

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

House Bill No. 5740

Introduced by Hon. TRANQUILINO B. CARMONA, M.D.

EXPLANATORY NOTE

It is observed that the Sangguniang Bayan/Panlungsod/Panlalawigan power to review enactments by the Sangguniang Barangay/Bayan/Panlungsod had been the subject of controversies among local government units, especially when the reviewing sanggunian encounters questions of law, that are, incidental to and entwined with sanggunian's authority to determine whether the enactment by its component local government units is within its prescribed powers under the Local Government Code of 1991.

Hence, to settle once and for all such kind of controversy, this representation from the first District of Negros Occidental wishes to propose this curative legislative measure to govern the reviewing sanggunians every time they exercise their authority to review enactments of inferior sanggunians, particularly, resolutions and ordinances.

A handwritten signature in black ink, appearing to read "Tranquilino B. Carmona".

TRANQUILINO B. CARMONA, M.D.

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House Bill No. 5740

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**An Act Defining and Expanding the Powers of Sangguniang
Bayan/Panlungsod/Panlalawigan under the Local Government Code of 1991
(R.A. 7160)**

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

SECTION. 1. Definition/Explanation of Terms. - The following terms shall be construed to mean, as follows:

- (a) **Quasi-Judicial Power** refers to the power of administrative authorities to make determinations of facts in the performance of their official duties and to apply the law as they construe it to the facts so found. It is the power of the Reviewing Sanggunian to determine questions of fact in accordance with the standards laid down by the law itself.
- (b) **Exercise of Quasi-Judicial Power** is only incidental to main function of the Reviewing Sanggunian, which is the enforcement of the law. The **Reviewing Sanggunian** exercises quasi-judicial power when it performs in a judicial manner an act which is essentially of executive or administrative in nature, where the power to act in such manner is incidental to, or reasonably necessary for, the performance of the executive or administrative duty entrusted to it.
- (c) **The Reviewing Sanggunian** refers to the sanggunian bayan/panlungsod/panlalawigan who reviews resolutions/ordinances passed and approved by component barangays/municipalities/cities.
- (d) **Duties of the Reviewing Sanggunian** are generally considered discretionary, especially as **they involve the interpretation or construction and enforcement of the law and appreciation of factual questions** that may be submitted to it for resolution.
- (e) **Ultra vires** act refers to an act that is beyond the powers of the sanggunian to enact or to pass upon.
- (f) **Enactment which is inherently wrong in itself** refers to an ordinance and/or resolution that is, from a legal point of view, invalid by merely gleaning at its face, its invalidity is evident from its face.

- (g) **A Resolution as referred to in this Act** is not only confined to resolutions approving the local development plans and local investment programs, but include resolutions which partake the nature of an ordinance, and resolutions that are *ultra vires*.

SECTION 2. *Amendment to Sections 56 and 57 of R.A. 7160.* - (a) Paragraph (c) of Sections 56 of R.A. 7160 is hereby amended and should be read as follows:

(c) {i} If the sangguniang panlalawigan finds that such an ordinance or resolution is beyond the power conferred upon the sangguniang panlungsod or sangguniang bayan concerned, it shall declare such ordinance or resolution invalid in whole or in part. The sangguniang panlalawigan shall enter its action in the minutes and shall advise the corresponding city or municipality authorities of the action it has taken.

{ii} THE FOLLOWING ARE CONSIDERED *ULTRA VIRES* OR BEYOND THE SCOPE OF THE POWERS OF THE SANGGUNIANG BAYAN/PANLUNGSOD TO ENACT:

1. THE BASIS FOR ENACTING AN ORDINANCE/RESOLUTION OR A PORTION/PART THEREOF IS NOT EXPRESSLY GRANTED BY THE LOCAL GOVERNMENT CODE OF 1991 AND/OR APPLICABLE AND EXISTING LAWS. NEITHER, IT IS NECESSARILY IMPLIED FROM SUCH POWERS AND/OR NECESSARY, APPROPRIATE OR INCIDENTAL FOR ITS EFFICIENT AND EFFECTIVE LEGISLATION, AND THOSE THAT ARE INHERENTLY EMBRACED IN THE EXERCISE OF THE EXPRESS/IMPLIED POWERS WHICH ARE ESSENTIAL TO THE PROMOTION OF THE GENERAL WELFARE;
2. ORDINANCES/RESOLUTIONS WHICH ARE IN EXCESS OF THE POWERS OF THE SANGGUNIANG BAYAN/PANLUNGSOD;
3. ORDINANCES/RESOLUTIONS WHICH ARE INHERENTLY WRONG IN THEMSELVES;
4. ORDINANCES/RESOLUTIONS WHICH ARE EXPRESSLY FORBIDDEN/PROHIBITED BY LAW;
5. ORDINANCES/RESOLUTIONS WHICH WERE ENACTED WITHIN THE MUNICIPAL POWERS AND EXECUTED IN DUE FORM, BUT EXECUTED FOR AN UNLAWFUL PURPOSE NOT REVEALED BY THE OFFICERS WHO SPONSORED/SUPPORTED AND EXECUTED SUCH ENACTMENT;
6. ORDINANCES/RESOLUTIONS WHICH WERE ENACTED NOT IN ACCORDANCE WITH THE MANNER AND MODE PRESCRIBED BY LAW.

(iii) IN ALL THE FOREGOING INSTANCES, THE REVIEWING SANGGUNIAN, IN THE EXERCISE OF ITS SOUND AND BY A MAJORITY OF THE ALL THE MEMBERS OF THE SANGGUNIAN, MAY NOT RESOLVE AN ISSUE WHEN IT INVOLVES PURELY QUESTIONS OF LAW AND REFER THE MATTER TO THE APPROPRIATE AGENCY. IN ORDER TO RESOLVE SUCH QUESTION OF LAW INVOLVE, THE REVIEWING AUTHORITY MAY, MOTU PROPRIO, FILE AN APPROPRIATE CASE IN COURT.

(iv) NOTWITHSTANDING, IT IS DISCRETIONARY UPON THE REVIEWING SANGGUNIAN TO DECIDE ON QUESTIONS OF LAW ESPECIALLY WHEN THEY INVOLVE THE INTERPRETATION OR CONSTRUCTION AND ENFORCEMENT OF THE LAW AND APPRECIATION OF FACTUAL QUESTIONS THAT MAY BE SUBMITTED TO IT FOR DECISION.

SECTION 3. *Amendment to Section 57 of R.A. 7160.* – (a) Paragraph c of Section 57 of R.A. 7160 is hereby modified and should be read as follows:

(c) If the sangguniang panlungsod or sangguniang bayan, as the case may be, finds THAT A barangay ordinance OR RESOLUTION IS BEYOND THE POWER OF THE BARANGAY TO ENACT, IT SHALL DECLARE SUCH ORDINANCE OR RESOLUTION INVALID IN WHOLE OR IN PART. THE SANGGUNIAN PANLUNGSOD OR SANGGUNIAN BAYAN, AS THE CASE MAY BE, SHALL ENTER ITS ACTION IN THE MINUTES AND SHALL ADVISE THE BARANGAY CONCERNED OF THE ACTION IT HAS TAKEN.

THE SANGGUNIAN BAYAN/PANLUNGSOD, IN THIS CASE, SHALL ALSO BE GOVERNED BY THE PROVISIONS ENUMERATED IN SECTION 56 (c) OF R.A. 7160 AS AMENDED.

SECTION 4. *Visitorial Powers.* – (a) The Reviewing Sanggunian shall be given visitorial powers to see to it that all enactment by the sanggunian concerned are with its prescribed powers, and the period within which the Secretary to the Sanggunian is required to submit such ordinances/resolution to reviewing sanggunian, is likewise complied with.

(b) In the event that the Reviewing Sanggunian finds an ordinance/resolution, which was not submitted to the reviewing sanggunian within the prescribed period, is beyond the powers of the barangay/municipality/city to enact. The Reviewing Sanggunian shall declare the same invalid.

SECTION 5. *Separability.* - If any provision of this Act or its application to any person or circumstances is declared invalid, such declaration shall not affect the other provisions of this Act.

SECTION 6. *Effectivity.* - This Act shall take effect thirty (30) days following its publication in the Official Gazette or in a national newspaper of general circulation in the Philippines.

APPROVED.