

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 178

Introduced by HON. NIEL "JUNJUN" C. TUPAS, JR.
5th District, Iloilo

EXPLANATORY NOTE

The 1987 Philippine Constitution created the Office of the Ombudsman to serve as the watchdog of the people against erring public officials. The Legislature then promulgated Republic Act No. 6770 otherwise known as "The Ombudsman Act of 1989" (R.A. 6770) to give flesh to the constitutional provisions. However, R.A. 6770 contains provisions which are constitutionally objectionable.

Prosecutory and Punitive Powers vs. Recommendatory Powers

In the center of the debate on the constitutionality of R.A. 6770 is the power of the Ombudsman to discipline elective and appointive officials, specifically whether such power is prosecutory and punitive or merely recommendatory.

In the discussions of the 1986 Constitutional Commission on the creation of the Office of the Ombudsman, it was mentioned that the Office of the Ombudsman of the Philippines was patterned after the Scandinavian countries wherein the authority of the Ombudsman lies in his moral suasion, prestige of office and the compulsion of public opinion, rather than on coercion through the use of state power. The delegates emphasized that the Ombudsman does not have prosecutory or punitive powers, all that he relies upon is his persuasive and recommendatory power, plus the ability to require that the proper legal steps be taken to compel the officer to comply, and nothing more. This was the clear intent of the framers of the Constitution as embodied in Article XI, Section 13 of the Philippine Constitution.

Disciplinary Powers Over Local Elective Officials

Section 21 of R.A. 6770, which provides the Office of the Ombudsman with disciplinary authority over elective and appointive officials, must also be revisited since it is in clear conflict with Section 60 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991, a later law. Section 60 of R.A. 7160 exclusively vests in the courts the power to dismiss from service erring elective local officials.

Section 60 of RA 7160 is understandable since the quantum of evidence required in administrative proceedings is lower than in prosecutions before the regular courts, and administrative due process does not require trial type proceedings as in the courts of justice. The penalty of removal from public office of a local elective official is too grave a penalty with serious effects on the will of the people to be passed upon by a mere administrative body such as the Office of the Ombudsman applying administrative rules of procedure.

Period of Preventive Suspension

While Section 24 of R.A. 6770 properly gives the Office of the Ombudsman the power to preventively suspend any officer or employee under his authority pending an

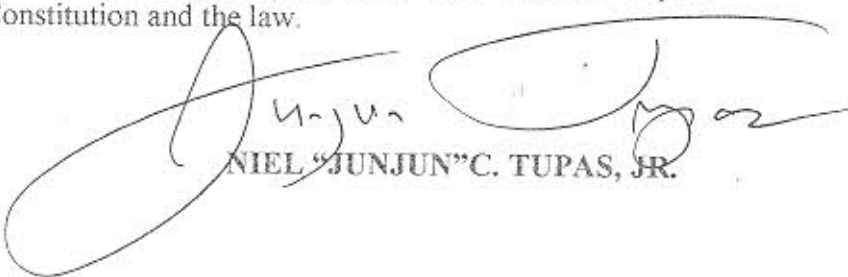
investigation, the period of suspension of not more than six (6) months is too long and must be shortened to a reasonable period.

Effectivity of Decisions

Perhaps in an attempt to clearly set the rules on the effectivity and finality of decisions of the Office of the Ombudsman, Section 27 of R.A. 6770 provides for the said rules. However, the reason for laying down the rules in the law is defeated by the last paragraph of the very same section which allows the Office of the Ombudsman to amend or modify the rules on the effectivity and finality of its decisions. This has resulted in the flip-flopping of the rules on the effectivity and finality of decisions as the Office of the Ombudsman sees fit.

In fact, the Office of the Ombudsman has amended its rules through Administrative Order No. 17 which provides that an appeal shall not stop a decision of the Ombudsman from being executory. This is impractical and unfair since it makes a decision which can possibly be reversed practically final; it defeats the purpose of an appeal. If the public officer is immediately punished but is acquitted on appeal, the adverse effects of the immediate execution of the decision/findings of the Office of the Ombudsman on him cannot be quantified and has no monetary value. The adverse effect is even worst if the public officer concerned is an elective official since the electorate will be deprived of the service of their representative. In other words, the damage caused by the immediate execution of an adverse decision pending appeal is irreparable. Such a rule can also be used for malicious prosecution and political oppression. Therefore, there is a need to clearly lay down in the law the rules on the finality of the decisions of the Office of the Ombudsman as well as to clarify the rules in the execution of said decisions to prevent the Office of the Ombudsman from tampering with such rules and to make sure that it does not contravene the constitution in the performance of its function.

For the foregoing reasons, there is a need to revisit the powers of the Office of the Ombudsman under Republic Act 6770 so that such powers may not be used as a tool for injustice, abuse and political oppression. The limits of the powers of the Ombudsman over public officials, especially local elective public officials, must be clearly laid down in the law in accordance and in conjunction with the Philippine Constitution and the intent of its framers and other relevant laws. This is necessary to ensure that when the Office of the Ombudsman adopts its rules of procedure, such rules will not impair substantive rights and amend the Constitution and the law.



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AN ACT DEFINING THE AUTHORITY OF THE OFFICE OF THE OMBUDSMAN OVER ELECTIVE AND APPOINTIVE OFFICIALS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 6770 OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989"

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

SECTION 1. Section 15, paragraph 3 of Republic Act No. 6770 is hereby amended to read as follows:

"SEC. 15. *Powers, Functions and Duties.* – The Office of the Ombudsman shall have the following powers, functions and duties:

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(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; [or enforce its disciplinary authority as provided in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;]

SECTION 2. Section 21 of Republic Act No. 6770 is hereby amended to read as follows:

"SEC. 21. *Officials Subject To [Disciplinary] OMBUDSMAN'S Authority; Exceptions.* – The Office of the Ombudsman shall have [disciplinary] authority TO INVESTIGATE AND RECOMMEND APPROPRIATE PENALTIES over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies,

including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. THE POWER TO REMOVE LOCAL ELECTIVE OFFICIALS BELONGS ONLY TO THE COMPETENT COURTS.”

SECTION 3. Section 24 of Republic Act No. 6770 is hereby amended to read as follows:

“SEC. 24. *Preventive Suspension.* - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent’s continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than [six (6)] THREE (3) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.”

SECTION 4. Section 25 of Republic Act No. 6770 is hereby amended to read as follows:

“SEC. 25. APPROPRIATE *penalties* THAT MAY BE RECOMMENDED.- (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one (1) year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.”

SECTION 5. Section 27 of Republic Act No. 6770 is hereby amended to read as follows:

“SEC. 27. *[Effectivity and] Finality of Decisions.* - (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: *Provided*, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. [Any] OrderS, directives, or decisionS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE CASES [imposing] RECOMMENDING THE IMPOSITION OF the penalty of public censure or reprimand, suspension FROM OFFICE of not more than one (1) month[’s salary], OR A FINE EQUIVALENT TO NOT MORE THAN ONE (1) MONTH’S SALARY shall be final and unappealable. IN ALL OTHER ADMINISTRATIVE DISCIPLINARY CASES WHERE THE RECOMMENDED PENALTY IS OTHER THAN PUBLIC CENSURE OR REPRIMAND, SUSPENSION FROM OFFICE OF NOT MORE THAN ONE (1) MONTH, OR A FINE EQUIVALENT TO NOT MORE THAN ONE (1) MONTH’S SALARY, THE ORDER, DIRECTIVE, OR DECISION BECOMES FINAL ONLY AFTER THE LAPSE OF THE PERIOD TO APPEAL IF NO APPEAL IS PERFECTED, OR AFTER THE DENIAL OF THE APPEAL FROM THE SAID FINDING, ORDER, DIRECTIVE, OR DECISION. A DECISION THAT HAS NOT YET BECOME FINAL CANNOT BE IMPLEMENTED PENDING APPEAL.

UPON THE FINALITY OF THE ORDER, DIRECTIVE OR DECISION OF THE OFFICE OF THE OMBUDSMAN, THE OFFICE OF THE OMBUDSMAN SHALL ENDORSE ITS RECOMMENDATION TO THE CONCERNED AGENCY FOR IMMEDIATE IMPLEMENTATION. IN CASES INVOLVING LOCAL ELECTIVE OFFICIALS, THE OFFICE OF THE OMBUDSMAN SHALL ENDORSE ITS FINDINGS AND RECOMMENDATION TO THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT FOR APPROPRIATE ACTION.

[In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.]

[The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.]

SECTION 6. *Repealing Clause.* - All laws, presidential decrees, executive orders, proclamations and/or administrative regulations which are inconsistent with the provisions of this Act are hereby amended, modified, superceded or repealed accordingly.

SECTION 7. *Effectivity Clause.* - This Act shall take effect after fifteen (15) days from its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,