



## HOUSE OF REPRESENTATIVES

H. No. 5308

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BY REPRESENTATIVE LIBANAN, PER COMMITTEE REPORT NO. 1589

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AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREEPORT IN THE MUNICIPALITIES OF GUIUAN, MERCEDES AND SALCEDO, INCLUDING THE ISLANDS OF HOMONHON, MANICANI, SULUAN AND CALICOAN, PROVINCE OF EASTERN SAMAR, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES

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

1           SECTION 1. *Short Title.* – This Act shall be known as the “Eastern  
2 Samar Special Economic Zone Act of 2006”.

3           SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the  
4 State to actively encourage, promote, induce and accelerate the sound and  
5 balanced industrial, economic and social development of the country in order  
6 to provide jobs for the people especially those in the rural areas, increase their  
7 productivity and their individual and family income, and thereby improve the  
8 level and quality of their living conditions through the establishment, among  
9 others, of special economic zones and freeports in suitable and strategic

1 locations in the country through measures that shall effectively attract  
2 legitimate and productive foreign and domestic investments.

3         SEC. 3. *The Eastern Samar Special Economic Zone and Freeport.* – In  
4 accordance with the foregoing declared policy, there is hereby established a  
5 special economic zone and freeport, hereinafter known as the Eastern Samar  
6 Ecozone, which shall cover the entire municipalities of Guiuan, Mercedes and  
7 Salcedo, and the islands of Homonhon, Manicani, Suluan and Calicoan,  
8 Province of Eastern Samar.

9         SEC. 4. *Governing Principles.* – The Eastern Samar Special Economic  
10 Zone shall be managed and operated by the Eastern Samar Economic Zone  
11 Authority, hereinafter referred to as the ESEZA, created under Section 10 of  
12 this Act, under the following principles:

13         (A) Under the framework and limitations of the Constitution and the  
14 applicable provisions of the Local Government Code, the Eastern Samar  
15 Ecozone shall be developed into and operated as a self-sustaining industrial,  
16 commercial, financial, investment and tourism/recreational center and freeport  
17 with suitable retirement/residential areas, in order to create employment  
18 opportunities in and around the zone, and to effectively encourage and attract  
19 legitimate and productive foreign and domestic investment therein.

20         (B) Except as otherwise provided herein, the local government units  
21 (LGUs) embraced within the Eastern Samar Ecozone shall retain and maintain  
22 their basic autonomy and identity and shall operate and function in accordance  
23 with Republic Act No. 7160, otherwise known as the Local Government Code  
24 of 1991, insofar as the areas within their respective jurisdiction covered by this  
25 Act are concerned.

26         SEC. 5. *Incentives to Registered Enterprises.* – The ESEZA may  
27 administer the following incentives to the registered enterprises located therein  
28 to the extent of the activity/project:

1 (A) Income Tax Holiday (ITH) – Registered enterprises shall be  
2 entitled to an ITH from the start of their commercial operations to the extent of  
3 their activity under the following categories:

4 (1) Category A – Registered domestic enterprises located in highly  
5 developed areas, as determined by the Board of Investments (BOI), shall be  
6 entitled to a four-year ITH.

7 (2) Category B – Registered domestic enterprises on the following shall  
8 be entitled to a six-year ITH:

9 (a) Located in less developed areas as defined by the BOI; or

10 (b) Producing/rendering new products/services or having strong  
11 backward or forward linkages.

12 (3) Category C – Registered export enterprises shall be entitled to a  
13 six-year ITH: *Provided, however,* That if the export enterprise complies with  
14 the following: (a) large capital investments or sizeable employment generation,  
15 or (b) use high level of technology, or (c) located outside Metro-Manila, it  
16 shall be entitled to an eight-year ITH.

17 Registered enterprises embarking on new investments that are listed in  
18 the current Investment Priorities Plan (IPP) shall be entitled to incentives  
19 provided herein pertaining to the new investments and subject to such terms  
20 and conditions as the BOI may determine.

21 Additional investments in the project shall be entitled to the ITH  
22 corresponding to such investments as may be determined by the BOI.  
23 Additional ITH may be granted for as long as the investment is made on the  
24 same project: *Provided,* That the project is listed in the IPP at the same time  
25 the additional investment in the project is made: *Provided, further,* That the  
26 entitlement period for additional investments shall not exceed three times the  
27 period provided under this subsection: *Provided, however,* That the total ITH  
28 period for an export enterprise availing of an eight-year ITH shall not exceed

1 twenty (20) years. Any unused incentives shall therefore be deemed forfeited  
2 if not used during the incentive period.

3 Enterprises registered with the ESEZA are required to share in the  
4 special development fund of the BOI for investment promotion projects of the  
5 government equivalent to one percent (1%) of the ITH granted for every  
6 application.

7 The Bureau of Internal Revenue (BIR) shall require a registered  
8 enterprise availing of the ITH or the Net Operating Loss Carryover (NOLCO)  
9 to secure a certificate of eligibility from the ESEZA for validation before  
10 submitting its income tax return (ITR).

11 Failure to secure certification and/or to file the ITH or the NOLCO  
12 availment for validation by the ESEZA within forty-five (45) days from the last  
13 day of statutory filing date for ITR shall cause the forfeiture of the availment  
14 for the taxable period.

15 (B) Net Operating Loss Carryover (NOLCO) – Net operating loss of  
16 the business or enterprise during the first three years from the start of  
17 commercial operations which have not been previously offset as deduction  
18 from gross income shall be carried over as a deduction from gross income for  
19 the next five consecutive years immediately following the year of such loss:  
20 *Provided, however,* That operating loss resulting from availment of incentives  
21 provided in this Code shall not be entitled to the NOLCO.

22 (C) Imposition of a tax rate of five percent (5%) on Gross Income  
23 Earned (GIE) – Except for real property tax on land, no local and national  
24 taxes as prescribed under Republic Act No. 8424, also known as “The National  
25 Internal Revenue Code (NIRC) of 1997, As Amended”, such as income tax,  
26 excise tax, franchise taxes, shall be imposed on business establishments  
27 operating within Eastern Samar Ecozone. In lieu thereof, five percent (5%) of  
28 the GIE shall be paid as follows:

1           (1) Two percent (2%) shall accrue to the general fund of the national  
2 government;

3           (2) One percent (1%) to the Province of Eastern Samar;

4           (3) One-half percent (½%) to be shared by the municipalities affected  
5 by the declaration of the zone in proportion to their income from business  
6 activities within the zone; and

7           (4) One and a half percent (1 ½%) to the ESEZA which shall be  
8 created under this Act.

9           All persons and service establishments in the Eastern Samar Ecozone  
10 shall be subject to national and local taxes under the NIRC of 1997, as  
11 amended, and the Local Government Code.

12           (D) Accelerated Depreciation – Accelerated depreciation of plant,  
13 machinery and equipment that are reasonably needed and actually used for the  
14 production and transport of goods and services may be allowed using a rate not  
15 exceeding twice the rate which would have been used had the annual allowance  
16 been computed in accordance with the rules and regulations prescribed by the  
17 Secretary of Finance and the provisions of the NIRC of 1997, as amended.

18           (E) Capital Equipment Incentives – (1) Importations of capital  
19 equipment, spare parts, tools and dye, or those required for pollution  
20 abatement and control, cleaner production and waste reduction including  
21 consignment thereof by registered enterprises upon the effectivity of this law,  
22 shall be exempted to the extent of one hundred percent (100%) of the taxes and  
23 customs duties: *Provided*, That the importation thereof shall be used  
24 exclusively by the registered enterprises in its registered activity: *Provided*,  
25 *further*, That the importation of machinery and equipment and accompanying  
26 parts shall comply with the following conditions:

27           (a) They are not manufactured domestically in sufficient quantity, of  
28 comparable quality and at reasonable prices;

1 (b) They are reasonably needed and will be used exclusively by the  
2 registered enterprise in the manufacture of its products, unless prior approval  
3 of the ESEZA is secured for the part-time utilization of said equipment in a  
4 nonregistered activity to maximize usage thereof or the proportionate taxes and  
5 duties are paid on a specific equipment and machinery being permanently used  
6 for nonregistered activities; and

7 (c) Approval of the ESEZA was obtained by the registered enterprise  
8 for the importation of such machinery, equipment and spare parts.

9 Approval of the ESEZA must be secured before any sale, transfer or  
10 disposition of the imported capital equipment, machinery or spare parts is  
11 made: *Provided*, That if such sale, transfer or disposition is made within the  
12 first five years from the date of importation, any of the following conditions  
13 must be present:

14 (i) The same is made to another enterprise enjoying tax and duty  
15 exemption on imported capital equipment;

16 (ii) The same is made to another enterprise, upon payment of any taxes  
17 and duties on the net book value of the capital equipment to be sold;

18 (iii) The importation of the capital equipment, machinery, spare parts or  
19 source documents or those required for pollution abatement and control; and

20 (iv) *Proven technical obsolescence* of the said equipment, machinery or  
21 spare parts.

22 When the aforementioned sale, transfer or disposition is made under any  
23 of the conditions provided for in the foregoing paragraphs other than paragraph  
24 (ii) herein, the registered firm shall not pay the taxes and duties waived on such  
25 items: *Provided, however*, That if the registered enterprise sell, transfer or  
26 dispose the aforementioned imported items without prior approval within five  
27 years from the date of importation, the registered enterprise and the vendee,  
28 transferee or assignee shall be solidarily liable to pay twice the amount of the

1 tax and duty exemption given it: *Provided, further,* That even if the sale,  
2 transfer or disposition of the capital equipment, machinery or spare parts is  
3 approved after five years from the date of importation, the registered  
4 enterprises are still liable to pay the taxes and duties based on the net book  
5 value of the capital equipment, machinery or spare parts if any of the  
6 registration terms and conditions has been violated. Otherwise, it shall no  
7 longer be subject to the payment of the taxes and duties waived thereon.

8 (2) The purchase of machinery, capital equipment, raw materials,  
9 supplies, parts and semi-finished products to be used in the fabrication of  
10 machinery and capital equipment by a registered export-oriented enterprise  
11 from a domestic manufacturer shall be subject to zero percent (0%) value-  
12 added tax.

13 The registered export-oriented enterprise shall be granted a tax credit  
14 equivalent to the amount of duties that would have been waived on the  
15 machinery, capital equipment, raw materials, supplies, parts and semi-finished  
16 products used in the fabrication of machinery and capital equipment, had these  
17 items been imported, upon its submission to the Department of Finance (DOF)  
18 of the bill of materials evidencing the transaction value of such and other  
19 pertinent documents, for verification and proper endorsement.

20 The availment of a registered export enterprise of the incentive stated in  
21 the immediately preceding two paragraphs shall be subject to the following:  
22 (a) that said capital equipment, machinery and spare parts will be used  
23 exclusively by the registered enterprise in its registered activity; (b) that the  
24 capital equipment or machinery where the raw materials, supplies, parts and  
25 semi-finished products were used would have qualified for tax and duty-free  
26 importation; and (c) that the approval of the ESEZA is obtained by the  
27 registered enterprise. If the registered enterprise sells, transfers or disposes

1 these machineries, capital equipment and spare parts, the provision in the  
2 preceding paragraphs for such disposition shall apply.

3 This incentive shall be deemed waived if application for tax credit under  
4 this subsection was not filed within one year from the date of delivery.

5 (F) The importation of source documents by information technology-  
6 registered enterprises shall be eligible for tax- and duty-free importation.

7 (G) Raw Materials Incentives – Every registered export-oriented  
8 enterprise shall enjoy a tax credit equivalent to the internal revenue taxes and  
9 customs duties paid on the supplies, raw materials and semi-manufactured  
10 products provided the same are not sufficient in quantity, quality or are not  
11 competitively priced which are used in the manufacture, processing or  
12 production of its export products forming part thereof, exported directly and  
13 indirectly by the registered export-oriented enterprise, based on the actual  
14 taxes and duties paid for such materials/supplies/semi-manufactured products  
15 by the registered enterprise.

16 This incentive shall be deemed waived if application for tax credit under  
17 this subsection was not filed within one year from the date of exportation of the  
18 final product.

19 (H) Incentives on Breeding Stocks and Genetic Materials – Importation  
20 of breeding stocks and genetic materials within ten (10) years from the date of  
21 registration of commercial operation of the enterprise shall be exempt from all  
22 taxes and duties: *Provided*, That such breeding stocks and genetic materials  
23 are reasonably needed in the registered activity and approved by the ESEZA.

24 Availment of the incentives by the registered enterprise shall be subject  
25 to the following: (1) that said breeding stocks and genetic materials would  
26 have been qualified for tax- and duty-free importation under the preceding  
27 paragraph; (2) that the breeding stocks and genetic materials are reasonably  
28 needed in the registered activity; (3) that approval of the ESEZA has been



1 obtained by the registered enterprise; and (4) that the purchase is made within  
2 ten (10) years from the date of registration of commercial operation of the  
3 registered enterprise.

4 This incentive shall be deemed waived if application for tax credit under  
5 this subsection is not filed within one year from the date of delivery.

6 (I) Exemption from Wharfage Dues – The provisions of law to the  
7 contrary notwithstanding, exports by a registered enterprise shall be exempted  
8 from wharfage dues.

9 (J) Deferred Imposition of the Minimum Corporate Income Tax – The  
10 Minimum Corporate Income Tax (MCIT) of two percent (2%) of the gross  
11 income as of the end of the taxable year shall be imposed when the MCIT is  
12 greater than the income tax computed under the *NIRC of 1997, as amended*,  
13 for the taxable year: *Provided, however*, That said MCIT shall be imposed  
14 only after the enterprise' entitlement period to the income tax-based incentives.

15 (K) (1) Tax treatment of merchandise in the Eastern Samar Ecozone –

16 (a) Except as otherwise provided in this Act, foreign and domestic  
17 merchandise, raw materials, supplies, articles, equipment, machineries, spare  
18 parts and wares of every description, except those prohibited by law, brought  
19 into the zone to be sold, stored, broken up, repacked, assembled, installed,  
20 sorted, cleaned, graded, or otherwise processed, manufactured, mixed with  
21 foreign or domestic merchandise whether directly or indirectly related in such  
22 activity, shall not be subject to customs and internal revenue laws and  
23 regulations nor to local tax ordinances, any provision of law to the contrary  
24 notwithstanding.

25 (b) Merchandise purchased by an Eastern Samar Ecozone enterprise  
26 from the customs territory and subsequently brought into the export processing  
27 zone shall be considered as export sales and exportation thereof shall be  
28 entitled to the benefits allowed by law for such transaction.

1           (c) Domestic merchandise sent from the Eastern Samar Ecozone to the  
2 customs territory shall, whether or not combined with or made part of other  
3 articles likewise of local origin or manufactured in the Philippines while in the  
4 export processing zone, be subject to internal revenue laws of the Philippines  
5 as domestic goods sold, transferred or disposed of for local consumption.

6           (d) Merchandise sent from the Eastern Samar Ecozone to the customs  
7 territory shall, whether or not combined with or made part of other articles  
8 while in the zone, be subject to rules and regulations governing imported  
9 merchandise. The duties and taxes shall be based on the value of said  
10 imported materials (except when the final product is exempt).

11           (e) Domestic merchandise on which all internal revenue taxes have  
12 been paid, if subject thereto, and foreign merchandise previously imported on  
13 which has been paid, or which have been admitted free of duty and tax, may be  
14 taken into the Eastern Samar Ecozone from the customs territory of the  
15 Philippines and be brought back thereto free of quotas, duty or tax.

16           (f) Subject to such regulations respecting identity and safeguarding of  
17 revenue as the ESEZA may deem necessary, when the identity of an article  
18 entered into the Eastern Samar Ecozone under the immediately preceding  
19 *paragraph has been lost*, such article when removed from the zone and taken to  
20 the customs territory shall be treated as foreign merchandise entering the  
21 country for the first time, under the provisions of the Tariff and Customs Code  
22 of the Philippines, as amended.

23           (g) Articles produced or manufactured in the Eastern Samar Ecozone  
24 and exported therefrom shall, on subsequent importation into the customs  
25 territory, be subject to the import laws applicable to like articles manufactured  
26 in a foreign country.

1 (h) Unless the contrary is shown, merchandise taken out of the export  
2 processing zone shall be considered for tax purposes to have been sent to  
3 customs territory.

4 (2) Tax Treatment of Merchandise in Eastern Samar Ecozone – The  
5 Eastern Samar Ecozone shall be operated and managed as a separate customs  
6 territory ensuring free flow or movement of goods within, into and exported  
7 out of the free trade/freeport zone. Importations of raw materials, and capital  
8 equipment are tax- and duty-free. However, exportations or removal of goods  
9 from the free trade/freeport zones to the other parts of Philippine territory shall  
10 be subject to customs and internal revenue regulations.

11 (3) Tax Treatment of Services in the Eastern Samar Ecozone –

12 (a) Sale of service by an entity from the customs territory to a  
13 registered ecozone or free trade enterprise, or by a registered ecozone or  
14 freeport enterprise to another ecozone or freeport enterprise shall be treated as  
15 indirect export, and hence, entitled to the benefits allowed by law for such  
16 transaction.

17 (b) Sale or service by a registered ecozone or freeport enterprise to the  
18 customs territory shall be subject to applicable internal revenue laws and  
19 regulations.

20 (L) Registered export-oriented enterprises shall have access to the  
21 utilization of the bonded warehousing system in accordance with the rules and  
22 regulations of the Bureau of Customs.

23 (M) Employment of Foreign National – Subject to the provisions of  
24 Section 29 of Commonwealth Act No. 613, as amended, a registered enterprise  
25 may employ foreign nationals in supervisory or technical positions for a period  
26 not exceeding ten (10) years from its registration: *Provided*, That when the  
27 majority of the capital stock of a registered enterprise is owned by foreign  
28 investors, the positions of the president, treasurer and general manager or their

1 equivalents may be retained by foreign nationals beyond the period set forth  
2 herein and such officer is the owner or a stockholder owning at least ten  
3 percent (10%) of the outstanding capital stock of the registered enterprise and  
4 he remains the owner or maintains his stockholdings therein.

5 Foreign nationals under employment contract within the purview of this  
6 incentive, their spouses and unmarried children under twenty-one (21) years of  
7 age, who are not excluded by Section 29 of Commonwealth Act No. 613, as  
8 amended, shall be permitted to enter and reside in the Philippines during the  
9 period of employment of such foreign nationals. They shall be issued a  
10 multiple-entry visa, valid for a period of three years, and shall be allowed to  
11 enter and leave the Philippines without further documentary requirements other  
12 than valid passports or other travel documents in the nature of passports. The  
13 validity of the multiple-entry visa shall be extendible yearly.

14 The foreign nationals admitted herein, as well as their respective  
15 spouses and dependents shall be exempt from obtaining alien certificate of  
16 registration and emigration clearance certificates; and securing the Alien  
17 Employment Permit (AEP) and all types of clearances, permits, licenses or  
18 their equivalents required by any government department or agency.

19 SEC. 6. *Incentive to Investors.* – Any foreign national covered under  
20 subsection (M) of Section 5 of this Act, who invests an amount of  
21 US\$150,000.00, either in cash and/or equipment, in a registered enterprise  
22 shall be entitled to an investor's visa: *Provided, That,*

23 (A) He is at least eighteen (18) years of age;

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

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

27 (D) He has not been institutionalized for any mental disorder or  
28 disability: *Provided, further, That in securing the investor's visa, the alien-*

1 applicant shall be entitled to the same privileges provided for under Section  
2 5(M), last paragraph.

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

9 *SEC. 7. Administration, Implementation and Monitoring of Incentives.*  
10 – The ESEZA shall be responsible for the administration and implementation  
11 of the incentives granted to its respective registered enterprises: *Provided,*  
12 That any incentive administration policy adopted by the BOI for all registered  
13 enterprises shall be uniformly applied by the ESEZA.

14 The following are the duties and responsibilities of the ESEZA in the  
15 administration of incentives:

16 (A) To adopt consistent procedures of administering incentives in  
17 accordance with the guidelines established by the BOI;

18 (B) To adopt and implement systems and procedures affecting trade  
19 and customs policies in accordance with the requirements established by the  
20 DOF and the BOI;

21 (C) To submit data and information to the DOF and the BOI as required  
22 by any of these agencies to ascertain consistency of investment policies and  
23 incentives, including their implementation as provided in paragraph (A) herein,  
24 and to ensure proper implementation of systems and procedures affecting trade  
25 and customs policies as provided in paragraph (B) herein; and

26 (D) To perform all other duties and responsibilities as may be required  
27 by the President of the Philippines.

1 For proper monitoring, the BOI shall create a single database of all  
2 incentives provided by all incentives granting agencies, including the ESEZA,  
3 and all information thereto. Double entry accounting shall be done by the BOI  
4 in recording all incentives granted by the government for transparency  
5 purposes.

6 SEC. 8. *Extension of Period of Availment.* – The availment period of  
7 the incentives provided herein may be extended by the ESEZA, in the event  
8 that the registered enterprise suffers operational *force majeure* or any event  
9 equivalent thereto, impairing its viability.

10 SEC. 9. *Duration of Incentives.* – Enterprises registered with the  
11 ESEZA may enjoy ITH or NOLCO granted by the Authority prior to the  
12 availment of the five percent (5%) GIE.

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

17 The industries exempted from this provision shall be recommended by  
18 the BOI, with the concurrence of the Secretaries of the DOF and the DTI.

19 SEC. 10. *Creation of the Eastern Samar Special Economic Zone*  
20 *Authority.* – There is hereby created a body corporate to be known as the  
21 Eastern Samar Economic Zone Authority, hereinafter referred to as the  
22 ESEZA, which shall manage and operate, in accordance with the provisions of  
23 this Act, the Eastern Samar Economic Zone and Freeport. This corporate  
24 franchise shall expire in fifty (50) years counted from the first (1<sup>st</sup>) day of the  
25 fifth (5<sup>th</sup>) calendar year after the effectivity of this Act, unless otherwise  
26 extended by Congress.

27 SEC. 11. *Power and Functions of the ESEZA.* – The ESEZA shall have  
28 the following powers and functions:

1 (A) To adopt, alter, use a corporate seal; to contract, lease, buy, sell,  
2 acquire, own and dispose movable and immovable as well as personal and real  
3 property of whatever nature (including, but not limited to, shares of stock or  
4 participation in private corporations or in limited partnerships, or in joint  
5 ventures in limited liability), bonds, precious metals in bullions, ingots, and  
6 easily convertible foreign exchange; to sue and be sued in order to carry out its  
7 *duties and functions granted and provided for in this Act*; and to exercise the  
8 power of eminent domain for public use and public purpose;

9 (B) Subject to the approval of the President of the Philippines and the  
10 Monetary Board of the Bangko Sentral ng Pilipinas upon the recommendation  
11 of the DOF, to raise or borrow adequate and necessary funds from local and  
12 foreign sources to finance its projects and programs under this Act, and for that  
13 purpose to issue bonds, promissory notes and other forms of securities, and to  
14 secure the same by a guarantee, pledge, mortgage, deed of trust, or an  
15 assignment of all or part of its property or assets;

16 (C) To approve, accept, accredit and allow any local or foreign  
17 business, enterprise or investment in the Zone, subject only to such rules and  
18 regulations as the ESEZA may promulgate from time to time in conformity  
19 with the provisions of this Act and the limitations provided in the  
20 *Constitutions*;

21 (D) To authorize or undertake, on its own or through others, and  
22 regulate the establishment, operation and maintenance of public utilities,  
23 services and infrastructure in the Zone such as shipping, barging, stevedoring,  
24 cargo handling, hauling, warehousing, storage of cargo, port services or  
25 concessions, piers, wharves, bulkheads, bulk terminals, mooring areas, storage  
26 areas, roads, bridges, terminals, conveyors, water supply and storage,  
27 sewerage, drainage, airport operations in coordination with the Civil  
28 Aeronautics Board, and such other services or concessions or infrastructure

1 necessary or incidental to the accomplishment of the objectives of this Act:  
2 *Provided, however,* That the private investors in the Zone shall be given  
3 priority in the awarding of contracts, franchises, licenses or permits for the  
4 establishment, operation and maintenance of utilities, services and  
5 infrastructure in the Zone;

6 (E) To construct, acquire, own, lease, operate and maintain on its own  
7 or through others by virtue of contracts, franchises, licenses or permits under  
8 the build-operate-transfer scheme or under a joint venture with the private  
9 sector any or all of the public utilities and infrastructure required or needed in  
10 the Zone, in coordination with appropriate national and local government  
11 authorities and in conformity with applicable laws thereon;

12 (F) To operate on its own, either directly or through a license to others,  
13 tourism-related activities, including games, amusements, recreational and  
14 sports facilities such as horse racing, dog racing, gambling casinos, golf  
15 courses and others, under priorities and standards set by the ESEZA;

16 (G) To protect, preserve, maintain and develop the virgin forests,  
17 beaches, coral and coral reefs within the Zone. The virgin forest within the  
18 Zone will be proclaimed as a national park and will be covered by a permanent  
19 total log ban. For this purpose, the rules and regulations of the Department of  
20 Environment and Natural Resources and other governmental agencies involved  
21 in the above functions shall be implemented by the ESEZA;

22 (H) To adopt, implement and enforce reasonable measures and  
23 standards to control pollution within the Zone;

24 (I) To provide security for the Zone in coordination with the national  
25 and local governments. For this purpose, the ESEZA may establish and  
26 maintain its own security force and firefighting capability or hire others to  
27 provide the same;



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

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

8           SEC. 12. *Board of Directors of the ESEZA.* – The powers of the  
9 ESEZA shall be vested in and exercised by a board of directors, hereinafter  
10 referred to as the Board, which shall be composed of twenty-one (21)  
11 members, to wit:

12           (A) The Secretary of Trade and Industry who shall serve as an *ex officio*  
13 chairman of the Board of Directors and three other representatives of the  
14 national government;

15           (B) The governor of the Province of Eastern Samar and the  
16 representative of the congressional district to which the Zone belongs, as *ex*  
17 *officio* voting members;

18           (C) The mayors of the municipalities of Guiuan, Mercedes and Salcedo,  
19 *Province of Eastern Samar, as ex officio* voting members;

20           (D) Four representatives from the business and investment sectors in the  
21 Zone, two of whom must come from the investors in the Municipality of  
22 Guiuan and one each from the municipalities of Mercedes and Salcedo; and

23           (E) Four representatives of the private sector, two of whom must be  
24 residents of the Municipality of Guiuan and one each coming from the  
25 residents of the municipalities of Mercedes and Salcedo.

26           The chairman and the members of the Board, except the *ex officio*  
27 members, shall be appointed by the President of the Philippines to serve for a  
28 term of three years, unless sooner separated from the service due to death,

1 voluntary resignation or removal for cause. In case of death, resignation or  
2 removal for cause, the replacement shall serve only the unexpired portion of  
3 the term.

4 Except for the representatives of the business and investment sectors, no  
5 person shall be appointed by the President of the Philippines as a member of  
6 the Board unless he is a Filipino citizen, of good moral character and of  
7 recognized competence in some relevant fields in business, banking, shipping  
8 business or labor management, port operations, engineering or law.

9 Members of the Board shall receive a reasonable *per diem* at rates to be  
10 determined by the Department of Budget and Management: *Provided,*  
11 *however,* That the total *per diem* collected each month shall not exceed the  
12 equivalent *per diems* for four meetings. Unless and until the President of the  
13 Philippines has fixed a higher *per diem* for the members of the Board, such *per*  
14 *diem* shall not be more than Ten thousand pesos (P10,000.00) for every Board  
15 meeting.

16 SEC. 13. *Administrator and Chief Executive Officer.* – The President of  
17 the Philippines shall appoint a full-time professional and competent  
18 administrator and chief executive officer for the ESEZA whose compensation  
19 shall be determined by its Board of Directors and shall be in accordance with  
20 the revised compensation and position classification system. The administrator  
21 and chief executive officer of the ESEZA shall be responsible to the Board and  
22 the President of the Philippines for the efficient management and operation of  
23 the Zone.

24 SEC. 14. *Capitalization.* – The ESEZA shall have an authorized capital  
25 stock of two billion (2,000,000,000) no par shares with a minimum issue of  
26 Ten pesos (P10.00) each, the majority shares of which shall be subscribed and  
27 paid for by the national government and the LGUs embracing the Eastern  
28 Samar Special Economic Zone and Freeport. The Board of Directors of the

1 ESEZA may, with the written concurrence of the Secretary of Finance, sell  
2 shares representing not more than forty *per centum* (40%) of the capital stock  
3 of the ESEZA to the general public under such policy as the Board and the  
4 Secretary of Finance may determine. The national government and the LGUs  
5 shall in no case own less than sixty *per centum* (60%) of the total issued and  
6 outstanding capital of the ESEZA.

7 The amount necessary to subscribe and pay for the shares of the national  
8 government to the capital stock of the ESEZA shall be included in the annual  
9 General Appropriations Act. For LGUs, the funds shall be taken from their  
10 internal revenue allotment and other local funds.

11 SEC. 15. *Supervision.* – The ESEZA shall be under the direct control  
12 and supervision of the Office of the President of the Philippines for purposes  
13 of policy direction and coordination, in the meantime that the agency tasked  
14 with the coordination of special economic zones is not yet in place.

15 SEC. 16. *Banking Rules and Regulations.* – Existing banking laws and  
16 Bangko Sentral ng Pilipinas (BSP) rules and regulations shall apply on foreign  
17 exchange and other current account transactions (trade and nontrade), local and  
18 foreign borrowings, foreign investments, establishment and operation of local  
19 and foreign banks, foreign currency deposit units, offshore banking units and  
20 other financial institutions under the supervision of the BSP.

21 SEC. 17. *Relationship with the Municipalities of Guiuan, Mercedes*  
22 *and Salcedo.* – In case of any conflict between the ESEZA and the  
23 municipalities of Guiuan, Mercedes and Salcedo on matters affecting the  
24 Eastern Samar Economic Zone other than in defense and security matters, the  
25 decision of the ESEZA shall prevail.

26 SEC. 18. *Legal Counsel.* – The ESEZA shall have its own internal legal  
27 counsel under the supervision of the government corporate counsel. When the  
28 exigencies of its businesses and operations demands it, the ESEZA may engage

1 the services of an outside counsel either on a case to case basis or on a fixed  
2 retainer.

3         *SEC. 19. Auditor.* – The Commission on Audit (COA) shall appoint a  
4 representative who shall be a full-time auditor of the ESEZA and assign such  
5 number of personnel as may be necessary to assist said representative in the  
6 performance of his or her duties. The salaries and emoluments of the assigned  
7 auditor and personnel of the COA shall be in accordance with the revised  
8 compensation and position classification system. The COA shall render an  
9 annual report to the President of the Philippines and to Congress on the  
10 business activities, transactions and operations of the ESEZA.

11         *SEC. 20. Separability Clause.* – If any provision of this Act shall be  
12 held unconstitutional or invalid, the other provisions not otherwise affected  
13 shall remain in full force and effect.

14         *SEC. 21. Repealing Clause.* – All laws, decrees, executive orders or  
15 issuances, or any part thereof which are inconsistent herewith are hereby  
16 repealed or amended accordingly.

17         *SEC. 22. Effectivity Clause.* – This Act shall take effect upon its  
18 publication in at least two newspapers of general circulation.

Approved,

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