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

SENATE

S. B. No. 1166

Introduced by Senator JOEL VILLANUEVA

AN ACT
PROVIDING FOR THE MAXIMIZATION OF BENEFITS FROM FINITE MINERALS AND MINERAL PRODUCTS AND QUARRY RESOURCES

EXPLANATORY NOTE

The Filipino people are the inherent owners of the mineral resources of the country. Unfortunately, the country's existing fiscal regime for the mineral sector does not provide for the adequate and equitable payment by mining companies for the extraction and use of these resources.

Mining companies, just like any other businesses operating in the Philippines, are required to pay taxes (including income taxes, value added tax, local government taxes, etc.). On top of these taxes, mining companies are required to pay 5% royalty taxes. The royalty serves as a unique payment for the use of mineral resources.

However, since not all mining companies are required to pay the royalty, the Filipino people are not sufficiently compensated for the mineral resources that they own and there is a large disproportion of the revenues collected between the total revenues earned by these mining companies. For example, in 2013, the royalty payments made to the Government only amounted to 1.21% of the estimated revenue of the mineral industry in the same year. Considering the negative social and environmental impacts of mining to the country, this small amount of taxes is barely enough to compensate the Filipino people for these finite resources.

In addition, the mining industry also falls short in terms of other contributions to the economy. The mining sector is not a huge employment generator. Data from the Mines and Geosciences Bureau shows that the total employment contribution of mining in 2015 is only 234,000 jobs translating to approximately 0.6% of total employment in the country. To maximize the employment potential of the mining industry, the country should encourage the development of mining downstream industry in the Philippines. This will not only will also expand the employment opportunity in the said industry but also allow the country to maximize the value of our minerals at different stages of value chain.

In line with the objective to increase the public benefits from mineral extraction in the country, this bill proposes the following measures:

(a) Requirement of royalty payment from all mineral mining operations in the country;

(b) The imposition of an export tax on raw ore from 2018 to 2020 (increasing gradually from 20% to 60%) to discourage companies from exporting unprocessed minerals, and encourage ore processing domestically;

(c) The prohibition to export of raw ore by 2021 to further strengthen the link of mineral extraction to manufacturing in the long-run;

(d) The establishment of the Mining Downstream Coordinating Council tasked to help govern the development of the mining downstream industry in the Philippines;

(e) The increase in the share of local government units from 40% to 50% of the proceeds derived from the utilization and development of the national wealth. This will ensure that local governments hosting the mining operation will receive an equitable share from the extraction of resources in their respective areas; and

(f) The creation of a Natural Resource Trust Fund using a fraction of the proceeds of mining activities, which may be used by the national and local governments to support educational programs, technological research programs of national and local relevance, and health services deemed to benefit future generations of Filipinos.

As such, the passage of this important measure is earnestly sought to enable the country to maximize of benefits from finite minerals and mineral products and quarry resources.

SENATOR JOEL VILLANUEVA

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

Chapter I
GENERAL PROVISIONS

SEC. 1. Title. This Act shall be known as "*Maximizing Benefits from Mineral and Mineral Products and Quarry Resources Act of 2016.*"

SEC. 2. Declaration of Principles.

(a) All mineral resources within the territory and exclusive economic zones of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

(b) The state must establish a fiscal regime that ensures that present and future generations of Filipinos benefit extensively from mining operations not just on the national level, but also on the local level. This fiscal regime must also encourage the development of a downstream industry to pave the way for the generation of more jobs for the Filipinos.

SEC. 3. Definition of Terms.

(a) Arm's Length Debt Amount, in relation to a mining contractor, means the amount of debt that a bank that is not an associate of the contractor would be prepared to lend to the contractor;

(b) Cash Flow Surcharge refers to a surcharge to be imposed on the cash flows of each mining area for each taxable fiscal year;

(c) Contract Area" means the land or body of water delineated under a mineral agreement or a financial or technical assistance agreement (FTAA) of the Contractor and properly defined by longitude and latitude;

(d) Contractor means a Qualified Person, as defined in Department Order 2012-21 of the Department of Environment and Natural Resources, acting alone or in consortium who is party to a Mineral Agreement or FTAA;

(e) Debt, in relation to a mining contractor, means the greatest amount, at any time, during a taxable fiscal year, of the debt obligations of a contractor on which interest made payable as defined according to international financial reporting standards

(f) Extractive Industries refer to the mining, oil, gas and coal sectors and all other sectors that require the extraction of non-renewable natural resources for commercial use;

(g) Financial or Technical Assistance Agreement means a contract involving financial or technical assistance for large-scale exploration, development and utilization of mineral resources;

(h) Gross Output means the actual market value of minerals or mineral products from each mine or mineral land operated as a separate entity, without any deduction for mining, processing, refining, transporting, handling, marketing or any other expenses;

(i) Mineral Agreement means a contract between the Government and a Contractor, involving Mineral Production Sharing Agreement, Co-Production Agreement or Joint Venture Agreement;

(j) Mining Area refers to a portion of the contract area identified by the Contractor as defined and delineated in a Survey Plan duly approved by the Director/Regional Director concerned for purposes of development and/or utilization, and sites for support facilities;

(k) Minerals refer to all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy;

(l) Mineral Products mean materials derived from ores, minerals and/or rocks and prepared into a marketable state by mineral processing;

(m) Mining Operations means mining activities involving exploration, feasibility study, development, and utilization

(n) Quarry Resources refers to any common rock or other mineral substances as the Director of Mines and Geosciences Bureau may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clays for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass: *Provided*, That such quarry resources do not contain metals or metallic constituents and/or other valuable minerals in economically workable quantities: *Provided, further*, That non-metallic minerals such as kaolin, feldspar, bullquartz, quartz or silica, sand and pebbles, bentonite, talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semi-precious stones, and other non-metallic minerals that may later be discovered and which the Director declares the same to be of economically workable quantities, shall not be classified under the category of quarry resources;

(o) Separate Taxable Person or Personality refers to an independent taxable entity as determined by business operations in a specific mining area;

(p) State means the Republic of the Philippines;

(q) Taxable Fiscal Year means an accounting period of twelve (12) months depending on the accounting method of the Contractor; and

(r) Utilization means the extraction, mineral processing and/or disposition of minerals.

SEC. 4. Interpretation. Nothing in this Act shall be construed as a diminution of the rights and privileges of local government units presently enjoyed under existing laws such as Republic Act No. 7160. Further, nothing in this Act shall be construed as a diminution of the rights enjoyed by indigenous peoples under the Republic Act No. 8371 of 1997.

CHAPTER II
SCOPE AND APPLICATION

SEC. 5. Scope and Application. This Act shall apply to new Mineral Agreements and FTAAs covering large-scale mineral mining operations that shall be entered into after the effectivity of this Act.

This Act shall also cover existing Mineral Agreements and FTAAs where such agreements provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulation or from the enactment of a law, regulation or administrative order shall be considered as part of said agreements. The renewal and renegotiation of existing Mineral Agreements and FTAAs shall also be governed by this Act.

CHAPTER III
TAXATION OF MINERALS, MINERAL PRODUCTS, AND QUARRY RESOURCES

SEC. 6. Separate Taxable Personality. Each mining operation in a mining area shall be considered a separate taxable entity. If a mining contractor is party or holds more than one mineral agreement, he shall be treated as a separate person in respect of the business operations related to each mining area.

SEC. 7. Mining Royalty. There shall be levied, assessed and collected on minerals, mineral products and quarry resources a mineral royalty of five percent (5%) based on the market value of the gross output at the time of sale, or the value used by the Bureau of Customs in determining tariff and custom duties, whichever is higher.

SEC. 8. Cash Flow Surcharge. A surcharge of ten percent (10%) shall be imposed on the cash flows of each mining area for every taxable fiscal year.

For purposes of computing the cash flow surcharge (CFS), each mining area shall be considered a separate taxable quantity. The tax base of the CFS is determined by adding back the depreciation and interest expense and other financing charges to the regular taxable income used for the purposes of the corporate income tax. Any surcharge loss is carried forward to subsequent years so as to avoid charging the CFS until the mining area shall have achieved a positive cash flow.

SEC. 9. Limitation on Deductions for Purposes of Computing the CFS. When computing for the cash flow surcharge, mining companies must adhere to the following guidelines:

(a) A deduction for the expenses or losses incurred, wholly or partly, by a contractor in undertaking mining operations in a mining area during a taxable fiscal year is allowed only against the income derived by the contractor from such operations in the mining area during the same taxable fiscal year;

(b) If the total deductions in respect of the mining operations undertaken by the contractor in a mining area during a taxable fiscal year exceed the total taxable income derived from the same year, the excess may be carried forward and allowed as a deduction against the taxable income of the contractor from mining operations in the mining area for the next taxable fiscal year;

(c) An amount that is not deducted under subsection (b) above may be carried forward to the next taxable fiscal year and allowed as a deduction in accordance with subsection (b) for that year and so on until the amount shall have been fully deducted, or until the mining operations in the mining area shall have ceased;

(d) If a contractor has an excess carried forward under subsection B for more than one fiscal year, the excess of the earliest period is allowed as a deduction first;

(e) If a contractor has ceased mining operations in a mining area and the contractor has a loss under subsection (b) in relation to the mining area, the contractor may elect, by notice in writing to the BIR Commissioner, to treat the loss as a loss under Subsection (b) in relation to another mining area operated by the contractor; *Provided*, That the latter mining area falls wholly within the same contract area of the first-mentioned mining area;

(f) If a contractor has ceased mining operations in a mining area or if the contractor has a lost under Subsection B in relation to the mining area and subsection E does not apply to the Contractor, the contractor may elect, by notice in writing to the BIR Commissioner, to treat the loss as a loss under subsection B in relation to mining operations undertaken by the contractor in another area.

SEC. 10. Limitations on the Interest Expense Deductions. The following are limitation on mining contractors for any interest expense deductions:

(a) If a contractor has a debt-to-equity ratio in excess of 1.5 to 1 at any time during a taxable fiscal year, a deduction of the interest paid by the contractor in the portion of the debt which exceeds the 1.5 to 1 ratio for that same fiscal year shall not be allowed.

(b) If the debt-to-equity ratio of a contractor exceeds the 1.5 to 1 ratio for a taxable fiscal year, subsection (a) above shall not apply; *Provided*, That during the said fiscal year, the total amount of the debt of the contractor shall not exceed the arm's length debt amount.

SEC. 11. Export Tax on Raw Ore. Effective January 1, 2018, a twenty percent (20%) export tax on the gross value of raw ore shall be imposed; *Provided* that, effective January 1, 2019, a forty percent (40%) export tax on the gross value of raw ore shall be imposed; *Provided further*, that effective January 1, 2020, a sixty percent (60%) export tax on the gross value of raw ore shall be imposed.

SEC. 12. Ban on Export of Raw Ore. Export of raw ore shall be prohibited effective January 1, 2021.

SEC. 13. Penalties. – Any company proven to have violated Section 12 of this Act shall be subject to a fine ranging from Five Million Pesos (P5,000,000.00) to Ten Million

Pesos (P10,000,000.00) plus five (5) times the gross value of raw ore illegally exported. In addition, the responsible officers of the erring Company shall be punished by imprisonment for not less than one (1) year but not more than three (3) years.

SEC. 14. Incentives. – Notwithstanding anything to the contrary, all tax incentives granted to mineral mining and quarry contractors shall be repealed immediately upon the effectivity of this Act.

CHAPTER IV
ALLOCATION OF PROCEEDS FROM THE DEVELOPMENT OF THE NATIONAL WEALTH

SEC. 15. Share of Local Government Units. The local government unit hosting the mining area shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, including sharing the same with its inhabitants by way of direct benefits.

A local government unit shall, in addition to the internal revenue allotment, have a share of fifty percent (50%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes, royalties and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. The fifty percent (50%) share shall be distributed among LGUs according to the Local Government Code of 1991 and its implementing rules and regulations; *Provided*, That in the event that the operation is hosted by several local government units, the share shall be divided equitably among the host local government units based on the amount of ore extracted from the local government unit.

The Bureau of Internal Revenue (BIR) shall have the authority to inspect mining sites and monitor the amount of mineral resources extracted by companies. The BIR, the Mines and Geosciences Bureau (MGB) and the Philippine Port Authority (PPA) shall reconcile their figures on the amount and value of minerals that were actually extracted and exported by companies. The reconciled figure will be the basis for taxation and allocation of share among units of government.

With respect to payment of business tax, eighty percent (80%) of the payment shall go to the local government unit hosting the mining operation and the twenty percent (20%) of the payment shall go to the local government unit where the main office of the business is located. If the mining operation is hosted by several local government units, the eighty percent (80%) shall be shared equally by the said LGUs.

SEC. 16. Natural Resource Trust Fund. To ensure intergenerational equity as a right of future generations of Filipinos and transparency and accountability in the use of proceeds from the extraction of mineral and quarry resources, the national government shall create a National Natural Resource Trust Fund where all the proceeds from mining activities excluding shares of local government units shall accrue. Likewise, local government units shall be required to create a Local Natural Resource Trust Fund where shares from national government and locally collected taxes from mining and quarrying shall accrue.

The National Trust Fund shall be governed by a multi-stakeholder oversight body composed of representatives from the government, civil society, and the business sector. The oversight body shall conduct regular monitoring and annual audit of the utilization performance of the National Trust Fund. The oversight body shall advise the concerned government agencies on fund operations and compliance with the fund's mandate. Furthermore, the oversight body shall be independent, and shall have access to all relevant public information necessary for the body to perform its mandates.

The Local Trust Funds shall be governed as legislated by the local sanggunian concerned provided that transparency and accountability mechanisms are put in place. The governing bodies may invest up to sixty percent (60%) of the money in the trust and shall not be required to return the balance of the trust to the national government at the end of every fiscal year.

In additional to other local governing bodies, the Local Trust Funds shall similarly be governed by local multi-stakeholder oversight bodies composed of representatives from the LGU, civil society, indigenous community (if applicable), and the business sector. The local oversight body shall conduct regular monitoring and annual audit of the utilization performance of the Local Trust Fund. The body shall advise the local governments on fund operations and compliance with the fund's mandate, and shall report the said LGU performance to concerned national government agency. Furthermore, the local oversight body shall be independent, and shall have access to all relevant public information necessary for the body to perform its mandates.

The funds may be used by the national and local governments to support educational programs, technological research programs of national and local relevance, and health services deemed to benefit future generations of Filipinos.

The funds are strictly subjected to annual audit by state auditors and mandatory disclosures to the Philippine Extractive Industries and Transparency Initiative.

CHAPTER V
DOWNSTREAM INDUSTRY

SEC. 17. Mining Downstream Coordinating Council. There is hereby created the Mining Downstream Coordinating Council (MDCC). The DENR, in coordination with Department of Trade and Industry (DTI), Department of Science and Technology (DOST), National Economic Development Authority (NEDA), the mining industry and civil society, shall submit, within a period of six (6) months a fifteen-year (15) strategic mining downstream development program and road-map based on the Philippine Development Plan and National Industrialization Plan for the development of downstream mining industries and creation of jobs for strategic metallic and nonmetallic minerals subject to review every five (5) years.

SEC. 18. Composition of MDCC. – The MDCC shall be co-chaired by the Secretaries of DENR and DTI and shall have the following additional members: a representative from the mining industry, a representative from civil society organizations and the Chairperson of the Board of Investments.

SEC. 19. Powers and Functions. The MDCC shall have the following powers and functions:

(a) Submit a work plan within sixty (60) days from the effectivity of this Act for the development of the mining downstream industry;

(b) Conduct and facilitate the necessary capacity and institutional building programs for all concerned government agencies and instrumentalities and stakeholders;

(c) Request the assistance of any government agency or instrumentality, including government-owned and controlled corporations and local government units (LGUs), in the implementation of the mining downstream development program and road-map;

(d) Conduct quarterly meetings among members of the council;

(e) Submit quarterly progress reports to the President on the status of the implementation of the mining downstream development program and road-map; and

(f) Perform such other functions and acts as may be necessary, proper or incidental to the attainment of its mandates and objectives, or as may be directed by the Chairpersons.

CHAPTER VI
TRANSITORY AND MISCELLANEOUS PROVISIONS

SEC. 20. Implementing Rules and Regulation. The Secretaries of Environment and Natural Resources, Interior and Local Government, Finance, and Budget, in consultation with relevant stakeholders, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SEC. 21. Separability Clause. If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SEC. 22. Repealing Clause. All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly; *Provided*, That nothing in this Act shall be construed as a diminution of local autonomy or in derogation of ancestral domain rights under the Indigenous Peoples' Right Act of 1997.

SEC. 23. Effectivity. This Act shall take effect fifteen (15) days after its publication in this Official Gazette or in any two newspapers of general circulation.

Approved.