



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 139
(1997, chapter 36)

An Act to amend the Securities Act

Introduced 15 May 1997
Passage in principle 28 May 1997
Passage 10 June 1997
Assented to 12 June 1997

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EXPLANATORY NOTES

The purpose of this bill is to convert the Commission des valeurs mobilières du Québec into an autonomous body with non-budgetary funding. For that purpose, the Commission is endowed with legal personality, and becomes a mandatary of the Government.

The bill provides for the financing of the Commission on the basis of a balance between expenditures and revenue and confers on the Commission the power to perform the acts that are required for its financial management. It requires self-regulatory organizations and workers' funds inspected by the Commission to contribute to the financing of the Commission. In addition, the bill provides that the costs incurred by the Government for the administration of the Securities Act are to be borne by the Commission.

Lastly, the Public Protector Act is amended so as to remain applicable in respect of the Commission. The bill also contains transitional provisions.

LEGISLATION AMENDED BY THIS BILL :

- Public Protector Act (R.S.Q., chapter P-32);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12);
- Securities Act (R.S.Q., chapter V-1.1).

Bill 139

AN ACT TO AMEND THE SECURITIES ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

- 1.** Section 275 of the Securities Act (R.S.Q., chapter V-1.1) is repealed.
- 2.** The said Act is amended by inserting, after section 276, the following sections :

“**276.1.** The Commission is a legal person.

It is a mandatary of the Government.

The property of the Commission forms part of the property of the State, but the execution of its obligations may be levied against its property.

The Commission binds none but itself when it acts in its own name.

“**276.2.** The Commission may provide consulting and implementation services related to the regulation of the securities market to bodies outside Québec involved in such regulation.

“**276.3.** The Commission shall advise the Minister on any matter he submits to it concerning securities.

“**276.4.** The Commission may, in the pursuit of its objects, set up a contingency reserve or, with the authorization of the Government, a designated fund, into which it may deposit part of its revenue.

“**276.5.** The Commission may establish rules of internal management. The rules of internal management must be approved by the Government and come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date determined by the Government. The rules are also published in the *Bulletin* of the Commission.”

- 3.** The said Act is amended by inserting, after section 278, the following section :

“**278.1.** The chairman shall coordinate and apportion the work of the Commission between its members. He is responsible for the administration of the Commission and the direction of its personnel.”

4. Section 299 of the said Act is replaced by the following section:

“299. The members of the personnel of the Commission are appointed in accordance with the staffing plan and standards established by by-law of the Commission. The by-law shall also determine the remuneration standards and scales, the employment benefits and the other conditions of employment applicable to the personnel.

The by-law shall be submitted to the Government for approval.”

5. The said Act is amended by inserting, after section 301, the following section:

“301.1. The chairman shall establish a plan of activities for the Commission at such intervals as is determined by the Government.

The plan shall be submitted to the Government for approval.”

6. The said Act is amended by inserting, after section 330, the following chapter:

“CHAPTER VII

“FINANCIAL PROVISIONS

“330.1. All amounts payable to the Commission under this Act shall form part of the revenue of the Commission. Such revenue shall be applied to the payment of its expenditures.

For the purposes of this Act, any amounts deposited into a contingency reserve or fund set up under section 276.4 in the course of a fiscal year shall be regarded as current expenditures.

Likewise, any amounts held in such a reserve or fund do not form part of the surplus referred to in section 330.4.

“330.2. The costs incurred by the Government for the administration of this Act, as determined each year by the Government, shall be borne by the Commission.

“330.3. The chairman of the Commission shall, each year, submit the Commission’s budgetary estimates for the ensuing fiscal year to the Minister in accordance with the conditions determined by the Government.

The budget estimates shall be submitted to the Government for approval.

“330.4. The Commission shall enter in its budgetary estimates, as revenue, any anticipated surplus for the current fiscal year and any other accumulated surplus.

It shall enter, as expenditure, any deficit incurred in the preceding fiscal year.

“330.5. All amounts collected by the Commission shall, upon collection, be deposited in a bank or in a savings and credit union governed by the Savings and Credit Unions Act (chapter C-4.1).

“330.6. The Commission may use any part of its revenue not required for the payment of expenditures or the amounts that constitute the reserve and any fund set up under section 276.4, to make short-term investments

(1) in securities issued or guaranteed by the government of Canada, of Québec or of another Canadian province;

(2) by way of deposit with financial institutions designated by the Government, or in certificates, notes and other short-term securities issued or guaranteed by such financial institutions;

(3) by way of deposit with the Caisse de dépôt et placement du Québec, to be administered by the Caisse in accordance with the investment policy determined by the Commission.

“330.7. The Commission may not, unless authorized by the Government,

(1) contract a loan that causes its total outstanding borrowings to exceed the amount determined by the Government;

(2) make financial commitments in excess of the limits or contrary to the terms and conditions determined by the Government.

The Commission may not receive any gift, bequest or subsidy.

“330.8. The Government may, on the conditions it determines,

(1) guarantee the payment in principal and interest of any borrowing of the Commission;

(2) guarantee the performance of any other obligation of the Commission;

(3) authorize the Minister of Finance to advance to the Commission any sum of money considered necessary for the carrying out of this Act, on the conditions he determines.

Any sum of money that the Government may be called upon to pay pursuant to such guarantees or to advance to the Commission shall be taken out of the consolidated revenue fund.

“330.9. The costs incurred by the Commission for the administration of Title VI shall be borne by the recognized self-regulatory organizations.

Such costs, established for each self-regulatory organization by the Commission at the end of its fiscal year, shall comprise a minimum contribution fixed by the Commission and the amount, if any, by which actual costs exceed the contribution. The actual costs shall be established on the basis of the rate schedule established by regulation.

The certificate issued by the Commission establishing the amount to be paid by each self-regulatory organization is preemptory.

“330.10. The costs incurred by the Commission or, as the case may be, by a person specially designated by the Commission, for the purposes of section 30 of the Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (chapter F-3.2.1) and sections 37 and 38 of the Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l’emploi (1995, chapter 48), shall be borne by those Funds. The costs shall be determined annually by the Commission, on the basis of the actual costs; in the case of costs incurred by the Commission, the actual costs are established on the basis of the rate schedule established by regulation.

The certificate issued by the Commission establishing the amount to be paid by each Fund in respect of the costs incurred is preemptory.”

7. Section 331 of the said Act is amended by striking out paragraphs 26.1 to 27.1.

8. The said Act is amended by inserting, after section 331, the following section:

“331.1. The Commission may, by regulation,

(1) prescribe the fees payable for any formality provided for by this Act or the regulations, and for the services provided by the Commission, as well as the terms and conditions of payment;

(2) prescribe the fees payable by an investor for a securities transaction, and the terms and conditions of collection and remittance of the fees to the Commission;

(3) establish the rate schedule referred to in sections 212, 330.9 and 330.10.

The regulations shall be submitted to the Government for approval.”

9. Section 333 of the said Act is replaced by the following section:

“333. In exercising their regulatory powers, the Government and the Commission may establish various classes of persons, securities and transactions and prescribe appropriate rules for each class.”

10. Section 335 of the said Act is replaced by the following section:

“**335.** Draft regulations and regulations made under section 331 or 331.1 shall be published in the *Bulletin* of the Commission.”

11. Section 350 of the said Act is repealed.

12. Section 15 of the Public Protector Act (R.S.Q., chapter P-32) is amended by adding, after paragraph 4, the following paragraph:

“(5) the Commission des valeurs mobilières du Québec.”

13. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10), amended by Orders in Council 556-96 and 557-96 dated 15 May 1996, 821-96 dated 3 July 1996, 1051-96 dated 28 August 1996, 1493-96 dated 4 December 1996 and 1589-96 dated 18 December 1996, is again amended

(1) by inserting, in alphabetical order, in paragraphs 1 and 4, the words “the Commission des valeurs mobilières du Québec”;

(2) by inserting, in alphabetical order, in paragraph 3, the words “the Commission des valeurs mobilières du Québec if they are employed full-time”.

14. Schedule I to the Act respecting the Civil Service Superannuation Plan (R.S.Q., chapter R-12), amended by section 860 of chapter 2 of the statutes of 1996, is again amended by striking out the words “the Commission des valeurs mobilières du Québec, appointed after 7 July 1971, except those members who hold office during pleasure” in paragraph 2.

15. A member of the personnel of the Commission who, on 12 June 1997 is a public servant with permanent tenure is entitled to be placed on reserve in the public service if he transmits a notice to that effect to the Commission before 11 August 1997.

16. Every member of the personnel of the Commission who, on 12 June 1997, is a permanent employee of the Commission to whom the Public Service Act (R.S.Q., chapter F-3.1.1) applies may apply for a transfer to a position in the public service or enter a competition for promotion to such a position in accordance with that Act.

17. Section 35 of the Public Service Act applies to any personnel member referred to in section 16 who enters a competition for promotion to a position in the public service.

18. Where a personnel member referred to in section 16 applies for a transfer or enters a competition for promotion, he may require the chairman of the Conseil du trésor to give him an assessment of the classification that

would be assigned to him in the public service. The assessment must take account of the classification of the personnel member in the public service on 12 June 1997, as well as the years of experience and the formal training acquired since that date.

If the person concerned is transferred, the deputy minister or the chief executive officer shall assign to him a classification compatible with the assessment referred to in the first paragraph.

If the person concerned is promoted, his new classification must take account of the criteria set out in the first paragraph.

19. If some or all the activities of the Commission are discontinued or if there is a shortage of work, a personnel member referred to in section 16 is entitled to be placed on reserve in the public service with the classification he had on 12 June 1997.

In such a case, the chairman of the Conseil du trésor shall, where applicable, establish his classification taking account of the criteria set out in the first paragraph of section 18.

20. A personnel member placed on reserve pursuant to section 15 or 19 shall remain in the employ of the Commission until the chairman of the Conseil du trésor is able to assign him a position.

21. Subject to the remedies available under a collective agreement, a personnel member referred to in section 16 who is dismissed may bring an appeal under section 33 of the Public Service Act.

22. An association of employees certified in accordance with the provisions of Chapter IV of the Public Service Act that represents a group of employees on 12 June 1997 shall continue to represent those employees within the Commission until the date of expiry of the collective agreements in force on 12 June 1997.

Such an association shall also represent, according to the group concerned, any personnel member subsequently assigned to the Commission, until the date of expiry of the collective agreements referred to in the first paragraph.

The provisions of a collective agreement in force on 12 June 1997 shall continue to apply to such members of the personnel of the Commission, to the extent that they are applicable to them, until their expiry.

However, the provisions of such a collective agreement relating to job security do not apply to personnel members referred to in the second paragraph.

23. The provisions defining the conditions of employment of members of the personnel of the Commission not covered by a collective agreement on 12 June 1997 shall continue to apply, to the extent that they are applicable to them, until they are amended in accordance with the law. Such provisions, except those relating to job security, shall also apply, to the same extent, to persons who become employees of the Commission after 12 June 1997.

In the case of jurists, such provisions shall continue to apply until they are replaced by the conditions of employment defined in the first collective agreement between the Association des juristes de l'État and the Government; the conditions of employment defined in the collective agreement shall apply until 30 June 1998.

The Association des juristes de l'État shall continue to represent, until 30 June 1998, the jurists in the employ of the Commission on 12 June 1997. It shall also represent until the same date jurists who become employees of the Commission after 12 June 1997.

24. The material resources and the records and other documents in the possession of the Commission on 12 June 1997 shall become the property of the Commission.

25. The provisions of the Securities Regulation, in force on 12 June 1997, that relate to the matters referred to in section 331.1 of the Securities Act (R.S.Q., chapter V-1.1), enacted by section 8 of this Act, are deemed to constitute a regulation made by the Commission under section 331.1.

26. Notwithstanding sections 330.1 and 330.4 of the Securities Act, the revenues of the Commission may exceed its approved expenditures for each of the fiscal years 1997-98, 1998-99 and 1999-2000, and the resulting surplus shall be paid into the consolidated revenue fund.

For the 1997-98 fiscal year, the surplus shall be equal to the surplus for the preceding fiscal year, less \$2,000,000.

For the 1998-99 and 1999-2000 fiscal years, the surplus shall be equal to 50% of the surplus for the preceding fiscal year.

For the three said fiscal years, the various rate schedules established by the Commission shall, if necessary, be adjusted to reflect the reduction of the surplus and any variation of the amount of the approved expenditures.

27. Section 276.4 of the Securities Act, enacted by section 2 of this Act, and section 6 have effect from 1 April 1997.

28. This Act comes into force on 12 June 1997.