

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE
S.B. No. 1747

RECEIVED BY: C

Introduced by Sen. Ramon B. Magsaysay

EXPLANATORY NOTE

Most people look forward to retirement as a moment when they will finally be able to relax and enjoy the pleasure of having more time for themselves and their families, away from the pressures of daily work. But without a dependable retirement plan, they are not assured of being able to enjoy a comfortable and leisurely retirement.

The absence of retirement funds and savings is a critical but underreported national problem. For the year 1998, only 1.25 million people are covered by the GSIS, 19 million people are members of the SSS and approximately 4 million people are covered by the PAG-IBIG Fund. In other words, only about 24.5 million of the 73.13 million Filipinos have some kind of a retirement plan.

In deed, the government is called upon and obligated to develop in the Filipino people sufficient awareness and understanding of the importance of retirement savings and the necessity that everyone start the habit of saving as soon as possible. Sans savings, people will not enjoy the remaining years of their lives due to the financial uncertainties and insecurities that will plague them. It is always best to save and plan, to lay the groundwork at the earliest time possible, for the future. Indeed, there is no substitute for preparedness for the foreseeable and unforeseeable events that will come along.

This proposed measure introduces the Personal Equity Retirement Account (PERA) which we hope will be accepted as an essential and valuable tool in encouraging savings for our people's retirement years.

A PERA is a long-term savings plan designed to achieve a comfortable and financially secure retirement through planned savings, sound investment and tax deferral. Through a PERA, one is encouraged to save because contributions to the savings funds are deductible from taxable income, and earnings of said savings are tax deferred. Funds are taxed only upon withdrawal from PERA.

A PERA is likewise a flexible investment scheme. In case of certain specified emergencies, one can withdraw a portion of his or her money from the PERA with a minimum of inconvenience. In that way it is unlike other pension schemes wherein one's money is locked in and rendered practically inaccessible for immediate and un-programmed needs.

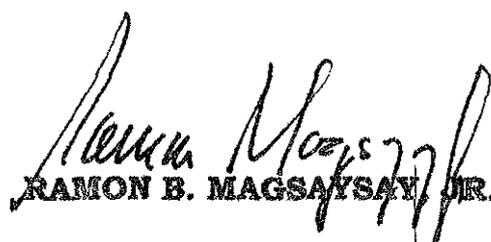
The PERA is a dynamic investment scheme. It can offer facilities to move funds to high levels and take advantage of prevailing market conditions. Investors will also be able to keep track of their funds and

even directly manage their PERAs as an investment portfolio, since PERA investors can always choose suitable arrangements in accordance with their present economic status and future financial objectives.

PERA has likewise been designed to benefit a good part of our working populace who are not members of government insurance funds and who have very limited options. In addition, for the first time, the self-employed will be allowed to participate in a retirement program through a SEP-PERA.

The value of the account is the total of the contributions plus, or minus, the gains or losses thereon. PERAs and SEP-PERAs are not intended to replace SSS or GSIS and are not designed to be used as liquid assets.

In view of the above premises and in order to reverse the long course of neglect on very vital retirement issues, approval of this bill is earnestly sought.


RAMON B. MAGSAYSAY, JR.

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Introduced by Sen. Ramon B. Magsaysay, Jr.

**AN ACT
ESTABLISHING A PROVIDENT PERSONAL SAVINGS PLAN KNOWN AS
THE "PERSONAL EQUITY AND RETIREMENT ACCOUNT OR PERA"**

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

SECTION 1. Short Title - This Act shall be known as the "Personal Equity and Retirement Account (PERA) Act of 2004".

SEC. 2. Declaration of Policy - It is declared the policy of the State to promote retirement plans for persons comprised of voluntary personal savings and investments supported by government incentives.

SEC. 3. Definition of Terms - As used in this Act, unless the context otherwise requires, the following terms shall have the following significance:

- a. "Administration" is an investment house duly authorized by the Securities and Exchange Commission;
- b. "Compensation" is all actual remuneration received for employment of services, or from self-employment, of any type, including, but not limited to fees, salaries, wages, commissions or income derived from the conduct of a trade or business, or from the exercise of a profession, or from providing consulting services, or from distributive shares from the net income of a general professional partnership;
- c. "Contributor" is a person who establishes a PERA or SEP-PERA account with an investment house. The Contributor must be the beneficiary of his or her own PERA or SEP-PERA account;
- d. "PERA" refers to the trust created or organized by a person who is employed by another person or by a company, known as the Trustor or Contributor, for his or her exclusive use and benefit, in which said Trustor or Contributor retains the beneficial ownership of funds he or she deposits therein, as well as the income and earnings thereon from investment of said funds;
- e. "Retirement Age" is the age when a person becomes qualified to receive benefits from the SSS program;
- f. "SEP-PERA" refers to the trust created or organized by a person who is self-employed, known as the Trustor or Contributor, for his or her exclusive use and benefit, in which said Trustor or Contributor retains the beneficial ownership of funds he or she deposits therein, as well as the income and earnings thereon from investment of said funds;
- g. "SSS" is the Social Security System of the Republic of the Philippines;
- h. "Trustee" is a bank or trust company duly authorized by the Bangko Sentral ng Pilipinas, an investment company duly authorized by the

Securities and Exchange Commission, a life insurance company duly authorized by the Office of the Insurance Commission or a pre-need company duly authorized under the terms of the applicable laws. The Trustee holds legal title to the contributions and earnings in a PERA or SEP-PERA administered on behalf of a Trustor until the retirement of the Trustor or the transfer of assets of the trust as provided in this Act; and

- i. "Trustor" is a person who establishes and makes contributions to a PERA or SEP-PERA and who designates a Trustee to administer and manage said account. The Trustor retains beneficial title to contributions, income and earnings in a PERA or SEP-PERA. The Trustor must be the beneficiary of his or her own PERA or SEP-PERA.

SEC. 4. Trust Accreditation and Activity - Investment houses, pre-need companies, and insurance companies shall be accredited as trusts but shall not be required to obtain a separate trust authorization by the Bangko Sentral ng Pilipinas to offer and operate PERA and SEP-PERA accounts. Notwithstanding any provisions of the Pre-Need Plan Code of the Philippines, or any other law to the contrary, pre-need companies shall be required to deposit one hundred percent (100%) of the Contributions to PERA and SEP-PERA accounts into the trust and fund of the company. Expenses and charges of the pre-need company shall be billed to the trust fund which shall then make the necessary disbursements. A summary, prepared by the actuary, of the actuary's annual report regarding the activity of the trust fund shall be sent to each PERA or SEP-PERA holder at the expense of the pre-need company. The summary shall contain, at a minimum, the total contributions received, the total expenses and charges paid, both in absolute number of pesos and as a percentage of contributions, the total earnings and income of the fund, both in absolute pesos and in percentages, and the total value of the fund.

SEC. 5. Separate Asset - PERA and SEP-PERA accounts shall be kept separate from the other assets of Trustee or Administrator and shall not be part of the general assets of a Trustee or Administrator for purposes of bankruptcy.

SEC. 6. Establishment of a PERA - Any person who is employed by another person or company, who is of legal age, who is earning an income and who is a participant in SSS or GSIS may establish a PERA with a Trustee or Administrator.

SEC. 7. Establishment of a SEP-PERA - Any person who is self-employed, who is of legal age, who is earning an income and who is a participant in SSS or GSIS may establish a SEP-PERA with a Trustee or Administrator.

SEC. 8. Qualifying Investment Rules - Notwithstanding any other investment provisions in any other law to the contrary, contributions made to a PERA or SEP-PERA, and the earnings thereon, may be invested only in:

- a. any equity listed on the Philippine Stock Exchange and any corporate or government bond, or commercial paper that is rated by at least two recognized rating agencies in the Philippines;

- b. investments denominated in foreign currencies which currencies are authorized by the Bangko Sentral ng Pilipinas, including the currencies themselves, traded on any recognized exchange, **provided**, that such investments do not exceed seven and one-half percent (7.5%) or whatever is the then current SSS limit on foreign denominated investments. This limit shall be applicable to the aggregate PERA and SEP-PERA assets held by the Trustee or Administrator;
- c. asset backed securities, common trust funds, investment companies (mutual funds and life insurance, annuity and pre-need contracts; and
- d. cash and bank deposits in local currencies and foreign currencies which are authorized by the Bangko Sentral ng Pilipinas.

Specific limits on investment categories shall be the subject of regulations.

SEC. 9. General Investment Rules -

- a. A Contributor who establishes a PERA or SEP-PERA account held by an investment house may self-direct his or her investment, but only after consulting with a broker/dealer. The Contributor, however, retains the authority for the final decision on all investments.
- b. A Trustor or Contributor may give a Trustee or Administrator written authority to make all investment choices without first consulting the Trustor or Contributor.
- c. Investments may be made in life insurance, annuity and pre-need contracts only where the maximum expenses for such contracts do not exceed one and one-half percent (1.5%) of the annual contribution.

SEC. 10. Maximum Annual PERA Contributions -

- a. An employee who participates in an employer retirement plan may make a maximum contribution of P18,000 for the tax year 2001. For each and every tax year thereafter, for which he or she is employed and earning an income, the employee may make a maximum contribution of fifteen percent (15%) of all annual Compensation, **provided**, that the maximum annual contribution shall not exceed fifteen percent (15%) of the SSS annualized average monthly salary credit.
- b. No contributions may be made to a PERA in excess of the deductible amounts.
- c. Employers are not allowed to make contributions to a PERA of an employee.

SEC. 11. Maximum Annual SEP-PERA Contributions -

- a. A self-employed person may make a maximum contribution of P28,000 for the tax year 2001. For each and every tax year thereafter, for which he or she is self-employed and earning an income, the person may make a maximum contribution of twenty-three percent (23%) of total annual Compensation: **provided**, that the maximum annual contribution shall not

exceed twenty-three percent (23%) of the SSS annualized average monthly salary credit.

- b. No contributions may be made to a SEP-PERA in excess of the deductible amounts.
- c. A self-employed person may not make a contribution to his or her SPE-PERA on behalf of his or her own company.

SEC. 12. Income Tax Deductibility - Fifteen percent (15%) of the amount of the contribution shall be deductible from the tax payable on the taxable income of the Trustor or Contributor in the year the contribution is actually made. All investment earnings and income are tax deferred until withdrawn and shall not be subject to any withholding taxes imposed under Section 57, Section 60, and any other applicable section(s), of The National Revenue Code of 1997 (Revenue Code) and Sections 2.57-1 and 2.57-2 (A),(B),(E),(F),(G),(H),(I) and (J) of Revenue Regulations No. 2-98 and any other applicable section(s) of any Revenue Regulation(s): **provided**, that the exemption allowed in Section 62 of the Revenue Code shall not apply and: **provided**, further, that the return required by Section 65 of the Revenue Code shall not be required.

SEC. 13. Taxability - All withdrawals or early withdrawals are taxed as income to the Trustor in the tax year in which the funds are received.

SEC. 14. Early Withdrawals and Penalties - Early withdrawals, withdrawals before Retirement Age, shall be allowed: **provided**, that, All penalties and applicable taxes shall be first withheld from any early withdrawal. A penalty of ten percent (10%) shall be imposed on the total amount of any early withdrawal in addition to the amount of income tax due: **provided**, that no penalty shall be imposed on any early withdrawal of for the following purposes:

- a. used to pay for hospitalization in excess of one hundred and twenty (120) days in any one calendar year;
- b. for a Trustor or Contributor who has been determined to be disabled under Presidential Decree No. 442, as amended (The Labor Code of the Philippines), Republic Act No. 1161 as amended by Republic Act No. 8282, or Republic Act No. 8291 (The Government Service Insurance System Act of 1997);
- c. used to pay for the first family home of the Trustor or Contributor; or
- d. used to pay for colled expenses of the Trustor or Contributor, his or her spouse or any children of the Trustor or Contributor.

Self-employed persons shall be allowed early withdrawals of a maximum of 50% of the balance of their account whether or not a penalty is imposed on the early withdrawal.

SEC. 15. Records and Reporting - The Trustee or Administrator shall keep records for all contributions, earnings, income and total account balances and shall be required to report to the Trustor or Contributor these amounts on a quarterly basis for each calendar year.

SEC. 16. Distributions Upon Retirement - Distributions shall be made upon retirement of the Trustor or Contributor at Retirement

Age. Persons who participate in an employer sponsored retirement plan, may withdraw their assets from a PERA either in a lump sum or in installments as determined by the Trustor or Contributor. For self-employed persons, at least fifty percent (50%) of the assets in a SEP-PERA must be withdrawn in the form of an annuity with a minimum term of five (5) years.

SEC. 17 - Termination -

- a. The Trustor or Contributor may terminate contributions to an account at any time: **provided**, that the assets of the PERA or SEP-PERA are deposited with a new Trustee or Administrator or remain with the existing Trustee or Administrator.
- b. A Trustor or Contributor may hold more than one PERA or SEP-PERA with more than one Trustee or Administrator: **provided**, that the maximum contribution limits are aggregate limits applicable to all PERAs or SEP-PERAs held by the same Trustor or Contributor.
- c. A Trustor or Contributor may not transfer assets from a PERA to a SEP-PERA or from a SEP-PERA to a PERA.

SEC. 18. Assignability - No portion of the assets of a PERA or SEP-PERA may be assigned, alienated, pledged, attacked garnished, levied upon, seized or otherwise encumbered. PERA and SEP-PERA assets shall not be considered assets of the Trustor or Contributor for purposes of bankruptcy or estate taxes.

SEC. 19. Jurisdiction - PERAs and SEP-PERAs shall be under the jurisdiction of a newly created "PERA regulatory authority" composed of one representative, appointed by the head of each of the following which shall have the full authority to adopt, amend and rescind rules and regulations:

- a. Securities and Exchange Commission;
- b. Office of the Insurance Commission;
- c. Bangko Sentral ng Pilipinas;
- d. Bureau of Internal Revenue.

And a Private Sector member appointed by the President of the Philippines upon the recommendation of the Secretary of Finance.

The PERA regulatory authority is hereby authorized to create a staff of qualified personnel.

All decisions of the PERA regulatory shall be arrived at by majority vote.

SEC. 20. Separability Clause - If any provision of this Act is declared or found to be invalid by a court of competent jurisdiction, the other provisions not affected thereby shall remain valid and in full force and effect.

SEC. 21. Repealing Clause - All laws, decrees, orders, rules and regulations or part thereof, inconsistent with this Act are hereby amended or modified accordingly.

No law hereafter enacted shall repeal any of the provisions of this Act unless it is provided therein that the same is applicable to this Act by specifically stating its name and Section number(s).

SEC. 22. Effectivity - This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

Approved _____