



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Wednesday, 9th February, 2005

1. The Senate met at 10.30 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Tuesday, 8th February, 2005 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.

3. **Matter of Urgent Public Importance:**
Truncation of Democracy in the Republic of Togo:
Rising to a Point of Order (Rule 42), Senator David C. Brigidi invited the attention of the Senate to the recent happenings in the Republic of Togo. He sought leave of the Senate to invoke Rule 52 to enable the Senate debate the issue forthwith as a Matter of Urgent Public Importance:

Question that Rule 42(2) be suspended to enable the matter be debated forthwith put and agreed to.

Motion made and Question Proposed: That whereas the Senate has learnt with consternation recent happenings in the Republic of Togo;

WHEREAS the Senate noted with concern the sending of the constitutionally elected Speaker of the Legislature of the Republic of Togo into forced exile;

WHEREAS the Senate noted with dismay the undemocratic manner in which the Constitution of the Republic of Togo was hurriedly amended;

WHEREAS the infraction of the Constitution occasioned the undemocratic installation of the Son of the late President Eyadema as the new President of the Republic of Togo; and

WHEREAS the Senate considers the aforementioned happenings as unconstitutional, undemocratic and a coup d'état.

Be it resolved and it is hereby resolved:

- (i) condemn the usurpation of constitutional power in the Republic of Togo;
- (ii) commend the position of France on the happenings in Togo and to continue to solicit the support of France, should there be need for the use of force;
- (iii) that the Senate do call on the Chairman of the African Union (AU) to lead all other African leaders to restore constitutionalism in the Republic of Togo;

- (iv) That the Senate do request the ECOWAS Parliament to condemn the happenings in Togo and stop all dealings with the Parliament of Togo;
- (v) That the Senate do request the President of the Senate to write the Speaker of the Togolese Parliament who is currently in exile in Ghana offering our support; and
- (vi) That the Senate do request the AU to summon an emergency meeting to discuss and address the situation immediately (*Senator David C. Brigidi*).

Debate:

Prayer (i)

Question: That the Senate do condemn the usurpation of constitutional power in the Republic of Togo — *Agreed to*.

Prayer (ii)

Question: That the Senate do commend the position of France on the happenings in Togo and to continue to solicit the support of France, should there be need for the use of force — *Agreed to*.

Prayer (iii)

Question: That the Senate do call on the Chairman of the African Union (AU) to lead all other African leaders to restore constitutionalism in the Republic of Togo — *Agreed to*.

Prayer (iv)

Question: That the Senate do request the ECOWAS Parliament to condemn the happenings in Togo and stop all dealings with the Parliament of Togo — *Agreed to*.

Prayer (v)

Question: That the Senate do request the President of the Senate to write the Speaker of the Togolese Parliament who is currently in exile in Ghana offering our support — *Agreed to*.

Prayer (vi)

Question: That the Senate do request the AU to summon an emergency meeting to discuss and address the situation immediately — *Agreed to*.

Resolved:

- (i) That the Senate do condemn the usurpation of constitutional power in the Republic of Togo.
- (ii) That the Senate do commend the position of France on the happenings in Togo and to continue to solicit the support of France, should there be need for the use of force.
- (iii) That the Senate do call on the Chairman of the African Union (AU) to lead all other African leaders to restore constitutionalism in the Republic of Togo.
- (iv) That the Senate do request the ECOWAS Parliament to condemn the happenings in Togo and stop all dealings with the Parliament of Togo;
- (v) That the Senate do request the President of the Senate to write the Speaker of the Togolese Parliament who is currently in exile in Ghana offering our support; and
- (vi) That the Senate do request the AU to summon an emergency meeting to discuss and address the situation immediately (*S. Res. 05/05*).

4. Destruction and Disrepair of the Velodrome at the National Stadium - a Call for Investigation:

Motion made and Question Proposed: That whereas the last All Africa Games has come and gone with its thrills and frills. Nigerians are still savouring the success we' recorded, both as hosts and as participants.

WHEREAS, I salute the organisers and the participants for the brilliant success recorded at the games.

WHEREAS, I have had deep reflections of all the activities that surrounded the games before, during and after and while I accept that the hosting of the games have assisted us in developing infrastructure for our sporting activities, I also deeply feel that a second look should be taken at those infrastructure.

WHEREAS it is no longer news that large sums of tax payers money running into several billions has gone into the construction of a befitting National Stadium Complex for the country in the Federal Capital Territory. The question that probes my mind, however, is the quality of work that has been given for such a huge amount.

WHEREAS, the fears which I express are not without reason, they are founded on the visible and palpable state of destruction and disrepair which we now find the velodrome and the Indoor Sports Hall. For those of you who had closely followed the activities at the games, you will recall that on the final day of the games, we were rudely brought to a stop by the violent destruction of the membrane covering the velodrome and the attendant destruction of equipment therein as well as other facilities such as the indoor Sports Hall.

WHEREAS one may validly support the position that the destruction of those facilities was an act of God since it was adduced solely to natural causes, some fundamental questions need to be answered was the velodrome certified to be standard before it was put to use? Were the materials used for the construction up to the recommended quality or standard? These are all questions begging for answers.

WHEREAS, modern sporting facilities such as the National Stadium are not just meant to be functional, but should also be of high aesthetic value, what one sees of the velodrome in its present state is an eyesore. What is more worrisome is the silence which has engulfed the whole episode. Nigerians have not been told what will become of the destroyed facilities. Whether the contractors handling the project will shoulder the cost of the repairs or not is yet to be known.

WHEREAS we have had several cases of government contractors carrying out shoddy and sub-standard jobs and collecting certificates of completion with full payment without anyone raising an eyebrow. I implore us all to rise up as one and put a stop to this unprogressive trend once and for all. We can not lose sight of our oversight functions at a time like this. Our country must be protected; our citizens must be guarded; the entire polity must be safeguarded; pillaging of our economy must be seen as a hydra-headed monster that must be annihilated. The case of the National Stadium complex should be used as a starting point.

WHEREAS, in the light of the foregoing, I urge us all to decide in this hallowed chamber here and now on how best to deal with this unsavoury situation, ensuring that there is transparency and accountability from government contractors. There should be no sacred cows as far as the protection of our existence is concerned.

Be it resolve and it is hereby resolved:

That a Committee comprising members of the Sports and Works Committees be mandated to:

- (i) investigate the extent and quality of work done on the stadium complex;
- (ii) investigate and ascertain whether the contractors acted in accordance with the brief given them.
- (iii) ascertain who will be responsible for the repairs to be carried out on the velodrome.
- (iv) report to the Senate within two weeks from the date of this assignment (*Senator Musiliu O. Obanikoro*).

Debate:

Motion made and Question Proposed: That the Motion be referred to the Committee on Sports and Social Development to investigate and report to the Senate within two weeks (*Senate Majority Leader*).

Question put and agreed to.

5. Committee on Works:

Report on the Infrastructure Concession Regulatory Commission Bill 2005 (SB. 66):

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report of the Committee on Works on the Infrastructure Concession Regulatory Commission

(SENATE IN THE COMMITTEE OF THE WHOLE)

A BILL FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION AND FOR MATTERS CONNECTED THEREWITH

PART 1 — PRIVATE SECTOR PARTICIPATION IN FEDERAL INFRASTRUCTURE DEVELOPMENT, MAINTENANCE, ETC.

Clause 1 : Contract with Private Sector for the Construction, Maintenance of Federal Infrastructures, Etc.

- (1) As from the commencement of this Act, any Federal Government ministry, agency, corporation or body involved in the financing, construction, operation or maintenance of infrastructure, by whatever name called, may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operation or maintenance of any infrastructure that is financially viable or any development facility of the Federal Government in accordance with the provisions of this Act.
- (2) This Act shall apply to new investment and development projects relating to any infrastructure of any Federal Government ministry, agency, corporation or body.

Committee's Recommendation:

That the provision in Clause 1 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 1 stand part of the Bill — Agreed to.

Clause 2: Priority Projects:

- (1) Every Federal Government ministry, agency, corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession under this Act.
- (2) The projects mentioned in subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector ministry or agency prior to entering into any contract under section 1 of this Act.
- (3) In entering into any contract or granting any concession under section 1 of this Act, the Federal Government ministry, agency, corporation or body shall ensure that the project proponent possesses the financial, expertise and experience in undertaking such infrastructure development or maintenance.
- (4) The Commission established under section 11 of this Act shall publish, in the *Federal Gazette* and at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, the list of projects eligible for contract for the financing, construction, operation or maintenance of any infrastructure under this Act.

Committee's Recommendation:

That the provision in Clause 2 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 2 stand part of the Bill — Agreed to.

Clause 3: Guarantee on Concession Agreement:

No Federal Government ministry, agency, corporation or body shall give any

guarantee, letter of comfort or undertaking in respect of any concession agreement made pursuant to this Act, except with the approval of the Federal Executive Council.

Committee's Recommendation:

That the provision in Clause 3 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 3 stand part of the Bill — Agreed to.

Clause 4:

Competitive Public Bidding for Projects and Contracts:

- (1) Upon an approval for any project or contract for financing, construction, operation or maintenance of any infrastructure or development project under this Act, the Federal Government ministry, agency, corporation or body concerned shall, by publication in at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, invite open competitive public bid for such project or contract approved under this Act.
- (2) With respect to projects under this Act, the concession contract shall be awarded to the bidder who, having satisfied the pre-qualification criteria, submits the most technically and economically responsive bid.
- (3) Where a consortium participates in a bid under this section, there shall be a proof by the consortium that all its members shall be bound jointly and severally under the contract and the withdrawal of any member of the consortium before or during the implementation of the project may be a ground for review or possible cancellation of the contract.

Committee's Recommendation:

That the provision in Clause 4 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 4 stand part of the Bill — Agreed to.

Clause 5:

Circumstances where Competitive bidding for Contract may not be necessary:

Notwithstanding section 4 of this Act, and if after advertisement in accordance with section 4 of this Act -

- (a) only one contractor or project proponent applied or submits a bid or proposal, or
- (b) only one contractor or project proponent meets the pre-qualification requirements, the ministry, agency, corporation body may undertake direct negotiation without competitive bidding for any contract to be entered into pursuant to section 1 of this Act.

Committee's Recommendation:

That the provision in Clause 5 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 5 stand part of the Bill — Agreed to.

Clause 6:

Duration of Concession:

The duration of any concession shall be as may be specified in the agreement or contract governing the concession.

Committee's Recommendation:

That the provision in Clause 6 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 6 stand part of the Bill — Agreed to.

Clause 7:

Repayment Scheme Etc.

- (1) Any project proponent or contractor who enters into any contract for financing, construction, operation or maintenance may, subject to the provisions of the concession contract, recover his investments.
- (2) Notwithstanding subsection (1) of this section, the project proponent or contractor shall -

- (a) undertake appropriate insurance policy on the concession with an insurance company approved by the National Insurance Commission; and
- (b) undertake the maintenance and repairs of the infrastructure or facility during the subsistence of the contract.

- (3) Subject to subsection (4) of this section, the amount expended by any project proponent or contractor who enters into any contract for financing, construction, operation or maintenance under any concession under this Act may be repaid by the relevant ministry, agency, corporation or body to such proponent or contractor, by way of amortisation payments.
- (4) Any contractor to whom any concession has been granted under this Act shall make payment to the Federal Government, of such sum and at such intervals, from the proceeds realised from the implementation of the concession as may be provided in the concession contract or agreement.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 7 stand part of the Bill — Agreed to.

Clause 8:

Power to Inspect:

The Commission and the Federal Government ministry, agency, corporation or body shall have the power at any reasonable hours during the day time to enter upon and inspect any land or asset comprised in any concession granted or contract executed pursuant to this Act for the construction or erection of any infrastructure project and it shall be the duty of the project proponent, the contractor or anyone acting on its behalf to permit and give free access to enter and inspect.

Committee's Recommendation:

That the provision in Clause 8 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 8 stand part of the Bill — Agreed to.

Clause 9:

Supervision of Projects under Concession:

Subject to this Act, the relevant Federal Government ministry, agency, corporation or body shall supervise the project in respect of which concession has been granted by it under this Act.

Committee's Recommendation:

That the provision in Clause 9 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 9 stand part of the Bill — Agreed to.

Clause 10:

Right of Way, Etc:

Every contractor to whom any concession has been granted under this Act shall have a right of way or easement in respect of any land or property near to or bordering the project site or facility as may be reasonably necessary for the proper implementation of the project under this Act.

Committee's Recommendation:

That the provision in Clause 10 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 10 stand part of the Bill — Agreed to.

PART 11 — ESTABLISHMENT OF THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION, ETC.

Clause 11:

Establishment of the Infrastructure Concession Commission:

- (1) There is hereby established a body to be known as the Infrastructure Concession Regulatory Commission (in this Act referred to as “the Commission”)
- (2) The Commission -
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue or be sued in its corporate name; and

Committee's Recommendation:

That the provision in Clause 11 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 11 stand part of the Bill — Agreed to.

Clause 12:

Establishment of the Governing Board for the Commission:

- (1) There is hereby established for the Commission, a Governing Board (in this Act, referred to as “the Board”) which shall have overall control of the Commission.
- (2) The Board shall consist of -
 - (a) a part time Chairman;
 - (b) the Attorney-General of the Federation;
 - (c) the Minister of Finance;
 - (d) the Secretary to the Government of the Federation;
 - (e) the Governor of the Central Bank of Nigeria;
 - (f) one person each from the six geo-political zones of Nigeria who shall each have cognate experience and expertise in law, business administration, engineering, economic or public administration and two of whom shall be women; and
 - (g) the Director-General of the Commission.
- (3) The Chairman and members of the Board, other than *ex-officio* members, shall be appointed by the President.

Amendment Proposed:

Immediately after the word “President” in line 2, *insert* the words “subject to confirmation by the Senate (*Senator Dalhatu S. Tafida*). ”

Question that the amendment be made put and agreed to.

Schedule:

- (4) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters mentioned therein.

Question that Clause 12 as amended stand part of the Bill — Agreed to.

Clause 13:

Tenure of Office:

The Chairman and other members of the Board, other than *ex-officio* members, shall each hold office -

- (a) for a term of 4 years in the first instance may be re-appointed for a further term of 4 years; and
- (b) on such terms and conditions as may be specified in his letter of appointment.

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 13 stand part of the Bill — Agreed to.

Clause 14: Cessation of membership.

- (1) Notwithstanding the provisions of section 13 of this Act, a member of the Board shall cease to hold office as a member of the Board if -
- (a) he resigns his appointment as a member of the Board by notice, under his hand, addressed to the President; or
 - (b) he becomes of unsound mind; or
 - (c) he becomes bankrupt or makes a compromise with his creditors; or
 - (d) he is convicted of a felony or of any offence involving dishonesty or corruption; or
 - (e) he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body; or
 - (f) the President is satisfied that it is not in the interest of the Commission or in the interest of the public for the person to continue in office and the President removes him from office.
- (2) Where a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however that the successor shall represent the same interest as his predecessor.

Committee's Recommendation:

That the provision in Clause 14 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 14 stand part of the Bill — Agreed to.

Clause 15: Emoluments, etc. of Members:

The Chairman and members of the Board shall be paid such emoluments, allowances and benefits as the Federal Government may, from time to time, direct.

Committee's Recommendation:

That the provision in Clause 15 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 15 stand part of the Bill — Agreed to.

PART III — FUNCTIONS AND POWERS OF THE COMMISSION

Clause 16: Powers of the Board:

- (1) The Board shall have power to -
- (a) provide the general policy guidelines relating to the functions of the Commission;
 - (b) manage and superintend the policies of the Commission;
 - (c) subject to the provisions of this Act, make, alter and revoke rules and regulations for carrying on the functions of the Commission;
 - (d) determine the terms and conditions of service of the employees of the Commission; and

- (e) fix the remuneration, allowances and benefits of the staff and employees of the Commission in consultation with the National Salaries, Income and Wages Commission;
- (f) do such other things which in its opinion are necessary to ensure the efficient performance of the functions of the Commission under this Act.

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 16 stand part of the Bill — Agreed to.

Clause 17: Functions of the Commission:

The Commission shall -

- (a) take custody of every concession agreement made under this Act and monitor compliance with the terms and conditions of such agreement;
- (b) ensure efficient execution of any concession agreement or contract entered into by the Government;
- (c) ensure compliance with the provisions of this Act;
- (d) perform such other duties as may be directed by the President, from time to time, and as are necessary or expedient to ensure the efficient performance of the functions of the Commission under this Act.

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 17 stand part of the Bill — Agreed to.

PART IV — STAFF OF THE COMMISSION

Clause 18: Director-General of the Commission, Etc.

- (1) There shall be for the Commission, a Director-General who shall -
 - (a) be appointed by the President;
 - (b) be the Chief Executive and accounting Officer of the Commission;
 - (c) be responsible for the execution of the policy and day-to-day administration of the Commission; and
 - (d) be the Secretary to the Board.
- (2) The Director-General shall hold office -
 - (a) for a single term of 5 years.
 - (b) on such terms and conditions as may be specified in his letter of appointment.
- (3) Notwithstanding the provisions of subsection (2) of this section, the Director-General may -
 - (a) resign his appointment by a notice in writing under his hand, addressed to the President through the Board; or
 - (b) be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or corruption.

Committee's Recommendation:

That the provision in Clause 18 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 18 stand part of the Bill — Agreed to.

Clause 19:

Other Staff of the Commission:

The Commission may, subject to the approval of the Board, appoint such other staff as it may deem necessary and expedient, from time to time -

- (a) for the proper and efficient performance of the functions of the Commission;
and
- (b) on such terms and conditions as may be determined, from time to time, by the Board.

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 19 stand part of the Bill — Agreed to.

Clause 20:

Pensions Cap. 346 LFN.:

- (1) It is hereby declared that service in the Commission shall be approved for the purpose of the Pensions Act, and accordingly, officers and employees of the Commission shall be entitled to pensions, gratuities and other retirement benefits as are prescribed under the Pension Act.
- (2) Without prejudice to the provisions of subsection (1) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms and conditions which preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.
- (3) For the purposes of the application of the provisions of the Pensions Act, any power exercisable by a Minister or other authority of the Federal Government, other than the power to make regulations, under section 23 thereof, is hereby vested in and shall be exercisable by the Board and not by any other person or authority.

Committee's Recommendation:

That the provision in Clause 20 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 20 stand part of the Bill — Agreed to.

PART V — FINANCIAL PROVISIONS

Clause 21:

Fund of the Commission:

The Commission shall establish and maintain a fund to which shall be paid -

- (a) grants from the Federal Government;
- (b) all subventions and budgetary allocations from the Federal Government;
- (c) gifts, loans, grants-in-aid from national, bilateral and multilateral organisations and agencies
- (d) rents, fees and other internally generated revenues from services provided by the Commission; and

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 21 stand part of the Bill — Agreed to.

Clause 22: Expenditure of the Commission:

The Commission may, from time to time, apply the proceeds of the fund established under section 21 of this Act -

- (a) to the cost of administration of the Commission;
- (b) to the payment of the emoluments, allowances and benefits of members of the Board and for reimbursing members of the Board or of any committee set up by the Board and for such expenses as may be expressly authorised by the Board;
- (c) to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the staff and other employees of the Commission, so however that no payment of any kind under this paragraph (except such as may be expressly authorised by the Board) shall be made to any person who is in receipt of emoluments from the Government of the Federation or of a State;

No. 57

Wednesday, 9th February, 2005

641

- (d) for the development and maintenance of any property vested in or owned by the Commission;
- (e) for maintaining general financial reserves subject to general or special directive that may be given in that behalf by the President in accordance with the provisions of this Act; and
- (f) for and in connection with all or any of its functions under this Act.

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 22 stand part of the Bill — Agreed to.

Clause 23: Annual Estimates and Accounts:

- (1) The Commission shall, not later than 30th September in each year, submit to the President an estimate of its expenditure and income (including payments to the Commission fund) for the next succeeding year.
- (2) The Commission shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

Amendment Proposed:

Leave out the word "six" in line 3 and insert the word "three" (Senator Farouk B. Bunza).

Question that the amendment be made put and agreed to.

Question that Clause 23 as amended stand part of the Bill — Agreed to.

Clause 24: Annual Report:

- (1) The Commission shall prepare and submit to the President not later than 30th June in each year a report in such form as the President may direct on the activities of the Commission during the immediate preceding year, and shall include in the report a copy of the audited accounts of the Commission for that year and of the auditor's report thereon.
- (2) The President shall lay a copy of the report and the auditors report thereon before the National Assembly so soon after the receipt thereof.

Amendment Proposed:

- (i) *Leave out* the word “President” in line 1 and *insert* the word “Auditor-General of the Federation” (*Senator Farouk B. Bunza*).

Question that the amendment be made put and agreed to.

- (ii) *Leave out* the words “and the auditors report thereon” in line 1 and *insert* the words “of the audited account of the Commission” (*Senator Farouk B. Bunza*).

Question that the amendment be made put and agreed to.

Question that Clause 24 as amended stand part of the Bill — Agreed to.

Clause 25: Power to accept gifts:

- (1) The Commission may accept gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

642

Wednesday, 9th February, 2005

No. 57

- (2) The Commission shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Commission under this Act.

Committee’s Recommendation:

That the provision in Clause 25 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 25 stand part of the Bill — Agreed to.

PART VI — LEGAL PROCEEDINGS

Clause 26: Limitation of suits against the Commission, etc. Cap. 379 LFN:

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member or officer or employee of the Commission.
- (2) Notwithstanding anything contained in any other law or enactment, no suit against a member of the Board, the Director-General or any other officer or employee of the Board for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duties or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duties or authority, shall lie or be instituted in any court unless it is commenced -
- (a) within three months next after the act, neglect or default complained of; or
- (b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.
- (3) No suit shall be commenced against a member of the Board, the Director-General or any other officer or employee of the Commission before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Commission by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state -
- (a) the cause of action;
- (b) the particulars of the claim;

- (c) the name and place of abode of the intending plaintiff; and
- (d) the relief which he claims.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 26 stand part of the Bill — Agreed to.

Clause 27: Service of Documents:

A notice, summons or other document required or authorised to be served on the Commission under the provisions of this Act or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post addressed to the Director-General at the principal office of the Commission.

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 27 stand part of the Bill — Agreed to.

No. 57

Wednesday, 9th February, 2005

643

Clause 28: Restriction on execution against property of the Commission:

- (1) In any action or suit against the Commission, no execution or attachment of process in the nature thereof shall be issued against the Commission unless not less than three months notice of the intention to execute or attach has been given to the Commission.
- (2) Any sum of money which by the judgement of any court has been awarded against the Commission shall, subject to any direction given by the court, where no notice of appeal against the judgement has been given, be paid from the fund of the Commission.

Committee's Recommendation:

That the provision in Clause 28 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 28 stand part of the Bill — Agreed to.

Clause 29: Indemnity of Officers:

A member of the Board, the Director-General or any officer or employee of the Commission shall be indemnified out of the assets of the Commission against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Commission.

Committee's Recommendation:

That the provision in Clause 29 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 29 stand part of the Bill — Agreed to.

PART VII — MISCELLANEOUS PROVISIONS

Clause 30: Directives by the President, etc:

The President may give to the Commission or the Director-General such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions under this Act as he may consider necessary and it shall be the duty of the Commission or the Director-General to comply with the directives or cause them to be complied with.

Committee's Recommendation:

That the provision in Clause 30 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 30 stand part of the Bill — Agreed to.

Clause 31: Power to make Regulations:

- (1) The Board may, with the approval of the Presidency, make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.
- (2) Without prejudice to the generality of subsection (1) of this section, the Board may issue guidelines to give full effect to the provisions of this Act.

Committee's Recommendation:

That the provision in Clause 31 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 31 stand part of the Bill — Agreed to.

Clause 32: Secrecy:

- (1) A member of the Board, the Director-General or any other officer or employee shall -
 - (a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as the Director-General, officer or employee of the Commission;

644

Wednesday, 9th February, 2005

No. 57

- (b) treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act;
 - (c) not disclose any information referred to under paragraph (b) of this subsection, except where required to do so by a court or in such other circumstances as may be prescribed by the Board, from time to time.
- (2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and shall on conviction be liable to a fine of not less than ₦50,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

Amendment Proposed:

Leave out the figure “₦50,000” in line 3 and insert the figure “₦500,000” instead thereof (*Senator Ibikunle Amosun*).

Question that the amendment be made put and agreed to.

Question that Clause 32 as amended stand part of the Bill — Agreed to.

Clause 33: Interpretation:

In this Act, unless the context otherwise requires -

“Board” means the Governing Board of the Commission established under section 12 of this Act;

Question, That the word “Board” be as defined in the Interpretation to this Act, put and agreed to.

“Chairman” means the Chairman of the Governing Board of the Commission appointed under section 11 of this Act;

Question, That the word “Chairman” be as defined in the Interpretation to this Act, put and agreed to.

“Commission” means the Infrastructure Concession Regulatory Commission established under section 11 of this Act;

Question, That the word “Commission” be as defined in the Interpretation to this Act, put and agreed to.

“Concession” means a contractual arrangement whereby the project proponent or contractor undertakes the construction, including financing of any infrastructure , facility and the operation and maintenance thereof and shall include the supply of any equipment and machinery for any infrastructure and the provision of any services;

Question, That the word “Concession” be as defined in the Interpretation to this Act, put and agreed to.

“Contractor” means any person or body corporate who may or may not be a project proponent who enters into a contract or has been granted a concession by any Federal Government ministry, agency, corporation or body and undertakes to construct any infrastructure or facility or supply any equipment for any infrastructure or facility under this Act;

Question, That the word “Contractor” be as defined in the Interpretation to this Act, put and agreed to.

“Construction” means any form of engineering work either civil, structural, mechanical or electrical and includes but not limited to rehabilitation, improvement, expansion, alteration and related works and activities, supply and installation of equipment or materials;

Question, That the word “Construction” be as defined in the Interpretation to this Act, put and agreed to.

“Director-General” means the Director-General of the Commission appointed under section 18 of this Act;

Question, That the words “Director-General” be as defined in the Interpretation to this Act, put and agreed to.

“Infrastructure” includes development projects which, before the commencement of this Act, were financed, constructed, operated or maintained by the Government and which, after the commencement of this Act, may be wholly or partly implemented by the private sector under an agreement pursuant to this Act including but not limited to power plants, highways, seaports, airports, canals, dams, hydro-electric power projects, water supply, irrigation, telecommunications, railways, inter-state transport systems, land reclamation projects, environmental remediation and clean-up projects, industrial estates or township development, housing, government buildings, tourism development projects, trade fair complexes, warehouses, solid wastes management, satellite and ground receiving stations, information technology networks and database infrastructure, education and health facilities, sewage, drainage, dredging, and other infrastructure and development projects as may be approved, from time to time, by the Federal Executive Council;

Question, That the word “Infrastructure” be as defined in the Interpretation to this Act, put and agreed to.

“Member” means a member of the Governing Board of the Commission and includes the Chairman;

Question, That the word “Member” be as defined in the Interpretation to this Act, put and agreed to.

“New investment and development projects” include -

- (a) any project involving any infrastructure, not existing at the time the concession is being made, that will require the injection of substantial funds or resources to design, construct, build, maintain or operate such infrastructure, or
- (b) any project involving any infrastructure, existing at the time the concession is being made, that will require the injection of substantial funds or resources to repair, service, overhaul, improve, maintain or sustain such infrastructure;

Question, That the words “New investment and development projects” be as defined in the Interpretation to this Act, put and agreed to.

“President” means the President of the Federal Republic of Nigeria;

Question, That the word “President” be as defined in the Interpretation to this Act, put and agreed to.

“Project proponent” means any person or body corporate who has contractual responsibility for the project and who has adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project;

Question, That the words “Project proponent” be as defined in the Interpretation to this Act, put and agreed to..

Committee’s Recommendation:

That the provision in Clause 33 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 33 stand part of the Bill — Agreed to.

Clause 34:

Short Title:

This Act may be cited as the Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act 2005.

Committee’s Recommendation:

That the provision in Clause 34 be retained (*Senator Idris I. Kuta*) — *Agreed to.*

Question that Clause 34 stand part of the Bill — Agreed to.

SCHEDULE

Section 12(4)

PROCEEDINGS OF THE BOARD

Paragraph 1:

Cap. 192 LFN:

Committee’s Recommendation:

1. Subject to this Act and section 27 of the Interpretation Act, the Board shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Commission may, from time to time, determine.

Question that Paragraph 1 under the head “Proceedings of the Board” stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 2:

Committee’s Recommendation:

- (1) There shall be at least four ordinary meetings of the Board in every calendar year and subject thereto, the Board shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than 3 other members, he shall convene a meeting of the Board to be held within 14 days from the date on which the notice was given.
- (2) Every meeting of the Board shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their member to preside at the meeting.

Question that Paragraph 2 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 3:

Committee's Recommendation:

The quorum of any meeting of the Board shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and four other members.

Question that Paragraph 3 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 4:

Committee's Recommendation:

The Board shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.

Question that Paragraph 4 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 5:

Committee's Recommendation:

A question put before the Board at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting.

Question that Paragraph 5 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 6:

Committee's Recommendation:

The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.

Question that Paragraph 6 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 7:

Committee's Recommendation:

Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend for such period as it thinks fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Question that Paragraph 7 under the head "Proceedings of the Board" stand part of the Supplementary Provision to the Bill, put and agreed to.

COMMITTEES

Paragraph 8:

Committee's Recommendation:

The Board may appoint one or more committees to carry out on behalf of the Board such of its functions

as the Board may determine and report on any matter with which the Board is concerned.

Question that Paragraph 8 under the head "Committees" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 9:

Committee's Recommendation:

A committee appointed under paragraph 8 of this Schedule shall be presided over by a member of the Board and consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

Question that Paragraph 9 under the head "Committees" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 10:

Committee's Recommendation:

A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Question that Paragraph 10 under the head "Committees" stand part of the Supplementary Provision to the Bill, put and agreed to.

MISCELLANEOUS

Paragraph 11:

Committee's Recommendation:

The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman and the Director-General or the Director-General and such other person authorised by the Board to act for that purpose.

Question that Paragraph 11 under the head "Miscellaneous" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 12:

Committee's Recommendation:

A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Commission by the Chairman or the Director-General or by any person generally or specifically authorised to act for that purpose by the Board.

Question that Paragraph 12 under the head "Miscellaneous" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 13:

Committee's Recommendation:

A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Commission shall be received in evidence and, unless the contrary is proved, be presumed without further proof, to have been properly signed or sealed.

Question that Paragraph 13 under the head "Miscellaneous" stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 14:

Committee's Recommendation:

The validity of any proceedings of the Board or its committees shall not be affected by -

- (a) any vacancy in the membership of the Board or its committees; or
- (b) reason that a person not entitled to do so took part in the proceedings; or
- (c) any defect in the appointment of a member.

Question that Paragraph 14 under the head “Miscellaneous” stand part of the Supplementary Provision to the Bill, put and agreed to.

Paragraph 15:

Committee’s Recommendation:

Any member of the Board or committee thereof who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or any committee thereof -

(a) shall forthwith disclose his interest to the Board or committee; and

(b) shall not vote on any question relating to the contract or arrangement.

Question that Paragraph 15 under the head “Miscellaneous” stand part of the Supplementary Provision to the Bill, put and agreed to.

Chairman to report Bill.

The Senate President reported that in the Committee of the Whole, the Senate considered of the Report of the Committee on Works on the Infrastructure Concession Regulatory Commission Bill and approved as follows:

Clause 1	—	As Recommended
Clause 2	—	As Recommended
Clause 3	—	As Recommended
Clause 4	—	As Recommended
Clause 5	—	As Recommended
Clause 6	—	As Recommended
Clause 7	—	As Recommended

No. 57

Wednesday, 9th February, 2005

649

Clause 8	—	As Recommended
Clause 9	—	As Recommended
Clause 10	—	As Recommended
Clause 11	—	As Recommended
Clause 12	—	With a slight Amendment
Clause 13	—	As Recommended
Clause 14	—	As Recommended
Clause 15	—	As Recommended
Clause 16	—	As Recommended
Clause 17	—	As Recommended
Clause 18	—	With slight Amendment
Clause 19	—	As Recommended
Clause 20	—	As Recommended

Clause 21	—	With slight Amendment
Clause 22	—	As Recommended
Clause 23	—	With slight Amendment
Clause 24	—	With slight Amendment
Clause 25	—	As Recommended
Clause 26	—	As Recommended
Clause 27	—	As Recommended
Clause 28	—	As Recommended
Clause 29	—	As Recommended
Clause 30	—	As Recommended
Clause 31	—	As Recommended
Clause 32	—	With slight Amendment
Clause 33	—	As Recommended
Clause 34	—	With slight Amendment
Schedule	—	As Recommended
Title	—	As Recommended

Motion made and Question Proposed: That the Senate do approve the Report of the Committee of the Whole on the Infrastructure Concession Regulatory Commission Bill 2005 (*Senate Majority Leader*).

Question put and agreed to.

650

Wednesday, 9th February, 2005

No. 57

Motion made and Question Proposed: That the Bill for an Act to provide for the establishment of the Infrastructure Concession Regulatory Commission and for matters connected therewith be read the Third Time (*Senate Majority Leader*).

Question put and agreed to.

Bill accordingly read the Third Time and passed.

6. Closed Session:

Motion made and Question Proposed: That the Senate do resolve into a Closed Session to deliberate on Important Matters relevant to the working of the Senate (*Senate Majority Leader*).

Question put and agreed to.

Closed Session — **1. 35 p.m.**

Open Session — **2. 05 p.m.**

9. Adjournment:

And it being 2. 05 p.m. the President adjourned the Senate till Thursday, 10th February, 2005 at 10.00 a.m.

Adjourned accordingly at 2.05 p.m.

Adolf Wabara
President of the Senate