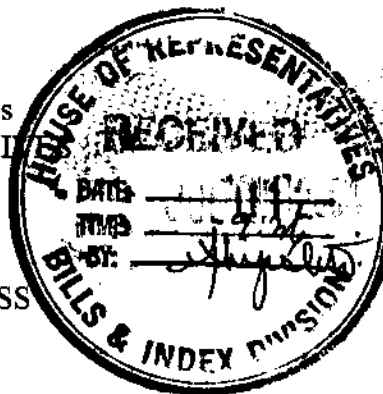


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Pasay City



THIRTEENTH CONGRESS
First Regular Session

H.B. No. 94

INTRODUCED BY HON. JUAN EDGARDO "SONNY" M. ANGARA

EXPLANATORY NOTE

This bill seeks to institutionalize the Personal Equity and Retirement Account (PERA) for all public and private employees in order to promote among them positive attitudes toward savings for their retirement years.

Retirement is a particular stage in every employee's life when he/she is suppose to find all the time to relax and enjoy the pleasure of having the convenience of time oneself and one's family, away from the pleasure of daily work. However, the absence of a dependable retirement plan could give one more insecurities, dilemma to the retiring employee rather than comfort, leisure and security.

Let us consider the following 1998 data from the National Statistical Information Center. Out of the 73,131,000 Filipinos, 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 covered by the Pag-IBIG Fund. This makes around 24.5 million Filipinos to have some kind of a retirement plan. However, with this number of Filipinos enjoying such retirement benefit plan, there are still a number of millions left problematic after finally leaving their respective workplaces for retirement.

Given this, several efforts both from the private and public sectors have been initiated to increase the general public's awareness and understanding on the significance of thriftiness and saving (in any investment possible). The government's responsibility now is to strengthen and expand such efforts in order to bring sustainable security for everyone. It is always a best policy to save and plan— to prepare for the worst and for the future ahead.

While the proposed institutionalization of Personal Equity and Retirement Account (PERA) will ultimately achieve a comfortable and financially-secure retirement through a sound investment and planning scheme, it will likewise benefit a significant number of our workforce who are neither members of government-initiated insurance funds. Because certain contributions to the savings funds are deductible from the taxable income, and earnings of such savings are sheltered from taxation as they grow and are taxed upon their withdrawal from PERA, such scheme will encourage more people to save. Besides, one can take out or withdraw his/her money or a portion of his/her savings with a minimum inconvenience in case of an emergency unlike pension scheme wherein one's money is locked in and rendered practically inaccessible for urgent and unprecedented necessities.

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


JUAN EDGARDO "SONNY" M. ANGARA
Representative
Lone District, Province of Aurora

HOUSE OF REPRESENTATIVES

H.B. No. 94

INTRODUCED BY HON. JUAN EDGARDO "SONNY" M. ANGARA

AN ACT
TO ESTABLISH A PROVIDENT PERSONAL SAVINGS PLAN KNOWN AS THE
"PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA)"

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

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

SEC. 2. Declaration of Policies. - It is declared the policy of the State to promote capital market development and savings mobilization by establishing the legal and regulatory framework of retirement plans for persons, comprised of voluntary personal savings and investments, that is supported by government incentives. For this purpose, the State shall rationalize the functions of the Regulatory Authorities with the main objective of generating investments and accelerating savings mobilization by providing tax incentives to eligible PERA Investment Vehicles.

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

- a) "Administrator" is an entity accredited by the Bureau of Internal Revenue (BIR), after pre-qualification by the Bangko Sentral ng Pilipinas (BSP), in the case of financial services institutions with trust licenses; or by the Securities and Exchange Commission (SEC), in the case of investment companies, investment houses, stockbrokerages and pre-need plan companies; or by the Office of the Insurance Commissioner (OIC), in the case of life insurance companies. The Administrator shall assume fiduciary responsibility over PERA funds. Its functions shall include but not limited to: reporting on contributions made to the account; computing the values of investments; educating the Contributor; enforcing PERA contributions and withdrawal limits; acting as withholding agent in the collection of appropriate taxes and penalties; issuing certificates of contribution for BIR purposes; and consolidating reports on all investments, income, expenses, withdrawals on the account and ensuring that PERA contributions are invested only in permitted investments as required by the concerned Regulatory Authority.
- b) "Contributor" is a citizen of the Philippines, of legal age, who possesses a Taxpayer Identification Number (TIN), and who establishes and makes contributions to a PERA.
- c) "Custodian" is a financial services institution with trust licenses or an insurance company, separate and distinct from the Administrator, accredited by the BIR after pre-qualification by the concerned Regulatory Authority, providing services in connection with the

custodianship of funds and securities of the PERA. The Custodian shall assume fiduciary responsibility over PERA funds and assets. It shall receive and disburse all funds in connection with the PERA, maintaining custody of all original securities, evidences of deposits or other evidences of investment. The Custodian shall operate independently from the Administrator. The Custodian is required to report to the Contributor and the concerned Regulatory Authority at regular intervals all financial transactions and all documents in its custody under a PERA.

- d) "Investment Manager" is an Administrator additionally authorized by a Contributor to make investment decisions for his PERA. As such, it shall assume fiduciary duty and responsibility for PERA investments. It shall act with utmost fidelity by observing policies directed towards confidentiality, scrupulous care, safety and prudent management of PERA funds.
- e) "Personal Equity Retirement Account (PERA)" refers to the voluntary retirement account established by and for the exclusive use and benefit of the Contributor who shall retain the ownership of funds placed therein, including all earnings of such funds.
- f) "PERA Investment Vehicle" refers to a common trust fund, mutual fund, annuity contract or pre-need pension plan, dedicated solely for PERA purposes and which has been pre-approved by the concerned Regulatory Authority before being granted tax-exempt privileges by the BIR. *Provided*, That the concerned Regulatory Authority may by rule allow other PERA pooled investment vehicles, subject to the approval of the Secretary of Finance.
- g) "Investment Vehicle Provider" refers to an entity authorized by any of the Regulatory Authorities to offer and manage a PERA investment Vehicle.
- h) "Self-Directed PERA Account" refers to a PERA in which the investment decisions are made by the Contributor.
- i) "Regulatory Authority" refers to the BSP as regards financial services institutions or trust companies, the SEC for investment companies, investment houses, stockbrokerages and pre-need plan companies, the OIC for life insurance companies, and the BIR as appropriate.

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

The Contributor may transfer from one Administrator to another at any time: *Provided*, That a Contributor must only have one Administrator at any given time.

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

SEC. 6. *Fit and Proper Rule for Officers and Directors of Administrators, Investment Managers, Custodians and Investment Vehicle Providers.* – The concerned Regulatory Authorities shall coordinate to establish uniform fit and proper standards for Administrators, Custodians, Investment Managers and Investment Vehicle Providers. This common regulatory framework shall maintain the quality of management in these institutions and afford better protection to the Contributors. Regulatory Authorities shall prescribe the qualification and disqualification standards of individuals elected or appointed as directors or officers of Administrators, Custodians, Investment Managers and Investment Vehicle Providers.

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

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

SEC. 8. *PERA Investment Vehicles.* – A contributor, through his Administrator, shall invest only in any of the following tax-favored PERA Investment Vehicles:

- (a) Approved common trust funds and mutual funds registered in the Philippines;
- (b) Approved annuity contracts and pre-need pension plans; and
- (c) Other investment vehicles which the concerned Regulatory Authority may be rule allow subject to the approval of the Secretary of Finance.

SEC. 9. *Permitted Investments of PERA Investment Vehicles.* – Investments made by Contributors in any of the products listed in Section 8 and earnings thereon shall be invested only in the following investments, subject to full disclosure standards and investment limits set by the concerned Regulatory Authority.

- (a) National Government securities or issues guaranteed by the Philippine government;
- (b) Corporate or government bonds, including issues of local governments or government agencies, or debt instrument including assetbacked securities, which are rated by a recognized rating agency in the Philippines;
- (c) Bank deposits in local and foreign currencies in Philippine financial institutions;
- (d) Foreign currency denominated investments authorized by the BSP, including the currencies themselves, traded on any recognized exchange but not to exceed 7.5% or whatever is the current Social Security System (SSS) limit on foreign denominated investments, for the aggregate PERA assets held by the Administrator;
- (e) Non-speculative equities listed in the Philippine Stock Exchange (PSE); and
- (f) Other investment outlets which the concerned Regulatory Authority may be rule allow subject to the approval of the Secretary of Finance.

SEC. 10. *Basic Investment Vehicles* – Regulatory Authorities may designate basic PERA Investment Vehicles that will be commonly offered by all Administrators to provide simple-to-understand options for Contributors.

SEC. 11. *Maximum Annual PERA Contributions* – A Contributor may make a contribution of no more than Fifty thousand pesos (P50,000.00) per year. The maximum contribution may be adjusted from time to time to such amount that the Secretary of Finance may determine.

SEC. 12. *Tax Treatment of Contributions.* – The Annual PERA contribution to the extent of Fifty thousand pesos (P50,000.00) shall be excluded from the gross income of the Contributor and shall be exempt from income taxation: *Provided, however,* That this tax treatment shall be applicable only to contributions taken from the Contributor's taxable income other than those subject to a final tax, as defined under the National Internal Revenue Code, as amended.

SEC. 13. *Tax Treatment of Investment Income* – All investment income derived by BIR-approved PERA Investment Vehicles are exempt from income tax.

SEC. 14. *Tax Treatment of Distributions.* – All distributions from the PERA under Section 18 are tax-exempt.

SEC. 15. *Penalty on Early Withdrawal* – No early withdrawals may be made until contributions have been made for at least five (5) years. Early withdrawal penalties which shall be payable to the Government as may be determined by the Secretary of Finance shall be imposed on any withdrawal of any funds for the following purposes:

- (a) For payment of hospitalization in excess of thirty (30) days;
- (b) For payment to a Contributor who has been subsequently rendered permanently disabled as defined under the Labor Code of the Philippines, Republic Act No. 7641, the Social Security Law and Government Insurance System Law; and
- (c) For the purchase of the first family socialized housing unit of the Contributor.

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

SEC. 16. *Employer's Contribution* – An employer may make contributions to its employee's PERA, and such shall be allowed as a deduction from the employer's gross income: *Provided*, That the employer complies with the mandatory SSS contribution and retirement pay under the Labor Code of the Philippines: *Provided, further*, That the amount thereof plus the employee's contribution shall not exceed the maximum amount allowable under Section 11 hereof.

SEC. 17. *Records, Reporting and Audit* – The Administrators, Custodians, Investment Managers and Investment Vehicle Providers shall as applicable keep records for all contributions, earnings and total account balances and shall be required to report to the Contributor these amounts on a quarterly basis for each calendar year. Such records shall be made available for inspection by the Regulatory Authority during office hours. The Regulatory Authority concerned may conduct routine and cause audits of Administrators, Custodians, Investment Managers and Investment Vehicle Providers.

SEC. 18. *Distributions Upon Retirement* – Distributions shall be made upon reaching the age of fifty (50) years provided that contributions have been made to the PERA for at least five (5) years. The distribution shall be made in any mode that may be elected by the Contributor. The Contributor then has the option to continue on with the account. In the event that a Contributor opens an account at the age of fifty-six (56) and above, distributions shall be made at any time without the corresponding five (5) –year holding period nor penalties.

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

SEC. 20. *Penalty* – A fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two hundred thousand pesos (P200,000.00) or imprisonment for not less than six (6) years nor more than twenty-one (21) years or both such fine and imprisonment, at the discretion of the court shall be imposed upon any person, association, partnership or corporation, its officer, employee or agent, who shall:

- (1) Act as Administrator, Custodian, Investment Manager or Investment Vehicle Provider without being properly qualified or without being granted prior accreditation by the concerned Regulatory Authority;
- (2) Invest the contribution without written or electronically authenticated authority from the Contributor except in the case of Self-Directed Accounts;
- (3) Knowingly and willfully make any statement in any application, report or document required to be filed under this Act, which statement is false or misleading with respect to any material fact; and
- (4) Violate any provision of this Act or rules and regulations issued pursuant to this Act.

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

SEC. 21. *Abuse of Tax Exemptions and Privileges.* – Any person, natural or juridical, who unduly avails of the tax exemption privileges herein granted, or who willfully aids or abets in the commission of the same, possibly by co-mingling PERA accounts in an investment with other investments, when such person is not entitled hereto, shall be subject to the penalties provided in Section 20 hereof. In addition, the offender shall refund to the government double the amount of the tax exemptions and privileges enjoyed under this Act, plus interest of twelve percent (12%) per year from the date of enjoyment of the tax exemptions and privileges to the date of actual payment.

SEC. 22. *Implementing Rules and Regulations.* – The Regulatory Authorities, together with the BIR, shall promulgate and amend such rules and regulations as may be necessary or appropriate to implement the provisions of this Act. Within thirty (30) days after the promulgations of the implementing rules and regulation or their amendments, the same shall be submitted to the Congressional Oversight Committee, hereinafter created, for approval.

SEC. 23. *Congressional Oversight Committee.* – There is hereby created a Congressional Oversight Committee composed of seven (7) members from the Senate and seven (7) members from the House of Representatives. The members from the Senate shall be appointed by the Senate President with at least two (2) Senators representing the Minority. The members from the House of Representatives shall also be appointed by the Speaker with at least two (2) members representing the Minority.

The Congressional Oversight Committee shall have the power to oversee the implementation of this Act and approve such rules and regulations promulgated pursuant to Section 22 hereof. It shall also have the power to promulgate its own rules.

SEC. 24. *Repealing Clause.* - All laws, decrees, orders, rules and regulations or parts thereof , inconsistent with this Act is hereby amended or modified accordingly.

SEC. 25. *Separability Clause.* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 26. *Effectivity.* - This Act shall take effect after fifteen (15) days following its publication in a newspaper of general circulation.

Approved,