

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. **3586**



Introduced by HON. SILVESTRE H. BELLO and HON. LINO S. CAYETANO

EXPLANATORY NOTE

Section 2, Article XII of the 1987 Constitution provides that "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests 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 State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens."

In the aforementioned Section it further states that "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."

The bone of contention has always been the real contributions to the economic growth and general welfare. It is undeniable that the mineral industry makes significant contributions to the country's socio-economic growth. But the question remains as to whether this significant contribution translates to more revenues and profit for the State as the owner of the resources. On the other hand, there is also the need to temper the regulatory environment so as not to drive away but attract more investments into the field, considering that there is yet a largely untapped vast mineral wealth in the archipelago. Support for the mineral industry also redounds to the benefit of a lot of other downstream industries as well.

This Bill seeks to find that middle ground, of taking into consideration the better interests of the State and that of the Contractor as well, so that this real contribution shall be felt by most, if not all. This Bill seeks to promote and promulgate a mineral resource fiscal regime that shall give the State its fair share in its mineral resources and, at the same time, encourage and support more investments, both foreign and local.

Thus, approval of this Bill is earnestly sought.


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Republic of the Philippines
Congress of the Philippines
Metro Manila

House Bill No. 3586

AN ACT
RATIONALIZING REVENUE SHARING IN THE LARGE-SCALE METALLIC
MINERAL RESOURCE INDUSTRY, AND FOR OTHER PURPOSES

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

CHAPTER I
GENERAL PROVISIONS

Section 1. Title. -- This Act shall be known as the "*Philippine Mineral Resource Revenue Sharing Act of 2013*".

Section 2. Declaration of Policy. --

- a. All mineral resources in public and private lands within the national territory of the Republic of the Philippines are owned by the *State*.
- b. The State shall have a fair, adequate, and equitable share of the economic benefits derived from mineral resources to contribute to the development of the country.
- c. The State shall promulgate a fiscal regime for the large scale exploration, development, and commercial utilization of metallic mineral resources in the country that shall apply both to the Government and to the Contractor.
- d. The State shall encourage and support investments in the large-scale metallic mineral resource industry, in order to maximize the generation of revenues as provided for under this Act.

Section 3. Definition of Terms. -- As used herein, the following terms shall be defined as follows:

- a. "*Contractor*" means a qualified person acting alone or in consortium who is a party to a Mineral Agreement or to a Financial or Technical Assistance Agreement.
- b. "*Financial or Technical Assistance Agreement*" means a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources, as provided for under Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995.
- c. "*Government Share*" shall be the Government Royalty, Corporate Income Tax, and Special Mines Tax, which shall be in lieu of all national and local taxes, royalties, duties, fees and charges, except fees and charges imposed by the Department of Environment and Natural Resources (DENR)-Mines and Geosciences Bureau (MGB).
- d. "*Mines and Geosciences Bureau*" (*MGB*) refers to the attached agency of the DENR, pursuant to Executive Order No. 192, June 1987.

- e. *"Mineral Agreement"* means a contract between the Government and a Contractor, involving Mineral Production Sharing Agreement, Co-production agreement, or Joint-venture agreement as contemplated under Republic Act No. 7942, otherwise known as "The Philippine Mining Act of 1995".
- f. *"Net Mining Revenue"* means the Sale Price applied to the payable metal content, less applicable treatment and refining charges, freight and insurance. The payable content and any price adjustments shall be based on standard market practices applicable to the sale of particular metals or ores.
- g. *"Philippine Economic Zone Authority (PEZA)"* refers to the attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 7916 as amended by Republic Act No. 8748.
- h. *"Sale Price"* means the price as agreed between the Contractor and a buyer for the sale of metals or ores, which shall be based on metal prices quoted in recognized international metal exchanges over the agreed quotational or averaging periods, or in the case of the sale of ores that are valued on a per ton basis, at a price that is considered to be in line with market conditions at the time of sale.

CHAPTER II SCOPE OF APPLICATION

Section 4. Scope. -- This Act shall govern and apply to new Mineral Production and Sharing Agreements (MPSAs) and Financial or Technical Assistance Agreements (FTAAs) that are entered into after the effectivity of this Act.

Section 5. 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 as prescribed in Section 81 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995.

CHAPTER III GOVERNMENT SHARE

Section 6. Composition of Government Share. -- The Government Share in the exploration, development, and utilization of mineral resources shall be in the form of Government Royalty, Corporate Income Tax, and Special Mines Tax.

Section 7. Government Royalty. -- A royalty shall be levied, assessed and collected on metallic minerals and ores extracted and sold, as follows:

- a. On Gold, a variable rate of between 2% to 5% of Net Mining Revenue, in accordance with the Sales Price in the following schedule:

<u>Gold Price \$/oz.</u>	<u>Rate</u>
Below \$1,440/oz.	2%
\$1,440/oz. to \$1,800/oz.	3%
Above \$1,800/oz. to \$2,200/oz.	4%
Above \$2,200/oz.	5%

- b. On Copper, a variable rate of between 2% to 5% of Net Mining Revenue, in accordance with the Sales Price in the following schedule:

<u>Copper Price \$/lb.</u>	<u>Rate</u>
Below \$2.50/lb.	2%
\$2.50/lb. to \$3.50/lb.	3%
Above \$3.50/lb. to \$4.40/lb.	4%
Above \$4.40/lb.	5%

- c. On Nickel, Chromite, and other metallic minerals and ores:

- i. If extracted within proclaimed mineral reservations: a fixed royalty of 7% of Net Mining Revenue;
- ii. If extracted outside of proclaimed mineral reservations: a fixed royalty of 4% of Net Mining Revenue;

For avoidance of doubt, Section 151(A)(3) of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, is hereby repealed insofar as it does not impair or diminish vested rights and obligations.

Section 8. Corporate Income Tax. -- The income tax shall be paid by the Contractor to the Government in accordance with Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997.

Section 9. Special Mines Tax. -- The Contractor shall also pay a Special Mines Tax equivalent to Five Percent (5%) of the Contractor's taxable income as defined under Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997.

Section 10. Incentives. -- The Contractor shall be granted the following incentives:

- a. Accelerated depreciation and depletion over a five-year period;
- b. Duty-free imports of equipment for mine and plant development;
- c. Vat zero-rating of importations and local purchases of goods and services;

Section 11. Allowable Deduction. -- Section 34 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, is hereby amended as follows:

“Chapter VII – Allowable Deduction

F. Depreciation

xxx xxx xxx
xxx xxx xxx

(5) Depreciation of Properties Used in Mining Operations. - an allowance for depreciation in respect of all properties used in mining operations other than petroleum operations, shall be computed **at a rate of five (5) years and the depreciation thereon allowed as deduction from taxable income.**

G. Depletion of Oil and Gas Wells and Mines. -

xxx xxx xxx

(2) Election to Deduct Exploration and Development Expenditures. - In computing taxable income from mining operations, the taxpayer may at his option, deduct exploration and development expenditures accumulated as cost or adjusted basis for cost depletion as of date of prospecting, as well as exploration and

development expenditures paid or incurred during the taxable year
in the form of depletion over a period of five (5) years."

For avoidance of doubt, *Section 34* of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, is hereby amended, insofar as it does not impair or diminish vested rights and obligations.

CHAPTER IV ALLOCATION OF GOVERNMENT SHARE

Section 12. *Allocation of Government Share.* -- The Government Share shall be allocated as follows:

- a.) National Government: Sixty Percent (60%), payable to the Bureau of Internal Revenue;
- b.) Local Government Units hosting the mining operations:
 - i. Fifteen percent (15%) for the provincial government;
 - ii. Fifteen percent (15%) for the municipal/city government;
 - iii. Ten percent (10%) for the barangay;

If the mine is in a highly urbanized/independent component city, the city will get thirty percent (30%).

If the mining operation is in two or more provinces, or in two or more component cities or municipalities, or in two or more highly urbanized or independent component cities or in two or more barangays, their respective shares are distributed according to their population with a weight of twenty percent (20%), land area with a weight of twenty percent (20%), and area of mine occupancy with a weight of sixty percent (60%).

The share of the LGU shall be directly remitted by the Contractor to the LGU.

If the contract area is in an ancestral land/domain covered by Certificate of Ancestral Domain Title/Certificate of Ancestral Land Title (CADT/CALT), the royalties for ICCs shall be One Percent (1%) of Net Mining Revenue, taken from the Government Share. Thereafter, the Government Share shall be allocated in accordance with the above-stated ratio.

Section 13. *Payment of Government Share.* -- The Government Share shall be payable as follows:

- a. Government Royalty and any royalty that may be due to ICCs, within twenty (20) days from the end of each quarter;
- b. The Corporate Income Tax and Special Mines Tax, within Forty-Five (45) days from the end of each quarter;

CHAPTER V UTILIZATION OF GOVERNMENT SHARE

Section 14. *Utilization of Local Government Unit Shares.* -- LGUs, in utilizing their share, shall give priority to local economic development including health, education and livelihood projects or activities.

Section 15. *Utilization of Indigenous Cultural Community Shares.* -- The royalty payments to ICCs shall be utilized in accordance with Republic Act No. 8371, otherwise known as the Indigenous Peoples' Rights Act, and other relevant issuances.

CHAPTER VI ORGANIZATIONAL AND INSTITUTIONAL ARRANGEMENTS

Section 16. *Mining Areas as Economic Zones.* -- All mining areas governed by this Act shall be declared as economic zones based on a favorable certification issued by the MGB. The certification of the MGB shall be in lieu of all the necessary concurrences from the LGUs and the ICCs concerned inasmuch as these have already been required by the MGB for the issuance of the Mineral Agreements or FTAAAs

Section 17. *Administration and Regulation of Mining Activities.* -- The MGB shall administer and regulate mining activities including the grant of permits relating to the mining project. The duties and responsibilities assigned to the DENR as promulgated in the 1987 Philippine Constitution and mandated by virtue of its competence and expertise shall continue to be under the purview of the DENR.

Section 18. *Administration of Mining Ecozones.* -- The Philippine Economic Zone Authority (PEZA) shall be responsible for issuance of business permits, construction permits and the like, pursuant to the establishment of the mining economic zones.

Section 19. *Implementing Rules and Regulations.* -- An inter-agency committee shall, within ninety (90) days from the effectivity of this Act, promulgate rules and regulations to implement the intent and provisions of this Act.

The said committee shall be composed of the following officials or their duly authorized representative:

- a.) Secretary of the Department of Trade and Industry as Chair;
- b.) Secretary of the Department of Environment and Natural Resources as Co-Chair;
- c.) Secretary of the Department of Finance as Member;
- d.) Secretary of the Department of Interior and Local Government as Member;
- e.) Secretary of the National Economic Development Authority as Member;
- f.) Secretary of the Department of Budget and Management as Member;
- g.) Governor of the DTI-Board of Investments as Member
- h.) Chairman of the National Commission on Indigenous Peoples as Member;

CHAPTER VII TRANSITORY AND MISCELLANEOUS PROVISIONS

Section 20. *Recognition of Valid and Existing Rights.* -- Holders of valid and existing Mineral Agreements or FTAAAs shall continue to be governed by the terms and conditions contained in their respective mining contracts: *Provided*, however, that holders of valid and existing Mineral Agreements or FTAAAs may opt to be governed by this Act, which option, once made, shall be final and irrevocable.

Section 21. *Applicability of the Provisions of the Mining Act.* -- Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995, shall continue to be applicable for Mineral Agreements and FTAAAs approved under this Act except the following provisions:

- a.) Section 80 (*Government Share in Mineral Production Sharing Agreement*),

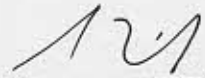
- b.) Section 81 (*Government Share in Other Mineral Agreements*) paragraph relating to the government share in financial or technical assistance agreement,
- c.) Section 82 (*Allocation of Government Share*),
- d.) Section 83 (*Income Taxes*),
- e.) Section 84 (*Excise Tax on Mineral Products*),
- f.) section 86 (*Occupation Fees*),
- g.) Section 87 (*Manner of Payment of Fees*),
- h.) Section 88 (*Allocation of Occupation Fees*),
- i.) Section 90 (*Incentives*),
- j.) Section 91 (*Incentives for Pollution Control Devices*),
- k.) Section 92 (*Income Tax-Carry Forward of Losses*),
- l.) Section 93 (*Income Tax-Accelerated Depreciation*), and
- m.) Such other provisions not consistent with this Act.

Section 22. Repealing Clause. -- Any provisions of other existing laws, rules, decrees, and executive orders inconsistent with the provisions of this Act are hereby repealed and modified accordingly.

Section 23. Separability Clause. -- If any provision of this Act is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

Section 24. Effectivity Clause. -- This Act shall take effect on _____.


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