EXPLANATORY NOTE

Mining brings images of abandoned stockpiles, tailings dumped in rivers, and acidic leakages. The massive pollution caused by the Marcopper Mining Corporation, which is considered the worst environmental disaster in Philippine history, released 1.6 million cubic meters of sulfidic slurry into the Makulapnit and Boac Rivers. Meanwhile, the Mines and Geosciences Bureau (MGB), though resource-constrained, must conduct risk-assessment studies, prepare Environmental Management Plans, and implement rehabilitation measures. The frontline local government units are even less capable in dealing with environmental threats, even as constituent communities suffer from ill-effects.

To provide a substantial solution, this measure proposes the creation of the Natural Resource Trust Fund, a sovereign wealth fund for use by local governments where mines are located. On top of providing funds for rehabilitation of abandoned mines, prior to the enactment of Republic Act No. 7942, the Fund accumulates resource revenues from mining operations, and extends their benefits to the next generations through educational programs, technological and research programs, health services, and disaster risk reduction management initiatives. To ensure utmost care in fund handling, the Fund shall limit discretionary spending until the next administration.

This measure acknowledges that mining operations deleteriously affect the carrying capacity of the environment, to the detriment of future generations. Further, the measure optimizes revenues from mining agreements through an auctioning system, to be established by the MGB. This will minimize awarding of mineral agreements based on asymmetrical information, first-come first-served system, and patronage politics. Moreover, it shall promote investments in mineral-rich areas through an online portal open to the public.

The measure institutionalizes the Nation’s participation in the Philippine Extractive Industries Transparency Initiative (PH-EITI) provided under DENR Administrative Order No. 2017-07 requiring full public disclosure in the mining industry, particularly in revenue collection, and tax payments.
In view of the necessity to promote economic and development and progress, aimed at uplifting our people, while balancing the same against safeguarding the environment, and ensuring sustainability, the passage of this bill is earnestly sought.

JOEY SARTE SALCEDA
Republic of the Philippines
House of Representatives
Quezon City

Eighteenth Congress
First Regular Session

5022
House Bill No. __________

Introduced by Rep. Joey Sarte Salceda

AN ACT ESTABLISHING THE FISCAL REGIME FOR MINING INDUSTRY,
AMENDING FOR THIS PURPOSE SECTIONS 34(B) AND 151 AND ADDING A
NEW SECTION 151-A, ALL UNDER THE NATIONAL INTERNAL REVENUE
CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

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

SECTION 1. Section 34(B) of the National Internal Revenue Code of 1997, as
amended, is hereby amended to read as follows:

"SEC. 34. Deductions from Gross Income. — x x x

"(A) Expenses. —
"x x x

"(B) Interest. —
"(1) x x x
"(2) x x x
"(3) x x x

"(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR
MINING CONTRACTORS:

(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY
RATIO IN EXCESS OF 3 TO 1 AT ANY TIME DURING AN
INCOME YEAR, A DEDUCTION IS DISALLOWED AS A
TAX-DEDUCTIBLE EXPENSE FOR THE INTEREST PAID
BY THE MINING CONTRACTOR DURING THAT YEAR ON
THAT PART OF THE DEBT THAT EXCEEDS THE 3 TO 1
RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED.

(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING
CONTRACTOR EXCEEDS 3 TO 1 FOR THE INCOME
YEAR, SUBSECTION (A) DOES NOT APPLY IF DURING
THE INCOME YEAR, THE AMOUNT OF THE DEBT OF THE
MINING CONTRACTOR DOES NOT EXCEED THE ARM'S
LENGTH DEBT AMOUNT.

(C) FOR PURPOSES OF THIS SECTION, THE TERM –

(1) 'ARM'S LENGTH DEBT AMOUNT' SHALL MEAN THE
AMOUNT OF DEBT THAT A BANK THAT IS NOT A
RELATED PARTY OF THE MINING CONTRACTOR
WOULD BE PREPARED TO LEND TO THE MINING
CONTRACTOR HAVING REGARD TO ALL THE
CIRCUMSTANCES OF THE MINING CONTRACTOR.

(2) 'RELATED PARTY' SHALL COVER THE
SUBSIDIARIES AS WELL AS AFFILIATES AND ANY
PARTY, INCLUDING THEIR SUBSIDIARIES,
AFFILIATES, AND SPECIAL PURPOSE ENTITIES,
THAT EXERTS DIRECT OR INDIRECT CONTROL
OVER THE MINING CONTRACTOR'S DIRECTORS,
OFFICERS, STOCKHOLDERS, AND RELATED
INTERESTS AND THEIR CLOSE FAMILY MEMBERS,
AS WELL AS CORRESPONDING PERSONS IN
AFFILIATED COMPANIES.

(3) 'DEBT' SHALL MEAN THE GREATEST AMOUNT, AT
ANY TIME DURING THE INCOME YEAR, OF THE DEBT
OBLIGATIONS OF THE MINING CONTRACTOR ON
WHICH INTEREST IS PAYABLE AS DETERMINED
ACCORDING TO INTERNATIONAL FINANCIAL
REPORTING STANDARDS.

(4) 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION
TO MAKE A REPAYMENT OF MONEY TO ANOTHER
PERSON, INCLUDING AN OBLIGATION ARISING
UNDER A PROMISSORY NOTE, BILL OF EXCHANGE,
OR BOND, BUT NOT INCLUDING ACCOUNTS
PAYABLE OR AN OBLIGATION TO MAKE
REPAYMENT OF MONEY IN RESPECT OF WHICH NO
INTEREST IS PAYABLE.

(5) 'EQUITY' SHALL MEAN THE GREATEST AMOUNT, AT
ANY TIME DURING AN INCOME YEAR, OF THE
EQUITY OF THE MINING CONTRACTOR AS
dETERMINED ACCORDING TO INTERNATIONAL
FINANCIAL REPORTING STANDARDS AND
INCLUDES AN OBLIGATION TO MAKE A REPAYMENT
OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

(C) Taxes. –

(D) Losses. –

(E) Bad Debts. –

(F) Depreciation. –

(G) Depletion of Oil and Gas Wells and Mines. –

(H) Charitable and Other Contributions. –

(I) Research and Development. –

(J) Pension Trusts. – x x x

(K) Additional Requirements for Deductibility of Certain Payments. – x

(L) Optional Standard Deduction. – x x x

SEC. 2. The chapter title of Chapter VII Title VI of the National Internal Revenue Code of 1997 (NIRC), as amended, is hereby amended to read as follows:

"CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS".

SEC. 3. Section 151 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 151. Mineral Products. –"

(A) Rates of Tax. –

(x x x

(1) x x x

(2) x x x

(3) x x x
“(a) Copper and other metallic minerals, [four percent (4%)] FIVE PERCENT (5%); and
“(b) Gold and chromite, [four percent (4%)] FIVE PERCENT (5%)
“(4) x x x”

SEC. 4. A new section shall be inserted as Section 151-A of the National Internal Revenue Code of 1997, as amended, to read as follows:

"SEC. 151-A. ROYALTY. –

(A) FOR LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS. – MINING CONTRACTORS OF LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE WITH THE FOLLOWING TABLE:

<table>
<thead>
<tr>
<th>MARGIN</th>
<th>ROYALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1% UP TO 10%</td>
<td>1.00%</td>
</tr>
<tr>
<td>ABOVE 10% UP TO 20%</td>
<td>1.50%</td>
</tr>
<tr>
<td>ABOVE 20% UP TO 30%</td>
<td>2.00%</td>
</tr>
<tr>
<td>ABOVE 30% UP TO 40%</td>
<td>2.50%</td>
</tr>
<tr>
<td>ABOVE 40% UP TO 50%</td>
<td>3.00%</td>
</tr>
<tr>
<td>ABOVE 50% UP TO 60%</td>
<td>3.50%</td>
</tr>
<tr>
<td>ABOVE 60% UP TO 70%</td>
<td>4.00%</td>
</tr>
<tr>
<td>ABOVE 70%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>

(B) FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS. – MINING CONTRACTORS OF LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO THREE PERCENT (3%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

(C) FOR SMALL-SCALE METALLIC MINING OPERATIONS. – MINING CONTRACTORS OF SMALL-SCALE METALLIC MINING OPERATIONS SHALL BE EXEMPT FROM THE PAYMENT OF ROYALTY.

(D) FOR THE PURPOSES OF THIS SECTION, THE TERM –
(1) 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM MINING OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT.

(2) 'INCOME FROM MINING OPERATIONS' SHALL MEAN THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES, WHICH INCLUDES:

(a) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES TOGETHER WITH SMELTING AND REFINING COSTS OTHER THAN SMELTING AND REFINING COSTS PAID TO THIRD PARTIES;

(b) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY INCURRED BY THE MINING CONTRACTOR IN THE PHILIPPINES;

(c) ENVIRONMENTAL EXPENSES OF THE MINING CONTRACTOR, INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN THE ENVIRONMENTAL PROTECTION PROVISION OF THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

(d) EXPENSES FOR THE DEVELOPMENT OF HOST AND NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING TRAINING COSTS AND EXPENSES AS STIPULATED IN THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;

(e) ROYALTY PAYMENTS TO CLAIM OWNERS OR SURFACE LAND OWNERS RELATING TO THE CONTRACT AREA DURING THE OPERATING PERIOD, IF ANY;

(f) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING PERIOD;
(g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING-RELATED EXPENSES INCURRED BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT, WHICH SHALL NOT BE MORE THAN THE PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY FOR THE OPERATION;

(h) DEPRECIATION, DEPLETION, AND AMORTIZATION;

(i) TAXES, DUTIES, FEES, AND CHARGES; AND

(j) ALL OTHER COSTS AND EXPENSES RELATED TO MINING OPERATIONS AND SALE OF MINERALS AND MINERAL PRODUCTS.

(3) THE TERM ‘MINING CONTRACTOR’ SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT."

SEC. 5. Each Mining Operation Treated as a Separate Taxable Entity. – Each mining operation, which is subject to a Mineral Agreement or Financial or Technical Assistance Agreement, shall be treated as a separate taxable entity. A mining contractor shall be treated as a separate taxpayer with respect to each and every Mineral Agreement or Financial or Technical Assistance Agreement it holds or is a party to.

If a Mineral Agreement or Financial or Technical Assistance Agreement is renewed, the renewal shall be treated as part of the original agreement.

SEC. 6. Fiscal Regime Under Financial or Technical Assistance Agreements and Other Mineral Agreements. – The fiscal regime provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the Mineral Agreements and Financial or Technical Assistance Agreements entered into by the government.

SEC. 7. Opening of Areas for Mining through Auctions. – The grant of mining rights and mining tenements over areas with known and verified mineral resources and reserves, including those owned by the Government and all expired tenements, shall be undertaken through auctions. The issuances of licenses over metallic mining is subject to a bidding process, while licenses over non-metallic mining are granted by
application. The Mines and Geosciences Bureau shall prepare the necessary auction
packages, the reserve price for which shall include the weighted average cost and the
social acceptability of the proposed project. It shall formulate the proper guidelines
and procedures to conduct the auction.

Provided, That in the formulation of such guidelines and procedures, the Mines and
Geosciences Bureau shall fix the minimum capitalization that any bidder must satisfy
based on its determination of the expected economic returns and the potential
negative impacts from mining, upon reference to an independent study proposing such
minimum capitalization.

Provided further, That the Mines and Geosciences Bureau shall uphold any and all
laws pertaining to the environment, in general, and mining, in particular, including the
granting of the Free, Prior, and Informed Consent (FPIC) of indigenous peoples when
the mining occurs in an ancestral domain.

SEC. 8. Vested Rights. – Valid Mineral Agreements and Financial or Technical
Assistance Agreements existing prior to the effectivity of this Act that do not provide
that any terms and conditions resulting from repeal or amendment of any existing laws
or regulations or from the enactment of a new law or regulation shall be considered a
part of said Mineral Agreements and Financial or Technical Assistance Agreements,
shall continue to be governed by their existing terms and conditions.

SEC. 9. Natural Resource Trust Fund. – There is hereby created a Natural Resource
Trust Fund from the annual payment of mining contractors to the Bureau of Internal
Revenue of an additional amount of two percent (2%) based on gross output for large-
scale metallic mining which shall be remitted to the Bureau of Treasury within the first
quarter of the succeeding income year. Failure to comply with this obligation shall
warrant immediate suspension or closure of the mining activities of the contractor
concerned.

The Bureau of Treasury shall create a Special Account for the Natural Resource Trust
Fund for the receipts of the Bureau of Internal Revenue under this Section. The Bureau
of Treasury shall serve as the fund manager and shall determine the investment
strategies for the Natural Resource Trust Fund.

For this purpose, the Natural Resource Trust Fund shall mean the special purpose
investment vehicle owned by a government whose principal source of financing is
revenues derived from mineral sales. It saves for future generations, earmarks
resource revenues for specific expenditure items of local governments concerned, and
employs a set of investment strategies that includes investing in foreign financial
assets.

SEC. 10. Disposition of Natural Resource Trust Fund. – The provisions of existing laws
to the contrary notwithstanding, the available proceeds from the Natural Resource
Trust Fund shall be divided equally among the provinces/municipalities directly
affected by mining activities. The Natural Resource Trust Fund shall be used by local
government units concerned to support educational programs, technological research
programs of local relevance, disaster risk management, rehabilitation of abandoned
mines prior to Republic Act No. 7942, and health services programs of the
communities directly affected by mining activities three (3) years after the effectivity of
this Act, and every six (6) years thereafter.

Provided, That the Department of Budget and Management, in consultation with the
Department of Environment and Natural Resources and the Bureau of Treasury, shall
issue rules and regulations governing the allocation and disbursement of the fund
allocated to provinces/municipalities not later than one hundred and eighty (180) days
from the effectivity of this Act.

SEC. 11. Annual Report. – The Mines and Geosciences Bureau shall submit an annual
report to Congress which shall include the list of entities granted mining rights and
mining tenements, including those owned by the Government and all expired
tenements, awarded through auctions and a comprehensive accounting of social and
environmental costs arising from each mining project, and economic benefits such as
job creation, gross value-added, and technology advancement and transfer. The
report shall be accessible to the public at all times.

SEC. 12. Exemption from Confidentiality Clauses. – Mining contractors for all metallic
and nonmetallic mining operations, whether large-scale or small-scale, shall observe
fiscal transparency and comply with the requirements of the Extractive Industries
Transparency Initiative (EITI) of government, and, for this purpose, shall be exempted
from application of the confidentiality clauses of the National Internal Revenue Code
of 1997, as amended, including Section 270 in relation to Section 71, to the extent of
their participation in the EITI.

SEC. 13. Implementing Rules and Regulations. – The Department of Finance, after
consultation with other concerned government agencies, shall, within ninety (90) days
from the effectivity of this Act, promulgate rules and regulations to implement the intent
and provisions of this Act.

SEC. 14. Repealing Clause. –

(A) The second paragraph of Section 5 of Republic Act No. 7942, otherwise known
as the Philippine Mining Act of 1995 is hereby amended to assign the Bureau
of Internal Revenue as the collecting agent of the payment of royalty.

(B) Section 13 of Department of Environment and Natural Resources
Administrative Order No. 2010-21 is hereby amended insofar as it governs the
payment of 5% royalty by contractors/permit holders/lessees within mineral
reservations.
(C) All general and special laws, acts, decrees, executive orders, proclamations
and administrative regulations, or part or parts thereof which are inconsistent
with any of the provisions of this Code are hereby repealed, amended or
modified accordingly.

SEC. 15. Separability Clause. – If any provision of this Act is declared unconstitutional
or invalid, other parts or provisions hereof not affected thereby shall continue to be in
full force and effect.

SEC. 16. Effectivity. – This Act shall take effect fifteen (15) days after its publication in
the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,