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Fourteenth Kerala Legislative Assembly

Bill No. 139

**THE KERALA IRRIGATION AND WATER
CONSERVATION (AMENDMENT)
BILL, 2018**

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(AMENDMENT) BILL, 2018

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further to amend the Kerala Irrigation and Water Conservation Act, 2003.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Irrigation and Water Conservation Act, 2003 for the purposes hereinafter appearing;

BE it enacted in the Sixty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Irrigation and Water Conservation (Amendment) Act, 2018.

(2) It shall be deemed to have come into force on the 8th day of December, 2017.

2. *Amendment of section 37.*—In the Kerala Irrigation and Water Conservation Act, 2003 (31 of 2003) (hereinafter referred to as the principal Act), in section 37, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) No person shall deposit rubbish or filth or excreta in any distributary system or water course or allow to flow waste water into it or pollute the water in any other way.”.

3. *Amendment of section 58.*—In sub-section (1) of section 58 of the principal Act, after clause (j), the following clause shall be inserted, namely:—

“(k) a police officer not below the rank of an Inspector General of Police to be nominated by the Government.”.

4. *Amendment of section 59.*—For sub-section (2) of section 59 of the principal Act, the following sub-section shall be substituted, namely:—

“(2) The quorum for a meeting of the Authority shall be four members including the Chairman.”.

5. *Amendment of section 70.*—For sub-section (3) of section 70 of the principal Act, the following sub-section shall be substituted, namely:—

“(3) Whoever contravenes the provisions of section 7 or sub-section (3) or sub-section (4) of section 37 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to two lakh rupees or with both.”.

6. *Insertion of new section 70A.*—After section 70 of the principal Act, the following section shall be inserted, namely:—

“70A. *Special jurisdiction of Magistrate.*—Notwithstanding anything contained in sub-section (2) of section 29 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), a Judicial Magistrate of the First Class shall be empowered to impose a fine which may extend to two lakh rupees for the offences punishable under this Act.”.

7. *Amendment of section 72.*— In section 72 of the principal Act, in clause (c), for the words and symbols “two years, but it shall not be less than six months, and with a fine which may extend to thirty-five thousand rupees”, the words and symbols “three years, but it shall not be less than one year, and with fine which may extend to two lakh rupees” shall be substituted.

8. *Repeal and saving.*—(1) The Kerala Irrigation and Water Conservation (Amendment) Ordinance, 2018 (21 of 2018) is hereby repealed.

(2) Notwithstanding such repeal, 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 principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala Dam Safety Authority was constituted as per sub-section (1) of section 57 of the Kerala Irrigation and Water Conservation Act, 2003 (31 of 2003) for the purposes of ensuring the safety and security and advice on maintenance of dams situated within the territory of the State. Considering the increasing threats to the safety of dams, it is proposed to nominate a police officer not below the rank of an Inspector General of Police to the Kerala Dam Safety Authority as a member.

2. At present the quorum for a meeting of the Kerala Dam Safety Authority shall not be less than fifty per cent of the total number of members of the Authority. The Authority often faces inconvenience to maintain the required quorum in the meetings since most of the members are *ex-officio* and they may be engaged with pre-assignments. Therefore, the Authority faces practical difficulties in deciding urgent and important matters.

3. The Government proposes to incorporate penal provision for the offence of polluting water bodies and to enhance the punishment of imprisonment upto three years or with fine which may extend to two lakh rupees or with both. As the Judicial Magistrate of the First Class is not empowered to impose a fine exceeding ten thousand rupees, the Government have also decided to give special jurisdiction to the court so as to empower it to impose a fine upto two lakh rupees for the offences punishable under the said Act. The Government have, therefore, decided to amend sections 37, 58, 59, 70 and 72 of the Kerala Irrigation and Water Conservation Act, 2003 and to insert a new section 70A for the above purposes.

4. As the Kerala Legislative Assembly was not in session and the above proposals had to be given effect to immediately, the Kerala Irrigation and Water Conservation (Amendment) Ordinance, 2017 was promulgated by the Governor of Kerala on 7th December, 2017 and the same was published as Ordinance No. 27 of 2017 in the Kerala Gazette Extraordinary No. 2698 dated 8th December, 2017.

5. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 92 of the Fourteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative

Assembly of the State of Kerala during its session which commenced on the 22nd day of January, 2018 and ended on the 7th day of February, 2018.

6. In order to keep alive the provisions of the said Ordinance, the Governor of Kerala has promulgated the Kerala Irrigation and Water Conservation (Amendment) Ordinance, 2018 on the 12th day of February, 2018 and the same was published as Ordinance No. 19 of 2018 in the Kerala Gazette Extraordinary No. 334 dated 12th February, 2018.

7. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 110 of the Fourteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 26th day of February, 2018 and ended on the 4th day of April, 2018.

8. In order to keep alive the provisions of the said Ordinance, the Governor of Kerala has promulgated the Kerala Irrigation and Water Conservation (Amendment) Ordinance, 2018 on the 7th day of April, 2018 and the same was published as Ordinance No. 21 in the Kerala Gazette Extraordinary No. 909 dated 7th April, 2018.

9. The Bill seeks to replace Ordinance No. 21 of 2018 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Clause (k) of sub-section (1) proposed to be inserted in section 58 of the principal Act by clause 3 of the Bill provides to include a police officer not below the rank of an Inspector General of Police as a member of the Kerala Dam Safety Authority. At present the sitting fee of a member of the Kerala Dam Safety Authority is Rupees 750/-. The Travelling Allowance and Daily Allowance of a member shall be at the rate applicable to the Class I officers of the State Government. Government have accorded sanction for granting Rupees 1500/- as special allowance for members, *ex-officio* members and sub-committee members for participating in each inspection of dams. On account of inclusion of a new member in the Kerala Dam Safety Authority, expenditure will be incurred for

Travelling Allowance, Daily Allowance, Sitting Fee and Special Allowance. Since the expenditure depends upon the number of meetings and inspections of dams, the expenditure that may be incurred towards this from the Consolidated Fund of the State cannot be estimated now. This Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State other than that stated above.

MATHEW T. THOMAS

**EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA
IRRIGATION AND WATER CONSERVATION ACT, 2003
(ACT 31 OF 2003)**

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37. No encroachment shall be allowed in the irrigation land.—(1) No person shall occupy any irrigation land for cultivation or for any other purpose and the irrigation officer shall take all necessary steps to remove encroachment on such lands.

Explanation:—For the purposes of this sub-section ‘irrigation land’ means any land owned, controlled or maintained by Government for the purposes of an irrigation work but shall not include a poramboke.

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(3) No person shall let out any industrial effluent or domestic effluent to any water course without proper treatment.

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58. Composition of the Authority.—(1) The authority shall consist of the following members, namely:—

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(j) the Principal Chief Conservator of Forests; ex-officio.

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59. Meetings.—(1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be provided by regulations.

(2) The quorum at the meeting of the Authority shall not be less than fifty per cent of the total number of members of the Authority.

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70. *Penalties.*—(1)

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(3) Whoever contravenes the provisions of section 7 shall, on conviction, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both.

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72. *Enhanced punishment for second or subsequent offences.*—Whoever, having been convicted by a Court, of an offence punishable under this Act, again commits the same offence, shall be punishable for every such subsequent offence,—

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(c) in respect of any offence referred to in sub-section (3) of section 70 with imprisonment for a term which may extend to two years, but it shall not be less than six months, and with fine which may extend to thirty-five thousand rupees;

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