

Thirteenth Kerala Legislative Assembly

Bill No. 17

**THE KERALA LOCAL AUTHORITIES LOANS
(AMENDMENT) BILL, 2011**

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further to amend the Kerala Local Authorities Loans Act, 1963.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Local Authorities Loans Act, 1963 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Local Authorities Loans (Amendment) Act, 2011.

(2) It shall be deemed to have come into force on the 30th day of January, 2010.

2. *Amendment of section 2.*—In the Kerala Local Authorities Loans Act, 1963 (30 of 1963) (hereinafter referred to as the principal Act), in section 2,—

(1) clause (i) shall be renumbered as clause (k) and before clause (k) as so renumbered, the following clauses shall be inserted, namely:—

“(a) “accrual period” means a financial year beginning from the 1st day of April and ending with the 31st day of March of the following year or part thereof ending with 31st March ;

(b) “Board” means the Board of Management appointed under sub-section (2) of section 3A ;

(c) “Development Fund” means the Kerala Local Government Development Fund constituted under sub-section (1) of section 3A and includes the aggregate of the contribution by the Government, investments, loans and all other properties.”;

(2) clause (2) shall be renumbered as clause (d) and after clause (d) as so renumbered and before clause (k) the following clauses shall be inserted, namely:—

“(e) “Fund Manager” means the asset management company to be constituted as specified in sub-section (4) of section 3A ;

(f) “fund period” means the period from the date of constitution of the Development Fund to the date of its revocation or transfer to the Consolidated Fund of the State under the provision of section 3A ;

(g) “Government” means the Government of Kerala ;

(h) “infrastructure projects” includes water supply, solid waste management, sanitation, storm water drains, roads, transportation systems, sites and services, area development and other remunerative and non-remunerative infrastructure projects for public use ;

(i) “investment” means money lent or to be lent by the Development Fund only for infrastructure projects and includes money placed by the Development Fund in instruments such as Government promissory notes or other Government securities, stock or share in any banking company or other public company, or stocks, funds, shares, debenture, debenture stock, commercial papers, financial papers, short term or long term corporate deposits, securitised debt, mortgage, bonds, obligations and securities of any description whatsoever;

(j) “lender” means any person who has given money to the Development Fund by way of loan.” ;

(3) after clause (k), the following clauses shall be inserted, namely:—

“(1) “management agreement” means the management agreement between the Fund Manager and the Board ;

(m) “net income” means in relation to any accrual period, the net income earned by the Development Fund as shown in its audited statements of account for that accrual period, net of all costs, taxes and expenses, Fund Manager’s remuneration and interest paid or payable on the borrowing by the Development Fund ;” ;

(4) clause (3) shall be renumbered as clause (n) and after clause (n) as so renumbered the following clause shall be inserted, namely:—

“(o) “State” means the State of Kerala ;” ;

(5) clause (4) shall be renumbered as clause (p).

3. *Insertion of new section 3A.*—After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. *Constitution of the Development Fund, financial management and services etc., by Government.*—(1) Save as otherwise provided in section 3, the

Government may, by notification in the Gazette, with effect from such date as may be notified, constitute a Fund namely the Kerala Local Government Development Fund for the objectives set forth hereunder, namely:—

(a) to establish viable and sustainable financing arrangements which enable creation, upgradation and maintenance of cost effective and quality civic infrastructure in the State ;

(b) to mobilise resources for the infrastructure project using various financing instruments and financial structures such as bonds or debentures, equity, pooled finance arrangements etc. ;

(c) to borrow, or raise money or loans or receive grants or accept contributions in such manner and on such terms, conditions and securities as the Board may deem fit from time to time ;

(d) to provide financial assistance in the form of loans, grants or a contribution thereof to local authorities for taking up and implementation of infrastructure projects which create enduring community assets and improve living standards of the population in their areas and to provide loans or equity in the infrastructure projects sponsored by the local authorities in association with non-government agencies. When the infrastructure projects are considered strategically important :

Provided that the investment shall comply with all laws regulating the environment and social protection ;

(e) to establish grant funds and provide grants from its own resources and to manage grant funds as the Government may direct from time to time in terms of such grants so as to ensure continuous upgradation of standards or organisational, financial and technical capacities of local authorities and to set up viable and substantial infrastructure projects for the betterment of the poor and disadvantaged sections of the society ;

(f) to enable the local authorities to access capital markets, financial institutions and private investors for setting up infrastructure projects in the State either individually or through such arrangements like pooled financing, guarantees or securitisation ;

(g) to guarantee the performance of any contract or obligations and the payment for any bond issue or mobilisation of resources by the local authorities;

(h) to assist the local authorities in getting the participation of non-government sector in creation and maintenance of civic infrastructure through joint ventures and other innovative partnerships ;

(i) to subscribe for, underwrite, acquire, hold and dispose of shares, stocks, debentures, debenture stocks, bonds, mortgage, obligations, securities of any kind issued or guaranteed by any company whether it is a body corporate or undertaking in whatever nature and any industry, or the Government or trust or any local authority ;

(j) to invest any money of the Development Fund, in any investments as may be prudent and as may be necessary, provided the income from such investments shall be utilised to fulfill the objectives of the Development Fund ;

(k) to act as nodal or nominated agencies on behalf of the Central and/or the State Governments for infrastructure projects in the State ;

(l) to do all other things necessary and conducive to the attainment of all these objectives.

(2) (a) The Government may, by notification in the Gazette, appoint a Board of Management to manage the Development Fund established under this Act with the following members, namely:—

(i) The Minister in charge of the Local Self Government Institutions— *ex-officio* ;

(ii) The Secretary to Government, Finance Department—*ex-officio* ;

(iii) The Principal Secretary, Local Self Government Department—*ex-officio* ;

(iv) The Secretary to Government, Local Self Government (Urban) Department—*ex-officio* ;

(v) The Secretary to Government, Planning Department—*ex-officio* ;

(vi) The Director of Urban Affairs—*ex-officio* ;

(vii) One Mayor of a Municipal Corporation, one Chairman of a Municipality and one President of a large urbanizing Panchayat each to be nominated by the Government.

(b) The Minister in charge of the Local Self Government Institutions shall be the Chairman of the Board and the Secretary to Government, Local Self Government (Urban) Department shall be its Convenor.

(c) The Board shall stand possessed of the Development Fund subject to the powers and provisions herein contained concerning the same and the Board shall have the power at any time during the existence of the Development Fund to accept any property whether of an onerous nature or not from any

person or persons from any other fund or otherwise with the intention of holding the same by or on behalf of the Board as an accretion to the Development Fund.

(3) The Board shall perform the following functions and duties namely:—

(a) to provide financial assistance in relation to infrastructure projects and also lay down policies relating to credit approval and investments, provided if no infrastructure project has been identified for making investments, the Board may invest the Development Fund, in such manner as it deems fit in the interest of the Local authorities ;

(b) to enter into a management agreement whereby the Board shall delegate such of its powers as it deems appropriate to the Fund Manager to enable the Fund Manager to manage the Development Fund, and to realise the objectives set forth in the Act ;

(c) to supervise operations of the Fund Manager in relation to the Development Fund ;

(d) to exercise at all times due diligence in carrying out its duties for protecting the interests of the Development Fund ;

(e) to hold the Development Fund on behalf of the Government for enabling opening and operating of Bank accounts on behalf of the Fund by the Fund Manager ;

(f) to accept additional contribution if any made by the Government and the local authorities towards the Development Fund ;

(g) to exercise the power at any time by a resolution, revocable or irrevocable during the existence of the Development Fund to release or to any extent restrict the future exercise of any powers hereby or by law conferred on it notwithstanding the fiduciary nature of any such powers ;

(h) to exercise the power, discretion, rights and immunities as may be prescribed.

(4) The Fund Manager shall be an Asset Management Company to be constituted by the Government under the Companies Act, 1956 with the following persons in the Board of Directors, namely:—

(a) Nominees of the Government and reputed non-Government Institutions such as Banks and Financial Institutions, management institutions etc., provided the shares of Government in the equity of the Fund Manager is not less than 51% and the respective shares of other participants together constitute the rest of the shareholding in the Fund Manager ;

(b) The number of nominees of the Government and other participants in the equity holding of the Fund Manager shall be proportionate to their shareholding ;

(c) The nominees of the Government shall be the *ex-officio* Secretary to Government, Local Self Government (Urban) Department who shall be designated as Chairman of the Company, the Secretary to Government (Finance), and the Secretary to Government (Planning).

(5) The net income of the Development Fund possessed by the Board shall accrue for the sole benefit of the Development Fund and the entire income of the said Fund shall accrue to the Government for investment.

(6) A member of the Board shall hold office till he holds an official position in the Government or local authorities, as the case may be, or until the termination of the Development Fund or the discharge of the member, whichever is earlier.

(7) The Government may, by notification in the Gazette, reconstitute the Board at any time.

(8) The Board shall have the power to make such reserves out of the income or capital as the Board deems proper for expenses, taxes and other liabilities of the Development Fund, to pay from income or from capital or to apportion between income and capital any expenses of making or changing investments and of selling, exchanging including brokers commissions and charges and generally to determine what part of the expenses of the Development Fund shall be charged to capital and what part to income and to determine as between separate funds and separate parts or shares the allocation of income, gains, profits, losses and distribution and any decisions of the Board whether made in writing or implied from its acts shall so far as the law may permit be conclusive and binding on the Government.

(9) Unless agreed to by the Government, the Board shall not remove the Fund Manager, or make any material amendments to the Management Agreement except for minor amendments thereto; or have the right to approve the withdrawal or resignation of the Fund Manager as provided for in the Management Agreement.

(10) The Board may, from time to time, delegate to any committee or any other person any of its powers and duties provided the Board shall remain liable for any such delegate's acts of commission or omission to the extent the Board itself would have been liable for such acts and if found necessary the Board may, from time to time, authorise any of the members to act on its behalf and sign documents.

(11) The Board may in the discharge of its duties, act upon any advice obtained from any bankers, accountants, brokers, lawyers or consultants, professionals or experts acting as advisers to the Board. The Board shall not be bound to supervise the action of such advisers or verify the advice or information received from them and the Board shall not be liable for anything bona fide done or omitted to be done or suffered in reliance upon such advice or information nor be responsible for any loss occasioned by so acting nor for the consequences of any bona fide mistake, oversight or error of judgment on the part of such advisers.

(12) The Board may charge the Fund with the following expenses, namely:—

(a) All expenses properly incurred in the operation of the Development Fund and for the realisation, preservation or benefit of the investments and assets comprising the Development Fund and for its protection.

(b) All expenses (including expenses incidental to execution and for registration of any agreement or other deeds) incurred by the Board for obtaining contributions from Government and loans or raising any form of resources.

(c) All expenses in connection with any legal proceedings by or against the Development Fund or concerning the affairs of the Development Fund including professional fees and costs of any legal advice.

(d) All legal and statutory expenses incurred in the operation of the Fund including all levies, duties and other charges paid or payable in connection with the issue of shares, units, debentures, bonds or any other form of financial instruments.

(e) All expenses in connection with the holding of its meetings and the fees of the Fund Manager as per the management agreement.

(13) The liabilities of the Board shall be limited to the following extent, namely:—

(a) The Board shall not be liable on account of anything done in good faith, bona fide and with due diligence.

(b) The Board shall only be chargeable for such money, stocks, funds and securities as the Board shall have actually received and shall not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may be deposited or placed nor otherwise for any involuntary loss.

(c) The Board and every attorney or agent appointed by the Board shall be entitled to be indemnified by the Development Fund in respect of all liabilities, losses and expenses incurred or any of the powers, authorities and discretion vested in or delegated to them other than those arising out of gross negligence or wilful misconduct, provided however that, such indemnity shall not in any event exceed the amount of the Fund.

(14) The members of the Board shall not be entitled to any remuneration for their services.

(15) The Board may provide a seal for the purpose of the Development Fund and the seal shall be affixed to such documents and instruments as the Board may direct from time to time.

(16) The Board shall incur all expenses in connection with the creation of the Development Fund from the Development Fund itself.

(17) The Development Fund is revocable only by an amendment to this Act and at the time of revocation of the Development Fund, all the assets and liabilities shall be transferred to the Government in such manner as may be prescribed.

(18) (a) The Board shall maintain proper books of accounts, documents and other records with respect to the Development Fund.

(b) The Board shall forward to the Government the following:—

(i) unaudited financial statements of the Development Fund within three months of the conclusion of the respective accrual period of the Development Fund ;

(ii) annual reports including audited financial statements of the Development Fund within six months of the conclusion of the respective accrual period of the Development Fund, and

(iii) quarterly reports within one month of the end of each quarter providing unaudited summary financial information regarding the operations of the Development Fund.

(c) The accounts of the Development Fund shall be audited every year in such manner as may be prescribed.

(d) The audited accounts of the Development Fund together with the audited report thereon shall be forwarded annually to the Government.

(e) The Government shall cause the accounts together with the audit report thereon forwarded to them to be placed before the Legislative Assembly every year.”.

4. *Repeal and saving.*—(1) The Kerala Local Authorities Loans (Amendment) Ordinance, 2011 (36 of 2011) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala Local Government Development Fund (KLGDF), one of the components of the Kerala Sustainable Urban Development Project had to be operational by December, 2009. An amount of Rs. 100 crores has been set apart by the Asian Development Bank for the purpose. On the basis of the above commitment, the operational policy, procedure and the manual of the Kerala Local Government Development Fund (KLGDF) has to be finalised. If the same is not fulfilled, the Government of Kerala will have to pay the commitment charges of approximately Rs. 70 crores to the ADB. The formation of the Kerala Local Government Development Fund (KLGDF) could be done only by amending the provisions of the Kerala Local Authorities Loans Act, 1963. Hence the Government have decided to amend the Kerala Local Authorities Loans Act, 1963. Therefore the Kerala Local Government Development Fund (KLGDF) is to be established which would get support from the budget and then raise resources from financial institutions and the market to finance infrastructure projects of the Local Governments. The fund would have two part structure — a Board of Management to lay down policy and priorities and a professional Asset Management Company to run the operations. The Asset Management Company will have the majority stake by the Government of Kerala (51%) and the remaining stake (49%) by public sector institutions. The formation of the Kerala Local Government Development Fund (KLGDF) could be done only by amending the provisions of the Kerala Local Authorities Loans Act, 1963. Hence the Government have decided to amend the Kerala Local Authorities Loans Act, 1963.

2. As the Legislative Assembly of the State of Kerala was not in session and circumstances existed for making immediate legislation for implementing the above said decision, the Kerala Local Authorities Loans (Amendment) Ordinance, 2010 was promulgated by the Governor of Kerala on the 30th day of January, 2010 and the same was published as Ordinance No. 11 of 2010 in the Kerala Gazette Extraordinary No. 214 dated 30th January, 2010.

3. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 318 of the 12th Kerala Legislative Assembly, it could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced from 24th day of February 2010 and ended on the 31st day of March 2010. Therefore, the Kerala Local Authorities Loans (Amendment) Ordinance, 2010 was promulgated by the Governor on the 6th day of April, 2010 and the same was published as Ordinance 12 of 2010 in Kerala Gazette Extraordinary No. 858 dated 7th April, 2010.

4. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 352 of the 12th Kerala Legislative Assembly, it could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 28th day of June, 2010 and ended on the 29th day of July, 2010. Therefore the Kerala Local Authorities Loans (Amendment) Ordinance, 2010 was promulgated by the Governor on the 8th day of August, 2010 and the same was published as Ordinance No. 35 of 2010 in the Kerala Gazette Extraordinary No. 1815 dated 8th August, 2010.

5. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 378 of the 12th Kerala Legislative Assembly, it could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 21st day of December, 2010 and ended on the 3rd day of January, 2011. Therefore the Kerala Local Authorities Loans (Amendment) Ordinance, 2011 was promulgated by the Governor on the 22nd day of January, 2011 and the same was published as Ordinance No. 12 of 2011 in the Kerala Gazette Extraordinary No. 161 dated 23rd January, 2011.

Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 415 of Twelfth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly, of the State of Kerala during its session which commenced on the 4th day of February, 2011 and ended on the 24th day of February, 2011. Therefore, the Kerala Local Authorities Loans (Amendment) Ordinance, 2011 was promulgated by the Governor on the 17th day of March, 2011 and the same was published as Ordinance No. 36 of 2011 in the Kerala Gazette Extraordinary No. 658 dated 18th March, 2011.

6. This Bill seeks to replace Ordinance No. 36 of 2011 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Kerala Local Authorities Loans Act, 1963 is proposed to be amended for enabling the Local Self Government Institutions to obtain necessary long-term resources for sustainable development in the areas like creation and maintenance of civic infrastructure by setting up of the Kerala Local Government Development Fund. Clause 3A of the Bill provides for the constitution of the Development Board, financial management and services etc. To start with an initial corpus would be provided to the Kerala Local Government Development Fund from the Kerala Sustainable Urban Development Project being supported by the Asian Development Bank (ADB), and the initial contribution would be Rs. 96.3 crore. The future contributions will have to be made by the Government and the Government have to earmark the said expenditure in its annual budget. This cannot be estimated accurately at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section 3 (h) of section 3A proposed to be inserted by clause 3 of the Bill seeks to prescribe the powers, discretion, rights and immunities of the Board of Management.

2. Sub-section 18 (c) of section 3A proposed to be inserted by clause 3 of the Bill seeks to prescribe the manner in which the accounts of the Development Fund shall be audited every year.

3. The matter in respect of which rules may be made or notification may be issued are matters of procedure and are of routine or administrative nature. The delegation of the legislative power is, therefore, of a normal character.

P. K. KUNHALIKUTTY

EXTRACTS FROM THE RELEVANT PORTIONS OF THE KERALA LOCAL
AUTHORITIES LOANS ACT, 1963

(30 OF 1963)

2. *Definitions.*—In this Act, unless the context otherwise requires.—

(i) “local authority” means any person legally entitled to the control or management of any local fund or legally entitled to impose any cess, rate, duty, fee or tax and includes the Panchayat or the Council of the Municipality, as the case may be, and also includes the Secretary of such local authority. If he has been specifically authorised by the local authority for discharging the duties and functions under this Act.

Explanation.—A person means and includes any authority or body corporate.

(2) “funds” used with reference to any local authority includes any local, panchayat or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose and any property vested in such authority ;

(3) “prescribed” means prescribed by rules made under this Act ; and

(4) “work” includes a survey whether incidental to any other work or not.

3. *Borrowing powers of local authorities.*—(1) A local authority may, subject to the prescribed conditions, borrow money from the Government or with the previous sanction of the Government from any other person, on the security of its funds or any portion thereof, for any of the following purposes, namely:—

(i) the carrying out of any work which it is legally authorised to carry out ;

(ii) the giving of relief and the establishment and maintenance of relief works in times of famine, scarcity, epidemic or flood ;

(iii) the prevention of the outbreak or spread of any dangerous epidemic disease ;

(iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii) ;

(v) the repayment of money previously borrowed in accordance of law :

Provided that no portion of the money so borrowed shall be applied to any purpose other than that for which it was borrowed.

(vi) any other purpose which the Government may specify.

(2) (a) The time for the repayment of any money borrowed under this section shall in no case exceed sixty years.

(b) The time for the repayment of any money borrowed before the commencement of this Act shall not, except with the express sanction of the Government, extend beyond the period of sixty years.

(c) The time for the repayment of any money borrowed for the purpose of discharging any previous loan shall not, except with the express sanction of the Government, extend beyond the unexpired portion of the period for which previous loans was raised.

(3) Nothing in this section shall be deemed to authorise any local authority to borrow or spend money for any purpose for which, under the law for the time being in force, it is not authorised to apply its funds.

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