

PENSIONS BILL, 2023

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PENSIONS BILL, 2023

A BILL FOR AN ACT TO ESTABLISH A CONTRIBUTORY PUBLIC SERVICE PENSIONS FUND FOR INDIVIDUALS IN THE PUBLIC SERVICE AND APPROVED AUTHORITIES AND FOR RELATED PURPOSES.

Enacted by the Parliament of the Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Public Service Pensions Act, 2023.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation.

In this Act –

“**Approved Authority**” means —

- (a) any one of the public authorities, boards or corporations specified in the First Schedule to this Act;
- (b) the proprietor of any registered independent school which is for the time being in receipt of grant-in-aid under the provisions of the Education Act;
- (c) any person employed under an enactment listed in the Second Schedule; and
- (d) any other authority or association or body, whether or not a body corporate, designated by the Minister by Order as an Approved Authority;

“**Board**” means the Public Service Pensions Board established under section 6;

“**Custodian**” means the Custodian appointed under section 13

“**early retirement age**” means retirement before the age of [sixty-seven] years;

“**employee**” means a public officer or a person employed by an Approved Authority;

“**employer**” means a government ministry or department and an Approved Authority;

“**financial year**” means means a period of twelve months ending on the 30th day of June;

“**Fund**” means the Public Service Contributory Pensions Fund established under section 3;

“**Fund Administrator**” means the Fund Administrator appointed under section 11;

“**Investment Manager**” means a person appointed under section 9;

“**member**” means a member of the Fund as described in section 5;

“**Minister**” means the Minister responsible for pensions;

“**normal retirement age**” means –

- (a) in the case of the public service, means the age of sixty-[seven] years; and
- (b) in the case of an approved authority, the age of normal retirement as determined by the terms governing an employee’s employment;

“public officer” means the holder of any public office to which he has been substantively appointed;

“public service” means service in a civil capacity under the Government of The Bahamas;

“repealed Act” means the Pensions Act (Ch. 43).

PART II – PUBLIC SERVICE CONTRIBUTORY PENSIONS FUND

3. Establishment of Public Service Contributory Pensions Fund.

- (1) There is established a Fund to be known as the Public Service Contributory Pensions Fund.
- (2) The Fund shall be a body corporate having perpetual succession and a common seal, shall be capable of suing and being sued and shall have the power to enter into contracts and to do or perform all things necessary for the purposes of its functions that may lawfully be done or performed by a body corporate.
- (3) The purpose of the Fund is to establish a defined contribution pension plan to ensure that individuals who are members of the Fund receive a pension or other benefit on retirement, death, pre-retirement, disability or cessation of employment.

4. Resources of the Fund.

- (1) There shall be paid into the Fund –
 - (a) all member contributions;
 - (b) all employer contributions;
 - (c) such sums as may lawfully be provided by an employer;
 - (d) all assets transferred by the Treasurer pursuant to subsection (2);
 - (e) all funds transferred by an Approved Authority pursuant to subsection (3);
 - (f) all rent, interest, dividends, income and other sums derived from the assets of the Fund;
and
 - (g) such other sums as may be received and accepted by the Fund.
- (2) The Treasurer shall cause the pensionable emoluments of every public officer to be transferred into the Fund for the credit of the pension accounts established pursuant to sections 12 and 41 for the benefit of such officers.
- (3) Every Approved Authority shall cause the pensionable emoluments of all of its employees to be transferred into the Fund for the credit of the pension accounts established pursuant to sections 12 and 41 for the benefit of such employees.
- (4) There shall be paid out of the Fund –
 - (a) all pension and gratuity benefits;
 - (b) all expenses properly incurred in the administration of the Fund;
 - (c) such other payments as may be required under the provisions of this Act to be paid out of the Fund.

- (5) No payments shall be made out of the Fund unless authorised by or under this Act.
- (6) The Fund shall not use any of its assets to grant any loan to the government, to any person, whether incorporated or not, or to any other entity.

5. Membership of Fund.

- (1) A person shall be a member of the Fund if he –
 - (a) joined the public service on or after the date of the commencement of this Act and is employed in the public service for not less than six months;
 - (b) on the date of the commencement of this Act, is a public officer who–
 - (i) has served in a pensionable office in the public service for less than eight years; or
 - (ii) has served in a pensionable office in the public service for eight years or more and elects to join the Fund;
 - (c) is employed by any Approved Authority on or after the date of the commencement of this Act [and remains in that employment for not less than [six] months;
 - (d) on the date of the commencement of this Act is an employee of an Approved Authority who–
 - (i) has been employed at the Approved Authority for less than eight years; or
 - (ii) has been employed at the Approved Authority for eight years or more and elects to join the Fund;
 - (e) on the date of the commencement of this Act, is employed pursuant to any of the enactments set out in the Second Schedule –
 - (i) for less than eight years; or
 - (ii) for eight years or more and elects to join the Fund.
- (2) A member, other than a member who has retired and has opted to be paid benefits due under section 25, who for any reason ceases to be a public officer or leaves the public service or ceases to be employed at an Approved Authority shall cease to be a member of the Fund.
- (3) For the avoidance of doubt, Part VII of this Act shall apply in respect to the pension benefits of a person who –
 - (a) has served in a pensionable office in the public service for eight years or more on the date of the commencement of this Act; and
 - (b) does not elect to join the Fund pursuant to subsection (1)(b)(ii).

PART III – PUBLIC SERVICE PENSIONS BOARD

6. Establishment of Public Service Pensions Board.

- (1) There is established the Public Service Pensions Board.
- (2) The Board shall be responsible for providing administrative oversight of the Fund and shall perform such other functions as may be conferred on it by this Act.
- (3) The Third Schedule shall have effect with respect to the composition and procedures of the Board.

7. Powers of Board.

- (1) The Board shall have all powers necessary for the performance of its functions under this Act.
- (2) Without prejudice to the generality of subsection (1), the Board shall have the power to –
 - (a) delegate the supervision and administration of the assets of the Fund in such manner and for such purposes that best promote the purpose of providing benefits for members of the Fund;
 - (b) provide for the receipt of contributions from members of the Fund and authorise the custody, investment and administration of such contributions and the payment of retirement benefits as specified in this Act that best promote the purpose of providing benefits for members of the Fund;
 - (c) enter into any agreement, engage the services of, or retain any technical or professional adviser, specialist or consultant for the purposes of managing, administering, investing or disposing of all or any part of the assets of the Fund;
 - (d) establish policies for –
 - (i) the investment of the assets of the Fund in accordance with the provisions of this Act;
 - (ii) the calculation and allocation of revenues accruing to the Fund;
 - (iii) the calculation of the amounts in the Fund standing to the credit of members;
 - (iv) such other matters as the Board may deem necessary; and
 - (e) do such other things as are necessary to ensure the effective and efficient administration of the Fund and to give effect to the provisions of this Act.

8. Protection of Board members.

No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Fund.

PART IV – MANAGEMENT AND ADMINISTRATION OF FUND

9. Appointment of investment manager.

- (1) Subject to subsection (3), the Board may appoint on terms and conditions as it may determine such number of persons as it deems necessary to be an investment manager.
- (2) An investment manager appointed under this section shall be responsible for the investment of the assets of the Fund.
- (3) Prior to appointing a person as an investment manager, the Board must be satisfied that the person –
 - (a) is [a firm] licensed or registered as an Investment Fund Manager under the Investment Funds Act, 2019;
 - (b) has sufficient equity capital and adequate guarantees and insurances against operational risks;
 - (c) has a sound record of operational and financial performance; and
 - (d) enjoys a reputation in the field of fund management which is of the highest standard.

10. Fund investments.

- (1) An investment manager shall invest the assets of the Fund in –
 - (a) Bahamas Government securities;
 - (b) investment grade corporate bonds;
 - (c) equities and debt securities of companies that are traded publicly;
 - (d) collective investment schemes registered on internationally recognised stock exchanges;or
 - (e) any other investment vehicle approved by the Board, having regard to best portfolio management processes.
- (2) No investment manager shall utilise the assets of the Fund to make any direct investment in real estate.
- (3) An investment manager shall invest the Fund in such a manner to ensure that there is no undue risk of loss or impairment of the Fund, including by diversifying the investments, and in determining investments of the Fund shall have regard to –
 - (a) best-practice portfolio management; and
 - (b) the investment policies and procedures formulated in accordance with subsection (5).
- (4) An investment manager shall exercise the care, diligence and skill in the investment of the Fund that persons of ordinary prudence would exercise in dealing with the property of another.
- (5) An investment manager shall establish, maintain and adhere to investment policies and procedures that address –
 - (a) the classes of investments in which the Fund is to be invested and the selection criteria for investments within those classes;

- (b) the determination of benchmarks or standards against which the performance of the Fund as a whole, classes of investments and individual investments will be assessed;
 - (c) standards for reporting the investment performance of the Fund;
 - (d) the balance between risk and return in the overall Fund portfolio;
 - (e) the Fund management structure;
 - (f) the use of options, futures and other derivative financial instruments;
 - (g) the investment in private equity funds, hedge funds and funds that invest in infrastructure;
 - (h) the management of credit, liquidity, operational, currency, market and other financial risks;
 - (i) the retention, exercise or delegation of voting rights acquired through investments;
 - (j) the method of, and basis for, valuation of investments that are not regularly traded at a public exchange; and
 - (k) the prohibition, restriction, constraint or limit on any investment.
- (6) An investment manager shall keep such financial and related records as may be necessary to -
- (a) reflect accurately all transactions relative to the assets of the Fund; and
 - (b) give a true reflection of the state of affairs of the Fund, its financial position and business.

11. Appointment of fund administrator.

- (1) The Board shall appoint as a fund administrator a person [firm] licensed under the Investment Funds Act, 2019 to carry on the business of fund administration, on such terms and conditions as it deems necessary.
- (2) The fund administrator shall –
 - (a) create a pension savings account for every member with a personal pension number;
 - (b) credit the pension savings account of the member with the appropriate contributions each month;
 - (c) inform the employer where a member’s contribution details differ from the member’s normal contribution;
 - (d) provide customer service support to members, such as access to member’s account balances and statements on demand;
 - (e) cause benefits to be paid to members in accordance with this Act;
 - (f) be responsible for all calculations relating to benefits;
 - (g) keep such records as may be necessary to reflect accurately all acts and transactions of the Fund, and to give a true reflection of the state of affairs and business of the Fund;
 - (g) carry out such other functions relative to the administration of the Fund as may be directed by the Board.
- (3) The fund administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members’ pension savings accounts, except for clearly defined reasonable fees, charges, costs, and expenses of transactions incurred in the administration of the Fund.

12. Pension savings account.

- (1) The fund administrator shall maintain the pension savings account created pursuant to section 11(2)(a) on the books of the Fund for so long as the Fund maintains an obligation to pay a benefit to, or on behalf of the member under this Act.
- (2) The fund administrator shall set up sub-accounts for every member, namely –
 - (a) a member contribution account;
 - (b) a member voluntary contribution account;
 - (c) an employer contribution account;
 - (d) a past service credit contribution account, if applicable; and
 - (e) such other sub-accounts that the Administrator considers to be appropriate.
- (3) No member shall have access to the funds held in the member’s pension savings account or have any dealing with respect to the pension savings account except through the fund administrator.

13. Appointment of custodian.

- (1) The Board shall appoint as a custodian, on such terms and conditions as it deems necessary, a person who satisfies such requirements to become a custodian as are prescribed under the Investment Funds Act, 2019.
- (2) The Custodian shall –
 - (a) receive the total contributions remitted by the employer under section 4 on behalf of the Board and notify the Fund Administrator within twenty-four hours of receipt of the contributions;
 - (b) hold pension funds and assets in safe custody on trust for the member and beneficiaries of the pension savings account;
 - (d) undertake statistical analysis on the investments and returns on investments with respect to pension funds in its custody and provide data and information to the Board and the Fund Administrator;
 - (e) keep such records as may be necessary to reflect accurately all of its acts and activities including a record of the names of all members and particulars of all contributions or other payments to the Fund by or in respect of the member;
 - (f) report to the Board at such intervals as may be determined by the Board on any matter relating to the assets that it holds on behalf of the Fund.

14. Reports

Each year the investment managers, fund administrator and custodian shall submit to the Board, on such date as the Board may require, a report on their respective work and activities.

15. Duty of Care

The investment managers, fund administrator and custodian shall —

- (a) ensure that the assets of the Fund are at all times managed or held in accordance with the provisions of this Act, any Regulations or guidelines made hereunder, and any directions

- issued by the Board;
- (b) take reasonable care to ensure that the management and safe keeping of the Fund assets are carried out in the best interests of the members;
 - (c) as soon as reasonably practicable, report to the Board any unusual occurrence with respect to the Fund which in their view could adversely affect the rights of the owner of a pension savings account; and
 - (d) as soon as reasonably practicable, report to the Board any default of remittance by the employer of any contributions and such remittance remains due for more than [ten days].

PART V – CONTRIBUTIONS AND BENEFITS

16. Mandatory member contributions.

- (1) Each employee shall, from the date of becoming a member of the Fund, contribute to the Fund an amount at a rate of [three] per cent of his salary.
- (2) Each employee's contribution shall be deducted by his employer from his salary on a [monthly] basis.
- (3) The employer shall, not later than fifteen days after the end of each month in which an employee's salary is paid, remit to the Fund on the employee's behalf the total amount comprising the employee's contribution to the Fund .

17. Employer contributions.

- (1) An employer shall set aside its monthly contribution for each employee who is a member of the Fund at a rate of [three] per cent of the member's and, not later than fifteen days after the end of each month in which an employee's salary is paid, remit to the Fund the total amount comprising the Employer's contribution to the Fund.
- (2) Subject to section 20, no employer shall under any circumstance deduct from the salary of an employee or otherwise recover from such member the employer's contribution for that member.
- (3) No employer shall be liable to make contributions pursuant to subsection (1) for an employee during any period in which that member is –
 - (a) in receipt of or entitled to a contract officer's gratuity; or
 - (b) not in receipt of a salary.
- (4) Where an employee is in receipt of a partial salary, the employer's contribution shall abate proportionally during that period.

18. Past service credit contributions.

- (1) An employer shall pay into the Fund in respect of an employee who is a member of the Fund, past service credit contribution calculated at [3%] of the member's [insert month and year] annual salary multiplied by the period of the member's past service with the employer.
- (2) The payment of past service contribution into the Fund by an employer under subsection (1) may be phased in over the first five years after the commencement of this Act at such rates as determined by the employer until the amount is fully paid.
- (3) Payment shall not be made under subsection (1) for any member for past service –
 - (a) during any probationary period;
 - (b) while he was on contract for which a gratuity was paid or is payable;
 - (c) while he was absent from duty on leave without salary;
 - (d) while he was a member of an existing or former pension plan of his current employer.
- (4) In this section “**past service**” means the period of continuous employment with an employer prior to an employee's enrolment in the Fund.
- (5) For the avoidance of doubt, in any case where an employee has left an employer and is subsequently re-employed by that employer, no account shall be taken of the service prior to re-employment for the purposes of computing past service credit.

19. Voluntary member contributions.

- (1) A member may, in addition to the contributions made under section 16, make voluntary contributions to the Fund at the rate of up to [ten] per cent of his salary.
- (2) A member who desires to make voluntary contributions to the Fund shall provide written notice to his employer consenting to have voluntary contributions deducted from his salary.
- (3) An employer shall make voluntary deductions each month until such time, not being less than six months from receipt of the notice provided under subsection (2), as the member provides further written notice of his desire to cease the voluntary contributions or to change the amount of the voluntary contribution.
- (4) An employer shall not later than fifteen days after the end of each month in which an employee's salary is paid, remit to the Fund the total amount comprising the employee's voluntary contribution to the Fund.

20. Refund of overpayment.

- (1) A member, an employer or where applicable, both, may be refunded any moneys paid to the Fund in excess of –

- (a) the amount for which an employer is liable in respect of a member; or
- (b) any contribution payable by a member.

(2) The Board shall determine the manner in which a refund under subsection (1) shall be paid.

21. Failure by employer to remit funds.

If an employer fails to remit contributions to the Fund in the period designated in sections 16(2), 17(1) and 19(4), the employer shall pay, in addition to the contribution, such amount as determined by the fund administrator that is required to ensure that the amount standing to the credit of the member is not less than it would have been if the contributions had been remitted within the designated period.

22. Vesting of benefits.

- (1) All the benefits derived from contributions from a member shall immediately vest in the member.
- (2) All benefits derived from contributions made by an employer to a member's pension savings account shall vest in the member as follows -
 - (a) a member with less than four years of public service – 0% of the employer's total contribution;
 - (b) a member with four but less than five years of public service – 20% of the employer's total contribution;
 - (c) a member with five but less than six years of public service – 40% of the employer's total contribution;
 - (d) a member with six but less than seven years of public service – 60% of the employer's total contribution;
 - (e) a member with seven but less than eight years of public service – 80% of the employer's total contribution;
 - (f) a member with eight or more years of public service – 100% of the employer's total contribution.

23. Withdrawal from pension savings account.

- (1) Subject to subsection (2), no member is entitled to withdraw the balance in his pension savings account before he retires in accordance with the provisions of this Act.
- (2) A member may withdraw out of the member voluntary contribution account, but not more than [twice] a year with a minimum of [\$5,000] for each withdrawal.

24. Normal retirement.

- (1) A member who retires on attaining normal retirement age shall be entitled to withdraw-
 - (a) the total amount of the benefits in the member contribution account and past service credit account, along with the total amount of the benefits derived from contributions made by an employer to the member's pension savings account and vested in the member as of the date of his resignation; or
 - (b) a lump sum from the balance in his pension savings account the equivalent of fifty percent

of the balance of the combined member contribution account, employer contribution account and past service credit account, if any, together with accrued interest thereon in full.

- (2) The remaining amount in the pension savings account after payment under subsection (1)(b) shall be available to the member in a monthly annuity for life purchased from a life insurance company of the member's choice.
- (3) An annuity purchased under subsection (2) shall include a provision for benefits payable to a member's dependents upon the member's death.
- (4) The payment of the retirement benefits shall commence from the end of the month immediately following the month of the member's retirement.
- (5) Notwithstanding subsection (2), where the amount remaining after payment under subsection (1)(b) is less than [\$20,000], the member may withdraw the balance at the member's discretion.

25. Early Retirement.

- (1) A member who resigns from his employment prior to attaining the normal retirement age may, at any time after his resignation date, elect to –
 - (a) withdraw the total amount of the benefits in the member contribution account and past service credit account, along with the total amount of the benefits derived from contributions made by an employer to the member's pension savings account and vested in the member as of the date of his resignation;
 - (b) withdraw a lump sum cash payment of up to fifty per cent of the combined member contribution account and past service credit contribution account, if any; or
 - (c) leave all accrued benefits in the Fund until the date on which he would have been eligible for retirement.
- (2) Where the amount in subsection (1)(b), is less than [\$20,000] the member may withdraw the balance at the member's discretion.
- (3) A member may, at any time before attaining normal retirement age, purchase an annuity for life from a life insurance company of the member's choice in respect of the amount in the employer contribution account and the remaining amounts in the member contribution account and past service credit account.
- (4) Where, pursuant to subsection (1)(c), a member elects to leave all accrued benefits in the Fund, the benefits shall be available to the member in the same manner as specified in section 22(2) upon the member attaining the normal retirement age and ceasing employment.
- (5) A member may withdraw at his discretion the amounts in the member voluntary contribution account, if any.

26. Disability Retirement.

- (1) A member who becomes permanently disabled, upon certification by a qualified medical practitioner approved by the Board stating that the member is no longer mentally or physically capable of discharging his duties, shall be -
 - (a) eligible to retire; and
 - (b) entitled to a lump sum cash payment of up to fifty per cent of the combined member contribution account, employer contribution account and past service credit account, if any.
- (2) The amount remaining in the member pension savings account shall be paid to the member in accordance with section 22(2).
- (3) A member may withdraw at his discretion the amounts in the member voluntary contribution account, if any.
- (4) Where a member to whom a pension was paid under subsection (1) is re-appointed to his prior office or appointed to an office in the public service which the [Board] determines to be similar, that member shall be re-enrolled in the Fund as of the date of his re-employment.

27. Re-employment after normal retirement age.

- (1) A member who has attained the normal retirement age and is in receipt of benefits from the Fund shall continue to access benefits without interruption if he is re-employed by an employer.
- (2) Both the member and his employer shall pay contributions into the Fund, but no withdrawal shall be permitted from contributions made during the re-employment period until the member ceases employment.

28. Dismissal prior to or after attaining early retirement age.

If a member is dismissed by his employer prior to attaining early retirement age, the member shall receive -

- (a) the entire balance in the member contribution account and past service credit contribution account, if any; and
- (b) such amounts as may be vested in the member pursuant to section 22 from contributions made by an employer to a member's pension savings account.

29. Retirement under special circumstances.

If a member's employment is terminated prior to the member attaining the normal retirement age either on the abolition of his office; or on compulsory retirement for the purpose of facilitating improvement in the organisation of the department to which he belonged, the member shall –

- (a) if he was paid redundancy benefits, be entitled to benefits in accordance with section 22 upon the member attaining the normal retirement age and is not re-employed by any employer;
- (b) if he was not paid redundancy benefits, be entitled to benefits in accordance with section 22.

30. Death of a member.

- (1) Every member shall, when enrolling in the Fund, be required to designate one or more beneficiaries for the purpose of receipt of benefits upon the member's death.
- (2) The designation of a member's beneficiary shall be in writing or in such other form as may be prescribed.
- (3) A member may change a beneficiary designated under subsection (1) at any time prior to that plan member's death.
- (4) Where a member designates more than one person as a beneficiary, the member shall specify the share to which each beneficiary is entitled.
- (5) On the death of a member, a lump sum cash payment of the amount standing to the credit of the member at the date of death shall be payable to the deceased member's beneficiary, as specified in the designation, of the amount standing to the credit of the member.
- (6) Where upon the death of a member the benefits are paid to a person validly designated under this section, no other person shall have any other claim to the benefits against the Fund.
- (7) If a member dies without designating a beneficiary, or if no designated beneficiary survives the member, any benefit that would have been payable to the member's designated beneficiary shall be paid to the member's estate.
- (8) Where a dispute relating to a designation under this section arises, the Board shall consider evidence presented and determine the rightful beneficiary.

31. Member Verification

Every member shall be required to verify his employment at such intervals and in such manner as may be prescribed.

32. Missing Member.

- (1) Notwithstanding anything to the contrary contained in any other law, where a member is missing and it is proven to the Board that the member has not been heard of for seven years by those persons who might reasonably be expected to have heard of the member if the member was alive, there shall be a rebuttable presumption that the member is dead and the provisions of section 22 shall apply.

- (2) Where it is confirmed that the missing member is dead, the provisions of section 30 shall apply.

33. Non-Assignment of Benefits.

- (1) Notwithstanding the provisions of any other written law, a pension, gratuity or other allowance granted under this Act shall not be—
- (a) assignable or transferable by a member except for the purpose of satisfying—
 - (i) a debt due to the Government; or
 - (ii) an order of any court for the payment of periodical sums of money towards the maintenance of the spouse, or former spouse, or minor child, of the plan member to whom the pension, gratuity or other allowance has been granted;
 - (b) subject to, or available to, the creditors of a member prior to payment thereof.
- (2) Where there is a dispute, a party to the dispute may submit the dispute to binding arbitration under the Arbitration Act, 2009.

34. Prohibited Payments.

No payment shall be made out of the Fund —

- (a) to the Government except [by Resolution passed by the majority of Members of the House of Assembly]; or
- (b) to a member while he is still in the public service or an approved authority; or
- (c) to any person as a loan, advance or other similar benefit or payment except as provided under section 23.

PART VI – FINANCIAL PROVISIONS

35. Annual Budget.

- (1) The Board shall prepare for each financial year an annual budget of revenue and expenditure which shall be submitted to [the Minister] at least [three] months prior to the commencement of the financial year.
- (2) The annual budget shall make provision for all the estimated revenue and expenditure of the Fund for the financial year and in particular, the estimates shall provide for—
- (a) the payment of pensions, gratuities and other charges in respect of the retirement benefits payable from the Fund;
 - (b) the payment of expenses concerning the administration and management of the Fund;
 - (c) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate; and

- (d) any other administrative costs of the Fund.
- (3) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under this section.

36. Accounts and audit of Fund

- (1) The Board shall cause to be kept proper records of account of the income, expenditure, assets and liabilities of the Fund and shall cause annual financial statements to be prepared in accordance with generally accepted accounting principles and be submitted for auditing and reporting annually by the Auditor General in accordance with The Bahamas Institute of Chartered Accountants Act (Ch. 364)).
- (2) The financial statements prepared pursuant to subsection (1) shall present the financial position, results of operations and changes in the Fund and Reserve Fund and cash flow of the Fund for the most recent financial year.
- (3) The Board shall appoint one or more auditors to audit the financial statements of the accounts of the Fund for each financial year.
- (4) As soon as the accounts have been audited the Board shall submit a copy thereof to the Minister together with a copy of any report made by the auditor.
- (5) The Minister shall lay a copy of every such audited accounts before each House of Parliament, together with a copy of any report made by the auditor on the accounts.

37. Accounts and audit of Board.

- (1) The Board shall keep proper accounts and other records in respect of its administrative oversight of the Fund and shall prepare in respect of each financial year a statement of accounts.
- (2) The accounts of the Board for each financial year shall be audited annually by the Auditor General.
- (3) As soon as the accounts have been audited the Board shall submit a copy thereof to the Minister together with a copy of any report made by the auditor.

(4) The Minister shall lay or cause to be laid a copy of every such audited accounts before each House of Parliament, together with a copy of any report made by the auditor on the accounts.

38. Annual Board Report.

- (1) The Board shall on or before June 30 in each year submit to the Minister an annual report on the work and activities of the Board and such report shall include the reports of the fund administrator, investment manager and custodian provided to the Board pursuant to section 14.
- (2) The Minister shall lay or cause to be laid a copy of every annual report on the table of both Houses of Parliament.

39. Actuarial valuation of Fund.

- (1) The Board shall appoint at intervals not exceeding five years an actuary to review the financial condition of the Fund and the adequacy or otherwise of contributions to support benefits, having regard to its liabilities under this Act.
- (2) The actuary appointed under subsection (1) shall prepare a report on the state of the Fund including any recommendations on any necessary action to be taken and shall submit the report to the Board.
- (3) [The Board shall within [six] months of the receipt of such report consider any recommendations made by the actuary and in so doing, may—
 - (a) recommend to the Minister the increase or decrease the rates of contribution payable in respect of members; or
 - (b) take any other action recommended by the actuary.
- (4) The Minister may in his discretion direct that a review under subsection (1) be carried out at shorter periods.

PART VII – DEFINED PENSION BENEFITS

40. Application.

- (1) This Part shall apply to a person who on the date of the commencement of this Act-
 - (a) is retired or has resigned from the public service and is entitled to receive pension benefits under the repealed Act;
 - (b) is retired from the Bahamas Telecommunications Corporation and is entitled to receive pension benefits under the repealed Bahamas Telecommunications Corporation Act (No. 13 of 1966); or
 - (c) has held a pensionable office in the public service for eight years or more prior to his retirement and has not elected to join the Fund established under Part II.

- (2) Subsection (1)(b) does not prevent a person from becoming a member of the Fund and such person may elect to join the Fund in the manner prescribed.
- (3) A person who transfers to the Fund established under Part II shall not accrue or receive benefits under this Part, but shall, from the date of the transfer, be governed by the provisions of Part II.
- (4) For the avoidance of doubt, no pension benefit payable to an employee under this Part shall be less than the benefits that would have been accrued or payable under the repealed Act.

41. Establishment of pension account.

The fund administrator shall establish and maintain within the Fund a pension account for every person to whom this Part applies for so long as there remains an obligation to pay a pension to or on behalf of such person.

42. Grant of pensions.

- (1) Every public officer to whom this Part applies, shall retire from the public service at any time after attaining the age of [sixty-seven] years or on the completion of thirty years of service in a pensionable office, whichever is the earlier.
- (2) The Governor-General shall grant to a public officer who holds a pensionable office or has been in the public service for five years or more a pension upon such officer's retirement of one-seventh hundred and twentieth of his pensionable emoluments in respect of each completed month of his pensionable service.
- (3) A public officer granted a pension in accordance with subsection (1) may at his option exercisable on a day not later than the day preceding the officer's retirement, be paid in lieu of such pension, a pension at the rate of three-fourths of such pension together with a gratuity equal to ten times the amount of the reduction so made in the pension, except that an officer who has exercised his option before the day preceding his retirement may revoke this option on or before, but not later than, the day preceding his retirement.
- (4) A pension granted to an officer to whom section 40(1) applies shall not exceed two-thirds of his highest pensionable emoluments at any time while in public service.
- (5) A person shall not have an absolute right to the benefits under this Part, or the superannuation or other allowances, but such benefits, superannuation or other allowances are considered to be granted only in consideration of good and faithful service during the time on which they are calculated and shall be withheld by the Governor-General where any public officer after due inquiry by the Governor-General has been found –
 - (a) guilty of disgraceful conduct or gross dereliction of duty; or
 - (b) to be indebted to the Government of The Bahamas for any public money which has come to his hands either legally or illegally.
- (6) The Governor-General may withhold in whole or in part any benefit, superannuation or other allowance of a public officer whenever requested by a resolution of the House of Assembly or where any public officer has in the opinion of the Governor-General not performed his duties to the satisfaction of the Government.

43. Permanent Secretary pension on retirement after forty years.

- (1) Notwithstanding section 42(1), (2) and (3), the Governor-General shall grant a pension to every person who holds the office of Permanent Secretary and –
 - (a) has served in the public service for a minimum period of forty years; or
 - (b) has served in the public service for a minimum period of twenty-five years and at least ten of those years as a Permanent Secretary.
- (2) Pursuant to subsection (1), a Permanent Secretary shall be entitled on his retirement from such office to a pension at a rate of one seven hundred and twentieth of his pensionable emoluments in respect of each completed month of pensionable service as if he had served for a period of forty years, except that the pension payable to that person under this section shall not exceed two thirds of the highest pensionable emoluments paid to him during his period of service in the public service.
- (3) For the purposes of this section, “**Permanent Secretary**” includes the Secretary to the Cabinet and the Financial Secretary.

44. Auditor-General pension on retirement after forty years.

- (1) Notwithstanding section 42(1), (2) and (3), the Governor-General shall grant a pension to every person who holds the office of Auditor-General and –
 - (a) has served in the public service for a minimum period of forty years; or
 - (b) has served in the public service for a minimum period of twenty-five years and at least ten of those years as the Auditor-General.
- (2) Pursuant to subsection (1), the Auditor-General shall be entitled on his retirement from such office to a pension at a rate of one seven hundred and twentieth of his pensionable emoluments in respect of each completed month of pensionable service as if he had served for a period of forty years, except that the pension payable to that person under this section shall not exceed two thirds of the highest pensionable emoluments paid to him during his period of service in the public service.

45. Commissioner of Police, etc. pension on retirement as if served forty years.

- (1) Notwithstanding section 42 (1), (2) and (3), the Governor-General shall grant to a person who holds the office of Commissioner of Police or Commander, Defence Force, on that person’s retirement from such office, a pension at a rate of one seven hundred and twentieth of his pensionable emolument in respect of each completed month of pensionable service as if that person had served for a period of forty years.
- (2) In order to qualify for a pension under subsection (1), a person who holds the office of Commissioner of Police or Commander, Defence Force shall have served –
 - (a) for a minimum period of forty years; or
 - (b) for a minimum period of twenty-five years and at least seven of those years as the Commissioner of Police or Commander, Defence Force.
- (3) A pension payable to a person under this section shall not exceed two thirds of the highest pensionable emoluments paid to that person during his period of pensionable service.

46. Temporary pension in case of abolition of office.

The Governor-General shall grant a temporary pension at the rate of one-seven hundred and twentieth of the salary of a public officer that holds a pensionable office in respect of each completed month of service where the public officer upon retirement has completed five years or more of public service and is compelled to leave the public service in consequence of –

- (a) the abolition of his office; or
- (b) for the purpose of facilitating improvements in the organization of the department to which he belongs, by reason of which greater efficiency or economy can be effected.

47. Grant of gratuity or pension in special circumstances.

- (1) The Governor-General shall grant to any public officer who -
 - (a) has not completed a period of service which would have entitled him to a pension and is compelled to quit the public service by reason of severe bodily injury that occurs without his own default in the discharge of his public duty -
 - (i) a gratuity not exceeding three months' pay for every two years of service; or
 - (ii) a pension not exceeding ten-sixtieths of his annual salary;
 - (b) is constrained from infirmity of mind or body to leave the public service before the completion of the period which would entitle him to a pension, such sum of money not exceeding the amount of one month's pay for each year of service by way of gratuity as the Governor-General may think proper.
- (2) Where the service of a public officer is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer to the public service and all other circumstances of the case, termination is desirable in the public interest, and a pension, gratuity or other allowance cannot be granted to such officer, the Governor-General may grant to such officer a pension, gratuity or other allowance not exceeding the amount that the officer would be eligible for if he were suffering from some infirmity of mind or body likely to be permanent.

48. Gratuity in case of retirement before qualifying for pension.

- (1) The Governor-General may grant to a person to whom subsection (2) applies a gratuity amounting to four per centum of that person's pensionable emoluments in respect of each year of service.
- (2) A gratuity under subsection (1) may be granted to –
 - (a) any public officer that holds a pensionable office and has -
 - (i) completed not less than ten years of service in the public service; and
 - (ii) retires from the public service at an age other than [sixty-seven] years; or
 - (b) an officer to whom section 13 of the Public Service Act (Ch. 39) applies.
- (3) For the purposes of this section “**public officer**” includes a temporary officer.

49. Gratuity in case of death of officer.

- (1) Where any public officer dies while in the public service, the Governor-General shall grant to his legal personal representative a gratuity of an amount equal to the pensionable emoluments of such officer at the date of his death, except that in the case of the death of an officer who is [sixty-seven] years or has completed at least thirty years of service in a pensionable office, the amount

payable under shall not be less than the amount as would have been payable to that officer as gratuity had he exercised immediately before his death, the option to retire.

- (2) Where any payment is made by the Government in respect of the death an officer under the provisions of any law relating to workmen's compensation, the amount of any gratuity granted under the provisions of this section shall be reduced by the amount of such payment.

50. Other gratuities.

- (1) The Governor-General may grant such gratuity as may be prescribed to any person who retires from employment in the public service in prescribed circumstances, but to whom a pension or gratuity may not otherwise be granted.
- (2) Where any person other than a public officer dies while in the public service who was employed for a period of not less than five years, the Governor-General may grant to that person's legal personal representative, a gratuity of an amount not exceeding the annual salary of that person at the time of his death.
- (3) Where any person other than a public officer dies while in the public service who was employed for a period of less than five years, the Governor-General may grant to that person's legal representative a gratuity of an amount not exceeding one-half of the annual salary of such person at the time of his death.
- (4) Where a person other than a public officer dies while in the public service whose employment was of a casual nature, the Governor-General may grant to that person's legal representative, a gratuity in accordance with prescribed Regulations.
- (5) For the avoidance of doubt, a person awarded a gratuity under this section is not entitled to any further gratuity.

51. Re-employed pensioners.

- (1) Where a public officer to whom a pension has been granted is re-employed in the public service, the Governor-General may either, notwithstanding the provisions of any law prescribing the remuneration of such re-employment, reduce the remuneration in view of the pension which the officer is receiving, or may order that the pension granted to the officer cease.
- (2) Where a public officer referred to in subsection (1) subsequently retires in circumstances in which he may be granted a pension, he shall be granted, in lieu of his previous pension, a pension computed as if the periods of his service had been continuous, and that such pension shall be based on his pensionable emoluments on his previous or final retirement from the service, whichever are the greater.
- (3) Notwithstanding subsection (2), if a public officer was paid a gratuity and pension on his previous retirement, the gratuity to be paid to him on final retirement shall be reduced by the amount of the gratuity already paid.

52. Computation of service.

- (1) Service in respect of which a pension or gratuity may be granted must be unbroken service.
- (2) Subject to subsection (3), in computing the period of service in respect of which an officer may be granted a pension or gratuity, the whole period of public service of the officer, including any part of such service in an office not being a pensionable office, but excluding any period during which the officer served as a contract officer or was on leave without pay shall be taken into account.
- (3) For the purpose of determining the eligibility of an officer to the grant of a pension or gratuity under this Part, based on the length of service of that officer, any period of service excluded under this section shall be taken into account.

53. Bridging of service.

- (1) A public officer to whom this Part applies may apply to the Secretary of Cabinet in the prescribed form to have his years of service bridged where -
 - (a) the period of broken service of that officer does not exceed two years from the date of his resignation or retirement from the public service; and
 - (b) the officer's broken service was taken -
 - (i) to pursue full time studies, whether locally or abroad;
 - (ii) as a result of a medical condition suffered by him and confirmed by a registered medical practitioner; or
 - (iii) due to extenuating family circumstances.
- (2) Notwithstanding subsection (1), Cabinet may authorise the bridging of the years of service of a public officer where, in the Cabinet's discretion, it would be in the interest of justice or fairness, except that the Cabinet shall not authorise the bridging of years of an officer if the period of broken service exceeds two years from the date of his resignation or retirement from the public service.
- (3) A public officer is entitled to apply under subsection (1) if he was employed full time in the public service and did not qualify for a pension and -
 - (a) he has been invited, in writing, by the Government to return to the public service on a full-time basis; and
 - (b) his period of broken service does not exceed two years from the date of his resignation or retirement from the public service.

54. Governor-General to have final decision in claim to pension or gratuity.

Where any question arises in any department of the public service as to the claim of any person for pension or gratuity under this Part, such claim shall be inquired into and decided upon by the Governor-General and his decision shall be final.

55. Payment of pensions and gratuities without abatement of deduction.

Every pension or gratuity granted in accordance with this Part shall be paid to the person entitled to receive the same without any abatement or deduction.

56. Exercise of powers by the Governor-General.

The Governor-General shall exercise the powers vested in him under this Part in accordance with the provisions of paragraph (2) of Article 123 of the Constitution.

PART VIII – MISCELLANEOUS

57. Confidentiality.

- (1) A person who acquires information in his capacity as a director, officer, employee or agent of the Board shall not without the express or implied consent of the person to whom the information relates disclose that information to any other person except –
 - (a) for the purposes of the performance of his duties or the exercise of his functions under this Act;
 - (b) for the purpose of the performance of his duties within the scope of his employment;
 - (c) when the Board is lawfully required to make a disclosure by a court of competent jurisdiction;
 - (d) to a person with a view of instituting –
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or without The Bahamas, relating to a counsel and attorney-at-law, auditor, accountant or actuary of his professional duties; or
 - (iii) disciplinary proceedings relating to the discharge of duties by a public officer.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term of twelve months, or to both.

58. Misappropriation of assets.

An employee of the fund, investment manager, fund administrator or custodian who misappropriates the assets of the Fund commits an offence and is liable on conviction to a fine [of an amount three times equal to the amount misappropriated or imprisonment for a term not exceeding seven years, or to both].

59. Correction of errors.

The Board shall establish a procedure that will allow a member to bring to the Board's attention the failure of any administrative process which has-

- (a) prevented a benefit from being paid; or
- (b) resulted in the incorrect calculation of the amount of a benefit.

60. Regulations.

- (1) The Minister may [on the recommendation of the Board/ after consultation with the Board] make regulations necessary for carrying out the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), such regulations may prescribe –
 - (a) the particulars, information or evidence to be furnished as to any question or matter arising under this Act, including any question or matter relevant to the making or validity of any claim or application for the payment of any benefit;

- (b) in respect of any action required or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed any forms to be used under this Act;
- (c) any other matter or thing which may be or is required to be prescribed under this Act.

61. Amendment of Schedules.

The Minister may amend the First, Second and Third Schedules of this Act by Order.

62. Transitional.

63. Savings.

64. Consequential amendments.

FIRST SCHEDULE

(section 2)

APPROVED AUTHORITIES

Central Bank of The Bahamas
National Insurance Board
Hotel Training Council
Bahamas Information Services Department
University of The Bahamas
Bahamas Agricultural Corporation
Hotel Corporation of The Bahamas
Water and Sewerage Corporation
Bahamas Development Bank
Bahamasair Holdings Limited
Royal Bahamas Defence Force
Bahamas Maritime Authority
Each town committee and Council established under the Local Government Act
Public Hospitals Authority
Hospitals and Health Care Facilities Licensing Board
National Museum of The Bahamas
Airport Authority
National Art Gallery of The Bahamas
Nassau Airport Development Company Limited
Bahamas Mortgage Corporation
Insurance Commission of The Bahamas
Utilities Regulation and Competition Authority
Sports Authority
National Training Agency
Bahamas Public Parks and Beaches Authority
National Health Insurance Authority
Bahamas Agricultural Health and Food Safety Authority
Aircraft Accident Investigation Authority
National Crime Intelligence Agency
Civil Aviation Authority
Bahamas Air Navigation Services Authority

SECOND SCHEDULE

(section 50))

Correctional Services Act
Police Force Act, 2009
Judges' Remuneration and Pensions Act (Ch. 45);

THIRD SCHEDULE

(section 6)

PUBLIC SERVICE PENSIONS BOARD

1. Composition

The Board shall consist of –

- (a) a Chairperson, not being a public officer and appointed by the Minister;
- (b) two Deputy Chairpersons who shall be the Permanent Secretary of the Ministry with responsibility for the public service and the Financial Secretary;
- (c) one person nominated by the members of The Bahamas Public Service Union and appointed by the Minister ;
- (d) one person nominated by the members of Unions representing Approved Authorities and appointed by the Minister ;
- (e) one person nominated by the members of the Registered Staff Association Union and appointed by the Minister ;
- (f) one person admitted as counsel and attorney-at-law under the Legal Profession Act(Ch. 6);
- (g) one person registered as a public accountant under the Bahamas Institute of Chartered Accountants Act (Ch. 364)appointed by the Minister;
- (h) one person qualified as an actuary and with demonstrated experience in actuarial science appointed by the Minister;
- (i) one person with demonstrated experience in matters relating to human resource management appointed by the Minister;
- (j) not more than three other persons appointed by the Minister who appear to the Minister to have demonstrated experience in industry, commerce, finance, law or administration.

2. Tenure

(1) The members of the Board appointed pursuant to paragraphs (a) and (c) to (e) of paragraph 1 shall hold office for a term of [three] years but are eligible for re-appointment for a further term of three years.

(2) The members of the Board appointed pursuant to paragraphs (f) to (j) of paragraph 1 shall hold office for a term of [two] years but are eligible for re-appointment for a further term of two years.

3. Secretary to Board

(1) The Minister shall appoint a public officer as Secretary to the Board who shall be responsible for making and preserving a record of all proceedings of the meetings of the Board.

(2) The Secretary to the Board shall keep the common seal of the Fund which shall not be used except by the order of the Board.

4. Meetings of the Board

(1) The Board shall hold such meetings that in the opinion of the Chairperson are necessary for the efficient conduct of its affairs but shall meet at least once in every three calendar months.

(2) Subject to this paragraph, the Board may regulate its own procedure.

5. Honourarium

There shall be paid to the Chairperson and each member of the Board such honourarium as the Minister may determine.

6. Committees of the Board

(1) The Board may appoint such committees to assist the Board in relation to a matter as the Board thinks fit.

(2) A committee appointed under this section shall consist of such persons, whether members of the Board or not, as the Board thinks fit, but any committee so appointed shall include not less than two members of the Board.

(3) A member of a committee who is not a member of the Board may be paid, in respect of attendance at meetings of the committee or while engaged with the approval of the Board on the business of the Board, such fees, expenses and allowances as the Minister may determine.

(4) A committee shall make such inquiries and furnish to the Board such reports with respect to the matter in relation to which it has been appointed as the Board may direct.

(5) Without limiting the generality of subsection (1), the Board shall appoint an Audit Committee and an Investment Committee.

7. Liability

(1) No member of the Board shall be personally liable for any act or default done or omitted to be done in good faith the exercise of a function or power under this Act.

(2) The Fund shall purchase and maintain insurance to cover against any liability incurred against any member of the Board arising out of the member's exercise of a function or power under this Act.

8. Disclosure of interest

- (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration or in which that member or his dependents are directly or indirectly interested in a private capacity, that member shall, as soon as practicable after the commencement of a meeting –
 - (a) disclose his interest; and
 - (b) unless the Board otherwise directs, refrain from taking part in any consideration or discussion, or vote on any question relating to such matter.
- (2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which such disclosure is made.
- (3) A member who fails to disclose his interest pursuant to this paragraph shall have his membership revoked in accordance with paragraph 3.