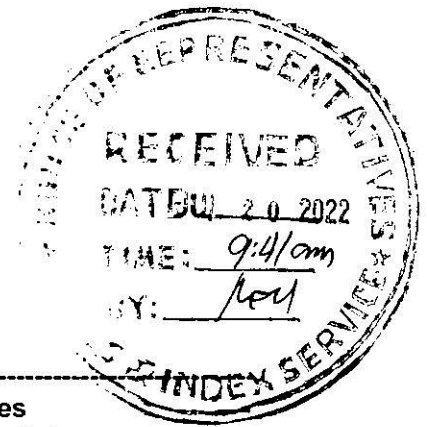


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2173



Introduced by Honorable Representatives
ARLENE D. BROSAS (Gabriela Women's Party);
FRANCE L. CASTRO (ACT Teachers Partylist);
and **RAOUL DANNIEL A. MANUEL** (Kabataan Partylist)

**AN ACT STRENGTHENING THE WORKERS' RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO 442, AS AMENDED,
OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES**

EXPLANATORY NOTE

The 1987 Constitution upholds the full protection to labor. Section 3 of Article XIII provides that "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." Likewise, all workers "shall be entitled to security of tenure, humane conditions of work, and a living wage."

In regular working arrangements, the gains from the enterprise have to be shared between two parties: the workers and the company. In labor/ job contracting however, the gains have to be divided into three parties: the company, the contractor or agency, and the workers. The company has thus to share the gains with another party or parties, the labor contractor or contractors, at the expense of workers. This means lower wages and benefits for the workers. Moreover, the entrance of the labor contractor has muddled the working relationship between the workers and their companies.

Under the 1974 Labor Code of the late dictator Ferdinand Marcos Sr., father of the current President, job contracting was institutionalized in contrast to "labor-only contracting" which was prohibited under Articles 106 to Article 109. In effect, such decree allowed "lawful" contractualization even as such arrangement still violates workers' security of tenure. The same decree also introduced the concept of probationary employment for up to six months, an arrangement which has been abused by employers for the repeated hiring of contractual workers or the "Endo" scheme. Under the Labor Code passed under the Cory Aquino administration (Herrera Law), the same provisions allowing job contracting were carried over.

Former president Rodrigo Duterte vowed to stop the practice of "endo" or labor contractualization as one of his promises during the campaign period. Yet, Duterte stepped down with worse and more widespread flexible labor arrangements in place. Duterte even vetoed an already watered down security of tenure bill to the expected approval of capitalists.

Existing rules and regulations are ineffective in curbing contractualization, and have in fact only further promoted and legitimized contractual employment schemes. In particular, the Department of Labor and Employment (DOLE) Department Order (DO) No. 174-17 issued on March 16, 2017, and Executive Order (EO) No. 51 signed on May 1, 2018, merely

repeated what were provided under previous rules, which merely prohibited labor-only contracting but allowed job contracting.

According to IBON Databank, there are some 8.5 million non-regular workers in private companies and more than 800,000 non-regular workers in government agencies. Sectors which have the most non-regular or agency-hired workers are in construction (7 out of 10 workers), real estate (5 out of 10 workers) and manufacturing (4 out of 10 workers) businesses. According to labor group Kilusang Mayo Uno (KMU), the number of contractual workers exceeds twenty-five (25) million, or 60% of total employed workers.

Labor contractualization blatantly violates the worker's right to security of tenure. Many contractual workers, like in the cases, of Peerless Manufacturing Corporation (PEPMACO), NutriAsia, Sumifru, Zagu, Hanes, Trans-Asia Philippines Manufacturing Corp., Liwayway Marketing Corp., Regent Foods, Soft Touch Corp., Monde-Nissin, Super 8, Coca-Cola, Tanduay, and, most recently, J&T Express have worked for as long as twelve (12) years and have been performing work that are desirable or necessary in the business, yet were never regularized.

Aside from having no security of tenure, contractual workers have no or lower benefits, no social insurance protection, no right to self-organization, no promotion opportunities, have higher withholding taxes, and have become targets of discrimination at work.


In general, contractualization is aimed at pressing down workers' wages and benefits, while further increasing the capitalists' profits. In particular, it is aimed at the following:

- 1) weakening trade unionism through the reduction of the traditional base of trade unions which are permanent workers;
- 2) systematic and efficient co-opting of workers into subscribing to an ideology that attacks workers' organization and unionism (employment vs. union mentality);
- 3) depriving workers of benefits and wages that are due to regular workers and the possibility of improving their working conditions through unionism and collective bargaining;
- 4) allowing capitalists to earn maximum profits and lessen the impact of economic crisis by constant adjustments in current and long-term production costs through wage reduction and elimination of workers' benefits from long-term employment;
- 5) dilution of employer-employee relationships which allow principal employers to escape liability over workers; and
- 6) increased vulnerability of workers to precarious and unsafe working conditions due to neglect of occupational safety and health

With this reality, the State must relentlessly protect and uphold workers' rights to decent and long-term employment. The challenge lies with Congress to uphold the people's rights and interests by passing a law that will truly protect workers' right to security of tenure, declare all forms of contractual employment as illegal and penalize those who will continue to carry out this anti-worker scheme.

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

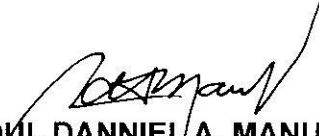
Approved,



ARLENE D. BROSAS
Gabriela Women's Party



FRANCE L. CASTRO
ACT Teachers Partylist



RAOUL DANNIEL A. MANUEL
Kabataan Partylist

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**AN ACT STRENGTHENING THE WORKERS' RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PUPOSE PRESIDENTIAL DECREE NO 442, AS AMENDED,
OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES**

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

Section 1. This law shall be known as the "PRO-WORKER SECURITY OF TENURE ACT OF 2022."

Section 2. Article 106 of the Labor Code of the Philippines is hereby repealed and substituted 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.]

"ARTICLE 106. PROHIBITION OF CONTRACTUALIZATION AND FIXED TERM EMPLOYMENT. ALL FORMS OF CONTRACTUALIZATION AND FIXED TERM EMPLOYMENT ARE HEREBY PROHIBITED. JOB CONTRACTING, OR THE CONTRACTING OUT OF A WORK BY THE PRINCIPAL EMPLOYER TO A CONTRACTOR, MANPOWER AGENCY, COOPERATIVE, IN-HOUSE AGENCY OR A SIMILAR ANALOGOUS ENTITY OR ARRANGEMENT, IS HEREBY PROHIBITED.

DIRECT HIRING OF CONTRACTUAL WORKERS IS ALSO HEREBY PROHIBITED.

VIOLATIONS SHALL CONSTITUTE UNFAIR LABOR PRACTICE AND SHALL BE DEEMED UNLAWFUL AND PENAL IN NATURE.

WHEN THE EMPLOYER CONTRACTS OR SUBCONTRACTS THE PERFORMANCE OF A WORK THAT IS NECESSARY OR DESIRABLE TO ITS BUSINESS OR OPERATIONS, THE WORKER OR WORKERS SUPPLIED BY A THIRD PERSON OR PARTY UNDER THIS PARAGRAPH SHALL BE CONSIDERED REGULAR EMPLOYEES OR EMPLOYEES OF THE PRINCIPAL EMPLOYER, AS PROVIDED FOR IN ARTICLE 295 (280) AND ARTICLE 296 (281), AS AMENDED, OF THE LABOR CODE.

THE BURDEN OF PROOF IN SHOWING THAT THE WORK PERFORMED IS NOT NECESSARY OR DESIRABLE TO THE EMPLOYER'S BUSINESS OR OPERATIONS LIES ON THE EMPLOYER.

THERE IS CONTRACTUALIZATION WHENEVER AN EMPLOYER ENTERS INTO A CONTRACT WITH ANOTHER PERSON FOR THE PERFORMANCE OF THE FORMER'S WORK. THIS INCLUDES WORKING ARRANGEMENTS WHEREBY:

- a. A PRINCIPAL AGREES TO CONTRACT OUT OR FARM OUT WITH A CONTRACTOR, SUBCONTRACTOR, MANPOWER AGENCY, WORKERS' COOPERATIVE, OR A SIMILAR OR ANALOGOUS ENTITY, 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, OR COOPERATIVE WHICH, NOT BEING A PRINCIPAL, CONTRACTS WITH A CONTRACTOR, SUBCONTRACTOR, MANPOWER AGENCY/COOPERATIVE, WORKERS' COOPERATIVE OR ANY OTHER SIMILAR OR ANALOGOUS ENTITY FOR THE PERFORMANCE OF ANY WORK, TASK, JOB OR PROJECT."

Section 3. Articles 107, 108 and 109 of the Labor Code of the Philippines are hereby repealed.

Section 4. Article 294 [279] of the Labor Code of the Philippines is hereby amended to read as follows:

"Art.294 [279]. Security of tenure. [In cases of regular employment, the employer shall not terminate the services of an employee except for] NO EMPLOYEE,

REGARDLESS OF EMPLOYMENT STATUS, SHALL BE DISMISSED WITHOUT just cause OR [when authorized by this Title] WITHOUT DUE PROCESS. [An] A REGULAR employee who is unjustly dismissed from work shall be entitled to IMMEDIATE reinstatement EVEN PENDING APPEAL AND without loss of seniority rights and other privileges AND BENEFITS. ADDITIONALLY, THE ILLEGALLY DISMISSED EMPLOYEE SHALL BE ENTITLED TO [and to his] full backwages AND ACCRUED BENEFITS AND REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY AND COLLECTIVE BARGAINING AGREEMENT, [inclusive of allowances, and to his other benefits or their monetary equivalent] computed from the time his OR HER compensation was withheld up to the time of his OR HER actual reinstatement.

IF REINSTATEMENT IS NO LONGER FEASIBLE DUE TO STRAINED RELATIONSHIPS BETWEEN THE PARTIES, OR, WHEN PRAYED FOR BY THE EMPLOYEE, THE EMPLOYER, OTHER THAN THE PAYMENT OF BACK WAGES, IS ALSO LIABLE TO PAY THE DISMISSED EMPLOYEE OR EMPLOYEES SEPARATION PAY EQUIVALENT TO AT LEAST TWO (2) MONTHS OR TO AT LEAST TWO (2) MONTHS PAY FOR EVERY YEAR OF SERVICE, WHICHEVER IS HIGHER.

FURTHERMORE, WITHOUT PREJUDICE TO THE OTHER PENALTIES THAT MAY BE IMPOSED UNDER THIS CODE, ANY EMPLOYER WHO UNJUSTLY DISMISSED AN EMPLOYEE SHALL BE LIABLE TO PAY A FINE OF DOUBLE THE AMOUNT OF THE EMPLOYEE'S FULL BACKWAGES, INCLUSIVE OF ALLOWANCES, THAT THE DISMISSED EMPLOYEE IS ADJUDGED TO RECEIVE.

A DISMISSAL WITHOUT JUST CAUSE OR WITHOUT OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL. AN EMPLOYEE WHOSE DISMISSAL IS DECLARED ILLEGAL BASED EXCLUSIVELY ON LACK OF PROCEDURAL DUE PROCESS IS ENTITLED TO IMMEDIATE REINSTATEMENT, REASONABLE NOMINAL DAMAGES AND COSTS OF SUIT. THE EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE TERMINATION IS WITH JUST CAUSE AND DUE PROCESS."

Section 5. Article 295 [280] of the Labor Code of the Philippines is hereby amended to read as follows:

"ARTICLE 295 [280]. Regular [and casual] employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee OR WORKER has been engaged to perform activities which are [usually] necessary or desirable in the usual business or trade of the employer. NO EMPLOYMENT WITH A FIXED TERM OR DEFINITE PERIOD SHALL BE ALLOWED EXCEPT IN CASES OF OVERSEAS FILIPINO WORKERS, RELIEVERS WHO ARE TEMPORARY REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE ENGAGEMENTS SHALL NOT EXCEED ONE (1) WEEK, PROJECT AND SEASONAL EMPLOYEES. [except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.]

[An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he/she is employed and his/her

employment shall continue while such activity exists.]

ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED.

ANY STIPULATION IN ANY WRITTEN OR ORAL CONTRACT OF EMPLOYMENT, FOR A DEFINITE OR FIXED PERIOD DESIGNED TO SUBVERT THE PROVISIONS OF THIS ACT AND COVERING WORK ACTIVITIES WHICH ARE NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER AS DEFINED UNDER THIS TITLE SHALL BE NULL AND VOID *AB INITIO* AND THE PERSON OR PERSONS RESPONSIBLE FOR SUCH ACTS SHALL BE PENALIZED IN ACCORDANCE WITH SECTION 10 HEREOF. FURTHER, NOTWITHSTANDING THE VOID CHARACTER OF SUCH CONTRACT, WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT."

Section 6. A new provision, Article 295-A, is hereby inserted in the Labor Code of the Philippines to read, as follows:

"ARTICLE 295-A. EMPLOYER-EMPLOYEE RELATIONSHIP. THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP WHEN THE WORKER IS ENGAGED TO RENDER WORK OR SERVICE UNDER THE CONTROL OR SUPERVISION OF THE EMPLOYER, NOT ONLY AS TO THE END TO BE ACHIEVED, BUT ALSO AS TO THE MANNER, MEANS, AND METHOD IN REACHING THE END. PAYMENT OF REMUNERATION, HOWEVER DENOMINATED, TO THE WORKER ALSO INDICATES THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP."

Section 7. A new provision, Article 295-B, is hereby inserted in the Labor Code of the Philippines to read, as follows:

"ARTICLE 295-B. STATUS OF EMPLOYMENT. ALL EMPLOYEES, EXCEPT THOSE UNDER PROBATIONARY EMPLOYMENT, ARE DEEMED REGULAR, INCLUDING PROJECT AND SEASONAL EMPLOYEES.

ANY PROVISION AND EMPLOYMENT CONTRACTS FIXING THE PERIOD OF EMPLOYMENT SHALL BE VOID; AND THE EMPLOYEE SO ENGAGED SHALL AUTOMATICALLY BE DEEMED A REGULAR EMPLOYEE OF THE EMPLOYER.

PROJECT AND SEASONAL EMPLOYEES ARE REGULAR FOR THE DURATION OF THE PROJECT OR SEASON, AS THE CASE MAY BE. FOR THIS PURPOSE, PROJECT EMPLOYMENT REFERS TO AN EXISTING PROJECT OR UNDERTAKING THE NATURE OF WHICH IS TEMPORARY AND THE COMPLETION OR TERMINATION HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON AND SHALL ONLY BE APPLICABLE IN AGRICULTURAL WORK. IN PROJECT AND SEASONAL EMPLOYMENT, WORKERS ARE CALLED TO WORK FROM TIME TO TIME AND TEMPORARILY LAID-OFF DURING THE COMPLETION OF THE PROJECT OR OFF-SEASON, BUT ARE IN THE WORK POOL ON LEAVE WITH OR WITHOUT PAY STATUS IN BETWEEN PROJECTS OR SEASONS. SEASONAL WORKERS SHALL HAVE THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK, OR PROJECT, WHICH IS THE SUBJECT MATTER OF HIS/ HER EMPLOYMENT.

ALL OTHER FORMS OF EMPLOYMENT ARE PROHIBITED AND WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT."

Section 8. Article 296 [281] of the Labor Code of the Philippines is hereby amended to read as follows:

“Art. 296 [281]. Probationary employment. Probationary employment shall not exceed six (6) months from the FIRST DAY OF SERVICE OF AN EMPLOYEE [date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period]. THIS PROVISION APPLIES TO ALL WORKERS OR EMPLOYEES, REGARDLESS OF THE NATURE OF EMPLOYMENT, CONTINUOUS OR BROKEN.

THE RIGHTS, TERMS AND CONDITIONS OF EMPLOYMENT OF PROBATIONARY EMPLOYEE SHALL NOT BE LOWER THAN THE MINIMUM STANDARDS SET BY LAWS OR REGULATIONS.

The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall AUTOMATICALLY be considered a regular employee.”

Section 9. Investigation and Enforcement. - The Department of Labor and Employment (DOLE) shall have the authority to investigate and require the keeping of records necessary for the administration of this Act. It shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this Act.

Section 10. Penalty. - Any violation of this Act shall be punished with a fine of not less than one million pesos (P1,000,000.00) but not more than ten million pesos (P10,000,000.00), or imprisonment of not less than six (6) months but not more than three (3) years, or both, at the discretion of the court.

The employer, contractor and subcontractor shall be solidarily liable to the employee or employees. No waiver or affidavit of desistance shall prevent the filing of complaints nor derail the proceedings against the employer, contractor and subcontractor.

Furthermore, a corporation or business entity which violates this Act shall have its business permit suspended for one (1) month to three (3) years for its first offense, and shall have its business permit cancelled for the second offense. If the offense is committed by a corporation, trust, firm, partnership or association or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association or entity.

Moreover, the employer and the contractor or subcontractor shall be solidarily liable to indemnify each contractual employee with no less than Seventy-five Thousand Pesos (P75,000.00) without prejudice to other monetary awards to which such employee may be entitled such as backwages, monetary claims and other benefits under an applicable collective bargaining agreement or company policy, whether written or otherwise.

Section 11. Separability Clause. - Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

Section 12. Repealing Clause. - All laws, presidential decrees, executive orders, rules and regulations, other issuances, and parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed and modified accordingly.

Section 13. Effectivity Clause. - This Act shall take effect fifteen (15) days after publication in the Official Gazette or in any newspaper of general circulation.

Approved,