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SENATE

S.B. NO. 2233

Prepared by the Committee on Banks, Financial Institutions and Currencies,
in substitution of Senate Bill Nos. 1343, 1747, 1821 and 1985

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 the "Personal Equity and
2 Retirement Account (PERA) Act of 2005."

3

4 **Section 2. Declaration of Policy.** – It is declared the policy of the
5 State to promote capital market development and savings mobilization by
6 establishing a legal and regulatory framework of retirement plans for persons,
7 comprised of voluntary personal savings and investments. The State recognizes
8 the potential contribution of PERA to long-term fiscal sustainability through the
9 provision of long-term financing and reduction of social pension benefits.

10

11 **Section 3. Definition of Terms.** - Unless the context requires
12 otherwise, the following terms shall have the following significance as used in
13 this Act:

14 a. "Administrator" is an entity accredited by the Bureau of Internal
15 Revenue (BIR), after pre-qualification by the concerned Regulatory Authority.
16 The Administrator shall be responsible for overseeing the PERA, whose core
17 functions shall include, but not limited to: reporting on contributions made to

1 the account, computing the values of investments, educating the Contributor,
2 enforcing PERA contributions and withdrawal limits, collecting appropriate taxes
3 and penalties for the government, issuing BIR Income Tax Credit Certificates to
4 the Contributor, consolidating reports on all investments, income, expenses and
5 withdrawals on the account and ensuring that PERA contributions are invested in
6 accordance with the prudential guidelines set by the Regulatory Authorities.

7 b. "Contributor" is any person of legal age who is a duly registered
8 taxpayer. The Contributor establishes and makes contributions to a PERA.

9 c. "Custodian" is a separate and distinct entity unrelated to the
10 Administrator, accredited by the Bangko Sentral ng Pilipinas, providing services
11 in connection with the custodianship of funds and securities comprising the PERA
12 investments. The Custodian shall be responsible for receiving all funds in
13 connection with the PERA, maintaining custody of all original securities, evidence
14 of deposits or other evidence of investment. The Custodian shall operate
15 independently from the Administrator. The Custodian is required to report to the
16 Contributor and the concerned Regulatory Authority at regular intervals all
17 financial transactions and all documents in its custody under a PERA.

18 d. "Early withdrawal" shall pertain to any withdrawal prior to the
19 period of distribution as set forth under Section 12 hereof.

20 e. "Investment Manager" is a regulated person or entity authorized by
21 a contributor to make investment decisions for his PERA. As such, it shall
22 assume fiduciary duty and responsibility for PERA investments. An Investment
23 Manager shall act with utmost fidelity by observing policies directed towards
24 confidentiality, scrupulous care, safety and prudent management of PERA funds.
25 An Administrator may also act as an Investment Manager.

26 f. "Personal Equity Retirement Account (PERA)" refers to the
27 voluntary retirement account established by and for the exclusive use and

1 benefit of the Contributor for the purpose of being invested solely in PERA
2 investment products in the Philippines. The Contributor shall retain the
3 ownership, whether legal or beneficial, of funds placed therein, including all
4 earnings of such funds.

5 g. "PERA Investment Product" refers to a unit investment trust fund,
6 mutual fund, annuity contract, insurance pension products, pre-need pension
7 plan, shares of stock listed in exchange, exchange-traded bonds or any other
8 investment product or outlet which the concerned Regulatory Authority may
9 allow for PERA purposes.

10 The concerned Regulatory Authority must first approve the product before
11 being granted tax-exempt privileges by the BIR.

12 h. "Regulatory Authority" refers to the Bangko Sentral ng Pilipinas
13 ("BSP") as regards banks, other supervised financial institutions and trust
14 entities, the Securities and Exchange Commission ("SEC") for investment
15 companies, investment houses, stockbrokerages and pre-need plan companies,
16 and the Office of the Insurance Commissioner ("OIC") for insurance companies.

17

18 **Section 4. Establishment of a PERA - A Contributor.**

19 may create and maintain a maximum of five (5) PERA, at any one time,
20 provided that the Contributor shall designate and maintain only one
21 Administrator for all his PERA.

22 The Contributor shall make all investment decisions pertaining to his
23 PERA. However, he has the option of appointing an Investment Manager, either
24 in writing or in electronic form, to make investment decisions on his behalf
25 without prior consultation.

26

1 **Section 5. Maximum Annual PERA Contributions** - A Contributor
2 may make an aggregate maximum contribution of Fifty Thousand Pesos
3 (P50,000.00) to his/her PERA per year; provided that if the Contributor is
4 married, each of the spouses shall be entitled to make a maximum contribution
5 of Fifty Thousand Pesos (P50,000.00) per year to his/her respective PERA. The
6 Secretary of Finance may adjust the maximum contribution from time to time,
7 taking into consideration the present value of the said maximum contribution
8 using the Consumer Price Index as published by the National Statistics Office,
9 fiscal position of the government and other pertinent factors.

10

11 **Section 6. Employer's Contribution** – A private employer may
12 contribute to its employee's PERA to the extent of the amount allowable to the
13 Contributor; *Provided, however,* that the employer complies with the mandatory
14 Social Security System (SSS) contribution and retirement pay under the Labor
15 Code of the Philippines. Such contribution shall be allowed as a deduction from
16 the employer's gross income, but shall be treated as part of the employee's
17 compensation for tax purposes. The Contributor, however, retains the
18 prerogative to make investment decisions pertaining to his PERA.

19

20 **Section 7. Separate Asset** – The PERA shall be kept separate from
21 the other assets of an Administrator/Custodian and shall not be part of the
22 general assets of the Administrator/Custodian for purposes of insolvency.

23

24 **Section 8. Tax Treatment of Contributions** - The Contributor shall
25 be given an income tax credit equivalent to five percent (5%) of the total PERA
26 contribution; *Provided, however,* that in no instance can there be any refund of
27 the said tax credit arising from the PERA contributions.

1

2 **Section 9. Tax Treatment of Investment Income** - All income
3 earned by a PERA is tax exempt.

4

5 **Section 10. Tax Treatment of Distributions** - All distributions in
6 accordance with Section 12 hereof are tax exempt.

7

8 **Section 11. Termination** – Any premature termination shall be treated
9 as an *Early Withdrawal* under Section 13 hereof, provided that the penalties
10 thereunder shall not apply if the entire proceeds therefrom are immediately
11 transferred to another PERA investment and/or another Administrator.

12

13 **Section 12. Distributions Upon Retirement/Death-** Distributions
14 may be made upon reaching the age of fifty-five (55) years, provided that the
15 Contributor has made contributions to the PERA for at least five (5) years. The
16 distribution shall be made in either lump sum or pension for a definite period or
17 lifetime pension, the choice of which shall be at the option of the Contributor.
18 The Contributor, however, has the option to continue the PERA. Complete
19 distribution shall be made upon the death of the Contributor, irrespective of the
20 age of the Contributor at the time of his death.

21

22 **Section 13. Penalty on Early Withdrawal** - Any *Early Withdrawal*
23 shall be subject to a penalty, the amount of which would be determined by the
24 *Secretary of Finance* and payable to the Government; provided that the amount
25 of the penalty shall in no case be less than the tax incentives enjoyed by the
26 Contributor.

1 No early withdrawal penalty shall be imposed on any withdrawal of any
2 funds for the following purposes:

3 a. For payment of accident or illness-related hospitalization in excess of 30
4 days; and

5 b. For payment to a Contributor who has been subsequently rendered
6 permanently totally disabled as defined under the Employees
7 Compensation Law, Social Security Law and Government Service
8 Insurance System Law.

9

10 **Section 14. Non-Assignability** - No portion of the assets of a PERA
11 may be assigned, alienated, pledged, encumbered, attached, garnished, seized
12 or levied upon. PERA assets shall not be considered assets of the Contributor for
13 purposes of insolvency and estate taxes.

14

15 **Section 15. Rules and Regulations** - Consistent with the policy of
16 promoting transparency in PERA investment and thereby affording protection to
17 the Contributor, the Department of Finance and the concerned Regulatory
18 Authorities, with the Bangko Sentral ng Pilipinas as lead agency, shall coordinate
19 to establish uniform rules and regulations pertaining to the following subject
20 matters:

21 a. Qualification and disqualification standards for Administrators, Custodians
22 and Investment Managers, including directors and officers thereof;

23 b. Qualified and/or eligible PERA investment products;

24 c. Disclosure requirements on the terms and conditions of the PERA
25 investments;

26 d. Minimum requirements imposed on the Administrators as regards
27 inculcating financial literacy in investors;

- 1 e. Ascertainment of client suitability for PERA products;
- 2 f. Record-keeping, reporting and audit requirement of Administrators and
3 Custodians pertaining to records for all contributions, earnings and total
4 account balances; and
- 5 g. Other pertinent matters to be determined by the Regulatory Authorities.

6

7 **Section 16. Administration of Tax Incentives** – The BIR shall issue
8 the implementing rules and regulations regarding all aspects of tax
9 administration relating to PERA. The BIR shall coordinate the qualification
10 standards of the Administrator with the Regulatory Authorities.

11

12 **Section 17. Penalty** - A fine of not less than Fifty Thousand Pesos
13 (P50,000.00) nor more than Two Hundred Thousand Pesos (P200,000.00) or
14 imprisonment for not less than six (6) months nor more than two (2) years or
15 both such fine and imprisonment, at the discretion of the court, shall be imposed
16 upon any person, association, partnership or corporation, its officer, employee or
17 agent, who shall:

18

- 19 a. Act as Administrator, Custodian or Investment Manager without being
20 properly qualified or without being granted prior accreditation by the
21 concerned Regulatory Authority;
- 22 b. Invest the contribution without written or electronically authenticated
23 authority from the Contributor, or invest the contribution in contravention
24 of the instructions of the Contributor,;
- 25 c. Knowingly and willfully make any statement in any application, report, or
26 document required to be filed under this Act, which statement is false or
27 misleading with respect to any material fact;

1 d. Violate any provision of this Act or rules and regulations issued pursuant
2 to this Act.

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

8 The above penalties shall be without prejudice to whatever civil and
9 criminal liability provided for under applicable laws for the same act or omission.

10

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

20

21 **Section 19. Separability Clause** - If any provision or part hereof, is
22 held invalid or unconstitutional, the remainder of the law or the provision not
23 otherwise affected shall remain valid and subsisting.

24

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

1

2 **Section 21. Effectivity.** This Act shall take effect 15 days following its

3 publication in a newspaper of general circulation.