

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5367

Introduced by **HONORABLE ROMERO "MIRO" S. QUIMBO**

EXPLANATORY NOTE

Executive Order No. 79 dated 6 July 2012 requires a new legislation rationalizing existing sharing schemes on mining revenues. This is pursuant to the recommendation of the Climate Change Adaptation and Mitigation and Economic Development Clusters in a Joint Resolution dated 16 March 2012 setting the direction and laying the foundation for the implementation of Responsible Mining Policies, foremost among which is to improve environmental mining standards and increase revenues to promote sustainable economic development and social growth, both at the national and local levels.

This Bill proposes a fiscal regime and revenue sharing arrangement between the Government and the mining Contractor for large-scale metallic mineral mining operations, wherein the Government Share shall be ten percent (10%) of Gross Revenue or fifty-five percent (55%) of the Adjusted Net Mining Revenue (ANMR), whichever is higher. In the event that the ANMR Margin exceeds fifty percent (50%) due to increase in metal prices or other factors, the Government, as owner of the mineral, shall get fifty-five percent (55%) of the Threshold ANMR plus sixty percent (60%) on the excess ANMR. Adjusted Net Mining Revenue is arrived at after deducting from Gross Revenue the allowable deductible expenses.

Payment to the Government shall be in lieu of all national and local taxes including income tax, royalty for indigenous cultural communities (ICC), duties on imported specialized capital mining equipment, fees for mayors and/or business permits and other fees and charges imposed by the host LGUs. The Contractor shall pay real property tax, value added tax, capital gains tax, stock transaction tax, documentary stamp tax, withholding tax on passive income, donor's tax, environmental fee, Securities and Exchange Commission (SEC) fee, water usage fee, and administrative and judicial cost and penalty.

The Government Share shall be allocated as follows: sixty percent (60%) to the National Government and forty percent (40%) to the Local Government Units. If the contract area is in an ancestral domain, the royalties for the ICCs shall be taken from the Government Share. Thereafter, the Net Government Share shall be allocated to the NG and the LGUs at the ratio stated earlier.

The Bill also prescribes that mining areas that will be covered shall be declared as Mining Industry Zones which will be administered by the Philippine Mining Development Corporation. The PMDC shall provide assistance to the Contractor in having its business registered with the appropriate government agencies and in applying with the concerned entities for the provision of services needed in the operation of the business. On the other hand, the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR) shall continue to exercise its functions as mandated by existing laws unless otherwise amended by the Bill.

A salient feature of the Bill provides for more speedy remittances of the LGU shares of ten days from the end of each quarter.

The Bill shall govern and apply to new Mineral Agreements (MAs) and Financial or Technical Assistance Agreements (FTAAs) covering large-scale metallic mineral mining operations that are entered into upon the effectivity of the Act. It shall also cover existing MAs and FTAAs where such agreements provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a law, regulation or administrative order shall be considered part of said agreements. It shall also govern the renewal and renegotiation of existing MAs or FTAAs.

In light of the foregoing, the urgent passage of this Bill is earnestly sought.

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HOUSE BILL NO. 5367

Introduced by **HONORABLE ROMERO "MIRO" S. QUIMBO**

**AN ACT ESTABLISHING THE FISCAL REGIME AND REVENUE SHARING
ARRANGEMENT FOR LARGE-SCALE METALLIC MINING, AND FOR OTHER
PURPOSES**

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

CHAPTER I
GENERAL PROVISIONS

SECTION 1. TITLE. – This Act shall be known as the *"Philippine Fiscal Regime and Revenue Sharing Arrangement for Large-scale Metallic Mining Act of 2014"*.

SECTION 2. DECLARATION OF POLICY.

- a. All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. The exploration, extraction and utilization of these resources shall be allowed based on real contributions to the economic growth of the country, and subject to the exercise by the State of its regulatory powers to promote and protect the general welfare of the country.
- b. The State shall effectively safeguard the environment and protect the rights of affected communities.
- c. The State shall get a fair and equitable share of the revenues and economic benefits derived from the mineral resources. Any economic rent arising from such exploration, extraction and utilization belongs to the State.
- d. The State shall establish a fiscal regime for the large-scale exploration, development and commercial utilization of mineral resources in the country that shall apply to the Contractor.
- e. The State shall promote investments in mining areas allowed by the Government consistent with the revenue sharing arrangements under this Act.

- f. The State shall encourage mining investments to develop value-adding and downstream industries pursuant to the development program of the country.

SECTION 3. DEFINITION OF TERMS. As used herein, the following terms shall be defined as follows:

- a. "Adjusted Net Mining Revenue" means gross revenue less allowable costs that include production costs as defined in item (t) hereof and the actual general and administrative costs, but not to exceed ten percent (10%) of the direct mining, milling and processing costs. Other allowable costs may be determined in the Implementing Rules and Regulations of this Act. Pre-operating expenses may be allowed as deduction provided that the amount shall be deducted within a five-year period from start of commercial operation. The interest expenses, and bank and financial charges shall not be allowed as deductible expenses from the gross revenue.
- b. "Adjusted Net Mining Revenue Margin" means total adjusted net margin revenue divided by gross revenue.
- c. "Administrative and Judicial Costs" means fees, charges, and or penalties imposed by administrative agencies in the exercise of their regular administrative functions and or quasi-judicial functions, and those imposed by the judiciary under the relevant laws and rules and regulations.
- d. "Contract Area" means the land or body of water delineated under a mineral agreement or financial or technical assistance agreement properly defined by longitude and latitude.
- e. "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.
- f. "Co-production Agreement" means an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral source.
- g. "Direct Milling and Processing Costs" means expenditures and expenses directly incurred in the mechanical and physical processing and/or chemical separation of the ore from the waste to produce marketable mineral products.
- h. "Direct Mining Costs" means expenditures and expenses directly incurred in all activities preparatory to and in the actual extraction of the ore from the earth and transporting it to the mill plant for mineral processing.
- i. "Excess Adjusted Net Mining Revenue" means the adjusted net mining revenue that is in excess of the threshold adjusted net mining revenue or the difference between the total adjusted net mining revenue and the threshold adjusted net mining revenue.
- j. "Final Mining Area" means the contract area or portion(s) thereof identified by the Contractor as defined and delineated in a survey plan duly approved by the Director / Regional Director concerned of the Mines and Geosciences Bureau for purposes of large-scale mining, development and utilization of mineral resources, and sites for support facilities.

- k. "Financial or Technical Assistance Agreement" means a contract involving financial or technical assistance for large-scale exploration, development and utilization of mineral resources.
- l. "Joint-venture Agreement" means an agreement where a joint-venture company is organized by the Government and the Contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.
- m. "Large scale metallic mining" means mining activities involving metallic minerals and which are not classified as small-scale mining.
- n. "Metallic Mineral" means a mineral having a brilliant appearance, quite opaque to light, usually giving a black or very black streak, and from which a metallic element/component can be extracted/utilized for profit.
- o. "Mineral Agreement" means a means a contract between the Government and a Contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.
- p. "Mineral Processing" means the milling, beneficiation, leaching, smelting, cyanidation, calcinations, upgrading or by similar means, of ores, minerals, rocks, mill tailings, mine waste and other metallurgical by-products to convert the same into marketable products.
- q. "Mineral Production-sharing Agreement" means an agreement where the Government grants to the Contractor the exclusive right to conduct mining operations within a contract area and shares in the revenue pursuant to Section 7 of this Act. The Contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.
- r. "Mineral Products" means materials derived from ores, minerals and/or rocks and prepared into a marketable state by mineral processing.
- s. "Mining Industry Zone" means a final mining area as defined in Section 3 (j) of this Act, endorsed by the Secretary of the Department of Environment and Natural Resources for declaration as such and whose metes and bounds are fixed and delimited by a Presidential Proclamation.
- t. "Production Cost" means the direct mining, milling and processing costs, and other allowable costs which are necessary and directly related to mining operations.
- u. "Small-scale mining" means mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment.
- v. "Threshold Adjusted Net Mining Revenue" means fifty percent (50%) of the gross revenue.

The definitions of the terms under Section 3 (e), (f), (k), (l), (o), and (q), and under Section 3 (h), (n), (p), and (r) were lifted from Republic Act No. 7942, known as the "Philippine Mining Act of 1995" and its Implementing Rules and Regulations, respectively, as such the meaning ascribed thereto under RA 7942 and its IRR shall be maintained.

CHAPTER II SCOPE OF APPLICATION

SECTION 4. SCOPE. This Act shall govern and apply to new Mineral Agreements (MAs) and Financial or Technical Assistance Agreements (FTAAs) covering large-scale metallic mineral mining operations that are entered into upon the effectivity of this Act. This shall also cover existing MAs and FTAAs where such agreements provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a law, regulation or administrative order shall be considered a part of said agreements.

The renewal and renegotiation of existing MAs and FTAAs shall also be governed by this Act.

CHAPTER III DECLARATION OF MINING INDUSTRY ZONE

SECTION 5. MINING INDUSTRY ZONES. All mining areas governed by this Act shall be declared by the President as Mining Industry Zones (MIZs) through a Presidential Proclamation upon endorsement by the Secretary of the Department of Environment and Natural Resources (DENR). For this purpose, only the mining areas approved and certified by the Mines and Geosciences Bureau (MGB) may be endorsed by the DENR Secretary to the President.

The MGB approval and certification process shall pass through consultation with the concerned Local Government Units (LGUs) and the Indigenous Cultural Communities (ICCs), if the mining area is within an ancestral domain. This consultation process shall include an LGU endorsement for the establishment of the mining area as MIZ. In consideration of the payment to LGU of 40% of the total government share referred to in Section 12 of this Act, the LGU endorsement shall include a waiver of its power to regulate the mining business operations through issuance of business permits and other license requirements imposed by the LGU pursuant to the Local Government Code of 1991, as amended.

The establishment of the MIZ must conform to the following criteria:

- a. The proposed area is a "Go Zone" as identified by an appropriate government agency or under any applicable law;
- b. The final mining area shall be endorsed by the Secretary of the Department of Environment and Natural Resources (DENR) to the President;
- c. The final mining area must have a significant advantage to the economy and its potential profitability can be established; and
- d. Other criteria as may be determined by the Mining Industry Coordinating Council (MICC) or an inter-agency Group that may be created, tasked or assigned by the President.

No mining operations can be undertaken in any mining area without the LGU/ICC endorsement and the Presidential Proclamation of an MIZ.

SECTION 6. RELATIONSHIP BETWEEN THE LGU AND THE MIZ

ADMINISTRATION. Once an MIZ is established, the administration of all mining activities within the zone shall exclusively pertain to the MIZ Administrator referred to in Section 15 of this Act. Any local issuances and/or directions that may be issued by the host LGU, which may affect or relate to mining operations and other incidental activities thereto, shall be consistent with and shall conform to the provisions of this Act and to the laws, regulations, policies and decisions taken by the National Government.

CHAPTER IV FISCAL REGIME AND REVENUE SHARING ARRANGEMENT

SECTION 7. FISCAL REGIME AND REVENUE SHARING ARRANGEMENT FOR MAs AND FTAAs. For every final mining area, the Government Share that shall be paid by the Contractor shall be whichever is higher of the following:

- a. Ten percent (10%) of Gross Revenue; or
- b. Fifty-five percent (55%) of Adjusted Net Mining Revenue; Provided, that in the event that the ANMR Margin exceeds fifty percent (50%) due to increase in metal prices or other factors, the Government, as owner of the mineral, shall get fifty-five percent (55%) of the Threshold ANMR, as defined in this Act, plus sixty percent (60%) of the Excess ANMR.

The payment of Government Share shall be in lieu of all national and local taxes including corporate income tax, royalty for the ICCs, duties on imported specialized capital mining equipment, fees for mayor's and/or business permits, and other fees and charges imposed by the host LGUs pursuant to Local Government Code of 1991, as amended.

The Contractor shall be liable to pay real property tax, value added tax, capital gains tax, stock transaction tax, documentary stamp tax, withholding tax on passive income, donor's tax, environmental fee, Securities and Exchange Commission (SEC) fee, water usage fee, and administrative and judicial cost and penalty.

The list of exceptions shall be reviewed annually, or as often as may be necessary; provided, however, that none of the exceptions indicated herein shall be delisted.

For purposes of this section, each final mining area is treated as a separate taxable entity. If the Contractor has more than one final mining area in a contract area or is a party to more than one mineral agreement, each final mining area shall be treated as a separate taxable entity.

SECTION 8. SOCIAL AND ENVIRONMENTAL FUNDS. In accordance with existing laws, rules and regulations, the Contractor shall continue to allocate and spend funds for the following:

- a. Social development and management program (SDMP) and community development program (CDP) for the host communities;

- b. Environmental Protection and Enhancement Program (EPEP); and
- c. Contingent Liability and Rehabilitation Fund (CLRF) which consists of the following:
 - i. Mine Rehabilitation Fund (MRF which further consists of the Monitoring Trust Fund and Rehabilitation Cash Fund);
 - ii. Mine Wastes and Tailings (MWT) Fees; and
 - iii. Final Mine Rehabilitation and Decommissioning Fund (FMRDF).

In addition, the Contractor shall allocate funds to cover costs for the following:

- a. Restoration/rehabilitation of areas and communities affected by disasters arising from mining operations; and
- b. Perpetual liability insurance to cover damages in the mining area where the Contractor previously conducted mining operations, as well as in identified impact areas.

SECTION 9. RECOVERABLE PRE-OPERATING EXPENSES. Pre-operating Expenses allowed for recovery under this Act shall be limited to actual expenses and capital expenditures relating to the following which shall have been incurred before the commencement of commercial operation:

- a. Cost of acquisition, maintenance and administration of the contract area;
- b. Cost of exploration, evaluation of explored areas, feasibility and environmental studies and rehabilitation of areas affected during the pre-operating period;
- c. Cost of meaningful CSR projects and activities undertaken for the affected communities within the contract area;
- d. Payments to landowners, surface rights holders, claim owners and Indigenous Peoples or Indigenous Cultural Communities, if any;
- e. Training expenses for personnel;
- f. Consultancy fees incurred for work directly related to the mining operations and consistent with the Contractor's approved work program;
- g. Cost of the establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocable to the mining operations and directly related to the performance of the Contractor's obligations;
- h. Costs of constructing and developing the mine which include machinery and equipment and real property; and
- i. General and administrative expenses actually incurred by the Contractor to support the exploration and the construction and development of the mine.

The actual costs of (c), (f) and (i) shall be allowed to be deducted but their aggregate amount shall not exceed five percent (5%) of the aggregate cost of (b) and (h).

Payments made to Government, both national and local, shall not be considered for recovery. All Pre-Operating Expenses reported for recovery shall be subject to verification by the MGB and/or PMDC or their designated representative or auditor.

SECTION 10. FISCAL REGIME FOR CO-PRODUCTION AND JOINT-VENTURE AGREEMENTS. The share of the Government in Co-production and Joint-venture agreements shall be negotiated by the Government and the Contractor provided that the Government Share shall not be less than the share for MAs and FTAAAs as prescribed in Section 7 of this Act.

SECTION 11. MINING CONTRACT. The fiscal regime and revenue sharing arrangement provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the MAs and FTAAAs that shall be prepared by the MGB.

CHAPTER V ALLOCATION OF GOVERNMENT SHARE

SECTION 12. ALLOCATION. The Government Share shall be allocated as follows:

- a. National Government (NG): sixty percent (60%)
- b. Local Government Units (LGUs) hosting the MIZ: forty percent (40%).

If the contract area is in an ancestral land/domain, the royalty for the ICC shall be taken from the Government Share. Thereafter, the Net Government Share shall be allocated to the National Government (NG) and the LGUs at the above stated ratio.

SECTION 13. PAYMENT AND DISTRIBUTION OF GOVERNMENT SHARE. The Government Share shall be remitted and paid quarterly by the Contractor to the Government.

The ICC share shall be directly remitted and paid by the Contractor to the ICC within five (5) days from the end of each quarter.

Within five (5) days from the end of each quarter, the Contractor shall pay the Government Share, net of the ICC share, if applicable, through the Electronic Filing and Payment System (EFPS) facility of the BIR or its accredited bank which shall credit such payment to the Bureau of Treasury (BTr) on the following banking day from payment. The BTr, within five (5) banking days from receipt thereof, shall deposit the forty percent (40%) LGU share to the account of the LGUs through their respective GFIs or their authorized agent bank.

The distribution of the LGU shares and the royalties allocated to the ICCs shall be based on existing laws. The utilization of these shares shall be covered by Section 18 of this Act.

The Government Share shall be recorded by the BIR as follows:

- a. Fifty percent (50%) as Corporate Income Tax; and
- b. Fifty percent (50%) as Royalty Tax.

SECTION 14. ENVIRONMENTAL / REHABILITATION FUND. An Environmental/Rehabilitation Fund of one-half of one percent (1/2 of 1%) from the NG share to be treated as a Trust Fund shall be established for government environmental mining programs. The specific activities and projects under these programs shall be determined and approved by the MICC or by an inter-agency Group created by the President. The utilization of this fund shall be covered by Section 18 of this Act.

CHAPTER VI ADMINISTRATION OF THE MINING INDUSTRY ZONE

SECTION 15. ADMINISTRATION OF THE MIZ. The Philippine Mining Development Corporation (PMDC) created through Presidential Memorandum dated April 9, 2003, shall be designated as Administrator of MIZs proclaimed under this Act. It shall have the following powers and functions:

- a. Formulate policies, rules and regulations to implement its functions under this Act;
- b. Evaluate and determine the Government Share on a monthly basis, which the Contractor shall remit and pay to the National Government (NG) and to the LGUs on a quarterly basis;
- c. Ensure that Government Shares are computed in accordance with this Act;
- d. Establish a One Stop Action unit, composed of all government agencies involved in the operation of MIZs, whose designated representatives are clothed with authority to act and approve or deny any matter relative to their respective agencies;
- e. Provide assistance to the Contractor in having its business registered with the appropriate government agencies such as the Securities and Exchange Commission (Sec), Social Security System (SSS), Department of Labor and Employment (DOLE) and Bureau of Internal Revenue (BIR);
- f. Provide assistance to the Contractor in applying with the concerned entities for the provision of utilities and other services needed in the operation of the business such as supply of electricity or power, water, telecommunications, and security in the area and waste disposal;
- g. Issue import permits, building permits, business permits and other necessary permits to the Contractor;
- h. Gather and verify data on the production and sales of the Contractor including the assaying of the mineral product. The data shall include tonnage or volume, value, market price and assay results, such as composition, percentage of metals, grade, purity, among others.
- i. Create and maintain a mineral revenue database system of the MIZ for reporting purposes and support the implementation of the Extractive Industries Transparency Initiative (EITI);

- j. Render annual reports to the President and to the MICC or inter-agency Group that may be created by the President; and
- k. Perform such other functions and duties relevant under this Act.

For this purpose, a one-time allocation of One Hundred Million Pesos (Php100,000,000.00) shall be appropriated for the administrative, promotional and operational expenses relating to the MIZs of the PMDC and all fees and charges collected by the PMDC shall be retained by the said office to sustain its operations.

CHAPTER VII INCENTIVE

SECTION 16. CAPITAL EQUIPMENT INCENTIVE. The Contractor shall be entitled to duty-free importation of specialized capital mining equipment that are directly needed in the exploration, extraction and processing of its mineral ores.

CHAPTER VIII INSTITUTIONAL ARRANGEMENTS

SECTION 17. MINES AND GEOSCIENCE BUREAU. The MGB shall continue to exercise its functions as mandated by existing laws unless otherwise amended by this Act.

SECTION 18. FUND UTILIZATION AND OTHER REPORTS. The LGUs, ICCs through the NCIP, the DENR and other concerned agencies allocated funds from the Government Share shall regularly submit reports to PMDC on completed projects and activities where their respective shares were utilized. They shall also be required to submit updated lists of current mining contractors, locations of mining projects and the areas covered or occupied by the mineral deposits, land area and population of the mining host communities, and other relevant information.

SECTION 19. ADMINISTRATIVE ARRANGEMENTS. The mandates, powers and functions provided in this Act shall be carried out through an agreement between and among the PMDC, MGB and other concerned agencies in accordance with the implementing rules and regulations promulgated under this Act, for purposes of coordination and consistency in policy formulation and implementation.

CHAPTER IX TRANSITORY AND MISCELLANEOUS PROVISIONS

SECTION 20. IMPLEMENTING RULES AND REGULATIONS. A 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 Committee shall be chaired by the DTI and composed of the following:

- a. Department of Environment and Natural Resources;
- b. Department of Finance;
- c. National Economic and Development Authority;
- d. Department of Budget and Management;
- e. Department of Interior and Local Government;
- f. Bureau of Internal Revenue;
- g. Board of Investments;
- h. Bureau of Local Government Finance; and
- i. Philippine Mining Development Corporation.

SECTION 21. VESTED RIGHT. Valid MAs and FTAA's existing prior to the effectivity of this Act that do not provide that any terms and conditions resulting from a repeal or amendment of any existing laws or regulations or from the enactment of a law, regulation or administrative order shall be considered a part of said agreements shall continue to be governed by the terms and conditions contained in their respective mining contracts.

SECTION 22. REPEALING CLAUSE. Sections 80, 81, 83, 84, 86, 87, 88, 90, 92 and 93 of Republic Act No. 7942 are hereby repealed or amended to the extent that they relate to the Scope of this Act.

Any laws, rules and regulations, 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 fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,