

HOUSE OF ASSEMBLY
XXXXXXXXX STATE OF NIGERIA
THE FIFTH LEGISLATURE (2003-2007)
ENROLLED HOUSE BILL NO.....

SPONSOR:

CO-SPONSORS:

NO..... CREST 2004

XXXXXXXXX STATE OF NIGERIA

XXXXXXXXXXXXXXXXXXXX
Governor of XXXXXXXXX State

A BILL

FOR

A LAW TO ESTABLISH A CONTRIBUTORY PENSION SCHEME FOR
EMPLOYEES IN THE PUBLIC SERVICE OF XXXXXXXXX STATE AND
FOR OTHER MATTERS INCIDENTAL THERETO OR CONNECTED
THEREWITH

Commencement.

BE IT ENACTED by the House of Assembly of XXXXXXXXX
State of Nigeria as follows:

PRELIMINARY

Citation.

1. This Law may be cited as the Pension Reform Law, 2005

Interpretation.

2 In this Law:-

“Act” means the Pension Reform Act, 2004

“Commission” means the National Pension Commission
established under section 14 of the Act;

“Court” means the High Court of the State;

“Custodian” means a Company incorporated under the Companies and Allied Matters Act and duly licensed *as a Pension Assets Custodian* by the Commission;

“Employee” means any person employed in the Public Service of the State;

“monthly emoluments” means the total sum of the basic salary, housing allowance and transport allowance;

“Public Service of the State” is as defined in Section 318 of the Constitution of the Federal Republic of Nigeria, 1999

“Pension Fund” means an investment fund within the Pension Scheme which is intended to accumulate during an individual’s working life, from contributions and investments income, with the intention of providing income in retirement from the purchase of an annuity or in the form of programmed withdrawals, with the possible option of an additional tax free cash lump sum being paid to the individual;

“Pension Fund Asset” means assets which collectively constitute a pension fund;

“Pension Fund Administrator” means any body corporate licensed by the Commission as a Pension Fund Administrator and includes the Nigeria Social Insurance Trust Fund;

“Programmed withdrawal” means a product offered by a Pension Fund Administrator for periodic payments to a beneficiary of a retirement savings account as specified in Section 7(1)(a) of this Law;

“Retirement Savings Account” means an Account opened with a Pension Fund Administrator as specified in section 13 (1) of this Law;

“Scheme” means the Contributory Pension Scheme established under section 3(1) of this Law;

“State” means XXXXXXXX State of Nigeria.

ESTABLISHMENT AND OBJECTIVES OF THE CONTRIBUTORY PENSION SCHEME

3. (1) There is hereby established for every employment in the Public Service of the State, a Contributory Pension Scheme (in this Law referred to as the Scheme) for the payment of retirement benefits of employees to whom the Scheme applies under this Law.

(2) Subject to section 5 of this Law, the Scheme shall apply to all employees in the Public Service of the State.

4. The objectives of the Scheme shall be to-

- (a) ensure that every person who has worked in the Public Service of the State receives his benefit as and when due;
- (b) assist improvident individuals by ensuring that they save in order to cater for their livelihood during old age;
- (c) implement a uniform set of rules, regulations and standards as may be prescribed by the Commission, for the administration and payment of retirement benefits in the Public Service of the State.

Exemptions from the Scheme.

5. (1) Notwithstanding the provisions of sub-section (2) of Section 3 of this Law, any employee who at the commencement of this Law is entitled to retirement benefits under any pension scheme existing before the commencement of this Law but has 3 or less years to retire shall be exempted from this Scheme.

(2) The categories of persons mentioned in section 291 of the Constitution of the Federal Republic of Nigeria, 1999, shall be exempted from the scheme.

(3) Any person who falls within the provisions of subsection 1 and 2 of this section shall continue to derive retirement benefits under the existing Pay-As-You-Go

Pension Scheme of the Public Service of the State as amplified in the First Schedule to the Act.

(4) Nothing in this Law shall preclude the right of any person mentioned in sub-section (1) and (2) of this Law to be paid his pension as and when due.

Withdrawal from Retirement Savings Account

6. (1) Subject to sub-section (2) of this section, as from the commencement of this Law, no person shall be entitled to make any withdrawal from his retirement savings account opened under section 13 of this Law, unless he has attained the age 50 years

(2) Notwithstanding the provisions of sub-section (1) of this section, any employee who -

(a) is retired on the advice of a suitably qualified physician or a properly constituted medical board certifying that the employee is no longer mentally or physically capable of carrying out the functions of his office;

(b) is retired due to his total or permanent disability either of kind or body; or

(c) retires before the age 50 years in accordance with the terms and conditions of his employment.

shall be entitled to make withdrawals in accordance with section 7 of this Law.

(3) The Medical Board or a suitably qualified Physician may, at the request of a retired employee, such request to be made not more than once in every two years, review the fitness of such employee and where the Medical Board or Physician certifies that he is mentally and physically capable of carrying out the functions of his office, such employee may re-enter the Scheme upon securing another employment.

(4) For the purpose of sub-section (1) of this section, the authentic age of an employee entering the public service or any other employment shall be that submitted by him on entering the service or taking up the employment.

Retirement benefits.

7. (1) A holder of a Retirement Savings Account, upon retirement or attaining the age 50 years, whichever is later, shall utilize

the balance standing to the credit of his retirement Savings Account for the following benefits -

- (a) programmed monthly or quarterly withdrawals;
- (b) annuity for life purchased from a Life Insurance Company licensed by the National Insurance Commission with monthly or quarterly payments; and
- (c) a lump sum from the balance standing to the credit of his Retirement Savings Account, provided that the amount left after the lump sum withdrawal shall be sufficient to procure an annuity or fund a programmed withdrawal that will produce an amount not less than 50 percent of his annual remuneration as at the date of his retirement.

(2) Where an employee retires under paragraph © of sub-section (2) of section 6 of this Law, the employee may, on request, withdraw a lump sum of money not more than 25% of the amount standing to the credit of his Retirement Savings Account: provided that such withdrawal shall only be made 3 months after his retirement and the retired employee shall not have secured another employment.

Death of an employee

8. (1) Where an employee dies, his entitlements under the life insurance policy maintained under sub-section (3) of section 11 of this Law shall be paid into his Retirement Savings Account.

(2) The Pension Fund Administrator shall apply the amount paid under sub-section (1) of this section in favour of the beneficiary under a will or the next-of-kin or any person designated by him during his life time or in the absence of such designation, to any person appointed by the Probate registry as the administrator of the Estate of the deceased

Missing Employee

9. Notwithstanding anything to the contrary contained in any other Law, where an employee is missing and is not found within a period of one (1) year from the date he was declared missing, and a board of enquiry set up by the relevant Bureau concluded that it is reasonable to presume that he has died, the provisions of section 8 of this Law shall apply.

Retirement benefits not taxable

10. (1) Any amount payable as a retirement benefit under this Law shall not be taxable

(2) Notwithstanding the provisions of subsection (1) of this section, any voluntary contributions made under sub-section (5) of this

section 11 of this Law shall be subject to tax at the point of withdrawal where the withdrawal is made before the end of 5 years from the date the voluntary contribution was made.

Rates of
Contribution to the
Scheme

11. (1) Subject to such rules, regulations and standards as may be prescribed by the Commission, the contribution of any employee to whom the Law applies shall consist of –

(a) a minimum of seven and half percent of the total monthly emolument of the employee to be contributed by the employer; and

(b) a minimum of seven and a half percent of the total monthly emolument of the employee to be contributed by the employee.

(2) Notwithstanding the foregoing, an employer may agree or elect to bear the full burden of the Scheme, provided that in such a case the employer's contribution shall not be less than 15% of the total monthly emolument of the employee.

(3) In addition to the rates specified in sub-section (1) of this section, an employer shall maintain a life insurance policy in favour of the employee for a minimum of three times the total annual emolument of the employee.

(4) Subject to such guidelines as may be issued from time to time by the Commission, any person who is not ordinarily covered under section 3 of this Law shall be entitled to make voluntary contributions under the Scheme.

(5) Any employee to whom this Law applies may, in addition to the total contributions being made by him and his employer, make voluntary contributions to his Retirement Savings Account.

(6) The rates of the contribution mentioned in sub-section (1) of this section may, upon an agreement between an employer and an employee be revised upwards, from time to time and the Commission shall be notified of such revision through the Bureau.

Contribution
To be part of
Tax deductible
expenses

12. Notwithstanding any thing under any law, contribution by an employee to the Scheme under this Law shall form part of tax deductible expenses in the computation of tax payable by such employee under the relevant income tax Law.

Retirement
Savings Account
and remittance of
contributions etc.

13. (1) Every Employee shall maintain an account (in this law referred to as Retirement Savings Account), in his name, with any Pension Fund Administrator of his choice.

(2) The employee may, not more than once in a year, transfer the Retirement Savings Account maintained under subsection (1) of this section from one Pension Fund Administrator to another without adducing any reason for such transfer.

(3) The employee shall notify his employer of the Pension Fund Administrator chosen by him and the identity of the retirement Savings Account opened in his name under sub-section (1) of this section.

(4) The employee shall not have access to his Retirement savings Account nor have any dealing with the custodian with respect to the Retirement Savings Account except through the Pension Fund Administrator.

- (5) The employer shall –
- (a) deduct at source the monthly contribution of each employee in his employment, and
 - (b) not later than 7 working days from the day the employee is paid his salary, remit an amount comprising both the employee's contribution deducted under paragraph (a) of this sub-section and the employer's contribution, to the custodian specified by the Pension Fund Administrator of the employee, to the exclusive order of the Pension Fund Administrator.

(6) Upon receipt of the contributions remitted under sub-section (5)(b) of this section, the Custodian shall notify the Pension Fund Administrator who shall cause to be credited, the Retirement Savings Account of the employee for whom the employer had made the payment.

(7) Any employer who fails to remit the stipulated contributions within the time prescribed under sub-section (5)(b) of this section shall in addition to making the remittance already due, be liable to a penalty to be stipulated by the Commission provided that the penalty shall not be less than 2 percent of the total arrears of contributions that remain unpaid for each month or part of each month during which the default continues and the amount of the penalty shall be recoverable as a debt owing to the employee's Retirement Savings Account as the case may be.

(8) Contributions by the State Government or a Local Government to the Pension of employees in its Service shall be a charge on the Consolidated Revenue Fund of the State Government or such Local Government and shall be deductible there from.

(9) The Accountant-General of the State shall, immediately upon the request of the Commission, effect the deductions mentioned in sub-section (8) of this section.

Transfer of entitlement from defined benefits scheme

14. (1) As from the commencement of this Law, the right to retirement benefits of employees who are already under any pension scheme existing before the commencement of this Law and have 3 years to retire shall:-

(a) in the case of State Government employees, be recognized in the form of an amount acknowledged through the issuance of a bond to be known as state Government retirement Bonds, in favour of the employees and the bond issued under this sub-section shall be redeemed upon retirement of the employee in accordance with section 16 of this Law. The amount so redeemed shall be added to the Retirement Savings Accounts of the employee and applied in accordance with the provisions of section 7 of this Law; or

(b) in the case of Local Government employees, be recognized in the form of an amount acknowledged through the issuance of a bond to be known as Local Government Retirement Bonds, in favour of the employees and the bond issued under this sub-section shall be redeemed upon retirement of the employee in accordance with section 16 of this Law and the amount so redeemed shall be added to the Retirement Savings Account of the employee and applied in accordance with the provisions of section 7 of this Law.

Transfer from one employment to another.

15. Where an employee transfers his service or employment from one employer or organization to another, the same Retirement Savings Account shall continue to be maintained by the employee.

Retirement benefits bond Redemption Fund.

16. (1) There shall be opened in the Central Bank of Nigeria, an account for the management and investment of funds to be known as the Retirement Benefits Bond redemption Fund (in this Law referred to as “the Redemption Fund”) in respect of the Public Service of the State.

(2) The State Government and each Local Government in the State shall pay into the Redemption Fund an amount equal to 5 percent of the total monthly wage bill payable to employees in the service of the State government and such Local Government.

(3) The Central Bank shall invest and manage the Fund under the joint supervision of State Government and the Commission.

(4) The amount in the redemption Fund shall be used by the Central Bank of Nigeria to redeem any retirement benefit bonds issued pursuant to section 14 of this Law.

(5) The Commission shall, upon the failure of the State Government or Local Government to redeem any bond issued within 1 month of its due date, demand such redemption in writing from the State Government or such Local Government.

(6) Upon the failure of the State Government or a Local Government to redeem the bond within one month of the receipt of the Commission's demand, the Commission shall issued a request to the Accountant General of the Federation who shall thereafter deduct directly from the State of Local Government allocation from the Federation Account, the value of the bond and credit either the Redemption Fund Account with the Central Bank of Nigeria or the Retirement Savings Account maintained by the affected employee with his Pension Fund Administrator.

(7) Payments into the Redemption Fund shall cease after all Retirement Benefit Bonds issued under section 14 of this Law have been redeemed.

Establishment
of Pension
Bureaux

17 (1) There is hereby established for the Public Service of the State, a Bureau for the State Service and Local Government Service, to be known respectively as Bureau of State Government and Bureau of Local Government Pension (in This Law referred to as " the Bureaux"), both to be located in the Office of the Governor.

Composition
of the
Bureaux etc

(2) *The Bureaux shall operate under the rules, regulations and directives made by the Commission from time to time.*

(3) *The Bureaux shall with regards to their respective Services, render on a monthly basis, returns of the comprehensive list of pensionable staff, existing pensioners, deceased pensioners and their next of kin, to the Commission.*

18 (1) Each Bureau shall be headed by an officer not below the rank of a Permanent secretary.

(2) Each Bureau shall have a Pension Fund Management Committee Consisting of:

(a) In the case of the Bureau of State Pensions:-

- i) the Head of the Bureau as Chairman;
- ii) a representative of the State Civil Service Commission not below the rank of a Director;
- iii) a representative of the State Ministry of Finance not below the rank of a Director;
- iv) a representative of the Trade Union side of the Joint Public Service Negotiating Council (*to be appointed on rotational basis of two years each from within the various constituent units of the Trade Union side*);
- v) A representative of the Nigerian Union Of Pensioners, XXXXXXXXX State Chapter;
- vi) A representative of the State Head of Service not below the rank of a Director;
- vii) A representative of the Nigerian Union of Teachers (*Post-Primary*);
- viii) A representative of the Teaching Service Commission not below the rank of a Director; and
- ix) A representative of the State Auditor-General not below the rank of a Director.

(b) In the case of the *Bureau of Local Government Pensions*:-

- i) the Head of the Bureau as Chairman;
- ii) an officer not below the rank of a Director from the Local Government Service Commission;
- iii) an officer not below the rank of a Director from the Bureau of Local Government Affairs;
- iv) a representative of the Nigerian Union of Teachers (Primary);
- v) a representative of the State Chapter of the National Union of Local Government Employees;
- vi) a representative of the State Ministry of Finance not below the rank of a Director;
- vii) a representative of the Nigerian Union of Pensioners, XXXXXXXXX State Chapter;
- viii) a representative of the State Primary Education Board not below the rank of a Director; and

- ix) a representative of the Auditor-General for the Local Governments not below the rank of a Director.

(3) The principal objective of the Committees shall be to supervise and ensure the effective administration of the Contributory Pension Scheme within their respective Services.

(4) Each Committee shall meet at least, once every quarter.

19. The Bureaux of State Pensions and Local Government Pensions shall respectively carry out the functions of the defunct State Pension Department and the Local Government Pensions Board, and shall in particular-

Functions of
the *Bureaux*

- (a) make budgetary estimates for existing pensioners and officers exempted from this Scheme under section, 5 of this Law;
- (b) receive budgetary allocations from the Government and make payments to the pensioners as and when due;
- (c) ascertain deficit in pension payments, if any, to the existing pensioners or the categories of officers exempted under section 5 of this Law and carry out such other functions aimed at ensuring the welfare of pensioners as the Government or the Commission may from time to time, direct;.
- (d) pay gratuity and pension to the existing pensioners and the category of officers exempted under section 5 of this Law, in accordance with the relevant and applicable computations under the existing Pay-As-You-Go Pension Scheme of the State Public Service;
- (e) establish and maintain a data base of all Pensioners and contributors under the Contributory Scheme;
- (f) receive and review complaints on the Contributory scheme from the public with a view to passing them on to the Commission, where necessary for appropriate action; and
- (g) Monitor compliance levels and appraise the effectiveness of the operations of the Contributory Scheme within the State, with a view to making suggestion for improvement to the Commission;

*Duties of the
Bureaux*

20. *Each Bureau shall:-*

- (a) *ensure that its business is at all times managed or held in accordance with the provisions of the Law, any regulation or guidelines made thereunder and any directions given by the Commission.*
- (b) *take reasonable care to ensure that the management or safe keeping of the pension funds is carried out in the best interest of the employees.*
- (c) *report to the Commission as soon as reasonably practicable, any unusual occurrence with respect to the pension funds which in its view could adversely affect the rights of the employee under the Scheme.*
- (d) *report to the Commission as soon as reasonably practicable, if the employer is in default of remittance of any contributions and such remittance remains due for a period of more than 14 days.*

Funds and assets,
existing pension
Offices etc.

21. As from the commencement of this Law, the responsibilities, funds, assets or liabilities of all existing Pension Offices in Public Service of the State shall be vested in the Bureaux as provided under this Law.

Commission
to supervise
Bureaux.

22. (1) The Commission shall regulate and supervise the activities of the Bureaux in order to ensure compliance with the provisions of the Act.

(2) The Commission may, at the request of the Bureaux, render technical support and advice on the management of Pension matters.

Death of
exempt officer
in service etc.

23. Where an officer exempted under section 5 of this Law dies in service or in the course of duty, the relevant Bureau shall pay, en- bloc to his next-of-kin or designated survivors, gratuity and pension to which the officer would have been entitled at the date of his death calculated in accordance with section 19(d) of this law.

Retirement of
exempt officer.

24. Where an officer exempted under section 5 of this law is retired by his employer as result of mental or physical incapacity, the officer shall be paid gratuity and Pension in accordance with section 19(d) of this law.

Books of
accounts to be
kept and
audited.

25. (1) Each Bureau shall cause to be kept proper books of accounts and records showing its income, expenditure, assets, investments made, returns on investments made and the contributions of employees in its respective Service as the case may be.

(2) Each Bureau shall, not later than four months from the end of the financial year, cause its accounts to be audited by qualified external auditors.

(3) Each Bureau shall submit its audited financial accounts to the Commission and the State Government not later than 120 days from the end of the financial year.

Annual
Report

26. Each Bureau shall, not later than four months from the end of the financial year, submit to the Commission and the State Government, an annual report in respect of the immediate preceding year on the pension funds being managed by it and such report shall include the audited accounts.

Duties of
External
Auditors

27. (1) Any external auditor appointed by the Bureaux under section 24 of this Law shall have responsibility to the Commission for the protection of pension funds and shall, in the discharge of its duties to the Bureaux, report any of the following situations to the Commission, That is:-

- (a) any evidence that there has been significant lapses in then accounting and other records or the internal control systems of the Bureaux;
- (b) any evidence that the Bureaux have reported financial information to the Commission which is misleading in material particulars;
- (c) where it believes that a fraud or other misappropriation has been committed by the management of the Bureaux or has evidence of an attempt by management to commit such fraud or misappropriation; or
- (d) where there has been an event or occurrence which affects or is likely to affect the auditor confidence in the competence of the management to conduct the affairs of the Bureaux in a prudent or safe and sound manner.

(2) Nothing in this section shall be constructed to be a breach of the duty of the auditor to the Bureaux by reason only of its communicating in good faith to the Commission, whether or not in response to a request made by the Commission for any information or opinion on any matter or situation to which this section applies.

(3) Any auditor who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of sub-section (1) of this section commits an offence and is liable on conviction to a fine not less than N 10,000,000 in the case of a firm or imprisonment for a term of not less than 3 years or both for the responsible partner or principal officer.

General
penalty

28. *Any person who contravenes any provision of this Law in respect of which no specific penalty is prescribed under this Law, commits an offence and shall be liable upon conviction to a fine of N 250,000.00 or to imprisonment for a term of one year or to both such fine and imprisonment.*

Offence
by body
corporate

29. *Where an offence under the provision of this Law is committed by a body corporate, the body corporate and every director or officer who had knowledge or should have had knowledge of the commission of the offence and who did not exercise due diligence to ensure compliance with this law commits an offence and shall be proceeded against in accordance with this law.*

Dissolutionn of
Board of Trustees
etc

30. (1) Any Board of Trustees established under any enactment in the state is hereby dissolved and all pension funds or assets being held by such Board of Trustees before the commencement of this Law shall be transferred to the relevant Bureau.

(2) The dissolution of any Board specified in sub-section (1) of this section shall not affect any additional fringe benefits other than pension and gratuity, enjoyable upon retirement by any person before the commencement of this Law except as provided by this law.

Inconsistency
of Laws.

31. If any other law relating to pensions in the State is inconsistent with this Law, this Law and that of the Act, the provisions of the Act shall prevail to the extent of the inconsistency.

Repeal of Cap.
90 of 1978.

32. The Pension Law, Cap. 90, Laws of XXXXXXXXX state,
1978, is hereby repealed.