A BILL

FOR

AN ACT TO AMEND THE ENERGY COMMISSION OF NIGERIA ACT TO GRANT PRIORITY TO THE DEVELOPMENT AND PROMOTION OF NEW AND RENEWABLE ENERGY, ENERGY EFFICIENCY AND CONSERVATION, AND PROVIDE FOR OTHER MATTERS RELATING THERETO

Sponsored by Senator Jibrin Barau

[ ] Commencement

The objective of this bill is to strengthen the mandate of the Energy Commission of Nigeria (ECN) to, inter alia:

(i) Promote, plan and provide guidelines for the development and utilization of renewable energy (RE); Energy Efficiency and Conservation (EEC) for sustainable energy development, and

(ii) Make the Commission the National Focal Point for renewable energy, energy efficiency and conservation.

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria:

Amendment of the Energy Commission of Nigeria Act 1979

1. The Energy Commission of Nigeria Act, No.62 1979 (within this Act referred to as the Principal Act) is amended as set under this Act.

Amendment of Section 1 (1)

1. Section 1 (1) of the principal act should be substituted by the following;

"There is hereby established a body to be known as the Energy Commission of Nigeria (hereafter in this Act referred to as The Commission) under the Presidency, with its headquarters in Abuja which shall have the functions specified in this Act."

Amendment of Section 1 (2)

2. Section 1(2) of the Principal Act should be amended by substituting the following; The Commission shall consist of the following departments, that is:

(a) Administration and Finance;

(b) Energy Information Systems (including Library, Energy Data Bank and Computer Services);

(c) Energy Management, Training and Manpower Development

(d) Energy Planning and Analysis;

(e) Monitoring and Enforcement;

(f) Renewable Energy;

(g) Such other Department as may be approved by the Commission on the Recommendation of the Management.

Amendment of Section 2

2. Section 2 (a) (vi) of the principal Act is amended by substituting the following:

Appointment of Chairman and Commissioners

3. Section 2A (1) Subject to subsections (2) and (3) of this section, the Commission shall consist of a Chairman and Six Executive Commissioners appointed by the President subject to confirmation by the Senate.

(2) In selecting potential nominees, the President shall ensure that individuals are chosen, from both the public and private sectors, for their experience or professional qualifications in the following fields or areas of competence:

(a) Engineering and the Sciences;

(b) Energy Policy, Energy Planning and Analysis, Energy Efficiency and Conservation, Energy Information, Energy Economics, Energy and Environment;

(c) Conventional, New and Renewable Energy Systems;

(d) Law, Accountancy, Finance or Administration;

(3) A Chairman shall be appointed by the President and confirmed by the Senate.

(4) Six Commissioners shall be appointed by the President to reflect one Commissioner from each geo-political zone and confirmed by the Senate.

Tenure of Office and Conditions of Service of Chairman and Commissioners

4. Section 2B (1) The Chairman and Commissioners, shall hold office for a period of four years respectively.

(2) A Chairman shall be entitled to a reappointment of second tenure

of four years only subject to the approval of the President.

(3) A Commissioner shall be entitled to a reappointment of second tenure of four years only subject to the approval of the President.

(4) All appointments and/or re-appointments of the Chairman and Commissioners shall be made before the expiration of their term of office in accordance with section 2 of this Act.

(5) A Chairman or Commissioner whose term of office has expired is eligible for reappointment for another term and no more.

Conditions for Appointment as Chairman and Commissioners

5. Section 2C (1) A person shall not be appointed as Chairman or Commissioner if he or she:

(a) is not a citizen of Nigeria or is not permanently resident in Nigeria;

(b) has, in terms of a law in force in any country:

(c) been adjudged or otherwise declared insolvent or bankrupted has not;

(d) been rehabilitated or discharged, or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside, or

(iii) been adjudged, by a court of competent jurisdiction, to be of unsound mind,

(iv) been banned from practicing his profession, or been convicted of an offence and sentenced to a term of imprisonment imposed with or without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

Vacation of office by Chairman and Commissioner

6. Section 2D A Chairman or Commissioner shall vacate his office and his office shall become vacant:

(a) three months after the date upon which he gives notice in writing to the President of his intention to resign;

(b) on the date he is convicted:

(i) in Nigeria, in respect of an offence;

(ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which, if committed in Nigeria, would constitute an offence;

(c) if he becomes disqualified under sections 2(C) to hold office as a Chairman or Commissioner:

(d) when he attains the age of 70 years, whichever is earlier.

Dismissal or Suspension of Chairman and Commissioner

7. Section 2 E(1) The President shall require a Chairman or Commissioner to vacate his office if the Chairman or Commissioner:

(a) has, subject to section 2(C), been found to have conducted himself in a manner that renders him unsuitable 'as a Commissioner;

(b) has failed to comply with any term or condition of his office fixed by the President under section 2B;

(c) is mentally or physically incapable of efficiently carrying out his function as a Commissioner; or

(d) on the death of, or vacation of office by a commissioner, the President shall nominate a candidate to fill that vacancy, and submit same to the Senate, within one month.

Vice-Chairman of the Commission

8. Section 2 F(1) The President shall designate one of the Commissioners as Vice-Chairman.

(2) The Vice-Chairman shall retain his position as Vice-chairman until his term of office as a Commissioner is expired.

(3) The Vice-Chairman shall perform the Chairman's functions whenever the Chairman is for any reason unable to perform them.

(4) The Chairman or Vice-Chairman may at any time resign his office as such by one month's notice in writing to the President.

(5) Whenever the office of Chairman or Vice-Chairman falls vacant, or on the death of the Chairman or Vice, the President shall, within three weeks, select another Commissioner to fill the vacancy under section 38d.

Meeting and Procedure of the Commissioner

9. Section 2 G(l) The Commission shall meet for the dispatch of businesses quarterly or as deemed necessary ,involving the Chairman and six

commissioner of the Commission, and representatives each from the following energy related ministries:

(a) Federal Ministry of Agriculture and Rural Development;

(b) Federal Ministry of Environment;

(c) Federal Ministry of Mine and Steel Development;

(d) Federal Ministry of Petroleum;

(e) Federal Ministry of Power;

(f) Federal Ministry of Science and Technology;

(g) Federal ministry of Water Resources;

Subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it deems fit.

(2)The Chairman or, in his absence, the Vice-Chairman shall preside at all Meetings of the Commission.

(3)The quorum for the meeting of the Commission shall be eight and subject to section 2J, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairman shall have a casting vote.

(4) All decisions of the Commission shall be on the basis of majority of the members present and voting.

(5) For a meeting of the Commission to review any previous decision or order taken by the Commission, the quorum shall be no less than the Commissioners present when the decision was taken or order was made.

Remuneration and expenses of Chairman and Commissioners

10. Section 2 H(1) The Chairman and Commissioners shall be paid from the funds of the Commission:

(a) Such remuneration, as the Commission may from time to time determine, having regard to the recommendations of the National Salaries, Incomes and Wages Commission; and

(b) Such allowances, as the Commission, may from time to time determine, having regard to the recommendations of the National Salaries,

Income and Wages Commission, to meet any expenses incurred by such Commissioners in connection with the business of the Commission.

(2) While making recommendations, the National Salaries, Income and Wages Commission shall have due regard to the following principle:

(a) The specialized nature of work to be performed by the Commission;

(b) The need to ensure the financial self-sufficiency of the Chairman and Commissioners;

(c) The salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills; and

(d) The nature of the expenses incurred by the Chairman and Commissioners, including National and International travel expenses.

Proceeding of the Commissioner

11. Section 2 I(1) The Commission shall be entitled to conduct its proceedings, consultations and hearings at its headquarters or at any other place in Nigeria.

(2)The Commission shall make regulations for the discharge of its functions and for the conduct of its proceedings and consultations.

Decision and Orders of the Commission

12. Section 2 J(1) The Chairman shall ensure that all Commission decisions and orders;

(a) contain the basis for the decision or order;

(b) are properly recorded in writing; and

(c) are accessible to the public at reasonable times and places.

(2) The Commission shall issue written reasons in respect of any decisions or orders affecting the existing rights of any person.

(2) The Commission may issue written reasons in respect of any other decision or order as the Commission deems necessary.

(3) Every recommendation, declaration, decision or order of the Commission, signed by the Chairman of the Commission, or by the Vice-Chairman acting in the capacity of the Chairman, shall, unless the contrary is shown, be deemed to be made by the Commission.

(4) The Commission may make interim orders pending the final disposition of a matter before it.

Amendment of Section 3(2)

13. Section 3(2) of the Principal Act is amended by substituting in sub-section (1) the word "Director-General" with the word "Chairman" and by substituting in paragraph (2) the words "National Electric Power Authority" with the words "Power Holding Company of Nigeria and any other successor company or representative of the power sector."

Section 3 (2) paragraph j is amended by inserting "Foreign Affairs" as paragraph j and amending former paragraph j as paragraph k in alphabetical sequence.

Amendment of Section 4

14. Section 4 of the Principal Act is amended, in subsection (3), by substituting for the existing subsection (3) as follows:

"one-third (1/3) of the members shall form a quorum at any meeting of the Commission."

Insertion of Section 5A, 5B and 5C

15. There is inserted, immediately after the existing section 5 of the Principal Act, the following new section 5A, 5B and 5C there on, that is:

5A. Without prejudice to the functions of the Commission specified under section 5 of this Act, the Commission shall grant priority to working out master plans for the development of' new and renewable energy, energy efficiency and conservation, in order to:

(a) facilitate a sustainable enhancement of energy supply in the federation, and for the purposes of protecting the Climate, nature and the environment;

(b) reduce the costs of energy supply to the national economy;

(c) incorporate long term measures, to protect the environment;

(d) promote further development of technologies for the generation of electricity from renewable energy sources;

(e) contribute to the increase in the percentage of renewable energy sources to a reasonable level;

(f) develop and promote energy efficiency and conservation best practices;

(g) serve as National Focal Point for renewable energy, energy efficiency and conservation and

(h) regulate, other than electricity generation, direct and guide the development. promotion and utilization of renewable energy

5B. In pursuance of the provisions of Section 5A and 5B of this Act, the Commission shall:

(a) Receive from all Ministries, Departments and Agencies in the Energy Sector, Annual report on their implementation of Energy Policies, strategies produced under this Act;

(b) Monitor the Ministries, Departments and Agencies implementation of policies, plans and strategies to ensure compliance;

(c) The Ministries, Departments and Agencies shall release relevant Energy related data necessary for the monitoring, co-ordination and implementation of national strategies and policy in the energy sector to the Commission on demand;

(d) device methods for the registration of installations and the issue of licenses to private grid system operators who produce below 1 MW and may apply for entry into the register of grid system operators;

(e) device means of monitoring and assessing the activities of grid system operators and their discipline and compliance to laid down regulations and rules;

(f) suggest ways and means of providing incentives and other encouragement to bodies corporate engaged in the development of new and renewable energy sources;

(g) develop guidelines for biofuels development; and

(h) license the production and importation of biofuels.

Amendment of Section 7

16. Section 7 of the principal Act is amended:

(1) Subsection (1) is amended by substituting "Director General"

with the "Chairman" subsection (2) is amended by substituting for the existing subsection (2) thereof, the following new subsection (2) therefore, that is:

(2) The Commission shall have power to employ such number of staff as it may deem necessary for the efficient performance of its functions under so pursuant to this Act, and shall have power to pay persons so employed such remuneration (including allowances) as the Commission may determine within the laws of the Federation."

By inserting, immediately after the existing subsection (2), as amended, the following new subsection (3) thereon, that is:

(3) The Commission shall determine the terms and conditions of service of the staff of the Commission, including remuneration, allowances, pensions and benefits and, in determining these terms and conditions, shall take into account the overriding objective of attracting and retaining the highest quality of manpower."

Amendment of Section 8

17. Section 8 of the principal Act is amended, by substituting for the existing section 8 thereof, the following new section 8 therefore, that is:

(1) There shall be established and maintained by the Commission an account into which there shall be paid and credited:

(a) the annual subvention received from the Government of the Federation;

(b) such money as may, from time to time, be lent, deposited with or granted to the Commission by the Government of the Federation or of a state;

(c) grants from international agencies involved in the development of energy resources;

(d) all other sums which may, from time to time, accrue to the Commission; and

(e) one quarter percent (0.25%) of the turnover of all registered

energy companies in Nigeria shall be set aside as Renewable Energy Fund (REF);

(2) The Commission may, from time to time, apply the funds in the account at its disposal:

(a) to the cost of the administration of the Commission and for the purpose of any activity carried on thereof;

(b) to the payment of remunerations, allowances, benefits and expenses of members of the Commission and Technical Advisory Committee or of any Committee set up by the Commission;

(c) to the payment of the salaries, allowances and benefits of the officers and servants of the Commission;

(d) for the maintenance of any property vested in the Commission or under its administration;

(e) for and in connection with all or any of the functions of the Commission under this Act;

(f) The REF shall be utilized for the development of renewable energy, energy efficiency and conservation only; and

(g) the modalities for utilization of REF shall be worked out and administered by the Commission.

Insertion of Section 8A, 8B and 8C

18. There is inserted, immediately after the existing section 8 (as amended), the following new section 8A, 8B and 8C thereon, that is;

8A. (1)The Commission may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift.

(2) The Commission shall not accept any gift if the term or condition attached by the person or organization making the gift is inconsistent with the functions of the Commission under this Act.

Annual estimate of account and audit

8B. (l) The Chairman shall cause to be prepared not later than the last day of June in each financial year an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall

be submitted to the President for presentation to the National Assembly for approval.

(2) The Chairman shall cause to be kept proper accounts of the Commission and proper records in relation thereto and when certified by the Commission, the accounts shall be audited by the auditors appointed by the Commission from the list and in accordance with the guidelines approved by the Auditor-General of the Federation.

Annual Report, etc.

8C.(1) The Chairman shall not later than three months before the end of each financial year, submit to the president the report on the activities and the administration of the Commission during the immediately preceding year, and shall include in such report audited accounts of the Commission and the auditor's report thereon.

(2) Notwithstanding the provisions of sub-section (1) of this section, the Chairman shall, at the end of every three months, submit to the President the report on the activities and administration of the Commission."

Amendment of Section 9

19. Section 9 of the principal Act is amended by inserting in alphabetical order, the interpretation of the following words and expressions, that is:

"grid system operators" means the operators of all types of voltage system for general electricity supply;

"national grid system" means all the interconnected facilities used for the transmission and distribution of electricity for general supply;

"plant" means any independent technical facility generating electricity from renewable energy sources or from mine gas, and as specified under this Act;

"Renewable energy sources" here refers to solar, wind, biofuel, biomass, geothermal, tidal, wave and small hydro;

"Biofuel" means fuel from non fossil type organic matter.

Miscellaneous

20. -(1) The Commission shall submit to the President a sustainable Energy Report every year, setting out progress made in the previous reporting

period towards achieving of the Act's objectives.

2. Upon the advice of the Commission, the Federal Government may encourage State Governments or any other agencies to take steps to support the implementation of the Act.

3. Subject to the provision of the constitution of the Federal Republic of Nigeria, the Federal Government through the Commission shall have powers to make any laws, regulations and rules for carrying out the provisions of the Act.

4. The Application of other laws relating to electricity energy and power are not barred by the Act, save for the constitution of the Federal Republic of Nigeria, this Act shall prevail.

Penalties

21.-(1) Any breach of any provision of this Act or any regulation hereunder shall be an offence punishable upon conviction, where no specific penalty is prescribed therefore:

(a) As a first offender, to a fine not exceeding five hundred thousand naira or to imprisonment for a period not exceeding one year or both, such fine and imprisonment; or

(b) For subsequent convictions, to a fine not exceeding one million naira or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

2. Any person who:

(a) fails or refuses to furnish a return or to supply information in the manner and in time prescribed or furnishes false or incomplete information; or

(b)willfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed on him or her under this Act; or

(c) refuses or fails; without reasonable cause, to give information to an inspector or police officer when required to do so or gives false information commits an offence and is liable on conviction to a fine not exceeding five hundred thousand naira or exceeding one year or to both such fine or

imprisonment.

3. Notwithstanding anything contained in any law, any person who willfully destroys injures and removes any equipment, devices or apparatus of a renewable energy generator commits an offence and is liable on conviction to imprisonment for a period not less than five years and not more than seven years.

Regulations

22. The Commission is empowered to regulate its own proceedings in carrying into effect the provision of the Commission's Act.

Citation

23. This Act may be cited as the Energy Commission Act (Amendment) Bill, 2015.

EXPLANATORY NOTE

This Bill seeks to amend the Energy Commission of Nigeria Act to confer power on the Commission to accord priority to promote, regulate and standardize development and utilization of renewable energy (RE), energy efficiency and conservation for sustainable energy development and their attendant effects on the environment and climate.

This bill is also to make the Commission the National Focal Point for renewable energy, energy efficiency and conservation.