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# The Gujarat Government Gazette

## EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

### PART - IV

#### Acts of the Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the Governor on the 2nd October, 1999 is hereby published for general information.

**KUM. H. K. JHAVERI**

Secretary to the Government of Gujarat,  
Legislative and Parliamentary Affairs Department.

#### GUJARAT ACT NO. 11 OF 1999.

(First published, after having received the assent of the Governor in the Gujarat Government Gazette, on the 5th October, 1999).

#### AN ACT

to provide for a framework for participation by persons other than the State Government and Government agencies in financing, construction, maintenance and operation of infrastructure projects and for that purpose to establish a Board and to provide for the matters connected therewith.

It is hereby enacted in the Fiftieth Year of the Republic of India, as follows :-

#### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Gujarat Infrastructure Development Act, 1999.
- (2) It extends to the whole of the State of Gujarat.
- (3) It shall be deemed to have come into force on the 28th April, 1999.

Short title, extent and commencement.

**Definitions.** 2.

In this Act, unless the context otherwise requires,—

(a) "Board" means the Gujarat Infrastructure Development Board established under section 17;

(b) "concession agreement" means a contract of the nature specified in Schedule II between a developer and the State Government, a Government agency or a specified Government agency, relating to a project;

(c) "developer" means a person with whom concession agreement is entered into by the State Government, a Government agency or a specified Government agency;

(d) "escrow account" means a bank account in which cash is deposited or from which cash is withdrawn in such manner as specified in the concession agreement;

(e) "Government agency" means a Corporation or a body owned or controlled by the State Government or an authority established by or under any law and includes a local authority;

(f) "infrastructure" means facilities and services provided by a project;

(g) "local authority" means a municipal corporation, nagar panchayat, municipal council, notified area committee, district panchayat, taluka panchayat, village panchayat or such other body;

(h) "member" means a member of the Board including Chairman, Vice- Chairman and Member - secretary;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "project" means a project specified in Schedule I;

(k) "regulations" means regulations made under section 38;

(l) "rules" means rules made under section 37;

(m) "senior loan" means a loan in respect of which a claim on assets is prior to the claim on the assets in respect of other loan and which is specified as such in an agreement providing finance;

(n) "specified Government agency" means an agency consisting of the State Government and a Government agency participating jointly;

(o) "State Government guarantee" means a guarantee given by the State Government to a developer consistent with the provisions of the Gujarat State Guarantees Act, 1963;

(p) "subordinate loan" means a loan in respect of which a claim on assets is subsequent to the claim on the assets in respect of another loan and which is specified as such in an agreement providing finance;

(q) "subsidy" means financial assistance in cash or kind provided by the State Government, a Government agency or a specified Government agency;

(r) "user charges" means the amount charged under section 11.

## CHAPTER II

## INFRASTRUCTURE PROJECTS

3. Any person may participate in financing, construction, maintenance and operation of a project. Participation in project.
4. (1) (a) A person may enter into a concession agreement of the nature specified in Schedule-II with the State Government, a Government agency or a specified Government agency. Concession agreement.
- (b) The scheme for a concession agreement shall be such as may be prescribed.
- (2) Where the Board, having regard to the nature of a project, is satisfied that it is necessary so to do, it may permit combination of two or more agreements of the nature specified in Schedule II into one agreement.
- (3) No concession agreement shall provide for transfer of a project by a developer to the State Government, a Government agency or a specified Government agency later than thirty-five years from the date of agreement.
- (4) (a) The State Government may, by notification in the *Official Gazette*, add to Schedule II any other nature of agreement and thereupon the nature of agreement so added shall be deemed to be a nature of agreement specified in Schedule II for the purposes of this Act.
- (b) Every notification issued under clause (a) shall be laid before the State Legislature as soon as may be after it is issued.
5. (1) A proposal prepared by the State Government, a Government agency or a specified Government agency for participation by a person other than the State Government, a Government agency or a specified Government agency in financing, construction, maintenance and operation of the project, the cost of which exceeds such amount as may be prescribed, shall be submitted to the Board alongwith proposed concession agreement relating thereto for its consideration and different amounts of cost may be prescribed for different nature of projects. Recommendation by Board.
- (2) The Board shall consider the proposal and the proposed concession agreement submitted to it under sub-section (1) or sub-section (1) of section 10 and may either recommend with or without modifications or not recommend, or return the proposal and concession agreement for reconsideration of the State Government, the Government agency or, as the case may be, the specified Government agency.
6. The State Government, a Government agency or a specified Government agency may provide to a person assistance in the following manner, namely:— Assistance by State Government, Government agency or specified Government agency.
- (a) participation in the equity of the project not exceeding forty-nine per cent. of the total equity;
- (b) subsidy not exceeding fifteen per cent. of the cost of the project;
- (c) senior or subordinate loans;
- (d) guarantee by the State Government, a Government agency or a specified Government agency in respect of liability of a Government agency arising out of a concession agreement;
- (e) opening and operation of escrow account;
- (f) conferment of a right to develop any land;
- (g) incentives by the State Government in the form of exemption from payment of, or deferred payment of, any tax or fees levied by the State Government under any law; or
- (h) in any other manner as deemed fit.
7. No concession agreement for undertaking a project shall be entered into with any person unless the procedure specified in sections 8 and 9 or, as the case may be, sections 8 and 10 has been followed. Procedure for concession agreement.

Selection of person.

8. (1) A concession agreement for undertaking a project may be entered into with a person who is selected through a competitive public bidding as provided in section 9 or by direct negotiation as provided in section 10.

(2) The matters relating to competitive bidding and direct negotiation shall be such as may be prescribed.

Selection of person by competitive public bidding.

9. (1) On the acceptance of the recommendation of the Board made under sub-section (2) of section 5, the State Government, the Government agency or, as case may be, the specified Government agency shall select a developer for the project through the competitive public bidding in the manner provided hereunder.

(a) A public notice inviting persons to participate in competitive public bidding for undertaking the project—

(i) shall be published once in a week for two consecutive weeks in atleast three newspapers, two in general circulation and one in circulation in the area in which the project is to be undertaken, and

(ii) may be published by any other means of mass communication.

(b) (i) Any person who intends to participate in the competitive public bidding to undertake the project in pursuance of a public notice published under clause (a) shall provide information with regard to his legal, technical, managerial and financial capacity to undertake the said project in such form alongwith such particulars as may be specified by the State Government, the Government agency or, as the case may be, the specified Government agency.

(ii) The State Government, the Government agency or, as the case may be, the specified Government agency shall examine the information and other particulars submitted by the person under sub-clause (i) and decide as to whether such person fulfills the criteria for pre-qualification as laid down by the State Government, the Government agency or, as the case may be, the specified Government agency.

(iii) A person who fulfills the criteria as laid down under sub-clause (ii) shall be the pre-qualified person.

(c) (i) Where after a person who is a consortium is pre-qualified under clause (b) but before such person enters into a concession agreement with the State Government, the Government agency or, as the case may be, the specified Government agency, any constituent of the consortium disassociates from such consortium, then the State Government, the Government agency or, as the case may be, the specified Government agency shall call upon the consortium to include, within thirty days, such constituent in the consortium as specified by it so that, in the opinion of the State Government, the Government agency or, as the case may be, the specified Government agency, the consortium fulfills the criteria referred to in sub-clause (ii) of clause (b).

(ii) Where the consortium fails to comply with the requirement specified in sub-clause (i), the consortium shall cease to be the pre-qualified person.

(d) All pre-qualified persons shall be permitted to submit their proposals to undertake the project in such form (containing technical and financial aspects) as may be specified by the State Government, the Government agency or, as the case may be, the specified Government agency.

(2) On receipt of the proposals from the pre-qualified persons, the State Government, the Government agency or, as the case may be, the specified Government agency shall evaluate the proposals from technical aspect.

(3) If the proposals are in order from the technical aspect, the State Government, the Government agency or, as the case may be, the specified Government agency shall evaluate the proposals from the financial aspect, having regard to different factors specified below in respect of different nature of the agreements specified in Schedule II:—

(a) In relation to the build own operate and transfer agreement and the build operate and transfer agreement, any of the following factors shall be taken into consideration for the purpose of evaluation of the proposal, namely:—

- (i) lowest bid in terms of the present value of user charges, where period of concession is fixed;
- (ii) the highest revenue share to the State Government, the Government agency or the specified Government agency;
- (iii) a bid in terms of the shortest concession period, where the user charges is fixed;
- (iv) the lowest present value of the subsidy, where the period of concession is fixed.

(b) In relation to the build and transfer agreement and the build lease and transfer agreement, the lowest net present value of the amortization payment from the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(c) In relation to the lease management agreement, highest present value of the lease payment to the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(d) In relation to the management and service agreement, the lowest present value of the management fees to be paid by the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(e) In relation to any other nature of agreement, the State Government, the Government agency or the specified Government agency may consider such factors as may be recommended by the Board.

(4) Where—

(a) the proposals are evaluated under sub-section (3) from the financial aspect having regard to a relevant factor specified in that sub-section and referred to in the proposals, and

(b) one of the proposals so evaluated satisfies the financial aspect having regard to the relevant factor,

the State Government, the Government agency or, as the case may be, the specified Government agency, may enter into a concession agreement with the person who has submitted the proposal referred to in clause (d) of sub-section (1).

(5) Where no proposal stands the scrutiny from the technical or financial aspect, the competitive bidding shall stand cancelled.

(6) Nothing in sub-section (5) shall prohibit the State Government, the Government agency or, as the case may be, the specified Government agency from inviting persons to participate in competitive public bidding in respect of the proposal which stands cancelled under that sub-section after, if necessary, revising the same.

10. (1) Where—

(i) a proposal for participation by a person for undertaking a project and a proposed concession agreement have not been prepared by the State Government, a Government agency or a specified Government agency for being submitted to the Board under sub-section (1) of section 5, and

(ii) a proposal for undertaking a project and a proposed concession agreement prepared by a person are submitted to the State Government, a Government agency or a specified Government agency;

the State Government, the Government agency or, as the case may be, the specified Government agency may—

(a) consider the proposal and the proposed concession agreement from all aspects (including technical and financial) and if necessary, modify the same in consultation

Selection by  
direct  
negotiation.

with the person who has submitted the proposal and the proposed concession agreement; and

(b) submit the proposal and the proposed concession agreement to the Board, if—

(i) the cost of the project exceeds the limit prescribed under sub-section (1) of section 5, and

(ii) the undertaking of the project does not require financial assistance in the form of subsidy from the State Government, the Government agency or the specified Government Agency.

(2) On acceptance of the recommendation of the Board made under sub-section (2) of section 5, the State Government, the Government agency or, as the case may be, the specified Government agency shall adopt the proposal as the basis for selecting a person with whom concession agreement for undertaking the project may be entered into, and for selecting such person, the State Government, the Government agency or, as the case may be, the specified Government agency shall follow the procedure of competitive public bidding specified in section 9.

(3) Where a person is selected by following the procedure of the competitive public bidding (hereinafter referred to as "the selected person"), the proposal of the selected person shall be compared with the proposal which is earlier submitted by a person to the State Government, the Government agency or, as the case may be, the specified Government agency under sub-section (1) (hereinafter referred to as "the earlier proposer").

(4) Where the proposal of the earlier proposer is not preferable to the proposal of the selected person, the earlier proposer shall be given an opportunity 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 the opportunity and where the earlier proposer fails to do so within the said period, the State Government, the Government agency or, as the case may be, the specified Government agency may enter into a contract with the selected person.

(5) (a) Where a concession agreement has not been entered into with the earlier proposer, the cost of preparation of the proposal and the concession agreement incurred by him shall be reimbursed by the State Government, the Government agency or, as the case may be, the specified Government agency and on such reimbursement, the proposal and the concession agreement submitted by the earlier proposer shall be the property of the State Government, the Government agency or, as the case may be, the specified Government agency.

(b) The cost of preparation of the proposal and the concession agreement shall be determined in such manner as may be prescribed.

Amount to be charged for providing goods and services.

11. (1) Where, in pursuance of a concession agreement with the State Government, the Government agency or, as the case may be, the specified Government agency,—

(a) (i) the developer has constructed a project for providing goods or services; and

(ii) the project vests in the developer for a period specified in the concession agreement; and

(iii) on expiry of such period, the project is to vest in the State Government, the Government agency or, the specified Government agency,

the developer may charge such amount as specified in the agreement for providing goods or services by the project so long as the project continues to vest in him, or

(b) an existing project is vested to a person to renovate, operate and maintain, the developer may charge such amount as specified in the agreement for providing goods or services by the project so long as the project continues to vest in him.

(2) A concession agreement may provide that a developer may, having regard to the rate of inflation, variation in the rate of the foreign exchange and such other factors, as may be prescribed, revise the amount of charges referred to in sub-section (1) in such manner, as may be prescribed.

12. Where a provision is made in a concession agreement requiring the developer to maintain the project constructed by him for a period specified in such agreement,—
- (a) there shall be opened an escrow account by the developer, the money out of which shall be expended for the maintenance of the project in accordance with the provisions made in the concession agreement or in any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency; or
- (b) the developer shall execute a bond in the favour of the State Government, the Government agency or, as the case may be, the specified Government agency binding himself to make payment of such amount of money as specified in the bond to the State Government, the Government agency or, as the case may be, the specified Government agency, in case he fails to maintain the project in accordance with the provisions made in the concession agreement or any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency.
13. A developer shall provide at his expense, training to the employees of the State Government, the Government agency or, as the case may be, the specified Government agency in respect of maintenance or operation of the project in accordance with the provisions made in the concession agreement or in any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency.
14. Where the project is transferred to the State Government, the Government agency or the specified Government agency according to the provisions of the concession agreement, all the rights of the developer in respect of the project shall stand transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.
15. (1) Where a concession agreement is terminated by the State Government, the Government agency or, as the case may be, the specified Government agency with the consent of the developer or in absence of any default of the developer, the developer shall be entitled to such amount of compensation for such termination as specified in the concession agreement.
- (2) A concession agreement may provide that if a default specified therein is committed by the developer, the State Government, the Government agency or, as the case may be, the specified Government agency shall, after giving to the developer an opportunity of being heard in such manner as may be prescribed, be entitled to terminate the concession agreement and—
- (a) take over the project without repaying the amount invested by the developer in the equity and shall assume the liability of the developer towards loans taken by him in respect of the project, or
- (b) enter into a concession agreement with another person whose name is recommended by the lenders of the developer and approved by the State Government, the Government agency or, as the case may be, the specified Government agency, on the same terms and conditions as are specified in the concession agreement so terminated.
16. (1) The State Government may, by notification in the *Official Gazette*, add to Schedule I any other project which falls within the executive power of the State and thereupon the project so added shall be deemed to be a project specified in Schedule I for the purposes of this Act.
- (2) Every notification issued under sub-section (1) shall be laid before the State Legislature as soon as may be after it is issued.

Financial security for maintenance of project.

Training to employees.

Transfer of certain rights.

Termination of concession agreement.

Power to add to Schedule I.



## CHAPTER III

## ESTABLISHMENT AND CONSTITUTION OF BOARD.

- Establishment of Board.** 17. As soon as may be after the commencement of this Act, the State Government may, by notification in the *Official Gazette*, establish a Board to be called the Gujarat Infrastructure Development Board with effect from such date as may be specified in the notification.
- Head quarters of Board.** 18. The head quarters of the Board shall be at Gandhinagar or at such other place as the State Government may, by notification in the *Official Gazette*, specify.
- Constitution of Board.** 19. The Board shall consist of Chairman, Vice-Chairman, Member-secretary appointed by the State Government and such number of other members not exceeding fifteen, who shall be appointed by the State Government.
- Term of office of members.** 20. Every member shall hold office during the pleasure of the State Government.
- Filling up casual vacancies.** 21. If any vacancy arises in the Board or any committee thereof by reason of death, resignation or otherwise, the same shall be filled up by the State Government as soon as possible.
- Meetings of Board.** 22. The Board shall meet at such time and place and shall observe such rules of procedure in regard to transaction of its business at its meeting (including the quorum at such meeting) as may be provided by regulations.
- Temporary association of persons with Board.** 23. The Board may associate with itself any person whose assistance or advice is required in performing any of its functions under this Act.
- Providing information to Board.** 24. The Board may obtain the information with regard to the progress of the project which was submitted to it under sub-section (1) of section 5 or which was undertaken as per the provisions of section 10 from the State Government, a Government agency or a specified Government agency.
- Constitution of committees.** 25. The Board may constitute an Executive Committee and such other committees consisting of such number of members, for performing such of its functions, as may be provided by regulations.
- Officers and servants of Board.** 26. (1) The Board may appoint such officers and servants as it may consider necessary for the efficient discharge of its functions.  
(2) The remuneration, allowances and conditions of service of the officers and servants of the Board shall be such as may be provided by the regulations.
- Acts and proceedings of Board presumed to be valid.** 27. No act or proceeding of the Board or of any of its committees shall be invalid merely by reason of—  
(a) any vacancy therein or any defect in the constitution thereof, or  
(b) any irregularity in its procedure not affecting the merit of the case,

## CHAPTER IV

## FUNCTIONS OF BOARD.

28. The functions of the Board shall be as follows, namely :—
- (a) to promote participation of a person in financing, construction, maintenance and operation of any project irrespective of its cost; Functions of Board.
- (b) to advise the State Government, a Government agency or a specified Government agency on matters of policy in respect of participation referred to in clause (a);
- (c) to lay down priorities of projects to be undertaken by the State Government, a Government agency or a specified Government agency ;
- (d) to consider the proposal for undertaking a project and the proposed concession agreement submitted to it and to recommend with or without modifications or not recommend or return the proposal and proposed concession agreement for reconsideration of the State Government, the Government agency or, as the case may be, the specified Government agency ;
- (e) to elicit information relating to National and International Financial Institutions and to ensure co-operation of such Institutions;
- (f) to co-ordinate and monitor the projects undertaken in the State;
- (g) to assist in developing concepts of projects by undertaking pre-feasibility and feasibility studies of the project;
- (h) to undertake such project as may be entrusted to it by the State Government;
- (i) to perform such other functions as may be entrusted to it by the State Government.

## CHAPTER V

## FINANCE, ACCOUNTS, AUDIT AND ANNUAL REPORT.

29. (1) The Board shall have its own fund. Fund of Board.
- (2) All sums which may, from time to time, be paid to the Board by the State Government or by any body and the amount charged by the Board under section 32 shall be carried to the fund of the Board and all payments shall be made therefrom.
- (3) The Board may spend such sums as it thinks fit for the performance of its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Board.
30. (1) The accounts of the Board shall be prepared and maintained in such form and in such manner as may be provided by regulations. Accounts and audit.
- (2) The Board shall cause to be prepared for each financial year an annual statement of accounts in such form as may be provided by regulations.
- (3) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of the companies under section 226 of the Companies Act, 1956.
- (4) The auditor shall send a copy of the report together with an audited copy of accounts to the Board which shall as soon as may be after the receipt of the audit report forward the same to the State Government.
- (5) The State Government shall cause the audit report together with audited copy of accounts to be laid before the State Legislature as soon as may be after the receipt of the same under sub-section (4).
31. (1) The Board shall during each financial year prepare in such form and at such time as may be provided by regulations, an annual report giving a true and full account of its activities during the previous financial year and an account of the activities likely to be undertaken by it in current financial year and copies of such report shall be forwarded to the State Government. Annual report.
- (2) The State Government shall cause every such report to be laid before the State Legislature as soon as may be after the receipt of the report under sub-section (1).

**CHAPTER VI**  
**MISCELLANEOUS.**

- Amount to be charged by Board.** 32. The Board may charge such amount as may be determined by it for considering the proposal and the proposed concession agreement under sub-section (2) of section 5.
- Members, officers and servants to be public servants.** 33. All members and officers and servants of the Board shall, while acting or purporting to act in pursuance of the provisions of this Act or any rules or regulations made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.
- Protection of action taken in good faith.** 34. No suit, prosecution or other legal proceeding shall lie against the Board or any member and officer or servant of the Board for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rules and regulation made thereunder.
- Arbitration.** 35. A concession agreement shall contain an arbitration clause providing that—
- (a) all parties to the agreement shall submit to arbitration any dispute which may arise between them out of the provisions of the agreement,
  - (b) the place of arbitration shall be at Ahmedabad or any other place in India agreed to by the parties, and
  - (c) the dispute referred to in clause (a) shall be decided in accordance with the law for the time being in force in India.
- Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 not to apply.** 36. Nothing contained in the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 shall apply to any arbitration arising out of the provisions of the concession agreement entered into by the State Government, a Government agency or a specified Government agency with a developer. Guj. 4 of 1992.
- Power to make rules.** 37. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
- (a) the scheme for concession agreement under clause (b) of sub-section (1) of section 4;
  - (b) the amount of cost of a project exceeding which a proposal shall be submitted to the Board under sub-section (1) of section 5; and different amounts of costs for different nature of projects;
  - (c) the matters relating to competitive public bidding and direct negotiation under sub-section (2) of section 8;
  - (d) the manner in which the cost of preparation of the proposal and the concession agreement shall be determined under clause (b) of sub-section (5) of section 10;
  - (e) the other factors having regard to which charges may be revised and the manner in which they may be revised under sub-section (2) of section 11;
  - (f) the manner in which an opportunity of being heard shall be given to the developer under sub-section (2) of section 15;
  - (g) any other matter which is to be or may be prescribed.
- (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to

rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

38. (1) The Board may make regulations not inconsistent with provisions of this Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

Power to  
make  
regulations.

(2) In particular and without prejudice to the foregoing power, such regulations may provide for all or any of the following matters, namely :-

- (a) the time and the place at which the Board shall meet and rules of procedure the Board shall observe in regard to transaction of its business at its meeting under section 22;
- (b) the other committees which the Board may constitute, the number of members which the executive committee and other committees may consist of and the functions of the Board which they may perform under section 25;
- (c) the remuneration, allowances and conditions of service of officers and servants of the Board under sub-section (2) of section 26;
- (d) the form and manner in which the accounts of the Board shall be prepared and maintained under sub-section (1) of section 30;
- (e) the form in which an annual statement of accounts of the Board shall be prepared under sub-section (2) of section 30;
- (f) the form in which and the time at which an annual report of the Board shall be prepared under sub-section (1) of section 31;
- (g) any other matter which is, or may be necessary to be prescribed for the efficient conduct of the affairs of the Board.

39. (1) Nothing in this Act shall affect the validity of-

Savings.

(a) a concession agreement entered into by the State Government, a Government agency or a specified Government agency with any person before the date of the commencement of this Act (hereinafter referred to as "the said date"),

(b) (i) a letter of intent or any other writing issued to a person before the said date entrusting to him a project for execution if a concession agreement is entered into with respect to the project in pursuance of the said letter of intent or the writing, by the State Government, a Government agency or a specified Government agency with such person within a period of one year from the said date or such further period as may be extended by the State Government,

(ii) a concession agreement entered into under sub-clause (i) notwithstanding that the procedure specified in sections 8 and 10 or, as the case may be, sections 9 and 10 is not followed before entering into such concession agreement.

Guj. Ord.  
1 of 1999.

40. (1) The Gujarat Infrastructure Development Ordinance, 1999 is hereby repealed.

Repeal and  
savings.

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

**SCHEDULE I**  
*(See clause (j) of section 2)*  
**PROJECTS**

1. Power Generation, Transmission and Distribution Systems.
2. Roads, Bridges and By-passes.
3. Ports (other than major ports) and Harbours thereof.
4. Urban Transportation.
5. Dams.
6. Water Storage, Water Supply and Sewerage System.
7. Irrigation.
8. Land Reclamation Projects.
9. Industrial Estates including Industrial Parks.
10. Tourism Projects.
11. Solid Waste Management.
12. Information Technology related Projects.
13. Education.
14. Health Facilities.
15. Public Markets.
16. Post-harvest Facilities.
17. Inland Waterways other than National Waterways.
18. Fisheries not beyond territorial waters.
19. Development of Minor Minerals.
20. Gas and Gas Works.

## SCHEDULE II

(See sub-section (1) of section 4)

## NATURE OF CONCESSION AGREEMENT

1. *Build Own Operate and Transfer Agreement* : An agreement whereby the developer undertakes to finance, construct, maintain and operate a project and whereby such project is to vest in the developer for a specified period. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in an agreement. The developer is required to transfer the project to the State Government, a Government agency or, as the case may be, a specified Government agency after the expiry of the period of operation.
2. *Build Own Operate and Maintain Agreement* : An agreement whereby a developer undertakes to finance, construct, operate and maintain a project and whereby such project is to vest in the developer for specified period. During the period of operation of the project, he may be permitted to charge user charges as specified in the agreement.
3. *Build and Transfer Agreement* : An agreement whereby a developer undertakes to finance and construct a project. After the completion of the project, the developer is required to transfer the project to the State Government, a Government agency or, as the case may be, a specified Government agency. The developer shall be paid such amount as is fixed in amortization schedule specified in the agreement.
4. *Build Lease and Transfer Agreement* : An agreement whereby a developer undertakes to finance and construct the project. On completion of the project, the developer hands it over to the State Government, a Government agency or, as the case may be, a specified Government agency for operation under a lease agreement for period specified in the agreement after the expiry of which the project stands transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.
5. *Build Transfer and Operate Agreement* : An agreement whereby the developer undertakes to finance and construct the project. On completion of the project, the developer transfers the project to the State Government, a Government agency or, as the case may be, a specified Government agency which permits the developer to operate the project on its behalf for a period specified in the agreement.
6. *Lease Management Agreement* : An agreement whereby the State Government, a Government agency or a specified Government agency leases a project owned by the State Government, the Government agency or, as the case may be, a specified Government agency to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefor.
7. *Management Agreement* : An agreement whereby the State Government, a Government agency or a specified Government agency entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement the State Government, the Government agency or, as the case may be, a specified Government agency may charge the user charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user charges pay the same to the State Government, a Government agency or as the case may be, a specified Government agency.
8. *Rehabilitate Operate and Transfer Agreement* : An agreement whereby an existing project is vested in a person to renovate, operate and maintain for the period specified in the agreement after the expiry of which the project is required to be transferred

to the State Government, a Government agency or, as the case may be, the specified Government agency. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in the agreement.

9. *Rehabilitate Own Operate and Maintain Agreement* :An agreement whereby an existing project is vested in a person to renovate, operate and maintain. The developer shall be permitted to charge user charges as specified in the agreement.

10. *Service Contract Agreement* :An agreement whereby a person undertakes to provide services to the State Government, a Government agency or, a specified Government agency for a specified period. The State Government, a Government agency or, as the case may be, a specified Government agency shall pay him an amount according to the agreed schedule.

11. *Supply Operate and Transfer Agreement* :An agreement whereby a person supplies to the State Government, a Government agency or a specified Government agency the equipments 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 employees of the State Government, the Government agency or, as the case may be, the specified Government agency to operate the project.

12. *Joint Venture Agreement* :An agreement whereby the State Government, a Government agency or a specified Government agency enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.



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# The Gujarat Government Gazette

**EXTRAORDINARY**  
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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

## PART IV

Acts of Gujarat Legislature and Ordinance Promulgated  
and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the Governor on the 31<sup>st</sup> March, 2006 is hereby published for general information.

**S. S. PARMAR,**  
Secretary to the Government of Gujarat,  
Legislative and Parliamentary Affairs Department.

### GUJARAT ACT NO. 18 OF 2006.

(First published, after having received the assent of the Governor in the "Gujarat Government Gazette", on the 31<sup>st</sup> March, 2006).

#### AN ACT

further to amend the Gujarat Infrastructure Development Act, 1999.

It is hereby enacted in the Fifty-seventh Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Infrastructure Development (Amendment) Act, 2006.
- (2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.
2. In the Gujarat Infrastructure Development Act, 1999 ( hereinafter referred to as "the principal Act"), in section 2,-

Short title and commencement.

Amendment of section 2 of Guj. 11 of 1999.



- (1) after clause (a), the following clause shall be inserted, namely :-

“(aa) "concession" means grant of financial assistance or conferment of right on Government property and public assets to a person other than the State Government, Government agency or specified Government agency, as per the terms specified in the concession agreement ;”;

- (2) after clause (j), the following clause shall be inserted, namely :-

“(jj) "proposal" means a document which may include among others, details of the project, feasibility study or any other study, financial viability analysis and structuring of project and such other information as may be decided by the Board ;”;

- (3) clause (q) shall be deleted.

Amendment of  
section 4 of Guj.  
11 of 1999.

3. In the principal Act, in section 4, -

- (1) in sub-section (1), clause (b) shall be deleted ;

- (2) to sub-section (3), the following proviso shall be added, namely :-

“Provided that if the State Government, Government agency or, as the case may be, specified Government agency, is satisfied with the performance of the developer during the concession period, it may by order, extend the concession period on such terms and conditions as may be mutually agreed.”;

- (3) in sub-section (4), for clause (a), the following clause shall be substituted, namely :-

“(a) The State Government may, by notification in *Official Gazette*, add to, amend or omit therefrom any other nature of agreement in Schedule II and on issue of such notification, the Schedule shall be deemed to have been amended accordingly.”.

Amendment  
of section 5  
of Guj. 11 of  
1999

4. In the principal Act, in section 5,-

- (1) in sub-section (1), -

(a) for the words "as may be prescribed", the words "as may be provided by the regulations" shall be substituted ;

(b) for the word "prescribed", the word "provided" shall be substituted ;

(2) in sub-section (2), after the word and figures "section 10", the words, figures and letter "or section 10A" shall be inserted.

5. In the principal Act, in section 6, for clause (b), the following clause shall be substituted, namely: -

Amendment of section 6 of Guj. 11 of 1999.

" (b) financial assistance, either one time or in installments, not exceeding twenty per cent. of the cost of the project ;".

6. In the principal Act, in section 7, for the words " No concession agreement ", the words, figures and letter "Subject to the provisions of section 10A, no concession agreement " shall be substituted.

Amendment of section 7 of Guj. 11 of 1999.

7. In the principal Act, in the section 8,-

Amendment of section 8 of Guj. 11 of 1999.

(1) in sub-section (1), for the words and figures "direct negotiation as provided in section 10", the words, figures and letter "inviting comparative bids as provided in section 10 or by direct negotiation as provided in section 10A" shall be substituted;

(2) in sub-section (2), for the words " competitive bidding ", the words "competitive bidding, inviting comparative bids " shall be substituted.

8. In the principal Act, for section 9, the following section shall be substituted, namely :-

Substitution of section 9 of Guj. 11 of 1999.

Selection of person by competitive public bidding.

" 9. On the acceptance of the recommendation of the Board made under sub-section (2) of section 5, the State Government, the Government agency or, as the case may be, the specified Government agency shall select a developer for the project through competitive public bidding in the manner as may be prescribed."

9. In the principal Act, in section 10,-

Amendment of section 10 of Guj. 11 of 1999.

(1) for the existing marginal note, the following marginal note shall be substituted, namely:-

"Inviting comparative bids.";

(2) for sub-section (1), the following sub-section shall be substituted, namely :-

“(1) Where a proposal for undertaking a project and a proposed concession agreement prepared by a person are submitted to the State Government, the Government agency or a specified Government agency, it may,

(a) consider the proposal and the proposed concession agreement from all aspects (including technical and financial) and if necessary, modify the same in consultation with the person who has submitted the proposal and the proposed concession agreement; and

(b) submit the proposal and the proposed concession agreement to the Board, if –

(i) the cost of the project exceeds the limit provided by regulations under sub-section (1) of section 5, and

(ii) the undertaking of the project does not require financial assistance from the State Government, the Government agency or the specified Government agency.”;

(3) in sub-section (2), for the words "specified in", the words "prescribed under" shall be substituted.

Insertion of new section 10A in Guj. 11 of 1999.

10. After section 10, the following section shall be inserted, namely :-

Selection by direct negotiation.

“10A. (1) Notwithstanding anything contained in sections 9 and 10, a person other than the State Government, Government agency or specified Government agency, may submit a proposal and proposed concession agreement for direct negotiation to the State Government, Government agency or the specified Government agency for any of the project specified in Schedule III.

(2) If the State Government, Government agency, or, as the case may be, the specified Government agency is satisfied that the project is of a nature specified in Schedule III, it may,-

(a) consider the proposal from all aspects (including technical and financial) and if necessary modify the same in consultation with the person who has submitted the proposal and the proposed concession agreement, and

(b) submit the proposal and the proposed concession agreement to the Board, if the cost of the project exceeds the limit provided by the regulations.

- (3) On acceptance of the recommendation of the Board made under sub-section (2) of section 5, the State Government, Government agency or, as the case may be, the specified Government agency may enter into a concession agreement with a person who has submitted the proposal under sub-section (1)."

11. In the principal Act, in section 16,-

- (1) for sub-section (1), the following sub-section shall be substituted, namely :-

"(1) The State Government may, by notification in the *Official Gazette*, add to, amend or omit therefrom any project in Schedule I or Schedule III which falls within the executive power of the State and on issue of such notification, the Schedule I or, as the case may be, Schedule III shall be deemed to have been amended accordingly."

- (2) for the marginal note, the following shall be substituted, namely :-

" Power to amend Schedules I and III. "

Amendment of  
section 16 of Guj.  
11 of 1999.

12. In the principal Act, in section 37, in sub-section (2) -

- (1) clauses (a) and (b) shall be deleted ;  
(2) for clause (c), the following clauses shall be substituted, namely :-

"(c) the matters relating to competitive public bidding, inviting comparative bids and direct negotiation under sub-section (2) of section 8;

(cc) the manner in which the developer for the project shall be selected under section 9;"

Amendment of  
section 37 of Guj.  
11 of 1999.

Amendment of  
section 38 of Guj.  
11 of 1999.

13. In the principal Act, in section 38, in sub-section (2), before clause (a), the following clause shall be inserted, namely :-

" (aa) the amount of cost of a project exceeding which a proposal shall be submitted to the Board under sub-section (1) of section 5 and different amounts of costs for different nature of projects; "

Insertion of  
new Schedule  
III in Guj. 11  
of 1999.

14. In the principal Act, after Schedule II, the following Schedule shall be added, namely:-

### " SCHEDULE III

( See sub-section (1) of section 10A )

#### PROJECTS OF SPECIAL NATURE

1. A project which is innovative or involves proprietary technology or franchise which is exclusively available with the person globally.
2. A project wherein competitive public bidding as provided in section 9 has failed to select a developer.
3. A project to provide social services to the people including community services and public utilities.
4. An infrastructure project which is an essential link for another bigger infrastructure project owned or operated by the same person. "