



SENATE

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COMMITTEE REPORT No. 728

Submitted by the Committee on Ways and Means on **MAY 28 2019**

Re: Senate Bill No. 2235

Recommending its approval in substitution of Senate Bill Nos. 225, 927 and 1979 taking into consideration House Bill No. 8400.

Sponsor: Sen. Sonny Angara

MR. PRESIDENT:

The Committee on Ways and Means to which were referred Senate Bill No. 225, introduced by Senator Franklin M. Drilon, entitled:

**“AN ACT
ESTABLISHING THE FISCAL REGIME AND REVENUE SHARING
ARRANGEMENT FOR LARGE-SCALE METALLIC MINING”**

S.B. No. 927, introduced by Senator Ralph G. Recto, entitled:

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

S.B. No. 1979, introduced by Senator Vicente C. Sotto, entitled:

**“AN ACT
AMENDING CHAPTER VII TITLE VI AND SECTION 151, AND CREATING
NEW SECTIONS 151-A AND 151-B, OF REPUBLIC ACT NO. 8424,**

**OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF
1997, AS AMENDED, AND FOR OTHER PURPOSES”**

and House Bill 8400, introduced by Representatives Suansing (E.), Quimbo, *et al.*, entitled:

**“AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY”**

has considered the same and has the honor to report these back to the Senate with the recommendation
that the attached bill, Senate Bill No. 2235 prepared by the Committee, entitled:

**“AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY”**

be approved in substitution of Senate Bill Nos. 225, 927 and 1979 taking into consideration House Bill
No. 8400 with Senators Drilon, Recto, Sotto III, and Angara, as authors thereof.

Respectfully Submitted:



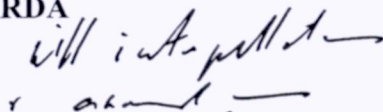
SONNY ANGARA
Chairperson

Vice-Chairpersons



LOREN B. LEGARDA

JOEL VILLANUEVA



PAOLO BENIGNO “BAM” AQUINO IV

may amend

Members



RICHARD J. GORDON

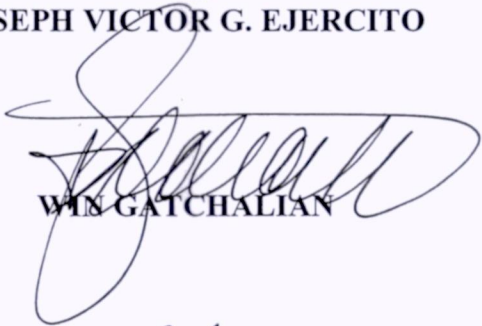
GRACE POE



JOSEPH VICTOR G. EJERCITO



MARIA LOURDES NANCY S. BINAY



WIN GATCHALIAN



FRANCIS "CHIZ" G. ESCUDERO



PANFILO M. LACSON

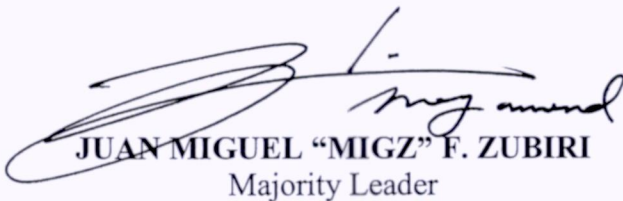
ANTONIO TRILLANES IV

FRANCIS "KIKO" PANGILINAN

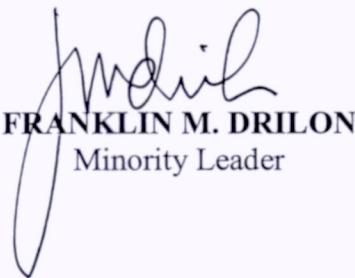
RISA HONTIVEROS

AQUILINO "KOKO" PIMENTEL III

Ex-Officio Members



JUAN MIGUEL "MIGZ" F. ZUBIRI
Majority Leader



FRANKLIN M. DRILON
Minority Leader



RALPH G. RECTO
Senate President Pro-Tempore


VICENTE C. SOTTO III
Senate President
Senate of the Philippines

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SENATE

S. No. 2235

(In substitution of S.B. Nos. 225, 927, and 1979 taking into consideration
H.B. No. 8400)

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Prepared by the Committee on Ways and Means with Senators Drilon, Recto, Sotto
III, and Angara as authors

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

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

1 SECTION 1. The chapter title of Chapter VII Title VI of the National Internal
2 Revenue Code of 1997, as amended, is hereby amended to read as follows:

3 "CHAPTER VII - [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF
4 MINERAL PRODUCTS."

5 SEC. 2. Sec. 151 of Chapter VII, Title VI of the National Internal Revenue Code of
6 1997, as amended, is hereby amended to read as follows:

7 "SEC. 151. TAX ON Mineral Products. -"

8 SEC. 3. A new section designated as Section 151-A under Chapter VII, Title VI of
9 the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall
10 read as follows:

11 "SEC. 151-A. ROYALTY. -

12 A. FOR ALL LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE
13 OF MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-
14 SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL
15 RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED

1 ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE
2 WITH THE FOLLOWING TABLE:

MARGIN	ROYALTY
1% UP TO 10%	1.00%
ABOVE 10% UP TO 20%	1.50%
ABOVE 20% UP TO 30%	2.00%
ABOVE 30% UP TO 40%	2.50%
ABOVE 40% UP TO 50%	3.00%
ABOVE 50% UP TO 60%	3.50%
ABOVE 60% UP TO 70%	4.00%
ABOVE 70%	5.00%

3 B. FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN
4 MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-
5 SCALE METALLIC MINING OPERATIONS WITHIN MINERAL
6 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY
7 EQUIVALENT TO THREE PERCENT (3%) OF THE GROSS OUTPUT OF
8 THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED
9 BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

10 C. FOR SMALL-SCALE METALLIC MINING OPERATIONS WITHIN OR
11 OUTSIDE MINERAL RESERVATIONS. - MINING CONTRACTORS OF
12 SMALL-SCALE METALLIC WITHIN OR OUTSIDE MINERAL
13 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY
14 EQUIVALENT TO ONE TENTH (1/10) OF ONE PERCENT (1%) OF GROSS
15 OUTPUT;

16 D. FOR PURPOSES OF THIS SECTION AND SECTION 151-B, THE TERM -

17 (1) 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM MINING
18 OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT;

19 (2) 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF
20 MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL
21 LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY

1 DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING,
2 HANDLING, MARKETING OR ANY OTHER EXPENSES: *PROVIDED*,
3 THAT OF THE MINERALS OR MINERAL PRODUCTS SOLD OR
4 CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST,
5 INSURANCE OR FREIGHT (CIF) TERMS, THE ACTUAL COST OF OCEAN
6 FREIGHT AND INSURANCE SHALL BE DEDUCTED: *PROVIDED*,
7 *FURTHER*, THAT IN THE CASE OF MINERAL CONCENTRATES WHICH
8 ARE NOT TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES
9 OR ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL
10 MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE
11 REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN
12 THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE
13 SMELTING, REFINING, TREATMENT, INSURANCE, TRANSPORTATION
14 AND OTHER CHARGES INCURRED IN THE PROCESS OF CONVERTING
15 MINERAL CONCENTRATES INTO REFINED METAL TRADED IN THOSE
16 COMMODITY EXCHANGES;

17 (3) 'INCOME FROM MINING OPERATIONS' SHALL MEAN THE GROSS
18 OUTPUT LESS DEDUCTIBLE EXPENSES, WHICH INCLUDE:

19 (A) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES
20 TOGETHER WITH SMELTING AND REFINING COSTS OTHER
21 THAN SMELTING AND REFINING COSTS PAID TO THIRD
22 PARTIES;

23 (B) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY
24 INCURRED BY THE MINING CONTRACTOR IN THE PHILIPPINES;

25 (C) ENVIRONMENTAL EXPENSES OF THE MINING
26 CONTRACTOR, INCLUDING SUCH EXPENSES NECESSARY TO
27 FULLY COMPLY WITH ITS ENVIRONMENTAL OBLIGATIONS AS
28 STIPULATED IN THE ENVIRONMENTAL PROTECTION
29 PROVISION OF THE MINERAL AGREEMENT OR FINANCIAL OR
30 TECHNICAL ASSISTANCE AGREEMENT AND IN THE
31 APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

1 (D) EXPENSES FOR THE DEVELOPMENT OF HOST AND
2 NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT
3 OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING
4 TRAINING COSTS AND EXPENSES AS STIPULATED IN THE
5 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
6 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
7 IMPLEMENTING RULES AND REGULATIONS;

8 (E) ROYALTY PAYMENTS TO CLAIMOWNERS OR SURFACE LAND
9 OWNERS RELATING TO THE CONTRACT AREA DURING THE
10 OPERATING PERIOD, IF ANY;

11 (F) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES
12 WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
13 PERIOD;

14 (G) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER
15 FINANCING RELATED EXPENSES INCURRED BY THE MINING
16 CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN
17 THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
18 ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN
19 THE PREVAILING INTERNATIONAL RATES CHARGED FOR
20 SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE
21 FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE
22 NECESSARY FOR THE OPERATION;

23 (H) DEPRECIATION, DEPLETION, AND AMORTIZATION;

24 (I) TAXES, DUTIES, FEES, AND CHARGES; AND

25 (J) ALL OTHER COSTS AND EXPENSES RELATED TO MINING
26 OPERATIONS AND SALE OF MINERALS AND MINERAL
27 PRODUCTS.

28 (4) 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON
29 ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL

1 AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE
2 AGREEMENT.”

3 SEC. 4. A new section designated as Section 151-B under Chapter VII, Title VI of
4 the National Internal Revenue Code of 1997, as amended, is hereby inserted and shall
5 read as follows:

6 “SEC. 151-B. WINDFALL PROFITS TAX. –

7 (A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CODE,
8 THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A MARGIN-
9 BASED WINDFALL PROFITS TAX ON INCOME FROM MINING
10 OPERATIONS BEFORE CORPORATE INCOME TAX, IN ACCORDANCE
11 WITH THE FOLLOWING TABLE: *PROVIDED*, THAT IT SHALL BE
12 DEDUCTIBLE FROM TAXABLE INCOME, AS DEFINED IN SECTION 31,
13 CHAPTER V, TITLE II OF THIS CODE:

MARGIN	RATE
MORE THAN 35% UP TO 40%	1%
MORE THAN 40% UP TO 45%	2%
MORE THAN 45% UP TO 50%	3%
MORE THAN 50% UP TO 55%	4%
MORE THAN 55% UP TO 60%	5%
MORE THAN 60% UP TO 65%	6%
MORE THAN 65% UP TO 70%	7%
MORE THAN 70% UP TO 75%	8%
MORE THAN 75% UP TO 80%	9%
MORE THAN 80%	10%

14 SEC. 5. Section 34 (B) of Chapter VII, Title II of the National Internal Revenue Code
15 of 1997, as amended, is hereby further amended to read as follows:

16 “SEC. 34. DEDUCTIONS FROM GROSS INCOME. – xxx

17 (A) Expenses. – xxx

18 (B) Interest. –

(1) xxx

(2) xxx

(3) xxx

(4) LIMITATION OF DEDUCTIONS FOR MINING CONTRACTORS:

(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN EXCESS OF THREE (3) TO ONE (1) AT ANY TIME DURING A TAXABLE YEAR, A DEDUCTION IS DISALLOWED AS A TAX-DEDUCTIBLE EXPENSE FOR THE INTEREST PAID BY THE MINING CONTRACTOR DURING THAT YEAR ON THAT PART OF THE DEBT THAT EXCEEDS THE THREE (3) TO ONE (1) RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED;

(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS THREE (3) TO ONE (1) FOR AN INCOME YEAR, SUBSECTION (1) DOES NOT APPLY IF, AT ALL TIMES, DURING THE YEAR, THE AMOUNT OF THE DEBT OF THE MINING CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH DEBT AMOUNT;

(C) FOR PURPOSES OF THIS SECTION, THE TERM 'ARM'S LENGTH DEBT AMOUNT', SHALL MEAN THE AMOUNT OF DEBT THAT A BANK THAT IS NOT AN ASSOCIATE OF THE MINING CONTRACTOR WOULD BE PREPARED TO LEND TO THE MINING CONTRACTOR HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE MINING CONTRACTOR;

THE TERM 'ASSOCIATE', SHALL MEAN ANY OTHER PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES OF THE FIRST-MENTIONED PERSON, AND THE FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE SECOND MENTIONED PERSON;

THE TERM 'DEBT', SHALL MEAN THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH

INTEREST IS PAYABLE AS DETERMINED ACCORDING TO
INTERNATIONAL FINANCIAL REPORTING STANDARDS;

THE TERM 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION
TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON,
INCLUDING AN OBLIGATION ARISING UNDER A PROMISORY
NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING
ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE
REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS
PAYABLE;

THE TERM 'EQUITY', SHALL MEAN THE GREATEST AMOUNT, AT
ANY TIME DURING AN INCOME YEAR, OF THE EQUITY OF THE
MINING CONTRACTOR AS DETERMINED ACCORDING TO
INTERNATIONAL FINANCIAL REPORTING STANDARDS AND
INCLUDES AN OBLIGATION TO MAKE A REPAYMENT OF MONEY
IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

- (C) Taxes. - xxx
- (D) Losses. - xxx
- (E) Bad Debts. - xxx
- (F) Depreciation. - xxx
- (G) Depletion of Oil and Gas Wells and Mines. -
x x x
- (H) Charitable and Other Contributions. -
x x x
- (I) Research and Development. -
x x x
- (J) Pension Trusts. - x x x
- (K) Additional Requirements for Deductibility of Certain Payments. - x x x
- (L) Optional Standard Deduction. - x x x
- Premium Payments on Health and/or Hospitalization Insurance of an Individual
Taxpayer. - x x x"

SEC. 6. *Each Mining Operation Treated as a Separate Taxable Entity.* - Each
mining operation, which is subject to a Mineral Agreement or Financial or Technical

Assistance Agreement shall be treated as a separate taxable entity. A mining contractor shall be treated as if a separate taxpayer with respect to each and every Mineral Agreement or Financial or Technical Assistance Agreement it holds or is a party to.

If Mineral Agreement or Financial or Technical Assistance Agreement is renewed, the renewal shall be treated as part of the original agreement.

SEC. 7. *Exemption from Confidentiality Clause.* – Mining contractors for all metallic and non-metallic mining operations, whether large-scale or small-scale, shall observe fiscal transparency and comply with the requirements of the Extractive Industries Transparency Initiative (EITI), and, for this purpose, shall be exempted from application of the confidentiality clauses of the National Internal Revenue Code of 1997, as amended, including Section 270 in relation to Section 71, to the extent of their participation in EITI.

SEC. 8. *Fiscal Regime Under Financial or Technical Assistance Agreements and Other Mineral Agreements.* – The fiscal regime provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the Mineral Agreements or Financial or Technical Assistance Agreements entered into by the government.

SEC. 9. *Vested Rights.* – Valid Mineral Agreements or Financial or Technical Assistance Agreements existing prior to the effectivity of this Act that do not provide that any terms and conditions resulting from the repeal or amendment of any existing laws and regulations or from the enactment of a new law or regulation shall be considered a part of said Mineral Agreement and Financial or Technical Assistance Agreements, shall continue to be governed by their existing terms and conditions.

SEC. 10. *Registration of Small-Scale Miners.* – All persons undertaking small-scale mining activities shall register as miners with the Mining Board of the concerned local government unit in accordance with Republic Act No. 7076, “An Act Creating a People’s Small-Scale Mining Program and For Other Purposes” and with the Mines and Geosciences Bureau (MGB) and may organize themselves into cooperatives in order to qualify for the awarding of a people’s small- scale mining contract.

1 The Mining Board shall submit an annual report to the MGB of all the small-scale
2 mining contracts entered into for the small-scale utilization of a plot of mineral land
3 including the respective production output, taxes and fees paid.

4 For this purpose, a tax identification number shall be secured from the Bureau of
5 Internal Revenue as a requirement for registration.

6 **SEC. 11. *Implementing Rules and Regulations.*** - The Department of Finance, after
7 consultation with other concerned government agencies, shall, within ninety (90) days
8 from the effectivity of this Act, promulgate rules and regulations to implement the
9 intent and provisions of this Act.

10 **SEC. 12. *Repealing Clause.*** - All laws, decrees, executive orders, rules and
11 regulations, or parts thereof, which are contrary to or inconsistent with this Act are
12 hereby repealed, amended or modified accordingly.

13 **SEC. 13. *Separability Clause.*** - If any provision of this Act so declared
14 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
15 continue to be in full force and effect.

16 **SEC. 14. *Effectivity.*** - This Act shall take effect fifteen (15) days after its
17 publication in the *Official Gazette* or in a newspaper of general circulation in the
18 Philippines.

Approved,