



Republic of the Philippines  
House of Representatives  
Quezon City, Metro Manila



**Seventeenth Congress**

**First Regular Session**

**House Bill No. 4505**

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Introduced by **HON. ROMEO M. ACOP**

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### **EXPLANATORY NOTE**

Section 389 of Republic Act No. 7160, also known as the 'Local Government Code of 1991', provides for the powers, duties and functions of the Punong Barangay. Among them is the power to appoint or replace the barangay treasurer, barangay secretary and other appointive barangay officials, provided the appointment or replacement is concurred upon by a majority of all the members of the sangguniang barangay. Unfortunately, this power is often used for political purposes to the advantage of the appointing authority. The abuse is more pronounced in cases of removal of the appointive officials for political accommodation of favored replacements.

But the more disturbing concern is the failure of the law to provide safeguards for the protection of concerned appointive barangay officials who may be subjected to capricious and whimsical dismissal from their posts, albeit the need for approval by a majority of the members of the sangguniang barangay. As the law presently stands, the removal of appointive barangay officials may be effected with or without cause, and does not expressly require the observance of due process.

Section 1 of Article III of the Constitution provides that 'no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws'. Protected property includes the right to work and the right to earn a living.

In *JMM Promotion and Management, Inc. v. Court of Appeals* (GR No. 120095, 5 August 1996),<sup>[3]</sup> the Court held that:

*'A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.'*

The prohibition against deprivation of property is not absolute and is qualified by the phrase 'without due process of law. Thus, the State may deprive persons of property through the exercise of police power. However, the deprivation must be done with due process. (*Philippine Association of Service Exporters, Inc. v. Drilon*, GR No. L-81958, 30 June 1988)

This bill seeks to provide protection to appointive barangay officials who may be subject of replacement or removal by the Punong Barangay, with the concurrence of the majority of the members of the Sangguniang Barangay, under Section 389 of RA 7160 by requiring that the removal or replacement of said barangay officials shall be for cause and must be compliant with the requirements of due process, such as but not limited to notice and hearing.

Furthermore, Section 46, paragraph (a) of Republic Act 7160 provides that in cases of temporary incapacity of the Punong Barangay to perform his duties for physical or legal reasons, the highest sangguniang barangay member shall automatically exercise the powers and functions of the Punong Barangay, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

Correlating Section 46 to Section 389 of Republic Act No. 7160 as above-discussed, once the 30-working day period has lapsed, the acting Punong Barangay may now exercise the power to appoint or dismiss appointive barangay officials and employees. This situation again presents an opportunity for abuse by the acting Punong Barangay, and/or with a consenting majority of the Sangguniang Barangay, to put in position people of his or their own for as long the incapacity of the incumbent elected Punong Barangay exists. It can also spawn chaos in the governance of the barangay when the elected Punong Barangay reassumes his position and causes a rigodon of replacements and appointments of helpless appointive officials all over again.

To prevent this politicization of the process of temporary succession on the office of the Punong Barangay as outlined in Section 46 of RA 7160, as well as to

protect appointive barangay officials from the whimsical exercise of the power to appoint and remove, this bill seeks to broaden the 30- working day period to ninety (90) working days within which the acting Punong Barangay is prohibited from exercising said power.

It should be noted that under Republic Act No. 6770, the Ombudsman may impose upon an erring Punong Barangay a preventive suspension not exceeding six (6) months or 180 calendar days. While the Revised Penal Code qualifies the commission of the crime of serious physical injuries when the victim requires more than 120 days of rest from his labor. Both instances could well be the legal or physical cause of the elected Punong Barangay's temporary incapacity. These periods well exceed 30 working days.

Finally, to ensure the stability of the barangay leadership and its affairs, barangay officials must be insulated from political loyalty and their objectivity and impartiality in the discharge of their functions enhanced. (*Occena vs. COMELEC, GR L-60258, January 1984*)

For the foregoing reasons, the immediate consideration and passage of this bill is earnestly urged.

  
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**2<sup>nd</sup> District, Antipolo City**



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**AN ACT**  
**PROVIDING FOR PROTECTION TO APPOINTIVE BARANGAY**  
**OFFICIALS AND EMPLOYEES IN CASES OF REMOVAL OR**  
**REPLACEMENT, AMENDING FOR THE PURPOSE SECTION 46 AND 389**  
**OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS 'THE LOCAL**  
**GOVERNMENT CODE OF 1991'**

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

**SECTION 1.** Section 46, paragraph (a) of Book I, Title 2, Chapter 2 of Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', is hereby amended to read as follows :

**Section 46.** *Temporary Vacancy in the Office of the Local Chief Executive.* -

- (a) When the governor, city or municipal mayor, or punong barangay is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor, city or municipal vice-mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if

the period of temporary incapacity exceeds [~~thirty (30)~~] **NINETY (90)** working days.

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**SECTION 2.** Section 389, paragraph (b)(5) of Book III, Title 1, Chapter 3 of Republic Act No. 7160, is hereby amended to read as follows :

**Section 389.** *Chief Executive: Powers, Duties, and Functions.* -

(a) xxxx

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) xxxx

xxxx

(5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials[;] **PROVIDED, THAT THE REPLACEMENT OR REMOVAL SHALL BE FOR CAUSE AND COMPLIANT WITH THE REQUIREMENTS OF DUE PROCESS OF NOTICE AND HEARING.**

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**SECTION 3. *Separability Clause*** - Any portion or provision of this Act which may be declared unconstitutional or invalid shall not affect the other portions or provisions hereof.

**SECTION 4. *Repealing Clause*** - All other laws, ordinances, rules, regulations and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

**SECTION 5. *Effectivity Clause*** - This Act shall effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

**Approved.**