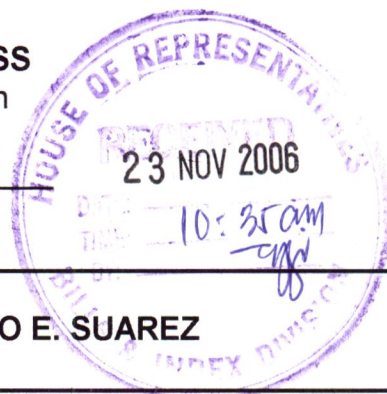


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
Second Regular Session

House Bill No. 5955



Introduced by **HONORABLE DANILO E. SUAREZ**

EXPLANATORY NOTE

Section II, Art. XII of the 1987 Philippine Constitution provides:

"All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forest or timber, wildlife, flora and fauna, and other natural resources are owned by the State, with the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State...

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development, and use of local scientific and technical resources."

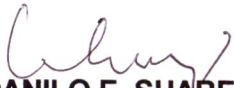
This provision underscores and emphasizes the regalian doctrine adopted by the Government. The State, through this provision, declares absolute and complete ownership of all its mineral and natural resources.

In all projects involving the exploitation, development and utilization of mineral resources, whether undertaken by the State on its own or with qualified Filipino entities, whether in small scale or in large scale through financial and technical assistance provided by a foreign corporation, one has to bear in mind that the Constitutional mandate and directive that all exploitation, development and utilization of mineral and natural resources SHALL be under the direct control and supervision of the State and that all mineral resources are finite and exhaustible, the country's mineral and natural resources being valued at PhP 47 trillion.

Despite this, Sections 80 and 81 of RA 7942, otherwise known as the Philippine Mining Act of 1995, limits the share of the government in mining. Section 80 confines the State's share to excise taxes as it is stated that, "The TOTAL government share in a mineral production sharing agreement shall be the excise tax on mineral products. Section 81 of the same law defines the State's share in mining revenues as, "among other things, the contractor's share in 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 law and all other taxes, duties and fees as provided for under existing law."

This bill thus seeks to increase the government's share in mining operation by amending Sections 80 and 81 of RA 7942. The author believes that the Government's share in mining profits and revenues should not be limited to taxes paid. The State is entitled to share in mining profits as an attribute of the State's ownership and NOT only in the exercise of its sovereign taxing authority. Similarly, as the term "among other things" in Section 81, referring to Financial and Technical Assistance Agreements (FTTA) is vague and ambiguous as it does not sufficiently define the State's share, it thus becomes necessary that Congress determines government's share with certainty.

For the foregoing reasons, passage of this bill is earnestly sought.


DANILO E. SUAREZ
Representative
3rd District, Quezon Province

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

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Introduced by **HONORABLE DANILO E. SUAREZ**

**AN ACT AMENDING SECTIONS 80 AND 81 OF REPUBLIC ACT (RA) 7942
OTHERWISE KNOWN AS THE PHILIPPINE MINING ACT OF 1995, AND FOR
OTHER PURPOSES.**

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

SECTION 1. Sections 80 and 81 of Republic Act No. 7942 are hereby amended
to read as follows:

*"Section 80. Government Share in Mineral Production Sharing Agreement – The
total government share in a mineral production sharing agreement shall **BE
DETERMINED USING THE FOLLOWING FORMULA:***

**GOVERNMENT SHARE = 45% OF GROSS PROFIT,
LESS ALL TAXES (INCOME, EXCISE, DIVIDEND
REMITTANCE, ETC.) PAID TO THE GOVERNMENT**

**GROSS PROFIT SHALL BE DETERMINED BY DEDUCTING THE COST OF
EXPLORATION / DEVELOPMENT DIVIDED BY TEN (ACCELERATED
AMORTIZATION PERIOD) FROM THE GROSS EXPORT SALES (BASED ON
INTERNATIONAL MARKET PRICE). THE GOVERNMENT AND THE CONTRACTOR
WILL AGREE ON COST OF EXPLORATION / DEVELOPMENT, AND IF THEY
DISAGREE, THE ISSUE WILL BE REFERRED TO ARBITRATION. THIS SHALL BE
WITHOUT PREJUDICE TO THE PAYMENT OF excise tax on mineral products as
provided in Republic Act No. 7729, amending Section 151 (a) of the National Internal
Revenue Code, as amended.**

*"Section 81. Government Share In Other Mineral Agreements – The share of the
Government in co-production and joint-venture agreements shall be negotiated by the
Government and the contractor taking into consideration the: (a) capital investment of
the project, (b) risks involved, (c) contribution of the project to the economy, and (d)
other factors that will provide for a fair and equitable sharing between the government
and the contractor. ~~The Government shall also be entitled to compensations for its other
contributions which shall be agreed upon by the parties, and shall consist, among other
things, the contractor's 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 stockholders, in case of a foreign national, and all such other taxes,
duties and fees as provided for under existing laws.~~ **THE SHARE SHALL BE
DETERMINED USING THE FOLLOWING FORMULA:***

**GOVERNMENT SHARE = 45% OF GROSS PROFIT,
LESS ALL TAXES (INCOME, EXCISE, DIVIDEND
REMITTANCE, ETC.) PAID TO THE GOVERNMENT**

GROSS PROFIT SHALL BE CONSTRUED AS DEFINED IN SECTION 80.

SEC. 2. *Repealing Clause.* All laws, presidential decrees, executive orders, issuances, and rules and regulations and parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 3. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved.