

05 February 2020

**REP. ENRICO A. PINEDA**

Chairperson

Committee on Labor and Employment

House of Representatives

3/F RVM Building, House of Representatives, Quezon City

**Dear Rep. Pineda:**

We are pleased to submit the Department's comments and recommendations on the following Bills:

**House Bill No. 271**

**An Act to Strengthen the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the 'Labor Code of the Philippines'**

**House Bill No. 1018**

**An Act Effectively Authorizing the Department of Labor and Employment to Ban and Avert the Practice of Private Companies of Contractualization of Employment and Any Form of Flexibilization of Labor Thereby Assisting Said Companies Toward a Shift to Regularization of Employment and Security of Tenure for Contractual Workers, Laborers, and Employees**

**House Bill No. 3032**

**An Act Strengthening the Security of Tenure of Workers in the Private Sector, Amending for the Purpose Articles 248, 279, 280, 281 and 288, and Introducing New Articles 106-A, 106-B, 106-C, 106-D, 106-E, 280-A And 280-B to Presidential Decree No. 442, as Amended, Otherwise Known as The Labor Code of the Philippines**

**House Bill No. 3184**

**An Act Strengthening the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the "Labor Code of the Philippines"**

**House Bill No. 3267**

**An Act Regulating the Outsourcing of Work Amending for the Purpose Article 106 of Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines**

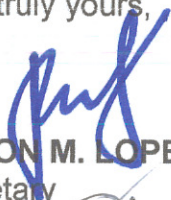
**OFFICE OF THE SECRETARY**

- House Bill No. 3367      **An Act Strengthening Workers Right to Security of Tenure, Amending for the Purpose Articles 106, 107, 108, and 109 of Book III, and Articles 294 [279], 295 [280], 296 [281], and 297 [282] of Book VI Of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, as Amended**
- House Bill No. 3381      **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**
- House Bill No. 4802      **An Act Extending the Maximum Allowable Period of Probationary Employment, Amending for the Purpose Presidential Decree No. 442, Otherwise Known as the "Labor Code of the Philippines," as Amended**
- House Bill No. 4845      **An Act Strengthening the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the "Labor Code of the Philippines"**
- House Bill No. 4892      **An Act Strengthening Workers Right to Security of Tenure and Criminalizing Labor-Only Contracting, Amending For The Purpose Articles 106 to 109 of Book III, Articles 294 [279] to 296 [281] of Book VI, and Articles 303 [288] of Book VII of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, as Amended**

This is without prejudice to the Department's submission of additional comments.

With my best regards.

Very truly yours,

  
**RAMON M. LOPEZ**  
Secretary



DTI Position on

- House Bill No. 271      **An Act to Strengthen the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the 'Labor Code of the Philippines'**
- House Bill No. 1018      **An Act Effectively Authorizing the Department of Labor and Employment to Ban and Avert the Practice of Private Companies of Contractualization of Employment and Any Form of Flexibilization of Labor Thereby Assisting Said Companies Toward a Shift to Regularization of Employment and Security of Tenure for Contractual Workers, Laborers, and Employees**
- House Bill No. 3032      **An Act Strengthening the Security of Tenure of Workers in the Private Sector, Amending for the Purpose Articles 248, 279, 280, 281 and 288, and Introducing New Articles 106-A, 106-B, 106-C, 106-D, 106-E, 280-A And 280-B to Presidential Decree No. 442, as Amended, Otherwise Known as The Labor Code of the Philippines**
- House Bill No. 3184      **An Act Strengthening the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the "Labor Code of the Philippines"**
- House Bill No. 3267      **An Act Regulating the Outsourcing of Work Amending for the Purpose Article 106 of Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines**
- House Bill No. 3367      **An Act Strengthening Workers' Right to Security of Tenure, Amending for the Purpose Articles 106, 107, 108, and 109 of Book III, and Articles 294 [279], 295 [280], 296 [281], and 297 [282] of Book VI Of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, as Amended**
- House Bill No. 3381      **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**
- House Bill No. 4802      **An Act Extending the Maximum Allowable Period of Probationary Employment, Amending for the**

**Purpose Presidential Decree No. 442, Otherwise Known as the "Labor Code of the Philippines," as Amended**

**House Bill No. 4845** **An Act Strengthening the Security of Tenure of Workers, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the "Labor Code of the Philippines"**

**House Bill No. 4892** **An Act Strengthening Workers Right to Security of Tenure and Criminalizing Labor-Only Contracting, Amending For The Purpose Articles 106 to 109 of Book III, Articles 294 [279] to 296 [281] of Book VI, and Articles 303 [288] of Book VII of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, as Amended**

The Department lauds the objectives of the bills that seek to strengthen workers' right to security of tenure and prohibit illegitimate contracting and subcontracting arrangements colloquially known as "endo." We believe in safeguarding and upholding the rights of workers as enshrined in the Constitution and implemented by the Labor Code inasmuch as the country's human resource is one of our sources of competitive advantage. DTI also believes that it is equally important to ensure that investors, locators, and businesses receive a fair return to their investments so that industrial peace and conducive business climate are realized and preserved.

Given the ever-changing nature of the global business landscapes, the Department recognizes the necessity of formulating new measures in accordance with emerging business trends and models driven by new economic factors like the Fourth Industrial Revolution or Industry 4.0, high-speed communication services, new forms of global and domestic governance, and integration, both at regional and global fronts. We also believe that it is crucial to determine a workable balance between job security and flexibility; between management prerogative and workers' rights; and between, business viability and workers' welfare.

Notwithstanding the abovementioned considerations, the DTI would like to highlight the following comments/recommendations on the relevant sections of the various bills on security of tenure:

<b>House Bills</b>	<b>Section</b>	<b>Comment</b>
<i>HB 271 (Sec. 2), HB 3032 (Sec. 1), HB 3184 (Sec. 1), HB 3267 (Sec. 1), HB 3367 (Sec. 2), HB 3381 (Sec. 2), HB 4845 (Sec. 1), and</i>	<i>Contractor and Subcontractor</i>	The Department is of the view that legitimate outsourcing, contracting and subcontracting arrangements should remain and continue. Such arrangements are expressly allowed by the Labor Code and cannot be repealed unless amendments of the law is made.

<p>HB 4892 (Sec. 2)</p>		<p>Also, in view of labor market flexibility wherein some companies would require fewer or more workers depending on the season and market demands, it would still be more viable to hire workers under contracting and subcontracting arrangements to remain competitive.</p> <p>It is also worth noting that these forms of employment arrangements are on the rise in many countries, including our ASEAN neighbors. Countries such as Indonesia, Singapore, Vietnam, and Thailand have their respective legal framework on non-standard forms of employment.<sup>1</sup></p> <p>We also highlight that the practice of labor contractualization has opened a lot of opportunities in the domestic economy, particularly the IT-BPO sector. In fact, because of the rise in demand for outsourced employees in this industry, the minimum entry-level salary for employees with acceptable skill level has increased significantly over the past years. The substantial cost savings for hiring large number of employees on contract basis afford IT-BPO companies more competitive packages to offer their prospective applicants.</p>
<p>HB 3267 (Sec. 3),</p>	<p><i>Conditions for Outsourcing of Work</i></p>	<p>We believe that the law should not put a cap on the number of employees to be hired under contracting and subcontracting arrangements as proposed by the bills.</p> <p>Businesses and management</p>

<sup>1</sup> Serrano, M. R., Marasigan, M. L. C., & Pupos, V. E. V. (2014). *Between flexibility and security: The rise of non-standard employment in selected ASEAN countries*. Jakarta, Indonesia: ASEAN Services Employees Trade Unions Council (ASETUC).

		<p>should be able to exercise their prerogative to determine the number of workers to be hired under flexible work arrangements (i.e., contracting/subcontracting arrangements, seasonal, project and casual employment) inasmuch as they are able to best determine whether it should contract out the performance of some of its work. However, this prerogative should be exercised in good faith, and the contracting out should not result to the circumvention of the law or must not be the result of malicious or arbitrary action.<sup>2</sup> Moreover, flexible hiring policies would be crucial in generating more and better jobs which is the best way to address poverty and move workers from the informal (where bad jobs are) to the formal sector (where good jobs<sup>3</sup> are).</p>
<p><i>HB 271 (Sec. 4), HB 1018 (Sec. 2), HB 3032 (Sec. 8), HB 3184 (Sec. 3), HB 3367 (Sec. 8), HB 3381 (Sec. 4), HB 4845 (Sec. 3), and HB 4892 (Sec. 3)</i></p>	<p><i>Security of Tenure</i></p>	<p>It is vital to ensure that contractual workers have security of tenure and are given their full rights and benefits as permanent employees of the contractor in accordance with the Labor Code, orders, and issuances from DOLE, and the recognition of jurisprudence, where as of now, the rights, privileges and benefits granted to workers are fair and sufficient.</p> <p>The DTI wishes to share that the major difference between DTI's proposed structure and current practice is that regular workers with full benefits have permanent status (vs. current, co-terminus with the project). Thus, the worker must be redeployed to another principal</p>

<sup>2</sup> Temic Automotive Philippines, Inc. vs. Temic Automotive Philippines, Inc. Employees Union-FFW, G.R. No. 186965, 23 December

<sup>3</sup> Good jobs are those found in the formal sector where workers have written employment contracts, receive social insurance from their employers, and are protected from arbitrary dismissal. Bad jobs pay below the wage threshold, not covered by labor regulations, and mainly partial, casual, or temporary in nature (Gerardo Sicat, "Options to improve labor market policies and multiply the good jobs". Philippine Star. June 22, 2016).

		<p>company if the former principal company ends the contract. If no other principal, the worker can enjoy a retirement or separation pay like a regular worker in a company. Moreover, our proposal highlights that retirement benefits or separation pay will be mandatory (vs. currently where only some do this depending on the principals). Normally, big companies would do this and pay little more for their retirement fund). Thus, workers' tenure is secured by the service provider.</p> <p>It is also worth considering the creation of a portable retirement plan for contractual employees hired under contracting and subcontracting arrangements which they are able to bring whenever they forge new contracts (similar to that of the Social Security System).</p>
<p><i>HB 271 (Sec. 5), HB 3032 (Sec. 10), HB 3184 (Sec. 4), HB 3367 (Sec. 9), HB 3381 (Sec. 7), HB 4845 (Sec. 4), and HB 4892 (Sec. 5)</i></p>	<p><i>Regular and Casual Employment</i></p>	<p>While we support further defining and reclassifying the types of employment, we defer to the comments of the DOLE and PSA for the proper nomenclature and classification of various types of employment as proposed by the bills.</p>
<p><i>HB 271 (Sec. 7), HB 3032 (Sec. 13), HB 3184 (Sec. 6), HB 3367 (Sec. 7), HB 4845 (Sec. 6), and HB 4892 (Sec. 7)</i></p>	<p><i>Jointly and Severally Liable</i></p>	<p>In legitimate contracting, the principal is considered as "indirect employer" of his contractor's employees. The employer-employee relationship as created by law was made for a limited purpose, which is to ensure that the employees are paid their wages. Hence, the principal becomes solidarily liable with the contractor if the latter fails to pay the employees' wages even if the principal has paid the workers' wage rates as stipulated in the contract with the contractor.</p>

		<p>DTI supports the proposed measures that stipulate solidary liability of the principal and contractor/subcontractor in cases of non-payment of wages and benefits and violations of the Labor Code. This ensures that workers are rightfully provided with the necessary wages and benefits due them when principals are found to be engaged in labor-only contracting.</p>
--	--	---

The Department suggests the strict implementation of the law on contracting and subcontracting arrangements and close monitoring of these companies to be further strengthened to ensure that worker's rights and welfare are upheld and protected (referring to direct employers or contractors) while guaranteeing that our local businesses and companies remain to be competitive in the global arena. Moreover, we must create and sustain a culture of compliance while strengthening our enforcement program and orienting the people that enforce the law.

Furthermore, we suggest that programs and initiatives to increase workers' productivity, upgrade their skills, including change in mindset and personal development be given priority so they have better opportunities for regularization and employment.

Finally, it is imperative for the government to improve the country's international competitiveness by fostering areas of cooperation and partnership between labor and capital, among others. Only with fair and harmonious relationship between management and labor can we ensure competitiveness of companies in the country and continue attracting investments that will create more jobs and income opportunities for Filipinos.

*Rayapin Chay*

**Bureau of Trade & Industrial Policy Research**

**04 February 2020**

Ref: BTIPR-022020-

/jmaj