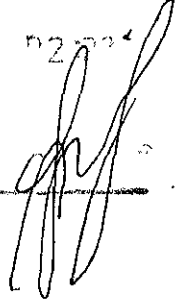


FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

7 JUN 30 12 52 PM '04

RECEIVED BY: 

SENATE

Senate Bill No. 140

Introduced by Senator FRANCIS N. PANGILINAN

EXPLANATORY NOTE

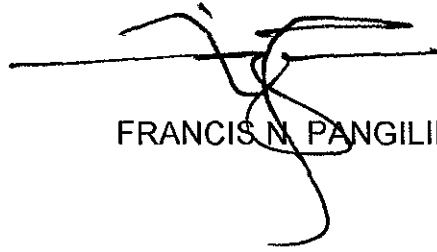
In the wake of serious allegations of violations of the law and betrayal of public trust by no less than the President and other high-ranking officials of the government, we are obligated to revisit our laws on accountability and examine the adequacy of existing mechanisms to realize public accountability. 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, the 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.

A handwritten signature in black ink, consisting of several overlapping loops and horizontal strokes, positioned above the printed name.

FRANCIS N. PANGILINAN

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

7 JUN 30 P2:23

SENATE

RECEIVED BY: _____

SENATE BILL No. 140

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 SECTION 1. *Title.* - This Act shall be known as the "Independent Counsel Act of
2 2007."

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

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

13 Upon evaluating the complaint, the Office of the Ombudsman shall determine
14 whether it may be:

- 15 a) dismissed outright for containing information that is not specific or is not
16 from a credible source;
- 17 b) referred to respondent for comment; or
- 18 c) subject to further investigation.

1 If the Office of the Ombudsman is unable to make determination within the
2 specified period, the Ombudsman shall subject the complain to further investigation.

3 SEC. 4. *Conduct of Further Investigation and Appointment of Independent*
4 *Counsel.* – (a) *Application for Appointment of an independent counsel.* – Where the
5 Office of the Ombudsman determines that reasonable grounds exist to warrant further
6 investigation of a complaint under Section 3 hereof, the Office of the Ombudsman may
7 apply to the Supreme Court *en banc* for the appointment of an independent counsel to
8 assist in the investigation of the complaint. The independent counsel shall be separate
9 and independent form the Department of Justice.

10 (b) *Content of the Application.* - The application shall contain a list of at least
11 three (3) nominees for independent counsel and include the proposed investigative
12 jurisdiction of the independent counsel. The Supreme Court, however, shall not be
13 precluded from appointing any person not nominated by the Office of the Ombudsman
14 and limiting or expanding the investigative jurisdiction of the independent counsel.

15 (c) *Limitation on Judicial Review.* – The determination of the Office of the
16 Ombudsman to apply for the appointment of an independent counsel and the list of
17 nominees submitted shall not be reviewable by any court.

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

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

1 SEC. 5. *Duties of the Supreme Court.* – The Supreme Court, sitting en banc,
2 shall have the following duties:

3 (a) Upon receipt of an application for the appointment of an independent
4 counsel, the Supreme Court shall appoint a qualified independent counsel, with due
5 consideration to the list of nominees submitted by the Office of the Ombudsman.

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

10 (c) After the Supreme Court has already defined the investigative jurisdiction
11 of the independent counsel, the Supreme Court may expand the same only upon the
12 request of the Office of the Ombudsman. Such expansion may, whenever proper, be in
13 lieu of the appointment of another independent counsel.

14 (d) If a vacancy in office arises by reason of the resignation, death, or removal
15 of an independent counsel, the Supreme Court shall appoint an independent counsel to
16 complete the work of the independent counsel whose resignation, death, or removal
17 caused the vacancy.

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

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

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

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

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

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

- 22 (1) Conduct fact-finding investigations;
- 23 (2) Conduct and participate in any proceeding before the court and other
24 investigative bodies;
- 25 (3) Receive, review and evaluate the evidence adduced before him and for
26 this purpose, summon witnesses, administer oaths, take testimony or
27 receive evidence relevant to the investigation, and issue *subpoena ad*
28 *testificandum* or *subpoena duces tecum* for the production of documents,
29 books, records and other articles;

- 1 (4) Examine and have access to bank accounts and records relating to the
2 subject matter of the investigation in accordance with Republic Act No.
3 1405 or upon petition to the Supreme Court;
- 4 (5) Request any government agency for assistance and information
5 necessary for the discharge of his responsibilities, and to examine, if
6 necessary, pertinent records and documents;
- 7 (6) Grant immunities to witnesses in accordance with Section 17 of the
8 Ombudsman Act;
- 9 (7) File applications for warrants, citations for contempt, and other court
10 orders as may be necessary to carry out the investigation;
- 11 (8) Contest any claim or privilege or attempt to withhold evidence on grounds
12 of national security;
- 13 (9) Request the Office of the Ombudsman to refer to him matters related to
14 the independent counsel's investigative jurisdiction;
- 15 (10) Publicize matters covered by the investigation when circumstances so
16 warrant and with due prudence: *Provided*, That the independent counsel
17 and the Office of the Ombudsman may determine what may not be made
18 public: *Provided, further*, That any publicity issued shall be balanced, fair
19 and true;
- 20 (11) Appoint, fix the compensation, and assign the duties of additional
21 employees as such independent counsel considers necessary, *Provided*
22 that the compensation of such employees shall be the same as their
23 counterparts in the civil service; and
- 24 (12) Perform such other acts as may be incidental to or necessary or
25 appropriate to carry out the objectives of the investigation.
- 26 (b) Compensation. – An independent counsel appointed shall be entitled to
27 *per diem* and travel expenses as may be determined by the Supreme Court.

1 (c) *Reports by Independent Counsel.* – (1) *Monthly Reports.* – An independent
2 counsel shall file with the Supreme Court and the Commission on Audit a monthly report
3 of all expenses incurred during the relevant period.

4 (2) *Final Report.* – Upon termination of office, the independent counsel
5 shall submit a final report to the Supreme Court which shall state a complete
6 description of the work done. The independent counsel shall furnish the
7 Senate and the House of Representatives a copy of such report.

8 (d) *Records.* – Upon termination of office, the independent counsel shall turn
9 over all records pertaining to the investigation to the Office of the Ombudsman,
10 identifying in particular those which have been classified as national security
11 information.

12 **SEC. 8. *Standards of Conduct.*** - An independent counsel, any person
13 appointed by such independent counsel under Section 7 (a) (11), and any person
14 associated with a firm with which such independent counsel is associated, may not
15 represent any person involved in any matter within the investigative jurisdiction of the
16 independent counsel during the term of office and within one (1) year after termination
17 of office.

18 **SEC. 9. *Removal of an independent counsel.*** - An independent counsel may
19 only be removed from office by conviction. Where an independent counsel is removed
20 from office, the Office of the Ombudsman shall promptly submit to the Supreme Court,
21 the Senate and the House of Representatives a report specifying the facts found and
22 the ultimate grounds for such removal.

23 **SEC. 10. *Termination of Office.*** – An office of independent counsel shall
24 terminate upon the occurrence of any of the following:

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

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

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

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

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

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

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

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

23 Adopted.,