

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



EIGHTEENTH CONGRESS

First Regular Session

5758

HOUSE BILL NO. _____

Introduced by Rep. Edgar Mary S. Sarmiento

EXPLANATORY NOTE

The Philippines, being an archipelagic country, is a state party to various international maritime conventions pertaining to safety of life at sea, prevention of pollution from ships, load lines, tonnage measurements of ships, and regulations for preventing collisions at sea. In fact, the Philippines is a state party to several international maritime conventions.

It is undeniable that these conventions play a significant role in ensuring the regulation of maritime activities and protection of water resources that affects everyone. It is laudable therefore that our country agreed to comply with the said conventions which greatly promotes our interests as well. As a state party, it is our duty and obligation to effectively implement and enforce the maritime conventions considering that these conventions are binding agreements. Under the well-known principle in customary law and as provided in Article 26 of the Vienna Convention on the Law of Treaties (VCLT), "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Hence, it is in our best interests as a nation, to faithfully comply with our international obligations.

Our country has been placed on the White List of the Tokyo Port State Control Memorandum of Understanding (Tokyo MoU)¹ which measures and classifies performance and detention rate of ships in our registry during the port State control inspections among Tokyo MoU members. Our 3-year rolling average detention percentage from 2016-2018 is 4.72%². In view of the continuous commitment to improve the country's competitiveness performance as a flag registry, this representation proposes this bill which is to be known as "Maritime Safety, Security and Prevention of Ship-Sourced Pollution Act of the Philippines."

¹ Tokyo- Memorandum of Agreement Secretariat. (2018) *Annual Report on Port State Control in the Asia-Pacific Region 2018*. Available at: <http://www.tokyo-mou.org/doc/ANN18-web.pdf> (Accessed: 5 December 2019)

² *Id.*

This bill aims to mandate the Department of Transportation (DOTr) to act as the single and central maritime administrator and exercise all powers and functions for the effective implementation and enforcement of international maritime instruments to which the Philippines is a State Party. Through this proposed measure, better policy coordination and enforcement can be achieved since the department shall provide the overall framework for policies involving regulation of maritime activities which includes maritime safety, security and prevention of ship-sourced pollution.

Furthermore, the Maritime Industry Authority (MARINA) shall exercise flag state control pursuant to relevant laws and is given the power to recommend to the Department of Foreign Affairs (DFA) the adoption of international maritime instruments that will benefit our country. MARINA is also authorized to amend and revise its rules and regulations to conform with the amendments to the relevant convention or treaty without need of further legislative or executive authorization under specific instances provided in the bill. This empowers MARINA to exercise administrative flexibility in executing its functions.

Recently, the Philippines was re-elected as member of the International Maritime Organization (IMO) Council under Category C for Biennium 2020-2021. As council member, the country is in the position to have better representation of its special interests in maritime transport or navigation. Consequently, we can further propel our competitive stance in the maritime industry by adopting national measures which also prioritize maritime safety, security and protection such as this proposed bill. The legislation of a national law which will implement our obligations under international conventions displays our commitment to promote the overall interests of the maritime sector.

For the foregoing reasons, the approval of this bill is earnestly sought.


EDGAR MARY S. SARMIENTO
Representative, First District of Samar

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AN ACT
PROVIDING FOR THE FULL AND EFFECTIVE IMPLEMENTATION AND
ENFORCEMENT OF INTERNATIONAL MARITIME INSTRUMENTS OF WHICH
THE PHILIPPINES IS A STATE-PARTY

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

Chapter I
General Provisions

Section 1. *Short Title.* – This Act shall be known as the “Maritime Safety, Security and Prevention of Ship-Sourced Pollution Act of the Philippines”

Section 2. *Declaration of Policy.* – the following are hereby declared to be the policies of the State:

(a) The State shall provide for the full and effective implementation and enforcement of international maritime instruments that cover safety of life at sea, prevention of pollution from ships, load lines, tonnage measurements of ships, and regulations for preventing collisions at sea, of which the Philippines is a State Party;

(b) The State shall provide for a platform for the adoption of regulations implementing the technical annexes, provisions and requirements of these International Maritime Instruments as well as future amendments to such technical provisions and requirements as the State Parties to these Conventions may adopt from time to time;

1 (c) The State shall comply with its duties and obligations to the international community
2 as State Party to these international maritime instruments by ensuring the effective exercise of
3 its jurisdiction and control over ships flying its flag, and that those who are responsible for the
4 management and operation of a ship registered in the Philippines including their duly registered
5 owners, operate their ships responsibly; and

6 (d) The State shall provide a mechanism for the full and effective implementation of
7 Port State Control guidelines as provided by regional agreements or Memoranda of
8 Understanding by which it may consistently carry out its obligation to conduct inspections on
9 ships of other States, whether parties to the international maritime instruments or not, when
10 these are within the waters, ports, harbors and offshore terminals of the Philippines.

11 **Section 3. Scope of the Act.** – Unless otherwise indicated, this Act shall apply to:

12 (a) All merchant marine ships, whether seagoing or coastwise, which are registered
13 under the Philippine flag;

14 (b) All persons, partnerships, corporations, firms or other entities duly registered or
15 licensed in the Philippines to engage in the business of shipping as ship owners, ship operators,
16 characters, or ship managers, or those acting on their behalf; and

17 (c) All foreign ships that are within the waters, ports, harbors and offshore terminals of
18 the Philippines regardless of whether or not they are registered in or belong to State Parties to
19 the international maritime instruments sought to be implemented by this Act.

20 **Section 4. Definition of Terms.** – As used in this Act:

21 (a) *International maritime instruments* refer to all conventions, codes,
22 recommendations, procedures, guidelines, or other similar instruments pertaining to safety of
23 life at sea, prevention of pollution from ships, load lines, tonnage measurements of ships, and
24 regulations for preventing collisions at sea, of which the Philippines is a State Party, including:

- 25 1. The International Convention for the Safety of Life at Sea, 1974 and its
26 Protocols of 1978 and 1988 and Agreement of 1996;
- 27 2. The International Convention for the Prevention of Pollution from Ships, 1973,
28 its Protocol of 1978 and its Protocol of 1997;
- 29 3. The Convention on the International Regulations for Preventing Collisions at
30 Sea 1972;
- 31 4. The International Convention on Load Lines 1966 and its protocol of 1988, as
32 amended in 2003;
- 33 5. The International Convention of the Tonnage Measurement of Ships 1969; and

1 6. All other international instruments, codes, recommendations, procedures, and
2 guidelines implementing or applying these Conventions.

3 (b) *Recognized Organization* refers to an organization that has been assessed as such
4 by the Department of Transportation (DOTr), in accordance with the relevant guidelines of the
5 International Maritime Organization (IMO) on recognized organizations.

6 **Section 5. Powers and Functions. –**

7 (a) DOTr. – For purposes of this Act, the DOTr shall have the following powers and
8 functions:

- 9 1. Act as the single and central maritime administration, and exercise all powers
10 and functions relative to the compliance with, and effective implementation and
11 enforcement of international maritime instruments to which the Philippines is a
12 State Party;
- 13 2. Prescribe, fix, issue, revise, amend, update or repeal rules and regulations from
14 time to time to ensure the full and effective implementation and enforcement of
15 international maritime instruments;
- 16 3. Determine the minimum standards and requirements, and issue rules and
17 regulations applicable to particular types of ships, considering their size, type,
18 motive capacity, trading limits and other physical and technical attributes
19 without diluting the minimum requirements of the international maritime
20 instruments;
- 21 4. Determine which ships shall be excluded or exempted from the coverage of
22 relevant regulations, and establish equivalent technical standards where it is
23 determined that by virtue of the ship's size, type, motive capacity, or trading
24 limits, it would be more workable to require the implementation of such
25 equivalent standards, without compromising the safety of the ship, its crew,
26 passengers and cargo, and without exposing the marine environment to the risk
27 of damage from ship-sourced pollution;
- 28 5. Assess and determine the qualification of any recognized organization, execute
29 the corollary written agreement to evidence the terms and conditions by which
30 such recognized organization shall act on its behalf, and the extent of the powers
31 delegated to such recognized organization in carrying out initial periodic
32 inspections and surveys, including the capacity to issue ship certificates on its
33 behalf;

- 1 6. Require the master, or in the absence of the latter, the owner, charterer, manager
2 or operator to submit, without delay, a full written report of any incident
3 involving the ship that may endanger the safety of the ship, its crew, passengers,
4 or cargo, or pose a threat to the marine environment;
- 5 7. Following any marine casualty, accident or incident involving a ship in the
6 Philippine registry, undertake, on its own or through a duly constituted
7 independent group of suitably qualified safety inspectors, a marine casualty
8 safety investigation which is independent from any other form of investigation
9 and is not intended to apportion blame or determine liability, but is conducted
10 to determine the cause of the accident and the identification of measures to
11 prevent the occurrence of similar marine casualties, accidents or incidents in the
12 future;
- 13 8. Institute amendments to existing regulations to enhance the safety and security
14 of ships, persons and property and the protection of the marine environment
15 following receipt of any recommendation arising from the marine safety
16 inspection report;
- 17 9. Receive the report of any violation from another State and conduct any other
18 investigation on a ship in the Philippine registry to protect public interest and
19 impose such penalties, sanctions, and levy such fines commensurate to the
20 gravity of the offense to ensure effective implementation, compliance and
21 enforcement of Maritime Conventions and upon completion of the
22 investigation, inform the State submitting the report of the action taken to
23 address the violation;
- 24 10. Act as the designated point of contact for all matters related to the IMO with
25 respect to safety of life at sea, prevention of pollution from ships, load lines,
26 tonnage measurements of ships, and regulations for preventing collisions at sea;
27 and
- 28 11. Exercise such other powers and functions necessary to fully implement
29 international maritime instruments.

30 When creating procedures, rules and regulations, the DOTr shall always be guided by
31 the relevant conventions, instruments, codes, recommendations, and guidelines of the IMO.

32 (b) Philippine Coast Guard (PCG). – For purposes of this Act, the PCG shall exercise
33 port State control, consistent with its powers and functions under Republic Act No. 9993,

1 otherwise known as the Philippine Coast Guard Law of 2009, and its Implementing Rules and
2 Regulations.

3 (c) Maritime Industry Authority (MARINA). – For purposes of this Act, the MARINA
4 shall exercise flag State control, consistent with its powers and functions under Presidential
5 Decree No. 474, otherwise known as the Maritime Industry Decree of 1974 and Executive
6 Order No. 1256 and 125-A, Series of 1987, as amended otherwise known as the Reorganization
7 Act of the Ministry of Transportation and Communications.

8 **Section 6. Power to Adopt Regulations to Conform to International Maritime**
9 **Conventions.** – The MARINA, with the concurrence of the DOTr, through the Secretary, shall
10 recommend to the Department of Foreign Affairs (DFA) the adoption of international maritime
11 instruments which the Philippines is not yet a party to, so that the appropriate recommendation
12 can be made, the relevant instrument of ratification nor accession may be issued by the
13 President, and the concurrence of the Senate of the Philippines may be obtained; *Provided*, that
14 in the case of any subsequent amendment to any technical annex of any existing international
15 convention or treaty to which the Philippines is already a party and which is deemed accepted
16 by the State parties to the convention after the lapse of the specified time, the MARINA is
17 hereby empowered and authorized to amend and revise its rules and regulations to conform
18 with the amendments to the relevant convention or treaty without need of further legislative or
19 executive authorization.

20 **Section 7. Coordination Among Regulatory Agencies.** – the Secretary of
21 Transportation shall direct, oversee and document the creation, maintenance and management
22 of the appropriate coordinative framework and structure among all government agencies
23 mandated by law to supervise and regulate all parties referred to in Section 2 of this Act in
24 order to ensure the harmonized implementation and enforcement of the conventions covered
25 by this Act. For this purpose, the Secretary of Transportation shall issue relevant regulations,
26 orders, processes and procedures within sixty (60) days from the effective date of this Act,
27 which regulations may be amended from time to time as needed. The issuance of the Secretary
28 of Transportation shall give special attention to clearly identify the processes and procedures
29 to be followed by the different regulatory agencies, considering each agency's mandate,
30 technical competence and expertise, organizational structure and capabilities for carrying out
31 the Philippines' obligations under the conventions. The Secretary of Transportation shall further
32 clarify functions and tasks which require:

33 (a) execution directly by the agency;

34 (b) execution indirectly by an agency acting on behalf of another;

- (c) coordination of several agencies by a lead agency;
- (d) cooperation by agencies acting independently of each other; or
- (e) monitoring and reporting to another agency

The Secretary of Transportation, as needed, shall coordinate with other executive departments whose line or attached agencies likewise exercise relevant functions or provide technical services that ensure the safety of the ship, its crew, passengers and cargo and the protection of the marine environment, such as the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) under the Department of Science and Technology (DOST), and the National Mapping and Resource Information Authority (NAMRIA) under the Department of Environment and Natural Resources (DENR), among others.

Section 9. *Implementing Rules and Regulations.* – the DOTr shall issue the implementing rules and regulations for each of the Maritime Instruments within six (6) months from the effectivity of this Act.

Section 10. *Separability Clause.* – If, for any reason, any section, subsection, clause or term of this Act is held to be illegal, invalid, or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

Section 11. *Repealing Clause.* – All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby amended, modified or repealed accordingly.

Section 12. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,