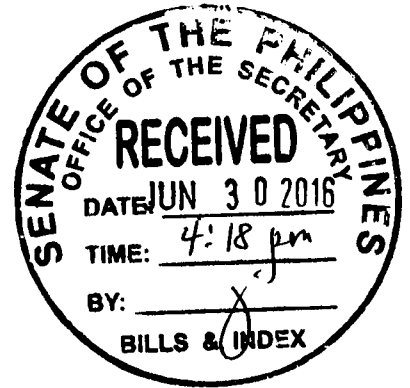


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE
S. B. No. 117

Introduced by Senator Aquilino “Koko” Pimentel III

AN ACT
STRENGTHENING THE PROHIBITION AGAINST LABOR-ONLY
CONTRACTING, AMENDING FOR THIS PURPOSE
PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS
THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

EXPLANATORY NOTE

Article II, Section 18 of the 1987 Constitution provides that “[t]he State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.” *Article XIII, Section 3* also states that “[t]he State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.” The same provision further mandates the right of all workers to security of tenure, humane conditions of work, and a living wage.

To implement these constitutional guarantees, *Presidential Decree No. 442*, otherwise known as *The Labor Code of the Philippines*, as amended, was enforced. *P.D. No. 442* construes security of tenure to mean that in cases of regular employment, the employer shall not terminate the services of an employee without just or authorized cause.

Despite the rights of the workers under constitutional and labor laws, there are employers who wantonly circumvent labor laws through a system that is designed to prevent workers from attaining regular employment and security of tenure, such as by terminating employment every five months and thereafter rehiring the same workers for the same duration, or by denying the existence of employer-employee relationship by engaging the

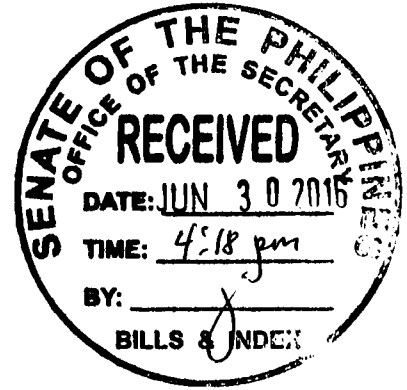
services of workers either from manpower cooperatives or from hiring and placement agencies, which will be the purported employers, to perform functions which are necessary and desirable to their main business without attaining regular employment.

These prevalent practices of labor contractualization have made it difficult for workers to attain the security of tenure guaranteed by the Constitution. Therefore, this proposed bill expressly prohibits these practices.

In view of the foregoing, the passage of this measure is earnestly requested.


AQUILINO "KOKO" PIMENTEL III

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

1 **SECTION 1.** *Article 106 of Presidential Decree No. 442, as*
2 *amended, is hereby amended to read as follows:*

3
4 **ARTICLE 106. Contractor and subcontractor. xxx.**

5
6 xxx.

7
8 xxx.

9
10 There is “labor-only” contracting where the person supplying
11 workers to an employer does not have substantial capital or
12 investment in the form of tools, equipment, machineries, work
13 premises, among others, **AMOUNTING TO AT LEAST FIVE**
14 **MILLION PESOS (P5,000,000.00) PAID-UP CAPITAL**
15 **STOCKS/SHARES IN THE CASE OF CORPORATIONS,**
16 **PARTNERSHIPS, AND COOPERATIVES AND AT LEAST**
17 **FIVE MILLION PESOS (P5,000,000.00) NET WORTH IN**
18 **CASE OF SINGLE PROPRIETORSHIP,** and the workers
19 recruited and placed by such person are performing activities
20 which are directly related to the principal business of such

1 employer. In such cases, the person or intermediary shall be
2 considered merely as an agent of the employer who shall be
3 responsible to the workers in the same manner and extent as if the
4 latter were directly employed by him.

5
6 **SECTION 2.** A new *Article 106-A of Presidential Decree No. 442*, as
7 amended, is hereby provided to read as follows:

8
9 **ARTICLE 106-A. PROHIBITION ON "LABOR-
10 ONLY" CONTRACTING. – "LABOR-ONLY"
11 CONTRACTING IS HEREBY DECLARED PROHIBITED.**

12
13 **FOR THIS PURPOSE, "LABOR-ONLY"
14 CONTRACTING SHALL INCLUDE ARRANGEMENTS
15 WHERE:**

16
17 **(I) A MANPOWER AGENCY RECRUITS,
18 SUPPLIES, OR PLACES ITS HIRES TO A PRINCIPAL TO
19 PERFORM JOBS NECESSARY, DESIRABLE, OR
20 DIRECTLY RELATED TO THE MAIN BUSINESS OF THE
21 PRINCIPAL; OR**

22
23 **(II) A WORKERS' COOPERATIVE ADMITS
24 WORK APPLICANTS TO BECOME ITS MEMBERS WHO
25 ARE FARMED OUT TO PERFORM THE JOBS
26 NECESSARY, DESIRABLE, OR DIRECTLY RELATED TO
27 THE MAIN BUSINESS OF THE PRINCIPALS; AND**

28
29 **(III) THE PERSONNEL OF THE PRINCIPAL TO
30 WHERE THE HIRES OF THE MANPOWER AGENCY OR
31 THE MEMBERS OF THE WORKERS' COOPERATIVE
32 WERE PLACED EXERCISE DIRECT CONTROL AND
33 SUPERVISION OVER THEM AS REGARDS THE
34 METHOD AND MEANS TO PERFORM THE JOB AND IN
35 ACHIEVING ITS DESIRED RESULTS.**

36
37 **SECTION 3.** A new *Article 106-B of Presidential Decree No. 442*, as
38 amended, is hereby provided to read as follows:

39
40 **ARTICLE 106-B. OTHER PROHIBITIONS. –
41 NOTWITHSTANDING ARTICLES 106 AND 106-A OF
42 THIS CODE, THE FOLLOWING ARE HEREBY**

1 **DECLARED PROHIBITED FOR BEING CONTRARY TO**
2 **LAW OR PUBLIC POLICY:**

3
4 **A. CONTRACTING OUT OF JOBS, WORKS, OR**
5 **SERVICES WHEN NOT DONE IN GOOD FAITH AND**
6 **NOT JUSTIFIED BY THE EXIGENCIES OF THE**
7 **BUSINESS, SUCH AS THE FOLLOWING:**

8
9 **(1) CONTRACTING OUT OF JOBS, WORKS, OR**
10 **SERVICES WHEN THE SAME RESULTS IN THE**
11 **TERMINATION OR REDUCTION OF REGULAR**
12 **EMPLOYEES AND REDUCTION OF WORK HOURS OR**
13 **REDUCTION OR SPLITTING OF THE BARGAINING**
14 **UNIT.**

15
16 **(2) CONTRACTING OUT OF WORK WITH A**
17 **“CABO”.**

18
19 **(3) TAKING UNDUE ADVANTAGE OF THE**
20 **ECONOMIC SITUATION OR LACK OF BARGAINING**
21 **STRENGTH OF THE CONTRACTOR’S EMPLOYEES, OR**
22 **UNDERMINING THEIR SECURITY OF TENURE OR**
23 **BASIC RIGHTS, OR CIRCUMVENTING THE**
24 **PROVISIONS OF REGULAR EMPLOYMENT, IN ANY OF**
25 **THE FOLLOWING INSTANCES:**

26
27 **(i) REQUIRING THEM TO DISCHARGE**
28 **FUNCTIONS WHICH ARE CURRENTLY BEING**
29 **PERFORMED BY THE REGULAR EMPLOYEES OF**
30 **THE PRINCIPAL; AND**

31
32 **(ii) REQUIRING THEM TO SIGN, AS A**
33 **PRECONDITION TO EMPLOYMENT OR CONTINUED**
34 **EMPLOYMENT, AN ANTEDATED RESIGNATION**
35 **LETTER; A BLANK PAYROLL; A WAIVER OF LABOR**
36 **STANDARDS INCLUDING MINIMUM WAGES AND**
37 **SOCIAL OR WELFARE BENEFITS; OR A QUITCLAIM**
38 **RELEASING THE PRINCIPAL, CONTRACTOR, OR**
39 **FROM ANY LIABILITY AS TO PAYMENT OF FUTURE**
40 **CLAIMS.**

41
42 **(4) CONTRACTING OUT OF A JOB, WORK, OR**
43 **SERVICE THROUGH AN IN-HOUSE AGENCY.**

1
2 (5) CONTRACTING OUT OF A JOB, WORK, OR
3 SERVICE THAT IS NECESSARY OR DESIRABLE, OR
4 DIRECTLY RELATED TO THE BUSINESS OR
5 OPERATION OF THE PRINCIPAL BY REASON OF A
6 STRIKE OR LOCKOUT WHETHER ACTUAL OR
7 IMMINENT.

8
9 (6) CONTRACTING OUT OF A JOB, WORK, OR
10 SERVICE BEING PERFORMED BY UNION MEMBERS
11 WHEN SUCH WILL INTERFERE WITH, RESTRAIN, OR
12 COERCE EMPLOYEES IN THE EXERCISE OF THEIR
13 RIGHTS TO SELF-ORGANIZATION AS PROVIDED IN
14 ARTICLE 248(C) OF THE LABOR CODE, AS AMENDED.

15
16 (7) REPEATED HIRING OF EMPLOYEES UNDER
17 AN EMPLOYMENT CONTRACT OF SHORT DURATION
18 OR UNDER A SERVICE AGREEMENT OF SHORT
19 DURATION WITH THE SAME OR DIFFERENT
20 CONTRACTORS, WHICH CIRCUMVENTS THE LABOR
21 CODE PROVISIONS ON SECURITY OF TENURE.

22
23 (8) REQUIRING EMPLOYEES UNDER A
24 SUBCONTRACTING ARRANGEMENT TO SIGN A
25 CONTRACT FIXING THE PERIOD OF EMPLOYMENT
26 TO A TERM SHORTER THAN THE TERM OF THE
27 SERVICE AGREEMENT, UNLESS THE CONTRACT IS
28 DIVISIBLE INTO PHASES FOR WHICH
29 SUBSTANTIALLY DIFFERENT SKILLS ARE REQUIRED
30 AND THIS IS MADE KNOWN TO THE EMPLOYEE AT
31 THE TIME OF ENGAGEMENT.

32
33 (9) REFUSAL TO PROVIDE A COPY OF THE
34 SERVICE AGREEMENT AND THE EMPLOYMENT
35 CONTRACTS BETWEEN THE CONTRACTOR AND THE
36 EMPLOYEES DEPLOYED TO WORK IN THE
37 BARGAINING UNIT OF THE PRINCIPAL'S CERTIFIED
38 BARGAINING AGENT TO THE SOLE AND EXCLUSIVE
39 BARGAINING AGENT.

40
41 (10) ENGAGING OR MAINTAINING BY THE
42 PRINCIPAL OF SUBCONTRACTED EMPLOYEES IN
43 THE EXCESS OF THOSE PROVIDED FOR IN THE

1 **APPLICABLE COLLECTIVE BARGAINING**
2 **AGREEMENT OR AS SET BY THE INDUSTRY**
3 **TRIPARTITE COUNCIL.**

4
5 **B. CONTRACTING OUT OF JOBS, WORKS, OR**
6 **SERVICES ANALOGOUS TO THE ABOVE WHEN NOT**
7 **DONE IN GOOD FAITH AND NOT JUSTIFIED BY THE**
8 **EXIGENCIES OF THE BUSINESS.**

9
10 **SECTION 4.** *A new Article 106-C of Presidential Decree No. 442,*
11 *as amended, is hereby provided to read as follows:*

12
13 **ARTICLE 106-C. IN ALL CASES WHERE “LABOR-**
14 **ONLY” CONTRACTING IS PRESENT, THE PRINCIPAL**
15 **SHALL *IPSO FACTO* BE DEEMED THE DIRECT**
16 **EMPLOYER OF THE AFFECTED EMPLOYEES WHO**
17 **WILL BE CONSIDERED REGULAR EMPLOYEES**
18 **RETROACTIVE TO THE DATE WHEN THEY WERE**
19 **FIRST HIRED, AGREEMENTS TO THE CONTRARY**
20 **NOTWITHSTANDING, WITHOUT PREJUDICE TO ANY**
21 **CRIMINAL, CIVIL, OR ADMINISTRATIVE CASE**
22 **AGAINST THE LABOR-ONLY CONTRACTOR AND THE**
23 **PRINCIPAL.**

24
25 **SECTION 5.** *A new Article 280-A of Presidential Decree No. 442, as*
26 *amended, is hereby provided to read as follows:*

27
28 **ARTICLE 280-A. EXCEPT FOR ACTIVITIES**
29 **WHICH ARE COVERED BY ALLOWABLE**
30 **CONTRACTING ARRANGEMENTS, EMPLOYEES WHO**
31 **HAVE BEEN HIRED REPEATEDLY BY THE SAME**
32 **GROUP OF COMPANIES, THE PARENT AND**
33 **SUBSIDIARY COMPANIES, OR BY COMPANIES WITH**
34 **INTERLOCKING DIRECTORS, OFFICERS, AND/OR**
35 **MAJORITY STOCKHOLDERS TO EITHER PERFORM**
36 **THE SAME OR DIFFERENT JOBS SHALL BE**
37 **CONSIDERED REGULAR EMPLOYEES FROM THE**
38 **DATE WHEN THEY WERE FIRST HIRED, WHETHER**
39 **SUCH SERVICE IS CONTINUOUS OR BROKEN.**

40
41 **SECTION 6.** *Implementing Rules and Regulations.* – Within ninety
42 (90) days from the promulgation of this Act, the Department of Labor and

1 Employment, shall formulate the Implementing Rules and Regulations of
2 this Act.

3
4 **SECTION 7.** *Non-impairment of existing contracts; Non-diminution*
5 *of benefits.* – Subject to the provisions of Articles 106-109 of *Presidential*
6 *Decree No. 442*, as amended, the applicable provisions of the *Civil Code*
7 and existing jurisprudences, nothing herein shall impair the rights or
8 diminish the benefits being enjoyed by the parties to existing contract or
9 subcontracting arrangements.

10
11 **SECTION 8.** *Separability Clause.* Should any provision of this Act
12 or part hereof be declared unconstitutional, the other provisions or parts
13 not affected thereby shall remain valid and effective.

14
15 **SECTION 9.** *Repealing Clause.* All laws, decrees, orders, and
16 issuances, or portions thereof, which are inconsistent with the provisions of
17 this Act, are hereby repealed, amended, or modified accordingly.

18
19 **SECTION 10.** *Effectivity Clause.* This Act shall take effect after
20 fifteen (15) days from its publication in two (2) newspapers of general
21 circulation.

22
23 *Approved,*