BANGSAMORO CIVIL SERVICE CODE: A POLICY REVIEW

By Estrada & Aquino Law

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Introduction

This policy review is for the purpose of ensuring that the provisions of House Bill No. 59, or the proposed "*Bangsamoro Civil Service Code of 2020*", are consistent with the provisions of R.A. 11054 or the "*Bangsamoro Organic Law*", in harmony with existing laws and jurisprudence of the Republic of the Philippines, and in conformity to the principles laid down in the 1987 Philippine Constitution.

The BOL authorizes the Bangsamoro Government to enact a civil service code, provided that it shall be in accordance with existing national laws, civil service laws, rules, and regulations. In case of conflict with the national laws, the Constitution and existing national civil service laws, rules and regulations shall prevail.

The proposed "*Bangsamoro Civil Service Code of 2020*" shall govern the conduct of civil servants, the qualifications for non-elective positions, adopt the merit and fitness system, and protect civil service eligibilities in various government positions, including government-owned or controlled corporations with original charters in the Bangsamoro Autonomous Region.

Classes of Positions in the Career Service should be established

House Bill No. 59, similar to the existing civil service classification of the National Government, classifies the Bangsamoro Civil Service into career service and non-career service.

For the career service, however, it is immediately noticeable that there is no provision providing for the different classes of positions. The importance of this provision must be emphasized. First, expressly providing for the classes of positions in the career service provides the legal basis for most of the provisions of HB 59 since these provisions make reference to classes or levels of positions.

To illustrate, Article 11 prescribes the rules to be observed in case there is a vacancy in the position in the first or second level of the Career Service. It provides that those in the next lower position, provided they meet the requirements, shall be considered for promotion. However, without the basic provision providing for the classes of positions in the career service, there will be no reference as to which positions are first level or second level, as the case may be, for purposes of filling in the vacancy.

Another example would be the dependence of Chapter VI on the classes of positions in the career service. Chapter VI refers to the merit selection and human resources of the Bangsamoro Civil Service. The Merit Selection Plan (MSP) covers positions in the first and second levels. Moreover, Article 123 of Chapter VI provides for the composition of the Bangsamoro

Promotion and Selection Boards (BPSB), which clearly identifies the various classes or levels in the career service, i.e. first and second level, executive, or managerial positions.

The absence of the classifications of the position creates a gap in the implementation of the proposed law. Without this, it renders the other provisions inoperative. Thus, it is recommended that Section 8, Chapter 2[1] of Executive Order No. 292 or the "*Administrative Code of 1987*", or a similar provision, be incorporated in or adopted under HB 59.

Special Examination for Indigenous Peoples should be uniform, centralized, and not discretionary

Article 14 provides that, in line with its policy of inclusivity, the Bangsamoro Government encourages Indigenous Peoples (IP) to enter the civil service. To this end, a special examination "may" be requested by the Bangsamoro Government. It may be observed that the provision uses the permissive term "may". It creates an impression that the examination is not mandatory and will only be administered upon the request of the Bangsamoro Government.

It must also be noted that the right to equal opportunity and treatment and freedom from discrimination of the IP is recognized and embodied in R.A. 8371[2], of the "*The Indigenous Peoples' Rights Act of 1997*". Section 23 thereof provides, among others, that the IP shall be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment. In

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[1] SEC. 8. *Classes of Positions in the Career Service.* — (1) Classes positions in the career service, appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or sub- professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

(c) The third level shall cover positions in the Career Executive Service.

(2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(3) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should, however, have previously passed the examination for that level.

[2] SECTION 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. — It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

other words, the IP shall enjoy the same benefits and privileges available to those who do not identify as IP.

On this note, the policy of inclusivity is laudable. Inclusion of the IP in public governance and service promotes unity among the BARMM community. While this may be so, the Bangsamoro Government must ensure that the examination is fair and that the IP applicant is fit for civil service, and the special examination should be standardized or uniform. This is in line with the nature of public office, which is imbued with integrity and responsibility. Also, in order to avoid confusion, the following provision is suggested:

> **"Article 14.** *Special Examinations for Indigenous Peoples in the BARMM.* In line with the Bangsamoro Government's policy to promote inclusivity for Moro and non-Moro indigenous peoples and accelerate the development of the areas occupied by them, special examinations for Indigenous Peoples, in lieu of the standard civil service exam, may be requested by the Bangsamoro Government."

Police officers must be included in the exemptions under temporary appointments

Under Rule IV, Sec. 9(b) of the 2017 Omnibus Rules on Appointments and other Human Resource Actions, as amended, temporary appointments issued to a person who does not meet any of the education, training, or experience requirements for the position shall be disapproved/invalidated except to positions that are hard to fill as may be determined by the Commission, or as provided by special law, such as Medical Officer/Specialist positions, Special Science Teacher, and Faculty positions, and *Police Officers*. Except for these positions, temporary appointments may only be renewed once.

As the appointment of police officers are determined also by R.A. 8551[3], a special law, it should be included and not distinguished from the others in the list.

Promotions based on awards and/or acts of conspicuous courage and gallantry should be included in the exemptions

The promotion of civil servants under the proposed bill must be subject to specific validation requirements and shall be exempt from qualification requirements. This is in line with Rule III, Sec. 11(b) of the 2017 Omnibus Rules on Appointments and other Human Resource Actions. It provides special promotions based on awards and/or acts of conspicuous courage and gallantry as provided under special laws, such as Sec. 6, RA No. 6713, Sec. 10, RA No. 9263, as amended by RA No. 9592, Sec. 31, RA No, 8551, and Executive Order No. 508, as amended by Executive Order No. 77. Civil servants promoted based on this qualification are exempt from qualification requirements but subject to specific validation requirements.

[3] Philippine National Police Reorganization Act of 1998.

This was not included in the paragraph of promotions in House Bill No. 59. Nevertheless, this must be included in order that promotions based on awards and/or acts of conspicuous courage, especially in the case of the police, are also recognized as promotions.

Third level positions are covered by positions in the Career Executive Service

HB 59 ostensibly states that the requirement for Career Executive Service Eligibility shall not apply to third level positions in the BAARM.

However, it must be noted that Section 8, Chapter 2, Book V of E.O. No. 292, otherwise known as the "*Administrative Code of 1987*", expressly provides that the third level shall cover positions in the Career Executive Service. It also states that entrance to the third level, while not requiring previous qualifications in the lower level, is subject to the requirements prescribed by the Career Executive Service Board.

In other words, third level positions are still subject to requirements set by the CESB. This is absent in House Bill No. 59. These requirements are necessary because civil servants in the third level position are expected to exercise executive and managerial functions. Perhaps it may best, in order to prevent confusion to the public, that: *first*, third level positions be defined; *second*, career executive service eligibility be defined; and *finally*, requirements for career executive service eligibility be listed.

Further, requiring a civil servant to pass the merit and fitness requirements of CESB will ensure transparency in the hiring and promotion process. Corrupt practices, like nepotism or cronyism, will be prevented, and thus creating a more transparent public office imbued with integrity.

The creation of BPSB may create unnecessary bureaucracy aiding corruption within the office

Articles 119 to 122 create an opportunity for power-holders and power-seekers to connive for personal gain. While one may argue that BPSB merely assists the appointing authority, it plays a crucial part because it filters who may be short-listed (see Art. 120). Further, the fact that one of the members of the BPSB is the head of the agency or department dilutes transparency and integrity in the evaluation of the candidates, as it does not counter the possible undue influence over appointments. The broad discretionary power of BPSB to recommend who may be short-listed erodes fair and transparent governance.

As such, it is recommended that a clearer eligibility criteria, procedure, and framework should be in place to ensure transparent and fair selection in the promotion or appointment.

Safeguards should be in place when engaging an external or independent resource person in the assessment of candidates for civil service

Under Article 131, the BPSB may engage an external or independent resource person to assist them in determining the best and most qualified candidates for appointment. Engaging the services of an independent resource person may somehow eliminate bias and favoritism within the office. However, caution must be observed in adopting and enacting the said provision because this may be subject to abuse if no proper guidelines are in place.

If Article 131 will be retained, it should prescribe qualifications of the external or independent resource person, and safeguards should be incorporated to ensure that the said resource person is divested of any interest in the appointment process. It must be remembered that as the appointing or recommending body, the actions of the BPSB and all persons connected with or assisting it in relation to its official functions should be above suspicion and beyond reproach. This ensures the integrity of the appointment process.

In the alternative, the proposed bill may also create an *independent commission* that can be convened to make recommendations to the appointing authority or ministry head in filling certain positions.

Resignation should not prejudice public accountability

It has become an unfortunate practice, both in the private and public service, for employees, officers or officials to resign from their respective employment or appointments when faced with disciplinary or administrative cases. In an attempt to evade liability, they resign. This should not be the case.

It must be remembered that public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency.[4] The same mandate is found in EO 292 and in the instant HB 59.

Corollary, the notion of a public trust connotes accountability. And while all persons, including public officers and employees, enjoy the presumption of innocence, they should not be allowed to evade accountability to the public by simply resigning from their posts. While they may be allowed to resign, the Bangsamoro Government, through the appropriate office or ministry, should pursue the appropriate legal actions or remedies, whether it be civil, criminal, or administrative, to ensure that erring public officers or employees are held accountable. In other words, resignation should not prejudice any civil, criminal, or administrative action that the Bangsamoro Government will institute.

[4] Section 1, Article XI of the Constitution.

Appointment by the Appointing Authority enjoys presumption of regularity

Article 147 provides that the appointing officer shall be personally liable for the salary of an appointee, whose appointment is disapproved or invalidated by the CSC.

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption.[5] Mere disapproval or invalidation of an appointment, without such proof, should not result to a liability on the part of the appointing officer. While the intent of the provision is to serve as a deterrent for any corruptive acts and creates more accountability, personal liability must only apply if the appointing officer is fully aware of the presence of any grounds for disqualification or invalidation of appointment after due process, and despite this, he approved or appointed such disqualified applicant or candidate.

Also, the liability of the appointing officer with regard to the salaries of the disqualified appointive personnel must be without prejudice to other administrative and criminal liability.

Mass appointments

CSC Resolution No. 1100188,[6] or the "*Revised Rules on Appointments Issued by Outgoing Elective and Appointive Officials",* defines 'mass appointments' as those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance. To avoid confusion and for easy reference, the said definition should be adopted.

Jurisdiction of the Chief Minister, other ministries and LGUs over administrative cases should be concurrent with that of the CSC-BARMM

Under Article IX of the 1987 Constitution, the Civil Service Commission (hereinafter "CSC") is mandated to be the independent central personnel agency who shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.[7] Hence, it is within its ambit to promulgate rules and procedures for proper disposition of administrative cases, whether disciplinary or non-disciplinary, and jurisdiction to enforce such rules for the purpose of promoting morale, efficiency, and integrity in the government civil service.[8]

[5] Yap v. Lagtapon, G.R. No. 196347, 23 January 2017.
[6] Revised Rules on Appointments Issued by Outgoing Elective and Appointive Officials, 01 February 2011.
[7] Section 3. B, Article IX of the 1987 Constitution.
[8] Section 6. A, Article IX of the 1987 Constitution.

The scope of CSC's jurisdiction over civil services embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.[9]

Under Section 2 of the 2017 Revised Rules on Administrative Cases in the Civil Service (hereinafter "RRACCS"), all disciplinary and non-disciplinary administrative cases are brought before the Civil Service Commission.[10]

Under Article 215 of HB 59, however, the jurisdiction of the CSC, by extension, the CSC-BARMM, is limited to non-disciplinary cases only, and conferring jurisdiction over disciplinary administrative cases to the Office of the Chief Minister, the different ministries, offices, or agencies.[11] This is contrary to the RRACCS which expressly states that the CSC shall have jurisdiction to hear and decide administrative cases.[12]

While the Office of the Chief Minister, other ministers, and agencies are not precluded to adopt their own internal rules of procedures in administrative or disciplinary cases against its employees, this should not prejudice the independent procedures of the CSC-BARMM, whose authority emanates from the CSC, a Constitutional Commission. It must further be remembered that in case of conflict with the national laws, the Constitution and existing national civil service laws, rules, and regulations shall prevail.

The terms used in the proposed procedure for administrative cases must be defined

Laws should be defined so as not induce ambiguity in its interpretation and/or application. However, while Book V of HB 59 prescribes the procedure on disciplinary actions, it fails to define certain terms. For example, the "Disciplining Authority" is not defined or identified. It must be remembered that several ministries, offices, agencies, and bodies are covered by HB 59, and there may be different disciplining authorities for each.

Also, for the proper guidance of all, the terms "Disciplinary Administrative Case" and "Non-disciplinary Administrative Case" should likewise be defined. By distinguishing these two cases, it may be reasonably presumed that there are differences in the treatment for each case.

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[9] Section 2. (1) B, Article IX of the 1987 Constitution.

[10] Section 2. Coverage. - This Rules shall apply **to all disciplinary and non-disciplinary administrative cases brought before the Civil Service Commission**, agencies and instrumentalities of the National Government, local government units, and government-owned or controlled corporations with original charters except as may be provided by law. . . [ ]

[11] Article 215. Coverage. The provisions of this Book shall apply to disciplinary administrative cases or matters brought before the Office of the Chief Minister, the different ministries, offices or agencies of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), including its component local government units (LGUs) and government-owned or controlled corporations (GOCCs) with original charters in the Bangsamoro except as may be provided by law enacted by the Bangsamoro Parliament or the Congress. **As to non-disciplinary in nature cases, the same shall be brought directly before the CSC-BARMM.**

[12] Section 5. Jurisdiction of the Civil Service Commission. – The Civil Service Commission shall hear and decide administrative cases instituted by or brought before it, directly or on appeal, including contested appointments and review decisions and actions of its offices and of the agencies attached to it.

The intention of the defining terms is to leave no discretion on the part of any person in interpreting and applying such law, thereby avoiding grave abuse of discretion.

Proof that evidence is strong against the respondent officer for preventive suspension, is contrary to existing laws

Article 242 of HB 59, proposes that: *"[I]n order for a preventive suspension to be valid, the evidence against respondent must be strong and there must be a showing that he/she is in a position to exert undue influence or pressure on the witnesses and/or to tamper with evidence by reason of his/her position."* This directly contradicts the purpose of the preventive suspension itself.

Book V of EO 292 provides that *"[T]he proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending as investigation, if the charge against such officers or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service."*

It must be remembered that preventive suspension pending investigation is not a penalty. It is simply a measure intended to enable to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or influencing witnesses against him in any way.

To require the evidence to be strong against a public officer or employee before placing him under preventive suspension renders its very purpose futile and useless, and would be as if the investigating officer is being required to meet a quantum of evidence similar to court cases, when in fact there is none lodged yet.

Misplaced provisions

Lastly, a final and thorough review of HB 59 should be undertaken. There are several provisions referencing unrelated provisions, misplaced, or better embodied in another provision/section or in a new provision, such as, but not limited to the following:

- *"**Article 124**. Official to Supervise Human Resource Management. . . [ ]*
  In case there is no accredited employees' association in the agency, the representatives shall be chosen at large by the employees through a general assembly. The candidate who garnered the second highest votes shall automatically be the alternate representative. Any other mode of selection may be conducted for the purpose.

  The first level representative or alternate shall participate during the screening of candidates for vacancies in the first level; the second level representative or alternate

shall participate in the screening of candidates for vacancies in the second level. Both rank-and-file representatives shall serve for a period of two (2) years."

The above quoted provision has no relation to the HRMO or its functions.

- *"**Article 128.** Role of Human Resource Management Office/Unit. . . [ ]*
  The HRM Officer, as member of the BPSB, shall not act as secretariat to the BPSB. For ministry, office and agencies with only one appointed or designated HRM Officer, the agency head shall designate an employee from other units to act as the secretariat."

  The above quoted provision is better embodied in Article 123 which refers to the Composition of the BPSB.

- *"**Article 150** Mass Appointments. The issuance of mass appointments of more than twenty (20) appointments may be allowed provided the above conditions in Articles 138 and 139 of this Code, as the case may be, are followed."*

  Articles 138 and 139 refers to the Submission of Selection and Recruitment Plan (SRP) and of Agency Merit Selection Plan (MSP), respectively.

Conclusion

House Bill No. 59, or the "Bangsamoro Civil Service Code of 2020" is generally compliant with the 1987 Constitution and R.A. 11054, or the "Bangsamoro Organic Law", and other relevant national laws, rules and regulations, save for certain provisions as earlier discussed. On this note, we wish to highlight the following points for consideration and revision:

1. The absence of the classifications of the positions creates gap in the implementation of HB 59. Without this, the other provisions are rendered inoperative. Thus, it is recommended that Section 8, Chapter 2 of Executive Order No. 292, or the "*Administrative Code of 1987*", or a similar provision, be incorporated in or adopted.

2. In order to ensure that the examination is fair and that the applicant is fit for civil service, the special examinations for Indigenous People should be standardized or uniform, and mandatory. This is in line with the nature of public office, which must be imbued with integrity and responsibility.

3. Clearer eligibility criteria, procedure, and framework should be in place to ensure transparent and fair selection in promotion or appointment.

4. Qualifications for an external or independent resource person should be prescribed, and safeguards should be incorporated to ensure that the said resource person is divested of any interest in the appointment process. In the alternative, the proposed bill may also

create an *independent commission* that can be convened to make recommendations to the appointing authority or ministry head in filling certain positions.

5. The definition of 'mass appointments' as defined in CSC Resolution No. 1100188,[13] or the "*Revised Rules on Appointments Issued by Outgoing Elective and Appointive Officials"* should be adopted to avoid confusion, and for easy reference.

6. Terms used in the proposed procedure for administrative cases must be defined.

7. CSC-BARMM should have jurisdiction over disciplinary and non-disciplinary administrative cases, without prejudice to the conduct of a separate investigation or proceeding with the Office of the Chief Minister, other ministers, and agencies pursuant to its own rules of procedure.

8. Placing an official or employee under preventive suspension should not be dependent on the presence of strong evidence against him.

9. A final and thorough review of HB 59 should be undertaken to ensure that there are no misplaced or wrongly referenced provisions.

~ Nothing follows ~

[13] dated 01 February 2011.