

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
First Regular Session



House Bill No. **3802**

Introduced by **REP. MANUEL ANTONIO F. ZUBIRI**

EXPLANATORY NOTE

In a long line of decided cases, the Supreme Court has repeatedly struck down nefarious practices on the part of some quarters in employing machinations and schemes designed to defeat an employee's Constitutionally-guaranteed right to security of tenure and receive the rights and benefits accorded to regular employment such as the right to self-organization and collective bargaining, among others. This Constitutional recognition and protection of an employee's right to security of tenure is the legal grindstone upon which the most progressive pieces of labor legislation has been honed.

Nevertheless and as evidenced by the widespread use of labor contracting even for activities directly related to the business of an employer, a large segment of the labor force has been unduly deprived the legal benefits and protection accorded by regular employment. While the detrimental effects of labor-only contracting upon workers' right to security of tenure has been largely arrested in the case of small contractors, the overly-restrictive definition of labor-only contracting provided under prevailing laws has ironically resulted in the institutional denial of the Constitutionally-guaranteed right to security of tenure to large swaths of workers employed in key industries in the Philippines. While it has been widely argued that this present practice of "acceptable labor-only contracting" promotes widespread employment in the country, it is the submission of this representation that any alleged economic benefit accorded by the "widespread employment" provided by such practice is merely illusory or temporary as the workers whose employment ceases upon the termination of their employment contract of fixed short duration (usually five months) eventually joins the pool of the unemployed.

In light of the declared policy and priority of the President to abolish any and all machinations and schemes designed to defeat the Constitutionally-guaranteed right to security of tenure of workers, this proposed legislation is intended to correct the deficiencies in existing laws which allowed the proliferation of measures whose primary purpose and intent is to prevent a worker from attaining regular employment. However, this proposed legislation recognizes that there remain cases and circumstances where job contracting or service outsourcing is legally-permissible and thus provides the legal framework for the valid practice thereof.

This proposed legislation is grounded upon the basic premise that there can be no true and lasting national progress if the Filipino worker's right to security of tenure is not accorded due recognition and protection under our laws.

Hence, support of this bill is earnestly sought.

MANUEL ANTONIO F. ZUBIRI
Representative
Third District, Bukidnon

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Seventeenth Congress
First Regular Session

3802

House Bill No. _____

Introduced by **REP. MANUEL ANTONIO F. ZUBIRI**

AN ACT
STRENGTHENING WORKERS' RIGHT TO SECURITY OF TENURE BY
EXPANDING THE SCOPE OF PROHIBITED LABOR-ONLY CONTRACTING,
AMENDING THE LABOR CODE OF THE PHILIPPINES,
AND FOR OTHER PURPOSES

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

SECTION 1. **Short Title.** This Act shall be known as the "Security of Tenure Act. of 2016."

SECTION 2. **Labor-only contracting.** Act 106 of the Labor Code shall be amended to read as follows:

"Art. 106. Contractor or sub-contractor.- 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 according with the provisions of this Code.

In the event that the contractor or sub-contractor fails to pay the wages of his employees in according with this Code, the employer shall be jointly and severally 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 right of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting as well as differentiation within these types of contracting, and determine who among the parties involved shall be considered the employer for purpose 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 investment in the form of tools, equipment, machinery, 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 or where an employer reserves the right to control not only the end to be achieved by such activities, but also the manner and means to be used by the worker of the contractor or sub-contractor in reaching that end, notwithstanding any substantial investment on the part of such contractor or sub-contractor in the form of tools, equipment, machineries, work premises, among others. 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. There shall arise a disputable presumption of labor-only contracting

if the activities to be undertaken by the worker of the contractor or sub-contractor is directly related to the principal business of the employer and is undertaken within the business or work premises of the employer.

It shall be unlawful for any employer, contractor, or sub-contractor to engage in "labor-only" contracting. In addition to any penalties or other liabilities that may be prescribed under this Code for its violation of the mandatory prohibition herein, the employer, contractor, and sub-contractor who violate this Section shall be solidarily liable to pay each affected worker an indemnity of not less than PhP50,000.00 per worker. This indemnity shall be without prejudice to the liability of the employer, contractor, and sub-contractor such other penalties and damages that may be prescribed under this Code and other issuances.

SECTION 3. *Repealing Clause.* - Art. PD 442, as amended, otherwise known as the Labor Code of the Philippines, and all other acts, laws, rules and regulations are hereby repealed, modified, or amended accordingly.

SECTION 4. *Separability Clause.* - If any part, section or provision of this Act shall be held invalid or unconstitutional, the other provisions shall not be affected thereby.

SECTION 5. *Effectivity Clause.* - 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.

Approved,