

Fifteenth Kerala Legislative Assembly  
Bill No.129

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**THE KERALA MARITIME BOARD (AMENDMENT)  
BILL, 2022**

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**THE KERALA MARITIME BOARD (AMENDMENT)  
BILL, 2022**

**A**

**BILL**

*to amend the Kerala Maritime Board Act, 2017.*

*Preamble.*— WHEREAS, it is expedient to amend the Kerala Maritime Board Act, 2017 (Act 16 of 2017) for the purposes hereinafter appearing;

BE it enacted in the Seventy-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Maritime Board (Amendment) Act, 2022.

(2) It shall be deemed to have come into force on the 19<sup>th</sup> day of January, 2022.

2. *Amendment of section 3.*— In section 3 of the Kerala Maritime Board Act, 2017 (Act 16 of 2017) (hereinafter referred to the principal Act),—

(1) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Headquarters of the Board shall be at Thiruvananthapuram and shall have a Regional office at Kochi.”.

(2) in sub-section (4),—

(a) for item (i), the following item shall be substituted, namely:—

“(i) the chairman shall be nominated by the state Government and he shall be a person who is or has been an officer of All India Service or a person having administrative experience as Executive Chairperson/ Managing Director/ Department Head in Government or public sector or major ports or Maritime Boards;”;

(b) in item (ii), for the words "not below the rank of Principal Secretary", the words "not below the rank of Secretary" shall be substituted;

(c) after item (ix), the following item shall be added, namely:—

"(x) Chief Executive Officer : Member Secretary."

(3) in sub-section (5), for the word "five" the word "three" shall be substituted.

3. *Amendment of section 8.*—In section 8 of the principal Act, for the words and symbol "The Board may, with the previous approval of the Government" the words and symbol " The Government may, by its own motion or the Board may, with the previous approval of the Government," shall be substituted.

4. *Amendment of section 9.*—In sub-section (2) of section 9 of the principal Act, the following sentence shall be added at the end, namely:—

" He shall also ensure that the Board functions according to the interests of the Government and strictly adheres to all laws, rules and procedures, including financial provisions."

5. *Amendment of section 13.*—In sub-section (1) of section 13 of the principal Act, for the word "notification" the word "order" shall be substituted.

6. *Amendment of section 14.*—In the principal Act, after sub-section (1) of section 14 , the following sub-section shall be inserted, namely: —

"(1a) It shall be the duty of the Controller of Finance and Accounts to ensure financial integrity in all transactions of the Board, in compliance with existing laws, rules and the directions issued by the Government from time to time."

7. *Substitution of new section for section 17.*—For section 17 of the principal Act, the following section shall be substituted, namely:—

"17. *Special Provisions regarding employees of the Port Directorate and offices of the Ports.*— (1) Notwithstanding anything contained in this Act, the officers and other employees who worked in the Directorate of Ports and Port offices on and till the appointed day, shall continue as Government employees as such, with all the rights that would have been available to them if the Board had not been constituted and such posts may be continued as a vanishing category on their superannuation;

(2) Nothing in sub-section (1) shall prevent such officers and employees from becoming employees of the Board by giving option, as may be prescribed.

(3) The Government shall have the right to utilise the services of employees who continue as Government employees under sub-section (1) in such manner that does not infringe their rights as specified in that section:

Provided that the supervision and power of disciplinary action over the Government employees continuing as such shall vest in the Board.

(4) On the superannuation of the employees who continue as Government employees as per sub-section (1), the said posts shall become the posts in the Board and appointments in such posts shall be made as per the regulations of the Board.

(5) Those who have become employees of the Board on the appointed day pursuant to the commencement of this Act may continue to be Government employees without any change, loss of seniority or any other adverse effect on the terms and conditions of service, consequent to the Kerala Maritime Board (Amendment) Ordinance, 2022. If any dispute arises in the return of employees, who became the employees of the Board in between this Act and the Kerala Maritime Board (Amendment) Ordinance, 2022, as Government employees, the Government may take appropriate decision in it and the decision of the Government shall be final. ”.

8. *Omission of section 18.*— Section 18 of the principal Act shall be omitted.

9. *Amendment of section 90.*—In section 90 of the principal Act,—

(1) in sub-section (1),—

(a) in clause(a),for the words " on account of grave emergency", the words "for reasons stated in the order" shall be substituted ;

(b) in clause (b), for the words and symbols “supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification”, the words “appoint an Administrator for discharging the functions of the Board for the period as may be specified in the notification” shall be substituted ;

(c) the proviso after clause (b) shall be omitted.

(2) in sub-section (2),—

(a) in clause (b), for the words, “such person or persons as the Government may direct”, the words “the Administrator appointed by the Government” shall be substituted;

(b) in clause (c), for the word, “Government” the words “Administrator appointed under sub-section (1)” shall be substituted.

(3) in sub-section (3),—

(a) in clause (a) the words and symbol “not exceeding six months,” shall be omitted;

(b) in the proviso to clause (c), for the word “this” the word “this” shall be substituted.

10. *Amendment of section 91.*—In section 91 of the principal Act,—

(1) in sub-section (1),

(a) for the words “directions of policy”, the words “directions regarding important matters” shall be substituted;

(b) the proviso to sub-section (1) shall be omitted.

(2) in sub-section (2), for the words “whether a question is one of policy”, the words “whether it is important” shall be substituted.

11. *Amendment of section 92.*—In section 92 of the principal Act, for the words and symbol “with the Ministry of Shipping, Government of India” the words and symbol “with the State Government and the Ministry of Shipping, Government of India” shall be substituted.

12. *Validation.*—Notwithstanding the cesser of operation of the Kerala Maritime Board (Amendment) Ordinance, 2022 (9 of 2022) (hereinafter referred to as the said Ordinance).—

(a) anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the provisions of the principal Act as amended by this Act;

(b) anything done or any action taken after the cesser of operation of the said Ordinance and before the publication of this Act in the Gazette, which could have been done or taken under the principal Act as amended by the said Ordinance had it not been ceased to operate, shall be deemed to have been done or taken under the principal Act as amended by this Act.

### STATEMENT OF OBJECTS AND REASONS

The Kerala Maritime Board was constituted as per the Kerala Maritime Board Act, 2017 passed by the State Legislative Assembly and issued notification vesting the assets and liabilities of the Directorate of Ports, Kerala State Maritime Development Corporation and the Kerala Maritime Institute in the Maritime Board. The notification also provided for the conversion of employees of the Directorate of Ports and other sub-offices as employees of the Board.

2. Government intends to shift the Headquarters of Board to Thiruvananthapuram for the administrative convenience of the Board, to establish a Regional Office at Kochi, to redetermine the Chairman's qualifications, to fix the term of office of the Chairman, Vice-Chairman and nominated members as three years, to enhance the efficiency of the Board and to make the Chief Executive Officer as Member Secretary of the Board. It is also to be ensured that rules, regulations and other directions of the Government are keenly followed by the Board. In the backdrop that the employees approached the Hon'ble Kerala Administrative Tribunal raising apprehension that employees who were transferred to the Board shall cease to be Government employees and Hon'ble Tribunal directed the Government to take decision after considering the demands of the representatives of the petitioners, Government accordingly decided to allow the employees of the Directorate of Ports and Port offices to continue as Government employees. Moreover, the Government also decided to appoint an administrator to oversee the administrative and financial affairs of the board. The Government have decided to bring in amendments to the Kerala Maritime Board Act, 2017 for the above said matters.

3. As the Legislative Assembly of the state of Kerala was not in session and the said proposals had to be given effect to immediately, the Kerala Maritime Board (Amendment) Ordinance, 2022 was promulgated by the Governor of Kerala on the 17th day of January, 2022 and the same was published as Ordinance No.2 of 2022 in the Kerala Gazette Extraordinary No.234 dated 19th day of January, 2022.

4. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in and passed by the Legislative Assembly of the State of Kerala, during its session which commenced on the 18th day of February, 2022 and ended on the 18th day of March, 2022.

5. As the provisions of the said Ordinance had to be kept alive and the Kerala Legislative Assembly was not in session, the Governor of Kerala has promulgated the Kerala Maritime Board (Amendment) Ordinance, 2022 on the 31st day of March, 2022 and the same was published as Ordinance No.9 of 2022 in the Kerala Gazette Extraordinary No.1099 dated 31st day of March, 2022.

6. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 114 of the Fifteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on the 27th day of June, 2022 and ended on the 21st day of July, 2022.

7. As the provisions of the said Ordinance ceased its operation on the 8th day of August, 2022 and since the provisions of the said Ordinance are to be kept alive, this Bill is to bring in an Act of the State Legislature validating all the things done and all the actions taken under the principal Act as amended by the said Ordinance after the expiry of the said Ordinance and till the date on which the Bill is passed and published in the Gazette as an Act.

#### FINANCIAL MEMORANDUM

The employees of the Port Department are currently redeployed to the Kerala Maritime Board. At present, the salaries, allowances, other benefits and pension of the employees of the Maritime Board are disbursed from the consolidated fund of the Government. Therefore, even if they opted to the Kerala Maritime Board, there would be no additional burden on the Government exchequer. The Board has to pay the salary and pensionary benefits of the employees who had become the employees of the Kerala Maritime Board by giving option.



2. Moreover, since the Board uses the service of officers who do not become the employees of the Kerala Maritime Board, the amount spent by the Government as salary item and since the Government pays pension to the employees who retire after joining the board, deeming the service of the above employees to be on deputation, the Government may realise from the Kerala Maritime Board a combined rate (maximum 25% of the salary scale) of pension contribution and leave salary contributions as per rule 146 of part I of the Kerala Service Rules.

3. Therefore, the implementation of the above amendments does not impose any additional financial burden on the Government.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (2) of section 17 of the Principal Act proposed to be amended by clause 7 of the Bill, seeks to empower the Government to make rules for such officers and employees working in the Directorate of Ports and Port offices to become employees of the Board by giving option.

2. The matters in respect of which rules may be made, or orders or notifications may be issued, are matters of procedure and are of routine or administrative in nature. Further, the rules, notifications and orders so made are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore of a normal character.

AHAMMAD DEVARKOVIL

EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA  
MARITIME BOARD ACT, 2017  
(Act 16 OF 2017)

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3. *Establishment of Kerala Maritime Board.*—(1) As soon as may be after the commencement of this Act, the Government may, by notification, establish a Board by name the Kerala Maritime Board.

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(3) The head office of the Board shall be at Kochi.

(4) The Board shall consist of the following members, namely:—

(i) The Chairman to be nominated by the State Government, who shall be a person having experience in shipping and maritime law.

(ii) Vice Chairman to be nominated and appointed by the State Government and shall be a person who is or has been an officer of the All India Service not below the rank of Principal Secretary to the Government of Kerala;

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(ix) Four Members nominated by  
              the State Government                 ..                 Members

(5) The Maximum term of office of the nominated Chairman, Vice Chairman, members shall be five years.

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(8) *Delegation of powers.*— The Board may, with the previous approval of the Government, direct that such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction, may also be exercised or performed by the Chief Executive Officer subject to such conditions and restrictions as may be specified in such direction.

(9) *Duties of the Chairman, the Vice Chairman and the Chief Executive Officer.*—

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(2) The Chief Executive Officer shall, as soon as possible, but not later than fifteen days of each meeting of the Board, transmit to the Government and to all members of the Board a copy of the minutes of such meeting and shall furnish to the Government such reports, returns, documents or, other information as it may, from time to time, call for.

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13. *Chief Executive Officer of the Board.*—(1) The Government may, by notification, appoint the Chief Executive Officer of the Board.

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14. *Controller of Finance and Accounts, officers and employees of the Board.*—(1) The Board shall, with the previous sanction of the Government in writing, appoint a person possessing the qualification such as may be prescribed to be the Controller of Finance and Accounts. The Government may sanction such appointment on such terms and conditions as it thinks fit.

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17. *Transfer of employees of the port offices and the Directorate of Ports to the Board.*— Save as otherwise provided in this Act, the officers and other employees of the port offices and of the Directorate of Ports shall, on and from the appointed day, become the officers and employees of the Board and shall hold office by the same tenure and upon the same remuneration and terms and conditions of service, and with the same right and privileges as to pension, gratuity and other matters as would have been admissible to them, if the same had not been transferred to the Board, and shall continue to do so unless and until their employment under the Board is duly terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board by regulations.

18. *Transfer of accumulation in provident fund and other like funds.*—The sums standing to the credit of the provident fund accounts and to the superannuation funds and other like funds, if any, of the persons referred to in section 17 shall be transferred to the Board by the port offices or the Directorate of Ports and the liability in respect of the said funds, shall be the liability of the Board.

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90. *Power of Government to supersede the Board.*—(1) If, at any time, the Government is of opinion,—

(a) that on account of grave emergency, the Board is unable to perform the duties imposed on it by or under the provisions of this Act or any other law; or

(b) that the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the ports has deteriorated considerably, the Government may, by notification, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of the notification under sub-section (1) superseding the Board,—

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(b) all the powers and duties which may, by or under the provisions of this Act, or of any other law, be exercised or performed by or on behalf of the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), be exercised and performed by such person or persons as the Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or (c) of sub-section (3), vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may,—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

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(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed to have disqualified for such appointment merely because they were members of the Board when the board was superseded:

Provided that the Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

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91. *Directions by Government.*—(1) The Government may from time to time issue to the Board such general or special directions of policy as they may deem necessary or expedient for the purposes of carrying out the objects of this Act and the Board shall be bound to follow and act upon such directions:

Provided that the Board shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Government whether a question is one of policy or not shall be final.

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92. *Declaring of port limits.*—The port limits for the non-major ports proposed to be developed may be prepared in consultation with the Ministry of Shipping, Government of India so as to ensure co-ordinated and sustainable development of port facilities with waterways and user facilities.

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