

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FOURTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 1793

Introduced by **Bayan Muna Reps. TEODORO A. CASIÑO and SATUR C. OCAMPO; Gabriela Reps. LIZA L. MAZA and LUZVIMINDA C. ILAGAN; and Anakpawis Rep. CRISPIN B. BELTRAN**

EXPLANATORY NOTE

The Philippines is endowed with rich mineral resources, with metallic reserves estimated at 7.1 B metric tons and non-metallic reserves estimated at 51 B metric tons. In 1980, mining accounted for 21.3% of the country's exports amounting to US\$ 11.2 B. In 2003, this nosedived to US\$1.6 B or a mere 1.6% of the Gross Domestic Product when world market prices of minerals dropped. The export-oriented, import-dependent character of the country's mining industry made it extremely vulnerable to world market prices and at the same time failed to lay the ground for the setting-up of basic and heavy industries essential for industrialization.

On March 3, 1995, Republic Act 7942, otherwise known as the Philippine Mining Act of 1995, was passed. The said law established the State's role "to promote the rational exploration, development, utilization and conservation of all mineral resources in the Philippines."

Nine years later, on January 27, 2004, several provisions of Republic Act 7942 were declared unconstitutional by the Supreme Court. This pronouncement involved provisions on foreign ownership under the Financial or Technical Assistance Agreements (FTAAs) and Mineral Processing Permits (MPPs). The implementing rules and regulations devised by the Department of Environment and Natural Resources (DENR) through Administrative Order No. 96-40 were likewise declared null and void.

The decision was a response to the petition filed by the La Bugal-B'laan Tribal Association in 1997 which questioned the constitutionality of the Mining Act, because it allows the execution of service contracts with fully foreign-owned corporations for the exploration, development, exploitation, and use of the country's minerals, petroleum, and other mineral oils.

In its decision, the Court asserted: "This court finds RA 7942 is invalid insofar as said Act authorizes service contracts. Although the statute employs the phrase 'financial and technical agreements' in accordance with the 1987 Constitution, it actually treats these agreements as service contracts that grant beneficial ownership to foreign contractors contrary to fundamental law."

This stand, however, lasted barely a year. On December 1, 2004, the Supreme Court reversed its January ruling. A Motion for Reconsideration was filed by the petitioners on

January 20, 2005, which was dismissed by the High Court on February 1, 2005. This effectively upheld the Mining Act of 1995. However, the most basic issues raised by the affected indigenous communities in their petition were not directly addressed in the decision. It instead focused on dismissing the question of Western Mining Corporation's nationality with the reported sale of its equity to Sagittarius Mines. It also gave particular emphasis to the economic potentials of the mining industry as justification for its ruling, which was, in fact, not the central issue of the petition.

Nevertheless, the issue raised on the potential economic benefits of mining is not at all new. It is very much in keeping with the Arroyo administration's 10-Point Agenda, which aims to revitalize the mining industry in order to address the worsening fiscal crisis. Even before the Supreme Court reversal, the President had already signed Executive Order 270, or the National Policy Agenda on Revitalizing Mining in the Philippines. In keeping with this, the Minerals Action Plan (MAP) being promoted by the DENR Mines and Geosciences Bureau (DENR-MGB), spells out the direction for exploration, development, and utilization of the country's mineral resources. The MAP speeds up the approval of mining applications from three years to a mere six months.

This revitalization of the mining industry is being hailed as the solution to the economic woes of the country. The National Economic and Development Authority (NEDA) has estimated the country's mineral potential to be worth P47 trillion (US\$ 840 B), stating that the mining sector may be able to contribute P1.8 trillion annually to the economy.

Government, however, is mum on exactly how this US\$ 840 B expected profit has been arrived at. The various incentives granted to foreign companies in the country, such as six-year income tax holidays, exemption from taxes and duties on imported machinery and tax credits for raw materials and supplies, alongside other schemes that allow full profit repatriation, gravely put this so-called revenue to question.

Moreover, what is US\$ 840 B compared to the irreparable environmental destruction, displacement, dislocation, gradual extinction of indigenous peoples' communities and even loss of lives that once again are bound to occur as a result of resumed large-scale mining operations? No accounting has been made on this respect in the previous decades that large-scale mining has been in place in the country.

Several studies likewise refute the promising predictions of mining's substantial contribution to economic growth. The Legal Rights and National Resources Center – Kasama sa Kalikasan (LRC-KsK) has cited studies commissioned by OXFAM America which found that local US counties that were dependent on mining experienced lower economic growth compared to non-dependent areas. A study by Jeffrey Sachs and Andrew Warner, as published in the *European Economic Review*, shows evidence that countries rich in natural resources tend to grow more slowly than resource-poor countries. Richard Auty's study likewise suggests that resource-driven growth does not necessarily result in higher economic gain.

Aside from the lack of substantive evidence that liberalizing the mining industry by upholding the Mining Act will boost our national economy, there is also a severe lack of attention given to the other aspects of our national welfare which are affected by mining. LRC-KsK has pointed out the World Bank- Extractive Industry Review, which says that mining causes environmental degradation, social disruption, conflict, and uneven sharing

of benefits to local communities affected by its negative social and environmental impact. It is clear that the cost of mining extends far beyond the economic alone.

But in the 7th Asia-Pacific Mining Conference and Exhibition in June 2007, President Arroyo said the mining industry would “serve as a leading engine for Philippine economic growth, becoming a source of revenue and wealth to allow the government to seriously bring down the level of poverty in the country.”

In this pursuit, the President signed Executive Order No. 636 “transferring” the government-owned and -controlled Philippine Mining Development Corp. (PMDC) from the Department of Environment and Natural Resources to the Office of the President on July 18, 2007. She cited the need to “closely monitor and oversee the efficient and effective implementation of the utilization and development of [the country’s] mineral resources.”

The PMDC is the DENR’s corporate arm tasked with exploring, developing, mining, smelting and producing, among others, all kinds of mineral deposits and resources.

Under direct Malacañang control, the PMDC will take charge of opening some 65 non-performing mining tenements that were previously canceled, covering a total of 68,000 hectares. The projected income from these mining tenements would reach US\$ 2 billion by yearend, rising to \$10 billion annually if and when a so-called mining boom occurs.

This is actually misleading, to say the least.

The PMDC transfer was meant to facilitate coordination between the Office of the President on one hand, and the local government units and the National Commission on Indigenous Peoples (NCIP) on the other, in the grant of mining permits.

Experience has impressed upon our countrymen the potentially disastrous effects of large-scale mining operations on the environment, with the Marcopper disaster in Marinduque standing as a classic example of massive degradation. Placer Dome, the Canadian partner of Marcopper, failed to sufficiently rehabilitate and provide reparations after the tailings spill. To this day, locals still continue to suffer the ill effects of the tragedy. They have lost their livelihood and their children still fall prey to poisoning from the toxic minerals which have contaminated their water and soil. With a poverty incidence rate of 71.6%, Marinduque is among the most impoverished countries in the country today.

In addition to these consequences to both environment and health, it must be noted that since the Mining Act was put into effect ten years ago, several violations against the rights of indigenous peoples have been committed by large mining companies. Foreign mining firms have been employing the services of military and paramilitary groups to quell resistance from the local communities, thus displacing the people from their own land and undermining their culture. Gross violations of human rights are given legal cloak via Section 75 of the law which gives mining companies easement rights.

Foreign-owned and controlled large-scale mining is not a new development. It has spanned the decades, yet the country’s economy remains in a slump. It is therefore both dangerous and unwise to assume at this point that further liberalization of the mining

industry is the solution to our financial woes. Prudent utilization of our mineral resources is indeed necessary for national industrialization and progress, but allowing foreign corporations full control and ownership of mining projects only defeats this objective. Thus, it is imperative that the government adopt a policy on mining which will enshrine the welfare of Filipinos, something which the existing Mining Act miserably fails to accomplish.

In view of the foregoing, early passage of this bill is earnestly requested.

TEODORO A. CASIÑO
Principal Author

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CRISPIN B. BELTRAN

**AN ACT REPEALING REPUBLIC ACT 7942, OTHERWISE KNOWN AS
THE MINING ACT OF 1995**

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

SECTION 1. Any provision of law to the contrary notwithstanding, Republic Act
7942 entitled “An Act Instituting a New System of Mineral Resources Exploration,
Development, Utilization, and Conservation” is hereby repealed.

SECTION 2. Effectivity Clause – This Act shall take effect fifteen (15) days after
its publication in two (2) national newspapers of general circulation.

Approved,

TEODORO A. CASIÑO
Bayan Muna Party-List

SATUR C. OCAMPO
Bayan Muna Party-List

LIZA L. MAZA
Gabriela Women’s Party

LUZVIMINDA C. ILAGAN
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