

**THE HIMACHAL PRADESH MUNICIPAL CORPORATION  
(AMENDMENT) BILL, 2021**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh Municipal Corporation Act, 1994 (Act No.12 of 1994).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventy-second Year of the Republic of India as follows:—

1. This Act may be called the Himachal Pradesh Municipal Corporation (Amendment) Act, 2021. Short title.

5 2. In section 2 of the Himachal Pradesh Municipal Corporation Act, 1994 (hereinafter referred to as the “principal Act”), after clause (37), the following shall be inserted, namely:— Amendment of section 2.

10 “(37-A) “political party” means an association or body of individual citizens of India registered with the Election Commission of India, as a political party under section 29A of the Representation of people Act, 1951;”. 43 of 1951

3. In section 8 of the principal Act, in sub-section (2), after clause (o), the following shall be inserted, namely:— Amendment of section 8.

“(o-a) if he is a defaulter of any co-operative society;”.

15 4. After section 8 of the principal Act, the following shall be inserted, namely:- Insertion of sections 8A, 8B and 8 C.

**“8A. Disqualification on the ground of defection.—**(1) The election to the Corporation shall be held on the basis of party symbols

of political parties and free symbols in the manner as may be prescribed.

(2) A person shall be disqualified for being a Councillor of the Corporation,—

- (a) if he has voluntarily given up his membership of such political party; or 5
- (b) if he votes or abstains from voting in such meeting of the Corporation contrary to any direction issued by the political party to which he belongs or by an authorised person of such political party in this behalf, without obtaining, in either case, the prior permission of such political party, or authorised person and such voting or abstention has not been condoned by such political party or authorised person of such political party within fifteen days from the date of such voting or abstention. 10 15

**Explanation.**—For the purposes of this section a Councillor of a Corporation shall deemed to belong to the political party, if he was set up as a contesting candidate for election by such political party.

(3) A Councillor of a Corporation who has been elected on a free symbol as such shall be disqualified for being a member of the Corporation if he joins any political party after such election. 20

**8B. Disqualification on ground of defection not to apply in case of merger.**—(1) A Councillor of a Corporation shall not be disqualified under section 8A, where his original political party merges 25

with another political party and he claims that he and any other members of his original political party,—

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- (a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or
  - (b) have not accepted the merger and opted to function as a separate group;

10 and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of section 8A and to be his original political party for the purposes of this sub-section.

15 (2) For the purposes of sub-section (1), the merger of the original political party of a Councillor of a Corporation shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the original party concerned in the Corporation have agreed to such merger.

20 **8C. Decision on questions as to disqualification on ground of defection.**— If any question arises as to whether a Councillor of a Corporation has become subject to disqualification under section 8A, the question shall be referred to the Government by the Commissioner of the Corporation through Director Urban Development Department. The Government may authorise an officer not below the rank of Deputy Commissioner to decide the question of disqualification on the ground of defection for the purpose of section 25 8A. The decision of such authorised officer shall be final.”.

Amendment  
of section  
36.

5. In section 36 of the principal Act, in sub-section (1), for the first proviso, the following shall be substituted, namely:—

"Provided that the office of Mayor shall be reserved for the Scheduled Castes, Scheduled Tribes, Women and Other Backward Classes by rotation or by lots in the manner as may be prescribed:".

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Amendment  
of section  
37.

6. In section 37 of the principal Act, in sub-section (2), for the words and sign "not less than majority" and "one-half", the words and signs "not less than two-third" and "three-fourth" shall be substituted respectively.

Amendment  
of section  
45.

7. In section 45 of the principal Act, in sub-section (1),—

(a) the words and sign "having a service as such of ten years", shall be omitted; and

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(b) in the end for the sign "." the sign ":" shall be substituted and thereafter the following proviso shall be inserted, namely:—

"Provided that the required length of service for an officer to be appointed as Commissioner to the Municipal Corporation shall be seven years for the officers belonging to the Indian Administrative Services and nine years for officers belonging to other Services.".

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## STATEMENT OF OBJECTS AND REASONS

Presently, the elections to the Municipal Corporations in the State are held on the basis of free symbols and the contesting candidates set up by the political parties are not allotted the reserved symbols. Therefore, the Himachal Pradesh Municipal Corporation Act, 1994 is proposed to be amended so that the candidates of the political parties may be allotted symbols reserved to them. In order to provide stability in the Municipal Corporations, the provisions are also being inserted to provide for disqualification of members in case of defections. Further, the quorum for considering a no confidence motion against the Mayor or Deputy Mayor is also being enhanced to three-fourth from the present limit of one-half. Keeping in view the spirit of the article 243T of the Constitution of India, an enabling provision is being incorporated to provide for reservation in the Office of Mayor of the Municipal Corporations to the Other Backward Classes (OBCs). Presently, there is no bar to the defaulter(s) of the Cooperative Societies to contest elections. Therefore, a provision is being made that such defaulter(s) will be disqualified from contesting the elections of the Municipal Corporations. Besides, certain other amendments are also required to be carried out in the Act *ibid.* so as to make it more compatible with the needs of the hour.

This Bill seeks to achieve the aforesaid objectives.

**(SURESH BHARDWAJ)**

*Minister-in-charge.*

SHIMLA:

The....., 2021

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## FINANCIAL MEMORANDUM

—Nil—

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## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 4 and 5 of the Bill seek to empower the State Government to make rules for carrying out the purposes of this Act. The proposed delegation of powers are essential and normal in character.

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*further to amend the Himachal Pradesh Municipal Corporation Act, 1994 (Act No. 12 of 1994).*

**(SURESH BHARDWAJ)**  
*Minister-in-charge.*

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**(YASHWANT SINGH CHOGAL)**  
*Pr. Secretary (Law).*

SHIMLA

THE....., 2021

**EXTRACT OF THE PROVISIONS OF THE HIMACHAL PRADESH MUNICIPAL CORPORATION ACT, 1994 (ACT NO. 12 OF 1994) LIKELY TO BE AFFECTED BY THIS AMENDMENT BILL**

**Sections:**

**8. Disqualifications of Councillors.**—(1) A person shall be disqualified for being chosen as, and for being, a Council of the Corporation—

- (a) if he is so disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than 25 years, if he has attained the age of 21 years; and

- (b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) A person shall also be disqualified for being chosen as, and for being, a Councilor—

- (a) if he is of unsound mind and stands so declared by a competent court ;
- (b) if he is an undischarged insolvent ;
- (c) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State ;
- (d) if he has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty of—
  - (i) any corrupt practice under section 21 of this Act;
  - (ii) any offence punishable under sections 171-E or 171-F of the Indian Penal Code, 1860 (45 of 1860) or any offence punishable under section 29 or clause (a) of sub-section (2) of section 30 of this Act ; unless a period of six years has elapsed since the date of the finding ;

- (dd) if he has incurred more expenditure than prescribed under section 13-A or has failed to lodge account under section 13-B within 30 days of the declaration of the result of the election;
- (e) if he has been convicted by a criminal court to imprisonment for an offence involving moral turpitude, unless a period of six years has elapsed since his conviction ;

**Explanation.**—"moral turpitude" shall mean the cases where a charge framed by a competent court involves an offence for which the maximum sentence is death or life imprisonment or 10 years or more;

- (f) if he holds any office of profit under the Corporation ;
- (g) if he is a licensed architect, draftsman, engineer, plumber, surveyor or town planner or is a partner of a firm of which any such licensed person is also a partner;
- (h) if he holds any office of profit under the Government or the Municipal Corporation;
- (i) if he is interested in any subsisting contract made with, or any work being done for the Corporation except as a share holder (other than a director) in an incorporated company or as a member of a co-operative society ;
- (j) if he is retained or employed in any professional capacity either personally or in the name of a firm of which he is a partner or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Corporation or any of municipal authorities is interested or concerned ;
- (k) if he, having held any office under the Government, the Corporation or any other local authority, any Government company or any corporate body owned or controlled by the Government, has been dismissed from service ;
- (l) if he has encroached upon or is a beneficiary of the encroachment upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a municipality, a panchayat, a co-operative society or any



- (i) any pension ; or
  - (ii) any allowance or facility for serving as a Mayor or Deputy Mayor or as a Councilor ; or
  - (iii) any fee for attendance at a meeting of any committee of the Corporation ;
- (c) a person shall not be deemed to have any interest in a contract or work such as is referred to in clause (i) of sub-section (2) by reason only of his having a share or interest in—
- (i) any lease, sale, exchange or purchase of immovable property or any agreement for the same ; or
  - (ii) any agreement for the loan of money or any security for the payment of money only ; or
  - (iii) any newspaper in which any advertisement relating to the affairs of the Corporation is inserted ; or
  - (iv) the sale to the Corporation or to any other municipal authority or any officer or other employee of the Corporation on behalf of the Corporation of any article in which he regularly trades or the purchase from the Corporation or from any such authority, officer or other employee on behalf of the Corporation of any article of a value in either case not exceeding five thousand rupees in the aggregate in any year during the period of the contract or work; or
  - (v) the letting out on hire to the Corporation or the hiring from the Corporation of any article not exceeding two thousand rupees in the aggregate in any year during the period of the contract or work ; and
  - (vi) any agreement or contract with the Corporation or any other municipal authority for taking water or any other thing which the Corporation may generally supply.

(4) If a person sits or votes as a Councilor of the Corporation when he is not qualified or that he is disqualified for such Councillorship, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as an arrear of tax under this Act.

(5) If any question arises as to whether a Councillor of the Corporation has become subject to any of the disqualifications mentioned in sub-sections (1) and (2), the question shall be referred for the decision of such authority and in such manner as the Government may by notification provide.

(6) If a person who is chosen as a Councillor of the Corporation, becomes a Member of the House of the People, the Council of States, the State Legislative Assembly, or is or becomes member of a municipality, or an office bearer of a panchayat, then at the expiration of a period of fifteen days from the date of publication of the election result, as the case may be, within fifteen days from the date of the commencement of term of office of a Member of the House of People, the Council of State, the State Legislative Assembly or member of the municipality, or an office bearer of a panchayat, his seat in a Corporation shall become vacant, unless he has previously resigned his seat in the House of People, the Council of States, the State Legislative Assembly, the panchayat or the municipality, as the case may be.

**Explanation.**—For the purposes of sub-section (6), the expression “office bearer of the panchayat” shall have the same meaning as is assigned to it under clause (23) of section 2 of the Himachal Pradesh Panchayati Raj Act, 1994 (4 of 1994).

**36. Election of Mayor, Deputy Mayor and their term of office.**—(1) The Corporation shall at its first meeting and thereafter at the expiration of every two and half years, elect one of its Councillors to be the Chairperson to be known as the Mayor and another Councillor to be the Deputy Mayor of the Corporation :

Provided that the office of the Mayor shall be reserved for the Scheduled Castes, Scheduled Tribes and Women; by rotation or by lots in the manner prescribed:

Provided further that where the population of any class of persons referred to in the foregoing proviso is less than fifteen percent of the total population of the Municipal area, the office of the Mayor shall not be reserved for that class.

(2) The term of office of the Mayor and the Deputy Mayor of the Corporation shall be two and half years from the date of his election, as such, unless in the mean time he resigns his office as Mayor or Deputy Mayor or unless in the case of Deputy Mayor is elected as the Mayor and he shall cease to hold his office on the expiry of his term of office :

Provided that if the office of the Mayor or Deputy Mayor is vacated or falls vacant during the tenure on account of death, resignation or no confidence motion, a fresh election within a period of one month of the vacancy shall be held from the same category, for the remainder period:

Provided further that the election of the new Mayor or the Deputy Mayor, as the case may be, at the end of every term, shall be held before the expiry of the term specified in this sub-section.

(3) The Mayor and Deputy Mayor shall be entitled to the payment of such honorarium and may be given such facilities in respect of residential accommodation, telephone, conveyance and the like as may be prescribed by bye-laws.

(4) The Mayor of the Corporation shall have access to the record of the Corporation and issue directions to the Commissioner or other functionaries of the Corporation or call for reports from them with a view to ensuring proper implementation of the decisions of the Corporation.

(5) The Mayor shall have such powers as may be necessary to carry out the purposes of this Act and to implement the decisions of the Corporation.

**37. Motion of no confidence against Mayor or Deputy Mayor.**—(1) A motion of no confidence against the Mayor or the Deputy Mayor may be made in accordance with the procedure as may be prescribed.

(2) Where a notice of intention to move a resolution requiring the Mayor or the Deputy Mayor of the Corporation to vacate his office, signed by not less than majority of its total elected Councillors is given and if a motion of no confidence is carried by a resolution passed by a majority of elected Councillors present and voting at its general or special meeting, the quorum of which is not less than one-half of its total elected members, the Mayor or the Deputy Mayor against whom such resolution is passed shall cease to hold office forthwith.

(3) Notwithstanding anything contained in this Act or the rules made there under, the Mayor or the Deputy Mayor of the Corporation shall not preside over a meeting in which a motion of no confidence is to be discussed against him. Such meeting shall be presided over by such a person, and convened in such manner, as may be prescribed and the person against whom a motion of no confidence is moved, shall have a right to vote and to take part in the proceedings of such meeting.

(4) Motion of no confidence under this section shall not be maintainable within six months of the date of his election to such office and any subsequent motion of no confidence shall not be maintainable within the interval of six months of the last motion of no confidence.

**45. Appointment of Commissioner.**— (1) The Government shall, by notification, in the Official Gazette, appoint a Class I Officer of the Government having a service as such of ten years, as the Commissioner of the Corporation.

(2) Subject to the provisions of sub-section (3), the Commissioner so appointed shall hold office for a term of three years in the first instance:

Provided that his appointment may be renewed for a term not exceeding three years:

Provided further that no officer who has attained the age of superannuation shall be appointed or continued as Commissioner.

(3) The Government—

- (a) shall recall the Commissioner if at a special meeting of the Corporation called for the purpose, a resolution for such recall has been passed by a majority of not less than two thirds of the total number of members ;
- (b) may in the public interest recall the Commissioner at any time during the term of his appointment.