BILL NO. 6 OF 2013

ADAMAWA STATE HOUSE OF ASSEMBLY

A BILL
FOR

A LAW TO ESTABLISH FOR BOTH STATE AND LOCAL GOVERNMENT PUBLIC SERVICES, A FULLY FUNDED CONTRIBUTORY PENSION SCHEME FOR THE PAYMENT OF BENEFITS TO EMPLOYEES OR SELF-EMPLOYED PERSONS PARTICIPATING IN THE SCHEME AND TO PROVIDE FOR MATTERS INCIDENTAL THERTO.

Date of Commencement ( )

BE IT ENACTED by the House of Assembly of Adamawa State of Nigeria and by the authority of same as follows:-

PART I – PRELIMINARIES

Short title and commencement

1. This Law may be cited as the Adamawa (State and Local Government) Contributory Pension Law, 2013 and shall come into operation on the……..day of ……..2013.

Interpretation

2. In this Law unless the context otherwise requires:-

"Actuary" means the Actuarial firm appointed by the Trustees to conduct the periodic valuation of the fund;

"Board" means Board of Trustees established under section 3, that is entrusted with the management of pension fund, whose composition, functions and duties are defined in the Trust Deed;

"Contributory Pension" means a combined contribution by employer and employee for the benefit of the employee and includes benefits to private individuals that participate in the scheme;

"Employee" means an officer who is in the service of an employer and contributing to the scheme;

"Employer" means an organization that engages the services of an employee and contributing to the pension scheme for the benefit of the employee;

"External Auditors" means the Auditors appointed by the Board of trustees for the purpose of certifying the correctness and fairness of the financial statements pertaining to the fund;

"Gratuity" means lump-sum payment of benefits by the employer to the employee on leaving service;

"Funds" means the Contributory Pension Fund;

"Investment" means putting to use the contributions of the employer and the employee for the purpose of yielding profit;

"Ministry" means any Ministry or organization for the time being charged with the responsibility of pension administration;

"Next-of-kin" means those persons whose names are furnished by a retiree as his next-of-kin in his record of service;

"Pension" means regular payment to a retiree under the Scheme who retired after the attainment of ten years qualifying service;

"Public Service" means service under State and Local Government or any scheduled or approved organization;

"Retirement" means cessation from service by an officer after qualifying for pension and gratuity;

"Retirement" means a retiree's terminal benefit of pension and gratuity;

"Scheme' means the contributory Pension Scheme established under Section 3;

"State" means Adamawa State of Nigeria;

"Total emolument" means basic salary attached to the established post held by the officer and the following allowances, where applicable:

(a) rent subsidy or housing allowance;

(b) transport allowance;

(c) meal subsidy;
(d) entertainment allowance;
(e) utility allowance;
(f) domestic staff allowances;
(g) medical allowance;
(h) annual bonus;
(i) furniture allowance.

PART II – ESTABLISHMENT OF CONTRIBUTORY PENSION SCHEME

Establishment of Contributory Pension Scheme

3 (1) There is hereby established for both State and Local Governments public services, a fully funded Contributory Pension Scheme (in this Law referred to as "the Scheme") for the payment of benefits to employees or self-employed persons participating in the Scheme.

(2) The Scheme shall apply to:

(a) all permanent and pensionable employees in the public service of the State and Local Governments; and
(b) any interested organization or individual that may join the scheme.

(3) The total fund or any part thereof contributed in the scheme shall be invested in approved securities in accordance with the provisions of the Securities and Exchange Commission Act, which shall include but not limited to the following:

(a) bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank;
(b) bonds, debentures, redeemable preference shares and other debt instruments issued by the corporate entities and listed on a Stock Exchange registered under Investment and Securities Act 2004;
(c) ordinary shares of public Limited Company listed on the Stock Exchange, registered under the Investment and Securities Act 2004 will guarantee records having declared

and paid dividends in the preceding five years;

(d) bank deposit and bank Securities;

(e) Investment Certificate of Close-end Investment Fund or Hybrid Investment Funds listed on the Stock Exchange registered under the Investment and Securities Act 2004 with good track record of earning;

(f) units sold by Open-end Investment funds or specialist open-end investment funds listed on the Stock Exchange;

(g) bonds and other debt securities issued by listed companies;

(h) real estate investment.

The Fund and contribution

4 (1) There is hereby established a Fund for the Scheme which shall consist of combined monthly contributions of the employer and employee for every financial year or part thereof in which an employee is employed, a sum equal to 18 percent to the Scheme, in the following proportion:

(i) 10 percent by the employer; and

(ii) 8 percent by the employee.

(2) In case of self-employed persons the minimum monthly contributions shall be One Thousand Naira (N1, 000.00) made up in the following proportion:

(a) State Government contribution – Two Thousand Naira per month;

(b) Local Government contribution (where the person resides) –Two Hundred Naira per month;

(c) Person contributing –Six Hundred Naira per month.

(3) The amount so contributed shall be paid into the Trustees account not later than one week from the date of deduction.

(4) Notwithstanding the provision of this section, the Pension Fund Trustees may in consultation with stakeholders proposed to the Governor any increase in

the rate of contribution subject to the approval of the State House of Assembly.

Conditions for benefitting

5 (1) No gratuity or pension shall be granted under this Law to an employee except on his retirement from the public service in any of the following circumstances:

(a) on statutory retirement under the provisions of this Law;

(b) on voluntary retirement after a qualifying service of 10 years , under the provisions of this Law;

(c) on compulsory retirement for the purpose of facilitating improvement in the employer's establishment;

(d) on the advice of a properly constituted Medical Board certifying that the employee is no longer mentally or physically capable of carrying out the functions of the office;

(e) on total or permanent disability of the employee while in service;

(f) on abolition of the office;

(g) on the ground that his retirement is in the public interest;

(h) on termination of appointment.

(2) For a person or employee participating in the Scheme to take full benefit, he must have contributed or his contribution to the scheme shall not be less than five years.

Dismissal of the employee

6. Where an employee who has contributed to the scheme is dismissed from the public service, he shall be entitled to all his contributions, but shall not be entitled to gratuity only.

Consequences of withdrawal from Public service

7 (1) Where an employee who has contributed to the Scheme for five years and leave or withdraws from the public service, he shall be entitled to gratuity only.

(2) Where an employee who has contributed to the Scheme for less than five years and withdraws from

public service, he shall be entitled to his contributions plus accrued yield less Government contributions.

(3) Where an employee who has contributed to the Scheme withdraws from public service and has served for more than 10 years, he shall be entitled to pension and gratuity.

Consequences of withdrawal from the Scheme

8. Where an organization or an individual withdraws from the Scheme, he shall be entitled to his contribution plus the accrued yield for the period of his contribution.

Merger of contributions

9. The contribution of any employee who leaves the services of his employers and joins another employer, his contribution and that of former employer shall be merge with his present contribution under the Scheme.

Termination before qualifying for pension

10. Where the service of an employee is terminated before qualifying for pension, the officer shall be entitled to one year total emolument as gratuity.

Pension and gratuity after serving for not less than 15 year

11. Where an employee is required to retire after serving for not less than 10 years in any of the circumstances specified in Section 5 of this Law, he shall be entitled to a gratuity and pension immediately on re-tirement, notwithstanding that he has not attained the age of 45 years.

Calculation of pension

12. For the purpose of calculating pension, the last year of service after qualifying for pension, if it is more than six months shall be rounded up to count one year.

Statutory age of receiving pension

13. Except otherwise provided in this Law, an employee who qualifies to receive pension shall not commence receiving it until he attains the age of 45 years.

Retirement age

14 (1) Every employee in the public service shall retire on attaining the age of 60 years or after 35 years of service, which ever comes earlier.

(2) An employee shall give notice of his intention to retire from the public service, three months before he

attains the age of 60 years or 35 years of service whichever comes earlier and shall be deemed to have retired with effect from the date he attained the age of 60 years or 35 years of service.

Penalty for exceeding retirement period in service

15. Where an employee stays beyond the date of retirement, all emoluments earned by him and actually paid to him, after that date, shall be deducted from:

(a) his gratuity en-bloc; and
(b) his pension in monthly installments.

Pension and or gratuity where employee dies or missing in service

16. (1) Where an employee is killed in the course of duty or dies in service, his recorded next-of-kin or any person designated by him or his designated survivors shall be paid his benefits in accordance with the provisions of this Law.

(2) Notwithstanding anything to the contrary contained in any law, where an employee is missing and is not found within a period of one year from the date he was declared missing, and a board of inquiry set up by the Commission concludes that it is reasonable to presume that he has died, the provision of sub-section (1) shall apply.

Pension and gratuity where an employee dies within five years of retirement

17 (1) Where an employee dies within five years of retirement, his next-of -kin or designated survivors shall be paid en-bloc the balance of the same pension which the employee was receiving prior to his death for a period expiring at the end of five years from the date of his retirement .

(2) Where an employee dies after years of retirement, the retirement benefit shall not be transferable and shall cease immediately.

Age of joining service not be altered

18. The authentic age of an employee entering the public service shall be submitted by him on entering the service and no alteration shall be entertained thereafter, notwithstanding any further information or facts to the contrary.

Pension and gratuity not assignable

19 (1) Pension or gratuity under this Law shall not be assignable or transferable or liable to be withheld, sequestrated or levied upon for or in respect of any debt or claim whatsoever except for the purpose of:

(a) recovering a debt due to the State or Local Governments;

(b) recovering an overpayment of a pension or gratuity made to an employee by Government;

(c) satisfying an order of a Court for the payment of periodic sums of money towards the maintenance of the wife or former wife or minor of the employee to whom the pension or gratuity has been granted.

(2) Any amount recovered under this Section shall be remitted to the appropriate authority.

Computation of tax payer

20.Notwithstanding anything in any enactment or Law, contributions by an employee and an employer to the Scheme under this Law shall form part of tax deductible expenses in the computation of tax payable by the employer, as the case may be under the relevant Income Tax Law.

PART III – ESTABLISHMENT OF BOARD OF TRUSTEES

Establishment of Board of Trustees

21. There shall be established a body to be known as the Board of Trustees for the Scheme.

Membership of Board of Trustees

22. The membership of the Board shall comprise the following:-

(i) a person of unquestionable integrity with requisite experience to be appointed by the Governor who shall be the Chairman subject to confirmation by the House of Assembly;

(ii) Permanent Secretary Office of the Head of Service;

(iii) the Permanent Secretary, State Pension Board or his representative not below the rank of a Director;

(iv) Permanent Secretary or his representative of State Ministry of Finance;

(v) the Permanent Secretary, Ministry for local Government or his representative not below the rank of a Director;

(vi) the Solicitor-General or his representative not below the rank of a Director;

(vii) the State Chairman Nigerian Labour Congress;

(viii) a representative of Nigerian Union of Local Government Employees;

(ix) five other members of immense social standing and impeccable character who in the opinion of the Governor will make meaningful contribution to the scheme to be appointed by the Governor;

(x) the State Chairman Nigerian Union of Teachers (NUT);

(xi) the Executive Secretary;

(xii) a representative of Nigerian Union of Pensioners; and

(xiii) a representative of State Public Joint Negotiation Council.

Functions of the Board

23. The functions of the Board shall include among others the following:

(a) to provide and implement appropriate guidelines and modalities for the investment of pension funds and the payment of pension and gratuity;

(b) to appoint and regulate the activities of fund managers;

(c) to advice Government on matters pertaining to the smooth operation of the Scheme;

(d) to prepare or cause to be prepared an annual report and audited accounts, authenticated by the Board's appointed External Auditors and Actuary and send same to the Securities and Exchange Commission (SEC) and Joint

Tax Board, not later than four months after the close of the financial year;

(e) to ensure that the annual reports, audited accounts, together with a report by an independent actuary of the investments of the pension funds and quarterly financial statements by the Fund Managers are submitted to the Commissioner for the Ministry of Social Security and Pension Administration not later than 3 months after the close of the financial year;

(f) the appointment of Fund Managers, Actuary and Auditors.

Tenure of office

24. The Chairman and Members shall have four years tenor subject to renewal by the Governor.

Emolument and Allowances of Members

25. The Chairman and other members of the Trustees shall be paid such emoluments and allowances as may be determined by the Governor from time to time.

Exemption from the Scheme

26. (1) Notwithstanding any provision of this Law, any employee who at the commencement of this Law is entitle 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 sub-section 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.

(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/her pension as and when due.

(5) Where an officer exempted under this section 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.

(6) Where an officer exempted under this Law, retired by his employer as a result of mental or physical incapacity, the officer shall be paid gratuity and pension in accordance with this Law.

Penalties

27. (1) 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 N250,000.00 or to imprisonment for a term of one year or both.

(2) Where an offence under this Law is committed by a body corporate and every director or officer who had knowledge or should have 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.

Fund Managers

28 (1) There shall be managers to the fund to be known as Fund Managers, to be appointed by the Trustees on such terms and conditions as may be agreed by the parties.

(2) In appointing Fund Managers, the Board shall be guided by the experience, transparency and ability to perform under harsh or unfavourable investment climate.

(3) The Fund Managers shall manage and invest the funds of the Scheme in any or all the investment windows enumerated under section 3 (3) of this Law.

(4) The Fund managers shall be answerable to the Board, and shall show due diligence, professional competence and comply with all laid down procedures governing investments in dealing with the Fund under their management.

(5) Pension Fund Managers shall not invest pension fund assets in shares or in other securities issued by:-

(a) the Pension Fund Manager or custodian; and
(b) a shareholder of the Pension Manager or custodian.

(6) In event of breach, failure or neglect, the Fund Managers shall be liable to penalties specified in the Contributory Pension Scheme Act 2004.

Executive Secretary and other staff

29 (1) The Governor shall appoint by name or office an Executive Secretary of the Board who shall be knowledgeable in pension matters and be responsible for carrying out the policy of the Board, the day to day administration of the business of the Board and such other functions as the Board may from time to time direct

(2) There shall be paid to the Executive Secretary such remuneration, allowance and other expenses as the Governor may from time to time determine.

(3) The Board may draw such number of supporting staff as it may require from the office of the Head of the Civil Service of the State and such staff so drawn shall be answerable to the Executive Secretary.

PART IV – SUPPLEMENTARY PROVISIONS

Running cost to the Board

30. The running cost and expenses of the Board shall be defrayed out of monthly grants from the State Government; however, where expenditure is special in nature, the Chairman may authorize same form the Fund subject to the ratification by the Board.

Saving the right, obligations and liabilities of the employer

31. All rights, interest, obligations, and liabilities of the State and Local Government, in respect of any pension or gratuity, existing, immediately before the commencement of this Law shall continue to vest in the respective tier of Government.

Saving of all pending legal actions

32. Any proceeding or cause of action pending or existing immediately before the commencement of this Law by or against the State and Local Governments, in respect of any pension or gratuity or any other right, interest, obligation or liabilities of Government may be commenced, continued, or enforced by or against the Government as if this Law had not been made.

Independence of the Board	33. In the discharge of their duties under this Law, the Board shall not be under the direction of any person or authority.
Financial year	34.Financial year shall commence from 1st January to 31st December of each year.