



Republic of the Philippines
House of Representatives
Quezon City

Eighteenth Congress
First Regular Session

5022
House Bill No. _____

Introduced by Rep. Joey Sarte Salceda

EXPLANATORY NOTE

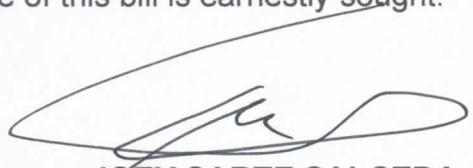
Mining brings images of abandoned stockpiles, tailings dumped in rivers, and acidic leakages. The massive pollution caused by the Marcopper Mining Corporation, which is considered the worst environmental disaster in Philippine history, released 1.6 million cubic meters of sulfidic slurry into the Makulapnit and Boac Rivers. Meanwhile, the Mines and Geosciences Bureau (MGB), though resource-constrained, must conduct risk-assessment studies, prepare Environmental Management Plans, and implement rehabilitation measures. The frontline local government units are even less capable in dealing with environmental threats, even as constituent communities suffer from ill-effects.

To provide a substantial solution, this measure proposes the creation of the Natural Resource Trust Fund, a sovereign wealth fund for use by local governments where mines are located. On top of providing funds for rehabilitation of abandoned mines, prior to the enactment of Republic Act No. 7942, the Fund accumulates resource revenues from mining operations, and extends their benefits to the next generations through educational programs, technological and research programs, health services, and disaster risk reduction management initiatives. To ensure utmost care in fund handling, the Fund shall limit discretionary spending until the next administration.

This measure acknowledges that mining operations deleteriously affect the carrying capacity of the environment, to the detriment of future generations. Further, the measure optimizes revenues from mining agreements through an auctioning system, to be established by the MGB. This will minimize awarding of mineral agreements based on asymmetrical information, first-come first-served system, and patronage politics. Moreover, it shall promote investments in mineral-rich areas through an online portal open to the public.

The measure institutionalizes the Nation's participation in the Philippine Extractive Industries Transparency Initiative (PH-EITI) provided under DENR Administrative Order No. 2017-07 requiring full public disclosure in the mining industry, particularly in revenue collection, and tax payments

In view of the necessity to promote economic and development and progress, aimed at uplifting our people, while balancing the same against safeguarding the environment, and ensuring sustainability, the passage of this bill is earnestly sought.



JOEY SARTE SALCEDA

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**AN ACT ESTABLISHING THE FISCAL REGIME FOR MINING INDUSTRY,
AMENDING FOR THIS PURPOSE SECTIONS 34(B) AND 151 AND ADDING A
NEW SECTION 151-A, ALL UNDER THE NATIONAL INTERNAL REVENUE
CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES**

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

1 **SECTION 1.** Section 34(B) of the National Internal Revenue Code of 1997, as
2 amended, is hereby amended to read as follows:
3

4 *"SEC. 34. Deductions from Gross Income. – x x x*
5

6 *"(A) Expenses. –*
7 *"x x x*
8

9 *"(B) Interest. –*
10 *"(1) x x x*
11 *"(2) x x x*
12 *"(3) x x x*
13 **"(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR**
14 **MINING CONTRACTORS:**
15

16 **(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY**
17 **RATIO IN EXCESS OF 3 TO 1 AT ANY TIME DURING AN**
18 **INCOME YEAR, A DEDUCTION IS DISALLOWED AS A**
19 **TAX-DEDUCTIBLE EXPENSE FOR THE INTEREST PAID**
20 **BY THE MINING CONTRACTOR DURING THAT YEAR ON**
21 **THAT PART OF THE DEBT THAT EXCEEDS THE 3 TO 1**
22 **RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED.**
23

24 **(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING**
25 **CONTRACTOR EXCEEDS 3 TO 1 FOR THE INCOME**
26 **YEAR, SUBSECTION (A) DOES NOT APPLY IF DURING**

1 THE INCOME YEAR, THE AMOUNT OF THE DEBT OF THE
2 MINING CONTRACTOR DOES NOT EXCEED THE ARM'S
3 LENGTH DEBT AMOUNT.

4

5 (C) FOR PURPOSES OF THIS SECTION, THE TERM –
6

7 (1) 'ARM'S LENGTH DEBT AMOUNT' SHALL MEAN THE
8 AMOUNT OF DEBT THAT A BANK THAT IS NOT A
9 RELATED PARTY OF THE MINING CONTRACTOR
10 WOULD BE PREPARED TO LEND TO THE MINING
11 CONTRACTOR HAVING REGARD TO ALL THE
12 CIRCUMSTANCES OF THE MINING CONTRACTOR.
13

14 (2) 'RELATED PARTY' SHALL COVER THE
15 SUBSIDIARIES AS WELL AS AFFILIATES AND ANY
16 PARTY, INCLUDING THEIR SUBSIDIARIES,
17 AFFILIATES, AND SPECIAL PURPOSE ENTITIES,
18 THAT EXERTS DIRECT OR INDIRECT CONTROL
19 OVER THE MINING CONTRACTOR'S DIRECTORS,
20 OFFICERS, STOCKHOLDERS, AND RELATED
21 INTERESTS AND THEIR CLOSE FAMILY MEMBERS,
22 AS WELL AS CORRESPONDING PERSONS IN
23 AFFILIATED COMPANIES.
24

25 (3) 'DEBT' SHALL MEAN THE GREATEST AMOUNT, AT
26 ANY TIME DURING THE INCOME YEAR, OF THE DEBT
27 OBLIGATIONS OF THE MINING CONTRACTOR ON
28 WHICH INTEREST IS PAYABLE AS DETERMINED
29 ACCORDING TO INTERNATIONAL FINANCIAL
30 REPORTING STANDARDS.
31

32 (4) 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION
33 TO MAKE A REPAYMENT OF MONEY TO ANOTHER
34 PERSON, INCLUDING AN OBLIGATION ARISING
35 UNDER A PROMISSORY NOTE, BILL OF EXCHANGE,
36 OR BOND, BUT NOT INCLUDING ACCOUNTS
37 PAYABLE OR AN OBLIGATION TO MAKE
38 REPAYMENT OF MONEY IN RESPECT OF WHICH NO
39 INTEREST IS PAYABLE.
40

41 (5) 'EQUITY' SHALL MEAN THE GREATEST AMOUNT, AT
42 ANY TIME DURING AN INCOME YEAR, OF THE
43 EQUITY OF THE MINING CONTRACTOR AS
44 DETERMINED ACCORDING TO INTERNATIONAL
45 FINANCIAL REPORTING STANDARDS AND
46 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. –

"XXX

"(J) Pension Trusts. - x x x

"(K) Additional Requirements for Deductibility of Certain Payments. – x

XX

“(L) Optional Standard Deduction. – x x x

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

“CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS”.

SEC. 3. Section 151 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 151. *Mineral Products.* —"

"(A) Rates of Tax. -

"XXX

"(1) x x x

"(2) x x x

"(3) x x x

- 1 "(a) Copper and other metallic minerals, [four percent (4%)] **FIVE**
2 **PERCENT (5%)**; and
3 "(b) Gold and chromite, [four percent (4%)] **FIVE PERCENT (5%)**
4 "(4) x x x"

5
6 **SEC. 4.** A new section shall be inserted as Section 151-A of the National Internal
7 Revenue Code of 1997, as amended, to read as follows:

8
9 **"SEC. 151-A. ROYALTY. –**

10
11 **(A) FOR LARGE-SCALE METALLIC MINING OPERATIONS**
12 **OUTSIDE OF MINERAL RESERVATIONS. – MINING**
13 **CONTRACTORS OF LARGE-SCALE METALLIC MINING**
14 **OPERATIONS OUTSIDE OF MINERAL RESERVATIONS SHALL**
15 **PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY ON**
16 **INCOME FROM MINING OPERATIONS IN ACCORDANCE WITH**
17 **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%

28
29 **(B) FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN**
30 **MINERAL RESERVATIONS. – MINING CONTRACTORS OF**
31 **LARGE-SCALE METALLIC MINING OPERATIONS WITHIN**
32 **MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT**
33 **A ROYALTY EQUIVALENT TO THREE PERCENT (3%) OF THE**
34 **GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS**
35 **EXTRACTED OR PRODUCED BY THE MINING OPERATIONS,**
36 **EXCLUSIVE OF ALL OTHER TAXES;**

37
38 **(C) FOR SMALL-SCALE METALLIC MINING OPERATIONS. –**
39 **MINING CONTRACTORS OF SMALL-SCALE METALLIC MINING**
40 **OPERATIONS SHALL BE EXEMPT FROM THE PAYMENT OF**
41 **ROYALTY.**

42
43 **(D) FOR THE PURPOSES OF THIS SECTION, THE TERM –**

- 1 (1) 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM
2 MINING OPERATIONS BEFORE CORPORATE INCOME
3 TAX TO GROSS OUTPUT.
- 4 (2) 'INCOME FROM MINING OPERATIONS' SHALL MEAN
5 THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES,
6 WHICH INCLUDES:
- 7 (a) MINING, MILLING, TRANSPORT AND HANDLING
8 EXPENSES TOGETHER WITH SMELTING AND
9 REFINING COSTS OTHER THAN SMELTING AND
10 REFINING COSTS PAID TO THIRD PARTIES;
- 11 (b) GENERAL AND ADMINISTRATIVE EXPENSES
12 ACTUALLY INCURRED BY THE MINING
13 CONTRACTOR IN THE PHILIPPINES;
- 14 (c) ENVIRONMENTAL EXPENSES OF THE MINING
15 CONTRACTOR, INCLUDING SUCH EXPENSES
16 NECESSARY TO FULLY COMPLY WITH ITS
17 ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN
18 THE ENVIRONMENTAL PROTECTION PROVISION OF
19 THE MINERAL AGREEMENT OR FINANCIAL OR
20 TECHNICAL ASSISTANCE AGREEMENT AND IN THE
21 APPLICABLE IMPLEMENTING RULES AND
22 REGULATIONS;
- 23 (d) EXPENSES FOR THE DEVELOPMENT OF HOST AND
24 NEIGHBORING COMMUNITIES AND FOR THE
25 DEVELOPMENT OF GEOSCIENCES AND MINING
26 TECHNOLOGY, INCLUDING TRAINING COSTS AND
27 EXPENSES AS STIPULATED IN THE MINERAL
28 AGREEMENT OR FINANCIAL OR TECHNICAL
29 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
30 IMPLEMENTING RULES AND REGULATIONS;
- 31 (e) ROYALTY PAYMENTS TO CLAIM OWNERS OR
32 SURFACE LAND OWNERS RELATING TO THE
33 CONTRACT AREA DURING THE OPERATING PERIOD,
34 IF ANY;
- 35 (f) CONTINUING EXPLORATION AND DEVELOPMENT
36 EXPENSES WITHIN THE CONTRACT AREA AFTER
37 THE PRE-OPERATING PERIOD;

(g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING-RELATED EXPENSES INCURRED BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN THE PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY FOR THE OPERATION:

(h) DEPRECIATION, DEPLETION, AND AMORTIZATION;

(i) TAXES, DUTIES, FEES, AND CHARGES; AND

(j) ALL OTHER COSTS AND EXPENSES RELATED TO MINING OPERATIONS AND SALE OF MINERALS AND MINERAL PRODUCTS.

(3) THE TERM 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT."

SEC. 5. 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 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 a Mineral Agreement or Financial or Technical Assistance Agreement is renewed, the renewal shall be treated as part of the original agreement.

SEC. 6. 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 and Financial or Technical Assistance Agreements entered into by the government.

SEC. 7. Opening of Areas for Mining through Auctions. – The grant of mining rights and mining tenements over areas with known and verified mineral resources and reserves, including those owned by the Government and all expired tenements, shall be undertaken through auctions. The issuances of licenses over metallic mining is subject to a bidding process, while licenses over non-metallic mining are granted by

1 application. The Mines and Geosciences Bureau shall prepare the necessary auction
2 packages, the reserve price for which shall include the weighted average cost and the
3 social acceptability of the proposed project. It shall formulate the proper guidelines
4 and procedures to conduct the auction.

5

6 *Provided*, That in the formulation of such guidelines and procedures, the Mines and
7 Geosciences Bureau shall fix the minimum capitalization that any bidder must satisfy
8 based on its determination of the expected economic returns and the potential
9 negative impacts from mining, upon reference to an independent study proposing such
10 minimum capitalization.

11

12 *Provided further*, That the Mines and Geosciences Bureau shall uphold any and all
13 laws pertaining to the environment, in general, and mining, in particular, including the
14 granting of the Free, Prior, and Informed Consent (FPIC) of indigenous peoples when
15 the mining occurs in an ancestral domain.

16

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

23

24 **SEC. 9. Natural Resource Trust Fund.** – There is hereby created a Natural Resource
25 Trust Fund from the annual payment of mining contractors to the Bureau of Internal
26 Revenue of an additional amount of two percent (2%) based on gross output for large-
27 scale metallic mining which shall be remitted to the Bureau of Treasury within the first
28 quarter of the succeeding income year. Failure to comply with this obligation shall
29 warrant immediate suspension or closure of the mining activities of the contractor
30 concerned.

31

32 The Bureau of Treasury shall create a Special Account for the Natural Resource Trust
33 Fund for the receipts of the Bureau of Internal Revenue under this Section. The Bureau
34 of Treasury shall serve as the fund manager and shall determine the investment
35 strategies for the Natural Resource Trust Fund.

36

37 For this purpose, the Natural Resource Trust Fund shall mean the special purpose
38 investment vehicle owned by a government whose principal source of financing is
39 revenues derived from mineral sales. It saves for future generations, earmarks
40 resource revenues for specific expenditure items of local governments concerned, and
41 employs a set of investment strategies that includes investing in foreign financial
42 assets.

43

44 **SEC. 10. Disposition of Natural Resource Trust Fund.** – The provisions of existing laws
45 to the contrary notwithstanding, the available proceeds from the Natural Resource
46 Trust Fund shall be divided equally among the provinces/municipalities directly

1 affected by mining activities. The Natural Resource Trust Fund shall be used by local
2 government units concerned to support educational programs, technological research
3 programs of local relevance, disaster risk management, rehabilitation of abandoned
4 mines prior to Republic Act No. 7942, and health services programs of the
5 communities directly affected by mining activities three (3) years after the effectivity of
6 this Act, and every six (6) years thereafter.

7

8 *Provided*, That the Department of Budget and Management, in consultation with the
9 Department of Environment and Natural Resources and the Bureau of Treasury, shall
10 issue rules and regulations governing the allocation and disbursement of the fund
11 allocated to provinces/municipalities not later than one hundred and eighty (180) days
12 from the effectivity of this Act.

13

14 **SEC. 11. Annual Report.** – The Mines and Geosciences Bureau shall submit an annual
15 report to Congress which shall include the list of entities granted mining rights and
16 mining tenements, including those owned by the Government and all expired
17 tenements, awarded through auctions and a comprehensive accounting of social and
18 environmental costs arising from each mining project, and economic benefits such as
19 job creation, gross value-added, and technology advancement and transfer. The
20 report shall be accessible to the public at all times.

21

22 **SEC. 12. Exemption from Confidentiality Clauses.** – Mining contractors for all metallic
23 and nonmetallic mining operations, whether large-scale or small-scale, shall observe
24 fiscal transparency and comply with the requirements of the Extractive Industries
25 Transparency Initiative (EITI) of government, and, for this purpose, shall be exempted
26 from application of the confidentiality clauses of the National Internal Revenue Code
27 of 1997, as amended, including Section 270 in relation to Section 71, to the extent of
28 their participation in the EITI.

29

30 **SEC. 13. Implementing Rules and Regulations.** – The Department of Finance, after
31 consultation with other concerned government agencies, shall, within ninety (90) days
32 from the effectivity of this Act, promulgate rules and regulations to implement the intent
33 and provisions of this Act.

34

35 **SEC. 14. Repealing Clause.** –

36

37 (A) The second paragraph of Section 5 of Republic Act No. 7942, otherwise known
38 as the Philippine Mining Act of 1995 is hereby amended to assign the Bureau
39 of Internal Revenue as the collecting agent of the payment of royalty.

40

41 (B) Section 13 of Department of Environment and Natural Resources
42 Administrative Order No. 2010-21 is hereby amended insofar as it governs the
43 payment of 5% royalty by contractors/permit holders/lessees within mineral
44 reservations.

45

1 (C) All general and special laws, acts, decrees, executive orders, proclamations
2 and administrative regulations, or part or parts thereof which are inconsistent
3 with any of the provisions of this Code are hereby repealed, amended or
4 modified accordingly.

5
6 **SEC. 15. Separability Clause.** – If any provision of this Act is declared unconstitutional
7 or invalid, other parts or provisions hereof not affected thereby shall continue to be in
8 full force and effect.

9
10 **SEC. 16. Effectivity.** – This Act shall take effect fifteen (15) days after its publication in
11 the *Official Gazette* or in a newspaper of general circulation in the Philippines.

12
13 Approved,