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SENATE

S. No. 1447

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Introduced by Senator JUAN MIGUEL F. ZUBIRI

EXPLANATORY NOTE

Several cases have been dismissed by the Sandiganbayan for failure by the Ombudsman to substantiate claims of unlawfully acquired properties against a corrupt government official.


In most cases, the defense was able to successfully show that the alleged illegally owned asset are either owned or given by families or relatives. The lack of appropriate powers and measures to address specific gaps in the evidence gathering process hampers the Ombudsman's ability to effectively prosecute corrupt government officials resulting to losses of millions of pesos by the State. Ombudsman investigators are prevented from looking into the respondent's bank records without any subpoena being issued by the Court. The Court, on the other hand, can only issue a subpoena upon the filing of case by the Ombudsman. By then, respondents have successfully withdrawn or transferred his/her account.

To address this prevailing problem, the proposed measure seeks to strengthen the Ombudsman's investigatory powers as well as its institutional capacity to run after corrupt officials. Specifically, the proposed bill seeks to:

- Enable the Office of the Ombudsman to issue *subpoena* and *subpoena duces tecum*, during the preliminary investigation in order look into bank records even prior to the filing of a case before the court;
- *Motu proprio*, issue freeze order to unlawfully acquired assets for six months;
- Provide immunity from criminal, administrative or civil suits to the Ombudsman investigators and prosecutors arising from the regular exercise of their official duties; and
- Impose penalties to the officer or employee found guilty of the charge even during election period notwithstanding the prohibitions under the Election Code and other similar statutes.

With the passage of this proposed legislation, the Ombudsman is able to address graft issues in the country through a progressive and transparent system of collecting evidence in corruption cases, supporting effective asset recovery, and addressing fundamental institutional capacity.

Hence, approval of this bill is earnestly sought.




JUAN MIGUEL F. ZUBIRI

10 JUL 15 09:14

SENATE

S. No. 1447

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AN ACT
STRENGTHENING THE INSTITUTIONAL CAPACITY OF THE OFFICE OF THE
OMBUDSMAN BY AMENDING CERTAIN PROVISIONS OF RA 6770
OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989"

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

1 **SECTION 1.** Section 6 of R.A. No. 6770 is hereby amended to read as
2 follows:
3

4 "SEC. 6. *Rank and Salary.* — The Ombudsman and his Deputies
5 shall have the same ranks, salaries and privileges as the Chairman and
6 members, respectively, of a Constitutional Commission. Their salaries
7 shall not be decreased during their term of office.

8 The members of the prosecution, investigation, [and] legal **AND**
9 **ADMINISTRATIVE STAFF** of the Office of the Ombudsman shall receive
10 **EMOLUMENTS AND** salaries which shall not be less than those given to
11 comparable positions in any office in the Government.

12 **OTHER BENEFITS AND ALLOWANCES GRANTED TO**
13 **OFFICIALS AND EMPLOYEES OF THE OFFICE OF THE**
14 **OMBUDSMAN SHALL BE PAID OUT OF THE NATIONAL FUNDS**
15 **AND INCLUDED IN THE ANNUAL APPROPRIATIONS OF THE**
16 **OFFICE OF THE OMBUDSMAN."**

17
18 **SEC. 2.** Section 15 of R.A. No. 6770 is hereby amended to read as follows:
19

20 "Section 15. *Powers, Functions and Duties.* - The Office of the
21 Ombudsman shall have the following powers, functions and duties:
22

23 xxx

24
25 (8) Administer oaths, issue *subpoena* and *subpoena duces tecum*,
26 and take testimony in any investigation or inquiry, including the power to
27 examine and have access to bank accounts and records
28 **NOTWITHSTANDING THE PROVISIONS OF R.A. 1405, R.A. 6426,**
29 **R.A. 8791, AND R.A. 9160;**

30
31 (9) Punish for contempt in accordance with [the Rules of Court] **ITS**
32 **OWN RULES** and [under the same procedure] with the [same] penalties
33 provided [therein] **UNDER SECTION 37 OF THIS ACT;**
34

1 xxx
2

3 (11) Investigate and initiate the proper action for the recovery of ill-
4 gotten and/or unexplained wealth amassed after February 25, 1986 and
5 the prosecution of the parties involved therein. **THE REPUBLIC OF THE**
6 **PHILIPPINES SHALL BE EXEMPT FROM FILING/OR PAYMENT OF**
7 **ANY BOND. THE PROPERTIES TO BE RECOVERED, FORFEITED**
8 **AND/OR SURRENDERED SHALL BE EXEMPT FROM PAYMENT OF**
9 **ANY TAXES BOTH NATIONAL AND LOCAL;**

10
11 **(12) ISSUE FREEZE ORDERS ON UNLAWFULLY ACQUIRED**
12 **PROPERTIES OR ASSETS OR ITS/THEIR EQUIVALENT VALID FOR**
13 **A PERIOD OF NOT MORE THAN SIX MONTHS.**

14
15 **SEC. 3.** Section 17 of R.A. No. 6770 is hereby amended to read as follows:

16
17 “SEC.17. *Immunities.* — In all hearings, inquiries, and
18 proceedings of the Ombudsman, including preliminary investigations of
19 offenses, no person subpoenaed to testify as a witness shall be excused
20 from attending and testifying or from producing books, papers,
21 correspondence, memoranda and/or other records on the ground that
22 the testimony or evidence, documentary or otherwise, required of him,
23 may tend to incriminate him, or subject him to prosecution: Provided, that
24 no person shall be prosecuted criminally for or on account of any matter
25 concerning which he is compelled, after having claimed the privilege
26 against self-incrimination, to testify and produce evidence, documentary
27 or otherwise.

28 Under such terms and conditions as it may determine, [taking into
29 account the pertinent provisions of the Rules of Court] the Ombudsman
30 may grant immunity from criminal prosecution to any person whose
31 testimony or whose possession and production of documents or other
32 evidence may be necessary to determine the truth in any hearing, inquiry
33 or proceeding being conducted by the Ombudsman or under its
34 authority, in the performance or in the furtherance of its constitutional
35 functions and statutory objectives. The immunity granted under this and
36 the immediately preceding paragraph shall not exempt the witness from
37 criminal prosecution for perjury or false testimony nor shall he be exempt
38 from demotion or removal from office.

39 Any refusal to appear or testify pursuant to the foregoing
40 provisions shall be subject to punishment for contempt and removal of
41 the immunity from criminal prosecution.”

42
43 **SEC. 4.** Section 25 of R.A. No. 6770 is hereby amended to read as follows:

44 “Section 25. *Penalties* -

45
46
47 (1) In administrative proceedings under Presidential Decree No. 807,
48 the penalties and rules provided therein shall be applied.

49
50 (2) In other administrative proceedings, the penalty ranging from
51 suspension without pay for one (1) year to dismissal with forfeiture of
52 benefits or a fine ranging from Five Thousand Pesos (P5,000.00) to twice
53 the amount malversed, illegally taken or lost, or both at the discretion of
54 the Ombudsman, taking into consideration circumstances that mitigate or
55 aggravate the liability of the officer or employee found guilty of the
56 complaint or charges.

1 **THESE PENALTIES MAY BE IMPLEMENTED DURING**
2 **ELECTION PERIOD NOTWITHSTANDING THE PROHIBITIONS**
3 **UNDER THE ELECTION CODE AND OTHER SIMILAR STATUTES."**
4

5 **SEC. 5.** Insert a new Section 32 in RA 6770 to read as follows:
6

7 **"SEC. 32. IMMUNITY FROM SUIT OF OMBUDSMAN**
8 **INVESTIGATORS AND PROSECUTORS. – OMBUDSMAN**
9 **INVESTIGATORS AND PROSECUTORS, INCLUDING THOSE**
10 **DESIGNATED BY THE OMBUDSMAN PURSUANT TO SECTION 31,**
11 **SHALL BE IMMUNE FROM CRIMINAL, ADMINISTRATIVE OR CIVIL**
12 **SUITS ARISING FROM THE REGULAR EXERCISE OF THEIR**
13 **OFFICIAL FUNCTION."**
14

15 **SEC. 6.** Section 32 of R.A. No. 6770 is hereby amended to read as follows:
16

17 "Section [32] 33. *Rights and Duties of Witness.* —

18 (1) A person required by the Ombudsman to provide the information
19 shall be paid the same fees and travel allowances as are extended to
20 witnesses whose attendance have been required in the trial courts.
21 Upon request of the witness, the Ombudsman shall also furnish him
22 such security for his person and his family as may be warranted by the
23 circumstances. For this purpose, the Ombudsman may, at its expense,
24 call upon any police or constabulary unit to provide the said security.
25

26 (2) A person who, with or without service or compulsory process,
27 provides oral or documentary information requested by the
28 Ombudsman shall be accorded the same privileges and immunities as
29 are extended to witnesses in the courts, and shall likewise be entitled to
30 the assistance of counsel while being questioned.
31

32 (3) If a person refuses to respond to the Ombudsman's or his
33 Deputy's subpoena, or refuses to be examined, or engages in
34 obstructive conduct, the Ombudsman or his Deputy shall issue an order
35 directing the person to appear before him to show cause why he should
36 not be punished for contempt. [The contempt proceedings shall be
37 conducted pursuant to the provisions of the Rules of Court.]"
38

39 **SEC. 7.** Section 36 of RA 6770 is hereby amended to read as follows:
40

41 "Section [36] 37. *Penalties for Obstruction.* — Any person who
42 wilfully obstructs or hinders the proper exercise of the functions of the
43 Office of the Ombudsman, or who wilfully misleads or attempts to
44 mislead the Ombudsman, his Deputies, and the Special Prosecutor in
45 replying to their inquiries shall be punished of a fine not exceeding five
46 thousand pesos (P5,000.00).
47

48 **ANY PERSON GUILTY OF MISBEHAVIOR IN THE**
49 **PRESENCE OF OR SO NEAR AN OFFICER OF THE OFFICE OF**
50 **THE OMBUDSMAN AS TO OBSTRUCT OR INTERRUPT THE**
51 **PROCEEDINGS BEFORE THE SAME, INCLUDING DISRESPECT**
52 **TOWARD THE HEARING OFFICER, OFFENSIVE PERSONALITIES**
53 **TOWARD OTHERS, OR REFUSAL TO BE SWORN OR TO**
54 **ANSWER AS A WITNESS, OR TO SUBSCRIBE AN AFFIDAVIT OR**
55 **DEPOSITION WHEN LAWFULLY REQUIRED SO TO DO, MAY BE**
56 **SUMMARILY ADJUDGED IN CONTEMPT BY SUCH HEARING**
OFFICER, SUBJECT TO THE APPROVAL OF THE OMBUDSMAN,

1 AND PUNISHED BY FINE NOT EXCEEDING FIVE THOUSAND
2 PESOS OR IMPRISONMENT NOT EXCEEDING TEN (10) DAYS.
3 ANY IMPROPER CONDUCT TENDING, DIRECTLY OR
4 INDIRECTLY, TO IMPEDE, OBSTRUCT, OR DEGRADE THE
5 ADMINISTRATION OF JUSTICE OR ANY INVESTIGATION BEING
6 CONDUCTED BY THE OFFICE SHALL CONSTITUTE INDIRECT
7 CONTEMPT, AND SHALL, AFTER NOTICE AND HEARING, BE
8 PUNISHED WITH THE SAME PENALTIES AS IN DIRECT
9 CONTEMPT.
10 TO ENFORCE THE PROVISIONS OF THIS SECTION, THE OFFICE
11 OF THE OMBUDSMAN MAY, IF NECESSARY, REQUEST THE
12 ASSISTANCE OF ANY LAW ENFORCEMENT OFFICE FOR THE
13 EXECUTION OF ANY ORDER MADE FOR SAID PURPOSE.”
14

15 **SEC. 8. *Rules and Regulations.*** – The Ombudsman shall issue, within ninety
16 (90) days after the approval of this Act, the necessary rules and regulation relating
17 to the administrative aspects of the provisions of this Act.
18

19 **SEC. 9. *Seperability Clause.*** – If for any reason, any section or provision of
20 this Act is declared to be unconstitutional or invalid, the other sections or provisions
21 hereof which are not affected thereby shall continue to be in full force and effect.
22

23 **SEC. 10. *Repealing Clause.*** – All laws, decrees, orders or rules and
24 regulations, and other issuances which are inconsistent with the provisions of this
25 Act are hereby repealed, amended or modified accordingly.
26

27 **SEC. 11. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
28 publication in two national newspapers of general circulation.
29

30 Approved,