

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

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 846

Introduced by **Honorable Roilo Golez**

EXPLANATORY NOTE

Several cases have been dismissed by the Sandiganbayan for failure by the Ombudsman to substantiate claims of unlawfully acquired properties against a corrupt government employee.

In most cases, defense was able to successfully show that the alleged illegally owned asset are either owned or given by families or relatives. The lack of appropriate powers and measures to address specific gaps in the evidence gathering process hampers the Ombudsman's ability to effectively prosecute corrupt government officials resulting to losses of millions of pesos by the State. Ombudsman investigators are prevented from looking into the respondent's bank records without any subpoena being issued by the Court. The Court, on the other hand, can only issue a subpoena upon the filing of case by the Ombudsman. By then, respondents have successfully withdrawn or transferred his/her account.

To address this prevailing problem, the proposed measure seeks to strengthen the Ombudsman's investigatory powers as well as its institutional capacity to run after corrupt officials. Specifically, the proposed bill seeks to:

- Enable the Office of the Ombudsman to issue *subpoena* and *subpoena duces tecum*, during the preliminary investigation in order look into bank records even prior to the filing of a case before the court;
- Motu proprio, issue freeze order to unlawfully acquired assets for six months;
- Provide immunity from criminal, administrative or civil suits to the Ombudsman investigators and prosecutors arising from the regular exercise of their official duties; and

- Impose penalties to the officer or employee found guilty of the charge even during election period notwithstanding the prohibitions under the Election Code and other similar statutes.

With the passage of this proposed legislation, the Ombudsman is able to address graft issues in the country through a progressive and transparent system of collecting evidence in corruption cases, supporting effective asset recovery, and addressing fundamental institutional capacity.

The passage of this bill is highly urged.



ROILO GOLEZ

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AN ACT
STRENGTHENING THE INSTITUTIONAL CAPACITY OF THE OFFICE OF THE OMBUDSMAN BY
AMENDING CERTAIN PROVISIONS OF RA 6770 OTHERWISE KNOWN AS "THE OMBUDSMAN
ACT OF 1989"

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

SECTION 1. Section 6 of R.A. No. 6770 is hereby amended to read as follows:

"SEC. 6. *Rank and Salary.* — The Ombudsman and his Deputies shall have the same ranks, salaries and privileges as the Chairman and members, respectively, of a Constitutional Commission. Their salaries shall not be decreased during their term of office.

The members of the prosecution, investigation, [and] legal **AND ADMINISTRATIVE STAFF** of the Office of the Ombudsman shall receive **EMOLUMENTS AND** salaries which shall not be less than those given to comparable positions in any office in the Government.

OTHER BENEFITS AND ALLOWANCES GRANTED TO OFFICIALS AND EMPLOYEES OF THE OFFICE OF THE OMBUDSMAN SHALL BE PAID OUT OF THE NATIONAL FUNDS AND INCLUDED IN THE ANNUAL APPROPRIATIONS OF THE OFFICE OF THE OMBUDSMAN."

SEC. 2. Section 15 of R.A. No. 6770 is hereby amended to read as follows:

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

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(8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have

access to bank accounts and records **NOTWITHSTANDING THE PROVISIONS OF R.A. 1405, R.A. 6426, R.A. 8791, AND R.A. 9160;**

(9) Punish for contempt in accordance with [the Rules of Court] **ITS OWN RULES** and [under the same procedure] with the [same] penalties provided [therein] **UNDER SECTION SECTION 37 OF THIS ACT;**

xxx

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein. **THE REPUBLIC OF THE PHILIPPINES SHALL BE EXEMPT FROM FILING/OR PAYMENT OF ANY BOND. THE PROPERTIES TO BE RECOVERED, FORFEITED AND/OR SURRENDERED SHALL BE EXEMPT FROM PAYMENT OF ANY TAXES BOTH NATIONAL AND LOCAL;**

(12) ISSUE FREEZE ORDERS ON UNLAWFULLY ACQUIRED PROPERTIES OR ASSETS OR ITS/THEIR EQUIVALENT VALID FOR A PERIOD OF NOT MORE THAN THREE MONTHS.

SEC. 3. Section 17 of R.A. No. 6770 is hereby amended to read as follows:

"SEC. 17. *Immunities.* — In all hearings, inquiries, and proceedings of the Ombudsman, including preliminary investigations of offenses, no person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him, or subject him to prosecution: Provided, that no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, [taking into account the pertinent provisions of the Rules of Court] the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

Any refusal to appear or testify pursuant to the foregoing provisions shall be subject to punishment for contempt and removal of the immunity from criminal prosecution."

SEC. 4. Section 25 of R.A. No. 6770 is hereby amended to read as follows:

"Section 25. *Penalties* -

(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.

THESE PENALTIES MAY BE IMPLEMENTED DURING ELECTION PERIOD NOTWITHSTANDING THE PROHIBITIONS UNDER THE ELECTION CODE AND OTHER SIMILAR STATUTES."

SEC. 5. Insert a new Section 32 in RA 6770 to read as follows:

"SEC. 32. IMMUNITY FROM SUIT OF OMBUDSMAN INVESTIGATORS AND PROSECUTORS. - OMBUDSMAN INVESTIGATORS AND PROSECUTORS, INCLUDING THOSE DESIGNATED BY THE OMBUDSMAN PURSUANT TO SECTION 31, SHALL BE IMMUNE FROM CRIMINAL, ADMINISTRATIVE OR CIVIL SUITS ARISING FROM THE REGULAR EXERCISE OF THEIR OFFICIAL FUNCTION."

SEC. 6. Section 32 of R.A. No. 6770 is hereby amended to read as follows:

"Section [32] 33. *Rights and Duties of Witness.* —

(1) A person required by the Ombudsman to provide the information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance have been required in the trial courts. Upon request of the witness, the Ombudsman shall also furnish him such security for his person and his family as may be warranted by the circumstances. For this purpose, the Ombudsman may, at its expense, call upon any police or constabulary unit to provide the said security.

(2) A person who, with or without service or compulsory process, provides oral or documentary information requested by the Ombudsman shall be accorded the same privileges and immunities as are extended to witnesses in the courts, and shall likewise be entitled to the assistance of counsel while being questioned.

(3) If a person refuses to respond to the Ombudsman's or his Deputy's subpoena, or refuses to be examined, or engages in obstructive conduct, the Ombudsman or his Deputy shall issue an order directing the person to appear before

him to show cause why he should not be punished for contempt. [The contempt proceedings shall be conducted pursuant to the provisions of the Rules of Court.]”

SEC. 7. Section 36 of RA 6770 is hereby amended to read as follows:

“Section [36] 37. *Penalties for Obstruction.* — Any person who wilfully obstructs or hinders the proper exercise of the functions of the Office of the Ombudsman, or who wilfully misleads or attempts to mislead the Ombudsman, his Deputies, and the Special Prosecutor in replying to their inquiries shall be punished of a fine not exceeding five thousand pesos (P5,000.00).

ANY PERSON GUILTY OF MISBEHAVIOR IN THE PRESENCE OF OR SO NEAR AN OFFICER OF THE OFFICE OF THE OMBUDSMAN AS TO OBSTRUCT OR INTERRUPT THE PROCEEDINGS BEFORE THE SAME, INCLUDING DISRESPECT TOWARD THE HEARING OFFICER, OFFENSIVE PERSONALITIES TOWARD OTHERS, OR REFUSAL TO BE SWORN OR TO ANSWER AS A WITNESS, OR TO SUBSCRIBE AN AFFIDAVIT OR DEPOSITION WHEN LAWFULLY REQUIRED SO TO DO, MAY BE SUMMARILY ADJUDGED IN CONTEMPT BY SUCH HEARING OFFICER, SUBJECT TO THE APPROVAL OF THE OMBUDSMAN, AND PUNISHED BY FINE NOT EXCEEDING FIVE THOUSAND PESOS OR IMPRISONMENT NOT EXCEEDING TEN (10) DAYS.

ANY IMPROPER CONDUCT TENDING, DIRECTLY OR INDIRECTLY, TO IMPEDE, OBSTRUCT, OR DEGRADE THE ADMINISTRATION OF JUSTICE OR ANY INVESTIGATION BEING CONDUCTED BY THE OFFICE SHALL CONSTITUTE INDIRECT CONTEMPT, AND SHALL, AFTER NOTICE AND HEARING, BE PUNISHED WITH THE SAME PENALTIES AS IN DIRECT CONTEMPT.

TO ENFORCE THE PROVISIONS OF THIS SECTION, THE OFFICE OF THE OMBUDSMAN MAY, IF NECESSARY, REQUEST THE ASSISTANCE OF ANY LAW ENFORCEMENT OFFICE FOR THE EXECUTION OF ANY ORDER MADE FOR SAID PURPOSE.”

SEC. 8. Section 38 of RA 6770 is hereby amended to read as follows:

“Section [38] 39. *Fiscal Autonomy.*—The Office of the Ombudsman shall enjoy fiscal autonomy. Appropriations for the Office of the Ombudsman may not be reduced below the amount appropriated for the previous years and, after approval, shall be automatically and regularly released.

THE OFFICE OF THE OMBUDSMAN SHALL BE ENTITLED TO A FIXED SHARE OF FIFTY (50%) PERCENT OF THE FUNDS AND/OR PROCEEDS TO BE RECOVERED/FORFEITED IN FAVOR OF THE GOVERNMENT; PROVIDED, THAT AT LEAST THIRTY PERCENT (30%) OF SUCH FUND AND/OR PROCEEDS SHALL BE USED TO AUGMENT THE ALLOWANCES OF THE OFFICIALS AND EMPLOYEES OF THE OFFICE OF THE OMBUDSMAN TO BE DISTRIBUTED IN

PROPORTION TO THEIR BASIC SALARIES, AND NOT MORE THAN TWENTY PERCENT (20%) OF SUCH FUND AND/OR PROCEEDS SHALL BE USED TO FINANCE THE ACQUISITION, MAINTENANCE AND REPAIR OF OFFICE EQUIPMENT AND FACILITIES."

SEC. 9. Rules and Regulation. - The Ombudsman shall issue, within ninety (90) days after the approval of this Act, the necessary rules and regulation relating to the administrative aspects of the provisions of this Act.

SEC. 10. Severability Clause. - If for any reason, any section or provision of this Act is declared to be unconstitutional or invalid, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 11. Repealing Clause.- All laws, decrees, orders or rules and regulations, and other issuances which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 12. Effectivity.- This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two newspapers of general circulation.

Approved,