

Fifteenth Kerala Legislative Assembly

Bill No. 135

**THE KERALA PUBLIC ENTERPRISES (SELECTION
AND RECRUITMENT) BOARD BILL, 2022**

©

Kerala Legislature Secretariat

2022

KERALA NIYAMASABHA PRINTING PRESS.

Fifteenth Kerala Legislative Assembly

Bill No. 135

**THE KERALA PUBLIC ENTERPRISES (SELECTION AND
RECRUITMENT) BOARD BILL, 2022**

Fifteenth Kerala Legislative Assembly
Bill No. 135

[Translation in English of “2022-ലെ കേരള പബ്ലിക് എന്റർപ്രൈസസ് (സെലക്ഷനും റിക്രൂട്ട്മെന്റും) ബോർഡ് ബിൽ” published under the authority of the Governor.]

**THE KERALA PUBLIC ENTERPRISES (SELECTION
AND RECRUITMENT) BOARD BILL, 2022**

A

BILL

to provide for the constitution of an autonomous Kerala Public Enterprises Selection and Recruitment Board to prepare select list of candidates for appointment in various posts in Public Sector Undertakings under the administrative control of Industries and Commerce Department of Government of Kerala other than the posts for which the appointment are to be made through the Kerala Public Service Commission and to address matters connected therewith or incidental thereto and to prepare select list of candidates for appointment in various posts in Public Sector Undertakings under the administrative control of Departments other than the Industries and Commerce Department of Government of Kerala, other than the posts for which appointment are to be made through the Kerala Public Service Commission, on request from the departments concerned.

Preamble.—WHEREAS, it is expedient to constitute an autonomous Kerala Public Enterprises Selection and Recruitment Board to prepare select list of candidates for appointment in various posts in Public Sector Undertakings under the administrative control of Industries and Commerce Department of Government of Kerala other than the posts for which the appointment are to be made through the Kerala Public Service Commission and to address matters connected therewith or incidental thereto and to prepare select list of candidates for appointment in various posts in Public

Sector Undertakings under the administrative control of Departments other than the Industries and Commerce Department of Government of Kerala, other than the posts for which appointment are to be made through the Kerala Public Service Commission, on request from the departments concerned;

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

CHAPTER 1

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kerala Public Enterprises (Selection and Recruitment) Board Act, 2022.

(2) It shall be deemed to have come into force on the 3rd day of June, 2022.

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

(a) “Board” means the Kerala Public Enterprises Selection and Recruitment Board constituted as per section 3 of the Act;

(b) “Board Fund” means the Board Fund maintained under section 10 of the Act;

(c) “Chairperson” means Chairperson of the Board;

(d) “Gazette” means Kerala Gazette;

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

(f) “member” means a member of the Board and includes the Chairperson;

(g) “notification” means a notification published in the Kerala Gazette;

(h) “other public enterprises” means a company or any corporate body or any statutory body which is not under the administrative control of the Industries and Commerce Department in which the Government have majority stake;

(i) “prescribed” means prescribed by rules under this Act;

(j) “public enterprises” means a company or any corporate body or any statutory body under the administrative control of the Industries and Commerce Department in which the Government have majority stake;

(k) “Secretary” means a Secretary of the Board.

CHAPTER 2

CONSTITUTION OF THE BOARD

3. *Constitution of the Board.*—(1) The Government shall, as soon as may be, after the commencement of this Act, by notification in the Gazette, constitute a Board to be known as the 'Kerala Public Enterprises Selection and Recruitment Board' to exercise the powers conferred on it and to perform the functions under this Act.

(2) The Board shall be an independent and autonomous body corporate in the name aforesaid, having perpetual succession and common seal and shall in the said name, sue and be sued.

(3) The Board shall consist of a Chairperson and four members appointed by the Government. Among the members, one shall be a woman and one shall be a person belonging to Scheduled Caste or Scheduled Tribe.

(4) The Chairperson of the Board shall be a person who is or has been holding a post not below the rank of Principal Secretary to Government and have experience as Board Member of Public Sector Undertakings or a person having 5 years' experience as Managing Director in Class A Public Sector Undertaking under the Government of India or Government of Kerala.

(5) The members of the Board shall be persons having experience in the area of,—

(i) General Management in Technical or Marketing or Human Resources;

(ii) Finance or Accounts or Cost Accounts;

(iii) Law; and

(iv) Administration.

(6) There shall not be more than one member in the Board at a time from the particular area specified in sub-section (5).

(7) The Government may appoint a person as Secretary to the Board, who is or has been holding the post of or equivalent to that of Special Secretary to Government or equivalent to that of Managing Director, with minimum of three years' experience, in a Public Sector Undertaking under category A classification at any point of time. He shall not be above the age of sixty two years. He shall exercise such powers and discharge such functions under this Act and as authorised by the Board.

(8) The Headquarters of the Board shall be at Thiruvananthapuram.

4. *Disqualification for membership.*—Any person shall be disqualified to be a member of the Board, if he,—

(i) is of unsound mind; or

(ii) is an undischarged insolvent; or

(iii) is an office-bearer or an employee of a Local Self Government Institution or a Public Sector Undertaking; or

(iv) is a Member of the Parliament or of the Legislature of any State or of a Local Self Government Institution; or

(v) has been convicted by a criminal court for any offence including moral turpitude or charge of corruption; or

(vi) has been removed from holding any office in pursuance of a court order.

5. *Term of office and conditions of service of the Chairperson and Members.*— (1) The Chairperson and other members may continue in office till the completion of a period of four years from the date on which they assume office, or till they attain sixty five years of age, whichever occurs earlier.

(2) The Chairperson or member of the Board may, at any time, resign his office by giving a notice in writing to the Government under his hand.

(3) A vacancy occurred under sub-section (2) or otherwise shall be filled by fresh appointment.

(4) The term of office of a member appointed to fill a temporary vacancy shall be only for the period during which that member in whose vacancy he was appointed, would have held office.

(5) The Government may, by order, remove the Chairperson or any member from office, if that person,—

(i) becomes an undischarged insolvent; or

(ii) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude, corruption or criminal offences; or

(iii) becomes unsound mind and stands so declared by a competent court; or

(iv) refuses to discharge of duties as a member; or

(v) does not attend three consecutive meetings of the Board without permission of the Board; or

(vi) has, in the opinion of the Government, so abused his official position as to render his continuance in that post detrimental to the interest of the Board or public interest:

Provided that no person shall be removed under this sub-section unless the person has been given a reasonable opportunity of being heard.

(6) A person once appointed as Chairperson or member is not eligible for re-appointment.

(7) The Chairperson and members shall be full time officers and shall be eligible to such salary and allowances as may be prescribed.

6. *Appointment of officers and employees of the Board.*—(1) The Government may, by order, create such number of various categories of posts for the proper management of the Board and prescribe their qualifications, method of appointment, pay and allowances and other terms and conditions of service.

(2) Appointment of officers and employees may be made by the Government through deputation from Government Departments or through direct recruitments by the Board after the Board is constituted and terms of appointment are finalised by the Government.

7. *Vacancies etc. not to invalidate proceedings of the Board.*—No act or proceeding of the Board shall become invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Board.

8. *Meeting of the Board.*—(1) The Board shall meet whenever necessary, at such place and time, as the Chairperson may deem fit.

(2) The meetings of the Board shall be convened by the Secretary of the Board on the recommendation of the Chairperson.

(3) The meetings of the Board shall be presided over by the Chairperson and in his absence by a member chosen by the members present from among themselves.

(4) The quorum for a meeting shall be three including the Chairperson.

(5) Any matter coming up before a meeting of the Board shall be decided by a majority of the members present and voting at the meeting and in case of equality of votes, the Chairperson or the member who is presiding over the meeting, shall have a casting vote.

(6) The Secretary shall keep the minutes of the proceedings of each meeting in a book maintained for the purpose, which shall be signed by the Chairperson or the person presiding and all the members present at such meeting.

CHAPTER 3

FUNCTIONS AND POWERS OF THE BOARD

9. *Functions and powers of the Board.*—(1) The Board shall have the following functions and powers, namely:—

(i) Notwithstanding anything contained in any other existing Acts or rules or regulations or orders or judgments or decree in respect of selection of candidates to the posts in public enterprises, the Board shall prepare select list for

appointment of candidates to various posts other than appointment made through the Kerala Public Service Commission, as per the provisions of this Act and by adhering to the norms of reservation prescribed in the Kerala State and Subordinate Service Rules, 1958, as amended from time to time, treating each such enterprise as one unit;

(ii) Notwithstanding anything contained in any other existing Acts or rules or regulations or orders or judgments or decree in respect of selection of candidates to the posts in other public enterprises, the Board shall prepare select list for appointment of candidates to various posts other than appointment made through the Kerala Public Service Commission, on request and entrusted to the Board, by way of a notification, by the departments concerned, as per the provisions of this Act and by adhering to the norms of reservation prescribed in the Kerala State and Subordinate Service Rules, 1958, as amended from time to time, treating each such enterprise as one unit;

(iii) Notwithstanding anything contained in any other existing Acts or rules or regulations or orders or judgments or decree with respect to the selection of the post of Managing Directors or Head of the Public Sector Undertakings under the administrative control of Industries and Commerce Department, the Board shall recommend suitable candidates to the Government for appointment as per the provisions of this Act and the Government shall appoint the Managing Directors or Head of the Public Sector Undertakings after obtaining vigilance clearance and approval of the Council of Ministers;

(iv) As a part of the selection process, the Board shall invite applications, verify the credentials, conduct written examinations or online examinations, as deem fit, including the preparation of question papers, supervision of examinations, answer sheet valuation and also conduct group discussion and interview of candidates, as the case may be, and notify select list for appointment by the public enterprises and other public enterprises within a short time frame;

(v) The Board shall be responsible for the proper conduct of the examinations to maintain secrecy in the preparation of question paper, valuation, preparation of list of candidates to be interviewed and preparation of final select list and for the safe custody of records;

(vi) The Board may avoid written examination or online examination, if the number of candidates applied for the post is below fifty, and in such cases selection may be made on the basis of interview or group discussion or both as the case may be, as per the decision of the Board;

(vii) The Board shall ensure that an applicant who applies for more than one post in a public enterprise or posts in more than one public enterprise shall not be denied the right to appear in more than one examination:

Provided that, if the candidate applies for examination to various posts being conducted by the Board and in the circumstance of conducting examinations to more than one post by the Board on the same day, the right referred in item (vii) of sub-section (1) of section 9 shall not be available to such candidate;

(viii) The Board shall strictly adhere to the reservation norms adopted by the Kerala Public Service Commission.

(2) The Board shall maintain safe custody of the records pertaining to the examinations and each activity in the selection process in electronic mode also after fixing a retention period.

(3) The Board after conducting written or online examinations, as the case may be, fix a cut off level mark for the written or online examination for pursuance of further steps in the selection process.

(4) The Board shall, immediately after the selection process is complete, notify the list of selected candidates for facilitating issue of appointment orders by the public enterprises and other public enterprises.

(5) The Board shall frame the procedures for invitation of applications giving wide coverage for conducting written or online examination as the case may be, for preparation of list of candidates for further selection process, for conducting the interview and for notification of the list of selected candidates for appointment by the public enterprises and other public enterprises which had requested for recruitment of candidates.

(6) The Board may issue general guidelines to the public enterprises under the Industries and Commerce Department incidental to the functions of the Board including those necessary for identifying vacant posts for selection by the Board. The information sought for may include information on Government approval for the vacant posts, pay scales, reports of manpower related studies carried out by the public enterprise, job descriptions, job specifications, age limit, whether the post is regular in nature or it is for a specific project only, whether the post is operative or not.

(7) The Board may also seek information relating to approved special rules or recruitment rules for posts that are mandatorily referred to the Board, details of agreements with employees regarding internal promotions, resolution of the Board of Directors of the public enterprise and other public enterprise concerned referring the matter to the Board so on and so forth.

CHAPTER 4

FINANCE

10. *Fund of the Board.*—(1) The Board shall maintain a fund called 'Board Fund' to which shall be credited grants and loans received from the Government public enterprises and other public enterprises and from any other source, application fee, all fee and money received from the public enterprises and other public enterprises towards services rendered by the Board, deposits, remittances, funds and other miscellaneous receipts received in connection with the affairs of Board:

Provided that separate accounts shall be maintained for specific purposes.

(2) All money in the Board received from Government shall be kept in the Treasury accounts as per the standing instructions. However, own funds may be kept in banks or invested in such manner as the Board may decide with the approval of the Government.

(3) The custody of the Board fund, the payment of money therein, the withdrawal of money therefrom and all other ancillary matters shall be regulated by the orders issued by the Board with the approval of the Government.

(4) The Board fund shall be used towards meeting the expenses of the Board including expenses incurred in the exercise of its powers and discharge of its functions under this Act.

11. *Budget.*—The Board shall prepare in each financial year a budget containing anticipated income and expenditure for the next financial year and shall submit to the Government within two months from the commencement of each financial year, such number of copies of the budget so prepared, as may be required by the Government.

12. *Accounts and Audit.*—(1) The Board shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such form, as may be prescribed, in consultation with the Accountant General.

(2) The accounts of the Board shall be audited annually by the Accountant General and expenditure incurred in respect of such concurrent audit, internal audit and statutory audit, shall be payable by the Board.

(3) The Accountant General and any person appointed by him in connection with the audit of accounts of the Board under this Act shall have the same rights and privileges as the Accountant General generally has in connection with the audit of Government accounts and, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any office of the Board. The accounts duly approved by the Board shall be referred to the Accountant General for audit within three months after completion of each financial year.

(4) The accounts of the Board, as certified by the Accountant General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Government by the Board and the Government shall cause the report to be laid before the Legislative Assembly within a period of six months from the date of completion of each financial year.

13. *Annual Report.*—The Board shall, for each financial year, prepare annual report containing complete information of its activities in the previous financial year in such form and time, as may be prescribed, and shall also forward a copy of it directly to the Government within three months after completion of each financial year and the Government shall cause the report to be laid before the Legislative Assembly within a period of six months from the date of completion of each financial year.

CHAPTER 5 MISCELLANEOUS

14. *Chairperson, Members and Employees of the Board to be public servants.*—The Chairperson, members and employees of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

15. *Protection of action taken in good faith.*—No suit, or prosecution or other legal proceeding shall lie against the Board, the Chairperson or any member or Secretary or any other employee of the Board acting under the direction of the Board in respect of anything which is done or purported to be done in good faith under this Act.

16. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette, make provisions not inconsistent with the provisions of this Act which appear to it to be necessary or expedient, for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

17. *Power to make regulations.*—The Board may with prior approval of the Government issue necessary regulations for the proper conduct of examination and other activities in the selection process.

18. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the procedure for the proper conduct of examination and selection process;

(ii) name and nature of various posts for which the recruitment are made;

(iii) salaries and allowances payable to the Chairperson and members and salaries and allowances payable to officers and other employees and other terms and conditions of their service as per procedures laid down by the Government;

(iv) regarding reservation to be followed for preparation of select lists of various posts;

(v) the form in which the annual statement of accounts shall be prepared;

(vi) form in which, and the time at which the annual report shall be prepared;

(vii) any other matter which is to be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. *Validation.*—Notwithstanding the cessation of operation of the Kerala Public Enterprises Selection and Recruitment Board Ordinance, 2022 (14 of 2022) (hereinafter referred to as the said Ordinance) on the 8th day of August, 2022,—

(a) anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act;

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

STATEMENT OF OBJECTS AND REASONS

At present the recruitments to make appointments to the various posts in the Public Sector Undertakings under the administrative control of Industries and Commerce Department are done through three channels. Posts like Chief Executive Officer / Managing Director are being selected through Kerala Public Enterprises Selection Board. Other posts are being recruited through Kerala Public Service Commission and the Public Sector Undertakings themselves depending on selection procedures in accordance with the guidelines issued by the Government from time to time. Appointments to the various posts in Public Sector Undertakings under the administrative control of the Department of Industries and Commerce, which are not under the purview of the Kerala Public Service Commission and the Kerala Public Enterprises Selection Board, for appointment in various posts in Public Sector Undertakings under the administrative control of Departments other than the Industries and Commerce Department of Government of Kerala, to the posts for which appointment are not to be made through the Kerala Public Service Commission, on request from the departments concerned. It is observed that a fool proof mechanism to be brought to introduce cent percent transparency in the matter. Public Sector Restructuring and Internal Audit Board (RIAB) has recommended for the formation of a new Board Viz. Kerala Public

Enterprises Selection and Recruitment Board so as to make recruitments in a transparent and uniform manner. Hence, the Government have decided to constitute the Kerala Public Enterprises Selection and Recruitment Board for the said purpose.

For the above said purpose, the Governor had promulgated the Kerala Public Enterprises (Selection and Recruitment) Board Ordinance, 2022 and the same had been published as Ordinance No. 14 of 2022 in the Kerala Gazette Extraordinary No.1838 dated 3rd June, 2022.

As the said Ordinance had ceased to operate on the 8th day of August, 2022, the Government have decided to bring an Act of the State Legislature to keep alive the provisions of the said Ordinance and for giving validation to anything done or any action taken under the principal Act as amended by the said Ordinance after the cessation of operation of the said Ordinance and before the date of publication of this Bill as an Act in the Gazette.

The Bill intended to achieve the above object.

FINANCIAL MEMORANDUM

The initial expenditure for the constitution of the Kerala Public Enterprises Selection and Recruitment Board constituted as per clause 3 of the Bill is Rupees two crores. The said amount shall be met by the Government from the budget allocation to the Public Sector Restructuring and Internal Audit Board (RIAB) during the year 2022-2023. Consequential expenses shall be met by the Board itself.

The Bill, if enacted and brought into operation, a non-recurring expenditure to the tune of Rs.2,00,00,000 (Rupees Two Crores only) is expected from the Consolidated Fund of State. There is no recurring expenditure in this item.

MEMORANDUM REGARDING DELEGATED LEGISLATION

(1) Sub-clause (1) of clause 3 of the Bill seeks to empower the Government to constitute a board named as 'Kerala Public Enterprises Selection and Recruitment Board' by notification, after the commencement of this Act for the purpose of exercising the powers and performing the functions conferred under this Act.

(2) Sub-clause (7) of clause 5 of the Bill, seeks to empower the Government to prescribe the salary and allowances of the Chairperson and members of the Board.

(3) Sub-clause (1) of clause 6 of the Bill, seeks to empower the Government to prescribe qualifications, method of appointment, pay and allowances and other terms and conditions of service of categories of posts created by Government.

(4) Sub-clause (1) of clause 12 of the Bill, seeks to empower the Government to prescribe form to maintain proper accounts and other relevant records and prepare annual statement of accounts, in consultation with the Accountant General.

(5) Clause 13 of the Bill, seeks to empower the Government to prescribe the form and time to prepare the annual report containing complete information of its activities in the previous financial year.

(6) Sub-clause (1) of clause 16 of the Bill seeks to empower the Government to make provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty by an Order published in the Gazette if any difficulty arises in giving effect to the provisions of this Act.

(7) Clause 17 of the Bill, seeks to empower the Board to issue necessary regulations for the proper conduct of examination and other activities in the selection process, with the approval of the Government.

(8) Sub-clause (1) of clause 18 of the Bill seeks to empower the Government to make rules either retrospectively or prospectively for the purpose of carrying into effect the purposes of this Act.

(9) The matters in respect of which rules may be made or notification or orders may be issued are matters of procedure and are of routine and administrative in nature. Further, the rules, are subject to the scrutiny by the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

P. RAJEEVE