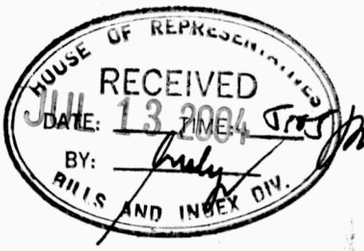
Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
FIRST REGULAR SESSION



HOUSE BILL NO. 1398

Introduced by **REPRESENTATIVE EDCEL C. LAGMAN**

EXPLANATORY NOTE

Section 15 of Article VII of the 1987 Constitution provides:

> "Section 15. Two months immediately before the next Presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

The foregoing restriction on the executive appointing power pertains only to the President. The ban does not extend to local executives like Municipal and City Mayors and Provincial Governors. Thus, in the *De Rama v Court of Appeals* (353 SCRA 94) the Supreme Court explicitly held:

> "The records reveal when the petitioner brought the matter recalling the appointments of the fourteen (14) private respondents before the CSC, the only reason he cited to justify his action was that these were 'midnight appointments' that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled and correctly so, that the said prohibition applies only to presidential appointments. **In truth and in fact, there is no law that prohibits local elective officials from making appointments.** Neither did he allege that the said appointments were tainted by irregularities and anomalies that breached laws and regulations governing appointments. His solitary reason for recalling these appointments was that they were, to his personal belief, 'midnight appointments' which the outgoing mayor had no authority to make." (emphasis supplied)

The reason for the ban on making presidential appointments during the proscribed period under Sec. 15 of Art. VII is well explained in *in re: Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta* (298 SCRA 408) where the Supreme Court ruled that:

> "Now, it appears that Section 15, Article VII is directed against two types of appointments: **(1) those made for buying votes and (2) those made for partisan consideration.** The first refers to those appointments made within the two (2) months preceding presidential elections and are similar to those which are declared election offenses in the Omnibus Election Code. x x x The second type of appointments prohibited by Section 15, Article VII consist of the so-called 'midnight' appointments. In *Aytona v. Castillo*, it was held that after the proclamation of Diosdado Macapagal as duly elected President, President Carlos P. Garcia, who was defeated in his bid for reelection, became no more than a 'caretaker' administrator whose duty was to 'prepare for the orderly transfer of authority to the incoming President.'" (emphasis supplied)

There is rhyme and reason to impose the same prohibition on elective local executives to foreclose the use of their appointing power for partisan considerations and electioneering purposes.

Moreover, it is also imperative that outgoing local executives, whose terms have expired or have lost their reelection bids or have run for another position, be prohibited from making appointments pending the assumption to office of their respective successors.

This would expressly extend to local executives the applicability of the jurisprudence rendering ineffective "midnight appointments" as enunciated in *Aytona v. Castillo* (4 SCRA 1).

This bill seeks to plug the loophole in the law which has been abused with impunity in the past for purely partisan reasons at the expense of public service even as it derogates the right of a legitimate successor.

Approval of this bill is earnestly sought.

EDCEL C. LAGMAN

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. 1398

Introduced by the **HONORABLE EDCEL C. LAGMAN**

AN ACT
PROHIBITING CITY MAYORS, MUNICIPAL MAYORS AND PROVINCIAL GOVERNORS FROM MAKING APPOINTMENTS TWO MONTHS IMMEDIATELY BEFORE THE NEXT LOCAL ELECTIONS AND PENDING ASSUMPTION TO OFFICE OF THEIR SUCCESSORS, AND FOR OTHER PURPOSES

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

SECTION 1. ***Proscribed Appointments***. Two months immediately before the next local elections and up to the end of their terms, City Mayors, Municipal Mayors and Provincial Governors or those in an acting capacity, shall not make appointments, either casual, contractual, temporary or permanent, except temporary appointments to executive positions where continued vacancies therein will prejudice public service or endanger safety.

SEC. 2. ***Outgoing Local Executives***. Outgoing City Mayors, Municipal Mayors and Provincial Governors shall not make appointments, either casual, contractual, temporary or permanent, after the local elections and pending the assumption to office of their respective successors, except temporary appointments to executive positions where continued vacancies therein will prejudice public service or endanger safety.

SEC. 3. ***Automatic Expiration***. All temporary appointments made pursuant to the two preceding sections shall *ipso facto* expire on July 1 following the elections, subject to the renewal of the appointment upon the discretion of the duly authorized appointing authority.

SEC. 4. ***Separability Clause.*** **-** If any part, section or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SEC. 5. ***Repealing Clause***. - All other laws, decrees, orders, issuances, rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 6. ***Effectivity***. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette.

Approved,