



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 135
(2000, chapter 35)

An Act to amend the Transport Act

Introduced 11 May 2000
Passage in principle 23 May 2000
Passage 16 June 2000
Assented to 16 June 2000

Québec Official Publisher
2000

EXPLANATORY NOTES

This bill proposes the establishment of a Forum of stakeholders in the general freight trucking industry in order to encourage dialogue between the major stakeholders in that industry, who are identified as being operators of heavy vehicles, transport service intermediaries, shippers and owners of a single tractor truck whose principal activity consists in driving that truck.

It is the mandate of the Forum to see to the drafting of one or more model contracts pertaining to any subject agreed upon by the members and to establish dispute settlement processes. The Forum will also be expected to propose to the Minister requirements to be made applicable to certain documents used in the industry, to promote compliance with agreements, to express its opinion on certain issues and to establish a strategic plan.

The Forum will also be made up of a chair and of ten other members representing freight movers and their clients; the representatives of the freight movers will have to be certified by the Commission des transports. The Commission will establish a list of freight movers on or before 15 August 2000, which will be revised on 1 November 2000.

If the majority of them so decide, all freight movers will have to pay an annual contribution to the certified freight movers group of their choice. Any defaulting freight mover will be prohibited from putting his or her heavy vehicle into operation and operating the vehicle.

Certain contractual provisions running counter to public policy are declared to be null. The Government is empowered to approve any model contract proposed by the Forum and to use any means to promote its use. Unless a formal agreement is reached as part of the proceedings of the Forum, the Government will be authorized, as of 1 October 2000, to make regulations in respect of any of the stated objects of the Forum. Moreover, the Minister is given the power to verify the professional knowledge of new freight movers.

The Act respecting owners and operators of heavy vehicles is amended to require transport service intermediaries to maintain a suretyship contract. The Commission will ascertain compliance with

this requirement and remove from the intermediaries list any intermediary who is remiss in this regard. Another amendment to the Act facilitates the consultation of the safety records of registrants.

Last, the bill provides that the Minister is to report to the Government on or before 1 June 2003 on the carrying out of the new provisions and on the advisability of maintaining or amending them.

LEGISLATION AMENDED BY THIS BILL :

- Transport Act (R.S.Q., chapter T-12);
- Act respecting owners and operators of heavy vehicles (1998, chapter 40).

Bill 135

AN ACT TO AMEND THE TRANSPORT ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. The Transport Act (R.S.Q., chapter T-12) is amended by inserting the following section after section 4.1 :

“4.1.01. The Minister may, by way of an order taking effect on the date of its publication in the *Gazette officielle du Québec*, require the persons designated by the Minister from among persons filing a first application for registration, or registered for less than 30 days and for the first time, in the register of operators or the register of owners of heavy vehicles established under the Act respecting owners and operators of heavy vehicles (1998, chapter 40) to demonstrate to the Minister, within the time the Minister indicates, the expertise or means available to them to implement in their businesses administrative measures capable of reasonably ensuring the safety of road users on roads open to public vehicular traffic and preserving the integrity of the road network.

The Minister shall request the Commission to make an inquiry, in accordance with the Act respecting owners and operators of heavy vehicles, if a person subject to an order has not demonstrated the required expertise or means within the prescribed time, or if the demonstration made is unsatisfactory to the Minister. Before making the request to the Commission, the Minister must invite the person to take a professional knowledge test that will allow the person’s expertise to be demonstrated objectively. The Minister may designate a person by agreement or contract to prepare and administer tests for the purposes of this section.”

2. The said Act is amended by inserting the following division after Division V.1 :

“DIVISION V.1.01

“FORUM OF STAKEHOLDERS IN THE GENERAL FREIGHT TRUCKING INDUSTRY

“§1. — *Establishment of Forum*

“48.11.01. The “Forum of stakeholders in the general freight trucking industry” is hereby established.

The object of the Forum is to encourage dialogue between the major stakeholders in the general freight trucking industry in Québec as regards the various commercial practices prevailing in the industry.

“Stakeholders in the general freight trucking industry” or “industry stakeholders” means freight movers and clients operating in the motor freight transportation sector. “Client” means an operator of heavy vehicles, a transport service intermediary or a person requesting or participating in the arranging of transportation within the meaning of the Act respecting owners and operators of heavy vehicles who enters into a motor freight transportation contract with a freight mover. “Motor freight transportation” means transportation by heavy vehicle of any goods or materials except the exclusive transportation of goods and materials expressly excluded by a government order made under this section. “Freight mover” means a person who owns or holds a right within the meaning of section 2 of the Highway Safety Code in respect of a single tractor truck registered in Québec, who usually only drives that tractor truck and whose principal business activity consists in driving that tractor truck.

The fact that a freight mover drives a tractor truck belonging to a partnership or legal person controlled by the freight mover is no obstacle to the application of this division. If a tractor truck is owned by two or more persons, the person whose principal activity consists in driving that tractor truck is deemed to be a freight mover provided the person meets the other conditions established in this section.

“48.11.02. More particularly, the mandate of the Forum is

(1) in keeping with the public interest as well as government agreements on public procurement, to see to the drafting of one or more model contracts pertaining to any subject agreed upon by the Forum and designed to establish the various rights and obligations of the parties as regards business transactions between a freight mover and a client; such a model contract may in particular provide for the considerations essential to the making of a contract, the terms and conditions of payment, the determination of the distance travelled and the price variations of certain products and services;

(2) to establish effective dispute settlement processes in the general freight trucking industry within the meaning of this division;

(3) to propose to the Minister requirements to be made applicable to estimates, contracts, bills of lading and documents binding between a freight mover and a client;

(4) to promote compliance by industry stakeholders with the agreements referred to in paragraph 1 and, where applicable, with the requirements ordered by the Government under paragraph *n* of section 5;

(5) to express its opinion on issues of concern to industry stakeholders which it takes up or which are referred to it by the Minister; and

(6) to establish a strategic plan, to be adjusted annually, setting out the objectives pursued, priorities established and results expected by the Forum, and including, in respect of the industry stakeholders, development projections over three years.

“48.11.03. The Forum shall be composed of a chair and no more than 10 other members.

Three members shall be appointed by the Minister, upon the designation of their respective group, to represent the three major groups of clients that do business with freight movers. In addition, the Minister, after consulting with those three members, shall appoint two other members upon the designation of their respective group and shall assign a number of votes to them. For the designation of the three members representing the major clients groups, the Minister shall select three groups and assign a certain number of votes to them according to the Minister’s analysis of the data contained in the research report dated 17 February 2000 entitled “Étude de la situation de travail des camionneurs du Québec”.

No more than five members shall be appointed by the Minister, upon designation of their respective group, to represent the five major groups of freight movers certified by the Commission. The Commission shall assign a number of votes to each such freight movers group in accordance with section 48.11.15.

“48.11.04. The Government shall appoint the chair of the Forum.

“48.11.05. The members of the Forum shall be appointed for a term of no more than three years. On the expiry of their term, the members shall remain in office until replaced or reappointed.

Any member of the Forum, except the chair, may be generally or specially represented at meetings of the Forum.

“48.11.06. The Government shall determine the remuneration, employee benefits and other terms of employment of the chair.

The other members of the Forum shall receive no remuneration, except in such cases, on such conditions and to such extent as may be determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the exercise of their functions, on the conditions and to the extent determined by the Government.

“48.11.07. The quorum at meetings of the Forum is seven members, including at least three representatives of clients groups and three representatives of freight movers groups. However, if less than five freight movers groups have been certified by the Commission, the quorum is six members including at least three representatives of clients groups and two representatives of freight movers groups.

“48.11.08. The chair shall call and preside at the meetings of the Forum and ensure that they are properly conducted. The chair shall decide any question of procedure. Decisions of the chair are final.

The Forum shall meet at least once every three months at the place determined by the chair. At such quarterly meetings, only the members who are present may constitute a quorum, even if other members take part in the meeting by means of equipment authorized by this Act.

Six members may require that the chair call a special meeting. The special meeting must be held within five days after the requisition is received.

“48.11.09. The members of the Forum may, if they all agree, take part in a meeting by means of telephone or other communications equipment enabling all participants to hear one another. The participants are, in such a case, deemed to have attended the meeting.

“48.11.10. Other than the chair, who has only one vote, the members of the Forum present at a meeting have the following number of votes :

(1) the members representing clients groups have the number of votes and fractions of votes, out of a total of 15 votes, assigned to each by the Minister under the second paragraph of section 48.11.03 ;

(2) the members representing freight movers groups have the number of votes and fractions of votes, out of a total of 15 votes, assigned to each by the Commission pursuant to section 48.11.15.

“48.11.11. The Minister shall designate a secretary for the Forum from among the employees in the Minister’s department.

“48.11.12. The minutes of a meeting of the Forum, approved by the Forum and certified by the chair, are authentic, as are documents and copies emanating from the Forum or forming part of its records if certified by the chair or by a person authorized by the chair.

“48.11.13. The Forum may form committees to examine particular matters, especially to evaluate the use and application of model contracts, determine their mode of operation and designate their members.

“48.11.14. The Forum may, by resolution, certify persons to arbitrate disputes between a freight mover and a client, in accordance with the rules of civil law or particular rules established by the Forum.

“§2. — Certification by the Commission

“48.11.15. A group of freight movers forming a cooperative, syndicate, union, federation or confederation or a non-profit legal person may be certified by the Commission if the group shows that it represents at least 10% of freight

movers, according to the list established by the Commission, and that it is able to offer group and individual services to freight movers in keeping with the objects set out in its articles of constitution or letters patent.

The Commission shall certify a maximum of five groups of freight movers as the major freight movers groups, assign to each such group a number of votes and fractions of votes and notify the Minister. The votes and fractions of votes shall be allocated among the groups in proportion to the number of freight movers, whether members or affiliates, that each certified group represents in relation to the total number of freight movers represented by other certified groups.

An “affiliate” means a freight mover who is not a member of a certified group of freight movers and who must, where applicable, pay a contribution to such a group pursuant to section 48.11.18.

The Commission shall request a freight mover whose name appears among the members of at least two groups referred to in the first paragraph to state in writing which of the groups the freight mover wishes to be included in.

“48.11.16. On or before 15 August 2000, the Commission shall establish the list of freight movers referred to in the first paragraph of section 48.11.15 on the basis, in particular, of the information referred to in section 49 of the Act respecting owners and operators of heavy vehicles. The list shall be revised every three years by the Commission.

Following a revision of the list, the Commission shall notify the chair of the Forum of stakeholders in the general freight trucking industry and the Minister of the representativeness of the five major certified groups and of the number of votes and fractions of votes assigned to each.

“48.11.17. The functions of a certified freight movers group shall consist in representing all its members and affiliates and promoting their interests, in particular through the improvement of the commercial practices of industry stakeholders, the promotion of services and employment benefits for freight movers, the distribution of information relevant to the commercial operations of freight movers, and the promotion of logistical and administrative services for their businesses.

“48.11.18. Every freight mover who is not a member of a certified freight movers group must, to avoid having the Commission prohibit his or her heavy vehicle from being put into operation or operated pursuant to the Act respecting owners and operators of heavy vehicles, pay to the certified group of his or her choice the annual contribution fixed at a special meeting of the members of the group for the financing of the group’s activities.

Every freight mover, whether a member or an affiliate of the certified freight movers group to which he or she pays a contribution, has the right to vote at the special meeting at which the annual contribution is fixed and has

only one vote. Where a certified group of freight movers is affiliated with an organization, a member or affiliate only has a right to vote at a special meeting of the group even if certain rules of the organization provide for special mechanisms, as regards contributions for the financing of its activities, that apply to all groups with which it is affiliated.

This section shall operate only if more than 50% of the persons named on the list of freight movers established in accordance with section 48.11.16 decide in favour of its application, either personally or through the certified group to which they belong. The Commission shall agree with the certified freight movers groups on the procedure to be determined by the Commission to allow the results of the decision to be established and published and, where applicable, to ensure that contributions are paid.

This section does not apply to a freight mover to which a collective agreement, within the meaning of the Labour Code (chapter C-27) or the Canada Labour Code (Revised Statutes of Canada, 1985, chapter L-2), applies and who pays dues to a certified association not certified by the Commission as a freight movers group.

“48.11.19. In order to ensure that the interests of freight movers are adequately protected, the Commission may direct any person it designates to inquire into the management or the activities of a certified freight movers group.

The person so designated shall have for the purposes of the inquiry the powers and immunities of a commissioner appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

“48.11.20. Following an inquiry report showing that the interests of freight movers are not being adequately protected, the Commission may cancel the certification of the group concerned. In that case, the Commission shall notify the Forum of stakeholders in the general freight trucking industry and the Minister.

“§3. — Provisions accessory to contracts between a freight mover and a client

“48.11.21. In the performance of a contract between a freight mover and a client, any clause the effect of which is to cause a freight mover who effects part of the freight movement to assume all of the risks and be liable for all freight charges and transportation costs is null.

In addition, any clause in such a contract that materially compels a freight mover to contravene a legislative or regulatory provision respecting the safety of road users on roads open to public vehicular traffic or the preservation of the integrity of the road network is null.

“48.11.22. The Government may, by order, ratify any model contract proposed by the Forum of stakeholders in the general freight trucking industry and perform any act necessary to promote its use.

“48.11.23. Except where a formal agreement is reached between the major industry stakeholders during the proceedings of the Forum of stakeholders in the general freight trucking industry, the Government may, as of 1 October 2000, by a regulation proposed by the Minister after consulting the Minister of Labour, enact requirements in respect of each and every one of the objects referred to in paragraph 1 of section 48.11.02.

Such requirements are deemed to have been enacted under paragraph *n* of section 5 and to apply to all freight movers and clients. Every first proposed regulation under this section may, notwithstanding section 11 of the Regulations Act (chapter R-18.1) be made or submitted for approval as early as the fifteenth day following its publication in the *Gazette officielle du Québec*.”

3. The Act respecting owners and operators of heavy vehicles (1998, chapter 40) is amended by inserting the following section after section 18:

“18.1. The Government may, by regulation, in the cases and according to the terms and conditions it determines, impose on the transport service intermediaries it indicates the obligation to obtain and maintain a suretyship contract for an amount it determines, and file the contract with the Commission, so as to guarantee the performance of their obligations toward other contracting parties. The suretyship contract must be accompanied with an undertaking by the surety to notify the Commission in the event of cancellation or non-renewal of the contract or reduction of the suretyship amount.

If such a suretyship contract is not obtained or maintained, the registration of the transport service intermediary on the list established under section 16 shall be refused or cancelled. An intermediary whose registration has been cancelled cannot present another application for registration until the default has been remedied and 90 days have elapsed since the date of cancellation.

The Commission shall publish the name and address of the surety together with the name of the intermediary whose obligations are guaranteed by the surety.”

4. Section 40 of the said Act is amended

(1) by inserting “name or” after “who gives the” in the first line of the first paragraph;

(2) by striking out “name or” in the second line of the second paragraph.

5. Notwithstanding the third paragraph of section 48.11.03 and section 48.11.15 of the Transport Act, the Minister of Transport shall, not later than 3 July 2000, appoint from among the major stakeholders having made

representations to the Minister on behalf of freight movers since 1 January 2000, three members, upon the designation of their respective group, and allocate among them, at the Minister's discretion, the 15 votes to be assigned to all the members representing groups of freight movers in accordance with paragraph 2 of section 48.11.10 of that Act. Until 1 December 2000, those groups are deemed to be the only certified groups of freight movers within the meaning of Division V.1.01 of the Transport Act and to have the number of votes assigned to them by the Minister and no other group of freight movers may make an application for certification to the Commission before that date.

6. Notwithstanding the first paragraph of section 48.11.16 of the Transport Act, the Commission shall, for the purposes of the certification of groups of freight movers, produce the first revision of the list of freight movers on or before 1 November 2000.

7. On or before 1 June 2003, the Minister shall submit to the Government a report on the carrying out of this Act and the expediency of maintaining or amending its provisions.

The report shall be tabled within the next 15 days in the National Assembly or, where the Assembly is not in session, within 15 days of resumption. The report shall be examined by the appropriate parliamentary committee.

8. The provisions of this Act come into force on the date or dates to be fixed by the Government, except section 3, which comes into force on 16 June 2000.