

THE ' [KHYBER PAKHTUNKHWA] HIGHWAYS
AUTHORITY ORDINANCE, 2001.

? IKHYBER PAKHTUNKHWA| ORDINANCE NO. XIX OF 2001.

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THE [KHYBER PAKHTUNKHWA] HIGHWAYS AUTHORITY
ORDINANCE, 2001.

? IKHYBER PAKHTUNKHWA| ORDINANCE NO. XIX OF 2001.

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

[29 August, 2001.]

AN

ORDINANCE

to provide for establishment of a Highway Authority in the
[Khyber Pakhtunkhwa]

WHEREAS it is expedient to establish a Highway Authority in the *[Khyber Pakhtunkhwa] for the purposes hereinafter appearing;

AND WHEREAS the Governor is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the 14th day of October, 1999, as amended upto date, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in

exercise of all powers enabling him in that behalf, the Governor of the *[Khyber Pakhtunkhwa] is pleased to make and promulgate, the following Ordinance:

CHAPTER-I
PRELIMINARY

1. Short title, extent_and commencement.---(1) This Ordinance may be called the [Khyber Pakhtunkhwa] Highways Authority Ordinance, 2001.

(2) It extends to the whole of the*[Province of the Khyber Pakhtunkhwa].

(3) It shall come into force at once, and shall always be deemed to have taken effect on 1*July, 2001.

2. Definitions.---In_ this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "Auditor General" means the Auditor General of Pakistan;

(b) "Authority" means the °[Khyber Pakhtunkhwa] Highways Authority established under section 3;

(c) "Board" means the Executive Board of the Authority;

(d) "Council" means the [Khyber Pakhtunkhwa] Highways Council;

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

°Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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“Provincial Highway”, for the purposes of this Ordinance, shall mean, a road declared by Government, by notification in the Official Gazette under section 10, to be a Provincial Highway;

“Government” means the Government of the [Khyber Pakhtunkhwa];

“Managing Director” means the Managing Director of the Authority;

“member” means a member of the Council or, as the case may be, of the Board;

“President” means the President of the Council;

“regulations” means regulations framed under this Ordinance;

“right of way (ROW)” means the land acquired for the purpose of construction of a Highway or any other road assigned to the Authority, or area astride a highway, the limits of which shall be notified, within which the control of land use shall rest with the Authority;

“road” means a road including land within the right of way and all works, such as catriageways, cartways, footpaths, berms, side drains, culverts, bridges, tunnels, fences, posts, sign boards, plantation and lighting arrangements, intersections and medians plantation assigned to the Authority; and

“rules” means rules made under this Ordinance.

CHAPTER-II

ESTABLISHMENT AND MANAGEMENT

OF THE AUTHORITY

3. Establishment of "Khyber Pakhtunkhwa] Highways Authority.---(1) As from the

commencement of this Ordinance, there shall be established, for carrying out the purposes of this Ordinance, an Authority to be known as the *[Khyber Pakhtunkhwa] Highways Authority;

(2) The Authority shall be a body corporate, having perpetual succession and a common seal with power to acquire, hold and dispose of property, and may by its name sue and be sued.

(3) The headquarters of the Authority shall be at Peshawar.

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

^{*}Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(4) The power of general direction and administration of the Authority and its affairs shall vest in the [Khyber Pakhtunkhwa] Highways Council, which may, through Board, exercise all powers and do all acts and things which may be exercised or done by the Authority in accordance with the provisions of this Ordinance.

(5) The Authority, or for that matter the 2[Khyber Pakhtunkhwa] Highways Council, shall work under the general superintendence and control of Government 3[Deleted].

4. Purpose and functions of the Authority.---The purpose and functions of the Authority shall be to plan, promote, organize and implement programmes for construction, development, operations, repairs and maintenance of Provincial Highways and other roads specially entrusted to it by Government.

5. '(Khyber Pakhtunkhwa) Highways Council.---(1) There shall be established a Council, to be known as the *[Khyber Pakhtunkhwa] Highways Council, consisting of-

(a) Chief Minister of the Province; President

(b) Minister for Works & Services; Vice President

(c) Minister for Finance; Member

(d) Minister for Environment; Member

(e) Additional Chief Secretary, Planning and Member

Development Department;

(f) Secretary, Finance Department; Member

(g) Secretary, Works & Services Department; Member

(h) Managing Director of the Authority; and Member-

cum-Secretary

(i) any other person to be co-opted by the Council.

(2) The meetings of the Council shall be called by the Secretary of the Council, at least once a year, or at any such date and time as required, or as may be specified by the

President.

(3) The President may, on the recommendation of the Board, accord anticipatory approval to any matter, which falls within the jurisdiction of the Council.

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Deleted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(4) The President or, in his absence, the Vice President, shall preside over the

meetings.

6. Powers and functions of the Council.---The powers and functions of the Council shall be-

(a) to review and recommend to Government for approval of perspective plans, five years plans, prepared by the Board, with appropriate consultation, where necessary;

(b) to lay down policies and guidelines to be followed by the Authority in the performance of its functions;

(c) to appraise '[, review and approve] projects upto the value within the competency of the province; and

(d) to recommend the annual budget of the Authority to Government for approval.

7. Management.---(1) The powers for the management of the Authority and its affairs shall be exercised by the Board;

12) The Board shall consist of a Chairman, who shall be the Managing Director, and not more than four members to be appointed by the Council as under:

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(ii)

(iii)

(iv)

a representative of the Finance Department of the rank of an Additional Secretary or equivalent;

a representative of the Works and Services Department;

a representative of the Planning and Development Department; and

an officer of the Authority from the field of Engineering in BPS-19 or 20, to be nominated by the Council, who shall also act as Secretary of the Board.]

(3) The meetings of the Board shall be held at the head office of the 3[Khyber Pakhtunkhwa] Highways Authority after every three months or at any time before three months if so desired by the Chairman of the Board.

(4) 'The

Chairman or, in his absence, a member authorized by him on

his behalf, and three members shall constitute a 'quorum' for a meeting of the board.

¹Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

[°]Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

8. Functions and powers of the Board.---Functions and powers of the Board shall be-

- (a) to exercise all technical, financial and contractual powers necessary for implementation and execution of the annual programme approved by Government;
- (b) in the event of an emergency or where restoration of damages cause to the infrastructure are needed in public interest, to undertake the requisite work; provided that the Board shall, as soon as possible, inform Government about it alongwith a short description of the work, its estimated cost and the time schedule;
- (c) to perform such other functions as may be delegated to it by the Council.

9. Managing Director, his duties, functions and powers.---(1) The Governor of the [Khyber Pakhtunkhwa] shall appoint the Managing Director who shall be the Chief Executive of the Authority and Chairman of the Board and shall exercise such powers and perform such functions as may be specified by the Council.

- (2) The Managing Director shall receive such salary and allowances and be subject to such conditions of service as may be determined by the Council.
- (3) The Managing Director shall have the power to re-appropriate with the approval of the Board, and the amount, including the re-appropriated amount, shall remain within the limit of approval cost and must not exceed the permissible excess.

CHAPTER-III POWERS AND DUTIES OF THE AUTHORITY

10. The powers of the Authority.---(1) The Authority may take such measures and exercise such powers, as it considers necessary or expedient for carrying out the purposes of this Ordinance.

(2) — Without prejudice to the generality of the powers conferred by subsection (1), the Authority may, for carrying out the purposes of this Ordinance,-

- (i) prepare and notify in the official Gazette, a list of Provincial Highways duly approved by the Cabinet and Government;
- (ii) advise Government on matters relating to Provincial Highways and other roads;
- (iii) | acquire any land in accordance with legal procedure and obtain and dispose off movable and immovable property or interests therein;
- (iv) undertake any work specified in sub-sections (1) and (2) of section 11;

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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incur expenditure on works specified in clause (iii);
procure plant, machinery, instruments and materials required for its use;
enter into and perform all such contracts as it may consider necessary;

levy, collect or cause to be collected tolls on '[Khyber Pakhtunkhwa]
Highways and such other roads as may be entrusted to it and bridges
thereon;

license facilities on roads under its control on such terms as it deems fit;

notify the right of way within which it shall not be lawful, without the
consent of the Authority, to make any changes in the land use;

cause studies, surveys, experiments and technical research to be made or
contribute towards the cost of such studies, surveys, experiments or
technical researches made by any other agency;

exercise power to award negotiated contracts for projects to be
undertaken through Private Sector Financing Programmes;

seek and obtain advice and assistance from any agency for the
preparation and execution of any plan, programme or project;

raise funds (local and foreign) through borrowing, floating of bonds,
sharing or leasing of assets or any other means, from time to time with
approval of Government:

Provided that a foreign loan shall be negotiated in consultation
with the relevant Ministry of Government of Pakistan besides the Finance

Department of Government;

perform any other function supplemental, incidental or consequential to
the purposes and functions aforesaid; and

*Tensure] mutation of land as soon as the land is taken over.

11. Plans and Schemes.---(1) The Authority shall prepare a master plan for the development, construction, operation and maintenance of *[Provincial Highways] and roads in the Khyber Pakhtunkhwa for the approval of the Council.

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

³Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

(2) The Authority may frame a scheme or schemes for all or any of the following matters, namely:

(i) construction, remodelling, operation and development of Provincial Highways and other roads entrusted to it by Government;

(ii) research and development in the field of Highways;
(iii) training of the Authority's employees;

(vi) welfare of the Authority's employees; and

(v) any other matter pertaining to the purposes and functions of the Authority or incidental thereto.

12. Powers to eject un-authorized_occupants.---Subject to rules, the Authority shall have the power to summarily eject any un-authorized occupant of Provincial Highways or other road entrusted to it or proposed site thereof or within the limits where raising of structures is prohibited and demolish and remove any structure thereon, and to use such force, including police force, as may be necessary for the purpose and to recover the cost thereof from the person responsible for such occupation or obstruction.

CHAPTER-IV ESTABLISHMENT

13. Appointment of officers, servants etc.---(1) The Authority may from time to time

employ [Omitted] such officers and servants, or appoint such experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), any rule made, or order or instruction issued, by the Authority, or in the terms and conditions of service of any person employed by or serving under the Authority, the Authority may at any time terminate the services of any person, as may be prescribed.

(3) The officers and servants of the Works & Services Department transferred to serve under the Authority shall be deemed to be on deputation, without payment of deputation allowance, but shall be entitled to the salary, allowances and other service benefits as admissible to them as Civil Servants.

14. Recruitment and conditions of service.---The Authority shall, with the approval of the Council, prescribe the procedure for appointment and terms and conditions of service of its officers and servants.

15. Managing Director, etc, to be deemed to be public servants.---The Managing Director, members, officers and servants of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the

^{‘Omitted vide Khyber Pakhtunkhwa Act No. XVI of 2011}

meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

16. Delegation of powers to Managing Director, etc.---The Authority may by general or special order delegate to the Managing Director, a member or officer of the Authority any of its powers, duties or functions under this Ordinance, subject to such conditions as it may think fit to impose.

17. Industrial Relations Ordinance. 1969 (XXIII of 1969). not to apply.---Nothing

contained in the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall apply to or in relation to the Authority.

18. Persons serving in Works and Services Department.---On the commencement of this

Ordinance, all persons serving in connection with the affairs of the Works and Services Department of Government of the Khyber Pakhtunkhwa shall be liable to serve under the Authority, if required to do so by the Provincial Government on such terms and condition as the Provincial Government may, in consultation with the Authority, determine but shall not be entitled to any deputation allowance:

Provided that the Provincial Government may, in relation to any such person as aforesaid, delegate such administrative, disciplinary and financial powers to the Authority as the Provincial Government may deem fit:

Provided further that the terms and conditions of services of any such person as aforesaid shall not be varied by the Authority to his disadvantage.

19. Authority to be local Authority.---The Authority shall be deemed to be local Authority for the purpose of borrowing money under the Local Authorities Loans Act, 1914 (IX of 1914).

CHAPTER-V

REPORTS AND STATEMENTS

20. Submission of yearly reports and returns, etc.---(1) The Authority shall submit to

Government, as soon as possible after the end of every financial year but before the last day of September next following, report on the conduct of its affairs for that year.

(2) A copy of the report mentioned in sub-section (1), together with a copy of the audit report shall be placed by Government before the Provincial Assembly and the Provincial Assembly shall refer the same to its Committee on Public Accounts for scrutiny and examination.

(3) The Committee on Public Accounts shall scrutinize and examine the reports referred to it under sub-section (2) in the same manner as, and shall in respect thereof, perform the same functions and exercise the same powers, as are required by it to be performed and exercised in respect of appropriation of accounts of the Provincial Government and the report of the Auditor General thereon.

(4) The Provincial Government may ask the Authority to furnish it with-

(i) any return, statement, estimate, statistics or other information regarding any matter under the control of the Authority; or

(ii) a report on any such matter; or

(iii) a copy of any document in the charge of the Authority; and the Authority shall comply with all such requisitions.

CHAPTER-VI

FINANCE

21. Funds and budget of the Authority.---(1) There shall be two separate non-lapsable funds to be known as "[Khyber Pakhtunkhwa] Highways Authority Development Fund" and "[Khyber Pakhtunkhwa] Highways Authority Road Maintenance Fund", vesting in the Authority and shall be utilized by it to meet the expenses in connection with its functions under this Ordinance, including the remuneration payable to its employees.

(2) The amounts at the credit of each of the Funds shall be inter transferable with the approval of the Council.

(3) The "[Khyber Pakhtunkhwa] Highways Authority Development Fund and the [Khyber Pakhtunkhwa] Highways Authority Road Maintenance Fund shall be separately kept in a Schedule Bank and shall be operated according to the rules and regulations of the Authority.

(4) The [Khyber Pakhtunkhwa] Highways Authority Development Fund shall have to its credit all the moneys received by the Authority on any of the following accounts:

(a) loans obtained from Government, including the Federal Government;
(b) any other loan obtained by the Authority, if so permitted by Government;

(c) grants made or funds provided by Government, and the Federal Government for development;

(d) foreign aids, grants and loans negotiated and raised by the Authority with the approval of Government;

(e) all other sums received by the Authority, such as fees, damages, costs, refunds, forfeiture, sale proceeds, lease moneys, rentals and fines;

*Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(f) income from sale of assets, lands and vehicles belonging to the Authority; and

(g) funds from floating bonds, shares or through any other means, if so permitted by Government.

(5) The following provincial receipts, which heretofore formed part of the Provincial Consolidated Fund, shall be credited to the '[Khyber Pakhtunkhwa] Highways Authority Road Maintenance Fund for utilization on maintenance of provincial roads and highways:

(a) renewal of fee of contractors registration;

(b) grants for maintenance of roads if any;

(c) sale of lender forms;

(d) initial fee recoverable from CNG/Petrol Pumps on Provincial Highways;

(e) income from lease of approaches to service station/CNG/Petrol pumps on Provincial Highways;

(f) toll tax on Provincial Highways; and

(g) proportionate share in the sugarcane cess allocated/collected corresponding to use of Provincial Highways in a certain zone.

(6) The budget of the Authority shall be formulated in three separate parts, firstly 'Construction/Development Budget', secondly 'Operational Budget' and thirdly 'Repairs and Maintenance Budget'; provided that any re-appropriation amongst the aforesaid three heads of budgets shall require recommendation of the Council and approval of Provincial Cabinet in the Revised Budget Estimates.]

22. Maintenance of accounts.---The Authority shall maintain complete and accurate books of accounts in such forms as may be prescribed by Government. *[A copy of these accounts shall be rendered to the Accountant General, *[Khyber Pakhtunkhwa], by the 31st August each year for incorporation in the Civil Accounts.]

23. Annual statement, of accounts.---In the month of January each year, the Authority shall submit to Government for approval a statement of the estimated receipts and expenditure in respect of the next financial year.

24. Audit.---(1) The accounts of the Authority shall be audited every year by the Auditor General in such manner as may be prescribed.

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Ordinance No. XXXIV of 2002

³Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(2) Copies of the audit report shall be sent to the Authority and, with the comments of the Authority, to Government and shall also be available for public inspection.

(3) The Authority shall carry out any directive issued by Government for rectification of an audit objection.

(4) The Audit report shall be submitted to the Provincial Assembly.

CHAPTER-VII

MISCELLANEOUS

25. Recovery of arrears due as arrears of land revenues.---Any sum due to the Authority shall be recoverable as an arrear of land revenue.

26. Land acquisition.---The acquisition of any land or any interest in land for the Authority or for any project under this Ordinance shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894), and the provisions of the said Act shall apply accordingly.

27. Transfer of rights and liabilities.---(1) As from the commencement of this Ordinance all assets and liabilities and all rights and obligations of the Communication and Works Department [along all Provincial Highways] shall stand transferred to the Authority.

(2) All contracts made by the Communication and Works Department shall be deemed to be contracts made by the Authority.

28. Authentication of orders and other instruments of the Authority.---All orders, decisions and other instruments of the Authority shall be authenticated by the signature of the

Managing Director and any other member or any Officer of the Authority authorized by it on its behalf.

29. Power to enter.---Subject to any regulation made in this behalf, any person generally or specially authorized by the Authority may, whenever it is necessary for the purposes of this Ordinance at all reasonable times, enter upon any land or premises, for the purposes stated hereunder without causing any damages to the private or public property:

(i) making any inspection survey, measurement, valuation or inquiry;

(ii) taking levels;

(iii) digging or bore into sub-soil;

(iv) setting out boundaries and intended lines of work;

[‘]Inserted vide Khyber Pakhtunkhwa Act No. XVI of 2011

(v) marking such levels, boundaries and lines by placing marks and cutting trenches; and

(vi) doing such other acts or things as may be prescribed:

Provided that no such person shall enter any boundary or any enclosed court or garden attached to a dwelling-house, except with the consent of the occupant thereof after serving on him at least twenty-four hours notice in writing of his intention to do so.

30. Indemnity, etc.---(1) Nothing in this Ordinance shall be construed as imposing upon the Authority, either directly or indirectly, any duty enforceable by proceedings before any court.

(2) No suit, prosecution or other legal proceedings shall lie against the Authority, the Managing Director or any Member, Officer, servant, expert, or consultant of the Authority in respect of any damage caused or likely to be caused or anything done or intended to be done in good faith under this Ordinance or rules or regulations.

31. Rules.---Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance:

Provided that till rules are made, existing corresponding rules of Government shall be followed.

32. Regulations.---The Authority may make regulations, not inconsistent with the rules, on all matters for which regulations are expedient.

33. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Ordinance, Government may issue such order, not inconsistent with the provisions of this Ordinance, as may appear to be necessary for the purpose of removing the difficulty.

34. Ordinance_to override other_laws.---Notwithstanding anything to the contrary contained in any other law for the time being in force, the provisions of this Ordinance shall have over-riding effect, and, in case of any repugnancy with any provision of any other law, the provisions of this Ordinance, to the extent of repugnancy, shall prevail.

Peshawar, Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH
dated the, Governor of the '[Khyber Pakhtunkhwa]
29" August, 2001.

'Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011