



Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Nineteenth Congress

First Regular Session

House Bill No. 5902



Introduced by:

**HON. MARISSA "DEL MAR" MAGSINO
OFW PARTYLIST**

EXPLANATORY NOTE

Overseas Filipino Workers (OFWs), also referred to as Filipino migrant workers, are a significant segment of Philippine labor force accounting for roughly a minimum of 1.5 million jobs at any given time, and sending back an annual average of foreign exchange remittances of USD 30 billion, or about 10% of the Gross Domestic Product (GDP) of the country in a year. These remittances help fuel our economy and provide lifelines to thousands of OFW families and their dependents. For these contributions, they are often hailed as our 'modern day heroes'.

However, despite their immense contribution, the government has yet to put in place a reliable and sustainable social security and retirement system for OFWs that they can lean on in times of need while still employed, and more importantly, upon their retirement.

A social security and retirement system aims to provide social protection to covered workers giving them a degree of financial independence and stability when faced with the contingencies of old age, survivorship, disability, unemployment, and needs for medical care and family support. The development of social security and retirement plans has also been supported by various international conventions and instruments, and their recognition as basic human rights was enshrined in the 1948 Universal Declaration of Human Rights.

In the Philippines, workers in the private sector are covered by the Social Security System (SSS), a state-run social insurance program established in 1954 by virtue of Republic Act No. 1161. Meanwhile, 'active and systemic migration' of Filipinos for temporary employment

abroad began by the 1960s leading the government to come up with a new labor code in 1974 which included Filipino migrant workers in its scope. However, the SSS started its coverage for OFWs only in 1995 in accordance with Republic Act No. 8282, and initially for voluntary membership only. This is the first indication that, in the eyes of the law, OFWs are treated differently from the other categories of workers in the private sector considering the peculiarities of overseas employment.

In March 2019, pursuant to Republic Act No. 11199, or the 'Social Security Act of 2018', SSS coverage became compulsory for all sea- and land-based OFWs as defined under Republic Act No. 8042, also known as the 'Migrant Workers Act' of 1995', as amended by Republic Act No. 10022, provided they are not yet over 60 years of age.

While RA 11199 guarantees that all benefit provisions under the Act shall apply to all covered OFWs, it does not, in other respects, account for the unique and peculiar conditions of overseas employment that require 'different treatment' to be more equitable for OFWs.

For one, the seasonal and/or intermittent character of overseas employment with contracts ranging from 2-5 years with no guaranteed renewal, calls for a different framework of determining appropriate rates of contributions and the corresponding social welfare and retirement benefits, such as in cases of separation from employment due to contract termination. Most importantly, OFWs usually find reemployment difficult past the age of 45 years, thus, a lower age for mandatory retirement is more appropriate for OFWs for their timely availment of retirement benefits. Moreover, the cross-national border nature of overseas employment presents jurisdictional issues on the supposed counterpart contributions of foreign-based employers, particularly their mandatory imposition, enforcement and remittance to the Philippines. This challenge demands a more aggressive effort on the part of the Philippine government to successfully forge bilateral agreements with the host countries to address it.

Providing for a separate social security and retirement system for OFWs does not violate equal protection for labor. Article III, Section 1 of the 1987 Constitution provides that 'no person shall be denied the equal protection of the laws'. *'The fundamental right of equal protection is not absolute but subject to reasonable classification. The classification must be characterized by substantial distinctions that make real differences to justify that one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.'* (Tiu vs CA, En Banc, GR No. 127420, January 20, 1999)

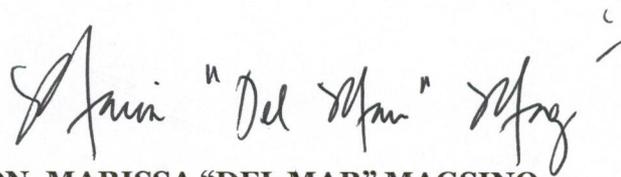
As alluded to above, the substantial distinctions that separate OFWs from other classes of workers are the seasonal character of their employment abroad, the cross-border nature of their employment which presents issues of jurisdiction with respect to enforcement and protection of their rights while in foreign soil, the significance of their contributions to the national economy through their remittances, and the personal sacrifices they endure as well as their families resulting from their physical separation from one another. These distinctions require and justify the provision of a different system, policies and mechanisms of a social

security and retirement plan adapted to their unique circumstances. Moreover, the classification is germane to the purpose of the law which is to ensure that OFWs are guaranteed and provided the ample social security and retirement benefits they deserve, and applies to all categories of migrant workers as defined in the proposed measure.

Finally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that with respect to social security, migrant workers shall enjoy in the State of employment the same treatment granted to nationals as long as they fulfill the requirements of that State and the applicable treaties, while at the same time adequately protected by the social security system of their State of origin. The State of employment and the State of origin shall at any time establish the necessary agreements of this norm.

This bill aims to establish a social security and retirement system for OFWs that is tailored and adapted to the distinct and unique circumstances of their overseas employment, with the end in view of ensuring that they receive the welfare assistance and retirement benefits they truly deserve. By necessity, they shall be removed from their present coverage under the SSS law.

For the foregoing reasons, the immediate consideration and approval of this bill is earnestly sought.

A handwritten signature in black ink, reading "Marissa 'Del Mar' Magsino". The signature is written in a cursive style with a small flourish at the end.

HON. MARISSA "DEL MAR" MAGSINO



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OFW PARTYLIST

AN ACT
ESTABLISHING THE OVERSEAS FILIPINO WORKERS SOCIAL SECURITY
AND RETIREMENT SYSTEM, APPROPRIATING FUNDS THEREFOR, AND
FOR OTHER PURPOSES

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

SECTION 1. Short Title. - This Act shall be known as the "*Overseas Filipino Workers Retirement System Act of 2022.*"

SECTION 2. Declaration of Policy. - It is hereby declared the policy of the State to recognize the significant contributions of overseas Filipino workers to the national economy and shall uphold their rights to social security. Towards this end, the State shall establish a social security and retirement system adapted to the distinctive employment conditions and status of overseas Filipino workers and their families, while guaranteeing equal treatment and protection to all workers in the country. Likewise, the State shall endeavor to establish the necessary bilateral agreements with the States of employment of overseas Filipino workers to ensure that same treatment enjoyed by their nationals with respect to social security are equally available to overseas Filipino workers.

SECTION 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

- a) "**Overseas Filipino Worker (OFW)**" refers to a Filipino citizen with a valid

contract of employment outside the Philippines through a legitimate agency or employer and who possesses the necessary documents to work abroad, including:

- (i) Land-based OFWs;
 - (ii) Seafarers and other sea-based workers, whether aboard foreign or domestic vessels, other than those on a government ship for military or non-commercial purposes or on a government installation located on high seas or offshore; and,
 - (iii) Other documented OFWs not previously classified elsewhere.
- b) "**Documented OFW**" refers to an overseas Filipino worker who has a valid contract of employment and possesses the necessary documents to work abroad;
 - c) "**Beneficiaries**" refers to the legal spouse of an OFW, his dependent children, whether legitimate or illegitimate, who are the primary beneficiaries. In their absence, the dependent parents shall be the secondary beneficiaries. In the absence of the foregoing, another person designated by the OFW.
 - d) "**Dependent**" refers to the legitimate, legitimated or legally adopted child who is unmarried, not gainfully employed, and not over twenty-one years of age, or over twenty-one years of age: *Provided*, That he is congenitally incapacitated and incapable of self-support, physically or mentally; legitimate spouse dependent for support upon the employee; and the legitimate parents wholly dependent upon the covered employee for regular support.

SECTION 4. Overseas Filipino Workers Social Security and Retirement System.

- There is hereby established an Overseas Filipino Workers Social Security and Retirement System, hereinafter referred to as the System, which shall cover all documented OFWs who are duly registered with the Philippine Overseas Employment Administration (POEA).

SECTION 5. Objectives. -The System shall have the following objectives:

- a) Provide retirement benefits and welfare assistance to OFWs and their dependents;
- b) Develop a savings pension plan by which OFWs can be encouraged collectively to save and contribute part of their earnings in order to protect them against the hazards of old-age, disability, sickness and death; and,
- c) Ensure the viability of the funds remitted by OFWs and their employers.

The system shall endeavor to strike a right balance in management and safekeeping of the funds remitted by OFWs while extending the benefits of the System's services to the rightful beneficiaries.

SECTION 6. Board of Trustees. - The System shall be administered by a Board of Trustees which shall be composed of the Secretary of the Department of Migrant Workers

(DMW), as chairman, the Administrator of Philippine Overseas Employment Administration (POEA) as vice-chairman, the Director of the System, three (3) representatives from the land-based overseas workers, three (3) representatives from the seafarer's group, and two (2) representatives from the management sector representing the placement and manning agencies, as members. The Board of Trustees and the System shall be under the supervision of the Department of Migrant Workers.

The Director of the System, upon the recommendation of the Secretary of the Department of Migrant Workers, and the representatives of both the land-based overseas workers and the the seafarers, and of both management sectors, upon the recommendation of their respective organizations, shall be appointed by the President.

The Director shall be the chief executive officer of the System. He shall have the qualifications, rank and compensation of bureau director. The Director shall be assisted by a Deputy Director who shall be appointed by the Board of Trustees upon the recommendation of the chairman.

SECTION 7. Powers and Functions. - The Board of Trustees shall have the following powers and functions:

- a) Formulate and implement measures and programs to attain the system's objectives and purposes;
- b) Enter into agreements or contracts as may be necessary for the proper and effective administration of the System;
- c) Manage the retirement fund and other sources of the System subject to pertinent accounting rules and regulations issued by the Commission on Audit: *Provided*, That continuing actuarial and statistical studies are conducted to determine the financial viability of the System taking into account readjustment of the benefits, contribution rates, interest rates or the allocation of funds for the contingencies covered;
- d) Adopt from time to time a budget of expenditures for the System including its annual budget which shall not be more than thirty percent (30%) of the retirement fund;
- e) Acquire property, real or personal, which may be necessary for the attainment of the purposes of this Act;
- f) Determine and fix the monthly contribution of the OFWs based on minimum and maximum salary credits, and their employers whenever practicable and applicable;
- g) Approve restructuring proposals for the payment of due but unremitted contributions and unpaid loan amortizations, including the rates of imposable penalties, under such terms and conditions as it may prescribe;
- h) Sue and be sued in court;
- i) Appoint such personnel as may be deemed necessary to ensure the efficient



administration of the System; and,

- j) Perform such other acts as may be necessary and authorized by the Board of Trustees for the effective implementation of this Act.

SECTION 8. Chairman; Powers and Functions. - The chairman shall have authority and responsibility of exercising the powers and functions of the System.

The Chairman shall have the following powers and functions:

- a) Formulate and implement policies and programs to attain the objectives and purposes of the System;
- b) Issue rules and regulations, subject to the approval of the Board of Trustees, to carry out the objectives and purposes of the System;
- c) Administer fund resources and recommend to the Board of Trustees the annual budget of the System;
- d) Determine the functions, composition, and compensation of the personnel of the System;
- e) Coordinate all policies and programs relating to OFWs as provided in this Act; and,
- f) Undertake necessary consultations concerning matters affecting the welfare of OFWs and their families, and recommend to the President policies and programs relative thereto.

SECTION 9. Secretariat. - The Secretariat personnel shall be appointed by the Chairman, upon the recommendation of the Director. The compensation of the personnel and the operating expenses of the Secretariat shall be charged to the General Fund of the System.

SECTION 10. Compulsory Coverage. - The System shall be compulsory upon all documented OFWs as defined in this Act: *Provided*, That they are not over fifty (50) years of age: *Provided further*, That if an OFW is a member of the Social Security System (SSS) or any similar entity as provided under existing laws, the same shall be discontinued and any benefit or benefits accruing to the OFW from such membership shall be integrated into the System.

Compulsory coverage of the OFW under this system shall take effect on the first day of his employment in the foreign country, or upon boarding the foreign or domestic vessel and throughout the duration of his tour of duty, which entitles him to all benefits that shall be provided under this Act, including but not limited to retirement, death, disability, funeral, sickness and maternity benefits.

For purposes of this Act, manning agencies in the case of sea-based OFWs, and placement or recruitment agencies in the case of land-based OFWs, are deemed agents of their principals and are considered employers of the OFWs concerned and shall be jointly and solidarily liable with their principals with respect to civil liabilities incurred for any violation of this Act,

without prejudice to any criminal liability arising out of any violation of the provisions of this Act.

Other OFWs not falling under the preceding paragraph shall be considered in the same manner as self-employed persons under such rules and regulations that the Board of Trustees may prescribe.

SECTION 11. *Separation from Employment.* - When a covered OFW is separated from employment, the obligation to pay contributions from that employment shall cease at the end of the month of separation, but he shall be credited with all contributions paid, including those made by his employer, and shall be entitled to all benefits provided in this Act. Intermittently, while awaiting the renewal or a new contract, he may continue to pay the total contributions to maintain his right to full benefit.

SECTION 12. *Retirement Benefits.* -All covered OFWs who had paid at least one hundred twenty (120) monthly contributions prior to the semester of retirement and who has reached the age of fifty (50) years shall be entitled to a monthly pension. The computation of the monthly pension shall be determined by the Board of Trustees in accordance with the actuarial system to be established for the purpose.

Upon the death of the retired OFW pensioner, his primary beneficiaries as of the date of his retirement shall be entitled to receive his monthly pension and his dependents to the dependent's pension: *Provided*, That no dependent shall receive double pension: *Provided further*, That if he has no primary beneficiaries and he dies within sixty months from the start of his monthly pension, his secondary beneficiaries, or his designated person in the absence of secondary beneficiaries, shall be entitled to a lump sum benefit equivalent to the greater of : (a) twenty (20) times the monthly pension or; (b) the difference of sixty (60) times the monthly pension and the total monthly pensions by the System.

SECTION 13. *Dependent's Pension.* - The dependent's pension shall be equivalent to ten percent (10%) of the monthly pension for each dependent child which shall not exceed five.

SECTION 14. *Early Retirement and Voluntary Separation Benefits.* - Any OFW who voluntarily elects in writing to retire prior to the age of fifty (50) but who has cumulatively served for at least five (5) years in overseas employment, shall be paid retirement or separation benefits equivalent to one and one-fourth (1 ¼) month basic salary for every year of his respective overseas employment based on the highest salary which he received in the course of his employment overseas.

SECTION 15. *Overseas Filipino Workers Retirement Fund* - There shall be established an Overseas Filipino Workers Retirement Fund, hereinafter referred to as the Retirement Fund, consisting of the contributions of OFWs and their employers, and self-employed OFWs as the case may be, which shall be used for the purpose of providing



retirement benefits and similar gratuities to OFWs or their beneficiaries in accordance with this Act.

SECTION 16. *Overseas Filipino Workers Provident Fund* – There shall be established an Overseas Filipino Workers Provident Fund, hereinafter referred to as the Provident Fund, consisting of voluntary contributions of OFWs covered by the System in excess of the prescribed contribution rates, or the maximum salary credits, subject to rules and regulations that may be promulgated by the Board of Trustees.

The Provident Fund shall be used for the provision of other benefits to covered OFWs and their families, such as but not limited to loans for start-up capital for entrepreneurial undertakings, in addition to the benefits that shall be provided for pursuant to this Act.

SECTION 17. *Sources of Fund.* - In addition to the monthly contribution of the OFWs to the Fund, the Fund shall be financed from the following sources:

- a) Ten percent (10%) from the fees charged by medical testing centers which provide medical tests to overseas job-applicants;
- b) Ten percent (10%) from fees charged by Philippine international airports to outgoing OFWs;
- c) Ten percent (10%) from fees charged by OFW training centers; and,
- d) Fifty Million Pesos (P50,000,000.00) annually for five (5) years to be appropriated and be taken from the Contingency Fund of the Office of the President to complement the Overseas Filipino Workers Retirement Fund.

SECTION 18. *Bilateral Agreements* – The Department of Migrant Workers (DMW), the Department of Foreign Affairs (DFA) and the System shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements with the host countries, and other measures for enforcement: *Provided*, That in countries which already extend social security coverage to OFWs, the DFA through the Philippine embassies and the DMW shall negotiate further agreements to serve the best interests of the OFWs.

SECTION 19. *Settlement of Disputes* - Any dispute arising under this Act with respect to coverage, contributions, benefits and penalties, or any matter related thereto, shall be cognizable by the Board of Trustees and shall be decided by the Board of Trustees within the mandatory period of thirty (30) days after submission of evidence of the parties concerned. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Board of Trustees.

Any decision of the Board of Trustees, without any appeal therefrom, shall be final and executory fifteen (15) days after receipt of the decision by the party concerned, subject to judicial review by the Court of Appeals on questions of facts and law, and by the Supreme Court



only on questions of law in accordance with the pertinent provisions of the Rules of Court. No appeal bond shall be required.

The Board of Trustees may, *motu proprio* or on motion of any interested party, issue a writ of execution to enforce its decision after the same has become final and executory.

SECTION 20. Penal Clause – Any violation of this Act or of the rules and regulations promulgated by the Board of Trustees in the implementation of this Act, shall be punished by a fine of not less than Fifty Thousand Pesos (P 50,000.00) but not more than Two hundred Thousand Pesos (P 200,000.00) and imprisonment of not less than six (6) years and one (1) day but not more than twenty (20) years, or both, at the discretion of the court.

Criminal action arising from a violation of this Act and of the rules and regulations promulgated by the Board of Trustees in implementation of this Act, may be commenced by the Director of the System or by the concerned party, either under this Act, or in appropriate cases under the Revised Penal Code and applicable special laws.

SECTION 21. Appropriation. -To effectively implement the provisions of this Act, there is hereby appropriated the amount of One Hundred Million Pesos (P 100,000,000.00) for the initial capitalization of the System to be charged to the current appropriations of the Office of the President. Thereafter, the amount necessary for the continuous operation of the System shall be included in the annual General Appropriations Act.

SECTION 22. Implementing Rules and Regulations. – The DMW, the POEA and the Board of Trustees of the System, in consultation with concerned stakeholders shall, within ninety (90) days after the effectivity of this Act, promulgate the necessary rules and regulations for the implementation of this Act.

SECTION 23. Separability Clause. - If any portion of this Act is declared unconstitutional or invalid, the other provisions not affected shall continue in full force and effect.

SECTION 24. Repealing Clause. - Any provision of laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 25. Effectivity Clause. - This Act shall take effect fifteen (15) days following the completion of its publication in two (2) newspapers of general circulation.

Approved.

