

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

House Bill No. **6029**



Introduced by Representative RAMON V. A. "RAV" ROCAMORA

EXPLANATORY NOTE

According to the US State Department, the Philippines has untapped mineral wealth worth more than \$840 billion. The country is therefore considered as one of the most mineral-rich countries in the world in terms of deposits to land ratio.

Current mining policies were created to purportedly harness our finite mineral resources in order to contribute to our economic development. However, statistics tend to show that it has failed to do so. According to the Mines and Geoscience Bureau (MGB) mining contributed less than one percent (0.7%) to GDP, less than one percent (0.6%) to employment, and 6.5% to exports earnings in 2014. Government does not earn anything from our minerals exports as there is no tax imposed on them. There is also no conscious effort to develop the downstream mining industry and this has greatly prevented the Philippines from generating increased employment and any additional value from the raw ore.

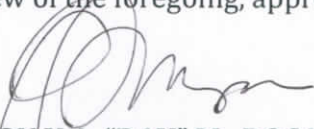
Government has attempted to collect higher revenues from large-scale mining companies by imposing a five percent (5%) royalty on the market value of the gross output of minerals on top of the two percent (2%) excise tax on operations within mineral reservations. However, to date, only nine (9) mineral reservation areas have been identified, thus making the collections gravely lower than what could potentially be received.

On to top it all, host municipalities and provinces get a much smaller share from the measly mining tax revenues being collected compared to what the national government gets. This is a common lament of most LGUs who end up dealing with destroyed watersheds, mine tailings and sometimes displaced indigenous peoples but getting the raw end of the deal. This is so because the current regime says only forty percent (40%) of the mining tax collection will go to LGUs and sixty percent (60%) will go to the national government. Likewise, the LGU where the principal office is located o gets thirty percent (30%) from the business tax even if the principal office is nowhere near the actual mining operations, while the host LGU gets seventy percent (70%).

This bill seeks to do the following:

- Impose a five percent (5%) mineral tax on all mining companies, regardless of where they operate, in addition to the two percent (2%) excise tax and other national and local taxes currently collected;
- Collect a surcharge of ten percent (10%) when prices of minerals are on the upswing for the country to benefit from windfall profits;
- Put in place a progressively increasing export tax on raw ore culminating to a total ban on the fifth year of this act to encourage the development of a downstream sector;
- Increase the share of local governments from forty percent (40%) to sixty percent (60%) of mining revenues for a fairer distribution of proceeds;
- Change the allocation of the proceeds of the business tax from the current seventy percent (70%) to the LGU where the operation is located and thirty percent (30%) to the principal office of the business to eighty percent (80%) where the operation is located and twenty percent (20%) where the principal office is located;
- Scrap unnecessary incentives given to mining companies.

In view of the foregoing, approval of this bill is earnestly sought.



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**AN ACT INCREASING THE TAXES ON FINITE MINERALS AND MINERAL PRODUCTS
AND QUARRY RESOURCES**

GENERAL PROVISIONS

SECTION 1. Declaration of Principles. All mineral resources within the territory and exclusive economic zones of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization, and conservation through the combined efforts of the government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

The state must establish a fiscal regime that ensures that present and future generations of Filipinos benefit extensively from mining operations not just on the national level, but also on the local level. This fiscal regime must also encourage the development of a downstream industry to pave the way for the generation of more jobs for Filipinos.

SECTION 2. Definition of Terms.

- A. "Ancestral domain" refers to all areas generally belonging to indigenous peoples/indigenous cultural communities (IPs/ICCs) comprising the lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by IPs/ICCs, by themselves or through their ancestors, communally or individually, since time immemorial, continuously to the present, except when interrupted by war, force majeure, deceit, stealth, or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social, and cultural welfare. It shall include ancestral lands, forest, pasture, residential, agricultural, and other lands individually owned, whether alienable and disposable or otherwise; hunting grounds, burial grounds, areas of worship, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by IPs/ICCs but from

1 which they traditionally and historically had access to for their subsistence
2 and traditional activities, particularly the home ranges of IPs/ICCs who are
3 still nomadic and/or shifting cultivators;

4 B. "Ancestral lands" refer to lands occupied, possessed, and utilized by
5 individuals, families, and clans who are members of IPs/ICCs since time
6 immemorial, by themselves or through their predecessors-in-interest, under
7 claims of individual or traditional group ownership, continuously to the
8 present, except when interrupted by war, force majeure, or displacement by
9 force, deceit, stealth, or as a consequence of government development
10 aggression projects and other dealings entered into by government and
11 private individuals/corporations including, but not limited to, residential
12 lots, rice terraces or paddies, forests, swidden farms, and tree lots;

13 C. "Arm's Length Debt Amount" in relation to a mining contractor, means the
14 amount of debt that a bank that is not an associate of the contractor would be
15 prepared to lend to the contractor;

16 D. "Cash Flow Surcharge" refers to a surcharge to be imposed on the cash flows
17 of each mining area for each taxable fiscal year;

18 E. "Certificate of Ancestral Domains Title" refers to a title formally recognizing
19 the rights of possession and ownership of IPs/ICCs over their ancestral
20 domains identified and delineated in accordance with law;

21 F. "Certificate of Ancestral Lands Title" refers to a title formally recognizing the
22 rights of IPs/ICCs over their ancestral lands;

23 G. "Contract Area" means the land or body of water delineated under a mineral
24 agreement or a financial or technical assistance agreement (FTAA) of the
25 contractor and properly defined by longitude and latitude;

26 H. "Contractor" means a qualified person, as defined in Department Order
27 2012-21 of the Department of Environment and Natural Resources, acting
28 alone or in consortium who is party to a Mineral Agreement or FTAA;

29 I. "Customary Laws" refer to a body of written and/or unwritten rules, usages,
30 customs, and practices traditionally recognized, accepted, and observed by
31 respective IPs/ICCs and local communities;

32 J. "Debt" in relation to a mining contractor, means the greatest amount, at any
33 time, during a taxable fiscal year of the debt obligations of a contractor on
34 which interest made payable as defined according to international financial
35 reporting standards;

36 K. "Downstream Industries" refer to mining activities that cover minerals
37 processing, refining, and manufacturing of intermediate and capital goods
38 and marketing of such;

- 1 L. "Extractive Industry" refers to the mining, oil, gas, coal, and all other sectors
2 that require the extraction of non-renewable natural resources for
3 commercial use;
- 4 M. "Financial or Technical Assistance Agreement" means a contract involving
5 financial or technical assistance for large-scale exploration, development, and
6 utilization of mineral resources;
- 7 N. "Free, Prior, and Informed Consent" refers to the consensus of all members of
8 the IPs/ICCs, to be determined in accordance with their respective
9 customary laws and practices, free from any external manipulation,
10 interference, coercion, and other analogous acts and obtained after fully
11 disclosing the intent and scope, including the positive and negative impacts,
12 of all the activities, in a language and process understandable and acceptable
13 to the community;
- 14 O. "Gross Output" means the actual market value of minerals or mineral
15 products from each mine or mineral land operated as a separate entity,
16 without any deduction for mining, processing, refining, transporting,
17 handling, marketing, or any other expenses;
- 18 P. "Indigenous Peoples/Indigenous Cultural Communities" refer to a group of
19 people or homogenous societies identified by self-ascription and ascription
20 by others, who have continuously lived as an organized community on
21 communally bounded and defined territory, and who have, under claims of
22 ownership since time immemorial, occupied, possessed, and utilized such
23 territories, sharing common bonds of language, customs, traditions, and
24 other distinctive cultural traits, or who have, through resistance to political,
25 social, and cultural inroads of colonization, non-indigenous religions and
26 cultures, became historically differentiated from the majority of Filipinos.
27 IPs/ICCs shall likewise include peoples who are regarded as indigenous on
28 account of their descent from the populations which inhabited the country, at
29 the time of conquest or colonization, or at the time of inroads of non-
30 indigenous religions and cultures, or the establishment of present state
31 boundaries, who retain some or all of their own social, economic, cultural,
32 and political institutions, but who may have been displaced from their
33 traditional domains or who may have resettled outside their ancestral
34 domains. They are people who have a spiritual relationship with the land;
- 35 Q. "Indigenous Political Structure" refers to organizational and cultural
36 leadership systems, institutions, relationships, patterns, and processes for
37 decision-making and participation as identified by IPs/ICCs such as, but not
38 limited to, Council of Elders, Council of Timuays, Bodong Holders, and any
39 other tribunal or body of similar nature;
- 40 R. "Mineral Agreement" means a contract between the government and a
41 contractor involving mineral production sharing agreement, co-production
42 agreement, or joint venture agreement;

- 1 S. "Mining Area" refers to a portion of the contract area identified by the
2 contractor as defined and delineated in a survey plan duly approved by the
3 director/regional director concerned for purposes of development and/or
4 utilization for support facilities;
- 5 T. "Minerals" refer to all naturally occurring inorganic substances in solid,
6 liquid, gas, or any intermediate state excluding energy materials such as coal,
7 petroleum, natural gas, radioactive materials, and geothermal energy;
- 8 U. "Mineral Products" refer to materials derived from ores, minerals, and/or
9 rocks and prepared into a marketable state by mineral processing;
- 10 V. "Mining Operations" refer to mining activities involving exploration,
11 feasibility study, development, and utilization;
- 12 W. "Ore" refers to a material that contains minerals in such quantities that it can
13 be mined and worked commercially to extract that mineral. The mineral is
14 usually contained in chemical combination with some other element in
15 addition to various impurities;
- 16 X. "Pollution Control and Infrastructure Devices" refer to infrastructure,
17 machinery, equipment, and/or improvements used for the impounding,
18 treating, or neutralizing, precipitating, filtering, conveying, and cleansing
19 mine industrial waste and tailings as well as reducing or eliminating
20 hazardous effects of solid particles, chemicals, liquids, or other harmful by-
21 products and gases emitted from any facility utilized in mining operations for
22 their disposal;
- 23 Y. "Quarry Resources" refer to any common rock or other mineral substances as
24 the Director of Mines and Geosciences Bureau may declare to be quarry
25 resources such as, but not limited to, andesite, basalt, conglomerate, coral
26 sand, diatomaceous earth, diorite, decorative stones, gabbro, granite,
27 limestone, marble, marl, red burning clays for potteries and bricks, rhyolite,
28 rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and
29 volcanic glass; provided, that such quarry resources do not contain metals or
30 metallic constituents and/or other valuable minerals in economically
31 workable quantities; provided further, that non-metallic minerals such as
32 kaolin, feldspar, bullquartz, quartz or silica, sand and pebbles, bentonite, talc,
33 asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and
34 semi-precious stones, and other non-metallic minerals that may later be
35 discovered and which the Director declares the same to be of economically
36 workable quantities, shall not be classified under the category of quarry
37 resources;
- 38 Z. "Separate Taxable Person or Personality" refers to an independent taxable
39 entity as determined by business operations in a specific mining area;
- 40 AA. "State" means the Republic of the Philippines;

1 BB. "Taxable Fiscal Year" refers to an accounting period of twelve (12) months
2 depending on the accounting method of the contractor; and

3 CC. "Utilization" refers to the extraction, mineral processing, and/or disposition
4 of minerals.

5 **SECTION 3. Interpretation.** Nothing in this Act shall be construed as a diminution of
6 the rights and privileges of local government units presently enjoyed under existing
7 laws such as Republic Act No. 7160 of 1991. Likewise, nothing in this Act shall be
8 construed as a diminution of the rights enjoyed by indigenous peoples under the
9 Indigenous Peoples' Rights Act of 1997. Finally, all other taxes and laws governing
10 large-scale mineral mining operations shall not be amended or repealed unless
11 otherwise provided in this Act.

12 CHAPTER II

13 SCOPE AND APPLICATION

14 **SECTION 4. Scope and Application.** This Act shall apply to new Mineral Agreements
15 and Financial or Technical Assistance Agreements (FTAAs) covering large-scale mineral
16 mining operations that are entered into upon the effectivity of this Act. This shall also
17 cover existing Mineral Agreements and FTAAs where such agreements provide that any
18 terms and conditions resulting from repeal or amendment of any existing laws or
19 regulation or from the enactment of a law, regulation, or administrative order shall be
20 considered as part of said agreements.

21 The renewal and renegotiation of existing Mineral Agreements and FTAAs shall also be
22 governed by this Act.

23 CHAPTER III

24 TAXATION OF MINERALS, MINERAL PRODUCTS, AND QUARRY RESOURCES

25 **SECTION 5. Separate Taxable Personality.** Each mining operation in a mining area
26 will be considered a separate taxable entity. If a mining contractor is party or holds
27 more than one mineral agreement, he shall be treated as a separate person with respect
28 to the business operations related to each mining area.

29 **SECTION 6. Mining Tax.** A mining tax shall be levied, assessed, and collected by the
30 Bureau of Internal Revenue on minerals, mineral products, and quarry resources with a
31 rate of seven percent (7%) – composed of the five percent (5%) mining tax on top of the
32 two percent (2%) excise tax stated in the National Internal Revenue Code, as amended –
33 based on the market value of the gross output at the time of sale for all mining
34 operations or the value used by the Bureau of Customs in determining tariff and custom
35 duties, whichever is higher.

36 **SECTION 7. Cash Flow Surcharge.** A surcharge of ten percent (10%) shall be imposed
37 on the cash flows of each mining area for every taxable fiscal year. For purposes of the
38 cash flow surcharge (CFS), each mining area shall be considered a separate taxable
39 quantity. The tax base of the CFS is determined by adding back the depreciation and

1 interest expense and other financing charges to the regular taxable income used for the
2 purposes of the corporate income tax. Any surcharge loss is carried forward to
3 subsequent years so as to avoid any charges until the mining area has a positive cash
4 flow.

5 **SECTION 8. Limitation on Deductions for Purposes of Computing the CFS.** When
6 computing for the cash flow surcharge, mining companies must adhere to the following
7 guidelines:

8 A. A deduction for the expenses or losses incurred, wholly or partly, by a
9 contractor in undertaking mining operations in a mining area during a
10 taxable fiscal year is allowed only against the income derived by the
11 contractor from such operations in the mining area during the same taxable
12 fiscal year.

13 B. If the total deductions in respect of the mining operations undertaken by the
14 contractor in a mining area during a taxable fiscal year exceed the total
15 taxable income derived from the same year, the excess may be carried
16 forward and allowed as a deduction against the taxable income of the
17 contractor from mining operations in the mining area for the next taxable
18 fiscal year.

19 C. An amount that is not deducted under subsection B may be carried forward
20 to the next taxable fiscal year and allowed as a deduction in accordance with
21 subsection B for that year and so on until the amount has been fully deducted
22 or until the mining operations in the mining area has ceased.

23 D. If a contractor has an excess carried forward under subsection B for more
24 than one fiscal year, the excess of the earliest period is allowed as a
25 deduction first.

26 E. If a contractor has ceased mining operations in a mining area and the
27 contractor has a loss under subsection B in relation to the mining area, the
28 contractor may elect, by notice in writing to the BIR Commissioner, to treat
29 the loss as a loss under Subsection B in relation to another mining area
30 operated by the contractor, provided that the latter mining area falls wholly
31 within the same contract area of the first-mentioned mining area.

32 F. If a contractor has ceased mining operations in a mining area or if the
33 contractor has a loss under Subsection B in relation to the mining area and
34 subsection E does not apply to the contractor, the contractor may elect, by
35 notice in writing to the BIR Commissioner, to treat the loss as a loss under
36 subsection B in relation to mining operations undertaken by the contractor
37 in another area.

38 G. For the instances under subsections E and F, the contractor must submit the
39 notice to the BIR Commissioner within 30 days from the cessation of the
40 mining operation. The Commissioner shall have the authority to determine
41 whether or not to grant the requested treatment of such loss.

SECTION 9. Limitations on the Interest Expense Deductions. The following are the limitations on mining contractors for any interest expense deductions:

A. If a contractor has a debt-to-equity ratio in excess of 1.5 to 1 at any time during a taxable fiscal year, a deduction of the interest paid by the contractor in the portion of the debt which exceeds the 1.5 to 1 ratio for that same fiscal year shall not be allowed.

B. If the debt-to-equity ratio of a contractor exceeds the 1.5 to 1 ratio for a taxable fiscal year, subsection A will not apply; provided, that during the said fiscal year, the amount of the debt of the contractor should not exceed the arm's length debt amount.

SECTION 10. Export Tax on Raw Ore. A progressive export tax system on the gross value of raw ore exported is hereby imposed to encourage the processing of raw ore in the country. A twenty percent (20%) export tax on the gross value of raw ore will be imposed two years upon effectivity of this Act, forty percent (40%) on the following year, and sixty percent (60%) the year after.

SECTION 11. Ban on Export of Raw Ore. To ensure availability of raw materials for processing plants located in the Philippines, a ban on export of raw ore shall be imposed on the fifth (5th) year of the effectivity of this Act.

SECTION 12. Incentives. All tax incentives granted to mineral mining and quarry contractors shall be repealed upon effectivity of this Act. Incentives that shall be given to the contractors shall only be limited to pollution mitigation devices.

CHAPTER IV

ALLOCATION OF PROCEEDS FROM THE DEVELOPMENT OF THE NATIONAL WEALTH

SECTION 13. Allocation of Funds. The mining tax collected shall be divided as follows:

A. National Government – Forty percent (40%); and

B. LGUs – Sixty percent (60%) to be subdivided as follows:

a. Provincial Government where the mine is located – Twenty percent (20%);

b. City/Municipal Government where the mine is located – Forty-five percent (45%); and

c. Barangay where the mine is located – Thirty five percent (35%).

If the LGU involved is a Highly Urbanized/Independent Component City, such City shall receive sixty percent (65%) and the Barangay shall receive thirty five percent (35%).

SECTION 14. Share of Local Government Units. The local government unit (LGU) hosting the mining area shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, including sharing the same with its inhabitants by way of direct benefits.

Local governments shall have a share of the gross collection derived by the national government from the preceding fiscal year from excise taxes, royalties, export and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture, or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. The share shall be distributed among LGUs according to the preceding section; provided, that in the event that the operation is hosted by several LGUs, the share shall be divided equitably among the host LGUs based on the amount of ore extracted from the LGU.

The Bureau of Internal Revenue (BIR) is given the authority to inspect mining sites and monitor the amount of mineral resources extracted by companies. The BIR, the Mines and Geosciences Bureau, and the Philippine Port Authority shall reconcile their figures on the amount and value of minerals that were actually extracted and exported by companies. The reconciled figure will be the basis for taxation and allocation among units of government.

For business taxes, eighty percent (80%) of the payment shall go to the LGU hosting the mining operation and twenty percent (20%) shall go to the LGU where the main office of the business is located. If the mining operation is hosted by several LGUs, the eighty percent (80%) shall be shared equitably by said LGUs.

Section 15. Authority to Inspect Mining Sites. The Bureau of Internal Revenue (BIR) is given the authority to inspect mining sites and monitor the amount of mineral resources extracted by companies. The BIR, the Mines and Geosciences Bureau, and the Philippine Port Authority shall reconcile their figures on the amount and value of minerals that were actually extracted and exported by companies. The reconciled figure will be the basis for taxation and allocation among units of government.

SECTION 16. Just Compensation to IPs/ICCs. A minimum one percent (1%) from the gross output of a mine shall be accorded by mining companies operating in ancestral domains to the legitimate Certificate of Ancestral Domains Title (CADT) or Certificate of Ancestral Lands Title (CALT) holders and not to the head claimant only. When an ancestral domain is not covered by a CADT/CALT, or is covered by a different title issued in favor of members of the IPs/ICCs, then mineral resources shall nevertheless be managed by the IPs/ICCs concerned when it can be presumed that the area is part of an ancestral domain. An area is presumed to be part of an ancestral domain by virtue of historic rights and self-delineation of the IPs/ICCs. The payment shall directly be given to the IPs/ICCs in a process that builds on their traditional and customary laws and indigenous political structure.

Management of payments and community based agreements shall build on the indigenous knowledge systems and practices of the IPs/ICCs.

1 No mining activity shall be conducted within the ancestral domains/lands of IPs/ICCs
2 without their free, prior, and informed consent (FPIC), in addition to the conditions set
3 for in the succeeding sections of this Act. For instances wherein there are questions on
4 the legality or validity of the issued FPIC, mining activities for which the FPIC was issued
5 shall be suspended until a resolution is reached.

6 Violation of any of the conditions imposed by the IPs/ICCs on the contractor shall cause
7 the cancellation of the mineral agreement.

8 CHAPTER V

9 DOWNSTREAM INDUSTRY

10 **SECTION 17. Creation of the Mining Downstream Coordinating Council.** The Mining
11 Downstream Coordinating Council (MDCC) is hereby created. The Department of
12 Environment and Natural Resources (DENR), in coordination with Department of Trade
13 and Industry (DTI), Department of Science and Technology, National Economic
14 Development Authority, the mining industry, and civil society, shall submit within a
15 period of six (6) months, a 15-year strategic mining downstream development program
16 and road-map based on the Philippine Development Plan and National Industrialization
17 Plan for the development of downstream industries and creation of jobs for strategic
18 metallic and nonmetallic minerals subject to review every five (5) years.

19 **SECTION 18. Composition.** The MDCC shall be co-chaired by the Secretaries of the
20 DENR and the DTI and shall have the following additional members: a representative
21 from the mining industry, a representative from civil society, and the Chairperson of the
22 Board of Investments.

23 **SECTION 19. Powers and Functions.** The MDCC shall have the following powers and
24 functions:

- 25 A. Submit a work plan within sixty (60) days from the effectivity of this Act for
26 the development of the mining downstream industry;
- 27 B. Conduct and facilitate the necessary capacity and institutional building
28 programs for all concerned government agencies and instrumentalities and
29 stakeholders;
- 30 C. Request the assistance of any government agency or instrumentality,
31 including government-owned and controlled corporations and LGUs, in the
32 implementation of the mining downstream development program and road-
33 map;
- 34 D. Conduct quarterly meetings among members of the MDCC;
- 35 E. Submit quarterly progress reports to the President on the status of the
36 implementation of the mining downstream development program and road-
37 map; and,

1 F. Perform such other functions and acts as may be necessary, proper, or
2 incidental to the attainment of its mandates and objectives, or as may be
3 directed by the Chairpersons.

4 CHAPTER VI

5 TRANSITORY AND MISCELLANEOUS PROVISIONS

6 **SECTION 20. Implementing Rules and Regulations.** The Secretaries of the DENR, the
7 Department of Interior and Local Government, the Department of Finance, and the DBM,
8 as well as the Chairperson of the National Commission on Indigenous Peoples, shall
9 promulgate the necessary rules and regulations for the effective implementation of this
10 Act.

11 **SECTION 21. Separability Clause.** If any provision of this Act is declared
12 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall
13 continue to be in full force and effect.

14 **SECTION 22. Repealing Clause.** All laws, decrees, executive orders, rules, and
15 regulations or parts thereof that are contrary to or inconsistent with this Act are hereby
16 repealed, amended, or modified accordingly.

17 **SECTION 23. Effectivity.** This Act shall take effect fifteen (15) days after its publication
18 in the Official Gazette or in any two newspapers of general circulation.

19 Approved,
20