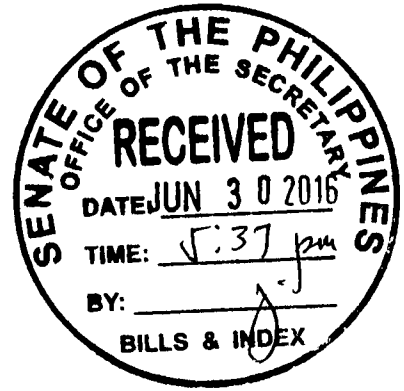


SEVENTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
S.B. No. 174



Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

**AN ACT PROFESSIONALIZING THE CONTRACTING AND SUBCONTRACTING
INDUSTRY, REQUIRING A TRANSITION SUPPORT PROGRAM, AND PROHIBITING
OPPRESSIVE PRACTICES, AMENDING FOR THIS PURPOSE ARTICLES 106 TO 109 OF
PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE
PHILIPPINES, AS AMENDED**

EXPLANATORY NOTE

Over the past decade, the Philippines has been experiencing GDP gains and exponential economic growth. However, the unemployment and underemployment rates remain high.

There are almost a million new jobseekers that enter the labor force each year and, sadly, employment opportunities are simply not enough to absorb them. Worse, with many skilled and experienced employees agreeing to entry-level jobs just to have a steady source of income, first-time jobseekers with limited or low-level skills are left with no job opportunities.

This is where contractors and subcontractors help job seekers in skills-building, particularly in developing occupational skills that match industry demand. Contractors and subcontractors also help employees in upgrading existing skills, learning new skills and opening up more opportunities for them.

On the other end, contractors and subcontractors also help employers and companies expand their businesses with minimal costs and freedom to focus on their core business. Consequently, when these businesses expand, more jobs are created.

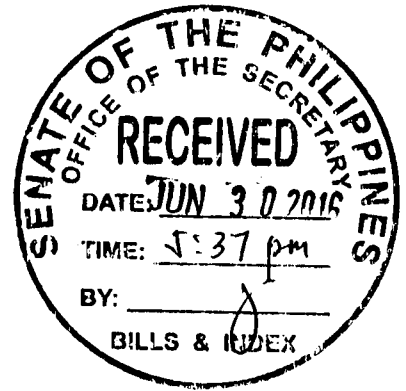
Seeing the impact of this flexibility, the government and contractors/subcontractors must work together to establish a framework, filling the gaps in current industry practices and protecting both employers and employees.

In view of the foregoing, immediate passage of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read "Bam Aquino". The signature is fluid and cursive, with the first name "Bam" being more prominent and the last name "Aquino" following in a similar style.

Senator Paolo Benigno "Bam" A. Aquino IV

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AN ACT PROFESSIONALIZING THE CONTRACTING AND SUBCONTRACTING INDUSTRY, REQUIRING A TRANSITION SUPPORT PROGRAM, AND PROHIBITING OPPRESSIVE PRACTICES, AMENDING FOR THIS PURPOSE ARTICLES 106 TO 109 OF PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

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

1 **SECTION 1. Title.** – This Act shall be known as the "End ENDO Act."

2 **SEC. 2.** Article 106 of Presidential Decree 442, otherwise known as the Labor
3 Code of the Philippines, is hereby amended to read as follows:

4 "ART. 106. Contractor or Subcontractor. – Whenever [an] **A PRINCIPAL**
5 employer enters into a contract with another person for the performance of the
6 former's work, the employees of the contractor and of the latter's subcontractor, if
7 any, shall be paid in accordance with the provisions of this [Code] **ACT**.

8 **FOR THIS PURPOSE, A LEGITIMATE CONTRACTOR OR SUBCONTRACTOR**
9 **MUST:**

- 10 1. **BE LICENSED WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT;**
11 2. **HAVE SUBSTANTIAL CAPITALIZATION, THE AMOUNT OF WHICH SHALL**
12 **BE DETERMINED BY THE SECRETARY OF LABOR AND EMPLOYMENT,**
13 **WITH CONCURRENCE BY THE NATIONAL TRIPARTITE INDUSTRIAL PEACE**
14 **COUNCIL. IN NO CASE SHALL SAID CAPITALIZATION BE LESS THAN THREE**
15 **MILLION PESOS (P3,000,000.00) IN PAID-UP CAPITAL IN THE CASE OF**
16 **CORPORATIONS OR PARTNERSHIPS OR THREE MILLION PESOS**
17 **(P3,000,000.00) TOTAL WORTH OF ASSETS IN CASE OF SINGLE**
18 **PROPRIETORSHIPS;**
19 3. **HAVE EQUIPMENT, MACHINERIES, AND TOOLS NECESSARY TO**
20 **PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED**
21 **OUT; AND**
22 4. **EXERCISE CONTROL OVER THE PERFORMANCE OR COMPLETION OF THE**

1 **JOB, WORK OR SERVICE CONTRACTED OUT.**

2 In the event that the contractor or subcontractor fails to pay wages of his
3 employees in accordance with this Code, the employer shall be jointly and severally
4 liable with his/HER contractor or subcontractor [to such employees to the extent of
5 the work performed under the contract, in the same manner and extent that he is
6 liable to employees directly employed by him.] **FOR ANY OBLIGATION WHICH THE
7 LATTER FAILS TO FULFILL IN RELATION TO ITS WORKERS IN THE SAME MANNER
8 AND EXTENT THAT THE PRINCIPAL EMPLOYER IS LIABLE TO HIS/HER DIRECT
9 EMPLOYEES.**

10 [The Secretary of Labor and Employment may, by appropriate regulations,
11 restrict or prohibit the contracting-out of labor to protect the rights of workers
12 established under this Code. In so prohibiting or restricting, he may make
13 appropriate distinctions between labor-only contracting and job contracting as well
14 as differentiations within these types of contracting and determine who among the
15 parties involved shall be considered the employer for purposes of this Code, to
16 prevent any violation or circumvention of any provision of this Code.]

17 **LABOR-ONLY CONTRACTING SHALL BE STRICTLY PROHIBITED.** There is "labor-
18 only" contracting where the person supplying workers to [an] **A PRINCIPAL** employer
19 does not have substantial capital or investment in the form of tools, equipment,
20 machineries, work premises, among others, [and] **OR** the workers recruited and
21 placed by such person are performing activities which are directly related to the
22 principal business of such employer. In such cases, the person or intermediary shall
23 be considered merely as an agent of the **PRINCIPAL** employer who shall be
24 responsible to the workers in the same manner and extent as if the latter were
25 directly employed by him.

26 **NO EMPLOYER SHALL ENGAGE ANY EMPLOYEE FOR A FIXED PERIOD. ALL
27 ARRANGEMENTS OR AGREEMENTS INVOLVING A FIXED TERM OF EMPLOYMENT
28 SHALL BE VOID."**

29 **SEC 3.** A new Article 106-B is hereby inserted, to read as follows:

30 **"ART. 106-B. PROHIBITIONS IN CONTRACTING AND SUBCONTRACTING
31 ARRANGEMENTS. – REGARDLESS OF COMPLIANCE WITH THE PRECEDING ARTICLE,
32 THE FOLLOWING ACTS SHALL BE PROHIBITED FOR BEING CONTRARY TO LAW OR
33 PUBLIC POLICY:**

- 34 **A) ENGAGING OR MAINTAINING BY THE PRINCIPAL EMPLOYER OF THE
35 CONTRACTED OR SUBCONTRACTED EMPLOYEES IN EXCESS OF TWENTY
36 PERCENT (20%) OF THE PRINCIPAL EMPLOYER'S TOTAL WORKFORCE;
37 PROVIDED, THAT SUCH CONTRACTED OR SUBCONTRACTED EMPLOYEES
38 DO NOT PERFORM WORK THAT IS NECESSARY OR DESIRABLE OR
39 DIRECTLY RELATED TO THE USUAL BUSINESS OR TRADE OR BUSINESS
40 OF THE PRINCIPAL EMPLOYER;**

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- B) CONTRACTING OUT A JOB, WORK OR SERVICE WHEN THE SAME RESULTS IN THE TERMINATION OF REGULAR EMPLOYEES AND REDUCTION OF WORK HOURS OR REDUCTION OR SPLITTING OF THE BARGAINING UNIT;
- C) CONTRACTING OUT OF WORK WITH A 'CABO', FOR THIS PURPOSE, 'CABO' REFERS TO A PERSON OR GROUP OF PERSONS OR TO A LABOR ORGANIZATION WHICH, IN THE GUISE OF A LABOR ORGANIZATION OR COOPERATIVE, SUPPLIES WORKERS TO AN EMPLOYER WITH OR WITHOUT ANY MONETARY OR OTHER CONSIDERATION, WHETHER IN THE CAPACITY OF AN AGENT OF THE EMPLOYER, OR AS AN OSTENSIBLE INDEPENDENT CONTRACTOR;
- D) TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION OR LACK OF BARGAINING STRENGTH OF THE CONTRACTUAL EMPLOYEE, OR UNDERMINING HIS SECURITY OF TENURE OR BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF REGULAR EMPLOYMENT IN ANY OF THE FOLLOWING CIRCUMSTANCES:
 - a. IN ADDITION TO HIS ASSIGNED FUNCTIONS, REQUIRING THE CONTRACTUAL EMPLOYEE TO PERFORM FUNCTIONS WHICH ARE CURRENTLY BEING PERFORMED BY THE REGULAR EMPLOYEES OF THE PRINCIPAL EMPLOYER OR OF THE CONTRACTOR/SUBCONTRACTOR;
 - b. REQUIRING HIM TO SIGN, AS A PRECONDITION TO EMPLOYMENT OR CONTINUED EMPLOYMENT, AN ANTEDATED RESIGNATION LETTER, A BLANK PAYROLL, A WAIVER OF LABOR STANDARDS INCLUDING MINIMUM WAGES AND SOCIAL WELFARE BENEFITS, OR A QUITCLAIM RELEASING THE PRINCIPAL OR SUBCONTRACTOR FROM ANY LIABILITY AS TO THE PAYMENT OF FUTURE CLAIMS; AND
 - c. REQUIRING HIM TO SIGN A CONTRACT FIXING THE PERIOD OF EMPLOYMENT TO A TERM SHORTER THAN THE TERM OF THE CONTRACT BETWEEN THE PRINCIPAL EMPLOYER AND THE CONTRACTOR/SUBCONTRACTOR, UNLESS THE LATTER CONTRACT IS DIVISIBLE INTO PHASES FOR WHICH SUBSTANTIALLY DIFFERENT SKILLS ARE REQUIRED AND THIS IS MADE KNOWN TO THE EMPLOYEE AT THE TIME OF ENGAGEMENT.
- E) CONTRACTING OUT OF A JOB, WORK OR SERVICE THROUGH AN IN-HOUSE AGENCY WHICH REFERS TO:
 - a. CONTRACTOR/SUBCONTRACTOR ENGAGED IN THE SUPPLY OF LABOR WHICH IS OWNED, MANAGED AND CONTROLLED BY THE PRINCIPAL EMPLOYER; OR
 - b. CONTRACTOR/SUBCONTRACTOR IN WHICH THE PRINCIPAL EMPLOYER OWNS OR OTHERWISE REPRESENTS ANY SHARE OF STOCK; OR
 - c. CONTRACTOR/SUBCONTRACTOR, WHICH OPERATES SOLELY FOR THE PRINCIPAL;
- F) CONTRACTING OUT OF A JOB, WORK OR SERVICE THAT IS NECESSARY AND DESIRABLE OR DIRECTLY RELATED TO THE BUSINESS OR

1 **OPERATION OF THE PRINCIPAL; AND**
2 **G) CONTRACTING OUT OF A JOB, WORK OR SERVICE BEING PERFORMED**
3 **BY OR PREVIOUSLY PERFORMED BY REGULAR EMPLOYEES AND/OR**
4 **MEMBERS OF THE BARGAINING UNIT."**

5 **SEC. 4.** A new Article 109 is hereby inserted, to read as follows:

6 **"ART. 109. LICENSING OF JOB CONTRACTORS. – THE SECRETARY OF LABOR**
7 **AND EMPLOYMENT, THROUGH REGIONAL OFFICES, SHALL ISSUE QUALIFIED**
8 **APPLICANTS THE CONTRACTOR'S LICENSE IN ACCORDANCE WITH RULES AS**
9 **PRESCRIBED BY THE SECRETARY FOR THE PURPOSE. THE RULES SHALL REQUIRE,**
10 **AMONG OTHERS, THAT LICENSES SHALL AT ALL TIMES RESPECT THE RIGHTS AND**
11 **PRIVILEGES OF ALL WORKERS INCLUDING:**

- 12 **A) SAFE AND HEALTHFUL WORKING CONDITIONS;**
13 **B) LABOR STANDARDS, SUCH AS BUT NOT LIMITED TO SERVICE INCENTIVE**
14 **LEAVE, REST DAYS, OVERTIME PAY, HOLIDAY PAY, 13TH MONTH PAY**
15 **AND SEPARATION PAY, AS MAY BE PROVIDED IN THE SERVICE**
16 **AGREEMENT OR UNDER THE LABOR CODE;**
17 **C) RETIREMENT BENEFITS UNDER THE SSS OR RETIREMENT PLAN OF THE**
18 **CONTRACTOR OR SUBCONTRACTOR, IF THERE IS ANY;**
19 **D) SOCIAL SECURITY AND WELFARE BENEFITS; AND**
20 **E) SECURITY OF TENURE.**

21 **THE APPLICANT MUST BE A FILIPINO CITIZEN OR A CORPORATION OF WHICH**
22 **ONE HUNDRED PERCENT (100%) OF AUTHORIZED AND VOTING CAPITAL IS OWNED**
23 **AND CONTROLLED BY FILIPINO CITIZENS. SUCH CONTRACTOR SHALL, LIKEWISE,**
24 **COMPLY WITH THE REQUIREMENTS OF OTHER GOVERNMENT AGENCIES.**

25 **IN ADDITION TO OTHER CONSEQUENCES PROVIDED BY LAW, THE SECRETARY**
26 **OF LABOR AND EMPLOYMENT SHALL IMPOSE A FINE AGAINST UNLICENSED**
27 **CONTRACTORS IN AN AMOUNT TO BE DETERMINED THROUGH CONSULTATION**
28 **WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL PROVIDED THAT**
29 **THE AMOUNT SHALL BE NO LESS THAN P50,000.00 AND SHALL BE SUBJECT TO**
30 **REVIEW AND ADJUSTMENT ANNUALLY."**

31 **SEC. 5.** Article 108 is hereby amended and renumbered to read as follows:

32 **"ART. [108] 111. MANDATORY Posting of Bond. – [An employer or indirect**
33 **employer may require the contractor or subcontractor to] THE CONTRACTOR OR**
34 **SUBCONTRACTOR SHALL furnish a bond TO THE PRINCIPAL EMPLOYER equal to the**
35 **cost of labor under the contract[, on condition that the]BETWEEN THE**
36 **CONTRACTOR OR SUBCONTRACTOR AND ITS EMPLOYEES. THE bond [will] shall**
37 **answer for [the wages due] ANY CLAIM BY the employees [should the] IN CASE OF**
38 **VIOLATION BY THE contractor or subcontractor.[, as the case may be, fail to pay the**
39 **same.]"**

1 **SEC. 6.** Article 109 is hereby amended and renumbered to read as follows:

2 “ART. [109] **112. Solidary Liability.** – **NOTWITHSTANDING** the provisions of
3 existing laws [to the contrary notwithstanding, every employer or indirect employer]
4 **THE PRINCIPAL EMPLOYER** shall be held [responsible] **SOLIDARILY LIABLE** with
5 his/HER contractor or subcontractor for any violation [of any provision of this Code.
6 For purposes of determining the extent of their civil liability under this Chapter, they
7 shall be considered as direct employer.] **OF THE LABOR CODE AND ITS**
8 **IMPLEMENTING RULES AND REGULATIONS.”**

9 **SEC. 7.** Insert a new section after Article 109, to read as follows:

10 “ART. **113. TRANSITION SUPPORT PROGRAM (TSP).** – **TO PROTECT**
11 **EMPLOYEES FROM LOSS OF CONTINUED INCOME AND TO WIDEN THEIR SKILLS SET,**
12 **CONTRACTORS AND SUBCONTRACTORS SHALL SET ASIDE FUNDS TO SUPPORT**
13 **DISPLACED EMPLOYEES IN THEIR TRANSITION TO A SUBSEQUENT PRINCIPAL**
14 **EMPLOYER. THE FOLLOWING SHALL BE OBSERVED IN THE IMPLEMENTATION OF**
15 **THE TSP:**

- 16 **A. THE AMOUNT OF FINANCIAL SUPPORT SHALL NOT BE LOWER THAN**
17 **THE EMPLOYEE’S LAST WAGE RECEIVED PROVIDED THAT THE AMOUNT**
18 **IS AT LEAST EQUAL TO THE APPROPRIATE MINIMUM WAGE;**
19 **B. THE FINANCIAL SUPPORT SHALL BE RELEASED EVERY END OF THE**
20 **MONTH;**
21 **C. CONTRACTORS AND SUBCONTRACTORS SHALL ALSO PROVIDE**
22 **TRAININGS TO UPGRADE THE SKILLS AND JOB QUALIFICATION OF**
23 **DISPLACED WORKERS; AND**
24 **D. THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL MONITOR AND**
25 **EVALUATE THE COMPLIANCE OF CONTRACTORS AND**
26 **SUBCONTRACTORS TO THE PROGRAM. NON-COMPLIANCE OR A DELAY**
27 **IN THE RELEASE OF FINANCIAL SUPPORT CAN BE GROUNDS FOR**
28 **SUSPENSION OF THE LICENSE OF THE CONTRACTOR AND**
29 **SUBCONTRACTOR.”**

30 **SEC. 8. *Implementing Rules and Regulations.*** – Within sixty (60) days from
31 the effectivity of this Act, the Department of Labor and Employment (DOLE) shall
32 promulgate the necessary rules and regulations for the effective implementation of
33 this Act.

34 **SEC. 9. *Separability Clause.*** - Should any provision herein be declared
35 unconstitutional, the same shall not affect the validity of the other provisions of this
36 Act.

37 **SEC. 10. *Repealing Clause.*** - All laws, decrees, orders, rules, and regulations
38 or other issuances or parts inconsistent with the provisions of this Act are hereby
39 repealed or modified accordingly.

1 **SEC. 11. *Effectivity.*** - This Act shall take effect fifteen (15) days after
2 publication in the Official Gazette or two (2) newspapers of general circulation in the
3 Philippines.

4 *Approved,*