

**Gujarat Infrastructure Development (Amendment) Act,
2006**

' of

[15th May, 2006]

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**Gujarat Infrastructure Development (Amendment) Act,
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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. Short title and commencement :-

(1) This Act may be called the Gujarat Infra-structure Development (Amendment) Act, 2006.

(2) It shall come into force on such date¹ as the State Government may, by notification in the Official Gazette, appoint. [STATEMENT OF OBJECTS AND REASONS The State Government, Government agency or a specified Government agency have been empowered to

provide to a person, the assistance in the form of subsidy not exceeding fifteen per cent, of the cost of project. Instead of granting subsidy, it is proposed to grant the concession and therefore the definition of 'subsidy' is proposed to be deleted and new definitions of 'concession' and 'proposal' are proposed to be inserted in Sec. 2 of the Gujarat Infrastructure Development Act, 1999. Sub-section (3) of Sec. 4 provides that no concession agreement shall provide for transfer of a project by a developer later than thirty-five years from the date of agreement. It is proposed in the proviso to be added in sub-sec. (3) that where the performance of the developer is satisfactory during the concession period, such concession period may be extended on such terms and conditions as may be mutually agreed upon by both the parties. In order to enable the State Government to add to, amend or omit the nature of agreement in Schedule II and to add, amend or omit the project in Schedules I and III, it is proposed to amend clause (a) of sub-sec. (4) of Sec. 4 and sub-sec. (1) of Sec. 16 of the said Act. The existing sub-sec. (1) of Sec. 5 empowers the State Government to prescribe by rules, the amount of cost of project exceeding which the proposal shall be submitted to the Board. It is proposed to amend sub-sec. (1) of Sec. 5 so as to empower the Board to provide by regulations the amount of cost of project exceeding which the proposal shall be submitted to the Board. Section 9 provides for the procedure for selection of the developer of the project through the competitive public bidding. It is proposed to substitute Sec. 9 with a view to empower the State Government to prescribe by rules, the manner in which the State Government, the Government agency or the specified Government agency may select the developer for the project through the competitive public bidding. The proposed amendment in sub-sec. (1) of Sec. 10 empowers the person to submit the proposal for undertaking a project and the concession agreement irrespective of whether any such proposal has been prepared by the State Government, a Government agency or a specified Government agency. The proposed new Sec. 10-A empowers the State Government, Government agency and the specified Government agency to consider the proposal and proposed concession agreement for the projects specified in Schedule III with a view to attract the investor for submission of innovative proposal, proposal for social services linkage proposals and the projects for which the competitive bidding has failed to select a developer. Amendment in Secs. 37 and 38 are consequential to the amendment suggested in

Sees. 4, 5 and 9. The proposed new Schedule III specify the projects of special nature for which the selection by direct negotiation is permitted under new Sec. 10-A. This Bill seeks to amend the said Act to achieve the aforesaid objects.]

2. Amendment of Sec. 2 of Guj. 11 of 1999 :-

In the Gujarat Infrastructure Development Act, 1999. (Guj. 11 of 1999) (hereinafter referred to as "the principal Act"), in Sec. 2,

(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) "proposar 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.

3. Amendment of Sec. 4 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 4,

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

(2) to sub-sec. (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-sec. (4), for clause (a), the following clauses 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.".

4. Amendment of Sec. 5 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 5,

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

5. Amendment of Sec. 6 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 6, for clause (b), the following clause shall be substituted, namely: "(b) financial assistance, either one time or in instalments, not exceeding twenty per cent, of the cost of the project;".

6. Amendment of Sec. 7 of Guj. 11 of 1999 :-

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

7. Amendment of Sec. 8 of Guj, 11 of 1999 :-

In the principal Act, in the Sec. 8,

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

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

8. Substitution of Sec. 9 of Guj. 11 of 1999 :-

In the principal Act, for Sec. 9, the following section shall be substituted, namely: "9. Selection of person by competitive public bidding. On the acceptance of the recommendation of the Board made under sub-sec. (2) of Sec. 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. Amendment of Sec. 10 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 10,

(1) for the existing marginal note, the following marginal note shall be substituted, namely: "Inviting comparative bids.";

(2) for sub-sec. (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-sec. (1) of Sec. 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-sec. (2), for the words "specified in", the words "prescribed under" shall be substituted.

10. Insertion of new Sec. 10-A in Guj. 11 of 1999 :-

After Sec. 10, the following section shall be inserted, namely: "10-A. Selection by direct negotiation. (1) Notwithstanding anything contained in Secs. 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-sec. (2) of Sec. 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-sec. (1).".

11. Amendment of Sec. 16 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 16,

(1) for sub-sec. (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.".

12. Amendment of Sec. 37 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 37, in sub-sec. (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-sec. (2) of Sec. 8; (cc) the manner in which the developer for the project shall be selected under Sec. 9;".

13. Amendment of Sec. 38 of Guj. 11 of 1999 :-

In the principal Act, in Sec. 38, in sub-sec. (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-sec. (1) of Sec. 5 and different amounts of costs for different nature of projects;".

14. Insertion of new Schedule III in Guj. 11 of 1999 :-

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

"SCHEDULE

III

[See sub-
section (1)
of Sec. 10-A]

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 Sec. 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."