



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 65

(2009, chapter 53)

An Act respecting Infrastructure Québec

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Passed in principle 3 November 2009
Passed 25 November 2009
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EXPLANATORY NOTES

This Act establishes a body under the name “Infrastructure Québec” whose mission it is to contribute, through its advice and expertise, to the planning and carrying out of infrastructure projects by public bodies, to the planning of their maintenance and to the improvement of the quality of services delivered to the public through those projects.

The Act applies to all public infrastructure projects the purpose of which is the construction, maintenance, improvement or demolition of a building, facility or civil engineering structure, including a transport infrastructure, that is considered major by the Government and to which the Government contributes financially, either directly or indirectly.

The Act confers on Infrastructure Québec the functions currently exercised by the Agence des partenariats public-privé du Québec. Moreover, several of those functions are extended to public infrastructure projects where a different project delivery approach—such as the traditional, management contract or turnkey approach—is used.

The Act provides that a public body planning a major public infrastructure project must work with Infrastructure Québec to prepare a business case that assesses the project’s relevance, identifies the options available to meet the need and determines the preferred option and the project delivery approach.

It also provides that, if the public-private partnership or turnkey approach has been chosen as the project delivery approach, the public body must work with Infrastructure Québec so that the latter may coordinate the selection of the enterprise or group of enterprises that will be involved in the project.

Under the Act, a public or municipal body may work with Infrastructure Québec to carry out various operations related to an infrastructure project, whether or not it is considered major.

In addition, the Conseil du trésor may, where warranted by the circumstances, establish mechanisms for the control and follow-up of the management of a public infrastructure project carried out by a

public body and entrust their implementation to that body or to Infrastructure Québec.

As well, the Act sets out the organizational and operational rules applicable to Infrastructure Québec.

Lastly, the Act contains transitional provisions and consequential amendments necessary for the establishment of Infrastructure Québec and the transfer of the personnel and the rights, property and records of the Agence des partenariats public-privé du Québec.

LEGISLATION AMENDED BY THIS ACT:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001);
- Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the pension plan of management personnel (R.S.Q., chapter R-12.1);
- Act respecting contracting by public bodies (2006, chapter 29).

LEGISLATION REPEALED BY THIS ACT:

- Act respecting the Agence des partenariats public-privé du Québec (R.S.Q., chapter A-7.002).

Bill 65

AN ACT RESPECTING INFRASTRUCTURE QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT

- 1.** A body is established under the name “Infrastructure Québec”.
- 2.** Infrastructure Québec is a legal person and a mandatary of the State.

Its property forms part of the domain of the State, but the execution of its obligations may be levied against its property.

Infrastructure Québec binds none but itself when it acts in its own name.

- 3.** The head office of Infrastructure Québec is located in the territory of Ville de Québec. Notice of the location and any relocation of the head office is published in the *Gazette officielle du Québec*.

CHAPTER II

MISSION, FUNCTIONS AND POWERS

- 4.** The mission of Infrastructure Québec is to contribute, through its advice and expertise, to the planning and carrying out of public infrastructure projects by public bodies in order to obtain quality infrastructures and ensure the optimal management of risks, costs and scheduling, and to take part in the planning of infrastructure maintenance, all of which to ensure the sound management of public funds.

Infrastructure Québec thus contributes to the improvement of the quality of services delivered to the public through the public infrastructure projects in which it is involved.

For the purposes of this Act, a public infrastructure project is a project, considered major by the Government, the purpose of which is the construction, maintenance, improvement or demolition of a building, facility or civil engineering structure, including a transport infrastructure, and to which the

Government contributes financially, either directly or indirectly. A public infrastructure project carried out under a public-private partnership may include the delivery of a public service.

A public infrastructure project is considered a major project if it meets the criteria determined by the Government or if the Government expressly qualifies it as such.

5. In pursuing its mission, Infrastructure Québec

(1) advises the Government on any matter of public infrastructure projects;

(2) provides expert services to public bodies in respect of any public infrastructure project, in particular with regard to identifying the elements to be taken into consideration in assessing project relevance, to identifying the options available to meet the need with due regard for the functional, durable and harmonious nature of the proposed infrastructure, and to determining the preferred option and the project delivery approach;

(3) provides public bodies with strategic, financial and other advice with regard to public infrastructure projects;

(4) participates in the meetings of the committee responsible for the follow-up of public infrastructure projects, including with regard to scheduling and budget control;

(5) operates a documentation centre accessible to all interested persons on matters related to the planning, carrying out and management of public infrastructure projects; for that purpose, Infrastructure Québec collects and analyzes information on similar experiences in Canada and abroad; and

(6) exercises any other function assigned to it by the Government.

6. Possible project delivery approaches include the traditional, management contract, turnkey and public-private partnership approaches.

For the purposes of this Act, under the turnkey approach, an enterprise or group of enterprises is given responsibility for the drawing up of the plans and specifications and the construction of the public infrastructure, while under the public-private partnership approach, a public body brings in a private-sector enterprise as a partner, with or without a financial contribution, to participate in designing, building and operating a public infrastructure.

7. A public body that is a party to a public-private partnership contract may, subject to the conditions it determines, delegate to a partner any function that is required for the carrying out of the contract.

It may authorize the subdelegation of any function subject to the conditions it determines.

A subdelegation under the second paragraph does not exempt the partner from the obligations imposed on the partner under the public-private partnership contract.

8. For the purposes of this Act, public bodies include the entities that are subject to the Act respecting contracting by public bodies (2006, chapter 29), the Agence métropolitaine de transport and any other body, except the National Assembly, designated by the Government.

9. A public body planning a public infrastructure project must work with Infrastructure Québec to prepare a business case that assesses the project's relevance, identifies the options available to meet the need with due regard for the functional, durable and harmonious nature of the proposed infrastructure, and determines the preferred option and the project delivery approach. Infrastructure Québec coordinates the business case preparation process and determines what studies are to be carried out by Infrastructure Québec or the public body.

In addition, if the public-private partnership or turnkey approach has been chosen, the public body must also work with Infrastructure Québec so the latter may coordinate the selection of the enterprise or group of enterprises that will be carrying out the project.

The public body may also work with Infrastructure Québec to follow up and manage the contracts arising from a public infrastructure project and to carry out any other project-related operation they have agreed upon.

A public body planning an infrastructure project that is not considered major may also work with Infrastructure Québec to carry out any operation related to the project.

In addition, if the public body planning a public infrastructure project is a body in the education network or the health and social services network or a body under the responsibility of the Minister of Transport, a request to Infrastructure Québec under any of the first four paragraphs must originate from the Minister responsible for the public body. The Minister must also be involved in the carrying out of the project.

In all cases, the public body remains responsible for the project and retains control over it.

Despite the other provisions of this section, if the public body planning a public infrastructure project comes under section 19 of the Act respecting the Société immobilière du Québec (R.S.Q., chapter S-17.1) and the purpose of the project is not excluded by a government order made under that section, the first four paragraphs of this section apply to the Société immobilière du Québec, which is responsible for the project and retains control over it.

10. A municipal body referred to in the first paragraph of section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) that is planning a public infrastructure project, whether or not the project is considered major, may work with Infrastructure Québec to carry out the operations referred to in section 9 of this Act.

In such a case, the municipal body remains responsible for the project and retains control over it.

11. The Conseil du trésor may, where warranted by the circumstances, establish control and monitoring mechanisms for managing public infrastructure projects of public bodies, particularly in order to ensure that the operations referred to in section 9 are carried out in a rigorous manner.

The Conseil du trésor may entrust Infrastructure Québec or the public body with the implementation of those mechanisms and require that it report back on it. When Infrastructure Québec is given such a mandate by the Conseil du trésor, it may require any relevant documents and information from the public body.

12. Infrastructure Québec issues advisory opinions, attaching any recommendations it may have, on any matter within its purview that is submitted to it by the chair of the Conseil du trésor.

13. Subject to the applicable legislative provisions, Infrastructure Québec may enter into an agreement with a government other than that of Québec, with a department of such a government, with an international organization or with a body of such a government or organization.

Likewise, Infrastructure Québec may, to carry out its mission, enter into an agreement with a person, partnership or body, and participate in joint projects with them.

14. Infrastructure Québec may not, without the Government's authorization,

(1) contract a loan that causes the total of its current outstanding loans to exceed the amount determined by the Government;

(2) make a financial commitment in excess of the limits or contrary to the conditions determined by the Government;

(3) acquire, hold or dispose of shares in a legal person or an interest in a partnership in excess of the limits or contrary to the conditions determined by the Government;

(4) acquire or dispose of other assets in excess of the limits or contrary to the conditions determined by the Government; or

(5) accept a gift or legacy to which a charge or condition is attached.

CHAPTER III

ORGANIZATION AND OPERATION

15. Infrastructure Québec is administered by a board of directors composed of the chief executive officer of Infrastructure Québec and eight other members appointed by the Government, five of whom are from public bodies and three of whom, including an engineer appointed after consultation with the Ordre des ingénieurs du Québec and an architect appointed after consultation with the Ordre des architectes du Québec, are from the private sector.

16. The chief executive officer is appointed by the Government for a term not exceeding five years; the other board members are appointed for a term not exceeding three years.

Despite the expiry of their term, board members remain in office until replaced or reappointed.

17. The chair and vice-chair of the board of directors are designated by the Government from among the members of the board.

18. The positions of chair of the board of directors and chief executive officer may not be held concurrently.

19. The chief executive officer is responsible for the administration and direction of Infrastructure Québec in keeping with its by-laws and policies. The functions of the chief executive officer are exercised on a full-time basis.

The chair calls and presides at meetings of the board of directors, sees to the proper conduct of the board's proceedings and exercises any other functions assigned by the board.

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

20. A vacancy on the board of directors is filled by the Government in the manner prescribed for the appointment of the member to be replaced.

Non-attendance at a number of board meetings determined by the by-laws of Infrastructure Québec, in the cases and circumstances specified, constitutes a vacancy.

21. The remuneration, employee benefits and other conditions of employment of the chief executive officer are determined by the Government.

The other board members receive no remuneration except in the cases, on the conditions and to the extent that may be determined by the Government. They are entitled, however, to the reimbursement of expenses incurred in the

exercise of their functions in the cases, on the conditions and to the extent determined by the Government.

22. The quorum at meetings of the board of directors is the majority of its members, including the chair or vice-chair of the board.

Decisions of the board are made by a majority vote of the members present. In the case of a tie vote, the person presiding at the meeting has a casting vote.

23. The minutes of the meetings of the board of directors, approved by the board and certified by the chair, the chief executive officer, the secretary or another person authorized by Infrastructure Québec, are authentic. The same applies to documents and copies emanating from Infrastructure Québec or forming part of its records, if they are so certified.

24. An intelligible transcription of a decision or other data stored by Infrastructure Québec in a computer or in any electronic form is a document of Infrastructure Québec and constitutes proof of its contents if it is certified by a person referred to in section 23.

25. A deed, document or writing is binding on and may be attributed to Infrastructure Québec only if it is signed by the chair, the chief executive officer, the vice-chair, the secretary or another personnel member authorized by Infrastructure Québec and, in the latter case, only to the extent determined by the by-laws of Infrastructure Québec.

26. Infrastructure Québec may, by by-law and subject to specified conditions, allow a signature to be affixed by means of an automatic device, an electronic signature to be affixed, or a facsimile of a signature to be engraved, lithographed or printed on specified documents. However, the facsimile has the same force as the signature itself only if the document is countersigned by a person referred to in section 23.

27. Infrastructure Québec may, in its by-laws, determine the mode of operation of the board of directors. It may form an executive committee and any other committee, determine their mode of operation and delegate powers of the board to them.

28. The standards of ethics and professional conduct adopted by Infrastructure Québec for the members of the board of directors in accordance with a regulation made under section 3.0.1 of the Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30) must be published by Infrastructure Québec in its operations report.

29. Infrastructure Québec establishes standards of ethics and professional conduct for its personnel. The standards must include, as a minimum, the requirements prescribed for public servants under the Public Service Act (R.S.Q., chapter F-3.1.1) and must be published by Infrastructure Québec in its operations report.

30. The members of the personnel of Infrastructure Québec are appointed in accordance with the staffing plan established by by-law of Infrastructure Québec.

Subject to the provisions of a collective agreement, the standards and scales of remuneration, employee benefits and other conditions of employment of the members of the personnel are determined by by-law of Infrastructure Québec in accordance with the conditions determined by the Government.

31. Any personnel member of Infrastructure Québec who has a direct or indirect interest in an enterprise causing the personnel member's personal interest to conflict with that of Infrastructure Québec must, on pain of forfeiture of office, disclose the interest in writing to the chief executive officer.

32. The chair of the Conseil du trésor may issue directives concerning the policies and general objectives to be pursued by Infrastructure Québec.

The directives are submitted to the Government for approval. Once approved, they are binding on Infrastructure Québec.

The directives are laid before the National Assembly within 15 days of their approval by the Government or, if the Assembly is not sitting, within 15 days of resumption.

CHAPTER IV

FINANCIAL PROVISIONS

33. The fiscal year of Infrastructure Québec ends on 31 March.

34. The Government may, subject to the conditions it determines,

(1) guarantee payment of the principal and interest on any loan contracted by Infrastructure Québec and guarantee its obligations; and

(2) authorize the Minister of Finance to advance to Infrastructure Québec any amount considered necessary to meet its obligations or pursue its mission.

The sums required for the purposes of this section are taken out of the consolidated revenue fund.

35. Infrastructure Québec may determine a tariff of commissions and professional and other fees for the use of its goods and services.

The tariff must be submitted to the Conseil du trésor for approval.

36. The operations of Infrastructure Québec are funded by the revenue it derives from the commissions and professional and other fees it charges and the other monies it receives.

37. The monies received by Infrastructure Québec must be allocated to the payment of its obligations. Infrastructure Québec retains any surpluses, unless the Government decides otherwise.

38. Each year, Infrastructure Québec submits its budgetary estimates for the following fiscal year to the chair of the Conseil du trésor, in accordance with the form and content and the schedule determined by the chair of the Conseil du trésor.

The estimates must be submitted to the Government for approval.

CHAPTER V

ACCOUNTS AND REPORTS

39. Not later than 31 July each year, Infrastructure Québec files its financial statements and an operations report for the preceding fiscal year with the chair of the Conseil du trésor.

The financial statements and the operations report must contain all the information required by the chair of the Conseil du trésor.

40. The chair of the Conseil du trésor lays the financial statements and operations report of Infrastructure Québec before the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.

41. Infrastructure Québec formulates a business plan in accordance with the form and content and the schedule determined by the chair of the Conseil du trésor. The plan must be submitted to the Government for approval.

On expiry, the business plan continues to apply until a new plan is approved.

42. The Auditor General audits the books and accounts of Infrastructure Québec each year and whenever so ordered by the Government.

The Auditor General's report must be submitted with the operations report and financial statements of Infrastructure Québec.

The Auditor General may conduct a value-for-money audit without obtaining the prior concurrence provided for in the second paragraph of section 28 of the Auditor General Act (R.S.Q., chapter V-5.01).

43. Infrastructure Québec must communicate to the chair of the Conseil du trésor any information required by the chair of the Conseil du trésor concerning its operations.

CHAPTER VI**AMENDING PROVISIONS****FINANCIAL ADMINISTRATION ACT**

44. Schedule 2 to the Financial Administration Act (R.S.Q., chapter A-6.001) is amended

- (1) by striking out “Agence des partenariats public-privé du Québec”;
- (2) by inserting “Infrastructure Québec” in alphabetical order.

ACT RESPECTING TRANSPORT INFRASTRUCTURE PARTNERSHIPS

45. Section 1.1 of the Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001) is replaced by the following section:

“**1.1.** Section 9 of the Act respecting Infrastructure Québec (2009, chapter 53) applies to a transport infrastructure project carried out under a partnership agreement if the project is a public infrastructure project within the meaning of that Act, except in the cases and subject to the conditions determined by the Government.”

ACT RESPECTING THE PROCESS OF NEGOTIATION OF THE COLLECTIVE AGREEMENTS IN THE PUBLIC AND PARAPUBLIC SECTORS

46. Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2) is amended

- (1) by striking out “the Agence des partenariats public-privé du Québec”;
- (2) by inserting “Infrastructure Québec” in alphabetical order.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

47. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is amended, in paragraph 1,

- (1) by striking out “the Agence des partenariats public-privé du Québec”;
- (2) by inserting “Infrastructure Québec” in alphabetical order.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

48. Schedule II to the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1) is amended, in paragraph 1,

- (1) by striking out “the Agence des partenariats public-privé du Québec”;
- (2) by inserting “Infrastructure Québec” in alphabetical order.

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

49. Section 3 of the Act respecting contracting by public bodies (2006, chapter 29) is amended by replacing subparagraph 1 of the second paragraph by the following subparagraph:

“(1) public-private partnership contracts entered into for the purposes of a public infrastructure project carried out under a public-private partnership within the meaning of the Act respecting Infrastructure Québec (2009, chapter 53);”.

50. Section 18 of the Act is amended by replacing “, the principles set out in section 2 of this Act and those set out in the second paragraph of section 4 of the Act respecting the Agence des partenariats public-privé du Québec (2004, chapter 32)” by “and the principles set out in section 2 of this Act”.

CHAPTER VII

REPEALING, TRANSITIONAL AND FINAL PROVISIONS

51. Infrastructure Québec is substituted for the Agence des partenariats public-privé du Québec established under the Act respecting the Agence des partenariats public-privé du Québec (R.S.Q., chapter A-7.002). It acquires the rights and assumes the obligations of that agency.

52. The by-laws of the Agence des partenariats public-privé du Québec in force on (*insert the date preceding the date of coming into force of this section*) are deemed to be by-laws of Infrastructure Québec.

53. The files, records and other documents of the Agence des partenariats public-privé du Québec become files, records and documents of Infrastructure Québec.

54. The current business of the Agence des partenariats public-privé du Québec is continued by Infrastructure Québec.

55. Infrastructure Québec becomes, without continuance of suit, a party to any proceedings to which the Agence des partenariats public-privé du Québec was a party.

56. The chief executive officer of the Agence des partenariats public-privé du Québec in office on *(insert the date preceding the date of coming into force of this section)* continues in office on the same terms, for the unexpired portion of his term, as chief executive officer of Infrastructure Québec.

57. The term of the members of the board of directors of the Agence des partenariats public-privé du Québec, other than the chief executive officer, in office on *(insert the date preceding the date of coming into force of this section)* ends on *(insert the date of coming into force of this section)*.

58. The members of the personnel of the Agence des partenariats public-privé du Québec in office on *(insert the date preceding the date of coming into force of this section)* become, without further formality, members of the personnel of Infrastructure Québec under the same conditions of employment.

59. The standards of ethics and professional conduct established by the Agence des partenariats public-privé du Québec for its personnel are considered to have been adopted by Infrastructure Québec under section 29.

60. Unless the Government decides otherwise, Chapter II applies to public infrastructure projects underway on *(insert the date preceding the date of coming into force of this section)* that meet one of the defining criteria of major projects for the purposes of the Act respecting the Agence des partenariats public-privé du Québec determined by Order in Council 65-2006 (2006, G.O. 2, 1285, French only), regardless of the project delivery approach considered or chosen.

61. The sums required for the purposes of this Act for the fiscal year 2009-2010 are taken out of the consolidated revenue fund to the extent determined by the Government.

62. Not later than *(insert the date that occurs five years after the date of coming into force of this section)* and subsequently every five years, the chair of the Conseil du trésor must report to the Government on the carrying out of this Act and the advisability of maintaining it in force or amending it.

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

63. The Act respecting the Agence des partenariats public-privé du Québec is repealed, except sections 62 to 67 of that Act, which continue to apply to the employees referred to in section 60 of that Act who are transferred to Infrastructure Québec under section 58.

64. The chair of the Conseil du trésor is responsible for the administration of this Act.

65. The provisions of this Act come into force on the date or dates to be set by the Government, but not later than 31 March 2010.