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SENATE

S. B. NO. 349

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Introduced by **SENATOR JOEL VILLANUEVA**

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

EXPLANATORY NOTE

The extractive industries have the capacity to contribute to the national growth and development, especially in resource-rich countries like the Philippines. They have 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, do not always translate to benefits for the general public. Across the globe, extractive industries are marred with various issues on environmental degradation, fiscal misconduct, 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

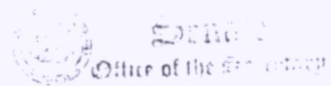
Philippine EITI (PH-EITI) served as an effective platform for public disclosure of information on fees, taxes and other payments made by mining companies. The later expansion of PH-EITI enabled the coverage of oil and gas industries. Furthermore, regular reports published by the PH-EITI also later expanded 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. Over the years since its inception, PH-EITI data collection and reporting provided different stakeholders the instrument and proper platform to formulate real governance reforms on the ground.

To ensure the continuation of the 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 immediate passage of this bill is earnestly sought.


SENATOR JOEL VILLANUEVA



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PURPOSES**

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

CHAPTER I

GENERAL PROVISIONS

1
2
3 **SECTION 1. Title.** – This Act shall be known as the “Philippine Extractive
4 Industries Transparency Initiative Act.”
5

6 **SEC. 2. Declaration of Principles.** – All natural resources are owned by
7 Filipinos represented by the State. It shall be the responsibility of the State to
8 ensure that the present and future generations benefit from these finite
9 resources. The State must then establish a mechanism by which the Filipino
10 people are fully aware of how proceeds from their finite resources are being
11 utilized.
12

13 **SEC. 3. Definition of Terms.** –

14 a) **Agreement** means a contract between the Government and a
15 Contractor, involving financial or technical matters;

16 b) **Contractor** means a qualified person acting alone or in consortium who
17 is a party to a mineral agreement or to a financial or technical assistance
18 agreement.

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

20
21 **CHAPTER II**

22 **ESTABLISHMENT OF THE PHILIPPINE**

23 **EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE**

24
25 **SEC. 4. Creation of PH-EITI.** – There is hereby created the Philippine
26 Extractive Industries Transparency Initiative (hereinafter referred to as PH-
27 EITI).

28
29 **SEC. 5. Composition.** – The PH-EITI shall be composed of a broad coalition
30 of stakeholders, including representatives from the government, the private
31 sector, the indigenous community, and non-governmental organizations. The
32 PH-EITI shall be governed by a multi-stakeholder body (hereinafter referred to
33 as PH-EITI MSG), which shall be constituted in accordance with the provisions
34 of Chapter V of this Act.

35
36 **CHAPTER III**

37 **OBJECTIVES OF THE PH-EITI**

38
39 **SEC. 6. General Objectives.** – The general objective of the PH-EITI is to
40 improve governance and management of the natural resources in the country
41 and ensure that all of what is due to the Filipino people and the Government on
42 account of the exploitation and/or extraction of the country's mineral, oil, gas

1 and other natural resources are (a) verifiably paid; (b) duly accounted for; and
2 (c) judiciously utilized for the benefits of all Filipinos and on the basis of
3 intergenerational equity and sustainability.

4
5 **SEC. 7. Specific Objectives.** – The specific objectives of the PH-EITI shall
6 include, but not be limited, to the following:

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

21 22 CHAPTER IV

23 SCOPE AND FOCUS OF THE PH-EITI

24
25 **SEC. 8. Applicability.** – This Act shall apply to all extractive industries,
26 government agencies at the national and local level in the country. National and
27 local governments shall be mandatorily required to participate in reporting
28 relevant data pursuant to this Act.

29
30 **SEC. 9. Scope.** – The scope of the PH-EITI shall include:

- 31 a) Revenue transparency, which means the timely disclosure,
32 reconciliation or audit and publication of all data of material national and
33 local payments and revenues sourced from the extractive activities
34 covered by the scope of the PH-EITI;
- 35 b) Contract transparency, which means public accessibility of all
36 concessions, contracts/licenses, agreements and joint ventures that the
37 Government enters into related to the extractive sectors within the scope
38 of the PH-EITI including related documents and attachments to the
39 contracts; and
- 40 c) Accessibility of data, information and reports on the extractive industries,
41 which means public release of data, documents, and information in a

1 format that allows the public to freely use, re-use and redistribute them,
2 for any purpose, without restrictions.

3
4 **SEC. 10. Sectors Covered.** – For the purpose of this Act, the following sectors
5 shall be covered by and within the scope of the PH-EITI: (a) the mining sector;
6 (b) the oil and gas sector; (c) the coal sector; and (d) such other sectors as the
7 multi-stakeholder group may subsequently determine and deem necessary.
8 The covered sectors shall submit relevant data, including, but not limited, to the
9 cost of their operations, amount minerals sold, which shall be disaggregated
10 per transaction, and include such information as the name of the buyer/s,
11 country of destination, among others, and other related costs, which shall also
12 be disaggregated.

13
14 **SEC. 11. Annual Report.** – The PH-EITI shall submit an annual report to the
15 President and Congress, in any case not later than April 30 of each year.

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

19
20 **SEC. 12. Monitoring of Payments.** – The payment and utilization of taxes,
21 fees, surcharges, and similar charges made by extractive companies and/or
22 contractors shall be closely monitored by the PH-EITI. All fiscal payments and
23 mandatory expenditures by contractors shall be disclosed to the PH-EITI MSG
24 for the production of the annual EITI report. National and local governments
25 shall also submit a report on how the proceeds from the extraction of resources
26 were utilized.

27
28 **CHAPTER V**
29 **CREATION OF MULTI-STAKEHOLDER GROUP**

30
31 **SEC. 13. Composition.** – In accordance with the EITI International Standards
32 and with due regard to the Philippine context, there shall be created a multi-
33 stakeholder group (MSG) that will be in charge of PH-EITI.

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

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

- 40 a) Government Representatives. The government representatives shall be
41 composed of (1) senior officials from concerned agencies appointed by
42 the President of the Philippines, (2) representatives from local
43 government units, which shall be the president of the leagues of various
44 local government units; and (3) representatives from the Congress, to

1 ensure that the findings of the EITI will be used for more effective and
2 more responsive policies;

3 b) Industry Representatives. The industry representatives shall be
4 composed of officials from the extractive industries included in the EITI;

5 c) Civil Society Organizations (CSOs) Representatives. The civil society
6 shall independently select their representatives in the EITI; and

7 d) Indigenous Peoples (IPs) Representatives. The IP representative shall
8 be selected by a caucus of IP organizations affected by mining
9 operations.

10 *Provided*, That groups representing items (b), (c) and (d) above shall designate
11 a permanent and alternate representative to PH-EITI MSG. Each organization,
12 upon the decision of its members and through its independent process, can
13 replace their representatives in the MSG any time following their own
14 governance mechanism.

15

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

18 For urgent matters where decision is needed, necessary information shall be
19 circulated through email so that decisions can be made electronically by
20 consensus.

21 Fifty percent (50%) of the members, with at least one representative from the
22 government, CSOs, IPs, and business sector shall constitute a quorum for the
23 transaction of business of PH-EITI MSG. The MSG, shall, in good faith, make
24 decisions by consensus.

25

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

32

33 **SEC. 16. Notice of Meetings.** – The Chairperson shall call and preside over
34 the meetings. Notices shall be sent out by the PH-EITI secretariat at least one
35 week before the date of the meeting. The secretariat shall handle the
36 documentation and preparations of the minutes of the meeting.

37

38 **SEC. 17. Review of the MSG.** – The composition and number of
39 representatives shall be subject to regular review by the MSG. Other agencies
40 may form part of the MSG subject to the evolving needs and scope of the EITI
41 implementation; *Provided*, That all sectors should be adequately represented
42 in the MSG at all times; *Provided further*, That the existing PH-EITI created
43 under Executive Order No. 147, s. 2013 shall be henceforth constituted under
44 the provisions of this Act.

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CHAPTER VI
SECRETARIAT OFFICE AND FUNDING

SEC. 18. PH-EITI Office. – There is hereby created the PH-EITI Office under the Office of the President, to be headed by a National Coordinator selected by the PH-EITI MSG.

The staffing pattern, including the duties, qualifications, responsibilities and functions, and compensation scheme of the personnel of the PH-EITI Office shall be determined by the MSG, upon the recommendation by the National Coordinator. For this purpose, the creation of the corresponding plantilla positions is hereby authorized.

SEC. 19. Funding. – The Congress shall allocate adequate funding for the implementation of PH-EITI in the General Appropriations Act; *Provided*, That the said amount shall not be less than the amount equivalent to one percent to two percent (1% to 2%) of the gross proceeds of the sectors covered by and within the scope of the PH-EITI, as defined in Section 10 of this Act.

The PH-EITI Office 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 the objectives of PH-EITI, subject to the usual accounting and auditing rules and regulations of the government.

CHAPTER VII
EXEMPTION FROM CONFIDENTIALITY CLAUSES

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

CHAPTER VIII
PENALTIES

SEC. 21. 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 that, without justifiable cause, unreasonably delays or causes the delay of submission of the reporting template within the deadline set by PH-EITI, shall be imposed a fine of One Million Pesos (Php1,000,000.00). Sanctions provided under this Act shall be imposed by the

1 responsible regulatory agency, as the case may be, pursuant to the concerned
2 agency's internal rules and regulations.

3
4 **CHAPTER IX**

5 **TRANSITORY AND MISCELLANEOUS PROVISIONS**

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7 **SEC. 22. Implementing Rules and Regulations.** – Within sixty (60) days from
8 the effectivity of this Act, the Secretaries of Finance, Budget and Management,
9 Environment and Natural Resources, Interior and Local Government, and
10 Energy, in consultation with relevant stakeholders, shall promulgate the
11 necessary rules and regulations for the effective implementation of this Act.

12
13 **SEC. 23. Separability Clause.** – If any provision of this Act is declared
14 unconstitutional or invalid, other parts or provisions hereof not affected thereby
15 shall continue to be in full force and effect.

16
17 **SEC. 24. Repealing Clause.** – All laws, decrees, executive orders, rules and
18 regulations or parts thereof which are contrary to or inconsistent with this Act
19 are hereby repealed, amended or modified accordingly; provided, that nothing
20 in this Act shall be construed as a diminution of local autonomy or in derogation
21 of ancestral domain rights under the Indigenous Peoples' Right Act of 1997.

22
23 **SEC. 25. Effectivity.** – This Act shall take effect fifteen (15) days after its
24 publication in this Official Gazette or in any two newspapers of general
25 circulation.

26 **Approved,**