

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **3691**

**Introduced by Reps. NIEL "JUNJUN" C. TUPAS, JR., LORENZO R. TAÑADA III,
JOSEPH EMILIO A. ABAYA, RAULA A. DAZA, HENEDINA R. ABAD**

EXPLANATORY NOTE

Republic Act No. 6770 otherwise known as "The Ombudsman Act of 1989" (R.A. 6770) was enacted into law in pursuance of the constitutional provision on the creation of the Office of the Ombudsman. Having been created to serve as the watchdog of the people against erring public officials, the Office of the Ombudsman no doubt plays a very important role in the system of checks and balances in our government.

However, it has been observed that R.A. 6770 contains some provisions which are not clearly defined. This lack of clarity in the law has resulted in the flip-flopping of decisions by the courts as to the interpretation of some provisions and terms found therein. Among the provisions/terms that need to be clarified or defined are (i) the authority of the Office of the Ombudsman to put a public officer who is the subject of an investigation under preventive suspension; and (ii) the effectivity of decisions issued by the Office of the Ombudsman.

Definition of Public Officers subject to "Preventive Suspension"

The authority of the Ombudsman or Deputy to issue a preventive suspension should be limited to those public officers under the authority of the Ombudsman who are currently occupying the same position by virtue of which the acts charged arose. This is to ensure that the very purpose for the preventive suspension is achieved and that the preventive suspension is imposed by the Office of the Ombudsman not as a penalty or as a tool for harassment but as a necessary act to prevent any influence by the public officer to interfere, prevent or delay any investigation against him. There have been many instances in the past when a public officer was put under preventive suspension by the Office of the Ombudsman although the said officer was no longer holding the same office by virtue of which the act charged arose and was therefore no longer able to influence the investigation in his former office. This negates the purpose of the preventive suspension.

Effectivity of Decisions

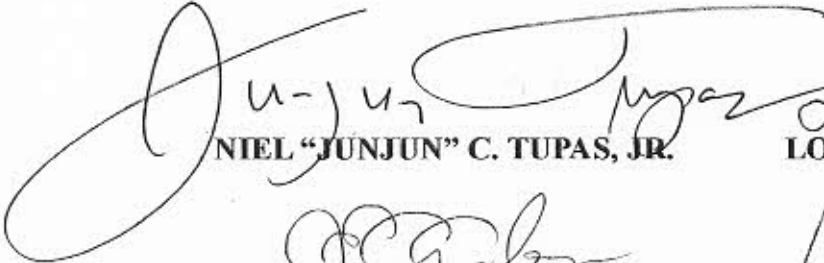
Section 27 of R.A. 6770 tries to provide for the effectivity and finality of the decisions of the Office of the Ombudsman. However, the reason for laying down the rules in the law is defeated by the last paragraph of the very same section which allows the Office of the Ombudsman to amend or modify the 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. The courts have also been confused on the issue as can be seen from the flip-flopping of decisions on the effectivity of the decisions of the Office of the Ombudsman.

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 on appeal 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 worse if the public officer concerned is an elective official since the electorate will be deprived 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 clearly define (i) the authority of the Office of the Ombudsman to preventively suspend a public official under investigation under Republic Act No. 6770; and (ii) the effectivity of the decisions of the Office of the Ombudsman. The authority of the Office of the Ombudsman to preventively suspend a public official who is under investigation should cover only those who are still holding the same position by virtue of which the act subject of the investigation arose. The decisions of the Office of the Ombudsman should not be immediately effective and executory pending appeal.

Approval of this bill is earnestly sought.



NIEL "JUNJUN" C. TUPAS, JR.



LORENZO R. TANADA III



JOSEPH EMILIO A. ABAYA



RAULA DAZA



HENEDINA R. ABAD

Republic of the Philippines
HOUSE OF REPRESENTATIVES
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FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3691

Introduced by Reps. NIEL "JUNJUN" C. TUPAS, JR., LORENZO R. TAÑADA
III, JOSEPH EMILIO A. ABAYA, RAUL A. DAZA, HENEDINA R. ABAD

AN ACT AMENDING SECTIONS 24 AND 27 OF REPUBLIC ACT NO. 6770, OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989", TO DEFINE THE "PREVENTIVE SUSPENSION" AUTHORITY OF THE OFFICE OF THE OMBUDSMAN OR HIS DEPUTY OVER ELECTIVE AND APPOINTIVE OFFICIALS, AND THE EFFECTIVITY OF THE DECISIONS OF THE OFFICE OF THE OMBUDSMAN

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

SECTION 1. Section 24, paragraph 1 of Republic Act No. 6770 is hereby amended as follows:

"Section 24. Preventive Suspension. - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority WHO CURRENTLY HOLDS THE SAME POSITION BY VIRTUE OF WHICH THE ACT SUBJECT OF AN INVESTIGATION AROSE, pending an investigation, if in his judgment the evidence of guilt is strong, AND GIVEN THE GRAVITY OF THE OFFENSE, THERE IS GREAT PROBABILITY THAT THE CONTINUANCE IN OFFICE OF THE RESPONDENT COULD INFLUENCE THE WITNESSES OR POSE A THREAT TO THE SAFETY AND INTEGRITY OF THE RECORDS AND OTHER EVIDENCE, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; OR (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].

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SECTION 2. Section 27 of Republic Act No. 6770 is hereby amended as follows:

"Section 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 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] [o]OrderS, directives, or decisionS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES imposing the penalty of public censure or reprimand or suspension of not more than one (1) month's salary, shall be final and unappealable. IN ALL OTHER ADMINISTRATIVE DISCIPLINARY CASES WHERE THE PENALTY IMPOSED IS OTHER THAN PUBLIC CENSURE OR REPRIMAND OR SUSPENSION OF NOT MORE THAN ONE (1) MONTH'S SALARY, THE ORDER, DIRECTIVE, OR DECISION SHALL BECOME FINAL ONLY AFTER THE LAPSE OF THE PERIOD TO APPEAL IF NO APPEAL IS PERFECTED, OR AFTER THE FINAL DENIAL OF THE APPEAL FROM THE SAID ORDER, DIRECTIVE OR DECISION. A DECISION THAT HAS NOT YET BECOME FINAL CANNOT BE EXECUTED OR IMPLEMENTED PENDING APPEAL.

[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 3. *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, superseded or repealed accordingly.

SECTION 4. *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,