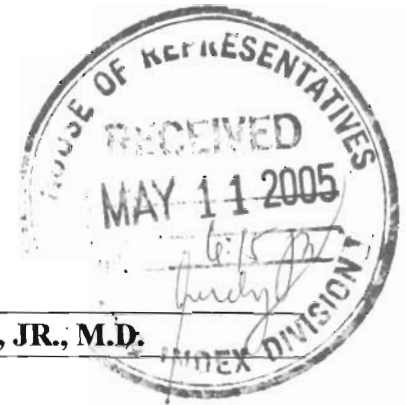


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

4315

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



Explanatory Note

Article II, Sec. 16 of the 1987 Constitution states:

"The State shall protect and advance the right of people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

This provision was first subjected to the test and interpretation of the Supreme Court in the 1993 Oposa vs. Factoran, Jr. case, a class suit involving thirty-four minors duly represented and joined by their parents who pleaded the cause of "inter-generational responsibility" and "inter-generational justice".

Chief Justice Davide wrote the *ponencia* and on the basis of the aforementioned constitutional provision recognized the right of all Filipinos to a "balanced and healthful ecology" and the "correlative duty to refrain from impairing the environment." The Court, speaking through him, said:

"Such a right...considers the 'rhythm and harmony of nature'. Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, offshore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, **every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.** Put a little differently, the minors assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come." (emphasis supplied)

The case involved the cancellation of timber licenses, but there was already this loud uproar and the well-grounded fear that nothing would be left not only to the present generation but also especially to future generations because of wanton deforestation and environmental devastation.

Ponder on these considerations now that mining operations by large-scale mining operations have resumed. Imagine the extent of damage and destruction that would be wrought not only to our environment but to all our nature's resources given that the present laws allow mining companies to operate for twenty-five (25) years and which can even be extended to another twenty-five (25) years. Imagine also the impact on public health.

A case to consider is the 1996 "Marcopper mining disaster".

Marcopper Mining Company mined the island province of Marinduque for thirty (30) years, starting out in 1956. It closed all its mines only in 1996 after one massive tailing spill

occurred filling the 26-kilometer-long Boac river with four (4) million tons of poisonous acids and heavy metals. Experts, however, do not discount the possibility that there is even much more that just four (4) million tons. This was the worst spillage that the company failed to arrest compared to the other spills it had numerously committed since 1975.

Almost ten (10) years have passed since it ceased operations, the company has failed to institute the needed rehabilitation of its abandoned mine pits and tunnels and to compensate thousands of families.

An independent research body had calculated that the country's worst mining disaster brought some US \$ 6 million damage in agriculture alone in 1996, another US\$ 19.5 million in the succeeding three years, and more than US\$ 14 million in key economic losses such as tourism.

All these happened because government agencies like the DENR and the Mines and Geo-Sciences Board (MGB) failed to exercise their mandated duties not only in the implementation of mining and environmental laws, but also in the monitoring of and in making the required social impact assessments of mining operations.

The failure is also due to the lack of clear policies and guidelines governing the rehabilitation of areas affected by mining operations.

This bill will help ensure that our country will not be left empty-handed with the funds necessary to rehabilitate areas affected by mining companies even in the face of the sudden closure or abrupt departure or abandonment of mining companies in their operations as in the case of Marcopper.

We will not be desperately seeking their attention with our begging bowls, pleading that they clean up their mess after they close their mining pits and cease operations.

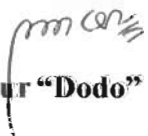
With the establishment of **special environmental and rehabilitation fund**, our mining companies would be compelled to always observe that extraordinary care and diligence in ensuring that the damages that may be sustained by our environment and natural resources would be kept at a minimum or else, it would mean more expenses for the mining companies.

No longer will our country be confined to chasing these mining companies for aid or assistance to be spurned and disdained and abandoned over and over again when an environmental disaster strikes no better than an ailing mendicant in the streets and underpasses of the metropolis.

Why beg, when we can fully flex and apply the State's police powers over these powerful mining companies and get what is due and just for our country and people?

This bill says with full might and reason and clearness of vision: We can; we will and we must---for the national interests and for the general welfare and for the next generation of Filipinos.

Based on the foregoing, the support of every member of Congress is hereby earnestly sought.


Rep. Arthur "Dodo" Y. Pingoy, Jr., M.D.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS

First Regular Session

4315

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

AN ACT ESTABLISHING THE SPECIAL ENVIRONMENTAL AND REHABILITATION FUND (SERF) THROUGH REVENUES DERIVED FROM LARGE-SCALE MINING OPERATIONS OF MINING COMPANIES AND REQUIRING FOR SUCH PURPOSE THE ONE-TIME RETENTION OF TWENTY PERCENT (20%) OF OPERATING CAPITAL PRIOR TO COMMENCEMENT OF MINING OPERATIONS AND THE ANNUAL RETENTION OF THIRTY PERCENT (30%) OF PROFITS FROM SAID COMPANIES IN LOCAL BANKS OR FINANCIAL INSTITUTIONS OWNED AND MANAGED BY THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, PROVIDING THE NECESSARY MECHANISMS FOR ITS IMPLEMENTATION 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 “SERF Act of 2005”.

SEC. 2. **Statement of Policy.**—The State shall promote and advance environmental protection, ecological balance and conservation of our country’s environmental and natural resources in all phases of national development. Towards this end, the State shall institute policies aimed at ensuring that the vital eco-systems and other essential elements of our environment will not be impaired nor suffer from any degradation, despoliation or ruin or any damage which will cause and wreak injustice not only to the present generation to the future generations of Filipinos. The establishment of a special environmental and rehabilitation fund will, among others, guarantee that the demands of a balanced and healthful ecology in accord with the rhythm and harmony of nature as well as that of the national patrimony and development of the country are justly and adequately fulfilled including the protection of that right for the generations to come.

SEC. 3. **Establishment of Special Environmental and Rehabilitation Fund.** (SERF)—A fund called the “special environmental and rehabilitation fund” is hereby established which shall be used actually, directly and exclusively for the following purposes:

- (a) rehabilitation of areas affected by large-scale mining companies which shall include but not limited to the covering, casing and sealing of mining pits; mopping up and clearing of pollutive mine tailings and reforestation activities, and which shall have an allocation of not less than ~~fifty~~ percent (50%) of this fund;

- (b) building of houses and restoration or repair of parks and other structures of host communities affected by mining operations;
- (c) implementation of educational and environmental projects and programs to instill health consciousness and the right of people to a balanced and healthful ecology;
- (d) support to wildlife conservation and propagation projects and programs;
- (e) creation of new scholarship grants for deserving children of families in areas affected by mining operations, provided that the courses would only be limited to medicine and other related sciences; environmental engineering or management degrees; law; forestry and agriculture.

SEC. 4. (a) Source of fund.—The fund shall be derived from twenty percent (20%) of the operating capital and thirty percent (30%) of profit of large-scale mining companies operating in the Philippines.

(b) **Disclosure of capital.**—Prior to the commencement of mining operations, mining companies shall declare their operating capital which shall include but not just limited to the value of their investments in the mining industry and which shall be contained in a report that will be submitted to the Mines and Geo-Sciences Board (MGB), Securities and Exchange Commission (SEC) and the Board of Investments (BOI), with copies furnished to the Department of Environment and Natural Resources (DENR) and the Senate and House committees on natural resources. Subsequent increases in the operating capital of the company must also be reported thereafter. A mining operation is deemed to have commenced at the very moment that the mining company has sent its team or personnel for exploration activities.

(c) **Annual disclosure of profits.**—All mining companies are required to submit an annual written report indicating the total amount of their gross profits gained at the end of every fiscal year. This report shall be submitted to the Bureau of Internal Revenue (BIR), with copies furnished to the SEC, BOI, DENR, the Senate and House committees on natural resources and to the local government unit (LGU) in the area of their mining operations. The Commission on Audit shall determine the probity and integrity of said report by conducting, among other things, a special and independent audit of the reported profits of the mining companies.

(d) **Disclosure of partnerships/joint ventures.**—Partnerships or ventures, of whatever nature or ownership stake or shares, must also be disclosed and duly reported in the same manner as provided in the preceding sections.

SEC. 5. Deposit and withdrawal requirement.—The required amount as provided in the preceding section shall be deposited in the name and in favor of the Philippine government in a local bank or financial institution owned and managed by the Philippine government, which amount shall only be withdrawn through an appropriations act passed by Congress only for such purposes as provided in the Section 3 of this Act.

SEC. 6. No prejudice clause.—The payment and deposit of the required amounts shall be without prejudice to the filing of additional claims by the Philippine government for the payment of additional costs to complete rehabilitation of affected areas or by any independent claims of individuals or groups for any damage sustained or suffered by them as a result of negligence or any tortious act by the mining company or its personnel and agents.

SEC. 7. Implementing rules and regulations.— Within sixty (60) days from the passage of this Act, the DENR, in consultation and coordination with the Department of Finance (DOF) and the Senate and House Committees on natural resources shall issue the necessary rules and regulations for the effective implementation of this Act.

SEC. 8. Separability Clause.—If any provision of this Act shall be declared unconstitutional or inoperative, any other provision not affected thereby shall remain in full force and effect.

SEC. 9. Repealing Clause.—All laws, decrees, orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SEC. 10. Effectivity.—This Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,