



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 41
(2013, chapter 25)

An Act to amend the Public Service Act mainly with respect to staffing

**Introduced 14 May 2013
Passed in principle 26 September 2013
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Assented to 20 November 2013**

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EXPLANATORY NOTES

This Act makes various amendments to the Public Service Act.

Changes are made to the staffing process to make it possible for a candidate who participates in a qualification process, following an invitation for applications of a limited or unspecified duration, to be appointed to a position as soon as the person is declared qualified.

This Act replaces the notions of competitions and lists of candidates declared qualified with the concepts of qualification processes and banks of qualified persons.

The Conseil du trésor is empowered to make various rules applicable to the new staffing process, design a specific qualification process for persons who have held a student or intern position, and determine the conditions under which retired employees may be re-appointed for a set term on the basis of their classification before retirement. As well, deputy ministers and chief executive officers are specifically authorized to conduct an additional evaluation before making an appointment.

The power to fix the norms for the classification of public servants is transferred to the Conseil du trésor.

The Chair of the Conseil du trésor is conferred the responsibility of appointing Conseil du trésor representatives to the joint parity committees of peace officers, and of calling meetings of those committees.

The Chair of the Conseil du trésor is also assigned new functions with respect to governance of human resources management.

New provisions are introduced regarding the management of the Commission de la fonction publique and its responsibilities.

Finally, this Act introduces amendments to the penal provisions and contains a number of transitional provisions and consequential amendments.

LEGISLATION AMENDED BY THIS ACT:

- Public Service Act (chapter F-3.1.1);
- Act to implement certain provisions of the Budget Speech of 30 March 2010, reduce the debt and return to a balanced budget in 2013-2014 (2010, chapter 20).

Bill 41

AN ACT TO AMEND THE PUBLIC SERVICE ACT MAINLY WITH RESPECT TO STAFFING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PUBLIC SERVICE ACT

1. Section 35 of the Public Service Act (chapter F-3.1.1) is amended by replacing the first paragraph by the following paragraph:

“35. A candidate may appeal to the Commission de la fonction publique if he considers that the procedure used, within a promotion-only qualification process, to determine whether he is eligible or to evaluate him was irregular or illegal. An appeal application must be submitted in writing and received by the Commission within 15 working days of the sending of the notice advising the candidate that he does not meet the eligibility criteria for the qualification process, or informing him of the results of his evaluation as part of that process.”

2. Section 36 of the Act is replaced by the following section:

“36. The Commission de la fonction publique may refuse to hear an appeal brought under section 35 relating to a promotion qualification process where it considers that the application is frivolous or in bad faith, or that its intervention would clearly be of no use.”

3. Section 42 of the Act is amended

(1) by replacing “by way of competition” in the first paragraph by “by means of a qualification process”;

(2) by replacing “without a competition” in the second paragraph by “otherwise than through a qualification process”.

4. Section 43 of the Act is amended

(1) by replacing “competition held to fill” in the first paragraph by “qualification process for the purpose of establishing a bank of qualified persons to fill”;

(2) by replacing “competition” wherever it appears in the third paragraph by “qualification process”.

5. Section 44 of the Act is replaced by the following section:

“44. The Chair of the Conseil du trésor launches invitations for applications in order to initiate qualification processes.”

6. Section 46 of the Act is repealed.

7. Section 47 of the Act is amended

(1) by replacing “for a competition or candidate inventory” in the first paragraph by “for a qualification process”;

(2) by inserting the following paragraph after the first paragraph:

“A person is presumed to be eligible for a qualification process on the basis of the information provided with their application. A person’s eligibility must be confirmed before their appointment.”;

(3) by striking out the second and third paragraphs.

8. The Act is amended by inserting the following section after section 47:

“47.1. If the Chair of the Conseil du trésor considers that it would be unreasonable to evaluate all the candidates in view of their number, the Chair may reduce the number of candidates in accordance with the norms determined by regulation by the Conseil du trésor.

When inviting applications, the Chair shall state what means are intended to be used to reduce the number of applications.”

9. Section 48 of the Act is amended by adding “or positions to be filled” after “the position”.

10. Section 49.1 of the Act is repealed.

11. The Act is amended by inserting the following section after section 49.1:

“49.2. A person presumed to be eligible is declared qualified after successfully passing the evaluation.

Upon being declared qualified, a person is registered in a bank of qualified persons.”

12. Section 50 of the Act is replaced by the following section:

“50. The Chair of the Conseil du trésor may, on request or on the Chair’s own initiative, correct an error having occurred during a qualification process and, if appropriate, register the persons concerned in or remove them from a bank of qualified persons.”

13. The Act is amended by inserting the following section after section 50:

“50.0.1. A person who has been employed as a student or intern may be registered in a bank of qualified persons following qualification processes specific to such persons. The Conseil du trésor determines the rules applicable to and the procedures governing access to those processes.”

14. Section 50.1 of the Act is amended

(1) by replacing subparagraph 1 of the first paragraph by the following subparagraph:

“(1) the procedure for a qualification process to establish a bank of qualified persons;”;

(2) by replacing “competition or for a candidate inventory” in subparagraph 2 of the first paragraph by “qualification process”;

(3) by replacing “competition or a candidate inventory” in subparagraph 3 of the first paragraph by “qualification process”;

(4) by replacing “competition” in subparagraph 4 of the first paragraph by “qualification process”;

(5) by replacing “lists of certifications of qualification may be drawn up” in subparagraph 5 of the first paragraph by “a bank of qualified persons may be established, used and terminated”;

(6) by replacing “promotion without a competition” in subparagraph 6 of the first paragraph by “promotion otherwise than through a qualification process”;

(7) by striking out subparagraph 7 of the first paragraph;

(8) by adding the following subparagraphs after subparagraph 7 of the first paragraph:

“(8) cases and circumstances in which and conditions subject to which a person may be removed from a bank of qualified persons;

“(9) all particulars relating to the information to be provided by a candidate during a qualification process or after registration in a bank of qualified persons;

“(10) cases and circumstances in which and conditions subject to which the qualification of a person who was once appointed may be maintained so that the person can be re-appointed even if they were removed from a bank of qualified persons or the bank has been terminated;

“(11) norms for the classification of public servants.”

15. Section 53 of the Act is replaced by the following section:

“53. A deputy minister or a chief executive officer may appoint a person as soon as the person has been declared qualified and is registered in a bank of qualified persons.

Before making a choice, the deputy minister or the chief executive officer may conduct an additional evaluation based on the nature and particularities of the position to be filled.

Despite the first paragraph, the Conseil du trésor may, by regulation, determine cases and circumstances in which the deputy minister or the chief executive officer cannot make an appointment before all candidates have completed the qualification process.

If there is among the qualified persons one to whom an affirmative action program or a program designed to ensure the hiring of handicapped persons applies, the deputy minister or the chief executive officer must take the objectives of the program into consideration when making the appointment. The hiring objectives determined by the Conseil du trésor as regards the various components of Québec society must also be taken into consideration.

The application of this section cannot be the subject of an appeal under section 35.”

16. Section 53.0.1 of the Act is amended by replacing the first and second paragraphs by the following paragraphs:

“53.0.1. Within the same invitation for applications, a public servant may be appointed before the expiry of the time for appeal provided in section 35 and even if an appeal brought under that section is pending before the Commission de la fonction publique.

However, the appointment is conditional for as long as the last time for appeal that applies to candidates within the same invitation for applications has not expired and, as the case may be, for as long as any appeal brought by one of the candidates has not been settled. If warranted, the appointment must be re-evaluated by the deputy minister or the chief executive officer on the basis of the decision made by the Commission; where applicable, the appointment shall cease to have effect and the public servant shall be reinstated in the position held before the appointment.”

17. The Act is amended by inserting the following section after section 53.1:

“53.2. Despite any provision to the contrary, a retired public service employee may, without having to undergo the qualification process, be re-appointed under this Act to a position in the same class as the class he belonged to before retiring or to any other position with less stringent conditions of eligibility for which a deputy minister or a chief executive officer has recognized

him as having the necessary skills. Such a re-appointment is only possible to meet a temporary need and where the person's particular expertise and experience are required. The Conseil du trésor prescribes the terms and conditions of such a re-appointment, which may only be for a fixed term."

18. Section 54 of the Act is amended by replacing "under section 126" in the first paragraph by "under subparagraph 11 of the first paragraph of section 50.1".

19. Section 70 of the Act is amended by replacing "the holding of recruitment or promotion competitions or to the certification of the qualification of candidates" in the second sentence of the first paragraph by "recruitment or promotion qualification processes, qualification, banks of qualified persons or certification of qualification".

20. Section 71 of the Act is amended by inserting "Chair of the" after "shall be appointed by the" in the second paragraph.

21. Section 73 of the Act is amended by inserting "Chair of the" after "whenever requested by the".

22. Section 99 of the Act is amended

(1) by replacing paragraphs 1 and 2 by the following paragraphs:

"(1) establishing and implementing recruitment and promotion qualification processes;

"(2) establishing conditions of eligibility for a qualification process;"

(2) by striking out paragraph 3;

(3) by replacing "competition" in paragraph 4 by "qualification process";

(4) by inserting the following paragraph after paragraph 4:

"(4.1) declaring candidates qualified and establishing banks of qualified persons;"

(5) by replacing paragraph 5 by the following paragraph:

"(5) making sure that candidates are qualified for promotion and declaring them so qualified pursuant to the second paragraph of section 42;"

(6) by striking out paragraph 7;

(7) by inserting the following paragraphs after paragraph 7:

“(7.1) developing a five-year human resources management strategy for the public service, proposing it for approval by the Conseil du trésor, coordinating its implementation and reporting to the latter every two and a half years on the achievement of results;

“(7.2) proposing directions and policies in various areas of human resources management to the Conseil du trésor, including measures to ensure equal employment opportunity;

“(7.3) proposing to the Conseil du trésor changes to the human resources management framework, taking into account organizational and societal changes;”;

(8) by replacing “surveys” in paragraph 9 by “watch activities”;

(9) by replacing paragraph 10 by the following paragraph:

“(10) advising and supporting government departments and bodies in implementing human resources management programs and activities;”;

(10) by replacing “a career planning and development system” in paragraph 11 by “career planning and development support measures”.

23. The Act is amended by inserting the following section after section 108:

“**108.1.** In addition to the powers and duties otherwise conferred on the chair of the Commission, the chair is responsible for the management and administration of the Commission.

The functions of the chair include

(1) fostering the participation of the members in the formulation of general directions for the Commission so as to maintain a high level of quality and coherence in its decisions;

(2) coordinating the activities of and assigning work to the members of the Commission, who, in that respect, must comply with the chair’s orders and directives;

(3) seeing that standards of ethical conduct are observed;

(4) promoting professional development of the members as regards the exercise of their functions; and

(5) determining the cases where an appeal must be heard by more than one member.”

24. Section 115 of the Act is amended by replacing “competition or the establishment of a candidate inventory” in the third paragraph by “qualification process”.

25. The Act is amended by inserting the following sections after section 115:

“**115.1.** The Commission shall also keep a records office whose function is to manage, in accordance with the collective agreements binding the Government and the associations certified under Chapter IV, the grievances filed by unionized public servants that are set down for arbitration.

“**115.2.** Except in respect of the management of the resources assigned to the records office, Divisions II, III and V of Chapter II of the Public Administration Act (chapter A-6.01) and section 124 of this Act do not apply to the activities of the records office.”

26. Section 116 of the Act is amended by striking out subparagraph 1 of the first paragraph.

27. The Act is amended by inserting the following sections after section 116:

“**116.1.** The Commission may, if circumstances permit, offer mediation to the parties.

Mediation sessions are presided over by a member, by a public servant of the Commission, or by any other person designated by the chair of the Commission.

“**116.2.** Except with the consent of the parties, nothing that is said or written in the course of a mediation session may be admitted as evidence.

“**116.3.** A member who has conducted a mediation session may not have a decision-making role in the dispute in question.

“**116.4.** A mediator cannot be compelled to disclose anything revealed to or learned by the mediator in the exercise of mediation functions or to produce a document prepared or obtained in the course of such functions before a court, a body or a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to a document contained in mediation records.

“**116.5.** The Commission may also, prior to a hearing before an arbitrator to settle a grievance filed by a unionized public servant, preside over mediation sessions between the parties concerned, subject to terms and conditions mutually agreed by the parties.

Mediation sessions are conducted by a member or a public servant of the Commission, or by any other person designated by the chair of the Commission.

Sections 116.2 to 116.4 apply to mediation sessions under this section.”

28. Section 121 of the Act is amended by replacing the first paragraph by the following paragraphs:

“**121.** The Commission may, to expedite business, appoint substitute members for a term of not over one year. With the chair’s permission, a member whose term has expired may continue the examination of a matter and make a decision.

Substitute members do not take part in the Commission’s activities under section 115.”

29. Section 122 of the Act is amended by replacing “commissioner” by “member”.

30. Section 123 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The Commission, on application, may review or revoke any decision it has made

(1) where a new fact is discovered which, had it been known in time, could have warranted a different decision;

(2) where a party, owing to reasons considered sufficient, could not be heard;
or

(3) where a substantive or procedural defect is of a nature likely to invalidate the decision.

In the case described in subparagraph 3 of the second paragraph, the decision may not be reviewed or revoked by the member having made the decision.”

31. Section 126 of the Act is amended by striking out paragraph 4.

32. Section 129 of the Act is amended

(1) by replacing “at a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory” in the first paragraph by “in connection with a recruitment or promotion qualification process”;

(2) by replacing the second paragraph by the following paragraphs:

“A person found guilty of such an offence is removed from all banks of qualified persons established before the date of the judgment and from any qualification process under way on that date. In addition, the person ceases to be eligible for any qualification process for a period of five years and, if a public servant, the person is also liable to disciplinary action.

Proceedings for the offence described in the first paragraph are prescribed one year from the date on which the prosecutor becomes aware of the commission of the offence.”

33. Sections 153 to 170 and 172 of the Act are repealed.

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

34. In any Act other than the Public Service Act (chapter F-3.1.1), “promotion competition” and “competition for promotion” wherever they appear are replaced by “promotion-only qualification process”, and “competition for promotion to” wherever it appears is replaced by “promotion-only qualification process for”, unless the context indicates otherwise.

35. Competitions under way on the date of coming into force of section 3 are continued and the related lists of candidates declared qualified may be established and used in accordance with the Public Service Act and the regulations, directives and norms under that Act, as they read on the day prior to that date. The same applies to any establishment of candidate inventories under way on that date and the use of such inventories.

36. Lists of candidates declared qualified already established on the date of coming into force of section 3 may be used in accordance with the Public Service Act and the regulations, directives and norms under that Act, as they read on the day prior to that date.

37. The Conseil du trésor may, by regulation, determine the terms and conditions under which the qualification of a person for appointment to certain positions may be maintained despite the termination of the list of candidates declared qualified from which the person was appointed to a position.

38. Despite the termination of the list of candidates declared qualified from which a person was appointed to a position, that person may be appointed to the class of positions in which they were placed following a change to the classification of positions. However, such an appointment may only be made if the person was placed in the changed class of positions between 16 April 2012 and the date of coming into force of the provisions prescribed by regulation under section 37.

The appointment may also be made even if the person no longer holds a position in the public service, provided their employment ended during the period defined in the first paragraph.

This section ceases to have effect on the date of coming into force of the provisions prescribed by regulation under section 37.

39. Any person found guilty under section 129 of the Public Service Act after the coming into force of section 3 is removed from the lists of candidates declared qualified referred to in either of sections 35 and 36.

40. Until section 12 comes into force, the second paragraph of section 50 of the Public Service Act is to read as follows:

“The Chair of the Conseil du trésor may, on request or on the Chair’s own initiative, correct an error having occurred during a competition and, if appropriate, register the persons concerned in or remove them from a list of candidates declared qualified.”

41. Until section 32 comes into force, section 129 of the Public Service Act is to read as follows:

“**129.** Every person who commits a fraudulent act, or incites a person to commit a fraudulent act, in connection with a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory is guilty of an offence and liable to a fine of \$700 to \$2,800.

A person who is found guilty of such an offence ceases to be eligible for any competition or examination for a period of five years. In addition, the person is removed from all lists of candidates declared qualified existing on the date of the judgment or from the lists relating to competitions under way on that date and, if a public servant, the person is liable to disciplinary action.

Proceedings for the offence described in the first paragraph are prescribed one year from the date on which the prosecutor becomes aware of the commission of the offence.”

ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET
SPEECH OF 30 MARCH 2010, REDUCE THE DEBT AND RETURN TO
A BALANCED BUDGET IN 2013-2014

42. Section 8 of the Act to implement certain provisions of the Budget Speech of 30 March 2010, reduce the debt and return to a balanced budget in 2013-2014 (2010, chapter 20), amended by section 129 of the Act respecting mainly the implementation of certain provisions of the Budget Speech of 20 November 2012 (2013, chapter 16), is again amended by replacing “and 2012” in the introductory clause of the first paragraph by “, 2012 and 2013”.

43. This Act comes into force on 20 November 2013, except for sections 1, 3 to 8 and 10 to 13, section 14 save where it enacts subparagraph 11 of the first paragraph of section 50.1, sections 15 to 17 and 19, paragraphs 1 to 5 of section 22, sections 24 and 25, section 27 where it enacts section 116.5, and

sections 32, 34 to 36 and 39, which come into force on the date or dates to be set by the Government.

