

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



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 6369

EXPLANATORY NOTE

The Department of Justice (DOJ) is the principal law agency which shall be both the government's "legal counsel and prosecution arm" (Section 1, Chapter 1, Title III, Executive Order No. 292 (Administrative Code of 1987). These core functions are fulfilled by the two main offices in the DOJ proper: the Legal Staff, serving as the legal counsel, and the National Prosecution Service, the prosecution arm.

The DOJ through the Legal Staff (Office of the Chief State Counsel or OCSC) assists in the role of the Secretary of Justice as Attorney General. Currently, the Office of the Chief State Counsel is composed of forty-two (42) state counsels and twenty-six (26) support staff. The Legal Staff was created under Republic Act (R.A.) No. 2705, as amended by R.A. No. 4152, and mandated by EO No. 292, to render legal opinions, memoranda, comments or legal studies, upon the request of national government functionaries on difficult questions of law attending the performance of their respective functions; prepares replies or legal advice or legal studies at the instance of private parties and minor government officials and employees including *ad hoc* bodies, committees or task forces.

From the time of the passage of the Administrative Code in 1987, the matters handled by the Office of the Chief State Counsel have evolved, and expanded beyond rendition of legal opinions. The Office of the Chief State Counsel is confronted with more complex and challenging legal matters that were not envisioned by the drafters of the Administrative Code. This bill seeks to accurately show the evolved role of the Legal Staff, as the alter ego of the Secretary of Justice.

The Office of the Chief State Counsel discharges the role of the DOJ as the Central Authority in matters involving international legal cooperation, such as, Mutual Legal Assistance Treaty in Criminal Matters (MLA), Extradition Treaty, and Transfer of Sentenced Persons Agreement (TSP). As such, the Legal Staff drafts, negotiates, and implements these treaties. The Legal Staff is tasked to make and receive requests for extradition, MLA and TSPs to and from PH treaty partners. It also represents treaty partners before Philippine courts in extradition and MLA proceedings, and negotiates, with the assistance of the Department of Foreign Affairs, proposed treaties on Extradition, MLA and TSPAs.

The Office of the Chief State Counsel, when so requested by the lead agency, also serves as legal adviser, in the negotiation and implementation of other treaties, agreements, and conventions.

The Office of the Chief State Counsel also attends and represents the DOJ in congressional hearings and technical working group meetings as well as extensively prepares comments and inputs in the drafting of proposed legislations for both houses of Congress.

The Office of the Chief State Counsel renders resolution on questions of constitutionality or legality of municipal tax ordinances and resolves issues concerning

controversies between or among government agencies. It acts on applications for special authority to employ foreign nationals under Commonwealth Act No. 108 or the Anti-Dummy Law, as well as resolve applications for determination of refugee and statelessness status of foreign nationals. Also, the OCSC acts on applications for special non-immigrant visas under section 47(a)(2) of C.A. No. 613, as amended; including citizenship and deportation cases transmitted by the Bureau of Immigration to the Department for review.

The multifaceted and demanding role required of State Counsels, which has been unheralded and overlooked over the years, can efficiently and effectively be met by recognizing the exceptional role of the OCSC, strengthening its functions, expanding the Office, augmenting benefits, and upgrading employee skills.

The OCSC is undermanned and in dire need of organizational upgrading in order to function optimally. The highest point in the career of a State Counsel is perhaps the position of Chief State Counsel. Yet, it is unfortunate that the counterparts of the Chief State Counsel – the Prosecutor General and the Solicitor General in the Office of the Solicitor General – enjoy the rank of Presiding Justices of the Court of Appeals. The corresponding judicial ranking proposed for State Counsel augurs well with the fact that the Office is a veritable training ground for lawyers in very special fields of law. To mention a few worked in the Legal Staff of the Department of Justice and rose to prominence in the legal field are the late Senator Miriam Defensor-Santiago, former Supreme Court Chief Justice and Sandigayabanay Justice Teresita Leonardo-De Castro, former Supreme Court Justices Florentino Feliciano, Leonardo Quisumbing, Minerva P. Gonzaga-Reyes, former Court of Appeals Justice Rosalina A. Vicente, Court of Tax Appeals Justice Cielito Mindaro-Grulla, Deputy Governor of BSP Melpin Gonzaga, former Ombudsman Conchita Carpio-Morales, and former Ombudsman, Chief Presidential Legal Counsel, and Acting Secretary of Justice Merceditas N. Gutierrez.

The counterparts of the State Counsels in the DOJ are the State Prosecutors who were strengthened and rationalized, and given the same benefits in R.A. No. 10071 in 2010. It is high-time that the unheralded and overlooked State Counsels of the Department of Justice likewise be given the same benefits as that of their counterparts in the Department.

Also, compensation and retirement benefits from the Office of the Ombudsman and the Judiciary have been upgraded, leaving the OCSC behind.

This bill has been filed in the 15th, 16th and 17th Congresses which signifies its importance and urgency. In re-filing this proposed measure in the 18th Congress, it is sincerely hoped that this will finally gain enough support for its passage into a law in order to empower and recognize our State Counsels as they perform fully and effectively their mandates.

The passage of this Bill is earnestly sought.



RUFUS B. RODRIGUEZ

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AN ACT

STRENGTHENING THE LEGAL STAFF OF THE DEPARTMENT OF JUSTICE,
RENAMING IT AS THE OFFICE OF THE CHIEF STATE COUNSEL REDEFINING,
EXPANDING, RATIONALIZING AND FURTHER PROFESSIONALIZING ITS
ORGANIZATION, AND APPROPRIATING FUNDS THEREFOR

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

SECTION 1. Short Title. – This Act shall be known as the “State Counsel Act.”

SECTION 2. Office of the Chief State Counsel. – The Legal Staff created under Republic Act (R.A.) No. 2705, as amended by R.A. No. 4152, shall be renamed as the Office of the Chief State Counsel.

The Office of the Chief State Counsel shall assist the Secretary of Justice in the exercise of his functions as Attorney General of the Philippines and *ex officio* legal adviser of government-owned or controlled corporations, or enterprises and their subsidiaries. The Office of the Chief State Counsel shall be under the supervision and control of the Secretary of Justice.

SECTION 3. State Counsel. - Unless otherwise specified, the term "State Counsel" shall refer to the Chief State Counsel, Deputy Chief State Counsel, Senior State Counsel, State Counsel and Associate State Counsel.

SECTION 4. Powers and Functions. – The Office of the Chief State Counsel shall have the following powers and functions:

- (a) Recommend to the Secretary of Justice, legal opinion or advice upon request of national government functionaries such as heads of departments, chiefs of bureaus and offices of equivalent rank and only on specific questions of law arising in the performance of their respective powers and duties;
- (b) Lead negotiations on international agreements where the Department of Justice (DOJ) is the Central Authority or implementing agency, including bilateral, regional or multilateral treaties and conventions within the purview of the DOJ's mandate or function;
- (c) Act upon requests on matters covered by the treaties or agreements on mutual legal assistance in criminal matters, extradition and transfer of sentenced persons;
- (d) Represent and serve as counsel of the requesting state in all stages of cases relating to extradition and mutual legal assistance in criminal matters;

- (e) Serve as legal adviser to other government agencies in the negotiations and implementation of international agreements, and in the negotiations, whenever there are legal and institutional issues, or whenever so requested;
- (f) Render opinion/comments on the legality and validity of foreign loan agreements and guarantee agreements, and in certain cases, agreements related to domestic borrowings;
- (g) Study and Recommend to the Secretary of Justice comments and position papers on proposed legislations, whenever there are legal issues involved;
- (h) Review Orders of the Bureau of Immigration concerning recognition of Filipino citizens or cancellation of alien certificate of registration;
- (i) Review appeals or petitions for review on any action in the exercise of the quasi-judicial function of the attached agencies under the control and supervision of the Secretary of Justice;
- (j) Review for the Secretary of Justice administrative settlement or adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned and controlled corporations, when only questions of law are raised;
- (k) Review the legality and validity of tax ordinances and revenue measures;
- (l) Represent DOJ in councils or committees where DOJ is a member;
- (m) Act upon applications for special authority to employ foreign nationals under Commonwealth Act (C.A) No. 108 entitled "An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges" or the *Anti-Dummy Law*, as amended;
- (n) Act upon applications for determination of refugee and statelessness status of foreign nationals, as well as protection matters of refugees and stateless persons;
- (o) Act upon applications for, and implementation of, special non-immigrant visas which may be issued by the President under Sec. 47(a)(2) of C.A. No. 613 entitled "*An Act to Control and Regulate the Immigration of Aliens into the Philippines*", otherwise known as the *Philippine Immigration Act of 1940*, as amended;
- (p) Act upon applications for validation of land titles filed pursuant to Presidential Decree (P.D.) No. 1271 entitled "*An Act Nullifying the Decrees of Registration and Certificates of Title Covering Lands Within the Baguio Townsite Reservation*";
- (q) Supervise the Department Law Library as well as its personnel; and
- (r) Exercise such other powers and functions as may be provided by law or as may be delegated by the Secretary of Justice.

SECTION 5. Expansion, upgrading and creation of positions. The Office of the Chief State Counsel is hereby expanded. The designation of state counsels are amended and

OLD POSITION			NEW POSITION		
POSITION/ TITLE	NUMBER OF POSITION	SALARY GRADE	POSITION/ TITLE	NUMBER OF POSITION	SALARY GRADE
Chief State Counsel	1	SG 30	Chief State Counsel	1	SG 30 Step 8
Assistant Chief State Counsel	2	SG 29	Deputy Chief State Counsel	5	SG 30
State Counsel V	6	SG 28	Senior State Counsel	10	SG 29
State Counsel IV	12	SG 27	State Counsel IV	15	SG 28
State Counsel III	12	SG 26	State Counsel III	15	SG 27
State Counsel II	12	SG 25	State Counsel II	20	SG 26
State Counsel I	15	SG 24	State Counsel I	20	SG 25
-	-	-	Associate State Counsel	10	SG 23
TOTAL	60			96	

The Chief State Counsel and the Deputy Chief State Counsels shall be appointed by the President of the Philippines. All other State Counsels and administrative personnel shall be appointed by the Secretary of Justice upon recommendation by the Promotion and Selection Board to be chaired by the Chief State Counsel.

The Chief State Counsel and the Deputy Chief State Counsels shall act as a Promotion and Selection Board to screen for appointment and promotion to any State Counsel position and administrative personnel in the Office of the Chief State Counsel.

Appointments of the State Counsels shall be deemed permanent upon compliance with the prescribed qualification standards under the law. The State Counsels occupying the positions affected by the changes in this Act at the time of its approval shall thereafter occupy and discharge the duties and functions of the upgraded positions and receive the corresponding salary, benefits and privileges without necessity of new appointment.

There shall be positions created for administrative personnel equivalent to at least one (1) support staff for each State Counsel.

SECTION 6. Standards, Compensation and Benefits. – The salaries, allowances or retirement, death, and survivorship benefits of State Counsels shall be the same as their counterparts in the judiciary, specified as follows:

Chief State Counsel – Associate Justice of the Court of Appeals
Deputy Chief State Counsel - Associate Justice of the Court of Appeals
Senior State Counsel - Judge of the Regional Trial Court
State Counsel IV - Judge of the Metropolitan Trial Court
State Counsel III - Judge of the Municipal Trial Court in Cities
State Counsel II - Judge of the Municipal Trial Court in Municipalities

No person shall be appointed as Chief State Counsel or Deputy Chief State Counsel unless he is a natural-born citizen of the Philippines and has been engaged in the practice of law in the Philippines for at least fifteen (15) years.

Senior State Counsels must be members of the Philippine Bar for at least ten (10) years prior to their appointment while State Counsels IV, III and II must be members of the Philippine Bar for at least five (5) years prior to their appointment.

State Counsels I must be members of the Philippine Bar for at least four (4) years prior to their appointment.

Associate State Counsels must be members of the Philippine Bar for at least (1) one year prior to their appointment.

SECTION 7. Retirement Benefits. – When a State Counsel, who has rendered at least fifteen (15) years of service either in the Office of the Chief State Counsel or in any branch of government, or in both, retires for having attained the age of sixty-five (65) years or resigns by reason of incapacity to discharge the duties of his/her office, he/she shall, during the residue of his/her natural life, in the manner hereinafter Provided, receive a retirement pension based on the highest monthly salary, plus the highest monthly aggregate of transportation, living and representation allowances, which he/she was receiving at the time of his/her retirement or resignation.

A State Counsel, who retires after having worked for at least fifteen (15) uninterrupted years in the Office of the Chief State Counsel, shall also earn longevity pay in addition to retirement benefits.

When a State Counsel has attained the age of sixty (60) years and has rendered at least fifteen (15) years of service in government, the last five (5) years of which must have been continuously rendered in the Office of the Chief State Counsel, he/she shall likewise be entitled to retire and receive during the residue of his/her natural life the same benefits provided for in this section.

Provided, however, that those with less than fifteen (15) years of service in the government shall be entitled to a pro-rata pension computed as follows:

No. of years In Government	x	Basic Pay Plus the Highest Monthly Aggregate of Transportation, Living and Representation Allowances
15 years	x	

Upon the retirement of a State Counsel, he/she shall automatically be entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest aggregate transportation, living and representative allowances he/she was receiving on the date of his/her retirement, and thereafter, upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to the first paragraph of this Section.

SECTION 8. Survivorship Benefits. – Upon death of the State Counsel, if he/she has retired or was in the service at the time of death, the surviving legitimate spouse and dependent children shall be entitled to receive on a monthly basis all the retirement benefits that the deceased was receiving or entitled to receive at the time of death under the provisions of the applicable retirement laws then in force.

A "dependent" means a legitimate, illegitimate or legally adopted child who is chiefly dependent on the above-enumerated deceased State Counsel, if such dependent is not more than twenty-one (21) years of age, unmarried and not gainfully employed, or if such dependent, regardless of age, is incapable of self-support because of mental or physical defect.

The said surviving legitimate spouse shall continue to receive such retirement benefits during his/her lifetime or until he/she remarries; Provided, that if the surviving legitimate spouse is receiving benefits under existing retirement laws, he/she shall only be entitled to the difference between the amount provided for in this Act and the benefits he/she is receiving; Provided further, that said benefits shall be granted all aforementioned State Counsel who died or retired prior to the effectivity of this Act.

Funds for the initial implementation of this Section shall be taken out of the current appropriations for the retirement of the State Counsel and/or savings of said office. Thereafter, such sums as may be necessary for the continued implementation of this Section shall be included in the annual general appropriations act.

SECTION 9. Death Benefits. – In case the State Counsel dies while in actual service, regardless of his or her age and length of service as required in the first and second paragraphs of Section 7 of this Act, his or her heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest aggregate of transportation, living and representation allowances being received by the concerned official or employee at the time of death: *Provided, however,* That where said State Counsel has rendered at least fifteen (15) years of government service, either in the Office of the Chief State Counsel or in any branch of government, or both, his or her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision: *Provided further,* That the lump sum of ten (10) years gratuity shall be received by the heirs of a State Counsel who was killed by reason of his or her duties as such: *Provided,* that the State Counsel has served in the Office of the Chief State Counsel for at least five (5) years regardless of age at the time of death. When a State Counsel is killed intentionally while in service, the presumption is that death is work-related.

SECTION 10. Conditions. – To maintain entitlement to the pension herein Provided, no State Counsel, during the time he/she is receiving said pension, shall appear as counsel before any judicial or quasi-judicial agency in any civil case wherein the Government or any agency, subdivision, or instrumentality thereof is an adverse party, or in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his/her office, or collect any fee for his/her appearance in any administrative proceedings to maintain an interest adverse to the government, whether national, provincial, or municipal or to any of its legally constituted officers. When a State Counsel covered under

this Act shall assume an elective public office, he/she shall not, upon assumption of office and during his/her term, retrieve the monthly pension or any of the allowance due to him/her.

SECTION 11. *Other Benefits and Privileges.* – The State Counsels and other employees under the Office of the Chief State Counsel shall be entitled to the following benefits:

(1) Health care services through a health maintenance organization (HMO). Expenses for the mandatory annual executive check-up of the Chief State Counsel, Deputy Chief State Counsels and Senior State Counsels, shall be for the account of the office;

(2) All employees shall be covered by accident insurance policies procured by the office at its own expense during travels while in the performance of their official duties and functions;

(3) Without prejudice to efficiency in the service, scholarships to deserving employees on official time and at the expense of the Office to enhance their academic growth and upgrade their knowledge and skills; and

(4) Wellness leave of fifteen (15) days a year for all State Counsels of the Office of the Chief State Counsel.

SECTION 12. *Automatic Increase.* – All pension benefits of retired State Counsels of the Office of the Chief State Counsel shall be automatically increased whenever there is an increase in the salary and allowance of the same position from which they retired.

SECTION 13. *Retroactivity.* – The benefits mentioned in Sections 8 and 9 hereof shall be granted to all those who retired prior to the effectivity of this Act.

SECTION 14. *Applicability.* – All benefits heretofore extended under Republic Act No. 910, as amended, and all other benefits that may be extended by the way of amendment thereto shall likewise be given to the State Counsels covered by this Act.

SECTION 15. *Authority to Collect Fees.* – The Office of the Chief State Counsel is hereby authorized to assess and collect fees for various services rendered in accordance with Section 54, Chapter 12, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, and other laws. These collections shall be deposited as a Special Trust Fund which shall be administered by the Secretary of Justice as special allowance for State Counsels of the Office of the Chief State Counsel who are actually performing the functions under Section 3 hereof duly certified by the Chief State Counsel; *Provided*, That such special allowances shall not exceed One Hundred Percent (100%) of the basic salary as provided under Republic Act No. 6758 otherwise known as the Salary Standardization Law, as amended.

SECTION 16. *Seminar and Other Related Fees.* – Fees for relevant seminars, as well as professional membership fees for lawyers, registration fees and related miscellaneous expenses incurred in completing the mandatory continuing legal education (MCLE) shall be borne by the Office of the Chief State Counsel.

SECTION 17. *Franking Privilege.* – The Office of the Chief State Counsel may transmit through ordinary mail and/or registered mail with return card, free of charge, all official communications and papers directly connected with the conduct of its duties and functions.

SECTION 18. *Appropriation.* – The amount necessary for the initial implementation of this Act shall be charged against the current year's savings of the Department of Justice. Thereafter, such sums as may be necessary for the continued implementation of this Act shall be included in the Annual General Appropriations Act.

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

SECTION 20. *Repealing Clause.* – All acts, laws, decrees, executive orders, letters of instructions and regulations or any part thereof which are inconsistent with any provision of this Act are hereby repealed and or modified accordingly.

SECTION 21. *Effectivity.* – This Act shall take effect after fifteen (15) days from its publication in at least two (2) newspapers of general circulation or in the Official Gazette.

Approved,