

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



'14 JAN 27 P4 53

SENATE
S. B. No. 2086

RECEIVED BY: 

Introduced by Senator Maria Lourdes Nancy S. Binay

EXPLANATORY NOTE

Section 2, Article XII of the 1987 Constitution clarifies that all natural resources are owned by the State. As owner of natural resources, the State may directly undertake the exploration, development and utilization of natural resources through co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law.

Republic Act No. 7942 or the Philippine Mining Act of 1995 implements Section 2, Article XII of the Constitution has adopted the first-to-file system in the availment of mining rights therein. This system however, probably an unintended consequence, has resulted in filing of applications for purposes of speculation. Companies with dubious capability of exploring, developing and utilizing mineral resources have applied and acquired priority under the Mining Act of 1995 over vast areas in the country. These companies peddle these mining rights to large mining companies all over the world. In the meantime, there are no developments ongoing in the areas covered by existing applications for mineral rights.

This situation has led the Department of Environment and Natural Resources (DENR) to espouse a Use it or Lose it Policy in respect of mining applications. While this policy would weed out speculators in the mining industry, the first-to-file system does not address the need to maximize benefits to the State.

One of the best practices all over the world is public bidding of mineral rights. Public bidding is the best method of assuring the government of the best price in the market for its natural resources. During the pre-qualification process, the Government can effectively weed out speculators or mining companies with no technical capability to develop mines.

Although Section 6 of Executive Order No. 79 series of 2012 mandated competitive public bidding in the grant of mineral rights and mining tenements over areas with known and verified mineral resources and reserves, the legality of said provision is questionable in view of the express provisions under the Mining Act supporting the first-to-file rule.

Moreover, to recognize and encourage initiatives from the private sector, public bidding schemes such as Swiss Challenge for unsolicited proposals may work to the best interest of the government.

To ensure that public bidding is observed as binding law even beyond the Aquino administration, the passage of this Bill is earnestly requested.



MARIA LOURDES NANCY S. BINAY
Senator

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1 AN ACT MANDATING THE CONDUCT OF COMPETITIVE PUBLIC BIDDING OF
2 MINING RIGHTS AND TENEMENTS, PROVIDING FOR SWISS CHALLENGE
3 PROCEDURES AND AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7942 OR
4 THE PHILIPPINE MINING ACT OF 1995
5

6 *Be it enacted by the Senate and House of Representatives of the Philippines in Congress*
7 *assembled:*
8

9 **SECTION 1.** Section 18 of Republic Act No. 7942 is hereby amended to read as follows:
10

11 **Section 18**
12 **Areas Open to Mining Operations**
13

14 Subject to any existing rights or reservations and prior agreements of all parties, all
15 mineral resources in public or private lands, including timber or forestlands as defined
16 in existing laws, shall be open to mineral agreements or financial or technical
17 assistance agreement applications. Any conflict that may arise under this provision
18 shall be heard and resolved by the panel of arbitrators.
19

20 THE GRANT OF MINING RIGHTS AND MINING TENEMENTS OVER AREAS
21 WITH KNOWN AND VERIFIED MINERAL RESOURCES AND RESERVES,
22 INCLUDING THOSE OWNED BY THE GOVERNMENT AND ALL EXPIRED
23 TENEMENTS, SHALL BE UNDERTAKEN THROUGH COMPETITIVE PUBLIC
24 BIDDING. THE MINES AND GEOSCIENCES BUREAU (MGB) SHALL
25 PREPARE THE NECESSARY COMPETITIVE BID PACKAGES AND
26 FORMULATE THE PROPER GUIDELINES AND PROCEDURES TO CONDUCT
27 THE SAME, WHICH SHALL INCLUDE ENSURING THAT THE SOCIAL
28 ACCEPTABILITY OF THE PROPOSED PROJECT HAS BEEN SECURED.
29

30 **SECTION 2.** Section 29 is hereby amended to read as follows:
31

32 **Section 29**
33 **UNSOLICITED PROPOSALS TO ENTER INTO MINERAL AGREEMENTS**
34

35 AN UNSOLICITED PROPOSAL FOR MINERAL AGREEMENT MAY BE FILED
36 IN THE REGION WHERE THE AREAS OF INTEREST ARE LOCATED OR
37 DIRECTLY WITH THE BUREAU.
38

1 UPON RECEIPT OF SUCH PROPOSAL, THE BUREAU SHALL INVITE BY
2 PUBLICATION, FOR THREE (3) CONSECUTIVE WEEKS, IN A NEWSPAPER
3 OF GENERAL CIRCULATION, COMPARATIVE OR COMPETITIVE
4 PROPOSALS. SHOULD THERE BE NO OTHER PROPOSAL RECEIVED AFTER
5 A PERIOD OF SIXTY (60) WORKING DAYS AFTER THE DATE OF THE LAST
6 PUBLICATION, THE BUREAU SHALL EXECUTE THE MINERAL
7 AGREEMENT WITH THE PROPONENT; PROVIDED, HOWEVER, THAT IN
8 THE EVENT ANOTHER PROPONENT SUBMITS A SUPERIOR PROPOSAL,
9 THE ORIGINAL PROPONENT SHALL HAVE THE RIGHT TO MATCH THAT
10 PRICE WITHIN THIRTY (30) WORKING DAYS.

11
12 **SECTION 3.** Section 37 is hereby amended to read as follows

13
14 **Section 37**
15 **UNSOLICITED PROPOSALS FOR FTAAS**

16
17 UNSOLICITED PROPOSALS FOR FTAAS MAY BE FILED WITH THE
18 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR).
19 UPON RECEIPT OF SUCH PROPOSALS, THE DENR SHALL INVITE BY
20 PUBLICATION, FOR FOUR (4) CONSECUTIVE WEEKS, IN A NEWSPAPER OF
21 GENERAL CIRCULATION, COMPARATIVE OR COMPETITIVE PROPOSALS.
22 SHOULD THERE BE NO OTHER PROPOSAL IS RECEIVED FOR A PERIOD OF
23 SIXTY (60) WORKING DAYS AFTER THE DATE OF THE LAST
24 PUBLICATION, THE DENR SHALL EXECUTE AN FTAAS WITH THE
25 PROPONENT, WHICH AGREEMENT SHALL BE APPROVED BY THE
26 PRESIDENT OF THE PHILIPPINES TO BE BINDING AND EFFECTIVE.

27
28 IN THE EVENT ANOTHER PROPONENT SUBMITS A SUPERIOR PROPOSAL,
29 THE ORIGINAL PROPONENT SHALL HAVE THE RIGHT TO MATCH THAT
30 PRICE WITHIN THIRTY (30) WORKING DAYS. AFTER THE SAID PERIOD,
31 THE DENR SHALL EXECUTE THE FTAAS WITH THE WINNING BIDDER,
32 WHICH AGREEMENT SHALL BE APPROVED BY THE PRESIDENT OF THE
33 PHILIPPINES TO BE BINDING AND EFFECTIVE.

34
35 **SECTION 4.** *Implementing Rules and Regulations.* The DENR/MGB shall issue the
36 necessary implementing rules and regulations within ninety (90) days from the approval of
37 this Act.

38
39 **SECTION 5.** *Separability Clause.* Should any part or provision of this Act be declared
40 unconstitutional or invalid; other parts or provisions hereof not otherwise affected thereby
41 shall remain in full force and effect.

42
43 **SECTION 6.** *Effectivity.* This Act shall take effect fifteen (15) days after its publication in at
44 least two (2) newspapers of general circulation.

45
46 Approved,