



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 9

(1999, chapter 11)

An Act respecting Financement-Québec

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EXPLANATORY NOTES

This bill gives effect to the reform of the government accounting policies announced in the Budget Speech of 31 March 1998 and establishes a financing authority to be known as Financement-Québec, whose primary object is to provide financial services to the public bodies of the education and health care networks, in particular by granting loans to them. The financing authority may, in addition, provide technical services in the field of financial analysis and management.

The bill defines the powers of Financement-Québec and establishes the manner in which the financial commitments the financing authority and its subsidiaries are authorized to make are to be fulfilled as well as the rules governing the organization of the financing authority.

Furthermore, the bill amends the Financial Administration Act to allow the Minister of Finance, as manager of the financing fund, to provide financial services determined by the Government to the departments, public bodies and special funds referred to in that Act. The bill also amends the Act respecting the Ministère des Ressources naturelles to grant to the Minister of Natural Resources, as manager of the land and geographic information fund, the power to borrow from the Minister of Finance sums taken out of the financing fund of the Ministère des Finances.

Lastly, the bill contains transitional provisions, including provisions ensuring the transfer to Financement-Québec of the rights and obligations of the Minister of Finance, as manager of the financing fund, resulting from the financial transactions, advances and loans previously contracted by the Minister of Finance in respect of the public bodies referred to in the bill.

LEGISLATION AMENDED BY THIS BILL :

- Financial Administration Act (R.S.Q., chapter A-6) ;
- Act respecting the Ministère des Ressources naturelles (R.S.Q., chapter M-25.2) ;
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10).

Bill 9

AN ACT RESPECTING FINANCEMENT-QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

ESTABLISHMENT AND MISSION

1. A financing authority to be known as “Financement-Québec” is hereby established.

The financing authority is a legal person with share capital and is a mandatory of the State.

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

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

3. The main mission of the financing authority is to provide financial services to public bodies. It may finance them directly by granting loans to them and by issuing titles of indebtedness in their name. It shall advise them with a view to facilitating their access to credit and minimizing the cost of financing and shall, for that purpose, develop and implement financing programs. It shall also manage the financial risks assumed by those bodies, in particular their cash and currency risks.

The financing authority may, in addition, provide technical services to public bodies, in particular in the field of financial analysis and management.

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

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

(2) the Conseil 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);

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

(4) public institutions governed by the Act respecting health services and social services (R.S.Q., chapter S-4.2) and regional boards established under that Act;

(5) 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;

(6) 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) designated by the Government, on the recommendation of the Minister of Municipal Affairs and Greater Montréal and the Minister of Finance;

(7) any other body designated by the Government.

5. A public body may mandate the financing authority to invest and manage its funds.

6. The financing authority may determine a tariff of commitment, professional and other fees for the use of its services.

The tariff must be submitted to the Government for approval.

7. The financing authority shall fix the conditions of the loans it makes to public bodies in accordance with the criteria determined by the Government as regards the determination of rates of interest, the nature of the costs to be included in computing those rates or in computing the repayment of those loans and the fees chargeable for the management of such loans.

8. The financing authority shall give its opinion on any matter within its purview submitted to it by the Minister. The financing authority may include recommendations with its opinion.

9. The financing authority may, according to law, 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.

10. The financing authority may, with the authorization of the Government, acquire or establish any subsidiary useful in the pursuit of its mission.

A legal person or a partnership is a subsidiary of the financing authority if the latter holds more than 50% of the voting rights attached to all the issued and outstanding shares of the legal person or more than 50% of the interests in the partnership, or if the financing authority may elect a majority of the directors of the legal person or partnership.

11. Subsidiaries all of whose shares are held directly or indirectly by the financing authority are mandataries of the State. The provisions of this Act apply to such subsidiaries, with the necessary modifications, except sections 1, 14 to 20 and 22, the second paragraph of section 29 and sections 31 to 37 and 40 to 68.

12. The financing authority may not, without the authorization of the Government,

(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 in contravention of the terms and 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 in contravention of the terms and conditions determined by the Government;

(4) transfer shares in a legal person or an interest in a partnership in excess of the limits or in contravention of the terms and conditions determined by the Government;

(5) assign loans made by or transferred to it under this Act for purposes of securitization;

(6) acquire or transfer other assets in excess of the limits or in contravention of the terms and conditions determined by the Government;

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

The Government may prescribe that one of the provisions of the first paragraph applies to all subsidiaries of the financing authority or to only one of them.

However, the provisions of the first paragraph do not apply to transactions between the financing authority and its subsidiaries or between the subsidiaries.

CHAPTER II

ORGANIZATION AND OPERATION

13. The head office of the financing authority shall be located in the territory of the Communauté urbaine de Québec. Notice of the location of the head office shall be published in the *Gazette officielle du Québec*.

14. The affairs of the financing authority shall be administered by a board of directors composed of nine members appointed by the Minister, including

(1) four persons who are members of the personnel of the Ministère des Finances;

(2) one person who is a member of the personnel of the Ministère de l'Éducation, on the recommendation of the Minister of Education;

(3) one person who is a member of the personnel of the Ministère de la Santé et des Services sociaux, on the recommendation of the Minister of Health and Social Services;

(4) one person who is a member of the personnel of the Ministère des Affaires municipales et de la Métropole, on the recommendation of the Minister of Municipal Affairs and Greater Montréal.

15. The Minister shall designate the chief executive officer of the financing authority and the chair of the board of directors from among the persons referred to in paragraph 1 of section 14.

The positions of chief executive officer and chair of the board of directors may be held concurrently.

16. The chief executive officer is responsible for the administration and direction of the financing authority within the scope of its by-laws and policies.

17. The chair of the board of directors shall call and preside at the meetings of the board and see to the proper operation of the board. The chair shall exercise any other functions assigned to the chair by the board.

18. The members of the board of directors shall designate a vice-chair from among their number. The vice-chair shall exercise the functions of the chair when the latter is absent or unable to act.

19. The chief executive officer shall be appointed for a term not exceeding five years, and the other members of the board shall be appointed for a term not exceeding three years.

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

20. Any vacancy on the board of directors shall be filled in accordance with the rules of appointment set out in section 14 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 financing authority constitutes a vacancy, in the cases and circumstances indicated therein.

21. The members of the board of directors 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.

22. The quorum at meetings of the board 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 chair of the meeting has a casting vote.

23. The minutes of meetings of the board of directors, approved by the board and certified by the chief executive officer, the chair or vice-chair of the board or the secretary, are authentic, as are documents and copies emanating from the financing authority or forming part of its records where so certified.

24. An intelligible print-out of a decision or of any other data stored by the financing authority in computerized or other electronic form is a document of the financing authority and constitutes proof of its contents where certified by a person referred to in section 23.

25. A document is binding on the financing authority or may be attributed to it only if it is signed by the chief executive officer, the chair or vice-chair of the board, the secretary, another member of the board of directors or another member of the financing authority's personnel and, in the latter two cases, only to the extent determined by the internal by-laws of the financing authority.

The by-laws may, however, allow, on the conditions and on the negotiable instruments indicated therein, that the signature be affixed by a person authorized by the financial institution with which the financing authority does business.

26. The internal by-laws of the financing authority may allow, subject to the conditions and on the documents determined therein, that a signature be affixed by means of an automatic device, that a signature be electronic or that a facsimile of a signature be engraved, lithographed or printed. However, the facsimile has the same force as the signature itself only if the document is countersigned by a person referred to in section 23.

The by-laws may, however, provide, for the documents determined therein, that the facsimile has the same force as the signature itself even if the document is not countersigned.

27. The members of the personnel of the financing authority shall be appointed in accordance with the staffing plan established by by-law of the financing authority. The by-laws shall, in addition, determine the pay scales and rates, employee benefits and other conditions of employment applicable to the members of the personnel.

The by-laws must be submitted to the Government for approval.

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

29. The internal by-laws of the financing authority must be submitted to the Government for approval.

No by-law of the financing authority is subject to ratification by the shareholder.

30. The Minister may issue directives concerning the policy and general objectives to be pursued by the financing authority.

The directives must be approved by the Government, and come into force on the day of their approval. Once approved, they are binding on the financing authority, and the financing authority must comply with them.

Every directive shall be laid before the National Assembly within 15 days of being approved by the Government or, if the Assembly is not sitting, within 15 days of resumption.

31. The provisions of Part II of the Companies Act (R.S.Q., chapter C-38), except those of sections 159 to 162, 179, 184, 189 and paragraph 3 of section 196, and the provisions of sections 89.1 to 89.4 of Part I and sections 123.87 to 123.89 of Part IA of that Act apply to the financing authority.

CHAPTER III

FINANCIAL PROVISIONS

32. The authorized share capital of the financing authority shall be \$100,000,000, divided into 1,000,000 shares having a par value of \$100 each.

33. The shares of the financing authority shall form part of the domain of the State and shall be allotted to the Minister of Finance.

34. The Minister of Finance may, with the authorization of the Government, pay to the financing authority out of the consolidated revenue fund the sum of \$100,000,000 for 1,000,000 fully paid shares of its share capital for which certificates shall be issued to the Minister of Finance.

The payment may be made in one or more instalments; if it is made in more than one instalment, each must be authorized by the Government.

35. After a reduction of the share capital of the financing authority and an equivalent repayment of capital, made to the Minister of Finance under the Act respecting the reduction of the share capital of legal persons established in the public interest and of their subsidiaries (R.S.Q., chapter R-2.2.1), the Minister may, with the authorization of the Government and subject to the conditions it determines, subscribe for shares of the financing authority for an amount that shall not exceed the amount of the repayment. The shares shall be paid out of the consolidated revenue fund. Certificates shall be issued when the shares are fully paid.

36. The Government may, subject to the terms and conditions it determines, transfer to the financing authority the ownership of any property forming part of the domain of the State and may receive in return any property, including shares of the capital of the financing authority.

37. A transfer pursuant to section 36 is registered in the land register on presentation of a declaration describing the transfer, referring to the order in council, containing the description of the immovable property transferred and indicating the effective date of the transfer.

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

(1) guarantee the payment of the principal of and interest on any loan contracted by the financing authority or one of its subsidiaries referred to in section 11 and the performance of their obligations ;

(2) authorize the Minister of Finance to advance to the financing authority or one of such subsidiaries any amount considered necessary for the fulfilment of their obligations or the pursuit of their mission.

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

39. The financing authority shall finance its operations out of the revenue it derives from the financial services it provides, the commitment, professional and other fees it charges and the other monies it receives.

40. The dividends payable by the financing authority shall be fixed by the Government.

CHAPTER IV

ACCOUNTS AND REPORTS

41. The fiscal year of the financing authority ends on 31 March.

42. The financing authority shall, not later than 31 July each year, file with the Minister its financial statements and a report of its operations for the preceding fiscal year.

The financial statements and report of operations must contain all the information required by the Minister.

43. The Minister shall table the report of operations and financial statements of the financing authority in the National Assembly within 15 days of receiving them or, if the Assembly is not sitting, within 15 days of resumption.

44. The financing authority shall formulate, according to the form, content and intervals fixed by the Minister, a plan of operations that must include the operations of its subsidiaries. The plan must be submitted to the Minister for approval.

45. The books and accounts of the financing authority shall be audited by the Auditor General each year and whenever so ordered by the Government.

The auditor's report must be submitted with the report of operations and financial statements of the financing authority.

46. The financing authority shall communicate to the Minister any information required by the Minister concerning its operations and the operations of its subsidiaries.

CHAPTER V

AMENDING AND MISCELLANEOUS PROVISIONS

FINANCIAL ADMINISTRATION ACT

47. Section 69.1 of the Financial Administration Act (R.S.Q., chapter A-6) is amended by adding the following sentence at the end: "The Government shall determine the nature of the loans to be granted pursuant to that section."

48. The said Act is amended by inserting the following section after section 69.1:

"69.1.1. The fund shall also be used to finance the provision of financial services to departments, bodies and special funds.

The Government shall determine the nature of the financial services financed by the fund, the nature of the costs that may be charged to the fund and the departments, bodies and special funds that must, to the extent it indicates, obtain such financial services through the fund."

49. Section 69.2 of the said Act is amended by replacing " , its assets and liabilities and the nature of the loans to be granted pursuant to section 69.6" by "and its assets and liabilities".

50. Section 69.3 of the said Act is amended

(1) by replacing "to section" in paragraph 1 by "to sections 69.1.1 and";

(2) by inserting the following paragraph after paragraph 1 :

“(1.1) the sums paid into it by the Minister out of the appropriations granted for that purpose by Parliament;”.

51. The said Act is amended by inserting the following section after section 69.6:

“69.6.1. The Government shall establish a tariff of commitment, professional and other fees for the financial services offered to departments, bodies and special funds.”

ACT RESPECTING THE MINISTÈRE DES RESSOURCES NATURELLES

52. Section 17.3 of the Act respecting the Ministère des Ressources naturelles (R.S.Q., chapter M-25.2) is amended by replacing paragraph 2 by the following paragraph :

“(2) the sums paid by the Minister of Finance under the first paragraph of section 17.10 and section 17.10.1;”.

53. The said Act is amended by inserting the following section after section 17.10:

“17.10.1. The Minister may, as manager of the fund, borrow from the Minister of Finance sums taken out of the financing fund of the Ministère des Finances.”

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

54. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10), amended by orders in council 1493-96 dated 4 December 1996 and 1589-96 dated 18 December 1996, orders in council 629-97 dated 13 May 1997, 788-97 dated 18 June 1997, 1105-97 dated 28 August 1997, 1652-97 dated 17 December 1997, 296-98 and 297-98 dated 18 March 1998, 730-98 dated 3 June 1998, 764-98 dated 10 June 1998 and 1155-98 dated 9 September 1998, and by section 35 of chapter 26 of the statutes of 1997, section 33 of chapter 27 of the statutes of 1997, section 13 of chapter 36 of the statutes of 1997, section 631 of chapter 43 of the statutes of 1997, section 57 of chapter 50 of the statutes of 1997, section 121 of chapter 63 of the statutes of 1997, section 52 of chapter 79 of the statutes of 1997, section 37 of chapter 83 of the statutes of 1997, section 61 of chapter 17 of the statutes of 1998, section 48 of chapter 42 of the statutes of 1998 and section 53 of chapter 44 of the statutes of 1998, is again amended by inserting the following in paragraph 1 at the place determined by the alphabetical order :

— “Financement-Québec”.

55. The provisions of the Act respecting guarantee fees in respect of loans obtained by government agencies (R.S.Q., chapter F-5.1) do not apply to the financing authority.

56. The responsibilities arising from financial transactions, advances and loans made under sections 36.1, 69.5 and 69.6 of the Financial Administration Act, and from contracts entered into, for the purposes of the operations of the financing fund, by the Minister, as manager of the fund, in respect of the public bodies referred to in paragraphs 1 to 5 of section 4, before (*insert here the date of coming into force of this section*) shall be transferred to the financing authority to the extent determined by the Government.

57. The financing authority shall, in respect of the responsibilities transferred to it under section 56, be substituted for the Minister of Finance, and shall acquire the rights and assume the obligations of the latter.

58. The files, documents and records of the Minister, as manager of the financing fund, relating to the financial transactions, advances, loans and contracts referred to in section 56, shall be transferred to the financing authority.

59. The proceedings to which the Minister of Finance, as manager of the financing fund, is a party are continued, without continuance of suit, by the financing authority, according to the rights it acquires and the obligations it assumes.

60. Subject to the provisions concerning the applicable conditions of employment, every person who is an employee of the Ministère des Finances on (*insert here the date of coming into force of this section*) designated by order of the Government shall become an employee of the financing authority.

61. Every employee of the financing authority who, when appointed to the financing authority, was a public servant with permanent tenure may apply for a transfer to a position in the public service or enter a competition for promotion to such a position in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

62. Section 35 of the Public Service Act applies to an employee referred to in section 61 who enters a competition for promotion to a position in the public service.

63. Every employee referred to in section 61 who applies for a transfer or enters a competition for promotion may apply to the chairman of the Conseil du trésor for an assessment of the classification that would be assigned to the employee in the public service. The assessment must take account of the classification that the employee had in the public service on the date the employee left the public service as well as the years of experience and the formal training acquired in the course of employment with the financing authority.

If the employee is transferred subsequent to the application of the first paragraph, the deputy-minister of the department or chief executive officer of the body shall assign to the employee a classification in keeping with the assessment provided for in the first paragraph.

If the employee is promoted pursuant to section 62, the employee's classification must be based on the criteria set out in the first paragraph.

64. If some or all of the operations of the financing authority are discontinued or if there is a shortage of work, an employee referred to in section 61 is entitled to be placed on reserve in the public service with the classification the employee had on the date on which the employee left the public service.

In such a case, the chairman of the Conseil du trésor shall, where applicable, establish the employee's classification on the basis of the criteria set out in the first paragraph of section 63.

65. A person who, in accordance with the applicable conditions of employment, refuses to be transferred to the financing authority shall be assigned to it until the chairman 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 who is placed on reserve pursuant to section 64, who shall remain in the employ of the financing authority.

66. Subject to any remedy available under a collective agreement, an employee referred to in section 61 who is terminated or dismissed may bring an appeal under section 33 of the Public Service Act.

67. The Minister, as manager of the financing fund of the Ministère des Finances, shall pay to the consolidated revenue fund the sum of \$10,000,000 out of the surpluses accumulated by the financing fund.

The Minister shall pay to the financing authority the sum of \$100,000 out of the consolidated revenue fund for 1,000 shares of its share capital for which a certificate shall be issued to the Minister.

In addition, the Minister shall pay to the financing authority, as contributed surplus, the sum of \$9,900,000 taken out of the consolidated revenue fund.

68. The Minister of Finance is responsible for the administration of this Act.

69. The provisions of this Act come into force on the date or dates to be fixed by the Government.