



BILL ANALYSIS

No.1, 2016

National Inland Waterways Authority Act, 2016

OBJECTIVES

The objectives of the Bill are as follows: -

- To develop and improve the National Inland Waterways for water transportation and navigation purposes;
- To increase and promote private sector investment and participation in the management and operation of the assets of the National Inland Waterways Authority;
- To provide for the technical and safety regulations of the National Inland Waterways;
- To promote intermodalism in the transport sector;
- To provide an alternative mode of transportation for the evacuation of goods and persons, and implement the National Transport Policy as it concerns National Inland Waterways in Nigeria;
- To repeal the National Inland Waterways Authority Act, CAP N47, LFN 2004

NUMBER OF CLAUSES/PARTS

- The Bill has 12 parts and 64 clauses, including an interpretation Clause and a schedule

CONTENT

The Bill has the following contents: -

- Part 1: - Bill Objectives
- Part II: - Establishment of the National Inland Waterways Authority (the Authority) which shall have the power to enter into contracts and incur obligations which a natural person may lawfully do, for the discharge of its functions;
- Part III: - Functions and Powers of the Authority;
- Part IV: - Governing Board, Management and workforce of the Authority
- Part V: - Declaration of Navigable waterways
- Part VI: - Funding of the Authority, Annual budgets, Annual Report, Financial and statistical returns;
- Part VII: - Powers of the Authority
- Part VIII:- Policy and Regulation of the National Inland Waterways;
- Part IX: - Power to acquire land and assets;
- Part X: - Safety on land within National Inland Waterways
- Part XI: - Liability, Legal proceedings, Monitoring and Enforcement; Power to seal premises and stop

- activities;
- Part XII: - Offences and Penalties

IMPLICATIONS OF THE BILL

1. **Application of the Bill**

The provisions of the Bill apply to all National Inland Waterways listed on the Schedule of this Bill and any other that may be declared by the National Assembly and to any person or government agency with operations connected to the Waterways in Nigeria. Any other water route or channel in Nigeria not contained in this list or declared by the National Assembly does not constitute part of the National Inland Waterways. No agency has the authority to declare a channel as part of the Waterways except the National Assembly under this Bill.

2. **Establishment of the National Inland Waterways Authority: -**

The National Inland Waterways Authority (the Authority) is established under Clause 3 of the Bill. The Authority shall handle the development and operations of the National Inland Waterways. Among the list of functions of the Authority are entering into joint venture contracts and granting permits for the use of the Waterways or to render services connected with the Waterways. The Bill did not mention any other authority responsible for managing contracts or granting licenses, therefore, only the Authority can grant licenses or permits, enter contracts, manage and administer operations along the Waterways.

3. **Independence in Operations: -**

The Bill provides under Clause 4(2) that the Authority shall perform its functions and exercise its powers in such a manner, as the Authority considers best to achieve its objectives. This Clause reiterates the independence of the Authority to carry out its operations, which is a key business indicator of stability. In effect, investors wishing to do business with the Authority can be confident that no external interference can occur. Independence in the operation of the Authority boosts confidence of intending investors or contractors.

4. **Demolition Power of the Authority: -**

The Authority can exercise its power under Clause 5 to demolish any pier, wharf or jetty in any of the Waterways or in the approach to any Waterway where any of them is erected in contravention of the Bill (when passed into law). The Bill empowers the Authority to issue permits, concessions etc. related to any activity in the Waterways, therefore any structure erected without the proper permit or concession from the Authority can be demolished.

Clause 9 clearly states that the powers to be exercised by the Authority would still apply to every party including Federal, State and Local government agencies. This Clause reiterates the independence of the Authority in its operations; even government agencies are subject to the regulations guiding the operations of the Authority.

5. **Establishment of the Governing Board of the Authority:**

The Bill under Clause 7 establishes a Governing Board responsible for supervising the affairs of the Authority. Clause 7(2) lists the membership of the Board while Clause 8 provides that the President on the recommendation of the Minister of Transport would appoint the Chairman of the Board. Having a Minister who is a political appointee recommend the who should chair he board might be seen as non-transparent, as the Minister might have influence on the decisions of the Board given that he recommended the Chairman. The President could appoint without recommendation from the Minister.

6. **Appointment of Managing and Executive Directors: -**

The President shall appoint the Managing Director of the Authority on the recommendation of the Minister of Transport. Just like the appointment of the Board Chairman, this process may raise questions as to the

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independence of the Authority. The President under Clause 10(4) appoints the two Executive Directors with no recommendation from the Minister and can do the same here. The political influence on the operation of the Authority can be reduced if the Minister does not recommend the candidate. The independence of the Authority is crucial to attract business and investors.

7. Independence in Employment: -

Clause 14 provides that the Authority shall have powers to employ such number of persons, as it may deem necessary for the effective discharge of its duties, functions and regulations. There is no provision of any recommendations from government officials or political officers and so there may be less interference in the execution of the Authority's work, if the employees are selected in a transparent manner. This could build the confidence of any investor or contractor seeking to do business with the Authority.

8. Declaration of the Navigable Waterways: -

Clause 15 of the Bill states that all rivers, lagoons and intra-coastal waterways specified under Schedule 1 of this Bill are declared Federal navigable waterways, except all direct approaches to the ports listed under Schedule II of this Bill. In effect, waterways not listed under Schedule 1 are not navigable and shall not be under the exclusive management of the Authority. Anyone wishing to carry out any activity along the waterways not listed under Schedule 1 shall not seek concession or permit from the Authority.

9. The Right of Land Usage: -

The Bill under Clauses 17 & 18 lay out the right of way of the waterways that is under the management and control of the Authority. Any area on the banks of the waterways, which would be submerged in a flood of 100 years return period is deemed as a right of way. Also where the waterway has steep banks where such flood has no overbank flow, the right of way shall include areas of land along the waterway measured 100 meters perpendicular from the edge of the channel. In other words anyone wishing to carry on any activity on any space on these areas mentioned is on the right of way of the waterway, and shall seek the required permit to use from the Authority.

The Bill further provides that the Authority shall have the right over all land within the right of way of declared waterways subject to the provisions of the Lands (Title Vesting, etc.) Act. The Authority shall also have powers to determine the use of the land or immovable property within the right of way.

10. Prohibition on Lease: -

The Authority shall not without the written approval of the President lease or concession its land or property for more than 5 years. In effect all leases will last for a period of 5 years or less, except with the approval of the President.

11. Funding for the Authority: -

The Bill establishes a fund for the Authority called 'the Fund' under Clause 20, which shall include monies accruing to the Authority through appropriation by the National Assembly; charges, levies, royalties and fees collected by the Authority; gifts, grants and subventions, etc.

For the purpose of regulation, development and maintenance of the inland waterways, all companies or government agencies whose operations and services are within the National Inland Waterways like the refineries, telecommunication and transportation, electric power generation and distribution, shall pay annual dues to the Authority in accordance with approved tariff. Apparently, the Authority shall generate a lot of revenue for the government for the maintenance of waterways.

12. Financial and Operational Reporting: -

Clause 24 of the Bill provides that the financial year of the Authority shall commence on January 1 and end on December 31 of each year. The accounts and records of the Authority shall be open for inspection during office hours by a member of the Board, authorized persons from the Minister, Commission,

and the National Assembly. Open inspection of records and account is a reflection of transparency and accountability, which the Authority will exhibit in its operations. Anyone intending to carry on a transaction with the Authority shall be assured on its transparency.

13. Account Auditing: -

The Bill empowers the Board to appoint external auditors, provided that such auditors are on the list of auditors approved by the Auditor-General of the Federation under Clause 26. The remuneration for the auditing shall be borne by the Authority. The financial statements of the Authority shall be published annually in at least 3 national dailies. The publication of the statements on national dailies is part of the transparency and accountability characteristic of the Authority, which give more credibility to the operation of the Authority.

14. Annual Report: -

The Board shall make a report to the Minister of Transport on its activities and performance during that year. Clause 28 lists the contents of an annual report, which shall be presented to the Minister not later than 4 months after the end of each financial year.

15. Power to Grant Concessions and Leases: -

The Authority may grant a concession, lease, contract or permit subject to such terms and conditions as the Authority may specify, authorizing any entity or person to provide any service in the waterways. Clause 31(3) provides that every exercise of the power to grant concessions under this section shall be subject to rules providing for competitive and transparent public tender for concessions as may be approved by any relevant government agency. This Clause is another indication of the transparent mode of operation, which the Authority shall imbibe. Standard procurement processes that reflect transparency and impartiality shall increase positive public perception and confidence in the Authority. Agencies, entities or individuals would be assured of fairness when doing business with the Authority.

16. Special Powers of the Authority:

-The Authority may, with the approval of the Minister of Transport suspend any concession, withdraw partially or totally from an agreement or take possession of any inland waterway's operation on the occurrence of an unrest, strike or lock-out, which creates an emergency situation or imminent threat to national security or public safety.

Where the Authority takes possession of an operation in the waterway, adequate compensation shall be paid to the tune of an amount agreed between the parties. This contractual responsibility goes to build confidence in any intending contractor or lessor, and encourages entities to do business with the Authority. In addition, a person without license or permit shall be prohibited from using the waterways (Clause 33)

17. Policy and Regulation of National Inland Waterways: -

Policy formulation, modification and issue for the management and operation of the National Inland Waterways are some of the functions of the Minister of Transport. Clause 34 lists the other functions including cooperation within the ECOWAS region for standardized practices, safety and interconnection of waterways. The Minister shall hold due consultations with relevant stakeholders in the sector and the general public prior to formulation or review of policies. The due consultation constitutes an open process, which shall be adopted by the Authority.

18. Power to Acquire Land and Assets: -

The Authority shall have power to acquire land by purchase for the purposes of the Authority and subject to applicable law. Any authorized employees or agents may enter the land and erect beacons, buoys and mooring, and may remove any obstacle interfering with the visibility of any lighthouse from any point. Where the obstacle is on another person's property or land, no authorized agent shall enter without prior consent of the owner. The Bill under Clause 37(3) provides for 14 days' notice of an intended entry to the

landowner. Where less than the provided number of days is given, the landowner may withhold consent.

19. Safety Matters: -

Subject to the provisions of this Bill (when passed into law), the Authority shall, for the purpose of ensuring safety of navigation and shipping in the waterways within its jurisdiction, control entry, regulate loading and discharge or cargo, provide tug services and river guide services, ensure removal of harmful objects, etc. in order to secure safety and protection. This Clause imposes a duty of care, security and safety consciousness of the Authority.

In ensuring safety also, the Authority may cause, with the consent of the Admiralty Marshal, a vessel to be arrested or attached by an Order of the Court. The Authority may also issue notice within a timeframe to the vessel owner to remove it for not being seaworthy or any other related reason. In effect, vessels or wrecks that may become an obstruction, which may endanger the safety of any vessel within the National Inland Waterways or threat to public safety or the environment shall be removed and the owner shall bear the cost of such removal.

20. Liability, Legal Proceedings and Enforcement: -

Where a judgment against the Authority requires compensation, Clause 40 provides that it shall be paid from the Fund of the Authority and if not paid within 30 days after the judgment, execution or attachment or process in nature therefore may be issued against the Authority. Consequently, compensation to a plaintiff, after the Court rules in their favor, shall be made within 30 days from the day of judgment.

21. Notice of Intent to Sue: -

A notice period of one month is required to notify the Authority of a party's intent to sue it. The notice shall clearly state the cause of action, the name of the intending plaintiff and the relief sought. Also no suit against the Authority shall be instituted in any court unless it is commence within 12 months after the act or default being complained of. Anyone who intends to sue the Authority needs to issue a notice of intent to sue first before proceeding to Court and the suit must be instituted within 12 months after the wrong or default happened.

22. Power of Distrain for Non-Payment of Dues: -

Where an agent of a vessel neglects or refuses to pay dues or rate on demand, the Authority may distrain the vessel, the tackle, apparel and furniture therein. In the event that a contractor or lessee fails to pay required dues or fees, the Authority can seize their vessel or equipment until a time, which they can pay what they owe. However, where the fees or dues remain unpaid for 14 days or more after the distraint, the Authority can cause it to be sold and amount realized shall be retained by the Authority.

23. Offenses and Penalties: -

Any person who willfully destroys or damages property belonging to the Authority shall on conviction be liable to a fine of N1million and shall make good any loss or damage suffered by the Authority. In addition to the fine to be imposed by the Court, a person found liable could pay additional compensation to the Authority for any loss it suffered.

23.1. Unlawful operation: -

Any violation of the provisions of this Bill (when passed into law) relating to operation without license or proper permit, shall attract a fine of N1million or a prison term not less than 3 years or both.

23.2. Evasion of Dues and Charges: -

Any operator of river ports, dockyards, jetties, piers or vessel who evades or attempts to evade dues, rates or charges shall be liable to pay the Authority a penalty 10 times the amount owed and have their license, permit or authorization withdrawn.

23.3. Liability of a Vessel: -

A vessel which enters or approaches the waterways without authorization or permit, or fails to leave any berth when required shall on conviction be liable to a fine not less than N200,000 or imprisonment not exceeding 3 years or both. Where the default is as a result of neglect by an individual, on conviction is liable to N300,000 for each day or a part or imprisonment of 12 months. Where it is a body corporate, upon conviction, a fine of N500,000 and a further fine of N200,000 for each day during which the offence continued.

24. Jurisdiction: -

The Federal High Court shall have exclusive jurisdiction over all matters arising out of this Bill (when passed into law)

ANY SIMILAR EXISTING BILL

A similar Bill is National Inland Waterways Authority Act (Amendment) Bill, 2015, sponsored by Hon. Onyenwufe Gabriel (HB 267)

A Bill for an Act to Repeal the National Inland Waterways Authority Act, Cap. N47, LFN 2004 and to Enact the National Inland Waterways Authority Act, sponsored by Hon. Ossai Nicholas Ossai (HB 48)

CONCLUDING ISSUES

The National Inland Waterways Authority (Repeal and Enact) Bill seeks to repeal the National Inland Waterways Authority Act (CAP N47, LFN 2004) and replace it as the legislation to provide for the management, regulation and development of the National Inland Waterways, and to promote private sector participation as well. The Bill also seeks to establish an implementing agency – The National Inland Waterways Authority (the Authority)

The Bill boasts of several provisions positioning the Authority as a transparent and reliable agency to do business with, and expect full compliance to provisions of the Bill when it is passed into law. However, the powers given to the Minister of Transport are enormous given the various Clauses of the Bill that highlight the independence of the Authority. The Minister shall recommend both the Chairman and Managing Director to the President for appointment and can make regulations for the management of the Authority. These powers make the Minister very influential in the Authority, which could give way to constant interference in the operations of the Authority. In addition, the independence gives room for quicker discharge of the Authority's duties and reduces approval time.

The Bill would guide the development of functional waterways in Nigeria that can generate revenue while putting the national waters in good use. The Authority, if properly managed could attract Foreign Direct Investment (FDI), which the country needs urgently given the economic downturn. The National Assembly needs to give it accelerated passage if the Country expects a positive reform effect sooner.



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About PLAC

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