

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5113



Introduced by Hon. ANGELO B. PALMONES

AN ACT
TO PROMOTE INVESTMENTS IN THE FORESTRY SECTOR

EXPLANATORY NOTE

The forestry sector had been a pillar of the Philippine economy. As late as 1975 the gross value added (GVA) of the forestry sector was 1,265 or 1.85% of the GNP which was then 68.28 B pesos. Since then the percentage share of the forestry sector in the GNP consistently decreased and in 2008 it was only 0.09% of the GNP¹.

There are several reasons for the decline in the economic importance of the forestry sector. Primary reason is the decrease in the forestry resources. As the resources declined investments in the sector also declined resulting to its current state of affairs. There are other factors though that constrained investments in the sector. An FAO-sponsored study on the constraints to investment in the forestry sector in the Philippines indicated several factors, among which are²:

Corruption - The most pervasive form is what is taking place at check points. Check points for the sector are installed to ferret out illegal logs, however it has become an instrument for extortion. They are manned not only by DENR personnel but also from other agencies such as the police, the military and from other agencies of government. Even if the logs and other forest products are properly documented and legal, personnel manning the check points still demands payment. Small-hold farmers transporting their plantation logs attest to the presence of corruption at check points. Builders' woodworks manufacturers from Region 2 (northeastern provinces) attest that they have to come across at checkpoints when transporting their

¹ Forest Management Bureau, DENR. 2008. Philippine Forestry Statistics

² FAO. 2008. Creating Space for Private Sector Financing - Removing Constraints to Investments.

products to Metro Manila³. Other products such as vegetables, poultry or swine are also subjected to extortion at the check points.

Shifting policies of the DENR – Allegedly, DENR changes policies with little or no consultation with stakeholders. In 2004 when flash floods and landslides occurred in parts of Aurora and Quezon provinces logging permits were cancelled in these two provinces and suspended for the rest of the country⁴. Later, the suspension was lifted only for Caraga Region and Region 11 but for the rest of the country the suspension remained⁵. On January 5, 2006 DENR issued a Memorandum from the Secretary (DENR, 2006) canceling IFMA, ITPLA, SIFMA, and CBFMA because of acute non-compliance of the terms and conditions of their tenure instruments. This action of the DENR has brought to a stand still activities of the various tenure-holders including pending plantation development and wood processing. Apparently, there was no consultation done with the stakeholders prior to the issuance of the order. This unstable policy situation discourages investments in the sector.

Confirmation from the National Commission for Indigenous People before a permit can be issued - DENR cannot now issue any permit on any forest area without asking confirmation from the National Commission of Indigenous Peoples (NCIP) because of the provisions of the Indigenous Peoples' Rights Act (IPRA) law that requires free and prior informed consent (FPIC)⁶ of indigenous people in areas claimed by them. NCIP has also to affirm that the subject area is outside the claim of the IPs. This affirmation takes time and increases the duration of obtaining a permit.

Limited incentives for sector investors – Investors in the forestry sector are provided incentives that are provided for in the Omnibus Investment Code (EO No. 226). Forestry investments particularly in plantation development have long gestation period before the investment start to pay off. This requires innovative incentives to encourage investors in the sector.

LGU issuances disadvantageous to investors in the sector - The Local Government Code (RA No. 7161, 1991) authorizes local governments to participate in the management of forestlands within their jurisdiction such as in forest protection, management of small watersheds and communal forest. However, LGUs see this as an authority to enact local ordinances imposing duplicatory requirements for the implementation of forestry projects within their jurisdiction.

³ Personal communication with manufacturers in Cagayan, Isabela and Nueva Vizcaya provinces. January 19-23, 2009.

⁴ DENR, 2004. Memorandum from the Secretary. Cancellation of all logging permits in Quezon Province and suspension of all permits in the rest of the country. December 8, 2004.

⁵ DENR 2005. Memorandum from the Secretary. Lifting of December 8, 2004 suspension of timber harvesting in Regions 11 and 13. March 7, 2005

⁶ Free and prior informed consent (FPIC) means the consensus of all members of the ICC/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, an obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community

As case in point is a province in Region 3 requiring industries with projects that are considered environmentally critical or located within environmentally critical areas to obtain an Environmental Compliance Certificate (ECC) from the Environmental Management Bureau (EMB). In addition they have to obtain a Provincial Environmental Compliance Certificate (PECC) from the office of the Governor⁷. Furthermore, the Provincial Government also directed the Municipal/City Mayors of the province not to issue a Business/Mayor's Permit to any business without the required ECC issued by EMB and the PECC issued by the Governor.

This requirement duplicates the ECC issued by the EMB and what it does is only to lengthen the process of obtaining a business permit not to mention the increase in the cost of obtaining the permit. If the EMB issued the ECC there is no apparent reason why the Provincial Government should not issue a similar permit.

The businesses covered by the Ordinance includes wood craft, furniture, private land timber utilization, and environmental enhancement/improvement projects such as tree planting projects in forests or sloping areas regardless of size.

In another case, the Governor of a Province issued an order banning the transport of *Gmelina* (*Gmelina arborea*) logs out of the province. Farmers have contracted to sell their logs to pallet manufacturers in a neighboring province. Because of this order from the Office of the Governor, farmers could not sell their timber products. The purported reason for the issuance of the ban was to ensure that local wood processor such as pallet manufacturers have sufficient raw material supply. The Regional Director of DENR had to intervene for the lifting of the ban⁸.

Plantation logs are exempt from the payment of forest charges yet LGUs have been imposing additional taxes on logs produced in their jurisdictions including plantation logs. This is an additional burden especially to small-hold tree farmers and a disincentive to plantation development.

Advance value added tax (VAT) - The Bureau of Internal Revenue (BIR) issued a memorandum imposing the advance payment of the value added tax on logs, including plantation logs, prior to transporting these logs⁹. To the large-scale log producers this may not present a problem, as has been indicated by them, but to the small-hold tree farmers who normally do not have ready cash to pay for these expenses, it becomes restrictive because they have to make the payment prior to being paid for their logs.

⁷ Province of Zambales. 2007. Provincial Ordinance No. 2007-67. Amended Guidelines for Environmental Regulations in the Province of Zambales, Superseding Provincial Ordinance No. 2005-17. Province of Zambales. . August 13, 2007

⁸ Principe, E. 2007. (former Regional Director who has jurisdiction over the Province of Quezon), Personal communication.

⁹ Bureau of Internal Revenue. 2007. Revenue Regulations No. 13-2007. Prescribing the Rules on the Advance Payment of Value Added Tax/Percentage Tax on the Transport of Naturally Grown and Planted Timber Products. October 15, 2007.

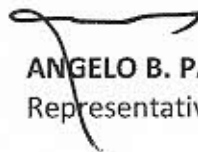
Access to capital - One constraint in investing in the sector is the absence of a window for credit for the sector. When the Agrarian Reform Law was passed the Land Bank of the Philippines (LBP) was established to facilitate the purchase by government of lands that are subject for reform. With the country in dire need of timber for its industries the government does not have a bank that caters to needs of investors in the sector.

Forest plantation trees that are fast growing take from 8 to 10 years to mature and ready for harvest. This long gestation period discourages banks to provide credit to tree farmers because such credit would require a grace period which is equivalent to the time it takes for the trees to mature. What is needed is a government bank dedicated to tree farming or plantation development.

Investor protection - There is no investor protection on tree plantation development unlike in the agriculture sector where there is crop protection insurance. The Philippines being in the typhoon belt is visited by an average of 20 typhoons a year and the tree crops are at risk of being destroyed by strong winds or by flash floods especially during the early stages of plantation development.

This Act seeks to reduce if not eliminate the various constraints to investment in the forestry sector with the expected results of improving the climate for investments in the sector thereby paving way for the recovery of forestry in the Philippines and begin to become again a pillar of the economy of the country which it occupied before. Its passage therefore is urgently requested.

Adopted



ANGELO B. PALMONES

Representative, AGHAM Party List

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AN ACT
TO PROMOTE INVESTMENTS IN THE FORESTRY SECTOR

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

SECTION 1. Title - This Act shall be known as the "Investment Act of the Forestry Sector of 2011".

SECTION 2. Basic Policy - It is the policy of the State as embodied in the Constitution to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature". As such the State shall provide opportunities and support for the development of the environment through forest rehabilitation and restoration of the natural forest. It shall also support the development of commercial plantations including agro-forestry to meet the needs of the country for wood and non-wood forest products in terms of supportive policies, institutions, regulations and incentives.

SECTION 3. Objectives - It is the objective of this Act to promote investments in the forestry sector through the establishment of institutions to support commercial forest plantations and efficient processing of forest products, provision of incentives and the rationalization and effective implementation of stable forest policies. It is also the objectives of this Act to make the Philippines self-sufficient in wood and forest products.

It is also the objectives of this Act to make the forestry sector an instrument for poverty reduction and improve livelihood opportunities particularly the people in the uplands.

SECTION 4. Capacity Building for Local Communities and Local Government Units - To ensure the success in the implementation of plantation development it is imperative that implementers be capacitated. The DENR shall identify the training needs of local communities and LGUs and develop the instruments for the training and cause the conduct the training. The

training implementation shall be in coordination with the Department of Interior and Local Government (DILG), in particular the DILG Local Government Academy.

SECTION 5. Research and Development (R & D) – The latest technology in forest plantation and agro-forestry development as well as forest products utilization and processing shall be applied to corresponding endeavors in forest development. To continuously improve the technologies, research and development shall be promoted and supported. The Ecosystems Research and Development Bureau (ERDB) of the Department of Environment and Natural Resources (DENR), the Forest Products Research and Development Institute (FPRDI) of the Department of Science and Technology (DOST) as well as state universities and colleges (SUCs) with capabilities and competence for forestry research and development shall be responsible for generating new technologies needed by the sector. The R & D components shall include policy, economic, social, cultural and marketing. Technology transfer shall also be undertaken by these institutions to plantation development enterprises and forest products processing industry.

SECTION 6. Production of High Quality Planting Materials – The DENR shall ensure the production of high quality planting materials since the success of reforestation and plantation development hinges among other things in the use of high quality planting materials. R & D shall be directed to generate technologies that will improve the quality of planting materials.

SECTION 7. Forestry Development Bank of the Philippines – There is hereby established a national bank, to be known as the **Forestry Development Bank of the Philippines (FDBP)** that caters to the needs and requirements for funds of commercial plantation developers as wells as those of the forest products industries. For this purpose, the Philippine Government shall allocate from the funds of the National Treasury Fifty Billion Pesos (P50 B) as seed capital.

SECTION 8. Philippine Forest Plantations Insurance Corporation – There shall be established a Philippine Forest Plantations Insurance Corporation that will provide insurance protection to plantation developers and investors. The Corporation shall establish its rules and procedures on insuring forest plantations, including agro-forest plantations. The Corporation shall be under the DENR for administrative and supervision purposes. The Corporation shall be appropriated P50 Billion pesos from the national treasury as start-up capital.

SECTION 9. Incentives for Private Plantation Development – The government shall encourage the development of private plantations including agro-forestry especially those established in private lands by providing incentives. Among the incentives to be provided are:

1. Free from payment of rent for the use of government lands for commercial plantation and agro-forestry development for the first plantation rotation but not longer than 12, which ever comes first;
2. Forest plantations in private lands shall not require a cutting permit for harvesting nor shall it need a transport permit for as long as the plantation is registered with the Community Environment and Natural Resources Office (CENRO) of the DENR. All that is required is for the plantation owner to inform

- the CENRO that the plantations will be harvested in a given date including the estimated volume that will be harvested. Inventory of the plantation prior to harvest shall not be required. CENROs are obligated to approve and enter into their book of registry application for registration for plantations in private lands.
3. Free from payment of forest charges and other form of fees or taxes that local government units may impose;
 4. Plantation logs shall not be subjected to inspection in check points;
 5. Plantation developers can access development loans from the Forestry Development Bank of the Philippines
 6. Insurance coverage of plantations and plantation development equipment by the Philippine Forest Plantations Insurance Corporation
 7. Tax free importation of plantation development equipment
 8. Expenses incurred shall be allowed as deductible expenses for income tax purposes subject to the provisions of the National Internal Revenue Code of 1997, as amended. Provided, That the deduction shall only apply to the taxable period when the expenses were incurred;
 9. Expenses incurred in the development and operation of a forest plantation prior to the commercial harvest shall be regarded as ordinary and necessary expenses or as capital expenditure;
 10. The Board of Investments (BOI) shall classify forest plantations and agro-forestry as pioneer and preferred areas of investment under its annual priority plan subject to the pertinent rules and regulations;
 11. The plantation developer shall be given priority to access credit assistance being granted by Government-owned, -controlled and/or -supported financial institutions;
 12. Plantations shall be accepted as collateral for loans in government owned or controlled banks.
 13. For tenured-developer, upon the premature termination of the agreement at no fault of the holder, all depreciable permanent and semi-permanent improvements such as roads, buildings, and nurseries including the planted and standing trees and other forest crops introduced and to be retained in the area shall be properly evaluated and the holder shall be entitled to a fair compensation thereof, the amount of which shall be mutually agreed upon by both the Department and the tenure-holder and in case of disagreement between them, by arbitration through a mutually acceptable and impartial third party adjudicator;
 14. Plantation logs, lumber and other finished wood products and plantation-grown non-wood may be exported without restrictions in volume
 15. Processors of wood and non-wood forest products may import tax-free processing equipment

SECTION 10. Tax on Commercial Plantation Timber and Other Forest Products –To encourage investors in plantation development to continue to invest in the sector, LGUs are hereby

banned from imposing fees and charges in whatever form or name on plantation logs and other planted forest products.

SECTION 11. Payment of Advanced Value Added Tax – Plantation owners with less than 500 ha in aggregate total area of plantations shall be exempted from payment of Advanced Value Added Tax (VAT) under the Bureau of Internal Revenue (BIR) Revenue Regulations No. 13-2007. The VAT shall be paid only after logs have been delivered and payment received by plantation owners.

SECTION 12. Duplicatory Requirements for Environmental Compliance Certificate and Other Similar Requirements from Local Government Units – Local Government Units (LGUs) are hereby prohibited to issue ordinances and similar issuances requiring plantation owners and forest products processors requirements which the national government is already requiring such investors such as the environmental compliance certificate (ECC).

SECTION 13. Free and Prior Informed Consent of Indigenous Peoples – The free and prior informed consent (FPIC) of indigenous peoples (IPs) shall be issued by the IPs through the National Commission of Indigenous Peoples (NCIP) within 30 day from filing of request for the FPIC. Failure of the NCIP to issue the FPIC within 30 days shall be construed as approval of the request.

SECTION 14. Oversight Committee – There shall be established a joint Oversight Committee in Congress to monitor and assess the accomplishments and progress in the implementation of this Act. DENR shall provide yearly reports on the progress of the implementation of this Act, or as often as the Oversight Committee requires.

SECTION 15. Implementing Rules and Regulations – The DENR in consultation with concerned agencies of government and the private sector shall formulate the implementing rules and regulations within 90 days after the approval of this Act.

SECTION 16. Separability clause – If any section or provision of this Act shall be declared invalid or unconstitutional, such shall not invalidate any other section or provision of this Act.

SECTION 17. Repealing Clause – All laws, decrees, executive orders, rules and regulations or parts thereof which are in conflict or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 18. Effectivity – This Act shall take effect thirty (30) days following its full publication in the Official Gazette or two (2) major daily newspaper of general circulation.

Approved