ARRANGEMENT OF CLAUSES

Clauses:

1. Imposition of Federal Tertiary Teaching Hospitals Development Fund Tax.
2. Source of Funding for the fund.
3. Assessment and collection of tax.
5. Establishment of the Board of Management.
6. Cessation of Membership.
7. Functions of the Board of Management.
9. Appointment of the Chief Managing Director and other staff of the Fund.
10. Pension.
11. Offences.
12. Penalties.
14. Limitation of suits against the Fund, etc.
15. Service of documents.
16. Restriction on execution against property of the Fund.
17. Indemnity of officers.
18. Regulations.
19. Interpretation.
20. Citation.

Schedule
FEDERAL TERTIARY TEACHING HOSPITALS DEVELOPMENT TAX FUND (ESTABLISHMENT, ETC) BILL 2020

A Bill

for

An Act to establish the Federal Tertiary Teaching Hospitals Development Tax Fund for the rehabilitation, restoration, improvement and consolidation of Tertiary Health Care Delivery in Nigeria.

Sponsor: Senator Muhammad Sani Musa

( ) Commencement

Enacted by the National Assembly of the Federal Republic of Nigeria -

1. As from the commencement of this Bill, there shall be charged and payable an annual Federal Tertiary Teaching Hospitals Development Tax which shall be assessed, collected and administered in accordance with the provisions of this Bill.

2. The source of funding for the Fund shall be 1% of-
   
   (1) Petroleum Companies Tax pays on total barrels of crude oil produced yearly.
   (2) Mobile Phone Service Providers Tax pays on Airtime and data sold yearly.
   (3) Beverage and Breweries Companies Tax pay on profit yearly declared.
   (4) Cement Companies shall pay 1% on profit yearly declared.
   (5) Paint and Chemical manufacturing Companies Tax pay on profit yearly declared.
   (6) Tobacco Companies Tax pays on profit yearly declared.

3. (1) The Federal Inland Revenue Service (in this Bill referred to as “FIRS”) shall assess and collect the taxes imposed by this Bill and accordingly-
   
   (a) shall, when assessing a company, for Companies income tax for an accounting period of the company, shall also assess the company for the tax due under this Bill; and
   (b) The tax imposed by this Bill shall be due and payable within 90 days after the FIRS has served notice of the Assessment on a Company.

   (2) The FIRS may, for the purpose of assessment and collecting the tax imposed by this Bill, devise such forms as it may deem necessary.
4. (1) There is established the Federal Tertiary Teaching Hospitals Development Fund (in this Bill referred to as “the Fund”).

(2) The Fund –

(a) shall be a body corporate with perpetual succession and a Common Seal; and
(b) may sue and be sued in its corporate name.

(3) The Federal Inland Revenue Services shall pay the tax collected under this Bill into the Fund and shall, when doing so, submit to the Fund, in such form as the Board shall approve showing-

(a) the name of the company making the payment;
(b) the amount collected;
(c) the assessable profit of the company for the accounting period; and
(d) such other information as may be required by the Fund for the proper administration of the tax.

(4) The Fund shall, before disbursement of the amount in the Fund, set aside in each year, an amount not exceeding 10 percent of the total monies accruing to the Fund in the preceding year which shall be applied-

(a) for the cost of administration and management of the Fund;
(b) for the maintenance of any property acquired by or vested in the Fund and generally to pay for any services rendered to the Fund;
(c) for project monitoring;
(d) to meet all the needs of the Fund necessary for the due administration and implementation of the purpose of this Bill.

5. (1) There is established for the Fund, a Board of Management (in this Bill referred to as “the Board”) which shall consist of –

(a) a Chairman who shall –

(i) be a person with good knowledge in Health Care Administration and Management matters,
(ii) have qualifications and experiences as are required to perform the functions of that office under this Bill.

(b) Six (6) persons, each representing a Geo-Political Zone in the country;

(c) a representative of the following, who shall not be below the rank of a Director-

(i) Office of Secretary to the Government of the Federation (SGF),
(ii) Federal Ministry of Health,
(iii) Federal Ministry of Education,
(iv) Federal Ministry of Finance,
(v) Federal Inland Revenue Service.
(d) Chairman or Chairperson of Committee as Chief Executives of Federal Tertiary Teaching Hospitals;
(e) The National President Institute of Health Service Administrators of Nigeria (IHSAN);
(f) The Chief Managing Director, who shall be a Member and the Secretary to the Board of Management and;
(g) Director Human Resources of the Fund who shall be the Secretary of the Board of Management.

(2) The membership of the Board of Management shall reflect the six (6) Geo-Political Zones of the Federation.

(3) The members of the Board of Management shall-
(a) be persons with considerable experience from both the public and private sectors to represent the health, business, financial and educational sectors;
(b) be appointed by the President on the recommendation of the Secretary to the Government of the Federation (SGF);
(c) other than the ex-officio members, each shall hold office for a term of four (4) years in the first instance and may be eligible for reappointment for a further term of four (4) years and no more; and
(d) be paid such remuneration and allowances as the President may, from time to time, determine.

(4) The Board of Management shall meet for the conduct of its ordinary meetings four (4) times in a calendar year.

(5) Notwithstanding provision of sub clause (4), the Board of Management may meet to conduct such other business as exigency demands.

(6) The supplementary provisions contained in the Schedule to this Bill shall have effect with respect to the proceedings of the Board of Management and other matters contained therein.

6. (1) A member of the Board of Management shall cease to hold office if he-

(a) becomes of unsound mind;
(b) becomes bankrupt or makes a compromise with his creditors;
(c) is convicted of a felony or any offence involving dishonesty;
(d) is guilty of serious misconduct in relation to his duties; or
(e) is guilty of immoral or corrupt conducts.

(2) A member of the Board of Management may be removed from office by the President if he is satisfied that it is
not in the interest of the Fund or Public that the member should continue in that office.

(3) A member of the Board of Management, other than an ex-officio, may resign his appointment by a month notice in writing under his hand, addressed to the President.

(4) Where a vacancy occurs in the Membership of the Board of Management, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so that the successor shall represent the same interest and shall be appointed by the President.

7. The Board of Management shall-
   (a) monitor and ensure collection of the tax by the Service and ensure transfer of same to the Fund;
   (b) manage and disburse the tax imposed by this Bill;
   (c) liaise with the appropriate ministries or bodies responsible for collection or safe keeping of the tax;
   (d) receive requests and approve appropriate projects after due consideration;
   (e) ensure disbursement of funds to various Federal Tertiary Teaching Hospitals in Nigeria;
   (f) monitor and evaluate execution of the projects in relation to funds releases;
   (g) invest funds in appropriate and safe securities;
   (h) update the Federal Government on its activities and progress through annual and audited reports not later than six month after the preceding year;
   (i) review progress and suggest improvements within the provisions of this Bill;
   (j) do such other things as are necessary or incidental to the objects of the Fund under this Bill or as may be assigned by the Federal Government;
   (k) make and issue guidelines, from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund; and
   (l) generally regulate the administration, application and disbursement of monies from the Fund under this Bill.

8. (1) The Board of Management shall administer the tax imposed by this Bill and disburse the amount in the Fund to Federal Tertiary Teaching Hospitals specifically for the provision or maintenance of—
   (a) essential physical infrastructure for teaching, learning, research and service;
   (b) instructional, medical and other services equipment;
   (c) research and publication;
   (d) staff training and development; and
(e) any other need which, in the opinion of the Board of Management, is critical and essential for the improvement of quality and maintenance of standards in the Federal Tertiary Teaching Hospitals.

(2) The Board of Management shall administer, manage and disburse the tax imposed by this Bill on the basis of-

(a) funding of all Federal Tertiary Teaching Hospitals;
(b) equality among the Geo-Political Zones of the Federation in the case of Special Intervention Projects; and
(c) equality among the States of the Federation in the case of Regular Intervention Projects.

(4) The Board of Management shall have power to give due consideration to the peculiarities of each Geo-Political Zone in the disbursement and management of the tax imposed by this Bill between the various Federal Teaching Hospitals.

(5) The Secretary to the Government of the Federation shall, on the recommendation of the Board of Management and subject to approval by the President, make guidelines for disbursement of funds under this Bill.

9. (1) There shall be for the Fund a Chief Managing Director who shall-

(a) be appointed by the President on the recommendation of the Secretary to the Government of the Federation;
(b) be the Chief Executive and Accounting Officer of the Fund;
(c) be a person with good knowledge and cognate management and administrative experience in Federal Tertiary Teaching Hospital;
(d) have qualifications and experience as are appropriate for a person required to perform the functions of that office under this Bill not below a first degree; and
(e) holds office for a period of four (4) years in the first instance and may be eligible for reappointment for a further term of four (4) years only and on such terms and conditions as to emoluments, and conditions of service as may be specified in his or her letter of appointment,

(2) The Chief Managing Director shall, subject to the general direction of the Board of Management, be responsible for-

(a) the day-to-day management and administration of the Fund;
(b) keeping the proper books and records of the proceedings of the Board of Management;
(c) the administration of the Secretariat of the Board of Management; and
(d) the general direction and control of all other employees of the Fund.

(3) The Board of Management shall have power to-

(a) employ either directly, on transfer or secondment from any civil or public service in the Federation or on contract basis such number of employees as may, in the opinion of the Board, be required to assist the Board of Management and the Chief Managing Director in the discharge of their functions under this Bill; and
(b) pay to persons so employed such remuneration (including allowances) as the Board of Management may, with the approval of the National Salaries, Incomes and Wages Commission, determine.

10. (1) Service in the Fund shall be approved service for purposes of Pension where applicable.

(2) Employees of the Fund where applicable, shall be entitled to pension, Lump Sum (Gratuity) and other retirement benefits as are enjoyed by persons holding equivalent grades in the Civil Service of the Federation as provided under the Pension Reform Act 2014 (as amended)

(3) Notwithstanding Sub-Section (1) or (2) of this Section, nothing in this Bill shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

(4) For the purposes of the application of the provisions of the Pension Reform Act, any power exercisable by an authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is vested in and shall be exercisable by the Board of Management.

11. (1) A person who contravenes or fails to comply with provisions of this Bill is guilty of an offence under this Bill.

(2) Subject to the provisions of sub clause (3) -

(a) if a tax due under clause 2 of this Bill is not paid within the time specified in that Section, the Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 5 per cent of the tax; and

(b) if a sum demanded under paragraph (a) of this sub clause is not paid within three (3) months of the demand, the company is guilty of an offence under this Bill.
(3) Notwithstanding any other provision in this Bill, it shall be the duty and responsibility of every company liable to pay the tax to ensure that its annual returns are filed with the Service for the purpose of assessment of the tax.

(4) The Board of Management shall, remit in whole or in part a sum added to the unpaid tax under sub clause (2) (a) of this clause.

(5) Where an offence under this Bill is committed by a body corporate or firm or other association of individuals-

(a) every Director, Manager, Secretary or other similar officer of the body corporate;
(b) every partner or officer of the firm;
(c) every person concerned in the management of the affairs of the association; or
(d) every person who was purporting to act in that capacity is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

12. (1) Except as otherwise provided in this Bill, a person guilty of an offence under this Bill shall, on conviction, be liable-

(a) for a first offence, to imprisonment for a term of six (6) months or to a fine of up to N6,000,000.00 or both; and
(b) for a second and subsequent offence to imprisonment for a term of twelve (12) months or to a fine of up to N12,000,000.00 or both.

(2) The institution of proceedings or imposition of a penalty under this Bill shall not relieve a company from liability to pay to the Service a tax which is or may become due under this Bill.

(3) Notwithstanding sub clause (1)(a) and (b) of this section, where any company or corporate body liable to file a Federal Tertiary Teaching Hospitals Development Tax return under this Bill fails in any year to file such return, the Service, if it is of the opinion that such a company or corporate body is liable to pay the tax, may, according to the best of its judgment, determine the amount of assessable profit of such company and make an assessment of the tax in accordance with the provisions of this Bill.

13. The Federal High Court shall have jurisdiction to try offenders under this Bill.
14. (1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Fund.

(2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Management, the Chief Managing Director or any other officer or employee of the Fund for any act done in pursuance or execution of the Bill or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Bill or such law or enactment, duty or authority, shall lie or be instituted in any court unless-

(a) it is commenced within three (3) months next after the act, neglect or default complained of; or
(b) in the case of a continuation of damage or injury, within six (6) months next after the ceasing thereof.

(3) No suit shall be commenced against a member of the Board of Management, the Chief Managing Director, officer or employee of the Fund before the expiration of a period of one (1) month after written notice of intention to commence the suit shall have been served upon the Fund by the intending plaintiff or his agent.

(4) The notice referred to in sub clause (3) of this clause shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

15. A notice, summons or other document required or authorized to be served upon the Fund under the provisions of this Bill or any other law or enactment may be served by delivering it to the Chief Managing Director or by sending it by registered post and addressed to the Chief Managing Director at the Head Office of the Fund.

16. (1) In any action or suit against the Fund, no execution or attachment of process in the nature thereof shall be issued Against the Fund.

(2) Any sum of money which may, by the judgment of any court, be awarded against the Fund shall, subject to any direction given by the court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Fund.

17. A member of the Board of Management, the Chief Managing Director, any officer or employee of the Fund shall be indemnified out of the assets of the Fund against any proceeding, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member
of the Board of Management, the Chief Managing Director, officer or employee of the Fund.

18. The Secretary to the Government of the Federation may, on the recommendation of the Board of Management and subject to the approval of the President, make regulations generally for the purposes of this Bill and the due administration thereof.

19. In this Bill—

"Board of Management" means the Board of Management established under clause 4 of this Bill;

"Company" means a company registered in Nigeria;

"Fund" means the Federal Tertiary Teaching Hospitals Development Tax Fund established under clause 3 of this Bill;

"Secretary" means the Secretary to the Government of the Federation;

"FIRS" means the Federal Inland Revenue Service established under the Federal Inland Revenue Service (Establishment) Act, 2007;

"Federal Tertiary Teaching Hospital" means a University Teaching Hospital established by the Federal Government of Nigeria and associated with a Federal University, for the purpose of teaching, learning, research and service in medical and other health services.

20. This Act may be cited as the Federal Tertiary Teaching Hospitals Development Tax Fund (Establishment, Etc.) Bill, 2020.

SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF MANAGEMENT

Proceedings of the Board of Management

(1) Subject to this Act and Section 27 of the Interpretation Act, the Board of Management may make Standing Orders regulating its proceedings or those of any of its committees.

(2) The quorum of the Board of Management shall be 2/3 of the members and the quorum of any committee of the Board of Management shall be determined by the Board of Management.

(3) The Board of Management shall meet not less than four (4) times in each year and subject thereto, the Board of Management shall meet whenever it is summoned by the Chairman, and if the Chairman is required to do so by notice given to him by not less than 5 other members, he shall summon a meeting of the Board of Management to be held within fourteen (14) days from the date on which the notice is given.
(4) At any meeting of the Board of Management, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at that meeting. At no time should the absence of the Chairman stop the Board from holding its statutory meetings.

(5) Where the Board of Management desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

(1) The Board of Management may appoint one or more committees to carry out, on behalf of the Board, such of its functions as the Board may determine.

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

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

Miscellaneous

(1) The fixing of the Seal of the Fund shall be authenticated by the signature of the Chairman and the Managing Director or, any other person authorized generally or specially to act for that purpose by the Board of Management.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under Seal may be made or executed on behalf of the Fund by the Chief Managing Director or any person generally or specially authorized to act for that purpose by the Board of Management.

(3) Any document purporting to be a document duly executed under the Seal of the Fund shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

(4) The validity of any proceeding of the Board of Management or of a Committee thereof shall not be adversely affected by any vacancy in the membership of the Board of Management or Committee, or by any defect in the appointment of a member of the Board of Management or of a Committee of the Board.
FEDERAL TERTIARY TEACHING HOSPITALS DEVELOPMENT TAX FUND (ESTABLISHMENT, ETC) BILL 2020

EXPLANATORY MEMORANDUM

This Bill seeks to establish a Federal Tertiary Teaching Hospitals Development Tax Fund for the rehabilitation, restoration, improvement and consolidation of Tertiary Health Care Delivery in Nigeria in order to restore confidence in our Health sector.