

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

Senate
Office of the Secretary

1978 JUL 14 2 11 PM

SENATE

SENATE BILL NO. 1103

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INTRODUCED BY **SENATOR JOSEPH VICTOR G. EJERCITO**

EXPLANATORY NOTE

Midnight appointment is defined as an appointment to political office made during the last hours of the term of office of the person in whom the right of making such appointment is vested. The court has decided long line of cases involving midnight appointments anchored on the prohibition under the 1987 Philippine Constitution, which covers only the President or the acting President. Section 15 of Article VII of the 1987 Philippine Constitution states that two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

There is no law that prohibits Local Executives including CITY MAYORS, MUNICIPAL MAYORS AND PROVINCIAL GOVERNORS from making appointments during the last hours of his term of office and this bill seeks to implement the same prohibition. At present, appointments in local government units are regulated by Sec. 261 (G) of the Omnibus Election Code and Civil Service Commission Regulation No. 010988.

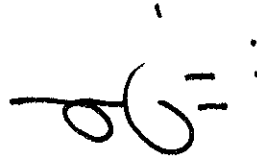
It is a prohibited act under Sec. 261 (G) of the Omnibus Election Code, the appointment of new employees, creation of new position, promotion or giving salary increases during the period of forty-five days before a regular election and thirty days before a special election by any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, whether provisional, temporary or casual, or creates and fills any new position except upon prior authority of the Commission. Appointments made during the prohibited period will not be invalidated when it is in conformity with CSC Regulation No. 010988 which outlined the following requirements: All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, which are issued AFTER the elections, regardless of their dates of affectivity and/or date of receipt by the Commission, shall be disapproved unless the following requisites concur relative to their issuance: a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting; b) That the appointee is qualified; c) There is a need to fill up

the vacancy immediately in order not to prejudice public service and/or endanger public safety; and d) That the appointment is not one of those mass appointments issued after the elections.

Cases relating to midnight appointments made by local executives before and after election are assumed to be initiated for partisan purposes in order to obtain favorable results during election. Short from referring midnight appointment to vote buying, most re-electionist would resort to such strategy in order to be re-elected. In the same vein that outgoing local executives should also be prohibited from making any appointments pending assumption of office by their successors in order to eliminate conflicts between the newly elected and the outgoing local officials.

It is to be emphasized that the discharged of official functions to better serve the people is the primordial consideration in filling the vacancies of any government instrumentalities/agencies and not the personal advantages that the appointing officers may obtain in the exercise of its appointive powers.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read 'J. Ejercito', with a horizontal line extending from the end of the signature.

JOSEPH VICTOR G. EJERCITO

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SENATE BILL NO. 1103

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BY: 

INTRODUCED BY SENATOR JOSEPH VICTOR G. EJERCITO

**AN ACT PROHIBITING CITY MAYORS, MUNICIPAL MAYORS AND
PROVINCIAL GOVERNORS FROM MAKING APPOINTMENTS TWO
(2) MONTHS IMMEDIATELY BEFORE THE NEXT LOCAL
ELECTIONS AND PENDING ASSUMPTION TO OFFICE OF THEIR
SUCCESSORS AND FOR OTHER PURPOSES**

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

SECTION 1. Proscribed Appointments. - Two (2) months immediately before the next local elections and up to the end of their terms, city mayors, municipal mayors and provincial governors or those in an acting capacity shall not make appointments, either casual, contractual, temporary or permanent, except temporary appointments to executive positions where continued vacancies therein will prejudice public service or endanger safety.

SECTION 2. Outgoing Local Executives. - Outgoing city mayors, municipal mayors and provincial governors shall not make appointments, either casual, contractual, temporary or permanent, after the local elections and pending the assumption to office of their respective successors, except temporary appointments to executive positions where continued vacancies therein will prejudice public service or endanger safety.

SECTION 3. Automatic Expiration. - All temporary appointments made pursuant to the two (2) preceding sections shall *ipso facto* expire on July 1 following the elections, subject to the renewal of the appointment upon the discretion of the duly authorized appointing authority.

SECTION 4. Separability Clause. - If any part, section or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SECTION 5. *Repealing Clause.* – All other laws, decrees, orders, issuances, rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette*.

Approved,