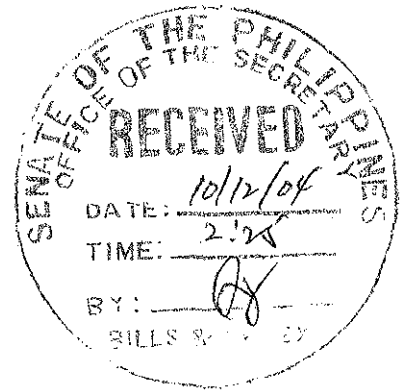


13TH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
S.B. NO. 1821



Introduced by
Senator Edgardo J. Angara

EXPLANATORY NOTE

Retirement is the culmination of a person's endeavors. It is the time when he is supposed to relax and enjoy the fruits of his labor as he is relieved from the pressures of daily work. Relaxation and enjoyment during the retirement stage, however, largely depend on the availability of finances. An ordinary employee who used to depend on his salary for his daily subsistence will now have to rely on other sources of fund. A dependable retirement plan will be a big help in alleviating the retiree's financial needs.

At present, only a small portion of the population avails of retirement plans. The 1998 National Statistical Information Center data show that only 1.25 million are covered by Government Service Insurance System (GSIS) Funds, 19 million are members of the Social Security System (SSS) and approximately 4 million are beneficiaries of the Pag-IBIG Fund. This means that only around 24.25 million out of the 73.13 million Filipinos have retirement plans. Thus, there are still millions of Filipinos who are facing uncertain retirement.

The Personal Equity Retirement Account (PERA), as proposed in this bill, promises to be a valuable tool to remedy the situation. PERA is a long-term savings plan designed to achieve a comfortable and financially secure retirement through planned savings, sound investment and tax exemptions. It will encourage Filipinos to save because contributions to the savings funds are deductible from taxable income, and earnings from said savings are tax exempt.

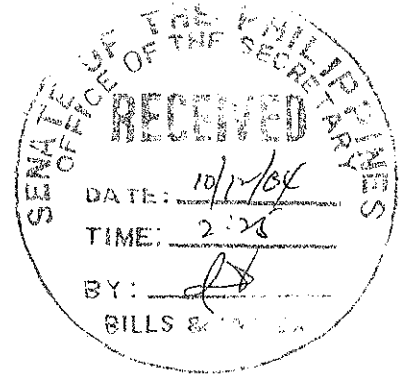
This proposed bill makes the PERA a more attractive retirement plan for the Filipinos by the introduction of valuable features such as withdrawability of funds in case of certain emergencies, transparency of investment records and government-regulated and contributor-influenced investment decisions of the PERA administrators.

While the proposed PERA Act will reduce government tax revenues, the increase in savings mobilization will result to a concomitant deepening of the capital market that will eventually result to a reduced interest costs.

With the aforementioned premises, approval of this bill is earnestly sought.


EDGARDO J. ANGARA

13TH CONGRESS OF THE REPUBLIC)
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SENATE
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Introduced by
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AN ACT
ESTABLISHING A PROVIDENT PERSONAL SAVINGS PLAN
KNOWN AS THE *PERSONAL EQUITY AND RETIREMENT ACCOUNT* (PERA)

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

1 Section 1. *Title.* - This Act shall be known as "Personal Equity and Retirement
2 Account (PERA) Act of 2004."

3 Section 2. *Declaration of Policy* - It is declared the policy of the State to
4 promote capital market development and savings mobilization by establishing the legal and
5 regulatory framework of retirement plans for persons, comprised of voluntary personal savings
6 and investments, that is supported by government incentives. For this purpose, the State shall
7 rationalize and streamline the functions of the Regulatory Authorities with the main objective of
8 generating investments and accelerating savings mobilization by providing simple-to-understand
9 basic PERA investment products.

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

12 a. "Administrator" is an entity accredited by the Bureau of Internal Revenue (BIR),
13 after pre-qualification by the concerned Regulatory Authority. The Administrator
14 shall be responsible for overseeing a PERA, whose functions shall include, but
15 not limited to: reporting on contributions made to the account, computing the
16 values of investments, educating the Contributor, enforcing PERA contributions
17 and withdrawal limits, collecting for the government appropriate taxes and
18 penalties, issuing certificates of contribution for BIR purposes, and consolidating

1 reports on all investments, income, expenses and withdrawals on the account
2 and ensuring that PERA contributions are invested only in permitted investments
3 as required by Section 8.

4 b. "Contributor" is any person of legal age who is a duly registered taxpayer and is
5 earning a taxable income other than those subject to final income tax as defined
6 under the National Internal Revenue Code of 1997. The Contributor establishes
7 and makes contributions to a PERA.

8 c. "Custodian" is an entity separate and distinct from the Administrator, accredited
9 by the Bureau of Internal Revenue after pre-qualification by the concerned
10 Regulatory Authority, providing services in connection with the custodianship of
11 funds and securities of the PERA. The Custodian shall be responsible for
12 receiving and disbursing all funds in connection with the PERA, maintaining
13 custody of all original securities, evidences of deposits or other evidences of
14 investment. The Custodian shall operate independently from the Administrator.

15 The Custodian is required to report to the Contributor and the concerned
16 Regulatory Authority at regular intervals all financial transactions and all
17 documents in its custody under a PERA.

18 d. "Investment Manager" is an entity authorized by a Contributor to make
19 investment decisions for his PERA. As such, it shall assume fiduciary duty and
20 responsibility for PERA investments. It shall act with utmost fidelity by observing
21 policies directed towards confidentiality, scrupulous care, safety and prudent
22 management of PERA funds.

23 e. "Personal Equity Retirement Account (PERA)" refers to the voluntary retirement
24 account established by and for the exclusive use and benefit of the Contributor
25 who shall retain the ownership of funds placed therein, including all earnings of
26 such funds.

27 f. "PERA Investment Product" refers to a common trust fund, mutual fund, annuity
28 contract, pre-need pension plan or any other investment outlet which the
29 concerned Regulatory Authority may by rule allow, subject to the approval of the
30 Secretary of Finance, and which is dedicated solely for PERA purposes. The

1 product must first be approved by the concerned Regulatory Authority before
2 being granted tax exempt privileges (or otherwise referred to as tax-favored) by
3 the Bureau of Internal Revenue.

4 g. "Self-Directed PERA Account" refers to a PERA in which the investment decisions
5 are made by the Contributor.

6 h. "Regulatory Authority" refers to the Bangko Sentral ng Pilipinas as regards
7 financial services institutions or trust companies, the Securities and Exchange
8 Commission for investment companies, investment houses, stockbrokerages and
9 pre-need plan companies, the Office of the Insurance Commissioner for life
10 insurance companies, and the Bureau of Internal Revenue as appropriate.

11 Section 4. *Establishment of a PERA* - A Contributor who establishes a PERA shall
12 designate an Administrator. The Contributor may also designate an Investment Manager and a
13 Custodian but has the option to ask the Administrator to choose the latter on his behalf.

14 The Contributor may transfer from one Administrator to another at any time; *Provided,*
15 that a Contributor must only have one Administrator at any given time.

16 Section 5. *Investment Decisions* - Generally, the Contributor shall make all
17 investment decisions. However, he may authorize an Investment Manager, either in writing or
18 electronic form, to make investment decisions on his behalf without prior consultation.

19 Section 6. *Fit and Proper Rule for Officers and Directors of Administrators/
20 Investment Managers and Custodians* - The concerned Regulatory Authorities shall
21 coordinate to establish uniform fit and proper standards for Administrators, Custodians and
22 Investment Managers. This common regulatory framework shall maintain the quality of
23 management in these institutions and afford better protection to the Contributors. Regulatory
24 Authorities shall prescribe the qualification and disqualification standards of individuals elected
25 or appointed as directors or officers of Administrators, Custodians and Investment Managers.

26 In determining whether an individual is fit and proper to hold the position of a director
27 or officer of an Administrator, Custodian or Investment Manager, regard shall be given to his
28 integrity, experience, education, diligence, training and competence.

1 Section 7. *Maximum Fees* - An accredited Administrator, Custodian or
2 Investment Manager for a PERA account shall charge fees not to exceed the amount or
3 percentage to be determined or set by the concerned PERA Regulatory Authority.

4 Section 8. *Permitted Investments* - Contributions made to PERA and
5 earnings thereon shall be invested only in the following investments subject to full disclosure
6 standards and investment limits set by the concerned Regulatory Authority.

- 7 a. national government securities or issues guaranteed by the Philippine
8 government;
- 9 b. corporate or government bonds, including issues of local governments or
10 government agencies, or debt instrument including asset-backed securities,
11 which are rated by a recognized rating agency in the Philippines;
- 12 c. bank deposits in local and foreign currencies in the Philippine financial institutions
13 subject to BSP regulation;
- 14 d. foreign currency denominated investments authorized by the Bangko Sentral ng
15 Pilipinas, including the currencies themselves, traded on any recognized
16 exchange but not to exceed 7.5% or whatever is the current Social Security
17 System (SSS) limit on foreign denominated investments, for the aggregate PERA
18 assets held by the Administrator;
- 19 e. non-speculative equities listed in the Philippine Stock Exchange (PSE); and
20 f. other investment outlets which the concerned Regulatory Authority may by rule
21 allow subject to the approval of the Secretary of Finance.

22 A Contributor, through his Administrator, shall invest only in any of the following tax-favored
23 PERA investment products:

- 24 a. approved common trust funds and mutual funds registered in the Philippines;
- 25 b. approved annuity contracts and pre-need pension plans; and
- 26 c. other investment outlets which the concerned Regulatory Authority may by rule
27 allow subject to the approval of the Secretary of Finance.

28 Section 9. *Basic Investment Products* - Regulatory Authorities may
29 designate basic PERA investment products that will be commonly offered by all Administrators
30 to provide simple-to-understand options for Contributors.

1 Section 10. *Maximum Annual PERA Contributions* - A Contributor may
2 make a maximum contribution not exceeding twenty-five percent (25%) of his/her taxable
3 Gross Income other than those subject to final income tax as defined under the National
4 Internal Revenue Code of 1997, and, in any case, no more than Fifty Thousand Pesos
5 (P50,000.00) per year. The maximum contribution may be adjusted from time to time to such
6 amount that the Secretary of Finance may determine.

7 Section 11. *Tax Treatment of Contributions* - The total PERA contribution
8 to the extent of Twenty Thousand Pesos (P20,000.00) shall be deductible from the gross
9 income of the Contributor, for the amount in excess of Twenty Thousand Pesos (P20,000.00)
10 but not to exceed Thirty Thousand Pesos (P30,000.00), an income tax credit equivalent to five
11 percent (5%) thereof shall be given to the Contributor; *Provided*, however, that such tax credit
12 shall not exceed the amount of income tax due for the same taxable year, and shall not be
13 transferable to any other entity.

14 Section 12. *Tax Treatment of Investment Income* - All investment income
15 earned by BIR-approved PERA investment products are tax exempt.

16 Section 13. *Tax Treatment of Distributions* - All distributions from the
17 PERA are tax exempt.

18 Section 14. *Penalty on Early Withdrawal* - No early withdrawals may be made
19 until contributions have been made for at least five (5) years. Early withdrawal penalties which
20 shall be payable to the Government as may be determined by the Secretary of Finance shall be
21 imposed on any withdrawal of any funds for the following purposes:

- 22 a. For payment of hospitalization in excess of 30 days;
- 23 b. For payment to a Contributor who has been subsequently rendered permanently
24 disabled as defined under the Labor Code of the Philippines, RA 7641, the Social
25 Security Law and Government Service Insurance System Law; and
- 26 c. For the purpose of the first family socialized housing unit of the Contributor.

27 However, no penalties shall be imposed on distribution made in the event that the
28 Contributor reaches the age of fifty (50) years or upon his or her death.

29 Section 15. *Employer's Contribution* - An employer may contribute to its
30 employee's PERA to the extent of the amount allowable to the Contributor; *Provided*, however,

1 that the employer complies with the mandatory Social Security System (SSS) contribution and
2 retirement pay under the Labor Code of the Philippines. Such contribution shall be allowed as a
3 deduction from the employer's gross income, but shall be treated as part of the employee's
4 compensation for tax purposes.

5 Section 16. *Records, Reporting and Audit* - The Administrators, Custodians and
6 Investment Managers shall as applicable keep records for all contributions, earnings and total
7 account balances and shall be required to report to the Contributor these amounts on a
8 quarterly basis for each calendar year. Such records shall be made available for inspection by
9 the Regulatory Authority during office hours. The Regulatory Authority concerned may conduct
10 routine and case audits of Administrators, Custodians and Investment Managers.

11 Section 17. *Distributions Upon Retirement* - Distributions shall be made
12 upon reaching the age of fifty (50) years provided that contributions have been made to the
13 PERA for at least five (5) years. The distribution shall be made in any mode that may be
14 elected by the Contributor. The Contributor then has the option to continue on with the
15 account. In the event that a Contributor opens an account at the age of fifty-six (56) and
16 above, distributions shall be made at any time without corresponding five-year holding period
17 nor penalties.

18 Section 18. *Non-Assignability* - No portion of the assets of a PERA may be
19 assigned, alienated, pledged, encumbered, attached, garnished, seized or levied upon PERA
20 assets shall not be considered assets of the Contributor for purposes of insolvency and estate
21 taxes.

22 Section 19. *Penalty* - A fine of not less than Fifty Thousand Pesos
23 (P50,000.00) nor more than Two Hundred Thousand Pesos (P200,000.00) or imprisonment for
24 not less than six (6) months nor more than two (2) years or both such fine and imprisonment,
25 at the discretion of the court shall be imposed upon any person, association, partnership or
26 corporation; its officer, employee or agent, who shall:

- 27 1. Act as Administrator, Custodian or Investment Manager without being properly
28 qualified or without being granted prior accreditation by the concerned
29 Regulatory Authority;

- 1 2. Invest the contribution without written or electronically authenticated authority
- 2 from the Contributor except in the case of Self-Directed Accounts;
- 3 3. Knowingly and willfully make any statement in any application, report, or
- 4 document required to be filed under this Act, which statement is false or
- 5 misleading with respect to any material fact; and
- 6 4. Violate any provision of this Act or rules and regulations issued pursuant to this
- 7 Act.

8 Notwithstanding the foregoing, any willful violation by the accredited Administrator,
9 Custodian and Investment Manager of any of the provisions of this Act, or its implementing
10 rules and regulations, or other terms and conditions of the authority to act as Administrator
11 may be subject to the administrative sanctions provided for in applicable laws.

12 Section 20. *Abuse of the Tax Exemption And Privileges* - Any person, natural
13 or juridical, who unduly avails of the tax exemption privileges herein granted, possibly by co-
14 mingling PERA accounts in an investment with other investments, when such person is not
15 entitled hereto, shall be subject to the penalties provided in Sec. 19 hereof. In addition, the
16 offender shall refund to the government double the amount of the tax exemptions and
17 privileges enjoyed under this Act, plus interest of twelve per cent (12%) per year from the date
18 of enjoyment of the tax exemptions and privileges to the date of actual payment.

19 Section 21. *Repealing Clause* - All laws, decrees, orders, rules and
20 regulations or parts thereof, inconsistent with this Act are hereby amended or modified
21 accordingly.

22 Section 22. *Separability Clause* - If any provision or part hereof, is held
23 invalid or unconstitutional, the remainder of the law or the provision not otherwise affected
24 shall remain valid and subsisting.

25 Section 23. *Effectivity* - This Act shall take effect 15 days following its
26 publication in a newspaper of general circulation.

27 Approved.