

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

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3760



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

Explanatory Note

In a speech during the Stakeholders Forum on Responsible Mining for Sustainable Development attended by local and foreign representatives of big foreign mining firms from Australia, Canada, China, Japan and the United States and hosted by the Chamber of Mines in Malacañang Palace, President Gloria Macapagal-Arroyo was clear and emphatic:

"I realized that the government has a long way to go to prove its earnestness and sincerity in cleaning up abandoned mines and seeing to it that local communities are benefited in a durable way and not hurt by mining... *The government will have a legal and administrative system of safeguards installed to achieve balanced economic development, social equity and environmental protection....We are also prepared to propose legislation for the payment of the proper royalties to the indigenous peoples in whose ancestral lands the mines are located. The indigenous peoples need not fear that their lands are being taken away...."*

The President also said:

"As investments pour into local mining, rural areas will experience a significant boost in jobs and productivity, plus a strong surge in infrastructure development. We will make sure this comes hand in hand with the full protection of the environment and *a sturdy umbrella of social and economic returns for host communities, especially the indigenous peoples.*" (underscoring applied)

This proposed legislation is in response to such policy statements.

There is no mistaking. The presidential pronouncement was loud and clear, like the sirens of Binondo fire trucks rumbling in the busy streets of the metropolis after having received one emergency call. And this humble representation heard it quite well as a dutiful soldier would from his feisty commander.

Verily, the payment of royalties as a legal principle and as an operative policy and ideal has long been recognized not only in foreign statutes but also in the Philippines.

In Republic Act 7942, also known as the Philippine Mining Act of 1995, it is stated:

"Section 16. Opening of Ancestral Lands for Mining Operations. No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.

“Section 17. Royalty Payments for Indigenous Cultural Communities. In the event of an agreement with an indigenous cultural community pursuant to the preceding section, the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty payment shall form part of a trust fund for the socioeconomic well-being to the indigenous cultural community.” (underscoring applied)

In DENR Administrative Order No. 99-56 which provide the guidelines in establishing the fiscal regime of Financial or Technical Assistance Agreements with mining companies, it is stated that **“royalty payments to claim owners or surface land owners relating to the Contract Area during the Operating Phase”** shall form part of the deductible expenses of the mining companies. (underscoring supplied)

The Supreme Court decision on December 1, 2004 also affirms this when it also said that royalty to indigenous cultural communities constitutes a part of the basic government share that can be collected from the mining companies.

And in construing the phrase “among other things” of the second paragraph of the Section 81 of the Philippine Mining Act of 1995*, the Supreme Court made the following relevant disquisition:

“The law provides no definition of the term among “other things”, for the reason that **Congress deliberately avoided setting unnecessary limitations as to what may constitute compensation to the State for the exploitation and use of mineral resources.** But the inclusion of that phrase clearly and unmistakably reveals the legislative intent to have the State collect more than just the usual taxes, duties and fees. Certainly, there is nothing in that phrase---or in the second paragraph of Section 81---that would suggest that such phrase should be interpreted as referring only to taxes, duties, fees and the like.” (underscoring supplied)

The right to receive royalty payments is also in accord with the overall intent and pertinent provisions of Republic Act No. 8371, also known as the “The Indigenous Peoples Rights Act of 1997”. In Section 7 thereof, it is stated that the rights of ownership and possession of indigenous cultural communities/indigenous people of their ancestral domains shall include, among others, the following:

1. the rights to develop, control and use lands and territories and uphold the responsibilities for future generations;
2. to benefit and share the profits from allocation and utilization of the natural resources found therein;
3. the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and conservation measures, pursuant to national and customary laws;

* (Sec. 81, 2nd paragraph of R.A. 7942: The Government’s share in financial or technical assistance agreements shall consist of, among other things, the contractor’s corporate income tax, excise tax, special allowance, withholding tax due from the contractor’s foreign stockholders arising from dividend or interest payments to the said foreign stockholder in case of a foreign national and all such other taxes, duties and fees as provided for under existing laws

4. the right to receive just and fair compensation for any damages which they sustain as a result of the project;
5. the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights.

This is the first of the eight (8) legislations that this representation has filed, in a close and committed collaboration with several esteemed colleagues of Congress who all firmly believe that Congress, as the highest policymaking body of the land, must assert a more vigorous and dynamic role in clearly defining the policy framework and environment for the mining sector in the light of the Supreme Court's complete reversal of an earlier ruling that foreign-led mining is tantamount to foreign ownership and control of the country's resources.

It is a shared opinion by many not only here in the legislature but also from the academe, legal circles, environmentalist groups and indigenous peoples' groups that before we finally declare "boomtown" for our valued foreign investors, we are duty-bound to set forth clearly essential rules and paramount guideposts, along with the desired safety nets, in keeping with our collective responsibilities in ensuring the judicious use of our country's mineral resources and the protection of our already fragile and enfeebled ecosystems.

It's because the inevitable has come---"the season of the cowboys".

Clad in top-of-the-line Armani suits, Collete Dinnigan and Safari apparel, billeted in the country's premier resorts and hotels, ferried by their luxurious SUVs, private jets and choppers and comforted by our unbridled hospitality and excessive obeisance, they will soon ravage our country's natural resources with much more power and thoroughness, and displace countless families residing in an area covering nine (9) million hectares, representing 30% of the country's total land area and almost 60% of which are ancestral lands and domains.

These are government estimates. Environmentalists do not agree. This representation does not agree, too.

According to environmentalists, the areas to be affected is even much bigger, far more vast than we'll ever know. The exact figures may still elude us at this time, but what will not escape us is the certainty that the social costs and burdens we have to endure in the coming years will have a double PHIL effect----pervasive, high, immense and lingering, and prevalent, harsh, intense and long-lasting.

What can we do at this juncture? Apart from our unwavering advocacy regarding the preservation and protection of our environment that includes our vital ecosystems, we must craft and push the necessary laws that will cushion the impact of mining operations in our people's lives.

This landmark initiative dealing with the payment of royalties is basically an economic compensation of our people who will be displaced from their properties and domains. It stresses the fact that people in localities where mining activities take place have a direct and inalienable share in the wealth produced by the utilization of their mineral sources in a way that translates into an improvement of their lives and well-being. It is a rightful claim and share to the \$ 840 billion worth of minerals that will be extracted from the wombs of our land.

And this is distinct and separate from the royalties that the national government for its own coffers, as this is for the Filipino people who own the lands and surface covers of areas that will be mined.

It can also be viewed as a social amelioration bill, as it redistributes wealth and promotes equitable distribution of economic opportunities.

Whatever amounts that may be received by our people as proposed by this bill may surely never be enough to compensate their displacement and other burdens they have to suffer and endure for not just five decades but even more.

True, no one can ever pay the right price for disrupting the economic, political and cultural life of hundreds of thousands of families; the millions of trees that will be cut and uprooted in the process; the lands and hills and mountains that will be denuded, drilled, blasted and bulldozed; the rivers, lakes and springs will be contaminated, and the many more essential components of our ecological system that will be damaged.

But, this is the bitter pill we all have to swallow because of government's acquiescence to the resumption of mining operations of mining companies and all in the name of economic development .

We may ask if the mining operations can still be prevented.

Hadn't the powers-that-be already conspired in this upcoming and biggest transgression of our Mother Nature? Hadn't their full might already started swinging in all the corridors of power?

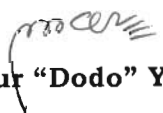
Even the so-called "bulwarks" have folded up. It is *fait accompli*.

When even a prominent magistrate was seen rubbing elbows, dining and chuckling with the mining lords in a posh hotel just a few days after the High Court ruled with finality (*in affirmation of its 246-paged decision on December 1, last year--- the longest ever in the court's 104-year history--allowing 100% foreign ownership of mining projects in large-scale exploration, development and utilization of natural resources; respecting existing contracts on oil, gas, coal and minerals; and giving foreign investors a lead on mining contracts*) the signs are crystal and unmistakable: the gold-rush has already started.

Certainly, this bill, along with the seven bills I have already drafted, will make it all easy for us as we painfully trek the road to the brand of development that our national leaders have prodded us at these very difficult times.

If this same government will make it hard for the passage of this bill, along with the other bills, then it can be told that we have been betrayed as a people once more, that we have again consented to an injustice to the unborn children of our children's children and that may God help us all much more.

In view of the foregoing, the crucial support of the members of both chambers of this legislature and of every Filipino and all churches, organizations, universities and political parties who truly love and care for our country is hereby earnestly sought.


Arthur "Dodo" Y. Pingoy, Jr.

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

THIRTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 3760

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

AN ACT

GRANTING MINING ROYALTIES TO INDIGENOUS PEOPLE AND OTHER COMMUNITIES AFFECTED BY MINING OPERATIONS AND ANY OTHER ACTIVITY ARISING FROM THE EXPLORATION, UTILIZATION, EXTRACTION AND DEVELOPMENT OF ANY MINERAL RESOURCE FROM ANY MASS OF LAND OR PROPERTY INCLUDING BODIES OF WATER AND ANY NATURAL RESOURCE THAT THESE PEOPLE AND COMMUNITIES OWN, OCCUPY AND UTILIZE FOR THEIR SOCIAL, ECONOMIC, CULTURAL AND COMMON WELFARE, 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 “People’s Mining 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, it shall be the responsibility of the State to 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.

Recognizing, affirming and considering the high social costs or the immense socio-economic and cultural impact in the lives of our people especially for indigenous people because of the State’s acquiescence to the resumption of mining operations by foreign companies, the State must also ensure the just, adequate and rightful compensation of the people’s individual and communal properties covered and affected by mining operations.

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) **Transfer**—means any agreement, act or operation of law that results in the disposal, distribution, exchange, sale or any other voluntary alienation of beneficial ownership or title, or the physical export from the Philippines of any mineral resource.
- (d) **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;
- (e) **Mineral resource extractor**—means any holder of a mineral resource right;
- (f) **Royalty rate**—means any royalty rate described in Section 6 of this law.
- (g) **Trust**—means any fund consisting of cash or assets that are administered and controlled by any person acting in a fiduciary capacity;
- (h) **Mining operation**—means mining activities involving exploration, feasibility, development, utilization and processing;
- (i) **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;
- (j) **Indigenous people**—refers to a group of people who have continuously lived as organized community on communally bounded and defined territory and who have, under claims of ownership since time immemorial, occupied, possessed customs, traditions and other distinctive cultural traits or as defined by the R.A. 8371.
- (k) **Communities**—refer to groups of people living in a defined territory, other than those occupied by indigenous people.

SEC. 5. Charging Provision.—A mineral resource extractor is subject to a royalty for every mineral resource extracted. The royalty is equivalent to the mineral resource's royalty rate multiplied by its current commercial price or fair market value as published or posted in local and international markets and by its unit quantity in terms of weight, size, volume or other similar criteria normally used for that mineral resource, or by its gross sales value, whichever is higher.

SEC. 6. Mining royalty rates. The royalty rates according to substance classification is as follows:

GROUP	SUBSTANCE	ROYALTY RATES
1	Salt, sand, stone, sandstone, late, gravel, clay, concrete, mortar, plastr, brick, dolorite, limestone, shale, gypsum, limestone, guano and phosphate rock	1 %
2	Oil and gas: natural gas and natural gas condensate petroleum crude offshore production	2 %
3	Alumino-silicates (andalusite, sillimanite, kyanite), asbestos, ammonium sulphate, barytes, zirconium oxide,	2 %

	uranium oxide, kaolin, talk, magnesite, mica, silica, sulphur, sodium sulphite, mineral pigment, pyrophyllite, dimension stone, (granite, norite), clay clay bentonite, dolomite diatomite, feldspar, gypsum and perlite.	
4	Anthracite and bituminous coal (low ash and steam)	4 %
5	Antimony, copper, iron, manganese, lead, zinc, cobalt, nickel, silicon, tin, and vermiculite.	5 %
6	Amethyst, quartz (smoky quartz, citrine, rose quartz), cryptocrystalline quartz (jasper, opal), or chalcedony (blue lace agate, moss agate, onyx, rainbow chalcedony), tiger's eye, blue asbestos (crocidolite), beryl (emeralds, aquamarine, morganite, heliodor), chrysoberyl (cat's eye, alexandrite), corundum (rubies, sapphires), garnet (jade, hydro-grossular, spessartine), lolite, kyanite, sodalite, sugilite (royal lavulite or royal azul), tourmaline, verdite (serpentine), tektite, obsidian, diorite, agate, serpentinite and topaz.	8 %
7	Platinum group metals: platinum palladium, rhodium, iridium, ruthenium, and osmium.	8 %
8	Gold, silver, vanadium, chromite, and titanium dioxide (limonite, rutile).	10 %
9	Unpolished natural diamonds	12 %
10	Minerals not included in this classification	Provisional 1 %

SEC. 7. **Schedule 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.

SEC. 8. **Manner of payment.**--The royalty payment shall be paid and deposited in the Land Bank of the Philippines (LBP) account in behalf of the people and communities affected and which shall be held in trust by their official representatives who also serve as officers of their official organization in the area as certified by the NCIP or by local government units (LGUs) in the case of non-indigenous communities.

SEC. 9. **Accreditation process.**--For the purpose provided in the preceding section, the NCIP, sixty (60) days from the promulgation of this Act, shall institute the rules and regulations for the proper screening and accreditation of official organizations and representatives for the indigenous people and the local legislative bodies of areas affected by mining operations in the case of non-indigenous people.

SEC. 10. **Administration of the mining royalty fund.**--The fund shall be managed and administered by the policy boards of such organizations. In case of intra-organization disputes or disagreements, the NCIP shall act as the official arbiter to resolve said conflicts and the decision of which shall be promulgated not later than sixty (60) days, or by the concerned LGU, in applicable cases.

SEC. 11. **Mining royalty bond.**--On the 1st year of the commencement of mining operations, a royalty cash bond shall be tendered at the Land Bank of the Philippines by the mineral resource contractor in the amount of five million dollars (US \$ 5,000,000.00) to be held jointly in escrow by the National Commission on Indigenous People (NCIP) and the Department of Natural Resources (DENR) acting as trustees in behalf of the affected indigenous people and communities in a particular area covered by mining operations.

(a) **Period of recovery.**--The said amount can only be recovered by the mining resource extractor only at the end of its mining operations period as defined by the Philippine government and after securing a clearance from the government that it has complied with all its responsibilities and obligations as provided for in its mining contract or agreement.

(b) **Failure to secure a clearance.**--The failure of a mining resource contractor to secure a clearance within reasonable time after its mining operations period has expired will forthwith cause the bond to be withdrawn by the Philippine government and to be duly applied to existing obligations and accountabilities of the mining company as may be determined either by the concerned government agencies or courts of competent jurisdiction.

SEC. 12. **Other conditions.**--The following conditions and considerations shall also be observed in the obligation and right to pay and receive the mining royalty payments:

- (a) No mining royalty will be collected on any mineral resource transferred if that extractor proves that the same mineral resource was previously subject to royalty;
- (b) It is not assignable at any stage of the mining operations;
- (c) The mining royalty for ancestral domains and lands covered by mining operations shall be paid solely for the name and benefit of the indigenous people occupying, possessing and utilizing these areas as defined by R.A. 8371 and in the case of non-indigenous people, only by communities affected by mining operations, as may be determined by the local legislative bodies of the local government unit concerned;
- (d) The mining royalty provided for under this Act is separate and distinct from any tax collected by the State from the mineral resource extractor; it is a compensatory payment, a compensation, not a tax;
- (e) The royalty provided for under this Act does not cover any mining royalty that may be collected by the national government for its own account.

SEC. 13. **Disallowed transfers.**--No transfer of any mineral resource will be allowed without proof of previous payment of royalty.

SEC. 14. **Royalty exemptions.**--The following shall exempt the mineral resource extractor from payment of mining royalty:

- (a) Transfer of a mineral resource solely for purposes of analysis, assay, regular or bulk sampling, identification or other testing that will be conducted in the Philippines by Filipino experts hired by the mining company for such purposes, provided that the volume of samples taken must be first approved by the mines regional office of the DENR.
- (b) Transfer of any mineral resource in Group 1 as contained in Section 6 of this law if such is used solely for domestic consumption;

SEC. 15. The provisions of this Act shall not apply to small-scale mining resource extractors.

SEC. 16. **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 individual or family in the affected area 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. 17. **Implementing rules and regulations.**—Within sixty (60) days from the promulgation of this Act, the NCIP and the Department of Local Government (DILG) shall issue the necessary rules and regulations, in consultation with the Department of Environment and Natural Resources (DENR) and 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. 18. **Saving clause.**--This Act will not in any manner adversely affect the rights and benefits of the indigenous people under other national laws, conventions, agreements, international treaties and local regulations.

SEC. 19. **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. 20. **Repealing Clause.**—All laws, decrees, orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 21. **Effectivity.**—This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,