



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 61
(2004, chapter 32)

An Act respecting the Agence des partenariats public-privé du Québec

Introduced 17 June 2004
Passage in principle 1 December 2004
Passage 15 December 2004
Assented to 17 December 2004

Québec Official Publisher
2004

EXPLANATORY NOTES

This bill establishes the Agence des partenariats public-privé du Québec.

The agency's mission is to contribute, through its advice and expertise, to the renewal of public infrastructures and the enhancement of services delivered to citizens through public-private partnership projects.

The agency is responsible for advising the Government on any public-private partnership matter, particularly as regards project selection and prioritization and for informing public bodies, the business community and the general public on the concept of public management in the public-private partnership mode.

It is also responsible for providing expertise to public bodies in the evaluation of projects in the public-private partnership mode, the assessment of their feasibility and the negotiation, conclusion and management of public-private partnership contracts.

A public body may use the agency's services on a voluntary basis. However, a department is required to use the services of the agency for any project for which a public-private partnership is considered, if the department is directly or indirectly the main source of financing for the project and if the project is considered a major one according to the criteria determined by the Government for that purpose.

The bill sets out the organizational and operational rules applicable to the agency and includes provisions applicable to the agency and its subsidiaries concerning such matters as standards of ethics and value-for-money auditing by the Auditor General. Lastly, the bill contains transitional provisions and consequential amendments necessary for the establishment of the agency.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001);

- Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1).

Bill 61

AN ACT RESPECTING THE AGENCE DES PARTENARIATS PUBLIC-PRIVÉ DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT

1. An agency is established under the name “Agence des partenariats public-privé du Québec”. The agency may also operate under the name “Partenariats public-privé Québec”.

2. The agency is a legal person and a mandatary of the State.

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

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

3. The head office of the agency is located where the agency determines in the territory of the Communauté métropolitaine de Québec. The agency may, however, move its head office elsewhere with the authorization of the Government. Notice of the location and any relocation of the head office of the agency is published in the *Gazette officielle du Québec*.

The agency may hold its meetings anywhere in Québec.

CHAPTER II

MISSION AND POWERS

4. The mission of the agency is to contribute, through its advice and expertise, to the renewal of public infrastructures and the enhancement of services delivered to citizens through public-private partnerships.

The agency promotes the following in exercising its functions:

(1) a process for the selection of partners and the conclusion of contracts that is both transparent and fair, in order to ensure healthy competition among interested enterprises;

(2) the implementation of means for citizens to learn about the public-private partnership process and the added value of public funds invested;

(3) the use of reporting mechanisms based on the accountability of public bodies and on the fact that those bodies must ensure supervision of the infrastructure, equipment and public service delivery projects;

(4) the use in the public interest of consultation and communication processes involving the people concerned by the projects.

5. In pursuing its mission, the agency

(1) advises the Government on any public-private partnership matter, particularly as regards project selection and prioritization;

(2) operates a public-private partnership knowledge and expertise centre accessible to all interested persons and, for that purpose, collects and analyzes information on public-private partnerships in Canada and abroad;

(3) informs public bodies, the business community and the general public on the concept of public management in the public-private partnership mode; and

(4) provides expert services to public bodies for the evaluation of the feasibility of their infrastructure, equipment and public service delivery projects in the public-private partnership mode, for the process of selecting partners and for the negotiation, conclusion and management of partnership contracts.

6. A public-private partnership contract is a long-term contract under which a public body allows a private-sector enterprise to participate, with or without a financial contribution, in designing, constructing and operating a public work. The purpose of the contract can be the delivery of a public service.

The contract must stipulate the results to be achieved and determine how responsibilities, investment, risks and profits are to be shared so as to enhance the services delivered to citizens.

7. For the purposes of this Act, public bodies include

(1) government departments;

(2) persons and government bodies and enterprises referred to in section 2 of the Financial Administration Act (R.S.Q., chapter A-6.001);

(3) government bodies that conduct fiduciary activities and appear in a list appended to the public accounts;

(4) general and vocational colleges governed by the General and Vocational Colleges Act (R.S.Q., chapter C-29);

(5) the Comité de gestion de la taxe scolaire de l'île de Montréal and school boards governed by the Education Act (R.S.Q., chapter I-13.3) and school boards governed by the Education Act for Cree, Inuit and Naskapi Native Persons (R.S.Q., chapter I-14);

(6) university establishments governed by the University Investments Act (R.S.Q., chapter I-17);

(7) public institutions governed by the Act respecting health services and social services (R.S.Q., chapter S-4.2) and local health and social services network development agencies established under that Act;

(8) public institutions governed by the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) and regional councils established under that Act;

(9) municipal bodies within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1); and

(10) any other body designated by the Government.

8. A public body may use the agency's advisory and expert services for the evaluation of the feasibility of its infrastructure, equipment or public service delivery projects in the public-private partnership mode, for the process of selecting partners and for the negotiation and conclusion of public-private partnership contracts. These services are made available if, in the opinion of the agency, the nature and importance of the project warrant it.

In addition, a department must use the services of the agency for any project for which a public-private partnership is considered, if the department is directly or indirectly the main source of financing for the project and if the project is considered to be a major one according to the criteria determined by the Government for that purpose.

9. The agency issues advisory opinions, attaching any recommendations it may have, on any matter within its purview that is submitted to it by the chair of the Conseil du trésor.

10. When an investment project is of considerable importance, the Government may give the agency a mandate to evaluate its feasibility in the public-private partnership mode and, possibly, to select a partner and negotiate and conclude a partnership contract for the carrying out of the project.

11. Subject to the applicable legislative provisions, the agency may enter into an agreement with a government other than that of Québec, with a department of such a government, with an international organization or with a body of such a government or organization.

Likewise, the agency may enter into an agreement with a public body or any other person or entity, and participate in projects with them.

12. A public body that is a party to a partnership contract may, subject to the conditions it determines, delegate to a partner any function or power, other than a regulatory power, that is required for the carrying out of the contract.

It may authorize the subdelegation of any function or power subject to the same conditions.

13. With the authorization of the Government and if useful in the pursuit of its mission, the agency may acquire or constitute one or more subsidiaries.

A legal person more than 50% of whose voting rights attached to all issued and outstanding shares are held by the agency or a partnership in which more than 50% of the interest is held by the agency is a subsidiary of the agency. A legal person or partnership the majority of whose directors may be elected by the agency is also a subsidiary of the agency.

14. Sections 2 and 12 apply, with the necessary modifications, to subsidiaries of the agency all of whose shares are held directly or indirectly by the agency. Such subsidiaries are considered mandataries of the State.

The Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) applies to a subsidiary of the agency.

15. The agency may not, without the Government's authorization,

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

(2) make a financial commitment in excess of the limits or contrary to the conditions determined by the Government;

(3) acquire or hold shares in a legal person or an interest in a partnership in excess of the limits or contrary to the conditions determined by the Government;

(4) dispose of shares in a legal person or an interest in a partnership in excess of the limits or contrary to the conditions determined by the Government;

(5) acquire or dispose of other assets in excess of the limits or contrary to the conditions determined by the Government; or

(6) accept a gift or legacy to which a charge or condition is attached.

The Government may determine that a provision of the first paragraph applies to all subsidiaries of the agency or to only one of them.

The first paragraph does not apply to transactions between the agency and its subsidiaries or between the subsidiaries of the agency.

16. Despite sections 58 to 60 and the first paragraph of section 61 of the Public Administration Act (R.S.Q., chapter A-6.01), the agency determines the terms of its contracts by regulation.

The second paragraph of section 61 of that Act applies to such a regulation, with the necessary modifications.

A regulation under the first paragraph is submitted to the Government for approval, on the recommendation of the Conseil du trésor, and the Government may approve it with or without amendments.

17. For the purposes of a mandate received from the Government under section 10 or from a public body, the agency may, with the authorization of the Government, acquire by expropriation any immovable or real right necessary to carry out a partnership project.

For the same purposes, it may lease or dispose of any property it owns.

18. The agency exercises any other function assigned to it by the Government.

CHAPTER III

ORGANIZATION AND OPERATION

19. The affairs of the agency are administered by a board of directors composed of

(1) the chief executive officer of the agency, who is a member of the board by virtue of office; and

(2) eight other members appointed by the Government, four of whom are from public bodies and four from the private sector.

20. The chief executive officer of the agency is appointed by the Government for a term not exceeding five years; the other board members are appointed for a term not exceeding three years.

On the expiry of their term, board members remain in office until replaced or reappointed.

21. The chair and vice-chair of the board of directors are designated by the Government from among the members of the board.

22. The positions of chair of the board of directors and chief executive officer may not be held concurrently.

23. The chief executive officer is responsible for the administration and direction of the agency in keeping with its regulations, by-laws and policies. The functions of chief executive officer are exercised on a full-time basis.

The chair calls and presides at meetings of the board of directors, sees to the proper conduct of the board's proceedings and exercises any other functions assigned by the board.

The vice-chair exercises the functions of the chair when the latter is absent or unable to act.

24. A vacant position on the board of directors, other than those of chair of the board and of chief executive officer, is filled by the Government for the unexpired portion of the term of the member to be replaced.

Absence from the number of board meetings determined in the internal by-laws of the agency, in the cases and circumstances specified, constitutes a vacancy.

25. The remuneration, employment benefits and other conditions of employment of the chief executive officer are determined by the Government.

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

26. The quorum at meetings of the board of directors is the majority of its members, including the chief executive officer or the chair.

Decisions of the board are made by a majority vote of the members present. In the case of a tie vote, the person presiding at the meeting has a casting vote.

27. The members of the board of directors may waive notice of a meeting. Attendance at a meeting of the board constitutes a waiver of notice, unless the members are present to contest the legality of the meeting.

28. If all agree, the board members may take part in a meeting by means of equipment enabling all participants to communicate directly with one another.

29. Written resolutions, signed by all board members entitled to vote, have the same value as if they had been adopted during a meeting of the board of directors.

A copy of all such resolutions is kept with the minutes of the proceedings or other equivalent record book.

30. The minutes of the meetings of the board of directors, approved by the board and certified by the chair, the chief executive officer, the secretary or another person authorized by the agency, are authentic. The same applies to documents and copies emanating from the agency or forming part of its records, if they are so certified.

31. An intelligible transcription of a decision or other data stored by the agency in a computer or in any electronic form is a document of the agency and is evidence of its contents if it is certified by a person referred to in section 30.

32. A deed, document or writing is binding on and may be attributed to the agency only if it is signed by the chair, the chief executive officer, the vice-chair, the secretary or another personnel member authorized by the agency and, in the latter case, only to the extent determined by the by-laws of the agency.

33. The internal by-laws of the agency may, subject to specified conditions, allow a signature to be affixed by means of an automatic device, an electronic signature to be affixed, or a facsimile of a signature to be engraved, lithographed or printed on specified documents. However, the facsimile has the same force as the signature itself only if the document is countersigned by a person referred to in section 30.

34. The agency may determine the mode of operation of the board of directors in its internal by-laws. It may form an executive committee and any other committee, determine their mode of operation and delegate powers of the board to them.

35. The standards of ethics and professional conduct adopted by the agency for the members of the board of directors in accordance with a regulation made under section 3.0.1 of the Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30) are published by the agency in its operations report.

36. The agency adopts standards of ethics and professional conduct for its personnel. The standards must contain provisions that include, as a minimum, the requirements for public servants under the Public Service Act (R.S.Q., chapter F-3.1.1). The standards are published by the agency in its operations report.

37. The provisions relating to ethics and professional conduct adopted in accordance with a regulation made under section 3.0.1 of the Act respecting the Ministère du Conseil exécutif apply to a subsidiary of the agency, with the necessary modifications.

A subsidiary of the agency adopts standards of ethics and professional conduct for its personnel. The standards must contain provisions that include, as a minimum, the requirements for public servants under the Public Service Act (R.S.Q., chapter F-3.1.1).

A subsidiary makes public the standards it adopts under this section.

38. The secretary and the other members of the personnel of the agency are appointed in accordance with the staffing plan established by by-law of the agency.

Subject to the provisions of a collective agreement, the standards and scales of remuneration, employee benefits and other conditions of employment of the members of its personnel are determined by by-law of the agency in accordance with the conditions defined by the Government.

39. Any personnel member of the agency who has a direct or indirect interest in an enterprise causing the personnel member's personal interest to conflict with that of the agency must, on pain of forfeiture of office, disclose the interest in writing to the chief executive officer.

40. The chair of the Conseil du trésor may issue directives concerning the policies and general objectives to be pursued by the agency.

Directives are submitted to the Government for approval. Once approved, they are binding on the agency.

Directives are laid before the National Assembly within 15 days of their approval by the Government or, if the Assembly is not sitting, within 15 days of resumption.

CHAPTER IV

FINANCIAL PROVISIONS

41. The Government may, subject to the conditions it determines,

(1) guarantee payment of the principal and interest on any loan contracted by the agency or a subsidiary referred to in section 14 and guarantee their obligations; and

(2) authorize the Minister of Finance to advance to the agency or one of its subsidiaries any amount considered necessary to meet their obligations or pursue their mission.

The sums required for the purposes of this section are taken out of the consolidated revenue fund.

42. The agency may determine a tariff of commissions, professional and other fees for the use of its goods and services.

43. The operations of the agency are funded by the revenue it derives from its financial operations, the commissions and professional and other fees it charges and the other monies it receives.

44. The monies received by the agency must be allocated to the payment of its obligations. The agency retains any surpluses, unless the Government decides otherwise.

45. The Government reimburses the costs and expenses incurred by the agency in carrying out the mandates received under section 10.

46. Each year, the agency submits its budgetary estimates for the following fiscal year to the chair of the Conseil du trésor, in accordance with the form and content and the schedule determined by the chair of the Conseil du trésor.

The estimates are submitted to the Government for approval.

CHAPTER V

ACCOUNTS AND REPORTS

47. The fiscal year of the agency ends on 31 March.

48. Not later than 31 July each year, the agency files its financial statements and an operations report for the preceding fiscal year with the chair of the Conseil du trésor.

The financial statements and the operations report must contain all the information required by the chair of the Conseil du trésor.

49. The chair of the Conseil du trésor lays the financial statements and operations report before the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.

50. The agency formulates a business plan, which must include the operations of its subsidiaries, in accordance with the schedule and the form and content determined by the chair of the Conseil du trésor. The plan is submitted to the Government for approval.

On expiry, the business plan continues to apply until a new plan is approved.

51. The Auditor General audits the books and accounts of the agency each year and whenever so ordered by the Government.

The Auditor General's report must be submitted with the agency's operations report and financial statements.

The Auditor General may, with regard to the agency and its subsidiaries, conduct a value-for-money audit without obtaining the prior concurrence provided for in the second paragraph of section 28 of the Auditor General Act (R.S.Q., chapter V-5.01).

52. The agency must communicate to the chair of the Conseil du trésor any information required by the chair of the Conseil du trésor concerning its operations and the operations of its subsidiaries.

CHAPTER VI

AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

53. Schedule 2 to the Financial Administration Act (R.S.Q., chapter A-6.001) is amended by inserting “Agence des partenariats public-privé du Québec” in alphabetical order.

ACT RESPECTING TRANSPORT INFRASTRUCTURE PARTNERSHIPS

54. The Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001) is amended by inserting the following section after section 1:

“**1.1.** Section 8 of the Act respecting the Agence des partenariats public-privé du Québec (2004, chapter 32) applies to a partnership agreement that constitutes a public-private partnership contract within the meaning of that Act, except in the cases and subject to the conditions determined by the Government.”

55. Section 5 of the said Act is amended by striking out the second paragraph.

ACT RESPECTING THE PROCESS OF NEGOTIATION OF THE COLLECTIVE AGREEMENTS IN THE PUBLIC AND PARAPUBLIC SECTORS

56. Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2), amended by Order in Council 464-2004 dated 12 May 2004, is again amended by inserting “The Agence des partenariats public-privé du Québec” in alphabetical order.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

57. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10), amended by Conseil du trésor

Decision 200976 dated 20 April 2004, is again amended by inserting “Agence des partenariats public-privé du Québec” in alphabetical order in paragraph 1.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

58. Schedule II to the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1), amended by Conseil du trésor Decision 200976 dated 20 April 2004, is again amended by inserting “the Agence des partenariats public-privé du Québec” in alphabetical order in paragraph 1.

CHAPTER VII

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

59. The records and other documents of the Direction des partenariats d’affaires of the Secrétariat du Conseil du trésor become records and documents of the Agence des partenariats public-privé du Québec.

60. Subject to the conditions of employment applicable to them, employees of the Secrétariat du Conseil du trésor assigned to the Direction des partenariats d’affaires in office on (*insert the date preceding the date of coming into force of this section*) become employees of the Agence des partenariats public-privé du Québec provided that a decision of the Conseil du trésor providing for their transfer is made before (*insert the date occurring one year after the date of coming into force of this section*).

61. Subject to the conditions of employment applicable to them, employees referred to in section 60 hold the positions and exercise the functions assigned to them by the agency.

62. An employee of the agency who, when appointed to the agency, was a public servant with permanent tenure may request a transfer to a position in the public service or take part in a promotion competition for such a position, in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

63. Section 35 of the Public Service Act applies to an employee referred to in section 62 who takes part in a promotion competition for a position in the public service.

64. An employee referred to in section 62 who applies for a transfer or takes part in a promotion competition may ask the chair of the Conseil du trésor for an assessment of the classification the employee would be assigned in the public service. The assessment must take into account the employee’s classification on the last day of employment in the public service and the experience and training acquired in the course of employment with the agency.

If an employee is transferred under section 62, the deputy minister or chief executive officer determines the employee's classification in accordance with the assessment provided for in the first paragraph.

If an employee is promoted under section 62, the classification assigned to the employee must take into account the criteria set out in the first paragraph.

65. In the event of a partial or total discontinuance of the operations of the agency or a shortage of work, an employee referred to in section 62 is entitled to be placed on reserve in the public service with the classification held on the last day of employment in the public service.

In that case, the chair of the Conseil du trésor determines the employee's classification taking into account the criteria set out in the first paragraph of section 64.

66. A person who, in accordance with the applicable conditions of employment, refuses to be transferred to the agency is assigned to the agency until the chair of the Conseil du trésor is able to place the person in accordance with section 100 of the Public Service Act. The same applies to a person placed on reserve in accordance with section 65, which person remains in the employ of the agency.

67. Subject to remedies available under a collective agreement, an employee referred to in section 62 whose employment is terminated or who is dismissed may bring an appeal under section 33 of the Public Service Act.

68. A regulation under section 58 of the Public Administration Act applies to the agency until the date a regulation under section 17 of this Act takes effect.

69. The sums required to carry out this Act during the fiscal year 2005-2006 are taken out of the consolidated revenue fund to the extent determined by the Government.

70. Not later than (*insert the date occurring five years after the date of coming into force of section 5*) and subsequently every five years, the chair of the Conseil du trésor must ensure that the carrying out of this Act is the subject of an independent report.

The chair of the Conseil du trésor lays the report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption. The report is examined by the appropriate committee of the National Assembly.

71. The chair of the Conseil du trésor is responsible for the administration of this Act.

72. This Act comes into force on the date or dates to be set by the Government.