

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
3rd Regular Session

House Bill No. **11411**



Introduced by Representative ERIC GO YAP

EXPLANATORY NOTE

Section 3, Article XIII of the 1987 Constitution provides that the State shall afford full protection to labor, local and overseas, or organized and unorganized, and promote full employment and equality of employment opportunities for all. Further, it stipulates that workers shall be entitled to security of tenure, humane conditions of work, and a living wage.

The Mines and Geosciences Bureau has estimated in 2019 that the mining industry provides livelihood and employment to 207,000 Filipinos. Apart from the informalities in small-scale or artisanal mining that the sector presently encounters, employee – miners of mining operators remain to be neglected and unprotected from repetitive drudgery and risk in their working conditions, lack of welfare services and social protection in their employment, and insufficient medical care in their field. Furthermore, absent is an enabling legislation that would codify the rights and privileges which shall be granted to the local Filipino miners.

Serving in the forefront of the high-risk mining activities, local Filipino miners are deprived of the genuine protection from their employers not only in terms of salary and benefits, but also in terms of insuring their health and well-being while amid the pits of the unknown and danger. Thus, this bill seeks to provide for a Magna Carta for Local Filipino Miners. It aims to promote and improve the physical, social, and economic well-being of Filipino miners, their living and working conditions, and terms of employment and tenure.

The following measure also provides stringent penalties for the employer - mining operators who fail to comply with the provisions set forth by the said Magna Carta.

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


HON. ERIC GO YAP

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AN ACT
PROVIDING FOR THE MAGNA CARTA OF LOCAL FILIPINO MINERS

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 "Magna Carta of Local Filipino Miners."

SEC. 2. *Declaration of Policy.* - It is hereby declared the policy of the State to promote and improve the physical, social, and economic well-being of local Filipino miners, their living and working conditions, health and wellness security, and just and livable terms of employment and tenure.

SEC. 3. *Definition.* - As used in this Act, the term "Local Filipino Miner" refers to Filipino citizens who, individually or in the company of other Filipino citizens, voluntarily form a cooperative duly licensed by the Department of Environment and Natural Resources to engage, under the terms and conditions of a contract, in the extraction or removal of minerals or ore-bearing materials from the ground

SEC. 4. *Coverage.* - This Act shall cover all Local Filipino miners who are registered and licensed with artisanal, small-scale, and large-scale mining operations.

SEC. 5. *Registration and Licensing of Local Filipino Miners.* - All persons undertaking or intending to undertake artisanal, small-scale, and large-scale mining operations within a declared mining area shall apply for and license with the Board according to the mining sector of their membership, as the case may be, subject to payment of the corresponding license application fee and the following requirements:

- a. Filipino citizen;
- b. Legal age;
- c. With any government issued ID;
- d. Barangay Clearance as proof of residency; and

- e. Certificate of attended skills and safety trainings conducted by MGB RO concerned.

A license shall be issued to the applicant free of charge upon completion of the mandatory 8-hour Occupational Safety and Health Orientation and Basic Training on Environmentally Sustainable Mining Practices. Such license shall be valid for at least three (3) years, unless sooner revoked for violation of mining rules and regulations, and renewable for the same period after completion of the orientation of training requirements.

SEC. 6. *Contract of Employment* - Notwithstanding any oral or written stipulations to the contrary, the contract between the employer – mining operator and the local miner shall be governed by the provisions of Articles 294 (formerly 279) and 295 (formerly 280) of the Labor Code, as renumbered. The employer – mining operator shall provide his/her miner employees a copy of the employment contract duly signed by the parties, which shall contain the terms and conditions of employment, such as those provided under Section 7 hereof.

The employer – mining operator shall submit the original copy of the Contract of Employment when directed to do so by the Regional Director or his/her duly authorized representative. The Contract of Employment must conform to the DOLE Standard Computation. The Contract of Employment shall stipulate, among others:

- a. The specific description of the kind or nature of security job, work, or service being contracted;
- b. The place of work and terms and conditions governing the contracting arrangement;
- c. The basic equipment to be provided by the employer – mining operator which shall be as follows:
- d. An "automatic crediting provision" which shall immediately give effect to the common provision in wage orders that prescribed increases in wage rates and other wage-related benefits of an employee shall be borne by the employer – mining operator accordingly;
- e. Provisions which shall ensure that the employer – mining operator shall uphold the rights and provide all the benefits of the local Filipino miners, as amended, and other existing laws, and that violation of which will render the employer – mining operator ineligible to license by the Mines and Geosciences Bureau (MGB) for large-scale miners and the Provincial/City Mining Regulatory Board for artisanal and small-scale miners;
- f. An undertaking that the employer – mining operator shall directly remit monthly the employers' share and employees' contribution to the Social

Security System (SSS), Employees' Compensation Commission (ECC), Philippine Health Insurance Corporation (PhilHealth), and Home Development Mutual Fund (Pag-IBIG); and

- g. An undertaking that the expenses for any training required by the employer or other government instrumentalities, shall be shouldered by the employer – mining operator.

Imposition of additional tasks or duties not expressly included in the Contract of Employment shall be considered outside the scope of the employment contract of the local Filipino miners shall be unlawful and constitute a violation of this Act.

SEC. 7. *Rights of Local Filipino Miners.* – All Local Filipino Miners, whether deployed or assigned as reliever, seasonal, week-ender, or temporary, shall be entitled to all the rights and privileges as provided for in the Labor Code, as amended, which shall include the following:

- a. Safe and healthful working conditions, including without limitation humane working environment, appropriate rest or “sitting time” periods, protection against abusive treatment of the employer – mining operator such as physical or corporal punishment, among others;
- b. Labor standards such as but not limited to service incentive leave, premium pay, overtime pay, holiday pay, night shift differential, 13th month pay, and separation pay as may be provided in the Contract of Employment or under the Labor Code, as amended;
- c. Retirement benefits as provided for by the Labor Code and other existing law and retirement plans of the employer – mining operator, if any;
- d. Social security and welfare benefits;
- e. Right to self-organization and collective bargaining, subject to the provisions of existing laws; and
- f. Security of tenure.

SEC. 8. *Discrimination Prohibited.* – Discrimination against any Local Filipino Miner and other private security personnel by reason of gender, civil status, creed, religious or political beliefs and ethnic groupings in the exercise of their functions and responsibilities is hereby prohibited.

SEC. 9. *Terms and Conditions of Employment.* –

a. *Requirements for Pre-employment and Continued Employment.* – The local Filipino Miner employed by any mining - operator should be duly licensed and must have passed the training required for pre-employment and for continued employment. Expenses for these training shall be shouldered by the local Filipino miner.

Any additional training may be required at the expense of the requesting party.

b. *Entitlement to Minimum Wage.* - Unless a higher minimum wage is agreed upon by the parties, the local Filipino miner shall be entitled to receive a salary of not less than the minimum wage rate prescribed for non-agricultural sector or industry in the region where he/she is assigned, regardless of the nature of business of the principal.

c. *Transfer of Assignment.* - In case of transfer, the wage rate most favorable to the local Filipino miner shall apply. Thus, transfer of local Filipino miner to areas outside the region of the domicile shall not result to reduction of the wage rate being enjoyed by the local Filipino miner prior to such transfer. Transfer to an area or region with higher wage rate shall render the higher rate the applicable wage rate for the transferred local Filipino miner.

d. *Statutory Benefits.* - Local Filipino miners are entitled to not less than the following benefits depending on the working hours, work shift and workdays and other analogous conditions, which benefits should be included in the cost distribution in the Contract of Employment:

1. Basic salary for all actual workdays and for the twelve (12) regular holidays (as holiday pay) which must not be lower than the minimum wage rates, to be computed by using the factors recommended herein. Whenever work is rendered on a regular holiday, an additional pay of one hundred percent (100%) of the minimum wage rate should be paid;
2. Allowance in addition to the basic salary, if prescribed by the applicable Regional Wage Order;

3. Premium pay of thirty percent (30%) of the daily rate for work on special days or on rest days, which is increased to fifty percent (50%) whenever work is performed coinciding the rest days and special days;
4. Overtime pay for work rendered in excess of eight (8) hours a day, equivalent to at least twenty-five percent (25%) of the regular hourly rate on ordinary days and thirty percent (30%) of the hourly rate on regular holidays, special days and rest days;
5. Night shift differential equivalent to ten percent (10%) of the regular hourly rate for work rendered between 10:00 p.m. and 6:00 a.m. of the following day;
6. Five (5) days service incentive leave for every year of service which benefits can be availed of during days of absence and, if not used, are convertible into its cash equivalent. A proportionate leave benefit per month may be derived by dividing five (5) days by twelve (12) months multiplied by the current daily rate;
7. Maternity leave as provided for under Republic Act No. 1161, as amended by Republic Act No. 8282, otherwise known as the "Social Security Law," for female miners who are unable to work due to childbirth or miscarriage, up to the first four (4) deliveries or miscarriages;
8. Paternity leave of seven (7) days with full pay for male miners under Republic Act No. 8187, otherwise known as the "Paternity Leave Act of 1996." which shall be granted after the delivery, without prejudice to an employer's policy of allowing the employee to avail of the benefit before or during the delivery. The paternity leave with pay is granted for the first four deliveries, including miscarriages, of the male employee's lawful wife with whom he is cohabiting;

9. Parental leave of seven (7) days every year for solo parents - miners who are left alone with the responsibility of parenthood as defined under Republic Act No. 8972, otherwise known as the "Solo Parents' Welfare Act of 2000";
10. Leave for Victims of Violence Against Women and their Children of ten (10) days for qualified victim-female miners under Republic Act No. 9262, otherwise known as "Anti-Violence Against Women and Their Children Act of 2004",
11. Special Leave for Women of not more than two (2) months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders, under Republic Act No. 9710, otherwise known as "The Magna Carta of Women",
12. 13th month pay which is one-twelfth (1/12) of the total basic salary earned within a calendar year;
13. Separation Pay if the termination of employment is for authorized cause as provided by law and as enumerated below:
 - a. One-half (1/2)-month pay per year of service, but guaranteed to one (1) month pay if separation is due to:
 - i. Retrenchment or reduction of personnel effected by management to prevent serious losses;
 - ii. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
 - iii. Illness or disease not curable within a period of six (6) months and continued employment is prohibited by law or prejudicial to the employee's health or that of his/her co-employees; or
 - b. Lack of service assignment for a continuous period of six (6) months.
 - i. One (1) month pay per year of service if separation is due to:

1. Installation of labor-saving device, such as replacement of employees by equipment/machinery;
2. Redundancy, as when the position has been found to be a surplusage or unnecessary in the operation of the agency;
3. Impossible reinstatement of the employee to his/her former position or to a substantially equivalent position for reasons not attributable to the fault of the employer, as when the reinstatement ordered by a competent authority cannot be implemented due to closure or cessation of operations of the establishment/mining operator, or the position to which the employee is to be reinstated no longer exists and there is no substantially equivalent position to which he/she can be assigned; or
4. Lack of service assignment by reason of age.

14. Benefits under the Employees Compensation Program pursuant to Presidential Decree 626;

15. PhilHealth benefits under Republic Act No. 7875, as amended by Republic Act No. 9241;

16. Social Security benefits under Republic Act No. 1161, as amended by Republic Act No. 8282;

17. Safe and healthful working conditions as provided in the Occupational Safety and Health Standards;

18. Retirement pay provided for by the Labor Code and other existing laws.

The fund shall be administered and maintained by a trust company bank, investment house, pre-need company, or corporation duly authorized to perform trust function exclusively for collective investment or re-investment of certain money received in its capacity as trustee, or similar arrangement as may be agreed upon in accordance with law.

The employer – mining company may establish a retirement plan for the payment of the retirement benefits of its employee – miners. From this a Retirement Trust Fund (RTF) shall be created out of contributions from the employer – mining operator. The trust fund agreement shall be executed by and between the employer – mining operator as trustor and a trust entity as trustee in favor of miner – employee. The trust entity as trustee shall administer the retirement plan and manage the trust fund in accordance with the retirement plan agreed upon by employer – mining operator and employee – miner.

The employer – mining operator may also register with the Securities and Exchange Commission (SEC), a non-stock Retirement Fund Company (RFC) owned and managed by its members who are officers and employees. The RFC shall manage and reinvest the retirement fund, and shall pay the retirement benefits of its members upon his/her retirement.

As such, any payment for retirement benefits collected in advance from the employer – mining operator shall immediately be deposited by the employer – mining operator or trustor to the trustee or retirement fund company in favor of the employee – miners as benefit upon retirement; and

19. Other benefits granted by law, individual or collective agreement, or company policy or practice.

e. Recommended Computation of the Estimated Equivalent Monthly Rates. - Using the Applicable Daily Rate (ADR) and a factor representing the number of paid days in a year, the following procedures are recommended to facilitate the computation of the Estimated Equivalent Monthly Rates (EEMR).

For those who are required to work every day including Sundays or rest days, special days, and regular holidays:

$$\text{EMR} = (\text{ADR} \times 393.5) / 12$$

Where 393.5 is derived from:

298 – ordinary working days

24 – 12 regular holidays x 200%

67.6 – 52 rest days x 130%

3.9 – 3 special days x 130%

393.5 - days considered paid in a year

For those who are considered paid on all days including unworked Sundays or rest days, special days and regular holidays:

$$\text{EMR} = (\text{ADR} \times 365) / 12$$

Where 365 days derived from:

298 - ordinary working days

3 - special days

52 - rest days

12 - regular holidays

365 - days considered paid in a year

For those who do not work and are not considered paid on Sundays or rest days:

$$\text{EMR} = (\text{ADR} \times 313) / 12$$

Where 313 is derived from:

298 - ordinary working days

3 - special days (if worked) x (130%)

12 - regular holidays

313 days considered paid in year

For those who do not work and are not considered paid on Saturdays and Sundays or rest days:

$$\text{EMR} = (\text{ADR} \times 261) / 12$$

Where 261 is derived from:

246 - ordinary working days

3 - special days (if worked) x (130%)

12 - regular holidays

261 - days considered paid in year

By using the above indicated factors, the daily wage for workdays and twelve (12) holidays are included in the monthly rates. Thirty percent (30%) rest day premium is integrated in factor 393.5 for all the Sundays or rest days in a year. For factors 313 and 261, all the twelve (12) regular holidays and the three (3) special days are included. However, factor 310 or 258 may be used instead of factor 313 or 261, respectively, if the three (3) special days are not considered paid.

Not included in the above formula is the additional pay due an employee whenever work is rendered on an ordinary working day proclaimed by the President or enacted into law as a special day (that is, other than August 21, November 1 and December 31) and local holidays.

- f. Mandatory Life Insurance and Health Care or Medical Insurance.* - Employer - Mining Operator shall be required to provide Employee - Miners mandatory life insurance and health care or medical insurance, including but not limited to HMOs, to cover work-related injuries, disability, or death that may result from the nature of the work of Employee - Miners during the period of their duty.

SEC. 9. Deductions from Salary. - No deduction shall be made from the salary of the local Filipino miners, except for:

- a. SSS contribution;
- b. Pag-IBIG contribution;
- c. PhilHealth contribution;
- d. Withholding tax from income, provided a proper withholding tax receipt is issued to the employee before the filing of income tax return every year;
- e. Union dues, if authorized in writing; and
- f. Other deduction as may be authorized in writing by employer - mining operator for payment to a third person and the employee - miner agrees to do so, provided that the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction.

These deductions should be reflected in the payroll by the employer - mining operator.

Pursuant to DOLE Labor Advisories, deductions or requiring cash deposits from employees to answer for reimbursement of loss or damage on tools, materials, or equipment supplied by the employer is allowed. However, for deductions of such nature to be valid, the following conditions must be observed:

- a. The employee concerned is clearly shown to be responsible for the loss or damage;

- b. The employee is given reasonable opportunity to show cause why the deduction should not be made;
- c. The amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and
- d. The deduction from the wages of the employee does not exceed twenty percent (20%) of the employee's wages in a week.

In the event that employer – mining operator requires a cash deposit from its employee - miners, the maximum amount shall not exceed the employee's one (1) month basic salary. The said cash deposit may be deducted from the employee's wages in an amount which shall not exceed twenty percent (20%) of the employee's wages in a week. The full amount of cash deposit deducted shall be returned to the employee within ten (10) days from his/her separation from the service.

SEC. 10. *Right to Security of Tenure and Due Process.* –

- a. Local Filipino miners shall enjoy security of tenure in their employment as provided by law. Their services can only be terminated for just or authorized causes after due process.
- b.
 - 1. For termination of employment based on just causes as defined in Article 297 (formerly 282) of the Labor Code, as renumbered, the requirement of two written notices served on the employee shall be in accordance with the following:
 - i. The first written notice should contain:
 - a. The specific causes or grounds for termination;
 - b. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee - miner. A general description of the charge will not suffice;
 - 1. The company rule, if any, that is violated and/or the ground under Article 297 (formerly 282) of the Labor Code, as renumbered, that is being charged against the employee - miner; and
 - 2. A directive that the employee - miner is given an opportunity to submit a written explanation within five (5) calendar days from receipt of the first written notice.
 - ii. After serving the first notice, the employer should afford the employee – miner the ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 292 (b) (formerly 277) of the Labor Code, as renumbered.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee - miner to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference, or some other fair, just, and reasonable way. A formal hearing or conference becomes mandatory only:

- a. when requested by employee - miner in writing;
 - b. substantial evidentiary disputes exist;
 - c. a company rule or practice requires it; or
 - d. when similar circumstances justify it.
- iii. After determining that termination of employment is justified, the employer - mining operator shall serve the employee - miner a second written notice, the notice of termination, indicating that:
- a. all circumstances involving the charge against the employee - miner; and
 - b. the grounds have been established to justify the severance of his/her employment.

The foregoing notices shall be served on the employee - miner's last known address.

Termination for just cause as stated in Article 297 (formerly 282) of the Labor Code, as renumbered, does not entitle the employee - miner to separation pay, unless otherwise provided in the employer's policy, individual contract, or collective agreement.

2. For termination of employment based on authorized causes, as defined in Articles 298 and 299 (formerly 283 and 284 of the Labor Code, as renumbered), the requirement of due process shall be deemed complied upon service of a written notice to the employee - miner and to the appropriate DOLE Regional Office at least thirty (30) days before the effectivity of the termination, specifying the ground(s) for termination.
3. If the termination is brought about by the completion of the contract, no prior notice is required. If the termination is brought about by the failure of a probationary employee - miner to meet the reasonable standards of the employer - mining operator, which was made known

to the employee - miner at the time of employment, it shall be sufficient that a written notice is served upon the employee - miner within a reasonable time prior to the expiration of the probationary period.

4. The termination of employment of local Filipino miner prior to the expiration of the Contract of Employment be governed by the provisions of the Labor Code.

In case the termination of employment is caused by the pre-termination of the Contract of Employment not due to any authorized cause under the Labor Code, the right of the employee - miner to accrued and unpaid wages and other wage-related benefits, including unremitted legal mandatory contributions such as SSS, PhilHealth, Pag-IBIG, and ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Contract.

- b. ***Report of Dismissal, Termination or Retirement.*** - The employer - mining operator shall submit a monthly report of all dismissal or termination, including retirement, effected during the month to the DOLE Regional Office having jurisdiction over its main or branch office using the prescribed form. All information gathered shall be used by the DOLE for policy and statistical purposes.
- c. ***Reserved Status.*** - An employee - miner may be placed in a work pool or on reserved status due to lack of service assignment after the expiration or termination of the Contract of Employment with the employer - mining operator where he/she is assigned, or due to the temporary suspension of service operations, or due to valid relief from the current place of work and there is no work assignment available.

No employee - miner can be placed in a work pool or on reserved status in any of the following situations:

1. after expiration of a service contract, if there are other principals where he/she can be assigned;
2. as a measure to constructively dismiss the employee - miner; and
3. as an act of retaliation for filing any complaint against the employer for violation of labor laws, among others.

If after a period of six (6) months, the employer - mining operator cannot provide work or give an assignment to the reserved employee - miner, the latter can be separated from service and shall be entitled to separation pay as described hereof. An assignment of the employee - miner as a reliever for less than one-month shall not be considered as an interruption of the six (6) months period.

- d. ***Retaliatory Measures.*** - Pursuant to Article 118 of the Labor Code, as amended, it shall be unlawful for the principal, employer – mining operator, or any party privy to the Contract of Employment to refuse to pay or reduce the wages and benefits, and discharge or in any manner discriminate against any employee - miner who has filed any complaint or instituted any proceeding on wages, labor standards violation, or has testified or is about to testify in such proceedings.
- e. ***Preventive Suspension.*** - Subject to the constitutional rights of the workers to security of tenure and the right to be protected against dismissal except for a just and authorized cause and without prejudice to the notice requirement under Article 297 (formerly 282) of the Labor Code, as renumbered, employee - miner may be preventively suspended if their continued employment poses a serious and imminent threat to life or property of the employer – mining operator or the employee – miner.

No preventive suspension shall last longer than thirty (30) days. The employer – mining operator shall thereafter reinstate the employee - miner to his/her former position or it may extend the period of suspension, provided that during the period of extension, the employer – mining operator shall pay the wages and other benefits due the employee – miner.

SEC. 11. Conciliation-Mediation through the Single-Entry Approach (SEnA). - All issues on employment, disciplinary measures, suspension, termination and compliance with labor standards and occupational health and safety standards between the employer – mining operator and its employee - miner shall be subject to the 30-day mandatory conciliation-mediation or the Single-Entry Approach (SEnA) of the DOLE pursuant to Republic Act No.10396.

SEC. 12. Non-diminution of Benefits. - Nothing herein shall be construed to authorize the diminution or reduction of benefits being enjoyed by the employee - miner at the time of the enactment of this Act.

SEC. 13. Implementing Rules and Regulations. - The DOLE shall formulate the necessary rules and regulations, not inconsistent with any provisions of this law, for the implementation of the Magna Carta of Local Filipino Miners. The rules and regulations shall be promulgated within six months from the effectivity of this Act.

SEC. 14. Penal Provision. - Any person who shall willfully interfere with, restrain, or coerce any employee - miner in the exercise of his/her rights or shall in any manner commit any act in violation of any of the provisions of this Act, upon conviction, shall be punished by a fine of not less than Two Hundred Fifty Thousand Pesos (P250,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00) or imprisonment of not more than two (2) years, or both, at the discretion of the court.

In addition to the abovementioned penalties, the court may impose additional penalty of cancellation of the employer – mining operator’s certificate of registration / license.

This penal provision shall apply and extend to the mining operator’s officers, Board of Directors, employees, or personnel as warranted under the circumstances.

SEC. 15. *Separability Clause.* – If any portion or provision of this Act is declared invalid or unconstitutional, other provisions hereof shall remain in full force and effect.

SEC. 16. *Repealing Clause.* – All laws, decrees, executive orders, issuances, rules and regulations which may be inconsistent with any of the provisions of this Act are hereby deemed repealed, amended or modified accordingly

SEC. 17. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a national newspaper of general circulation.

Approved,