

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

TWENTIETH (20th) CONGRESS
1st Regular Session

HOUSE BILL NO. 5171



Introduced by **REP. HENRY "INDY" F. OAMINAL JR.**
REP. SANCHO FERNANDO "ANDO" F. OAMINAL

EXPLANATORY NOTE

Pursuant to Executive Order No. 292 otherwise known as the Administrative Code of 1987 ("Administrative Code"), the Department of Justice ("DOJ") is the principal law agency which shall be both the government's "legal counsel and prosecution arm." These core functions are fulfilled by the two main offices in the DOJ proper: the Legal Staff or State Counsels, serving as the legal counsel, and the National Prosecution Service, as the prosecution arm.

The Legal Staff, under the Office of the Secretary of Justice, assists the Secretary of Justice in his role as Attorney General.

Currently, the Legal Staff 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 the Administrative Code to render legal opinions, memoranda, comments or legal studies, and to prepare replies or legal advice or legal studies.

Since the promulgation of the Administrative Code in 1987, the matters and issues handled by the Legal Staff have evolved and expanded beyond the rendition of legal opinions. The Legal Staff 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 R.A. No. 2705. The complexity of these legal matters requires permanence on part of the State Counsels, given that they handle matters that overlap administrations. There are certain aspects of the Legal Staff's evolved role that requires a consistent legal position, especially in the realm of treaty implementation.

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 Legal Staff, strengthening its functions, expanding the office, augmenting benefits, and upgrading employee skills.

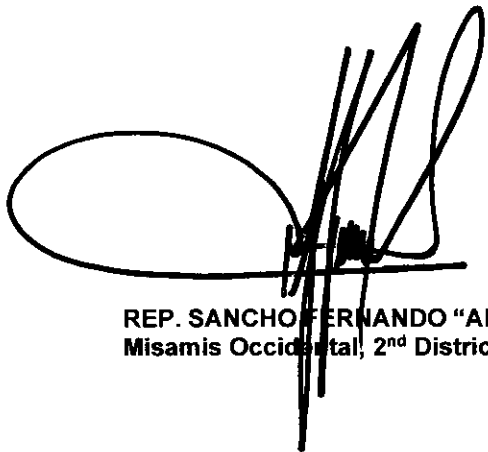
The Legal Staff is undermanned and is in dire need of organizational upgrading in order to function optimally. This is an unfortunate state of affairs, considering that the Legal Staff is a veritable training ground for lawyers in specialized fields of law.

The counterparts of the State Counsels in the DOJ are the State Prosecutors whose Office was strengthened, rationalized, and given greater benefits through R.A. No. 10071 in 2010. Additionally, compensation and retirement benefits from the Office of the Ombudsman and the Judiciary have been upgraded, leaving the Legal Staff behind. Hence, 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.

Considering all the foregoing, this bill seeks to rename the Legal Staff as the Office of the Chief State Counsel and grant them the organizational upgrade befitting their pivotal role in the DOJ.

This bill was filed in the 15th, 16th, 17th, 18th and 19th Congresses, signifying 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 thereof, the passage of this Bill is earnestly sought.



REP. SANCHO FERNANDO "ANDO" F. OAMINAL
Misamis Occidental, 2nd District



REP. HENRY "IMAY" F. OAMINAL JR.
Asenso Pinoy Partylist

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Introduced by **REP. HENRY "INDY" F. OAMINAL JR.**
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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 Republic of the Philippines in Congress assembled:

1 **SECTION 1. *Short Title.*** – This Act shall be known as the “**Office of the Chief**
2 **State Counsel Act.**”
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4 **SECTION 2. *Office of the Chief State Counsel.*** – The Legal Staff created under
5 Republic Act (“R.A.”) No. 2705, as amended by R.A. No. 4152, shall be renamed as the
6 “Office of the Chief State Counsel.”
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8 **SECTION 3. *State Counsel.*** - Unless otherwise specified, the term “State
9 Counsel” shall refer to the Chief State Counsel, Deputy Chief State Counsel, Senior State
10 Counsel, and State Counsels I to IV.
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12 **SECTION 4. *Powers and Functions.*** – The Office of the Chief State Counsel
13 shall assist the Secretary of Justice in the exercise of his functions as Attorney General of
14 the Philippines and *ex officio* legal adviser of government-owned or controlled
15 corporations, or enterprises and their subsidiaries. The Office of the Chief State Counsel
16 shall be under the supervision and control of the Secretary of Justice. The Office of the
17 Chief State Counsel shall have the following powers and functions:
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19 (a) Recommend to the Secretary of Justice, legal opinion or advice on
20 questions of law arising from the performance of powers and duties, and upon
21 request of heads, of national government functionaries and act on other
22 queries;
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24 (b) Study and recommend to the Secretary of Justice the following:
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26 i. comments and position papers on proposed legislations, whenever
27 there are legal issues involved;

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- 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:

POSITION/ DESIGNATION	SALARY 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.

All 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
15 years	x	

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.

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259 **SECTION 14. *Applicability.*** – All benefits heretofore extended under Republic
260 Act No. 910, as amended, and all other benefits that may be extended by way of
261 amendment thereto shall likewise be given to the State Counsels covered by this Act.
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263 **SECTION 15. *Authority to Collect Fees.*** – The Office of the Chief State
264 Counsel is hereby authorized to assess, revise and collect fees for various services
265 rendered in accordance with Section 54, Chapter 12, Book IV of Executive Order No.
266 292, otherwise known as the Administrative Code of 1987, and other laws. These
267 collections shall be deposited as a Trust Fund which shall be administered by the
268 Secretary of Justice to augment the Department's funds covering the privileges and
269 benefits under Sections 13 and 16 hereof.
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271 **SECTION 16. *Seminar and Other Related Fees.*** – Fees for relevant seminars,
272 as well as professional membership fees for lawyers, registration fees and related
273 miscellaneous expenses incurred in completing the mandatory continuing legal
274 education (MCLE) shall be charged against the Trust Fund.
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276 **SECTION 17. *Franking Privilege.*** – The Office of the Chief State Counsel
277 may transmit through ordinary mail and/or registered mail with return card, free of
278 charge, all official communications and papers directly connected with the conduct of
279 its duties and functions.
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281 **SECTION 18. *Appropriation.*** – There is hereby appropriated initially the sum
282 of Two Hundred Million Pesos (P200,000,000.00) from the funds of the National
283 Treasury not otherwise appropriated for the initial implementation of this Act.
284 Thereafter, the amount needed for the implementation of this Act shall be appropriated
285 in the budget of the Department of Justice under the Annual General Appropriations
286 Act and from the collected fees pursuant to Section 16 hereof.
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288 **SECTION 19. *Separability Clause.*** – If any of the provisions of this Act is
289 declared unconstitutional or invalid, the provisions not affected thereby shall continue
290 to be in full force and effect.
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292 **SECTION 20. *Repealing Clause.*** – All acts, laws, decrees, executive orders,
293 letters of instructions and regulations or any part thereof which are inconsistent with
294 any provision of this Act are hereby repealed and or modified accordingly.
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296 **SECTION 21. *Effectivity.*** – This Act shall take effect after fifteen (15) days
297 from its publication in at least two (2) newspapers of general circulation or in the
298 Official Gazette.
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300 Approved,