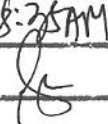


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City
SEVENTEENTH CONGRESS
First Regular Session
House Bill No. **1857**

HOUSE OF REPRESENTATIVES	
RECEIVED	
DATE:	25 JUL 2016
TIME:	8:35AM
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REGISTRATION UNIT BILLS AND INDEX SERVICE	

Introduced by **Hon. Sol Aragon**

EXPLANATORY NOTE

The Constitution, Article 13, Section 3, provides as follows:

Section 3. 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.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. 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.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

While we have this Constitutional mandate, this protection afforded to labor is not enjoyed by everyone. A big number of businesses are motivated by profit and overlook the rights, safety, health, and security of their employees. They engage in the hiring of contractual employees, 5-5-5- casuals, and other temporary workers whose employment engagements are renewed every five months in circumvention of our labor laws. In effect, these employees are not given their proper wages and benefits no matter their long years in service to their employers. These fly-by-night "contractors" without enough capital exploit

our workers, cheat the government on taxes and fail to contribute to SSS, Pag-ibig, or Philhealth.

It is against this backdrop that we need to strengthen our labor laws to address this circumvention. According to the Labor Code's "Rights of Contractual Employees," contractual employees should also be entitled to the rights and privileges received by regular employees. We thus need to address the rampant victimization of our labor force in the hands of their countrymen. This has forced a lot of them to seek better working conditions abroad, if they are lucky. This bill seeks to make it unlawful for employers to require contractual employees from discharging functions that are currently being performed by regular employees and to outlaw the "5-5-5" labor contract, among others. Under the "5-5-5" scheme, a contractual employee is hired and fired every five months by the employers.

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


SOL ARAGONES
Representative, 3rd District of Laguna

Introduced by **Hon. Sol Aragon**

1 be responsible to the workers in the same manner and extent as if the latter were directly
2 employed by him.

3 SECTION 2. A new Article 106-A of Presidential Decree No. 442, as amended, is
4 hereby provided to read as follows:

5 ARTICLE 106-A. PROHIBITION ON "LABOR-ONLY" CONTRACTING –
6 "LABOR-ONLY" CONTRACTING IS HEREBY DECLARED PROHIBITED.

7
8 FOR THIS PURPOSE, "LABOR-ONLY" CONTRACTING SHALL INCLUDE
9 ARRANGEMENTS WHERE:

- 10
11 I. A MANPOWER AGENCY RECRUITS, SUPPLIES, OR PLACES ITS HIRES
12 TO A PRINCIPAL TO PERFORM JOBS NECESSARY, DESIRABLE, OR
13 DIRECTLY RELATED TO THE MAIN BUSINESS OF THE PRINCIPAL; OR
14
15 II. A WORKERS' COOPERATIVE ADMITS WORK APPLICANTS TO BECOME
16 ITS MEMBERS WHO ARE FARMED OUT TO PERFORM THE JOBS
17 NECESSARY, DESIRABLE, OR DIRECTLY RELATED TO THE MAIN
18 BUSINESS OF THE PRINCIPAL, AND
19
20 III. THE PERSONNEL OF THE PRINCIPAL, TO WHERE THE HIRES OF THE
21 MANPOWER AGENCY OR THE MEMBERS OF THE WORKERS'
22 COOPERATIVE WERE PLACED, EXERCISE DIRECT CONTROL AND
23 SUPERVISION OVER THEM AS REGARDS THE METHOD AND MEANS
24 TO PERFORM THE JOB AND IN ACHIEVING ITS DESIRED RESULTS.

25 SECTION 3. A new Article 106-B of Presidential Decree No. 442, as amended, is
26 hereby provided to read as follows:

27 ARTICLE 106-B. *OTHER PROHIBITIONS*. – NOTWITHSTANDING ARTICLES
28 106 AND 106-A OF THIS CODE, THE FOLLOWING ARE HEREBY DECLARED
29 PROHIBITED FOR BEING CONTRARY TO LAW OR PUBLIC POLICY:

1 I. CONTRACTING OUT OF JOBS, WORKS, OR SERVICES WHEN NOT
2 DONE IN GOOD FAITH AND NOT JUSTIFIED BY THE EXIGENCIES OF
3 THE BUSINESS, SUCH AS THE FOLLOWING:

4 (1) CONTRACTING OUT OF JOBS, WORKS, OR SERVICES WHEN THE
5 SAME RESULTS IN THE TERMINATION OR REDUCTION OF
6 REGULAR EMPLOYEES OR REDUCTION OF WORK HOUR SOR
7 REDUCTION OR SPLITTING OF THE BARGAINING UNIT.

8 (2) CONTRACTING OUT OF WORK WITH A "CABO".

9 (3) TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION
10 OR LACK OF BARGAINING STRENGTH OF THE CONTRACTOR'S
11 EMPLOYEES, OR UNDERMINING THEIR SECURITY OF TENURE
12 OR BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF
13 REGULAR EMPLOYMENT, IN ANY OF THE FOLLOWING
14 INSTANCES:

15 i. REQUIRING THEM TO DISCHARGE FUNCTIONS WHICH
16 ARE CURRENTLY BEING PERFORMED BY THE REGULAR
17 EMPLOYEES OF THE PRINCIPAL; AND

18 ii. REQUIRING THEM TO SIGN, AS A PRE-CONDITION TO
19 EMPLOYMENT OR CONTINUED EMPLOYMENT, AN
20 ANTEDATED RESIGNATION LETTER; A BLANK PAYROLL;
21 A WAIVER OF LABOR STANDARDS INCLUDING
22 MINIMUM WAGES AND SOCIAL OR WELFARE BENEFITS,
23 OR A QUITCLAIM RELEASING THE PRINCIPAL,
24 CONTRACTOR, OR ITS AGENT, FROM ANY LIABILITY AS
25 TO PAYMENT OF FUTURE CLAIMS.

26 (4) CONTRACTING OUT OF A JOB, WORK, OR SERVICE THROUGH
27 AN IN-HOUSE AGENCY.

28 (5) CONTRACTING OUT OF A JOB, WORK, OR SERVICE THAT IS
29 NECESSARY OR DESIRABLE, OR DIRECTLY RELATED TO THE
30 BUSINESS OR OPERATION OF THE PRINCIPAL BY REASON OF
31 AS STRIKE OR LOCKOUT WHETHER ACTUAL OR IMMINENT.

32 (6) CONTRACTING OUT OF A JOB, WORK, OR SERVICE BEING
33 PERFORMED BY UNION MEMBERS WHEN SUCH WILL
34 INTERFERE WITH, RESTRAIN, OR COERCE EMPLOYEES IN THE

1 EXERCISE OF THEIR RIGHTS TO SELF-ORGANIZATION AS
2 PROVIDED UNDER ARTICLE 248(C) OF THE LABOR CODE, AS
3 AMENDED.

4 (7) REPEATED HIRING OF EMPLOYEES UNDER AN EMPLOYMENT
5 CONTRACT OF SHORT DURATION OR UNDER A SERVICE
6 AGREEMENT OF SHORT DURATION WITH THE SAME OR
7 DIFFERENT CONTRACTORS, WHICH CIRCUMVENTS THE LABOR
8 CODE PROVISIONS ON SECURITY OF TENURE.

9 (8) REQUIRING EMPLOYEES UNDER A SUBCONTRACTING
10 ARRANGEMENT TO SIGN A CONTRACT FIXING THE PERIOD OF
11 EMPLOYMENT TO A TERM SHORTER THAN THE TERM OF THE
12 SERVICE AGREEMENT, UNLESS THE CONTRACT IS DIVISIBLE
13 INTO PHASES FOR WHICH SUBSTANTIALLY DIFFERENT SKILLS
14 ARE REQUIRED AND THIS IS MADE KNOWN TO THE EMPLOYEE
15 AT THE TIME OF ENGAGEMENT.

16 (9) REFUSAL TO PROVIDE A COPY OF THE SERVICE AGREEMENT
17 AND THE EMPLOYMENT CONTRACTS BETWEEN THE
18 CONTRACTOR AND THE EMPLOYEES DEPLOYED TO WORK IN
19 THE BARGAINING UNIT OF THE PRINCIPAL'S CERTIFIED
20 BARGAINING AGENT TO THE SOLE AND EXCLUSIVE
21 BARGAINING AGENT.

22 (10) ENGAGING OR MAINTAINING BY THE PRINCIPAL OF
23 SUBCONTRACTED EMPLOYEES IN THE EXCESS OF THOSE
24 PROVIDED FOR IN THE APPLICABLE COLLECTIVE BARGAINING
25 AGREEMENT OR AS SET BY THE INDUSTRY TRIPARTITE
26 COUNCIL.

27 II. CONTRACTING OUT JOBS, WORKS, OR SERVICES ANALOGOUS TO
28 THE ABOVE WHEN NOT DONE IN GOOD FAITH AND NOT JUSTIFIED
29 BY THE EXIGENCIES OF THE SERVICE.

30 SECTION 4. A new Article 106-C of Presidential Decree No. 442; as amended, is

31 hereby provided to read as follows:

1 ARTICLE 106-C. IN ALL CASES WHERE "LABOR-ONLY" CONTRACTING IS
2 PRESENT, THE PRINCIPAL SHALL IPSO FACTO BE DEEMED THE DIRECT
3 EMPLOYER OF THE AFFECTED EMPLOYEES WHO WILL BE CONSIDERED
4 REGULAR EMPLOYEES RETROACTING TO THE DATE WHEN THEY WERE
5 INITIALLY HIRED, AGREEMENTS TO THE CONTRARY NOTWITHSTANDING,
6 WITHOUT PREJUDICE TO ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE CASE
7 AGAINST THE LABOR-ONLY CONTRACTOR AND THE PRINCIPAL.

8
9 SECTION 5. A new Article 280-A of Presidential Decree No. 442, as amended, is
10 hereby provided to read as follows:

11 ARTICLE 280-A. EXCEPT FOR ACTIVITIES WHICH ARE COVERED BY
12 ALLOWABLE CONTRACTING ARRANGEMENTS, EMPLOYEES WHO HAVE BEEN
13 HIRED REPEATEDLY BY THE SAME GROUP OF COMPANIES, THE PARENT AND
14 THE SUBSIDIARY COMPANIES, OR BY COMPANIES WITH INTERLOCKING
15 DIRECTORS, OFFICERS, AND/OR MAJORITY STOCKHOLDERS TO EITHER
16 PERFORM THE SAME OR DIFFERENT JOBS SHALL BE CONSIDERED REGULAR
17 EMPLOYEES FROM THE DATE WHEN THEY WERE FIRST HIRED, WHETHER
18 SUCH SERVICE IS CONTINUOUS OR BROKEN.

19
20 SECTION 6. *Implementing Rules and Regulations.* – Within ninety (90) days from
21 the effectivity of this Act, the Department of Labor and Employment shall promulgate the
22 implementing rules and regulations necessary to carry out the provisions of this Act.

23 The Secretary shall submit a report to the House of Representatives and the Senate,
24 prior to, but in no event later than, December thirty-first, in the year following enactment of
25 this Act, and annually thereafter, on the status of the implementation and enforcement of this
26 amendment.

27 SECTION 7. *Non-impairment of existing contracts; Non-diminution of benefits.* –
28 Subject to the provisions of Articles 106-109 of Presidential Decree No. 442 as amended, the
29 applicable provisions of the Civil Code and existing jurisprudence, nothing in this Act shall
30 impair the rights or diminish the benefits being enjoyed by the parties to existing contract or
31 subcontracting arrangements.

1 SECTION 8. *Separability Clause.* – If any provision or part hereof is held invalid or
2 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
3 valid and subsisting.

4 SECTION 9. *Repealing Clause.* – Any law, presidential decree or issuance, executive
5 order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent
6 with the provisions of this Act is hereby repealed, modified, or amended accordingly.

7 SECTION 10. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
8 publication in at least two (2) newspapers of general circulation.

Approved,