

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 8223



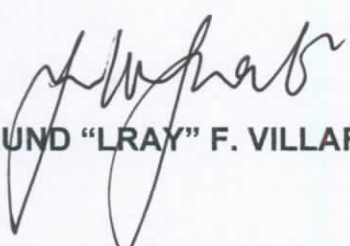
Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

EXPLANATORY NOTE

This bill intends to ensure sustained transparency and improve disclosure in the extractive industries by committing the government to disclose timely, complete, and accurate information and documents pertinent to resource extraction to enable evidence-based management. The expected report is projected to contain information on fees, taxes, and other mandatory payments by mining, oil and gas companies and may be expanded to include discussions on social and environmental costs and benefits as well as economic linkages.

Extractive industries are operations that harvest resources such as metals, minerals, aggregates, and other items from the earth. This industry accounts for 0.75% of the country's GDP, close to 4% of government revenue and 11.5% of exports in 2014, according to the PH-Extractive Industries Transparency Initiative¹. However, the Philippines is still the only country that has yet to meet international standards in extractive industries governance². The proposed bill intends to address this issue and strengthen this lucrative industry, as well as maintain stringent regulation thereof.

The approval of this bill is earnestly sought.


LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.

¹ <https://eiti.org/philippines>

² <https://news.abs-cbn.com/news/10/06/17/ph-lone-country-to-meet-intl-standards-in-extractive-industries-governance>

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AN ACT
IMPROVING THE DISCLOSURE AND TRANSPARENCY OF THE EXTRACTIVE
INDUSTRIES

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

SECTION 1. *Short Title.* – This Act shall be known as the "Open Extractives Data Act".

SECTION 2. *Declaration of Policy.* – Under Section 7, Article III of the Philippine Constitution, the right of the people to information on matters of public concern shall be recognized – access to official records, and to documents and papers pertaining to official acts, transactions, or decisions shall be afforded the citizen. Accordingly, the following are declared policies of the State:

- a. The State shall adopt and implement a policy of full public disclosure of all its transactions involving public interest;
- b. All natural resources are owned by Filipinos represented by the State. The State shall be under the full control and supervision of the exploration, development, and utilization of natural resources;
- c. The State shall be responsible for promoting the rational exploration, development, utilization, and conservation of the country's mineral resources through the combined efforts of government and the private sector in order to

enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities;

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

SECTION 3. Objectives. – In pursuit of Section 28. Article II of the Philippine Constitution, this Act shall have the following objectives:

- a. To ensure sustained Philippine government's commitment to participate in the Extractive Industries Transparency Initiative (EITI) that sets international standards for transparency and accountability in the extractive industries and in government;
- b. To promote better understanding of the public on the nature of extractive industries and the benefits of transparent and accountable governance of our natural resources;
- c. To promote genuine participation of civil society in the design, implementation, evaluation and modification of policies and actions of the government associated with resources governance in the Philippines;
- d. To require all entities engaged in the extraction of natural resources to participate in such initiative;
- e. To ensure that the initiative is effectively integrated in other related government reform agenda and make the information required by EITI available and accessible through government reporting systems and structures; and
- f. To ensure material information is disclosed and payments are reconciled.

SECTION 4. Definition of Terms. – For purposes of this Act, the following terms shall be defined as follows:

- a. Beneficial owner – refers to the natural person/s who directly or indirectly ultimately owns or controls the corporate entity;
- b. Contract – refers to an agreement between the Government and a contractor for the exploration, development, production and utilization of natural resources for commercial and other uses as authorized by law;

- c. Contractor – refers to a qualified person acting alone or in consortium who is a party to a contract as defined under this Act;
- d. Extractive Industries – refer to the mining, oil, gas, and coal sectors and all other sectors that require the extraction of natural resources for commercial and other uses.

SECTION 5. *Institutionalization of the PH-EITI.* – The Philippine Extractive Industries Transparency Initiative (hereinafter referred to as PH-EITI) is hereby institutionalized to ensure that all of what is due to the Filipino people and the Government on account of the exploration, development, production and utilization of natural resources are (a) verifiably paid; (b) duly accounted for; and (c) judiciously utilized for the benefit of all Filipinos and on the basis of intergenerational equity and sustainability.

SECTION 6. *Applicability and Coverage.* – For the purposes of this Act, the following sectors shall be covered by and within the scope of the PH-EITI: (a) the mining sector; (b) the oil and gas sector; (c) the coal sector; and (d) such other sectors as may be determined by the PH-EITI Multi Stakeholder Group, as defined in the succeeding section.

SECTION 7. *Composition of the PH-EITI Multi-Stakeholder Group.* – The PHEITI shall be implemented and operationalized through the Multi-Stakeholder Group (MSG) chaired by the Secretary of the Department of Finance (DOF) and co-chaired in rotation and by fixed term of the Secretary of the Department of Environment and Natural Resources (DENR) and the Secretary of the Department of Energy (DOE).

It shall specifically consist of the following members:

- a. Six (6) government representatives from the DOF, DOE, DENR Environmental Management Bureau, DENR Mines and Geosciences Bureau, Department of Interior and Local Government (DILG), National Commission on Indigenous Peoples (NCIP);
- b. Six (6) business group representatives which shall include, but not be limited to, a representative from the mineral industry, from the oil and gas sector,

from the coal sector, and other sectors as may be determined by the PH-EITI MSG; and

- c. Six (6) Civil Society Organizations (CSOs) representatives, which must include at least one indigenous peoples (IP) representative and one (1) Labor Union representative in the extractive industries.

The Business group and the CSOs shall each designate six (6) full and six (6) alternate representatives to the PH-EITI-MSG. Each organization, upon the decision of its members and through its own independent processes and governance mechanisms, can at any time replace their representatives in the PH-EITI-MSG; Provided, that such replacement shall only serve for the unexpired term of the representative replaced. Permanent and alternate members shall attend and participate in the PH-EITI-MSG meetings.

SECTION 8. Powers and Functions of the PH-EITI-MSG. – The PH-EITI-MSG shall have the following powers and functions:

- a. Define the strategic direction and scope of EITI in the Philippines;
- b. Craft, publish, review, and update a work plan in consultation with key PH-EITI stakeholders and oversee the implementation of the same;
- c. Procure the services of an independent administrator to perform reconciliation of payments and mandatory expenditures with receipts by government and other covered entities, applying international auditing and professional standards;
- d. Require relevant government agencies to disclose to the PH-EITI MSG all information required by it for the production of regular and annual reports;
- e. Produce all regular reports with contextual information about the extractive industries as may be required by the PH-EITI implementation;
- f. Direct and supervise the PH-EITI Secretariat in its various activities and establish its internal rules of procedure;
- g. Conduct outreach activities and road shows to promote better public understanding of the extractive industries and benefits of transparent and accountable governance of our natural resources;

- h. Identify discrepancies and undertake measures to enhance capacity of any relevant organ of the Government or local government authority having statutory responsibility to monitor revenues and payments by all extractive industry companies to the Government; and
- i. Perform such other functions as may be germane to the purpose for which it was created and consistent with this Order and the EITI Principles.

SECTION 9. *PH-EITI Secretariat.* – The PH-EITI shall be assisted by a PH-EITI Secretariat whose composition shall be determined by the Secretary of Finance, in consultation with the PH-EITI-MSG.

The PH-EITI Secretariat shall be composed of administrative and technical personnel as the PH-EITI-MSG may deem necessary to assist the PH-EITI-MSG in efficiently and effectively carrying out its powers and functions. The creation of plantilla positions and hiring of personnel to carry out the functions enumerated herein shall be authorized in coordination with, and subject to the approval of the Department of Budget and Management (DBM).

SECTION 10. *Disclosure of Material Information and Reconciliation of Payments.* – Disclosure shall adhere to the open data principles. All contractors shall disclose all fiscal payments and mandatory expenditures while all government and concerned entities shall disclose complete, timely and accurate information on receipts to the PH-EITI-MSG for reconciliation for the production of the annual EITI report. Utilization of shares in national wealth which are subject of special accounts shall be reported to PH-EITI. It shall be published in the government website and any widely accessible media, among others.

SECTION 11. *Disaggregation of Shares from the National Wealth by Sector.* – Local government units shall report the direct and non-direct payments made by extractive industries, and shall provide a detailed expenditure report against these collections and receipts through the Environment and Natural Resources Data Management Tool (ENRDMT). The report shall include the following:

- a. Receipts of shares from national wealth within the LGU's jurisdiction;

- b. Expenditures of LGUs coming from receipts/collections from the extractive industries and share from national wealth; and
- c. Such other monetary and non-monetary benefits received by the LGUs from extractive industries and shared from national wealth.

The reports shall be submitted quarterly. The ENDRMT data shall be uploaded by all concerned local treasurers of each respective local government units to the system on or before the following dates:

- a. For the first three quarterly reports: on or before the 30th month following the end of each quarter; and
- b. For the year-end report: on or before April 30 of the subsequent fiscal year.

SECTION 12. *Annual Report.* – The PH-EITI shall submit an annual report to the President and Congress, in any case not later than April 30 of each year.

The annual report to be prepared, submitted and published by the PH-EITI shall include, but not limited to:

- a. Report of Payments and Revenues including government spending of these proceeds;
- b. Report and Audit of Contracts and Monitoring Reports;
- c. Civil Society assessment of the EITI Process.

The annual report shall comply with the international standards of EITI and include additional reporting requirements as agreed upon by the PH-EITI MSG.

SECTION 13. *Beneficial Ownership.* – A publicly available register of the beneficial owners of the corporate entities that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identities of their beneficial owners, the level or ownership and details about how ownership or control is exerted, shall be developed and maintained.

Information about the identity of the beneficial owner should include, but not be limited to:

- a. Name of the beneficial owner;
- b. Nationality;
- c. Country of residence;
- d. Tax Identity Number;
- e. Date of Birth;
- f. Residential or service address;
- g. Contact details.

Disclose information on beneficial ownership shall also be included in the Annual Report.

SECTION 14. *Penalties.* – Non-participation in or non-disclosure of the information required by the PH-EITI shall constitute a breach or violation by extractive companies of their contracts as defined under this Act, and shall be meted the appropriate penalties, including suspension or termination of the contract.

Failure of extractive companies to comply with requirements provided by the PH-EITI-MSG shall cause suspension of the pertinent Environmental Compliance Certificate (ECC) and non-issuance of Ore Transport Permit and/or Mineral Export Permit.

Failure of government agencies to comply with the requirements of this Act shall constitute grounds for disciplinary action against the responsible officer/s under the Administrative Code of 1987, and shall be penalized accordingly.

SECTION 15. *Transitory Provision.* – The existing PH-EITI Secretariat created under Executive Order No. 147, s. 2013 shall continue to operate until such time that the Secretariat has to be constituted under the provisions of this Act.

SECTION 16. *Appropriations.* – The Secretary of the Department of Finance shall immediately include in the department's program the implementation of this Act, the funding of which shall be included in the General Appropriations Act.

SECTION 17. *Exemption from Confidentiality Clauses.* – Confidentiality provisions stated under the Section 270 of the National Internal Revenue Code and Article 81 of the Omnibus Investments Code shall not be applicable to extractive companies insofar as their participation in the PH-EITI process is concerned.

SECTION 18. *Implementing Rules and Regulations.* – Within sixty (60) days from the effectivity of this Act, the Secretaries of Finance, Budget and Management, Environment and Natural Resources, Interior and Local Government, and Energy shall promulgate the necessary rules and regulations for the effective implementation of this Act.

SECTION 19. *Separability Clause.* – Should any provision herein be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SECTION 20. *Repealing Clause.* – All laws, decrees, orders, rules, and regulations or other issuances or parts inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 21. *Effectivity Clause.* – This Act shall take effect in fifteen (15) days after publication in the Official Gazette or in one (1) newspaper of general circulation in the Philippines.

Approved,