

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

14 AUG 18 P4:15

SENATE

S. No. 2362

RECEIVED BY: fr

Introduced by Senator Ralph G. Recto

AN ACT
ESTABLISHING THE FISCAL REGIME AND REVENUE SHARING
ARRANGEMENT FOR LARGE-SCALE METALLIC MINING, AND FOR OTHER
PURPOSES

Explanatory Note

The Philippines, is the 5th richest country in the world in terms of mineral resources, third in gold, fourth in copper and fifth in nickel resources.¹

Our mining industry offers so much growth potential. Thus, to take advantage of the immense possibilities in this sector, this bill aims to provide for an equitable and competitive tax regime to revitalize and strengthen the mineral resource sector; provide long-term benefits that would outweigh costs; and establish a stronger link between the growth of the sector and overall national development.

In 2012, President Benigno Aquino III expressed in his State of the Nation Address the government's aim to raise its revenues from the mining industry. He appealed for the passage of a law that would ensure that the government receives just benefits from mining while protecting the environment. Executive Order No. 79 was issued on July 6, 2012 to lay down general reform directions in the mining industry.

In response to the President's call for reforms in the mining sector, this measure proposes a fiscal regime and revenue arrangement between the government and the mining contractor, taking into consideration the role of the government as the owner of the minerals and the impact of mining activities on the environment and community.

All Mineral Agreements (MAs) and Financial or Technical Assistance Agreements (FTAAs) covering large-scale metallic mineral mining operations shall be governed by the new fiscal regime proposed in this bill.

Of the 30 million hectares of our total land area, 9 million hectares is identified as having high mineral potential, of which only 3.11% or 0.932 million hectares is covered by mining contracts/permits.²

Guided by the government's commitment to responsible minerals development, only mining areas declared as Mining Industry Zones (MIZ) can undertake mining operations and shall be administered by the Philippine Mining Development Corporation.

¹Atty. Ronald S. Recidoro. EO 79 and Beyond: The State and Prospects of the Philippine Mining Industry. Chamber of Mines of the Philippines. <http://www.slideshare.net/ronnierecidoro/mining-101-the-basics-of-mining-and-the-philippine-mining-industry>

²<http://www.mgb.gov.ph/Files/ItemLinks/ThePhilippineMineralsIndustryAtAGlance.jpg>

As a piece of legislation that intends to provide long-term benefits to the government, the following provisions are included:

- a) Fiscal regime and revenue sharing agreement wherein the government share shall be ten percent (10%) of gross revenue or fifty-five percent (55%) of Adjusted Net Mining Revenue whichever is higher;
- b) Establishment of social and environmental funds;
- c) Allocation of government share wherein the national government shall receive sixty percent (60%) while the host local government unit shall get forty percent (40%); and
- d) Establishment of Environmental/Rehabilitation Fund for government environmental mining programs determined by the Mining Industry Coordinating Council.

In order to enhance government accountability, the local government units, indigenous cultural communities through the National Commission on Indigenous Peoples, the Department of Environment and Natural Resources and other agencies concerned shall regularly submit fund utilization and other reports.

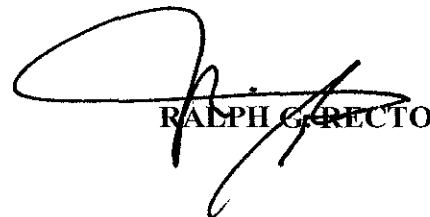
Likewise, this bill also aims to attract quality investments by providing the following incentives:

- a) Recoverable Pre-operating Expenses; and
- b) Duty-free importation of specialized capital mining equipment.

The mining sector, composed of only 41 operating metallic mines and 3 processing plants/smelters, with total investments of US\$6.67 billion from 2004 to 2013,³ has contributed 0.7% to GDP with a gross production value of P157.1 billion in 2013. In the same year, the sector has employed 250,000 or 0.6% of the country's total employment; and has paid a total of P18.879 billion in taxes, fees and royalties.⁴

The benefit of this sector to the economy in terms of exports, jobs, and national and local revenues is substantial. Our archipelago has an estimated value of \$1.4 trillion in metallic and non-metallic mineral reserves.⁵ If we can tap at least 3.5% of these mineral reserves, the national government can settle its total outstanding debt amounting to P5.632 trillion.⁶

With the foregoing considered, immediate passage of this bill is earnestly sought.


RALPH G. RECTO

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³ <http://www.mgb.gov.ph/Files/ItemLinks/ThePhilippineMineralsIndustryAtAGlance.jpg>

⁴ Mining Industry Statistics. Mines and Geosciences Bureau. July 8, 2014.

⁵ Arangkada Philippines 2010: A Business Perspective. Joint Foreign Chambers. December 2010. <http://www.investphilippines.info/arangkada/seven-winners/mining/background/>

⁶ Selected Economic And Financial Indicators. August 7, 2014. <http://www.bsp.gov.ph/statistics/keystat/sefi.pdf>

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ESTABLISHING THE FISCAL REGIME AND REVENUE SHARING
ARRANGEMENT FOR LARGE-SCALE METALLIC MINING, AND FOR OTHER
PURPOSES

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

1 **SECTION 1. Short Title.** – This Act shall be known as the "Philippine Mineral Resource
2 Revenue Sharing Act of 2014".

3 **SEC. 2. Declaration of Policy.** –

4 (a) All mineral resources in public and private lands within the territory and exclusive
5 economic zone of the Republic of the Philippines are owned by the State. The
6 exploration, extraction and utilization of these resources shall be allowed based on real
7 contributions to the economic growth of the country, and subject to the exercise by the
8 State of its regulatory powers to promote and protect the general welfare of the country;

9 (b) The State shall effectively safeguard the environment and protect the rights of affected
10 communities;

11 (c) The State shall get a fair and equitable share of the revenues and economic
12 benefits derived from the mineral resources. Any economic rent arising from such
13 exploration, extraction and utilization belongs to the State;

14 (d) The State shall establish a fiscal regime for the large-scale exploration, development
15 and commercial utilization of mineral resources in the country that shall apply to the
16 Contractor;

17 (e) The State shall promote investments in mining areas allowed by the Government
18 consistent with the revenue sharing arrangements under this Act; and

19 (f) The State shall encourage mining investments to develop value-adding and
20 downstream industries pursuant to the development program of the country.

21 **SEC. 3. Definition of Terms.** – As used in this Act, the following shall mean:

22 (a) "Adjusted Net Mining Revenue " means gross revenue less allowable costs
23 that include production costs as defined in item (t) hereof and the actual
24 general and administrative costs, but not to exceed ten percent (10%) of the
25 direct mining, milling and processing costs. Other allowable costs may be

1 determined in the Implementing Rules and Regulations of this Act. Pre-
2 operating expenses may be allowed as deduction provided that the amount
3 shall be deducted within a five-year period from start of commercial
4 operation. The interest expenses, and bank and financial charges shall not be
5 allowed as deductible expenses from the gross revenue.

6 (b) "Adjusted Net Mining Revenue Margin" means total adjusted net mining
7 revenue divided by gross revenue.

8 (c) "Administrative and Judicial Costs" means fees, charges, and or penalties
9 imposed by administrative agencies in the exercise of their regular
10 administrative functions and or quasi-judicial functions, and those imposed by
11 the judiciary under the relevant laws and rules and regulations.

12 (d) "Contract Area" means the land or body of water delineated under a mineral
13 agreement or financial or technical assistance agreement properly defined by
14 longitude and latitude.

15 (e) "Contractor" means a qualified person, acting alone or in consortium, who is a
16 party to a mineral agreement or to a financial or technical assistance
17 agreement.

18 (f) "Co-production Agreement" means an agreement between the Government
19 and the Contractor wherein the Government shall provide inputs to the mining
20 operations other than the mineral resource.

21 (g) "Direct Milling and Processing Costs" means expenditures and expenses
22 directly incurred in the mechanical and physical processing and/or chemical
23 separation of the ore from the waste to produce marketable mineral products.

24 (h) "Direct Mining Costs" means expenditures and expenses directly incurred in
25 all activities preparatory to and in the actual extraction of the ore from the
26 earth and transporting it to the mill plant for mineral processing.

27 (i) "Excess Adjusted Net Mining Revenue" means the adjusted net mining
28 revenue that is in excess of the threshold adjusted net mining revenue or the
29 difference between the total adjusted net mining revenue and the threshold
30 adjusted net mining revenue.

31 (j) "Final Mining Area" means the contract area or portion(s) thereof identified
32 by the Contractor as defined and delineated in a survey plan duly approved by
33 the Director / Regional Director concerned of the Mines and Geosciences
34 Bureau for purposes of large-scale mining, development and utilization of
35 mineral resources, and sites for support facilities.

36 (k) "Financial or Technical Assistance Agreement" means a contract involving
37 financial or technical assistance for large-scale exploration, development and
38 utilization of mineral resources.

- 1 (l) "Joint-venture Agreement" means an agreement where a joint-venture
2 company is organized by the Government and the Contractor with both parties
3 having equity shares. Aside from earnings in equity, the Government shall be
4 entitled to a share in the gross output.
- 5 (m) "Large scale metallic mining" means mining activities involving metallic
6 minerals and which are not classified as small-scale mining.
- 7 (n) "Metallic Mineral" means a mineral having a brilliant appearance, quite
8 opaque to light, usually giving a black or very black streak, and from which a
9 metallic element/ component can be extracted/ utilized for profit.
- 10 (o) "Mineral Agreement" means a contract between the Government and a
11 Contractor, involving mineral production-sharing agreement, co-production
12 agreement, or joint-venture agreement.
- 13 (p) "Mineral Processing" means the milling, beneficiation, leaching, smelting,
14 cyanidation, calcination, upgrading or by similar means, of ores, minerals,
15 rocks, mill tailings, mine waste and other metallurgical by-products to convert
16 the same into marketable products.
- 17 (q) "Mineral Production-sharing Agreement" means an agreement where the
18 Government grants to the Contractor the exclusive right to conduct mining
19 operations within a contract area and shares in the revenue pursuant to Section
20 7 of this Act. The Contractor shall provide the financing, technology,
21 management and personnel necessary for the implementation of this
22 agreement.
- 23 (r) "Mineral Products" means materials derived from ores, minerals and/or rocks
24 and prepared into a marketable state by mineral processing.
- 25 (s) "Mining Industry Zone" means a final mining area as defined in Section 3 (j)
26 of this Act, endorsed by the Secretary of the Department of Environment and
27 Natural Resources for declaration as such and whose metes and bounds are
28 fixed and delimited by a Presidential Proclamation.
- 29 (t) "Production Cost" means the direct mining, milling and processing costs, and
30 other allowable costs which are necessary and directly related to mining
31 operations.
- 32 (u) "Small-scale mining" means mining activities which rely heavily on manual
33 labor using simple implements and methods and do not use explosives or
34 heavy mining equipment.
- 35 (v) "Threshold Adjusted Net Mining Revenue" means fifty percent (50%) of the
36 gross revenue.

1 **CHAPTER II**

2 **SCOPE OF APPLICATION**

3 **SEC. 4. Scope.** This Act shall govern and apply to new Mineral Agreements (MAs) and
4 Financial or Technical Assistance Agreements (FTAAs) covering large-scale metallic mineral
5 mining operations that are entered into upon the effectivity of this Act. This shall also cover
6 existing MAs and FTAAs where such agreements provide that any terms and conditions
7 resulting from repeal or amendment of any existing laws or regulations or from the enactment of
8 a law, regulation or administrative order shall be considered a part of said agreements.

9 The renewal and renegotiation of existing MAs and FTAAs shall also be governed by this
10 Act.

11 **CHAPTER III**

12 **DECLARATION OF MINING INDUSTRY ZONE**

13 **SEC. 5. Mining Industry Zones.** All mining areas governed by this Act shall be declared
14 by the President as Mining Industry Zones (MIZs) through a Presidential Proclamation upon
15 endorsement by the Secretary of the Department of Environment and Natural Resources
16 (DENR). For this purpose, only the mining areas approved and certified by the Mines and
17 Geosciences Bureau (MOB) may be endorsed by the DENR Secretary to the President.

18 The MGB approval and certification process shall pass through consultation with the
19 concerned Local Government Units (LGUs) and the Indigenous Cultural Communities (ICC), if
20 the mining area is within an ancestral domain. This consultation process shall include an LGU
21 endorsement for the establishment of the mining area as MIZ. In consideration of the payment to
22 LGU of 40% of the total government share referred to in Section 12 of this Act, the LGU
23 endorsement shall include a waiver of its power to regulate the mining business operations
24 through issuance of business permits and other license requirements imposed by the LGU
25 pursuant to the Local Government Code of 1991, as amended.

26 The establishment of the MIZ must conform to the following criteria:

- 27 (a) The proposed area is a "Go Zone" as identified by an appropriate government
28 agency or under any applicable law ;
- 29 (b) The final mining area shall be endorsed by the Secretary of the Department of
30 Environment and Natural Resources (DENR) to the President;
- 31 (c) The final mining area must have a significant advantage to the economy and its
32 potential profitability can be established; and
- 33 (d) Other criteria as may be determined by the Mining Industry Coordinating
34 Council (MICC) or an inter-agency Group that may be created, tasked or
35 assigned by the President.

36 No mining operations can be undertaken in any mining area without the LGU/ICC
37 endorsement and the Presidential proclamation of an MIZ.

1 (i) Mine Rehabilitation Fund (MRF which further consists of the
2 Monitoring Trust Fund and Rehabilitation Cash Fund);

3 (ii) Mine Wastes and Tailings (MWT) Fees; and

4 (iii) Final Mine Rehabilitation and Decommissioning Fund (FMRDF).

5 In addition, the Contractor shall allocate funds to cover costs for the following:

6 (a) Restoration/ rehabilitation of areas and communities affected by disasters
7 arising from mining operations; and

8 (b) Perpetual liability insurance to cover damages in the mining area where the
9 Contractor previously conducted mining operations, as well as in identified
10 impact areas.

11 **SEC. 9. Recoverable Pre-Operating Expenses.** Pre-operating Expenses allowed for
12 recovery under this Act shall be limited to actual expenses and capital expenditures relating to
13 the following which shall have been incurred before the commencement of commercial
14 operation:

15 (a) Cost of acquisition, maintenance and administration of the contract area;

16 (b) Cost of exploration, evaluation of explored areas, feasibility and
17 environmental studies, and rehabilitation of areas affected during the pre-
18 operating period;

19 (c) Cost of meaningful CSR projects and activities undertaken for the affected
20 communities within the contract area;

21 (d) Payments to landowners, surface rights holders, claim owners and Indigenous
22 Peoples or Indigenous Cultural Communities, if any;

23 (e) Training expenses for personnel;

24 (f) Consultancy fees incurred for work directly related to the mining operations
25 and consistent with the Contractor's approved work program;

26 (g) Cost for the establishment and administration of field and regional offices
27 including administrative overheads incurred within the Philippines which are
28 properly allocable to the mining operations and directly related to the
29 performance of the Contractor's obligations;

30 (h) Costs of constructing and developing the mine which include machinery and
31 equipment and real property; and

32 (i) General and administrative expenses actually incurred by the Contractor to
33 support the exploration and the construction and development of the mine.

34 The actual costs of (c), (f) and (i) shall be allowed to be deducted but their aggregate
35 amount shall not exceed five percent (5%) of the aggregate cost of (b) and (h).

36 Payments made to Government, both national and local, shall not be considered for
37 recovery. All Pre-Operating Expenses reported for recovery shall be subject to verification by
38 the MGB and/or PMDC or their designated representative or auditor.

1 **SEC. 10.** *Fiscal Regime for Co-production and Joint-venture Agreements.* The share of
2 the Government in Co-production and Joint-venture agreements shall be negotiated by the
3 Government and the Contractor provided that the Government Share shall not be less than the
4 share for MAs and FTAAAs as prescribed in Section 7 of this Act.

5 **SEC. 11.** *Mining Contract.* The fiscal regime and revenue sharing arrangement provided
6 herein and the applicable terms and conditions provided under existing laws shall be embodied in
7 the MAs and FTAAAs that shall be prepared by the MGB.

8 **CHAPTER V**

9 **ALLOCATION OF GOVERNMENT SHARE**

10 **SEC. 12.** *Allocation.* The Government Share shall be allocated as follows:

11 (a) National Government (NG): sixty percent (60%)

12 (b) Local Government Units (LGUs) hosting the MIZ: forty percent (40%)

13 If the contract area is in an ancestral land/domain, the royalty for the ICC shall be taken
14 from the Government Share. Thereafter, the Net Government Share shall be allocated to the
15 National Government (NG) and the LGUs at the above stated ratio.

16 **SEC. 13.** *Payment and Distribution of Government Share.* The Government Share shall be
17 remitted and paid quarterly by the Contractor to the Government.

18 The ICC share shall be directly remitted and paid by the Contractor to the ICC within five
19 (5) days from the end of each quarter.

20 Within five (5) days from the end of each quarter, the Contractor shall pay the
21 Government Share, net of the ICC share, if applicable, through the Electronic Filing and
22 Payment System (EFPS) facility of the BIR or its accredited bank which shall credit such
23 payment to the Bureau of Treasury (BTr) on the following banking day from payment. The BTr,
24 within five (5) banking days from receipt thereof, shall deposit the forty percent (40%) LGU
25 share to the account of the LGUs through their respective GFIs or their authorized agent bank.

26 The distribution of the LGU shares and the royalties allocated to the ICCs shall be based
27 on existing laws. The utilization of these shares shall be covered by Section 18 of this Act.

28 The Government Share shall be recorded by the BIR as follows:

29 (a) Fifty percent (50%) as Corporate Income Tax; and

30 (b) Fifty percent (50%) as Royalty Tax.

31 **SEC. 14.** *Environmental/Rehabilitation Fund.* An Environmental / Rehabilitation Fund of
32 one-half of one percent (1/2 of 1%) from the NG share to be treated as a Trust Fund shall be
33 established for government environmental mining programs. The specific activities and projects
34 under these programs shall be determined and approved by the MICC or by an inter-agency
35 Group created by the President. The utilization of this fund shall be covered by Section 18 of this
36 Act.

37 **CHAPTER VI**

38 **ADMINISTRATION OF THE MINING INDUSTRY ZONE**

1 **SEC. 15. Administration of the MIZ.** The Philippine Mining Development Corporation
2 (PMDC) created through Presidential Memorandum dated April 9, 2003, shall be designated as
3 Administrator of MIZs proclaimed under this Act. It shall have the following powers and
4 functions:

- 5 (a) Formulate policies, rules and regulations to implement its functions under this
6 Act;
- 7 (b) Evaluate and determine the Government Share on a monthly basis, which the
8 Contractor shall remit and pay to the National Government (NG) and to the
9 LGUs on a quarterly basis;
- 10 (c) Ensure that Government Shares are computed in accordance with this Act;
- 11 (d) Establish a One Stop Action unit, composed of all government agencies
12 involved in the-operation of MIZs, whose designated representatives are
13 clothed with authority to act and approve or deny any matter relative to their
14 respective agencies;
- 15 (e) Provide assistance to the Contractor in having its business registered with the
16 appropriate government agencies such as the Securities and Exchange
17 Commission (SEC), Social Security System (SSS), Department of Labor and
18 Employment (DOLE) and Bureau of Internal Revenue (BIR);
- 19 (f) Provide assistance to the Contractor in applying with the concerned entities
20 for the provision of utilities and other services needed in the operation of the
21 business such as supply of electricity or power, water, telecommunications,
22 security in the area and waste disposal;
- 23 (g) Issue import permits, building permits, business permits and other necessary
24 permits to the Contractor;
- 25 (h) Gather and verify data on the production and sales of the Contractor including
26 the assaying of the mineral product. The data shall include tonnage or volume,
27 value, market price and assay results, such as composition, percentage of
28 metals, grade, purity, among others;
- 29 (i) Create and maintain a mineral revenue database system of the MIZ for
30 reporting purposes and support the implementation of the Extractive Industries
31 Transparency Initiative (EITI);
- 32 (j) Render annual reports to the President and to the MICC or inter-agency Group
33 that may be created by the President; and
- 34 (k) Perform such other functions and duties relevant under this Act.

35 For this purpose, a one-time allocation of One Hundred Million Pesos
36 (Php100,000,000.00) shall be appropriated for the administrative, promotional and operational
37 expenses relating to the MIZs of the PMDC and all fees and charges collected by the PMDC
38 shall be retained by the said office to sustain its operations.

1 **CHAPTER VII**

2 **INCENTIVE**

3 **SEC. 16. *Capital Equipment Incentive.*** The Contractor shall be entitled to duty-free
4 importation of specialized capital mining equipment that are directly needed in the exploration,
5 extraction and processing of its mineral ores.

6 **CHAPTER VIII**

7 **INSTITUTIONAL ARRANGEMENTS**

8 **SEC. 17. *Mines and Geosciences Bureau.*** The MGB shall continue to exercise its functions
9 as mandated by existing laws unless otherwise amended by this Act.

10 **SEC. 18. *Fund Utilization and Other Reports.*** The LGUs, ICCs through the National
11 Commission on Indigenous Peoples (NCIP), the DENR and other agencies concerned allocated
12 with funds from the Government Share shall regularly submit reports to PMDC on completed
13 projects and activities where their respective shares were utilized. They shall also be required to
14 submit updated lists of current mining contractors, locations of mining projects and the areas
15 covered or occupied by the mineral deposits, land area and population of the mining host
16 communities, and other relevant information.

17 **SEC. 19. *Administrative Arrangements.*** The mandates, powers and functions provided in
18 this Act shall be carried out through an agreement between and among the PMDC, MGB and
19 other agencies concerned in accordance with the implementing rules and regulations
20 promulgated under this Act, for purposes of coordination and consistency in policy formulation
21 and implementation.

22 **CHAPTER IX**

23 **TRANSITORY AND MISCELLANEOUS PROVISIONS**

24 **SEC. 20. *Vested Right.*** Valid MAs and FTAAAs existing prior to the effectivity of this Act
25 that do not provide that any terms and conditions resulting from repeal or amendment of any
26 existing laws or regulations or from the enactment of a law, regulation or administrative order
27 shall be considered a part of said agreements shall continue to be governed by the terms and
28 conditions contained in their respective mining contracts.

29 **SEC. 21. *Implementing Rules and Regulations.*** A committee shall, within ninety (90)
30 days from the effectivity of this Act, promulgate rules and regulations to implement the intent
31 and provisions of this Act. The Committee shall be chaired by the DTI and composed of the
32 following:

- 33 (a) Department of Environment and Natural Resources;
34 (b) Department of Finance;
35 (c) National Economic and Development Authority;
36 (d) Department of Budget and Management;
37 (e) Department of Interior and Local Government;
38 (f) Bureau of Internal Revenue;

- 1 (g) Board of Investments;
- 2 (h) Bureau of Local Government Finance;
- 3 (i) National Commission on Indigenous Peoples; and
- 4 (j) Philippine Mining Development Corporation

5 **SEC. 22. *Separability Clause.*** If any provision of this Act is subsequently declared
6 unconstitutional, the validity of the remaining provisions hereof shall remain in full force and
7 effect.

8 **SEC. 23. *Repealing Clause.*** Sections 80, 81, 83, 84, 86, 87, 88, 90, 92 and 93 of
9 Republic Act. No. 7942 are hereby repealed or amended to the extent that they relate to the
10 Scope of this Act.

11 Any laws, rules and regulations, decrees and executive orders inconsistent with the
12 provisions of this Act are hereby repealed and modified accordingly.

13 **SEC. 24. *Effectivity Clause.*** The Act shall take effect after fifteen (15) days following its
14 publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

15 *Approved,*