

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT

Legislative

West Bengal Act XXXII of 1997

**THE WEST BENGAL MUNICIPAL
(AMENDMENT) ACT, 1997.**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Calcutta Gazette, Extraordinary*, of the 9th March, 1998.]

[9th March, 1998.]

An Act to amend the West Bengal Municipal Act, 1993.

West Ben.
Act XXII of
1993.

WHEREAS it is expedient to amend the West Bengal Municipal Act, 1993, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-eighth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. This Act may be called the West Bengal Municipal (Amendment) Act, 1997.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Short title
and
commenc-
ment.

2. In section 2 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the principal Act),—

(1) clause (1) shall be renumbered as clause (1A) and before clause (1A) as so renumbered, the following clause shall be inserted:—

‘(1) “Annual Development Plan” means the Annual Development Plan prepared under section 300;’;

(2) clause (1A) shall be renumbered as clause (1B);

(3) after clause (10), the following clause shall be inserted:—

‘(10A) “corporate sector” means a financial institution.

Explanation.—“Financial institution” shall mean—

(a) a bank to which the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, do not apply,

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of section 2
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(Section 2.)

(b) a financial institution which is not maintained or managed by the Central Government or the State Government,

(c) a private company, or a limited company (being a public company), as defined in the Companies Act, 1956, not being a public financial institution within the meaning of section 4A of that Act, or

(d) a co-operative society, by whatever name called, registered or deemed to have been registered under the West Bengal Co-operative Societies Act, 1983;';

(4) after clause (15A), the following clauses shall be inserted:—

‘(15B) “District Planning Committee” means the District Planning Committee constituted under sub-section (1) of section 3 of the West Bengal District Planning Committee Act, 1994, and includes the Siliguri Sub-Division Planning Committee;

‘(15C) “Draft Development Plan” means the Draft Development Plan prepared under section 297;’;

(5) after clause (26), the following clause shall be inserted:—

‘(26A) “household sector” includes—

(a) a rural household or urban household.

Explanation I.—“Rural household” shall mean a household within a rural area as defined in the West Bengal District Planning Committee Act, 1994.

Explanation II.—“Urban household” shall mean a household within an urban area as defined in the West Bengal District Planning Committee Act, 1994,

(b) a business undertaking, whether proprietorship or partnership, not being a body corporate as defined in the Companies Act, 1956, or

(c) a trust for a public purpose of a charitable nature within the meaning of the Charitable and Religious Trusts Act, 1920;’;

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(Sections 3, 4.)

(6) after clause (53), the following clause shall be inserted:—

‘(53A) “recognised political party” means a national party or a State party recognised as such by the Election Commission of India by notification for the time being in force;’;

(7) after clause (62A), the following clause shall be inserted:—

‘(62AA) “Urban Development Sub-Committee” means the Urban Development Sub-Committee constituted under sub-section (4) of section 10 of the West Bengal District Planning Committee Act, 1994;’.

3. In section 9 of the principal Act, after the second proviso, the following proviso shall be added:—

Amendment of section 9.

“Provided also that no such notification shall be issued—

(i) under any of the clauses (a) to (g) in respect of the municipal area which complies with the provisions of clauses (ii) and (iii) of section 3, except after taking into consideration the views of the Board of Councillors or the Boards of Councillors concerned;

(ii) under clause (c), unless the State Government is satisfied that the local area complies with the provisions of clauses (ii) and (iii) of section 3;

(iii) where any part of the municipal area or the local area is a cantonment, or part of a cantonment, as defined in the Cantonments Act, 1924.”.

4. In section 21A of the principal Act,—

Amendment of section 21A.

(1) in clause (c), the word “if” shall be omitted,

(2) in clause (d),—

(i) the word “if” shall be omitted, and

(ii) for the words and figures “the West Bengal *Panchayat* Act, 1973.”, the words and figures “the West Bengal *Panchayat* Act, 1973, or” shall be substituted, and

(3) after clause (d), the following clause shall be inserted:—

“(e) he is declared under section 21B to be disqualified for being a Councillor.”.

(Section 5.)

Insertion of
new section
21B.

5. After section 21A of the principal Act, the following section shall be inserted:—

“Disqualification for being a Councillor on change of political party by the Councillor.

21B. (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, such competent authority for a Municipality as may be appointed by the State Government by notification in this behalf (hereinafter referred to in this section as the competent authority), may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a Councillor of such Municipality to be disqualified for being a Councillor thereof, if—

- (a) he is an elected Councillor set up by a recognised political party and has—
 - (i) voluntarily given up his membership of such recognised political party, or
 - (ii) exercised the voting right contrary to the manner of voting of the majority of the Councillors who are the members of such recognised political party in such Municipality, or
- (b) he is an elected Councillor set up by a recognised political party and he has joined a recognised political party on the expiry of six months from the date of election:

Provided that the competent authority shall not declare any Councillor to be disqualified under this section without giving to such Councillor a reasonable opportunity to represent his case and to be heard in person:

Provided further that an elected Councillor referred to in sub-clause (ii) of clause (a) shall not, on the competent authority being satisfied in this behalf, be declared to be disqualified, if—

- (a) the action of such Councillor was taken on obtaining prior permission of, or was condoned by, such recognised political party, or
- (b) such Councillor claims that he and any other Councillors, who are the members, of such recognised political party, constitute in the Municipality a group representing a faction consisting of not less than one-third of the total number of Councillors set up by such recognised political party in the Municipality and that all the Councillors constituting such group have voluntarily given up their membership of such recognised political party, or

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(c) the former recognised political party of the Councillor merges with another recognised political party, and he claims that he and the other members of his former recognised political party—

- (i) have become members of such other recognised political party or of a new recognised political party formed out of merger, as the case may be, or
- (ii) have not accepted the merger, and from the time of such merger, he and such other Councillors constituting not less than one-third of the total number of Councillors set up by the former recognised political party in the Municipality, have opted to remain members of the former recognised political party or have formed a new recognised political party.

(2) On being declared to be disqualified under sub-section (1), a Councillor shall, subject to the provisions of sub-section (12), stand removed from the Board of Councillors from the date of such declaration.

(3) As soon as may be within one month from the date of the first meeting of the Board of Councillors or within one month from the date on which this section comes into force, as the case may be, the elected Councillors set up by the recognised political parties shall, by adopting a resolution, select one Councillor from amongst themselves to be the Leader and such Leader shall, within fifteen days from the date of such selection, furnish to the competent authority referred to in sub-section (1)—

- (i) a copy of the resolution,
- (ii) a signed statement containing the names, addresses and constituencies of himself and other Councillors set up by such recognised political party, and
- (iii) a copy of a set of rules and regulations, if any, by whatever name called, of such recognised political party:

Provided that an office-bearer may also hold the office of the Leader:

Provided further that the competent authority shall not refuse to accept, or to rely on, the documents furnished by the Leader merely on the ground that the resolution selecting the Leader was not adopted within one month from the date of the first meeting of the Board of Councillors or within one month from the date on which this section comes into force, as the case may be, or that the documents as aforesaid were not furnished to him within fifteen days from the date of such selection.

(Section 5.)

(4) Where there is only one elected Councillor set up by a recognised political party in a Municipality, he shall furnish the documents referred to in sub-section (3) in relation to himself:

Provided that in the event of any increase in the number of Councillors who are the members of such recognised political party, the provisions of sub-section (3) shall apply as if the first meeting of the Board of Councillors was held or this section came into force, as the case may be, on the date on which such increase took place.

(5) A Councillor not belonging to any recognised political party shall furnish a statement to that effect to the competent authority within one month from the date of the first meeting of the Board of Councillors.

(6) In the event of any change of the information furnished under sub-section (3), sub-section (4) or sub-section (5), the Leader or the Councillor, as the case may be, shall, as soon as may be within fifteen days from the date of such change, furnish in writing such change of information to the competent authority.

(7) The Leader referred to in sub-section (3), who is a member of a recognised political party, may at any time file a petition endorsed by the General Secretary, or, if there is no General Secretary, the Secretary, of the district unit of such recognised political party to the competent authority, stating that—

- (a) one or more Councillors who are the members of such recognised political party have—
 - (i) voluntarily given up his or their membership of such recognised political party, or
 - (ii) have exercised the voting right contrary to the manner of voting of the majority of the Councillors set up by such recognised political party in the Municipality, or
- (b) the Councillor referred to in sub-section (4) has voluntarily given up his membership of the recognised political party that set him up, or
- (c) the Councillor referred to in sub-section (5) has joined a recognised political party on the expiry of six months from the date of election, and that such Councillor or Councillors should be declared to be disqualified under sub-section (1) and should be removed from the Board of Councillors.

(8) Every petition referred to in sub-section (7)—

- (a) shall contain a concise statement of the material facts on which the petitioner relies, and

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(Section 5.)

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and, where the petitioner relies on any information furnished to him by any person or persons, a statement containing the names and addresses of such person or persons and the gist of such information as furnished by such person or each of such persons.

(9) On receipt of the petition referred to in sub-section (7), the competent authority shall, as soon as possible within six weeks from the date of the receipt of such petition, proceed to make an enquiry to satisfy himself, among others, as to—

(a) the common decision in regard to the manner of voting to be exercised by the majority of the Councillors set up by the recognised political party, and

(b) whether the Councillor or Councillors, against whom such petition is filed, exercised by voting right in a meeting of the Board of Councillors contrary to such manner of voting.

(10) For the purpose of enquiry under sub-section (9), the competent authority may summon such members of the recognised political party or other persons, and may require such signed statement from, and production of such documents and records by, the members or other persons as aforesaid, as he may deem necessary.

(11) As soon as possible within eight weeks from the date of receipt of the petition referred to in sub-section (7), the competent authority shall, in consideration of the statements, documents and records before it,—

(a) reject the petition, or

(b) admit the petition wholly or in part and declare any member or members of such recognised political party to be disqualified under sub-section (1) for being Councillor or Councillors of the Municipality.

(12) Any Councillor declared disqualified under sub-section (1) or the Leader of the recognised political party referred to in sub-section (7), if aggrieved by the decision of the competent authority, may, within thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the competent authority, and after giving the appellant and the opposite parties an opportunity of being heard, set aside or confirm the order or declare any Councillor or Councillors to be disqualified under, and in accordance with the provisions of, sub-section (1) and, upon such declaration, the Councillor or Councillors shall stand removed from the Board of Councillors.

(Sections 6-9.)

(13) The order passed by the authority referred to in sub-section (12) on the appeal shall be final.

(14) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no court shall have any jurisdiction in respect of any matter arising out of a Councillor of a Municipality being declared to be disqualified under sub-section (1) for being a Councillor of such Municipality.

Explanation.—For the purposes of this section, an elected Councillor shall be deemed to be set up by a recognised political party if he has contested election with the symbol reserved for such recognised political party or if he has contested election with a free symbol and joins a recognised political party and furnishes a declaration to that effect to the competent authority before the expiry of six months from the date of election.”.

Amendment
of section
23.

6. In sub-section (1) of section 23 of the principal Act,—

- (1) for the word “may”, the word “shall” shall be substituted, and
- (2) the proviso shall be omitted.

Amendment
of section
54.

7. In sub-section (2) of section 54 of the principal Act, the word “also” shall be omitted.

Amendment
of section
71.

8. After sub-section (2) of section 71 of the principal Act, the following sub-section shall be inserted:—

“(3) The State Government shall give grants to a Municipality or Notified Area Authority for implementation in full or in part of any scheme included in the Annual Development Plan.”.

Insertion of
new section
73A.

9. In Part III of the principal Act, in Chapter VII, after section 73, the following section shall be inserted:—

“Approval
of State
Government
in respect of
work etc.
estimated to
cost more
than rupees
one lakh.

73A. No expenditure for any work or for purchase of any material as may be necessary for the purposes of this Act shall be made without the approval of the Board of Councillors at a meeting, if the estimated cost of such work or purchase exceeds rupees five thousand but does not exceed rupees five lakh:

Provided that where the estimated cost of such work or purchase exceeds rupees five lakh, approval of the State Government shall be obtained.”.

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(Sections 10-12.)

10. In sub-section (1) of section 93 of the principal Act, for clause (e), the following clause shall be substituted:—

Amendment of section 93.

“(e) toll on—

(i) ferry,

(ii) bridge, and

(iii) heavy truck which shall be a heavy goods vehicle, and bus which shall be a heavy passenger motor vehicle, within the meaning of the Motor Vehicles Act, 1988, plying on a public street.”.

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11. In Part IV of the principal Act, in Chapter X, under the heading “Taxes and Fees”, under the sub-heading “A. *Taxes on Fees (other than Application Fee)*”, after section 95, the following sections shall be inserted:—

Insertion of new sections 95A and 95B.

“Levy of toll on heavy truck and bus. 95A. (1) The Board of Councillors may levy toll on heavy trucks and buses referred to in sub-clause (iii) of clause (e) of sub-section (1) of section 93, plying on a public street.

(2) The rate of toll for the purposes of sub-section (1) shall be such as may be determined by the Board of Councillors from time to time.

(3) The Board of Councillors may make regulations specifying the rate of such toll, the mode of collection thereof and other matters incidental thereto.

Levy of special conservancy charge. 95B. (1) The Board of Councillors may levy a special conservancy charge on the commercial and industrial establishments for providing municipal services in connection with removal of solid wastes.

(2) The charge for the purpose of sub-section (1) shall be such as may be determined by the Board of Councillors from time to time.

(3) The Board of Councillors may frame regulations specifying the occasions on which such charge may be imposed as well as the rate of charge, the mode of collection and other matters incidental thereto.”.

12. After section 100 of the principal Act, the following section shall be inserted:—

Insertion of new section 100A.

“Exemption of properties of ex-servicemen. 100A. Notwithstanding anything contained in the foregoing provisions of this chapter, the Board of Councillors may, by a resolution, exempt 25 *per cent.* of the property tax in respect of any holding belonging to an ex-serviceman, or family of a deceased soldier, who has no other land or building in any part of the State of West Bengal and who is residing in that holding.”.

(Sections 13-16.)

Amendment
of section
116.

13. In section 116 of the principal Act,—

- (1) in sub-section (1), for the words “after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, as the case may be,”, the words “of the registration of the instrument,” shall be substituted;
- (2) for sub-section (6), the following sub-section shall be substituted:

“(6) The District Registrar of the district or the Sub-Registrar of the local registration office shall co-operate with the Chairman or his representatives, sent in this behalf, for collecting the particulars regarding the registration of instrument, transfer of immovable property and periodical returns containing the detailed periodical list of registration of instruments.”;
- (3) sub-section (7) shall be omitted.

Substitution
of new
section for
section 117.

14. For section 117 of the principal Act, the following section shall be substituted:—

“Levy of
surcharge on
transfer of
lands.
duty.

117A. (1) The Board of Councillors shall levy a surcharge on the transfer of immovable property situated within the municipal area, in the form of additional stamp

- (2) The rate of the surcharge, and the manner of—
 - (a) collection of the surcharge,
 - (b) payment of the surcharge to the Municipality, and
 - (c) deduction of the expenses, if any, incurred by the State Government in course of collection of the surcharge,

shall be such as may be prescribed.”.

Amendment
of section
118.

15. In section 118 of the principal Act, for the words “not exceeding rupees ten,”, the words “not exceeding rupees five hundred,” shall be substituted.

Amendment
of section
193.

16. In section 193 of the principal Act,—

- (1) in sub-section (1), after the words “Before utilizing, selling, leasing out or otherwise disposing of any land”, the words, figures and letter “, which has not been converted into agricultural land under section 4C of the West Bengal Land Reforms Act, 1955,” shall be inserted;

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(Section 17.)

(2) for sub-section (5), the following sub-section shall be substituted:—

“(5) Where the transfer of any land or building is executed before the layout plan has been approved, no plan for erection of a building within the meaning of sub-section (1) of section 197 on the said land or building shall be approved:

Provided that the Chairman may, after considering the case, by order approve the plan for erection of such building in relaxation of the provisions of this sub-section.”.

17. After section 204 of the principal Act, the following section shall be inserted:—

‘Construction of building in contravention of the provisions of the Act or the rules made thereunder.

204A. (1) Notwithstanding anything contained in this Act or the rules made thereunder or in any other law for the time being in force, any person, who, being responsible by himself or by any other person on his behalf, so constructs or attempts to so construct or conspires to so construct any new building or additional floor or floors of any building in contravention of the provisions of this Act or the rules made thereunder as endangers or is likely to endanger human life, or any property of the Municipality whereupon the water-supply, drainage or sewerage or the road traffic is disrupted or is likely to be disrupted, or is likely to cause a fire hazard, shall be punishable with imprisonment of either description for a term which may extend to five years and also with fine which may extend to fifty thousand rupees.

Explanation.—“Person” shall include an owner, occupier, lessee, mortgagee, consultant, promoter or financier, or a servant or agent of an owner, occupier, lessee, mortgagee, consultant, promoter or financier, who supervises or causes the construction of any building or additional floor or floors of any building as aforesaid.

(2) The offence under sub-section (1) shall be cognizable and non-bailable, within the meaning of the Code of Criminal Procedure, 1973.

(3) Where an offence under sub-section (1) has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Insertion of
new section
204A.

(Sections 18-20.)

Explanation.—For the purposes of this section,—

- (a) “company” means a body corporate, and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.’.

Amendment
of section
208.

18. In section 208 of the principal Act, after the words “nor granted permission to execute a work,”, the words and figures “the applicant may appeal to the Municipality, in writing, in this regard, and if the appeal as aforesaid is not disposed of within 30 days from the date of the appeal, this section,” shall be inserted.

Amendment
of section
208A.

19. To section 208A of the principal Act, the following proviso shall be added:—

“Provided that if such structure or building under the plan approved under the West Bengal *Panchayat* Act, 1973, has not been constructed, either in full or in part, before the constitution of the Municipality under this Act, the plan shall be revalidated by the Municipality before the completion of the work in respect of part construction or before the commencement of the work in respect of new construction.”.

Substitution
of new
section for
section 297.

20. For section 297 of the principal Act, the following section shall be substituted:—

“Preparation
of Draft
Develop-
ment Plan. 297. (1) The Board of Councillors shall prepare a Draft Development Plan for the municipal area or notified area, as the case may be, in consultation with the District Planning Committee for a period of five years, and shall submit to the Urban Development Sub-Committee at least one year before completion of the term of the preceding Draft Development Plan:

Provided that a Municipality or Notified Area Authority shall prepare the first Draft Development Plan in accordance with the directions of the District Planning Committee.

(2) The Draft Development Plan for any municipal area or notified area shall be a written statement, and shall include—

- (a) the schemes of the Municipality or the Notified Area Authority for the development and other use of land or for any description of development or other use of such land including, in either case, such measures as the Municipality or the Notified Area Authority thinks fit for the improvement of the physical environment;

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- (b) detailed and specific scheme of the Municipality or the Notified Area Authority for conducting development programmes on all or any of the points specified in clauses (1), (2) and (3) of section 63, section 64 and sub-section (2) of section 65;
- (c) such maps and diagrams as the Municipality or the Notified Area Authority thinks appropriate;
- (d) existing land use pattern in maps or documents;
- (e) the scheme for future land use control by way of—
 - (i) identification and preservation of open spaces;
 - (ii) prohibition of filling up of tanks or water courses;
 - (iii) filling up of insanitary water courses;
 - (iv) protection of land surface through which sub-soil water sources are re-charged;
 - (v) provision for drainage network and outfalls;
 - (vi) provision of dumping grounds for solid wastes disposal;
 - (vii) street alignment;
 - (viii) provision for burning and burial grounds;
 - (ix) reclamation of waste lands; or
 - (x) providing activities of similar nature;
- (f) regulation and restriction of sites for construction of buildings, huts or structures for the purposes of safety, disinfection, density control or pollution control;
- (g) scheme for environmental improvement by way of restriction on felling of trees, planting of new trees and flowering of plants in public places and adding of house greenery and the like;
- (h) scheme for control of pollution relating to water, soil, air, noise and odour;
- (i) scheme for acquisition of land for the purpose of ensuring that the benefits of development activities are reaped by public institutions for community-welfare and not for speculative gains by private individuals.

(3) If the preceding Draft Development Plan has not been fully implemented, a statement shall be annexed with the Draft Development Plan, showing the due quantum of work and the reasons for such non-completion.”.

(Sections 21-23.)

Substitution
of new
section for
section 298.

21. For section 298 of the principal Act, the following section shall be substituted:—

“Financial statement in regard to Draft Development Plan.

298. A financial statement shall be submitted with the Draft Development Plan containing—

- (a) detailed particulars about the quantum of finance available for conducting the development programme under the said Draft Development Plan from—
 - (i) own resources of the Municipality or the Notified Area Authority, as the case may be, with source-wise break-ups; and
 - (ii) corporate sector or household sector;
- (b) the following particulars in detail:—
 - (i) credit plan or the terms and conditions for availing of the finance from corporate sector or household sector;
 - (ii) sources of fund for repayment of credit, if taken from corporate sector or household sector and the manner of repayment; and
- (c) if the Municipality or the Notified Area Authority, as the case may be, thinks it proper to transfer any function of the Municipality or the Notified Area Authority in relation to the implementation of the Draft Development Plan to any organisation including Government organisation within the meaning of section 66, a statement containing the list of the function or the functions to be transferred, the manner of transfer, and the terms and conditions of such transfer.”.

Substitution
of new
section for
section 299.

22. For section 299 of the principal Act, the following section shall be substituted:—

“Modifica-
tion of Draft
Develop-
ment Plan.

299. The Board of Councillors may, at any time but not more than once in every three years, propose to the District Planning Committee any revision or modification of the Draft Development Plan.”.

Substitution
of new
section for
section 300.

23. For section 300 of the principal Act, the following section shall be substituted:—

“Annual
Develop-
ment Plan.

300. (1) The Board of Councillors shall prepare an Annual Development Plan for a period of one financial year, covering only the relevant portion of the Draft Development

Plan for the concerned period, in consultation with the District Planning Committee, and submit the same to the State Government within the last week of the month of October of the year preceding the period for which the Annual Development Plan shall be prepared.

(Section 23.)

(2) The Annual Development Plan shall be prepared in accordance with the provisions of sub-section (2) of section 297 and section 298, which shall apply *mutatis mutandis*.

(3) The State Government shall, on receipt of the Annual Development Plan, consider it in the light of the availability of fund for the purpose and shall, thereafter, approve the Annual Development Plan with necessary modification, if any.

(4) The Board of Councillors shall, within six months from the date of receipt of plan grant under sub-section (3) of section 71, submit a report, stating the progress of work towards implementing the Annual Development Plan, either in full or in part, for which the said grant was sanctioned.

(5) The Board of Councillors may, at any time but not more than once, revise or modify the Annual Development Plan with the approval of the State Government:

Provided that any modification or revision of the Annual Development Plan shall not contain anything which is not included in the Draft Development Plan for the period to which the Annual Development Plan relates.”.
