

In response to the SC decision, President Arroyo said that the decision firmly upholds the national interest.

She also said that “the High Court has spoken with wisdom and joins the other great powers of government to do what is best for the nation and people at this time of challenge and opportunity.”

The President views the mineral extraction sector as a quick ticket to poverty reduction for the Philippines, where half of the 84 million population earn only the equivalent of \$ 2 a day or less. She also says that the revival of mining “spells more jobs, more roads, more bridges, more classrooms and books and computers in them, and potable water and electricity for the every barangay.” She estimates that four to six billion dollars would be poured in by foreign investors in the next five years.

Rigoberto Tiglao, head of the Presidential Management Staff, says that the government hoped to develop 23 mining projects with foreign investors. Similar to NEDA planning secretary Romulo Neri’s calculations, he estimated the total mining wealth in the country at \$ 840 billion or Ph P 47 trillion.

DENR Secretary Mike Defensor said the country could earn an additional \$ 2 billion yearly, if the 23 flagship projects pushed through. He said he foresees a “golden era” for the mining industry which will create vast economic benefits while giving paramount consideration to the protection of environment at every stage of mining activity.

Neri said that the landmark decision would open the window of opportunity towards the ultimate revitalization of the local mining industry and the creation of new jobs for Filipinos. “Mining has a multiplier effect of six times. At a potential value value added of Ph P 300 billion (US \$ 5.3 billion) annually, mining can add an incremental economic activity of Ph P 1.8 trillion (32.1 billion) or 36% of GDP.

Philip Romualdez, President of the Chamber of Mines of the Philippines, noted that the country could have earned at least \$ 20 billion in export revenues since 1995, had only the government fully implemented R.A. 7942.

With the new ruling of the Court, he said that there would be a rebirth of Philippine mining and other allied industries such as quarrying as well as oil, gas and cement production. He also said that investors from India, South Korea, Japan, China, Australia and Canada are already planning to conduct exploration activities in the country for the prospecting of gold, copper, nickel and zinc.

Leo G. Dominguez, head of the mining and natural resources section of the law firm of Quisumbing Torres (a member firm of Baker and Mackenzie) also reported that mining companies from China, Australia, Canada and United States have shown renewed interest in investing in the Philippines. He said that “investors perceive that the Philippine government is awakening from its former apathy and is assuming its proper role as active, involved partner of the minerals society”.

Former DTI Secretary now Finance Secretary Cesar Purisima said that the country is the 5th most mineralized country in the world, ranking 2nd in gold deposits, 4th in copper, 5th in nickel and 6th in chromite.

The Geo-Sciences and Mines Bureau, for its part, considers that with the full and unconstrained implementation of the Mining Act of 1995, the government foresees to set a mineral industry with about ten (10) world class mining operations which will be able to provide our expected economic benefits. With this setting, the bureau expects the government to generate about \$ 400 million annual contributions to foreign exchange.

It said that a financial model of one “world class” copper gold-mine with a projected milling rate of 25 million tones per year and a projected commercial life of 20 years would generate an average of over US \$ 100 million per year in taxes and other benefits to the community. It illustrated this point in the following table:

Potential Financial Benefits to be Derived from One World Class Mine in the Phils.		
	Annual Average	Life of Mine
Foreign Exchange Earnings thru Exports Sales		
Income Tax	US \$ 66.70 Million	US \$ 951 Million
Excise Tax	US \$ 7.52 Million	US \$ 120 Million
Custom Duties	US \$ 0.18 Million	US \$ 3 Million
Tax on Dividends to Foreign Loans	-	-
Tax on Dividends to Foreign Stockholders	US \$ 2.79 Million	US \$ 48 Million
Business Tax	US \$ 0.70 Million	US \$ 14 Million
Real Property Tax	US \$ 0.30 Million	US \$ 46 Million
Community Tax	-	-
Occupation Fees	US \$ 0.01 Million	US \$ 1 Million
Government Income from Indirect Taxes		
Fuel	US \$ 1.02 Million	US \$ 20 Million
Tax on Payroll	US \$ 1.43 Million	US \$ 25 Million
VAT on Purchase of Local Goods/Services	-	-
Government Income from Additional Share	US \$ 21.30 Million	US \$ 111 Million
Payment to Other Filipino in the Form of:		
Royalty to Claimowners	US \$ 7052 Million	US \$ 150 Million
Royalty to Indigenous Peoples	US \$ 3.76 Million	US \$ 75 Million
Salaries and Wages	US \$ 14.30	US \$ 246 Million
Direct Foreign Investment	-	US \$ 740 Million
Government Income from Additional Share	US \$ 0.90 Million	US \$ 18 Million
Government Income from Additional Share	US \$ 0.30 Million	US \$ 6 Million

The stage for “boomtown” is, thus, already set.

At this very moment that this representation has filed this bill, thirteen (13) mining firms are already exploring 67,500 hectares in the different provinces for prospects of gold, silver, copper, nickel, chromite, zinc and other minerals. By the time it is scheduled next month for the 1st reading, four (4) more firms have already been added. And consider that nine (9) million hectares would be mined and that only 420,000 hectares are presently mined.

This bill deals with the grant of royalty to the government of the Republic of the Philippines, a charge or compensatory fee for the extraction of our country's mineral deposits, but which is distinct from a tax. It is an economic compensation for the negative impacts brought about by mining operations. And it will be shouldered by the large-scale mining companies. As the owner of these minerals under the *regalian doctrine*, the State has the absolute right to demand for royalty.

How much should we charge the Americans, Australians, Chinese, Japanese, Canadians and many more lining up their applications with the DENR?

Think of the state-of-the-art tools, equipment and machineries of mining companies. Think of how much faster, more efficient, more sophisticated, more powerful and more moneyed a hundred thousand times these entities are, compared with our illegal loggers who, in their obsolete equipment can already sink

not just villages but towns and provinces and irretrievably ruin the ecological systems of several heavily-forested provinces in just less than a decade. The scale and magnitude of ecological damage are more than enough to make us shudder even in the afterlife.

And now we have the gall to allow 25 years for these mining companies at a minimum?

Again, may I stress that no amount of royalties can compensate for our environment's irreversible degradation and the permanent disruption of community life and the complex interaction and bio-diversity of our country's ecosystems. The ancestral domains of the indigenous people, the forests, lakes, streams and rivers, the many hills and mountains and other masses of lands are all priceless -- not to mention our ancient burial sites revered for generations.

There can never be a rightful price tag for all these non-renewable treasures and resources.

But, Malacañang had already spoken.

And the Supreme Court already ordered the mining paths open.

All because of the "need to develop our stagnating industry and in order to jumpstart our floundering economy....."

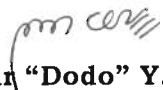
Again, how much?

The average rate of mining royalties granted to the recipient state is estimated to be 8-10%. However, many studies show that this is too low compared with the high and staggering social and ecological costs that the people have to bear for many years, long after the mining plants have shut down their operations for the last drop of gold and other mineral ores. Thus, it is viewed that the ideal royalty rate is from 15-20%.

This representation proposes that in the case of the Philippines, it should be twelve percent (12%), or possibly even higher. This is a very meager amount, only a thin slice from their huge and bloated coffers.

If Congress and Malacañang can hastily decide to tax the poorest sectors of our society at 12% in Value-Added Tax (VAT), apart from the old and new tax burdens that have to be shouldered, it is only fair and just that we can exact the same rate to our foreign investors who are a trillion times richer than Juan de la Cruz. Even a trillion times multiplied by a thousand fold.

This representation, therefore, seeks the support of all his colleagues for the swift passage of this bill.


Arthur "Dodo" Y. Pingoy, Jr.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3759

Introduced by **HON. ARTHUR "Dodo" Y. PINGOY, JR., M.D.**

AN ACT

GRANTING MINING ROYALTIES TO GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, ESTABLISHING MECHANISMS FOR ITS PROPER PAYMENT, COLLECTION AND ADMINISTRATION AND FOR OTHER PURPOSES

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

SECTION 1. This Act shall be known as the State's Royalty Act of 2005.

SEC. 2. Declaration of Policy.—Consistent with State policies within the framework of the Constitution and of other national laws and international covenants that recognize and promote the rights of all Filipinos to a balanced and healthful ecology, genuine national growth, and the preservation and protection of our national patrimony, the State shall effectively ensure the proper conservation of our natural resources, safeguard the environment, promote a more equitable distribution of opportunities, income and wealth, and protect the rights of affected individuals and communities in the utilization and development of such resources.

It is, therefore, the responsibility of the State to ensure the proper collection and judicious management and utilization of a just, adequate and rightful compensation for the mineral resources that will be extracted by mining companies for the protection of our environment and conservation of our natural resources and for the demands and purposes of the national economy and the patrimony of the nation.

SEC. 3. **Definition of terms:**--The following words are defined for the purposes of this Act:

- (a) **Royalty**—a payment to the owners or to the lawful possessors and any other legal occupants or stewards of a land, property or any resource, *other than the State*, for the right for the right to extract the State's mineral resources in such land, property or resource; it is an economic compensation paid *not only to the State* for the exploitation of its mineral resources but also to the owners, possessors and occupants of the area where the mineral resources are extracted and exploited.
- (b) **Extract**—means any operation or activity for the purpose of mining any mineral resource on, in or under the earth, water or any residue deposit and includes any operation or activity incidental thereto;
- (c) **Mineral resource**—means any substance whether:
 - (1) in solid, liquid or gaseous form
 - (2) occurring naturally in or under the earth, or in or under water, and
 - (3) formed or subjected to a natural or man-made process;

- (d) **Mineral resource extractor**—means any holder of a mineral resource right;
- (e) **Trust**—means any fund consisting of cash or assets that are administered and controlled by any person acting in a fiduciary capacity;
- (f) **Mining operation**—means mining activities involving exploration, feasibility, development, utilization and processing;
- (g) **Exploration**—means the searching or prospecting for mineral resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit;

Sec. 4. **Royalty Charge.**--A mineral resource extractor is subject to a royalty for every mineral resource extracted. The royalty is equivalent to 12% of the net sales profit of the mineral resource.

SEC. 5. **Schedule and manner of payment.**--The payment of royalty payment shall be made by a mineral resource extractor on a semi-annual basis until the expiration of the mining operations period approved by the Philippine government. It shall be paid and deposited in the Land Bank of the Philippines (LBP) in a joint account of the Department of Budget and Management (DBM), Department of the Environment and Natural Resources (DENR), Department of Justice (DOJ), Department of Finance (DOF) and the Department of Interior and Local Government (DILG) who are hereby appointed as trustees of the fund.

SEC. 6. **Administration of the mining royalty fund.**--The fund shall be managed and administered by an interim council of all the aforementioned departments and can only be withdrawn through an appropriation measure passed by Congress.

SEC. 7. The provisions of this Act shall not apply to small-scale mining resource extractors.

SEC. 8. **Punishable acts and applicable penalties.**--Non-payment of the royalty or any violation of any provision of this Act shall be sufficient ground for any court of competent jurisdiction, after due notice and summary proceedings, to order, at the instance of any taxpayer in any of the affected areas of mining operations, or on its own, the cessation and closure of the mining operations in the area. The order will include, among others, the satisfaction of the payment plus legal interests, without prejudice to administrative sanctions that may be passed upon under existing laws against the erring party by government agencies regulating the mining operations and the forfeiture of any property or assets of said party corresponding to its adjudged liabilities.

SEC. 9. **Implementing rules and regulations.**—Within sixty (60) days from the approval of this Act, the DBM, DILG, DOJ, DOF and DILG shall issue the necessary rules and regulations, in consultation with the Committees on Natural Resources and on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

SEC. 10. **Separability Clause.**—If any provision of this Act shall be declared unconstitutional, any other provision not affected thereby shall remain in full force and effect.

SEC. 11. **Repealing Clause.**—All laws, decrees, orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 12. **Effectivity.**—This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,