

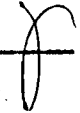
SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

'16 AUG 16 P6:35

SENATE

RECEIVED BY: 

S. B. No. 1035

Introduced by Senator JOEL "TESDAMAN" VILLANUEVA

**AN ACT CREATING THE
NATIONAL INDEPENDENT COMMISSION AGAINST CORRUPTION
(NICAC), APPROPRIATING FUNDS THEREOF AND FOR OTHER
PURPOSES**

EXPLANATORY NOTE

Over the last six years, the Philippine government has made enormous strides in the fight against corruption. As a high political priority of the past administration, stricter rules on transparency and government transactions were put in place.

However, corruption remains a significant obstacle not only to good governance but also in making the Philippines attractive to investors. Corruption also undermines the continuing thrust of the government towards public-private partnerships (PPP) projects.

In fact, the Transparency International's survey on corruption showed that the Philippines ranking slipped by 10 notches, from its earlier rank of 85 out of 175 countries in 2014 to 95 out of 186 countries in 2015. In ASEAN, the Philippines has even been surpassed by Thailand and Indonesia, which ranked 76th and 88th, respectively.

The global survey measures perceptions on the degree of corruption as seen by business people and risk analysts. Hence, higher ranking for the Philippines means that it would be more costly to do business in the country.

Corruption, especially bribery, crowds out potential investors. It is more likely to also impact job creation efforts of the government. In the World Bank Group's Doing

Business 2016 report, the Philippines ranking dropped to 103rd from its 2015's 97th place across 189 economies.

Controlling corruption necessitates several strategies and institutional responses. For many countries, the approach of choice has been the creation of an anti-corruption agency.

Hong Kong has successfully eradicated syndicated corruption by creating the Independent Commission Against Corruption (ICAC) in 1974. Integral to the success of the ICAC is a three-pronged approach: corruption prevention, law enforcement and community education. A professional and dedicated staff, information exchange and cooperation and continuous learning, also contributed to its success.

Creating the National Independent Commission Against Corruption (NICAC) in the Philippines is long overdue. With the NICAC, the government can better carry out and coordinate policies at the national level for the prevention, control and ultimately, eradication of graft and corrupt practices at all levels of the government perpetuated by both public officers and private individuals.

An unimpeachable anti-corruption agency with officials that is carefully selected from the civil society and is subject to strict disciplinary codes and anti-corruption checks can effectively instill ethical standards in all dealings and zero tolerance for corruption. Of course, a corruption-free Philippines can help improve the business and investment climate, which is critical to fostering inclusive growth and job creation.

The immediate passage of this bill is earnestly sought.

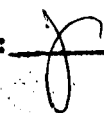

SENATOR JOEL VILLANUEVA

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AND FOR OTHER PURPOSES**

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

1 **SECTION 1. Title** – This Act shall be known as the “National Independent
2 Commission Against Corruption Act of 2016.”
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4

5 **SECTION 2. Declaration of Policy** – It is the declared policy of the State to
6 maintain honesty and integrity in public service and to take effective and
7 efficient measures in the battle against graft and corruption.
8
9

10 **SECTION 3. Organization.** – There is hereby created a National Independent
11 Commission Against Corruption, hereinafter referred to as the Commission, to
12 implement and to coordinate policy at the national level for the prevention,
13 control and ultimately, the elimination of graft and corrupt practices at all
14 levels in government perpetuated by public officers and private persons alike;
15 *Provided that*, acts or omissions constituting graft and corrupt practices shall
16 be as defined by Republic Act No. 3019, as amended, or as declared unlawful
17 by other existing laws.
18

19 **SECTION 4. Powers and Functions of the Commission.** – The
20 Commission shall exercise the following powers:
21

- 22 a. To formulate and implement a national anti-corruption framework,
23 program strategies and a corresponding action agenda of the
24 government in consultation with government agencies, private
25 sector, and civil society organizations;

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- b. To investigate, as provided under Section 37, Chapter 9, Book I of the administrative Code of 1987, including the power to summon witnesses, administer oaths, take testimony or evidence relevant to its investigation, and to issue compulsory processes to produce documents, books, records and such other matters, in the performance of its functions;
- c. To initiate legal action in cases where a party refuses to take oaths, give testimony or produce documents for inspection, when thereunto lawfully required;
- d. To apply for the grant of immunity from prosecution to any person whose testimony, or whose possession of documents or other evidence, is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- e. To endorse to the office of the ombudsman or the Department of justice, as the case may be, for prosecution upon finding of *prima facie* case, any matter that the Commission, after investigation, upon complaint by any person or at its own instance, shall find to constitute graft and corrupt practices in case of the infractions by public officials and private groups or individuals;
- f. To assist in the investigation of palpable and massive electoral fraud, including, but not limited to, verifying the observance of the ceiling on electoral expenditure and the accuracy of the election campaign accounts, and monitor the actions of the different board of canvassers during elections in coordination with the Commission on Elections (COMELEC);
- g. To examine the execution of public contracts as to both tendering and results;
- h. To verify the award of public works and supply contracts and the assignment of operations by the public authorities if they are conducted properly and honestly;
- i. To undertake a comprehensive audit which shall be inclusive of lifestyle check on any public officer/employee;
- j. To serve lawfully issued warrants of arrest and/or search and seizure pursuant to its investigatory powers;
- k. To conduct sustained information and education drives aimed at preventing corruption and public misconduct;
- l. To organize specialized training of staff members of the Commission and representatives of private sector and civil society

1 in the prevention, investigation, and prosecution of graft and corrupt
2 practices;

3
4
5 **SECTION 5. Offenses covered** – For the purposes of this law, the
6 Commission shall have jurisdiction to investigate possible violations of the
7 following laws, including but not limited to:

- 8
9 a. Republic Act No. 9485, otherwise known as the “Anti-Red Tape Act
10 of 2007”;
- 11
12 b. Republic Act No. 3019, as amended, otherwise known as the “Anti-
13 Graft and Corrupt Practices Act”;
- 14
15 c. Republic Act No. 1379 on the “Law on Forfeiture of ill-Gotten
16 Wealth”;
- 17
18 d. Republic Act No. 6713, otherwise known as the “Code of Conduct
19 and Ethical Standards for Public Officials and Employees”;
- 20
21 e. Section 46 (b), Book V, Subtitle A, Chapter 6 of the executive Order
22 No. 292, series of 1987, otherwise known as the “Administrative
23 Code of 1987”;
- 24
25 f. Any provision under Title Seven of the Revised Penal Code on
26 Crimes committed by Public Officers”;
- 27
28 g. Rules and regulations duly promulgated by competent authority to
29 implement relevant law, executive orders, rules and regulations.
30

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32 **SECTION 6. Composition of the Commission.** The Commission shall be
33 headed by a Chairperson, who shall be assisted by three (3) Commissioners.
34 The Chairperson and Commissioners shall all serve on a full-time basis.

- 35
36 a. Each shall be selected and appointed by the President, without the
37 requirement of confirmation, provided, however, that reappointment
38 shall follow the nomination process outlined in this section;
- 39
40 b. The Chairperson and the Commissioners shall include at least one
41 (1) lawyer and accountant and member of the academe who is in
42 the field of public administration. Each shall be selected and
43 appointed by the President from a pool of candidates to be
44 nominated by peak professional organizations of accountants and
45 lawyers and by the University or College Administration for the
46 Chairperson or Commissioner/s that shall come from the academe,
47 respectively. These organizations must have been in existence for
48 at least ten (10) years. A “peak professional organization” refers to
49 an organization duly recognized by members as representative of,
50 and having the largest active membership in their profession. The

1 mechanics of the nomination process shall be provided for in the
2 Implementing Rules and Regulations for this Act.

- 3
4 c. The Chairperson and Commissioners must be a citizen of the
5 Philippines, at least thirty-five (35) years of age, known and
6 recognized for moral uprightness and patriotism, of unquestionable
7 integrity, and a recognized expert in law, accounting, and public
8 administration. They must not have been candidates for any
9 elective national or local office in the immediately preceding election
10 whether regular or special.
11
12 d. The Chairperson shall serve for five years and renewable every two
13 (2) years thereafter. The commissioners to be appointed shall serve
14 for three (3) years and renewable every two (2) years thereafter.
15
16 e. The President may remove any member of the Commission for any
17 of the following reasons:
18
19 i. The member suffers from physical or mental incapacity
20 that renders him or her incapable of properly discharging
21 the duties and responsibilities of the Commission and
22 such incapacity has lasted for more than six (6) months;
23
24 ii. The member has committed acts or operations that are
25 shown *prima facie* to be fraudulent or illegal or manifestly
26 opposed to the aims and interests of the Commission;
27
28 iii. The member ceases to possess the qualifications
29 required in the law or the implementing rules and
30 regulations.
31
32 f. The Chairperson and the Commissioners shall not hold any public
33 office or employment during their tenure.
34 Except as otherwise provided by law, in no case shall any member
35 of the Commission appoint representatives to act on his behalf.
36
37
38 g. The President shall fix the compensation of the Chairperson and
39 the Commissioners based on an objective classification system at a
40 sum commensurate to the importance and responsibilities attached
41 to the position and shall be exempt from the Salary Standardization
42 Law.
43
44 h. The Ombudsman shall serve as an *ex officio* member of the
45 Commission.
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47

48 **SECTION 7. The Secretariat.** The Commission shall be assisted by a
49 Secretariat which shall first be organized upon the appointment of the
50 Executive Director.

1
2 The secretariat shall likewise be composed of individuals of known moral
3 probity and dedication to public service.
4

- 5 a. The Executive Director. The Executive director shall be appointed
6 by the Chairperson with the concurrence of the Commissioners.
7 The Executive Director shall attend the Commission's deliberations,
8 monitor the implementation of the programs thereof, and manage the
9 day-to-day operations thereof.
10
11 b. Functions of the secretariat. The secretariat shall provide technical
12 and administrative support to the Commission and oversee all the
13 operational activities of the Commission.
14
15 c. The Commission shall prepare the salary schedule of the
16 Secretariat in consultation with the Department of Budget and
17 Management.
18
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20 **SECTION 8. Organizational Structure.** Three departments shall be created
21 to carry out policies and decisions of the Commission: the Operations
22 Department, the Corruption Prevention Department and the Community
23 Relations Department.
24
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- 26 a. The Operations Department shall carry out the investigation and
27 endorsement to the proper agency of cases investigated for the
28 prosecution of offenses;
29
30 b. The Corruption Prevention Department shall carry out assessment
31 of other organization's breakpoints where corruption practices
32 would be most likely. It examines the practices and procedures of
33 government departments and public bodies and makes
34 recommendations on how opportunities for corruption can be
35 eliminated or reduced; and
36
37
38 c. The Community Relations Department shall gather support and
39 information from the public and work towards changing the public
40 attitude regarding corruption.
41
42

43 **SECTION 9. Transparency and Availability of records.** – The Commission
44 shall maintain and preserve its records, documents and papers, and shall
45 make the same available to the public except when disclosure will pose
46 serious damage to the Commission's case or when a party would be deprived
47 of his/her right to a fair and impartial adjudication.
48
49

1 **SECTION 10. Implementing Rules and Regulations and Standard Forms.**

2 – Within ninety (90) days from the approval of this Act, the Commission with
3 the assistance, but without any additional remuneration, of the head of the
4 Development Academy of the Philippines, the chair of the Civil Service
5 Commission, the hair of the Commission on Audit, the Ombudsman and a
6 representative from the Sandiganbayan shall promulgate the Implementing
7 Rules and Regulations of this Act.

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10 **SECTION 11. Restrictions.** – No writ of injunction shall be issued by any
11 court to delay an investigation being conducted by the Commission.

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14 **SECTION 12. Total Support of Other Government Units.** – The
15 Commission may require any government agency to make available their
16 offices personnel and facilities to attain the objectives of this law.

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19 **SECTION 13. Relationship with the Office of the Ombudsman.** – The
20 Commission shall be attached to the Office of the Ombudsman for purposes
21 of policy and program coordination.

22
23 **SECTION 14. Malicious Prosecution.** – Any compliant found to have been
24 initiated with malice shall be dealt with in accordance with law.

25
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27 **SECTION 15. Franking Privilege.** – All official mail letters and telegrams of
28 the Commission addressed for delivery within the Philippines shall be
29 received, transmitted, and delivered free of charge: *provided*, that such mail
30 matters when addressed to private persons or non-government offices shall
31 not exceed one hundred twenty grams (120). All mail matters and telegrams
32 sent through government telegraph facilities containing complaints to the
33 Commission shall be transmitted free of charge, provided that the telegram
34 shall contain not more than one hundred fifty (150) words.

35
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37 **SECTION 16. Annual Report.** – The Commission shall, on or before June 30
38 in each year, or by such later date as the President may allow, submit to the
39 President, a report of the activities the Commission has undertaken in the
40 previous year. The Commission shall furnish a copy of such report to the
41 Office of the Ombudsman, and shall also make available a copy of the report
42 to the general public.

43
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45 **SECTION 17. Welfare Fund.** – There shall be established a fund to be
46 known as the:” National Independent Commission Against Corruption Welfare
47 Fund”. The Fund shall be consisted of donations and voluntary contributions
48 as may be made thereto. The said Fund shall be in control of the Chairperson
49 and utilized for purposes as specified in the IRR.

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SECTION 18. Appropriation. – The Commission shall have an initial budget of Five Hundred Million Pesos (PHP500,000,000.00) which shall include the budget appropriated for the agencies that will be integrated. Any additional funding requirement shall be determined in coordination with the Department of Budget and management. Appropriations for the succeeding years shall be incorporated in the budget proposal for this fiscal year.

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

SECTION 21. Effectivity Clause. This Act shall take effect fifteen (15) days following its publication in the Official Gazette or two (2) newspapers of general circulation.

Approved.