THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
Second Regular Session

SENATE

Senate Bill No. 2281

INTRODUCED BY SEN. MANNY VILLAR

EXPLANATORY NOTE

Today, one of the most controversial issues affecting labor and industrial relations in the country is the practice known as "sub-contracting". Basically, this term or expression refers to a business or commercial arrangement whereby work is contracted out by a firm or company to another entity or enterprise.

To be sure, the practice of subcontracting is not a novelty in this country, and it is not now regarded as a scheme or system which is essentially objectionable. For many years, business firms or establishments in the country have been using the services of independent contractors or subcontractors in relation to their various operations and activities, and the contractual arrangements between these firms and their contractors or subcontractors, which have become widely known as "subcontracting", having gained public recognition and acceptance particularly in the light of the principles and concepts of the law on contracts and the reasons as well as the motivations of a free enterprise economy.

However, the aforementioned business or commercial practice became the subject of remedial legislation effected through P.D. No. 442, as amended, otherwise known as the Labor Code of the Philippines, particularly because of the fact that in the course of time, it has become a source of abuses and injustices which are prejudicial to the rights and welfare of the workers. It was noted in this regard that, as revealed by a substantial number of cases, there are times when the subcontracting arrangement is used or adopted not as a means to achieve some legitimate business purposes or objectives, but as a deceptive and fraudulent device to deprive the workers of their rights and the benefits to which they are entitled under the law and the national policies governing labor and the relations between employees and employers in the country. On some occasions, the said contractual arrangement was utilized by the management of some firms or establishments for some unscrupulous and unconscionable purposes and ends such as, for instance, where a corporation would shut down one of its operating departments and give the work being performed by that department to a contractor or subcontractor in order that workers in the said department would not succeed in organizing themselves into a labor union; to prevent a group of workers from acquiring a permanent employment status; and to evade the obligations and responsibilities which a business firm or

establishment has to assume in relation to workmen's compensation, minimum wage, medicare and social security.

To provide an effective solution to the pernicious problems affecting the workers, and the business and industrial community as a whole, arising not so much from the use but from the wrongful utilization or what should be regarded as a perversion of the subcontracting system, several significant reforms were instituted and made part of the Labor Code so that the subcontracting industry itself would really perform its business and economic functions and would be able to pursue its goals within the proper bounds of a legitimate and responsible enterprise. One of these important reforms brought about by the Labor Code is the prohibition against "labor-only" contracting.

It should be observed, in this connection, that under the provisions of **Article 106 of the Labor Code** and its implementing rules and regulations, the subcontracting relationships are classified into two types or kinds. One of them is called "job-contracting", which is a legally permitted type of subcontracting and is subject to the regulatory authority of the Secretary of Labor and Employment. The other type or kind of subcontracting is known as **"labor-only contracting"**, which is illegal and prohibited by the Labor Code. The distinction between these two types of subcontracting have been drawn and delineated under **Section 8 and 9, Book III, Rule VIII of the Implementing Rules and Regulations,** in amplification of **Article 106 of the Labor Code.**

The aforementioned prohibition against "labor-only contracting" is certainly one of the most commendable features of our Labor Code and is well in accord with the constitutional mandate that the State shall provide ample protection to the rights and welfare of the workers in our society. It is lamentable to say, however, that notwithstanding this prohibition, there are still many instances in this country where some business firms or establishments, in connivance with some unscrupulous individuals and entities, are using the "labor-only contracting" arrangements with seeming impunity and to the detriment and prejudice of the workers. Thus it is proper and necessary that the prohibition against the practice of "Labor-Only Contracting" which is embodied in **Article 106 of the Labor Code,** should be strengthened and made truly effective by providing it with penal sanctions, and this Bill was prepared precisely for the purpose of giving more teeth to the aforesaid labor policy.

In view of the foregoing, approval of this bill is earnestly recommended.

MANNY VILLAR

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AN ACT
STRENGTHENING THE PROVISION ON "LABOR-ONLY" CONTRACTING BY PROVIDING PENALTY FOR THE VIOLATION THEREFOR, AMENDING FOR THIS PURPOSE ARTICLE 106 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE "LABOR CODE OF THE PHILIPPINES" AND FOR OTHER PURPOSES

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

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

"**Art. 106.** *Contractor or Subcontractor.*- Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

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

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the worker in the same manner and extent as if the latter were directly employed by him.

ANY PERSON, NATURAL OR JURIDICAL, VIOLATING THE PROVISIONS AGAINST "LABOR-ONLY" CONTRACTING UNDER THIS SECTION OR THE RULES AND REGULATIONS ISSUED IN PURSUANCE THERETO SHALL BE LIABLE TO PAY A FINE OF NOT LESS THAN FIVE THOUSAND PESOS (P5,000.00) NOR MORE THAN TWENTY THOUSAND PESOS (P20,000.00) OR BE IMPRISONED FOR NOT LESS THAN TWO (2) YEARS NOR MORE THAN FIVE (5) YEARS, OR BOTH, AT THE DISCRETION OF THE COURT. IF THE VIOLATION IS COMMITTED BY A JURIDICAL PERSON, THE PENALTY OF IMPRISONMENT SHALL BE IMPOSED UPON THE OFFICER RESPONSIBLE THEREFOR: *PROVIDED,* THAT THE INSTITUTION OF ANY CRIMINAL ACTION UNDER THIS SECTION SHALL NOT BAR THE AGGRIEVED PARTY FROM FILING AN ENTIRELY SEPARATE AND DISTINCT ACTION FOR MONEY CLAIMS, WHICH MAY INCLUDE CLAIMS FOR DAMAGES AND OTHER AFFIRMATIVE RELIEFS. THE ACTIONS HEREBY AUTHORIZED SHALL PROCEED INDEPENDENTLY OF EACH OTHER.

IN ADDITION, ANY ALIEN FOUND GUILTY UNDER THIS SECTION SHALL BE SUMMARILY DEPORTED UPON COMPLETION OF SERVICE OF SENTENCE AND BE PERMANENTLY BARRED FROM RE-ENTERING THE COUNTRY WITHOUT SPECIAL PERMISSION OF THE PRESIDENT OF THE PHILIPPINES".

SECTION 2. The Secretary of Labor and Employment is hereby authorized to promulgate such rules and regulations as may be necessary to implement the provisions of this Act.

SECTION 3. This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation, whichever comes earlier.

Approved,