

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 3038



Introduced by Representative Paolo Henry M. Marcoleta

EXPLANATORY NOTE

The Constitution provides that “the State shall protect and advance the right of the people a balanced and healthful ecology in accord with the rhythm and harmony of nature.”¹

The Philippine legal system is replete with laws and regulations mirroring this policy. Among them are Republic Act no. 8749 or the Philippine Clean Air Act, and Republic Act no. 9512 or the Environmental Awareness and Education Act of 2008. It has also been enshrined in various landmark cases such as *Oposa v. Factoran*², *LLDA v. Court of Appeals*³, and *MMDA v. Concerned Residents of Manila Bay*⁴.

In the case of *Oposa v. Factoran*, the Court emphasized the primordial nature of the said principle, as follows:

“While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self- preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic

¹ Section 16, Article II, 1987 Constitution.

² G.R. No. 101083, July 30, 1993.

³ G.R. No. 110120, March 16, 1994.

⁴ G.R. No. 171947-48, December 18, 2008.

rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”

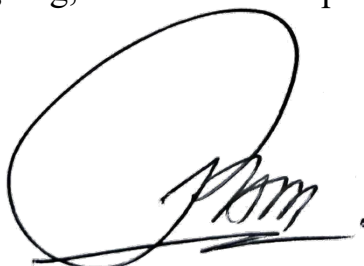
However, despite all these existing laws and jurisprudence, there are still areas for improvement and advancement insofar as the implementation of the people’s right to a healthful and balanced ecology is concerned. History shows several cases of severe ecological disasters caused by man-made incidents, such as:

- The 1996 Marcopper mining tragedy in Marinduque which destroyed hectares of farmlands, displaced local families, caused severe illnesses to residents, and led to the biological death of the Boac and Mogpog rivers;
- The 2005 massive fish kill in Rapu-Rapu, Albay, caused by cyanide spill from the mining operations of Lafayette, Philippines, Inc., which severely impacted the local community’s livelihood; and
- The 2012 Padcal mine spill in Benguet which led to over 20 million tons of mine tailings being discharged to local waters.

Regrettably, despite these environmental disasters, there is still no policy to ensure sufficient financial coverage for communities affected by man-made ecological disasters.

This bill seeks to require mandatory environmental insurance coverage for owners and operators of environmentally critical projects whose activities destroy or pose risks to the environment, the ecosystems, and their constituent elements. The said insurance will be used to guarantee sufficient funding coverage for the needed restoration and compensation in case of damage caused by their operations.

In light of the foregoing, the immediate passage of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read 'PHM', enclosed within a large, loopy oval shape.

PAOLO HENRY M. MARCOLETA
Representative, SAGIP Partylist

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

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

1 **SECTION 1.** *Short Title.* - This Act shall be known as the “*Mandatory*
2 *Environmental Insurance Coverage Act.*”
3
4

5 **SEC. 2.** *Declaration of Policy.* - Consistent with the State policy to protect
6 and advance the right of the people to a balanced and healthful ecology in accord
7 with the rhythm and harmony of nature, the State shall promote environmental
8 conservation and its sustainable development at all times, and shall implement,
9 under a system of compensation and compliance mechanisms, proper, effective
10 and immediate environmental rehabilitation, remediation, and protection against
11 pollution and degradation arising from violations of environmental laws and
12 regulations.
13
14

15 **SEC. 3.** *Definition of Terms.* - As used in this Act, the following terms
16 shall be defined as:
17

- 18 a. *Environmentally Critical Project* - refers to a project that has high potential
19 for significant negative environmental impact and is listed as such under
20 Presidential Proclamation (Proclamation) No. 2146, series of 1981, and
21 Proclamation No. 803, series of 1996, as well as other projects which the

1 President may proclaim as environmentally critical in accordance with
2 Section 4 of Presidential Decree (PD) No. 1586 or the Philippine
3 Environmental Impact Statement System;

- 4
- 5 b. *Heavy Industries* - refer to non-ferrous metal industries, iron and steel
6 mills, petroleum, and petrochemical industries, including oil and gas
7 smelting plants;
- 8
- 9 c. *Infrastructure Projects* - refer to major dams, major power plants, major
10 reclamation projects, and major roads and bridges; and,
- 11
- 12 d. *Resource Extractive Industries* - refer to major mining and quarrying
13 projects; forestry projects involving logging, major wood processing
14 projects, introduction of fauna or exotic animals in public or private forests,
15 forest occupancy, extraction of mangrove products, and grazing; and
16 fishery projects, specifically fishpond development projects and dikes for
17 such projects.
- 18
- 19

20 **SEC. 4.** *Establishment of a National Framework for Mandatory*
21 *Environmental Insurance Coverage.* – Within one (1) year following the
22 effectivity of this Act, a national framework for Mandatory Environmental
23 Insurance Coverage (MEIC) shall be established. The framework shall consider
24 the following:

25

26

- 27 a. *Coverage.* All owners and operators of environmentally critical projects
28 (ECPs) shall be required to secure MEIC for ECPs as prescribed under this
29 Section to compensate for the adverse environmental consequences which
30 include damage to health and property, and costs for environmental
31 rehabilitation, remediation, cleanup, and other environmental impairments
32 arising from their operations. For purposes of this Act, ECPs shall include
33 heavy industries, major manufacturing industries, major resource-
34 extractive industries, major infrastructure projects, and other similar
35 projects that could pose serious risks to people and the environment.
- 36
- 37 b. *Forms of MEIC.* – The MEIC shall be in the form of:
- 38
- 39 1. Environmental guarantee cash fund established pursuant to
40 existing environmental laws; or
- 41
- 42 2. Environmental Insurance Policy (EIP) obtained from bonding or
43 insurance companies, whenever the environmental guarantee

1 cash fund is insufficient to cover the said adverse environmental
2 consequences, upon determination and recommendation of the
3 Inter-Agency Technical Committee created pursuant to Section 6
4 of this Act.

5
6 The EIP may take the form of the following:

- 7
8 i. Environment Performance Bond (EPB) – which shall be required for
9 all ongoing activities or projects issued with Environmental
10 Compliance Certificate (ECC) pursuant to PD 1586, to guarantee
11 adequate and timely compliance with the environmental standards
12 and the terms and conditions set forth by the Department of
13 Environment and Natural Resources (DENR) during the pre-
14 development, development, and construction phases of the project.
15 The EPB shall answer for all environmental damages, penalties, and
16 legal obligations, which may arise from the failure of the project
17 proponent to comply with its undertakings during the
18 aforementioned phases; and,
19
20 ii. Environment Pollution, Impairment, and Cleanup Liability
21 Insurance (EPICLI) – which shall be required for all existing and
22 future activities or projects issued with ECC pursuant to PD 1586,
23 to cover the operational phases. The EPICLI shall answer for all
24 claims arising from damages to the environment; bodily injury and
25 property damage arising from a pollution event; and for the cost of
26 environmental rehabilitation, cleanup, or remediation to address the
27 contamination or impairment of the environment.
28
29

30 **SEC. 5.** *Prerequisite to the Construction or Operational Phase.* – Owners
31 and operators of ECPs shall not be allowed to commence construction or
32 commercial operation without initially obtaining the MEIC required under
33 Section 4 of this Act.
34
35

36 **SEC. 6.** *Creation of an Inter-Agency Technical Committee.* – Within one
37 (1) year following the effectivity of this Act, the Secretary of the DENR shall
38 establish and chair an Inter-Agency Technical Committee (IATC), with the
39 Commissioner of the Insurance Commission, and representatives of the insurance
40 industry, the mining industry, and other stakeholders that the DENR may deem
41 fit as members. Within the same period, the IATC shall:
42

- a. Identify the perils or possible negative environmental impacts, activities, processes or undertakings that need to be mandatorily insured as provided in Section 4 hereof;
- b. Conduct risk assessment to determine the appropriate insurance coverage for different ECPs and activities;
- c. Formulate guidelines for the identification of primary impact areas and prescription of rehabilitation or remediation measures in cases of environmental damages;
- d. Formulate cleanup guidelines;
- e. Formulate guidelines for the identification of beneficiaries of the MEIC;
- f. Ensure that the premium rates of the EIP are commensurate to the risks covered;
- g. Formulate guidelines for the determination of veracity of claims;
- h. Formulate guidelines for the establishment of insurance facilities; and,
- i. Undertake such activities as may be necessary to fulfill the objectives of this Act.

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

SEC. 7. Beneficiaries. – The beneficiaries of the MEIC include affected communities, stakeholders, and local government units within the projects' primary impact areas. Also included as beneficiaries are government departments, bureaus, and agencies which are tasked under the law to undertake the rehabilitation, cleanup, and monitoring of the sites affected by the pollution or insurable event, for which no responsible private or public entity is specified.

The beneficiaries shall be represented by the government, particularly the DENR. The IATC shall identify the affected areas and prescribe the rehabilitation or remediation measures pursuant to Sec. 6 of this Act.

1 **SEC. 8. *Payment of Claims.*** – The insurance company shall place all
2 payments of claims into special escrow accounts in government depository banks,
3 which shall in turn disburse the corresponding payment to beneficiaries, upon
4 advice of the DENR and with proper documentation.
5

6 The DENR may create an ad-hoc body composed of representatives from
7 business, labor, government, civil society, and other stakeholders to assure that
8 claims are verified and rightful parties are compensated, and the environment is
9 properly rehabilitated, cleaned up, remediated, stabilized, and protected.
10

11 The DENR shall not receive and handle payment of claims for
12 environmental damages, penalties, and charges, except for the claims component
13 which properly accrues to it as an insurance beneficiary.
14

15 The government agency tasked with rehabilitation and assigned as the
16 beneficiary of the MEIC as provided under Section 7 of this Act, shall undertake
17 the same utilizing funds coming from the insurance claim upon approval of the
18 DENR.
19
20

21 **SEC. 9. *Penalties.*** – The failure of the owner and operator of an ECP to
22 secure a MEIC as prescribed under Section 4 hereof, or of the insurance company
23 to pay a verified claim in violation of the provisions of this Act within a
24 reasonable time, shall be punished with a fine of Five hundred thousand pesos
25 (Php 500,000.00) but not more than Two million pesos (Php 2,000,000.00) or
26 imprisonment of not less than six (6) years but not more than twelve (12) years,
27 or both, at the discretion of the court.
28

29 In the case of a partnership, association, corporation, or any juridical entity,
30 the fine shall be imposed upon the president, treasurer, or any other officer or
31 person responsible for the violation.
32

33 If the offender is a foreigner, the offender shall, after the service of
34 sentence, be deported immediately without further proceedings by the Bureau of
35 Immigration.
36

37 Government officials, employees and agents who approve the operation of
38 ECPs without the necessary MEIC, in violation of the provisions of this Act, shall
39 suffer the penalty of suspension of not less than thirty (30) days, but not more
40 than six (6) months after due notice and hearing in the appropriate administrative
41 proceedings.
42
43

1 **SEC. 10. *Implementing Rules and Regulations.*** – Within sixty (60) days
2 from the approval of this Act, the DENR shall, in coordination with the Insurance
3 Commission, promulgate the rules and regulations for the effective
4 implementation of this Act.
5

6 **SEC. 11. *Separability Clause.*** – If any provision or part of this Act is
7 declared invalid or unconstitutional, the remaining parts not affected shall remain
8 in full force and effect.
9

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11 **SEC. 12. *Repealing Clause.*** – All laws, presidential decrees, executive
12 orders, letters of instructions, administrative orders, proclamations or
13 administrative regulations that are inconsistent with the provisions of this Act are
14 hereby repealed, amended, or modified accordingly.
15

16
17 **SEC. 13. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
18 publication in the Official Gazette or in a newspaper of general circulation.
19

20 ***Approved,***