

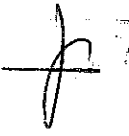
SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

16 SEP -5 P5:03

SENATE

RECEIVED BY: 

S. B. No. 1125

Introduced by Senator JOEL VILLANUEVA

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

EXPLANATORY NOTE

The extractive industry has the capacity to contribute to the national growth and development, especially in resource-rich countries like the Philippines. It has the potential to provide livelihood opportunities, create jobs, and channel additional government resources to host communities. The gains from the oil, gas, and mineral resources, nevertheless, does not always translate to benefits for the general public. Across the globe, extractive industries are marred with various issues on environmental degradation, poverty, and corruption.

In response to these issues, the Extractive Industries Transparency Initiative (EITI) was launched to allow for full disclosure of and public access to information regarding the extractive industry. The EITI is an internationally recognized framework and practice that monitors revenue and public benefit from mining and other extractive resources. Composed of representatives from the government, extractive industry players, and civil society organizations, EITI provides a platform for the regular and systematic reporting, review, and assessment of information concerning the industry. It also strengthens multi-sectoral participation in crafting and implementing regulatory policies governing the extractive industry.

In the Philippines, the EITI was established on November 26, 2013 pursuant to Executive Order No. 147 entitled "Creating the Philippine Extractive Industries Transparency Initiative". Since its inception, the Philippine EITI (PH-EITI) served as an effective platform for public disclosure of information on fees, taxes and other payments made by mining companies. The later expansion of PH-EITI enabled the coverage of oil and gas industries. Furthermore, regular reports published by the PH-EITI also later expanded to include publicly disclosed information on social and environmental impact of the extractive industries.

Among the impacts of this initiative, the PH-EITI strengthened the capacity of local government units (LGUs) – as well as other stakeholders such as 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.

The said efforts and impact of PH-EITI was recognized internationally as a global model of multi-sectoral initiative on transparency and monitoring of the extractive industry. Last February 2016, the Philippines honored as one of four country recipients of the “EITI International Chair Award” at the opening session of the 7th EITI Global Conference in Lima, Peru. The said award recognized the Philippines for having exemplified how EITI reports can maximize impact, translating data collected into real governance reforms on the ground.

To ensure the continuation of the globally recognized governance reforms introduced and established by the said initiative, this bill seeks to institutionalize the creation of the Philippine EITI. Institutionalizing the PH-EITI will enable the multi-sectoral initiative not only to continue its efforts but also pursue other reforms that will allow the country to further maximize the benefits from the extractive industry.

The passage of this important measure is earnestly sought.

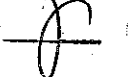

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

GENERAL PROVISIONS

- 1 **SEC. 1. Title.** This Act shall be known as the *“Philippine Extractive Industries*
2 *Transparency Initiative Act.”*
3
- 4 **SEC. 2. Declaration of Principles.** All natural resources are owned by Filipinos
5 represented by the State. It shall be the responsibility of the State to ensure that the
6 present and future generations benefit from these finite resources. The State must
7 then establish a mechanism by which the Filipino people are fully aware of how
8 proceeds from their finite resources are being utilized.
9
- 10 **SEC. 3. Definition of Terms.**
- 11 a) Agreement means a contract between the Government and a Contractor,
12 involving financial or technical matters;
- 13 a) Contractor means a qualified person acting alone or in consortium who is a
14 party to a mineral agreement or to a financial or technical assistance
15 agreement.
- 16 b) Extractive Industries refer to the mining, oil, gas and coal sectors and all other
17 sectors that require the extraction of non-renewable natural resources for
18 commercial use;
19

- 1 c) Financial or Technical Assistance Agreement (FTAA) means a contract
2 involving financial or technical assistance for large-scale exploration,
3 development and utilization of mineral resources;
- 4 d) Independent Firm refers to an accounting or auditing firm that has no existing
5 relationship with either the Government or any of the companies that are part
6 of the Philippines-Extractive Industries Transparency Initiative (PH-EITI);
- 7 e) Mineral Production Sharing Agreement (MPSA) means an agreement where
8 the government grants to the contractor the exclusive right to conduct mining
9 operations within a contract area and shares in the gross output. The contractor
10 provides the financing, technology, management and personnel necessary for
11 the implementation of the agreement;
- 12 f) Multi-stakeholder Group (MSG) shall have the meaning given to it under
13 Section 14 of this Act;
- 14 g) State means the Republic of the Philippines.

15 16 CHAPTER II

17 ESTABLISHMENT OF THE PHILIPPINE

18 EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

19

20 **SEC. 4. Creation of PH-EITI.** There is hereby created the Philippine Extractive
21 Industries Transparency Initiative (hereinafter referred to as PH-EITI).

22
23 **SEC. 5. Composition.** The PH-EITI shall be composed of a broad coalition of
24 stakeholders, including representatives from the government, the private sector, the
25 indigenous community, and non-governmental organizations. The PH-EITI shall be
26 governed by a multi-stakeholder body (hereinafter referred to as PH-EITI MSG), which
27 shall be constituted in accordance with the provisions of Chapter V of this Act.

28 29 CHAPTER III

30 OBJECTIVES OF THE PH-EITI

31

32 **SEC. 6. General Objectives.** The general objective of the PH-EITI is to improve
33 governance and management of the natural resources in the country and ensure that
34 all of what is due to the Filipino people and the Government on account of the
35 exploitation and/or extraction of the country's mineral, oil, gas and other natural
36 resources are (a) verifiably paid; (b) duly accounted for; and (c) judiciously utilized for
37 the benefits of all Filipinos and on the basis of intergenerational equity and
38 sustainability.

39
40 **SEC. 7. Specific Objectives.** The specific objectives of the PH-EITI shall include,
41 but not be limited, to the following:

- 1 a) Ensure sustained political commitment for the initiative and mobilize resources
2 to sustain its activities and goals;
- 3 b) Require all companies engaged in the extraction of natural resources to
4 participate in such initiative;
- 5 c) Promote genuine participation of civil society in the design, implementation,
6 evaluation and modification of policies and actions of the Government
7 associated with resource governance in the Philippines;
- 8 d) Implement and ensure compliance to the standards and policies of the global
9 initiative;
- 10 e) Ensure that the initiative is effectively integrated in other related government
11 reform agenda; and
- 12 f) Promote better understanding of the public on the nature of extractive industries
13 and the benefits of transparent and accountable governance of our natural
14 resources.
- 15

16 **CHAPTER IV**
17 **SCOPE AND FOCUS OF THE PH-EITI**

18

19 **SEC. 8. Applicability.** This Act shall apply to all extractive industries, government
20 agencies at the national and local level in the country. National and local governments
21 are strictly required to participate in reporting relevant data pursuant to this Act.

22

23 **SEC. 9. Scope.** The scope of the PH-EITI shall include:

- 24 a) Revenue transparency, which means the timely disclosure, reconciliation or
25 audit and publication of all data of material national and local payments and
26 revenues sourced from the extractive activities covered by the scope of the PH-
27 EITI;
- 28 b) Contract transparency, which means public accessibility of all concessions,
29 contracts/licenses, agreements and joint ventures that the Government enters
30 into related to the extractive sectors within the scope of the PH-EITI including
31 related documents and attachments to the contracts; and
- 32 c) Accessibility of data, information and reports on the extractive industries, which
33 means public release of data, documents, and information in a format that
34 allows the public to freely use, re-use and redistribute them, for any purpose,
35 without restrictions.
- 36

37 **SEC. 10. Sectors Covered.** For the purpose of this Act, the following sectors shall be
38 covered by and within the scope of the PH-EITI are: (a) the mining sector; (b) the oil
39 and gas sector; (c) the coal sector; and (d) such other sectors as the multi-stakeholder
40 group may subsequently determine and deem necessary.

41

1 **SEC. 11. Annual Report.** The PH-EITI shall submit an annual report to the President
2 and Congress, in any case not later than April 30 of each year.

3 The annual report to be prepared, submitted and published by the PH-EITI shall
4 comply with the international standards of EITI and include additional reporting
5 requirements as agreed upon by the PH-EITI MSG.

6
7 **SEC. 12. Monitoring of Payments.** The payment and utilization of taxes, fees,
8 surcharges, and similar charges made by extractive companies and/or contractors
9 shall be closely monitored by the PH-EITI. All fiscal payments and mandatory
10 expenditures by contractors shall be disclosed to the PH-EITI MSG for the production
11 of the annual EITI report. National and local governments are required to report on
12 how the proceeds from the extraction of resources were utilized.

13
14 **CHAPTER V**
15 **CREATION OF MULTI-STAKEHOLDER GROUP**
16

17 **SEC. 13. Composition.** In accordance with the EITI International Standards and with
18 due regard to the Philippine context, there shall be created a multi-stakeholder group
19 (MSG) that will be in charge of PH-EITI.

20 The PH-EITI MSG shall be headed by a Chairperson to be appointed by the President
21 of the Philippines, who must be either: (1) a Cabinet secretary, (2) the head of the
22 interagency coordinating council on the extractive sector, or (3) a presidential adviser.
23 The functions of the Chairperson shall include convening the group and organizing a
24 secretariat.

25 The PH-EITI MSG shall consist of representatives from the following sectors:

- 26 a) **Government Representatives.** The government representatives shall be
27 composed of (1) senior officials from concerned agencies appointed by the
28 President of the Philippines, (2) representatives from local governments, which
29 shall be the president of the leagues of various local government units; and (3)
30 representatives from the Congress, to ensure that the findings of the EITI will
31 be used for more effective and more responsive policies;
- 32 b) **Industry Representatives.** The industry representatives shall be composed of
33 officials from the extractive industries included in the EITI;
- 34 c) **Civil Society Organizations (CSOs) Representatives.** The civil society shall
35 independently select their representatives in the EITI.
- 36 d) **Indigenous Peoples (IPs) Representatives.** The IP representative shall be
37 selected by a caucus of IP organizations affected by mining operations.

38 *Provided,* That groups representing items (b), (c) and (d) above shall designate a
39 permanent and alternate representative to PH-EITI MSG. Each organization, upon the
40 decision of its members and through its independent process, can replace their
41 representatives in the MSG anytime following their own governance mechanism.

1 **SEC. 14. Regular Meeting of PH-EITI MSG.** The PH-EITI MSG shall meet once a
2 quarter or as often as necessary.

3 For urgent matters where decision is needed, necessary information shall be
4 circulated through email so that decisions can be made electronically, also by
5 consensus.

6 Fifty percent (50%) of the members, with at least one representative from the
7 government, CSOs, IPs, and business sector shall represent the quorum of the PH-
8 EITI MSG. The MSG, shall, in good faith, make decisions by consensus.

9
10 **SEC. 15. Annual Meeting of PH-EITI MSG Members.** The members of PH-EITI MSG
11 shall hold their annual meeting on the month of April of each year. The agenda of the
12 meeting shall include, but not be limited to, the approval of the activities, reports,
13 accounts and the activity plan of the PH-EITI, and any other acts or matters which may
14 be brought to the attention of the PH-EITI in pursuit of its mandate as provided under
15 this Act and relevant regulations.

16
17 **SEC. 16. Notice of Meetings.** The Chairperson shall call and preside over the
18 meetings. Notices shall be sent out by the PH-EITI secretariat at a minimum of one
19 week before the date of the meeting. The secretariat shall handle the documentation
20 and preparations of the minutes of the meeting.

21
22 **SEC. 17. Review of the MSG.** The composition and number of representatives shall
23 be subject to regular review by the MSG. Other agencies may form part of the MSG
24 subject to the evolving needs and scope of the EITI implementation, *provided*, that all
25 sectors should be adequately represented in the MSG at all times; *provided further*,
26 that the existing PH-EITI created under Executive Order No. 147, s. 2013 shall be
27 henceforth constituted under the provisions of this Act.

28
29 **CHAPTER VI**
30 **SECRETARIAT OFFICE AND FUNDING**
31

32 **SEC. 18. PH-EITI Office.** There is hereby created the PH-EITI Office under the Office
33 of the President. The PH-EITI shall be headed by a Chairperson as appointed by the
34 President of the Philippines. The MSG shall then select a National Coordinator who
35 will lead the PH-EITI Secretariat team. The MSG shall approve the staffing pattern of
36 the EITI office and determine the duties, qualifications, responsibilities and functions,
37 as well as the compensation scheme for the positions to be created, upon the
38 recommendation of the National Coordinator. It shall also prepare and approve its
39 work and financial plan. For this purpose, the creation of the corresponding *plantilla*
40 positions is hereby authorized.

41
42 **SEC. 19. Funding.** The Congress shall allocate adequate funding for PH-EITI
43 implementation, including participation of relevant stakeholders from non-government
44 organizations in the General Appropriations Act; *Provided*, That the said amount shall

1 be equivalent to one percent to two percent (1-2%) of the gross proceeds of the sectors
2 covered by and within the scope of the PH-EITI, as defined in Section 10 of this Act.

3 PH-EITI shall have the authority to receive, disburse, and manage financial aid or
4 grants from foreign and domestic entities to be utilized for the implementation of its
5 objectives subject to the usual accounting and auditing rules and regulations.

6
7 **CHAPTER VII**

8 **EXEMPTION FROM CONFIDENTIALITY CLAUSES**

9
10 **SEC. 20. Exemption from Confidentiality Clauses.** Confidentiality provisions stated
11 under applicable laws, including, but not limited to the provisions of Section 270 of the
12 National Internal Revenue Code, Article 81 of the Omnibus Investments Code, among
13 others, shall not be applicable to extractive companies insofar as their participation in
14 the PH-EITI process is concerned.

15
16 **CHAPTER VIII**

17 **PENALTIES**

18
19 **SEC. 21. Penalties.** Failure to participate in PH-EITI shall be a ground for suspension
20 of the contractor's permit to operate and blacklisting for future projects. A contractor
21 that, without justifiable cause, unreasonably delays or causes the delay of submission
22 of the reporting template within the deadline set by PH-EITI, shall be imposed a fine
23 of Five Hundred Thousand Pesos (Php500,000.00). Sanctions provided for under this
24 Act shall be imposed by the responsible regulatory agency, as the case may be,
25 pursuant to these agencies' internal rules and regulations.

26
27 **CHAPTER IX**

28 **TRANSITORY AND MISCELLANEOUS PROVISIONS**

29
30 **SEC. 22. Implementing Rules and Regulations.** Within sixty (60) days from the
31 effectivity of this Act, the Secretaries of Finance, Budget and Management,
32 Environment and Natural Resources, Interior and Local Government, and Energy shall
33 promulgate the necessary rules and regulations for the effective implementation of this
34 Act.

35
36 **SEC. 23. Separability Clause.** If any provision of this Act is declared unconstitutional
37 or invalid, other parts or provisions hereof not affected thereby shall continue to be in
38 full force and effect.

39
40 **SEC. 24. Repealing Clause.** All laws, decrees, executive orders, rules and
41 regulations or parts thereof which are contrary to or inconsistent with this Act are

1 hereby repealed, amended or modified accordingly; *provided*, that nothing in this Act
2 shall be construed as a diminution of local autonomy or in derogation of ancestral
3 domain rights under the Indigenous Peoples' Right Act of 1997.

4

5 **SEC. 25. Effectivity.** This Act shall take effect fifteen (15) days after its publication in
6 this Official Gazette or in any two newspapers of general circulation.

7

8 *Approved.*