



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 102
(2002, chapter 59)

**An Act to amend the Environment
Quality Act and the Act respecting the
Société québécoise de récupération et de
recyclage**

**Introduced 8 May 2002
Passage in principle 5 June 2002
Passage 12 December 2002
Assented to 18 December 2002**

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EXPLANATORY NOTES

This bill proposes amendments to the Environment Quality Act and the Act respecting the Société québécoise de récupération et de recyclage that deal chiefly with measures related to residual materials management.

The Environment Quality Act is amended to allow municipalities to be compensated for the services they provide as regards residual materials recovery and reclamation. The proposed compensation regime is based on agreements that will be entered into between the associations of municipalities and the various associations of enterprises concerned. The role of the Société québécoise de récupération et de recyclage is to be one of support provider, trustee and, where required, arbitrator.

The measures contained in the bill confer new powers on the Société, among others the mandate to assist the Minister in the exercise of ministerial powers relating to the residual materials management plans developed by the municipalities pursuant to the provisions of the Environment Quality Act.

Amendments to the constituting Act of the Société are also proposed, in particular to revise the rules governing the composition of its board of directors and its operating procedures.

LEGISLATION AMENDED BY THIS BILL :

- Environment Quality Act (R.S.Q., chapter Q-2);
- Act respecting the Société québécoise de récupération et de recyclage (R.S.Q., chapter S-22.01).

Bill 102

AN ACT TO AMEND THE ENVIRONMENT QUALITY ACT AND THE ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE DE RÉCUPÉRATION ET DE RECYCLAGE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

ENVIRONMENT QUALITY ACT

1. The Environment Quality Act (R.S.Q., chapter Q-2) is amended by inserting the following section after section 53.5 :

“53.5.1. The Minister may give the Société québécoise de récupération et de recyclage various mandates to assist the Minister with the responsibilities relating to the regional planning of residual materials management. In particular, the Minister may transmit to the Société the management plans received from the municipalities so that the Société may analyse the plans and make recommendations to the Minister.”

2. Section 53.7 of the said Act is amended by replacing the first paragraph by the following paragraph :

“53.7. Subject to the provisions of section 237 of chapter 68 of the statutes of 2001, every regional municipality must, within three years from 1 January 2001, establish a residual materials management plan.”

3. Section 53.30 of the said Act is amended

(1) by replacing “establishment, in particular” in subparagraph 6 of the first paragraph by “persons, in particular those operating”;

(2) by replacing “by agreement between the organization and the Minister” at the end of subparagraph *a* of subparagraph 7 of the first paragraph by “in an agreement between the organization and the Société québécoise de récupération et de recyclage, which must be transmitted to the Minister”;

(3) by replacing “the Minister” in subparagraph *b* of subparagraph 7 of the first paragraph by “the Société”;

(4) by striking out “the Minister or” in subparagraph 13 of the first paragraph;

(5) by replacing the second sentence of the second paragraph by the following: “The Minister may prescribe conditions on which such agreements may be approved and determine the minimum content thereof. The provisions of the agreements are public information.”

4. The said Act is amended by inserting the following after section 53.31 :

“§4.1. — *Compensation for municipal services*

“53.31.1. The persons referred to in subparagraph 6 of the first paragraph of section 53.30 are required, to the extent and on the conditions set out in this subdivision, to compensate the municipalities for the services provided by the municipalities to ensure that the materials designated by the Government under section 53.31.2 are recovered and reclaimed.

“53.31.2. The Government may, by regulation, designate the materials or classes of materials referred to in subparagraph 6 of the first paragraph of section 53.30 in respect of which the compensation regime established under this subdivision is to apply.

The designation shall be made taking into account, among other things, the proportion of the population receiving municipal curbside recycling services and the territories in which the services are provided, after evaluating the results achieved with regard to recycling or reclamation in other forms of the containers, packaging or packaging materials, printed matter or other products concerned.

The Government may also, by regulation, as regards one or more designated materials or classes of materials, specify which persons from among the persons referred to in subparagraph 6 of the first paragraph of section 53.30 are required to pay a compensatory contribution as compensation to the municipalities.

“53.31.3. The annual compensatory contribution payable corresponds to a percentage of the total of the net costs of the services provided by the municipalities in relation to the materials or a class of materials designated by the Government.

The amount of the compensatory contribution shall be determined by material or class of materials designated by the Government.

Subject to a maximum percentage fixed under section 53.31.4, the amount of the compensatory contribution is established by multiplying the percentage determined under that section by the total amount of the net costs determined under section 53.31.5 or, where applicable, section 53.31.7.

To establish the first annual compensatory contribution payable in relation to a material or a class of materials, the net costs taken into account are those borne by the municipalities in the year preceding the year in which the

designation of the material or class of materials by the Government becomes effective. The amount of the compensatory contribution shall, however, be established as a proportion of the number of months elapsed since the designation.

“53.31.4. The percentage of the total of the net costs subject to compensation shall be determined by the Government and may not exceed 50%.

The Government may also determine, by regulation, the maximum amount of the annual compensatory contribution payable in relation to a material or a class of materials.

“53.31.5. The total amount of the net costs of the municipal services subject to compensation and the nature of the expenses taken into account shall be determined by agreement between the municipal groupings and the body certified by the Société québécoise de récupération et de recyclage.

“53.31.6. The Société québécoise de récupération et de recyclage shall support and assist the municipal groupings and the certified body in reaching an agreement. The Société shall see that any agreement entered into is conducive to the achievement of the objectives established in the residual materials management policy adopted under section 53.4 of this Act.

“53.31.7. Failing agreement between the certified body and the municipal groupings within the time determined by the Minister, the Société québécoise de récupération et de recyclage shall determine the total amount of the net costs of the municipal services subject to compensation.

The determination of the amount is subject to the prior approval of the Minister.

“53.31.8. The municipal groupings referred to in section 53.31.5 are the Union des municipalités du Québec and the Fédération québécoise des municipalités. Another body representing the municipalities may be substituted for or added to the municipal groupings if the body is designated for that purpose by the Société québécoise de récupération et de recyclage.

“53.31.9. Applications for certification to represent the persons required to pay a compensatory contribution under this subdivision shall be made to the Société québécoise de récupération et de recyclage.

The Société may require any body to supply it with any information necessary to assess the merits of the application and, in particular, to ascertain the body's representativeness of the persons specified in the application.

“53.31.10. Unless another grouping criterion is established by the Société québécoise de récupération et de recyclage, the Société shall issue as

many certifications as there are materials or classes of materials designated by the Government under section 53.31.2.

This rule does not prevent the Société from issuing more than one certification to the same body.

The Société may also issue joint certification in relation to the same materials or class of materials if the applicant bodies submit to the Société an agreement which the Société considers satisfactory as regards the manner in which the bodies are to share their responsibilities. The agreement shall specify in particular the proportion of the compensatory contribution that will be paid by each body.

“53.31.11. The Minister may specify minimum criteria to be taken into account by the Société québécoise de récupération et de recyclage in certifying a body.

The Minister may also determine the period within which applications for certification may be made to the Société. At the end of that period, the Société may designate a body on its own initiative if no application has been made or if no application satisfies the criteria fixed.

“53.31.12. The certified body shall remit to the Société québécoise de récupération et de recyclage, in trust, the amount of the compensation owed to the municipalities.

The times at which and the terms according to which the amount is payable to the Société shall be agreed between the Société and the certified body. Failing agreement, they shall be determined by the Minister.

The Government may, by regulation, provide that the amount of the compensation referred to in the first paragraph in relation to materials or a class of materials may be paid, in whole or in part, through a contribution in goods or services.

The contributions in goods or services must enable the dissemination of information, awareness and education messages concerning environmental matters and favour messages intended to promote the recovery and reclamation of residual materials.

The terms and conditions for applying a payment through contributions in goods or services shall be established by agreement between the certified body concerned and the Société québécoise de récupération et de recyclage, subject to any directives that the Minister may give in that regard.

“53.31.13. A certified body required to remit an amount of compensation under section 53.31.12 may collect, from its members and from persons who or which, without being members, carry on activities similar to those carried on by the members in relation to the designated materials or

classes of materials, the contributions necessary to remit the full amount of compensation and to indemnify the body for its management costs and other expenses incidental to the compensation regime.

“53.31.14. The contributions payable shall be established on the basis of a schedule of contributions that has been the subject of a special consultation of the persons concerned.

The criteria taken into account to determine the schedule must evolve over the years in such manner as to foster the accountability of the various classes of persons concerned as regards the environmental consequences of the products they manufacture, market, distribute or commercialize or the materials they otherwise generate, having regard in particular to the content of recycled materials, the nature of the materials used, the volume of residual materials produced and their potential for recovery, recycling or other forms of reclamation.

The schedule of contributions may also provide for exemptions or exclusions in addition to those resulting from decisions made under section 53.31.2. The schedule of contributions may also specify the terms according to which the contributions are to be paid to the certified body, which must take into account payments through a contribution in goods or services made in accordance with section 53.31.12.

The schedule must be approved by the Government.

“53.31.15. The Société québécoise de récupération et de recyclage shall give an opinion to the Government on the advisability of approving the schedule of contributions proposed by the certified body. The approved schedule of contributions shall be published in the *Gazette officielle du Québec*.

“53.31.16. The sum owed to a certified body as a compensatory contribution to the municipalities bears interest at the rate fixed under section 28 of the Act respecting the Ministère du Revenu (chapter M-31).

Where a certified body pursues a remedy to claim a sum it is owed under this Act, the certified body is entitled to claim, in addition to interest, an amount equal to 20% of that sum.

“53.31.17. The certified body and the municipal groupings shall agree on the criteria under which the compensation paid is to be distributed among the municipalities. They shall also agree on the times at which and the terms according to which the compensation is payable to the municipalities concerned.

Failing agreement within the time prescribed by the Minister, the Société québécoise de récupération et de recyclage shall determine the applicable distribution criteria and fix the other terms according to which the payments are to be made to the municipalities concerned.

“53.31.18. The Société québécoise de récupération et de recyclage may withhold from any sum received as compensation for the municipalities a percentage of the sum to indemnify the Société for its management costs and other expenses related to the compensation regime, including expenses for informational, awareness and educational activities and for development activities related to the reclamation of the designated materials or classes of materials.

The percentage that may be withheld by the Société under the first paragraph shall be determined by the Government and may not exceed 10%.

“53.31.19. In addition to the powers provided for in section 53.31, the Minister may determine, by regulation, the information and documents concerning the matters referred to in that section that a person or municipality is required to periodically make available to the Minister or to furnish to the Société québécoise de récupération et de recyclage or to a body certified by the Société under this subdivision, as regards designated materials or classes of materials, for the establishment or application of a schedule of contributions for the purpose of compensating the municipalities.

“53.31.20. The information obtained under section 53.31.19 by a body certified by the Société québécoise de récupération et de recyclage is confidential; it may not be disclosed or made accessible to persons not legally entitled thereto except with the written authorization of the person concerned.

Persons working with such a body may not use confidential information obtained in connection with the compensation regime established under this subdivision to obtain, directly or indirectly, a benefit for themselves or for others.”

ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE DE RÉCUPÉRATION ET DE RECYCLAGE

5. The Act respecting the Société québécoise de récupération et de recyclage (R.S.Q., chapter S-22.01) is amended by replacing sections 5 to 17 by the following sections:

“5. The affairs of the Société shall be administered by a board of directors composed of not more than 11 members, including a chief executive officer, appointed by the Government on the recommendation of the Minister.

In making such recommendations, the Minister shall seek to ensure the presence on the board of directors of persons who are representative of or drawn from the various sectors concerned by the Société’s activities.

“6. On the recommendation of the Minister, the Government shall appoint, from among the members of the board of directors other than the chief executive officer, a chair and a vice-chair of the board.

“7. The chief executive officer is responsible for the administration and direction of the Société within the scope of its by-laws and policies.

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

The vice-chair shall exercise the functions of the chair when the latter is absent or unable to act.

“8. The chief executive officer shall be appointed for a term not exceeding five years; the term of the other members of the board of directors shall not exceed three years.

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

“9. Any vacancy on the board of directors, other than in the position of chief executive officer, shall be filled 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 Société, in the cases and circumstances specified therein, constitutes a vacancy.

“10. The Government shall determine the remuneration, employment benefits and other conditions of employment of the chief executive officer of the Société.

The other 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.

“11. The secretary and the other members of the personnel of the Société are appointed and remunerated in accordance with the staffing plan established by by-law of the Société.

Subject to the provisions of a collective agreement, the Société shall determine, by by-law, the standards and scales of remuneration of the members of its personnel in accordance with the conditions defined by the Government.

“12. The board of directors of the Société may deliberate validly only if a majority of its members, including the chair or the vice-chair of the board, are present.

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.

“**13.** The Société may make internal by-laws, which must be approved by the Government. It comes into force on the date of such approval or on any later date determined by the Government.

“**14.** The minutes of the meetings of the board of directors, approved by it and certified by the chief executive officer, the chair, the vice-chair or the secretary of the board, are authentic. The same applies to documents and copies of documents emanating from the Société or forming part of its records, where so certified.

“**15.** No document binds the Société or may be attributed to it unless it is signed by the chief executive officer, the chair or vice-chair of the board, the secretary or another member of the personnel of the Société but, in the last case, only to the extent determined in the internal by-laws of the Société.

“**16.** The internal by-laws of the Société may allow, on the conditions and to the documents determined therein, that a signature be affixed by means of an automatic device, that the signature be electronic or that a facsimile of a signature be engraved, lithographed or printed. However, the facsimile shall have the same force as the signature itself only if the document is countersigned by a person referred to in section 15.”

6. Section 18 of the said Act is amended

(1) by replacing subparagraph 6 of the second paragraph by the following subparagraph :

“(6) administer any program of the Government or a government department or body, in any field related to its objects, or provide assistance in developing those programs.”;

(2) by adding the following paragraphs after the second paragraph :

“The Société shall also exercise the responsibilities entrusted to it under another Act, in particular the responsibilities entrusted to it under the Environment Quality Act (chapter Q-2).

The Société shall promote the implementation of the policy adopted by the Government pursuant to section 53.4 of the Environment Quality Act.”

7. Section 19 of the said Act is amended by replacing the second and third paragraphs by the following paragraph :

“The Société may also make an agreement with a government in Canada or a foreign government, a department or agency of such a government, an international organization or a body of that organization in accordance with the requirements of section 24 of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1) and section 3.12 of the Act respecting the Ministère du Conseil exécutif (chapter M-30).”

8. Section 21 of the said Act is replaced by the following section :

“**21.** The Société shall also carry out any other mandate related to its objects entrusted to it by the Government or the Minister and the costs of which may be assumed in whole or in part by the Government or the Minister.”

9. The said Act is amended by inserting the following section after section 23

“**23.1.** The Société shall keep the interest earned on the sums received in trust under the regime established to compensate municipalities pursuant to sections 53.31.1 and following of the Environment Quality Act.”

MISCELLANEOUS AND FINAL PROVISIONS

10. Section 10 of the Regulation respecting the recovery and reclamation of discarded paint containers and paints, made by Order in Council 655-2000 dated 1 June 2000 (2000, G.O. 2, 2613), is amended

(1) by replacing “by that organization and the Minister” at the end of paragraph 1 by “under subparagraph 7 of the first paragraph of section 53.30 of the Environment Quality Act (R.S.Q., chapter Q-2)”;

(2) by replacing “drawn up by the Minister of the Environment and published in the *Gazette officielle du Québec*” at the end of paragraph 2 by “published in the *Gazette officielle du Québec* pursuant to subparagraph 7 of the first paragraph of section 53.30 of that Act”.

11. The president of the Société québécoise de récupération et de recyclage in office on the date of coming into force of this Act shall become the chief executive officer of the Société, until replaced or reappointed.

12. This Act comes into force on 18 December 2002.