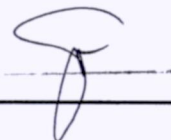


SENATE

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Senate Bill. No. 313

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Introduced by Senator Juan Miguel F. Zubiri

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

EXPLANATORY NOTE

The Philippines is a diverse and mineral-rich nation. According to statistics, the Philippines is the fifth most mineral-rich nation in terms of gold, chromite, nickel and copper. The Philippines has an estimated \$840 billion worth of metallic and non-metallic reserves as of 2012.¹

According to the Mines and Geosciences Bureau (MGB), total estimated production value for metallic minerals reached PhP121.94 Billion in 2018 while Estimated Gross Value Added (GVA, excluding crude oil) in mining at current prices for the same year amounted to PhP107.90 Billion. The mining industry plays a very important role in local and regional economic development. A total of 212,000 workers were employed in the mineral industry in 2018. Mining also contributed to the country's foreign exchange earnings through exports which amounted to US\$4.26 Billion (metallic minerals and mineral products) for the same period. The government collected PhP25.70 Billion in national and local taxes, fees and royalties in 2017.²

However, we must not forget that, although we have all these untapped valuable resources and their potential to contribute to the country's development, in most aspects of mining activities, the hazard of environmental and ecological degradation always exists. Thus, we must also consider the protection of our environment by ensuring responsible, sustainable and socially-acceptable mining practices.

This bill seeks to ensure that the Philippines not only maximizes the use of its mineral resources but also receives a fair share from mining revenues. It proposes to impose royalties based on a scale ranging from 1% to 5% on all metallic operations including those conducted within and outside mineral reservation areas, whether large- or small-scale, as well as additional tax on their windfall profits.

Ultimately, it is the hope of this bill to create a mining industry that is not exploitative, but rather responsible for the benefit of the mining sector, the government, the environment, and most of all for the benefit of the Filipino people.

¹<https://www.rappler.com/business/special-report/whymining/whymining-latest-stories/11983-fast-facts-mining-philippines>, accessed 27 June 2019.

²<http://www.mgb.gov.ph/attachments/article/162/mining%20facts%20and%20figures%20updated%20March%202019.pdf>, accessed 27 June 2019.

In view of the foregoing, the approval of this bill is earnestly sought.



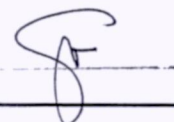
JUAN MIGUEL F. ZUBIRI

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SENATE

Senate Bill. No. 313

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Introduced by Senator Juan Miguel F. Zubiri

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

*Be it enacted by the Senate and the House of the 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
6 of 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 OF**
13 **MINERAL RESERVATIONS. – MINING CONTRACTORS OF LARGE-**
14 **SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL**
15 **RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED**
16 **ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE**
17 **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%

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

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

14 **D. FOR PURPOSES OF THIS SECTION AND SECTION 151-B, THE TERM –**

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

17 **(2) 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF**
18 **MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL**
19 **LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY DEDUCTION**
20 **FOR MINING, PROCESSING, REFINING, TRANSPORTING, HANDLING,**
21 **MARKETING OR ANY OTHER EXPENSES: PROVIDED, THAT OF THE**
22 **MINERALS OR MINERAL PRODUCTS SOLD OR CONSIGNED ABROAD BY**
23 **THE MINING CONTRACTOR UNDER COST, INSURANCE OR FREIGHT**
24 **(CIF) TERMS, THE ACTUAL COST OF OCEAN FREIGHT AND INSURANCE**

1 SHALL BE DEDUCTED: *PROVIDED FURTHER*, THAT IN THE CASE OF
2 MINERAL CONCENTRATES WHICH ARE NOT TRADED IN COMMODITY
3 EXCHANGED IN THE PHILIPPINES OR ABROAD, SUCH AS COPPER
4 CONCENTRATES, THE ACTUAL MARKET VALUE SHALL BE WORLD PRICE
5 QUOTATIONS OF THE REFINED MINERAL PRODUCTS CONTENT
6 THEREOF PREVAILING IN THE SAID COMMODITY EXCHANGED, AFTER
7 DEDUCTING THE SMELTING, REFINING, TREATMENT, INSURANCE,
8 TRANSPORTATION AND OTHER CHARGES INCURRED IN THE PROCESS
9 OF CONVERTING MINERAL CONCENTRATES INTO REFINED METAL
10 TRADED IN THOSE COMMODITY EXCHANGES;

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

13 (A) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES
14 TOGETHER WITH SMELTING AND REFINING COSTS OTHER THAN
15 SMELTING AND REFINING COSTS PAID TO THIRD PARTIES;

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

18 (C) ENVIRONMENTAL EXPENSES OF THE MINING CONTRACTOR,
19 INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY
20 WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN
21 THE ENVIRONMENTAL PROTECTION PROVISION OF THE
22 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
23 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
24 IMPLEMENTING RULES AND REGULATIONS;

25 (D) EXPENSES FOR THE DEVELOPMENT OF HOST AND
26 NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT OF
27 GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING
28 TRAINING COSTS AND EXPENSES AS STIPULATED IN THE
29 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
30 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
31 IMPLEMENTING RULES AND REGULATIONS;

1 (E) ROYALTY PAYMENTS TO CLAIMOWNERS OR SURFACE LAND
2 OWNERS RELATING TO THE CONTRACT AREA DURING THE
3 OPERATING PERIOD, IF ANY;

4 (F) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES
5 WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
6 PERIOD;

7 (G) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER
8 FINANCING RELATED EXPENSES INCURRED BY THE MINING
9 CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN
10 THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
11 ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN
12 THE PREVAILING INTERNATIONAL RATES CHARGED FOR
13 SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE
14 FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE
15 NECESSARY FOR THE OPERATION;

16 (H) DEPRECIATION, DEPLETION, AND AMORTIZATION;

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

18 (J) ALL OTHER COSTS AND EXPENSES RELATED TO MINING
19 OPERATIONS AND SALE OF MINERALS AND MINERAL
20 PRODUCTS.

21 (4) 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON
22 ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL
23 AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE
24 AGREEMENT."

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

28 **"SEC. 151-B. WINDFALL PROFITS TAX. –**

29 **(A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CODE, THERE**
30 **IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A MARGIN-BASED**

1 **WINDFALL PROFITS TAX ON INCOME FROM MINING OPERATIONS**
 2 **BEFORE CORPORATE INCOME TAX, IN ACCORDANCE WITH THE**
 3 **FOLLOWING TABLE: *PROVIDED*, THAT IT SHALL BE DEDUCTIBLE FROM**
 4 **TAXABLE INCOME, AS DEFINED IN SECTION 31, CHAPTER V, TITLE II**
 5 **OF THIS CODE:**

MARGIN	ROYALTY
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%

6
 7 **SEC. 5.** Section 34 (B) of Chapter VII, Title II of the National Internal Revenue
 8 Code of 1997, as amended, is hereby further amended to read as follows:

9 "SEC. 34. *DEDUCTIONS FROM GROSS INCOME.* – xxx

10 (A) Expenses. – xxx

11 (B) Interest. –

12 (1) xxx

13 (2) xxx

14 (3) xxx

15 (4) **LIMITATION OF DEDUCTIONS FOR MINING CONTRACTORS:**

16 **(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO**
 17 **IN EXCESS OF THREE (3) TO ONE (1) AT ANY TIME DURING A**
 18 **TAXABLE YEAR, A DEDUCTION IS DISALLOWED AS A TAX-**
 19 **DEDUCTIBLE EXPENSE FOR THE INTEREST PAID BY THE MINING**

1 THAT EXCEEDS THE THREE (3) TO ONE (1) RATIO FOR THE PERIOD
2 THE RATIO WAS EXCEEDED;

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

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

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

19 THE TERM 'DEBT', SHALL MEAN THE GREATEST AMOUNT, AT ANY
20 TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF
21 THE MINING CONTRACTOR ON WHICH INTEREST IS PAYABLE AS
22 DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL
23 REPORTING STANDARDS;

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

30 THE TERM 'EQUITY', SHALL MEAN THE GREATEST AMOUNT, AT
31 ANY TIME DURING AN INCOME YEAR, OF THE EQUITY OF THE
32 MINING CONTRACTOR AS DETERMINED ACCORDING TO

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

7 (C) Taxes. – xxx

8 (D) Losses. – xxx

9 (E) Bad Debts. – xxx

10 (F) Depreciation. – xxx

11 (G) Depletion of Oil and Gas Wells and Mines. – xxx

12 (H) Charitable and Other Contributions. – xxx

13 (I) Research and Development. – xxx

14 (J) Pension Trusts. – xxx

15 (K) Additional Requirements for Deductibility of Certain Payments. – xxx

16 (L) Optional Standard Deduction. – xxx

17 Premium Payments on Health and/or Hospitalization Insurance of an Individual
18 Taxpayer. – xxx”

19 **SEC. 6. Each Mining Operation Treated as a Separate Taxable Entity. –**

20 Each mining operation, which is subject to a Mineral Agreement or Financial or
21 Technical Assistance Agreement shall be treated as a separate taxable entity. A mining
22 contractor shall be treated as if a separate taxpayer with respect to each and every
23 Mineral Agreement or Financial or Technical Assistance Agreement it holds or is a party
24 to.

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

27 **SEC. 7. Exemption from Confidentiality Clause. –** Mining contractors for all
28 metallic and non-metallic mining operations, whether large-scale or small-scale, shall
29 observe fiscal transparency and comply with the requirements of the Extractive
30 Industries Transparency Initiative (EITI), and, for this purpose, shall be exempted from
31 application of the confidentiality clauses of the National Internal Revenue Code of 1997,

1 as amended, including Section 270 in relation to Section 71, to the extent of their
2 participation in EITI.

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

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

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

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

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

25 **SEC. 11. *Implementing Rules and Regulations.*** – The Department of
26 Finance, after consultation with other concerned government agencies, shall, within
27 ninety (90) days from the effectivity of this Act, promulgate rules and regulations to
28 implement the intent and provisions of this Act.

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

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

4 **SEC. 13. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
5 publication in the *Official Gazette* or in a newspaper of general circulation in the
6 Philippines.

Approved,