

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
SECOND REGULAR SESSION

5 AUG -4 P.4:26

SENATE
S.B. No. 2077

RECEIVED BY: _____

INTRODUCED BY SENATOR MAGSAYSAY, JR.

EXPLANATORY NOTE

Labor undergoes some kind of a transformation in its role in development. At this time, we see the employees becoming stockholders of big corporations, in fact, the controlling stockholders of the biggest airline company and the pioneer car rental company in America.

As our country prepares itself for the challenges of the next millennium the capital contributions from labor and other non-traditional sources of capital must likewise be tapped. Labor capital is enormous and is a potentially powerful force in the economic development of our country. Maybe, labor capital could better handle labor intensive industries. And, as down-sizing of big companies become necessary for global competitiveness, the opportunities for labor continue to expand.

Still, the State is called upon to protect labor, including labor capital. The Constitution states:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

xxx

The State shall regulate the relations between workers and employers, organized the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

This legislation seeks to respond to the above-quoted constitutional tenet, while aggressively stimulating capital, by institutionalizing one of the vehicles for labor’s added participation in the economic development of our country – the employees stock ownership program (ESOP) or the “stock paluwagan” plan, as the scheme is sometimes referred to in the academic community. At the same time, this legislation challenges existing capital, the country’s employers, to consider the alternatives offered by labor as partners and investor in their business.

Through the ESOP or “stock paluwagan” envisioned in this bill, we will get closer to employee empowerment, to the so-called quality improvement process and, therefore, to real preparedness for global competition. With the ESOP, the joint stakes of employers and

employees in every business venture, the much needed capital for the development of our country will expand, while the employers and the employees would then be focused on improving the delivery and ensuring the quality of service.


To promote the principles enunciated and specific objectives enumerated in this bill, voluntariness in the adoption of the ESOP is emphasized. Thus, all that is required of the employers under this legislation is their serious and earnest effort at studying the program by themselves or in consultation with their employees. In fact, the bill only defines in general terms what ESOP is, and then suggests what could be contained or covered by the ESOP.

Indeed, the bill hopes to strengthen business activities by allowing the businessmen, the opportunity to tap labor as a source of capital and, more importantly, non-capital investments which only they can provide, i.e., their interest in the best interest of their employers including themselves including themselves. In addition, the bill carries a package of incentives in the form of various tax holidays, some amount of flexibility in the negotiation of terms of collective bargaining agreements and, inevitably, goodwill recognition in their being labor-friendly entities, among others. In other words, as soon as a decision to participate in the program is reached, government assistance and support is provided to the employers in the form of incentives and facilitative processes which are embodied herein or to be adopted under rules and regulations.

On the other hand, to tap labor as one huge source of capital and investments, and to harness their energy for increased productivity, the bill among other encourages ESOP to include therein employees' acquisition at premium prices, representation and participation in the management and even first refusal right in case of business re-organizations.

The times has come for the Filipino labor force to be fully recognized, not by the Government but by their opportunity to become co-owners in the company they work for, and a hand in the management of said company in exchange for their loyalty, dedication, talent and efficiency. This salute to the greatness of Filipino labor likewise breathes life and sinews to the provisions on welfare upliftment mandated in the pages of our Constitution.

Keeping an earnest desire in championing the cause of Filipino workforce, this bill is recommended for immediate cognizance by the Philippine Senate.


RAMON B. MAGSAYSAY, JR.

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
SECOND REGULAR SESSION

5 AUG -4 P4:26

SENATE 2077
S.B. No. _____

RECEIVED BY: _____

INTRODUCED BY SENATOR MAGSAYSAY, JR.

**AN ACT
PROMOTING THE RIGHTS OF FILIPINO LABOR BY
INSTITUTIONALIZING THE EMPLOYEES STOCK OWNERSHIP
PROGRAM, AND FOR OTHER PURPOSES**

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

SECTION 1. Title - This Act shall be cited as the **"Employees
Stock Ownership Program Act of 2005."**

SEC. 2. Declaration of Policy - It is the declared policy of the
State -

- a. To promote the principle of shared responsibility, between workers and employers, and the recognition of the right of enterprises to reasonable returns on investments and to expansion and growth and the right of labor to its just share in the fruits of production;
- b. To encourage employers to share with their employees the ownership and management of their ventures and the other investment opportunities available to them;
- c. To stimulate and invigorate the employees' added investments in the business of their employers in the form of additional time, effort, efficiency and part of their income through various schemes, including the employees stock option program institutionalized through this Act.

SEC. 3. Purposes - The purposes of this Act are, as follows:

- a. To broaden the ownership of Philippine enterprises and all means of production;
- b. To generate additional capital and increase the level of investments in business and economic activities; and
- c. To improve the productivity, income security and asset position of Filipino labor and their families.

SEC. 4. The Employees Stock Ownership Program - There is hereby institutionalized an Employees Stock Ownership Program (ESOP), as follows:

- a. All enterprises, corporations, partnerships, cooperatives and other business entities, including government-owned and controlled corporations, hereinafter collectively referred to as "the employers", with at least five (5) years of existence and

employees, are hereby encouraged to allocate, grant or cede a portion of their outstanding capital to their employees, workers' cooperatives or labor unions, hereinafter collectively referred to as "the employees".

- b. Within one (1) year from the date of the effectivity of this Act, and every year thereafter until an ESOP is adopted and instituted by the employers in their respective firms, the employers shall study the feasibility of adopting an ESOP for *their respective firms* and advise their employees of their specific findings, plans or programs, likewise reporting to or advising their employees of their decisions on the matter, such as, but not limited to the following:
 - i. Whether or not they have adopted any specific ESOP for their firms;
 - ii. Whether or not, if they have decided to adopt an ESOP program for their firms, they would need more time to study the details thereof;
 - iii. If they are not yet through with their study, such information as the employers could provide on how the study is proceeding and the stage in which the study is;
 - iv. If they are not yet prepared to adopt any ESOP, the reason or reasons therefor; or
 - v. Such other advice or information consistent with the employers good faith efforts towards the adoption of the ESOP program for their firms.
- c. Pending the decision of the employers to adopt and ESOP, the employees shall have no right to demand the same, but they may request that documents or information relevant to report on the study made.

Provided, That nothing in this Act will prevent the employers from undertaking the study jointly with representatives of the employees, or from pursuing actions intended as compliance with the requirements of this Act through negotiations with employees' representatives in collective bargaining tables or otherwise.

SEC. 5. ESOP Nature, Contents and Requirements. - An ESOP is a program consisting either in a contract or an agreement, stipulations or provisions in a collective bargaining agreement, or a firm offer upon acceptance by the employees, or the employees' cooperative, union, association, union, association, agent or representative, allowing acquisition by the employees directly or through said employees' cooperative, union or association, agent or representative, of part ownership of their companies, with all the rights and privileges appurtenant thereto.

The other contents, structures and terms and conditions of an ESOP may vary, and may include, but need not be limited to, provisions on -

- a. The premium or reduced price at which the part ownership in the company or shares of stock representing the same are to be sold to the employees, and the other terms and conditions of such sale;

- b. The employees participation or representation in the management of the company;
- c. Job security consistent with the security of tenure guarantee under the Constitution;
- d. Right of the employees to first refusal in the event the company covered is sold; or
- e. Utilization of wages and other compensations and for the payment of shares or part ownership of the company, notwithstanding the provisions of Article 102 and other provisions of the Labor Code of the Philippines: Provided, That nothing in this Act shall be construed as a waiver of the employees' right to self-organization, collective bargaining and negotiation and peaceful concerted activities, including the right to strike, or as authority on the part of employers to commit unfair labor practice, nor shall any provision of this Act or any provision of the contract or agreement, the stipulations or provisions in a collective bargaining agreement, or the accepted firm offer not mutually knowingly and intelligently agreed upon by and between the employer and the employees diminish or reduce any benefits and other privileges enjoyed by the employees under existing laws.

SEC. 6. Effective Date of Inclusion of Employees Within the Coverage of the Program - Voluntary coverage of the employee within the coverage of the ESOP shall take effect on the date of his employment.

SEC. 7. Registration - Each employer availing itself of the ESOP shall register the document embodying the same with the Department of Labor and Employment (DOLE) for monitoring and implementation purposes, in accordance with the rules and regulations that will be issued consistent with this Act.

The ESOP document or agreement shall likewise be registered and approved by the Bureau of Internal Revenue to qualify an employer to the tax incentives provided under this Act.

SEC. 8. Incentives to Enterprises, Firms and Entities as well as to Cooperatives adopting the ESOP. - The ESOP duly registered in accordance with the foregoing provisions of this Act shall be entitled to the following incentives:

- a. A thirty percent (30%) tax credit on income tax, for the reduction in price or discount on or contribution for the payment of the value of the ownership shares granted or given by the employers;
- b. Exemption from all forms of taxation of the transactions under the ESOP, including capital gains tax and taxes on dividend repayment schemes where dividend payments are retained as such for a period of at least five (5) years;
- c. On the part of the cooperatives, in addition to the tax exemptions provided for under R.A. No. 6938 or the Cooperative Code of the Philippines, exemptions from –
 - i. capital gains tax or income on any gain resulting from any sale of stock owned by the cooperative or any distribution of gains there from to members; and

- ii. income tax on any dividends or interest arising from stocks owned by the cooperative or on any distribution of income there from to members.
- d. Exemption from income tax of any retirement or separation benefits, whether or not covered by a tax qualified plan, and retained in the ESOP for a period of not less than five (5) years; and
- e. Exemption of the shares of stocks in a corporation involved in the transactions from registration, but not the reporting, requirements under the Corporation Code.

SEC. 9. Public Information Campaign - The DOLE, in coordination with the Philippine Information Agency, shall undertake information campaign and similar other educational training on employees stock option program, processes and privileges, rights and duties

SEC. 10. Penal Provisions - Any violation of this Act shall be punishable in accordance with the pertinent provisions of Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines", as amended.

SEC. 11. Implementing Rules and Regulations - The DOLE shall issue the necessary rules and regulations to implement the provisions of this Act.

SEC. 12. Separability Clause - All laws, decrees, executive orders, rules and regulations, and other issuances or parts thereof which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 13. Effectivity Clause - This Act shall take effect after fifteen (15) days following its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,