



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 102
(2005, chapter 25)

An Act respecting the funding of certain pension plans

Introduced 5 May 2005
Passage in principle 31 May 2005
Passage 16 June 2005
Assented to 17 June 2005

Québec Official Publisher
2005

EXPLANATORY NOTES

The purpose of this bill is to temporarily relax certain rules relating to the funding of defined benefit pension plans and defined benefit-defined contribution plans.

The bill provides that an employer participating in such a pension plan may take advantage of the relaxation measures at the first actuarial valuation of the plan carried out after 30 December 2004. Under a first relaxation measure, an unfunded solvency liability noted at the time of that valuation may be combined with unfunded liabilities of the same nature determined in earlier valuations. In certain cases, too, the period normally prescribed to offset the unfunded solvency liability may be extended.

As well, the bill provides that the cost of an amendment to such a pension plan made during the period the bill specifies is to be evaluated on a funding basis and a solvency basis and funded using the method providing the greater value.

Bill 102

AN ACT RESPECTING THE FUNDING OF CERTAIN PENSION PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** This Act applies to pension plans governed by Chapter X of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1).
- 2.** A pension committee that requests an actuary to carry out the first complete actuarial valuation of a pension plan to be undertaken after 30 December 2004 must notify every employer participating in the plan of the fact, in writing, within 10 days following the request.
- 3.** Within 30 days of notification, the employer—or, in the case of a multi-employer pension plan, even not considered as such under section 11 of the Supplemental Pension Plans Act, the participating employers jointly—may send the pension committee a writing instructing it not to take into account the amounts referred to in subparagraph 3 of the second paragraph of section 137 of that Act for the purpose of determining a technical actuarial deficiency or an amount determined under subparagraph 4 of the second paragraph of that section at the time of the valuation. Those amounts are eliminated for such purposes.

The employer, or the employers jointly, may also, in the same writing, require that the valuation be carried out at a date it sets that is earlier than the date set by the committee. However, that date may not be more than 90 days before the date of the writing, except if necessary to comply with the obligation under paragraph 3 of section 118 of the Supplemental Pension Plans Act.

If an amendment to the pension plan is made after 5 May 2005 and was not considered for the purposes of a valuation of the pension plan carried out in accordance with section 130 of the Supplemental Pension Plans Act at a date before the date of the valuation referred to in section 2, the carrying out of the instructions provided for in the first paragraph includes, if applicable, the following operations:

- (1) determining an amount under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act without reference to that amendment; and then
- (2) determining an unfunded actuarial liability pertaining to that amendment and another amount determined under subparagraph 4 of the second paragraph

of section 137 of the Supplemental Pension Plans Act, taking into account the amount referred to in subparagraph 1 and the amendment.

4. If an employer has not received a notice under section 2, the employer may at all times send the pension committee a writing instructing it to have the valuation referred to in that section carried out at the date it sets and in keeping with the instructions provided for in section 3.

The date set by the employer cannot be more than 90 days before the date of the writing sent under the first paragraph, except if necessary to comply with the obligation under paragraph 3 of section 118 of the Supplemental Pension Plans Act.

In the case of a multi-employer pension plan, even not considered as such under section 11 of that Act, the instructions provided for in this section must be given by the participating employers jointly; they may not be given, however, if all the employers have received the pension committee's notice.

5. In the following cases, an employer that sends the pension committee a writing under section 3 or 4 may also give instructions to have an amount determined at the time of the valuation under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act, other than the amount determined under subparagraph 2 of the third paragraph of section 3, amortized according to the procedures set out in section 8:

(1) the employer is a municipality, a body referred to in section 18 of the Act respecting the Pension Plan of Elected Municipal Officers (R.S.Q., chapter R-9.3), or an educational institution at the university level referred to in any of paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (R.S.Q., chapter E-14.1);

(2) the employer provides the pension committee with a guarantee, such as a letter of credit, established in accordance with the regulations; and

(3) the plan members and beneficiaries give their consent in accordance with section 7.

6. In the case of a multi-employer pension plan, even not considered as such under section 11 of the Supplemental Pension Plans Act, the instructions provided for in section 5 must be given by the participating employers jointly. They may not be given unless each of the employers is referred to in paragraph 1 or 2 of section 5, or, if an employer is not referred to in those provisions, unless the members and beneficiaries bound to that employer as well as those affected by the earlier withdrawal of an employer who are not bound to an employer participating in the plan have consented, in accordance with section 7, to the application of the procedures set out in section 8.

For the purposes of the first paragraph, the following are bound to an employer:

(1) the active members in the employ of the employer on the date the notice under the first paragraph of section 7 is sent;

(2) the non-active members on that date whose active membership ended while they were in the employ of the employer; and

(3) the beneficiaries on that date of a pension benefit that derives from the benefit of a member whose active membership ended while the member was in the employ of the employer.

7. To verify whether the plan members and beneficiaries whose consent is required agree to the application of the procedures set out in section 8, the pension committee must send each of them a notice containing the information prescribed by regulation, informing them that they may notify the pension committee in writing of their opposition within 30 days after the notice is sent or after the notice provided for in the second paragraph is published, whichever is later.

Unless all plan members and beneficiaries whose consent is required have been personally notified, the pension committee must also publish a notice of the measure being considered in a daily newspaper in the region of Québec where the greatest number of active members affected reside. The notice must invite those persons who have not received a personal notice and who believe they are a member or beneficiary whose consent is required, to declare their status to the pension committee within 30 days after the publication, and, if they are able to establish that status, to inform the committee in writing of their opposition.

Upon expiry of the time for expressing opposition, the members and beneficiaries are deemed to have consented to the application of the procedures set out in section 8, unless 30% or more of the active members or 30% or more of the non-active members and the beneficiaries whose consent is required have opposed it. The pension committee must immediately inform the employer concerned of the result of the consultation.

If all the active members whose consent is required are represented by at least one certified association, those members are deemed to have consented to the application of the procedures set out in section 8 if every certified association that represents them has agreed to it. In such a case, the pension committee need not implement the information and consultation process provided for in this section for those members.

8. When instructions are given in accordance with section 5 or 6, the following procedures apply to the amortization of an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act, other than the amount determined in

accordance with subparagraph 2 of the third paragraph of section 3, at the time of the valuation referred to in section 2:

(1) the amortization amounts required during the fiscal years or parts of a fiscal year of the pension plan included in the five-year period following the date of valuation are established as if the amortization period were 10 years; and

(2) the balance of that amount on the date the five-year period provided for in paragraph 1 ends is amortized as if it were an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act at the time of a complete actuarial valuation of the plan.

9. For the purposes of sections 133 and 134 of the Supplemental Pension Plans Act, the amortization amounts to be paid with respect to the balance referred to in paragraph 2 of section 8 are considered as the continuation of the amortization amounts determined under paragraph 1 of that section. Moreover, as regards the amortization amounts to be paid until the end of the fifth year following the date of the actuarial valuation, the reduction provided for in section 134 of the Supplemental Pension Plans Act must first be applied to the amounts relating to the balance referred to in paragraph 2 of section 8.

In the case of a reduction of the amortization amounts relating to that balance, the latter must be redetermined so as to be equal to the discounted value of the amortization amounts thus reduced. The amortization period of the balance thus determined runs from the date of the actuarial valuation determining it or the date that is five years after the date of the actuarial valuation referred to in section 2, whichever is later. It ends not later than 10 years after the date of the actuarial valuation referred to in section 2.

10. If, during the five-year period referred to in paragraph 1 of section 8, the guarantee provided under paragraph 2 of section 5 ceases to be in conformity with the standards established by regulation as regards the amount required, or if the guarantee is realized, the amortization amounts determined at the time of the valuation referred to in section 2 according to the procedures set out in paragraphs 1 and 2 of section 8, as amended if applicable, and that remain to be paid on the date on which the guarantee ceases to be in conformity or is realized are again determined as prescribed by regulation.

11. During the period for which the procedures set out in section 8 apply as regards a pension plan some of whose members and beneficiaries have consented to the application of those procedures, no amendment concerning the rights of the members or beneficiaries whose consent was required may be made to the plan unless an amount equal to the greater of the following values is paid into the pension fund:

(1) the value of the additional obligations arising from the amendment, determined on a funding basis; or

(2) the value of those obligations determined on a solvency basis.

The amount must be paid as soon as the report on the actuarial valuation required under paragraph 2 of section 118 of the Supplemental Pension Plans Act is sent to the Régie des rentes du Québec. Any interest accrued since the valuation date is added, calculated at the rate referred to in section 48 of that Act.

Subject to those conditions, no unfunded actuarial liability or amount under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act need be determined as a result of the amendment.

12. The guarantee provided under paragraph 2 of section 5 is added to the assets of a pension plan in order to determine the solvability of the pension plan. In addition, for the purposes of section 172 of the Supplemental Pension Plans Act, it is considered as a security in which the assets of the pension plan are invested and whose book value is equal to the amount of the guarantee.

If that guarantee is realized,

(1) the procedures set out in section 8 cease to apply;

(2) as of the payment, the amount paid into the pension fund as a result of the realization of the guarantee is considered to be an employer contribution appropriated to the payment of the amortization amounts relating to the amount referred to in the instructions provided for in section 5; and

(3) the amount by which the total of that amount and of the amortization payments made to the pension fund exceeds the amortization payments which, were it not for the application of the procedures set out in section 8, would have been due on the date of realization of the guarantee is paid to the employer.

Subparagraph 3 of the second paragraph does not apply in the case of a pension plan referred to in section 6. If the guarantee is realized as a result of the termination of another type of pension plan, the surplus amount may be paid under that subparagraph 3 only if, after the payment, the value of the assets of the pension plan is at least equal to the value of its liabilities.

13. For the purposes of an actuarial valuation required under paragraph 2 of section 118 of the Supplemental Pension Plans Act in connection with an amendment made between 5 May 2005 and the date that is five years after the date of the actuarial valuation referred to in section 2, section 130 of the Supplemental Pension Plans Act applies subject to the following amendments:

(1) the first paragraph is replaced by the following paragraph:

“**130.** The actuarial valuation required under paragraph 2 of section 118 may be limited to the determination of the value of the additional obligations

arising from an amendment to the pension plan, or, if that value is determined on a funding basis, may concern only the variation in the current service contribution arising from the amendment. If the value or the variation is determined on a funding basis, the same assumptions and methods must be used as were used for the preceding actuarial valuation, unless they are not appropriate in view of the nature of the amendment made to the pension plan.”;

(2) the following paragraph is inserted after the second paragraph:

“If the amendment increases the obligations arising from the pension plan, the value of the additional obligations is equal to the higher of

“(1) the value of the additional obligations arising from the amendment, determined on a funding basis; and

“(2) the value of those obligations determined on a solvency basis.”;

(3) the first three lines of the third paragraph are replaced by the following:

“An improvement unfunded actuarial liability equal to the value of the additional obligations must be determined unless”.

14. The Government may make any regulation necessary for the purposes of this Act, in particular as regards

(1) the form and content of any document prescribed by this Act;

(2) the information that a report on the actuarial valuation of a pension plan must contain if instructions provided for in section 3, 4 or 5 have been given with respect to an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act at the time of the valuation referred to in section 2, and with respect to the amortization of such an amount or its balance;

(3) the nature, form and amount, and the terms and conditions of a guarantee under paragraph 2 of section 5; and

(4) the time limits and procedures applicable to the execution of any obligation or formality under this Act.

15. A pension committee that, before 17 June 2005, requested an actuary to carry out the first complete actuarial valuation of a pension plan to be undertaken after 30 December 2004 must, within 30 days after 17 June 2005, send the employer the notice required under section 2. In that case, the employer may send the committee a writing under section 3 on or before 16 August 2005.

If, on or before 16 August 2005, the employer sends a writing under section 3 or instructs the pension committee as provided for in section 4,

(1) the 30-day time limit set out in the first paragraph of section 3 cannot be invoked against the employer;

(2) the valuation date may be more than 90 days before the date specified in the instructions given by the employer; and

(3) the time limit to send the Régie a report on the valuation carried out in accordance with the instructions ends nine months after the valuation date or 31 December 2005, whichever is later.

For the purposes of this section, “the employer” means an employer participating in the pension plan, and, in the case of a multi-employer pension plan, even not considered as such under section 11 of the Supplemental Pension Plans Act, the participating employers jointly.

16. If an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act was established at the time of an actuarial valuation referred to in the first paragraph of section 255 of the Act to amend various legislative provisions concerning municipal affairs (2004, chapter 20) and the municipality or body referred to in that section 255 gave the pension committee the instructions provided for in section 3 or 4, the amount that may be the subject of the instructions provided for in section 5 must be divided so as to constitute

(1) an amount equal to the lesser of

(a) the amount that is the total of the amortization amounts that, were it not for the instructions provided for in section 3 or section 4, would remain to be paid with respect to an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act at the time of an actuarial valuation dated not earlier than 31 December 2001 nor later than 1 January 2003, those amounts being discounted at the date of the valuation referred to in section 2; and

(b) the amount that may be the subject of the instructions provided for in section 5;

(2) an amount equal to the lesser of the following amounts:

(a) the amount that is the total of the amortization amounts that remain to be paid with respect to an amount determined under subparagraph 4 of the second paragraph of section 137 of the Supplemental Pension Plans Act at the time of an actuarial valuation dated not earlier than 2 January 2003 nor later than 1 January 2005, other than the amount determined under subparagraph 2 of the third paragraph of section 3, those amounts being discounted at the date of the valuation referred to in section 2; and

(b) the amount that may be the subject of the instructions provided for in section 5, reduced by the amount constituted under paragraph 1; and

(3) an amount equal to the remainder of the amount that may be the subject of the instructions provided for in section 5 once the amounts constituted under subparagraphs 1 and 2 have been deducted from it.

For the purposes of section 12 of the Act to amend various legislative provisions concerning municipal affairs (2003, chapter 3), replaced by section 215 of chapter 20 of the statutes of 2004, the amount constituted under subparagraph 1 of the first paragraph is the remainder of the amount referred to in the third paragraph of that section 12. For the purposes of section 255 of the Act to amend various legislative provisions concerning municipal affairs (2004, chapter 20), the amounts constituted under subparagraphs 1 and 2 of the first paragraph are the remainder of the sum referred to in the first paragraph of that section 255.

17. Section 11 does not apply to an amendment made to a pension plan before 5 May 2005.

18. The first regulation made under this Act is not subject to the publication requirement under section 8 of the Regulations Act (R.S.Q., chapter R-18.1).

That regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation, despite section 17 of the Regulations Act. However, once published and if it so provides, the regulation may apply from any date not earlier than 5 May 2005.

19. In addition to the transitional provisions provided for by this Act, the Government may, by a regulation made before 31 December 2005, make any other transitional provision to ensure this Act is applied.

If it so provides, such a regulation may apply from any date not earlier than 5 May 2005.

20. The Minister of Employment and Social Solidarity is responsible for the administration of this Act.

21. This Act comes into force on 17 June 2005.

