

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

16th Congress
First Regular Session

House Bill No. **4582**



Introduced by Honorable Sergio A. F. Apostol

EXPLANATORY NOTE

Section 1 of Article XI of the 1987 Constitution provides that "Public office is a public trust. Public officer and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives." Pursuant thereto, the fundamental law of the land gives the Office of the Ombudsman the calling and badge to protect the people from the abuse and misuse of government power for personal aggrandizement. Accordingly, Republic Act No. 6770 otherwise known as the Ombudsman Act of 1989 was enacted.

RA No. 6770 fully recognizes the prosecutory prerogative by empowering the Ombudsman to grant immunity, subject to "such terms and conditions" as he may determine. The only textual limitation imposed by law on this authority is the need to take "into account the pertinent provisions of the Rules of Court," – i.e., Section 17, Rule 119 of the Rules of Court. This provision requires that: (a) There is absolute necessity for the testimony of the accused whose discharge is requested; (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) The testimony of said accused can be substantially corroborated in its material points; (d) Said accused does not appear to be the most guilty; and (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

The power to grant immunity from prosecution is essentially a judicial prerogative. The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law.

This bill seeks to repeal Section 17 of RA No. 6770 for the power to grant immunity lies in the proper Court and cannot be removed.

In view hereof, approval of this bill is earnestly sought.



SERGIO A.F. APOSTOL
Representative
Second District, Leyte

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AN ACT REPEALING REPUBLIC ACT NO. 6770,
OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989"

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

SECTION 1. This Act shall be known as "The Ombudsman Act of 1989."

SECTION 2. Section 17 of Republic Act No. 6770 is hereby repealed to read as follows:

"Section 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.

SECTION 3. The Department of Justice shall promulgate the necessary rules and regulation to implement this Act.

SECTION 4. If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting .

SECTION 5. All laws, executive orders, decrees, rules, regulations, ordinances, or parts thereof which are inconsistent with the provision of this Act are hereby repealed or modified accordingly.

SECTION 6. This Act shall take effect fifteen (15) days upon its complete publication in the Official Gazette or in at least two (2) general newspapers of national circulation.

Approved,