

**CHAMBER OF MINES OF THE PHILIPPINES
COMMENTS ON HOUSE BILL NO. 6342**

I. ON THE EXPLANATORY NOTES

The Chamber of Mines (“Chamber”) in analyzing the explanatory note of the proponents of House Bill No. 6342 (“Bill”) understands where the authors are coming from, including their advocacies. However, to say that the resolution of the constitutionality issue of Republic Act No. 7942 or the Philippine Mining Act of 1995 (“Mining Act”) by the Supreme Court “mirrors the proclivity of government to act against its better judgment once the so-called profits of mining are brought into the picture” is immaturely judgmental. The need to utilize the mining industry as a catalyst to the development of areas particularly the countryside in order to hasten poverty should be among the first and overriding priorities of a developing country like the Philippines. It may be worthwhile for the proponents of the Bill to also recognize mining as one of the nation’s priorities.

A clear, honest and open-minded understanding of the mining industry may be what is necessary to allay fears and dreadful insinuations that mining is dirty, wasteful and destructive. This understanding cannot be achieved by simply copying selectively a paragraph in the 2003 World Report by a Washington-Based Non-Government Organization (“NGO”) - Worldwatch Institute that “mining consumes 10% of the world’s energy, spews out toxic emissions, and threatens 40% of the world’s undeveloped forests” and stopping there and omitting the next line that says “but these effects could be drastically reduced”. The citation is misleading and untruthful. Moreover, the bill proponents must realize, as Worldwatch Institute has, that modern technology has long caught up with humanities’ needs, hence mining activities can now be undertaken responsibly and are sustainable.

Environmental protection measures, social responsibilities and the protection of the rights of indigenous peoples/indigenous cultural communities (“IPs/ICCs”) have been considered by the global mining community and this is well covered by Mining Act. The law, including its implementing rules and regulations are comparable to, or even more advanced in certain aspects (including environmental, social and indigenous peoples protection provisions) than those in developed countries such as Australia, Canada, the United States and United Kingdom. The Mining Act is the result of this legislature’s intelligent and objective discussions and deliberations, the mining industry’s experienced cooperation and the judiciary’s erudite examination. It is touted to be a monumental legislative work that embodies all perceived aspects of the industry and takes into account all interests of legitimate stakeholders.

Justifying an alternative mining bill due to past mining incidents and saying that because of such experience the government should forget about the potentials of the industry is disregarding an economic activity that could help alleviate poverty in areas where minerals are located. An emotional, subjective and radical attempt to push back the

innovative and developmental gains achieved from the enactment and current application of the Mining Act is a needless exercise.

Contrary to the claim that mining is one of the weakest sectors in the global market, is the fact that in spite of the global financial crisis that have affected the global financial and commodities market, investor interest in the mining industry did not wane in view of the continuing demand for minerals and metals by China, India, Korea, Japan and other developing countries. Prices of major commodities are still considered above break-even levels with gold breaking the US\$1,000/oz level. In the Philippines, a number of mining operations have started in late 2008 and early 2009, defying a lot of skepticism that many seem to project.

Considering historical figures, the mining and quarrying sector performed well in early 1970s and in the 1980s, contributing 21% in export receipts and about 2.5% of the country's gross domestic product. The roads built and maintained, schools, hospitals and other social infrastructures in sustainable communities are testament to the immeasurable benefits the industry has contributed in nation building.

Recently, the National Statistical Coordination Board (NSCB) reported that the Philippine economy registered a 1.5% growth during the second quarter of 2009 from 4.2% last year, due to the reinvigorated Construction and Mining & Quarrying Sectors and the big push by Government Services. The mining and quarrying sector rebounded to a double-digit growth of 21.4 percent from negative 13.7 percent recorded the previous year with the metallic mining sector posting a three-digit growth of 111.2 percent from 0.9 percent due to the operation of the Atlas copper mine in Toledo, Cebu. These figures only indicate that the sector, in spite of the global crisis has been doing its share in national development and in sustaining community development within its areas of jurisdiction. Certainly, government's prioritization of the industry was not in vain.

Adopting this Bill will set back and stunt the Philippine mining industry's continuing growth, and will unduly hamper the Philippine economy's struggle to cope with the financial crisis. The radical changes which this Bill seeks to introduce will lead to a retrogression of an economic activity enjoying a much needed resurgence. The uncertainty that this Bill, if legislated into law, will bring to the country would be devastating and will again result in a time of languishing stagnation in the development of what is otherwise a rising field in the Philippine economy.

The Mining Act is serving its purpose of implementing responsible mining and is responsive to national development efforts. The Mining Act is current, comprehensive, environment friendly and already addresses much of the supposed concerns of the bill proponents, thus, it needs no further amendments or worse, an alternative law arising from this Bill that is not only constitutionally and legally infirm but fraught with erroneous and redundant provisions.

The Chamber urges this august legislative body to reject the introduction of this radical Bill and consider the same as unnecessary and bereft of justification for adoption.

II. ON THE BILL

A. Constitutional Infirmities of the Bill

The Chamber is of the opinion that provisions of the Bill violate the 1987 Philippine Constitution, as follows:

1. Derogation of the Regalian Doctrine

Section 2, Article XII of the Philippine Constitution provides that all minerals are owned by the State. Thus, all mining projects are considered projects of the State.

The Bill maintains that mineral resources found within ancestral domains/lands are owned by the indigenous peoples/indigenous cultural communities, and only those outside are owned by the State. This is in violation of the Regalian Doctrine. This also runs counter to the pronouncements of the Philippine Supreme Court in the case of Cruz vs. Secretary of Environment and Natural Resources upholding the priority rights of IPs/ICCs.

2. Prohibition against Financial or Technical Assistance Agreement (“FTAA”)

Section 2, Article XII of the Philippine Constitution also provides:

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
(underscoring supplied)

The Mining Act has implemented this Constitutional provision by instituting the FTAA, which is contract that can be entered into by the State and a company that can be up to 100% foreign-owned, involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources. The validity of the FTAA has been upheld by the Supreme Court in the case of La Bugal B’laan vs. Ramos (G. R. No. 127882) (“La Bugal”).

The Philippine Constitution, in the aforementioned Article and Section of the Philippine Constitution, further provides that (i) the State can directly undertake the exploration, development, and utilization of natural resources, or (ii) the State may enter into agreements with contractors for the conduct of the same, provided that the State shall always that the exploration, development, and utilization activities are under the full control and supervision of the State. In La Bugal, the Supreme Court ruled that the

provisions of the Mining Act comply with this Constitutional requirement on full control and supervision. The Supreme Court held in *La Bugal* that “[f]ull control is not anathemic to day-to-day management by the contractor, provided that the State retains the power to direct overall strategy...[The State] need not micro-manage mining operations and day-to-day affairs of the enterprise.”

As noted above, the Mining Act does not prevent government from conducting exploration activities but because this entails significant cost and substantial risks that exploration will not result in economically viable mineral development, it makes no sense to prevent private entities from conducting this activity. The country actually benefits from private entities including foreign companies assuming the exploration risk instead of the government. The Supreme Court, in upholding the validity of the FTAA, cited the inadequacy of Filipino capital and technology in large-scale mining activities and the need for foreign investments in mining endeavors.

3. Bill Limits the Term of Mineral Agreements to 15 Years

Not only is the 15-year term limit too short, it also violates Section 2, Article XII of the Philippine Constitution which states that “such agreements may be for a period not exceeding twenty–five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.” A law may not disallow what the Philippine Constitution permits, i.e., the term of a mineral agreement may exceed 15 years (which is the limit under the Bill), but should not be more than 25 years, renewable for not more than 25 years.

4. Bill Embraces More than One Subject

The Bill includes various provisions on peace and order, environment, human rights, foreign policy, indigenous peoples, and other subject matter which are covered by separate laws and should not be included in a mining law. This violates Section 26, Article VI of the Philippine Constitution which states:

Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

5. Bill Increases Appellate Jurisdiction of the Supreme Court without its Advice and Concurrence

The Bill makes decisions of the Mine Adjudication Board’s (“MAB”) directly appealable to the Supreme Court. Under current rules of procedure, MAB decisions are appealable to the Court of Appeals. This provision of the Bill violates Section 30, Article VI of the Philippine Constitution which provides:

No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

6. Bill Violates the Constitutional Due Process Clause, Equal Protection Clause, and Non-Impairment Clause

Section 1, Article 3 of the Philippine Constitution provides:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The Bill seeks to limit the government incentives given to mining contractors to “pollution control or mitigation devices or infrastructure, mineral, processing plants and development of downstream industries.” While the Chamber shares the importance to national development of pollution control/mitigation, infrastructure development, and adding value to mineral output, we believe that the aforementioned limitation of incentives against mining contractors, considering mining’s contribution to the national economic development, violates the equal protection clause of the Philippine Constitution.

The Bill also provides for a moratorium on “all mining activities until all the systems are in place for the proper implementation of the law. In addition, the Bill provides that “[a]ll existing mining permits, licenses and agreements are deemed cancelled.” This not only violates the aforementioned due process clause of the Philippine Constitution, but also the non-impairment clause under Section 10, Article III of the Philippine Constitution which provides that “[n]o law impairing the obligation of contracts shall be passed.”

B. Other Infirmities

Many other sections and provisions of the Bill are irrelevant, superfluous, or are addressed sufficiently and appropriately under existing mining and environmental laws/regulations, such as the following:

1. Policies

Statements of government policy on peace and order, human rights, and foreign policy may not be appropriate to be included in the Bill as there are existing separate laws and programs that deal with government policy on these matters.

The fiscal provisions of the Bill will totally discourage investments in the mining industry particularly at this time when developing mineral-rich countries compete for venture capital and large financing requirements. A satisfactory and stable fiscal regime is almost always a pre-condition for private investment along with geology and infrastructure, secure title to mining rights, stability in environmental management, right to market mine products, right to assign, freedom of commercial operation and international arbitration. On top of taxes and fees levied to the company as proposed in

the Bill, a government share of 10% of gross revenues, and another 10% as royalty to the IPs/ICCs are considered too burdensome. Compounding these prohibitive provisions are the need to set aside a Scientific Research and Development Fund, and Legal Support Services Fund, and the entitlement of the local government units (“LGUs”) to a share of the net revenues from mining operations which shall be directly paid to them with a percentage of the amount set aside for Disaster Risk Management. A semi-annual Mine Waste and Tailings Fees is also being imposed that will accrue to a fund to be used for the monitoring activities of the Multi-Sectoral Mineral Council. Additionally, incentives are limited to pollution control devices or infrastructure, mineral processing plants and downstream activities.

The fiscal regime for minerals cannot move too far out of line with that of countries with competing deposits and should avoid additions to investor risk aiming both at more investments and higher shares of rent. In balancing these two considerations, measures such as accelerated depreciation and the imposition of fair excise tax/royalty are made to facilitate early payback. In most instances, focus is made on taxation of profit (not inputs or gross output) thereby minimizing pre-and post-tax rates of return. Common tax instruments include corporate income tax, excise/royalty tax, import duties and Value-Added Tax and withholding payments for services. These form important tax base in many countries.

In mineral-rich ASEAN countries, excise/royalty tax is in the range of 1.5% to 3% and is normally based on gross revenues for ease of computation and collection. In Southern Africa, the rates are also within the same range of 2% - 5%, with Botswana and Mozambique imposing 10% only on diamonds being a high value mineral. Corporate income tax rates in ASEAN and South African countries are in the 30% rate with Botswana and Cambodia imposing only 25% and 20% respectively.

2. Governance/Regulation

The present institutional framework that implements the current Mining Act through the Department of Environment and Natural Resources (“DENR”) / Mines and Geosciences Bureau (“MGB”) is efficient and well-established. Moreover the processes involved in the grant of mining tenements, Environmental Compliance Certificates, Social Development Management Program, Health and Safety Standards, Reforestation and rehabilitation and post-mining activities related to mining and mineral resource development are well in place.

The Safety and Environmental provisions under the Bill were patterned largely on the pertinent provisions of the Mining Act. The difference between the two is that the Mining Act’s provisions are more complete and specific since all the organizations, systems and processes mandated by the Mining Act are already in place and working very well.

The concerns of local communities, LGUs, and IPs/ICCs are being adequately addressed and considered under the current laws and regulations such as the Local Government Code and the Indigenous Peoples Right Act. The Free and Prior Informed Consent

(“FPIC”) of IPs/ICCs is required even before any exploration work in areas within ancestral domain/ancestral lands can be conducted. Before a mining company can proceed to construction and development, it must obtain (i) an Environmental Compliance Certificate from the DENR and (ii) the consent of the majority of the local government councils concerned, which is in accord with democratic principles. Various concerns including alternative land uses and environmental sustainability are discussed and debated during the process of consultation and obtaining the consent of the aforementioned stakeholders.

3. Regulating Agency

The proposed transfer of MGB from the DENR to the Department of Science and Technology (“DOST”) is inappropriate. The DOST is mandated to provide central leadership and coordination of scientific and technological efforts while mining pertains to natural resource extraction and is logical to be with the DENR.

4. Multi-Sectoral Council (“Council”)

The Bill proposes a Council which will have the power to decide whether or not mining should be conducted. The Bill proposes that the Council be composed of a representative each from the MGB and the DENR (which by itself already conflicts with the proposal to have the MGB under the DOST), and one representative each of the affected provincial government, independent component cities/highly urbanized cities, representatives from development NGOs as many as the representatives of LGUs and the affected ICCs/IPs, with MGB acting only as the convener of the Council. This institutional framework tasked to decide for the State is indefensible. The composition of the Council indicates that there is no required educational or professional requirement of the members or required experience in the mining industry which is disturbing considering that it will have to decide on the fate of the mining industry. As the number of the Council is not fixed by law, the size appears to be impractical and unwieldy.

The Council does not have the technical capability to make decisions involving maximum areas to be held under mineral agreements, terms, capitalization requirements, consultation process and other technical matters. This will undoubtedly undermine the governance of strategic mineral resources that needs long-term foresight and perspective. The MGB with its technical staff is presently competent and qualified to comply with its mandate under the Mining Act to “have direct charge in the administration and disposition of mineral lands and mineral resources”.

5. Conflict Resolution

The Mines Adjudication Board (MAB) as proposed is made to function like a special or statutory court; has the power to cite any person in contempt and the power to issue injunctive orders. These proposed powers deviate from the adjudicatory powers exercised by the current MAB.

6. Terms Used/Provisions are Vague or Contrary to Internationally Accepted Usage and Practice

Various terms used in the Bill, such as those for “Exploration” and “Critical Watershed” are vague, unrealistic, or not in accord with internationally accepted usage and practice.

The Bill seeks to prohibit the use of cyanide for gold extraction. The prohibition of the use of cyanide will kill the gold mining industry. Cyanide is widely used by large-scale mining operators in the Philippines and internationally because cyanide is the most cost and recovery-efficient chemical for extracting gold. Contrary to popular belief, the educated and responsible use of cyanide in mining can be safe and with minimal adverse effects.

7. Bill Seeks to Create Certain Legal Presumptions that are Contrary to Law/Jurisprudence

The Bill provides for a presumption that an area is part of ancestral domain by virtue of historic rights and self-delineation by the IPs/ICCs. This broad presumption may sweep across and trample private land rights, in derogation of the current system of land ownership in the Philippines and land rights that have vested prior to those of IPs/ICCs (or those that claim to be IPs/ICCs).

The Bill also provides that in instances where there are questions on the legality or validity of the issued FPIC of IPs/ICCs, mining operations will not be allowed to be conducted in the ancestral domains or lands of the ICCs/IPs without the final resolution of such question on the legality or validity of the FPIC. The issuance by the National Commission on Indigenous Peoples (“NCIP”) of a Certification Precondition signifying the grant of FPIC by the IPs/ICCs is entitled to a presumption of regularity under Philippine law. The aforementioned provision of the Bill contravenes this legal presumption.

In addition, the Bill provides that “[w]hen the separate personality of the corporation from its shareholders is being invoked as defense in order to perpetuate a crime, fraud or other machinations, or evade liability, the separate personality of the corporation shall be set aside. Civil, criminal and administrative actions may thus be filed directly against the members of the Board of Directors, officers and/or individual stockholders.” This is contrary to established corporate law and jurisprudence, which requires a court to decide whether or not to pierce the veil and impose liability directly on the persons behind the corporation.

CONCLUSION

In light of the foregoing, the Chamber believes that the Bill will definitely be rejected by currently producing mining companies, exploration companies, would-be foreign and local investors, and national and local officials. The Bill is also constitutionally and

legally infirm as various sections of the Bill violate the Philippine Constitution and established legal principles.

The Mining Act has been accepted by all stakeholders and is considered one of the best because it has all the provisions for environmental protection, protection of the rights of IPs/ICCs and communities, corporate social responsibilities and the right of people to be consulted. The constitutionality of the Mining Act has also been upheld by the Supreme Court in its landmark en banc decision issued in December 2004.

The environmental and social concerns and issues about stakeholder consultation/consent that the Bill appears to raise are already adequately addressed under existing laws and regulations. Benefits to the local communities are addressed through the sharing of mining revenues between the national and local government, the implementation of government-required Social Development and Management Programs by the mining company, and payment of royalties to IPs/ICCs and the government. Revenue sharing of benefits from mining is clearly provided not only in the Mining Act but also in the Local Government Code and the National Internal Revenue Code. The share of LGUs from excise taxes will now be given directly to them after the first quarter of every year as provided in the Joint Memorandum Circular of government agencies involved in this matter.

Concerning the distribution of excise tax and royalty tax collections, BIR and DENR figures indicate that in 2007, the total collections reached PhP1.68 billion of which PhP1.03 went to the national government and PhP649 million went to the local government units. Total collections went down a bit in 2008 to PhP1.07 billion with the national government getting PhP662 million and the LGUs, PhP413 million. These figures indicate that the LGUs share the benefits from mining activities.

The foregoing statistics also indicate that since the finality of the Supreme Court's decision in the La Bugal case in early 2005 and with government providing the direction for its development, the mining industry has taken off and optimism remains high for its continuing development. To introduce a radical change through the adoption of the Bill will only lead to needless uncertainty and stunt the otherwise growing sector of mining of the Philippine economy.

While the intentions of the Bill for a rational exploration, development and utilization of mineral resources and to ensure the equitable sharing of benefits for the government, the communities and indigenous peoples are all laudable, these are sufficiently and adequately covered by the Mining Act and other relevant laws. It may be necessary for the proponents of the Bill to have a deeper understanding of the Mining Act, its implementing rules and regulations, and related laws to appreciate how the Mining Act is implemented. The Chamber finds the alternative bill as unnecessary. Changing a mining law that has been studied since the promulgation of the 1987 Constitution, filed and deliberated in Congress until signed into law in 1995, subsequently challenged in 1997 until finally affirmed in early 2005 by the highest court of the land indicate that the Mining Act has been fully studied and debated. Problems in implementation have been

manageable and reforms have already been initiated. A different perspective on mineral resources development can be discussed. However, in the final analysis, the Bill's proposed deviation from constitutionally mandated minerals development and the resulting weak regulatory framework will not be accepted by major stakeholders and investors.

**CHAMBER OF MINES OF THE PHILIPPINES
COMMENTS ON SPECIFIC SECTIONS OF
HOUSE BILL NO. 6342**

**AN ACT
TO REGULATE THE RATIONAL EXPLORATION, DEVELOPMENT AND
UTILIZATION OF MINERAL RESOURCES, AND TO ENSURE THE EQUITABLE
SHARING OF BENEFITS FOR THE STATE, INDIGENOUS PEOPLES AND LOCAL
COMMUNITIES AND FOR OTHER PURPOSES**

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

**CHAPTER I
DECLARATION OF POLICIES**

- Section 1. Short Title. This Act shall be known as the “Philippine Mineral Resources Act of 2009”.
- Section 2. Declaration of Policy. It is hereby declares that it is the policy of the State to:
- a) Maintain peace and order, protect life, liberty and property and promote the general welfare;
 - b) Protect and advance the right of the people to a balance and healthful ecology in accord with the rhythm and harmony of nature;
 - c) Value the dignity of every human person and guarantees full respect for human rights;
 - d) Promote social justice in all phases of national development;
 - e) Recognizes and promote the rights of indigenous cultural communities within the framework of national unity and development;
 - f) Protect and promote the right to health of the people and instill health consciousness among them;
 - g) Pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination;
 - h) Develop self-reliant and independent national economy effectively controlled by Filipinos,
 - i) Ensure the autonomy of local governments;
 - j) Give highest priority to the measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good;
 - k) Encourage non-governmental community-based or sectoral organizations that promote the welfare of the nation;
 - l) Adopts and accepts the generally accepted principles as embodied in the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, Cultural Rights and UN Declaration on the Rights of Indigenous Peoples.

Section 3. To this end, the State shall also endeavor to achieve an ecologically sound, economically viable, gender fair equitable system of land and resource management that upholds the human rights of indigenous people and local communities towards sustainable development.

Section 4. The exploration, development and utilization of natural resources must take comply with the principles of intergenerational responsibility.

Section 5. The judicious stewardship of our mineral resources requires that:

- (1) The State and its members should share in the burden of satisfying the need for mineral resources primarily through reusing and recycling existing mineral products;
- (2) In land and water use, the production of sufficient food free from pollution towards food security should always be the priority;
- (3) The State and its members should develop its human resources and encourage the evolution of its own appropriate technologies;
- (4) The community shall actively participate in the stewardship of mineral resources, Community-based initiatives shall be encouraged and supported.
- (5) Mining operations should not in any way create or exacerbate conflicts.

[CHAMBER OF MINES COMMENT:

THIS BILL INCLUDES STATEMENTS OF GOVERNMENT POLICY ON PEACE AND ORDER, ENVIRONMENT, HUMAN RIGHTS, FOREIGN POLICY. NOTHING IS BEING MENTIONED ON THE IMPORTANCE OF MINING. THE DECLARATION OF POLICY OF RA 7942, OR THE PHILIPPINE MINING ACT OF 1995 (“**MINING ACT**”) IS BETTER.

WE ARE ALSO OF THE OPINION THAT THESE ARE NOT APPROPRIATE TO BE INCLUDED IN A MINING BILL. THERE ARE SEPARATE LAWS AND PROGRAMS THAT DEAL WITH GOVERNMENT POLICY ON THESE MATTERS.

CURRENT MINING LAWS AND REGULATIONS ALREADY REQUIRE LOCAL GOVERNMENT AND INDIGENOUS PEOPLES CONSULTATION/CONSENT BEFORE EXPLORATION/EXTRACTION CAN BE CONDUCTED. THE EXISTING LAWS AND REGULATIONS ARE SUFFICIENT IN THIS REGARD.

EXISTING MINING LAWS AND REGULATIONS ARE COMPARABLE TO, OR EVEN MORE ADVANCED IN CERTAIN ASPECTS (INCLUDING ENVIRONMENTAL AND SOCIAL PROVISIONS), THAN THOSE IN DEVELOPED COUNTRIES SUCH AS AUSTRALIA, CANADA, THE UNITED STATES, AND UNITED KINGDOM.

THE INTER-GENERATIONAL CONCEPT INJECTED IN SEC. 4 IS VAGUE. IT DOES NOT EXPLAIN WHO SHOULD DECIDE WHICH GENERATION/S SHOULD BE FAVORED WITH THE UTILIZATION OF MINERALS AND HOW MUCH OR WHAT FRACTION.

SEC. 5 (5) IS TOO BROAD AND VAGUE. IS THERE ANY ACTIVITY, BUSINESS OR OTHERWISE, THAT DO NOT CREATE ANY CONFLICTS?]

CHAPTER II

SCOPE AND GENERAL PRINCIPLES

Section 6. Scope. This Act shall govern the ownership, management and governance of ore minerals onshore, as well as quarry resources, sand and gravel, guano and gemstones, and the conservation, exploration, development, utilization, processing and transportation thereof. The ownership, managements and governance of petroleum and coal shall be governed by special laws. Offshore mining shall also be governed by special laws.

[CHAMBER OF MINES COMMENT:

THE MINING ACT GOVERNS BOTH ONSHORE AND OFFSHORE MINING. PETROLEUM AND COAL EXPLORATION AND DEVELOPMENT ARE ALREADY GOVERNED BY EXISTING SPECIAL LAWS. THERE IS NO REASON WHY OFFSHORE MINING SHOULD BE GOVERNED BY A SEPARATE SPECIAL MINING LAW.]

Section 7. Ore minerals form part of the country's irreplaceable and non-renewable natural wealth and capital. The conservation of our mineral wealth is a paramount public interest and mineral resources shall be utilized on in a rational manner. The economic benefits derived from mining shall be equitably distributed by, among others, prioritizing development for local communities and all other shareholders directly affected by mining operations.

[CHAMBER OF MINES COMMENT:

CURRENT REGULATIONS ALREADY DISTRIBUTE THE GOVERNMENT REVENUES FROM MINING BETWEEN THE NATIONAL AND LOCAL GOVERNMENTS.

CURRENT REGULATIONS REQUIRE THE MINING PROPONENT TO ESTABLISH A SOCIAL DEVELOPMENT AND MANAGEMENT PROGRAM EQUIVALENT TO AT LEAST 1% OF DIRECT MINING AND MILLING COST. MOREOVER, INDIGENOUS PEOPLES/INDIGENOUS CULTURAL COMMUNITIES ("IPS/ICCS") ARE ENTITLED TO A ROYALTY OF 1% OF THE GROSS OUTPUT FROM MINING OPERATIONS WITHIN THEIR ANCESTRAL DOMAIN AREAS. FOR MINING OPERATIONS WITHIN A MINERAL RESERVATION, THE CONTRACTOR IS REQUIRED TO PAY TO THE GOVERNMENT AN ADDITIONAL ROYALTY OF NOT LESS THAN 5% OF THE GROSS OUTPUT.]

Section 8. The management of mineral resources shall be a shared concern and responsibility among the national government, corporations, all levels of local government, and the communities affected by the exploration, development, and utilization of mineral resources.

[CHAMBER OF MINES COMMENT:

THE PHILIPPINE CONSTITUTION PROVIDES THAT ALL MINERALS ARE OWNED BY THE STATE (REGALIAN DOCTRINE). THUS, ALL MINING PROJECTS ARE PROJECTS OF THE STATE. NO LAW PASSED BY CONGRESS CAN DEROGATE FROM THE REGALIAN DOCTRINE, AS ANY SUCH LAW WOULD BE UNCONSTITUTIONAL.

EXISTING LAWS AND REGULATIONS ALREADY PROVIDE FOR LOCAL COMMUNITY CONSULTATION AND APPROVAL.]

Section 9. The extraction of mineral resources shall only be allowed if the returns from mining substantially exceed the returns from alternative land uses as well as the anticipated cost of environmental and social impacts on the affected local communities, which shall at all times be prevented and/or mitigated through the allocation of sufficient funds for this purpose.

[CHAMBER OF MINES COMMENT:

EXISTING LAWS AND REGULATIONS ALREADY PROVIDE FOR A MECHANISM BY WHICH LOCAL COMMUNITIES AND/OR IPS/ICCS CAN WITHHOLD THEIR CONSENT FOR MINERAL EXTRACTION WITHIN THEIR COMMUNITIES, E.G., IF THE LOCAL COMMUNITIES/INDIGENOUS PEOPLES/INDIGENOUS CULTURAL COMMUNITIES BELIEVE THAT THERE ARE BETTER ALTERNATIVE LAND USES.]

Section 10. The State shall accord support to communities dependent on small-scale mining.

[CHAMBER OF MINES COMMENT:

THERE ARE EXISTING SMALL-SCALE MINING LAWS AND REGULATIONS THAT PROTECT AND SUPPORT LEGITIMATE SMALL-SCALE MINING ACTIVITIES CONDUCTED BY LOCAL COMMUNITIES]

Section 11. Subject to their right to self-determination, indigenous cultural communities/indigenous peoples (ICCs/IPs) own and have the responsibility to manage the mineral resources in their respective ancestral domains, free from external manipulation, interference, force threat, intimidation, coercion and other analogous acts. The State shall support indigenous cultural communities in developing capacities to effectively exercise their right and responsibility.

[CHAMBER OF MINES COMMENT:

UNDER THE PHILIPPINE CONSTITUTION, ALL MINERALS ARE OWNED BY THE STATE. THE INDIGENOUS PEOPLES RIGHTS ACT (“IPRA”) GRANTS PRIORITY TO IPS/ICCS IN THE EXPLORATION AND DEVELOPMENT OF MINERAL RESOURCES WITHIN THEIR ANCESTRAL DOMAIN AREAS.]

Section. 12. Mining shall be limited in scale in accordance with this Act.

[CHAMBER OF MINES COMMENT:

A MINING BILL THAT CONTRAVENES CONSTITUTIONAL PROVISIONS WOULD NOT PASS THE TEST OF VALIDITY OR LEGALITY.

THIS SECTION CLEARLY PROHIBITS LARGE SCALE MINING ACTIVITIES. THIS GOES AGAINST THE BENEFITS OF ECONOMIES OF SCALE AND CONTRAVENES WHAT IS ALREADY ALLOWED BY THE PHILIPPINE CONSTITUTION .]

Section 13. Mineral resources development, utilization and processing shall be reserved for Filipino citizens and for Filipino corporation. Exploration shall be undertaken directly by the State for the benefit of the nation.

[CHAMBER OF MINES COMMENT:

THE PHILIPPINE CONSTITUTION ALLOWS A FOREIGN-OWNED COMPANY TO ENGAGE IN LARGE-SCALE EXPLORATION, DEVELOPMENT, AND UTILIZATION OF NATURAL RESOURCES BY WAY OF A FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT (“FTAA”) WITH THE PHILIPPINE GOVERNMENT. THE VALIDITY OF THE FTAA HAS BEEN UPHeld BY THE SUPREME COURT IN THE CASE OF *LA BUGAL B’LAAN VS. RAMOS* (G.R. NO. 127882).

UNDER THE MINING ACT, THE STATE IS NOT PREVENTED FROM CONDUCTING EXPLORATION ACTIVITIES. HOWEVER, BECAUSE EXPLORATION ENTAILS SIGNIFICANT COST AND SUBSTANTIAL RISK THAT THE EXPLORATION WILL NOT RESULT IN ECONOMICALLY VIABLE MINERAL DEVELOPMENT, IT MAKES NO SENSE TO PREVENT PRIVATE ENTITIES FROM CONDUCTING MINERAL EXPLORATION. THE COUNTRY COULD ONLY BENEFIT FROM PRIVATE ENTITIES (INCLUDING FOREIGN COMPANIES) ASSUMING THE EXPLORATION RISK, INSTEAD OF THE STATE.]

Section 14. Remining and recycling of mineral resources shall be prioritized over the opening of new mines to maximize and recover the remaining minerals resources from the rejects of wastes of previous mines and mining operations.

[CHAMBER OF MINES COMMENT:

THERE IS NO REASON TO GIVE LESS PRIORITY TO THE OPENING OF NEW MINES THAT COMPLY WITH ALL CONSENT AND REGULATORY REQUIREMENTS, INCLUDING ENVIRONMENTAL REGULATIONS. THIS IS CONSISTENT WITH THE POLICY OF THE GOVERNMENT TO PROMOTE RESPONSIBLE MINERALS DEVELOPMENT.]

Section 15. The State shall prioritize the rehabilitation of the abandoned mines in the country.

Section 16. The State shall prioritize the development of mineral resources needed for national development and the creation of domestic processing capacity for industrial metals and

other labor-intensive downstream industries. Mine planning shall be conducted to meet this principle.

CHAPTER III DEFINITION OF TERMS

Section 17. Definition of terms – As used in and for the purposes of this Act, the following terms, whether used in singular or in plural form, shall mean.

- a. Abandonment – the act of the contractor leaving a mine without rehabilitation despite the legal obligation to do the same;
- b. Acid mine drainage – the dissolution, mobilization and transportation of toxic metals from rocks resulting from the chemical reaction of the acid-generating minerals in rock and waste materials having high permeability to both air and rainfall and other water inflows when land is opened up for mining and initiates the chemical reaction, resulting to a perpetual machine of acid generation.
- c. Ancestral domains - all areas generally belonging to indigenous cultural and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forest, pasture, residential, agricultural, and other lands individually owned whether alienable and disposal or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources and lands which may no longer be exclusively occupied by ICCs//IPs but from which they traditionally hand access to for their subsistence and traditional activities, particularly the home ranges of ICCS/IPs who are still nomadic and/or shifting cultivators.
- d. Ancestral lands – lands occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots.
- e. Beneficiation – process wherein a large fraction of the waste material is removed from the ore;
- f. Buffer Zones – identified areas outside the boundaries of and immediately adjacent to designated protected areas that need special development control in order to avoid or minimize harm to the protected area;

- g. Bureau - the Mines and Geosciences Bureau under the Department of Science and Technology.

[CHAMBER OF MINES COMMENT:

THE MINING AND GEOSCIENCES BUREAU (“**MGB**”) IS SOUGHT TO BE TRANSFERRED TO THE DEPARTMENT OF SCIENCE AND TECHNOLOGY (“**DOST**”) FOR NO APPARENT REASON.]

- h. Carrying capacity – the capacity of natural and human environments to accommodate and absorb change without experiencing conditions of instability and attendant degradation;
- i. Certificate of Ancestral Domains Title (CADT) – title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with law;
- j. Certificate of Ancestral Lands Title (CALT) - a title formally recognizing the rights of ICCs/IPs over their ancestral lands;
- k. Closure of mines – permanent cessation of operations at a mine or mine processing site after completion of the decommissioning process;
- l. Consensus – the decision communally reached after appropriate participatory consultation and discussion, free from any external manipulation, interference and coercion, and other analogous cases and obtained after fully disclosing the intent and scope, including the positive and negative impacts, of the activity such of decision, in a language and process understandable to the community or group.
- m. Consent – the voluntary assent of the landowner or those who have been in open, continuous, exclusive and notorious possession of the land for more than ten (10) Years in good faith, or thirty (30) years in bad faith, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable to the said landowner or occupant;
- n. Contract area – the area delineated as specifically provided by a mineral agreement for the development or utilization of mineral resources found therein.
- o. Critical watershed – refers to a drainage area of a river system, lake or water reservoir supporting existing and proposed hydroelectric power, domestic water supply, geothermal power and irrigation works, which needs immediate rehabilitation and protection to minimize soil erosion, improve water yield and prevent possible flooding. The term shall also include areas which are traditional human settlements, land-uses, or sea-uses which are representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

[CHAMBER OF MINES COMMENTS:

THE SECOND SENTENCE OF THE DEFINITION OF “CRITICAL WATERSHED” DOES NOT MAKE SENSE.]

- p. Critical habitats – place or environment where species or subspecies naturally occur or has naturally established its population that are crucial to the survival of a species and essential for its conservation;
- q. Cultural sites – those that bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared or, directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.
- r. Customary Laws – body of written and/or unwritten rules, usages, customs and practices traditionally recognized, accepted and observed by respective ICCs/IPs and local communities;
- s. Decommissioning – the activity or process that begins after cessation of prospecting activities or mineral production (including metallurgical plant production). It involves, among others, the removal of unwanted infrastructure, making excavations and waste repositories safe and stable and surface rehabilitation with a view to negate or minimize any adverse environmental impacts remaining after cessation of mineral production. It includes the after-care or maintenance that may be needed;
- t. Ecological profile or eco-profile – geographic-based instruments for planners and decision-makers which present an evaluation of the environmental quality and carrying capacity of an area and measures the specific interactions that will be affected by mining, operations;
- u. Exploration – means the searching or prospecting for mineral resources by non-invasive means for the purpose of determining the existence, extent, quantity and quality thereof, which may include but not limited to seismic, gravity, magnetic, electro-magnetic, radar, induced polarization, radio-wave and electro-geochemical;

[CHAMBER OF MINES COMMENT:

THE DEFINITION OF “EXPLORATION” WOULD REDUCE MINING EXPLORATION ACTIVITIES TO “NON-INVASIVE MEANS” WHICH INCLUDES SEISMIC, GRAVITY, MAGNETIC, ELECTROMAGNETIC, RADAR, INDUCED POLARIZATION, RADIO WAVE AND ELECTRO-GEOCHEMICALS. THIS IS A GREAT HIT AND MISS EFFORT WHICH WOULD ONLY RESULT TO IMPRACTICALITY AND MASSIVE WASTE.

EXPLORATION MAY BE NON-INVASIVE IN THE EARLY STAGES BUT THE PROCESS HAS TO GRADUATE TO THE INVASIVE AND MORE COMPREHENSIVE DRILLING STAGE TO JUSTIFY MINE DEVELOPMENT. THERE IS NO WAY THAT A FEASIBILITY STUDY COULD BE COMPLETED WITHOUT ACTUAL DRILLING IN THE PROJECT AREA. THE BILL PROPONENTS MAY NEED TO REALIZE THAT DRILLING ACTIVITIES WHEN DONE RESPONSIBLY DO NOT HAVE LASTING ADVERSE EFFECTS ON THE ENVIRONMENT.]

- v. Extraction – ore-removal activities that take place at the mine site itself;
- w. Free and prior informed consent – the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and other analogous act and obtained after fully disclosing the intent and scope, including the positive and negative impacts, of the activity, in a language and process understandable and acceptable to the community;
- x. Indigenous peoples/Indigenous cultural communities (IP/ICC) – refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains. They are peoples who have a spiritual relationship with the land;
- y. Indigenous political structure – refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, and any other tribunal or body of similar nature;
- z. Joint Venture Agreement – an agreement wherein the government and a qualified person organize a joint-venture company, with both parties having equity shares, to develop and manage mineral resources. Aside from earning on the equity, the Government shall be entitled to a share in the output computed at a certain percentage mutually agreed upon by and beneficial to both parties.
- aa. Key biodiversity areas – are places of international importance for the conservation of biodiversity;
- bb. Large-scale mining – mining in areas more than twenty (20) hectares, using mechanized tools and equipment, requiring considerable capital and having large-scale environmental, social, cultural and economic impacts with regards to resource use and/or consumption.
- cc. Mineral Agreement – a contract entered into by the government, in behalf of the State, and a private Filipino person, granting such person/s the privilege to mine a specific contract area;

- dd. Mineral Resource – any concentration of minerals/rocks with potential economic value;
- ee. Mineral Processing – the milling, beneficiation or upgrading of ores or minerals and rocks or by similar means to convert the same into marketable products;
- ff. Minerals – all naturally occurring inorganic substance in solid, gas, liquid, or any intermediate state excluding energy materials such as coal, petroleum, natural gas, radioactive materials, and geothermal energy;
- gg. Mine Development – preparing the mine site for production by shaft sinking or pit excavation building of access roads, and constructing of surface facilities;
- hh. Mine wastes and tailings – rock materials from surface or underground mining and milling operations with no economic value to the generator of the same;
- ii. Mining Activity – any or all of the following activities exploration, extraction, utilization, processing, transportation and other activities conducted for the same.
- jj. Mining Area – a portion of the contract area which has been identified by the contractor wherein actual mining operations are conducted;
- kk. Mining Operations – either all or any of the mining activities involving exploration, feasibility, development, utilization, and processing;
- ll. National Park – an area of the public domain essentially natural wilderness, scenic, or historic in character which has been withdrawn from settlement, occupancy, or any form of exploitation except in conformity with an approved management plan and set aside exclusively conserve the area or preserve the scenery, the natural and historic objects, wild animals, and plants therein mainly for the purpose of biodiversity conservation and/or human enjoyment;
- mm. Native Title – pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;
- nn. Natural Forest – forests composed of indigenous trees, not planted by man, whose structure, functions, and dynamics have been largely the result of natural succession processes;
- oo. Natural Parks – is a relatively large area not materially altered by human activity where extractive resource uses are not allowed and maintained to protect outstanding natural and scenic areas of national or international significance for scientific, educational and recreational use;
- pp. Ore – a material that contains minerals in such quantities that it can be mined and worked commercially to extract that mineral. The mineral is usually contained in chemical combination with some other element in addition to various impurities.

- qq. Pollution control and infrastructure devices – infrastructure, machinery, equipment and/or improvements used for impounding, treating, or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailings as well as eliminating or reducing hazardous effects of solid particles, chemicals, liquids or other harmful byproducts and gases emitted from any facility utilized in mining operations for their disposal;
- rr. Private Land – any land belonging to any private person which includes alienable and disposable land being claimed by a holder, claimant, or occupant who has already acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued;
- ss. Processing – includes all treatment an ore receives after its extraction and beneficiation, which involves changes in the chemical nature of the mined minerals;
- tt. Progressive rehabilitation – rehabilitation which involves the staged treatment of disturbed areas during exploration, construction/development and mining operations;
- uu. Protected Areas – identified portions of land and water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation;
- vv. Protected landscapes/seascapes – areas of national significance which are characterized by the harmonious interaction of man and land while providing opportunities for public enjoyment through recreation and tourism within the normal lifestyle and economic activity of these areas;
- ww. Quarry Resources – any common rock or other mineral substances as the Director of the Mines and Geosciences may declare to be quarry resources such as, but not limited to, andesite, basalt, conglomerate, coral sand, diatomaceous earth, diorite, decorative stones, gabbro, granite, limestone, marble, marl, red burning clay for potteries and bricks, rhyolite, rock phosphate, sandstone, serpentine, shale, tuff, volcanic cinders, and volcanic glass, provided, that such quarry resources do not contain metals or metallic constituents and/or other valuable minerals in economically workable quantities; provided further, that non metallic minerals such as kaolin, feldspar, bull quartz, quartz or silica, sand and pebbles, bentonite, talc, asbestos, barite, gypsum, bauxite, magnesite, dolomite, mica, precious and semi-precious stones, and other non-metallic minerals that may latter be discovered and which the Director declares the same to be of economically workable quantities, shall not be classified under the category of quarry resources;
- xx. Quarrying – process of extracting, removing and disposing quarry resources found on or underneath the surface of private or public land;
- yy. Regional Director – the regional director of any mines regional office;
- zz. Regional Office – any of the mines regional offices;

- aaa. Recycling – shall refer to the treating of used or waste materials through a process of making them suitable for beneficial use and for other purposes, and includes any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity, and which may be used as raw materials for the production of other goods or services: Provided, that the collection, segregation and re-use of previously used packaging material shall be deemed recycling under the Act;
- bbb. Rehabilitation – the process by which the land will be returned to a form and productivity in conformity with a prior land use plan including a stable ecological state that does not contribute substantially to environmental deterioration and is consistent with surrounding aesthetic values;
- ccc. Remediation – removal of pollution or contaminants from environmental media for the general provisions;
- ddd. Remining – maximizing and recovering the remaining minerals from the rejects or wastes of previous mines and mining operations;
- eee. Restoration – the act of bringing back the original, or the closest possible state, of the forest and biodiversity;
- fff. Small-scale mining – mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment, primarily engage in for sustainable living. Impacts from small-scale mining should not be large-scale, otherwise, the mining activity shall be defined as large-scale mining;
- ggg. Small-scale mining permit – permit issued for small-scale mining;
 - a. Strategic minerals – minerals needed for national development
 - b. Tailings Disposal System or Tailings Placement – the method wherein the waste from mining operations are dumped, placed, or disposed;
 - c. Traditional small-scale mining- small-scale mining using traditional means and without the use of chemical or mechanized extraction and separation means, methods, implements, and/or equipment;
 - d. Watershed system – land area drained by a stream or a fixed body of water and with tributaries having a common outlet for surface runoff. It is the system by which the mining affected communities shall be determined following the drainage of a stream or fixed body of water with tributaries having a common outlet for surface runoff.
 - e. Wildlife undomesticated forms and varieties of flora and fauna.

**CHAPTER IV
OWNERSHIP AND GOVERNANCE**

Section 18. Authority of the Bureau. The Mines and Geosciences Bureau shall be a scientific research institution under the Department of Science and Technology (DOST), primarily conducting and developing research of mineral resources and mining technologies and training of local communities, local government units and indigenous peoples. It shall also regulate the

operations of persons involved in mining activities. It shall also work with the Multi-Sectoral Mineral Council in the monitoring of mining activities.

[CHAMBER OF MINES COMMENT:

THIS SECTION REDUCES THE MGB INTO A “RESEARCH INSTITUTION”. THERE IS NO LOGICAL AND PRACTICAL BASIS TO DO THIS.

THIS TRANSFERS MGB FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (“DENR”) TO THE DOST. UNDER THE ADMINISTRATIVE CODE OF 1987, THE DOST IS MANDATED TO PROVIDE CENTRAL LEADERSHIP AND COORDINATION OF SCIENTIFIC AND TECHNOLOGICAL EFFORTS. BECAUSE MINING PERTAINS TO NATURAL RESOURCES EXTRACTION, THE APPROPRIATE GOVERNMENT DEPARTMENT FOR THE MGB APPEARS TO BE THE DENR.]

Section 19. Regional Offices. The Bureau shall have as many regional offices in the country as may be established by the Secretary, upon the recommendation of the Director.

Section 20. Bureau as repository of information. The Bureau shall be the central repository of information regarding mineral lands, resources, permits, studies and other information relevant to the operation of a mine, including the necessary requirements which a contractor is obliged to submit. All other governmental offices and other bodies created under this Act shall copy furnish the Bureau of other information related to mining.

Section 21. Recording System. There shall be established a national and regional filing and recording system. A mineral resource database system shall be set up in the Bureau which shall include, among others, a mineral rights management system.

Section 22. The Bureau shall publish at least annually a mineral gazette of nationwide circulation containing among others, a current list of mineral rights, their location in the map, mining rules and regulations, other official acts affecting mining, and other information relevant to mineral resources development. A system of publication fund shall be included in the regular budget of the Bureau.

Section 23. Bureau to conduct exploration activities. Exploration of mineral resources shall be exclusively and directly undertaken by the State through the Bureau. In no case shall this function be delegated or contracted out to private corporations or persons.

[CHAMBER OF MINES COMMENT:

THIS IS HARDLY ACHIEVABLE. THE GOVERNMENT WOULD NOT HAVE ANY MONEY TO UNDERTAKE THE EXPLORATION ACTIVITIES ITSELF. GOVERNMENT RESOURCES WILL BE BETTER UTILIZED IN OTHER ACTIVITIES RATHER THAN IN UNCERTAIN AND ECONOMICALLY COSTLY UNDERTAKINGS SUCH AS EXPLORATION.

PLEASE REFER TO OUR COMMENT UNDER CHAPTER II, SECTION 13, SECOND PARAGRAPH OF THIS BILL.]

Section 24. Exploration activities shall only be non-invasive such as, but not limited to seismic, gravity, magnetic, electromagnetic, radar, induced polarization, radio-wave and electrogeochemical.

[CHAMBER OF MINES COMMENT:

THIS LIMITS EXPLORATION ACTIVITIES TO NON-INVASIVE PROCEDURES. THIS IS IMPRACTICAL AND CONTRARY TO THE INTERNATIONALLY ACCEPTED CONCEPT OF EXPLORATION WHICH INCLUDE DRILLING ACTIVITIES.]

Section 25. The Bureau shall not enter into any private lands for the purposes of exploration activities without the written consent of the land owner, possessor and/or occupant, or the FPIC of the ICC/IP and payment of just compensation for the use of property. Neither shall the Bureau enter into any part of the ancestral domains/lands of ICCs/IPs without their free and prior informed consent.

[CHAMBER OF MINES COMMENT:

EXISTING MINING LAWS AND REGULATIONS ALREADY PROVIDE FOR A PROCEDURE FOR EASEMENT AND ACCESS RIGHTS FOR MINING OPERATIONS THAT REQUIRE MUTUAL AGREEMENT AT THE FIRST INSTANCE AND PROVIDE FOR THE POSTING OF BONDS AND ADMINISTRATIVE/JUDICIAL DETERMINATION OF JUST COMPENSATION.

EXISTING MINING AND INDIGENOUS PEOPLES RIGHTS LAWS ALREADY REQUIRE THE FREE AND PRIOR CONSENT OF IPS/ICCS EVEN BEFORE ANY EXPLORATION ACTIVITY CAN BE CONDUCTED.]

Section 26. Ownership of ICCs/IPs. Mineral resources within ancestral domain/ancestral lands are the collective private property of the indigenous cultural communities/indigenous peoples (ICCs/IPs). The management of such mineral resources shall build on the indigenous knowledge systems and practices.

[CHAMBER OF MINES COMMENT:

THIS GRANTS IPS/ICCS COLLECTIVE OWNERSHIP OVER THE MINERAL RESOURCES IN THEIR ANCESTRAL DOMAINS AND LANDS. THIS CONTRAVENES THE REGALIAN DOCTRINE, WHICH PROVIDES THAT ALL RESOURCES ARE OWNED BY THE STATE. IT MUST BE NOTED THAT IN THE CASE OF *CRUZ V. DENR* (G.R. NO. 135385), THE SEPARATE OPINION PENNED BY NOW CHIEF JUSTICE REYNATO PUNO SPECIFICALLY DISTINGUISHED BETWEEN THE PRIORITY RIGHT, AS GRANTED BY THE INDIGENOUS PEOPLES RIGHTS ACT (“**IPRA**”), AND OWNERSHIP, HOLDING THAT HAVING PRIORITY RIGHTS OVER THE NATURAL RESOURCES DOES NOT NECESSARILY MEAN OWNERSHIP RIGHTS. THE GRANT OF PRIORITY RIGHTS IMPLIES THAT THERE IS A SUPERIOR ENTITY THAT OWNS THESE RESOURCES (I.E., THE STATE) AND THIS ENTITY HAS THE POWER TO

GRANT PREFERENTIAL RIGHTS OVER THE RESOURCES TO WHOSOEVER IT CHOOSES.]

Section 27. When ancestral domain is not yet formally recognized. When ancestral domain is not yet covered by a Certificate of Ancestral Domain Title/Certificate of Ancestral Land Title (CADT/CALT), or is covered by a different title issued in favor of members of the ICCs/IPs, mineral resources shall nevertheless be managed by the ICCs/IPs concerned when it can be presumed that the area is part of ancestral domain. An area is presumed to be part of ancestral domain by virtue of historic rights and self-delineation.

[CHAMBER OF MINES COMMENT:

THIS IS SUBJECT TO ABUSE BY PURPORTED IPS/ICCS SINCE ANYBODY CAN CLAIM OWNERSHIP OVER LANDS EVEN WITHOUT ANY CADT/CALT.]

Section 28. When ICCs/IPs displaced from ancestral domain, and when ancestral domain is already covered by other titles emanating from the state other than CADT/CATL. Native title over ancestral domain subsists notwithstanding the fact that the ICCs/IPs who hold such native title have been displaced therefrom or that such ancestral domains have been occupied by other persons or corporations under another claim of title emanating from the State. In such cases, ICCs/IPs shall continue to own such mineral resources.

[CHAMBER OF MINES COMMENT:

UNDER CURRENT REGULATIONS, THE FREE AND PRIOR INFORMED CONSENT OF IPS/ICCS IS ALREADY REQUIRED FOR EXPLORATION AND MINING PROJECTS, EVEN IF THE IPS/ICCS DO NOT YET HAVE A CERTIFICATE OF ANCESTRAL DOMAIN TITLE OR CERTIFICATE OF ANCESTRAL LAND TITLE PROVIDED THAT THE FIELD-BASED INVESTIGATION OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (“NCIP”) ALREADY SHOW THAT THERE ARE LEGITIMATE IPS/ICCS IN THE AREA WHERE EXPLORATION OR MINING IS SOUGHT TO BE CONDUCTED.

THESE SECTIONS PROVIDE FOR A PRESUMPTION THAT AN AREA IS PART OF ANCESTRAL DOMAIN BY VIRTUE OF HISTORIC RIGHTS AND SELF-DELINEATION BY THE ICCS/IPS. THIS BROAD PRESUMPTION MAY SWEEP ACROSS AND TRAMPLE PRIVATE LAND RIGHTS, IN DEROGATION OF THE CURRENT SYSTEM OF LAND OWNERSHIP IN THE PHILIPPINES AND LAND RIGHTS THAT HAVE VESTED PRIOR TO THOSE OF ICCS/IPS (OR THOSE THAT CLAIM TO BE ICCS/IPS).

OWNERSHIP BY IPS/ICCS OF THE MINERAL RESOURCES CONTRAVENE THE REGALIAN DOCTRINE UNDER THE PHILIPPINE CONSTITUTION.

ADDITIONALLY, THE ABOVE TWO SECTIONS DWELL PRINCIPALLY ON THE RIGHTS OF IPS/ICCS AND SHOULD PROPERLY BE COVERED BY THE IPRA LAW.

INCLUSION OF THESE SECTIONS IN A MINING LAW VIOLATES THE CONSTITUTIONAL PROVISION THAT “EVERY BILL PASSED BY CONGRESS SHALL EMBRACE ONLY ONE SUBJECT WHICH SHALL BE EXPRESSED IN THE TITLE THEREOF.”]

Section 29. Questions on the validity of FPIC. In instances that there are questions on the legality or validity of the issued free prior and informed consent, mining operations shall not be allowed to be conducted in the ancestral domains or lands of the ICCs/IPs without the final resolution of such question on the legality or validity of the FPIC.

[CHAMBER OF MINES COMMENT:

THE ISSUANCE BY THE NCIP OF A CERTIFICATION PRECONDITION SIGNIFYING THE GRANT OF FREE AND PRIOR CONSENT BY THE ICCS/IPs IS ENTITLED TO A PRESUMPTION OF REGULARITY UNDER PHILIPPINE LAW. SECTION 29 CONTRAVENES THIS LEGAL PRESUMPTION.

CURRENT PROVISIONS OF THE IPRA ON FPIC ARE MORE THAN SUFFICIENT. SEC. 29 IS TOO HARSH, UNFAIR AND ANTI-PROGRESS/DEVELOPMENT SINCE THERE CAN BE NO MINING ACTIVITY WHATSOEVER AS LONG AS THERE IS A PENDING QUESTION AS TO THE VALIDITY OF FPIC.]

Section 30. Ownership of the State. The mineral resources found outside ancestral domains/lands shall be owned by the State. The State shall ensure that the management of mineral resources shall be primarily for the benefit of the local communities in whose territory the same shall be found. The State may directly undertake development, utilization and processing of mineral resources or it may enter into mineral agreements with eligible parties.

[CHAMBER OF MINES COMMENT:

UNDER THE REGALIAN DOCTRINE OF THE 1987 PHILIPPINE CONSTITUTION, ALL LANDS AND MINERAL RESOURCES ARE OWNED BY THE STATE, NOT ONLY THOSE FOUND OUTSIDE ANCESTRAL DOMAINS/LANDS. UNDER THE MINING ACT, IT IS SPECIFICALLY STATED THAT MINERAL RESOURCES ARE OWNED BY THE STATE, IN ACCORDANCE WITH THE REGALIAN DOCTRINE OF THE CONSTITUTION.

THIS SECTION IS ANTI-BUSINESS. NO INVESTOR WOULD PART WITH ITS HARD EARNED INVESTMENTS FOR THE PRIMARY PURPOSE OF CATERING TO THE NEEDS OF THE LOCAL COMMUNITIES IN WHOSE TERRITORY THE MINERAL RESOURCES ARE FOUND. THE DEVELOPMENT AND WELFARE OF THE HOST COMMUNITY IS MANDATED UNDER CHAPTER X OF THE MINING ACT AND CHAPTER XIV OF THE MINING ACT IMPLEMENTING RULES AND REGULATIONS (“**IRR**”). THE CONTRACTOR OR PERMITTEE CANNOT ESCAPE FROM THIS RESPONSIBILITY AND IT IS A NATURAL CONSEQUENCE OF MINING OPERATIONS, ESPECIALLY IN LIGHT OF THE SAID CHAPTER X AND IRR AND THE REQUIRED MOA BETWEEN THE CONTRACTOR AND LGU. IN REALITY AND PURSUANT TO THE MINING ACT AND IRR AND THE ENVIRONMENTAL LAWS, THE BUSINESS CONCERNS OF THE CONTRACTORS MAY BE HARMONIZED WITH THE DEVELOPMENT, SOCIAL AND ENVIRONMENTAL CONCERNS OF THE HOST COMMUNITY WITHOUT

NECESSARILY MAKING THE LATTER THE PRIMARY OBJECTIVE OF THE CONTRACTORS.]

Section 31. The Bureau shall identify and provide an inventory of the available mineral resources, including the mine tailings within the country. It shall submit to the DOST a report which shall contain the following information:

- a. the classification of minerals;
- b. the quality and grade of the ore;
- c. the potential mine life;
- d. the geological description of the area;
- e. the economic viability of mine tailings;
- f. and all other relevant information necessary for potential mineral investments.

The process for exploration and/or approval for a mining permit shall not commence without the said inventory.

Section 32. Identification of strategic minerals. The Bureau shall conduct researches and studies prior to any mining operations to identify strategic mineral resources.

Section 33. Demarcation of mineral areas. The Bureau shall demarcate the boundaries of all areas identified as containing commercial quantities of mineral resources on the ground.

[CHAMBER OF MINES COMMENT:

THIS RESTRICTION WILL UNFAIRLY LIMIT THE ABILITY OF THE STATE TO PROMOTE RESPONSIBLE MINERALS DEVELOPMENT.

IT IS PRECISELY THE CONDUCT OF EXPLORATION EITHER BY THE STATE OR PRIVATE ENTITIES THAT WILL PROVIDE THE MGB WITH DATA ON THE AVAILABLE MINERAL RESOURCES WITHIN THE COUNTRY AND ALLOW IT TO DEMARCATe AREAS CONTAINING COMMERCIALY VIABLE QUANTITIES OF MINERAL RESOURCES.]

Section 34. Baseline information on watersheds. The baseline information on all watersheds in the country shall be required and made available to the public, online as much as possible. No mining permit shall be issued without this baseline information.

[CHAMBER OF MINES COMMENT:

THE MANAGEMENT OF WATERSHEDS IS CURRENTLY SHARED BY LOCAL GOVERNMENT UNITS AND THE DENR. REQUIRING BASELINE INFORMATION TO BE GENERATED BY THE GOVERNMENT WILL PLACE AN UNFAIR STRAIN ON THE RESOURCES OF THE STATE.

MOREOVER, THERE IS ALREADY A PROCESS UNDER THE NATIONAL INTEGRATED PROTECTED AREAS ACT FOR THE PROCLAMATION AND DESIGNATION OF PROTECTED AREAS. CURRENT DENR/MGB REGULATIONS AND PRACTICE ALREADY TAKE INTO CONSIDERATION THE

EXISTENCE OR POTENTIAL EXISTENCE OF WATERSHED AREAS IN PROCESSING AND APPROVING OR DENYING APPLICATIONS FOR EXPLORATION PERMITS AND MINING AGREEMENTS.]

Section 35. Affected local community and local government unit. For the purposes of this Act, the affected local community and the affected local government unit are defined in relation to other watershed which is potentially negatively impacted by mining operation in the demarcated area. The local communities and the local government units therefore are those who are dependent on the watershed eco-system and its resources.

Section 36. Establishment of Multi-Sectoral Mineral Council. A Multi-Sectoral Council shall be established for the purposes of this Act. There shall be as many Multi-Sectoral Mineral Councils as there are watershed systems with demarcated mineral areas.

Section 37. Powers of the Council. The Council shall have the following powers, among others:

- a. To determine whether or not mining operations shall be allowed;
- b. To deliberate on proposals for mineral agreements;
- c. To approve the proposal for mineral agreements;
- d. To monitor the conduct of mining operations;
- e. To establish its internal rules of procedure which are not contradictory to this Act;

Section 38. Composition of the Multi-Sectoral Mineral Council. The Multi-Sectoral Mineral Council shall be composed of a representative of the Bureau, a representative from the DENR, one representative from each of the affected provincial governments/independent component cities/highly urbanized cities, representatives from development non-government organizations as many as the representatives of local government units, and the affected ICCs/IPs within the watershed system. The Bureau shall be the convener of the Council.

No mining operations shall be allowed without the council having been properly convened.

Section 39. Areas open to mining. The Council shall have the power to determine whether or not the land where mineral resources are found shall be opened to mining. Areas may only be opened to mining upon the unanimous vote of all the members of the Council pursuant to the guidelines provided by this Act. In determining whether or not such area shall be opened, the following shall be taken into consideration;

- a. Report of the Bureau on the conducted exploration;
- b. Existence of downstream industries for the mineral resources;
- c. Potential environmental impacts;
- d. Potential cultural impacts;
- e. Conflict and risk assessment;
- f. Potential health impacts;
- g. Potential economic benefits of the development and utilization of the minerals;
- h. Value of the natural resources found within the demarcated land, applying acceptable valuation standards vis-à-vis potential economic benefits of mining;
- i. Carrying capacity and the ecological profile of the area;
- j. Existing and alternative land uses of the area;

- k. Local government land use plan.

This information shall be accessible to the public at all times.

Provided however, that in no case shall the Council open the following areas to mining;

- a. head waters of watershed areas;
- b. areas with potential for acid mine drainage;
- c. critical watersheds;
- d. critical habitats;
- e. climate disaster-prone areas;
- f. geohazard areas;
- g. cultural sites, which may include, but not limited to. Sacred sites and burial grounds;
- h. traditional swidden farms and hunting grounds, and prime agricultural lands;
- i. community sites;
- j. key biodiversity areas;
- k. densely populated areas;
- l. high conflict areas;
- m. Old growth or virgin forests, watershed forest reserves, wilderness area, mangrove forests, mossy forests, national parks, protection forests, provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries and their respective buffer zones as defined by law and in areas expressly prohibited under the National Integrated Protected Area system (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.

The determination whether or not the same area absolute closed to mining shall not only be limited to the existence of a law or ordinance declaring it as protected areas, but also to the actual use of said area.

[CHAMBER OF MINES COMMENT:

THIS REQUIRES THE MGB TO CONVENE A MULTI-SECTORAL MINERALS COUNCIL (“**COUNCIL**”), COMPOSED OF REPRESENTATIVES FROM THE MGB, DENR, LOCAL GOVERNMENT UNITS, NON-GOVERNMENT UNITS, AND IPS/ICCS. DELEGATING THIS TASK TO A BODY THAT MIGHT NOT HAVE THE APPROPRIATE TECHNICAL AND SCIENTIFIC KNOWLEDGE RELATING TO THE AVAILABILITY OF MINERAL RESOURCES OR THE CONDUCT OF MINING DANGEROUSLY EXPOSES THE BUSINESS OF MINING TO INCOMPETENT RULINGS AND DECISIONS. ALSO, AS THE NUMBER OF MEMBERS OF THE COUNCIL IS NOT FIXED BY LAW, THE SIZE OF THE COUNCIL APPEARS TO BE IMPRACTICAL AND UNWIELDY. IN ADDITION, THE UNANIMOUS VOTE REQUIREMENT OF THE COUNCIL BEFORE AN AREA CAN BE OPENED TO MINING WILL LIKELY RESULT IN NO NEW MINING ACTIVITIES BEING UNDERTAKEN.

A STUDY OF MINING REGULATION IN THE ASEAN COUNTRIES WILL SHOW THAT IN NO CASE IS AUTHORITY OVER MINING GRANTED TO BODIES SUCH AS THE CONTEMPLATED COUNCIL. THE SET-UP IN THE ASEAN COUNTRIES WITH RESPECT TO MINING REGULATION ARE LARGELY SIMILAR TO THE CURRENT PHILIPPINE SET-UP WHEREIN MINING IS REGULATED PRINCIPALLY BY THE DENR/MGB.]

Section 40. Manner of voting by the Council for opening an area to mining. Section 26 and 27 of the Local Government Code on consultation and consent shall be strictly adhered to. Local government units at all levels shall conduct mandatory public hearing with the affected local communities, to be carried out within their respective territories and presenting those enumerated under Section 39.

After the inventory of the existing minerals, the formulation of a mine plan, and the existence of a baseline information of the particular watershed area, the Bureau shall convene the Council.

The Council shall thereafter respectively convene their constituents to determine whether or not their respective territories shall be opened for mining.

Local government units, ICCs/IPs, NGO's and peoples organizations, shall ensure that the Bureau shall comprehensively explain the goals and objectives of the project or program, its negative and positive impact upon the people and community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. Thereafter, the approval of the respective sanggunians of the affected local government units shall be required in accordance to the sentiment of the peoples of the local government unit as a result of the consultations conducted.

Provided, that the affected local government unit representatives shall meet and shall relay the decision of their respective constituents to the provincial government/independent component cities/highly urbanized cities. The provincial/component city/highly urbanized city government representative shall sit in the Council and shall carry the result of the vote of all the affected local government units within the province resulting from the process provided in the preceding paragraph of this Section. There must be a unanimous vote among the local government units for the purpose of opening a particular area for mining. Failure to reach a unanimous vote for opening shall mean that the area is closed to mining. The proceedings shall at all times be recorded.

Provided also, that the non-government organizations operating within the affected watershed area shall be convened and determine among themselves their representatives in the Council.

Provided moreover, that in case there are affected indigenous cultural communities/indigenous peoples within the watershed system, they shall also bring the community's vote to the Council after undergoing their own processes in accordance with their respective indigenous political structure, free from any external manipulation, interference, coercion and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

Provided finally, that any member of the community may file a protest with the Council during this period of consultations and deliberations for the Council's consideration.

[CHAMBER OF MINES COMMENT:

THE CURRENT REGULATIONS ALREADY REQUIRE THE CONSENT OF MAJORITY OF THE LOCAL GOVERNMENT COUNCILS CONCERNED BEFORE MINING DEVELOPMENT AND EXTRACTION CAN COMMENCE. THIS SUFFICIENTLY ADDRESSES THE NEED TO OBTAIN LOCAL GOVERNMENT STAKEHOLDER CONSENT.

SEC. 36 TO SEC. 40 WHICH CREATE AND DISCUSS THE COUNCIL MAKES IT VERY DIFFICULT TO OBTAIN LICENSES FOR MINING. THE COUNCIL, WHERE THERE IS NO INDUSTRY REPRESENTATIVE, IS GIVEN THE AWESOME POWER TO DETERMINE WHAT AREAS ARE OPEN FOR MINING. NGOS, WHICH ARE MOSTLY ANTI-MINING AND ILL EQUIPPED FOR AN OBJECTIVE AND TECHNICAL DETERMINATION OF THE MINERAL RESOURCES APPLIED FOR, ARE PART OF THIS COUNCIL THUS DISCRIMINATING AGAINST INDUSTRY REPRESENTATIVES. ALSO, THE REQUIREMENT OF UNANIMITY IN THE VOTING (TO DECLARE AREAS OPEN FOR MINING) IS ABSURD. FURTHER, THIS BILL EXPANDED THE LIST OF THE AREAS CLOSED TO MINING, AS COMPARED TO SECTION 19 OF THE MINING ACT.]

Section 41. Local government officials who are administratively found to violate the preceding section and Section 50 of this Act vis-à-vis the pertinent sections of the Local Government Code shall be removed from office and perpetually disqualified from holding any elective or appointive position in government, its divisions, subsidiaries and any government owned and controlled corporations.

[CHAMBER OF MINES COMMENT:

SEC. 41 IMPOSES A HARSH PENALTY ON LGU OFFICIALS FOR VIOLATION OF SECTIONS 40 AND 50.]

Section 42. Pool of consultants. There shall be a pool of independent consultants that may assist the local government units, local communities or ICCs/IPs with regard to the technical aspects of mining.

[CHAMBER OF MINES COMMENT:

WHILE COMMENDABLE, THIS UNDULY IMPOSES ON LOCAL GOVERNMENTS ADDITIONAL COSTS EVEN WHEN EXISTING ADMINISTRATIVE BUREAUCRATS ARE ALREADY IN PLACE AND EMPOWERED TO PERFORM THIS TASK UNDER THE MINING ACT.]

Section 43. Publication, posting and radio announcement requirements. The decision of the Council shall be published by the Bureau in the local newspaper in the local language, shall be announced on the local radio programs for not less than six (6) weeks and notices shall be distributed widely in communities. The notice containing relevant information shall likewise be posted in conspicuous places for the information of the general public and shall be announced during the local market dev.

CHAPTER V

MINERAL AGREEMENTS

Section 44. Modes of Mineral Agreement. A mineral agreement may only take the following forms as herein defined:

- (a) Mineral production sharing agreement – is 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 shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.
- (b) Co-production agreement – is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.
- (c) Joint venture agreement – is an agreement where a joint-venture company is organized by the Government and the contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.

In no case shall Financial or Technical Assistance Agreements, or any other similar agreements, contracts, and/or executive issuances granting license or permission to explore, develop and/or utilize mineral resources be awarded to foreign persons.

[CHAMBER OF MINES COMMENT:]

WITH EXCEPTION TO THE ABSOLUTE PROHIBITION OF FOREIGN PARTICIPATION IN MINING ACTIVITIES AS DISCUSSED BELOW, THE MODES OF THE MINERAL AGREEMENTS PROVIDED FOR IN THIS BILL ARE DEFINED EXACTLY THE SAME AS THOSE PROVIDED FOR IN THE MINING ACT.]

Section 45. Eligibility. Only Filipino citizens or corporations sixty percent (60%) of whose equity is owned or controlled by such citizens shall be allowed to conduct development, utilization and processing of mineral resources within the country.

[CHAMBER OF MINES COMMENT:]

THE PROPOSED PROHIBITION OF FTAAS AND THE LIMITATION TO FOREIGN PARTICIPATION IN MINING IS UNCONSTITUTIONAL.

THE 1987 CONSTITUTION EXPRESSLY AUTHORIZES THE STATE TO ENTER INTO AN AGREEMENT WITH FOREIGN-OWNED CORPORATION FOR LARGE SCALE EXPLORATION, DEVELOPMENT AND UTILIZATION OF MINERALS AND THE PROPOSED BAN ON FTAAS GOES AGAINST THIS AUTHORITY. PARAGRAPH 4 OF SECTION 2 OF ARTICLE XII OF THE 1987 CONSTITUTION STATES:

“THE PRESIDENT MAY ENTER INTO AGREEMENTS WITH FOREIGN-OWNED CORPORATIONS INVOLVING EITHER TECHNICAL OR FINANCIAL ASSISTANCE FOR LARGE-SCALE EXPLORATION, DEVELOPMENT, AND UTILIZATION OF MINERALS, PETROLEUM, AND OTHER MINERAL OILS

ACCORDING TO THE GENERAL TERMS AND CONDITIONS PROVIDED BY LAW, BASED ON REAL CONTRIBUTIONS TO THE ECONOMIC GROWTH AND GENERAL WELFARE OF THE COUNTRY. IN SUCH AGREEMENTS, THE STATE SHALL PROMOTE THE DEVELOPMENT AND USE OF LOCAL SCIENTIFIC AND TECHNICAL RESOURCES.”

FURTHERMORE, THE NECESSITY OF FOREIGN PARTICIPATION IN THE MINING INDUSTRY HAS TIME AND AGAIN BEEN POINTED OUT. IN THE DECISION OF THE SUPREME COURT DECISION IN THE LANDMARK CASE OF *LA BUGAL-B’LAAN TRIBAL ASSOCIATION, INC., ET AL. VS. RAMOS, ET AL* (G.R. NO. 127882, 2004) WHERE THE CONSTITUTIONALITY OF THE MINING ACT AND ITS IMPLEMENTING RULES AND REGULATIONS WAS CHALLENGED, THE COURT STARTED BY SAYING:

“ALL MINERAL RESOURCES ARE OWNED BY THE STATE. THEIR EXPLORATION, DEVELOPMENT AND UTILIZATION (EDU) MUST ALWAYS BE SUBJECT TO THE FULL CONTROL AND SUPERVISION OF THE STATE. MORE SPECIFICALLY, GIVEN THE INADEQUACY OF FILIPINO CAPITAL AND TECHNOLOGY IN LARGE-SCALE EDU ACTIVITIES, THE STATE MAY SECURE THE HELP OF FOREIGN COMPANIES IN ALL RELEVANT MATTERS — ESPECIALLY FINANCIAL AND TECHNICAL ASSISTANCE — PROVIDED THAT, AT ALL TIMES, THE STATE MAINTAINS ITS RIGHT OF FULL CONTROL.
XXX”

THE COURT CONTINUED AND REPEATEDLY DISCUSSED THE INSUFFICIENCY OF FILIPINO CAPITAL AND THE NEED FOR FOREIGN INVESTMENTS IN MINING IN LIGHT OF THE LARGE CAPITAL REQUIREMENTS AND THE ATTENDANT RISKS TO THESE UNDERTAKINGS:

“AS A MATTER OF FACT, FINANCIAL, AND EVEN TECHNICAL ASSISTANCE, REGARDLESS OF THE NATIONALITY OF ITS SOURCE, WOULD BE WELCOMED IN THE MINING INDUSTRY ANYTIME WITH OPEN ARMS, ON ACCOUNT OF THE DEARTH OF LOCAL CAPITAL AND THE NEED TO CONTINUALLY UPDATE TECHNOLOGICAL KNOW-HOW AND IMPROVE TECHNICAL SKILLS.

XXX

“THE COURT BELIEVES THAT IT IS NOT UNCONSTITUTIONAL TO ALLOW A WIDE DEGREE OF DISCRETION TO THE CHIEF EXECUTIVE, GIVEN THE NATURE AND COMPLEXITY OF SUCH AGREEMENTS, THE HUMONGOUS AMOUNTS OF CAPITAL AND FINANCING REQUIRED FOR LARGE-SCALE MINING OPERATIONS, THE COMPLICATED TECHNOLOGY NEEDED, AND THE INTRICACIES OF INTERNATIONAL TRADE, COUPLED WITH THE STATE’S NEED TO MAINTAIN FLEXIBILITY IN ITS DEALINGS, IN ORDER TO PRESERVE AND ENHANCE OUR COUNTRY’S COMPETITIVENESS IN WORLD MARKETS.”

“WHETHER WE CONSIDER THE NEAR TERM OR TAKE THE LONGER VIEW, WE CANNOT OVEREMPHASIZE THE NEED FOR AN APPROPRIATE BALANCING OF INTERESTS AND NEEDS -- THE NEED TO DEVELOP OUR STAGNATING MINING INDUSTRY AND EXTRACT WHAT NEDA SECRETARY

ROMULO NERI ESTIMATES IS SOME US\$840 BILLION (APPROX. PHP47.04 TRILLION) WORTH OF MINERAL WEALTH LYING HIDDEN IN THE GROUND, IN ORDER TO JUMPSTART OUR FLOUNDERING ECONOMY ON THE ONE HAND, AND ON THE OTHER, THE NEED TO ENHANCE OUR NATIONALISTIC ASPIRATIONS, PROTECT OUR INDIGENOUS COMMUNITIES, AND PREVENT IRREVERSIBLE ECOLOGICAL DAMAGE.”

GIVEN THE FOREGOING, THERE APPEARS TO BE NO COMPELLING REASON TO CHANGE THE POLICY OF THE STATE TO REDUCE FOREIGN PARTICIPATION IN MINING. THIS IS ESPECIALLY IN LIGHT OF THE CURRENT GLOBAL FINANCIAL CRISIS AND IT IS DURING WHICH TIMES THAT FOREIGN INVESTMENT MUST BE AGGRESSIVELY PURSUED, RATHER THAN RESTRICTED.]

Section 46. Identification of mining projects. With the unanimous vote of the Council to open areas for mining operations, the Bureau shall prepare the necessary information sheets on the said area for potential investments. The Bureau shall call for proposals to develop the mining area.

[CHAMBER OF MINES COMMENT:

THE PROCESS OF OBTAINING A “UNANIMOUS VOTE” OF THE COUNCIL FOR PURPOSES OF OPENING AN AREA FOR MINING OPERATIONS COMPLETELY DISREGARDS THE TECHNICAL EXPERTISE OF THE MGB AND THE WEALTH OF INFORMATION ALREADY OBTAINED BY THE MGB AS A RESULT OF YEARS EXPOSED IN THE INDUSTRY. FURTHERMORE, WE BELIEVE THE MGB HAS ALREADY IDENTIFIED THE PROSPECTS IN THE COUNTRY.]

Section 47. Pre-screening of mining proposals. Mining proposals shall be pre-screened by the Bureau upon the submission of interested parties of the following.

- a. demonstration of financial capability;
- b. proven social and environmental track record, including those of its officers and directors;
- c. clear corporate structure and ownership;
- d. proof of physical office and operations of the proponent within the Philippines;
- e. identification of potential investors;
- f. mining project feasibility;
- g. mining operation work plan;
- h. proposed operation, mitigation and prevention methods and/or equipment;
- i. capacity to process minerals;
- j. intent to develop downstream industries;
- k. intent to contribute to local community development
- l. Submission of the Environmental and Social Impact Prevention and Mitigation Plan.

The Council shall fix the minimum capitalization that any bidder must satisfy based on its determination of the expected economic returns and the potential negative impacts from mining, upon reference to an independent study proposing such minimum capitalization.

Section 48. Environmental and Social Impact Prevention and Mitigation Plan. The contractor shall submit an Environmental and social Impact prevention and Mitigation Plan

(ESIPMP) containing the means, methods, processes and schedule by which the contractor shall conduct its operations and prevent or mitigate negative environmental and social impacts. Social impact shall include possible impacts on the enjoyment and exercise of human rights, cultural rights, and on peace and security. The ESIPMP shall also include not only plans relative to mining operations but also to rehabilitation, regeneration, restoration of mineral areas, slope stabilization of mined out and tailings covered areas, aquaculture, watershed development, water conservation, relocation and return of displaced population, provision of alternative livelihood and socioeconomic development.

The ESIPMP shall also contain a Social Development Management Plan which shall likewise contain the plans of the proponent for the development of the community through the establishment of infrastructures and programs that should be sustainable even after the closure of the mine.

[CHAMBER OF MINES COMMENT:

THE PROPOSED ENVIRONMENTAL AND SOCIAL IMPACT PREVENTION AND MITIGATION PLAN IS ALREADY PROVIDED FOR IN THE MINING ACT'S ENVIRONMENTAL PROTECTION AND ENHANCEMENT PLAN (“**EPEP**”), WHICH ALSO REQUIRES THE SUBMISSION OF THE FINAL MINE REHABILITATION AND DECOMMISSIONING PLAN, AND THE SOCIAL DEVELOPMENT MANAGEMENT PLAN (“**SDMP**”).]

Section 49. Pre-qualification. The Bureau shall thereafter identify the top three (3) proposals and shall recommend the same to the Council for deliberation.

Section 50. Deliberation of the proposals. After the Bureau's transmittal of its recommendations to the Council together with all the submitted documents for the pre-qualification, the Council shall initiate the deliberation process of the pre-qualified proposals.

Immediately thereafter, Section 26 and 27 of the Local Government Code on consultation and consent shall be strictly adhered to. Local government units at all levels shall conduct mandatory public hearings with the affected local communities, to be carried out within their respective territories and presenting those enumerated under Section 47. Local government units, ICCs/IPs, NGO's and peoples organizations, shall ensure that the mining applicant shall comprehensively explain the goals and objectives of the project or program, its negative and positive impact upon the people and the community in terms of social, cultural and environmental or ecological balance, and the measures that will undertaken or prevent or minimize the adverse effects thereof. Thereafter, the approval of the respective sanggunians of the affected local government units shall be required in accordance to the sentiment of the peoples of the local government units as a result of the consultations conducted.

Provided, that the affected local government unit representatives shall meet and shall relay the decision of their respective constituents to the provincial government/independent component cities/highly urbanized cities. The provincial/component city/highly urbanized city government representative shall sit in the Council and shall carry the result of the vote of all the affected local government units within the province/independent component city/highly urbanized city resulting from the process provided in the preceding paragraph of this Section.

In determining which proposal is acceptable to the people, a majority vote of the local government units within the province/independent component city/highly urbanized city shall be required.

The affected ICCs/IPs shall also deliberate on the proposals in accordance with their own systems and processes free from any external manipulation, interference, coercion and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

After the respective processes are complied with, the Council shall then meet and decide which proposal, if any, is most acceptable and consistent with their own socio-economic, environmental and cultural programs and shall notify the Bureau of the chosen proposal.

[CHAMBER OF MINES COMMENT:

THIS REQUIRES THE STRINGENT APPROVAL/CONSENT OF THE LOCAL GOVERNMENT UNITS, WHICH IS NOT REQUIRED BY THE LOCAL GOVERNMENT CODE. CERTAINLY, THIS SECTION CAN BE ABUSED.]

Section 51. Posting and Publication Requirement. After notice, the Bureau shall notify the proponent of the accepted proposal and cause the publication and posting of the accepted proposal.

Provided, that any member of the community may contest the decision of the Council within six (6) weeks upon the posting and publication of notice of the acceptance of the proposal in the manner provided in Section 41. No mining operations shall be allowed to be conducted pending any action questioning the legality or validity of the proposal.

[CHAMBER OF MINES COMMENT:

THE SECOND PARAGRAPH OF THE ABOVE SECTION IS AGAIN TOO HARSH, UNFAIR, TEDIOUS AND PRONE TO ABUSE AS IT PROHIBITS ANY MINING ACTIVITY AS LONG AS ANY MEMBER OF THE COMMUNITY QUESTIONS THE DECISION OF THE COUNCIL ALLOWING THE SAME.]

Section 52. Issuance of the permit. After the six (6) weeks from the date of the posting and publication, if no contest is filed, the Bureau shall issue a permit in accordance with the decision of the Council on the winning proposal.

[CHAMBER OF MINES COMMENT:

THE PROPOSED PROCEDURE FOR THE ISSUANCE OF THE PERMIT REFLECTS A BIDDING PROCESS WITH THE GOVERNMENT AUCTIONING OUT THE MINERAL AREAS. THE APPROVAL IS BASED ON MAJORITY VOTES AND NOT FOCUSED ON THE QUALIFICATION, CAPABILITY AND COMPETENCE OF THE PROPONENT OF THE PROJECT. FURTHERMORE, THE BIDDING PROCESS REMOVES THE PRIORITY RIGHTS OF ANY OF THE APPLICANTS.

UNFORTUNATELY, THE GROUP WHICH PLAYS A SIGNIFICANT ROLE IN THE PROCESS IS THE COUNCIL THAT DOES NOT HAVE THE TECHNICAL CAPABILITY TO MAKE THE VARIOUS IMPORTANT DECISIONS. THE COMPOSITION OF THE COUNCIL REFLECTS THAT THERE IS NO REQUIRED EDUCATIONAL OR PROFESSIONAL REQUIREMENT OF THE MEMBERS OF THE COUNCIL, OR REQUIRED EXPERIENCE IN THE MINING INDUSTRY. IT MAY ACTUALLY TURN OUT THAT THE MAJORITY OF THE MEMBERS WILL BE POLITICAL LEADERS, WHO MAY HAVE TO BE REPLACED IN ELECTIONS EVERY THREE YEARS. BY THIS REASON, THERE WILL BE NO LONG TERM VISION/GOAL OR POLICY FOR THE MINING INDUSTRY BUT SUCH WILL BE DEPENDENT ON WHO SITS CURRENTLY IN THE COUNCIL. ALSO, WITH MAJORITY OF THE POLITICAL LEADERS AS MEMBERS, THE EXERCISE UNDERTAKEN MAY BE AN EXERCISE WHERE DECISIONS ARE BEING MADE AND COMPROMISES ARE BEING NEGOTIATED FOR POLITICAL REASONS.

THE LACK OF TECHNICAL EXPERTISE BY THE COUNCIL BECOMES APPARENT AS THE BILL ITSELF PROVIDES THAT THE COUNCIL SHALL FIX THE MINIMUM CAPITALIZATION REQUIREMENT “UPON REFERENCE TO AN INDEPENDENT STUDY PROPOSING SUCH MINIMUM CAPITALIZATION.”

THE PROCEDURE IS ALSO LENGTHY AND COMPLICATED, WITH VARIOUS STEPS REQUIRED FROM DIFFERENT GROUPS. AND, EVEN AFTER GOING THRU THE LENGTHY AND COMPLICATED PROCESS AND THE COUNCIL MAKES A DECISION, THIS BILL PROVIDES THAT ANY MEMBER OF THE COMMUNITY MAY CONTEST THE COUNCIL’S DECISION. THE GROUNDS FOR QUESTIONING THE DECISION ARE NOT EVEN SPECIFIED AND LIMITED DESPITE THE NUMEROUS MANDATORY CONSULTATIONS REQUIREMENTS AND THE FAVORABLE SANGGUNIAN ENDORSEMENTS REQUIRED PRIOR TO THE COUNCIL’S DECISION. SIGNIFICANTLY, MINING SHALL NOT BE ALLOWED PENDING ANY ACTION QUESTIONING THE LEGALITY OR VALIDITY OF THE PROPOSAL. TAKING NOTE OF HOW PROTRACTED COURT PROCEEDINGS ARE IN THE PHILIPPINES (DUE TO CLOGGED COURT DOCKETS, LACK OF COURT PERSONNEL ETC...), IT APPEARS THAT THERE WILL NEVER BE AN END TO THIS “APPROVAL PROCESS”. THUS, WHILE A MINING COMPANY IS ALREADY REQUIRED UPFRONT TO PRESENT COMPLIANCE WITH REQUIREMENTS ON FINANCIAL CAPABILITY, MINING OPERATION WORK PLANS AND MANY OTHER REQUIREMENTS DURING THE PRE-SCREENING PROCESS, THE SAID COMPANY WILL STILL HAVE TO WAIT IT OUT THRU A LENGTHY APPROVAL PROCESS AND POSSIBLE COURT PROCEEDINGS.

THE POSTING AND PUBLICATION REQUIREMENT UNDER SEC. 51 IS TOO LATE. IT SHOULD BE MADE EARLY ON IN THE PROCESS SO THAT THOSE WHO HAVE ISSUES CAN ALREADY RAISE THEM UP EARLY IN THE PROCEEDINGS AND NOT ONLY AFTER A DECISION IS MADE BY THE COUNCIL. THE POSTING REQUIREMENT SHOULD BAR SUBSEQUENT CONTESTS TO THE APPROVED PERMIT.]

Section 53. Environmental and Social Impact Compliance Certificate. The mining proponent shall be issued an Environmental and Social Impact Compliance Certificate by the Bureau with the approval of Council.

Provided, that the Council and the Bureau shall be notified of any amendments to the ESIPMP and that the former should give their consent to the same, after the proponent explaining in detail the reason for such amendment and the possible impacts and consequences of these amendments.

Provided further, that any violation of the ESIPMP shall cause the cancellation of the Certificate.

[CHAMBER OF MINES COMMENT:

THERE IS A NEED TO CLARIFY PROPOSAL THAT THE “VIOLATION OF ESIPMP SHALL CAUSE THE CANCELLATION OF THE CERTIFICATE”. THE ECC OR THE EESICC IS NOT A PERMIT BUT A PLANNING TOOL FROM WHICH THE DETAILED PLAN (ESIPMP) WILL BE BASED ON. AND, IN REALITY, A PLAN SUCH AS THE ESIPMP MAY BE IMPLEMENTED IN PHASES DEPENDING ON THE STAGE OF THE PROJECT. THUS, IT IS NOT VERY CLEAR WHY ONE CAN VIOLATE A PLAN.]

Section 54. Maximum Areas for Mineral Agreements. The maximum area under mineral agreements that a person can hold at any one time shall be determined by the Council. *Provided*, the contract area per agreement shall not exceed five hundred (500) hectares. *Provided further*, that no person shall be awarded in excess of the total contract area of seven hundred fifty (750) hectares in any given watershed area. For the purposes of this Act, the prohibition on the maximum area shall also included corporations that shall have common directors or significant shareholders.

[CHAMBER OF MINES COMMENT:

THE TECHNICAL EXPERTISE OF THE COUNCIL TO DETERMINE MAXIMUM AREAS TO BE HELD UNDER MINERAL AGREEMENTS IS NOT SHOWN. AT ANY RATE, THE PROPOSED LIMITATION OF 500 HECTARES FOR EACH MINERAL AGREEMENT IS PRACTICALLY INSUFFICIENT AND TOO SMALL. MINING INVESTORS TARGET MINING AREAS AT LEAST 16,000 HECTARES.

THIS SECTION DEFEATS ECONOMIES OF SCALE. THERE IS NO VALID REASON TO REDUCE THE MPSA AREA IN MANNER AS THE PROPOSAL STATES (I.E. 500 HEC/MPSA BUT NOT TO EXCEED 700 HEC PER PERSON/OPERATOR.) AND TO LIMIT ITS TERM PERIOD TO 5 YEARS TWICE RENEWABLE FOR 5 YEAR TERMS EACH. WITH THE EXORBITANT FEES, TAXES AND ROYALTIES IMPOSED IN THE BILL, THERE COULD NOT BE ANY PAYBACK AT ALL.]

Section 55. Term of Mineral Agreement. The term of the mineral agreement shall be equivalent to be mine life plus an additional five (5) years for the rehabilitation of the mining area. *Provided*, that in no case shall a Mineral Agreement have a term beyond fifteen (15) years *provided further*, that the contractor should already include rehabilitation/remediation of the mining area within the ten-year term.

In no case shall a Mineral Agreement be extended without just cause to be determined by the Council, *provided*, that the extension shall not cause the term of the agreement to exceed he fifteen (15) year term mentioned in the preceding section. *Provided further*, that for the purposes of this act, just cause shall mean acts or events resulting from war, force majeure or those beyond the control of the mining proponent not attributable to the same.

Provided finally, that in no case shall mineral agreements be renewed after the expiration of the fifteen year period.

[CHAMBER OF MINES COMMENT:

THE 15-YEAR LIMITATION ON THE TERM OF THE MINERAL AGREEMENT IS CLEARLY NOT SUFFICIENT AND HAS NO SCIENTIFIC BASIS. IT LIMITS THE PROPONENT'S OPPORTUNITY TO MAXIMIZE ITS INVESTMENT/CAPITALIZATION (WITH VERY LIMITED GROUNDS FOR EXTENSION). BY HISTORY IN THE PHILIPPINES ALONE, MINING OPERATIONS CAN LAST FOR 50 TO A HUNDRED YEARS IN OPERATION. THIS MAY BE VERY IDEAL FOR SMALL MINE AREAS BUT STILL, THE FIVE YEARS REHABILITATION AFTER MINE LIFE MAY ACTUALLY BE SHORT.

IN THE EVENT THAT A MINERAL RESERVE IS FOUND TO BE A HUGE ONE WITH A 25-YEAR MINE LIFE AND THE MINERAL AGREEMENT IS LIMITED TO 15 YEARS, WHAT SHOULD BE DONE TO THE REMAINING 10-YEAR MINE LIFE? THIS IS CONSIDERING THAT THE "JUSTIFIABLE CAUSES" FOR AN EXTENSION ARE LIMITED TO FORCE MAJEURE AND SIMILAR INCIDENTS.

NOT ONLY IS THE 15-YEAR TERM LIMIT TOO SHORT, IT VIOLATES SEC 2, ARTICLE XII OF THE CONSTITUTION WHICH STATES THAT "SUCH AGREEMENTS MAY BE FOR A PERIOD NOT EXCEEDING TWENTY-FIVE YEARS, RENEWABLE FOR NOT MORE THAN TWENTY-FIVE YEARS, AND UNDER SUCH TERMS AND CONDITIONS AS MAY BE PROVIDED BY LAW." CONGRESS MAY NOT DISALLOW WHAT THE CONSTITUTION ALLOWS.]

Section 56. Failure to initiate mining operations in accordance with the work program within two (2) years from the award of the mineral agreement shall cause the cancellation of the mineral agreement. The contractor thereafter forfeits the value of the improvements made upon the land. The contractor and other corporations who are also run by the same directors and officers are thereafter banned from bidding to conduct mining operations for ten (10) years after failure to initiate its mining operations in accordance with the work program.

[CHAMBER OF MINES COMMENT:

THE UNILATERAL AND AUTOMATIC CANCELLATION OF AGREEMENT FOR FAILURE TO COMMENCE IN 2 YEARS COMBINED WITH THE 10-YEAR BAN FROM BIDDING, WITHOUT ANY EXCEPTION GRANTED FOR CERTAIN REASONABLE CIRCUMSTANCES, APPEARS TO BE CONFISCATORY AND UNREASONABLE, ESPECIALLY CONSIDERING THAT THE FEASIBILITY OF A PROJECT DEPENDS TO A LARGE EXTENT ON METAL PRICES WHICH ARE BEYOND THE CONTRACTOR'S CONTROL.

THIS SECTION MUST NOT IMPOSE A HARD-LINE RULE. IF JUSTIFIED BY CIRCUMSTANCES, THE MPSA MUST NOT BE CANCELLED EVEN IF THE OPERATOR WAS NOT ABLE TO START HIS WORK WITHIN TWO YEARS.]

Section 57. Mandatory consultations in each mining phase. Mandatory consultations shall be undertaken in each phase of mining operations; exploration, extraction, processing, and mine

closure to ensure that the peoples shall be informed of the proposed plans and methods that are proposed to be conducted.

[CHAMBER OF MINES COMMENT:

THE CONSULTATION REQUIREMENT IS REASONABLE. IN FACT, THE CURRENT GUIDELINES ON MINE CLOSURE PLANNING ALREADY REQUIRE CONSULTATIONS. EXTRACTION AND PROCESSING NORMALLY HAPPENS SIMULTANEOUS, HOWEVER, SO THAT THESE SHOULD BE PUT TOGETHER UNDER ONE CATEGORY SUCH AS “OPERATIONS”.

MANDATORY FPIC AND CONSULTATIONS SHOULD BE FOR THE ENTIRE SERIES OF MINING ACTIVITIES, AS A PACKAGE, IF THE PROPONENT SO DESIRES, AND NOT AS A SEPARATE PHASES/STAGE AS PROVIDED FOR UNDER THIS SECTION. NOT ONLY IS IT TOO HARSH, TEDIOUS, ONEROUS AND CUMBERSOME, BUT IS LARGELY SUBJECT TO ABUSE.]

Section 58. FPIC of ICCs/IPs on each stage of operation. The free and prior informed consent of the ICCs/IPs shall be required at each and every stage of the mining operations. Free and prior informed consent shall be secured in accordance with the laws, practices and processes of the concerned ICCs/IPs. The violation of any of the conditions imposed by the ICCs/IPs on the contractor shall cause the cancellation of the mineral agreement. Included in this process is the explanation of the rights of ICCs/IPs of ownership and self-determination.

[CHAMBER OF MINES COMMENT:

REQUIRING FPIC AT EVERY STAGE OF THE MINING OPERATION IS ANOTHER MATTER AND IS UNREASONABLE. THIS WOULD MEAN THAT THE MINING PROJECT MAY NOT PROCEED EVEN IF AN AGREEMENT IS ALREADY SIGNED BY THE PARTIES AND THE CONTRACTOR HAS ALREADY INVESTED SO MUCH IN THE CONSTRUCTION PHASE OF THE PROJECT IF THE IPS/ICCS DECIDE TO WITHHOLD FPIC PRIOR TO COMMENCEMENT OF COMMERCIAL OPERATIONS. CURRENTLY, MANY APPLICATIONS ARE STALLED BECAUSE OF DIFFICULTY IN SECURING THE FPIC, HOW MUCH MORE IF IT IS REQUIRED AT EVERY STAGE OF THE OPERATION?

THE RIGHTS OF ICCS/IPS ARE ALREADY SUFFICIENTLY PROTECTED WHEN FPIC IS OBTAINED PRIOR TO THE EXECUTION OF THE AGREEMENT.]

Section 59. Consent of private landowners. No person shall be allowed entry into private lands without the written consent of the landowners, possessors or lawful occupants of the land and/or the FPIC of the ICC/IP.

[CHAMBER OF MINES COMMENT:

ENTRY INTO PRIVATE LANDS SHOULD BE EITHER WITH THE WRITTEN CONSENT (WHICH MEANS PURSUANT TO VOLUNTARY AGREEMENT BETWEEN THE PARTIES) OR PURSUANT TO AN ORDER FROM THE AUTHORIZED BODY AS DISCUSSED IN THE FOLLOWING SECTION.

THIS SECTION IS RESTRICTIVE, PROHIBITORY AND PRONE TO ABUSE. ONE MUST ONLY CONSIDER THE FACT THAT THE OPERATOR/PROponent OF ANY MINING

ACTIVITY IS ONLY ACTING FOR AND IN BEHALF OF THE STATE WHICH TRULY OWNS THE MINERALS.]

Section 60. Expropriation. Expropriation proceedings shall be filed with the regular courts to determine whether the taking of private property for mining purposes shall meet a public purpose and to determine just compensation.

[CHAMBER OF MINES COMMENT:

THE PROPOSAL TO VEST THE DETERMINATION OF PUBLIC USE AND COMPENSATION WITH THE COURTS AT THE FIRST INSTANCE THRU EXPROPRIATION PROCEEDINGS WOULD FURTHER CLOG THE COURT DOCKETS AND RESULT IN DELAY OF A MINING COMPANY'S ENTRY INTO THE MINING AREA. FURTHERMORE, THE ADJUDICATION OF CONFLICTS IN RESPECT OF MINING CONTRACTOR'S EASEMENT RIGHTS AND THE PAYMENT OF PROPER AND FAIR COMPENSATION OR THE EXERCISE OF SUCH RIGHTS INVOLVE MATTERS REGULATED IN SUBSTANTIAL DETAIL BY THE MINING LAWS OF WHICH THE PRESUMED EXPERTISE OF THE PANEL OF ARBITRATORS/MINES ADJUDICATORY BOARD IS ENTIRELY APPROPRIATE. THERE IS REASONABLE BASIS TO EXPECT THAT A SPECIAL ADMINISTRATIVE BODY WOULD BE BETTER EQUIPPED THAN THE REGULAR COURTS TO DETERMINE TECHNICAL QUESTIONS. AT ANY RATE, THE DECISION OF THE PANEL AND THE BOARD ARE ULTIMATELY SUBJECT TO JUDICIAL REVIEW BY THE COURTS.]

Section 61. Multi-partite Monitoring. The Council shall form a multi-partite monitoring team to monitor compliance by the contractor of the terms and conditions of the mineral agreement. It may conduct ocular inspections of the contract area at any time of the day and night. It shall also inspect all the books of contractors and refer the same to independent auditors. The Multi-partite monitoring team and/or the Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Council, the Director or the local government authorities may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernment organization (NGO) or any qualified person to police all mining activities.

[CHAMBER OF MINES COMMENT:

IT IS CONFUSING THAT THERE IS A LARGE NUMBER OF AGENCIES AND GROUPS THAT WILL HAVE SUPERVISION OF THE CONTRACTOR AND THE PROJECT AND THE AUTHORITY GRANTED TO EACH GROUP IS BROAD AND NOT CLEAR. THERE IS SUPPOSED TO BE A MULTI-PARTITE MONITORING TEAM, WHICH HAS THE POWER TO INSPECT BOOKS AND TO CONFISCATE BONDS - A POWER THAT IT SHARES WITH THE BUREAU. AT THE SAME TIME, ANY MEMBER OF THE PNP, BARANGAY, DULY REGISTERED NGO OR ANY QUALIFIED PERSON CAN BE DEPUTIZED BY THE COUNCIL, DIRECTOR OR THE LOCAL GOVERNMENT AUTHORITIES. ONE CAN GET EASILY CONFUSED ON HOW THE ORGANIZATIONAL SET-UP IS AND HOW THE ABOVEMENTIONED AGENCIES AND INDIVIDUALS ARE SUPPOSED TO WORK AND EXIST WITH EACH OTHER GIVEN OVERLAPPING BROAD POWERS.

UNDER CURRENT MINING LAWS, THERE IS A MONITORING TEAM THAT IS SPECIFICALLY TASKED TO MONITOR IMPLEMENTATION OF THE EPEP, THE BUDGET UTILIZATION AND THE EPEP IMPLEMENTATION. THE COMPOSITION OF THIS MONITORING TEAM AND THE TASKS ARE CLEAR.

FOR NO APPARENT REASON, THE MINING INDUSTRY/MINING CONTRACTOR IS NOT LIKEWISE REPRESENTED IN THE MULTI-PARTITE MONITORING CREATED UNDER THIS SECTION.]

Section 62. Withdrawal from the Mineral Agreement. The contractor may withdraw from the mineral agreement at any time for justifiable cause with one (1) month's notice to the Bureau, the Council and/or the ICCs/IPs, and other government agencies as may be provided by law. The Council, in cooperation with other concerned government agencies, shall issue a clearance for withdrawal upon certifying that the contractor has complied with all its legal obligations, including the appropriate measures for mine closure and rehabilitation. Funds and bonds which have been put up by the contractor in accordance with this Act shall be forfeited.

[CHAMBER OF MINES COMMENT:

THE WITHDRAWAL OF A CONTRACTOR FROM THE PROJECT SHOULD BE FOR ANY REASON AND SHOULD NOT BE SUBJECT TO APPROVALS BY VARIOUS BODIES INASMUCH AS ALL BONDS AND FUNDS PUT UP BY THE CONTRACTOR ARE GOING TO BE FORFEITED BY WAY OF PENALTY. FURTHERMORE, ASSUMING THERE IS FORFEITURE OF THE BONDS BY WAY OF PENALTY, THE FORFEITURE SHOULD NOT BE ABSOLUTE BUT MERELY COMMENSURATE AND TO THE EXTENT THAT THE MINING CONTRACTOR HAS PROCEEDED WITH THE PROJECT (E.G., THE CONTRACTOR MAY HAVE ONLY COMMENCED CONSTRUCTION PHASE; THUS, NO MEASURES FOR MINE CLOSURE AND REHABILITATION NEEDED.)]

Section 63. Non-transferability of Mineral Agreements. In no case shall mining rights under this Act be transferrable. The contractor shall also notify the Council and the Bureau of any substantial change in the ownership and/or control of the corporation.

[CHAMBER OF MINES COMMENT:

NON-TRANSFERABILITY OF RIGHTS WILL DISCOURAGE POTENTIAL MINING PROPONENTS AS IT PERPETUALLY BINDS THE ENTITY TO THE PROJECT (GIVEN THE CAPITAL-INTENSIVE AND TECHNOLOGY-INTENSIVE NATURE OF THE PROJECT) AND RESTRICTS THE FUTURE FINANCIAL STRATEGIES AVAILABLE TO THE COMPANY. BECAUSE THE GOAL IS TO ENSURE THAT THE TRANSFEREE IS ABLE TO COMPLY WITH THE OBLIGATIONS UNDER THE AGREEMENT, THE BETTER POLICY IS TO ALLOW TRANSFER OF ASSIGNMENT OF RIGHTS SUBJECT TO GOVERNMENT APPROVAL, AS CURRENTLY PROVIDED FOR IN THE MINING ACT.]

Section 64. Access to Information. All contractors for mineral permits and agreements shall provide information to affected indigenous peoples, local communities, local governments. The following information, among others, shall be required.

- (a) full disclosure of methods and processes of mining
- (b) full disclosure of environmental and social risks
- (c) full disclosure of ownership structure

(d) full disclosure of financial sources

All information and documents related to proposals, mineral agreements, permits and mining operations shall not be considered confidential.

Refusal to grant access to this information shall be cause for the disqualification of prospective proponents or cancellation of mineral agreements and permits.

The Bureau, being the repository of all relevant information under this Act is mandated to grant access to the public of any information in its custody. Refusal or unnecessary delay by the officers of the Bureau to give information shall be punishable by a fine of fifty thousand pesos (Php50,000.00) for every instance of refusal or unnecessary delay.

Information requested by indigents or marginalized sectors shall be given to them for free.

[CHAMBER OF MINES COMMENT:

THE PROPOSED REQUIREMENT IS TANTAMOUNT TO FULL DISCLOSURE/TOO MUCH TRANSPARENCY, WHICH MAY BE MORE STRINGENT THAN DISCLOSURE REQUIREMENTS OF PUBLIC OR LISTED COMPANIES. THE BREADTH OF THE COVERAGE OF THE INFORMATION COVERS THE ENTIRE BUSINESS OF THE CONTRACTOR AND THIS WILL POTENTIALLY VIOLATE THE CONTRACTOR'S INTELLECTUAL PROPERTY RIGHTS, TRADE SECRETS AND POSSIBLE CONFIDENTIALITY UNDERTAKINGS WITH RESPECT TO ITS DEALINGS WITH OTHER PARTIES. MINING COMPANIES ARE THEN SINGLED OUT AND PUT ON THE SPOTLIGHT AND THERE APPEARS TO BE NO PUBLIC POLICY FOR THE REQUIREMENT. IN FACT, OTHER INDIVIDUALS WOULD BE IN BETTER STANDING COMPARED TO THE STOCKHOLDERS OF THE CONTRACTOR IN DEMANDING RELEASE OF INFORMATION.

THE CURRENT ANNUAL REPORTORIAL REQUIREMENTS OF THE SECURITIES AND EXCHANGE COMMISSION APPLICABLE TO ALL COMPANIES, AND THE NUMEROUS REPORTS BEING SUBMITTED TO THE MINES AND GEOSCIENCES BUREAU UNDER CURRENT MINING LAWS AND RULES SHOULD CONTINUE TO SUFFICE FOR PURPOSES OF DISCLOSING THE NECESSARY INFORMATION TO THE PUBLIC. THESE DOCUMENTS FILED WITH GOVERNMENT AGENCIES ARE PUBLIC DOCUMENTS AND FREE FOR PUBLIC VIEWING.

CONFIDENTIAL AND PROPRIETARY INFORMATION SHOULD BE RESPECTED. THE CONSTITUTION PROHIBITS HEAVY INTRUSION INTO ONE'S PRIVACY EXCEPT IF IT CAN BE CORRELATED TO PROTECTING PUBLIC INTEREST. THE DISCLOSURES REQUIRED BY THE BILL COULD HARDLY PASS THIS TEST.]

**CHAPTER VI
SMALL-SCALE MINING**

Section 65. Small-scale mining shall continue to be governed by the provisions of Republic Act Non. 7076 or the People's Small-Scale Mining Act of 1991, *Provided* that, the powers to appoint members of the Provincial or City Mining Regulatory Board granted under Section 25 of Republic Act No. 7076 to the Regional Executive Director shall be transferred to the appropriate

Council. *Provided further*, that the conduct of small-scale mining shall also comply with the prohibitions and regulations established herein for large-scale mining. Only individuals and cooperatives may apply for a small-scale mining permit.

[CHAMBER OF MINES COMMENT:

THE REQUIREMENT OF COMPLYING WITH THE PROHIBITIONS AND REGULATIONS FOR LARGE-SCALE MINING IS CUMBERSOME AND FAILS TO RECOGNIZE THE INHERENT DIFFERENCES BETWEEN, AND SEPARATE BENEFITS ARISING FROM, LARGE-SCALE AND SMALL-SCALE MINING.

SECTION 65 STATES THE APPLICABILITY OF R.A. 7076 FOR SMALL-SCALE MINING. IN ADDITION, IT PROVIDES THAT: (1) THE POWER TO APPOINT MEMBERS TO THE PROVINCIAL OR CITY MINING REGULATORY BOARD ARE TRANSFERRED TO THE MULTI-SECTORAL MINERAL COUNCIL; AND (2) THE CONDUCT OF SMALL-SCALE MINING SHALL COMPLY WITH THE PROHIBITIONS AND REGULATIONS ESTABLISHED FOR LARGE-SCALE MINING.

WITH REGARD TO THE COUNCIL, THE OBJECTIONS THERETO ARE REITERATED, SUCH AS ITS IMPRACTICABILITY AND THE FAILURE TO JUSTIFY THE TRANSFER OF POWER FROM THE DENR (SEE SIMILAR COMMENTS ON SECTION 38). THE REQUIREMENT OF COMPLYING WITH THE PROHIBITIONS AND REGULATIONS FOR LARGE-SCALE MINING IS CUMBERSOME AND FAILS TO RECOGNIZE THE INHERENT DIFFERENCES BETWEEN, AND SEPARATE BENEFITS ARISING FROM, LARGE-SCALE AND SMALL-SCALE MINING.]

Section 66. Maximum term of small-scale mining permits. The term for small-scale mining permits shall be three (3) years, extendible to a maximum of fifteen (15) years.

[CHAMBER OF MINES COMMENT:

THIS SECTION INCREASES THE VALIDITY OF A SMALL-SCALE MINING PERMIT FROM 2 YEARS TO 3 YEARS. ACCORDINGLY, THE PROVISION REMOVES THE BURDEN OF HAVING TO CONSTANTLY APPLY FOR A PERMIT. WHILE THIS IS AN ACCEPTABLE PROVISION, IT IS NOT PRACTICAL TO CHANGE THE ENTIRE LAW SIMPLY FOR THIS SOLE PROVISION. THIS ALSO UNDULY RESULTS IN AN AMENDMENT OF REPUBLIC ACT NO. 7076 OR THE PEOPLE'S SMALL SCALE MINING ACT.]

Section 67. Traditional small-scale mining within ancestral domains. The Council shall conduct regular monitoring activities within its jurisdiction to determine if the provisions of relevant laws are complied with in traditional small-scale mining by ICCs/IPs within their respective ancestral domains.

Section 68. Small-scale mining within ancestral domain by any person shall also require the free, prior informed consent of ICCs/IPs.

[CHAMBER OF MINES COMMENT:

THE ABOVE TWO SECTIONS ARE UNNECESSARY. THESE PROVISIONS ARE

ALREADY COVERED BY EXISTING LAW, SUCH THAT: (1) SECTION 7 OF RA 7076 ALREADY REQUIRES THE CONSENT OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES (ICC/IP) PRIOR TO THE GRANTING OF A PERMIT; AND (2) THE IPRA CONTINUES TO PROTECT THE RIGHTS OF ICC/IP TOWARDS THEIR ANCESTRAL DOMAINS.]

Section 69. Environmental measures in small-scale mining. The State shall immediately address the environmental and health problems in small-scale mining, including the use of hazardous chemicals, such as mercury and cyanide, in the amalgamation of gold by small-scale miners.

Section 70. Prohibition on the use of mercury. Mercury use in small-scale mining shall be prohibited. The Bureau shall research, develop and actively promote appropriate technologies in small-scale mining including labor-intensive methods, environmental protection and physical techniques of gold extraction among small-scale miners.

[CHAMBER OF MINES COMMENT:

THE ABOVE TWO SECTIONS REQUIRE THE ADDRESSING OF ENVIRONMENTAL CONCERNS. THESE ARE APTLY COVERED BY EXISTING LEGISLATION ON THE ENVIRONMENT. FURTHERMORE, THESE SECTIONS INCLUDE POLICY STATEMENTS THAT MERELY REITERATE THE NEED TO PROTECT THE ENVIRONMENT AND DEVELOP OTHER TECHNOLOGIES FOR ENVIRONMENTAL PROTECTION.]

Section 71. The state shall support the improvement of the livelihood of small-scale miners by extending the services for access to other more viable and sustainable forms of livelihood, and, if the same is not possible, the following support services:

- (a) access to minerals markets and to financing;
- (b) facilitating partnership with mining companies or contractors by, among others, requiring mining companies to buy tailings from small-scale mining operations for further processing or recycling;
- (c) facilitating partnership among small-scale mining cooperatives; and
- (d) other incentives to attract informal small-scale miners to formalize their status.

[CHAMBER OF MINES COMMENT:

AGAIN, THIS SECTION IS MERELY A POLICY STATEMENT THAT IS UNNECESSARY. EVEN THE CONSTITUTION MANDATES THE PROTECTION OF ALL FILIPINO LABORERS AND THE NEED TO UPLIFT THEIR LIVES.]

Section 72. The Central Bank shall ensure that buying stations acquire gold from small scale traders at reasonable rates and quantities.

[CHAMBER OF MINES COMMENT:

THIS SECTION FAILS TO PROVIDE ADEQUATE STANDARDS IN DETERMINING THE TEST OF REASONABLENESS. THE PROVISION ALSO IMPAIRS THE CONDUCT OF

FREE TRADE AND FAILS TO CONSIDER THAT GOLD IS NOT A PRIMARY COMMODITY THAT REQUIRES PRICE CONTROL.]

CHAPTER VII QUARRY RESOURCES

Section 73. Gathering of quarry resources, sand and gravel, guano and other organic fertilizer materials, and gemstones within ancestral domains shall likewise be subject to the free prior informed consent of ICCs/IPs. ICCs/IPs and the government shall be entitled to at least ten percent (10%) of royalties depending on whether the resources are found inside or outside ancestral domains. Permits shall be limited to a maximum term of five (5) years, renewable for like periods but not exceeding a total term of twenty five (25) years, and a maximum area of five (5) hectares.

[CHAMBER OF MINES COMMENT:

IPS/ICCS ARE ALREADY PROTECTED BY EXISTING LAWS, FOREMOST OF WHICH IS THE IPRA, WHICH REQUIRES THEIR PRIOR CONSENT BEFORE THE DEVELOPMENT OR EXPLOITATION OF NATURAL RESOURCES WITHIN THEIR ANCESTRAL DOMAINS. ACCORDINGLY, IT IS NOT NECESSARY FOR ANOTHER LAW THAT REQUIRES PERMISSION FROM THE IP/ICC TO DEVELOP QUARRYING RESOURCES IN THE ANCESTRAL DOMAIN.

CONSISTENT WITH THE PROPOSITION IN EARLIER SECTIONS OF THIS BILL THAT NATURAL RESOURCES FOUND INSIDE ANCESTRAL DOMAINS ARE PRIVATELY OWNED BY THE ICC/IP CONCERNED, THE GOVERNMENT WILL NOT HAVE A SHARE OF ROYALTIES IF THE QUARRYING RESOURCES ARE FOUND INSIDE AN ANCESTRAL DOMAIN. THE PROPOSITION (THAT QUARRYING RESOURCES INSIDE AN ANCESTRAL DOMAIN ARE OWNED BY INDIGENOUS PEOPLES) IS AGAINST THE PHILIPPINE CONSTITUTION FOR VIOLATING THE REGALIAN DOCTRINE.

THE PROVISION ON ROYALTIES IS ALSO UNCLEAR IN SO FAR AS IT REFERS TO THE SHARE OF THE GOVERNMENT, WITHOUT DISTINGUISHING BETWEEN THE NATIONAL OR LOCAL GOVERNMENT. UNDER EXISTING LAWS, BOTH THE NATIONAL AND LOCAL GOVERNMENT BENEFIT FROM QUARRYING RESOURCES, IN THE FORM OF TAXES AND FEES.

THE TERM AND SIZE LIMIT FOR THE QUARRYING PERMIT IS THE SAME WITH (THE MINING ACT. ACCORDINGLY, THE AMENDMENT IS NOT NECESSARY.]

Section 74. Quarry Permit. Any qualified person may apply to the provincial/city mining regulatory board for a quarry permit on privately-owned lands except ancestral domains and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground. The provincial governor shall grant the permit after the applicant has complied with all the requirements as prescribed by the rules and regulations.

The maximum area which a qualified person may hold at any one time shall be five hectares (5 has); *Provided*, That in large-scale quarry operations involving cement raw materials, marble, granite, sand and gravel and construction aggregates, a qualified person and the government may enter into a mineral agreement as defined herein.

A quarry permit shall have a term of five (5) years, renewable for like periods but not to exceed a total term of twenty-five (25) years. No quarry permit shall be issued or granted on any area covered by a mineral agreement.

Section 75. Quarry Fee and Taxes. A permittee shall pay a quarry fee as provided for under the implementing rules and regulations. The permittee shall also pay the excise tax as provided by pertinent laws.

Section 76. Cancellation of Quarry Permit. A quarry permit may be cancelled by the provincial governor for violations of the provisions of this Act or its implementing rules and regulations or the terms and conditions of said permit: *Provided, That* before the cancellation of such permit, the holder thereof shall be given the opportunity to be heard in an investigation conducted for the purpose.

Section 77. Commercial Sand and Gravel Permit. Any qualified person may be granted a permit by the provincial governor to extract and remove sand and gravel or other loose or unconsolidated materials outside ancestral domains which are used in their natural state, without undergoing processing from an area of not more than five hectares (5 has.) and in such quantities as may be specified in the permit.

Section 78. Industrial Sand and Gravel Permit. Any qualified person may be granted an industrial sand and gravel permit by the Bureau for the extraction of sand and gravel and other loose or unconsolidated materials outside ancestral domains that necessitate the use of mechanical processing covering an area of more than five hectares (5 has.) at any one time. The permit shall have a term of five (5) years, renewable for a like period but not to exceed a total term of twenty-five (25) years.

Section 79. Exclusive Sand and Gravel Permit. Any qualified person may be granted an exclusive sand and gravel permit by the provincial governor to quarry and utilize sand and gravel or other loose or unconsolidated materials from public lands for his own use, provided that there will be no commercial disposition thereof.

Section 80. Government Gratuitous Permit. Any government entity or instrumentality may be granted a gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials outside ancestral domains needed in the construction of building and/or infrastructure for public use or other purposes over an area of not more than two hectares (2 has.) for a period conterminous with said construction.

Section 81. Private Gratuitous Permit. Any owner of land may be granted a private gratuitous permit by the provincial governor to extract sand and gravel, quarry or loose unconsolidated materials within his property.

Section 82. Guano Permit. Any qualified person may be granted a guano permit by the provincial governor to extract and utilize loose unconsolidated guano and other organic fertilizer materials in any portion of a municipality where he has established domicile outside ancestral

domains. The permit shall be for specific caves and/or for confined sites with locations verified by the Department' field officer in accordance with existing rules and regulations.

Section 83. Gemstone Gathering Permit. Any qualified person may be granted a non-exclusive gemstone gathering permit by the provincial governor to gather loose stones useful as gemstones in rivers and other locations outside ancestral domains.

[CHAMBER OF MINES COMMENT:

SECTIONS 74 TO 83 REPEAT VERBATIM THE CHAPTER ON QUARRY RESOURCES FOUND IN THE MINING ACT. HOWEVER, THE SECTIONS, WHENEVER POSSIBLE, QUALIFY THAT THE PERMITS MAY ONLY BE GRANTED FOR LANDS OUTSIDE THE ANCESTRAL DOMAIN. THE LAW IS THEREFORE INCOMPLETE INsofar AS IT FAILS TO PROVIDE A RULE ON PERMITS FOR DEVELOPING OR EXPLOITING QUARRYING RESOURCES FOUND WITHIN AN ANCESTRAL DOMAIN. SECTION 73 ALLOWS THE QUARRYING OF RESOURCES WITHIN AN ANCESTRAL DOMAIN WITH THE PRIOR CONSENT OF THE IP/ICC CONCERNED. HOWEVER, THE PRESENT CHAPTER FAILS TO SET THE RULE WITH REGARD TO OBTAINING A GOVERNMENT PERMIT.

IT SHOULD BE NOTED THAT SECTION 79 REMOVES THE PREVIOUS EXEMPTION UNDER SECTION 48 OF THE MINING ACT. UNDER THE OLD RULE IN SECTION 48, A MINERAL AGREEMENT OR FINANCIAL TECHNICAL ASSISTANCE AGREEMENT CONTRACTOR NEED NOT OBTAIN A PERMIT TO EXTRACT AND REMOVE SAND, GRAVEL AND OTHER LOOSE MATERIALS WITHIN THE AREA COVERED BY ITS MINING AGREEMENT. THE PROPOSED RULE (OF REQUIRING A PERMIT) IS UNNECESSARY, CONSIDERING THAT WHEN A CONTRACTOR ENGAGES IN QUARRYING OF SAND AND GRAVEL, IT IS ALREADY PURSUING SIMILAR TYPES OF WORK IN THE AREA COVERED BY THE MINING AGREEMENT.

AS A WHOLE, THE SECTIONS MERELY REPEAT THE PROVISIONS IN THE EXISTING LAW. THUS, THE AMENDMENT IS NOT NECESSARY.]

**CHAPTER VIII
TRANSPORT, SALE AND PROCESSING OF MINERALS**

Section 84. Ore Transport Permit. A permit specifying the origin and quantity of non-processed mineral ores or minerals shall be required for their transport. Transport permits shall be issued by the Bureau. The absence of a permit shall be considered as *pram facie* evidence of illegal mining and shall be sufficient cause for the confiscation of the ores or minerals being transported, the tools and equipments utilized, and the vehicle containing the same.

Section 85. Only mining companies with demonstrated capacity and good environmental track record in mineral processing shall be allowed to extract minerals. The Council shall encourage contractors to put up processing plants within the community with the end in view of generating employment and developing other downstream industries.

Section 86. Mineral Trading Registration. No person shall engage in the trading of mineral products, either locally or internationally, unless registered with the Department of Trade and

Industry and accredited by the Department, with a copy of said registration submitted to the Bureau.

Section 87. Mineral Processing Permit. No person shall engage in the processing of minerals without first securing a minerals processing permit from the Council. Minerals processing permits shall be for a period of five (5) years, renewable for like periods but not to exceed a total term of twenty-five (25) years.

[CHAMBER OF MINES COMMENT:

COMPARED TO SEC. 84-87 OF THIS BILL, SEC. 53-56 OF THE MINING ACT IS MUCH BETTER. THERE IS NO REASON TO CHANGE/AMEND/RE-WORD OR RE-PHRASE THE SAME.]

**CHAPTER IX
DEVELOPMENT OF COMMUNITIES, SCIENCE AND TECHNOLOGY**

Section 88. Expenditure for Community Development. A contractor shall assist in the development of the community, and the promotion of the general welfare of its inhabitants towards sustainable development. Community development projects shall in no way decrease the obligation of the corporation with regard to royalties and fees due to communities or local government units.

[CHAMBER OF MINES COMMENT:

COMPARED TO SEC. 88 OF THE BILL, SEC. 57 AND 59 OF THE MINING ACT IS MORE FAIR AND BETTER. THE PROPOSAL IS TOO ONEROUS AND UNCONSCIONABLE SINCE DESPITE THE HIGH AND MANY TAXES, FEES AND FUNDS TO BE SETTLED, IT AFFORDS NO CREDIT FOR WHATEVER IS SPENT FOR COMMUNITY AND SOCIAL DEVELOPMENT PROJECTS.]

Section 89. Employment of Filipinos and training of members of the local community. A contractor shall give preference to Filipino citizens in all types of mining employment within the country. Members of the local community shall be trained in all aspects of the mining operations, including remining, recycling, rehabilitation, and the management thereof.

Section 90. Use of Indigenous Goods, Services and Technologies. A contractor shall give preference to the use of local goods, services and scientific and technical resources in the mining operations, where the same are of equivalent quality and are available on equivalent terms as their imported counterparts.

Section 91. Donation/Turn Over of Facilities. Prior to the cessation of mining operations occasioned by abandonment or withdrawal of operations, on public lands by the contractor, the latter shall have a period of one (1) year therefrom within which to remove improvements; otherwise all the infrastructure, facilities and equipment shall be turned over or donated tax-free to the proper government authorities, national or local, to ensure that said infrastructure facilities and equipment are continuously maintained and utilized by the host and neighboring communities.

CHAPTER X BENEFIT SHARING, TAXES AND FEES

Section 92. Taxes and fees. The contractor shall pay all taxes and fees as required by law, including but not limited to:

- a. contractor's income tax;
- b. customs, duties and fees on imported capital equipment;
- c. value-added tax on imported goods and services;
- d. withholding tax on interest payments on foreign loans;
- e. withholding tax on dividends to foreign stockholders;
- f. documentary stamps taxes;
- g. capital gains tax;
- h. excise tax on minerals;
- i. local business tax;
- j. real property tax;
- k. community tax;
- l. occupation fees;
- m. registration and permit fees;
- n. water usage fees.

Section 93. Government share. Aside from the taxes and fees referred to in the preceding section, Government shall have at least a share equivalent to ten percent (10%) of the gross revenues from the development and utilization of mineral resources that are owned by it to be set aside from the general fund of the government.

Section 94. Indigenous Cultural Communities' Royalty. In case of mineral operations within ancestral domains, the contractor shall pay at least ten per cent (10%) of the gross revenues as royalty to the ICCs/IPs. Community development programs shall not be considered as royalty payment. The payment of the royalties shall directly be given to the communities in a process that build on traditional and customary laws.

Provided, that the royalty established in this Act shall be a minimum royalty payment and may still be subject to other conditions to be agreed by the parties, free from any external manipulation, interference, coercion, and other analogous acts, and obtained after fully disclosing the intent and scope, including the positive and negative impacts of the activity, in a language and process understandable and acceptable to them.

Section 95. Scientific Research and Development Fund. A Scientific Research and Development Fund shall be set aside to be devoted to research and development of clean mining technologies, improvement of mining processes, mine rehabilitation, mitigating technologies, setting up and maintenance of an independent pool of experts, and operational expenses of the Bureau.

Section 96. Legal Support Services Fund. A legal support fund shall be set aside for the use of the communities and local government units for cases that they may file against mining permittees.

Section 97. Local Government Unit Share, Local Government Units shall be entitled to share of the net revenues from mining operations which shall be paid directly to the provincial/independent component city/highly urbanized city treasurer/s for distribution to other

local government units. To determine the government share, the following variables shall be considered:

- a. Classification of local government;
- b. Vulnerability;
- c. Human development index.

A percentage of this amount shall be set aside by the respective local government units for Disaster Risk Management. This fund shall likewise benefit ICCs/IPs within the territory of the local government unit with regard to disaster risk response and other social services.

Provided, that the administrative and operational expenses of the Council shall also be taken from this share.

Section 98. Mine Wastes and Tailings Fees. A semi-annual fee to be known as mine wastes and tailings fee is hereby imposed on all operating mining companies in accordance with the implementing rules and regulations. The mine wastes and tailings fee shall accrue to a fund to be used as support funds for monitoring activities of the Council. The Secretary is authorized to increase mine wastes and tailings fees, when public interest so requires.

Section 99. Incentives. Incentives that shall be given to the contractors shall only be limited to pollution control or mitigation devices or infrastructure, mineral, processing plants and development of downstream industries.

[CHAMBER OF MINES COMMENT:

THE ENTIRE CHAPTER, AS PROPOSED, WILL TOTALLY DISCOURAGE INVESTMENTS IN THE MINING INDUSTRY PARTICULARLY AT THIS TIME WHEN DEVELOPING MINERAL RICH COUNTRIES COMPETE FOR VENTURE CAPITAL AND INVESTMENTS. A SATISFACTORY AND STABLE FISCAL REGIME IS ALMOST ALWAYS A PRE CONDITION FOR PRIVATE INVESTMENT ALONG WITH GEOLOGY AND INFRASTRUCTURE, SECURE TITLE TO MINING RIGHTS, STABILITY IN ENVIRONMENTAL MANAGEMENT, RIGHT TO MARKET MINE PRODUCTS, RIGHT TO ASSIGN, FREEDOM OF COMMERCIAL OPERATION AND INTERNATIONAL ARBITRATION.

ON TOP OF TAXES AND FEES LEVIED TO THE COMPANY AS PROPOSED IN THIS CHAPTER, A GOVERNMENT SHARE OF 10 PERCENT (10%) OF GROSS REVENUES, ANOTHER 10 PERCENT (10%) AS ROYALTY TO THE IPS/ICCS ARE CONSIDERED TOO BURDENSOME. COMPOUNDING THESE PROHIBITIVE PROVISIONS ARE THE NEED TO SET ASIDE A SCIENTIFIC RESEARCH AND DEVELOPMENT FUND, AND LEGAL SUPPORT SERVICES FUND, AND THE ENTITLEMENT OF THE LGUS TO A SHARE OF THE NET REVENUES FROM MINING OPERATIONS WHICH SHALL BE DIRECTLY PAID TO THEM WITH A PERCENTAGE OF THE AMOUNT SET ASIDE FOR DISASTER RISK MANAGEMENT. A SEMI-ANNUAL MINE WASTE AND TAILINGS FEES IS ALSO BEING IMPOSED THAT WILL ACCRUE TO A FUND TO BE USED FOR THE MONITORING ACTIVITIES OF THE COUNCIL. ADDITIONALLY, INCENTIVES ARE LIMITED TO POLLUTION CONTROL DEVICES OR INFRASTRUCTURE, MINERAL PROCESSING PLANTS AND DOWNSTREAM ACTIVITIES.

THE FISCAL REGIME FOR MINERALS CANNOT MOVE TOO FAR OUT OF LINE WITH THAT OF COUNTRIES WITH COMPETING DEPOSITS AND SHOULD AVOID ADDITIONS TO INVESTOR RISK AIMING BOTH AT MORE INVESTMENTS AND HIGHER SHARES OF RENT. IN BALANCING THESE TWO CONSIDERATIONS, MEASURES SUCH AS ACCELERATED DEPRECIATION AND THE IMPOSITION OF FAIR EXCISE TAX/ROYALTY ARE MADE TO FACILITATE EARLY PAYBACK. IN MOST INSTANCES, FOCUS IS MADE ON TAXATION OF PROFIT (NOT INPUTS OR GROSS OUTPUT) THEREBY MINIMIZING PRE-AND POST-TAX RATES OF RETURN. COMMON TAX INSTRUMENTS INCLUDE CORPORATE INCOME TAX, EXCISE/ROYALTY TAX, IMPORT DUTIES AND VAT AND WITHHOLDING PAYMENTS FOR SERVICES. THESE FORM IMPORTANT TAX BASE IN MANY COUNTRIES.

IN MINERAL-RICH ASEAN COUNTRIES, EXCISE/ROYALTY TAX IS IN THE RANGE OF 1.5% TO 3% AND IS NORMALLY BASED ON GROSS REVENUES FOR EASE OF COMPUTATION AND COLLECTION. IN SOUTHERN AFRICA, THE RATES ARE ALSO WITHIN THE SAME RANGE OF 2% - 5%, WITH BOTSWANA AND MOZAMBIQUE IMPOSING 10% ONLY ON DIAMONDS BEING A HIGH VALUE MINERAL. CORPORATE INCOME TAX RATES IN ASEAN AND SOUTH AFRICAN COUNTRIES ARE IN THE 30% RATE WITH BOTSWANA AND CAMBODIA IMPOSING ONLY 25% AND 20% RESPECTIVELY.

THIS ENTIRE CHAPTER IS PROHIBITIVE, TOO BURDENSOME AND CONFISCATORY. SEC. 92 TO 99 THEREOF WILL CLEARLY DESTROY THE MINING INDUSTRY IN THE PHILIPPINES. THE GOVERNMENT SHOULD BE GIVEN AT LEAST 10% OF GROSS REVENUES ON TOP OF THE LONG LITANY OF DIFFERENT HEAVY TAXES TO BE PAID. THE IPS/ICCS IS GIVEN ANOTHER 10% (AT LEAST) OF GROSS REVENUES. THE LGUS WOULD ALSO HAVE THEIR OWN SHARE ON THE NET REVENUES ON TOP OF THE SEVERAL FEES TO BE PAID, FUNDS AND INSURANCES TO BE SET UP. THIS IS INDUBITABLY CONFISCATION BEYOND COMPARE. THE MINING ACT AND THE IPRA LAW DID NOT PROVIDE FOR THIS TYPE OF COMPENSATION TO THE GOVERNMENT AND THE IPS/ICCS. UNDER THE MINING ACT, THERE IS NO SPECIFIC MENTION OF THE EXACT AMOUNT OF ROYALTIES TO BE PAID TO THE IPS/ICCS. ALSO, THE SHARE OF THE NATIONAL GOVERNMENT FROM A MINING OPERATOR'S OPERATIONS IS THE PAYMENT OF EXCISE TAXES ONLY IN ACCORDANCE WITH SECTION 151 OF THE NIRC. ADDITIONALLY, THE WORDING OF THE SAME WOULD DIRECT THAT MINING IS NO LONGER ENTITLED TO A TAX HOLIDAY. THIS SEEMING BIAS/PREJUDICE AGAINST, AND LACK OF INCENTIVE TO, MINING INDUSTRY DESPITE ITS PALPABLE CONTRIBUTION TO NATIONAL ECONOMY, IS A SURE MARK OF UNDUE CLASSIFICATION AMOUNTING TO DENIAL OF EQUAL PROTECTION OF LAW.]

CHAPTER XI SAFETY AND ENVIRONMENTAL PROTECTION

[CHAMBER OF MINES COMMENT:

EXISTING LAWS ARE ADEQUATE FOR THE PURPOSES OF ENSURING MINE SAFETY, ENVIRONMENTAL PROTECTION AND, IN CASE OF DAMAGES SUFFERED BY

INDIVIDUALS ARISING FROM MINING ACTIVITIES, INDEMNIFICATION OF SUCH AGGRIEVED PARTIES.

THE EXISTING LAWS IN THIS REGARD ARE AS FOLLOWS:

- THE MINING ACT AND ITS IRR;
- PD 1151 AND PD 1586 RELATING TO THE ENVIRONMENTAL IMPACT STATEMENT SYSTEM; AND
- R.A. 9275 KNOWN AS THE CLEAN WATER ACT.

EACH OF THE SAID LAWS CLEARLY STATES WHO WILL BE RESPONSIBLE FOR ITS IMPLEMENTATION. THIS BILL MERELY REITERATES WHAT IS ALREADY STATED IN THE AFORESAID LAWS. WHENEVER THE SAFETY AND ENVIRONMENTAL PROVISIONS OF THIS BILL DEPART FROM THE PROVISIONS OF THE MINING ACT, IRR AND OTHER EXISTING LAWS, THERE IS AN AMBIGUITY AS TO WHO WILL BE IN CHARGE.]

A. Safety

Section 100. Mines Safety. All contractors and permittees shall strictly comply with all the mines and safety rules and regulations concerning the safe and sanitary upkeep of the mining development. Government personnel involved in the implementation of mines safety, health and environmental rules and regulations shall be covered under Republic Act No. 7305 or the Magna Carta of Public Health Workers.

[CHAMBER OF MINES COMMENT:

SECTION 100 OF THIS BILL IS BASICALLY PATTERNED AFTER SECTION 63 OF THE MINING ACT BUT, UNLIKE SECTION 63, IS SILENT ON WHO WILL PROMULGATE AND IMPLEMENT THE MINES SAFETY RULES AND REGULATIONS. BOTH THIS BILL AND THE MINING ACT REQUIRE THAT THE GOVERNMENT PERSONNEL IMPLEMENTING THE MINES SAFETY RULES AND REGULATIONS BE COVERED UNDER R.A. NO. 7305, THE MAGNA CARTA OF PUBLIC HEALTH WORKERS.]

Section 101. Mine Labor. No person under sixteen (16) years of age shall be employed in any place of mining operations and no person under eighteen (18) years of age shall be employed in a mine.

Section 102. Mine Supervision. All mining and quarrying operations that employ more than fifty (50) workers shall have at least one (1) licensed mining engineer with at least five (5) years of experience in mining operations, and one (1) registered foreman.

Section 103. Safety of Workers. All mining companies shall provide a safeguards to the health and well-being of workers. The Regional Office of the Department of Labor and Employment shall inspect all mining sites within their areas of jurisdiction to determine the conditions of workers. Denial of entry shall be punishable under this Act. Representative of labor unions shall also have visitorial rights.

Section 104. Mine Inspection. The mines regional directors and Council shall have jurisdiction over the safety inspection of all installations, surface or underground, in mining operations at reasonable hours of day or night and as much as possible in a manner that will not impeded or

obstruct work in progress of a contractor or permittee. Monitoring reports and commendations of the Bureau shall be submitted to the Council.

[CHAMBER OF MINES COMMENT:

SECTIONS 101 102 AND 104 OF THIS BILL ARE REPRODUCTIONS OF SECTIONS 64, 65 AND 66, RESPECTIVELY, OF THE MINING ACT.

SECTION 103 OF THIS BILL STATES THAT ALL MINING COMPANIES SHALL PROVIDE SAFEGUARDS TO THE HEALTH AND WELL-BEING OF WORKERS AND MANDATES THE REGIONAL OFFICE OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) TO INSPECT ALL MINING SITES WITHIN THEIR AREAS OF JURISDICTION TO DETERMINE THE CONDITION OF THE WORKERS. SECTION 63 HAS THE SAME MANDATE-- ALL CONTRACTORS AND PERMITTEES SHALL COMPLY WITH ALL THE MINES SAFETY RULES AND REGULATIONS AS MAY BE PROMULGATED BY THE DENR SECRETARY. UNDER SECTION 144 OF THE MINING ACT IMPLEMENTING RULES AND REGULATIONS (IRR), THE REGIONAL DIRECTOR SHALL REQUIRE A CONTRACTOR/ PERMITTEE/ LESSEE/ PERMIT HOLDER TO SUBMIT A SAFETY AND HEALTH PROGRAM COVERING ITS AREA OF OPERATIONS WHICH PROGRAM SHALL INCLUDE THE FOLLOWING:

- a. LEADERSHIP AND ADMINISTRATION;
- b. ORGANIZATIONAL RULES;
- c. MANAGEMENT AND EMPLOYEE TRAINING;
- d. GOOD HOUSEKEEPING;
- e. HEALTH CONTROL AND SERVICES;
- f. PROVISION FOR PERSONAL PROTECTIVE EQUIPMENT;
- g. MONITORING & REPORTING;
- h. ENVIRONMENTAL RISK MANAGEMENT INCLUDING AND EMERGENCY RESPONSE PROGRAM; AND
- i. OCCUPATIONAL HEALTH & SAFETY MANAGEMENT.

UNDER SECTION 145 OF THE IRR, IT IS THE MGB REGIONAL DIRECTOR OR HIS REPRESENTATIVE WHO HAS EXCLUSIVE JURISDICTION OVER THE CONDUCT OF SAFETY INSPECTION OF ALL INSTALLATIONS IN MINING AND QUARRYING OPERATIONS AND MONITORING OF THE SAFETY AND HEALTH PROGRAM OF THE CONTRACTOR/PERMITTEE/ LESSEE/ PERMIT HOLDER. OWING TO THE TECHNICAL NATURE OF SUCH INSPECTION, WE SUBMIT THAT THE MGB REGIONAL DIRECTOR, RATHER THAN THE DOLE, CAN MORE EFFECTIVELY DISPENSE WITH THIS FUNCTION.

FURTHERMORE, SECTION 146 OF THE IRR REQUIRES THAT MINING/QUARRYING OPERATIONS SHALL HAVE SAFETY ENGINEERS AND SAFETY INSPECTORS WHO SHOULD BE DULY REGISTERED WITH THE MGB REGIONAL OFFICE. QUALIFICATIONS FOR REGISTRATION ARE COMPREHENSIVE, AS ENUMERATED IN SECTION 147 OF THE IRR.]

Section 105. Power to Issue Orders. The mines regional director, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in the order,

require the contractor to remedy any practice connected with mining, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the Director may summarily suspend the mining operation until the danger is removed, or appropriate measures are taken by the contractor. Unreasonable delay to remove the danger or introduce the necessary improvements by the contractor shall be a cause for the cancellation of the mineral agreement.

[CHAMBER OF MINES COMMENT:

SECTION 105 OF THIS BILL IS SIMILAR TO SECTION 67 OF THE MINING ACT EXCEPT THAT IT HAS AN ADDITIONAL PROVISION: “UNREASONABLE DELAY TO REMOVE THE DANGER OR INTRODUCE THE NECESSARY IMPROVEMENTS BY THE CONTRACTOR SHALL BE CAUSE FOR THE CANCELLATION OF THE MINERAL AGREEMENT.” THIS ADDITIONAL PROVISION IS NOT NECESSARY CONSIDERING THAT, UNDER SECTION 96 OF THE MINING ACT, VIOLATION OF THE TERMS AND CONDITIONS OF THE PERMITS OR AGREEMENTS (WHICH TERMS AND CONDITIONS INCLUDE COMPLIANCE WITH SAFETY AND ENVIRONMENTAL LAWS, RULES AND REGULATIONS), “SHALL BE A SUFFICIENT GROUND FOR CANCELLATION OF THE SAME”.]

Section 106. Report of accidents. In case of any incident or accident, causing or creating the danger or loss of life or serious physical injuries, the person in charge of operations shall immediately report the same to the regional office where the operations are situated. Failure to report the same without justifiable reason shall be cause for the imposition of administrative sanctions prescribed in the rules and regulations implementing this Act.

[CHAMBER OF MINES COMMENT:

SECTION 106 OF HB 6342 IS AN EXACT REPRODUCTION OF SECTION 68 OF THE MINING ACT.

IN SUM, THE SAFETY PROVISIONS UNDER THIS BILL WERE PATTERNED LARGELY ON THE PERTINENT PROVISIONS OF THE MINING ACT. THE DIFFERENCE BETWEEN THE TWO VERSIONS IS THAT THE MINING ACT’S PROVISIONS ARE MORE COMPLETE AND SPECIFIC SINCE ALL THE ORGANIZATIONS, SYSTEMS AND PROCESSES MANDATED BY THE MINING ACT ARE ALREADY IN PLACE AND WORKING VERY WELL.]

B. Environmental Protection

Section 107. Environmental Insurance. Contractors and mineral processing permit holders shall be obliged to execute an insurance contract as an environmental assurance for each and every source of pollution or disaster, relative to the “worst case scenario” costs, following accepted actuarial standards. *Provided that*, in no way shall this provision be construed to remove or reduce the liability of the contractors and/or permit holders to compensate any damage caused by their operations. *Provided further*, that the insurer shall be an accredited international company in good standing.

Prior to the approval of the insurance contract by the DOST, the DOST shall seek and consider the opinion of an independent expert as to the financial credibility of the insurer.

Section 108. Calamity and Human Rights Protection Fund. Persons issued a mineral agreement shall deposit five million pesos (Php5,000,000.00) semi-annually in an interest-bearing account a common fund maintained by the national government which shall be used for responding to, or ameliorating the effects of calamities, natural disasters and human rights violations including militarization, displacement, and forcible evacuation in any part of the country in relation to mining activities. *Provided that*, in no way shall this provision be construed to remove or reduce the liability of the contractors and/or permit holders to compensate any damage caused by their operations.

Section 109. Performance Bond. The contractor shall put up a bond in an amount equivalent to fifty percent (50%) of the projected cost of rehabilitation as validated by independent studies. This amount shall be deposited in an interest-bearing account. The bond shall be forfeited in the event that the contractor shall fail or default in the rehabilitation or remediation of the mining area as included in the work plan of the contractor or abandons the mine at any time of its operations.

[CHAMBER OF MINES COMMENT:

JUST LIKE SECTIONS 92 TO 99, SEC. 107, 108, AND 109 WILL EFFECTIVELY DESTROY THE MINING INDUSTRY AS THE COSTS FOR OPERATIONS WILL BE VERY PROHIBITIVE. MINING OPERATORS WILL BE REQUIRED TO PUT UP AN ENVIRONMENTAL INSURANCE FOR “EACH AND EVERY SOURCE OF POLLUTION OR DISASTER, RELATIVE TO THE WORST CASE SCENARIO. THE BASIS FOR THE INSURANCE IS VERY SUBJECTIVE. MOREOVER, MINING OPERATORS ARE REQUIRED TO DEPOSIT THE AMOUNT OF P 5 MILLION PESOS AS CONTRIBUTION TO THE CALAMITY AND HUMAN RIGHTS PROTECTION FUND. LASTLY, THIS BILL MANDATES THAT MINING OPERATORS SHOULD PUT UP A BOND IN AMOUNT EQUIVALENT TO 50% OF THE PROJECTED COSTS OF REHABILITATION.]

Section 110. Rehabilitation. Contractors and permittees shall technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor’s approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean immediate suspension or closure of the mining activities of the contractor’s permittee concerned.

[CHAMBER OF MINES COMMENT:

SECTIONS 107 TO 110 OF THIS BILL PROVIDE VARIOUS INDEMNIFICATION MECHANISMS FOR DAMAGES TO THE ENVIRONMENT. THE MECHANISMS ARE IN THE FORMS OF:

1. INSURANCE CONTRACT WITH AN ACCREDITED INTERNATIONAL COMPANY IN GOOD STANDING FOR EACH AND EVERY SOURCE OF

POLLUTION OR DISASTER BASED ON “WORST CASE SCENARIO COSTS”

2. CALAMITY AND HUMAN RIGHTS PROTECTION FUND OF P5M EVERY SEMESTER TO COVER CALAMITIES, NATURAL DISASTERS, HUMAN RIGHTS VIOLATIONS;
3. PERFORMANCE BOND EQUIVALENT TO 50% OF THE PROJECTED COST OF REHABILITATION AS VALIDATED BY INDEPENDENT STUDIES;
4. REHABILITATION FUND WHICH IS A REPRODUCTION OF THAT PROVIDED UNDER SEC 71 OF THE MINING ACT.

THE INDEMNIFICATION MECHANISMS LISTED ABOVE ARE SUPERFLUOUS, UNREASONABLE AND SEEM TO BE DESIGNED TO ELIMINATE ALTOGETHER MINING ACTIVITIES IN THE COUNTRY, THUS VIOLATING SECTION 1, ARTICLE XII OF THE PHILIPPINE CONSTITUTION WHICH MANDATES THE STATE TO PROMOTE INDUSTRIALIZATION THROUGH INDUSTRIES THAT MAKE FULL AND EFFICIENT USE OF HUMAN AND NATURAL RESOURCES.

IF EXISTING REGULATIONS ARE DEEMED TO BE INADEQUATE, THEN THESE SHOULD JUST BE REVISITED AND ENFORCEMENT PROCEDURES STREAMLINED TO BE MORE RESPONSIVE TO ENVIRONMENTAL CONCERNS.

REGARDING SECTION 108 OF THIS BILL, MINING OPERATORS SHOULD NOT BE MADE RESPONSIBLE FOR CALAMITIES AND NATURAL DISASTERS AS THESE NO LONGER RELATE TO MINING ACTIVITIES.

EXISTING LAWS ADEQUATELY PROTECT MINING COMMUNITIES NOT ONLY FROM ENVIRONMENTAL DESTRUCTION BUT ALSO AGAINST HUMAN RIGHTS VIOLATIONS IN NO UNCERTAIN TERMS. IT SHOULD BE NOTED THAT THE TERMS “MILITARIZATION”, “DISPLACEMENT” AND “FORCIBLE EVACUATION” IN SECTION 108 OF THIS BILL SHOULD BE DEFINED IN THE BILL LEST THESE BE OPEN TO CONFLICTING INTERPRETATIONS.

FOLLOWING ARE THE INDEMNIFICATION MECHANISMS UNDER EXISTING LAWS AND REGULATIONS FOR THE COMPENSATION OF ANY DAMAGES ARISING FROM MINING OPERATIONS:

1. MINE REHABILITATION FUND (MRF)- UNDER SECTION 70 OF THE MINING ACT, AN MRF SHALL BE CREATED, BASED ON THE CONTRACTOR’S APPROVED WORK PROGRAM AND SHALL BE DEPOSITED AS A TRUST FUND IN A GOVERNMENT DEPOSITORY BANK AND USED FOR PHYSICAL AND SOCIAL REHABILITATION OF AREAS AND COMMUNITIES AFFECTED BY MINING ACTIVITIES AND FOR RESEARCH ON THE SOCIAL, TECHNICAL AND PREVENTIVE ASPECTS OF REHABILITATION. (SEC 70). UNDER SEC 181 OF THE IRR, THERE ARE 2 FORMS OF THE MRF, NAMELY THE MONITORING TRUST FUND (MTF) TO COVER ADMINISTRATIVE EXPENSES FOR MONITORING COMPLIANCE WITH ENVIRONMENTAL STANDARDS; AND THE REHABILITATION CASH FUND, EQUIVALENT TO 10% OF THE TOTAL AMOUNT NEEDED TO IMPLEMENT THE ENVIRONMENTAL PROTECTION &

ENHANCEMENT PROGRAM OR P5 MILLION, WHICHEVER IS LOWER.

2. ENVIRONMENTAL GUARANTEE FUND- DENR ADM. ORDER 2000-05 IMPLEMENTING P.D. NO. 1151 REQUIRES THE ESTABLISHMENT OF AN ENVIRONMENTAL GUARANTEE FUND FOR ALL PROJECTS OR PROGRAMS DETERMINED BY THE DENR TO POSE SIGNIFICANT PUBLIC RISK, OR WHERE A PROJECT OR PROGRAM REQUIRES REHABILITATION OR RESTORATION. THIS MAY BE IN THE FORM OF COMMERCIAL INSURANCE, SELF-INSURANCE THROUGH A FINANCIAL TEST, SURETY BOND, LETTER OF CREDIT, TRUST FUND OR A COMBINATION OF THESE INSTRUMENTS.
3. MINE WASTE AND TAILINGS FEES- UNDER SECTION 189 OF THE IRR, THIS IS COLLECTED SEMI-ANNUALLY FROM EACH CONTRACTOR/ LESSEE/ PERMIT HOLDER BASED ON THE AMOUNTS OF MINE WASTE AND MILL TAILINGS IT GENERATED FOR THEIR PROJECTS. THE FEES COLLECTED ACCRUE TO A MINE AND WASTE TAILING RESERVE FUND TO BE USED FOR PAYMENT OF COMPENSATION OF DAMAGES CAUSED BY MINING OPERATIONS AND TO FUND RESEARCH PROJECTS WHICH ARE DEEMED NECESSARY FOR THE PROMOTION AND FURTHERANCE OF E OBJECTIVES OF THE CONTINGENT LIABILITY AND REHABILITATION FUND.

THE LIST OF COMPENSABLE DAMAGES UNDER SECTION 199 OF THE IRR IS QUITE COMPREHENSIVE AS IT INCLUDES DAMAGES TO LIVES AND PERSONAL SAFETY, LANDS, AGRICULTURAL CROPS AND FOREST PRODUCTS, MARINE LIFE AND AQUATIC RESOURCES, CULTURAL AND HUMAN RESOURCES, AND INFRASTRUCTURE. GUIDELINES FOR EVALUATING THE AMOUNT OF COMPENSATION ARE SET FORTH IN SECTION 200 OF THE IRR.

THE MINING ACT (SEC 69) AND THE IRR (SECTIONS 167-172) ALREADY PROMOTES A PROACTIVE APPROACH TO ENVIRONMENTAL PROTECTION, HAVING THE FOLLOWING OBJECTIVES:

1. MAINTENANCE OF SUSTAINABLE ENVIRONMENTAL CONDITIONS AT EVERY STAGE OF MINING OPERATION;
2. ESTABLISHMENT OF A FUNCTIONAL POST-DISTURBANCE LAND USE CAPABILITY;
3. PRESERVATION OF DOWNSTREAM FRESHWATER QUALITY;
4. PRESERVATION OF SEA WATER QUALITY AND NATURAL HABITATS FOR MARINE LIFE;
5. PREVENTION OF AIR AND NOISE POLLUTION; AND
6. RESPECT FOR TRADITIONAL AND/OR SUSTAINABLE MANAGEMENT STRATEGIES CONCERNING NATURAL RESOURCES OF INDIGENOUS CULTURAL COMMUNITIES.]

Section 111. Progressive rehabilitation. Contractors shall also conduct progressive rehabilitation activities.

Section 112. Adoption of Precautionary Principle. When an activity related to mining raises threats of harm to human health or the environment, precautionary measures should be taken proactively even if some cause and effect relationship are not fully established scientifically. The mining proponent and the Bureau shall also be obliged to disclose whether or not the cause and effect have not yet been scientifically established.

Section 113. Adoption of Polluter Pays Principle. Polluters shall pay for the damage they cause to the environment. The amount of damages shall be determined by accredited independent consultants, to be chosen from a list and agreed upon by both the mining proponent and by the Council.

Section 114. Tailings impoundment. Tailings impoundments should be bulk away from critical watershed drainage areas. Furthermore, it shall be ensured that will not endanger critical watershed areas or low lying valleys in the event of accidents under abnormal conditions. Tailing impoundments and dams should meet the international standards for large dams.

Section 115. Dumping of waste or tailing in any body of water shall be prohibited. Provisions on the Clean Water Act shall be strictly implemented.

[CHAMBER OF MINES COMMENT:

SECTION 115 PROHIBITING THE DUMPING OF WASTE AND TAILINGS IN ANY BODY OF WATER IS ALREADY PROHIBITED UNDER THE CLEAN WATER ACT.]

Section 116. Use of toxic chemicals and methods. At all time, mining contractors shall use chemicals or reagents which would result to the least environmental and social destruction. The use of mercury and cyanide for the extraction of gold, silver and other minerals shall be prohibited. The use of blow torching to separate gold from amalgam shall likewise be prohibited.

[CHAMBER OF MINES COMMENT:

THE PROHIBITION OF THE USE OF CYANIDE WILL KILL THE MINING INDUSTRY. CYANIDE IS WIDELY USED BY LARGE-SCALE MINING OPERATORS (SMALL-SCALE MINERS USE MERCURY) BECAUSE IT IS THE MOST COST AND RECOVERY-EFFICIENT CHEMICAL FOR EXTRACTING GOLD. WITHOUT CYANIDE, RECOVERY IS NOT MAXIMIZED AND THE PRECIOUS METALS WILL GO TO WASTE. SINCE CYANIDE USE IS INDISPENSABLE TO MINING OPERATIONS, SUCH USE AND THE DISCHARGE OF CYANIDE-BEARING MATERIALS SHOULD INSTEAD BE REGULATED. THE DENR ALREADY HAS STRINGENT STANDARDS AND MECHANISMS IN THIS REGARD.

SECTION 73 OF THE MINING ACT ADEQUATELY PROTECTS BOTH THE MINING OPERATOR AND HOST COMMUNITY WITH RESPECT TO WATER RIGHTS, RESPECTING WATER RIGHTS ALREADY GRANTED OR VESTED THROUGH LONG USE. IT RECOGNIZES THE FACT THAT SINCE MOST MINING OPERATIONS ARE IN THE HINTERLANDS, THE WATER SUPPLY SYSTEMS THEREIN WERE ESTABLISHED BY MINING COMPANIES AND THESE SYSTEMS ALSO GREATLY BENEFIT THE HOST

COMMUNITIES. UNDER SECTION 73, THE GOVERNMENT RESERVES THE RIGHT TO REGULATE WATER RIGHTS AND THE REASONABLE AND EQUITABLE DISTRIBUTION OF WATER SUPPLY. ON THE OTHER HAND, SECTION 118 OF THIS BILL PRACTICALLY GIVES THE ICCS/IPPS FULL CONTROL OF WATER USE, TO THE EXCLUSION OF MINING OPERATORS, IGNORING THE FACT THAT THE WATER SUPPLY SYSTEMS IN THESE AREAS WERE ESTABLISHED BY MINING COMPANIES.]

Section 117. Preservation of top soil. The removed topsoil, or the more productive horizons of the soil should be preserved fro other uses.

Section 118. Priority use for water. The National Water Resources Board shall investigate any existing use of water resources in the area whether or not covered by any existing water permit or registration. Upon determination of any existing use, the applicant shall procure the consent of all water users and/or the free prior and informed consent of ICCs/IPs with or without water permits within the same groundwater network or any downstream users of water resources. In all instances, priority shall be given to use of water for domestic, municipal, and agricultural purposes. If potential negative impact on other water users is identified, the water permit shall not be granted. For water resources within the ancestral domain of indigenous peoples, no water permit shall be granted by the National Water Resources Board without the free and prior informed consent of indigenous peoples.

[CHAMBER OF MINES COMMENT:

THIS SECTION TACKLES THE GRANT OF WATER PERMITS AND IMPOSES RIDICULOUS REQUIREMENTS FOR THE GRANT THEREOF. AN APPLICANT (MINING CONTRACTOR) HAS TO GET THE CLEARANCE/CONSENT OF ALL WATER USERS AND/OR THE INFORMED CONSENT OF THE IPS/ICCS. IT ALSO MANDATES THE PAYMENT, AGAIN, OF A SO-CALLED WATER FEES. THIS SECTION IS REDUNDANT AS ADEQUATE PROVISIONS UNDER EXISTING LAWS RELATING TO WATER UTILIZATION ARE WELL IN PLACE.]

Section 119. Recycling of water resources. Water used in mining operations shall be recycled. Mining contractors shall be required to provide for the methods or equipments for the recycling or reuse of water. Released contaminated water should be treated accordingly to meet national standards. Released water must at least be equivalent in quality to the baseline water quality.

Section 120. Water user fee. A water user fee that reflects the value of water to the country and community shall be imposed by the Council for water used in mining operations. Contractors shall pay the fee to the National Water Resources Board which shall use the same for monitoring and improvement of the affected waterways and systems and the mitigation of negative impacts thereon to ensure that communities shall have access to clean water.

C. Acid Mine Drainage

Section 121. Prohibition from using acid-generating waste rock to build roads or dams. To prevent or mitigate acid mine drainage, there shall be a prohibition against using acid-generating waste rock to build roads or dams or other infrastructures. The use of such materials shall only be used after treatment to neutralize the effect of acid mine drainage.

[CHAMBER OF MINES COMMENT:

ACID MINE DRAINAGE TAKES PLACE WITH OR WITHOUT MINING OPERATIONS. IT IS A NATURAL PHENOMENON IN MINERALIZED AREAS AS THE ROCKS OR ORES ARE WASHED OUT BY RAINS. TO ADDRESS THIS AND OTHER ISSUES CONCERNING WATER QUALITY, A SYSTEM IS IN PLACE UNDER THE MINING ACT AND CHAPTER XVI OF THE IRR FOR THE PRESERVATION/ MONITORING BY MULTI-PARTITE MONITORING TEAMS OF THE QUALITIES OF DOWNSTREAM WATER, SEA WATER AND NATURAL HABITATS FOR MARINE LIFE.]

Section 122. Establishment of a prediction and monitoring system. A prediction and monitoring system shall be in place to identify potential acid-producing materials and monitor their production of acid waste.

Section 123. Avoidance of waterways. Open pits, waste rock piles and tailings impoundments shall not be built near or on waterways to prevent contact and subsequent acid production.

Section 124. Remining. Remining shall be prioritized over the opening of new mines to maximize and recover the remaining minerals from the rejects of wastes of previous mines and mining operations, *Provided*, that remining operations shall follow the standards, parameters and guidelines set for mining operations.

[CHAMBER OF MINES COMMENT:

RE-MINING, WHICH IS MANDATED UNDER THIS BILL, SHOULD BE SUBJECT TO A FEASIBILITY STUDY AS WITH ANY PROJECT THAT REQUIRES CAPITAL INVESTMENTS.]

Section 125. Suites after the termination of contracts or projects. Recognizing that the effects of mining may be seen or felt, actions relating to the health of affected communities or peoples, environmental degradation and other similar effects may be maintained against the project proponent and/or persons even after the mineral agreement or mining projects has terminated.

**CHAPTER XII
RESOLUTION OF CONFLICTS**

Section 126. Panel of Arbitrators. There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must e members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- a. Questions involving compliance with the established technical guidelines and standards herein established, or those to be established by the implementing rules and regulations of this Act;
- b. Questions involving the compliance with technical procedures herein established, or those to be established by the implementing rules and regulations; and
- c. Other similar instances wherein the technological and technical expertise of the Department shall be needed.

Disputes involving real rights, contractual obligations and the other causes of action that re outside the technological and technical expertise of the Panel of Arbitrators shall be under the jurisdiction of the regular courts or as otherwise provided by other special laws.

Provided that, disputes pending before the Bureau and the Department at the date of effectivity of this Act shall undergo an immediate review within sixty (60) working days upon the passage of this Act to determine the cause of action. Those which are outside the technical expertise of the Department or Bureau shall be refiled with the appropriate court, without costs to the complainant or petitioner.

[CHAMBER OF MINES COMMENT:

THE PROPOSED JURISDICTION OF THE PANEL IS VAGUE AND AMBIGUOUS.

COMPLIANCE WITH THE ESTABLISHED TECHNICAL GUIDELINES, PROCEDURES OR STANDARDS LIKE POLLUTION, SAFETY STANDARDS IN THE MINING OPERATIONS, REHABILITATION, ETC. ARE ADMINISTRATIVE MATTERS THAT SHOULD BE DETERMINED BY THE SECRETARY OF THE DENR AND ALL BUREAUS UNDER IT. CASES BROUGHT TO THE PANEL SHOULD NECESSARILY BE ADVERSARIAL IN NATURE AND THE PANEL WILL HAVE TO DECIDE WHO AMONG THE PARTY-LITIGANTS HAS THE BETTER RIGHTS TO THE CONTESTED AREAS. THE TREND NOW IS TO MAKE THE ADJUDICATION OF MINING CASES A PURELY ADMINISTRATIVE MATTER.

THE FUNCTION OF THE RULES AND REGULATIONS IS NOT TO CONFER JURISDICTION BUT TO IMPLEMENT AND CLARIFY THE EXISTING LAW. THE JURISDICTION OF THE PANEL SHOULD BE SPELLED OUT CLEARLY IN THE LAW ITSELF AND SHOULD NOT BE LEFT TO THE DETERMINATION OF THE EXECUTIVE OFFICIAL WHO WILL PROMULGATE THE IMPLEMENTING RULES.

THE TECHNOLOGICAL KNOWLEDGE AND EXPERIENCE OF THE PANEL OF ARBITRATORS IS INDISPENSABLE IN DETERMINING WHO AMONG THE PARTIES WITH CONFLICTING INTEREST INVOLVING A MINING AREAS OR MINING APPLICATIONS OR RIGHTS. IN OTHER WORDS, THE JURISDICTION OF THE PANEL MUST BE LIMITED ONLY TO MINING DISPUTES.

CONTRACTUAL VIOLATIONS ARISING FROM AN OPERATING OR JOINT VENTURE AGREEMENTS AND AWARD OF DAMAGES ARE JUDICIAL QUESTIONS BECAUSE THESE INVOLVES A DETERMINATION OF FACTS, THE RIGHTS OF THE PARTIES AND THE LAW APPLICABLE.

THE PRESENT JURISDICTION OF THE PANEL ON MINING DISPUTES UNDER THE MINING ACT SHOULD BE MAINTAINED.]

Section 127. Appeal. The decision or order of the panel or arbitrators may be appealed by the party not satisfied hereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

Section 128. Mines Adjudication Board (MAB). The Mines Adjudication Board shall be composed of three (3) members. The Secretary of the DOST shall be the Chairperson with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

- a. To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;
- b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act.
- c. To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable.
 1. To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefore; and
 2. To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process and social justice. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

[CHAMBER OF MINES COMMENT:

THE POWER OF THE MAB TO CITE ANY PERSON IN CONTEMPT AND ITS POWER TO ISSUE INJUNCTIVE ORDERS MAY BE EXERCISED HASTILY OR SUBJECTED TO

ABUSE. THE GROUNDS WHICH SERVE AS BASIS ARE TOO VAGUE AND GENERAL.

IN THIS BILL, THE ONLY RECOURSE WOULD BE A PETITION FOR REVIEW BY CERTIORARI TO THE SUPREME COURT. THE SC IS NOT A TRIER OF FACTS AND TECHNICAL INFORMATION WHICH SHOULD SERVE AS BASIS FOR THE MAB'S DECISIONS. QUESTIONS OF LAW ARE FRAMED BY THE FACTUAL BACKGROUND WHICH SHOULD BE THRESHED OUT IN A FULL-BLOWN JUDICIAL PROCEEDING. THE MAB CANNOT BE MADE TO FUNCTION LIKE A SPECIAL OR STATUTORY COURT. IT WOULD BE MORE ADVISABLE FOR THE MAB TO LIMIT ITS DISCRETION ON MINING-RELATED MATTERS ISSUES ALONE AND LEAVE ALL LEGAL, COMMERCIAL AND CONTRACTUAL MATTERS TO THE REGULAR COURTS. THEREFORE, RECOURSE SHOULD AVAILABLE THROUGH THE REGULAR COURTS IN ACCORDANCE WITH THE EXISTING JUDICIAL HIERARCHY.

THIS SECTION, INSOFAR AS IT MAKES THE MAB'S DECISIONS DIRECTLY APPEALABLE TO THE SC VIOLATES SEC 30, ARTICLE VI OF THE CONSTITUTION THAT SAYS: "NO LAW SHALL BE PASSED INCREASING THE APPELLATE JURISDICTION OF THE SUPREME COURT AS PROVIDED IN THIS CONSTITUTION WITHOUT ITS ADVICE AND CONCURRENCE." AS PRESENTLY WORDED, IT APPEARS THAT SECTION 128 ALLOWS THE ELEVATION OF AN MAB CASE DIRECTLY TO THE SUPREME COURT BY WAY OF A PETITION FOR CERTIORARI, EVEN IF THE CASE INVOLVES A MERE QUESTION OF FACT.

CHAPTER XIII ACCESS TO JUSTICE

Section 129. Obligation to respect human rights. Corporations are obliged to respect, protect and promote the human rights of communities affected by mining, including the right to life, liberty and property, freedom of movement, right of public participation and the right to self-determination of indigenous cultural communities.

[CHAMBER OF MINES COMMENT:

THE MOVEMENT OF COMMUNITIES IN MINING AREAS SHOULD BE REGULATED PARTICULARLY IN HIGHLY DANGEROUS AREAS LIKE IN MILLS, TUNNELS, DYNAMITE BATTERIES, CHEMICAL STORAGE, DYNAMITE BLASTING IS TO TAKE PLACE AND OTHER SIMILAR PLACES.]

Section 130. Violations of human rights. Extrajudicial killing, torture, involuntary disappearance, forcible displacement of populations ,setting up of checkpoints and imposition of toll fees which impede the freedom of movement within mineral areas, deprivation of food an water sources, vote-buying and bribery for the purpose of securing consent or endorsement for the mining project, and other analogous acts are violations of human rights. Violations of human rights by contractors shall cause the immediate cancelation of mineral agreements. The offending contractor, as well as corporations having the same directors and/or officers as of the offending contractors shall be perpetually disqualified form being granted a mineral agreement. All equipment and assets of the corporation or person shall be confiscated in favor of the government.

[CHAMBER OF MINES COMMENT:

THIS SECTION IS NOTABLE FOR PROVIDING THAT VIOLATIONS OF HUMAN RIGHTS BY CONTRACTORS SHALL CAUSE THE IMMEDIATE CANCELLATION OF MINERAL AGREEMENTS. THE CANCELLATION APPEARS TO BE POSSIBLE WITHOUT DUE PROCESS.

THIS IS UNNECESSARY BECAUSE ALL PROHIBITED ACTS DESCRIBED THEREIN ARE ALREADY GOVERNED BY LAW UNDER GENERAL AND SPECIAL PENAL STATUTES.]

Section 131. Use of paramilitary and military forces. All mining companies are strictly prohibited to employ paramilitary groups. Use of private and military forces shall result in the cancellation of the mineral agreement and the filing of appropriate civil, criminal and/or administrative charges.

[CHAMBER OF MINES COMMENT:

THE PROVISION IS TOO VAGUE. THIS MAY BE APPLIED TO PRIVATE SECURITY COMPANIES WHICH ARE WHAT MOST MINING COMPANIES USE FOR PROTECTION.

AS THERE IS NO DEFINITION OF “PRIVATE FORCES”, IT IS POSSIBLE THAT MINING COMPANIES WILL BE UNABLE TO SECURE THEIR SITES WITHOUT OFFENDING THIS PROVISION.]

Section 132. Strategic Legal Action Against Public Participation (SLAPP) shall be strictly prohibited. SLAPP is any legal action, whether civil, criminal or administrative, filed to harass, vex, exert legal action or stifle legal recourses of community members complaining against violations of this Act or enforcing the provisions of the Act, or exercising their freedom of assembly or right of public participation. The investigating prosecutor or court shall immediately determine within a period of thirty (30) days from filing thereof whether a legal action is a SLAPP and accordingly dismiss the same.

[CHAMBER OF MINES COMMENT:

THE ”STRATEGIC LEGAL ACTION AGAINST PUBLIC PARTICIPATION (SLAPP)” CONCEPT IS TOO VAGUE, GENERALIZED AND DOES NOT DISTINGUISH BETWEEN MERITORIOUS LEGAL ACTIONS AGAINST “AGIT-PROP” PROVOCATEURS, “PROFESSIONAL PROTESTERS” AS AGAINST THOSE WITH VALID ISSUES AGAINST MINING COMPANIES. IT LEAVES TOO MUCH DISCRETION TO THE INVESTIGATING PROSECUTOR AND SUBJECTS HIM TO UNDUE PUBLIC PRESSURE INSTEAD OF PURELY LOOKING AT THE MERITS OF A CASE.]

Section 133. Indigents shall be exempt from payment of any administrative or court fees, including docket fees for the filing of a case. Lawyers shall be provided to pauper litigants in case they could not afford legal services.

[CHAMBER OF MINES COMMENT:

LEGAL ASSISTANCE TO INDIGENTS IS ALREADY ASSURED UNDER EXISTING LAWS. THIS PROVISION INVITES A DELUGE OF FLIMSY LEGAL ACTIONS SIMPLY TO HARASS, DISRUPT OR OTHERWISE PREJUDICE MINING PROJECTS.]

Section 134. Application of the customary laws of ICCs/IPs. The contractor shall respect the customary laws of the ICCs/IPs and shall submit to processes of their customary laws. *Provided* that these laws are not contrary to the provisions of the Constitution.

Section 135. Strict liability. Mining corporations are strictly liable for all damages that the mining operations might cause. In case of any actual damage, the burden of proof shall lie with the corporations.

[CHAMBER OF MINES COMMENT:

MINING COMPANIES MAY BE LIABLE ONLY FOR DAMAGES ARISING FROM CAUSES THAT ARE DIRECTLY ATTRIBUTABLE TO THEIR MINING OPERATIONS AND NOT NATURAL CAUSES OR ACTS OF GOD. THE BURDEN OF PROOF SHOULD BE WITH THE COMPLAINING PARTY. OTHERWISE, MINING COMPANIES WILL BE FACED WITH NUMEROUS NUISANCE/UNSUBSTANTIATED CLAIMS FOR DAMAGES.]

Section 136. Piercing the corporate veil. When the separate personality of the corporation from its shareholders is being invoked as defense in order to perpetuate a crime, fraud or other machinations, or evade liability, the separate personality of the corporation shall be set aside. Civil, criminal and administrative actions may thus be filed directly against the members of the Board of Directors, officers and/or individual stockholders.

[CHAMBER OF MINES COMMENT:

THIS IS CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE, WHICH REQUIRE A COURT TO DECIDE WHETHER OR NOT TO PIERCE THE VEIL AND IMPOSE LIABILITY DIRECTLY ON THE PERSONS BEHIND THE CORPORATION.]

Section 137. Citizen Suits. For the purpose of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file appropriate civil, criminal and administrative suits against any of the following.

- a. Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations;
- b. Any public officer with respect to orders, rules and regulations inconsistent with this Act;
- c. Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its rules and regulations; or abuses the authority in the performance of a duty/ies under this Act or its implementing rules and regulations.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimation, and shall likewise, upon *prima facie* showing of non enforcement or violation complained, of, exempt the plaintiff from filing an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days upon the filing of the case, the court will determine whether or not the complaint is malicious or baseless and shall accordingly dismiss the petition.

[CHAMBER OF MINES COMMENT:

FOR DUBIOUS REASONS, THIS BILL INCLUDES PROVISIONS ON THE VIOLATION OF HUMAN RIGHTS BY THE MINING OPERATOR. THIS IS OBVIOUSLY MISPLACED BECAUSE THERE ARE ALREADY LAWS THAT ADDRESS/CONFRONT THIS MATTER/ISSUES.

THE EXEMPTION ON THE INJUNCTION BOND REQUIREMENT IS CONTRARY TO LAW AND ESTABLISHED LEGAL PRINCIPLES ON WHY THE LAW REQUIRES AN INJUNCTIVE BOND FOR THOSE SEEKING EXTRAORDINARY REMEDIES. WITHOUT A SECURITY TO ANSWER AGAINST ANY POTENTIAL GRAVE OR IRREPARABLE DAMAGE ON THE PARTY SOUGHT TO BE ENJOINED, WHIMSICAL AND “INTENDED FOR HARASSMENT” INJUNCTION CASES AGAINST MINING COMPANIES WILL BE NUMEROUS AND TO BE EXPECTED.

THIS PROVISION WILL PROMOTE HARASSMENT, BLACKMAIL AND WILL DISCOURAGE FOREIGN INVESTORS. ONLY PERSONS WHO STAND TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT OR THE PARTY ENTITLED TO THE AVAILS OF THE SUIT SHALL BE ALLOWED TO BRING ACTION AGAINST THE MINING CORPORATIONS.

FILING OF AN INJUNCTION BOND MUST BE REQUIRED PRIOR TO THE ISSUANCE OF ANY INJUNCTION. EVEN A DAY’S SUSPENSION OF THE MINING OPERATIONS WOULD COST A MINING COMPANY MILLIONS OF PESOS IN LOSSES. IF IT IS DETERMINED JUDICIALLY THAT THE ACTS COMPLAINED OF HAS NO LEGAL / FACTUAL BASIS, THE MINING COMPANY SHOULD BE INDEMNIFIED FOR ITS LOSSES THROUGH THE BOND.]

CHAPTER XIV. PENAL PROVISIONS

Section 138. Grounds for the cancellation of permits:

- a. Violation of any provision of this Act;
- b. Human rights violations perpetrated by the contractor or any agent of the contractor.
- c. Non-payment of taxes;
- d. Bribery, use of force, intimidation, threat, coercion of public officials and communities;
- e. Any act that shall create or contribute to conflicts;
- f. Other analogous acts.

Corporations, corporate directors/officers found guilty of the above enumeration may be subjected to a perpetual ban in the mining operations.

[CHAMBER OF MINES COMMENT:

OTHER THAN FOR SECTION 138, SUBSECTION A, ALL OTHER PUNISHABLE ACTS ARE VAGUE AND EITHER SUPERFLUOUS OR ALREADY GOVERNED BY GENERAL AND SPECIAL LAWS.]

Section 139. False Statements. Any person who knowingly presents any false application, declaration, or evidence to the Government or publishes or causes to be published any prospectus or other information containing any false statement relating to mines, mining operations or mineral agreements and permits shall, upon conviction, be penalized by a fine of not exceeding One Hundred Thousand pesos (P100,000.00).

Section 140. Illegal Exploration. Any person extracting minerals and imposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from One Hundred thousand pesos (P100,000.00) to One Million pesos (P1,000,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

Section 141. Theft of Minerals. Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from One Hundred Thousand Pesos (P100,000.00) to One Million Pesos (P1,000,000.00) or both, at the discretion of the appropriate court. IN addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such association, corporation, or partnership.

[CHAMBER OF MINES COMMENT:

IT SEEMS THAT IF THE MINING OPERATOR IS THE VIOLATOR, THE PERIOD OF IMPRISONMENT IS HIGHER AND THE AMOUNT OF FINE IS EXORBITANT, I.E., P5 MILLION. THIS IS DISCRIMINATORY AS THEFT OF MINERALS IS THE MORE SERIOUS OFFENSE AND THE PERPETRATOR SHOULD BE PUNISHED ACCORDINGLY. IN ILLEGAL EXPLORATION, THERE IS NO COMMERCIAL DISPOSITION OF MINERALS AND THEREFORE, THE FINE SHOULD BE MINIMAL PLUS ADMINISTRATIVE SANCTIONS.]

Section 142. Destruction of Mining Structures. Any person who willfully destroys or damages structures in or on the mining area or on the mill sites shall, upon conviction, be imprisoned for a period not to exceed five (5) years and shall, in addition, pay compensation for the damages which may have been caused thereby.

Section 143. Mines Arson. Any person who willfully sets fire to any mineral stockpile, mine or workings, fittings or a mine, shall be guilty of arson and shall be punished, upon conviction, by the appropriate court in accordance with the provisions of the Revised Penal Code and shall, in addition, pay compensation for the damages caused hereby.

Section 144. Willful Damage to a Mine. Any person who willfully damages a mine, unlawfully causes water to run into a mine, or obstructs any shaft or passage to a mine, or renders useless, damages or destroys any machine, appliance, apparatus, rope, chain, tackle, or any other things used in a mine, shall be punished, upon conviction, by the appropriate court, by imprisonment not exceeding a period of five (5) years and shall, in addition, pay compensation for the damages caused thereby.

[CHAMBER OF MINES COMMENT:

THE PENALTIES FOR SECTIONS 142, 143, AND 144 SHOULD BE HIGHER BECAUSE THESE OFFENSES CONSTITUTE ECONOMIC SABOTAGE.]

Section 145. Illegal Obstruction to Permittees or Contractors. Any person who, without justifiable cause, prevents or obstructs the holder of any permit, agreement or lease from undertaking his mining operations shall be punished, upon conviction by the appropriate court, by a fine not exceeding Five thousand pesos (P5,000.00).

Section 146. Vitiating of FPIC. Any person found to have vitiated the cones of the ICCs/IPs through bribery, threat, force and/or intimidation, or any other similar means, shall suffer the penalty of six (6) years and one (1) day to ten (10) years in prison, and a fine of at least two million pesos (Php2,000,000.00). If the preparatory is a government official, the penalty shall be eight (8) years and one (1) day to twelve (12) years imprisonment, and a fine of at least four (4) million pesos (Php4,000,000.00). He/she shall be perpetually prohibited from assuming public office, and shall be disqualified from receiving other benefits by virtue of his/her position in government.

Section 147. Penalty for human rights violations. Contractors or other persons who have violated the human rights communities in connection with the mining operations shall be penalized with ten (10) years to fourteen (14) years imprisonment and a fine of at least five million pesos (Php5,000,000.00) and shall indemnify the victims.

Section 148. Abandonment. Contractors and/or permittees who shall abandon mines shall be perpetually banned or disqualified from conducting mining operations, directly. The ban and/or disqualification shall include the officers and directors of corporations that have abandoned mines.

Section 149. Confiscation of equipment and property. The equipment and property of contractors and permit holders violating this Act shall be forfeited in favor of the government.

Section 150. Non-application of the corporate veil. Any person violating the provisions of Commonwealth Act No. 108, or the Anti-Dummy Law of the Philippines as amended, or is found to have used the corporate structure to defeat the provisions of the Act shall suffer the penalty of five million pesos (Php5,000,000.00) and perpetual ban in the mining industry.

[CHAMBER OF MINES COMMENT:

THIS SECTION MAKES NON-APPLICATION OF THE CORPORATE VEIL A CRIMINAL OFFENSE. THIS IS CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE, WHERE PIERCING THE CORPORATE VEIL IS MERELY A METHOD BY WHICH A COURT CAN IMPOSE LIABILITY DIRECTLY ON THE PERSONS BEHIND THE CORPORATION. NON-USE OF THE CORPORATE VEIL DOES NOT IN ITSELF RESULT IN CRIMINAL LIABILITY. THIS PENALTY ALSO RESULTS IN AN AMENDMENT OF THE ANTI-DUMMY LAW WHICH IS NOT GERMANE TO THIS BILL.]

Section 151. After notice and hearing, revoked permits that have undergone due process may be reinstated, provided that it may only be reinstated once.

CHAPTER XV TRANSITORY PROVISIONS

Section 152. There shall be a moratorium on all mining activities until all the systems are in place for the proper implementation of the law.

Section 153. All existing mining permits, licenses and agreements are deemed cancelled.

[CHAMBER OF MINES COMMENT:

THIS IS THE MOST DESTRUCTIVE AND RADICAL OF ALL PROVISIONS IN THIS BILL AS IT IS CONFISCATORY. CLEARLY, THERE WILL BE DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW AND VIOLATIONS OF THE NON-IMPAIRMENT CLAUSE OF THE CONSTITUTION IF THIS WILL BE APPLIED. THE NON-IMPAIRMENT CLAUSE UNDER THE BILL OF RIGHTS, SPECIFICALLY SEC 10, ARTICLE III OF THE CONSTITUTION, PROVIDES: "NO LAW IMPAIRING THE OBLIGATION OF CONTRACTS SHALL BE PASSED."]

Section 154. The classification of public lands as mineral reservations pursuant to pre-existing laws shall hereby cease. All such lands shall be closed to mining unless opened thereto in accordance with the provisions of this Act. The President's power to declare mineral reservations shall henceforth cease to exist. A review of the current mineral land classification shall be conducted to determine the best livelihood and economic option for the said area.

[CHAMBER OF MINES COMMENT:

SECTIONS 152, 153 AND 154 ARE UNACCEPTABLE. THEY VIOLATE THE CONSTITUTIONAL PROVISIONS ON ELEMENTARY DUE PROCESS, EQUAL PROTECTION AND NON-IMPAIRMENT OF CONTRACTS. THESE WOULD CAUSE PARALYSIS AND IMMEDIATE COLLAPSE OF THE MINING INDUSTRY.]

Section 155. The members of the panels of arbitrations and the provincial or city mining regulatory boards established under Republic Act No. 7942 shall hold-over their positions until replaced in accordance with provisions of this Act.

CHAPTER XVI FINAL PROVISIONS

Section 156. Separability Clause. The provisions of this Act are hereby declared to be separable and, in the event of any such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in force and effect.

Section 157. Repealing Clause. Republic Act 7942, Presidential Decree 463, Presidential Decree 512, and other related mining laws are hereby repealed. All provisions in laws, decrees and other regulations inconsistent with this present law shall be deemed amended or repealed if the inconsistency is irreconcilable.

Section 158. Funds. The amount of One Hundred Billion Pesos (Php100,000,000,000.00) is hereby appropriated for the proper functioning of the Bureau, the Council, and other bodies established under this Act.

[CHAMBER OF MINES COMMENT:

WHAT IS THE BASIS OF THIS AMOUNT PROPOSED TO BE SET ASIDE?]

Section 159. Implementing Rules and Regulations. The implementing rules and regulations of this Act shall be the product of joint collaboration by the Department, and representatives from the local government units, peoples' organizations, sectoral organizations and non-governmental organizations, and shall be drawn up after appropriate public consultations.

Section 160. Effectivity Clause. This Act shall take effect within fifteen (15) days following its publication in two newspapers of general circulation in the Philippines