

TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. **4376**

EXPLANATORY NOTE

The Department of Justice (DOJ) is the principal law agency which shall be both the government's "legal counsel and prosecution arm" (Section 1, Chapter 1, Title III, Executive Order (EO) No. 292 (Administrative Code of 1987)). These core functions are fulfilled by the two main offices in the DOJ proper: the Legal Staff, serving as the legal counsel, and the National Prosecution Service, the prosecution arm.

The Legal Staff (Office of the Chief State Counsel or OCSC), under the Office of the Secretary of Justice, assists the Secretary of Justice in his role as Attorney General.

Currently, the Office of the Chief State Counsel is composed of forty-two (42) State Counsels and twenty-six (26) support staff. The Legal Staff was created under Republic Act (R.A.) No. 2705, as amended by R.A. No. 4152, and mandated by EO No. 292, to render legal opinions, memoranda, comments or legal studies, upon the request of national government functionaries on difficult questions of law attending the performance of their respective functions and to prepare replies or legal advice or legal studies at the instance of private parties and minor government officials and employees including *ad hoc* bodies, committees or task forces.

Since the promulgation of the Administrative Code in 1987, the matters and issues handled by the Office of the Chief State Counsel have evolved and expanded beyond rendition of legal opinions. The Office of the Chief State Counsel is confronted with more complex and challenging legal matters, particularly in the areas of public and private international laws that were not envisioned by the drafters of the Administrative Code and of the law which created the Legal Staff of the Department of Justice. This bill seeks to accurately show the evolved role of the Legal Staff.

The most unique and novel function that is exclusive to the Office of the Chief State Counsel is that it discharges the role of the DOJ as the Central Authority in matters involving international legal cooperation, *i.e.*, extradition, mutual legal assistance in criminal matters (MLA) and transfer of sentenced persons. As such, it is the Legal Staff which negotiates, with the assistance of the Department of Foreign Affairs, proposed treaties on Extradition, Mutual Legal Assistance in Criminal Matters (MLA) and Transfer of Sentenced Persons (TSP). It is also the Office of the Chief State Counsel which takes the lead in the implementation of the country's treaties on international legal cooperation. As Central Authority, the Legal Staff is tasked to make and receive requests for extradition, MLA and TSPs to and from Philippine treaty partners. It also represents Philippine treaty partners before Philippine courts in extradition and MLA proceedings.

The Department's Refugees and Stateless Persons Unit (RSPPU) plays a pivotal role in the implementation of the country's treaty commitments under the Refugees and Statelessness Conventions. The Department is also the designated Philippine Central

Authority for the Hague Child Abduction Convention. It is the Office of the Chief State Counsel which is in charge of these matters.

The Office of the Chief State Counsel is also the legal adviser of the country's lead negotiators of bilateral and regional Free Trade Agreements (FTAs) and Investment Promotion and Protection Agreements (IPPAs). So far, the country has three bilateral FTAs: with Japan, the European Free Trade Association (EFTA) and South Korea. Moreover, the Philippines has six (6) regional trade agreements (ASEAN Plus FTAs), with the Regional Comprehensive Economic Partnership (RCEP) Agreement as the most recent. It is the OCSC which led the negotiations for the Working Group on Legal Institutional Issues (WGLII) and the legal scrubbing of the said Agreements. It is essential to recognize that FTAs and IPPAs, being economic accords, carry legal implications, and the State Counsels of the OCSC play a vital role in these endeavors. The OCSC, when so requested by the lead agency, also serves as legal adviser in the negotiation and implementation of other treaties, agreements, and conventions.

When requested, State Counsels, in their mandate to assist the Secretary of Justice in his role as Attorney General, have been actively involved as resource persons in various proposed legislations in both houses of Congress and have led the drafting of the Implementing Rules and Regulations (IRRs) for some laws. It is also the Office of the Chief State Counsel which prepares the Department's comments on Enrolled Bills, upon the request of the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) of the Office of the President.

The OCSC also renders resolution on questions of constitutionality or legality of municipal tax ordinances and resolves issues concerning controversies between or among government agencies. It acts on applications for special authority to employ foreign nationals under Commonwealth Act No. 108, amended or the Anti-Dummy Law. Also, the OCSC acts on applications for special non-immigrant visas under Section 47(a)(2) of C.A. No. 613, as amended, including citizenship and deportation cases transmitted by the Bureau of Immigration to the Department for review.

The multifaceted and demanding role required of State Counsels, which has been unheralded and overlooked over the years, can efficiently and effectively be met by recognizing the exceptional role of the OCSC, strengthening its functions, expanding the Office, augmenting benefits, and upgrading employee skills.

The OCSC is undermanned and is in dire need of organizational upgrading in order to function optimally. The highest point in the career of a State Counsel is perhaps the position of Chief State Counsel. Yet, it is unfortunate that the counterparts of the Chief State Counsel – the Prosecutor General and the Solicitor General in the Office of the Solicitor General – enjoy the rank of Presiding Justices of the Court of Appeals. The corresponding judicial rank proposed for the State Counsels of the Legal Staff augurs well with the fact that the Office is a veritable training ground for lawyers in specialized fields of law. Among those who worked in the Legal Staff of the Department of Justice and rose to prominence in the legal profession are the late Senator Miriam Defensor-Santiago, retired Supreme Court Chief Justice and Sandiganbayan Justice Teresita Leonardo-De Castro, retired Supreme Court Justices Florentino Feliciano, Leonardo Quisumbing and Minerva P. Gonzaga-Reyes, retired Court of Appeals Justice Rosalinda Asuncion-Vicente, Court of Tax Appeals Justice Cielito Mindaro-Grulla, retired BSP Deputy Governor Melpin Gonzaga, former Supreme Court Justice and Ombudsman Conchita Carpio-Morales, and former Ombudsman, Chief Presidential Legal Counsel, and Acting Secretary of Justice Ma. Merceditas Navarro-Gutierrez.

The counterparts of the State Counsels in the DOJ are the State Prosecutors whose Office was strengthened and rationalized, and given the same benefits in R.A. No. 10071 in

2010. It is high time that the unheralded and overlooked State Counsels of the Department of Justice likewise be given the same benefits as that of their counterparts in the Department.

Also, compensation and retirement benefits from the Office of the Ombudsman and the Judiciary have been upgraded, leaving the OCSC behind.

This bill has been filed in the 15th, 16th, 17th, 18th and 19th Congresses which signifies its importance and urgency. In re-filing this proposed measure in the 20th Congress, it is sincerely hoped that this will finally gain enough support for its passage into a law in order to empower and recognize our State Counsels as they perform fully and effectively their mandates.

In view of the foregoing, immediate approval of this measure is earnestly requested.



RUFUS B. RODRIGUEZ



MAXIMO B. RODRIGUEZ, JR.

TWENTIETH CONGRESS)
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AN ACT

STRENGTHENING THE LEGAL STAFF OF THE DEPARTMENT OF JUSTICE, RENAMING IT AS THE OFFICE OF THE CHIEF STATE COUNSEL, REDEFINING, EXPANDING, RATIONALIZING AND FURTHER PROFESSIONALIZING ITS ORGANIZATION, AND APPROPRIATING FUNDS THEREFOR

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

SECTION 1. Short Title. – This Act shall be known as the “Office of the Chief State Counsel Act”.

SECTION 2. Office of the Chief State Counsel. – The Legal Staff created under Republic Act (R.A.) No. 2705, as amended by R.A. No. 4152, shall be renamed as the “Office of the Chief State Counsel.”

SECTION 3. State Counsel. - Unless otherwise specified, the term "State Counsel" shall refer to the Chief State Counsel, Deputy Chief State Counsel, Senior State Counsel, and State Counsels I to IV.

SECTION 4. Powers and Functions. – The Office of the Chief State Counsel shall assist the Secretary of Justice in the exercise of his functions as Attorney General of the Philippines and *ex officio* legal adviser of government-owned or controlled corporations, or enterprises and their subsidiaries. The Office of the Chief State Counsel shall be under the supervision and control of the Secretary of Justice. The Office of the Chief State Counsel shall have the following powers and functions:

(a) Recommend to the Secretary of Justice, legal opinion or advice on questions of law arising from the performance of powers and duties, and upon request of heads, of national government functionaries and act on other queries;

(b) Study and recommend to the Secretary of Justice the following:

- i. comments and position papers on proposed legislations, whenever there are legal issues involved;
- ii. opinion or comments on the legality and validity of foreign loan and guarantee agreements, and, in certain cases, agreements related to domestic borrowings;

(c) Lead negotiations of treaties, conventions, or agreements involving international legal cooperation, including extradition, mutual legal assistance in criminal matters, and transfer of sentenced persons;

- (d) Serve as legal adviser to other government agencies in the negotiations and implementation of international agreements, and whenever so requested, lead in the negotiations involving legal and institutional issues;
- (e) Represent the Secretary of Justice or Department of Justice (DOJ) as the designated Central Authority in treaties, conventions, and other international agreements;
- (f) Act on requests for mutual legal assistance in criminal matters, extradition, transfer of sentenced persons, and other forms of international legal cooperation;
- (g) Represent and serve as counsel of the requesting state in all stages of cases relating to extradition and mutual legal assistance in criminal matters;
- (h) Serve on standing councils, committees, working groups, and task forces, as required;
- (i) Review Orders of the Bureau of Immigration, including recognition of Filipino citizens or cancellation of alien certificate of registration, and deportation cases;
- (j) Adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations, when only questions of law are raised;
- (k) Review the legality and validity of tax ordinances and revenue measures;
- (l) Act on applications for the following:
 - i. special non-immigrant visas under Sec. 47(a)(2) of Commonwealth Act (C.A.) No. 613, otherwise known as the *Philippine Immigration Act of 1940*, as amended;
 - ii. special authority to employ foreign nationals under C.A. No. 108, otherwise known as the *Anti-Dummy Law*, as amended;
 - iii. recognition of refugee and statelessness status;
 - iv. validation of land titles filed pursuant to Presidential Decree (P.D.) No. 1271 entitled "*An Act Nullifying the Decrees of Registration and Certificates of Title Covering Lands Within the Baguio Townsite Reservation*";
- (m) Supervise the Department Law Library, as well as its personnel; and
- (n) Exercise such other powers and functions as may be provided by law or as may be delegated by the Secretary of Justice.

SECTION 5. Expansion. The staff of the Office of the Chief State Counsel shall be increased and their positions upgraded, with a corresponding increase in the general and administrative support personnel and provision for ample office space. There shall be seven (7) divisions in the Office of the Chief State Counsel. Each division shall be headed by a Deputy Chief State Counsel and shall consist of at least ten (10) State Counsels, and such personnel as may be necessary for the office to effectively carry out its functions. Upon the recommendation of the Chief State Counsel, provided the exigencies of service requires it, the Secretary of Justice may create additional divisions.

The designation, ranks, and salary grades of State Counsels are amended as follows:

OLD POSITION		NEW POSITION	
POSITION/ DESIGNATION	SALAR Y GRADE	POSITION/ DESIGNATION	SALARY GRADE
Chief State Counsel	SG 30	Chief State Counsel	SG 30 Step 4
Assistant Chief State Counsel	SG 29	Deputy Chief State Counsel	SG 30
State Counsel V	SG 28	Senior State Counsel	SG 29
State Counsel IV	SG 27	State Counsel IV	SG 28
State Counsel III	SG 26	State Counsel III	SG 27
State Counsel II	SG 25	State Counsel II	SG 26
State Counsel I	SG 24	State Counsel I	SG 25

The Chief State Counsel and the Deputy Chief State Counsels shall be appointed by the President of the Philippines. All other State Counsels and administrative personnel shall be appointed by the Secretary of Justice upon recommendation by the Promotion and Selection Board.

The Chief State Counsel and the Deputy Chief State Counsels shall act as a Promotion and Selection Board to screen applicants for appointment and promotion to any State Counsel position and administrative personnel in the Office of the Chief State Counsel. The Chief State Counsel shall be the chairperson of the Board.

Appointments of the State Counsels shall be deemed permanent upon compliance with the prescribed qualification standards under the law. The State Counsels occupying the positions affected by the changes in this Act at the time of its approval shall thereafter occupy and discharge the duties and functions of the upgraded positions and receive the corresponding salary, benefits and privileges without necessity of new appointment.

The State Counsels occupying the positions affected by the changes in this Act at the time of its approval shall thereafter occupy and discharge the duties and functions of the upgraded positions and receive the corresponding salary, benefits, and privileges, without necessity of new appointment.

There shall be positions created for administrative personnel equivalent to at least one (1) support staff for every two (2) State Counsels.

SECTION 6. Qualifications of the State Counsels. -The Chief State Counsel and Deputy Chief State Counsels must be citizens of the Philippines and have been engaged in the practice of law in the Philippines for at least fifteen (15) years prior to their appointment.

Senior State Counsels must be members of the Philippine Bar for at least ten (10) years prior to their appointment.

State Counsels IV must be members of the Philippine Bar for at least five (5) years prior to their appointment.

State Counsels III must be members of the Philippine Bar for at least four (4) years prior to their appointment.

State Counsels II must be members of the Philippine Bar for at least three (3) years prior to their appointment.

State Counsels I must be members of the Philippine Bar for at least one (1) year prior to their appointment.

SECTION 7. Compensation and Benefits. – The salaries and allowances of State Counsels shall correspond to their position, rank, and salary grade pursuant to Section 5 hereof. The Chief State Counsel and the Deputy Chief State Counsels shall enjoy the same retirement, death, survivorship, and other benefits as those of a Presiding Justice and Associate Justice of the Court of Appeals, respectively. Senior State Counsels shall enjoy the same retirement, death, survivorship, and other benefits as those of the judges of the Regional Trial Courts. All other State Counsels shall enjoy the same retirement, death, survivorship, and other benefits as those of the judges of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts.

SECTION 8. Retirement Benefits. – When a State Counsel, who has rendered at least fifteen (15) years of service either in the Office of the Chief State Counsel or in any branch of government, or in both, retires for having attained the age of sixty-five (65) years or resigns by reason of incapacity to discharge the duties of his or her office, he or she shall, during the residue of his or her natural life, in the manner hereinafter provided, receive a retirement pension based on the highest monthly salary, plus the highest monthly aggregate of transportation, living and representation allowances, which he or she was receiving at the time of his or her retirement or resignation.

A State Counsel, who retires after having worked for at least fifteen (15) uninterrupted years in the Office of the Chief State Counsel, shall also earn longevity pay in addition to retirement benefits.

When a State Counsel has attained the age of sixty (60) years and has rendered at least fifteen (15) years of service in government, the last five (5) years of which must have been continuously rendered in the Office of the Chief State Counsel, he or she shall likewise be entitled to retire and receive during the residue of his or her natural life the same benefits provided for in Paragraph 1 of this Section; Provided, however, that those with less than fifteen (15) years of service in the government shall be entitled to a *pro rata* pension computed as follows:

No. of years In Government			Basic Pay Plus the Highest Monthly Aggregate of Transportation, Living and Representation Allowances
<hr style="width: 100px; margin: 0 auto;"/>	x		
15 years			

Upon retirement, a State Counsel shall automatically be entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest aggregate transportation, living and representative allowances he or she was receiving on the date of retirement, and thereafter, upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his or her natural life pursuant to the first and second paragraph of this Section.

SECTION 9. Collateral Increase. - All pension benefits of retired State Counsels shall be automatically increased whenever there is an increase in the salary and allowance for the same position from which they retired.

SECTION 10. Survivorship Benefits. –In case a State Counsel covered by this Act dies during his or her retirement, the surviving legitimate spouse and dependent of said State

Counsel shall be entitled to receive all the retirement benefits that the deceased was receiving or entitled to receive at the time of death.

A "dependent" means a legitimate, illegitimate or legally-adopted child who is chiefly dependent on the said deceased State Counsel if such dependent is not more than twenty-one (21) years of age, unmarried and not gainfully employed, or if such dependent regardless of age, is incapable of self-support because of mental or physical disability or condition.

The surviving legitimate spouse shall continue to receive retirement benefits during his or her lifetime or until he or she remarries; Provided, that the surviving legitimate spouse receiving benefits under existing retirement laws shall only be entitled to the difference between the amount provided for in this Act and the benefits he or she is receiving; Provided, further, that said benefits shall be granted to the surviving legitimate spouse or dependent of State Counsels who retired prior to the effectivity of this Act.

Funds for the initial implementation of this Section shall be taken out of the current appropriations for the retirement of the State Counsel and/or savings of the DOJ. Thereafter, such sums as may be necessary for the continued implementation of this Section shall be included in the Annual General Appropriations Act.

SECTION 11. *Death Benefits.* – In case a State Counsel dies while in service, regardless of age and length of service, the heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest aggregate of transportation, living and representation allowances being received by the State Counsel at the time of death: *Provided, however,* That where said State Counsel has rendered at least fifteen (15) years of government service, either in the Office of the Chief State Counsel or in any branch of government, or both, his or her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision: *Provided further,* That the lump sum of ten (10) years gratuity shall be received by the heirs of a State Counsel who was killed by reason of his or her duties as such: *Provided finally,* that the State Counsel has served in the Office of the Chief State Counsel for at least five (5) years regardless of age at the time of death.

SECTION 12. *Prohibitions.* – To maintain entitlement to the retirement benefits herein provided, a State Counsel shall not, during the time he or she is receiving said benefit, appear as counsel before any judicial or quasi-judicial agency in any civil case wherein the Government or any agency, subdivision, or instrumentality thereof is an adverse party, or in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his/her office, or collect any fee for his or her appearance in any administrative proceedings, to maintain an interest adverse to the government, whether national, provincial, or municipal or to any of its legally constituted offices. When a State Counsel covered under this Act shall assume an elective public office, he or she shall not, upon assumption of office and during his or her term, receive retirement benefits.

SECTION 13. *Other Benefits and Privileges.* –The State Counsels and all employees under the Office of the Chief State Counsel shall be entitled to the following benefits:

- (a) Health care services through a health maintenance organization (HMO). Expenses for the mandatory annual executive check-up of the Chief State Counsel, Deputy Chief State Counsels and Senior State Counsels, shall be for the account of the DOJ;
- (b) Accident insurance policies procured by the DOJ, at its own expense, during travels while in the performance of their official duties and functions;
- (c) Scholarships to deserving employees, on official time and at the expense of the DOJ, to enhance their academic growth and upgrade their knowledge and skills;

- (d) Annual thirty (30) days forfeitable leave with pay, in addition to the fifteen (15) days' vacation leave and fifteen (15) days sick leave privileges provided for by law, for all State Counsels. The forfeitable leave privilege under this Act shall be noncumulative and nonconvertible to cash.

SECTION 14. *Applicability.* – All benefits heretofore extended under Republic Act No. 910, as amended, and all other benefits that may be extended by way of amendment thereto shall likewise be given to the State Counsels covered by this Act.

SECTION 15. *Authority to Collect Fees.* – The Office of the Chief State Counsel is hereby authorized to assess, revise and collect fees for various services rendered in accordance with Section 54, Chapter 12, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, and other laws. These collections shall be deposited as a Trust Fund which shall be administered by the Secretary of Justice to augment the Department's funds covering the privileges and benefits under Sections 13 and 16 hereof.

SECTION 16. *Seminar and Other Related Fees.* – Fees for relevant seminars, as well as professional membership fees for lawyers, registration fees and related miscellaneous expenses incurred in completing the mandatory continuing legal education (MCLE) shall be charged against the Trust Fund.

SECTION 17. *Franking Privilege.* – The Office of the Chief State Counsel may transmit through ordinary mail and/or registered mail with return card, free of charge, all official communications and papers directly connected with the conduct of its duties and functions.

SECTION 18. *Appropriation.* – There is hereby appropriated initially the sum of Two Hundred Million Pesos (P200,000,000.00) from the funds of the National Treasury not otherwise appropriated for the initial implementation of this Act. Thereafter, the amount needed for the implementation of this Act shall be appropriated in the budget of the Department of Justice under the Annual General Appropriations Act and from the collected fees pursuant to Section 16 hereof.

SECTION 19. *Separability Clause.* – If any of the provisions of this Act is declared unconstitutional or invalid, the provisions not affected thereby shall continue to be in full force and effect.

SECTION 20. *Repealing Clause.* – All acts, laws, decrees, executive orders, letters of instructions and regulations or any part thereof which are inconsistent with any provision of this Act are hereby repealed and or modified accordingly.

SECTION 21. *Effectivity.* – This Act shall take effect after fifteen (15) days from its publication in at least two (2) newspapers of general circulation or in the Official Gazette.

Approved,