

**Hon. L. Ryan Pinder**  
**Member of Parliament**  
**Elizabeth Constituency**  
**Employees Pension Fund Protection Bill, 2012**  
**January 9, 2013**  
**Introduction**

Mr. Speaker,

Today I rise on behalf of the good and loyal constituents of Elizabeth who sent me here to work for all Bahamians, to give my contribution in support of the Employees Pension Fund Protection Bill, 2012. Consistent with our commitments in our Charter for Governance, we tabled for review and consultation within 100 days of coming to office this Employees Pension Fund Protection Bill, 2012. Specifically we pledged to “Introduce the Employees Pension Fund Protection Act to keep pension funds out of reach for business owners, and to make directors and officer personally liable for breaches.” That 100 day commitment was fulfilled by this Government, we have allowed significant opportunity for consultation and consideration by the private sector and other interested parties. We now fulfill all commitments by providing ample debate and passage of this all important legislation to protect the hard earned savings of many Bahamians through employer provided pension plans. I want to commend this Government for doing what it promised during the campaign, for undertaking initiatives that are designed for the best interest in Bahamians, the passage of this Bill demonstrates our Government undertakes initiatives that demonstrate that we “Believe in Bahamians.”

**Pensions**

Pension plans are integrated into the society of the Bahamian labour force, providing financial security after years of hard work. Generally, A pensions plan can be characterized as an arrangement to provide people with an income during retirement when they are no longer earning a steady income from employment. Often pension plans require both the employer and employee to contribute money to a fund during their employment in order to receive defined benefits upon retirement. In the context of pension plans, you will hear discussion about defined benefit plans and defined contribution plans.

In general, a defined benefit plan guarantees a certain payout at retirement, according to a fixed formula that may depend on the member's salary as well as the number of years' membership in the plan. A defined contribution plan will provide a payout at retirement that may be dependent upon the amount of money contributed and the performance of the investment vehicles utilized by the administrators of the pension plan. In both instances, however, pensions and the accumulation of funds within the pension plans is a significant source of security for a workforce approaching and in retirement. As such, regulation and protection is a necessity.

Regulatory reform in the context of pension plans is a necessary evolution, especially as more and more private pension plans are put in force, and more and more retirement

benefits are found in private pension plans. Challenges with pension plans in recent times have demonstrated the importance of proper regulation and oversight. Like many areas in the industry, pensions and their importance and oversight is in constant evolution. These are the basis for this Bill, a Bill that mandates necessary Governance protection and enforcement to ensure the protection of Bahamians and their hard earned savings. This is the mandate of this Government.

### **Employees Pension Fund Protection Bill, 2012**

In general, the Bill seeks to provide the necessary framework for Good Governance, oversight and enforcement and protections for the administration of pension plans. As a general proposition, the Bill seeks to establish the Pension Commission of the Bahamas. The commission is to administer the Act, monitor the administration and funding of pension plans and to enforce the provisions of the Act; approve the payment of benefits under pension plans; promote public education on pension plans and their benefits; and advise the minister. The Act requires pension funds to be registered with the Commission. The legislation likewise requires private pension funds to be administered by an administrator registered with the Commission. We have heard a breakdown of the relevant provisions of the bill, however, I do want to highlight certain areas that demonstrate the principles of Good Governance, protection and necessary enforcement of rights of members in pension funds, and the savings of Bahamians in those funds.

Part II of the Bill is the operative section that creates the Pension Commission. The Commission is a governing body that puts in place the proper Governance of Pension Plans. The Commission in Section 5 is responsible for a number of functions as I have mentioned earlier. Specifically the Commission determines the eligibility of pension plans to be registered, and ensure the compliance by those plans with the requirements that are set forth in the Act. The integrity of the oversight and governance of pension plans is in part protected by Section 8 where the members of the Commission are absolved of personal liability in pursuit of the discharge of their duties. This will allow the Commission to operate without influence or threat of liability, allowing the Commission to properly operate in pursuit of the interests of thousands of Bahamians and their hard earned savings. The operation of the Commission in pursuit of its mandate is of utmost importance, and the Bill in Part II provides it with the necessary oversight powers and protections to accomplish this goal.

Part III of the Bill causes pension plans, both new and existing plans, to be registered with the Commission. This mandate ensures that all private employer pension plans be covered and governed equally. The registration requires all necessary documents of the pension plan, but also requires that the administrator who administers the pension plan be registered with the Commission. This is to ensure that the Commission has oversight of the designated person that will manage the day to day affairs of the pension plan. This requirement is to ensure the ability of comprehensive good governance over all the necessary inputs and management of the pension plan and the savings of thousands of Bahamian employees. It is not only the administrator that is required to be registered with the Commission, but a trustee of a fund, and the investment manager of the fund must be registered or licensed by the Commission. The Bill makes clear as well that not everyone can qualify to be an investment manager or trustee, they must be a “fit and proper

person” which prohibits certain convictions, financial insolvencies and other good governance requirements. The necessary ability for oversight by the Commission is found at all levels of administration of pension funds, a comprehensive governance and enforcement piece of legislation for the protection of Bahamians.

There is much discussion in the administration and oversight of pension funds regarding the quality of investments that the fund typically invests in. Section 17 addresses this matter. Specifically Section 17(2) provides that “the administrator shall exercise the care, diligence and skill in the administration and investment of the pension plan and the pension fund that a person of prudence is expected to exercise in dealing with the property of another person.” This is a legally recognized standard that imposes a heightened fiduciary duty on the registered administrator in managing the assets of the pension fund, another example of good governance, protection and enforcement found in this Bill. The required documents likewise must disclose the types of investments to be made by the pension fund.

Integrity is also protected by the requirement of transparency. The Bill in this Part details the duty of the administrator to provide detailed information about the pension plan and its investments to the members on a routine basis. This allows for the members to also perform a self-evaluation and oversight of the administration of the pension fund that governs and manages their retirement investments. The member and other interested parties also have the right to request the review and inspection of certain documents and information related to the pension fund, providing additional oversight not only by the Commission, but by the members themselves. Transparency is the ultimate test for good governance and enforcement, something this Bill provides for.

Part IV addresses the issue related to the funding and contributions of pension plans. An important element of good governance is found in Section 28 that addresses “funding”. Specifically the requirement that “all assets of a pension plan shall be held in a segregated fund ...” is a significant provision. This protects the integrity of the assets of the fund and prevents co-mingling with company assets. This is an important provision to ensure the necessary protection and insulation of pension assets against any downturn in the or ultimate demise of the employer. By segregating the assets of a pension plan the retirement savings of Bahamians will be protected.

It is also of note that Section 30 puts in place necessary protections against creditors of companies for accrued but unpaid pension contributions. Specifically Section 30 provides that “all contributions due to the pension fund of a pension plan by an employer, including members ‘contributions withheld ... are recoverable as a debt due to the pension fund, and is superior to all other debts, including secured debts ...” This is an important provision as it provides legal protection to the members of a pension fund against claims of creditors against the employer during the time when payments have accrued but have not been made to the administrator. A protection that is clearly in the best interest of the protection and good governance of pensions and the investments and retirement benefits of Bahamians. Likewise, consistent with the pledge in our Charter for Governance, Section 30 extends joint and several liability to directors and officers of a

company that as an employer owes contributions but are not paid.

Part VI likewise contains important provisions as it relates to the protection from creditors of the employee as to the benefits that are owed such employee. Section 37 is clear in providing that “money payable under a pension plan is exempt from execution, seizure or attachment or any other process taken by a creditor.” This protection extends beyond just the assets in the pension fund, but also to money transferred from a pension fund to another retirement product that purchases life annuities. This is an important protection and insulation of retirement benefits in the event that the employee experience financial challenges, retirement proceeds are protected against creditors. This is an important provision in the best interest of Bahamians, providing necessary protection and good governance.

Part IX continues the underlying theme of good governance, protection and enforcement found in this Bill. Part IX provides guidance on the applicability of transfers and sale of businesses and their effects on that disposed employer’s pension plan. Section 59 makes it clear that after the employee is transferred, entitlement to benefits under the initial pension plan are preserved. Eligibility in the pension plan of the acquiring company is preserved, the time period for employment and other elements of eligibility are carried over to the successor plan. These provisions are of utmost importance to protect the rights of employees. Furthering the theme of good governance, protecting the interests of employees, allowing for necessary enforcement mechanisms found in this Bill for the best interest of Bahamians.

Part XI highlights the principal that in instances where good governance and protections are put in place to ensure and preserve the integrity of items such as pension plans that today’s Bill covers, that due process also be a necessary component. The preservation of due process is a fundamental component of good governance. Part XI establishes the procedure whereby decisions of the Commission can be disputed at a hearing by the Commission, and Appeals Tribunal is likewise provided for to hear appeals of decisions by the Commission. Ultimately final appeal is made to the Supreme Court, giving ultimate opportunity for judicial determination of any dispute under the Act and with the Commission. Fairness of good governance is an underlying theme of this Bill, providing the necessary balance of protections afforded all.

### **Support of the Future Employees**

Today we have discussed in depth protections being extended to employees of the Bahamas for the regulation and protection of pension benefits that accrue throughout their working life. I also believe that we should always be minded to encourage and provide support to future employees of the country, as we continue to build and develop the Commonwealth of the Bahamas. This Christmas holiday in the Elizabeth constituency we conducted an essay competition for children between the ages of 11 – 15 on the topic “What Christmas Means To Me”. The writer of the winning essay received a laptop computer to assist with the continuation of their education. The winning essay was written by Mr. Christian Ferguson, a 13 year old resident of Elizabeth. Mr. Speaker, with your leave I would like to read the winning essay.

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**Conclusion**

I want to commend the Government on its continued initiatives to do what is right and in the best interest of Bahamians. We have passed legislation in this Honourable House that provides continued and enhanced incentives for economic development. We have passed legislation to provide assistance to homeowners and those challenged by the adverse economic downturn. We are now debating legislation to provide the necessary protections and regulatory environment for pension funds, and in turn retirement benefits of thousands of Bahamians. Our legislative agenda is clear, we work and as the Government we legislate for the advancement of Bahamians in all regards. The Employees Pension Fund Protection Bill, 2012 in necessary, is an example of good governance, and further advances the Bahamas, and support for Bahamians consistent with international best practices. Elizabeth supports the Bill.