



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Tuesday, 13th June, 2006

1. The Senate met at 10. 15 a.m. The President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Thursday, 8th June, 2006 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.
3. **Announcements:**
(i) The Senate President read a letter from Russell D. Feingold, a USA Ranking Senator as follows:

Embassy of the United States of America

June 8 2006

*Senator Ken Nnamani Senate
President National Assembly
Federal Republic of Nigeria
Abuja*

Dear Senator Nnamani:

Enclosed is a copy of a letter from United States Senator Russell D. Feingold to Members of the Nigerian Parliament through the Nigerian Embassy in Washington, DC.

Sincerely,

Signed:

Thomas P. Furey Charge d'Affaires, a.i. Enclosure

RUSSELL D. FEINGOLD
WISCONSIN
FOREIGN RELATIONS
506 HARY SENATE OFFICE BUILDING
WASHINGTON, DC20510-4904

COMMITTEE ON THE BUDGET
United states
senate COMMITTEE ON THE JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE

COMMITTEE ON

DEMOCRATIC POLICY COMMITTEE

WASHINGTON, DC 20510 -4904

June 7,2006

*Attn: Members of the Nigerian Parliament
Nigerian Embassy 3519 International Place,
NW Washington, DC 20008*

Honorable Members of Parliament,

I am writing to congratulate you on your recent decision against the proposed amendment to the constitution that would have extended your country's, presidential term limit. Your decisive action is an important step forward for the health of your country's democratic institutions.

As a fellow legislator, I encourage you to continue your work in protecting and enhancing democratic principles.

Sincerely,

*Signed:
Russell D. Feingold
United States Senator*

(ii) The Senate President acknowledged the presence of Esan North-East Legislative Council Uromi, Edo State in the gallery to observe Senate proceedings.

4. Matter of Urgent Public Importance:

Tragic Death of Senator Ahmed Tijani Ahmed:

Rising on Rules 42 and 52, Senator Tunde Ogbeha invited the attention of the Senate to the tragic death of Senator Ahmed Tijani Ahmed in a ghastly motor accident on Saturday, 10th June, 2006 along Abuja- Lokoja road. He sought and obtained leave of the Senate to present a Motion on the issue as a Matter of Urgent Public Importance.

Motion made and Question Proposed: That whereas on Saturday, June 10, 2006 was a sad and tragic day for the people of Kogi State and indeed Nigeria. On that day, several Nigerians lost their lives in two separate ghastly motor accidents along Abuja - Lokoja road. Among those who lost his life was Senator Ahmed Tijani Ahmed popularly called A. T;

WHEREAS Senator A. T. Ahmed, born on 20th May, 1943, was a two-time Senator elected in 1992 and 1999, he represented Kogi Central Senatorial District. He was a consummate and compassionate politician and administrator. He was a member of PDP Board of Trustees. He was a man who cared for his people, a grass-root politician who was admired by both his supporters and critics alike. A politician that was often times misunderstood;

WHEREAS as a former Managing Director of Federal Aviation Authority of Nigeria (FAAN), he made his mark as an administrator;

WHEREAS as a Senator, he was very influential and positive in all his contributions and actions. In 1999 he served as Chairman, Committee on Senate Services and Committee on Aviation;

WHEREAS we in Kogi State will miss him just as the Nation will miss his services. His death is a big blow to PDP, particularly in Kogi State. We commiserate with his family, the government and people of Kogi State. May God grant the family the fortitude to bear the loss and May Allah grant him eternal rest;

WHEREAS the tragic accidents of last Saturday along Abuja-Lokoja road has brought to the fore the need to dualise the road. This issue cannot be over flogged. How many more lives would be lost before action is taken; and

WHEREAS the road serves the South-West and Kwara States, South - South and South-East and Benue States to deserve immediate attention from the Federal Ministry of Works. I commiserate with the families of the victims of last Saturday accidents and pray for the repose of their souls.

Be it resolved:

That the Senate do:

- (i) condole the family of Senator A. T. Ahmed and of all those who lost their lives in the two separate accidents on Saturday, 10th June 2006 along Abuja - Lokoja road;
- (ii) send a delegation to condole the family of Senator A. T. Ahmed, the Government and people of Kogi State;
- (iii) observe a minute's silence in honour of Senator A. T. Ahmed and several other Nigerians who lost their lives in the two accidents;
- (iv) call on the Federal Government to commence without further delay, the dualisation of Abuja-Lokoja-Okene -Benin road (*Senator Tunde Ogbeha*).

Debate:

Prayer (i);

That the Senate do condole the family of Senator A. T. Ahmed and of all those who lost their lives in the two separate accidents on Saturday, 10th June 2006 along Abuja - Lokoja road — *Agreed to*.

Prayer (ii):

That the Senate do send a delegation to condole the family of Senator A. T. Ahmed, the Government and people of Kogi State— *Agreed to*.

Prayer (Hi):

That the Senate do observe a minute's silence in honour of Senator A. T. Ahmed and several other Nigerians who lost their lives in the two accidents — *Agreed to*.

Prayer (iv):

That the Senate do call on the Federal Government to commence without further delay, the dualisation of Abuja-Lokoja-Okene -Benin road — *Agreed to*.

Amendment Proposed:

Inserts new prayer (v) as follows:

"(v) That the Senate do implore the Federal Road Safety Commission to mount enlightenment and education campaign targeted at drivers of articulated lorries, trailers and tankers and luxurious buses to adopt good driving habits and be more sensitive to the safety of other road users" (*Senator Oserheimen A. Osunbor*).

Question that the amendment be made, put and agreed to.

Another Amendment Proposed:

Inserts, new prayer (vi) as follows:

"(vi) That the Senate do call on the Federal Government to adopt a programme for the dualization of all Inter-State Roads" (*Senator Udoma Udo Udoma*).

Question that the amendment be made, put and agreed to.

Resolved:

That the Senate do:

- (i) condole the family of Senator A. T. Ahmed and of all those who lost their lives in the two separate accidents on Saturday, 10th June 2006 along Abuja - Lokoja road;
- (ii) send a delegation to condole the family of Senator A. T. Ahmed, the Government and people of Kogi State;

- (iii) observe a minute's silence in honour of Senator A. T. Ahmed and several other Nigerians who lost their lives in the two accidents;
- (iv) call on the Federal Government to commence without further delay, the dualisation of Abuja-Lokoja-Okene -Benin road
- (v) implore the Federal Road Safety Commission to mount enlightenment and education campaign targeted at drivers of articulated lorries, trailers and tankers and luxurious buses to adopt good driving habits and be more sensitive to the safety of other road users;
- (vi) call on the Federal Government to adopt a programme for the dualization of all Inter-State Roads (S. Res./059/60).

One minute silence accordingly observed.

5. Senate Delegation to Okene, Kogi State:

The Senate President announced the composition of the Senate delegation to Okene, Kogi State, to commiserate with the family, Government and people of Kogi State as follows:

- (i) Deputy Senate President — Leader of Delegation
- (ii) All Senators from Kogi State (iii)

Ail other interested Senators.

6. Personal Explanation:

Extra Judicial Killings by the Police in Oturkpo, Benue State:

Invoking Rule 43, Senator David Mark invited the attention of the Senate to the extra judicial killings of an 18 year old boy following a minor disagreement between the police and some youth in Oturkpo, Benue State. He stated that the incident occurred on Thursday, 8th June, 2006, at about 7:00 p.m. which led to rampage by the youths burning down a Police ALGON vehicle in the process. He further stated that as the Chairman, Senate Committee on Police Affairs, the Committee has taken up to investigate the matter and report to the Senate.

7. Committees on Foreign Affairs:

Motion made and Question Proposed: That the Senate do receive the Report of the Committee on Foreign Affairs Nigerian Hajj Commission Bill 2006 (*Senator jibril M. Aminu*).

Question put and agreed to.

Report Laid.

8. Central Bank of Nigeria (Repeal and Re-Enactment) Bill 2006 (SB. 300):

Motion made and Question Proposed: That the Central Bank of Nigeria (Repeal and Re-Enactment) Bill 2006 be read the Second Time (*Deputy Senate Majority Leader*).

Debate:

Further consideration of the Bill stood down.

9. Committee on Commerce:

Report on Equipment Leasing Act (Amendment) Bill 2006 (SB. 76):

Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on Commerce on the Equipment Leasing Act (Amendment) Bill 2006 and approve the recommendations (*Senator Ibikunie Amosun*).

Question put and agreed to.

Report presented.

Motion made and Question Proposed: That the Senate do resolve into a Committee of the Whole to consider the Report (*Deputy Senate Majority Leader*).

Question put and agreed to.

(SENATE IN COMMITTEE OF THE WHOLE) (Mr

President in the Chair)

**A BILL FOR AN ACT TO REGULATE THE BUSINESS OF EQUIPMENT LEASING IN NIGERIA
AND FOR PURPOSES CONNECTED THEREWITH**

EQUIPMENT LEASING BILL 2006

Clause 1: Commencement, Application of this Act:

ENACTED by the National Assembly of the Federal Republic of Nigeria-This Act applies to all equipment lease agreements.

Committee's Recommendation:

That the provision in clause 1 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 1 do stand part of the Bill, put and agreed to.

Clause 2: Equipment Lease Agreement:

- (1) An equipment lease agreement shall be in writing containing -
 - (a) a statement to the effect that the lessor and lessee have agreed to enter into-
 - (i) A finance equipment lease, or
 - (ii) An operating lease, or
 - (iii) Any other specified variant of either (i) or (ii) above;
 - (b) A description of the equipment to be acquired under the lease agreement; or
 - (c) The total or instalmental lease rentals payable by the prospective lessee.
- (2) If a finance equipment lease is to be entered into, the written agreement shall in addition to (b) and (c) above, contain:
 - (i) The estimated price of the equipment
 - (ii) A statement that the equipment is being acquired by the prospective lessor in connection with the lease agreement which, to the knowledge of a supplier or manufacturer, is to be made between the prospective lessor and lessee;
 - (Hi) A statement as to whether or not the prospective lessee has selected **the** equipment, or selected the supplier or manufacturer with or without relying on the skill and judgment of the prospective lessor.

Committee's Recommendation:

That the provision in clause 2 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 2 do stand part of the Bill, put and agreed to.

Clause 3: Classification of equipment leasing:

- (1) Equipment leasing is divided into three main classes;
 - (a) Finance lease;
 - (b) Operating lease;
 - (c) Other variants of either (a) or (b)

- (2) Other variants of equipment leasing of either subsection 3 (a) or (b) are as follows-
- (a) Syndicated lease;
 - (b) Sale and lease back lease;
 - (c) Cross border lease;
 - (d) Leverage lease; and
 - (e) any equipment lease that may from time to time be approved by the Minister

Committee's Recommendation:

That the provision in clause 3 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 3 do stand part of the Bill, put and agreed to.

Clause 4:

Contents of a lease Agreement:

- (1) Before a lease agreement is registered, it shall be in writing and shall contain
- (a) A description of the equipment to which the lease agreement relates sufficient to the identify it;
 - (b) The total lease rentals payable by the lessee to the lessor;
 - (c) The amount of each instalmental rental payable by the lessee to the lessor;
 - (d) The date or the mode of determining the date on which each instalment rental is payable;
 - (e) A clause that the lessee acknowledges confirms and declares that he holds the equipment as a mere bailee of the lessor and that the lessee does not, during the specified period of a lease, have any proprietary right, title or interest in the equipment other than as a lessee; and
 - (f) That upon the termination of the lease agreement or any renewal thereof, subject to any exercisable option as regards the sale or disposal of the equipment, the lessee shall deliver to the lessor, the equipment, in good order and working conditions, ordinary wear and tear excepted. That in termination of the lease agreement by expiry of time, unless a renewal is granted or the lessor agrees to sell the equipment to the lessee, the lessee shall deliver to the lessor the equipment in good order and condition
- (2) If the equipment lease is a finance lease it shall in addition to the provision in subsection (1) contain the following clauses-
- (a) That the lessee confirms and acknowledges that the finance lease agreement is a full pay- out non- conceal able agreement; and
 - (b) That upon the termination of the lease agreement or any renewal thereof, subject to any exercisable option as regards the sale or disposal of the equipment, the lessee shall deliver to the lessor, the equipment, in good order and working conditions, ordinary wear and tear exempted.

Committee's Recommendation:

That the provision in clause 4 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 4 do stand part of the Bill, put and agreed to.

Clause 5: Delivery of a lease agreement to the lessee:

A copy of the agreement pursuant to section 2 shall be delivered or sent to the lessee within 14 days after the making of the lease agreement.

Committee's Recommendation:

That the provision in clause 5 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 5 do stand part of the Bill, put and agreed to.

Clause 6: Business of equipment leasing:

No person shall carry on the business of equipment leasing unless-

- (a) it is a limited liability company and the Memorandum and Articles of Association of the company shall have express provision to carry on the business of equipment leasing; and

Amendment Proposed:

Leave out the words "and Articles" in line 1 (*Senator Oserheimen Osunbor*)

Question that the amendment be made, put and agreed to.

- (b) it has satisfied all requirement prescribed by guidelines made from time to time by the Minister.

Committee's Recommendation:

That the provision in clause 6 be retained (*Senator Ibikunle Amosun*)

Another Amendment Proposed:

Leave out the word "Minister" in sub-clause 6(b) and *insert* the words "Registration Authority" instead thereof (*Senator David Mark*)

Question that the amendment be made, put and agreed to.

Question that Clause 6 as amended do stand part of the Bill, put and agreed to.

Clause 7: Establishment of Registration Authority:

There is hereby established a body to be known as Equipment Leasing Registration Authority (in this Act referred to as "Registration Authority").

Committee's Recommendation:

That the provision in clause 7 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Composition of Registration Authority:

The Registration Authority shall consist of

Committee's Recommendation:

Insert new sub-clauses 8(a) (d) (e) (f) and (g) as follows and renumber subsequent clauses:

- (a) a chairman who shall be appointed by the Minister being a person by reason of his ability, experience, or specialized knowledge of leasing, commercial, financial or economic matters, would in his opinion be capable of making outstanding contributions to the work of the authority;

- (a) a representatives of the Federal Ministry of Finance;
- (b) A representative of the Central Bank of Nigeria;
- (d) Three representatives of the Equipment Leasing Association of Nigeria to be appointed by the Association;
- (e) A representative of the Ministry of Justice
- (f) A representative of the Business Community to be appointed by the Nigerian Association of Chambers of Commerce, Industries, Mines and Agricultures.
- (g) A Registrar who shall, in addition to his other functions under this act, be the Secretary to the Authority, convene and keep Minutes of the proceedings at all meetings of the Authority and Committees thereof as the case may be (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 8 as recommended do stand part of the Bill, put and agreed to.

Clause 9:

Duties of a Registration Authority:

The Registration Authority shall be charged with the responsibility of the registration of:

- (a) An Equipment Lease Agreement;
- (b) A company carrying on business as an Equipment Lessor; and
- (c) Any other responsibility as may be directed by minister

Committee's Recommendation:

Insert a new sub-clause 9(2) as follows;

9 (2) The functions of the Registration Authority shall be to:

- (a) determine in accordance with the provisions of this Act persons who are eligible to carry on the business of equipment leasing ;
- (b) determine the requirements to be met by persons seeking to be registered to carry on the business of equipment leasing, and review such requirement from time to time;
- (c) register persons carrying on or intending to carry on business [as] equipment lessor;
- (d) secure the establishment and maintenance of a register of persons entitled to carry on the business of equipment leasing and the production from time to time of a list of these people;
- (e) register equipment lease agreements;
- (f) conduct an investigation into the affairs of persons registered under this Act when necessary or expedient to give full effect to the provisions of this Act;
- (g) register and investigate incidence of default by lessees;
- (h) undertake any other activity that is necessary or expedient for the purpose of giving full effect to the provisions of this Act; and
- (i) perform other function conferred on the Authority by this Act (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 9 as recommended do stand part of the Bill, put and agreed to.

Clause 10: Committee's Recommendation:
Inserts new clause 10 as follows and renumber subsequent clauses:

FUNDS AND FINANCIAL ACCOUNTS OF THE REGISTRATION AUTHORITY

- (1) There shall be established for the Authority, a fund which shall be managed for the purposes of this Act.
- (2) There shall be paid into the Fund:
 - (a) all fees and other moneys payable to the Authority, in pursuance of this Act; and
 - (b) All such moneys as may be payable to the Authority; whether in the course of the discharge of its functions or not;
- (3) They shall all be paid out of the Fund of the Authority the remuneration and allowances of the registrar and employees of the Authority:
 - (a) such reasonable travelling and subsistence allowances of members of the Authority in respect of time spent on the business of the Authority as the Authority may, with the approval of the Minister, determine; and
 - (b) any other expenses incurred by the Authority in the discharge of its functions under this Act.
- (4) (a) The Authority shall prepare and submit to the Minister not later than 31st day of December of each year an estimate of the income and expenditure of the authority during the next succeeding year.
- (b) The Authority shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause the accounts to be audited within six months after the end of the year to which the account relates by auditors (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 10 as recommended do stand part of the Bill, put and agreed to.

Clause 10: **Power of the minister to issue guidelines to the registration authority:**
 The Minister shall issue guidelines as he considers necessary for the purpose of implementing the provisions of sections 8 and including guidelines relating to the-

- (a) Stamp duties payable;
- (b) Registration and notarisation fees; and procedure for filing an application for registration and cancellation of a registration.
- (c) Procedure for filling an application for registration and cancellation of registration

Committee 's Recommendation:

That the provision in clause 10 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: **Register of registered equipment lease agreement:**

- (1) There shall be kept by the Registration Authority a register of an Equipment Lease Agreement containing the particulars of the lessor, the lessee and the equipment being the subject of the Equipment Lease Agreement.
- (2) The register shall be opened for inspection to members of the public on the payment of a prescribed fee.

- (3) The Registration Authority shall on request by a person and on payment of the prescribed fees, furnish that person with a copy of the entry in the register relating to a particular Equipment Lease: Agreement being a copy certified to be true by the Registration Authority

Committee's Recommendation:

That the provision in clause 11 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: Registration of a leased agreement:

An equipment lease agreement made pursuant to this Act shall irrespective of the value of the leased equipment, be registered with the Registration Authority not later than 14 days after the commencement of such lease agreement, or within three months for a lease agreement made before the Commencement of this Act.

Committee's Recommendation:

That the provision in clause 12 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Application for registration of leased agreement:

An application for the registration of a lease equipment shall be in Form A of the First Schedule to this Act and shall contain or be accompanied by evidence of conforming with section 6 and such other information, document as the registration Authority may from time to time prescribe.

Committee's Recommendation:

That the provision in clause 13 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Issue of registration certificate:

The Registration Authority shall on being satisfied that an application has complied with the provisions of this Act issue a certificate of registration.

Committee's Recommendation:

That the provision in clause 14 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Effect of registration of a registrable agreement:

Registration of a registrable lease agreement and any regulation made under this Act shall constitute sufficient notice to any third-party of the fact and terms of the lease agreement.

Committee's Recommendation:

That the provision in clause 15 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 15 do stand part of the Bill, put and agreed to.

Clause 16: Effect of non-registration of a registrable lease agreement:

Non-registration of a registrable lease agreement shall render the lease agreement invalid as between the parties to the agreement but shall render same unenforceable against any third party acting in good faith, for value without notice of the lease agreement.

Committee's Recommendation:

That the provision in clause 16 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: Fixation of the lessor's name on leased equipment:

A lessor shall conspicuously inscribe or affix his name on an equipment leased

Committee's Recommendation;

That the provision in clause 17 be retained (*Senator Ibikunle Amosun*)

Amendment Proposed:

Leave out the words "an equipment leased" and insert the words "a leased equipment" instead thereof (Senator Oserheimen Osunbor)

Question that the amendment be made, put and agreed to.

Question that Clause 17 as amended do stand part of the Bill, put and agreed to.

Clause 18: Implied terms as to legal ownership of the leased equipment:

- (1) On the registration of a lease agreement the lessor is the legal owner of a leased equipment.
- (2) The implied legal ownership of a lessor or his assign under a lease agreement shall prevail at all times over any claim by a lessee, a I lessee's creditor or third party.
- (3) Notwithstanding anything to the contrary in any law, mere fixture of a leased equipment to Land or building shall not confer ownership in a leased equipment on any person other than the lessor.
- (4) Any provision in a lease agreement that is inconsistent with subsections (1), (2) and (3) of this section shall be null and void to the extent of the inconsistency.

Committee's Recommendation;

That the provision in clause 18 be retained (*Senator Ibikunle Amosun*) *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: Sale, transfer of leased equipment:

- (1) A lessee shall not during the period in which a leased equipment remain in his possession and use, sub-lease, assign pledge mortgage, charge, create any encumbrance or act in any way that is inconsistent with the legal ownership of a lessor with a third I party.
- (2) Subject to the provisions of this Act, or a lease agreement, any Sale sub-lease, pledge, charge, mortgage, loan or assignment or any act inconsistent with the legal ownership of a lessor shall not be effective,
- (3) The Lessee shall have no other claim against the Lessor for non-delivery, delay in delivery or delivery of non-conforming equipment except to extend to which this results from the Act or omission of the Lessor.

Committee's Recommendation:

That the provision in clause 19 be retained (*Senator Ibikunle Amosun*) *Agreed to.*

Question that Clause 19 do stand part of the Bill, put and agreed to.

Clause 20: Priority of the lessor's claim against third party and insolvency of a lessee:

The title or interest of the lessor or his assigns in a leased equipment under a leased agreement shall prevail at all times against claims by a third party including a creditor of the lessee, except as against a purchaser in good faith for value of the equipment under a non-registered lease.

Committee's Recommendation:

That the provision in clause 20 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

Clause 21:**Rights and obligation of a lessee:**

- (1) A lessee shall during the specified period of a lease have the following rights and obligations-
 - (a) have and enjoy quiet possession of the leased equipment;
 - (b) as long as the lessee performs his obligations in accordance with terms of the lease agreement, the lease agreement, shall not be terminated unilaterally by the lessor even if the lessor is declared insolvent;
 - (c) use the equipment according to the terms and conditions of the lease agreement;
 - (d) take proper care of the equipment and use it in a reasonable manner consistent with that of a normal user and keep it in the condition with which it was delivered subject to fair wear and tear and to any lessor approved modification of the equipment;
 - (e) be responsible for the maintenance of the leased equipment in a finance lease; and
 - (f) pay the lease rentals as stipulated in the leased agreement.
- (2) Without prejudice to the lessors rights against the lessee or the supplier or manufacture, the lessee shall have the right to direct action against the manufacturer in order to hold the supplier or the manufacturer to the satisfactory performance of the supplier's or manufacturers contractual obligations, and to obtain from the supplier's or manufacturer's compensation for damages resulting from the supplier or manufacturer's default.
- (3) The lessee shall have no other claim against the lessor, delay in delivery or delivery of a non-conforming equipment except to the extent to which this results from the act or omission of the lessor

Committee's Recommendation:

That the provision in clause 21 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 21 do stand part of the Bill, put and agreed to.

Clause 22:**Default of lease resulting in termination of agreement between lessor and supplier:**

Where owing to default or negligence on the part of lessee, the sales agreement between the manufacturer or the supplier and the lessor is terminated, if the lessor acted in good faith, the lessor shall have the right to demand payments due from the lessee under the lease agreement.

Committee's Recommendation:

That the provision in clause 22 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23:**Liability for damage of leased equipment caused by lessee or his agent:**

- (1) A lessee shall during the period in which a leased equipment remain in his possession be liable for repairs of damage to equipment resulting from the acts of a lessee, his agent, servant or any third party to a leased equipment,

- (2) Where a lessee is in breach of his liability to repair as provided in subsection (1) of this section, the lessor shall serve notice on the lessee specifying the breach and requiring the lessee to effect specified repairs within a period of time.
- (3) **If** the lessee fails to effect repairs on expiration of the specified period, the lessor may at his own expense effect the necessary repairs.
- (4) Where the lessor effects repairs, the lessee shall indemnify the lessor for expenses reasonably incurred by the lessor in effecting such repairs.
- (5) The lessee shall, however have a right to bring by action against a third party to recover any expenses incurred as a result of his obligations to repair the leased equipment and the lessee's indemnity to the lessor.

Committee's Recommendation:

That the provision in clause 23 be retained (*Senator **Ibikunle** Arnosun*) — *Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

Clause 24:

Claims to leased equipment by a third party:

- (1) Any claim to the ownership or any disturbance to the quiet enjoyment of a leased equipment by a third party shall be notified in writing by the lessee to the lessor within fourteen days of such claim.
- (2) If a lessee fails to notify the lessor he shall be liable for any charges or expenses hereby incurred by the lessor.
- (3) **The** lessor shall have a right to apply to join as a co- defendant in any legal action instituted by a third party claiming any right to a leased equipment

Committee's Recommendation:

That the provision in clause 24 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

Clause 25:

Right of a lessor to inspect leased equipment:

A lessor or his accredited representative after giving reasonable notice to the lessee, may inspect a leased equipment to verify the state and use of a leased equipment.

Committee's Recommendation:

That the provision in clause 25 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

Clause 26:

Lessee to give information on the state of a leased equipment:

- (1) Where under a leased agreement a lessee is under a duty to keep a leased equipment in his possession and for his use, the lessee shall on receipt of a request in writing from the lessor inform the lessor of:
 - (a) the location of a leased equipment;
 - (b) **the** state of the leased equipment; and
 - (c) any other such information that may be required by the lessor in respect of the leased equipment.
- (2) If a lessee, without reasonable cause fails to give the information requested under subsection (1) of this section within fourteen days of receipt of a written request, is guilty of an offence and liable on conviction to a fine not exceeding N50,000.

Committee's Recommendation:

That the provision in clause 26 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: Liability of the lessor for delay in delivery of leased equipment:

(1) Where the leased equipment is not delivered to the lessee-

- (a) as a result of delay by the Lessor to enter into sales agreement with the supplier or manufacturer; or
- (b) as a result of delay by the lessor to make payment to the supplier or manufacturer; **or**
- (c) for any other delay attributable to the lessor; the lessee's obligation to the lessor under the lease agreement shall be suspended and, the lessee shall give the lessor an appropriate extension of time during which the lessor shall comply with his contractual obligation.

Committee's Recommendation:

That the provision in clause 27 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

Clause 28: Non-delivery of equipment to the lessee as a result of the lessor's willful infringement:

Where a lessor's willful infringement or unlawful act results in the termination of a sales agreement with a supplier or manufacturer, the lessor shall be liable in damages for actual loss and damages incurred by the lessee.

Committee's Recommendation:

That the provision in clause 28 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Claim against lessor for non-delivery of a leased equipment:

A lessee shall have no other claim against a lessor for non-delivery or delivery of a non-conforming equipment except to the extent to which- this result from an act or omission of the lessor

Committee's Recommendation:

That the provision in clause 29 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 29 do stand part of the Bill, put and agreed to.

Clause 30: Liability of the lessor for defect of a leased equipment:

Subject to the provisions of this Act or a lease agreement, a lessor shall not be liable for any defect in the fitness of a leased equipment except a lessee suffers loss as a result of the lessee's reliance on the lessor's skill or judgment in the selection of the supplier or manufacturer of a leased equipment

Committee's Recommendation:

That the provision in clause 30 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: Liability of a lessor for supply and installations of a leased equipment inspected by a lessee before supply:

Where the lessee does not nominate the supplier or manufacturer but provides a description of technical specifications of an equipment before the supply or installation of the equipment to be leased, the lessor shall not be liable to the lessee for any defect or for

Committee's Recommendation:

That the provision in clause 31 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

Clause 32: Liability of a lessor for supply of equipment where lessee relies on the expertise of the lessor:

Where the lessee neither nominates the supplier or manufacturer nor describes or provides technical specifications of the equipment to be leased but relies on the skill, knowledge and expertise of the lessor in providing equipment for a stated purpose, the lessor is liable to the lessee for any material defect or non-fitness of the equipment.

Committee's Recommendation:

That the provision in clause 32 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 32 do stand part of the Bill, put and agreed to.

Clause 33: Liability of a supplier nominated by a lessor:

Subject to the general law of contract and the provision of any written law in that respect, a supplier or manufacturer of leased equipment nominated by a lessor is liable to the lessee for any material defect or for a non-fitness of a supplied equipment; but shall not be liable to both lessor lessee in respect of the same equipment.

Committee's Recommendation:

That the provision in clause 33 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 33 do stand part of the bill, put and agreed to.

Clause 34: Insurance of a registered leased equipment:

A registered equipment shall be insured with a registered insurance company, as may be mutually agreed by the parties

Committee's Recommendation:

That the provision in clause 34 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 34 do stand part of the Bill, put and agreed to.

Clause 35: Taxation:

- (1) **The** lessor shall be entitled to all capital allowance tax and other allowance and concessions payable from time under an applicable law.
- (2) An equipment, being a subject of an operating lease shall for purpose of a lessor's annual financial statement remain the equipment of a lessor's notwithstanding that the equipment is in the possession of the lessee.
- (3) for purpose of an annual financial statement only an equipment under an operating lease shall be deemed to be an equipment of a lessor.

Committee's Recommendation:

That the provision in clause 35 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 35 do stand part of the Bill, put and agreed to.

Clause 36: Notice for non-payment of rentals and redemption:

Where the lessee defaults in the payments of rentals due under a lease agreement, the lessor may serve the lessee a default notice as in Form B the First Schedule to this Act giving the lessee not less than 14days within which to remedy the default so far as the default may be remedied.

Committee's Recommendation:

That the provision in clause 36 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 36 do stand part of the Bill, put and agreed to.

Clause 37: Termination of lease agreement for non-payment of rentals:

- (1) Where the lessee fails to remedy a default after the service of default notice, the lessor may terminate the lease agreement
- (2) The termination of the lease agreement shall be in writing and communicated to the lessee

Committee's Recommendation:

That the provision in clause 37 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 37 do stand part of the Bill, put and agreed to.

Clause 38: Repossession of leased equipment by a lessor:

- (1) Where the lessor becomes entitled to repossess the leased equipment due to non-payment of rentals, and the lessee fails to surrender the leased equipment after service of due notice, the lessor may apply by an Ex-parte Motion to the Federal High Court for the repossession of the leased equipment.
- (2) If a judge is satisfied by information on oath by a lessor that there is reasonable evidence for holding-
 - (a) that a lessee is in default of the payment of rent also due to the lessor; and
 - (b) that the lessor has complied with the provisions of sections 36 and 37 of this Act, he may Issue a warrant to enter and repossess the leased equipment.
- (3) The right of the lessor to repossess a leased equipment shall in no way prejudice any other remedy available to the lessor under any law, including but not limited to the right to recover damages for losses caused by non-compliance with the terms of the lease agreement by the lessee.
- (4) Where there is repossession under this section the lessee shall unless otherwise agreed by the parties be responsible for the immediate payment of all rentals due at the time of repossession.

Committee's Recommendation:

That the provision in clause 38 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 38 do stand part of the Bill, put and agreed to.

Clause 39: Breach of agreement by a lessee:

Where the lessee is in breach of a lease agreement not being a breach for non-payment of rentals, the lessor may serve the lessee a notice as in Form C of the First Schedule to this Act

Committee's Recommendation:

That the provision in clause 39 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 39 do stand part of the Bill, put and agreed to.

Clause 40: Commencement of legal proceedings for recovery of leased Equipment:

A lessor may commence legal proceeding in a court of competent jurisdiction against a lessee for recovery of a leased equipment-

- (a) **If a lessee is-**
 - (i) in breach of any of the terms of a lease agreement apart from a breach for non-payment of rentals; or
 - (ii) in breach of any provision of this Act for which no specific penalty is provided; or
 - (Hi) Declared bankrupt;
- (b) **If a court orders the-**
 - (i) Dissolution of winding-up of a lessee; or
 - (ii) The appointment of a receiver or manager for a lessee,

Committee's Recommendation:

That the provision in clause 40 be retained (*Senator Ibikunie Amosun*) — *Agreed to.*

Question that Clause 40 do stand part of the Bill, put and agreed to.

Clause 41: Removal of a leased Equipment from Nigeria without lessors permission:

- (1) A lessee or his agent or representative shall not remove from Nigeria a leased equipment without the written consent of a lessor.
- (2) If a lessee contravenes subsection (1) of this section he shall be guilty of an offence and liable on conviction to fine N50,000 or imprisonment for a term not exceeding one year or to both such fine and imprisonment unless he satisfies a court that he did not intend -
 - (a) to deprive the lessor of his ownership of the leased equipment; or
 - (b) to defeat the rights of the lessor to obtain payment due to him;
- (3) If a lessor has reasonable cause to believe that a leased equipment has been removed or is being removed from Nigeria with intent to deprive the lessor of his ownership or defeat his right to obtain any payment due to lessor under a lease agreement the lessor may institute a legal action for the return to Nigeria of the leased equipment.
- (4) Before institution of legal action under subsection (3) of this section or during the pendency of such legal action, the lessor may apply to a Court for an attachment of the leased equipment.
- (5) A court in making an order for the attachment of a leased equipment may require the applicant to give security for damages to the lessee resulting from such order.
- (6) An order of attachment of a leased equipment-
 - (a) may be discharged or varied by the court if a good cause is shown by person affected by the order on such terms as to costs as the court may deem fit; and
 - (b) Shall be discharged upon the lessee giving security as the court may deem fit taking into account the value of the leased equipment, amount and cost due to the lessor.

Committee's Recommendation:

That the provision in clause 41 be retained (*Senator Ibikunie Amosun*).

Amendment Proposed:

Leave out the word "fine" in line 2 and 41(2), *insert* the words "a fine of not less than" (Senator Da vid Mark)

Question that the amendment be made, put and agreed to.

Question that Clause 41 as amended do stand part of the Bill, put and agreed to.

Clause 42:**Variation or limitation:**

Nothing in this Act shall negate **or** invalidate any express provision in any leased agreement except to the extent that any such express provision is inconsistent with or limits the application of this Act.

Committee's Recommendation:

That the provision in clause 42 be retained (Senator Ibikunle Amosun) — *Agreed to.*

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43:**Interpretation:**

In this Act the context otherwise requires-

"Capital allowance" means any allowance :or other concession granted by the Federal Board of Inland Revenue of or other taxing authority to meet any diminish in value of an equipment subject of an equipment lease;

Question, That the words "Capital allowance " be as defined in the Interpretation to this Act, put and agreed to.

"Cross-border lease" is a lease in which the lessee and the equipment are non-resident of Nigeria; or in which the lessor is a non-resident of Nigeria; "equipment" means any moveable and immoveable equipment howsoever described;

Question, That the words "Cross-border lease " be as defined in the Interpretation to this Act, put and agreed to.

"Finance lease" is a lease involving rental - payment over an obligatory period sufficient in total to amortise the capital outlay of the lessor and also give the lessor some benefit.

Question, That the words "Finance lease " be as defined in the Interpretation to this Act, put and agreed to.

"Lease agreement" means a written agreement between the lessor and the lessee for the lessee's use in consideration of the payment of an agreed rentals over a specified period for-

- (a) either the lessor's own already acquired equipment; or
- (b) any equipment agreed to be acquired by the lessor from a third-party (supplier) whether chosen by the lessee or not such that the lessor shall retain full title and legal ownership during the specified period of the lease;

Question, That the words "Lease agreement" be as defined in the Interpretation to this Act, put and agreed to.

"lessor" means any person who under an equipment lease agreement transfers to another person or body (the lessee) the right to use an equipment in return for an agreed consideration for an agreed period;

Question, That the word "lessor" be as defined in the Interpretation to this Act, put and agreed to.

"Leverage lease" is a lease involving a lessor, lessee and a lender that supplies the greater part of the purchase price of equipment leased;

Question, That the words "Leverage lease" be as defined in the Interpretation to this Act, put and agreed to.

"Minister" means the Minister of Finance;

Question, That the word "Minister " be as defined in the Interpretation to this Act, put and agreed to.

Amendment Proposed:

Leave out the words "of Finance" and insert the words "who for the time being is in charge of Equipment leasing" instead thereof — (Senator Musiliu Obanikoro)

Question that the amendment be made, put and agreed to.

"non-concealable period" means such period within which an equipment lease agreement is concealable only

- (a) on the occurrence of some remote contingency; or
- (b) by mutual agreement; or
- (c) by operation of law;

Question, That the words "non-concealable period" be as defined in the Interpretation to this Act, put and agreed to.

"Operating lease" is a lease involving rental payment over an obligatory period but the equipment is not wholly mortgaged during the non-concealable period if any, of the lease, and **the** lessor does not rely for his profit on the rentals in the Concealable period.

Question, That the words "Operating lease" be as defined in the Interpretation to this Act, put and agreed to.

"Option" means any provision in an equipment lease agreement dealing with the disposal of the equipment at the expiration of the lease;

Question, That the word "Option " be as defined in the Interpretation to this Act, put and agreed to.

"Rental" means the total consideration payable by the lessee to a lessor under an equipment lease inclusive of any sum payable as management fees, services or other charges or any part thereof payable at specified intervals;

Question, That the word "Rental" be as defined in the Interpretation to this Act, put and agreed to.

"Supplier" means a person (other than lessor or lessee) who in the ordinary course of business supplies any equipment to a lessor or a lessee which equipments are the subject of a lease between the lessor and the lessee;

Question, That the word "Supplier " be as defined in the Interpretation to this Act, put and agreed to.

"Syndicated lease" is a lease involving more than one lessor who jointly lease, an equipment to a single lessee;

Question, That the words "Syndicated lease " be as defined in the Interpretation to this Act, put and agreed to.

"Sale and lease back" is a lease where the lessee (owner of all equipment) sells the equipment to the lessor and simultaneously leases it back from the lessor (the new owner);

Question, That the words "Sale and lease back" be as defined in the Interpretation to this Act, put and agreed to.

"Third party" means any person or body other than the lessor or lessee under an equipment lease and not being a lawful assignee, or sub-lease there under.

Question, That the words "Thirdparty" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in clause 43 be retained (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 43 do stand part of the Bill, put and agreed to.

Clause 44: Citation:

This Act may be cited as the Equipment Leasing Act 2004.

Committee's Recommendation:

Leave out the word "2004" and insert the word "2006" instead thereof (*Senator Ibikunle Amosun*) — *Agreed to.*

Question that Clause 44 do stand part of the Bill, put and agreed to.

Chairman to Report Bill.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Commerce on the Equipment Leasing Act (Amendment) Bill 2006 and approved as follows:

Clauses 1 - 5	—	As Recommended
Clause 6	—	As Amended
Clauses 7 - 16	—	As Recommended
Clause 17	—	As Amended
Clauses 18-40	—	As Recommended
Clause 41	—	As Amended
Clause 42	—	As Recommended
Clause 43	—	As Amended
Clause 44	—	As Recommended
Title	—	As Amended

Question, that the Senate do approve the Report of the Committee of Whole, resolved in the Affirmative.

Motion made and Question Proposed: That the Bill be read the Third Time (*Deputy Senate Majority Leader*).

Question put and agreed to.

Bill accordingly read the Third Time and passed.

10. Committee on National Planning, Economic Affairs and Poverty Alleviation:

Report on Remuneration for Former Presidents, Heads of Federal Legislative Houses and Chief Justices of the Federation and Other Ancillary Matters Bill 2006 (SB. 150):

Motion made and Question Proposed: That the Senate do receive and consider the Report of the Committee on National Planning, Economic Affairs and Poverty Alleviation on Remuneration for Former Presidents, Heads of Federal Legislative Houses and Chief Justices of the Federation and Other Ancillary Matters Bill

2006 and approve the recommendations (*Senator Gbemi R. Saraki*).

Question put and agreed to.

Report presented.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Deputy Senate Majority Leader*).

Question put and agreed to.

(SENATE IN COMMITTEE OF THE WHOLE)

(Mr President in the Chair)

A BILL FOR AN ACT TO PROVIDE REMUNERATION FOR FORMER PRESIDENTS, HEADS OF FEDERAL LEGISLATIVE HOUSES AND CHIEF JUSTICES OF THE FEDERATION AND OTHER ANCILLARY MATTERS

Debate:

Further debate adjourned till next legislative day.

Chairman to report Bill.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on National Planning, Economic Affairs and Poverty Alleviation on the Remuneration for Former Presidents, Heads of Federal Legislative Houses and Chief Justices of the Federation and Other Ancillary Matters Bill 2006 and adjourned further debate till the next legislative day.

11. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Wednesday, 14th June, 2006 at 10:00 a. m. (*Deputy Senate Majority Leader*).

Adjourned accordingly at 1.. 58p. m.

Ken Nnamani
President of the Senate