

Council of State Act, B.E. 2522 (1979)

As amended until the Council of State Act (No. 5), B.E. 2551 (2008)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 22nd Day of April B.E. 2522;

Being the 34th Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on the Council of State and the law on petitions;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, acting as the National Assembly, as follows:

Section 1

This Act is called the "Council of State Act, B.E. 2522 (1979)⁽¹⁾".

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.⁽²⁾

Section 3

The following shall be repealed:

- (1) Council of State Act, B.E. 2476;
- (2) Council of State Act (No. 2), B.E. 2510;
- (3) Petition Act, B.E. 2492;
- (4) Petition Act (No. 2), B.E. 2516.

Section 4⁽³⁾

In this Act, "State agency" means a Ministry, Sub-Ministry, Department, provincial administration, local administration, State enterprise and other agencies of the State.

Section 5

The Prime Minister shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations for the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

PART I

COUNCIL OF STATE

Chapter 1

General Provisions

Section 6⁽⁴⁾

The Council of State shall consist of Councilors of State appointed by the King under Section 11.

The Prime Minister shall be *ex officio* President of the Council of State, with the powers and duties to oversee general affairs of the Council of State.

Section 7⁽⁵⁾

The Council of State shall have the following powers and duties;

- (1) to draft laws, by-laws, rules, regulations or notifications upon direction of the Prime Minister or resolution of the Council of Ministers;
- (2) to give legal advice and opinions to a State agency or upon direction of the Prime Minister or resolution of the Council of Ministers;
- (3) to submit opinions or remarks to the Council of Ministers on the need for new legislation or the amendment, revision or repeal of existing legislation.

Section 8⁽⁶⁾

(Repealed)

Section 9

The Councilors of State shall be entitled to remuneration as prescribed by the Royal Decree.

Section 10⁽⁷⁾

(Repealed)

Chapter 2 Councilors of State

Section 11⁽⁸⁾

The King shall appoint Councilors of State from persons selected under Section 13/1.

The Secretary-General of the Council of State shall be *ex officio* Councilor of State.

A government official of the Office of the Council of State holding office of not lower than Permanent Councilor may, as entrusted by the Secretary-General of the Council of State, attend the meeting of Councilors of State so as to give comment to the matter under consideration thereof, or to submit draft laws for consideration of the Councilors of State. In this regard, such official is deemed to be quorum of the meeting and is entitled to remuneration as same as Councilors of State, but having no right to vote.

Section 12

A Councilor of State holds office for a term of three years as from the date of appointment.

If there is an appointment of a Councilor of State while the appointed Councilors of State remain in office, irrespective of whether it is an appointment for the additional member or for the fulfillment of the vacancy, the appointee shall hold office for the remaining term of the appointed Councilors of State.

A Councilor of State who vacates office may be re-appointed.

The Councilors of State who vacate office at the expiration of the term shall remain in office to continue their duties until the promulgation of the Royal Command appointing the newly Councilors of State.⁽⁹⁾

The provisions of paragraph one shall not apply to the Councilors of State who have been appointed as the Chairperson of each Law Committee under Section 15.⁽¹⁰⁾

Section 13

A person who is eligible for appointment as Councilor of State shall be a person with knowledge and experience in law, political science, economics, social science, or public administration and shall possess any one of the following qualifications:

- (1) serving or having served in a position not lower than a Director-General or its equivalent;

- (2) serving or having served in a position not lower than judge of the Supreme Court of Justice, judge of the Supreme Administrative Court or judge of the Supreme Military Court;
- (3) being or having been for not less than five years a law lecturer in a State educational institution at university level;
- (4) having been a law councilor under the Council of State Act, B.E. 2476;
- (5) possessing knowledge in the work of and having worked in legislative drafting for not less than ten years and possessing experience and ability which are useful to the work of the Councilors of State.

Section 13/1⁽¹¹⁾

The Office of the Council of State shall nominate the list of specialists having qualifications under Section 13, in the number that appropriate for the performance of the powers and duties of the Councilors of State, to the Committee consisting of the Chairperson of each Law Committee under Section 15 as members and the Secretary-General of the Council of State as member and secretary for approval. The approved list shall be proposed to the Prime Minister for further submission to the King for appointment.

The Chairpersons of Laws Committees under paragraph one shall select one among themselves to preside over at the meeting.

The rule for selection and giving approval under paragraph one shall be determined by the Committee under paragraph one.

Section 14

In addition to vacating office at the end of term, a Councilor of State vacates office upon:

- (1) death;
- (2) resignation;
- (3) being imprisoned by a final judgment or a lawful order to a term of imprisonment except for an offence committed through negligence or a petty offence;
- (4) being an incompetent or quasi-incompetent person;
- (5) being a bankrupt.

Section 15

In the performance of duties under this Act, the Councilors of State shall meet as a Committee, each of which shall consist of not less than three Councilors of State. In case of important matter, it shall be brought before the meeting of the Council of State which must consist of not less than one-half of the total number of the Councilors of State.

The division of Councilors of State into Law Committees, the appointment of the Chairperson of each Law Committee and the meeting of the Council of State under paragraph one shall be in accordance with the rules prescribed by the President of the Council of State.⁽¹²⁾

The decision on the matter under consideration shall be made by a majority of votes. Each Councilor of State shall have one vote; in case of an equality of votes, the Chairperson of the meeting shall have an additional vote as casting vote.

Section 15 bis⁽¹³⁾

In considering a draft legislation, the Councilors of State shall also take into account the necessity, possibility and scope of such legislation, the consistency with the principles of law and provisions of the Constitution and other laws, the efficiency of administrative organization and machinery for law enforcement, the impact which may occur on the public administration, and the burden or inconvenience of the public or individual who will be subject to such legislation, and shall revise it so as to be appropriate. In the case

where the Councilors of State are of the opinion that any draft legislation has problems in respect of the substance of the principles thereof or have an opinion contrary to or inconsistent with that of the State agency or private individual having the duty to comply with the law, the Councilors of State may submit opinion requesting the revision of such principle before proceeding further or may revise it in accordance with the above mentioned criteria and report to the Council of Ministers for further consideration.

Section 16

The President of the Council of State shall have the power to prescribe rules on the preparation of draft laws, by-laws, rules, regulations or notifications and rules on the giving of legal opinion by the Councilors of State subject to the approval of the Council of Ministers.

Section 17

Any Councilor of State who has a private interest in the matter then being considered, shall not attend the meeting which is considering such matter.

The President of the Council of State shall have the power to prescribe rules prohibiting a Councilor of State who is engaging in the occupation or the profession which may conflict with the performance of duty as Councilor of State from attending the meeting of a Committee temporarily for as long as he or she is engaging in such occupation or profession.

Chapter 2 *bis*⁽¹⁴⁾

Law Reform Commission

Section 17 *bis*

There shall be a Commission called the "Law Reform Commission", consisting of not less than nine but not more than fifteen Law Reform Commissioners appointed by the President of the Council of State from Councilors of State under Section 11 and qualified members from universities or from State or private agencies. Among this number, there shall be a Councilor of State as Chairperson and other Councilors of State of not less than one-half of the total number. The Secretary-General of the Council of State shall be *ex officio* Law Reform Commissioners. The Law Reform Commission shall have the powers and duties as provided in this Chapter.

The Secretary-General of the Council of State shall appoint officials of the Office of the Council of State as secretary and assistant secretaries.

The President of the Council of State may, as he or she deems appropriate, appoint the Law Reform Commission in accordance with the branches of law.

The provisions on term of office under Section 12 shall apply *mutatis mutandis* to the qualified members.

Section 17 *ter*

The Office of the Council of State shall have the duty to review, consider and examine all the existing legislation. If it is of the opinion that any legislation or any matter has provisions imposing restriction on the liberty of person, property or occupation of the people without any reasonable cause or which unnecessarily causes a burden on the occupation or business of any person or which is inconsistent with the policy of the Government or with economic, social and political development or public administration, or is of the opinion that Thailand needs a new legislation for the more efficient protection of rights and liberties of the people, or for the purpose of economic, social and political development or public administration, the Office of the Council of State shall submit opinions to the Law Reform Commission for preparing a law reform program or project by specifying the scope of work, steps and procedure together with the operational expenditure estimates, and in case of necessity where a supplementary expenditure

estimate is required, it shall be submitted to the Council of Ministers for further approval. The provisions of this paragraph shall not apply to the consideration of the draft legislation of Ministries, Sub-Ministries, and Departments which the Council of Ministers sends to the Council of State for consideration.

In submitting opinions to the Law Reform Commission, if the Law Reform Commission is appointed in accordance with the branches of law, the opinions shall be submitted to the Law Reform Commission in accordance with the branches of law.

Section 17 *quater*

When the Council of Ministers has already approved the law reform program or project under Section 17 *ter*, the Law Reform Commission shall proceed with the study and research and prepare a report together with a draft legislation concerned for submitting to the Council of Ministers for further consideration; provided that researchers may be appointed for preparing the report as entrusted. For this purpose, the Law Reform Commission shall have the power to prescribe remuneration or provide subsidies for the research work in accordance with the rules prescribed by the President of the Council of State.

In the case where there is a reasonable cause, the Law Reform Commission may request that the meeting of the Council of State be held to consider any matter.

Section 17 *quinque*

For the purpose of proceeding under Section 17 *ter* or Section 17 *quater*, the Office of the Council of State may provide for a conduct of research, seminar or receiving an opinion from any agency or person both in the Government sector and in the private sector, as appropriate to each case.

Section 17 *sex*

The Law Reform Commission may, as it deems appropriate, appoint one or more sub-committee to carry out any act as entrusted by the Law Reform Commission.

Section 17 *septem*

The Law Reform Commission and the subcommittees under Section 17 *sex* shall have the power to invite representatives of any agency and other persons both in the Government sector and in the private sector to give facts or opinions.

Section 17 *octo*

The Law Reform Commission and the subcommittees under Section 17 *sex* shall receive the same remuneration as the Councilors of State.

Chapter 3⁽¹⁵⁾

Petition Councilors

Section 18 - Section 61

(Repealed)

PART II

OFFICE OF THE COUNCIL OF STATE

Section 62⁽¹⁶⁾

There shall be the Office of the Council of State with the powers and duties, as follows:

- (1) to be responsible for the administrative works of the Council of State and the Law Reform Commission and study and compile data related to the works of the Council of State and the Law Reform Commission;

- (2) to consider and prepare draft legislation as entrusted by the Council of Ministers or the Prime Minister and submit opinions on the need for new legislation or the amendment, revision or repeal of existing legislation;
- (3) to provide assistance and advice in connection with legislative drafting to State agencies;
- (4) to give opinions to or carry out other legal works for State agencies or as requested by foreign Governments or international institutions;
- (5) to provide training for and conduct the development of Government officials of the Office of the Council of State and State officials with regard to legal work and legislative drafting and to disseminate the apprehension of laws for general members of the public;
- (6) to co-ordinate with agencies concerned for the purpose of developing principles of law and the administration of State affairs;
- (7) to publish opinions of the Council of State for the purpose of dissemination, except confidential matters;
- (8) to make an annual report on the result of the works and on obstacles encountered in the performance of duties of the Council of State and the Law Reform Commission for submission to the Council of Ministers;
- (9) to study and compile data, and enable the acquisition of data, on Thai and foreign legal systems and legal research works or other law-related research works both of Thailand and foreign countries for the purpose of the performance of duties of the Council of State and the Law Reform Commission under this Act.

Section 63

There shall be Secretary-General of the Council of State with the duties to generally supervise the performance of official affairs of the Office of the Council of State. He shall be responsible directly to the President of the Council of State and shall be the superior official of the Office of the Council of State.

There shall be Deputy Secretary-General of the Council of State to assist the Secretary-General in the performance of official duties.

The Secretary-General of the Council of State shall be an ordinary civil service appointed by the King from a person who possesses knowledge and experience in law, legislative drafting and public administration, upon the recommendation of the Council of Ministers and with the approval of the House of Representatives and the Senate respectively. In case the National Assembly is unicameral, approval of such Assembly is required.

Section 63/1⁽¹⁷⁾

In order to enhance the performance of legal work of State, there shall be the position called *Krisadika* lawyer, being ordinary civil service with knowledge and experience in law, legislative drafting and State administration, to be responsible for legal work under responsibility of the Office of the Council of State.

Krisadika lawyer is entitled to additional allowance at the rate that not lower than remuneration of the public prosecutor.

The qualifications, rules and procedure for taking office, the appointment and additional allowance of *Krisadika* lawyer shall be in accordance with the rules prescribed by the President of the Council of State.

Section 63/2⁽¹⁸⁾

For the efficiency of consideration of draft law or rule, the Prime Minister shall have the power to order a legal councilor, lawyer or other officials of the State agency which submits such draft law or rule to act as assistant secretary of the Law Committee considering such draft law or rule on full-time basis until the completion thereof.

The superior official of the official under paragraph one shall cause such official to act as assistant secretary under paragraph one, and it shall be deemed that the performance of such duty is the performance of official work or duty of that State agency.

Section 64⁽¹⁹⁾

(Repealed)

Section 65⁽²⁰⁾

(Repealed)

Section 66

Subject to the provisions of laws, for the purpose of coordinating the works, exchanging experience, and developing the ability of the government officials in the performance of duties in connection with the laws or the execution of this Act, the Minister in charge and the Secretary-General of the Council of State may request the Prime Minister in the capacity of the head of the Government to exercise the power under the law on State Administration to appoint any government official attached to a Ministry, Sub-Ministry or Department, to any position in the Office of the Council of State, receiving the monthly salary from his original Ministry, Sub-Ministry or Department, but having the status as a government official attached to the Office of the Council of State.

The appointment to the position under paragraph one shall be for a period not less than one year nor more than three years each time.

The provisions in paragraph one and paragraph two shall apply *mutatis mutandis* to the appointment of government officials attached to the Office of the Council of State to the positions in any other Ministry, Sub-Ministry or Department.

Section 67⁽²¹⁾

(Repealed)

Section 68⁽²²⁾

(Repealed)

PART III⁽²³⁾

PENALTIES

Section 69– Section 73

(Repealed)

TRANSITORY PROVISIONS

Section 74

The law councilors appointed under the Council of State Act, B.E. 2476 and the petition councilors appointed under the Petition Act, B.E. 2492 shall be the law councilors and the petition councilors under this Act, as the case may be, until new appointment is made under this Act by a Royal Command, which shall not be later than one hundred and twenty days from the date this Act comes into force.

The Secretary-General of the Council of State appointed under the Council of State Act, B.E. 2476 shall be the Secretary-General of the Council of State under this Act.

Section 75

The Petition Council under this Act shall have the power under the Petition Act, B.E. 2492 to consider petition already submitted to the Petition Council under the Petition Act, B.E. 2492. However, if the Petition Council under this Act deems it appropriate to exercise the powers under Section 45 and Section 48, it may do so.

Section 76

Within five years from the date this Act comes into force, the President of the Council of State may order any law councilor to perform the duties of the petition councilor and such law councilor shall have the powers, duties and rights as the petition councilor.

Countersigned by

S. Hotrakitya

Deputy Prime Minister

Amendment

- (1) As last amended by the Council of State Act (No. 5), B.E. 2551 (2008).
- (2) Published in the Government Gazette Vol. 96, Part 69, Special Issue, dated 1st May B.E. 2522 (1979).
- (3) As amended by Section 4 of the Council of State Act (No. 4), B.E. 2542 (1999).
- (4) As amended by Section 5, *ibid.*
- (5) *Ibid.*
- (6) As repealed by Section 3 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (7) As repealed by Section 6 of the Council of State Act (No. 4), B.E. 2542 (1999).
- (8) As amended by Section 4 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (9) As added by Section 5 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (10) *Ibid.*
- (11) As added by Section 6 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (12) As amended by Section 7 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (13) As added by Section 3 of the Council of State Act (No. 3), B.E. 2534 (1991).
- (14) As added by Section 4, *ibid.*
- (15) As repealed by Section 8 of the Council of State Act (No. 4), B.E. 2542 (1999).
- (16) As amended by Section 9, *ibid.*
- (17) As added by Section 8 of the Council of State Act (No. 5), B.E. 2551 (2008).
- (18) *Ibid.*
- (19) As repealed by Section 10 of the Council of State Act (No. 4), B.E. 2542 (1999).
- (20) *Ibid.*
- (21) *Ibid.*
- (22) *Ibid.*
- (23) *Ibid.*

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