the Supreme Court.

The COA insisted that Circular 89-299 would "reaffirm the concept that fiscal responsibility resides in management as embodied in the Government Auditing Code of the Philippines and contribute to accelerating the delivery of public services

¹ <http://www.gmanetwork.com/news/story/250107/news/nation/sc-upholds-coa-circular-lifting-pre-audit-of-gov-t-transactions#sthash.zS8BBuxB.dpuf>

and improving government operations by curbing undue bureaucratic red tape and ensuring facilitation of government transactions, while continuing to preserve and protect the integrity of these transactions."

The COA would later issue Circulars 94-006 that clarified the total lifting of pre-audit activities on all financial transactions of the national government and GOCCs.

In 1995, Circular 95-006 expanded the coverage of the lifting of pre-audit procedures to include local government units.

Conscious that the Legislature is only limited by Sec. 3, Art. IX-D of Constitution from enacting laws which exempt COA jurisdiction and also aware of the damage that plunder causes to the welfare and economy of the Republic of the Philippines, the attached bill seeks to adopt as a mandatory requirement, a system of independent pre-audit in local government unit transactions and expenditures worth Php 50 million and more. Thus, the proposed bill does not exempt coverage of COA jurisdiction but merely directs COA to constantly exercise its audit jurisdiction over a specific class of local government unit transactions. It is hoped that through this system of pre-audit, plunder is stopped at its inception, not when money has already transferred and difficult to recover.

Thus, the approval of the bill is earnestly sought.


MANUEL T. SAGARBARRIA

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AN ACT ESTABLISHING A MANDATORY PRE-AUDIT SYSTEM OF LOCAL
GOVERNMENT UNITS DISBURSEMENTS AND USE OF FUNDS IN THE AMOUNT
OF FIFTY MILLION PESOS (Php 50,000,000) & ABOVE

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

Section 1. *Short Title.* – This Act shall be known otherwise as “The Local Government Unit Anti-Plunder Pre-Audit Act of 2017”.

Section 2. *Declaration of Policy.*—For the purposes of this Act, it is hereby declared the policy of the state to:

- a. Prevent the plunder of public funds or the leakage thereof to unintended purposes by a system of pre-audit checks and processes before disbursement;
- b. In line with the principle that a public office is a public trust, prevent certain acts of public officers and private persons alike which constitute plunder and graft or corrupt practices or which may lead thereto.

Section 3. *Definition of Terms.*— For purposes of this Act only, the terms are hereby defined as follows:

- a. “*Agreement*” – refers to any agreement, contract, or undertaking which creates a “government obligation” as defined in this Act; it shall be synonymous to “contract”, “transaction”, “project”, or “procurement” as used in this Act;
- b. “*Certificate of Pre-audit*” – refers to the sworn document signed and issued by the auditors evidencing that an “agreement” has undergone pre-audit and recommending that public funds be released for payment thereof;

- c. *"Disbursement officer"* – refers to the treasurer or financial officer of the "local government unit", as herein defined, who has the duty under law to approve the release of funds as payment for a government obligation;
- d. *"Disbursement or use of public funds"*– refers to the release of public funds, regardless if done in one payment or in instalments, in the aggregate amount of at least Php 50,000,000 in payment for a contract, agreement, procurement plan, or public-private partnership project, whether or not it is divisible into phases or stages, and whether or not reduced into writing in whole or in part;
- e. *"Local Government Unit"* – pursuant to Section 15 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, Local Government Unit is defined as a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it performs dual functions, governmental and proprietary;
- f. *"Government obligation"* – refers to any expenditure, duty, credit, or liability incurred or committed to be paid by the local government unit in the amount of Php 50 million or more, regardless of whether the obligee or payee is the government or a private entity;
- g. *"COA" or "Commission"* – refers to the Commission on Audit.

Section 4. Coverage. –

- a. The requirements of this act shall apply only to disbursement of public funds by local government unit for government obligations in the amount of Php 50 million or more to any private or government entity, regardless of whether or not such disbursement is pursuant to an allotment done by virtue of the General Appropriations Ordinance or any special appropriation law or ordinance.
- b. The requirements of this Act shall apply to local government units and any private person or entity entrusted with the use of public funds, including non-government organizations having transaction with a local government unit.
- c. This Act shall not apply to disbursements and use of funds made pursuant to contracts, agreements, or projects executed or approved prior to the effectivity of this Act.
- d. This Act shall not apply to the national government, its instrumentalities, agencies, government owned or controlled corporations, its subsidiaries, constitutional bodies, commissions and other national offices that have been granted fiscal autonomy under the Constitution.

Section 5. Mandatory Pre-Audit. – No public funds shall be disbursed or released by a local government unit in payment of a government obligation worth at least Php 50 million

without the conduct of a pre-audit by the COA and the issuance of a Certificate of Pre-audit as provided in this Act. The COA is hereby mandated to issue the corresponding Pre-Audit Certificate, or decline the issuance of the same, on valid and legal grounds within the period of 15 DAYS from receipt of all pertinent documents relative to the intended disbursement of public funds.

Section 6. *Conduct of Pre-Audit.* – The COA shall issue rules and regulations pertaining to the conduct of the pre-audit provided that:

- a. the auditing officer from the COA shall not be related to the disbursement officer and signatories of the contract, agreement, procurement, or project within the fourth (4th) civil degree of consanguinity or affinity;
- b. the auditing officer may use accepted auditing methods, standards, and techniques as they may deem fit in the conduct of the pre-audit, provided that they are sufficient to ascertain the following:
 - i. the proposed expenditure complies with an appropriation law, ordinance or other specific statutory authority;
 - ii. sufficient funds are available for the purpose;
 - iii. the proposed expenditure is legal, valid, lawful, not unreasonable or extravagant, and the unexpended balance of appropriations to which it will be charged is sufficient to cover the entire amount of the expenditure; and
 - iv. the proposed expenditure is in compliance with pertinent laws, ordinances, rules, regulations, and orders;
 - v. the transaction is approved by the proper authority and the claim is duly supported by authentic underlying evidence.
- c. The details and results of the pre-audit shall be reduced into writing in a Pre-Audit Report which shall be annexed with supporting documents and signed by the auditor.
- d. If the results of the pre-audit show that the requirements under par. (b) of this Section have been complied with, the COA shall cause the issuance of a sworn Certificate of Pre-Audit attesting to compliance of said requirements, attaching the Pre-Audit Report as annex, and shall substantially follow the form below:

Republic of the Philippines)
City/Municipality of _____)

CERTIFICATE OF PRE-AUDIT

I, _____, of legal age, and resident of _____, after being sworn to in accordance with law, depose and state that:

1. I was the auditor selected to conduct a pre-audit on the <Insert Material Information of the Contract> pursuant to R.A. _____ or the Anti-Plunder Pre-Audit Act of 2017”;
2. I conducted a pre-audit the results of which are reduced into writing in a Pre-Audit Report dated _____ attached hereto as Annex “A” and have found that:
 - a. the proposed expenditure complies with an appropriation law, ordinance or other specific statutory authority;
 - b. sufficient funds are available for the purpose;
 - c. the proposed expenditure is legal, lawful, valid, is not unreasonable or extravagant, and the unexpended balance of appropriations to which it will be charged is sufficient to cover the entire amount of the expenditure; and
 - d. the proposed expenditure is compliant with pertinent laws, ordinances, rules, regulations, and orders;
 - e. the transaction is approved by the proper authority and the claim is duly supported by authentic underlying evidence;
3. As a consequence, I execute and issue this Certificate of Pre-Audit for purposes of the Anti-Plunder Pre-Audit Act of 2017.

IN WITNESS WHEREOF, We have hereunto affixed our signatures this ____ day of _____, 20__ at _____, Philippines.

(sgd.) Affiant

SUBSCRIBED AND SWORN to before me, this ____ of ____ 20__ at _____, Philippines by the Affiant whom I have identified through competent evidence of identity:

(sgd.) NOTARY PUBLIC

Doc. No. _____;

Page No. _____;

Book No. _____;

Series of 20____.

Section 7. *Legal Significance of Certificate of Pre-Audit.*

- a. The issuance of a valid Certificate of Pre-Audit shall create a rebuttable presumption in law that the appurtenant public funds were not disbursed through or in connection to an act of plunder; *provided*, conversely, that the non-issuance or absence of such Certificate shall not constitute *prima facie* evidence of plunder against the disbursement officer or the parties to the contract, agreement, or project for which public funds were disbursed or used.
- b. The disbursing officer any entity, whether private or public, which holds public funds shall not approve nor cause the release of such public funds pursuant to a contract, contract, agreement, or project if he has not been presented and given an original copy of the Certificate of Pre-Audit.
- c. The Certificate of Pre-Audit shall be considered a sworn document imbued with public interest and certified true copies thereof must be provided by the notarizing lawyer upon request of the concerned public.

Section 8. *Effect if No Pre-Audit.* – Any contract, agreement, procurement, or project which has not undergone pre-audit and for which no Certificate of Pre-audit had been issued shall be considered void and invalid, thereby creating no enforceable right or obligation between the parties thereto.

Section 9. *Separability Clause.* – If any provisions of this Act or the application thereof to any person or circumstance is held invalid, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 10. *Effectivity.* – This Act shall take effect after fifteen (15) days from its publication in the Official Gazette and in a newspaper of general circulation.