

**EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session

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Senate
Office of the Secretary

19 JUL 24 A9 50

SENATE

S. B. NO. 710

RECEIVED BY



Introduced by **SENATOR JOEL VILLANUEVA**

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

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 the revenues earned by mining companies are unusually disproportionate to the revenues generated by the government from these companies. For example, royalty paid to the government amounted to less than one percent of the total proceeds of the mineral industry in 2018 – the government collected at most Php1.73 Billion in royalties from the total mining gross production value of Php179.6 Billion. 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. For example, 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 2018 was only 207,000 or 0.46% 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 expand the employment opportunity in the said industry but also allow the country to maximize the value of our minerals at different stages of the 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 2020 to 2022 (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 2023 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.



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AN ACT
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AND FOR OTHER PURPOSES

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

1 **SECTION 1. Title.** – This Act shall be known as “Maximizing Benefits from
2 Mineral and Mineral Products and Quarry Resources Act.”
3

4 **SEC. 2. Declaration of Principles.** –
5

6 a) All mineral resources within the territory and exclusive economic zones of
7 the Republic of the Philippines are owned by the State. It shall be the
8 responsibility of the State to promote their rational exploration,
9 development, utilization and conservation through the combined efforts of
10 government and the private sector in order to enhance national growth in
11 a way that effectively safeguards the environment and protect the rights of
12 affected communities.
13

14 b) The state must establish a fiscal regime that ensures that present and
15 future generations of Filipinos benefit extensively from mining operations
16 and other extractive activities not just on the national level, but also on the
17 local level. This fiscal regime must also encourage the development of a
18 downstream industry to pave the way for the generation of more jobs for
19 the Filipinos.
20

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1 **SEC. 3. Definition of Terms. –**

- 2
- 3 a) **Arm's Length Debt Amount**, in relation to a mining contractor, means
4 the amount of debt that a bank that is not an associate of the contractor
5 would be prepared to lend to the contractor;
- 6
- 7 b) **Cash Flow Surcharge** refers to a surcharge to be imposed on the
8 cash flows of each mining area for each taxable fiscal year;
- 9
- 10 c) **Contract Area** means the land or body of water delineated under a
11 mineral agreement or a financial or technical assistance agreement
12 (FTAA) of the Contractor and properly defined by longitude and
13 latitude;
- 14
- 15 d) **Contractor** means a Qualified Person, as defined in Department Order
16 2012-21 of the Department of Environment and Natural Resources
17 (DENR), acting alone or in consortium who is party to a Mineral
18 Agreement or FTAA;
- 19
- 20 e) **Debt**, in relation to a mining contractor, means the greatest amount, at
21 any time, during a taxable fiscal year, of the debt obligations of a
22 contractor on which interest is payable as defined according to
23 international financial reporting standards;
- 24
- 25 f) **Extractive Industries** refer to the mining, oil, gas and coal sectors and
26 all other sectors that require the extraction of non-renewable natural
27 resources for commercial use;
- 28
- 29 g) **Financial or Technical Assistance Agreement (FTAA)** means a
30 contract involving financial or technical assistance for large-scale
31 exploration, development and utilization of mineral resources;
- 32
- 33 h) **Gross Output** means the actual market value of minerals or mineral
34 products from each mine or mineral land operated as a separate entity,
35 without any deduction for mining, processing, refining, transporting,
36 handling, marketing or any other expenses;
- 37
- 38 i) **Mineral Agreement** means a contract between the Government and a
39 Contractor, involving Mineral Production Sharing Agreement, Co-
40 Production Agreement or Joint Venture Agreement;
- 41
- 42 j) **Mining Area** refers to a portion of the contract area identified by the
43 Contractor as defined and delineated in a Survey Plan duly approved
44 by the Director/Regional Director concerned for purposes of
45 development and/or utilization, and sites for support facilities;
- 46
- 47 k) **Minerals** refer to all naturally occurring inorganic substances in solid,
48 liquid, gas or any intermediate state excluding energy materials such
49 as coal, petroleum, natural gas, radioactive materials and geothermal
50 energy;

- 1 l) **Mineral Products** mean materials derived from ores, minerals and/or
2 rocks and prepared into a marketable state by mineral processing;
 - 3
 - 4 m) **Mining Operations** means mining activities involving exploration,
5 feasibility study, development, and utilization;
 - 6
 - 7 n) **Quarry Resources** refers to any common rock or other mineral
8 substances as the Director of Mines and Geosciences Bureau may
9 declare to be quarry resources such as, but not limited to, andesite,
10 basalt, conglomerate, coral sand, diatomaceous earth, diorite,
11 decorative stones, gabbro, granite, limestone, marble, marl, red
12 burning clays for potteries and bricks, rhyolite, rock phosphate,
13 sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass:
14 *Provided*, That such quarry resources do not contain metals or metallic
15 constituents and/or other valuable minerals in economically workable
16 quantities: *Provided, further*, That non-metallic minerals such as kaolin,
17 feldspar, bullquartz, quartz or silica, sand and pebbles, bentonite, talc,
18 asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious
19 and semi-precious stones, and other non-metallic minerals that may
20 later be discovered and which the Director declares the same to be of
21 economically workable quantities, shall not be classified under the
22 category of quarry resources;
 - 23
 - 24 o) **Separate Taxable Person or Personality** refers to an independent
25 taxable entity as determined by business operations in a specific
26 mining area;
 - 27
 - 28 p) **State** means the Republic of the Philippines;
 - 29
 - 30 q) **Taxable Fiscal Year** means an accounting period of twelve (12)
31 months depending on the accounting method of the Contractor; and
 - 32
 - 33 r) **Utilization** means the extraction, mineral processing and/or disposition
34 of minerals.

36 **SEC. 4. Interpretation.** – Nothing in this Act shall be construed as a
37 diminution of the rights and privileges of local government units presently
38 enjoyed under existing laws such as Republic Act No. 7160 or the Local
39 Government Code of 1991. Further, nothing in this Act shall be construed as a
40 diminution of the rights enjoyed by indigenous peoples under Republic Act
41 No. 8371 of 1997 or The Indigenous Peoples Rights Act of 1997.

CHAPTER II

SCOPE AND APPLICATION

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

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

CHAPTER III

TAXATION OF MINERALS, MINERAL PRODUCTS, AND QUARRY RESOURCES

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

SEC. 7. Mining Royalty. – Mining contractors within and outside mining reservation areas, whether large-scale or small-scale, shall pay to the government a mineral royalty of five percent (5%), levied, assessed and collected on minerals, mineral products and quarry resources, 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.

29 For purposes of computing the cash flow surcharge (CFS), each mining area
30 shall be considered a separate taxable entity. The tax base of the CFS (CFS
31 tax base) is determined by adding back the depreciation and interest expense
32 and other financing charges to the regular taxable income used for the
33 purposes of the corporate income tax. In the event that CSF tax base is
34 negative, such amount shall be carried over as a deduction from the CSF tax
35 base for the next three (3) consecutive years immediately following the year of
36 such loss.

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:

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

47

48 b) If the total deductions in respect of the mining operations undertaken
49 by the contractor in a mining area during a taxable fiscal year exceed
50 the total taxable income derived from the same year, the excess may

- 1 be carried forward and allowed as a deduction against the taxable
2 income of the contractor from mining operations in the mining area for
3 the next taxable fiscal year;
- 4
- 5 c) An amount that is not deducted under subsection (b) above may be
6 carried forward to the next taxable fiscal year and allowed as a
7 deduction in accordance with subsection (b) for that year and so on
8 until the amount shall have been fully deducted, or until the mining
9 operations in the mining area shall have ceased;
- 10
- 11 d) If a contractor has an excess carried forward under subsection (b) for
12 more than one fiscal year, the excess of the earliest period is allowed
13 as a deduction first;
- 14
- 15 e) If a contractor has ceased mining operations in a mining area and the
16 contractor has a loss under subsection (b) in relation to the mining
17 area, the contractor may elect, by notice in writing to the Commissioner
18 of the Bureau of Internal Revenue (BIR), to treat the loss as a loss
19 under Subsection (b) in relation to another mining area operated by the
20 contractor; *Provided*, That the latter mining area falls wholly within the
21 same contract area of the first-mentioned mining area;
- 22
- 23 f) If a contractor has ceased mining operations in a mining area or if the
24 contractor has a loss under Subsection (b) in relation to the mining
25 area and subsection (e) does not apply to the Contractor, the
26 Contractor may elect, by notice in writing to the BIR Commissioner, to
27 treat the loss as a loss under subsection (b) in relation to mining
28 operations undertaken by the contractor in another area.
- 29

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

32

- 33 a) If a contractor has a debt-to-equity ratio in excess of 1.5 to 1 at any
34 time during a taxable fiscal year, a deduction of the interest paid by the
35 contractor in the portion of the debt which exceeds the 1.5 to 1 ratio for
36 that same fiscal year shall not be allowed.
- 37
- 38 b) If the debt-to-equity ratio of a contractor exceeds the 1.5 to 1 ratio for a
39 taxable fiscal year, subsection (a) above shall not apply; *Provided*, That
40 during the said fiscal year, the total amount of the debt of the contractor
41 shall not exceed the arm's length debt amount.
- 42

43 **SEC. 11. Export Tax on Raw Ore.** – Effective January 1, 2020, a twenty
44 percent (20%) export tax on the gross value of raw ore shall be imposed;
45 *Provided*, That effective January 1, 2021, a forty percent (40%) export tax on
46 the gross value of raw ore shall be imposed; *Provided further*, That effective
47 January 1, 2022, a sixty percent (60%) export tax on the gross value of raw
48 ore shall be imposed.

49

SEC. 12. Ban on Export of Raw Ore. – Export of raw ore shall be prohibited effective January 1, 2023.

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 of 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.

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

37
38 The BIR shall have the authority to inspect mining sites and monitor the
39 amount of mineral resources extracted by companies. The BIR, the Mines and
40 Geosciences Bureau (MGB) and the Philippine Port Authority (PPA) shall
41 coordinate among themselves and reconcile the figures on the amount and
42 value of minerals that were actually extracted and exported by companies
43 which were reported to them. The reconciled figure shall be the basis for
44 taxation and allocation of share among units of government.

With respect to payment of business tax, eighty percent (80%) of the gross sales/receipts of the business shall be taxable by the city or municipality hosting the mining operation, while the remaining twenty percent (20%) of the gross sales/receipts of the business shall be taxable by the local government unit where the main office of the business is located. If the mining operation is

1 hosted by several local government units, the tax due on the eighty percent
2 (80%) of the gross sales/receipts of the business shall be shared equally by
3 the said LGUs.

4

5 **SEC. 16. Natural Resource Trust Fund.** – The national government shall
6 create a National Natural Resource Trust Fund where all the proceeds from
7 mining activities, excluding shares of local government units, shall accrue.
8 Local government units shall also create a Local Natural Resource Trust Fund
9 where shares from national government and locally collected taxes from
10 mining and quarrying shall accrue.

11

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

19

20 The Local Trust Funds shall be governed in accordance with the resolution
21 passed by the local sanggunian concerned provided that transparency and
22 accountability mechanisms are put in place, which shall include the oversight
23 of a local multi-stakeholder oversight body composed of representatives from
24 the LGU, civil society, indigenous community (if applicable), and the business
25 sector.

26

27 The local oversight body shall conduct regular monitoring and annual audit of
28 the utilization of the Local Trust Fund and the performance of the projects,
29 activities and programs funded by the Local Trust Fund. The body shall also
30 advise the concerned LGU on fund operations and compliance with the fund's
31 mandate. It, shall be independent, and shall have access to all relevant public
32 information as may be necessary for the efficient and effective performance of
33 its functions.

34

35 The governing bodies may invest up to sixty percent (60%) of the money in
36 the trust and shall not be required to return the balance of the trust to the
37 national government at the end of every fiscal year.

38

39 The funds which are not otherwise invested may be used by the national and
40 local governments to support educational programs, technological research
41 programs of national and local relevance, and health services deemed to
42 benefit future generations of Filipinos.

43

44 The funds shall adhere to the accounting and auditing rules of the
45 Commission on Audit, and shall be regularly audited by COA. The governing
46 bodies of the funds shall also adhere to the reporting requirements of the
47 Philippine Extractive Industries and Transparency Initiative.

48

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50

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2 **CHAPTER V**
3 **DOWNSTREAM INDUSTRY**

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

14
15 **SEC. 18. Composition of MDCC.** – The MDCC shall be co-chaired by the
16 Secretaries of DENR and DTI and shall have the following additional
17 members: a representative from the mining industry, a representative from
18 civil society organizations and the Chairperson of the Board of Investments.

19
20 **SEC. 19. Powers and Functions.** – The MDCC shall have the following
21 powers and functions:

- 22 (a) Submit a work plan within sixty (60) days from the effectivity of this Act
23 for the development of the mining downstream industry;
- 24 (b) Conduct and facilitate the necessary capacity and institutional building
25 programs for all concerned government agencies and instrumentalities
26 and stakeholders;
- 27 (c) Request the assistance of any government agency or instrumentality,
28 including government-owned and controlled corporations and LGUs, in
29 the implementation of the mining downstream development program
30 and road-map;
- 31 (d) Conduct quarterly meetings among members of the council;
- 32 (e) Submit quarterly progress reports to the President on the status of the
33 implementation of the mining downstream development program and
34 road-map; and
- 35 (f) Perform such other functions and acts as may be necessary, proper or
36 incidental to the attainment of its mandates and objectives, or as may
37 be directed by the Chairpersons.

38 **CHAPTER VI**
39 **TRANSITORY AND MISCELLANEOUS PROVISIONS**

40
41 **SEC. 20. Implementing Rules and Regulation.** – The Secretaries of
42 Environment and Natural Resources, Interior and Local Government, Finance,
43 and Budget, in consultation with relevant stakeholders, shall promulgate the

1 necessary rules and regulations for the effective implementation of this Act
2 within sixty (60) days from the effectivity of this Act.

3
4 **SEC. 21. Separability Clause.** – If any provision of this Act is declared
5 unconstitutional or invalid, other parts or provisions hereof not affected
6 thereby shall continue to be in full force and effect.

7
8 **SEC. 22. Repealing Clause.** – All laws, decrees, executive orders, rules and
9 regulations or parts thereof which are contrary to or inconsistent with this Act
10 are hereby repealed, amended or modified accordingly; *Provided*, That
11 nothing in this Act shall be construed as a diminution of local autonomy or in
12 derogation of ancestral domain rights under the Indigenous Peoples' Right Act
13 of 1997.

14
15 **SEC. 23. Effectivity.** – This Act shall take effect fifteen (15) days after its
16 publication in this Official Gazette or in any two newspapers of general
17 circulation.

18
19 **Approved,**
20