



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 44

(2007, chapter 41)

**An Act to amend the Financial
Administration Act and the Act
respecting the Ministère des Finances**

**Introduced 15 November 2007
Passed in principle 18 December 2007
Passed 19 December 2007
Assented to 21 December 2007**

**Québec Official Publisher
2007**

EXPLANATORY NOTES

The purpose of this bill is to prohibit a body subject to the provisions of the Financial Administration Act regarding borrowing plans from making a borrowing or investment or a financial commitment determined by regulation unless the borrowing, investment or financial commitment is authorized by the Minister responsible for the administration of the Act governing the body and its nature, terms and conditions are authorized by the Minister of Finance. The bill further stipulates that such a body may not conclude a currency exchange or interest rate exchange agreement or a transaction involving any other financial instrument unless it has the authorization of the Minister of Finance.

In addition, the bill specifies when ministerial authorizations are not required, such as when the borrowing, investment, financial commitment determined by regulation or the transaction must be authorized or approved by the Government or in the cases determined by regulation.

Lastly, the bill amends the Act respecting the Ministère des Finances to clarify the scope of application of certain provisions with respect to university establishments.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Act respecting the Ministère des Finances (R.S.Q., chapter M-24.01).

Bill 44

AN ACT TO AMEND THE FINANCIAL ADMINISTRATION ACT AND THE ACT RESPECTING THE MINISTÈRE DES FINANCES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The heading of Chapter VIII of the Financial Administration Act (R.S.Q., chapter A-6.001) is replaced by the following heading:

“BORROWINGS, FINANCIAL INSTRUMENTS AND CONTRACTS,
INVESTMENTS AND FINANCIAL COMMITMENTS OF BODIES”.

2. The Act is amended by inserting the following sections after section 77:

“77.1. A body may not make a borrowing unless the borrowing is authorized by the Minister responsible for the administration of the Act governing the body and its nature, terms and conditions are authorized by the Minister of Finance.

However, the authorization of the Minister responsible for the administration of the Act governing university establishments is not required in the case of a project that is not subsidized under the University Investments Act (chapter I-17).

The first paragraph does not apply if the borrowing must, by law, be authorized or approved by the Government.

Moreover, the authorization of the Minister of Finance is not required in the cases and subject to the terms and conditions determined by the Government in a regulation. The provisions of the regulation may apply in whole or in part to one or more bodies and may specify the applicable categories of borrowings.

“77.2. A body may not make an investment unless the investment is authorized by the Minister responsible for the administration of the Act governing the body and its nature, terms and conditions are authorized by the Minister of Finance.

The first paragraph does not apply if the investment must, by law, be authorized or approved by the Government or if it is made as part of an economic development project or to provide financial assistance or in any other case determined by regulation.

Moreover, the authorization of the Minister of Finance or that of the Minister responsible for the administration of the Act governing the body is not required, or neither are required, as the case may be, in the cases and subject to the terms and conditions determined by the Government in a regulation for each such authorization. The provisions of the regulation may apply in whole or in part to one or more bodies and may specify the applicable categories of investments.

“77.3. A body may not make a financial commitment determined by government regulation unless the financial commitment is authorized by the Minister responsible for the administration of the Act governing the body and its nature, terms and conditions are authorized by the Minister of Finance.

The first paragraph does not apply when the financial commitment must, by law, be authorized or approved by the Government.

Moreover, the authorization of the Minister of Finance is not required in the cases and subject to the terms and conditions determined by the Government in a regulation. The provisions of the regulation may apply in whole or in part to one or more bodies and may specify the applicable categories of financial commitments.

“77.4. The Minister responsible for the administration of the Act governing a body or the Minister of Finance may, in the cases and on the conditions the Minister determines, delegate the power to give an authorization required under any of sections 77.1 to 77.3, 79 and 80 to any person the Minister designates.

“77.5. The Government may, by order,

(1) exempt any body from some or all of the provisions of sections 77.1 to 77.3, on the conditions and for the categories of borrowings, investments or financial commitments the Government determines; and

(2) subject a legal person established in the public interest not described in paragraph 2 of section 77 to some or all of the provisions of sections 77.1 to 77.3, 79 and 80.

“77.6. Sections 77.1 to 77.5, 79 and 80 do not apply to

(1) the fiduciary functions expressly conferred on a body by its governing Act;

(2) the Caisse de dépôt et placement du Québec and its subsidiaries;

(3) the Régie des rentes du Québec;

(4) a pension fund; or

(5) a foundation.

“77.7. When a body applies for an authorization that is required under any of sections 77.1 to 77.4, 79 and 80, the Minister of Finance rules on the application within the time limit specified by the Government after authorization is given by the Minister responsible for the administration of the Act governing the body. However, the Minister of Finance may extend the time limit if the Minister of Finance considers it necessary to do so.

The fact that an authorization is given after the time limit specified in the first paragraph does not invalidate the transaction.”

3. Section 79 of the Act is amended

(1) by inserting “and with the authorization of and subject to the conditions determined by the Minister of Finance” after “power” in the second line of the first paragraph;

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

“The authorization of the Minister of Finance is not required if the transaction must, by law, be authorized or approved by the Government, nor is it required in the cases and subject to the terms and conditions that may be determined by the Government in a regulation.

The provisions of a regulation under the second paragraph may apply in whole or in part to one or more bodies and specify the applicable categories of currency exchange or interest rate exchange agreements.”

4. Section 80 of the Act is amended

(1) by inserting “if they deem it advisable for their financial management,” after “may” in the second line of the first paragraph;

(2) by replacing “, and if they deem it advisable for sound and efficient financial management” in the third and fourth lines of the first paragraph by “and with the authorization of and subject to the conditions determined by the Minister of Finance”;

(3) by replacing the second paragraph by the following paragraphs:

“The authorization of the Minister of Finance is not required if the transaction must, by law, be authorized or approved by the Government, nor is it required in the cases and subject to the terms and conditions that may be determined by the Government in a regulation.

The provisions of a regulation under the second paragraph may apply in whole or in part to one or more bodies and specify the applicable categories of financial instruments or contracts.”

5. Section 24 of the Act respecting the Ministère des Finances (R.S.Q., chapter M-24.01) is amended by replacing subparagraph 3 of the first paragraph by the following subparagraph:

“(3) a university establishment described in paragraph *a* of section 1 of the University Investments Act (chapter I-17), except a legal person not directly or indirectly controlled by that establishment whose object is to build and administer university student residences;”.

6. The first regulation made under sections 77.1, 77.2 and 77.3 of the Financial Administration Act, enacted by section 2, and under the provisions of sections 79 and 80 of that Act enacted by sections 3 and 4 is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1).

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