

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City, Metro Manila

**THIRTEENTH CONGRESS**  
First Regular Session

House Bill No. 3339

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*Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja,  
Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel*

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**AN ACT TO STRENGTHEN SECURITY OF TENURE AND FOR THAT  
PURPOSE, AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL  
DECREE NO. 442**

**EXPLANATORY NOTE**

Arguably, the gravest threat to our workers' right to security of tenure comes from the current trend towards contractualization and de-regularization. Workers settle for intermittent and short term employment affecting not only their ability to earn livelihood but also their productivity and quality of work.

The present proposal recognizes subcontracting as a valid business practice but also protects workers from unscrupulous and unnecessary subcontracting. Hence, it balances legitimate business interests with the need to protect workers from insecure employment conditions.

In particular, the present proposal is characterized by the following:

1) Many of the concepts and processes contained in the proposal reflects current practice as provided by Department Order No. 18 series of 2002 (DO 18). While some refinements have been made to DO 18 provisions, core concepts have been retained such as:

- Definition of subcontracted work and labor only contracting
- Recognition of rights of subcontracted workers
- Maintenance of a registration system for legitimate subcontractors

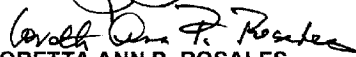
2) The salient innovations introduced by this proposal include the following:

- Principals can engage a maximum of 10% subcontracted employees.
- Violation of contracting rules is made an unfair labor practice
- Violation of contracting rules is penalized by a fine.

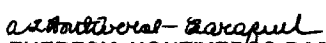
Hence, the support of this bill is earnestly sought.



MARIO "MAYONG" JOYO AGUJA



LORETTA ANN P. ROSALES



ANA THERESIA MONTIVERO S-BARAQUEL

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

**Article 1. Subcontracting.** Article 106 of the Presidential Decree No. 442 is hereby repealed and amended to read as follows:

**Article 106. Concept and Nature of Subcontracting Arrangements.** In legitimate subcontracting, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the subcontractor, and a contract of employment between the subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a subcontractor, the subcontractor which has the capacity to independently undertake and actually undertakes the performance of the job, work or service, and the contractual workers engaged by the subcontractor to accomplish the job work or service.

For purposes of this Code, "subcontracting" refers to an arrangement whereby

- (a) a principal agrees to put out or farm out with a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal or
- (b) a person, partnership, association or corporation which, not being a principal, contracts with a subcontractor for the performance of any work, task, job or project.

**Article 2. Parties.** Article 106-A is hereby inserted in Presidential Decree No. 442 as follows:

**Article 106 – A. Rights and Liabilities of Parties.**

*A. The Subcontracted Employee.* In all cases, subcontracted employees shall be entitled to all the rights and privileges due regular employees including the following:

- (a) Safe and healthful working conditions;
- (b) Labor standards such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay and separation pay;
- (c) Retirement benefits;
- (d) Social security and welfare benefits;
- (e) Self-organization, collective bargaining and peaceful concerted action; and
- (f) Security of tenure;

In addition, subcontracted employees shall have a right to a written contract which shall include the following terms and conditions:

- (i) The specific description of the job, work or service to be performed by the contractual employee;
- (ii) The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual contractual employee; and
- (iii) The term or duration of employment, which shall be coextensive with the contract of the principal and subcontractor, or with the specific phase for which the contractual employee is engaged, as the case may be.

The subcontracted employee shall be informed by the subcontractor of the foregoing terms and conditions on or before the first day of his employment.

*B. The Principal and the Subcontractor.* The legitimate subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. In all cases of subcontracting, however, the principal or any subcontractor which engages other subcontractors shall be solidarily liable with any subcontractor it engages in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases:

- (a) where there is labor-only contracting; or
- (b) in the absence of the written contract required by Article 106-A; or

(c) in cases of violation of Article 106 – B and 106-C.

In addition, the principal shall be solidarily liable with the subcontractor in case the contract between the principal and subcontractor is preterminated for reasons not attributable to the fault of the subcontractor.

**Article 3. Prohibition against labor only contracting.** Article 106-B is hereby inserted in Presidential Decree No. 442 as follows:

**Article 106-B. Prohibition against labor-only subcontracting.** Engaging in labor-only contracting or contracting with a labor-only contractor is strictly prohibited. For this purpose, labor-only contracting refers to an arrangement where the subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, including instances where any of the following are present:

- i) The subcontractor does not have substantial capital and investment which relates to the job, work or service to be performed;
- ii) the employees recruited, supplied or placed by such subcontractor are performing activities which are directly related to the main business of the principal; or
- iii) the subcontractor does not exercise the right to control over the performance of the work of the contractual employee.

As used in this Code, "substantial capital and investment" in subcontracting arrangements refers to tools, equipment, implements, machineries and work premises, actually and directly used by the subcontractor in the performance or completion of the job, work or service contracted out. The use of the subcontractor of the equipment, facilities, machineries, and tools of the principal is an indication that the subcontractor has no substantial capital and investment. The existence of capital stocks and subscribed capitalization in relation to corporations engaged in subcontracting does not by itself constitute substantial capital and investment.

As used in this Code, the "right to control" in subcontracting arrangements shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

**Article 4. Prohibitions.** Article 106- is hereby inserted in Presidential Decree No. 442 as follows:

**Article 106-C. Prohibitions in Subcontracting Arrangements.** Regardless of compliance with the immediately preceding Article, the following are hereby declared prohibited for being contrary to law or public policy:

- (a) Engaging or maintaining by the principal of subcontracted employees in excess of 10% of the principal's total workforce.

- (b) Contracting out of a job, work, service, or position when not justified by the exigencies of the business and the same results in the termination of regular employees or reduction of work hours or reduction or splitting of the bargaining unit.
- (c) Contracting out of job, work, service, or position which had previously been declared redundant or subject of retrenchment.
- (d) Contracting out of work with a "cabo". For this purpose, "cabo" refers to a person or group of persons except a legitimate labor organization which, with or without any monetary or other consideration, supplies workers to an employer, whether in the capacity of an agent of the employer or as an ostensible independent contractor.
- (e) 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 instances:
  - i) 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 or of the subcontractor;
  - ii) 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 or welfare benefits; or a quitclaim releasing the principal, subcontractor from any liability as to payment of future claims; and
  - iii) Requiring him to sign a contract fixing the period of employment to a term shorter than the term of the contract between the principal and the 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;
- (f) Contracting out of a job, work or service through an in-house agency which refers to a
  - a. subcontractor engaged in the supply of labor which is owned, managed or controlled by the principal; or
  - b. subcontractor in which the principal owns or otherwise represents any share of stock; or
  - c. subcontractor which operates solely for the principal.
- (g) Contracting out of a job, work or service directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.
- (h) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self organization as provided in Art. 248 (c) of the Labor Code, as amended.

**Article 5. Registration of Subcontractors.** Article 106-D is hereby inserted in Presidential Decree No. 442 as follows:

**Article 106 – D. Registration of Subcontractors.**

1) *Mandatory registration.* It shall be mandatory for all persons or entities acting as subcontractors to register under a registration system hereby established to govern contracting arrangements and to be implemented by the Regional Offices of the Department of Labor and Employment.

Non-registered persons or entities acting as subcontractors shall be deemed as labor-only contractors. Mere registration, without a showing of compliance with all requirements for legitimate subcontracting and avoidance of all prohibitions of subcontracting, shall not indicate legitimate subcontracting.

2) *Requirements for registration.* A subcontractor may be listed in the registry of subcontractors upon completion and submission of an application form provided by the Department. In the application form, the applicant subcontractor shall provide the following information:

- (a) The name and business address of the applicant and the area or areas where it seeks to operate;
- (b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or union;
- (c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;
- (d) The number of regular workers; the list of clients, if any; the number of personnel assigned to each client, if any and the services provided to the client;
- (e) The description of the phases of the contract and the number of employees covered in each phase, where appropriate; and
- (f) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a union, or copy of the latest ITR if the applicant is a sole proprietorship.

The application shall be supported by:

- (a) A certified copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a union; and
- (b) A certified copy of the license or business permit issued by the local government unit or units where the subcontractor operates.

The application shall be verified and shall include an undertaking that the subcontractor shall abide by all applicable labor laws and regulations.

3) *Filing and processing of applications.* The application and its supporting documents shall be filed in triplicate in the Regional Offices where the applicant principally operates. No application for registration shall be accepted unless all the foregoing requirements are complied with. The subcontractor

shall be deemed registered upon payment of a registration fee to be determined by the Regional Office.

Where all the supporting documents have been submitted, the Regional Office may deny or approve the application within seven (7) working days after its filing.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant, retain one set for its file, and transmit the remaining set to the Bureau of Local Employment. The Bureau shall devise the necessary forms for the expeditious processing of all applications for registration.

4) *Annual Reporting of Registered Contractors.* The subcontractor shall submit in triplicate its annual report using a prescribed form to the appropriate Regional Office not later than the 15th of January of the following year. The report shall include:

- (a) A list of contracts entered with the principal during the subject reporting period;
- (b) The number of workers covered by each contract with the principal;
- (c) A sworn undertaking that the benefits from the Social Security System (SSS), the Home Development Mutual Fund (HDMF), PhilHealth, Employees Compensation Commission (ECC), and remittances to the Bureau of Internal Revenue (BIR) due its contractual employees have been made during the subject reporting period.

The Regional Office shall return one set of the duly-stamped report to the subcontractor, retain one set for its file, and transmit the remaining set to the Bureau of Local Employment within five (5) days from receipt thereof.

5) *Delisting of contractors or subcontractors.* The Regional Director shall cancel the registration of subcontractors based on any of the following grounds:

- (a) Non-submission of contracts between the principal and the subcontractor when required to do so;
- (b) Non-submission of annual report;
- (c) Engagement in labor-only contracting;
- (d) Violation of the prohibited activities provided by this Code;
- (e) Non-compliance with labor standards and working conditions.

6) *Renewal of registration of subcontractors.* After its initial registration, every subcontractor shall apply for renewal of registration every calendar year on or before January 31. Failure to do so results in cancellation of the previous registration without need for any act on the part of the Regional Director. For this purpose, the Tripartite Industrial Peace Council (TIPC) as created under Executive Order No. 49, shall serve as the oversight committee to verify and monitor the following:

- (a) Engaging in allowable contracting activities; and
- (b) Compliance with administrative reporting requirements.

**Article 6. Duty to Produce Contract.** Article 106-E is hereby inserted in Presidential Decree No. 442 as follows:

**Article 106-E. Duty to produce copy of contract.** The principal or subcontractor shall produce a copy of the contract between the principal and the contractor in the course of inspection. The subcontractor shall also produce a copy of the contract of employment of subcontracted workers when directed to do so by the Regional Director or his authorized representative.

A copy of the contract between the subcontracted employee and the subcontractor shall be furnished the certified bargaining agent, if there is any.

**Article 7. Grounds for Cancellation.** Article 239 of Presidential Decree No. 442 is hereby amended to read as follows:

**ART. 239. Grounds for cancellation of union registration.** - The following shall constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification and the list of members who took part in the ratification;

(b) Failure to submit the documents mentioned in the preceding paragraph within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;

(c) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election;

(d) Failure to submit the annual financial report to the Bureau within thirty (30) days after the closing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself;

[(e) Acting as a labor contractor or engaging in the "cabo" system, or otherwise engaging in any activity prohibited by law; ]

(e) [(f)] Entering into collective bargaining agreements which provide terms and conditions of employment below minimum standards established by law;

(f) [(g)] Asking for or accepting attorney's fees or negotiation fees from employers;

(g) [(h)] Other than for mandatory activities under this Code, checking off special assessments or any other fees without duly signed individual written authorizations of the members;

(h) [(i)] Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau; and

(i) [(j)] Failure to comply with requirements under Articles 237 and 238.

**Article 8. Unfair Labor Practice.** Article 248 of Presidential Decree No. 442 is hereby amended to read as follows:

**ART. 248. Unfair labor practices of employers.** - It shall be unlawful for an employer to commit any of the following unfair labor practice:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by MEMBERS OF THE BARGAINING UNIT when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

**(J) TO VIOLATE ARTICLE 106 OR ENGAGE ANY SUBCONTRACTOR WHO VIOLATES ARTICLE 106 OF THIS CODE.**

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

**Article 9. Penalties.** Article 288 of Presidential Decree No. 442 is hereby amended to read as follows:

**ART. 288. Penalties.** - Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

ANY PRINCIPAL OR SUB-CONTRACTOR WHO VIOLATES ARTICLES 106, 106-A, 106-B, 106-C, 106-D AND 106-E SHALL BE SOLIDARILY LIABLE TO INDEMNIFY EACH SUBCONTRACTED EMPLOYEE NO LESS THAN P50,000.00 WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH SUBCONTRACTED EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT.

In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance.

**Article 10. Separability provisions.** If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

**Article 11. Repealing clause.** Article 107 of the Labor Code as amended is hereby expressly repealed. All other provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are hereby repealed.

**Article 12. Effectivity.** This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.