



NATIONAL ASSEMBLY

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THIRTY-SEVENTH LEGISLATURE

Bill 30

(2006, chapter 42)

An Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans

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EXPLANATORY NOTES

The purpose of this bill is to improve the funding of pension funds in order to protect the pension benefits of plan members and beneficiaries. A further purpose of the bill is to enhance the governance of pension plans and better define the scope of the responsibilities of pension committee members and other persons involved in the administration of pension plans.

The bill introduces a number of measures dealing with the solvency of pension plans. It requires accelerated funding of any amendment to a pension plan whose cost causes the solvency of the plan to drop below a certain threshold determined by the bill. It also requires that a pension fund maintain a provision for adverse deviation to provide adequate coverage for the risks associated with market fluctuations. On the other hand, the bill offers some flexibility to employers by allowing them to use a letter of credit to fulfill part of their obligations as to the funding of a pension plan.

The bill also provides that any appropriation of the surplus assets of a pension plan to the funding of an amendment to the plan must be equitable both for the group of active members and for the group of non-active members and beneficiaries. Under the bill, the optional confirmation procedure already established by the Act as regards the employer's right to a contribution holiday becomes applicable to this type of appropriation of the plan's surplus assets.

In addition, the bill requires pension committees to establish and observe specific governance and operation standards. The bill contains additional rules to protect and compensate pension committee members in liability matters.

Bill 30

AN ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT, PARTICULARLY WITH RESPECT TO THE FUNDING AND ADMINISTRATION OF PENSION PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 14 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by inserting the following subparagraph after subparagraph 16 of the second paragraph:

“(16.1) in the case of a plan to which the second paragraph of section 146.4 does not apply, the employer’s right, if any, to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan;”;

(2) by inserting “the third paragraph of” after “to which” in the first line of subparagraph 17 of the second paragraph.

2. Section 21.1 of the Act is amended by inserting “16.1 or” after “subparagraph” in the first line.

3. Section 24 of the Act is amended by striking out subparagraph 4 of the second paragraph.

4. Section 26 of the Act is amended by replacing “contributions” in the eleventh line of subparagraph 2 of the first paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

5. Section 39 of the Act is amended by replacing subparagraphs 1 and 2 of the first paragraph by the following subparagraphs:

“(1) in the case of an insured plan, the current service contribution as established in section 40;

“(2) in the case of an uninsured plan, the sum of the following amounts:

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

(b) the amortization payment determined in respect of the funding deficiency or the sum of the amortization payments determined in respect of the solvency deficiencies, whichever is higher.”

6. Section 39.1 of the Act is amended

(1) by replacing “sections 39 and 140” in the first line by “section 39”;

(2) by replacing “sections 39 and 140” in the third line of paragraph 2 by “section 39”.

7. Section 41 of the Act is amended

(1) by inserting “, less the portion the employer is relieved of paying under section 42.1,” after “employer contribution” in the first line of the first paragraph;

(2) by inserting “any portion of the contribution the employer is relieved of paying under section 42.1 and” after “plus” in the eighth line of the third paragraph.

8. Section 42 of the Act is replaced by the following section:

“42. If the amortization period for an unfunded actuarial liability begins in the course of a fiscal year of the plan, the amortization payment determined for that year must be paid in as many monthly payments as there are months in the portion of the fiscal year included in the amortization period.”

9. The Act is amended by inserting the following section after section 42:

“42.1. Under the conditions prescribed by regulation, an employer may, upon providing the pension committee with a letter of credit established in accordance with the regulations, be relieved of paying all or part of the portion of the employer contribution related to an amortization payment determined for a fiscal year of the plan in relation to the solvency deficiency.

However, employers who are parties to a multi-employer pension plan may not avail themselves of the provisions of the first paragraph.”

10. Section 101 of the Act is amended by replacing “142” in the first line by “143”.

11. Chapter X of the Act, comprising sections 116 to 146, is replaced by the following:

“CHAPTER X**“SOLVENCY AND FUNDING****“DIVISION I****“GENERAL PROVISIONS**

“116. This chapter does not apply

(1) to an insured pension plan in respect of which the insurer has undertaken to pay all costs and satisfy all rights arising from the termination of the plan;

(2) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled derive only and at all times from amounts credited to them; or

(3) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled are either pension benefits and refunds that are insured at all times or benefits described in paragraph 2.

“117. For the purposes of this chapter, a defined benefit-defined contribution plan shall be considered to be a defined benefit plan.

“118. Every pension plan shall be the subject of an actuarial valuation

(1) at the date on which it becomes effective;

(2) at the end of each fiscal year; or

(3) whenever so required by the Régie, at the date fixed by the Régie.

The actuarial valuations carried out under the first paragraph must be complete actuarial valuations, although the valuations provided for in subparagraph 2 of that paragraph may be partial actuarial valuations if the pension plan is both solvent and funded at the end of the fiscal year. However, a plan must be the subject of a complete actuarial valuation not later than the date of the end of the last fiscal year of the plan occurring within three years after the date of the last complete actuarial valuation of the plan.

“119. The pension committee must transmit a report to the Régie on every actuarial valuation referred to in section 118

(1) within nine months after the date of the actuarial valuation in the case of an actuarial valuation required under subparagraph 2 of the first paragraph of that section; or

(2) within the time fixed by the Régie, which shall be at least 60 days, in the case of an actuarial valuation required under subparagraph 3 of the first paragraph of that section.

A report on an actuarial valuation not referred to in section 118 must be transmitted to the Régie within nine months after the date of the actuarial valuation.

“120. The funding of a pension plan must be based on an actuarial valuation report prepared at the request of the pension committee and transmitted to the Régie. Unless the report concerns a partial actuarial valuation carried out under the conditions set out in the second paragraph of section 118, it must refer to a complete actuarial valuation of the plan.

Except in the case provided for in section 121, an actuarial valuation report that has been transmitted to the Régie can be amended or replaced only at the request of or with the authorization of the Régie and subject to the conditions fixed by the Régie. If a report is amended or replaced, any unfunded actuarial liability determined by the valuation must be re-established and any actuarial certification required for the purposes of such valuation must be renewed.

“121. Any amendment to a pension plan having an impact on the funding of the plan must be considered for the first time not later than the latest of the following dates:

(1) the date of the last actuarial valuation of the plan, the date of which is not later than the date the amendment is made; or

(2) the date of the last actuarial valuation of the plan, the date of which is not later than the date the amendment becomes effective.

If the actuarial valuation report was transmitted to the Régie and an amendment which should have been considered under the first paragraph was not taken into account, the report must be amended or replaced.

“122. Every certification required for the purpose of a partial actuarial valuation must reflect the financial position of the plan at the date of the actuarial valuation, estimated on the basis, in particular, of the actual rate of return of the pension fund, changes in interest rates determined on a solvency basis and the contributions actually paid into the pension fund since the last complete actuarial valuation of the plan.

If a partial actuarial valuation pertains to the amendments to a pension plan, it is limited to the determination of the value of the additional obligations arising from any amendment considered for the first time in the valuation or to the determination, on a funding basis, of the variation in the current service contribution arising from the amendment. The determination of the value or of the variation must be based on the same assumptions and methods as were used for the most recent complete actuarial valuation, unless those assumptions and methods are not appropriate in view of the nature of the amendment made to the pension plan.

However, if the amendment to the pension plan increases the pensions already in payment and the additional obligations arising from the amendment are guaranteed by an insurer at the date on which the actuarial valuation report is prepared, the value of the obligations may be assumed to correspond to the premium paid to the insurer, discounted at the date of actuarial valuation according to the rate of return of the pension fund.

“DIVISION II

“SOLVENCY

“123. For the purpose of determining the solvency of a pension plan, the assets of the plan must be established according to their liquidation value or an estimate of that value and be reduced by the estimated amount of the administration costs to be paid out of the pension fund assuming that the pension plan is terminated on the valuation date.

The liabilities of the pension plan must be equal to the sum of the following values:

(1) the value of the obligations arising from the plan, assuming that the plan is terminated on that date; and

(2) the value of the obligations arising from any amendment to the plan considered for the first time at the date of the valuation, such value having been computed on the assumption that the effective date of the amendment is the valuation date.

A letter of credit provided by the employer under section 42.1 forms part of the assets of the plan for the purpose of determining its solvency. The amount of the letter, or the total amount of such letters, may in no case exceed 15% of the value of the liabilities of the plan.

“124. If the plan provides expressly that the amount of a member’s pension must be established with reference to the progression of the member’s remuneration after termination, the value of the pension must be established assuming that the plan is terminated in such circumstances that the benefits accrued to the member in respect of the pension must be estimated at their maximum value. If the plan provides for other obligations the value of which depends on the circumstances in which the plan is terminated, they must be included in the liabilities to the extent provided in the scenario used for that purpose by the actuary in charge of the valuation.

If the liabilities established in accordance with section 123 and with the first paragraph are less than the value of the obligations arising from the pension plan, assuming that the plan is terminated on the valuation date in such circumstances that the benefits accrued to the members must be estimated at their maximum value, the valuation report must also indicate the latter value.

“125. The liabilities of a pension plan under which refunds or benefits are guaranteed by an insurer must, for the purpose of determining the plan’s solvency, include the value corresponding to those benefits, and the plan’s assets must include an amount equal to that value.

“126. The values referred to in the second paragraph of section 123 and in section 124 are determined by applying sections 211 and 212 and subparagraph 1 of the second paragraph of section 212.1, with the necessary modifications. In the case of pensions already in payment, inasmuch as they are not guaranteed by an insurer at the valuation date, those values must be determined according to an estimation of the premium that an insurer would charge to guarantee the pensions in the 30-day period following the valuation date.

“127. For the purpose of determining the degree of solvency of a pension plan, the value of the plan’s assets and that of its liabilities are both reduced by an amount representing the sum of the following values:

- (1) the value of any additional voluntary contributions paid into the pension fund, with accrued interest;
- (2) the value of the contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan, with accrued interest; and
- (3) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The degree of solvency of the plan at the date of a complete actuarial valuation corresponds to the value of the assets, increased by the special amortization payment provided for in section 132 but reduced as provided in the first paragraph, over the value of the liabilities reduced in the same manner, expressed as a percentage.

“128. At the date of the actuarial valuation to which the pension plan is subject, a reserve must be established equal to the lesser of the following amounts:

- (1) the amount of the actuarial gains determined in the valuation;
- (2) the amount of the provision for adverse deviation calculated in accordance with the regulations.

The amount of the actuarial gains corresponds to the amount by which the plan’s assets, increased by the value of the amortization payments required to amortize a solvency deficiency determined in a prior actuarial valuation and which are not eliminated under section 131, exceed the plan’s liabilities, reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

“129. A pension plan is solvent if its assets are equal to or greater than its liabilities.

“130. A solvency deficiency includes

(1) the technical actuarial deficiency which, at the date of an actuarial valuation of the pension plan, corresponds to the amount by which the plan's liabilities, reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, exceed the sum of the plan's assets and the value of the amortization payments required to amortize a solvency deficiency determined in a prior actuarial valuation, which payments are not eliminated under section 131; the value of the amortization payments must be established using the same interest rate as the one used to establish the plan's liabilities; and

(2) the improvement unfunded actuarial liability which corresponds,

(a) if it is determined in a complete actuarial valuation, to the amount by which the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation exceeds the special amortization payment provided for in section 132; or

(b) if it is determined in a partial actuarial valuation, to the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

“131. If, at the date of an actuarial valuation, a plan's assets are equal to or greater than the plan's liabilities reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, any amortization payments remaining to be paid in connection with any technical actuarial deficiency determined in a prior actuarial valuation are eliminated.

If, at the date of an actuarial valuation, the plan's assets are equal to or greater than the plan's liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128 and reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, any amortization payments remaining to be paid in connection with any improvement unfunded actuarial liability determined in a prior actuarial valuation are eliminated.

“132. If the actuarial valuation used to determine the value of the additional obligations arising from an amendment to the pension plan shows that the degree of solvency of the plan is less than 90%, a special amortization payment must be paid into the pension fund, payable in full on the day following the date of the valuation and equal to or greater than the lesser of:

(1) the amount that corresponds to the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation; and

(2) the amount to be funded to ensure that the degree of solvency of the plan is equal to 90%.

“133. The improvement unfunded actuarial liability determined in an actuarial valuation of the pension plan is reduced by the part of the value of the additional obligations arising from an amendment to the plan considered for the first time in the valuation that is paid for by appropriation of the plan’s surplus assets.

If the liability is determined in a partial actuarial valuation, an actuary must certify in the valuation report that a complete actuarial valuation carried out at the date of the valuation would have allowed the establishment, in accordance with the third paragraph of section 146.1, of the amounts that could be appropriated to the payment of the value of the additional obligations arising from the amendment.

“DIVISION III

“FUNDING

“134. To determine the funding of a pension plan, the liabilities of the pension plan at the date of the valuation must be equal to the sum of the following values:

(1) the value of the obligations arising from the plan, given the service credited to the members; and

(2) the value of the obligations arising from any amendment to the plan considered for the first time at the date of the valuation, such value having been computed on the assumption that the effective date of the amendment is the valuation date.

A letter of credit provided by the employer under section 42.1 is not included in the assets of the plan for the purpose of determining its funding.

“134.1. A plan is funded if, at the date of the actuarial valuation, the value of its assets is equal to or greater than the value of its liabilities.

A plan is partially funded if the value of its assets, increased by the funding deficiency determined at the date of the actuarial valuation, is, at that date, equal to or greater than the value of its liabilities.

“135. If, at the date of an actuarial valuation of the pension plan, the plan’s assets determined on a funding basis do not cover its liabilities determined on the same basis and reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, an amount must be established at that date equal to the amount by which the liabilities thus reduced exceed the assets.

At the same date, an amount must also be established equal to the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

The funding deficiency corresponds to the sum of the amount established under the first paragraph and the amount established under the second paragraph. Any such deficiency is reduced by the amount which represents the part of the value of the obligations referred to in the second paragraph, if any, that is paid for by appropriation of the plan's surplus assets.

“136. The funding method used for an actuarial valuation must be consistent with generally accepted actuarial principles and be based on the assumption that the pension plan is perpetual.

The actuarial assumptions and methods used in verifying the funding of a plan must be suited, in particular, to the type of plan concerned, its obligations and the position of the pension fund.

“137. In addition to the other elements prescribed by regulation, an actuarial valuation must determine

(1) the current service contribution, expressed in currency or as a rate or percentage of the remuneration of active members estimated in the valuation, for the fiscal year or the part of the fiscal year of the pension plan that immediately follows the date of the valuation; and

(2) the value of the assets and the liabilities of the pension plan.

“138. The current service contribution must be equal to or greater than the value of the obligations arising from the pension plan in respect of credited service completed during the year or the part of a year referred to in paragraph 1 of section 137. The contribution may, however, be less if it is determined on the basis of a funding method that maintains the plan fully or partially funded at all times.

“139. The value of the obligations referred to in section 134 or 138, which, under the plan, are to increase according, in particular, to the progression of the members' remuneration, must include the estimated amount of the obligations when they become payable, assuming that contingencies based on actuarial assumptions as to survival, morbidity, mortality, employee turnover, eligibility for benefits or other factors will occur.

Furthermore, any pension benefit increase provided for by the plan which becomes effective after the benefits begin to be paid must be taken into account in determining the value of the plan's obligations.

“DIVISION IV**“AMORTIZATION OF UNFUNDED ACTUARIAL LIABILITIES**

“140. Every unfunded actuarial liability must be amortized by dividing it into as many amounts as there are full months included in the amortization period.

“141. The monthly amortization payable for any fiscal year or any part of a fiscal year of the plan included in the amortization period must be established as a fixed amount at the date the unfunded actuarial liability is determined.

“142. The amortization period for an unfunded actuarial liability begins at the date of the actuarial valuation in which the unfunded liability is determined. It expires at the end of a fiscal year of the pension plan that ends

(1) no later than five years after the date of the valuation, if the liability is a solvency deficiency; or

(2) no later than 15 years after the date of the valuation, if the liability is a funding deficiency.

“DIVISION V**“CONDITIONS GOVERNING THE PAYMENT OF BENEFITS**

“143. The value of any benefit to which a member or a beneficiary becomes entitled under a pension plan and which corresponds to the following amounts must be paid in full:

(1) additional voluntary contributions credited to the member's account, with accrued interest;

(2) member or employer contributions paid in respect of a member under terms in a defined benefit plan that are identical to those of a defined contribution plan, with accrued interest; and

(3) amounts credited to a member's account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The benefit provided for in section 69.1 and the periodic amounts payable as pension benefits must also be paid in full.

The value of any other benefit may be paid out of the pension fund only in proportion to the degree of solvency of the plan, up to 100%, as established in the last actuarial valuation report transmitted to the Régie.

“144. The actuary responsible for preparing the actuarial valuation report of the pension plan must determine whether the payment of the benefits that are transferable under an agreement referred to in section 106 could reduce the degree of solvency of the plan or, where that degree exceeds 100%, reduce it to a percentage lower than 100%.

If so, the payment of benefits is permitted only in the proportion fixed by the actuary to avoid such a consequence.

“145. The value of the benefits which, under section 143 or 144, cannot be paid may be paid up to 5% of the maximum pensionable earnings established under the Act respecting the Québec Pension Plan (chapter R-9) for the year during which the payment is to be made; the total amounts so paid since the last actuarial valuation may not, however, exceed 5% of the assets determined at the time of the actuarial valuation to ascertain the solvency of the pension plan.

“145.1. Despite the limits set in sections 143 to 145, the value of the benefits paid must be equal to or greater than the sum of the contributions paid by the member concerned and the amounts credited to the member’s account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

“146. The balance of the value of the benefits which, under the terms of sections 143 to 145.1, cannot be paid must be funded and paid within five years after the date of the initial payment or not later than the date on which the member concerned attains normal retirement age if that age is attained before the expiry of the five-year period.”

12. The heading of Chapter X.1 of the Act is replaced by the following heading:

“APPROPRIATION OF SURPLUS ASSETS”.

13. Sections 146.1 to 146.3 of the Act are replaced by the following sections:

“146.1. The surplus assets of a pension plan to which Chapter X applies may only be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan if, without reference to the value of those obligations, the actuarial valuation of the plan determines that, on a funding basis, there are surplus assets and, on a solvency basis, there are surplus assets that exceed the reserve established under section 128, if either of the following conditions are met:

(1) the value of the obligations referred to is paid in full by appropriation of the plan’s surplus assets; and

(2) the maximum amount of surplus assets that may be appropriated to that payment of that value is used entirely for that purpose.

The maximum amount of surplus assets that may be appropriated for that purpose is determined in the valuation referred to in the first paragraph.

In the case of a complete actuarial valuation, the maximum amount of surplus assets is equal

(1) on a solvency basis, to the amount by which the plan's assets, reduced by the reserve provided for in section 128, exceed the plan's liabilities reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation;

(2) on a funding basis, to the amount by which the plan's assets exceed the plan's liabilities, the latter being reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

In the case of a partial actuarial valuation, the maximum amount of surplus assets is equal to the amounts given by the actuary who certifies that a complete actuarial valuation carried out at the date of the valuation would have allowed the establishment, in accordance with the third paragraph, of amounts equal to or greater than the amounts given.

“146.2. In the case of a pension plan other than a plan referred to in section 146.1, the surplus assets of the plan may be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan only to the extent that the amount appropriated for that purpose is limited to the portion of the assets that exceeds the value of the obligations arising from the plan, determined without reference to the additional obligations arising from the amendment and assuming that the plan is terminated.

“146.3. The surplus assets of a pension plan may only be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan in a manner that is equitable for both the group of active members and the group of non-active members and beneficiaries. Anyone amending the plan must make sure this requirement is satisfied.

For the purposes of the first paragraph, the amount appropriated to the payment of the value of the additional obligations arising from an amendment to the plan is determined on a funding basis.

In order to ensure equitable treatment, the main elements to be taken into consideration are the evolution of the pension plan, any amendments made to it and the circumstances in which those amendments were made, the origin of the surplus assets concerned, the use made in the past of any surplus assets, the characteristics of the benefits provided for under the plan and the characteristics of the pensions being paid out.

“146.3.1. An employer who intends to appropriate the surplus assets of a pension plan to the payment of the value of the additional obligations arising from an amendment to the plan must inform the pension committee of those intentions before the committee applies for the registration of the amendment.

Before applying for the registration of the amendment, the pension committee must send every member and beneficiary of the plan a written notice containing the information provided for in the first paragraph of section 26 and informing them of the value of the additional obligations arising from the amendment and of the portion of that value to be paid by appropriation of the plan's surplus assets. The notice must also inform them that they may notify the pension committee in writing of their opposition to the proposed appropriation of the surplus assets within 30 days after the notice is sent or after the notice provided for in the third paragraph is published, whichever is later.

Unless all members and beneficiaries have been personally advised, the pension committee must also publish in a daily newspaper circulated in the region in Québec where the greatest number of active members reside a notice of the proposed amendment and of the proposed appropriation of the surplus assets. The notice must also inform those persons who have not received a personal notice and who believe they are a member or beneficiary who must be consulted that they may declare their status to the pension committee within 30 days after the publication and that, if they are able to establish their status, they are entitled to receive a copy of the notice provided for in the second paragraph and, if applicable, to notify the committee in writing of their opposition to the proposed appropriation of the surplus assets.

For the purposes of this Act, the notice given under this section is considered to be the notice given under section 26.

“146.3.2. Upon expiry of the time for expressing opposition, the pension committee must count the notices of opposition received from the group of active members and from the group of non-active members and beneficiaries. The committee must immediately inform the employer concerned and each of the plan members and beneficiaries of the results.

If 30% or more of the members of a group referred to in the first paragraph are opposed to the proposed appropriation of the surplus assets, it is presumed that the requirement set out in the first paragraph of section 146.3 has not been met with respect to that group. However, if fewer than 30% of the members of such a group are opposed to the appropriation, it is presumed that the requirement has been met with respect to that group.

“146.3.3. Sections 146.1 to 146.3.2 do not apply in the case of a pension plan to which the second paragraph of section 146.4 does not apply nor when an amendment confirming the employer's right to appropriate the plan's surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan has been made in accordance with section 146.5.

“146.3.4. The surplus assets of a pension plan to which Chapter X applies may only be appropriated to the payment of employer contributions if the actuarial valuation of the plan shows that

(1) on a solvency basis, assets exceed liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128; or

(2) on a funding basis, assets exceed liabilities.

The maximum amount of surplus assets that may be appropriated to the payment of employer contributions is determined in the valuation referred to in the first paragraph.

In the case of a complete actuarial valuation, that amount is equal to the lesser of the following amounts:

(1) the surplus assets of the plan determined on a solvency basis, reduced by the reserve provided for in section 128; or

(2) the surplus assets of the plan determined on a funding basis.

In the case of a partial actuarial valuation, the amount corresponds to the amount given by the actuary who certifies that a complete actuarial valuation carried out at the date of the valuation would have allowed the establishment, in accordance with the third paragraph, of a maximum amount equal to or greater than the amount given.

“146.3.5. In the case of a pension plan other than a plan referred to in section 146.3.4,

(1) the assets of the plan may only be appropriated to the payment of employer contributions if they exceed the value of the obligations arising from the plan, assuming that the plan is terminated; and

(2) the maximum amount of surplus assets that may be appropriated for that purpose is limited to the portion of the assets that exceeds the value of the obligations arising from the plan, assuming that the plan is terminated.

“146.3.6. The appropriation of the surplus assets of a pension plan to the payment of employer contributions must cease

(1) in the case of a pension plan referred to in section 146.3.4, at the date of any actuarial valuation showing that there are no surplus assets determined on a funding basis, or that assets determined on a solvency basis no longer exceed liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128; and

(2) in the case of a pension plan referred to in section 146.3.5, as soon as the condition set out in paragraph 1 of that section is no longer met.”

14. The heading of Division II of Chapter X.1 of the Act is replaced by the following heading:

“CONFIRMATION OF CERTAIN EMPLOYER’S RIGHTS REGARDING THE APPROPRIATION OF SURPLUS ASSETS”.

15. Section 146.4 of the Act is amended

(1) by replacing the first sentence by “The employer’s right to appropriate all or part of the surplus assets of a pension plan to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions may be confirmed by an amendment made to the plan in accordance with section 146.5.”;

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

“If an amendment referred to in the first paragraph is related to the appropriation of a plan’s surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan, it may apply only to a pension plan effective on 31 December 2009 or to a pension plan resulting from the division after that date of a pension plan that was effective on that date.

In addition, if the amendment is related to the appropriation of a plan’s surplus assets to the payment of employer contributions, it may apply only to a pension plan effective on 31 December 2000 or to a pension plan resulting from the division after that date of a pension plan that was effective on that date.”

16. Section 146.5 of the Act is amended

(1) by replacing “employer contributions” in the second line of the first paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”;

(2) by inserting “written” after “give effect to a” in the third line of the first paragraph.

17. Section 146.6 of the Act is amended by replacing “employer contributions” at the end of subparagraph 1 of the first paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

18. Section 146.7 of the Act is amended by replacing “employer contributions” in the third and fourth lines by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

19. Section 146.9 of the Act is amended by replacing “employer contributions” in the second line of the second paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

20. The Act is amended by inserting the following sections after section 151:

“151.1. The pension committee is presumed to have acted with prudence where it acted in good faith on the basis of an expert’s opinion.

“151.2. The pension committee may adopt internal by-laws establishing its rules of operation and governance. The committee ensures that they are complied with and reviews them regularly.

The internal by-laws determine, in particular,

- (1) the duties and obligations of the committee members;
- (2) the rules of ethics to which those persons are subject;
- (3) the rules governing the appointment of the chair, vice-chair and secretary;
- (4) the procedure for meetings and the frequency of meetings;
- (5) the measures to be taken to provide professional development to committee members;
- (6) the measures to be taken to ensure risk management;
- (7) internal controls;
- (8) the books and registers to be kept;
- (9) the rules to be followed when selecting, remunerating, supervising or evaluating delegates, representatives or service providers; and
- (10) the standards that apply to the services rendered by the committee, namely the standards on communicating with plan members and beneficiaries.

In the event of a discrepancy between the text of the pension plan and the text of the internal by-laws as regards the operation and governance of the committee, the latter prevails. However, in the case of the following subjects, the internal by-laws prevail only if the text of the pension plan expressly so provides:

- (1) the rules governing the appointment of the chair, vice-chair and secretary of the pension committee as well as their duties and obligations;
- (2) quorum and the granting of a casting vote at committee meetings; and

(3) the proportion of committee members who must participate in a decision in order for it to be valid.

“151.3. The secretary of the pension committee or any other person appointed by the committee provides the committee members with the documents and information needed to administer the pension plan.

Committee members have access to all information on the plan and may obtain a copy of any document. However, they may not have access to personal information unless it is required in the performance of their duties.”

21. Section 153 of the Act is amended by adding the following sentence: “The same applies to service providers and representatives who exercise a discretionary power belonging to the committee.”

22. Section 154 of the Act is amended by adding the following paragraph:

“Service providers and representatives who exercise a discretionary power belonging to the pension committee are considered to be delegates.”

23. The Act is amended by inserting the following sections after section 154:

“154.1. The pension committee selects and hires the delegates, representatives and service providers.

“154.2. Delegates, representatives and service providers must submit reports on their work to the pension committee.

Delegates, representatives and service providers must report to the pension committee in writing any situation noted in the normal course of their duties that might adversely affect the financial interests of the pension fund and that requires correction.

If the pension committee fails to take immediate corrective measures, the delegatee, representative or service provider must send a copy of the report to the Régie.

A person who, acting in good faith, sends a report to the committee or the Régie under the second or third paragraph may not be held liable.

“154.3. Delegates, representatives and service providers must provide the pension committee with the documents and information they receive from government authorities and that call into question the conformity of the plan or its administration with this Act.

“154.4. Delegates, representatives and service providers may not exclude or limit their liability. Any clause to that effect is null.

Any clause to that effect in a contract terminated or in effect on 13 December 2006 is null if it is abusive.

The abusive nature of such a clause is assessed, with the necessary modifications, with reference to the articles of the Civil Code on consumer contracts and contracts of adhesion.”

24. Section 161 of the Act is amended by replacing “containing the information prescribed by regulation and accompanied with the prescribed attestations, certificates and documents” at the end of the first paragraph by “drawn up on the form it provides and accompanied by the attestations and documents prescribed by regulation”.

25. Section 161.1 of the Act is repealed.

26. Section 162 of the Act is amended by adding the following sentence: “The cost of the professional development of committee members is an administration cost.”

27. The Act is amended by inserting the following section after section 162:

“**162.1.** The pension committee compensates members who sustain a loss in the performance of their duties and who have committed no fault.

If a member has committed a fault other than a deliberate or gross fault and is covered by liability insurance, the committee may compensate up to the amount of the deductible. Before making a decision, the committee must take the adverse effect of the fault on the financial interests of the pension assets and other circumstances into consideration.”

28. Section 170 of the Act is amended by adding the following paragraph at the end:

“In the event of a discrepancy between the internal by-laws and the investment policy as regards any matter mentioned in this section, the latter prevails.”

29. Section 172 of the Act is amended by inserting the following paragraph after the first paragraph:

“For the purposes of the first paragraph, the letter of credit provided by an employer under section 42.1 is considered to be a security in which the assets of the pension plan are invested and whose book value is equal to the amount of the letter of credit.”

30. Section 180 of the Act is amended by replacing “within their powers and on the recommendation of persons whose profession gives credence to their opinion” at the end of the third paragraph by “in good faith on the basis of an expert’s opinion”.

31. Section 195 of the Act is amended

(1) by replacing “subdivision 1 of Division II” in the second line of the second paragraph by “Division III”;

(2) by replacing “an initial or improvement unfunded actuarial liability” in the fourth and fifth lines of that paragraph by “a funding deficiency”;

(3) by replacing the first sentence of the fourth paragraph by the following sentence: “Furthermore, the Régie may not authorize such a division except where the plan into which a portion of the assets to be divided is to be transferred includes provisions which, in respect of the allocation of any surplus assets in case of termination and the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions but, in the latter case, only if the plan from which the assets are to be transferred is a plan to which subparagraph 16.1 or 17 of the second paragraph of section 14 applies or which was amended in that respect under section 146.5, are identical as to their effects to the provisions of the plan from which such assets are to be transferred.”

32. Section 196 of the Act is amended

(1) by inserting “16.1 or” after “subparagraph” in the second line of the fourth paragraph;

(2) by replacing “employer contributions” in the fourth and fifth lines of the fourth paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”;

(3) by replacing “employer contributions” in the third line of the fifth paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

33. Section 217 of the Act is amended by replacing the second sentence by the following sentence: “The rate of interest must be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan if the amount due is due

(1) under a defined contribution plan;

(2) under provisions of the plan which relate to additional voluntary contributions;

(3) under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan;

(4) as member contributions that exceed the limits set under section 60; or

(5) as amounts credited to the plan following a transfer, even a transfer other than a transfer under Chapter VII.”

34. Section 218 of the Act is replaced by the following section:

“218. Where an employer withdraws from a multi-employer pension plan or a pension plan is terminated, the amounts to which the members and beneficiaries affected are entitled shall be paid out in the following order:

(1) amounts corresponding to the following values, concurrently:

(a) the value of the additional voluntary contributions paid into the pension fund or to the insurer;

(b) the value of the member or employer contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan; and

(c) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII;

(2) the value of other benefits, excluding those referred to in subparagraph 4, accrued under the plan and reduced under section 216;

(3) the value of any benefit reduction under section 216; and

(4) the value of benefits payable to members under pension plan terms granting them compensation for cessation of continuous employment due to technological or economic changes in the employer’s enterprise or to the division, merger, alienation or closing down of the enterprise.

If the assets are insufficient for the full satisfaction of the rights that are collocated in the same rank, payment shall be made proportionately to the value of the benefits concerned.

The benefits referred to in the first and second paragraphs are the benefits accrued under the plan at the date of termination. The value of those benefits must be established at that date, and is increased by the interest calculated in accordance with section 217.”

35. Section 230.7 of the Act is amended by replacing “second” in the sixth line of the first paragraph by “third”.

36. Section 237 of the Act is amended by replacing the third paragraph by the following paragraphs:

“If no pension of the type to which the member is entitled under the pension plan is available on the market, the pension committee may, in order to have an insurer guarantee the pension, replace the characteristics of the pension that

make it unavailable on the market by similar characteristics that do not entail such a result.

The pension thus modified must, on the date payment begins, be of a value equal to that of the member's vested pension; however, if equal value cannot be attained because of the limits set under the Taxation Act, an amount equal to the difference between the value of the pension to which the member is entitled and the value of the modified pension must be paid to the member in a lump sum. These values must be established on the basis of the actuarial assumptions referred to in section 61."

37. The heading of Chapter XIV of the Act is replaced by the following heading:

"PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC".

38. Sections 241 and 242 of the Act are repealed.

39. Section 243 of the Act is replaced by the following section:

"**243.** A person concerned may contest a decision or order of the Régie before the Administrative Tribunal of Québec within 30 days of notification of the decision or order."

40. Section 244 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 2 of the first paragraph:

"(2.1) specify the conditions under which an employer may provide the pension committee with a letter of credit, as well as the form, amount and terms of such a letter;";

(2) by inserting the following subparagraph after subparagraph 8 of the first paragraph:

"(8.0.1) determine the manner in which the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128 is calculated;";

(3) by replacing subparagraph 8.3 of the first paragraph by the following subparagraph:

"(8.3) determine which attestations, certificates and documents must accompany the annual statement referred to in section 161;";

(4) by replacing subparagraph 14 of the first paragraph by the following subparagraph:

“(14) prescribe the fees payable for the financing of expenses incurred by the Régie for the administration of this Act and the regulations and for any formality prescribed by this Act or the regulations, including fees which may be imposed as a penalty for a delay in carrying out such a formality or failure to provide within the time allotted any information or document provided for in this Act or required by the Régie;”.

41. Section 248 of the Act is amended by striking out subparagraph 4 of the first paragraph.

42. Section 250 of the Act is amended by striking out the second paragraph.

43. Section 253 of the Act is amended by replacing “publish periodically a bulletin” in the first line by “periodically post a bulletin on its website,”.

44. Section 257 of the Act is amended

(1) by replacing “41 to 43” in the second line of paragraph 1 by “41, 42, 43”;

(2) by striking out “140,” in the second line of paragraph 1.

45. Section 258 of the Act is amended by replacing “135, 142 to 144” in the first line of paragraph 1 by “143 to 145”.

46. Sections 306 to 306.6 of the Act are repealed.

47. Section 306.9 of the Act is amended

(1) by inserting “a pension plan that comes into force after 31 December 2009 pertaining to the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan and those of” after “provisions of” in the second line of the first paragraph;

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

“No amendment to a pension plan resulting from the division of a pension plan that was amended under section 146.5 in relation to the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions may pertain to the subject of that amendment unless all the requirements set out in the first paragraph of section 146.5 and in section 146.6 are satisfied.”

TRANSITIONAL AND FINAL PROVISIONS

48. Sections 118 to 142 of the Supplemental Pension Plans Act, enacted by section 11 of this Act, apply to actuarial valuations dated after 14 December 2009.

49. This section applies only for the purposes of the first actuarial valuation of a pension plan dated after 14 December 2009.

The amortization amounts, among the following, that remain to be paid at the date of the valuation are considered to be amortization payments relating to a technical actuarial deficiency referred to in paragraph 1 of section 130 of the Supplemental Pension Plans Act, enacted by section 11 of this Act:

(1) the amortization amounts referred to in subparagraphs 2 and 3 of the second paragraph of section 137 of the Supplemental Pension Plans Act as they read before 1 January 2010, excluding those relating to an improvement unfunded actuarial liability, that were taken into account in the last complete actuarial valuation dated prior to 15 December 2009;

(2) the amortization amounts determined in the valuation referred to in subparagraph 1 for the purposes of section 140 of that Act as it read before 1 January 2010.

The amortization amounts, among the following, that remain to be paid at the date of the valuation are considered to be amortization payments relating to an improvement unfunded actuarial liability within the meaning of paragraph 2 of section 130 of the Supplemental Pension Plans Act, enacted by section 11 of this Act:

(1) the amortization amounts referred to in subparagraphs 1 and 2 of the second paragraph of section 137 of the Supplemental Pension Plans Act as they read before 1 January 2010, excluding those relating to a technical actuarial deficiency, that were taken into account in the last complete actuarial valuation dated prior to 15 December 2009;

(2) the amortization amounts related to an unfunded liability referred to in the third paragraph of section 130 of the Supplemental Pension Plans Act as it read before 1 January 2010, and determined, if applicable, in an actuarial valuation of the plan carried out in accordance with that section at a date subsequent to the valuation referred to in subparagraph 1; the amounts referred to in this subparagraph need not be taken into account if an actuary certifies in the report on the actuarial valuation referred to in the first paragraph that none of those amounts were required to ensure the solvency of the plan at the date they were determined.

If, at the date of the actuarial valuation referred to in the first paragraph, the value of the amortization payments relating to the technical actuarial deficiency and to the improvement unfunded actuarial liability referred to in the second and third paragraphs exceeds the amount to be funded to ensure the solvency of the plan at that date, the excess thus determined may serve to reduce the amortization payments remaining to be paid in connection with the technical actuarial deficiency and, if that deficiency is eliminated, with the improvement unfunded actuarial liability. If the excess is insufficient to eliminate the deficiency or the liability, the reduction is applied proportionately to each

amortization payment remaining to be paid. In addition, if there is more than one deficiency or liability of the same nature, the reduction is applied beginning with the earliest and ending with the most recent.

50. Sections 141 and 142 of the Supplemental Pension Plans Act, as they read before 1 January 2010, are replaced by the following sections:

“141. The degree of solvency of a pension plan is the proportion, expressed as a percentage, of the value of the assets of the plan over the value of its liabilities, both values having first been reduced by an amount representing the sum of the following values:

(1) the value of any additional voluntary contributions paid into the pension fund, with accrued interest;

(2) the value of the contributions paid into the pension fund under provisions that, in a defined benefit plan, are identical to those of a defined contribution plan, with accrued interest; and

(3) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

“142. The value of the benefits to which a member or a beneficiary becomes entitled under a pension plan and that corresponds to the following amounts must be paid in full:

(1) additional voluntary contributions credited to the member’s account, with accrued interest;

(2) member or employer contributions paid in respect of a member under terms in a defined benefit plan that are identical to those of a defined contribution plan, with accrued interest; and

(3) amounts credited to a member’s account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The benefit provided for in section 69.1 and the periodic amounts payable as pension benefits must also be paid in full.

The value of any other benefit may be paid out of the pension fund only in proportion to the degree of solvency of the plan, up to 100%, as established in the last actuarial valuation report transmitted to the Régie.”

51. Section 27 applies even to matters pending before a court or an arbitrator on 14 June 2006.

52. Sections 37 to 39 apply to the decisions and orders rendered by the Régie from 13 December 2006.

53. In addition to the transitional provisions provided for by this Act, the Government may, by regulation made before 1 July 2010, make any other transitional provision concerning the administration of the Supplemental Pension Plans Act as amended by this Act or the administration of the Act respecting the funding of certain pension plans (2005, chapter 25).

Such a regulation is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1). Despite section 17 of that Act, it comes into force on the date of its publication in the *Gazette officielle du Québec*, or on any later date specified in the regulation. However, once it is published and if it so provides, it may apply from any date not prior to 13 December 2006.

54. This Act comes into force on 1 January 2010; however,

(1) sections 27 and 51 have effect from 14 June 2006;

(2) section 20, except to the extent that it enacts section 151.2 of the Supplemental Pension Plans Act, sections 21 to 26, section 30, sections 33 to 39, paragraphs 3 and 4 of section 40 and sections 42, 43, 50, 52 and 53 come into force on 13 December 2006;

(3) section 20, insofar as it enacts section 151.2 of the Supplemental Pension Plans Act, and section 28 come into force on 13 December 2007.