

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City  
**17<sup>th</sup> CONGRESS**  
First Regular Session

House Bill No. **5899**



Introduced by **Representative WES GATCHALIAN**

**EXPLANATORY NOTE**

**Section 3, Article XII** of the Constitution in bold letters declare the rights of labor:

"The State shall afford **full protection to labor**, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. They shall be entitled to **security of tenure, humane conditions of work, and a living wage**. They shall also participate in **policy and decision-making processes** affecting their rights and benefits as may be provided by law."

When we enshrined these rights in the constitution, we as a people made a solemn commitment to guarantee that these will be enjoyed by the working force of our country. When we enshrined these rights in our constitution, we are saying that these rights are now beyond dispute, not subject to any debates or controversies. These rights are immutable and these rights we should uphold and with vigor fight for. This therefore brings me to the subject of this bill which is to end a plague which has for so long been the bane of labor in the Philippines – Contractualization.

For so long, employers have been able to get away with not providing the proper benefits and just due to employees enshrined in our constitution and our statutes to people who perform work for them by the simple exigency of **contracting out labor**. The approach is to not create an employer-employee relationship, thus barring the application of the laws regarding labor standards as to said employer. As an aside, the author of this bill is not oblivious or naïve to the fact that business exigencies would at times necessitate the contracting out of certain work. There is also a societal utility in the idea of business specialization whereby products are improved as they are more efficiently produced, the benefits of which redounding to the community as a whole. And of course, it is definitely the right of capital owners to do and decide with their businesses what they wish. All these considerations notwithstanding however, it cannot be that they override, outweigh, and defeat the rights of labor. The old adage remains true that the rights of one person ends when the rights of another person begins.

In view of all that was discussed above, the approach of this bill is to strike the balance between the competing rights of capital and labor by limiting the positions which can be contracted out to those positions which are not considered to be *regular* positions. This to the author is a proper compromise as on the one hand, employers would still be allowed to contract out business processes which are not core thus allowing the interest of specialization to kick in, while on the other hand ensuring that those laborers who perform for them functions which are necessary and beneficial to their usual business or trade would be enjoying the full benefits of employment.

In conclusion I harken back to the commitment of the president to put an end to *endo*. A year after his ascension to the presidency the mandate is still as loud as ever. We in congress should take this onus as well as we turn into reality with the laws that we enact the dreams and visions of our people as enshrined in the constitution.

**HON WES GATCHALIAN**  
Representative  
1<sup>ST</sup> District, Valenzuela City

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**AN ACT**  
**PROHIBITING THE SUBCONTRACTING**  
**OF POSITIONS WHICH ARE REGULAR AS DEFINED**  
**BY ARTICLE 295 OF PD 442 AS AMENDED**  
**AMENDING FOR THIS PURPOSE**  
**ARTICLE 106 OF PD 442 OTHERWISE KNOWN**  
**THE LABOR CODE OF THE PHILIPPINES**

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

**Section 1.**

Article 106 of the Labor Code shall hereby be 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 and Employment 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 purposes 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 workers in the same manner and extent as if the latter were directly employed by him.

**PROVIDED THAT FOR FUNCTIONS WHICH ARE CONSIDERED REGULAR AS DEFINED BY ARTICLE 295 OF THIS CODE, NO CONTRACTING OUT OF SUCH WORK SHALL BE ALLOWED.**

**Section 2. Repealing Clause.** - All laws, executive orders, presidential decrees or issuances, letter of instruction, administrative orders, rules, and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

**Section 3. Effectivity Clause.** - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved.