

SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



House of Representatives
H. B. No **4116**

Introduced by Representative Ramon Vicente "Rav" M. Rocamora

AN ACT
PROVIDING FOR THE CREATION OF PHILIPPINE EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE

EXPLANATORY NOTE

The Extractive Industries Transparency Initiative (EITI) in the Philippines was created by virtue of Executive Order No. 147 issued on November 26, 2013. PH-EITI applies international standards for transparency and accountability in the extractive industry. It is a method of monitoring if gains from the industry translate to benefits for the country and communities where they operate.

The extractive industry, which includes mining, oil, gas and coal sectors, is a multi-billion peso business. It has the potential to create employment, contribute to poverty alleviation, add substantial revenues to the government, and, when properly managed, contribute to sustainable development.

But if left unchecked, the extractive industry could leave our natural resources depleted and the host communities ravaged without any lasting benefits from the contribution the community expects.

Currently, participation in the PH-EITI is viewed by the extractive industry as merely on a voluntary basis. PH-EITI lacks the compulsory power to exercise its mandate of auditing the industry through regular reporting. This bill compels participation to the PH-EITI by providing penalties for failure to comply with reportorial requirements.

PH-EITI is composed of representatives from the government, extractive industry players, and civil society organizations and will have the power to monitor revenue and public benefit from mining and other extractive resources. It provides a platform for the regular and systematic reporting, review, and assessment of information concerning the extractive industry. It also strengthens multi-sectoral participation in crafting and implementing regulatory policies governing the extractive industry. This bill shall expand the participation of the local government units, community groups, civil society organizations, and indigenous people in monitoring the mining activities in their

respective areas through regular disclosure of the share of LGUs in the revenues from extractive industries.

Finally, this bill seeks to institutionalize the creation of the Philippine EITI to ensure sustainability of the effort and to maximize the benefits from the extractive industry. Funding for the initiative would come from the proceeds of the funds monitored.

Approval of this bill is earnestly sought.



RAMON VICENTE "Rav" M. ROCAMORA
Representative
Lone District, Siquijor

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

SEC. 1. Title. This Act shall be known as the "Philippine Extractive Industries Transparency Initiative Act."

SEC. 2. Declaration of Principles - All natural resources are owned by Filipinos represented by the State. It shall be the responsibility of the State to ensure that the present and future generations benefit from these finite resources. The State must then establish a mechanism by which the Filipino people are fully aware of how proceeds from their finite resources are being utilized.

SEC. 3. Definition of Terms.

- a) **Agreement** means a contract between the Government and a Contractor, involving financial or technical matters;
- b) **Contractor** means a qualified person acting alone or in consortium who is a party to a mineral agreement or to a financial or technical assistance agreement.
- c) **Extractive Industries** refer to the mining, oil, gas and coal sectors and all other sectors that require the extraction of non-renewable natural resources for commercial use;
- d) **Financial or Technical Assistance Agreement (FTAA)** means a contract involving financial or technical assistance for large-scale exploration, development and utilization of mineral resources;
- e) **Independent Firm** refers to an accounting or auditing firm that has no existing relationship with either the Government or any of the companies that

are part of the Philippines-Extractive Industries Transparency Initiative (PH-EITI);

- f) **Mineral Production Sharing Agreement (MPSA)** means an agreement where the government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor provides the financing, technology, management and personnel necessary for the implementation of the agreement;
- g) **Multi-stakeholder Group (MSG)** shall have the meaning given to it under Section 12 of this Act;
- h) **State** means the Republic of the Philippines.

SEC. 4. There is hereby created the Philippine Extractive Industries Transparency Initiative (hereinafter referred to as PH-EITI). The PH-EITI shall be composed of a broad coalition of stakeholders, including representatives from the government, the private sector, the indigenous community, and non-governmental organizations. The PH-EITI shall be governed by a multi-stakeholder body as defined in Section 12 of this Act.

SEC. 5. General Objectives. The general objective of the PH-EITI is to ensure that all of what is due to the Filipino people and the Government on account of the exploitation and/or extraction of the country's mineral, oil, gas and other natural resources are (a) verifiably paid; (b) duly accounted for; and (c) judiciously utilized for the benefits of all Filipinos and on the basis of intergenerational equity and sustainability.

SEC. 6. Specific Objectives. The specific objectives of the PH-EITI shall include, but shall not be limited, to the following:

- a) Ensure sustained political commitment for the initiative and mobilize resources to sustain its activities and goals;
- b) Require all companies engaged in the extraction of natural resources to participate in such initiative;
- c) Promote genuine participation of civil society in the design, implementation, evaluation and modification of policies and actions of the Government associated with resource governance in the Philippines;
- d) Procure reconciliation of payments and mandatory expenditures by covered extractive companies by an independent firm;
- e) Set the scope of the EITI process;
- f) Ensure that the initiative is effectively integrated in other related government reform agenda; and
- g) Promote better understanding of the public on the nature of extractive industries and the benefits of transparent and accountable governance of our natural resources.

SEC. 7. Applicability and Coverage. The following sectors shall be covered by and within the scope of the PH-EITI: (a) mining; (b) oil and gas sector; and (c) coal. Further, this Act shall apply to all operating mines, regardless of materiality, covering the reporting years of the EITI report including, but not limited to, MPSA and FTAA holders and contractors in cases of subcontracting. National and local governments are strictly required to participate in reporting relevant data pursuant to this Act.

SEC. 8. The PH-EITI shall focus on and promote the following:

- a) Revenue transparency, which means the timely disclosure, reconciliation or audit and publication of all data of material national and local payments and revenues sourced from the extractive activities covered by the scope of the PH-EITI;
- b) Contract transparency, which means public accessibility of all concessions, contracts/licenses, agreements and joint ventures that the Government enters into related to the extractive sectors within the scope of the PH-EITI; and
- c) Accessibility of data and information, which means public release of data, documents, and information in a format that allows the public to freely use, re-use and redistribute them, for any purpose, without restrictions.

SEC. 9. The PH-EITI shall submit an annual report to the President and Congress, in any case not later than April 30 of each year.

SEC. 10. The annual report to be prepared, submitted and published by the PH-EITI shall include, but not be limited to:

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

SEC. 11. The payment and utilization of taxes, fees, surcharges, and similar charges made by extractive companies and/or contractors shall be closely monitored by the PH-EITI. All fiscal payments and mandatory expenditures by contractors shall be disclosed to the PH-EITI multi-stakeholder group for the production of the annual EITI report. National and local governments are required to report on how the proceeds from mining and other extractive industries was utilized.

SEC. 12. MSG Composition. In accordance with the EITI International Standards and with due regard to the Philippine context, there shall be created a multi-stakeholder group (MSG) that will be in charge of PH-EITI.

The MSG shall be headed by a Chairperson to be appointed by the President of the Philippines. It shall operate at the national and provincial levels where extractive companies are located.

The MSG both at the national and provincial levels shall consist of representatives from the following sectors:

- a) *Government Representatives.* The government representatives shall be composed of senior officials from the Department of Finance including the Bureau of Internal Revenue and Bureau of Local Government Finance, Department of the Interior and Local Government, Department of Environment and Natural Resources, Department of Energy and the Department of Budget and Management including representatives from local governments. A representative from both Houses of Congress shall also be included to ensure that the findings of the EITI will be used for more effective and more responsive policies;
- b) *Industry Representatives.* There shall be five (5) industry representatives who are officials from the extractive industries included in the EITI;
- c) *Civil Society Organizations (CSOs) Representatives.* There shall be five (5) civil society organization representatives who shall independently select their representative to the EITI amongst themselves.
- d) *Indigenous Peoples (IPs) Representatives.* The IP representative shall be selected by a caucus of IP organizations affected by mining operations.

SEC. 13. Conduct of MSG Work. Decision-making shall be by consensus. Other agencies may be tapped by MSG for advice and information to further strengthen EITI's implementation of its mandate, *provided*, that all sectors are adequately represented in the MSG at all times; *provided further*, that the existing PH-EITI created under Executive Order No. 147, s. 2013 shall be henceforth constituted under the provisions of this Act.

SEC. 14. PH-EITI Secretariat. There is hereby created the PH-EITI Office under the Office of the President. The PH-EITI shall be headed by a Chairperson as appointed by the President of the Philippines. The MSG shall then select a National Coordinator who will lead the PH-EITI Secretariat team. The MSG shall approve the staffing pattern of the EITI office and determine the duties, qualifications, responsibilities and functions, as well as the compensation scheme for the positions to be created, upon the recommendation of the National Coordinator. It shall also prepare and approve its work and financial plan. For this purpose, the creation of the corresponding *plantilla* positions is hereby authorized.

SEC. 15. Funding. Congress shall allocate adequate funding for PH-EITI implementation, including participation of relevant stakeholders from non-government organizations in the General Appropriations Act; *Provided*, That the said amount shall be equivalent to two percent (2%) of the gross proceeds of the sectors covered by and within the scope of the PH-EITI. PH-EITI shall have the authority to receive, disburse and manage financial aid or grants from foreign and domestic entities to be utilized for the implementation of its objectives subject to the usual accounting and auditing rules and regulations.

SEC. 16. 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.

SEC. 17. Penalties. Failure to participate in PH-EITI shall be a ground for suspension of the contractor's permit to operate and blacklisting for future projects. A contractor who, without justifiable cause, unreasonably delays or causes the delay of submission of the required reports within the deadline set by PH-EITI, shall be imposed a fine of Five Hundred Thousand Pesos (Php500,000.00). Sanctions provided for under this Act shall be imposed by the Mines and Geosciences and Bureau and/or the Department of Energy, as the case may be, pursuant to these agencies' internal rules and regulations.

SEC. 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.

SEC. 19. 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. 20. Repealing Clause. All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly; *provided*, that nothing in this Act shall be construed as a diminution of local autonomy or in derogation of ancestral domain rights under the Indigenous Peoples' Right Act of 1997.

SEC. 21. Effectivity. This Act shall take effect fifteen (15) days after its publication in this Official Gazette or in any two newspapers of general circulation.

Approved.