

BILLS INTRODUCED IN THE LEGISLATIVE ASSEMBLY OF THE STATE OF TAMIL NADU

Under Rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 5th December, 2014 is published together with Statement of Objects and Reasons for general information:-

L.A. BILL NO. 26 OF 2014

A Bill to provide for an effective and efficient audit system to all local authorities and certain other authorities, bodies or institutions and Funds and for matters connected therewith and incidental thereto.

WHEREAS the Thirteenth Finance Commission in its report recommended that the State Government must put in place an audit system for all local bodies and also recommended that the Comptroller and Auditor General of India must give technical guidance and supervision over the audit of all the local bodies in the State at every tier/category;

AND WHEREAS the Second State Finance Commission *has also recommended to* enact an Act to provide for and to regulate the audit of the local funds and authorize the Director of Local Fund Audit to audit the accounts relating to the local authorities;

AND WHEREAS it has become imperative to ensure effective spending of the grants of the Government of India and the State Government by the local authorities and other authorities and to promote public confidence on how the public money is expended by the local authorities and other authorities established by the State Government

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-fifth Year of the Republic of India as follows:-

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Tamil Nadu Local Fund Audit Act, 2014.
- (2) It extends to the whole of the State of Tamil Nadu.
- (3) It shall come into force at once

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) '**audit**' includes cent percent audit, post audit, test audit, special audit and such other examination of accounts as the Government may, from time to time, specify;

(b) '**cent per cent audit**' means a post audit of all the transactions of a particular account for the whole financial year or for such period as may be specified by the Director;

(c) '**concurrent audit**' means a continuous post audit of accounts of day-to-day transactions;

(d) '**Director**' means the Director of Local Fund Audit appointed under section 3 and includes any person authorised by the Government to perform the functions of the Director of Local Fund Audit;

(e) '**Executive authority**' means the Chief executive officer or any other officer of a local authority, vested with the power to administer the fund of that authority;

(f) '**Government**' means the State Government;

(g) '**local authority**' means,-

(i) any municipal corporation or municipal councilor panchayat union councilor village panchayat constituted under the relevant law for the time being in force; or

(ii) any other authority, body or institution established by or under any law or order of the Government and specified in the Schedule;

(h) '**local fund**' means the fund administered by a local authority and other fund specified in the Schedule;

(i) '**Local Library Authority**' means the Local Library Authority constituted under the Tamil Nadu Public Libraries Act, 1948;

Tamil Nadu
Act XX IV of
1948.

Tamil Nadu
Act 35 of
1972.

Tamil Nadu
Act 27 of
1989.

(j) '**Local Planning Authority**' means the Local Planning Authority constituted under the Tamil Nadu Town and Country Planning Act, 1971;

(k) '**market committee**' means the market committee constituted under the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987;

(l) '**post audit**' means the detailed audit conducted after the completion of transactions;

(m) '**Schedule**' means the Schedule to this Act;

(n) '**special audit**' means an audit of accounts pertaining to a specified item or series of items requiring thorough examination, and includes re-audit of the accounts for a period already covered by audit;

(o) '**State**' means the State of Tamil Nadu;

(p) '**surcharge**' means an amount for which the Director, makes a person liable for loss, waste, misapplication or misappropriation of any money or other property;

(q) '**University**' means the University established or incorporated by an Act of the State Legislature.

3. (1) The Government may, by notification, appoint a person, having such qualification as may be prescribed, as the Director of Local Fund Audit.

Appointment of
the Director.

(2) The Government may also appoint such other officers of the Local Fund Audit Department, as it may deem necessary, to carry out the purposes of this Act.

(3) All officers and staff of the Local Fund Audit Department shall be subordinate to the Director, who shall have general superintendence and control over them in the performance of their functions under this Act or the rule made thereunder.

(4) Notwithstanding anything contained in sub-section (1), the Director of Local Fund Audit functioning before the commencement of this Act, shall be deemed to be appointed as the Director under this Act.

Central Act 56
of 1971.

4. Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971, the Director shall audit or cause to be audited by an officer of the Local Fund Audit Department authorised by him by general or special order in this behalf, the accounts of a local authority or local fund in the manner provided by or under this Act. The officer so authorised shall exercise such of the powers and perform such of the functions of the Director in regard to the conduct of audit under this Act.

Audit of
Accounts.

5. The Director may, with the previous sanction of the Government, and without prejudice to the provisions of section 4, audit the accounts of any authority, body, institution or fund not included in the Schedule subject to such terms and conditions as may be agreed upon between the Director and the person responsible for the administration of such authority, body, institution or fund.

Power to audit
accounts of
certain
authorities,
bodies,
institutions
or fund not
included in the
Schedule.

6. (1) The Director or the officer authorised by him under section 4, shall conduct the audit annually or at such intervals as he may deem fit. The Director may also conduct concurrent audit of such of those local authority or local fund as are found necessary under the provisions of any law governing them or as may be decided by the Director in consultation with the Government:

Manner in
which audit
is to be
conducted.

Provided that so far as village panchayats are concerned, the Director may conduct audit of twenty percent of such panchayats in a financial year, so that all such panchayats are audited within a span of five years:

Provided further that no audit shall be commenced unless notice in writing for a period of not less than fifteen days is given to the executive authority concerned:

Provided also that for reasons to be recorded in writing, notice for a lesser period may be given or the notice may be dispensed with.

(2) The Director may verify the cash balance of the local fund at the time of audit.

(3) An officer not below the rank of Deputy Director, appointed under sub-section (2) of section 3, may inspect the records relating to the accounts of a local authority or local fund.

Liability of the Executive authority to prepare and present accounts for audit.

7. (1) The accounts of a local authority or local fund relating to every financial year shall be prepared or caused to be prepared by the Executive authority, within three months from the end of the financial year, in such form and in such manner as may be prescribed, and presented for audit.

(2) Where an Executive authority makes default in the preparation and presentation of accounts for audit within the specified period, he shall be punishable with a fine of not less than one thousand rupees, which may extend to five thousand rupees and shall also be liable to departmental action:

Provided that no such fine shall be imposed by the Director unless an opportunity of not less than fifteen days is given to show cause as to why it may not be imposed.

(3) The Government may withhold release of funds to any authority which fails to furnish accounts for audit on expiry of three months from the specified period.

Power to require production of accounts and attendance of persons for audit.

8. (1) For the purpose of audit under this Act, the Director may,-

(a) require in writing, the production at the place of audit, such vouchers, statements, returns, correspondences, notes or any other documents including documents in electronic form, the perusal or examination of which are necessary for the elucidation of the accounts;

(b) require in writing, any employee of a local authority or an authority which administers a local fund accountable for or having the custody or control of such vouchers, statements, returns, correspondences, notes or other documents including documents in electronic form or any person having directly or indirectly, any share or interest in any contract with the local authority or the authority which administers the local fund to appear in person before him and answer any question and require any person so appearing to make and sign a declaration with respect to such document or to prepare and furnish any statement relating thereto; and

(c) in the event of an explanation being required from any officer or member of a local authority or an authority which administers a local fund, invite such person and shall in writing, specify the point on which his explanation is required.

(2) The Director may, in any requisition made under sub-section (1) specify a period of not less than three days within which the said requisition shall be complied with.

Penalty for disobeying requisition under section 8.

9. Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (a) or clause (b) of sub-section (1) of section 8 shall be punishable with a fine of not less than one thousand rupees, which may extend to five thousand rupees:

Provided that no such fine shall be imposed by the Director on any person until he has been given an opportunity of not less than fifteen days of showing cause against the fine:

Provided further that in the case of an employee of a local authority or an authority which administers a local fund, he shall also be liable to departmental action.

Completion of audit of accounts.

10. (1) The audit of the accounts prepared and of presented for audit under section 7 shall be completed by the Director within a period of not exceeding six months as may be prescribed.

(2) The Director at the time of completion of audit shall verify the correctness of the accounts, certify the annual accounts in such manner as may be prescribed and append the certified copy of the accounts with the audit report.

Audit report to be sent to Executive authority and certain officers and bodies.

11. As soon as practicable after the completion of the audit, but not later than three months thereafter, the Director shall send to the Executive authority concerned a report on the accounts audited by him and copies of the report to such officers and bodies or institutions, as the Government may direct or as may be specified under the law governing that local authority or local fund, as the case may be.

12. The Director shall include in the audit report,-Contents of
audit report.

(a) any payment which appears to have been made contrary to any law or order of the Government;

(b) the amount of any deficiency or loss which appears to have been caused by the negligence or misconduct of any person in the performance of his duties;

(c) any case of misappropriation or Improper utilisation of the fund;

(d) the amount, if any, received which ought to have been brought into account but not brought into account; and

(e) any other material impropriety or irregularity observed in the audit.

13. (1) On receipt of the audit report sent under section 11, the Executive authority shall, within a period of two months, either remedy the defects or irregularities, if any, pointed out therein and place the audit report together with a statement of action taken or place the audit report together with a statement of action proposed to be taken thereon before a meeting of the governing body of the authority concerned. The Executive authority shall also, within a month from the date of the said meeting, send to the Director a report of having remedied the said defects or irregularities or submit any explanation in regard to such defects or irregularities.

Procedure to
be followed
on receipt of
audit report.

(2) On receipt of such report or explanation, the Director may,-

(a) accept the report of having remedied the defects or irregularities or the explanation in regard thereto and drop the objection; or

(b) hold that any or all of the defects or irregularities pointed out in the audit report have not been remedied.

(3) The Director shall, within two months from the date of receipt of the report or explanation, or if no such report or explanation is received, on expiry of the total period of three months referred to in sub-section (1), pass an order thereon. If the Director holds that any defect or irregularity pointed out in the audit report has not been remedied, he shall state in the order,-

(a) whether the defect or irregularity can be regularised and, if so, by what method; or

(b) if the defect or irregularity cannot be regularised, whether they can be condoned and, if so, by what authority; and

(c) whether the amount to which the defect or irregularity relate to, in his opinion, be charged and, if so, against whom.

(4) The local authority or the authority, body or institution which administers the local fund shall publish in its next Administrative report, extract of the defect or irregularity, if any pointed out in the audit report, the explanation, if any, given by the Executive authority under sub-section (1) and the order passed thereon by the Director under sub-section (3) and shall also keep the same open to inspection for the public at its office for a period of one month from the date of the receipt of the order of the Director.

(5) Nothing in this section or section 12 shall preclude the Director, at any time, from bringing to the notice of the Government for such action as may be necessary, any information which appears to the Director to support a presumption of criminal misappropriation or fraud or, which, in his opinion, deserves special attention or immediate investigation.

14. (1) The Director, may disallow any payment which appears to him to be contrary to any law or order of the Government, or the amount of any deficiency or loss caused by negligence or misconduct or any sum received, which ought to have been brought into account but not brought into account and surcharge the person or the person authorising the same and shall, in every such case, certify the amount due from such person:

Director to
surcharge
illegal
payments
and loss
caused by
negligence or
misconduct.

Provided that no such surcharge shall be imposed by the Director on any person until he has been given an opportunity of not less than fifteen days of showing cause against the surcharge.

(2) Any person aggrieved by the surcharge may, within one month from the date of receipt of the decision of the Director apply to the District Court, to set aside the surcharge and the Court, after taking such evidence as is necessary, may confirm, modify or remit the same.

(3) Every sum certified to be due from any person by the Director under this Act shall be paid by such person to the Executive authority within one month from the date of intimation to him of the decision of the Director unless, within that time, such person has filed an application before the District Court against the decision under sub-section (2) and such amount, if not so paid, or such amount as the District Court shall declare to be due, may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Director shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864.

Tamil Nadu
Act 11 of
1864.

Powers and
functions of
Director.

15. (1) The Director shall exercise general supervision and control over the officers and staff of the Local Fund Audit Department.

(2) The Director shall have the power to settle the audit objections included in the audit report.

(3) The Director may approach the Principal Accountant General of the State to provide necessary technical guidance and support on the audit and maintenance of accounts of a local authority or local fund.

(4) The Director may condone any payment made from a local fund, of a sum not exceeding rupees ten thousand only, as may be prescribed by the Government, which appears to him to be contrary to law, if in his opinion there was no negligence or misconduct on the part of the person making or authorising such payment.

(5) The Director shall also exercise such other powers and functions, as may be prescribed.

Delegation of
powers and
functions.

16. The Director may, by general or special order delegate all or any of the powers to be exercised or functions to be performed by him under this Act or the rules made thereunder except the power under sub-section (4) of section 15 to any other Officer of the Local Fund Audit Department, subject to such conditions if any, as may be specified in that order.

Payment of
cost of
audit.

17. (1) The cost of audit of accounts shall be paid by the authority concerned at such rates as may be fixed by the Government, from time to time.

(2) The Government may, by general or special order, exempt, either wholly or in part, any authority from the liability to pay the cost of audit under sub-section (1).

(3) If the cost of audit due under sub-section (1) is not paid within one year from the date of its becoming due, the Government may adjust the same against the grant or other sums, if any, payable to such authority:

Provided that if no grant or other sums is payable to such authority, the cost of audit shall be recovered by the Director in such manner as may be prescribed.

Power to
dispense
with
detailed
audit.

18. The Director may, when circumstances so warrant, dispense with detailed audit of any account or class of transactions and apply such limited check in relation to such accounts or transactions as he may deem fit.

Defalcation or
loss in
money or
stores to be
reported by
the Executive
authority.

19. (1) Whenever any defalcation or loss in money or stores of any local authority or authority, body or institution which administers a local fund caused due to misappropriation, theft or natural calamities is detected, the fact shall be promptly reported by the Executive authority to the Director giving in detail the circumstances which led to such defalcation or loss.

(2) On receipt of a report under sub-section (1), the Director shall immediately conduct or cause to be conducted a special audit of the accounts of that authority:

Provided that nothing in this section shall prevent the Executive authority from initiating criminal proceedings against any person suspected of, or involved in, any defalcation or loss of money or stores.

Central Act
XLV of 1860.

- 20.** The Director shall submit to the Government annually a consolidated report of the accounts audited by him containing such particulars which he intends to bring to their notice and the Government shall cause the consolidated report to be laid, as soon as may be, after it is received, along with the Report of the Comptroller and Auditor General, before the Legislative Assembly. Laying of audit report.
- 21.** Save as otherwise provided in sub-section (2) of section 14, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any action taken or to be taken by the Government or the Director or any officer in pursuance of any power conferred by or under this Act. Bar of jurisdiction of civil courts.
- 22.** All audit of accounts pending at the commencement of this Act in respect of any local authority or local fund shall, notwithstanding anything contained in this Act, be continued and completed by the Director, within such time as may be prescribed, as if this Act has not been promulgated. Special provision for pending audit.
- 23.** The provisions of this Act shall have effect *not* withstanding anything consistent therewith contained in any other law made by the Legislature of the State for the time being in force. Act to override other enactments.
- 24.** No suit, prosecution or other legal proceedings shall against the Director or any officer for anything which is in good faith done or intended to be done under this Act or any rule or order made there under. Protection of action taken in good faith.
- 25.** The Director or other officers shall be deemed, when acting or purporting to act in pursuance of the provisions of this Act or any rule or order to be public servants within the meaning of section 21 of the Indian Penal Code. Director or other officers to be deemed to be servants.
- 26.** (1) The Government may, make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) The manner and the form in which the accounts of a local authority or local fund shall be kept and presented;
- (b) the procedure to be followed by the Director in the conduct of audit and the period within which such audit shall be conducted;
- (c) the manner in which the matters required to be published under this Act shall be published; and
- (d) any other matter which is required to be or may be prescribed under this Act.
- (3) Every rule made or notification or order issued under this Act, shall, as soon possible, after it is made or issued, be placed on the Table of the Legislative Assembly and if before the expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule, notification or order, or the Legislative Assembly decides that the rule, notification or order should not be made, the rule, notification or order 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, notification or order.
- 27.** If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the *Tamil Nadu Government Gazette*, make such provisions, not inconsistent with the provisions of this Act as appears to them to be necessary or expedient for removing the difficulty: Power to remove difficulties.
- Provided that no such order shall be issued after the expiry of a period of two years from the date of commencement of this Act.
- 28.** The Government may, by notification, include any body, authority or institution or fund established by or under any law or order of the Government in the Schedule to this Act: Power to amend Schedule.

Provided that no body, authority or institution or fund shall be omitted from the Schedule except by the authority of law made by the State Legislature.

Savings

29. The provisions of this Act shall not apply to any case, suit, appeal, revision petition or any other proceeding that may be pending at the commencement of this Act before the Director of Local Fund Audit, the Government or Civil Court and the law in force immediately before the commencement of this Act shall, notwithstanding anything contained in this Act, continue to apply to such cases, suits, appeals, revision petitions or other proceedings.

THE SCHEDULE

(See clauses (g) and (h) of section 2)

I. Local authorities.

1. All City Municipal Corporations.
2. All Municipalities.
3. All Town Panchayats.
4. All District Panchayats.
5. All Panchayat Unions.
6. All Village Panchayats.
7. All Universities.
8. All Local Library Authorities.
9. All Market Committees including the Tamil Nadu State Agricultural Marketing Board.
10. All Local Planning Authorities.
11. The Tamil Nadu State Council for Higher Education.
12. The Treasurer of Charitable Endowments
13. Arasar Chatram.
14. RajaVedapadasalai.

II. Local Funds.

1. The Tamil Nadu Municipal Employees Health Fund.
2. The Tamil Nadu Town Panchayat Employees Health Fund.
3. The Tamil Nadu Panchayat Union Employees Health Fund.
4. The Tamil Nadu Municipal Employees House Building Advance Family Benefit Fund.
5. The Tamil Nadu Municipal Corporation Employees House Building Advance Family Benefit Fund.
6. National Social Welfare Schemes.

STATEMENT OF OBJECTS AND REASONS

The audit of Urban and Rural Local Bodies, Universities, Agricultural Market Committees, Local Library Authorities and some other institutions in the State are undertaken by the Local Fund Audit Department under the provisions of the respective Acts governing these institutions. The Thirteenth Finance Commission In its report has recommended that the State Government must put in place an audit system for all local bodies (all categories of Urban Local Bodies and all tiers of Panchayat Raj Institutions) and also recommended that the Comptroller and Auditor General of India must give Technical Guidance and Supervision over the audit of all the local bodies in the State at every tier / category. The Second State Finance Commission has alsb recommended to enact an Act to provide for and to regulate the audit of the local funds and to authorize the Director of Local Fund Audit to audit the accounts relating to the local authorities.

2. The State Government also considers that the Director of Local Fund Audit may also be empowered to audit the accounts of other authorities, bodies or institutions and Funds established by any law or order of the State Government.

3. To give effect to the recommendations of the Thirteenth Finance Commission and the Second State Finance Commission and to ensure transparency in the functioning of the local authorities and other authorities, bodies or institutions and Funds established by the State Government, it has been decided to bring in legislation to provide for an effective and efficient audit system.

4. The Bill seeks to give effect to the above decision.

O. PANNEERSELVAM,
Chief Minister.

**MEMORANDUM REGARDING DELEGATED
LEGISLATION**

Clauses 3,4,7,10,11,15,16,17,22,26,27 and 28 of the Bill authorise the Government to issue notifications or orders or to make rules, as the case may be, for the purposes specified therein.

2. The powers delegated are normal and not of an exceptional character.

O. PANNEERSELVAM,
Chief Minister.

A.M.P. JAMALUDEEN,
Secretary.