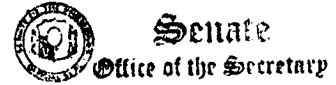


EIGHTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
*First Regular Session* )

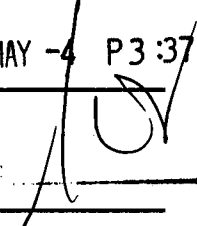


**SENATE**  
S. No. 1489

20 MAY -4 P3:37

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Introduced by Senator Grace Poe

RECEIVED BY: 

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**AN ACT**  
**IMPROVING THE DISCLOSURE AND TRANSPARENCY OF THE EXTRACTIVE**  
**INDUSTRIES**

*Explanatory Note*

The Philippines is known for its abundant minerals, oil and gas reserves and is estimated to possess about 21.5 billion metric tons of metal deposits, highest in Southeast Asia. The Philippines has potential deposits of petroleum of about 8.9 billion barrel of oil equivalent (bboe) or a total of about 1 million square kilometers<sup>1</sup>. Mineral, oil and gas are finite resources, with a single opportunity to gain from its extraction.

Thus, ensuring that the Filipino people maximize benefits from it while minimizing losses is essential. Proper management of these resources may contribute to economic growth and social development. In contrast, if left unimpeded, it may cause permanent environmental damage and create conflict within and among communities.

Communities have experienced adverse environmental and social impacts from mining: fish kill in Lake Mainit near the operation of Greenstone Resources Corporation<sup>2</sup>; breaching of Philex Padcal Mine tailings pond in Itogon, Benguet, releasing over 20 million metric tons of sediments and toxic materials into water channels in August 2012<sup>3</sup>; incidents of mine collapse in Semirara Mining and Power Corporation's Painan pit in 2013 and 2015 costing the lives of over a dozen

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<sup>1</sup> Data from the Philippine Extractive Industries Transparency Initiative Report 2014.

<sup>2</sup> [http://www.mindanews.com/top-stories/2015/12/15/mayor-threatens-to-close-mining-firm-if-found-responsible-for-fish-kill-in-lake-mainit/?utm\\_campaign=shareaholic&utm\\_medium=facebook&utm\\_source=socialnetwork](http://www.mindanews.com/top-stories/2015/12/15/mayor-threatens-to-close-mining-firm-if-found-responsible-for-fish-kill-in-lake-mainit/?utm_campaign=shareaholic&utm_medium=facebook&utm_source=socialnetwork).

<sup>3</sup> <https://ejatlas.org/conflict/philex-padcal-mining-disaster-benguet-philippines>.

workers<sup>4</sup>; landslide and destruction of homes in Itogon, Benguet forcing the Mines and Geoscience Bureau (MGB) to review the mining areas in 2016<sup>5</sup>; the killing and displacement of Lumads in Mindanao because of development aggression<sup>6</sup>; and the proven water, air, and soil pollution, and siltation in Zambales and Pangasinan caused by five mining firms as decided in a Supreme Court case where a Writ of Kalikasan was issued.<sup>7</sup>

In 2015, the Caraga Region was host to 21 of 40 operating large-scale metallic mines<sup>8</sup>. Based on the Fourth PH-EITI Annual Report, a reconciled amount of Php186 million<sup>9</sup> was collected in taxes and fees by local government units in the region from the 12 mining entities in Caraga that participated in PH-EITI<sup>10</sup>. Collections from national wealth including mining taxes<sup>11</sup> and proceeds from mineral resources<sup>12</sup> for the same period was at Php162 million. Current policies mandate social and environmental expenditures for the development of mining communities, and for the protection and enhancement of impacted areas. A total of Php980 million was declared as mandatory expenditures in 2015. In addition, operating large-scale metallic mining companies in the Caraga Region employed about 13,800<sup>13</sup> individuals during the period. Despite the mandatory payments, programs, and individuals employed, development in the area is slow. Per 2015 Philippine Statistics Authority, the Caraga Region has a poverty incidence of 39.1%, well above the national poverty level of 21.6%<sup>14</sup>.

Minerals, coal, petroleum, gas, and other mineral oils are owned by the State<sup>15</sup> on behalf of its citizens. As such, management of these resources are of public concern.

The Extractive Industries Transparency Initiative (EITI) is an international standard of open and accountable governance in mining, oil, and gas sectors<sup>16</sup>. The

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<sup>4</sup> <http://www.gmanetwork.com/news/news/regions/524006/ocd-9-workers-dead-after-semirara-mining-mishap/story/>.

<sup>5</sup> <http://www.sunstar.com.ph/baguio/local-news/2016/01/05/geologists-cordillera-mull-review-mining-areas-450153>.

<sup>6</sup> <http://www.abs-cbnnews.com/blogs/opinions/11/09/15/on-eve-of-apec-summit-ph-leaders-ignore-cost-of-development-on-social-margins>.

<sup>7</sup> <http://www.sunstar.com.ph/manila/local-news/2016/06/21/sc-issues-writ-kalikasan-vs-5-mining-firms-480726>.

<sup>8</sup> Fourth Ph-EITI Report, p. 35-36.

<sup>9</sup> Fourth Ph-EITI Report, p. 345. Locally collected taxes and fees include local business tax, real property tax and special education funds, among others.

<sup>10</sup> Fourth Ph-EITI Report, p. 438.

<sup>11</sup> Fourth Ph-EITI Report, p. 357.

<sup>12</sup> Fourth Ph-EITI Report, p.363.

<sup>13</sup> Fourth Ph-EITI Report, p. 114-117.

<sup>14</sup> <https://psa.gov.ph/poverty-press-releases/data> – Table 2

<sup>15</sup> Article XII, Section 2 of the 1987 Constitution.

<sup>16</sup> <https://eiti.org/who-we-are>

Philippines expressed its commitment to participate in EITI through Executive Order No. 79 S. 2012<sup>17</sup>. Further, the Philippines, as one of the founding countries of the Open Government Partnership (OGP), aims to increase access to information, public accountability, and civic participation. EITI compliance is one of the country's commitments to the OGP.

Moreover, EITI fulfills the people's constitutional right to information under Section 7, Article III of the 1987 Constitution. Composed of representatives from government, extractive companies, and civil society organizations, the 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 extractives governance.

Transparency is a cornerstone of governance. This bill aims to ensure sustained transparency in the extractive industries. In so doing, government commits to disclose timely, complete, and accurate information and documents pertinent to resource extraction to enable evidence-based management. Further, it intends to continue producing the PH-EITI Annual Report. To date, the Philippines has published four Annual Reports. The said Reports contain information on fees, taxes, and other mandatory payments made by mining, oil, and gas companies. The Report may be expanded to extensively discuss social and environmental costs and benefits. Moreover, it may also be extended to reflect economic linkages. With access to such information, citizens are empowered to meaningfully participate in resource management.

In the wake of fiscal rationalization, monitoring the impact of taxes and incentives to assess if they meet their set objectives is key. Institutionalizing PH-EITI is therefore urgently needed. The passage of this bill is earnestly sought.



GRACE POE

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<sup>17</sup> Section 14, Executive Order No. 79, s. 2012.



SENATE  
S. No. 1489

20 MAY -4 P3:37

Introduced by Senator Grace Poe

RECEIVED BY \_\_\_\_\_

**AN ACT**

**IMPROVING THE DISCLOSURE AND TRANSPARENCY OF THE EXTRACTIVE INDUSTRIES**

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

- 1 Section 1. *Title.* – This Act shall be known as the “Open Extractives Data Act.”
- 2 Sec. 2. *Declaration of Policy.* – Under Section 7, Article III of the Philippine
- 3 Constitution, the right of the people to information on matters of public concern shall
- 4 be recognized – access to official records, and to documents, and papers pertaining
- 5 to official acts, transactions, or decisions shall be afforded the citizen. Accordingly,
- 6 the following are declared policies of the State:
- 7 a. The State shall adopt and implement a policy of full public disclosure of all
- 8 its transactions involving public interest.
- 9 b. All natural resources are owned by Filipinos represented by the State. The
- 10 State shall be under the full control and supervision of the exploration,
- 11 development, and utilization of natural resources.
- 12 c. The State shall be responsible for promoting the rational exploration,
- 13 development, utilization, and conservation of the country’s mineral
- 14 resources through the combined efforts of government and the private
- 15 sector in order to enhance national growth in a way that effectively
- 16 safeguards the environment and protects the rights of affected
- 17 communities
- 18 d. The State shall protect and advance the right of the people to a balanced
- 19 and healthful ecology in accord with the rhythm and harmony of nature.

1           Sec. 3. *Objectives.* – In pursuit of Section 28, Article II of the Philippine  
2 Constitution, this Act shall have the following objectives:

- 3           a. To ensure sustained Philippine government's commitment to participate in  
4           the Extractive Industries Transparency Initiative (EITI) that sets  
5           international standards for transparency and accountability in the  
6           extractive industries and in government;  
7           b. To promote better understanding of the public on the nature of extractive  
8           industries and the benefits of transparent and accountable governance of  
9           our natural resources;  
10          c. To promote genuine participation of civil society in the design,  
11          implementation, evaluation and modification of policies and actions of the  
12          Government associated with resource governance in the Philippines;  
13          d. To require all entities engaged in the extraction of natural resources to  
14          participate in such initiative;  
15          e. To ensure that the initiative is effectively integrated in other related  
16          government reform agenda and make the information required by EITI  
17          available and accessible through government reporting systems and  
18          structures; and  
19          f. To ensure material information is disclosed and payments are reconciled.

20          Sec. 4. *Definition of Terms.* – For purposes of this Act, the following terms  
21 shall be defined as follows:

- 22          a. *Beneficial owner* refers to the natural person/s who directly or indirectly  
23          ultimately owns or controls the corporate entity.  
24          b. *Contract* refers to an agreement between the Government and a  
25          contractor for the exploration, development, production and utilization of  
26          natural resources for commercial and other uses as authorized by law.  
27          c. *Contractor* refers to a qualified person acting alone or in consortium who  
28          is a party to a contract as defined under this Act.  
29          d. *Extractive Industries* refer to the mining, oil, gas, and coal sectors and all  
30          other sectors that require the extraction of natural resources for  
31          commercial and other uses;

32          Sec. 5. *Institutionalization of the PH-EITI.* – The Philippine Extractive

1 Industries Transparency Initiative (hereinafter referred to as PH-EITI) is hereby  
2 institutionalized to ensure that all of what is due to the Filipino people and the  
3 Government on account of the exploration, development, production and utilization  
4 of natural resources are (a) verifiably paid; (b) duly accounted for; and (c)  
5 judiciously utilized for the benefit of all Filipinos and on the basis of intergenerational  
6 equity and sustainability.

7       Sec. 6. *Applicability and Coverage.* – For the purposes of this Act, the  
8 following sectors shall be covered by and within the scope of the PH-EITI: (a) the  
9 mining sector; (b) the oil and gas sector; (c) the coal sector; and (d) such other  
10 sectors as may be determined by the PH-EITI Multi Stakeholder Group, as defined in  
11 the succeeding section.

12       Sec. 7. *Composition of the PH-EITI Multi Stakeholder Group.* –The PH-EITI  
13 shall be implemented and operationalized through the Multi-Stakeholder Group  
14 (MSG) chaired by the Secretary of the Department of Finance (DOF) and co-chaired  
15 in rotation and by fixed term of the Secretary of the Department of Environment and  
16 Natural Resources (DENR) and the Secretary of Department of Energy (DOE).

17       It shall specifically consist of the following members:

- 18       a. Six (6) Government Representatives from the DOF, DOE, DENR  
19       Environmental Management Bureau, DENR Mines and Geosciences  
20       Bureau), Department of Interior and Local Government (DILG),  
21       National Commission on Indigenous Peoples (NCIP).
- 22       b. Six (6) Business Group Representatives which shall include, but not be  
23       limited to, a representative from the mineral industry, from the oil and  
24       gas sector, from the coal sector, and other sectors as may be  
25       determined by the PH-EITI MSG; and
- 26       c. Six (6) Civil Society Organizations (CSOs) Representatives, which must  
27       include at least one indigenous peoples (IP) representative and one (1)  
28       a Labor Union Representative in the extractive industries.

29       The Business Group and the CSOs shall each designate six (6) full and six (6)  
30       alternate representatives to the PH-EITI-MSG. Each organization, upon the decision  
31       of its members and through its own independent processes and governance  
32       mechanisms, can at any time replace their representatives in the PH-EITI-

1 MSG; *Provided that* such replacement shall only serve for the unexpired term of the  
2 representative replaced. Permanent and alternate members shall attend and  
3 participate in the PH-EITI-MSG meetings.

4       *Sec. 8. Powers and Functions of the PH-EITI MSG.* – The PH-EITI-MSG shall  
5 have the following powers and functions:

- 6       a. Define the strategic direction and scope of EITI in the Philippines;
- 7       b. Craft, publish, review, and update a work plan in consultation with key  
8       PH-EITI stakeholders and oversee the implementation of the same;
- 9       c. Procure the services of an independent administrator to perform  
10       reconciliation of payments and mandatory expenditures with receipts  
11       by government and other covered entities, applying international  
12       auditing and professional standards;
- 13       d. Require relevant government agencies to disclose to the PH-EITI MSG  
14       all information required by it for the production of regular and annual  
15       reports;
- 16       e. Produce all regular reports with contextual information about the  
17       extractive industries as may be required by PH-EITI implementation;
- 18       f. Direct and supervise the PH-EITI Secretariat in its various activities and  
19       establish its internal rules of procedure;
- 20       g. Conduct outreach activities and road shows to promote better public  
21       understanding of the extractive industries and the benefits of  
22       transparent and accountable governance of our natural resources;
- 23       h. Identify discrepancies and undertake measures to enhance capacity of  
24       any relevant organ of the Government or local government authority  
25       having statutory responsibility to monitor revenues and payments by  
26       all extractive industry companies to the Government; and
- 27       i. Perform such other functions as may be germane to the purpose for  
28       which it was created and consistent with this Order and the EITI  
29       Principles.

30       *Sec. 9. PH-EITI Secretariat.* – The PH-EITI shall be assisted by a PH-EITI  
31 Secretariat whose composition shall be determined by the Secretary of Finance, in  
32 consultation with the PH-EITI-MSG.

1 The PH-EITI Secretariat shall be composed of administrative and technical  
2 personnel as the PH-EITI-MSG may deem necessary to assist the PH-EITI-MSG in  
3 efficiently and effectively carrying out its powers and functions. The creation of  
4 plantilla positions and hiring of personnel to carry out the functions enumerated  
5 herein shall be authorized in coordination with, and subject to the approval of the  
6 Department of Budget and Management (DBM).

7 *Sec. 10. Disclosure of Material Information and Reconciliation of Payments.* –  
8 Disclosure shall adhere to the open data principles. All contractors shall disclose all  
9 fiscal payments and mandatory expenditures while all government and concerned  
10 entities shall disclose complete, timely and accurate information on receipts to the  
11 PH-EITI MSG for reconciliation for the production of the annual EITI report.  
12 Utilization of shares in national wealth which are subject of special accounts shall be  
13 reported to PH-EITI. It shall be published in the government website and any widely  
14 accessible media, among others.

15 *Sec. 11. Disaggregation of Shares from the National Wealth by Sector.* – Local  
16 government units shall report the direct and non-direct payments made by extractive  
17 industries, and shall provide a detailed expenditure report against these collections  
18 and receipts through the Environment and Natural Resources Data Management  
19 Tool (ENRDMT). The report shall include the following:

- 20 a) Receipts of shares from national wealth within the LGU's jurisdiction;
- 21 b) Expenditures of LGUs coming from receipts/collections from the  
22 extractive industries and share from national wealth; and
- 23 c) Such other monetary and non-monetary benefits received by LGUs  
24 from extractive industries and shared from national wealth.

25 The reports shall be submitted quarterly. The ENRDMT data shall be uploaded by all  
26 concerned local treasurers of each respective local government units to the system  
27 on or before the following dates:

- 28 i. For the first three quarterly reports: on or before the 30<sup>th</sup> month  
29 following the end of each quarter; and
- 30 ii. For the year-end report: on or before April 30 of the subsequent  
31 fiscal year.



1           Sec. 12. *Annual Report.* – The PH-EITI shall submit an annual report to the  
2 President 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 include, but not limited to:

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

9 The annual report shall comply with the international standards of EITI and include  
10 additional reporting requirements as agreed upon by the PH-EITI MSG.

11           Sec. 13. *Beneficial Ownership.* – A publicly available register of the beneficial  
12 owners of the corporate entities that apply for, or hold a participating interest in an  
13 exploration or production oil, gas or mining license or contract, including the  
14 identities of their beneficial owners, the level of ownership and details about how  
15 ownership or control is exerted, shall be developed and maintained.

16           Information about the identity of the beneficial owner should include, but not  
17 be limited to:

- 18       a. Name of the beneficial owner;
- 19       b. Nationality;
- 20       c. Country of residence
- 21       d. Tax Identity Number
- 22       e. Date of birth
- 23       f. Residential or service address
- 24       g. Contact details

25 Disclosed information on beneficial ownership should also be included in the Annual  
26 Report.

27           Sec. 14. *Penalties.* – Non-participation in or non-disclosure of the information  
28 required by PH-EITI shall constitute a breach or violation by extractive companies of  
29 their contracts as defined under this Act, and shall be meted the appropriate  
30 penalties, including suspension or termination of the contract.

31           Failure of extractive companies to comply with requirements provided by the  
32 PH-EITI MSG shall cause suspension of the pertinent Environmental Compliance

1 Certificate (ECC) and non-issuance of Ore Transport Permit and/or Mineral Export  
2 Permit.

3 Failure of government agencies to comply with the requirements of this Act  
4 shall constitute grounds for disciplinary action against the responsible officer/s under  
5 the Administrative Code of 1987, and shall be penalized accordingly.

6 Sec. 15. *Transitory Provision.* – The existing PH-EITI Secretariat created  
7 under Executive Order No. 147, s. 2013 shall continue to operate until such time  
8 that the Secretariat has be constituted under the provisions of this Act.

9 Sec. 16. *Appropriations.* – The Secretary of the Department of Finance shall  
10 immediately include in the department's program the implementation of this Act, the  
11 funding of which shall be included in the annual General Appropriations Act.

12 Sec. 17. *Exemption from Confidentiality Clauses.* – Confidentiality provisions  
13 stated under the Section 270 of the National Internal Revenue Code and Article 81  
14 of the Omnibus Investments Code shall not be applicable to extractive companies  
15 insofar as their participation in the PH-EITI process is concerned.

16 Sec. 18. *Implementing Rules and Regulations.* – Within sixty (60) days from  
17 the effectivity of this Act, the Secretaries of Finance, Budget and Management,  
18 Environment and natural Resources, Interior and Local Government, and Energy  
19 shall promulgate the necessary rules and regulations for the effective  
20 implementation of this Act.

21 Sec. 19. *Separability Clause.* – If any provision of this Act is declared  
22 unconstitutional or invalid, other parts or provisions hereof not affected thereby shall  
23 continue to be in full force and effect.

24 Sec. 20. *Repealing Clause.* – All laws, decrees, executive orders, rules and  
25 regulations or parts thereof which are contrary to or inconsistent with this Act are  
26 hereby repealed, amended or modified accordingly: *Provided,* that nothing in this Act  
27 shall be construed as a diminution of local autonomy or in derogation of ancestral  
28 domain rights under the Indigenous Peoples' Rights Act of 1997.

29 Sec. 21. *Effectivity.* – This Act shall take effect fifteen (15) days after its  
30 publication in the Official Gazette or in any newspaper of general circulation.

Approved,