



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Twentieth Congress
Second Regular Session

HOUSE BILL NO. 11425



Introduced by Representative Ma. Cristina Talavera Lopez

AN ACT
REQUIRING CLIMATE AND DISASTER RISK SCREENING OF RESILIENCE
PROJECTS, INSTITUTIONALIZING CLIMATE AND RESILIENCE EXPENDITURE
TAGGING AND DISCLOSURE, APPROPRIATING FUNDS THEREFOR, AND FOR
OTHER PURPOSES

EXPLANATORY NOTE

The Philippines does not lack laws on climate change and disaster risk reduction. It lacks any law that requires the money appropriated for climate and disaster resilience to actually reduce risk.

Republic Act No. 9729, as amended by Republic Act No. 10174, establishes a planning framework. Republic Act No. 10121 establishes a disaster management system. Neither imposes on any agency or local government a duty to achieve a resilience outcome with the funds it receives, and neither provides a remedy when the funds are spent on works that do not reduce the hazard they were appropriated to address.

The consequences of that gap are now a matter of public record. Flood control appropriations rose from roughly Seventy-Nine Billion Pesos (P79,000,000,000.00) in 2016 to more than Two Hundred Billion Pesos (P200,000,000,000.00) annually by 2021, without any corresponding change in how projects are selected, sited, disclosed or audited. What followed were ghost projects, substandard works, and structures built where they could not reduce risk or which displaced flooding onto communities downstream.

Hazard information is not the missing element. The Philippine Atmospheric, Geophysical and Astronomical Services Administration, modernized under Republic Act No. 10692, the Philippine Institute of Volcanology and Seismology, the National Mapping and Resource Information Authority and the Mines and Geosciences Bureau produce the data. What is missing is any legal duty to consult it before a resilience project is designed, sited, funded, procured or built. A flood control

structure may today be designed for historical rainfall, sited in a hazard zone, and built where it worsens flooding downstream, without any law being broken.

This measure supplies the missing duty, and does so in the narrowest way that will work. It requires every resilience project to undergo climate and disaster risk screening and to obtain a Resilience Screening Certificate. The certificate states the hazard the project is meant to address, the hazard conditions projected over the design life of the project, the alternatives considered, the expected reduction in risk, and the effect of the project upon adjacent, upstream and downstream communities.

The certificate is issued by a Resilience Screening Technical Panel composed of the agencies that already hold the hazard data, and not by the agency that proposes to build the project. An implementing agency cannot be permitted to certify to itself that its own project is well-sited and adequate to the hazard; that is the precise failure this measure is directed against. The Panel may issue the certificate, deny it, or issue it subject to conditions, and its action is appealable. The head of the implementing agency remains personally accountable for the truth and completeness of the application and for implementing the project in accordance with the certificate issued.

The bill is deliberately modest in where it applies pressure. It contains no provision addressed to the contents of the National Expenditure Program or of the General Appropriations Act. Screening is required of the implementing agency as part of project development, before a project enters its pipeline and before detailed engineering design is commissioned. The certificate then operates as a condition precedent to the release of funds, to procurement and to award, all of which are matters of budget execution. Appropriations for items that remain uncertified are declared not to constitute savings, so that the requirement cannot be evaded by realignment.

The bill creates no new department, bureau or office. The screening panel is composed of agencies that already exist and already produce the data on which it will act. The bill further institutionalizes in statute the climate and resilience expenditure tagging that has until now rested only upon a joint memorandum circular, requires an annual Climate and Resilience Budget Statement showing the certification status of every resilience item, mandates publication in machine-readable form within a fixed period, and requires the geotagging, as-built documentation and public marking of every resilience project. Compliance is secured by the nullity of any release or award made without a certificate, by the personal liability of the officers responsible, by the audit powers the Commission on Audit already possesses, by the right of any citizen to sue, and by the penalties provided in this Act.

The question of a permanent body to conduct technical and engineering audits of public infrastructure is a substantial one, and it is reserved for separate legislation so that it may receive the deliberation it deserves without delaying the requirement established here.

The right to a balanced and healthful ecology under Section 16, Article II of the Constitution, and the mandate that public office is a public trust under Section 1,

Article XI, are not vindicated by appropriating larger sums for resilience. They are vindicated by ensuring that what is appropriated is spent on the right projects, at the right cost, at the right quality, by the right people, and delivered on time.

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


MA. CRISTINA TALAVERA LOPEZ
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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 as the “*Climate and Disaster Resilience Expenditure Accountability Act.*”

SECTION 2. Declaration of Policy. — It is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology, to protect and promote the right to health, to maintain honesty and integrity in the public service, and to adopt and implement a policy of full public disclosure of all transactions involving public interest.

Toward these ends, the State shall ensure that every peso appropriated, released and expended for climate and disaster resilience demonstrably reduces the climate and disaster risk it is intended to address; that every resilience project is the right project, at the right cost, of the right quality, undertaken by qualified persons, and delivered on time; and that the development, funding, procurement, implementation and audit of resilience projects are conducted with full public disclosure and with the effective participation of the communities at risk.

The State further recognizes that the selection and design of resilience projects must rest upon the best available scientific evidence on present and

projected hazards, and that public funds expended upon works which do not reduce risk, or which transfer risk to other communities, constitute a waste of public resources and a violation of the public trust.

SECTION 3. *Mandatory Climate and Disaster Risk Screening.* — Unless otherwise provided in this Act, all resilience projects funded in whole or in part from the General Appropriations Act, from the National Disaster Risk Reduction and Management Fund, from the Local Disaster Risk Reduction and Management Fund, from the People's Survival Fund, from the share of local government units in the national taxes, from official development assistance, or from any other public fund, shall undergo climate and disaster risk screening in accordance with this Act. No resilience project shall proceed to detailed engineering design, release of funds, procurement or award except upon the issuance of a valid Resilience Screening Certificate.

For this purpose, a resilience project shall mean any program, activity, project or component thereof, whether structural or non-structural, the principal purpose or a substantial component of which is to reduce, manage, transfer or adapt to climate or disaster risk. It includes flood control, drainage and pumping works; river, basin and shoreline works; slope and coastal protection; evacuation centers; the retrofitting of schools, health facilities and other public buildings; water security and drought mitigation works; early warning and monitoring systems; and ecosystem-based measures.

SECTION 4. *Climate and Disaster Risk Screening for Resilience Projects Funded through Official Development Assistance.* — Where a resilience project is funded by official development assistance and has undergone an appraisal by the funding institution which the Panel determines to be equivalent in scope and rigor to the screening required under this Act, the Panel shall issue its determination on the basis of that appraisal without requiring a further study, subject to such supplementary determination as the Panel may require.

SECTION 5. *Relationship with the Environmental Impact Statement System.* — The Resilience Screening Certificate is separate from, and shall be required in addition to, the Environmental Compliance Certificate or the Certificate of Non-Coverage issued under Presidential Decree No. 1586. Neither certificate shall substitute for the other, and the issuance of one shall not be a condition for the issuance of the other.

Applications for the Environmental Compliance Certificate and for the Resilience Screening Certificate shall be filed simultaneously and processed in parallel. No applicant shall be required to duplicate any study, survey, baseline data or public consultation already submitted in connection with either application.

SECTION 6. *Resilience Screening Technical Panel.* — There is hereby constituted a Resilience Screening Technical Panel, which shall be convened and chaired by a Commissioner of the Climate Change Commission and composed of the following, or their duly designated representatives holding a rank not lower than director:

- (a) The Administrator of the Philippine Atmospheric, Geophysical and Astronomical Services Administration;
- (b) The Director of the Philippine Institute of Volcanology and Seismology;
- (c) The Administrator of the National Mapping and Resource Information Authority;
- (d) The Director of the Mines and Geosciences Bureau;
- (e) The Director of the Environmental Management Bureau;
- (f) The Director of the Bureau of Design of the Department of Public Works and Highways;
- (g) The Administrator of the Office of Civil Defense; and
- (h) A representative from the Department of Economy, Planning, and Development.

The Panel shall receive and act upon applications for screening, render the hazard determination and design-life hazard projection required under this Act, and issue, deny, or issue subject to conditions the Resilience Screening Certificate. The Panel may require any implementing agency to submit such records, designs, surveys and data as are necessary for a determination under this Act, and may enter and inspect any project site. The refusal or unreasonable delay of an implementing agency to comply shall be a ground for the withholding of the determination and shall be reported to the Commission on Audit and to the Congressional Oversight Committee.

SECTION 7. *Hazard Determination and Design-Life Hazard Projection.* — In all resilience project submitted for screening, the Panel shall render a hazard determination and a design-life hazard projection for the project site within sixty (60) days from the completion of the application. In the hazard determination and design-life hazard projection, the Panel shall rely upon the hazard maps, climate projections, geohazard assessments and geospatial data, the ecosystem and natural capital accounts maintained under Republic Act No. 11995, and such other scientific data as it may require. The Panel shall employ forward-looking projections over the design life of the project and shall not rely solely upon historical return periods.

Where the data necessary for a determination are unavailable or materially incomplete, the Panel shall so state, shall specify the studies required, and shall not issue a favorable determination until said studies are submitted.

SECTION 8. *Issuance of the Resilience Screening Certificate; Contents; Validity.* — Within thirty (30) days from the rendition of the hazard determination and design-life hazard projection, the Panel shall issue the Resilience Screening Certificate, deny it, or issue it subject to such conditions as the hazard determination requires. A denial or an issuance subject to conditions shall state the reasons therefor.

The Certificate shall state, at the minimum: the hazard or hazards which the project is intended to address; the hazard conditions projected over the design life of the project; the alternatives considered, including nature-based and hybrid alternatives, and the basis for the selection of the proposed intervention; the expected reduction in risk and the residual risk; the mitigation measures required; and the effects, if any, of the project upon hazard exposure in adjacent, upstream and downstream communities.

The Certificate shall be valid for three (3) years from issuance and shall lapse if the project has not been procured within that period. The failure of the Panel to act within the periods prescribed by this Act shall not be construed as an approval of an application, and no rule providing for the automatic or deemed approval of applications shall apply to screening under this Act.

SECTION 9. *Appeal from the Denial of Application for Resilience Screening Certificate.* — An implementing agency aggrieved by the denial of a Certificate, or by a condition attached to its issuance, may appeal within fifteen (15) days from receipt to a review body composed of the Secretary of Environment and Natural Resources, the Secretary of Science and Technology and the Vice Chairperson and Executive Director of the Climate Change Commission, which shall resolve the appeal within forty-five (45) days.

The decision of the review body shall be final and executory, without prejudice to judicial review. The review body shall not substitute its own hazard determination for that of the Panel except upon a finding that the determination is unsupported by the scientific data on record. Its resolution shall be in writing, shall state the reasons therefor, and shall be published.

SECTION 10. *Revocation of the Resilience Screening Certificate.* — Where the Certificate is shown to have been issued upon false, incomplete or superseded information, where the project as designed or constructed departs materially from the project as certified, or where the conditions attached to the Certificate are not complied with, the Panel may at its own motion or upon a verified petition filed before it by any person or organization, revoke the same.

Revocation shall be a ground for the suspension of further releases for the project and for the withholding of payment for works not yet performed, and shall be reported to the Commission on Audit and to the Congressional Oversight Committee.

SECTION 11. *Condition Precedent to Release of Funds, Procurement and Award.* — No resilience project shall be implemented, including publication of invitation to bid, award of contract, or issuance of notice to proceed, nor shall any allotment thereof be released until screening has been completed and a Resilience Screening Certificate has been issued.

Any release, obligation, disbursement, award or notice to proceed made in violation of this Section shall be void and the officers responsible therefor shall be personally liable for the amounts involved, without prejudice to criminal and administrative liability under relevant laws.

SECTION 12. *Climate and Resilience Expenditure Tagging.* — All implementing agencies shall tag their programs, activities, and projects in accordance with the typology to be prescribed in the implementing rules and regulations, which shall be consistent with the National Climate Change Action Plan and with the Nationally Determined Contribution of the Philippines as from time to time submitted. The Climate Change Commission and the Department of Budget and Management shall regularly update the prescribed typology of the projects, taking into consideration the most recent National Climate Change Action Plan and the Nationally Determined Contribution.

No program, activity or project shall be tagged, untagged, or retagged except upon written technical justification, which shall be published together with the change.

The Climate Change Commission shall conduct an annual quality assurance review of tagged expenditure. The results of the annual quality assurance review shall be regularly published in machine readable format and any material or repeated mis-tagging shall be reported to the Congressional Oversight Committee.

SECTION 13. *Annual Climate and Resilience Budget Statement.* — The Department of Budget and Management, in coordination with the Climate Change Commission, shall prepare and transmit to Congress, in machine readable format, together with the National Expenditure Program, an Annual Climate and Resilience Budget Statement.

The Statement shall set out the total and disaggregated resilience expenditure proposed, its distribution by agency, by region and by climate priority, its alignment with the National Climate Change Action Plan and the National Adaptation Plan, and a certification status schedule identifying, for every resilience item, whether a

Resilience Screening Certificate has been issued, is pending, or has not been applied for.

SECTION 14. *Itemization and Disclosure of Resilience Items.* — Every resilience item in the budget proposal of an implementing agency, and in the data published by the Department of Budget and Management, shall be stated by individual project and shall identify the project title, the exact geographic location expressed in coordinates, the hazard addressed, the total project cost, the implementing office, and the certification status of the project.

No officer of any implementing agency shall, after the enactment of the General Appropriations Act, identify, select, designate or substitute the specific project to which a resilience appropriation shall be applied, except in accordance with the certification and disclosure requirements of this Act.

SECTION 15. *Resilience Expenditure Transparency Portal.* — The Department of Budget and Management, in coordination with the Climate Change Commission, the Department of Public Works and Highways and the Department of the Interior and Local Government, shall establish and maintain a Resilience Expenditure Transparency Portal. The portal shall publish, for every resilience project: the Resilience Screening Certificate and the hazard determination upon which it rests; the procurement records required to be published under Republic Act No. 12009, including the identity of the contractor and of its beneficial owners; the contract and all variation orders; the implementation status and geotagged photographic records; and the as-built documentation upon completion.

The portal shall likewise publish the documents transmitted to the President and to the Department of Budget and Management in respect of resilience items following the enactment of the General Appropriations Act, in such form as to permit comparison with the National Expenditure Program as submitted.

SECTION 16. *Accreditation of Monitors; Access to Documents.* — The Climate Change Commission, in coordination with the Department of the Interior and Local Government and the Commission on Audit, shall prescribe simple and non-discretionary criteria for the accreditation of monitors, which shall be open to civil society organizations, professional organizations, academic institutions, people's organizations, and organizations of persons with disabilities.

Accredited Monitors shall have the right to access all documents published or required to be published under this Act, to observe procurement proceedings as resource persons, to be furnished the agenda and supporting documents not later than seven (7) days before any proceeding they are entitled to observe, and to enter project sites subject to reasonable safety requirements.

SECTION 17. *Protection of Reporting Persons.* — No person who reports in good faith a violation of this Act shall be subjected to dismissal, demotion, suspension, transfer, harassment, or any other retaliatory or discriminatory act, nor shall such person be held civilly or criminally liable for the disclosure. Any retaliatory act shall be void, and the aggrieved person shall be entitled to reinstatement, back wages and damages, without prejudice to the criminal liability of the offender.

SECTION 18. *Prohibited Acts.* — It shall be unlawful for any person:

- (a) To issue a Resilience Screening Certificate upon information known to be false, incomplete or superseded, or to procure the issuance of a Certificate by such means;
- (b) To make any false or materially incomplete representation in an application for screening, or in any study, survey or data submitted in support of it, or to withhold from the Panel any data material to the hazard determination;
- (c) To release, obligate or disburse public funds, to invite bids, to award a contract, or to issue a notice to proceed, for a resilience project for which no valid Certificate has been issued;
- (d) To implement a resilience project in material departure from the project as certified, or in violation of a condition attached to the Certificate, without a further determination by the Panel;
- (e) To tag, untag, or retag any expenditure without the written technical justification required by this Act, or to tag as resilience expenditure any item known not to qualify;
- (f) To fail, without justifiable cause, to publish any document within the period prescribed by this Act, or to remove or restrict access to any document required to be maintained in the public archive;
- (g) To falsify as-built documentation, geotagged records or any certification required under this Act;
- (h) To obstruct, delay or refuse a site inspection by the Panel or the access of an Accredited Monitor; or
- (i) To commit any retaliatory act against a reporting person in violation of this Act.

SECTION 19. *Penalties.* — Any person who commits any of the acts prohibited under the immediately preceding Section shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than Five Million Pesos (P5,000,000.00).

Where the offender is a public officer, the penalty shall be imposed in its maximum period and shall carry with it perpetual absolute disqualification from public office. Where the act complained of has resulted in loss of life or in damage to

property exceeding Fifty Million Pesos (P50,000,000.00), the penalty shall be *prision mayor* and a fine of not less than Five Million Pesos (P5,000,000.00) but not more than Twenty Million Pesos (P20,000,000.00).

Where the offender is a juridical person, the penalty shall be imposed upon its responsible officers, directors and beneficial owners who participated in, permitted or by their gross negligence allowed the commission of the offense. The juridical person shall in addition be perpetually disqualified from participating in the procurement of resilience projects, and the proceeds of any contract obtained in violation of this Act shall be forfeited in favor of the Government.

SECTION 20. *Congressional Oversight Committee.* — A Congressional Oversight Committee is hereby constituted, composed of the Chairpersons of the Committees on Appropriations, Climate Change, and Public Works and Highways of the House of Representatives, and of the corresponding Committees of the Senate, and two (2) additional members from each House. The Committee shall review the implementing rules and regulations and shall receive the reports required under this Act.

SECTION 21. *Implementing Rules and Regulations.* — Within one hundred twenty (120) days from the effectivity of this Act, the Climate Change Commission, the Department of Budget and Management, the Department of Public Works and Highways, the Department of Environment and Natural Resources, the Department of Science and Technology, the Department of the Interior and Local Government and the Department of Economy, Planning and Development, in consultation with the Commission on Audit, the Government Procurement Policy Board, the leagues of local government units and organizations of Accredited Monitors, shall promulgate the implementing rules and regulations.

The failure to promulgate the implementing rules and regulations within the period herein provided shall not suspend the effectivity of this Act, and the provisions hereof which are complete in themselves shall be executed accordingly.

SECTION 22. *Appropriations.* — The amount necessary for the initial implementation of this Act shall be charged against the current appropriations of the agencies concerned. Thereafter, such sums as may be necessary for the operation of the Panel, for the establishment and maintenance of the portal, and for the technical assistance facility for local government units shall be included in the annual General Appropriations Act.

SECTION 23. *Transitory Provisions.* — Resilience projects for which a contract has been awarded prior to the effectivity of this Act shall not be required to secure a Resilience Screening Certificate, but shall be subject to the publication, geotagging and as-built documentation requirements of this Act.

The screening requirement shall apply to national government agencies upon the effectivity of this Act, and to local government units two (2) years thereafter. Within that period the Climate Change Commission and the Department of the Interior and Local Government shall establish a technical assistance facility for local government units and shall give priority to fourth, fifth and sixth class municipalities and to local government units situated in high-hazard zones.

The Panel shall be convened within sixty (60) days from the effectivity of this Act.

SECTION 24. *Separability Clause.* — If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions which are not affected shall continue to be in full force and effect.

SECTION 25. *Repealing Clause.* — All laws, presidential decrees, executive orders, or issuances, or any part thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 26. *Effectivity.* — This Act shall take effect fifteen (15) days after its publication in the Official Gazette or any newspaper of general circulation.

Approved,