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Summary

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PROVINCE OF QUÉBEC

1ST SESSION

41ST LEGISLATURE

QUÉBEC, 1 APRIL 2015

OFFICE OF THE LIEUTENANT-GOVERNOR

Québec, 1 April 2015

This day, at forty minutes past two o'clock in the afternoon, the Honourable the Administrator of Québec was pleased to sanction the following bill:

26 An Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts (*modified title*)

To this bill the Royal assent was affixed by the Honourable the Administrator of Québec.

PROVINCE OF QUÉBEC

1ST SESSION

41ST LEGISLATURE

QUÉBEC, 2 APRIL 2015

OFFICE OF THE LIEUTENANT-GOVERNOR

Québec, 2 April 2015

This day, at two o'clock in the afternoon, the Honourable the Administrator of Québec was pleased to sanction the following bill:

34 An Act to amend the Supplemental Pension Plans Act with respect to the funding and restructuring of certain multi-employer pension plans

To this bill the Royal assent was affixed by the Honourable the Administrator of Québec.

NATIONAL ASSEMBLY

FIRST SESSION FORTY-FIRST LEGISLATURE

Bill 26
(2015, chapter 6)

An Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts

Introduced 3 December 2014
Passed in principle 17 February 2015
Passed 24 March 2015
Assented to 1 April 2015

Québec Official Publisher
2015

EXPLANATORY NOTES

This Act provides for exceptional measures to make possible the recovery of amounts improperly paid due to fraud or fraudulent tactics in the course of the tendering, awarding or management of public contracts.

The Act provides that the Minister of Justice must publish in the Gazette officielle du Québec *a voluntary, fixed-term reimbursement program to allow the reimbursement of such amounts in relation to which there may have been fraud or fraudulent tactics.*

The Minister is authorized to act on behalf of a public body within the scope of this program, and may transact and grant a discharge in that capacity on behalf of a public body.

Within the scope of the program, the Government designates a person to act as director. One of the director's duties is to attempt to bring the parties to an agreement.

Moreover, the Act establishes certain special rules applicable to judicial proceedings to recover such amounts that may be instituted by a public body. It establishes certain presumptions, authorizes, on certain conditions, the reinstitution of actions previously dismissed on the grounds that the right to recover was prescribed, and extends the prescription period applicable to the right to institute proceedings.

A fund dedicated to financing activities carried out for the purposes of the Act is established.

Amendments are also made to the Act respecting contracting by public bodies so that an application for authorization to enter into a contract filed by an enterprise found guilty of certain offences will not be automatically refused by the Autorité des marchés financiers.

In addition, the Act integrates election law offences that currently result in ineligibility for public contracts under such laws to the public contract ineligibility regime set out in the Act respecting contracting by public bodies.

Lastly, the Act includes transitional and final provisions, in particular as regards the cessation of effect of certain provisions.

LEGISLATION AMENDED BY THIS ACT:

– Building Act (chapter B-1.1);

– Act respecting contracting by public bodies (chapter C-65.1);

– Act respecting elections and referendums in municipalities (chapter E-2.2);

– Act respecting school elections (chapter E-2.3);

– Election Act (chapter E-3.3).

Bill 26

AN ACT TO ENSURE MAINLY THE RECOVERY OF AMOUNTS IMPROPERLY PAID AS A RESULT OF FRAUD OR FRAUDULENT TACTICS IN CONNECTION WITH PUBLIC CONTRACTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND DEFINITIONS

1. This Act provides for exceptional measures for the reimbursement and recovery of amounts improperly paid as a result of fraud or fraudulent tactics in the course of the tendering, awarding or management of public contracts.

2. For the purposes of this Act,

(*a*) "**public contract**" means a contract between a public body and an enterprise;

(*b*) "**enterprise**" means a legal person established for a private interest, a general, limited or undeclared partnership, an association or a natural person who operates a sole proprietorship;

(*c*) "**public body**" means a body described in section 4, 7 or 7.1 of the Act respecting contracting by public bodies (chapter C-65.1) as well as a municipal body within the meaning of section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

CHAPTER II

REIMBURSEMENT PROGRAM

3. The Minister publishes in the *Gazette officielle du Québec* a voluntary, fixed-term reimbursement program to make it possible for an enterprise or a natural person mentioned in section 10 to reimburse certain amounts improperly paid in the course of the tendering, awarding or management of a public contract in relation to which there may have been fraud or fraudulent tactics.

4. The reimbursement program the Minister intends to establish must be published as a draft program in the *Gazette officielle du Québec*, together with a notice stating the period that must elapse before the program may be

established and during which an interested person may send comments to the person specified in the notice.

5. Within the scope of the reimbursement program, the Minister acts on behalf of a public body. For that purpose, the Minister may transact and validly grant a discharge regarding the contracts concerned.

A public body may, however, in the cases, on the conditions and in the manner determined by the Minister, intervene within the scope of the program, in particular by participating in a vote of all the public bodies covered by a settlement proposal made by an enterprise or natural person mentioned in section 10.

6. The Government designates a person to act as program director. The person must exercise the functions of office in an impartial manner.

One of the director's duties is to attempt to bring the Minister and an enterprise or natural person mentioned in section 10 to an agreement.

For that purpose, the director must inform them of the scope of sections 7 and 8 and make recommendations to the Minister with regard to any reimbursement proposals received.

7. Anything said or written within the framework of the program is confidential and may not be admitted in evidence unless the Minister and the enterprise or natural person mentioned in section 10 agree otherwise.

8. The program director, the Minister and the enterprise or natural person mentioned in section 10 cannot be compelled to disclose anything they hear or learn within the framework of the program. Nor can they be compelled to produce a document prepared or obtained within that framework before a court of justice, before a person or body of the administrative branch exercising adjudicative functions or before any other person or body having the power to summon witnesses, gather evidence and require the production of documents.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person may have access to such a document.

9. The program director cannot be prosecuted for acts performed in good faith in the exercise of the functions of office.

CHAPTER III

SPECIAL RULES APPLICABLE TO JUDICIAL PROCEEDINGS

10. Any enterprise or natural person who has, in any capacity, participated in fraud or fraudulent tactics in the course of the tendering, awarding or

management of a public contract is presumed to have caused injury to the public body concerned.

In such a case, the officers of the enterprise in office at the time the fraud or fraudulent tactics occurred are held liable unless they prove that they acted with the care, diligence and skill that a prudent person would have exercised in similar circumstances.

The directors of the enterprise in office at the time the fraud or fraudulent tactics occurred are also held liable if it is established that they knew or ought to have known that fraud or fraudulent tactics were committed in relation to the contract concerned, unless they prove that they acted with the care, diligence and skill that a prudent person would have exercised in similar circumstances.

The enterprises and natural persons referred to in this section are solidarily liable for the injury caused, unless such liability is waived by the public body.

11. The injury is presumed to correspond to the amount claimed by the public body concerned for the contract concerned if the amount does not exceed 20% of the total amount paid for that contract.

The public body may, subject to providing proof, claim an amount greater than that determined under the first paragraph.

Any amount granted by the court under this section bears interest from the date the work is accepted by the public body concerned for the contract concerned, at the rate determined under section 28 of the Tax Administration Act (chapter A-6.002).

12. The Minister may, on behalf of a public body, bring an action against an enterprise or natural person referred to in section 10 after informing the public body of its intention and giving the public body reasonable time to bring an action itself.

In such a case, the Minister may transact on an amount the Minister claims under the first paragraph and validly grant a discharge regarding the contracts concerned.

13. The public body's claim in an action brought under this chapter confers on the public body a legal hypothec which may, on authorization, be registered on the property of any enterprise or natural person referred to in section 10.

The application for authorization is made to a judge in chambers. In urgent cases, it may be made without notice to the adverse party. If the authorization is granted, it must be served without delay on the enterprise or the natural person concerned.

The judge grants the authorization if the body's claim appears to be well-founded and if there is reason to fear that recovery of the claim might be jeopardized without such authorization.

14. A court that allows an action to be brought under this chapter must add a lump sum equal to 20% of any amount granted for injury, to cover expenses incurred for the purposes of this Act. The amount bears interest from the time the action is brought.

15. An application addressed to a court or to a judge in chambers under this chapter is heard and decided by preference.

16. An action to repair injury caused after (*insert the date that is 20 years before the date of coming into force of Chapter III*) to a public body by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract may not, if in progress on (*insert the date of coming into force of Chapter III*) or instituted within five years after that date, be dismissed on the grounds that the right is prescribed.

Any such actions dismissed on those grounds before (*insert the date of coming into force of Chapter III*) may be instituted again within five years after that date.

In addition, during a proceeding, no measure necessary or useful to preserve the public body's rights, including an unenforceability action, may be dismissed on the grounds that the right is prescribed or extinguished.

In such cases, this Act has the retroactive effect necessary to ensure its application.

17. A court of justice has exclusive jurisdiction to hear applications brought under this chapter. However, persons or bodies exercising adjudicative functions retain their authority with respect to any such application made by a public body exclusively against one of its employees. In such a case, this Act applies with the necessary modifications.

CHAPTER IV

MISCELLANEOUS PROVISIONS

18. This Act is public policy.

19. The Minister must, within six months after the end of the reimbursement program described in Chapter II, report to the Government on the implementation of the program. The report must include the names of the enterprises or natural persons mentioned in section 10 who participated in the program, the names of the public bodies involved, and the total amount reimbursed.

The report is tabled within the next 30 days in the National Assembly or, if the Assembly is not sitting, within 30 days of resumption.

20. The Government may determine rules for the apportionment between the Minister and a public body of any amount recovered under Chapter II and section 12, in proportion to the amounts paid by the public body for a particular contract.

21. A public body is required to cooperate with the Minister in achieving the purpose of this Act. To that end, it must, in particular, provide any document or information requested by the Minister in relation to a public contract.

22. No recourse in warranty or recursory action may be brought against an enterprise or natural person mentioned in section 10 who has been granted a discharge for a claim arising from a contract described in section 3.

23. Despite any inconsistent provision of an Act, any value accrued or any benefit paid or granted to an employee of a public body or to an elected officer under a pension plan is seizable for the execution of a final judgment in an action brought under Chapter III, in the cases, on the conditions and in the manner determined by government regulation.

24. The Government may, by regulation, take any measure necessary or useful for carrying out this Act and fully achieving its purpose.

CHAPTER V

PUBLIC CONTRACTS FUND

25. The Public Contracts Fund is established at the Ministère de la Justice.

The Fund is dedicated to financing activities carried out by the Minister for the purposes of this Act.

26. The following are credited to the Fund:

(1) the amounts paid to the Minister under this Act;

(2) the amounts transferred to it by a minister out of the appropriations granted for that purpose by Parliament;

(3) the amounts transferred to it by the Minister of Finance under sections 53 and 54 of the Financial Administration Act (chapter A-6.001);

(4) the gifts, legacies and other contributions paid into it to further the achievement of its purpose; and

(5) the revenue generated by the amounts credited to it.

27. The amounts required to pay any expense, including the expenses incurred by the Minister for the purposes of this Act, and any cost related to an investment, and that are necessary to achieve the purpose to which the Fund is dedicated are debited from the Fund.

28. Any surplus accumulated by the Fund is transferred to the general fund on the dates and to the extent determined by the Government.

CHAPTER VI

AMENDING PROVISIONS

BUILDING ACT

29. The Building Act (chapter B-1.1) is amended by inserting the following sections after section 65.1:

"**65.1.0.1.** Section 65.1 does not apply if

(1) the offence or indictable offence that led to the conviction has already been considered by the Autorité des marchés financiers (the Authority) under Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1) and, when it was considered, an authorization was granted to the licence holder or the authorization held by the licence holder was not revoked or was renewed; or

(2) the conviction and the offence or indictable offence that led to it have not yet been considered by the Authority in connection with an application submitted to it under Chapter V.2 of the Act respecting contracting by public bodies and currently under examination, or following an advisory opinion provided under section 21.32 of that Act.

The Authority must send the Board the information required for the purposes of the first paragraph.

"**65.1.0.2.** The holder of a restricted licence may at any time file an application for authorization with the Authority as provided for in Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1).

The granting by the Authority of such an authorization entails, despite any inconsistent provision, the removal of the restriction on the licence."

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

30. The Act respecting contracting by public bodies (chapter C-65.1) is amended by inserting the following section after section 21.2:

"**21.2.0.1.** No entry may be made under section 21.1 or the first paragraph of section 21.2 in the register provided for in section 21.6 if

(1) the offence that led to the finding of guilty has already been considered by the Autorité des marchés financiers (the Authority) under Chapter V.2 and, when it was considered, an authorization was granted to the contractor or the authorization held by the contractor was not revoked or was renewed; or

(2) the finding of guilty and the offence that led to it have not yet been considered by the Authority in connection with an application submitted to it under Chapter V.2 and currently under examination, or following an advisory opinion provided under section 21.32.

The Authority must send the Chair of the Conseil du trésor the information required for the purposes of the first paragraph."

31. Section 21.26 of the Act is amended, in the first paragraph,

(1) by striking out subparagraph 1;

(2) by replacing "holding 50% or more of the voting rights attached to the shares that may be exercised under any circumstances" in subparagraph 2 by "is a natural person who holds 50% or more of the voting rights attached to the shares that may be exercised under any circumstances and who";

(3) by striking out subparagraphs 4 to 7.

32. Section 21.28 of the Act is amended by inserting the following subparagraphs before subparagraph 1 of the second paragraph:

"(0.1) whether the enterprise has, in the preceding five years, been found guilty of an offence listed in Schedule I;

"(0.2) whether the enterprise has, in the preceding five years, been found guilty by a foreign court of an offence which, if committed in Canada, could have resulted in criminal or penal proceedings for an offence listed in Schedule I;

"(0.3) whether the enterprise has, in the preceding two years, been ordered to suspend work by a decision enforceable under section 7.8 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);

"(0.4) whether the enterprise has, in the preceding two years, been ordered by a final judgment to pay an amount claimed under subparagraph *c*.2 of the first paragraph of section 81 of that Act;".

33. The Act is amended by adding the following section after section 58.1, enacted by section 23 of chapter 25 of the statutes of 2012:

"**58.2.** A contractor named in the register of enterprises ineligible for public contracts kept under Division II of Chapter V.1 for a reason other than

those provided for in section 88 of the Integrity in Public Contracts Act (2012, chapter 25) may at any time file an application for authorization with the Authority as provided for in Chapter V.2.

The granting by the Authority of such an authorization entails, despite any inconsistent provision, the removal of the contractor's name from the register.

The Authority must send the Chair of the Conseil du trésor the information required for the purposes of this section."

34. Schedule I to the Act is amended by inserting the following in the alphanumerical order of the Acts and regulations concerned:

"

Act respecting elections and referendums in municipalities (chapter E-2.2)	610 (2)	Making an illegal contribution referred to in paragraph 1 of section 610
	610 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	610 (4)	Making a false declaration concerning a contribution
	610.1 (2)	Making an illegal gift of money referred to in paragraph 1 of section 610.1
Act respecting school elections (chapter E-2.3)	219.8 (2)	Making an illegal contribution referred to in paragraph 1 of section 219.8
	219.8 (3)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	219.8 (4)	Making a false declaration concerning a contribution

Election Act (chapter E-3.3)	564.1 (1)	Making a false declaration concerning a contribution
	564.1 (2)	Inciting an elector to make a contribution by using threats or coercion or by promising compensation, consideration or a reimbursement
	564.2	Contravening section 87 – contribution made by a person who is not an elector, contribution made in favour of an unauthorized entity or contribution not in accordance with Division II of Chapter II of Title III
		Contravening section 90 – involuntary contribution of an elector, contribution not made out of the elector's property or contribution made with compensation or for consideration or a reimbursement
		Contravening section 91 – contribution exceeding the maximum amount allowed
		Contravening the first paragraph of section 127.7 – contribution made by a person who is not an elector
		Contravening the third paragraph of section 127.7 – contribution exceeding the maximum amount allowed

	Contravening the first paragraph of section 127.8 with regard to section 90 – involuntary contribution of an elector, contribution not made out of the elector's property or contribution made with compensation or for consideration or a reimbursement

".

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

35. Sections 641.2 to 641.5 of the Act respecting elections and referendums in municipalities (chapter E-2.2) are repealed.

36. The Act is amended by inserting the following section after section 648:

"**648.1.** The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences described in this Title and listed in Schedule I to that Act."

ACT RESPECTING SCHOOL ELECTIONS

37. Sections 221.1.2 to 221.1.5 of the Act respecting school elections (chapter E-2.3) are repealed.

38. The Act is amended by inserting the following section after section 223.4:

"**223.5.** The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this chapter and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by

public bodies concerning findings of guilty for offences under this chapter that are listed in Schedule I to that Act."

ELECTION ACT

39. Sections 564.3 to 564.6 of the Election Act (chapter E-3.3) are repealed.

40. The Act is amended by inserting the following section after section 569:

"**569.1.** The Chief Electoral Officer shall transmit to the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1) who exercise the function described in paragraph 1.1 of section 10 of that Act the information relating to any penal proceeding brought under this Title and any resulting finding of guilty for an offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1).

The Chief Electoral Officer shall also transmit to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7 of the Act respecting contracting by public bodies concerning findings of guilty for offences under this Title that are listed in Schedule I to that Act."

CHAPTER VII

TRANSITIONAL PROVISIONS

41. The expenditure and investment estimates for the Public Contracts Fund, set out in Schedule I, are approved for the 2014-2015 fiscal year.

42. Out of the amounts credited to the general fund, the Minister may transfer to the Public Contracts Fund the required appropriations allocated by Parliament for Program 2, "Administration of Justice", of the "Justice" portfolio in the Expenditure Budget for the 2014-2015 fiscal year.

43. Expenditures and investments made after 31 March 2014 by the Minister out of the appropriations allocated by Parliament and corresponding, on the date they were made, to the type of expenditures and costs that may be debited from the Public Contracts Fund are debited from the Fund.

44. A proceeding, pending before a civil court on 1 April 2015, to repair injury caused to a public body by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract may, on a party's application, be stayed.

The application to stay the proceeding is made to a judge in chambers, who grants the stay if the enterprise or natural person mentioned in section 10 undertakes to participate in the reimbursement program described in Chapter II or if the public body states that it intends to continue the matter under the rules set out in Chapter III when they come into force.

45. From 1 April 2015 to the end date of the program described in Chapter II, a public body must obtain the Minister's authorization to institute an action to repair injury caused to it by fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract. The Minister grants the authorization if of the opinion that it does not hinder the achievement of the objectives of the reimbursement program.

46. From 1 April 2015 to the end date of the program described in Chapter II, a public body may not, without the Minister's authorization, transact on an amount improperly paid as a result of fraud or fraudulent tactics in the course of the tendering, awarding or management of a public contract. In the absence of an authorization from the Minister, such a transaction is null.

47. Persons and partnerships who are contractors within the meaning of section 1 of the Act respecting contracting by public bodies (chapter C-65.1) and are entered in the register kept by the Chief Electoral Officer with respect to persons and partnerships referred to in the first and second paragraphs of section 641.2 of the Act respecting elections and referendums in municipalities (chapter E-2.2), of section 221.1.2 of the Act respecting school elections (chapter E-2.3) or of section 564.3 of the Election Act (chapter E-3.3) are, despite any provision to the contrary and for the remaining period of ineligibility applicable under those Acts, named in the register of enterprises ineligible for public contracts established under section 21.6 of the Act respecting contracting by public bodies.

For the purposes of the first paragraph, the Chair of the Conseil du trésor enters in the register of enterprises ineligible for public contracts for each person and partnership concerned the relevant information from among that required under the first paragraph of section 641.4 of the Act respecting elections and referendums in municipalities, of section 221.1.4 of the Act respecting school elections or of section 564.5 of the Election Act, as applicable.

CHAPTER VIII

FINAL PROVISIONS

48. The Minister of Justice is responsible for the administration of this Act, except Chapter VI.

49. This Act comes into force on 1 April 2015, except Chapter III, which comes into force on the date to be set by the Government.

This Act, except Chapters V and VI, ceases to have effect on (*insert the date that is five years after the date of coming into force of Chapter III*), except with regard to any action brought prior to that date. Chapter V ceases to have effect on the date to be set by the Government.

SCHEDULE I
(*Section 41*)

PUBLIC CONTRACTS FUND

2014-2015 EXPENDITURE AND INVESTMENT ESTIMATES
(in thousands of dollars)

Revenues	
Expenditures	**72.4**
Surplus or deficit for the fiscal year	(72.4)
Balance of loans or advances	(72.4)

NATIONAL ASSEMBLY

FIRST SESSION FORTY-FIRST LEGISLATURE

Bill 34
(2015, chapter 7)

An Act to amend the Supplemental Pension Plans Act with respect to the funding and restructuring of certain multi-employer pension plans

Introduced 18 February 2015
Passed in principle 25 February 2015
Passed 2 April 2015
Assented to 2 April 2015

Québec Official Publisher
2015

EXPLANATORY NOTES

This Act amends the Supplemental Pension Plans Act to introduce special measures for the funding of certain multi-employer pension plans as well as rules applicable to the restructuring of those plans when contributions are found to be insufficient.

The Act applies to multi-employer defined benefit-defined contribution pension plans that may not be amended unilaterally by any of the employers that are a party to those plans and regarding which the sole obligation of the employer is the contribution stipulated in the plan.

Such plans will be funded solely on a funding basis, the amortization period for funding deficiencies will be 12 years instead of 15, and solvency deficiencies will no longer be funded. Members' benefits will be paid in proportion to the degree of solvency of the plan.

The plans will need to be restructured if an actuarial valuation report indicates that contributions are insufficient. A recovery plan will then be required to set out measures to ensure that the funding of the pension plan complies with the law. These measures could include an increase in employer contributions or in member contributions or an amendment reducing benefits that is applicable to service completed before or after the effective date of the amendment.

Lastly, the necessary transitional measures are introduced into the Supplemental Pension Plans Act.

LEGISLATION AMENDED BY THIS ACT:

– Supplemental Pension Plans Act (chapter R-15.1);

– Act to foster the financial health and sustainability of municipal defined benefit pension plans (chapter S-2.1.1).

Bill 34

AN ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT WITH RESPECT TO THE FUNDING AND RESTRUCTURING OF CERTAIN MULTI-EMPLOYER PENSION PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

SUPPLEMENTAL PENSION PLANS ACT

1. The Supplemental Pension Plans Act (chapter R-15.1) is amended by inserting the following chapter after section 146.9:

"**CHAPTER X.2**

"SPECIAL PROVISIONS RELATING TO CERTAIN MULTI-EMPLOYER PENSION PLANS

"**DIVISION I**

"SCOPE

"**146.10.** This chapter applies to multi-employer defined benefit-defined contribution pension plans, in force on 18 February 2015, that may not be amended unilaterally by a participating employer. Such plans are called "negotiated contribution plans".

This chapter does not apply to multi-employer pension plans governed by a regulation under the second paragraph of section 2, other than the Regulation providing new relief measures for the funding of solvency deficiencies of pension plans in the private sector (chapter R-15.1, r. 4.1), but does apply to pension plans subject to Division III.3 of the Regulation respecting the exemption of certain pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 8).

"**DIVISION II**

"CONTRIBUTIONS AND BENEFITS

"**146.11.** Despite the first paragraph of section 39, the employer is only required to pay, in each fiscal year of the plan, the employer contribution stipulated in the plan.

Despite the third paragraph of section 41, the employer contribution may not be adjusted unless the adjustment has been negotiated with the employer.

"**146.12.** The sum of the employer contribution and the member contributions payable in each fiscal year of the pension plan must be equal to or greater than the sum of the following amounts:

(1) the current service contribution determined in accordance with sections 138 and 139;

(2) the estimated amount of the administration costs to be paid out of the pension fund during the fiscal year; and

(3) the sum of the amortization payment determined in respect of the funding deficiency and the special amortization payments payable during the fiscal year.

"**146.13.** No employer may appropriate the surplus assets of the pension plan to the payment of the employer contribution unless a fiscal rule so requires, nor may an employer, despite section 42.1, be relieved of paying the employer contribution by a letter of credit.

"**146.14.** No amortization payments may be determined in respect of the solvency deficiencies of the plan.

"**146.15.** Sections 60 and 60.1 do not apply to negotiated contribution plans.

"**DIVISION III**

"FUNDING RULES

"§1. — *Special provisions*

"**146.16.** The report on the actuarial valuation required under subparagraph 2 of the first paragraph of section 118 must, despite subparagraph 1 of the first paragraph of section 119, be sent to the Régie within six months after the date of the actuarial valuation.

"**146.17.** Any amendment to a negotiated contribution plan having an impact on the obligations arising from the plan must be considered for the first time according to the rules set out in section 121.

"**146.18.** The provisions of section 128, concerning the establishment of a reserve, do not apply to negotiated contribution plans.

"**146.19.** Despite paragraph 2 of section 142, the maximum amortization period of a funding deficiency is 12 years.

"§2. — *Conditions governing payment of benefits*

"**146.20.** The value of the benefits accrued to a member or a beneficiary and referred to in the third paragraph of section 143 must be paid in proportion to the degree of solvency of the plan as established in the last actuarial valuation that precedes the date of the application for transfer and for which the report has been sent to the Régie.

Sections 145 and 146 do not apply to negotiated contribution plans. An employer may however, before the date of payment, pay an additional amount into the pension fund for the payment of all or part of the value of the benefits that cannot be paid under the first paragraph.

Despite sections 20 and 21, a pension plan may be amended to provide that, in cases when the degree of solvency of the plan exceeds 100%, the value of the benefits must be paid in a proportion that is less than the degree of solvency of the plan but equal to or greater than 100%. Such an amendment may only be made in the circumstances described in section 146.35, which applies with the necessary modifications.

"**146.21.** A payment made in accordance with section 146.20 constitutes a final payment of the benefits accrued to a member or beneficiary.

"**146.22.** For the purposes of the assignment of a member's benefits or the seizure of such benefits for non-payment of support, the degree of solvency of the plan as established in the last actuarial valuation that precedes the date of their valuation and for which the report has been sent to the Régie must be taken into account in determining the value of the member's benefits.

"**DIVISION IV**

"RESTRUCTURING

"§1. — *Recovery plan*

"**146.23.** When the report on an actuarial valuation of a negotiated contribution plan indicates that the contributions provided for in the pension plan are insufficient, a recovery plan must be prepared by the person or body who may amend the plan.

"**146.24.** The recovery plan must set out the measures to be taken to ensure that the funding of the pension plan is in conformity with the law.

These measures may include an increase in the employer contribution, an increase in member contributions, or the establishment of such contributions in the case of a non-contributory plan, or an amendment reducing benefits that is applicable to service completed before or after the effective date of the amendment.

"**146.25.** No measure set out in a recovery plan may reduce, on a funding basis, the value of the benefits in payment in a proportion greater than that applicable to the value of the benefits of active members.

"**146.26.** The measures in the recovery plan must not reduce the pension plan's liabilities below the value of its assets either on a solvency basis or on a funding basis.

"**146.27.** The recovery plan must include certification by an actuary that implementing the measures set out in the plan, as of the date of the actuarial valuation showing insufficient contributions, would result in sufficient contributions being made to the plan.

"**146.28.** The recovery plan must be sent to the Régie by the pension committee within 18 months after the date of the actuarial valuation.

"§2. — *Amendment reducing benefits*

"**146.29.** An amendment reducing pension benefits set out in a recovery plan may, without being agreed to as required under section 20, become effective before the date set under the first paragraph of that section or apply to service completed before the effective date of the amendment.

"**146.30.** The effective date of an amendment reducing benefits set out in a recovery plan may not precede the date following that of the actuarial valuation showing insufficient contributions.

"**146.31.** Despite section 21, an amendment set out in a recovery plan may reduce a pension benefit the payment of which began before the effective date of the amendment.

"**146.32.** No amendment reducing benefits may have an effect on amounts or benefits already paid at the date of its registration.

"§3. — *Adoption of recovery plan*

"**146.33.** The recovery plan is adopted if, at the end of the consultation process set out in this section, less than 30% of the members and beneficiaries of the pension plan are opposed to it.

The pension committee must send every member and beneficiary a written notice informing them of the purpose and effective date of the amendments set out in the recovery plan, and the consequences set out in sections 146.39 and 146.40 for failure to adopt a recovery plan. The notice must also inform them that they may notify the pension committee of their opposition to the recovery plan within 60 days after the notice is sent or after the notice required under the third paragraph is published, whichever is later.

Unless all members and beneficiaries of the pension plan have been personally notified, the pension committee must publish a notice containing the information required under the second paragraph. The rules set out in the third paragraph of section 146.3.1 apply with the necessary modifications.

"**146.34.** The consultation set out in section 146.33 is not required in the following circumstances:

(1) the text of the pension plan or an ancillary document registered with a body similar to the Régie includes, as of 18 February 2015, a provision allowing the reduction of benefits accrued to members and beneficiaries;

(2) the pension plan was amended in accordance with section 146.35 after 2 April 2015 to allow, within the scope of a recovery plan, the reduction of benefits accrued to members and beneficiaries.

"**146.35.** A pension plan may only be amended as described in paragraph 2 of section 146.34 if, at the end of the consultation process set out in this section, less than 30% of the members and beneficiaries are opposed to it.

The pension committee must send every member and beneficiary of the pension plan a written notice, separate from the notice required under section 146.33, that states, in addition to the information required under subparagraph 1 of the first paragraph of section 26, the consultation process required in the absence of a pension plan provision allowing the reduction of benefits when contributions are insufficient. The notice must also inform them that they may notify the pension committee of their opposition to the proposed amendment within 60 days after the notice is sent or after the notice required under the third paragraph is published, whichever is later.

Unless all members and beneficiaries of the pension plan have been personally notified, the pension committee must publish a notice containing the information required under the second paragraph. The rules set out in the third paragraph of section 146.3.1 apply with the necessary modifications.

"**146.36.** A notice given under section 146.33 or 146.35 is considered to be the notice required under section 26.

Section 113.1 applies to such a notice.

"**146.37.** An application for the registration of amendments set out in the recovery plan must be filed with the Régie not later than 24 months after the date of the actuarial valuation showing insufficient contributions.

Registration of such amendments is not subject to the authorization of the Régie required under subparagraph 2 of the second paragraph of section 20.

"§4. — *Failure to produce a recovery plan*

"**146.38.** In a case of failure to produce a recovery plan or a required accompanying document, fees equal to those payable in a case of failure to produce the report on the actuarial valuation showing insufficient contributions must be paid to the Régie for each full month of delay.

"**146.39.** In a case of failure to produce an application for the registration of an amendment to the pension plan for the purpose of implementing a recovery plan or a required accompanying document, active members cease to accumulate benefits on the date of default.

Such termination does not constitute termination of active membership.

The plan must be amended to specify the period during which benefits are not accumulated under the first paragraph.

Restoring these benefits constitutes an amendment to the plan.

"**146.40.** If no recovery plan or amendment for the purpose of increasing contributions or reducing member and beneficiary benefits under such a plan is filed with the Régie within 60 months after the date of the actuarial valuation showing insufficient contributions, the person or body who may amend the pension plan must terminate it.

The date of termination is the date of expiry of that 60-month time limit.

"**DIVISION V**

"RIGHTS OF MEMBERS AND BENEFICIARIES ON WINDING-UP

"**146.41.** The benefits accrued under a pension plan to a member or beneficiary affected by the withdrawal of an employer from a negotiated contribution plan shall be paid in accordance with sections 236 and 237, which apply with the necessary modifications.

The notice referred to in section 200 must, instead of containing the information required under paragraphs 2 to 4 of that section, inform the members and beneficiaries of the terms and conditions for payment of their benefits.

Despite sections 20 and 21, the pension plan may provide for a cap on the degree of solvency applicable to the payment of the value of the benefits, such as the cap permitted by section 146.20, in the circumstances described in that section, which applies with the necessary modifications.

"**146.42.** Sections 240.2 and 308.3 do not apply to negotiated contribution plans.

However, the members and beneficiaries of the plan whose benefits were paid under the third paragraph of section 146.20 are considered, in the event of the withdrawal of the employer or the termination of the plan within three years of the date of payment of their benefits, to be members for the sole purpose of the distribution of surplus assets with respect to the value of their accrued benefits that is equal to the difference between the degree of solvency of the plan on the date of withdrawal or termination and the degree of solvency of the plan applied on the payment of their benefits.

The same applies if the plan is terminated within three years after the date of a payment made under the third paragraph of section 146.41.

"**146.43.** Surplus assets determined on the withdrawal of an employer or the termination of the plan may only be allocated to the members and beneficiaries and shall be distributed among them proportionately to the value of their accrued benefits.

"**146.44.** The provisions of subdivision 4 of Division II of Chapter XIII, concerning the debts of an employer in the event of the withdrawal of the employer or the termination of the plan, apply to negotiated contribution plans only with respect to contributions provided for in the plan that are unpaid at the date of the withdrawal or termination.

However, an employer may, before the date of payment, pay into the pension fund an additional amount to cover all or part of the amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer or the termination of a pension plan.

The amounts paid by an employer under the second paragraph must be applied to paying the benefits of the members or beneficiaries which relate to that employer.

"**146.45.** When an employer no longer has active members in its employ, the plan must be amended to allow for the withdrawal of the employer from the plan, effective on or before the end date of the fiscal year in which the last member ceases to accumulate benefits.

In the case of an employer all of whose employees covered by the plan are hired on an ad hoc, fixed term basis, the plan need only be amended if 12 months have elapsed since the employer ceased to have active members in its employ."

2. Section 249 of the Act is amended

(1) by replacing "The Régie" in the first paragraph by "The Minister or the Régie";

(2) by replacing "elle a conclu l'entente" in the fourth paragraph in the French text by "est conclue l'entente".

3. The Act is amended by inserting the following sections after section 319.1:

"**319.2.** The time limit set by section 146.16 for sending the Régie the report on the actuarial valuation as at 31 December 2014 of a plan subject to Chapter X.2 runs from 30 April 2015 instead of from 31 December 2014.

The same applies to the time limit for sending the recovery plan and the time limit for filing an application for registration of an amendment to the plan for the purpose of implementing the recovery plan, which time limits are set by sections 146.28 and 146.37, respectively.

"**319.3.** The payment made in accordance with section 143 and, if applicable, section 145.1 before 31 December 2014 in respect of a plan subject to Chapter X.2 constitutes the final payment of the benefits accrued to the member or beneficiary concerned.

The employer may however pay an additional amount into the pension fund for the payment of all or part of any amount that is no longer required to be paid under the first paragraph.

A pension plan may also be amended to provide for the payment, in any fiscal year of the plan ending before 1 January 2020, of amounts whose payability is extinguished under the first paragraph. The amount of such a payment, added to the sum of the amounts referred to in section 146.12, must not result in insufficient contributions being made to the plan.

"**319.4.** All amounts due, at 31 December 2014, by an employer that is a party to a pension plan subject to Chapter X.2 as contributions receivable, under the applicable legal provisions in force on 30 December 2014, in excess of the contributions provided for in the pension plan that have not been paid at that date are eliminated.

"**319.5.** No amount required to be paid by an employer that is a party to a pension plan subject to Chapter X.2 pursuant to a judgment that has become final before 18 February 2015 or in connection with a case pending before a court of justice or an administrative tribunal on that date may, in any way, be recovered by the administrator of the pension plan or by an employer that is a party to the pension plan.

"**319.6.** A pension plan subject to Chapter X.2 must be amended to allow for the withdrawal from the plan of any employer that no longer has active members in its employ on 31 December 2014. The date of withdrawal must be 31 December 2014.

The benefits accrued to the members or beneficiaries affected by the withdrawal must, not later than 2 April 2016, be paid in accordance with the first paragraph of section 146.41.

The value of the members' or beneficiaries' benefits shall be established as at 31 December 2014.

The members or beneficiaries referred to in the second paragraph may request that their benefits be maintained in the plan.

The pension committee must inform the members or beneficiaries of the measures set out in this section so as to give them at least three months to exercise their rights. The notice must mention that the benefits of members and beneficiaries who remain with the plan might later be reduced.

This section only applies, with respect to an employer all of whose employees covered by the plan are hired on an ad hoc, fixed term basis, if, on 31 December 2014, at least 12 months have elapsed since the employer ceased to have active members in its employ.

"**319.7.** The benefits accrued to members and beneficiaries who, on 31 December 2014, work for none of the employers who are a party to the plan must, not later than 2 April 2016, be paid in accordance with the first paragraph of section 146.41.

For that purpose, the third, fourth and fifth paragraphs of section 319.6 apply.

"**319.8.** Despite sections 20 and 21, the pension plan may provide for a cap on the degree of solvency applicable to the payments made under sections 319.6 and 319.7, such as the cap permitted by section 146.20, in the circumstances described in that section, which applies with the necessary modifications.

Section 146.42 applies to such payments.

"**319.9.** On the withdrawal of an employer that is a party to a pension plan subject to Chapter X.2 or on the termination of such a plan before 2 April 2020, the following rules apply:

(1) any reduction after 31 December 2014 of benefits accrued to members or beneficiaries shall be annulled;

(2) the debt of each employer concerned by the withdrawal or termination shall be established as if Chapter X.2 and section 319.4 did not apply; and

(3) any such employer debt extinguished under section 319.3 shall become payable once again.

The first paragraph does not apply, however, if the employer's withdrawal from the pension plan or the termination of the pension plan results from the impossibility of adopting a recovery plan, the alienation or closing down of all or part of the enterprise, the insolvency of the employer or a change in union affiliation.

"**319.10.** When a negotiated contribution plan ceases to be governed by a regulation giving rise to exclusion from the application of the provisions of Chapter X.2 in accordance with the second paragraph of section 146.10, those provisions apply from the date that follows that on which the regulation ceases to apply. Sections 319.3 to 319.9 apply to such a plan, and in applying those sections, the date of 31 December 2014 is replaced by the date on which those provisions begin to apply and the other dates mentioned in those sections are replaced accordingly.

However, section 319.9 does not apply to such a plan if the regulation described in the first paragraph included a provision exempting the negotiated contribution plan from the application of the provisions of this Act that relate to employer debts."

ACT TO FOSTER THE FINANCIAL HEALTH AND SUSTAINABILITY OF MUNICIPAL DEFINED BENEFIT PENSION PLANS

4. Section 62 of the Act to foster the financial health and sustainability of municipal defined benefit pension plans (chapter S-2.1.1) is amended by adding the following paragraphs at the end:

"Any person who ceases to be a member of a pension plan during the same period is entitled to the transfer or reimbursement, as applicable, of the benefits accumulated by the member under the plan, established without reference to the amendments to be made to any pension plan under Chapter II of this Act.

Furthermore, the death benefits provided for in section 86 of the Supplemental Pension Plans Act (chapter R-15.1) to which the spouse or successors of a person who dies during the same period are entitled are established without reference to those amendments."

MISCELLANEOUS AND FINAL PROVISIONS

5. A multi-employer pension plan restructuring agreement that became effective during the year 2014 and was submitted to a body similar to the Régie before 18 February 2015 is considered, with effect from the effective date of the agreement, to be a recovery plan for the purposes of the resulting amendments, provided the agreement was authorized by the body.

6. Chapter X.2 and sections 319.3, 319.4 and 319.6 to 319.9 of the Supplemental Pension Plans Act (chapter R-15.1), enacted by sections 1 and 3, do not apply to matters pending on 18 February 2015 before a court of justice or an administrative tribunal.

7. This Act does not apply to a pension plan all of whose members ceased to accumulate benefits before 31 December 2014.

Nor does it apply with respect to the withdrawal of an employer if all members who work for that employer ceased to accumulate benefits before

31 December 2014 and the plan was, before 18 February 2015, the subject of a notice of amendment under section 26 of the Supplemental Pension Plans Act concerning the withdrawal of the employer from the plan.

8. This Act comes into force on 2 April 2015. However, except for section 2, it has effect from 31 December 2014.

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Abbreviations: **A**: Abrogated, **N**: New, **M**: Modified