Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 3769

Introduced by REPRESENTATIVE ARTHUR C. YAP

EXPLANATORY NOTE

Presidential Decree 442, otherwise known as the Labor Code of the Philippines, as amended, attempts to protect non-regular workers by providing for the solidary liability of the principal and the labor-only contractor for the former's unpaid wages.

Thereafter, the Labor Code was amended by P.D. No. 570-A, Section 22 of which is the predecessor of what is now Article 106 of the Labor Code, which provides:

"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 contractingout 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."

Over four decades later, the wording has remained the same, despite the many interpretations and amendments brought by various department orders and the unresolved confusion as to the meanings of "contractor" and "subcontractor."

Where an entity is declared to be a labor-only contractor, the employees supplied by said contractor to the principal employer become regular employees of the latter. Having gained regular status, the employees are entitled to security of tenure and can only be dismissed for just or authorized causes and after they had been afforded due process.

Despite these gains, there must still be a finding from labor arbiters that labor-only contracting existed before workers can claim reinstatement and backwages. Even then, it is possible that workers would still be unable to claim the benefits granted by the labor tribunals and the courts.

According to DOLE, more and more companies are engaged in contractualization. These companies include those in manufacturing, hotels, restaurants and fast food, and retail sectors.

It was reported that the number of registered companies that are considered principal owners reached more than 26,000 – and they contract employees from a registered number of more than 5,000 contractors.

However, contractualization per se is not bad. It is a perfectly valid and useful employment mode and if done right, it has benefits for employer and employee alike.However, there are two main ways wherein a perfectly legal concept like contractualization is abused.

The first one is 'endo' or 'end of contract,' in which a worker is serially re-hired on five month contracts to escape the legal stipulation that an employee must be considered permanent after six months.The second is the underpayment of contractual workers, which happens two ways. Employees are often misclassified in order to qualify them for a lower minimum wage; and more generally, many employees are paid less on a contractual basis for work that pays significantly better in comparable permanent jobs.

Both of these practices are already prohibited by law, but the law has many loopholes that most of the practitioners are doing them completely legally.

This measure seeks to amend the Labor Code to eliminate these abuses. It particularly amends Articles 106 and 280 so that subcontracting arrangements makes explicit the currently implied requisite of a trilateral relationship between the principal, the subcontractor, and the subcontracted employee and requirement for a written contract, stipulating precisely the terms and conditions for employment of a company's workers, would help

clarify ambiguities with regard to the nature of their employment. These proposed amendments will help to ensure that employers who decide to hire employees on a contractual basis will also be required to clearly stipulate in such contracts the particular type of contractual relationship established. This premise is anchored on a real situation in the labor force that *not all* employees can be employed with a regular status on establishments, and that there may exist situations and events where employees may be hired for jobs with seasonal nature, or projects that terminate or ends at specific period of time, special events like conventions, exhibits and related activities that are time-bound.

The amendments shall also cover these type of workers, including those that are in service with the Government who are not qualified to be conferred with regular or temporary appointments in the Civil Service but who functions are deemed necessary to deliver or support delivery of essential government services to the general public; and empower these type of workers who are left behind by the "regularization" phenomenon with equal if not more than sufficient protection and social safety nets that are provided to and enjoyed by regularly-situated type of workers, minus the security of tenure of regular employees.

This will also enable labor mobility to a protected workforce and enable especially the first-entrants to the labor force, new graduates and even unskilled, skilled or partly-skilled workers to move between employers, place and venue of work, or to areas that provide alternative employment opportunities outside of the usual concentration on urbanized centers.

By establishing employment relationships between the employer and the regular employee, the direct employer and the contractual employee, and the subcontractor and the subcontracted employee, the lines of accountability are determined, making it easier for employees to pursue their claims for benefits against the appropriate party.

Also, the prohibitions on labor-only contracting are retained, and its definitions concretized to ensure the protection of subcontracted employees from exploitative employment regimes, which are utilized by principals to circumvent laws on the granting of benefits, the exercise of the freedom of association and collective bargaining, and the acquisition of security of tenure.

Under these proposed amendments, the doctrine laid out in jurisprudence that labor-only contractors are mere agents of the principal is wholly retained. What is made express is that, once a labor-only contracting arrangement is found, the subcontracted employees are automatically deemed to be regular employees of the principal.

Moreover, these amendments will entitle a non-regular employee to be paid at least five percent (5%) higher than the required minimum wage and shall already be entitled to all the benefits of a regular employee as provided for in Book 3 of the Labor Code, as amended, as well as the 13th month pay

and other benefits as provided by law. Same as a minimum wage earner, the income of these non-regular employees shall also be tax exempt. These monetary benefits shall be included in the payment of the employee's monthly salary on a pro-rated basis. However, said non-regular employees shall not be covered by Article 279 and may be removed summarily, with or without cause, by the employer.

With the proposed legislation I believe that the plight of non-regular workers would begin to be relieved.They will be empowered.

Hence, support of this bill is earnestly sought.

ARTHUR C. YAP
Representative

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AN ACT
EMPOWERING NON REGULAR WORKERS, ELIMINATING ABUSIVE CONTRACTUALIZATION PRACTICES AND PENALIZING EMPLOYERS AND CONTRACTORS WHO COMMIT SUCH ABUSES, BY AMENDING FOR THIS PURPOSE BOOK THREE, TITLE TWO AND BOOK SIX, TITLE 1 OF PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

Be it enacted by the Senate and House of Representatives of the Philippines inCongress assembled.

SECTION 1. ***Title.*** This Act shall be known as the "*Labor Force Empowerment Act.*"

SECTION 2. Book III, Title II, chapter III, Article 106 of the Labor Code, as amended is hereby further amended, by adding new articles as follows:

ARTICLE 106.–A 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 SUB-CONTRACTED WORKERS ENGAGED BY THE SUB-CONTRACTOR 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 SUB-CONTRACTOR FOR THE PERFORMANCE OF ANY WORK, TASK, JOB OR PROJECT.

ARTICLE 106-B. PROHIBITION AGAINST LABOR-ONLY SUBCONTRACTING. — ENGAGING IN LABOR-ONLY

SUBCONTRACTING, OR CONTRACTING WITH A LABORONLY SUBCONTRACTOR 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 IS PRESENT:

(A) THE SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL CAPITAL AND INVESTMENT WHICH RELATES TO THE JOB, WORK OR SERVICE TO BE PERFORMED;

(B) THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY SUCH SUBCONTRACTOR ARE PERFORMING ACTIVITIES USUALLY NECESSARY OR DESIRABLE OR DIRECTLY RELATED TO THE USUAL BUSINESS OF THE PRINCIPAL; OR

(C) THE PRINCIPAL HAS THE RIGHT TO CONTROL, WHETHER EXERCISED OR NOT, NOT ONLY THE END TO BE ACHIEVED BUT ALSO THE MANNER AND MEANS TO BE USED IN REACHING THAT END. IN CASES OF LABOR-ONLY CONTRACTING, THE SUBCONTRACTED EMPLOYEES ARE DEEMED REGULAR EMPLOYEES OF THE PRINCIPAL, OTHERWISE, THE SUBCONTRACTED EMPLOYEES ARE DEEMED REGULAR EMPLOYEES OF THE SUBCONTRACTOR OR SERVICE PROVIDER.

SECTION 3. Book VI, Title I, of the Labor Code, as amended, is hereby further amended as follows:

Art. 280. Regular and casual employment. —**IN THE ABSENCE OF A WRITTEN AGREEMENT, AN EMPLOYMENT SHALL BE DEEMED REGULAR FROM THE TIME OF ITS COMMENCEMENT.**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 has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, 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, **IN THE SAME OR SIMILAR POSITION,** whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

PROVIDED FURTHER, THAT A CONTRACTUAL OR CASUAL EMPLOYEE SHALL BE PAID AT LEAST FIVE PERCENT (5%) HIGHER THAN THE REQUIRED MINIMUM WAGE AND SHALL ALREADY BE ENTITLED TO ALL THE BENEFITS OF A

REGULAR EMPLOYEE AS PROVIDED FOR IN BOOK 3 OF PRESIDENTIAL DECREE 442, AS AMENDED,THE 13TH MONTH PAY, AND OTHER BENEFITS OF A REGULAR EMPLOYEE AS PROVIDED BY LAW SUCH AS BUT NOT LIMITED TO, LEAVE PAY, SEVERANCE PAY OF 1 MONTH SALARY OF SALARY FOR EACH YEAR OF SERVICE COMPUTED PRO-RATA PER EACH MONTH OF ACTUAL SERVICE RENDERED, MANDATORY SOCIAL SECURITY, PHILHEALTH AND PAG-IBIG FUND PREMIUM CONTRIBUTIONS THAT MUST BE REMITTED BY EMPLOYER WITHIN THE NEXT 15 DAYS ENDING THE PREVIOUS MONTH OF WORK BY THE EMPLOYEE. THESE BENEFITS SHALL BE INCLUDED IN THE PAYMENT OF THE EMPLOYEE'S MONTHLY SALARY ON A PRO RATED BASIS. INCOME OF SAID EMPLOYEES SHALL ALSO BE TAX EXEMPT.

NEVERTHELESS, EMPLOYEES COVERED BY THE PRECEEDING PARAGRAPH SHALL NOT HAVE THE RIGHT TO SECURITY OF TENURE UNDER ARTICLE 279 SUCH THAT SAID EMPLOYEE MAY REMOVED SUMMARILY, WITH OR WITHOUT CAUSE, BY THE EMPLOYER.

MOREOVER, SAID EMPLOYEE SHALL, UPON THE TERMINATION OF EMPLOYMENT, BE ENROLLED IN ANY TESDA ACCREDITED INSTITUTION FOR THE UPGRADING OF HIS SKILLS, FREE OF CHARGE. THE EXPENSES SHALL BE FULLY SUBSIDIZED BY TESDA.

SECTION 4. Book VI, Title I, of the Labor Code, as amended, is hereby amended by adding a new article as follows:

ARTICLE 280-A. ***INITIAL AND SUBSEQUENT ENGAGEMENTS.*** **– ANY EMPLOYEE ENGAGED FOR A DEFINITE PERIOD OF TIME, PROVIDED THAT SUCH ENGAGEMENT IS COVERED BY A WRITTEN CONTRACT OF EMPLOYMENT SPECIFYING THE RIGHTS, TERMS, AND CONDITIONS OF EMPLOYMENT NOT LOWER THAN THE MINIMUM STANDARD SET BY LAWS OR REGULATIONS, SHALL NOT BE DEEMED A REGULAR EMPLOYEE UPON THE EXPIRATION OF SAID CONTRACT.**

SUBSEQUENT ENGAGEMENT UNDER ANY ARRANGEMENT, WITH OR WITHOUT A WRITTEN CONTRACT, REGARDLESS OF WHETHER THE EMPLOYEE WAS DIRECTLY HIRED OR THROUGH A CONTRACTOR OR THIRD PARTY, WOULD AUTOMATICALLY RENDER THE EMPLOYMENT REGULAR: (I) WHEN THE INITIAL CONTRACT THAT EXPIRED WAS FOR A PERIOD OF AT LEAST SIX (6) MONTHS AND THE WORK IS DESIRABLE TO THE BUSINESS OF THE EMPLOYER, OR (II) WHEN THE WORKER HAS ACCUMULATED AN AGGREGATE PERIOD OF AT LEAST SIX (6) MONTHS FOR SUCCESSIVE PRIOR CONTRACTS OR ARRANGEMENTS OF SHORTER DURATION AND THE WORK IS DESIRABLE TO THE BUSINESS OF THE EMPLOYER.

SUBSEQUENT ENGAGEMENT OF THE SAME EMPLOYEE SHALL BE DEEMED COVERED BY THE PRECEDING PARAGRAPH AND THE EMPLOYEE DEEMED TO HAVE ATTAINED REGULAR EMPLOYMENT IN THE PROPER CASES EVEN WHEN THE NEW EMPLOYER IS A DIFFERENT ENTITY; PROVIDED, THAT THE OWNERSHIP OF AT LEAST TWO-THIRDS (2/3) OF THE TOTAL STOCKHOLDING OR OTHER PROPRIETARY INTEREST OF THE FIRST AND THE SUBSEQUENT ENTITY BELONGS TO ONE AND THE SAME JURIDICAL PERSON OR INDIVIDUAL; OR ONE EMPLOYER EXERCISES OVER THE OTHER EMPLOYER COMPLETE CONTROL OR DOMINATION OF FINANCES, POLICIES, AND BUSINESS PRACTICES.

ARTICLE 280-B. ***PENALTIES FOR NON-COMPLIANCE.*** **– AN EMPLOYER WHO FAILS TO IMPLEMENT ARTICLE 106 AND THE PRECEDING PROVISION, OR WHO INTENDS TO CIRCUMVENT SAID PROVISIONS BY INDICATING OTHERWISE IN THEIR CONTRACT WITH THEIR EMPLOYEE SHALL BE PENALIZED BY A FINE OF FIFTY THOUSAND PESOS (PHP50,000.00) FOR THE FIRST OFFENSE; ONE HUNDRED THOUSAND PESOS (PHP100,000.00) FOR THE THIRD OFFENSE, AND FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) FOR THE THIRD OFFENSE. IN ADDITION, THE EMPLOYER SHALL IMMEDIATELY REGULARIZE THE EMPLOYEE, OR IF REGULARIZATION IS NO**

LONGER FEASIBLE, PAY A SEPARATION FEE TO THE EMPLOYEE EQUIVALENT TO THE LATTER'S THREE MONTHS SALARY."

SECTION 5.*Implementing Rules and Regulations* -The Secretary of Labor and Employment shall promulgate the necessary implementing rules and regulations within one hundred and twenty (120) days from the effectivity of this Act.

SECTION 6. ***Separability Clause*** - If any of the provisions of this Act is declared invalid or unconstitutional, the remaining parts or provisions hereof not affected thereby shall remain in full force and effect.

SECTION 7. ***Repealing Clause.*** - All laws, decrees, executive orders, proclamations, rules and regulations, and issuances, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 6. ***Effectivity Clause.*** - This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved.