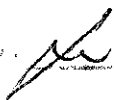


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SENATE

Senate Bill No. 699

RECEIVED BY 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Public office is a public trust. Article XI, Section 1 of the 1987 Philippine Constitution categorically declares this mandate. Thus, the State shall maintain honesty and integrity in the public service and is further mandated to take positive and effective measures against graft and corruption. Likewise, Section 4 of Republic Act No. 6713, or the Code of Conduct of Ethical Standards for Public Officials and Employees expressly mandates all public officials and employees to always uphold the public interest over and above personal interest. Accordingly, in order to safeguard public trust and ensure accountability from public officers, the independent Office of the Ombudsman was created under Section 5, Article XI of the 1987 Constitution, with the intention that the Ombudsman would be the "champion of the citizen" or the "people's champion." Generally, the Office of the Ombudsman has the duty to promptly act on complaints before it pursuant to Section 12, Article XI of the 1987 Constitution. Specifically, the Office of the Ombudsman has both the duty and power to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan pursuant to Section 13, Article XI of the 1987 Constitution and Section 13 of Republic Act No. 6770, otherwise known as *The Ombudsman Act of 1989*.

Unfortunately, in spite of these constitutional and statutory mandates, the government has been saddled with allegations of graft and corruption by high-ranking government officials. Even more unfortunate is the apparent attempt to shield said government officials from criminal prosecution by the very public officer, in the person of the Ombudsman, constitutionally mandated to investigate and prosecute corrupt high-ranking officials. Major graft and corruption cases have remained unacted upon, unresolved, and/or been dismissed by reason of either poor handling, for which the Ombudsman has been repeatedly rebuked. The Ombudsman has been equally assailed for failing to prosecute various cases of graft and corruption involving First Gentleman Mike Arroyo as well as other close allies of the former President despite the existence of overwhelming evidence to support the same. Examples of these high-profile graft and corruption cases are the botched MEGA Pacific Scandal, ZTE-NBN Broadband Deal, the Jocjoc Fertilizer Fund Scam, the case of the Euro-Generals and the World Bank report that alleged that the First Gentleman demanded and/or received millions of pesos in bribe money in exchange for favorable endorsements to contractors bidding for government infrastructure projects.

Thus, this bill proposes the appointment of a Special and Independent Prosecutor who will investigate and prosecute all criminal charges against impeachable public officials and their relatives, up to the 6th degree of

consanguinity and affinity, in instances where the Department of Justice and the Office of the Ombudsman may have personal, financial or political conflict of interest, or, have not commenced any resolution to prosecute the same.

The Special and Independent Prosecutor shall be selected from a list of 5 nominees prepared by the Supreme Court, and appointed through a joint resolution of Congress. The independent special prosecutor shall have adequate authority, including fiscal autonomy, to fully investigate and prosecute such cases that may come within the purview of this Act.

The intent of this measure is to restore public confidence in an impartial administration of justice by ensuring that officials of the government, particularly impeachable officials and their relatives could not interfere with any on-going investigation or prosecution of a prominent government official or his/her relative. The appointment of an independent special prosecutor will ensure that investigations will be free from the influence of political and personal considerations.

In view of the foregoing, urgent passage of this bill is earnestly requested.




JINGGOY EJERCITO ESTRADA
Senator

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SENATE

Senate Bill No. 699

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT
TO STRENGTHEN PUBLIC TRUST AND ACCOUTABILITY BY ENSURING
IMPARTIALITY IN THE INVESTIGATION AND PROSECUTION OF CERTAIN
CASES INVOLVING IMPEACHABLE PUBLIC OFFICIALS AND THEIR
RELATIVES WITHIN THE 6th CIVIL DEGREE OF CONSANGUINITY OR
AFFINITY, MANDATING FOR THE PURPOSE THE APPOINTMENT OF THE
SPECIAL AND INDEPENDENT PROSECUTOR, AND FOR OTHER
PURPOSES

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

SECTION 1 . Title. - This Act shall be known as the "**Special and Independent Prosecutor Act of 2010.**"

SEC. 2. Declaration of Policy - Pursuant to Article II Section 7 of the 1987 Constitution, the State shall maintain honesty and integrity in the public service. Toward this end, public officials shall always uphold the public interest over and above personal interest. Further, the State shall implement a mechanism that will discourage the practice of undue patronage and ensure that laws are applied to everyone without discrimination and regardless of party affiliation or preference.

SEC. 3. Coverage. - This Act shall apply to the following persons who may have committed any crime punishable by at least six (6) years of imprisonment, regardless of fines:

- (a) The President and Vice President;
- (b) Members of the Supreme Court;
- (c) Members of the Constitutional Commissions;
- (d) Ombudsman;
- (e) Any individual who held an office or position described in paragraphs (a), (b), (c) or (d) for 1 year after leaving the office or position; and
- (f) Relatives of the individuals occupying an office or position described in paragraphs (a), (b), (c) or (d) up to the fifth (6th) civil degree, whether by consanguinity or by affinity.

SEC. 4. Filing an Application for an Appointment of a Special and Independent Prosecutor in Cases where Conflict of Interests Exists - Whenever a case is filed for investigation or prosecution by the Office of the Ombudsman and/or the Department of Justice (DOJ) of a crime involving any of the persons mentioned in Section 1 and the latter do not resolve it within a period of fifteen (15) days from filing, or if it may result in a personal, financial, or political conflict of interest with any of the officials of the Office of the Ombudsman and/or the Department of Justice, any person may file an application for the appointment of a Special and Independent Prosecutor in accordance with the provisions provided in this Act.

SEC. 5. Application for Appointment of an Independent Prosecutor - (a) An application for the appointment of a Special and Independent Prosecutor for cases involving persons mentioned in Section 1 shall be filed before the Supreme Court.

(b) When the Supreme Court determines that there is basis for the appointment of a Special and Independent Prosecutor as provided in Section 4 of this Act, it shall resolve the application, within a period of thirty (30) days, by submitting at least five (5) names, with the names on the list ranked and marked as to preference, to be appointed as the Special and Independent Prosecutor; *Provided*, That no person maybe nominated as the Special and Independent Prosecutor unless he is a citizen of the Philippines, a member of the Philippine Bar, at least thirty-five (35) years of age, engaged in the practice of law for at least five (5) years, of proven competence, integrity, probity and is not occupying any position in the government; *Provided Further*, that the Supreme Court shall promulgate the necessary rules of procedure that will govern the exercise of the powers of the Special and Independent Prosecutor as mandated and described under this Act.

(c) The Congress of the Philippines, through a joint resolution, shall choose and confirm the appointment of the Special and Independent Prosecutor who shall come from the list of nominees indicated in the resolution of the Supreme Court; *Provided*, that if Congress does not act on the resolution of the Supreme Court within a period of fifteen (15) days from receipt of such, regardless of whether or not Congress is in session, the first name on the list of nominees submitted by the Supreme Court shall automatically become the duly designated Special and Independent Prosecutor.

(d) The Special and Independent Prosecutor shall take his oath of office before the Chief Justice of the Supreme Court and shall serve for a term of five (5) years.

SEC. 6. Powers and Duties of the Independent Prosecutor. - (a) The Independent Special Prosecutor shall have adequate authority to fully investigate and prosecute the subject matter with respect to which he was appointed, and all matters related thereto. Such jurisdiction shall also include the authority to investigate and prosecute crimes punishable by at least six (6) years imprisonment, irrespective of fines.

(b) Notwithstanding any other provision of law to the contrary, an Independent Special Prosecutor appointed under this Act shall have, with respect to all matters for which he was appointed, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice and the Office of the Ombudsman. Such investigative and prosecutorial functions and powers shall include the following:

- (1) conduct fact-finding and investigations;
- (2) issue subpoenas to compel the attendance of witnesses, parties, documents and other evidences deemed pertinent to the case;
- (3) participate in court proceedings and engage in any litigation, including civil and criminal matters, that such Special and Independent Prosecutor considers necessary;
- (4) appeal any decision of a court in any case or proceeding in which such Special and Independent Prosecutor participates in an official capacity;
- (5) review all evidence available from any source;
- (6) determine whether to contest the assertion of any testimonial privilege;
- (7) receive appropriate national security clearances and, if necessary, contest in court any claim of privilege or attempt to withhold evidence on grounds of national security; and
- (8) initiate and conduct prosecutions in any court of competent jurisdiction, including the framing and signing indictments, filing the appropriate information, and handling all aspects of any case, in the name of the People of the Philippines; *Provided, however,* that the Special and Independent Prosecutor shall have no authority to plea bargain and grant immunity in favor of any of the parties involved in the case to which he is appointed; and,
- (9) exercising such other powers which are inherent to the foregoing duties and powers to enable it to accomplish its mandate as provided in this Act.

(c) The Special and Independent Prosecutor shall have the authority to promulgate its own rules to govern its internal administration, hire such number of officials and personnel as it may deem necessary and appropriate, and incur such expenses that are needed for its effective and efficient operations.

(d) He shall conduct any investigation and prosecution in a prompt, responsible, and cost-effective manner.

(e) An independent prosecutor appointed under this chapter shall receive the same compensation and emoluments as that being received by the Special Prosecutor of the Ombudsman.

SEC. 7. Special Privileges of the Special and Independent Prosecutor. - Once the Special and Independent Prosecutor has assumed office, it shall have the following special privileges in relation to the exercise of its mandate, powers and duties:

(a) No temporary restraining order or any preliminary injunctions shall be issued by any court, except the Supreme Court, against the Special and Independent Prosecutor.

(b) The Office of the Special and Independent Prosecutor shall enjoy fiscal independence and autonomy.

(c) The Special and Independent Prosecutor shall be immune from suit for the duration of his term and for a period two (2) years after he has relinquished such post. Any suit filed thereafter against the Special and Independent Prosecutor for acts done in his official capacity as such shall be defended at the expense of the funds allocated for the Office of the Special and Independent Prosecutor.

(d) Any court before which the Special and Independent Prosecutor files case in pursuant to its mandate in this act shall not refuse a request of the Special and Independent Prosecutor to have speedy and/or continuous trials.

(e) In the event that the Special and Independent Prosecutor obtains such evidence in the course of its investigations that will constitute basis for the filing of an impeachment case against any impeachable official, he shall immediately cause the filing of the same before the House of Representatives of the Congress of the Philippines.

SEC. 8. Suspension of Other Investigations and Proceedings- Whenever a matter is in the prosecutorial jurisdiction of the Special and Independent Prosecutor, the Department of Justice and/or the Ombudsman shall suspend all their investigations and proceedings, pending or otherwise, regarding such matter.

SEC. 9. Removal of the Special and Independent Prosecutor - An independent prosecutor appointed under this Act may be removed from office only for good cause, physical or mental disability or any other condition that substantially impairs the performance of such Special and Independent Prosecutor's duties, which cause and causes shall be determined by a joint resolution of Congress.

SEC. 10. Vacancy - If a vacancy in office arises by reason of the resignation, death, or removal of the Special and Independent Prosecutor, the Congress shall appoint, through a joint resolution, an independent prosecutor from the list of remaining names nominated by the Supreme Court, to complete the work of the Special and Independent Prosecutor whose resignation, death, or removal caused the vacancy; *Provided*, that if Congress does not act, on the resolution of the Supreme Court within a period of fifteen (15) days from receipt of such, regardless of whether or not Congress is in session, the first name on the list of nominees submitted by the Supreme Court shall automatically become the duly designated Special and Independent Prosecutor; *Provided further*, that the Special and Independent Prosecutor appointed under the circumstances provided for in this section shall automatically serve for a term of five (5) years.

SEC. 11. Standards of Conduct Applicable to Independent Prosecutor and Persons Serving in the Office of an Independent Prosecutor - (a) The Special and Independent Prosecutor and the other officials serving therein shall be subject to the following standards of conduct:

(1) During the period in which the Special and Independent Prosecutor is serving under this Act, any law firm or corporation, wherein the Special and Independent Prosecutor and/or any of the other officials in this Act were previously affiliated with, may not represent in any capacity any person involved in any investigation or prosecution under this Act.

(2) The Special and Independent Prosecutor and any official serving therein shall not be allowed to represent any person, in any matter and capacity, if such person was the subject or involved in an investigation or prosecution

under this Act, for a period of not more than five (5) years following the termination of its functions as such under this Act.

SEC. 12. Required Reports.- (a) The Special and Independent Prosecutor shall file with the Congress of the Philippines and with the Supreme Court a report of its performance and operations every six (6) months of its five (5) year term of office.

(b) Upon termination of the Special and Independent Prosecutor's office, he or she shall file a final report with the Congress of the Philippines and with the Supreme Court, a summary of his/her accomplishments and recommendations on how public trust and accountability will be strengthened.

(c) The final report stated in subsection (b) hereof shall be published in the Official Gazette or at least two (2) newspaper of general circulation.

SEC. 13. Appropriations.- The Office of the Special and Independent Prosecutor shall be entitled to a budget of not less than One Billion Pesos (P1,000,000,000.00) annually and this shall be automatically released by the Department of Budget and Management within a period of twenty (20) days from assumption of office and every year thereafter.

SEC. 14. Penalty Clauses. - Any person who violates the provisions of this Act shall be liable for a penalty of imprisonment for a period not less than twelve (12) years and a fine of ranging from Five Hundred Thousand Pesos (P500,000.00) up to Two Million Pesos (P2,000,000.00); *Provided* that, in case the Secretary of the Department of Budget and Management fails to comply with Section 13 of this Act, he/she shall automatically be removed from office in addition to being subject to the penalties prescribed herein.

SEC. 15. Repealing Clause. - All existing laws, decrees, executive orders, rules and regulations, or parts thereof which are inconsistent with or contrary to the provisions of this Act are hereby repealed or modified accordingly.

SEC. 16. Separability Clause. - If any part or provision of this Act is held unconstitutional or invalid, other parts or provisions thereof which are not affected, shall continue to remain in full force and effect.

SEC. 17. Effectivity. - This Act shall take effect immediately following completion of its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,