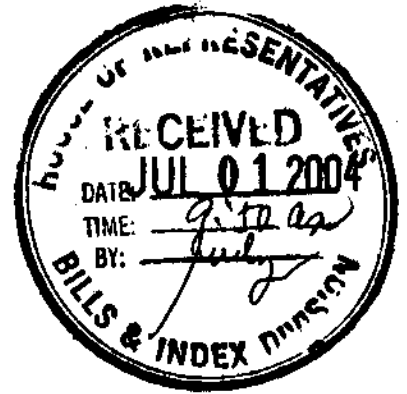


Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 118



Introduced by Representative **JOEY SARTE SALCEDA**

EXPLANATORY NOTE

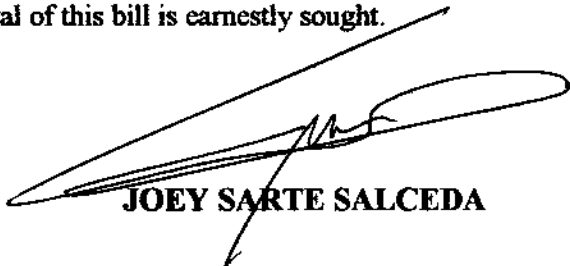
Unlike their counterparts in developed countries such as the US and Europe, Filipino workers generally look at retirement with trepidation. Instead of "rest from daily toil" as the term suggests, it means lower or even loss of income for a big portion of Filipinos who do not have retirement benefits to look forward to.

The NSO reported that the country has a labor force of about 34.85 M¹ (as of July 2003), for a labor force participation rate of 67.1%². Unfortunately, of the total labor force, only 75% are members of government-initiated pension funds, broken down as follows: 25 million for SSS³ (as of end 2003) and 1.3 million for GSIS⁴ (as of April 2004). This translates to about 8.55 million Filipinos and their dependents who will have nothing to look forward to in their retirement years.

This bill seeks to remedy the situation by institutionalizing the Personal Equity and Retirement Account (PERA) for all public and private employees. Under the proposed measure, people will be encouraged to save for their retirement years. Among its attractive features are the following:

1. The contributions shall be deductible from the taxable income and earnings of said savings are sheltered from taxation as they grow and are taxed only upon their withdrawal from PERA.
2. Flexibility. In case of emergency, a member may withdraw his money or a portion of it, unlike the current pension schemes where the money is locked in.
3. More dynamic earnings potential. It offers facilities to move funds to investment options that offer higher returns.

From the foregoing reasons, immediate approval of this bill is earnestly sought.


JOEY SARTE SALCEDA

¹ Source: Current Labor Statistics, 3rd Quarter 2003, published by BLES.

² Ibid.

³ As per Mr. Joel Palacios, Media Affairs Bureau, SSS.

⁴ Public Affairs Department, GSIS

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Introduced by **Representative JOEY SARTE SALCEDA**

AN ACT
ESTABLISHING 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 "Personal Equity and Retirement Account (PERA) Act of 2004."

SEC.2. Declaration of Policy. - 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, comprise of voluntary personal savings and investment, 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; 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 function shall include but not limited to: reporting on contributions made to the account; computing the values of investment; educating the contributor; enforcing PERA contribution and withdrawal limits; acting as withholding agent in the collection of appropriate taxes and penalties; issuing certificates of contributions 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 Tax Identification Number (TIN), and who establishes and makes contributions to 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 fund in connection with the PERA, maintaining custody of all original securities, evidences of deposits or other evidences of investments. 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 decision for his PERA. As such, It shall assume fiduciary duty and responsibility for PERA investment. 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 funds, mutual funds, 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 be 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 the 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 decision 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 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 charged 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 with the concern Regulatory Authority may by rule allow subject to the approval of the Secretary of Finance.

SEC 9. *Permitted Investments of PERA Investment Vehicles.* – Investment 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 concern 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 asset backed securities, which are rated by a recognized by a rating agency in the Philippines;
- (c) Bank deposits in local and foreign currencies in Philippine financial institutions;
- (d) Foreign currency denominated investment authorize by the BSP, including the currencies themselves, traded or any recognized exchange but not to exceed seven and a half percent (7.5%) or whatever is the current Social Security System (SSS) limit on foreign denominated investments, for 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 concern Regulatory Authority may by 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 is 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 Service 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 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 record 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.* – Distribution 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, distribution 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 Contributors 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 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:

- (a) 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;
- (b) Invest the contribution without written or electronically authenticated authority from the Contributor except in the case Self-Directed Accounts;
- (c) Knowingly and willfully make any statement in any application, report or document required to be filed under this Act, which statements false or misleading with respect to any material fact; and
- (d) 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 or Investment Vehicle Provider of any of the provision 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 of 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 in this Act, plus interest of twelve percent (12%) per year from the date 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 promulgation of the implementing rules and regulations 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 are 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 fifteen (15) days following its publication in a newspaper of general circulation.

Approved,