

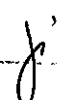
SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

 *Senate*
Office of the Secretary

15 MAY 11 P3:44

SENATE

Senate Bill No. 2760

RECEIVED BY: 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT

ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE PURPOSE ARTICLES 40, 41 AND 42, TITLE II, BOOK 1 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS "THE LABOR CODE OF THE PHILIPPINES"

EXPLANATORY NOTE

The Labor Code of the Philippines, as amended, was enacted in 1974. Through the years, the trend towards integration and interconnectedness of countries into a single global community has increased in the form of various political and economic agreements. In 1991, the Philippines became a member of the World Trade Organization (WTO). As a member, the country is also a signatory to the General Agreement on Trade in Services (GATS), a treaty of the WTO, which entered into force in 1995. The GATS is a framework for a multilateral trading system in the service sector which includes an annex on the movement of natural persons.

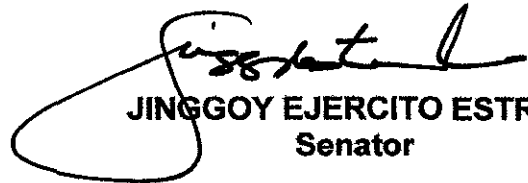
One of the Philippine commitments to the WTO-GATS is to review the restrictions in Title II, Article 40 of the Labor Code of the Philippines, as amended. The main restriction in the hiring of a foreign national is the Labor Market Test (LMT) which is used to determine the non-availability of a qualified, able and willing person in the Philippines to do the services for which the foreign national is being hired. It is comparable to an Economics Needs Test implemented by other countries.

In relation to this, the Philippines is also a member-state of the Association of Southeast Asian Nations (ASEAN), and is likewise obliged to review the said provision in light of the envisioned regional integration as envisioned in the ASEAN Economic Community (AEC) Blueprint. ASEAN member countries committed to the AEC in 2007.

The proposed amendment of the provision in the Labor Code is to facilitate uniformity by properly stating the term used by the Philippines in its commitments entered into bilateral, regional and multilateral agreements. It is a way for the country to determine if there is a short supply of workers in specific industries, occupations and professions which probably inhibits the country from increased productivity and industry development. It includes a provision for training of Filipino understudies to transfer skills and technology from the foreign national.

Increased fines and penalties for violations by foreign nationals are also updated to address inflation since the law was enacted almost four decades ago.

In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other bilateral, regional and multilateral agreements, it is expected to at least review the affected national laws and policies. This proposed agreement is a timely initiative to update the said law as the country modernizes as part of a global community. It is also a show of good faith to countries, regions, and international bodies the Philippines has agreements with that the country is willing to accommodate changes in order to meet its commitments. The proposed amendment is beneficial to the country as it paves the way to an improved but still protective policy on employment of foreign nationals.




JINGGOY EJERCITO ESTRADA
Senator

75 MAY 11 P3:44

SENATE

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AN ACT
ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN
NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE
PURPOSE ARTICLES 40, 41 AND 42, TITLE II, BOOK 1 OF PRESIDENTIAL
DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS "THE LABOR
CODE OF THE PHILIPPINES"

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

1 **Section 1.** Article 40 of the Labor Code is hereby amended to read as follows:
2

3 "Title II - Employment of Non-Resident [Aliens] FOREIGN
4 NATIONALS.

5 "ART. 40. *Employment permit of non-resident [aliens]-*
6 *FOREIGN NATIONALS* - [Any alien] ALL NON-RESIDENT
7 FOREIGN NATIONALS seeking [admission to the Philippines for
8 employment purposes and any domestic or foreign employer who
9 desires to engage an alien for] employment in the Philippines shall
10 obtain an employment permit from the Department of Labor AND
11 EMPLOYMENT.
12

13 "[The] AN employment permit may be issued to a non-
14 resident [alien] FOREIGN NATIONAL [or to the applicant employer
15 after a determination of the] SUBJECT TO THE LABOR MARKET
16 TEST BASED ON THE non - availability of [a person in the
17 Philippines who is competent, able and] QUALIFIED AND willing
18 [at the time of application to perform the services for which the alien
19 is desired] FILIPINO NATIONAL.
20

21 "THE SECRETARY OF LABOR AND EMPLOYMENT IS
22 AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR
23 MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR
24 UNDER EXISTING LAWS AND AGREEMENTS, AS WELL AS IN
25 INDUSTRIES OR OCCUPATIONS OR PRACTICE OF
26 PROFESSIONS WHERE THERE IS SHORT SUPPLY, AFTER
27 TRIPARTITE CONSULTATION.
28

29 "FOREIGN NATIONALS ISSUED EMPLOYMENT PERMITS
30 SHALL TRANSFER TECHNOLOGY TO FILIPINO
31 UNDERSTUDIES WITHIN A PRESCRIBED PERIOD.

1 "For an enterprise registered in preferred areas of
2 investments, said employment permit may be issued upon
3 recommendation of the government agency charged with the
4 supervision of said registered enterprise."
5
6

7 **SEC 2.** Article 41 of the Labor Code is hereby amended to read as follows:
8

9 "ART. 41. Prohibition against transfer of employment.

10 "(a) After the issuance of an employment permit, the [alien]
11 FOREIGN NATIONAL shall not transfer to another job or change
12 his employer without prior approval of the Secretary of Labor AND
13 EMPLOYMENT.
14

15 "(b) Any non-resident [alien] FOREIGN NATIONAL who
16 shall take up employment in violation of the provision of this Title
17 and its implementing rules and regulations, AS WELL AS THE
18 EMPLOYER OR THE RESPONSIBLE PERSON REPRESENTING
19 THE EMPLOYER, shall be punished [in accordance with the
20 provisions of Articles 289 and 290] WITH A FINE of [the Labor
21 Code.] NOT LESS THAN FIFTY THOUSAND PESOS
22 (P50,000.00) NOR MORE THAN ONE HUNDRED THOUSAND
23 PESOS (P100,000.00), OR IMPRISONMENT OF NOT LESS
24 THAN SIX MONTHS NOR MORE THAN SIX YEARS OR BOTH
25 SUCH FINE AND IMPRISONMENT AT THE DISCRETION OF
26 THE COURT.
27

28 "In addition, the [alien worker] FOREIGN NATIONAL shall be
29 subject to deportation after service of his OR HER sentence.
30

31 "THE SECRETARY OF LABOR AND EMPLOYMENT IS
32 AUTHORIZED TO IMPOSE A FINE OF FIFTY THOUSAND
33 PESOS (P50,000.00) FOR EVERY YEAR OR FRACTION
34 THEREOF TO BOTH THE FOREIGN NATIONAL FOUND
35 WORKING WITHOUT VALID EMPLOYMENT PERMIT AND TO
36 THE EMPLOYER."
37
38

39 **SEC 3.** Article 42 of the Labor Code is hereby amended to read as follows:
40

41 ART. 42. *Submission of List.* – Any employer employing non-
42 resident foreign nationals [on the effective date of this Code] shall
43 submit a list of such nationals to the REGIONAL DIRECTOR OF
44 THE DEPARTMENT OF LABOR AND EMPLOYMENT WHICH
45 HAS JURISDICTION ON THE EMPLOYER [Secretary of Labor and
46 Employment] within 30 days after HIRING, [such date] indicating
47 their names, citizenship, foreign and local addresses, nature of
48 employment and status of stay in the country. [The Secretary of
49 Labor and Employment shall then determine if they are entitled to
50 an employment permit.]
51
52

53 **SEC 4.** *Implementing Rules and Regulations.* Within ninety (90) days from the
54 effectivity of this Act, the Secretary of Labor and Employment, in coordination
55 with concerned agencies, shall formulate the necessary rules and regulations to
56 implement the provisions of this Act.
57

1 **SEC 5. *Separability Clause.*** – If any provision of this Act is declared
2 unconstitutional, the same shall not affect the validity and effectivity of the other
3 provisions thereof.

4
5 **SEC 6. *Repealing Clause.*** All statutory laws, orders and issuances, rules and
6 regulations and/or parts thereof which are inconsistent with the provisions of this
7 Act are hereby repealed or modified accordingly.

8
9
10 **SEC 7. *Effectivity.*** This Act shall take effect after fifteen (15) days from the date
11 of its publication in Official Gazette or in a newspaper of general circulation.

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17 *Approved,*