

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
SECOND REGULAR SESSION)

5 JUL -6 A9:31

SENATE

RECEIVED BY: 

2061

Senate Bill No. _____

Introduced By Senator Francis N. Pangilinan

EXPLANATORY NOTE

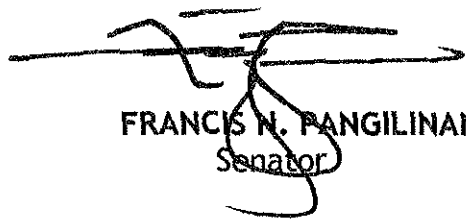
In the wake of serious allegations of violations of the law and betrayal of public trust by no less than the President and other high-ranking officials of the government, we are obligated to revisit our laws on accountability and examine the adequacy of existing mechanisms to realize public accountability. The Constitutional principle that public office is a public trust cannot be overemphasized or taken for granted. Elective and appointive officials alike are answerable to the people from whom all power emanates and for whom Government exists. Integrity in public service is paramount.

It is a sad reality, however, that our people have become increasingly cynical of the impartiality and efficacy of present constitutional and legal processes that were established as a means of implementing discipline among, and enforcing accountability by, public servants. The recurring sentiments of the Filipino people and endless chain of accusations of serious misdemeanors by past and present public officials call for a highly independent and impartial investigative mechanism with powers broad enough to facilitate the discovery of the truth. In response to this call, this Bill provides for the appointment of an independent counsel to conduct investigations of impeachable officials, the Executive Family, and Members of Congress.

In furtherance of its power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment under Section 22 of the Ombudsman Act and its authority to designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of cases under Section 31 of the same Act, the Office of the Ombudsman is granted the authority to request the appointment of an independent counsel by the Supreme Court. As the Office of the Ombudsman is an independent constitutional creation and the Supreme Court is a distinct and apolitical branch of government, the appointment of an independent counsel is best left to their discretion. This would safeguard the impartiality of the independent counsel and ensure the fulfillment of the purposes of the investigation.

Such independent counsel shall have full power and independent authority to exercise all investigative functions and powers of the Department of Justice and the Office of the Ombudsman, subject to the supervision of the Office of the Ombudsman. To ensure an expeditious investigation, the independent counsel is granted additional powers and is mandated to complete the investigation within sixty (60) days from his appointment.

In view of the current national situation and the urgency of resolving the issues sought to be addressed by this measure, immediate passage of this Bill is earnestly sought.



FRANCIS N. PANGILINAN
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

5 JUL -6 A9:31

SENATE
S.B. No. **2061**

RECEIVED BY: 

Introduced by Senator Francis N. Pangilinan

AN ACT
PROVIDING FOR THE APPOINTMENT OF AN INDEPENDENT COUNSEL TO
CONDUCT INVESTIGATIONS INVOLVING IMPEACHABLE OFFICIALS AND OTHER
HIGH-RANKING GOVERNMENT OFFICIALS AND FOR OTHER PURPOSES

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

1 Sec. 1. *Title.* - This Act shall be known as the "Independent Counsel Act
2 of 2005."

3
4 Sec. 2. *Declaration of Policy.* - The State shall uphold integrity in the
5 public service. Public officials must at all times be accountable to the people
6 and obey the laws of the land.

7
8 Sec. 3. *Investigations by the Ombudsman.* - Upon receipt of a complaint
9 under oath sufficient to constitute grounds for impeachment by the President,
10 the Vice-President, the Members of the Supreme Court, and the Members of
11 the Constitutional Commissions, and possible violation of law by Members of
12 Congress and Members of the Cabinet, the Office of the Ombudsman shall
13 determine, within ten (10) days from receipt thereof, whether grounds to
14 investigate exist. The Office of the Ombudsman may also initiate such
15 investigation *motu proprio*.

16
17 Upon evaluating the complaint, the Office of the Ombudsman shall
18 determine whether it may be:

- 19
20 a) dismissed outright for containing information that is not specific or
21 is not from a credible source;
22
23 b) referred to respondent for comment; or
24
25 c) subjected to further investigation.

26
27 If the Office of the Ombudsman is unable to make a determination within the
28 specified period, the Ombudsman shall subject the complaint to further
29 investigation.

30
31 Sec. 4. *Conduct of Further Investigation and Appointment of*
32 *Independent Counsel.* - (a) Application for Appointment of an independent
33 counsel. - Where the Office of the Ombudsman determines that reasonable
34 grounds exist to warrant further investigation of a complaint under section 3
35 hereof, the Office of the Ombudsman may apply to the Supreme Court *en banc*
36 for the appointment of an independent counsel to assist in the investigation of

1 the complaint. The independent counsel shall be separate and independent
2 from the Department of Justice.

3
4 (b) Contents of the Application. - The application shall contain a list of
5 at least three (3) nominees for independent counsel and include the proposed
6 investigative jurisdiction of the independent counsel. The Supreme Court,
7 however, shall not be precluded from appointing any person not nominated by
8 the Office of the Ombudsman and limiting or expanding the investigative
9 jurisdiction of the independent counsel.

10
11 (c) Limitation on Judicial Review. - The determination of the Office of
12 the Ombudsman to apply for the appointment of an independent counsel and
13 the list of nominees submitted shall not be reviewable by any court.

14
15 (d) Congressional Request.—

16
17 (1) The Senate or the House of Representatives, through a
18 resolution concurred in by a majority of its Members, may request in
19 writing that the Office of the Ombudsman apply for the appointment of
20 an independent counsel.

21
22 (2) Within ten (10) days after the receipt of a request from either
23 the Senate or the House of Representatives under paragraph (1), the
24 Office of the Ombudsman shall furnish the House making the request a
25 certified copy of the application for the appointment of an independent
26 counsel. If no application is made, the Office of the Ombudsman shall
27 submit a report to that House stating the reasons why such application
28 was not made, addressing each matter with respect to which the
29 congressional request was made.

30
31 *Sec. 5. Duties of the Supreme Court.* - The Supreme Court, sitting *en*
32 *banc*, shall have the following duties:

33
34 (a) Upon receipt of an application for the appointment of an
35 independent counsel, the Supreme Court shall appoint a qualified independent
36 counsel, with due consideration to the list of nominees submitted by the Office
37 of the Ombudsman.

38
39 (b) Upon appointment of an independent counsel, the Supreme Court
40 shall define that independent counsel's investigative jurisdiction and grant
41 sufficient powers to enable the independent counsel to conduct a
42 comprehensive investigation of the subject matter and all related matters.

43
44 (c) After the Supreme Court has already defined the investigative
45 jurisdiction of the independent counsel, the Supreme Court may expand the
46 same only upon the request of the Office of the Ombudsman. Such expansion
47 may, whenever proper, be in lieu of the appointment of another independent
48 counsel.

49
50 (d) If a vacancy in office arises by reason of the resignation, death, or
51 removal of an independent counsel, the Supreme Court shall appoint an
52 independent counsel to complete the work of the independent counsel whose
53 resignation, death, or removal caused the vacancy.

54

(e) Determine a reasonable compensation for the independent counsel, with due consideration to the period of time for completion of the investigation and the costs to the Government.

(f) Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this Act, the Supreme Court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this Act. In determining the award of attorneys' fees, the Supreme Court shall observe the following procedure:

(i) Notify the independent counsel who conducted the investigation and the Office of the Ombudsman of any request for attorneys' fees under this subsection.

(ii) Direct such independent counsel and the Office of the Ombudsman to file a written evaluation of any request for attorneys' fees under this subsection, addressing the sufficiency of the documentation, the need or justification for the underlying item, whether the underlying item would have been incurred but for the requirements of this chapter, and the reasonableness of the amount of money requested.

Sec. 6. Qualifications of an Independent Counsel.- An independent counsel shall be a natural-born citizen of the Philippines, of recognized competence, integrity, probity, dedication to duty, and independence of mind, a member of the Philippine Bar, and must not have been a candidate for any elective national or local office in the immediately preceding election whether regular or special. He must have at least ten (10) years of experience as fiscal, prosecutor, judge, investigator, hearing officer, or trial lawyer.

Sec. 7. Powers and Functions of an Independent Counsel. - (a) An independent counsel shall have full power and independent authority to exercise all investigative functions and powers of the Department of Justice and the Office of the Ombudsman, subject to the supervision of the Office of the Ombudsman. The Independent Counsel shall have the following powers:

(1) Conduct fact-finding investigations;

(2) Conduct and participate in any proceeding before the court and other investigative bodies;

(3) Receive, review and evaluate the evidence adduced before him and for this purpose, summon witnesses, administer oaths, take testimony or receive evidence relevant to the investigation, and issue subpoena *ad testificandum* or *subpoena duces tecum* for the production of documents, books, records and other articles;

(4) Examine and have access to bank accounts and records relating to the subject matter of the investigation in accordance with Republic Act No. 1405 or upon petition to the Supreme Court;

(5) Request any government agency for assistance and information necessary for the discharge of his responsibilities, and to examine, if necessary, pertinent records and documents;

1
2 (6) Grant immunities to witnesses in accordance with Section 17 of the
3 Ombudsman Act;

4
5 (7) File applications for warrants, citations for contempt, and other
6 court orders as may be necessary to carry out the investigation;

7
8 (8) Contest any claim of privilege or attempt to withhold evidence on
9 grounds of national security;

10
11 (9) Request the Office of the Ombudsman to refer to him matters
12 related to the independent counsel's investigative jurisdiction;

13
14 (10) Publicize matters covered by the investigation when circumstances
15 so warrant and with due prudence: *Provided*, That the independent counsel
16 and the Office of the Ombudsman may determine what may not be made
17 public: *Provided, further*, That any publicity issued shall be balanced, fair and
18 true;

19
20 (11) Appoint, fix the compensation, and assign the duties of additional
21 employees as such independent counsel *considers necessary*, *Provided* that the
22 compensation of such employees shall be the same as their counterparts in the
23 civil service; and

24
25 (12) Perform such other acts as may be incidental to or necessary or
26 appropriate to carry out the objectives of the investigation.

27
28 (b) *Compensation.*— An independent counsel appointed shall be entitled
29 to *per diem* and travel expenses as may be determined by the Supreme Court.

30
31 (c) *Reports by Independent Counsel.*— (1) *Monthly Reports.* - An
32 independent counsel shall file with the Supreme Court and the Commission on
33 Audit a monthly report of all expenses incurred during the relevant period.

34
35 (2) *Final Report.*— Upon termination of office, the independent counsel
36 shall submit a final report to the Supreme Court which shall state a complete
37 description of the work done. The independent counsel shall furnish the
38 Senate and the House of Representatives a copy of such report.

39
40 (d) *Records.* - Upon termination of office, the independent counsel shall
41 turn over all records pertaining to the investigation to the Office of the
42 Ombudsman, identifying in particular those which have been classified as
43 national security information.

44
45 Sec. 8. *Standards of Conduct.* - An independent counsel, any person
46 appointed by such independent counsel under section 7 (a) (11), and any
47 person associated with a firm with which such independent counsel is
48 associated, may not represent any person involved in any matter within the
49 investigative jurisdiction of the independent counsel during the term of office
50 and within one (1) year after termination of office.

51
52 Sec. 9. *Removal of an independent counsel.* - An independent counsel
53 may only be removed from office by conviction. Where an independent
54 counsel is removed from office, the Office of the Ombudsman shall
55 promptly submit to the Supreme Court, the Senate, and the House of

Representatives a report specifying the facts found and the ultimate grounds for such removal.

Sec. 10. *Termination of Office.*— An office of independent counsel shall terminate upon the occurrence of any of the following:

(a) The independent counsel notifies the Office of the Ombudsman that the investigation of all matters within his investigative jurisdiction have been completed or so substantially completed that it would be appropriate for the Office of the Ombudsman to complete such investigations and prosecutions; and

(b) The independent counsel files a final report under section 7 (c) (2);

(c) The Supreme Court, either on its own motion or upon the request of the Office of the Ombudsman, terminates an office of independent counsel on the ground that the investigation of all matters within the investigative jurisdiction of such independent counsel have been completed or so substantially completed that it would be appropriate for the Office of the Ombudsman to complete such investigations and prosecutions;

Provided That, an independent counsel shall complete his investigation not later than sixty (60) days after his appointment; *Provided further*, that a reasonable extension may be granted upon petition to the Supreme Court.

Sec. 11. *Suspension of Other Investigations and Proceedings.*— Whenever a matter is within the investigative jurisdiction of an independent counsel, all other investigations and proceedings regarding such matter shall be immediately suspended except an impeachment proceeding initiated by the House of Representatives.

Sec. 12. *Repealing Clause.* — Republic Act No. 6770, Executive Order No. 292 as amended, Republic Act No. 1405, and all other provisions of laws, orders, decrees, including rules and regulations inconsistent herewith are hereby repealed and/or modified accordingly.

Sec. 13. *Separability Clause.* — If any part or provision of this Act shall be held to be unconstitutional or invalid, other provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 14. *Effectivity.* — This Act shall take effect fifteen (15) days following its publication in one (1) national newspaper of general circulation.

Adopted,