



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 41
(2009, chapter 48)

**An Act to amend the Act respecting
transport infrastructure partnerships
and other legislative provisions**

**Introduced 14 May 2009
Passed in principle 27 October 2009
Passed 26 November 2009
Assented to 4 December 2009**

**Québec Official Publisher
2009**

EXPLANATORY NOTES

This Act amends the Act respecting transport infrastructure partnerships to introduce new rules for the recovery of unpaid tolls and the protection of amounts collected by a partner on behalf of the Government. It also amends the Act respecting the Ministère des Transports to create the transport infrastructure partnership fund.

It contains measures allowing the Government to entrust the management of an infrastructure to a municipal authority and to retain the possibility of regulating the immovables and the facilities and equipment that are in or on the immovables even if the immovables are administered by a partner. It specifies the powers that the Minister of Transport may delegate to a partner, certain obligations of the partner and the applicable liability regime.

This Act stipulates that the Act respecting roads does not apply to a road infrastructure constructed or operated under a partnership agreement, except to the extent provided for in the agreement in accordance with the Act respecting transport infrastructure partnerships.

It amends the Highway Safety Code to regulate the use of cameras used to photograph the registration plates of road vehicles driven on a public road that is subject to the Act respecting transport infrastructure partnerships.

Finally, it contains various consequential provisions and brings more precision to a number of notions.

LEGISLATION AMENDED BY THIS ACT:

- Highway Safety Code (R.S.Q., chapter C-24.2);
- Act respecting administrative justice (R.S.Q., chapter J-3);
- Act respecting the Ministère des Transports (R.S.Q., chapter M-28);

- Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001);
- Act respecting roads (R.S.Q., chapter V-9).

Bill 41

AN ACT TO AMEND THE ACT RESPECTING TRANSPORT INFRASTRUCTURE PARTNERSHIPS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING TRANSPORT INFRASTRUCTURE PARTNERSHIPS

1. Section 3 of the Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001) is amended by replacing “proposal solicitation documents” by “tender solicitation documents” at the end.

2. Section 4 of the Act is amended by replacing “transfer or lease out any property under the Minister’s management” at the end by “dispose of any government property under the Minister’s authority”.

3. Section 6 of the Act is amended

(1) by replacing “Every property” by “Every corporeal property”;

(2) by adding the following paragraph:

“However, the Government may, by an order published in the *Gazette officielle du Québec*, entrust all or part of the management of a road infrastructure constructed under this Act to a municipality, which, in that case, shall exercise the powers provided for in the Municipal Powers Act (chapter C-47.1).”

4. Section 8 of the Act is amended

(1) by inserting “under the Act respecting the Ministère des Transports (chapter M-28) and the Act respecting roads (chapter V-9) and” after “powers” in the first paragraph;

(2) by adding the following paragraph:

“However, a partner or partner’s delegate is not a mandatary of the State and no legal action may be taken against the State for damage caused by a partner or partner’s delegate in the exercise of a power delegated by the Minister or resulting from any instrument entered into under the partnership agreement.”

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

“8.1. All complaints received by a partner must be treated fairly. To this end, the partner must adopt a complaints examination policy.

“8.2. A person dissatisfied with the way a complaint addressed to a partner has been examined or treated may take the matter to the Minister.

The Minister may make recommendations to the partner concerning the complaint in question.”

6. Section 11 of the Act is amended

(1) by striking out “charges and the” in subparagraph 1 of the first paragraph;

(2) by replacing “toll devices” in subparagraph 4 of the first paragraph by “transponders”.

7. Section 12 of the Act is amended

(1) by replacing paragraph 2 by the following paragraph:

“(2) establish, collect and enforce payment of administration fees relating to the collection and enforced payment of tolls; and”;

(2) by replacing “fees and charges” in paragraph 3 by “and fees”;

(3) by adding the following paragraphs:

“A partner may also take photographs identifying a vehicle at a toll station. The camera used must be positioned such as to protect the identity of the occupants of the vehicle.

Before communicating a photograph described in the second paragraph, the partner must ensure that the photograph shows the road vehicle’s registration plate but does not allow the occupants of the vehicle to be seen.”

8. Section 13 of the Act is replaced by the following section:

“13. A toll and related fees and interest payable under this Act for the operation of a road vehicle on a designated road infrastructure shall be paid to the partner

(1) by the person in whose name a transponder is registered for the road vehicle, if the device is in the vehicle and functioning;

(2) by the holder of an anonymous transponder, if the device is in the road vehicle and functioning and there is no functioning transponder registered for the vehicle in the vehicle;

(3) by the holder of a customer account, opened with the partner, to which the passages of the road vehicle are charged, if there is no functioning transponder registered for the vehicle or functioning anonymous transponder in the vehicle;

(4) by the driver of the road vehicle, if the installations allow the driver to pay the toll at the time of passage, there is no functioning transponder registered for the vehicle or functioning anonymous transponder in the vehicle, and no customer account to which the passages of the vehicle are charged has been opened with the partner;

(5) by the holder of the registration certificate for the road vehicle, if the driver fails to pay the toll as required under paragraph 4 and no statement of offence is issued to the driver by a peace officer at the time of the offence; and

(6) by the holder of the registration certificate for the road vehicle, in all other cases.”

9. Section 14 of the Act is replaced by the following section:

“**14.** The obligation to pay a toll is incurred as soon as a road vehicle enters a designated infrastructure.”

10. Section 15 of the Act is amended

(1) by replacing “from any government or body” by “from the Société de l’assurance automobile du Québec or, if the road vehicle is not registered in Québec, from any administrative authority responsible for the registration of the vehicle or any body composed of representatives of the ministers responsible for transport or highway safety,”;

(2) by adding the following paragraph at the end:

“(4) the file number of the person in whose name the road vehicle is registered with the Société de l’assurance automobile du Québec.”

11. Section 16 of the Act is amended

(1) by striking out “, charges”;

(2) by adding the following paragraph:

“If the partnership agreement provides that some or all the tolls and fees required under this Act belong to the State, the amounts belonging to the State are paid into the transport infrastructure partnership fund established under paragraph 3 of section 12.30 of the Act respecting the Ministère des Transports (chapter M-28).”

12. The Act is amended by inserting the following sections after section 16:

“**16.1.** If a partnership agreement provides that some or all of the tolls and fees collected by the partner belong to the State, the partner is deemed to hold the amounts belonging to the State in trust for the State for payment into the transport infrastructure partnership fund. These amounts must be considered as forming a fund separate from the partner’s own patrimony and property, whether or not they have in fact been held separately from the partner’s own funds and assets.

“**16.2.** The Minister may, by regulation, determine the personal information that a partner is authorized to collect from a person in whose name a transponder is registered or from the holder of a customer account.”

13. Section 17 of the Act is amended by adding the following paragraph:

“A partner must destroy all personal information, including a photograph taken under section 12, no later than three years after payment of the toll, unless such payment is contested.”

14. Sections 18 to 23 of the Act are replaced by the following sections:

“**18.** A person described in paragraph 4 of section 13 must pay the toll at the time of passage on a designated infrastructure whose installations allow the toll to be paid at that time.

“**19.** A person described in paragraph 1, 3 or 6 of section 13 must pay the toll and related fees upon receiving a demand for payment to that effect.

Such a demand for payment must be sent to the person within 30 days of the passage of the road vehicle on the designated infrastructure and must

(1) set out the place, date and time the passage was recorded;

(2) state that the partner will send the person a photograph showing the road vehicle’s registration plate but not allowing the occupants of the vehicle to be seen and indicating the place, date and time the passage was recorded, upon receipt of a written request and the additional fee prescribed by government regulation; and

(3) specify that failure to pay within 30 days of the sending of the demand for payment or, as applicable, of the photograph may result in penal proceedings.

In the case of a person described in paragraph 1 or 3 of section 13, the demand for payment is sent to the last address the person gave to the partner.

In the case of a person described in paragraph 6 of section 13, the demand for payment is sent to the last address listed for the person in the records of the Société de l'assurance automobile du Québec or, if applicable, in the records kept outside Québec by the administrative authority responsible for the registration of the vehicle.

If the agreement between the partner and either the person in whose name a transponder is registered or the holder of a customer account, as applicable, provides that tolls for passages detected by the transponder are paid at the time of passage, a demand for payment referred to in the first paragraph is sent only if the person or holder is in default.

“20. The Minister may designate from among the partner’s employees who meet the conditions determined by government regulation a person to be entrusted with the enforcement of this Act for the purposes of drawing up offence reports referred to in article 62 of the Code of Penal Procedure (chapter C-25.1).

A person designated under the first paragraph is not authorized to exercise the powers provided for in Chapters II and III of that Code.”

HIGHWAY SAFETY CODE

15. Section 31.1 of the Highway Safety Code (R.S.Q., chapter C-24.2) is amended

(1) by striking out the second paragraph;

(2) by replacing “, if” in the fourth paragraph by “or if” and by striking out “or if, on the due date, the Société has not received the notice referred to in the second paragraph of section 23 of the Act respecting transport infrastructure partnerships (chapter P-9.001)” in that paragraph;

(3) by striking out “, and the Société must, in the case of a failure to pay a toll, have received the notice referred to in the second paragraph of section 23 of the Act respecting transport infrastructure partnerships” in the fifth paragraph.

16. Section 417.1 of the Code is amended by striking out “or the sum payable under the Act respecting transport infrastructure partnerships” at the end.

17. The Code is amended by inserting the following section after section 417.1:

“417.2. No person may drive a road vehicle on a public road subject to a toll under the Act respecting transport infrastructure partnerships (chapter P-9.001) unless the toll and fees are paid in accordance with that Act.”

18. The Code is amended by inserting the following section after section 509.1:

“509.2. Every person who contravenes section 417.2 is guilty of an offence and is liable to a fine of \$150 to \$250.”

19. Section 592 of the Code is amended by replacing “415 to 418” in the second paragraph by “415 to 417.1, 418”.

20. The Code is amended by inserting the following sections after section 592:

“592.0.1. A person in whose name a transponder is registered may be convicted of any offence under section 417.2 unless the person proves that, at the time of the offence, the transponder was in the possession of a third party without the person’s consent.

“592.0.2. A holder of a customer account with the partner may be convicted of any offence under section 417.2 unless the person proves that, at the time of the offence, the road vehicle associated with the customer account was in the possession of a third party without the person’s consent.”

21. The Code is amended by inserting the following section after section 592.4:

“592.5. In the case of an offence evidenced by a photograph taken by a camera approved by the Minister of Transport under section 595.1, the statement of offence and the photograph, indicating the place, date and time it was taken, must be sent to the owner of the road vehicle at the most recent address entered in the records of the Société or, if applicable, in the records kept outside Québec by an administrative authority responsible for registering the vehicle, or to the person in whose name the transponder is registered or the holder of the customer account at the last address that person or holder gave to the partner. The photograph must show the vehicle’s registration plate without making it possible to see the occupants of the vehicle.

In the case of a person described in paragraph 5 of section 13 of the Act respecting transport infrastructure partnerships (chapter P-9.001), the prosecutor must send to that person the statement of offence and the photograph, indicating the place, date and time it was taken, within 30 days after the passage of the road vehicle on a public road subject to a toll under that Act.”

22. The Code is amended by inserting the following sections after section 595:

“595.1. The cameras used to photograph the registration plates of road vehicles driven on a public road referred to in section 417.2 must be approved by the Minister of Transport and, if applicable, be verified or certified in accordance with a regulation made under subparagraph 5 of the first paragraph of section 11 of the Act respecting transport infrastructure partnerships (chapter P-9.001); they must also allow the place, date and time the photograph was taken to be determined.

The places where such cameras may be used must be announced by traffic signs or signals prescribed for that purpose by the Minister of Transport.

Any order made under this section is to be published in the *Gazette officielle du Québec*.

“595.2. In penal proceedings for an offence under section 417.2, a photograph of a road vehicle’s registration plate taken by a camera approved by the Minister of Transport is proof, in the absence of any evidence to the contrary, of the vehicle’s presence on the public road and of the other information displayed on the photograph.”

23. The Code is amended by inserting the following section after section 597.1:

“597.2. Section 597 does not apply to penal proceedings for an offence under section 417.2.”

24. Section 648 of the Code, amended by section 83 of chapter 40 of the statutes of 2007 and by section 98 of chapter 14 of the statutes of 2008, is again amended by adding the following paragraph at the end:

“However, the Government deducts from each fine collected under section 509.2 an amount it determines on the recommendation of the Minister of Transport. This amount is paid into the transport infrastructure partnership fund established under paragraph 3 of section 12.30 of the Act respecting the Ministère des Transports (chapter M-28) in order to reimburse the partner, if applicable, for the toll and fees imposed under the Act respecting transport infrastructure partnerships (chapter P-9.001).”

ACT RESPECTING ADMINISTRATIVE JUSTICE

25. Schedule IV to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by striking out paragraph 30.

ACT RESPECTING THE MINISTÈRE DES TRANSPORTS

26. Section 3 of the Act respecting the Ministère des Transports (R.S.Q., chapter M-28) is amended by replacing “is applied” in subparagraph *j* of the first paragraph by “and the Act respecting transport infrastructure partnerships (chapter P-9.001) are applied”.

27. Section 12.1 of the Act is amended by replacing “Minister and” by “Minister or of a partner in accordance with the Act respecting transport infrastructure partnerships (chapter P-9.001), and in respect”.

28. Section 12.1.1 of the Act is amended by adding “or by a partner in accordance with the Act respecting transport infrastructure partnerships (chapter P-9.001)” at the end.

29. Section 12.30 of the Act, amended by section 87 of chapter 40 of the statutes of 2007, is again amended by adding the following paragraph at the end:

“(3) the “transport infrastructure partnership fund”, to finance the construction and operation of transport infrastructures pursuant to a partnership agreement.”

30. The Act is amended by inserting the following after section 12.42:

“§3. — *Transport infrastructure partnership fund*

“**12.43.** The fund is made up of the following amounts, except interest:

(1) the tolls and fees collected by partners under the Act respecting transport infrastructure partnerships (chapter P-9.001);

(2) the sums paid by the Minister of Finance under the second paragraph of section 648 of the Highway Safety Code (chapter C-24.2);

(3) the sums paid by the Minister of Transport out of the appropriations granted for that purpose by Parliament;

(4) the sums paid by the Minister of Finance under the first paragraph of section 12.34 and section 12.35;

(5) the sums paid by a partner or a third party under a partnership agreement;

(6) the contributions, gifts and legacies paid into the fund to further the achievement of its objects.

“**12.44.** Sections 12.31 and 12.33 to 12.39 apply to the fund.”

ACT RESPECTING ROADS

31. Section 1 of the Act respecting roads (R.S.Q., chapter V-9) is amended by adding the following paragraph at the end:

“It does not apply to a road infrastructure constructed or operated under a partnership agreement entered into pursuant to the Act respecting transport infrastructure partnerships (chapter P-9.001), except to the extent provided for in the agreement in accordance with section 8 of that Act.”

FINAL PROVISION

32. This Act comes into force on 4 December 2009.

