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Punjab Infrastructure (Development & Regulation) Act, 2002

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Part-1

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

Notification

No.10-Leg.12002.- The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on **the 811** July, 2002, and is published for general information:-

**THE PUNJAB INFRASTRUCTURE (DEVELOPMENT & REGULATION)
ACT, 2002**

(Punjab Act No. 8 of 2002)

AN

ACT

to provide for the partnership of private sector and public sector, participation of private sector in the development, operation and maintenance of infrastructure facilities and development and maintenance of infrastructure facilities through financial sources other than those provided by the State budget by following modern project management systems and for matters connected therewith or incidental thereto.

BE it enacted by the Legislature of the State of Punjab in the fifty-third year of the Republic of India as follows:

CHAPTER 1: PRELIMINARY

- 1.** (1) This Act may be called the Punjab Infrastructure (Development & Regulation) Act, 2002.

Short title and
commencement.

- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

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

Definitions

- (1) **"Authority"** means the Punjab Infrastructure Regulatory Authority, established under section 4;

- (2) **"Board"** means the Punjab Infrastructure Development Board established under section
- (3) **"bye-laws"** means the bye-laws made by the Board under section 24;
- (4) **"Chairperson"** means the chairperson of the Authority;
- (5) **"concession"** includes any right or interest granted to a concessionaire in relation to any aspect of an infrastructure project, as well as any subsidy, subvention, grant or other similar financial incentive granted by the State Government to secure the viability and commercial efficacy of an infrastructure project;
- (6) **"concession agreement"** means any of the contracts executed for the purposes of private participation in an infrastructure project between a concessionaire and a public infrastructure agency in terms of this Act, or the rules or regulations made thereunder as per the model specified in Schedule 11;.
- (7) **"concession fee"** means the sum of money required to be paid by the concessionaire to a public infrastructure agency in consideration of grant of a concession for undertaking an infrastructure project pursuant to the provisions of this Act, rules or regulations made thereunder;
- (8) **"concessionaire"** means a person, who is selected and awarded a concession for financing, development, maintenance or operation of an infrastructure project in terms of this Act or rules or regulations made thereunder;
- (9) **"committee"** means a committee and includes a Sectoral Sub-Committee, Project Implementation Sub-Committee or any other Committee called by any other name, constituted by the Board under this Act for the purposes assigned to them;
- (10) **"development"** includes creation of new facilities, rehabilitation, improvement, expansion, alteration and replacement of existing facilities;
- (11) **"Development Fund"** means the Punjab Infrastructure Development Fund constituted under section 27;
- (12) **"disinvestment"** means a sale of equity or shares held by the State Government or a public body to any person;

- (13) **"fee"** means a charge levied and collected for facilitating the development, maintenance and providing of infrastructure facilities under this Act;
- (14) **"infrastructure project"** means a project in any of the infrastructure sectors, which may involve development, maintenance or operation of infrastructure facilities through private participation or financial sources other than those provided by State Budget;
- (15) **"infrastructure sector"** means an infrastructure sector specified in Schedule 1 and shall include such other sectors as may be notified by the State Government from time to time in this behalf,
- (16) **"milestone bonding"** means a schedule or chart indicating the specifies lime within which a work is to be completed.
- (17) **"negotiated contract"** means a contract entered into by the State Government in terms of section 36;
- (18) **"notification"** means a notification published in the Official Gazette of the State of Punjab;
- (19) **"prescribed"** means prescribed by the **rules** made tinder this Act;
- (20) **"Private participation"** means the participation in development, maintenance or operation of infrastructure projects by any person other than the State Government, public infrastructure agency or public body as may be permitted by the Board from time to time;
- (21) **"Project Management Team"** means a team of technical, financial, legal expert officials of the Board,
- (22) **"public body"** means a body either established by State Government, working under the control of the State Government;
- (23) **"Public infrastructure agency"** means a Government Department, Government Company, Government-owned controlled Corporation, Local Authority or a Public Body, which own, govern or control infrastructure sectors or infrastructure projects;
- (24) **"regulations"** means the regulations made by the Authority under section
- (25) **"rules"** means the rules made by the State Government under section 46;
- (26) **"Schedule"** means a schedule appended to this Act;

- (27) **"Schedule Of amortisation"** means a schedule of periodic payment interest and principal owed on a debt obligation;
- (28) **"section"** means the section of this Act;
- (29) **"sectoral policy"** means a policy pertaining to an infrastructure.
- (30) **"service provider"** means any agency or body other than those constituted under the Act, which provides services to the Board;
- (31) **"special purpose vehicle"** means any body or authority, consisting of experts in the relevant fields as may be constituted by the Board to execute an infrastructure project;
- (32) **"State Government"** means the Government of the State of Punjab in the Department of Finance.
- (33) **"tariff"** means a toll or charge or fee, other than the fee levied under clause (13) of section 2 and section 25, payable by the users of an infrastructure project;
- (34) **"unsolicited proposal"** means a proposal for the development, maintenance or operation of an infrastructure project received from any person without any invitation or a proposal initiated by **the State** Government or the Board in terms of section 37; and
- (35) **"Vice-Chairperson"** means the Vice-Chairperson of the Authority.

CHAPTER II . PRIVAT E PARTICIPATION IN THE INFRASTRUCTURE

PROJECTS

3. Any person may participate in the accomplishment of the infrastructure projects in terms of the provisions of this Act:

Private
Participation

Provided that where participation is sought by any person by participating in disinvestment process, the provisions of this Act shall not apply:

Provided further that any authority or body, constituted to implement such disinvestment, may seek assistance from the Authority, Board, Committee or the Project Management Team as the case may be.

**CHAPTER III: PUNJAB INFRASTRUCTURE
REGULATORY AUTHORITY**

4. (1) Within a period of three months from the date of coming into force of this Act, the State Government shall, by notification, establish for the purpose of this Act, an authority to be called the Punjab Infrastructure Regulatory Authority. Establishment of the Authority
- (2) The Authority shall be a body Corporate known by the aforesaid name having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property, both movable and immovable and to contract and shall, by the said name, sue or be sued.
- (3) The Head Office of the Authority shall be at Chandigarh or at such place, at the State Government may notify from time to time.
- 5.(1) The Authority shall consist 'of a Chairperson and not less than three and not more than six members, appointed by the State Government with the approval of the Chief Minister of Punjab by notification. Composition of the Authority
- (2) The Chairperson, shall either be a retired Chief Justice or a serving or retired Judge of the supreme Court or a retired Chief Justice of a High Court or a serving) retired Judge of a High Court or a serving or retired officer of the rank and status of the Chief Secretary of the State of Punjab or Secretary to the Government of India.
- (3) The members shall possess the qualifications specified in sub-section(5).
- (4) The State Government may appoint one of the members, by notification to a Vice-Chairperson of the Authority.
- (5) The members appointed under sub-section (1), shall have the following qualifications and experience in the fields of Management of Infrastructure Sectors or Infrastructure Projects, Law, Finance, Economics or Commerce: -
- (i) **Qualifications and experience in the field of management of infrastructure sector or infrastructure project:-** Relevant professional qualifications and a minimum experience of ten years of working after acquiring the said qualifications in a Government department or public sector organisation or in a private sector organisation; having annual turnover of one hundred crore rupees or more in any infrastructure sector

in respect of conceptualising, appraisal, development, financing or implementation of infrastructure projects;

- (ii) **Qualifications and experience in the field of Law:-** A serving or a retired District and Sessions Judge or a person qualified to be a District and Sessions Judge;
- (iii) **Qualifications and experience in the field of Finance, Economics or Commerec:-**

Qualifications:

- (a) Membership of the Institute of Chartered Accountants of India; or
- (b) Post Graduation in Economics, Commerce, Management or Engineering

Experience:

- (a) Ten years' experience of working after acquiring the said qualifications in a Government department or public sector organisation or in a private sector organisation having annual turnover of one hundred crore rupees or more; or
- (b) Ten years' teaching experience in a university or a college, recognised by 'he University Grants Commission or an institute recognised by the All India Council of Fechnical Education.

- (6) Before appointing any person to the Authority as a Chairperson or Vice-Chairperson or member, as the case may be, the State Government shall satisfy itself that the person does not have any financial or other interest, which may affect prejudicially his functioning as a Chairperson or Vice-Chairperson or member of the Authority.

- 6. (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority. The Chairperson shall, preside over the meetings of the Authority, as well as exercise and discharge the powers and functions of the Authority vested in him in accordance with the regulation.

Powers of
Chairperson and
Vice-Chairperson

- (2) The Vice-Chairperson shall exercise and discharge the powers and functions of the Chairperson, in the absence of the Chairperson, in accordance with the regulations.
7. (1) The Chairperson shall hold **office** for a term of **five** years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier. Terms of office and conditions of service of the Chairperson, Vice-Chairperson and other member
- (2) The terms of office and other conditions of service of a member shall be applicable to the Vice-Chairperson.
- (3) A member shall hold office for a term of **five** years from the date on which he enters upon his office or the date on which he attains the age of sixty-eight years, whichever is earlier.
- (4) If a person already holding an office, is appointed as a Chairperson or a member, as the case may be, he shall have to resign from that office before joining the Authority.
- (5) The salary and allowances payable to, and the other terms and of the Chairperson, Vice-Chairperson and other members shall be such, as may be prescribed and the same shall not be varied to their disadvantage during their tenure.
- (6) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Chairperson or the Vice-Chairperson or a member, as the case may be, may: -
- (i) relinquish his office by giving a written notice of at least three calendar months to the State Government; or
- (ii) be removed from his office in accordance with the provisions of Section 8.
- (7) The Chairperson or the Vice-Chairperson or any other member, ceasing to hold office as such, -
- (i) shall be ineligible for further employment under the State Government; and
- (ii) shall not accept any commercial employment in any infrastructure sector organisation, associated with the Government of the State of Punjab during his term in office, for a period of two years from the date he ceases to hold such office.

- (8) A vacancy caused to the office of the Chairperson or Vice-Chairperson or any other member, as the case may be, shall be filled up within a period of three months from the date on which such vacancy occurs.
8. (1) The State Government may remove the Chairperson, Vice Chairperson or any member from office after complying with the provisions of sub-section (2), if he has,-
- Removal and suspension of the Chairperson, Vice-Chairperson and member from office in certain circumstances
- (i) been adjudged insolvent; or
 - (ii) been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or
 - (iii) become physically or mentally incapable; or
 - (iv) acquired such financial or other interest as is likely to affect prejudicially his functions in any of the said capacities; or
 - (v) so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-section (1), the Chairperson or Vice-Chairperson or member, as the case may be, shall not be removed from his office unless,-
- (i) a reference is made by the State Government to the Chief Justice of the High Court of Punjab and Haryana seeking an enquiry and recommendation on the proposed removal of the Chairperson or Vice-Chairperson or member along with the grounds for the removal and material supporting such proposal;
 - (ii) the reference is duly enquired into by an inquiry committee headed by a sitting or retired High Court Judge or any other person appointed by the chief Justice of the High Court of Punjab and Haryana; and
 - (iii) the inquiry committee makes recommendation that the Chairperson or Vice-Chairperson or member ought to be removed on such ground or grounds.
- (3) The State Government may suspend the Chairperson, Vice-Chairperson or any member of the Authority in respect of whom a reference has been made to the Chief Justice under sub-section (2), until any recommendation is made by the inquiry committee appointed by the Chief Justice.

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| <p>9. (1) The Authority shall meet at such times and places and shall follow such procedure to transact its business in the meetings, as may be specified in the regulations.</p> <p>(2) The Chairperson or, if for any reason he is unable to attend the Authority, the Vice-Chairperson, and in his absence, any other member 1 members present from amongst themselves at the meeting, shall preside over the meeting.</p> <p>(3) All questions which conic up before any meeting shall be dec'i, majority, vote of the members present and voting, and in the event of an equality the person presiding, shall have a second or casting vote.</p> | <p>Meetings</p> |
| <p>10. No act or proceeding of the Authority shall be invalid merely by reason of :</p> <p>(i) any vacancy in, or any defect in the constitution of the Authority; or</p> <p>(ii) any defect in the appointment of a person acting as member of the Authority; or</p> <p>(iii) any irregularity in the procedure of the Authority not affecting the merits of the case</p> | <p>Vacancies not to invalidate proceedings of the Authority</p> |
| <p>11.(1) The Authority may appoint officers and such other employees considers necessary for the efficient discharge of its functions under this Act.</p> <p>(2) The salary and allowances payable to and the other conditions of the officers and employees of the Authority appointed under sub-section (1), such as may be determined by regulations.</p> | <p>Officers and other employees of Authority</p> |
| <p>12. (1) After the Authority is established by the State Government, the Authority shall open an account in any nationalized bank or a bank authorized by the Reserve Bank of India to carry out the banking business. The following may be credited to the Account, namely -</p> <p>(i) contribution received from the State Government</p> <p>(ii) grants received by the Authority; and</p> <p>(iii) any other sum received by the Authority from any sources including fees fixed by the Authority under the regulations for the proceedings before the Authority.</p> <p>(2) The Account shall vest in and be administered by the Authority, which will apply the same to meet the various expenses of the Authority, including the</p> | <p>Finance accounts and audit</p> |

salaries, allowances and administrative expenses defrayed for purposes authorised by this Act.

- (3) The Authority shall cause its books and accounts to be maintained, and its annual accounts to be prepared in the form prescribed by the State Government in consultation with the Accountant General, Punjab.
- (4) The annual accounts of the Authority shall be audited by the Accountant General, Punjab and any expenditure incurred in connection with such at, shall be payable by the Authority.
- (5) The Accountant General, Punjab and any other person appointed by him in connection with the audit of the Accounts of the Authority, shall have the same rights and privileges as the Accountant General, Punjab generally has in connection with the audit of the State Government accounts and, in particular, the rights to demand production of the relevant books, accounts, supporting vouchers and other documents and papers of the Authority, for inspection.
- (6) The accounts of Authority as certified by the Accountant General, Punjab or any other person appointed by him in this behalf along with the audit report with respect thereto, shall be forwarded annually to the State Government, which shall cause the same to be laid before the State Legislative Assembly.

13. (1) The Authority shall prepare an annual report every year giving a summary of its activities done during the previous year in such form and at such place, as may be prescribed and copies of the report shall be forwarded to the State Government for laying them before the Legislative Assembly.

Furnishing of
returns to the
Legislative
Assembly

(2) The Authority shall furnish to the State Legislative Assembly, at such time and in such form and manner as may be prescribed or required by the State Legislative Assembly, the returns, statements and particulars in regard to any proposed or existing programme for the promotion and development of the infrastructure sector.

14. (1) The Authority shall discharge the following functions, namely:-

Function of
the Authority

- (i) to aid and advise the State Government in the formulation of appropriate policy or guidelines relating to tariff;

- (ii) to conduct the public bearing regarding the approval of proposed infrastructure projects in terms of section 30;
- (iii) to determine, modify or vary the tariff on the basis of the concessions granted to the concessionaires and the interest of the consumer;
- (iv) to regulate the working of the concessionaire and promote efficient, economical and equitable performance, including laying down standards of performance of the concessionaire in regard to the service to the consumer;
- (v) to adjudicate upon appeal preferred to it against an order passed by the Board or the State Government related to the approval of an infrastructure project or the award of a concession; and
- (vi) to adjudicate upon disputes inter se two or more Concessionaires, operators of infrastructure projects, the State Government and the Board.

Provided that the Authority shall not discharge any of the aforesaid functions or any other such functions in respect of which The Punjab State Electricity Regulatory Commission established under sub-section (1) of section 17 of the Electricity Commissions Act, 1998 (Act no. 14 of 1998), is empowered to discharge.

- (2) The Authority shall always act consistent with the objectives and purposes for which it has been established.
- (3) Orders passed by the Authority in exercise of its powers under this Act, shall be final and binding on all concerned and shall be executable as a decree.

15. (1) The Authority, in conduct of all proceedings before it and in exercise of its powers under this Act, will be guided by the principles of natural justice.

Authority to
have power of a
Civil Court

- (2) The Authority shall have, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of, -
 - (i) summoning and enforcing the attendance of any person and examining him on oath;
 - (ii) requiring the discovery and production of documents;
 - (iii) receiving evidence on affidavits;
 - (iv) issuing commissions for the examination of witnesses or documents,

- (v) reviewing its decisions:
 - (vi) dismissing an application for default or deciding it ex-parte, setting aside any order of dismissal or any application for default or any order passed by it ex-parte; and
 - (vii) any other matters as the Authority may specify by regulations.
- 16. (1)** All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860, and the Authority shall be deemed to be a 'Civil Court' for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Proceedings before the Authority shall be deemed to be Judicial Proceedings
- (2) Every proceeding before the Authority shall be completed within a period of ninety days of its commencement, except where the time period is extended by the Authority for the reasons to be recorded **in** writing.
- 17. (1)** The Authority may make regulations for the proper performance of its functions under this Act. Power of Authority to make Regulations
- (2) In particular and without prejudice to the generality of the foregoing power and of matters specifically provided for in this Act, such regulations may provide for all or any of the following matters, namely; -
- (i) Specifying procedure to transact business in the meetings under section 9;
 - (ii) Determining of salaries, allowances and other conditions of service of the officers and other employees of the Authority under sub-section (2) of section 11; and
 - (iii) Fixing of sums received by the Authority under clause (iii) of sub-section (1) of section 12.

CHAPTER IV: PUNJAB INFRASTRUCTURE DEVELOPMENT BOARD

- 18. (1)** With effect from such date, as the State Government may by notification appoint, there shall be established a Board for the purposes of this Act to be called the Punjab Infrastructure Development Board: Established of the Board

Provided that till the Board is constituted under this Act, the Board already established under section 3 of the Punjab Infrastructure Development Act, 1998 (Punjab Act No. 1 of 1999) shall be deemed to have been constituted under this section.

- (2) The Board established under sub-section (1) shall consist of a Chairman.

Vice-Chairman and the following, namely:-

- | | | |
|-----|--|-------------------------------|
| (a) | The Chief Minister of Punjab | Chairman |
| (b) | The Minister of Finance of Punjab | Vice Chairman |
| (c) | The Chief Secretary to Government of Punjab | Member |
| (d) | The Principal Secretary to Government of Punjab, Department of Finance | Member Secretary-cum-Convenor |
| (e) | Principal Secretary to the Chief Minister of Punjab | Member |
| (f) | Managing Director of Board | Member |
| (g) | Three technical experts to be nominated by the State Government; and | Member |
| (h) | Minister or Principal Secretary or Secretary of the concerned Administrative Department. | Special Invitee |

- (3) The Board may constitute an Executive Committee to aid and assist the Board in the discharge of its functions.

- (4) The Executive Committee shall consist of the following, namely:-

- (a) The Chief Secretary to Government of Punjab
- (b) The Principal Secretary to Government of Punjab, Department of Finance
- (c) Principal Secretary to the Chief Minister of Punjab
- (d) Managing, Director of the Board - Convenor, and
- (e) Any one other member to be nominated by the Board.

- (5) The Administrative Secretary of the concerned Administrative Department shall be the special invitee to the Executive Committee.

- (6) In addition to the above, the Board may appoint from time to time such Sectoral Sub-Committees and Infrastructure Project Implementation Sub-Committees in terms of section 2 1, as may be considered necessary for carrying out the purposes of this Act. The constitution, powers, functions, objectives, and officers of each of these Committees shall be such as may be prescribed by the State Government.
- (7) The Board shall meet at such time and place and shall observe such procedure to transact its business in the meetings as may be specified by bye-laws.
- 19.** No act or proceeding of the Board shall be invalid merely be reason of :-
- (i) any vacancy in, or any defect in the constitution of the Board; or
 - (ii) any defect in the appointment of a person acting as a Chairman or Vice-Chairman or member of the Board; or
 - (iii) any irregularity in the procedure of the Board not affecting the merits of the case.
- 20. (1)** Subject to the limitations specified in sub section (3), the Board shall be the apex body in the State of Punjab for overall planning for development of infrastructure sectors and infrastructure projects.
- (2)** The Board shall:-
- (i) act as a nodal agency to co-ordinate all efforts of the State Government regarding the development of the infrastructure sectors, involving private participation and funding from sources other than those provided by State budget and will,-
 - (a) identify infrastructure projects for privatisation;
 - (b) promote competitiveness and progressively involve private participation
 - (c) while ensuring fair deal to the consumers; (c) identify bottlenecks in the infrastructure sectors and recommend to the State Government, policy initiatives to rectify the same;
 - (d) select, prioritise and determine sequencing infrastructure projects formulate clear and transparent policies related to the infrastructure

Vacancies not to invalidate proceedings of the Board

Functions and Powers of the Board

- sectors so as to ensure that project risks are clearly **identified** and allocated between the stakeholders; and
- (e) identify the sectoral concessions to be offered to concessionaires to attract private participation and secure availability of viable infrastructure facilities to the consumers;
- (ii) prepare internally or through external consultants or service providers engaged for the purpose, all necessary documents including the bid or tender documents, draft contracts including the various contractual arrangements and incentives to be offered by the State Government;
- (iii) create a Fund to be known as Punjab Infrastructure Initiative Fund, which shall vest in the Board to carry out the pre-feasibility and feasibility studies and the preparing of reports for the proposed infrastructure projects, along with the collection of the relevant data. The Punjab Infrastructure Initiative Fund will have contributions from the Development Fund, budgetary resources of State Government, public bodies and multilateral lending agencies and financial institutions;
- (iv) assist public infrastructure agencies and concessionaires in obtaining statutory and other approvals;
- (v) recommend the grant of concessions to a public infrastructure accordance with the provisions of this Act, the rules **and** the made there under;
- (vi) assist in determining the level and structuring of investments of the State Government and public bodies into infrastructure projects with private participation including holding the investment or part thereof;
- (vii) create special purpose vehicles for implementing infrastructure projects in terms of section 38 in co-ordination with the State Government or public infrastructure agencies; and
- (viii) manage and administer the Development Fund and the Punjab Infrastructure Initiative Fund.
- (3) The Board shall not play any role in the infrastructure projects undertaken by the State Government exclusively through its budgetary provisions.
- (4) In order to carry out its functions consistent with the provisions of this Act the Board shall have the powers to do all or any of the following, namely:-

- (i) acquire, hold, develop or construct such property, both movable and immovable, as the Board may deem necessary for the performance of any of its activities related to the development of infrastructure sectors of infrastructure projects;
- (ii) advise or recommend to the State Government acquisition of land under the Land Acquisition Act., 1894 for the purposes of infrastructure projects;
- (iii) lease, sell, exchange, or otherwise make allotments of the property referred to in clause (i) to concessionaire and to modify or rescind allotment, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of such allotment;
- (iv) borrow and raise money in such manner as the Board may think fit and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Board's property or assets @whether present or future), and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Board of any obligation or liability, it may have undertaken or which may become binding on it;
- (v) constitute a Project Management Team and one or more Advisory Committee or Committees or Sectoral Sub-Committee or Project Implementation Sub-Committee, or engage suitable service providers or advisors or consultants to advise the Board for the efficient discharge of its functions;
- (vi) enter into and perform all such contracts as it may think nee expedient for performing any of its functions; and
- (vii) do such other things and perform such other acts as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect the purposes of this Act.

21.(1) Such Sectoral Sub-Committee or Project Implementation Sub-Committee or Committees may be constituted by the Board from time to time to assist the

Sectoral Sub-Committee and Project Implementation Sub-Committee

Board in carrying out its functions, as may be considered necessary for the purposes of this Act.

- (2) For the effective association, consultation and participation of a public infrastructure agency in the decision making of the Board, the Sectoral Sub-Committee or Project Implementation Sub-Committee will comprise of members of the Project Management Team and representatives from the concerned public infrastructure agency.
- (3) The constitution, functioning and powers of the Sectoral Sub-Committee or Project Implementation Sub-Committee will be as per the bye-laws made by the Board.
- (4) The Sectoral Sub-Committee and the Project Implementation Committee will be subordinate to the Board and will carry out the functions delegated to them by the Board.
- (5) Each Sectoral Sub-Committee will be concerned, in particular, with
 - (a) the formulation, review change and implementation of the sectoral policies for private participation in the infrastructure sector,
 - (b) the conduct of feasibility study and preparation of feasibility report and
 - (c) formulating the Sectoral packages of financial incentives and concession:
- (6) Each Project Implementation Sub-Committee will be concerned particular with.
 - (a) providing proposals to the Board for taking decision on project identification and priority,
 - (b) finalising the scope and structuring of infrastructure project
 - (c) pre-bidding and bidding procedures
 - (d) election of concessionaire and recommending grant of concession, and,
 - (e) implementing, supervising and monitoring of project

- 22.** (1) Subject to the rules, estimates of annual income and expenditure of the Board for the ensuing financial year, shall be got prepared by the Member Secretary of the Board and shall be submitted to the Board for its approval.
- (2) An annual statement of accrued income and expenditure of the Board shall be got prepared by the Member Secretary-cum-Convenor and after obtaining approval of the Board, the same shall be sent to the State Government for

Finance,
accounts and
audit of the
Board

information, within period of three months from the date of closure of the concerned financial year.

- (3) The custody, application and operation of the Development Fund, including borrowing and investment shall be carried out by the Board in accordance with the bye-laws.
- (4) The accounts of the Board shall be audited by the Local Fund Examiner, Punjab.

23. (1) The Board shall have a Managing Director to be appointed by the State government to assist the Board in its day to day functioning.

- (2) The Board may, with the approval of the State Government, create such other posts and appoint such officers and other employees thereon, as it may consider necessary for the efficient discharge of its functions.
- (3) The conditions of service of officers and other employees referred to in sub-sections (1) and (2) and their functions and duties shall be such, as may be specified in the bye-laws.
- (4) The Managing Director shall exercise the powers of super vision over all the officers and other employees of the Board.
- (5) All contracts on behalf of the Board shall be signed by the managing Director after due sanction from the competent authority and in the absence of the Managing Director, no contract signed by an employee other than the Managing Director, shall be valid and binding on the Board without the prior and specific approval of the Board in respect thereof.

24. (1) The Board may, with the prior approval of the State Government, make bye-laws for the proper performance of its functions under this Act.

- (2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for the following matters, namely :-
 - (i) the constitution, functioning and powers of the Sectoral Sub-Committee, Project Implementation Sub-Committee under sub-section (3) of Section 21;
 - (ii) the custody, application and operation of the Development Fund including, borrowing and investment under sub-section (3) of section 22;
 - (iii) the duties of the managing Director , officers and employees of the Board and their conditions of service under section 23;

- (iv) conduct of the meeting of the Board, the time and place at which such meetings shall be held, the procedure to be followed in the transaction of business under sub-section (7) of section 18;
- (v) any other matter in relation to which bye-laws are required to be or may be made.

CHAPTER V: LEVY OF FEE AND PUNJAB INFRASTRUCTURE DEVELOPMENT FUND

- 25. (1)** With effect from the date of coming into force of this Act and subject to the provisions of this Chapter, every dealer shall be liable to pay a fee levied under this Act on the sale or purchase of the goods specified in Schedule III within the State of Punjab at a rate not exceeding six rupees for every one hundred rupees of the value of goods as the State Government may, by notification, direct. Levy of fee
- (2) The fee shall be payable at the stage mentioned in Schedule III.
 - (3) The authorities for the time being empowered to assess, re-assess, collect and enforce the payment of tax under the Punjab General Sales Tax Act, 1948, shall assess, re-assess, collect and enforce the payment of fee.
 - (4) With respect to the fee, the accounts shall be maintained and the returns shall be submitted in the manner prescribed by the State Government.
 - (5) The fee collection under sub section (1), shall be deposited by the authorities specified in sub-section (3) in the Development Fund within a period of one week from the date of its collection.
 - (6) The dealer shall deposit the amount of fee due from him either in cash or by cheque in a specified bank account.

Explanation:

For the purposes of this Act, the expression “sale”, “purchase” and “dealer” shall have the same meanings as have been assigned to them in the Punjab General Sales Tax Act, 1948.

- 26. (1)** Whoever contravenes or fails to comply with the provision of this Act, the rules and the regulations made thereunder with respect to,- Cognizance of offences

- (a) filing true and complete returns with regard to the fee; or
(b) payment of the fee;
- shall be punishable with imprisonment for a term, which may extend to six month or with fine, which may extend to five times the fee found due and payable or with both. Where the offence is a continuing one, the person shall be liable to a further daily fine of five hundred rupees per day of continued default.
- (2) Any person found guilty of delayed payment of nonpayment or delay in depositing the fee shall, in addition to the liability to pay the fee and the fine imposed under sub-section (1), be liable to pay interest on the delayed payment at the rate of 1.5 percent per month for the period, the payment has been delayed.
- (3) All offences under this Act, the rules and the regulations made there under, will be bailable and non-cognizable. No court shall take cognizance of any such offence except on a complaint made by the Board.
- 27. (1)** The State Government shall constitute a Fund to be known as the Development Fund which shall vest in the Board.
- (2) The amount of fee charged and collected under this Act, shall be credited to the Development Fund.
- (3) The Development Fund shall be applied for the development of infrastructure sectors by providing infrastructure facilities in the State of Punjab for the benefit of the persons from whom the fee has been charged and collected and the public at large and for the infrastructure faculties of the country having direct benefit to the economy of the Sate of Punjab.

Constitution of
the Development
Fund

CHAPTER VI: PROJECT IDENTIFICATION & CONCESSIONAIRE SELECTION

- 28. (1)**The Board shall be the nodal agency to coordinate all the efforts of the State Government in the identification and prioritization of infrastructure projects.

Project
identification
and
prioritisation

- (2) The Board in consultation with the State Government shall scrutinize, evaluate and priorities infrastructure projects to be developed managed and operated in the State of Punjab.
 - (3) The Board shall inform the State Government of the infrastructure projects so identified. The State Government shall decide within a period of ninety days of the receipt of such information, as to whether and which of the infrastructure projects will be undertaken as State Government projects in a time bound manner.
 - (4) In case, the State Government decides not to take up an infrastructure project with total State Government budgetary funds or if it fails to decide within the stipulated period, the infrastructure project will automatically be referred back to the Board. Upon such reference, the Board shall decide whether the infrastructure project is to be executed on complete private participation basis or with part private participation and part dependence upon the Development Fund or by complete funding out of the Development Fund; and thereafter, the Board through the Project Management Team or the Sectoral Sub-Committee, as the case may be, shall take the following steps, namely;
 - (i) publication of the notice containing details pertaining to the infrastructure projects in the leading newspapers, inviting objections and suggestions;
 - (ii) assisting te Authority in conducting public hearing on objections and suggestions received to finalise the scope of the infrastructure project;
 - (iii) notification of infrastructure project inviting bids or placement of request for proposal;
 - (iv) conducting pre-bid processes;
 - (v) conducting evaluation of bids; and
 - (vi) conducting negotiations and recommending the grant of Concession by the Board;
- 29. (1)** Once the infrastrcture project is referred back to the Board in terms of sub-section (4) of section 28, the Board shall provide wide publicity at national
- Procedure for public hearing

level to the proposed infrastructure project or projects, as the case may be, and propose its implementation as per the decided parameters and structures. For this purpose, the Board shall cause the notice of the proposed infrastructure project to be published in the specified manner in the leading local and national newspapers and in the Official Gazette of the State Government. Such public notice shall include, highlights of the feasibility report. On demand, a complete copy of the feasibility report shall be made available from the office of the Board on payment of a specified fee.

- (2) The notice shall:-
- (i) highlight the salient features of the proposed infrastructure project, its parameters or structuring;
 - (ii) invite objections and suggestions from the public to the proposed infrastructure project and its parameters in respect of which objections should be filed with the Board within the period specified in the notice from the date of publication of the notification; and
 - (iii) mention the date, time and place of the proposed public hearing to consider such objections, suggestions or comments.
- (3) The date, time and place of the proposed public hearing referred to above shall be included in the notice by the Board after consultation with the Authority.
- (4) All persons including bona fide residents, Non-Governmental Organizations and others, located at the project sites of displacements likely to be affected by the proposed infrastructure project and other members of public, can participate in the public hearing before the Authority.

30. (1) The Authority shall take into account any objections or suggestions or comments of the concerned persons before approving the proposed infrastructure project, and may either approve the same in its original format or subject to any changes that may be proposed by the Board and found acceptable by the Authority.

Finalisation of the scope, funding and structuring of infrastructure projects

- (2) In the event, the Authority is of the opinion that the objections or suggestions or comments so raised in the hearing, are unfounded or baseless or that the same can be dealt with at a later stage, it may, in its discretion

allow the Board or the public infrastructure agency to go ahead with the project. Such decision shall be taken within a period of thirty days of the hearing and it shall be final and binding.

- | | | |
|----------------|---|-----------------------------------|
| 31. | Upon identification of the infrastructure project to be developed under section 28, the Board shall direct the Project Management Team or the concerned Sectoral Sub-Committee or Committees to carry out itself or through external service providers or consultants, a feasibility study and to prepare and submit a feasibility report within a period of six months. | Feasibility
Report |
| 32. (1) | Upon finalization of the scope and structure of the infrastructure project under section 30, the Board shall forthwith cause to be published, one every week for three consecutive weeks, in at least two national level newspapers out of which, one will be a financial or business newspaper; and in one local newspaper, which is circulated in the region, province, city or municipality in which the project is to be constructed, a notice inviting all interest parties to participate in a competitive public bidding for the infrastructure projects so approved. | Public bidding
for the project |
| (2) | The Board shall be responsible in all respects for all aspects of pre-bidding and bidding processes, including,-

(i) fixing pre-qualification criteria on the basis of the clearly identifiable parameters known to the "Concessionaires, Contactors and the General Public;

(ii) arranging pre-bid conferences and bid evaluation conferences with the prospective Concessionaires or Contactors;

(iii) issuing clear, comprehensive and fair instructions to bidders, which establish the rules of bidding and shall include all relevant information;

(iv) preparing the bid or tender documents, which shall include the following, namely;-

(a) instruction to bidders; | |

- (b) pre-qualification or qualification parameters, both technical (indicating experience, specific norms, design and performance standards) and financial;
 - (c) draft Concession Agreement or any other appropriate Agreement, clearly defining the basic relationship between the parties with their inter se rights and responsibilities;
 - (d) bid form; and
 - (e) any other documents, deemed necessary.
- (3) The instructions to the bidders relating to the bidding shall be clear, comprehensive and fair and shall, as far as necessary and practicable, include the following information, namely:-
- (i) general description and objectives of the infrastructure projects;
 - (ii) basic contractual arrangement under which the implementation of the infrastructure project shall be undertaken;
 - (iii) bid submission, procedures and requirements;
 - (iv) bid and bid security validity period;
 - (v) milestone bonding;
 - (vi) method and criteria (including the minimum amount of equity) for the valuation of the technical and financial components of the Bids.
 - (vii) Tariff policy, formula and factors to be used in the levy of, adjustments of tolls or fees or rentals or charges;
 - (viii) requirements of concerned regulatory bodies, if any;
 - (ix) monetary rules and regulations governing foreign exchange remittances, if relevant;
 - (x) revenue sharing arrangements, if any; and
 - (xi) expected commissioning date.
- (4) Minimum design and performance standards or specifications including appropriate environmental standards shall be clearly defined and non-conformity with any of these minimum requirements shall render the bids as non-responsive.
- (5) Financial parameters shall also be described, which amongst others, shall include,-

- (a) maximum period of project construction;
- (b) fixed term for project operation and collection of tolls or fees or rentals or charges in respect of models of contracts specified in Schedule II;
- (c) The draft concession Agreement shall clearly define the basic and legal relationship between the parties as well as the rights and responsibilities of the parties involved. Where applicable, the following matters, among others, shall be included:-
 - (i) bonds, guarantees, insurance, damages;
 - (ii) warranties, indemnities, limitation of liability;
 - (iii) schedule and amount of milestone bonding;
 - (iv) relevant price index to be used;
 - (v) force majeure and its consequences;
 - (vi) effect of changes in circumstances, which may be brought about by, among others, the enactment of new laws or regulations or the change in existing government policies which will materially affect the financial viability of the project;
 - (vii) contract termination and combination;
 - (viii) the governing laws, manner and procedure for the resolution of disputes including partnering, conciliation, arbitration;
 - (ix) project monitoring mechanisms including provisions for independent quality control consultants and dispute review experts on a standing basis; and
 - (x) taxes and duties.

- 33. (1)** Any person, who fulfills the qualification criteria, may respond to the notice inviting tenders or proposals, subject to the prevalent laws and policies laid down by the Board. The expression 'person' shall include natural and juristic persons, as permissible by policies of the Board, whether of Indian or foreign origin.
- (2) The prospective bidders will be required to, prepare and submit their respective pre-qualification documents within the specified period.
- (3) Amongst others, the following may be specified by the Board, as the pre-qualification requirements, namely:-

Pre bid or pre-qualification stage

- (i) legal requirements;
 - (ii) technical qualifications i.e. the Concessionaire applicant must possess adequate relevant experience in terms of specified requirements for the infrastructure project or sector in question. The applicant should not have committed a material breach in any previous concession Agreement; and
 - (iii) financial qualification i.e. the Concessionaire must show the capability to sustain the financing requirements of the infrastructure project, which may be measured in terms of proof of the ability of the Concessionaire or to provide a minimum amount of equity to the project and letter of good standing from the bank.
- (4) On the basis of the pre-qualification proposal received, the Board shall mark the pre-qualification documents of each prospective proposer as either pre-qualified or pre-disqualified, as the case may be, within a specified period.
- 34. (1)** The Board shall make available the related bid documents to all pre-qualified bidders within the specified period to prepare and submit their respective bids. Bidding Stage
- (2) The bids will be submitted in two envelopes i.e. the one containing the technical proposal and the other containing the financial proposal.
 - (3) The required bid security, if any, shall be valid for the specified period, but in no case it will exceed one hundred and twenty days following the opening of the bids, unless specifically decided by the Board for a particular infrastructure project.
 - (4) The evaluation of bids shall be undertaken in two stages in terms of the specified procedure and period.
 - (5) The first stage of valuation shall involve the assessment of the technical proposal regarding technical, operational and environmental, visibility of the proposal as contained in the bidder's first envelopes vis-à-vis the specified requirements and criteria or minimum standards and the basic parameters specified in the bidding documents.

- (6) Only those bidders, who have not been disqualified at the first stage of evaluation, shall be eligible to participate in the second stage of evaluation. The second stage of evaluation shall involve the assessment in comparison of the financial proposals of the qualified bidders based on the criteria and parameters specified by the Board in this behalf. Such criteria and parameters, in the case of infrastructure projects without private participation, may provide for clubbing of technical and financial scores for the purposes of determining the bidder eligible for award of work.
- (7) In the case of infrastructure projects based on private participation schemes, the Board shall award the contract to the bidder whose proposed tolls or frees or rentals or charges in respect of models of contracts (shortly indicated as BOT, BOO, CAO, DOT, ROT, ROO in Schedule II) and other similar schemes or proposed Schedule of amortization payments in respect of BT, BLT, BTO (as shortly indicated in Schedule II) and other similar schemes, are determined to have the lowest present value.
- 35. (1)** The concession shall be granted by a public infrastructure agency to a bidder who:- Grant of a concession
- (i) satisfies the stipulated financial, technical, organizational and legal standards; and
- (ii) whose bid is the lowest and is in most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the infrastructure project to be constructed, rehabilitated, operated and maintained as per the stipulated minimum design and performance standards, plans and specifications.
- (2) The purpose of the financial package governing any sector or the concessions to be granted for any infrastructure project will be to ensure that the same is financially viable and bankable to attract maximum private investment. The public infrastructure agencies may have to make substantial investments or grant substantial concessions to make an infrastructure sector or any infrastructure project viable.

- (3) Within a period of thirty days from the date of completion of the second stage evaluation, a decision on whether or not to award the contract, shall be taken by the Board.
- (4) If the Board takes a decision to award the contract, the Board shall issue to the proposed awardee, the notice of award within a period of fifteen days from the date of the decision.
- (5) The notice of award shall indicate, amongst others, the time within which the proposed awardee shall submit the specified performance security, proof of equity contribution and financing resources, and in the case of a joint venture or consortium the agreement indicating that the members are jointly and severally responsible for the obligations of the Concessionaire under the contract.
- (6) The winning bidder shall be granted the Concession for the development, operation and maintenance of the infrastructure project, including the right to collect the specified tolls, fees, rentals and charges.
- (7) Withdrawals of any member of a joint venture bidder prior to the actual award or implementation of the infrastructure project, can be a ground for cancellation of the contract and forfeiture of that person's bid security. The Board may, however, proceed with the award of the contract for the implementation of the infrastructure project, if it is of the opinion that the other members of the joint venture or consortium are still capable of carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.
- (8) The bid and the bid securities shall be kept valid till the process of selection of bidders and the grant of concession is completed. Once the concession is granted, the bid securities shall be returned to the unsuccessful bidders.
- (9) In the event of refusal, inability or failure of the bidder with the lowest complying evaluated bid to make good his bid by entering into Concession Agreement with the State Government within the specified period, the State Government shall forfeit the bid security of such bidder. In such an event, the Board shall consider the next complying and qualified lowest evaluated bid for the award. If the same tool fails to execute the Concession Agreement with the State Government, its bid security shall likewise be

forfeited, and the Board shall consider the next complying and qualified lowest evaluated bid, and so on until a contract has been entered into. In case, the State Government is unable to execute the contract with any of the complying and qualified bidders due to the refusal of the latter, the project shall be subjected to re-bidding.

- (10) When no bids are received, the bidding shall be declared a failure. In such a case, the bidding shall be re-called for the concerned project.

36. Negotiation shall be resorted to when there is only one bidder complying with the stipulated pre-qualification conditions (hereinafter referred to as the “Complying Bidder”) as defined hereunder:-

Negotiation of
Contract

- (i) if after advertisement, only one concessionaire applied for pre-qualification and it meets the pre-qualification requirements;
- (ii) if after advertisement, more than one concessionaire applied for pre-qualification, but only one meets the pre-qualification requirements;
- (iii) if after pre qualification of more than one concessionaires, only one submits a bid; and
- (iv) if after pre qualification, more than once concessionaires submit bids, but only one is found by the Board to be Complying Bidder.

Provided that, any of the aggrieved disqualified bidder may, within a period of fifteen days from the date of decision of the Board, file appeal to the Authority and the same shall be decided by the Authority within a period of twenty-one days from the date of filing of the appeal.

- 37. (1)** When any person makes a representation to the Board with respect to any project, which has not yet been approved or notified in terms of the provisions of this Act, the same may be accepted by the Board on a provisional basis; if such a project involves a new concept or technology.
- (2) On acceptance of the proposal by the Board, the Board may purchase the proposal from the proposer on payment of a sum mutually agreed between the proposer and the Board.
- (3) The Board shall adopt the proposal as a basis for selecting a person with whom Concession Agreement may be entered into, and for selecting such

Unsolicited
proposals

person, the Board shall follow the procedure of public bidding as specified in this Act, in which the proposer may also participate.

- (4) Where the proposal of the proposer, referred to in sub-section (2), is not to make his proposal competitive with that of the selected person within a period of thirty days from the date on which he has been given opportunity and if the proposer referred to in sub-section (2), fails to do so, the Board may execute the Concession Agreement with the selected person.

- 38.** (1) If at any time after the pre-feasibility stage, the Board is of the prima facie opinion that a proposed infrastructure project is unlikely to success through private participation, the Board may refer that infrastructure project to the State Government to get the same executed through special purpose vehicle or vehicles by leveraging the funds available with the Board or the public infrastructure agencies.

Development
through
Special
purpose
vehicles

- (2) In case of private participation in the special purpose vehicles, which are granted concessions to implement the infrastructure projects referred to in sub-section (1) those special purpose vehicles will be governed by the relevant provisions of this Act, rules and regulations framed there under.

- 39.** (1) Within a period of thirty days from the date of receipt of the notice of award or selection under sub-section (4) of section 34, the public infrastructure agency shall execute a Concession Agreement with the awardee or successful bidder.

Executing of
Concession
Agreement

- (2) Where the Board, having regard to the nature of an infrastructure project is satisfied that, it is necessary to do so, it may permit combination of two or more model contracts of the nature specified in Schedule II in to one agreement for the purpose of private participation in the development, operation and management of the infrastructure project.

CHAPTER VIII: PROJECT IMPLEMENTATION

- 40.** (1) Notwithstanding any thing contained in any other law enacted by the State Legislature, the concessionaire may, charge, recover and appropriate the tariff leaved in respect of use of any facility of product or service related to or arising

Tariff

out of an infrastructure project, where the development, operation and maintenance of such infrastructure project has been done by the concessionaire at its own expense.

(2) Any variation of tariff shall require the approval of the Authority. The Authority shall not vary the rate of tariff without consulting the concessionaire and where the tariff is not specified in the Concession Agreement, the Authority shall specify the mode and manner of determination and variation of concessionaire's revenues, and tariff fixation.

(3) The right of concessionaire to collect, retain and appropriate tariff will be assignable to its lenders for the funding of the development, operation and maintenance of the infrastructure project.

41. The concessionaire may, with the prior approval of the Authority, offer its rights and interest in the Concession Agreement of the assets of infrastructure project as collateral to any of its financier for any financing availed of by the concessionaire for the infrastructure project, in accordance with an assignment clause enabling the concessionaire to assign his rights and interest as aforesaid subject to the guidelines and regulations issued or made in this behalf.

Assignment

42. Once any infrastructure project has been finalized or a concession granted, the State Government and the public bodies will ensure that they do not act in any manner, which results in a material adverse impact on the technical and commercial feasibility or viability of the infrastructure project or the Concession Agreement.

Feasibility and viability of finalized infrastructure projects and granted concessions

43. (1) In case the public infrastructure agency wishes to terminate any concession, it shall take such action only in consultation with the Authority or as per the guideline provide by the Authority in this behalf.

Termination of the concession Agreement

(2) Where a Concession Agreement is terminated by the public infrastructure agency with or without the consent of the concessionaire, the concessionaire shall be entitled to such amount of compensation for such termination, as is specified in the Concession Agreement.

CHAPTER VIII : APPEAL AND OTHER MISCELLANEOUS PROVISIONS

- 44.** Any person aggrieved by any decision or order of the Authority, may file an appeal to the High Court of Punjab & Haryana within a period of sixty days from the date of communication of the decision or order of the Authority to him. Appeals from the orders of Authority
- 45.(1)** If a person violates directions of the Authority, such person shall be punishable with fine, which may extend to twenty-five thousand rupees and in case of second or subsequent offence, with fine, which may extend to fifty thousand rupees. In case of continuing contravention; with an additional fine, which may extend to five hundred rupees for each day during which such contravention continues after the first offence. Penalties for contravention of directions of Authority
- (2)** Notwithstanding anything contained sub-section (1) where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, as the case may be, shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- Provided that nothing contained in this sub-section shall render any such person liable to any punishment specified in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- Explanation --- For the purpose of this section ---
- (a)** “company”, means any body corporate and includes a firm or other association of individuals; and
- (b)** “director”, in relation to a firm, means a partner in the firm.
- 46. (1)** The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Powers of State Government to make rules
- (2)** In particular and without prejudice to the generality of the foregoing power and matters specifically provided for in this Act, such rules may provide for all or any of the following matters, namely: -

- (i) prescribing the salary and allowances payable to, and the other terms and conditions of service of the Chairperson, Vice-Chairperson and other members under sub-section (5) of section 7;
 - (ii) prescribing the form and place for preparing the annual report under sub-section (1) of section 13;
 - (iii) prescribing the form and manner of furnishing returns, statements and particulars under sub-section (2) of section 13;
 - (iv) prescribing the constitution, powers, functions, objectives and officers each of the committee under sub-section (6) of section 18; and
 - (v) prescribing the manner maintaining the accounts and submitting the returns under sub-section (4) of section 25.
- (3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rules, or the House agrees, that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, without prejudice to the validity of any thing previously done or omitted to be done under that rule.

47. The State Government shall have the power to issue policy directions to the Authority and Board on matters concerning the infrastructure sectors and the infrastructure projects in the State. All policy directions issued shall be consistent with the provisions of this Act and the rules made there under and the objects sought to be achieved by this Act.

Power to issue
directions

48. The State Government shall issue guidelines concerning the subsidies to be allowed to a class of consumers for providing services or for utilising facilities of an infrastructure project or infrastructure sector

49. The Chairperson, Vice-Chairperson, members, officers and other employees of the Authority and the Board, when acting or purporting to act in pursuance of any of the provisions of this Act, the rules and regulations made thereunder,

Chairperson, Vice
Chairperson,
members, officials
and employees of
the Authority and
the Board deemed to
be public servants

shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, (Act No. 45 of 1860).

- 50.** (1) No court shall take cognizance of any offence punishable under this Act or rules or regulations made there under except on a complaint made by the Authority or the Board, as the case may be. Cognization of offences
- (2) No court inferior to that of a Chief Judicial Magistrate or First Class shall try any offence punishable under this Act.
- 51.** No suit, prosecution or other legal proceedings shall lie against the State Government or the Authority or any officer of the State Government of the Chairperson, Vice-Chairperson, any member, officer or other employee of the Authority or the Board for anything, which is done or intended to be done in good faith under this Act and rules or regulations made thereunder. Protection for action taken in good faith
- 52.** (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provision of this Act, as may appear to be necessary for removing the difficulty; Power to remove difficulties
- Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.
- (2) Every order made under this section, shall be laid, as soon as may be. After it is made, before the Legislative Assembly.
- 53.** The State Government may, by notification in the Official Gazette amend any Schedule. Power to amend the Schedule
- 54.** (1) Save as otherwise provided in this Act, the Punjab Infrastructure Development Act, 198 (Punjab Act. No.1 of 1999), shall stand repealed consequent upon the commencement of this Act; Repeal and saving
- Provided that such repeal shall not affect,-

- (a) the previous operation of the Act so repealed or any rules or regulations made there under or anything duly done or suffered thereunder; or
- (b) any obligation or liability accrued or incurred under the Act so repealed or any rules or regulations made thereunder.

55. Save as other wise provided in this Act, the provisions of this Act, or rules or regulations or bye-laws made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in law, enacted by the State Legislature and for the time being in force in the State of Punjab.

Over-riding effect on other laws

56. No order passed or action taken under this Act, rules or regulations made thereunder, shall be subject to challenge except as provided in this Act and no civil court shall have jurisdiction in respect of any matter, which the Authority or the Board is empowered to decide and adjudicate upon.

Bar of jurisdiction of civil courts

Schedule I : Infrastructure Sectors

[See section 2 (15)]

1. Information Technology related projects.
2. Transportation-Roads, bridges, road transport and related areas, for the benefit of public including agricultural community.
3. Urban infrastructure including,-
 - (i) Water supply;
 - (ii) Sewerage disposal and treatment;
 - (iii) Urban roads and street lighting;
 - (iv) Solid waste management;
 - (v) Parks; and
 - (vi) Urban mass transit system;
4. Industrial estates, Industrial parks, Modern Industrial Townships and Special Economic Zones.
5. Irrigation Infrastructure.
6. Other agricultural infrastructure, including post-harvest facilities like warehousing facilities and cold chains, and marketing infrastructure for agricultural produce.
7. Super-specialty health care facilities and infrastructure.
8. Tourism related facilities and infrastructure.
9. Power sector including power generation and transmission infrastructure.
10. Infrastructure for giving boost to technical education.

Scheduled II : Models of Contracts

[See section 2 (6)]

- (a) **Build Operation and Transfer (BOT)** shall mean a contractual arrangement whereby the Concessionaire undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The Concessionaire operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding these proposed in its bid or as investment, and operating and maintenance expenses in the project. The Concessionaire transfers the facility to the Government Agency or Local Government unit concerned at the end of the fixed terms which shall or exceed thirty years.
- (b) **Build-Own-Operate-and-Transfer (BOOT)** shall means a project based the granting of a Concession by a Principal (the Union of Government or a local authority) to the Concessionaire, who is responsible for the construction, financing, operation and maintenance of a facility over the period of the Concession before finally transferring the facility, at no cost to the Principal, a fully operational facility. During the concession period the Promoter owns and operates the facility and collects revenue in order to repay the financing and investment costs, maintain and operate the facility and made a margin of profit.
- (c) **Build-and-Transfer (BT)** shall means contractual arrangement whereby the Concessionaire undertakes the financing and construction of a given infrastructure or development facility and after it completion turns it over to the Government agency or Local Government unit oncerned, which shall pay the proponent on an agreed Schedule its total investments expended on the project plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the Government .
- (d) **Build-Own-and Operate (BOO)** shall mean a contractual arrangement whereby a Concessionaire is authorized to finance, construct, own, operate

and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users.

- (e) **Build-Lease-and Transfer (BLT)** shall mean a contractual arrangement whereby a Concessionaire is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.
- (f) **Build-Transfer-and-Operate (BTO)** shall mean a contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the concessionaire builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risk. Once the facility is commissioned satisfactorily, title is transferred to the Implementing agency. The private entity however, operates the facility on behalf of the implementing agency under an agreement.
- (g) **Contract-Add-and-Operate (CAO)** shall mean a contractual arrangement whereby the concessionaire adds to an existing infrastructure facility, which it is renting from the government. It operates the expanded project over an agreed franchise period. There may, or may not be, a transfer arrangement in regard to the facility.
- (h) **Develop operate and Transfer (DOT)** shall mean a contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.
- (i) **Lease Management Agreement** An agreement whereby the State Government, the Government Agency or the specified Agency leases a project owned by the State Government, the Government Agency or, as the case may be, the specified Government Agency to the person who is

permitted to operate and maintain the project for the period specified in the agreement.

- (j) **Management Agreement** An agreement whereby the State Government, the government Agency or the specified Government Agency entrusts the operation and management of the project to a person for the period specified in the agreement on payment of specified consideration. In such agreement, the State Government agency may charge the user fee and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user fees pay the same to the State Government, the Government Agency or, as the case may be , the refurbishing, erecting and consuming it within the host country.
- (k) **Rehabilitate-Operate-and-Transfer (ROT)** shall mean contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the Government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- (l) **Rehabilitate-Own-and-Operate (ROO)** shall mean a contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (m) **Service Contract Agreement** shall mean and agreement whereby a person undertakes to perform the service for the State Government for the specified period. The State government shall pay him an amount according to the agreed Schedule.
- (n) **Supply, Operate and Transfer Agreement** shall mean an agreement whereby a person supply to the state Government equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train the employees of the State Government to operate the project.

Schedule III : Articles subject to levy of fee under the Act

[See section 25]

Serial No.	Description of articles and goods	Circumstances and stage under and at which the fee is to be levied under this Act.
1.	All agricultural produces except Fruits, vegetables and pulses as defined in the Punjab Agricultural	<p>Under the circumstances and stage mentioned in Schedule D to the Punjab General Sales Tax Act, 1948</p> <p>In cases not covered in the said Schedule D, the levy shall be at the first stage of purchase of the Commodity concerned.</p>
2.	Petrol.	First stage of sale in accordance with the Department of Excise and Taxation, Punjab Notification no.S.C,13/P.A.46/48S.5/99 dated February, 1999.
3.	Diesel.	First stage of sale in accordance with the Department of Excise and Taxation, Punjab Notification no.S.C.13/P.A.46/48S5/99 dated 15 th February 1999.

REKHA MITTAL,
Secretary to Government of Punjab,
Department of Legal and Legislature Affair.

STATEMENT OF OBJECTS AND RESONS

The Punjab Infrastructure (Development and Regulation) Bill, 2002 is proposed to provide high priority on infrastructure development to accelerate economic and industrial growth in the State. In view of the Volume of funds required for infrastructure development, the State Government wishes to encourage the private sector to supplement its efforts in developing the infrastructure facilities by participating in its financial and/or development operations and management thereof. This Bill seeks to establish regulatory framework which will provide clear guidelines for all aspects for infrastructure development from the conception to the implementation.

LAL SINGH
Finance Minister, Punjab

FINANCIAL MEMORANDUM

The Punjab Infrastructure (Development and Regulation) Bill, 2002 is being introduced to attract and facilitate private participation in infrastructure development as the State Government recognizes the need to: -

- (a) have an overarching legislation to secure a level playing field for private participations;
- (b) establish a transparent regulatory framework governed by an autonomous regulator; and
- (c) grant various concessions and incentives to make the infrastructure project and the investment opportunities viable and attractive.

The actual financial implications can only be worked out as and when any incentives are granted in this regard.

MEMORANDUM REGARDING DELEGATION LEGISLATION

Clause 24 of the Punjab Infrastructure (Development and Regulation) Bill, 2002 empowers the Board to make the Bye-laws for carrying out the purpose of the Bill. The powers sought are necessary for the proper implementation of the provisions of the Bill and are normal in nature.

The Governor has, in pursuance of clause (1) of Article 207 of the Constitution of India, recommended to the Punjab Legislative Assembly, the introduction of the Bill.

CHANDIGARH:
The 25th June 2002

NACHHATTAR SINGH MAVI,
Secretary.

N.B. - The above Bill was published in the Punjab Government Gazette (Extraordinary), dated the 25th June, 2002, under the proviso to rule 121 of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly).