

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fourteenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

[REPUBLIC ACT NO. 9728]

AN ACT CONVERTING THE BATAAN ECONOMIC ZONE LOCATED IN THE MUNICIPALITY OF MARIVELES, PROVINCE OF BATAAN, INTO THE FREEPORT AREA OF BATAAN (FAB), CREATING FOR THIS PURPOSE THE AUTHORITY OF THE FREEPORT AREA OF BATAAN (AFAB), APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* — This Act shall be known as the “Freeport Area of Bataan (FAB) Act of 2009”.

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to actively encourage, promote, induce and accelerate a sound and balanced industrial, economic and social development of the country in order to provide jobs to the people especially those in the rural areas, increase productivity and individual and family income, and thereby improve the level and quality of living condition through the establishment, among others, of special economic zones in suitable and strategic locations in the country and through measures that will attract legitimate and productive foreign investments.

SEC. 3. *Conversion of the Bataan Economic Zone (BEZ) into the Freeport Area of Bataan.* – The existing Bataan Economic Zone located in the Municipality of Mariveles, Province of Bataan is hereby converted into a special economic zone and freeport to be known as the Freeport Area of Bataan (FAB). The FAB shall cover the Municipality of Mariveles, Province of Bataan.

SEC. 4. *Governing Principles.* – The FAB shall be managed and operated under the following principles:

(a) Within the framework and limitations of the Constitution and applicable provisions of the Local Government Code, the FAB shall be developed into and operated as a decentralized, self-reliant and self-sustaining industrial, commercial-trading, agro-industrial, tourist, banking, financial and investment center with suitable residential areas;

(b) The FAB shall continue to be provided with transportation, telecommunications and other facilities needed to attract legitimate and productive investments, generate linkage industries and employment opportunities for the people of the Province of Bataan and its neighboring towns and cities;

(c) The FAB may establish mutually beneficial economic relations with other entities or enterprises within the country or with foreign entities or enterprises;

(d) Foreign citizens and companies owned by non-Filipinos in whatever proportion may set up enterprises in the FAB either by themselves or in joint venture with Filipinos in any sector of industry, international trade and commerce within the FAB;

(e) The FAB shall be managed and operated as a separate customs territory ensuring free flow or movement of goods and capital within, into and out of its territory;

(f) The FAB shall provide incentives such as tax and duty-free importations of raw materials, capital and equipment to registered enterprises located therein. However, exportation or removal of goods from the territory of the FAB to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue Code (NIRC) of 1997, as amended;

(g) The areas comprising the FAB may be expanded or reduced when necessary. For this purpose, the FAB Authority which will be created under this Act, with the concurrence of the local government units (LGUs), in accordance with existing laws and local ordinances shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to the FAB for the following purposes: (1) consolidation of lands for FAB development; (2) acquisition of right of way to the FAB; and (3) the protection of watershed areas and the maintenance and improvement of its water yield and natural assets valuable to the prosperity of the FAB, the management of solid and water waste and its impact to adjacent areas within the local government concerned.

The LGU and the FAB shall provide for a mechanism to address inappropriate exploitation of the natural environment and disruptive land use within the jurisdiction of the FAB;

(h) Goods manufactured by the FAB enterprise shall be made available for immediate retail sale in the domestic market, subject to the payment of corresponding taxes on raw materials and other regulations that may be formulated by the FAB Authority, together with the Philippine Economic Zone Authority (PEZA), the *Bangko Sentral ng Pilipinas* (BSP), the Department of Finance (DOF), the Bureau of Customs (BOC) and the Department of Trade and Industry (DTI) in accordance with the NIRC of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

However, in order to protect the domestic industries, a negative list of industries shall be drawn up and regularly updated by the PEZA. Enterprises engaged in industries included in such negative list shall not be allowed to sell their products locally; and

(i) The defense of the FAB and the security of its perimeter fence shall be the responsibility of the National Government in coordination with the FAB Authority and the LGUs.

SEC. 5. *Fiscal Incentives.* – The registered enterprises operating within the FAB may be entitled to the existing pertinent fiscal incentives as provided for under Republic Act No. 7916, as amended by Republic Act No. 8748, also known as the Special Economic Zone Act of 1995, or those provided under Executive Order No. 226, as amended, otherwise known as the Omnibus Investment Code of 1987.

SEC. 6. *Imposition of a Tax Rate of Five Percent (5%) on Gross Income Earned.* – No taxes, local and national, shall be imposed on business establishments operating within the FAB. In lieu thereof, said business establishments shall pay a five percent (5%) final tax on their gross income earned in the following percentages:

- (a) One *per centum* (1%) to the National Government;
- (b) One *per centum* (1%) to the Province of Bataan;
- (c) One *per centum* (1%) to the treasurer's office of the Municipality of Mariveles; and
- (d) Two *per centum* (2%) to the Authority of the Freeport of Area of Bataan.

SEC. 7. *Incentive to Investors.* – Any foreign national who invests an amount of One hundred fifty thousand US dollars (US\$150,000.00), either in cash and/or equipment, in a registered enterprise shall be entitled to an investor's visa: *Provided*, That he has the following qualifications:

- (a) He is at least eighteen (18) years of age;

(b) He has not been convicted of a crime involving moral turpitude;

(c) He is not afflicted with any loathsome, dangerous or contagious disease; and

(d) He has not been institutionalized for any mental disorder or disability.

As a holder of investor's visa, an alien shall be entitled to reside in the Philippines while his investment subsists. For this purpose, he should submit an annual report, in the form duly prescribed for the purpose, to prove that he has maintained his investment in the country, should said alien withdraw his investments from the Philippines, then the investor's visa issued to him shall automatically expire.

SEC. 8. Administration, Implementation and Monitoring of Incentives. - For the proper administration, implementation and monitoring of tax incentives provided under this law, the following are herein mandated:

(a) The AFAB shall be responsible for the administration and implementation of the incentives granted to its respective registered enterprises. Among others, it shall adopt and implement systems and procedures affecting trade and customs policies.

The BOC shall set up and establish a custom's controlled area outside the gate of the FAB to facilitate payment of taxes on goods entering the Philippine customs territory; and

(b) The AFAB shall likewise submit to the DOF its annual tax expenditures based on the tax incentives granted to its registered enterprises. The DOF, for its part, shall create a single database of all incentives provided by the governing authority. The DOF shall monitor the incentives granted, and submit an annual report to the President.

SEC. 9. Extension of Period of Availment. - The availment period of the incentives provided herein may be extended by AFAB, in the event that the registered enterprise

has suffered operational *force majeure* that has impaired its viability, equivalent thereto.

SEC. 10. *Duration of Incentives.* – Enterprises registered with AFAB may enjoy the income tax holiday (ITH) or the net operating loss carry over (NOLCO) granted by the authority prior to the availment of the five percent (5%) gross income earned (GIE).

Fiscal incentives under this Act shall be terminated after a cumulative period of twenty (20) years from date of registration or start of commercial operation, whichever is applicable, except that it could be extended with regard to industries deemed indispensable to national development.

The industries exempted from this provision shall be determined by the AFAB.

SEC. 11. *Creation of the Authority of the Freeport Area of Bataan (AFAB).* – There is hereby created a body corporate to be known as the Authority of the Freeport Area of Bataan (AFAB), hereinafter referred to as the AFAB which shall manage and operate the FAB, in accordance with the provisions of this Act.

SEC. 12. *Principal Office of the AFAB.* – The AFAB shall maintain its principal office in the Municipality of Mariveles, Province of Bataan, but it may establish liaison offices within the Philippines as may be necessary for the proper conduct of its business.

SEC. 13. *Powers and Functions of the AFAB.* – The AFAB shall have the following functions:

(a) To adopt, alter, use a corporate seal, to contract, lease, buy, sell, acquire, own and dispose properties of whatever nature;

(b) To sue and be sued in order to carry out its duties, responsibilities, privileges, powers and functions as granted and provided for in this Act and to exercise the power of eminent domain for public use and public purpose;

(c) To operate, administer, manage, develop, in accordance with Executive Order No. 525, as amended, the FAB according to the principles and provisions set forth in this Act and to coordinate with the LGUs for the development plans, activities and operation of the FAB;

(d) To recommend to the President the issuance of a proclamation to fix and delimit the site of the FAB;

(e) To register, regulate and supervise the enterprises in the FAB in an efficient and decentralized manner, subject to existing laws;

(f) To coordinate with the LGUs and exercise general supervision over the development plans, activities and operations of the FAB;

(g) To authorize or undertake, on its own or through others, and to regulate the establishment, construction, operation and maintenance of public utilities, services, and infrastructure in the FAB such as shipping, barging, stevedoring, cargo, handling, hauling, warehousing, storage of cargo, port services or concessions, piers, wharves, bulkheads, bulk terminals, mooring areas, storage areas, roads, bridges, reclamation projects, terminals, conveyors, water supply and storage, sewerage, drainage, airport operations in coordination with the Civil Aeronautics Board, and such other services or concessions or infrastructure necessary or incidental to the accomplishment of the objectives of this Act: *Provided, however,* That the private investors in the FAB shall be given priority in the awarding of contracts, franchises, licenses, or permits for the establishment, operation and maintenance of utilities, services and infrastructure in the FAB;

(h) To license, set fees, regulate and undertake the establishment, operation and maintenance of utilities, other services, educational and medical institutions and infrastructure in the FAB such as, but not limited to, heat, light and power, water supply, telecommunications, mobile, internet and other data facilities, transport, toll roads and bridges, port services, etc., and to fix just, reasonable and competitive rates, fares, charges and prices thereof;

(i) To construct, acquire, own, lease, operate and maintain on its own or through contracts, franchises, licenses, bulk purchase from the private sector and build-operate-transfer scheme, or under a joint venture with the private sectors, any or all of the public utilities and infrastructure required or needed for the operation and development of the FAB, in coordination with appropriate national and local government authorities and in conformity with applicable laws thereon;

(j) To operate on its own, either directly or through a license to other tourism-related activities, including games, amusements, recreational and sports facilities, subject to the approval and supervision of the Philippine Amusement and Gaming Corporation (PAGCOR);

(k) To raise or borrow, within the limitation provided by law, adequate and necessary funds from local or foreign sources, to finance its projects and programs under this Act, and for that purpose, to issue bonds, promissory notes, and other forms of securities, and to secure the same by a guarantee, pledge, mortgage, deed of trust, or an assignment of all or part of its property or assets;

(l) To provide security for the FAB in coordination with the national and local governments. For this purpose, the AFAB may establish and maintain its security forces and firefighting capability or hire others to provide the same. In the event that an assistance of the military force is necessary, it shall not interfere in the internal affairs of the FAB except to provide the necessary security and defense, and their expenses shall be borne by the National Government;

(m) To protect, preserve, maintain and develop the virgin forests, beaches, coral and coral reefs, and maintain ecological balance within the FAB. For this purpose, the rules and regulations of the Department of Environment and Natural Resources (DENR) and other government agencies involved in the above functions shall be implemented by the AFAB;

(n) To create, operate and/or contract to operate such functional units or offices of the AFAB as it may deem necessary;

(o) To issue certificates of origin for products manufactured or processed in the FAB;

(p) To issue rules and regulations consistent with the provisions of this Act as may be necessary to implement and accomplish the purposes, objectives and policies provided herein;

(q) To exercise such powers as may be essential, necessary or incidental to the powers granted to it hereunder as well as those that shall enable it to carry out, implement and accomplish the purposes, objectives and policies of this Act; and

(r) To be vested with other powers enjoyed or exercised by other freeport zone authorities.

SEC. 14. *Board of Directors of the FAB.* – The powers of the AFAB shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of the following:

(a) The chairman who shall, at the same time, be the administrator of the AFAB;

(b) A vice chairman who shall come from among the members of the Board;

(c) Members consisting of:

(1) Two (2) representatives from the National Government;

(2) One (1) representative from the Province of Bataan;

(3) One (1) representative from the district covering the site of the FAB;

(4) One (1) representative from the Municipality of Mariveles, Province of Bataan;

(5) One (1) representative from the domestic investors;

(6) One (1) representative from the foreign investors; and

(7) One (1) representative from the workers working in the FAB.

The chairman and the members of the Board, shall be appointed by the President of the Philippines to serve for a term of six (6) years, unless sooner separated from service due to death, voluntary resignation or removal for cause. In case of death, resignation or removal for cause, the replacement shall serve only the unused portion of the term.

Except for the representatives of the business and labor sectors, no person shall be appointed by the President of the Philippines as a member of the Board unless he is a Filipino citizen, of good moral character, of proven probity and integrity, and a degree holder in any of the following fields: economics, business, public administration, law, management or their equivalent, and with at least ten (10) years relevant working experience preferably in the field of management or public administration.

The members of the Board shall each receive *per diem* at rates to be determined by the Department of Budget and Management (DBM) in accordance with existing rules and regulations: *Provided, however,* That the total *per diem* collected each month shall not exceed the equivalent *per diem* for four (4) meetings.

SEC. 15. *Powers and Duties of the Chairman-Administrator.* – The chairman-administrator shall have the following powers and duties:

(a) To direct and manage the affairs of the AFAB in accordance with the policies of the Board;

(b) To establish the internal organization of the AFAB under such conditions that the Board may prescribe;

(c) To submit an annual budget and necessary supplemental budget to the Board for its approval;

(d) To submit within thirty (30) days after the close of each fiscal year an annual report to the Board and such other reports as may be required;

(e) To submit to the Board for its approval policies, systems, procedures, rules and regulations that are essential to the operation of the AFAB;

(f) To create a mechanism in coordination with relevant agencies for the promotion of industrial peace, the protection of the environment, and the advancement of the quality of life in the FAB; and

(g) To perform such other duties as may be assigned to him by the Board or which are necessary or incidental to his office.

SEC. 16. *Organization and Personnel.* – The AFAB Board of Directors shall provide for an organizational structure and appoint employees, subject to the civil service law. Upon the recommendation of the chairman-administrator and with the approval of the Secretary of the DTI, the Board shall appoint and fix the remuneration and other emoluments of its officers and employees in accordance with existing laws on compensation and position classification: *Provided*, That the Board shall exercise administrative supervision on their employees.

The officers and employees of the AFAB, including all members of the Board, shall not engage directly or indirectly in partisan activities nor take part in any election, except to vote.

No officer or employee of the AFAB, subject to civil service laws and regulations, shall be removed or suspended except for cause, as provided by law.

SEC. 17. *Labor Center.* – A labor center shall be established within the FAB. This center shall be responsible for studying and amicably settling professional and labor relations and disputes, interpretation of employment contracts, and monitoring work, hygiene and safety standards within the FAB. The labor center shall comprise a labor office,

an industrial health and safety office, and an inspection and disputes office.

SEC. 18. *Banking Rules and Regulations.* – Existing banking laws and rules/regulations of the BSP shall apply to banks and financial institutions to be established in the FAB.

SEC. 19. *Remittances.* – In the case of foreign investments, a registered enterprise in the Bataan Ecozone shall have the right to remit earnings from the investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section 74 of Republic Act No. 265, as amended.

SEC. 20. *Applicability Clause.* – The provisions of Sections 30-41 of Republic Act No. 7916, otherwise known as “The Special Economic Zone Act of 1995”, as amended, shall likewise apply to the FAB.

SEC. 21. *Capitalization.* – The AFAB shall have an authorized capital stock of Two billion pesos (Php2,000,000,000.00), with option to increase capitalization upon the discretion of the AFAB, divided into twenty thousand (20,000) no-par shares fully subscribed and paid up by the Republic of the Philippines with:

(a) All lands embraced and covered by the FAB, as well as permanent improvements and fixtures upon proper inventory not otherwise alienated, conveyed, or transferred to another government agency;

(b) All other assets which the President may transfer to the AFAB as part of the equity contribution of the government; and

(c) Cash contribution by the government in the amount of Five hundred million pesos (Php500,000,000.00) a year for the next five (5) years, which is hereby appropriated out of any fund in the National Treasury not otherwise appropriated.

SEC. 22. *Supervision and Control.* – For purposes of policy direction and coordination, the AFAB shall be under the

direct control and supervision of the Office of the President of the Philippines.

SEC. 23. *Regional Development Council.* – The AFAB shall determine the development goals for the FAB within the framework of national development plans, policies and goals. The administrator shall, upon approval by the Board, submit the FAB plans, programs and projects to the Regional Development Council for inclusion and inputs to the overall regional development plan.

SEC. 24. *Relationship with Local Government Units.* – Except as herein provided, the Municipality of Mariveles in the Province of Bataan shall operate and function in accordance with the Local Government Code of 1991. In case of any conflict between the AFAB and the local government units (LGUs) and the National Government (NG) on matters affecting the FAB other than defense and security matters, the decision of the AFAB shall prevail.

SEC. 25. *Legal Counsel.* – The AFAB shall have its own internal legal counsel under the supervision of the Government Corporate Counsel. When the exigencies of its businesses and operations demand, the AFAB may engage the services of an outside counsel either on a case-to-case or on a fixed retainer basis.

SEC. 26. *Interpretation/Construction.* – The powers, authorities and functions that are vested in the AFAB are intended to establish decentralization of governmental functions and authority and promote an efficient and effective working relationship between the AFAB, the National Government and the LGU.

SEC. 27. *Audit.* – The Commission on Audit shall appoint a full-time auditor in the AFAB or may assign such number of personnel as may be necessary in the performance of their functions.

SEC. 28. *Transitory Provisions.* – All properties, assets, funds, rights, obligations, and liabilities are hereby transferred to the AFAB except for the liabilities that are not properly accounted for as per the reports coming from the Commission

on Audit, which shall be retained by the PEZA. The AFAB shall be responsible for the operations, administration, management and development of the FAB.

The AFAB shall effect the transfer herein provided in a manner that will ensure the least disruption of ongoing programs of the BEZ. The qualified and necessary personnel of the BEZ shall be transferred to and absorbed by the AFAB: *Provided*, That the tenure, rank, salaries and privileges of such personnel are not reduced or adversely affected. The personnel whose services are not retained by the AFAB shall be granted separation pay and retirement and other benefits they are entitled to under existing laws but in no case shall the separation pay be less than one (1) month for every year of service.

In the period prior to the actual assumption of duties by the AFAB, all officers and employees of the BEZ shall continue to exercise their functions and discharge their duties and responsibilities. The BEZ shall be deemed abolished upon the organization of the AFAB.

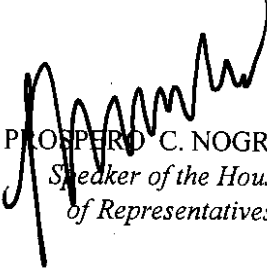
SEC. 29. *Implementing Rules and Regulations.* – The DTI, the DOF, the LGU and the Department of the Interior and Local Government shall formulate the implementing rules and regulations of this Act within ninety (90) days after its approval. Such rules and regulations shall take effect fifteen (15) days after their publication in a newspaper of general circulation in the Philippines.

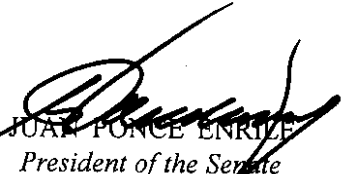
SEC. 30. *Separability Clause.* – If any provision of this Act shall be held unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force and effect.

SEC. 31. *Repealing Clause.* – Republic Act No. 5490 and Presidential Decree No. 66 are hereby amended. All laws, executive orders or issuances or any part thereof which are inconsistent herewith are hereby repealed or amended accordingly.


SEC. 32. *Effectivity Clause.* – This Act shall take effect upon its publication in at least one (1) newspaper of general circulation.

Approved,


 PROSPERO C. NOGRALES
*Speaker of the House
 of Representatives*


 JUAN PONCE ENRILE
President of the Senate

This Act which is a consolidation of Senate Bill No. 2118 and House Bill No. 5344 was finally passed by the Senate and the House of Representatives on September 14, 2009 and September 16, 2009, respectively.


 MARILYN B. BARUA
*Secretary General
 House of Representatives*


 EDWIN B. BELLEN
Acting Senate Secretary

Approved:

GLORIA MACAPAGAL-ARROYO

President of the Philippines

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~~Lapsed into law on~~ OCT 23 2009
 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution