



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 35

(2011, chapter 35)

An Act to prevent, combat and punish certain fraudulent practices in the construction industry and make other amendments to the Building Act

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EXPLANATORY NOTES

This Act amends the Building Act in order to prevent, combat and punish certain fraudulent practices in the construction industry and revise the amounts of fines imposed under that Act.

It makes certain adjustments to the governance of the Régie du bâtiment du Québec (the Board) and makes other amendments to improve the regulation and terms of financial guaranties in the construction industry. It also amends the Act respecting contracting by public bodies as regards the register of enterprises ineligible for public contracts.

It provides that a person convicted of an offence under a fiscal law or of an indictable offence must now file any declaration, information or document required by the Board concerning the offence. Failure to comply entails the denial of a licence or, if the person holds a licence, its suspension or cancellation. Furthermore, requirements concerning the contractor's good moral character, competence and integrity are added to the conditions for the issue and maintenance of a licence. As well, the licence of any contractors convicted of certain offences under a fiscal law in the last five years will be restricted for the purposes of bidding for a public contract.

Fines under the Building Act are substantially increased, including those that may be imposed on any person for acting as a contractor without holding a licence, on a contractor for the illegal transfer of a licence and on any person for using the name of a licence holder for the purpose of carrying out construction work.

The composition of the Board's board of directors is altered, as are certain aspects of its operation. A third vice-president is added to oversee investigations. Commissioners are appointed to take charge of certain functions, including the issue, suspension and cancellation of licences.

The Board is given the power to impose a continuing education system on contractors, by regulation, so that they keep their skills and knowledge up to date.

The financial guaranties offered to purchasers of new residential buildings are revisited. For instance, the Building Act now requires

that guaranty plan managers be non-profit legal persons and that their board of directors meet the criteria prescribed by regulation of the Board. A guaranty fund, of which the Board will be trustee, is set up to step in should an exceptional or unforeseeable major loss occur or should a guaranty plan manager no longer be able to meet its obligations owing to its financial situation.

The Act respecting contracting by public bodies is amended to fine-tune the mechanics of the register of enterprises ineligible for public contracts and specify the cases in which contractors are named in the register.

LEGISLATION AMENDED BY THIS ACT:

- Building Act (R.S.Q., chapter B-1.1);
- Cities and Towns Act (R.S.Q., chapter C-19);
- Municipal Code of Québec (R.S.Q., chapter C-27.1);
- Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01);
- Act respecting the Communauté métropolitaine de Québec (R.S.Q., chapter C-37.02);
- Act respecting contracting by public bodies (R.S.Q., chapter C-65.1);
- Master Electricians Act (R.S.Q., chapter M-3);
- Master Pipe-Mechanics Act (R.S.Q., chapter M-4);
- Act respecting public transit authorities (R.S.Q., chapter S-30.01).

Bill 35

AN ACT TO PREVENT, COMBAT AND PUNISH CERTAIN FRAUDULENT PRACTICES IN THE CONSTRUCTION INDUSTRY AND MAKE OTHER AMENDMENTS TO THE BUILDING ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

BUILDING ACT

1. Section 58 of the Building Act (R.S.Q., chapter B-1.1) is amended

(1) by inserting the following subparagraphs after subparagraph 8.2 of the first paragraph:

“(8.3) he has filed any declaration, information or document required by the Board concerning offences under a fiscal law or indictable offences of which he or a person referred to in subparagraph 8.2 has been convicted;

“(8.4) he has not, in the five years preceding the application, been convicted by a foreign court of an offence referred to in subparagraph 8 which, if committed in Canada, would have resulted in criminal proceedings;”;

(2) by striking out the third paragraph.

2. Section 58.1 of the Act is repealed.

3. Section 60 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 6 of the first paragraph:

“(6.0.1) none of the officers of any of its members, in the case of a partnership, or of any of its shareholders, in the case of a legal person, has, in the five years preceding the application, been convicted of an offence under a fiscal law or an indictable offence referred to in subparagraph 6;”;

(2) by inserting the following subparagraphs after subparagraph 6.2 of the first paragraph:

“(6.3) it has filed any declaration, information or document required by the Board concerning offences under a fiscal law or indictable offences of which it or a person referred to in subparagraph 6 or 8 has been convicted;

“(6.4) neither it nor any of its officers have, in the five years preceding the application, been convicted by a foreign court of an offence referred to in subparagraph 6 which, if committed in Canada, would have resulted in criminal proceedings;”;

(3) by striking out the third paragraph.

4. Section 61 of the Act is amended by striking out the third paragraph.

5. The Act is amended by inserting the following sections after section 62:

“62.0.1. The Board may refuse to issue a licence if issuing the licence would be contrary to the public interest, for example because the applicant or, in the case of a partnership or a legal person, it or any of its officers is unable to prove good moral character and a capacity to exercise activities as a contractor with competence and integrity, given the past conduct of the applicant or the officer.

The Board may, in that regard, conduct or commission any verifications it considers necessary.

“62.0.2. The Board may refuse to issue a licence to a natural person, a partnership or a legal person that is, in actual fact, directly or indirectly under the direction or control of a person who does not meet the conditions set out in subparagraph 8 of the first paragraph of section 58, subparagraph 6 of the first paragraph of section 60 or section 62.0.1.”

6. Section 65 of the Act is amended by replacing “30” by “60”.

7. Section 65.1 of the Act is amended

(1) by replacing “or section 5” in subparagraph 1 of the second paragraph by “or has been convicted, in the last five years, under paragraph *a* of subsection 1 of section 380 of that Code, subparagraph *i* of paragraph *b* of that subsection, any of sections 467.11 to 467.13 of that Code or section 5”;

(2) by striking out subparagraph 2 of the second paragraph;

(3) by inserting the following subparagraphs after subparagraph 2 of the second paragraph:

“(3) if the licence holder or, in the case of a partnership or a legal person, a person referred to in subparagraph 6 of the first paragraph of section 60, has, in the last five years, been convicted of an offence under any of sections 62, 62.0.1 and 62.1 of the Tax Administration Act (chapter A-6.002), section 68 or 68.0.1 of that Act insofar as it is related to any of those sections, section 239 of the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement) or section 327 of the Excise Tax Act (Revised Statutes of Canada, 1985, chapter E-15); or

“(4) if an officer of the licence holder is also an officer of a partnership or a legal person whose licence contains a restriction as regards the obtention of a public contract and for the same period of time, unless the licence holder proves to the Board that the offence that resulted in the restriction was not committed in the exercise of the person’s functions within the partnership or legal person.”;

(4) by striking out the last three paragraphs.

8. The Act is amended by inserting the following section after section 65.1:

“**65.1.1.** A licence holder whose licence has been restricted must send the Board, within the time limit set by the Board, the name of every party referred to in section 65.4 with which the licence holder has a contract in process and the name and, if applicable, Québec business number of every partnership or legal person of which the licence holder is an officer.”

9. The Act is amended by inserting the following section after section 65.2:

“**65.2.1.** If the holder’s licence has been restricted, the holder must cease to perform any public contract if the other party to the contract, referred to in section 65.4, fails to apply to the Board, within 20 days after the restriction is registered, for authorization for continued performance of the contract or the Board does not grant the authorization within 10 days after it is applied for.

The Board may subject its authorization to certain conditions, including that the licence holder agree to the implementation, at the licence holder’s own expense, of oversight and monitoring measures determined by regulation of the Board.”

10. Section 70 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 3.2 of the first paragraph:

“(3.3) has failed to file any declaration, information or document required by the Board concerning offences under a fiscal law or indictable offences of which the licence holder or a person referred to in subparagraph 8.2 of the first paragraph of section 58 or subparagraph 6 or 8 of the first paragraph of section 60 has been convicted;”;

(2) by striking out the second paragraph.

11. Section 81 of the Act is amended

(1) by inserting “non-profit” before “legal person”;

(2) by adding the following paragraph:

“The composition of such a legal person’s board of directors must be in accordance with the criteria determined by the regulation.”

12. The Act is amended by inserting the following section after section 81:

“31.0.1. A guaranty fund is set up as a social trust patrimony to intervene should an exceptional or unforeseeable major loss occur or should the manager of a guaranty plan no longer be able to meet the obligations of the guaranty plan, owing to the manager’s financial position.

The Board is trustee of the guaranty fund. It acts in constant pursuit of the objectives of the fund.”

13. Section 81.1 of the Act is replaced by the following section:

“31.1. The manager of a guaranty plan must, in keeping with the terms prescribed by regulation, pay the prescribed amounts into a reserve account and into the guaranty fund.

Those amounts are unassignable and unseizable.”

14. Section 83 of the Act is amended by replacing the last paragraph by the following paragraph:

“The Board may, in such cases, appoint a provisional administrator.”

15. The Act is amended by inserting the following sections after section 83:

“33.0.1. Before withdrawing its authorization and appointing a provisional administrator, the Board must give the manager an opportunity to submit observations.

However, in an urgent situation, the Board may first appoint the provisional administrator, provided that the manager is allowed at least 10 days to submit observations.

“33.0.2. The decision to appoint a provisional administrator must give reasons and be notified in writing by the Board to the manager.

“33.0.3. The provisional administrator shall have the necessary powers to carry out the mandate assigned by the Board.

Subject to the restrictions included in the mandate, the provisional administrator may, on his own initiative, in particular,

(1) take possession of all the assets and funds held in trust or otherwise by or for the manager;

- (2) commit the funds to carrying out the mandate and enter into such contracts as are necessary for that purpose;
- (3) determine the number of guaranty plan beneficiaries and their identity;
- (4) assign, transfer or otherwise dispose of guaranty contracts;
- (5) transact on any claim made by a guaranty plan beneficiary for the performance of a guaranty contract; and
- (6) go before the courts for the purpose of carrying out the mandate.

In no case may the provisional administrator be sued for acts done in good faith in the performance of duty.

“83.0.4. When a provisional administrator is appointed, every person in possession of documents, records, books, electronic data, computer programs or other effects relating to the manager’s affairs must hand them over on request to the provisional administrator and give him access to such premises, equipment or computers as he may require.

“83.0.5. After receiving a notice to that effect from the provisional administrator appointed for a manager, no depositary of funds for the manager may make any withdrawal or payment from the funds except with the written authorization of the provisional administrator. The funds must, on request, be put in the possession of the provisional administrator according to his directives.

“83.0.6. The costs of the provisional administration and the provisional administrator’s fees shall be taken out of the manager’s assets and become payable on being approved by the Board. If the manager fails to pay the account within 30 days of its presentation, the costs and fees shall be payable out of the security required of the manager and, in case of a lack or insufficiency of funds, they shall be payable out of the guaranty fund.”

16. Section 83.1 of the Act is amended

- (1) by striking out “exclusively” in subparagraph 1 of the first paragraph;
- (2) by replacing the last paragraph by the following paragraph:

“The body must maintain a website that allows the public to access the full text of any decision made by its arbitrators within 30 days.”

17. Section 90 of the Act is amended by replacing “nine” by “13”.

18. Section 91 of the Act is amended

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

“(1) two chosen from among persons identified with building contractors associations;”;

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

“(1.1) one chosen from among persons identified with corporations incorporated under the Master Electricians Act (chapter M-3) or the Master Pipe-Mechanics Act (chapter M-4);”;

(3) by replacing “one chosen” in subparagraph 3 of the second paragraph by “two chosen”;

(4) by replacing “one chosen” in subparagraph 4 of the second paragraph by “two chosen”;

(5) by replacing “one chosen” in subparagraph 5 of the second paragraph by “two chosen”;

(6) by replacing “one chosen” in subparagraph 6 of the second paragraph by “two chosen”.

19. Section 91.3 of the Act is amended by inserting the following paragraph after the first paragraph:

“The chair shall also see to the proper operation of the board committees and may participate in their meetings. The chair shall evaluate the performance of the other board members according to criteria established by the board.”

20. Section 91.5 of the Act is amended by replacing “two vice-presidents” in the first paragraph by “three vice-presidents, including a vice-president in charge of investigations,”.

21. Section 101 of the Act is replaced by the following section:

“**101.** The Board shall adopt internal by-laws. The internal by-laws must, among other things, provide for the establishment of

(1) a governance and ethics committee; and

(2) an audit committee at least one of whose members must be a member of one of the professional orders of accountants governed by the Professional Code (chapter C-26).

The internal by-laws come into force on the date of their approval by the Government.”

22. The Act is amended by inserting the following division after section 109.5:

“DIVISION 1.2

“COMMISSIONERS

“109.6. The Government shall appoint not more than five commissioners for the exclusive exercise of the following functions under the administrative authority of the president and chief executive officer:

(1) to decide whether a licence or an amendment to a licence may be refused in light of the conditions prescribed in any of subparagraphs 4, 8, 8.2 and 8.3 of the first paragraph of section 58, sections 59 and 59.1, subparagraphs 6, 6.0.1, 6.3 and 8 of the first paragraph of section 60, the third paragraph of section 60 and sections 61 to 62.0.2;

(2) to decide to indicate a restriction on a licence under subparagraph 4 of the second paragraph of section 65.1;

(3) to grant the holder of a licence that contains a restriction the authorization to continue to perform a contract in accordance with section 65.2.1 and to subject the authorization to certain conditions;

(4) to decide to suspend or cancel a licence under any of subparagraphs 1 to 6, 11 and 12 of the first paragraph of section 70 or the second paragraph of that section;

(5) to revoke, limit, suspend, amend or refuse to renew a permit granted under section 35.2 or 37 pursuant to section 128.3;

(6) to revoke the recognition of a person or body referred to in section 16, 35 or 37.4 pursuant to section 128.4; and

(7) to render decisions, in accordance with sections 160 to 164, on applications for review of a ruling of the Board.

“109.7. The commissioners shall be appointed for a term of up to five years. The term is renewable.

The president and chief executive officer may allow a commissioner to continue the examination of an application and render a decision although the commissioner’s term has expired.

“109.8. The Government shall determine the commissioners’ remuneration, employee benefits and other conditions of employment.”

23. Section 111 of the Act is amended

(1) by inserting the following paragraph after paragraph 5:

“(5.1) subsidizing services or bodies whose purpose is to protect guaranty plan beneficiaries;”;

(2) by inserting “a guaranty fund or” after “administer” in paragraph 11.

24. Section 112 of the Act is amended

(1) by replacing “enter a building or” by “enter a building, an establishment where the manager of a guaranty plan carries on activities or a”;

(2) by inserting “of the manager of a guaranty plan,” after “files” in paragraph 2.

25. Section 114 of the Act is amended by inserting “the manager of a guaranty plan,” after “require”.

26. Section 115 of the Act is amended by inserting “establishment where the manager of a guaranty plan carries on activities,” after “building,”.

27. Section 130 of the Act is amended

(1) by inserting “109.6,” after “sections” in the first paragraph;

(2) by replacing subparagraph 1 of the third paragraph by the following subparagraph:

“(1) the exercise of the functions assigned to it by this Act, except those conferred by sections 109.6, 130.1, 132, 173 to 179 and 185, to a member of its personnel;”.

28. Section 130.1 of the Act is amended by replacing “58.1” in the first paragraph by “58”.

29. Section 141 of the Act is amended by inserting “a commissioner,” after “vice-president,” in the first paragraph.

30. Section 145 of the Act is amended by inserting “a commissioner,” after “vice-president,” in the first paragraph.

31. Section 160 of the Act is amended by replacing “58.1” in paragraph 1 by “84”.

32. Section 164.1 of the Act is amended

(1) by striking out “or is made under section 58.1” in subparagraph 1 of the first paragraph;

(2) by inserting “84,” after “section” in subparagraph 2 of the first paragraph.

33. Section 185 of the Act is amended

(1) by inserting the following paragraph after paragraph 9:

“(9.1) determine the continuing education requirements, or the framework for continuing education requirements, with which all or certain natural persons who are licence holders and all or certain natural persons referred to in section 52 must comply, in accordance with the conditions set by resolution of the Board; the regulation must include the procedure for monitoring, supervising or evaluating compliance with the requirements, penalties for a failure to comply and, if applicable, any exemptions from the requirements;”;

(2) by inserting the following paragraph after paragraph 16:

“(16.1) determine, for the purposes of section 65.2.1, the oversight and monitoring measures applicable to the holder of a restricted licence and determine the cases, conditions, period and manner—including the sanctions for non-compliance—in which these measures apply to such a licence holder, who must in all cases assume the expenses;”;

(3) by striking out paragraph 18.1;

(4) by inserting the following subparagraph before subparagraph *a* of paragraph 19.5:

“(0.a) prescribe the governance rules applicable to a non-profit legal person designated by the Board to act as manager, including rules as to the composition of its board of directors and as to the content of its internal by-laws, which by-laws must be approved by the Board;”;

(5) by replacing “he” in subparagraph *a* of paragraph 19.5 by “the person”;

(6) by inserting the following subparagraph after subparagraph *c* of paragraph 19.5:

“(c.1) determine the amount that the person must pay into the guaranty fund;”;

(7) by inserting the following paragraphs after paragraph 19.5:

“(19.5.1) determine how the guaranty fund is to be managed, and in particular

(a) prescribe the amount and form of required contributions and prescribe how and when they are to be collected and paid as well as how they are to be administered and used;

(b) determine the target amount to be accumulated in the fund;

“(19.5.2) prescribe the financial penalties that the Board may impose if its intervention is necessary owing to a guaranty plan manager’s failure to comply with the Act or the regulation or with the policies established by the Board;”;

(8) by striking out “maximum” in subparagraph *b* of paragraph 19.6.

34. Section 196 of the Act is amended

(1) by replacing “Any offence under section 194, except paragraphs 1, 2 and 5,” in the first paragraph by “Subject to sections 196.1 and 196.1.1, any offence under section 194”;

(2) by replacing “between \$330 and \$710” and “between \$710 and \$1,420” in the first paragraph by “\$1,000 to \$5,000” and “\$3,000 to \$15,000”, respectively;

(3) by replacing “between \$659 and \$1,420” and “between \$1,420 and \$2,839” in the second paragraph by “\$2,000 to \$6,000” and “\$6,000 to \$30,000”, respectively;

(4) by replacing “between \$1,977 and \$4,259” and “between \$4,259 and \$8,518” in the third paragraph by “\$6,000 to \$18,000” and “\$18,000 to \$90,000”, respectively.

35. Section 196.1 of the Act is amended by replacing “\$659 to \$1,420” and “\$1,420 to \$5,071” in the first paragraph by “\$2,500 to \$12,500” and “\$7,500 to \$37,500”, respectively.

36. The Act is amended by inserting the following section after section 196.1:

“196.1.1. Any person who contravenes the second paragraph of section 56 or paragraph 5 of section 194 is liable to a fine of \$10,000 to \$75,000 in the case of an individual and \$30,000 to \$150,000 in the case of a legal person.”

37. Section 196.2 of the Act is amended by replacing “\$1,014 to \$10,141” and “\$2,028 to \$50,705” by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively.

38. Section 197 of the Act is amended

(1) by striking out “any of sections 46, 48 and 64,”;

(2) by replacing “65.2,” by “65.2 or”;

(3) by striking out “or paragraph 5 of section 194”;

(4) by replacing “between \$710 to \$1,420” and “between \$1,420 and \$2,839” by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively.

39. The Act is amended by inserting the following section after section 197:

“197.1. Any person who contravenes section 46 or 48 by not holding a licence of the appropriate class or subclass is liable to a fine of \$5,000 to \$25,000 in the case of an individual and \$15,000 to \$75,000 in the case of a legal person, and any person who contravenes either of those sections by not holding a licence is liable to a fine of \$10,000 to \$75,000 in the case of an individual and \$30,000 to \$150,000 in the case of a legal person.”

40. Section 198 of the Act is amended by replacing “between \$710 and \$1,420” and “between \$1,420 and \$2,839” by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively.

41. Section 199 of the Act is amended

(1) by replacing “between \$1,648 and \$2,840” and “between \$7,099 and \$28,395” in the first paragraph by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively;

(2) by replacing “between \$3,296 and \$5,679” and “between \$14,197 and \$70,987” in the second paragraph by “\$10,000 to \$75,000” and “\$30,000 to \$150,000”, respectively.

CITIES AND TOWNS ACT

42. Section 573.3.3.2 of the Cities and Towns Act (R.S.Q., chapter C-19), enacted by section 41 of chapter 17 of the statutes of 2011, is amended by replacing the second paragraph by the following paragraph:

“For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts and every municipality is deemed to be a public body, and the Minister of Municipal Affairs, Regions and Land Occupancy exercises, in respect of those contracts, the responsibility conferred on the Conseil du trésor by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act.”

MUNICIPAL CODE OF QUÉBEC

43. Article 938.3.2 of the Municipal Code of Québec (R.S.Q., chapter C-27.1), enacted by section 43 of chapter 17 of the statutes of 2011, is amended by replacing the second paragraph by the following paragraph:

“For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts and every municipality is deemed to be a public body, and the

Minister of Municipal Affairs, Regions and Land Occupancy exercises, in respect of those contracts, the responsibility conferred on the Conseil du trésor by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act.”

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

44. Section 118.1.1 of the Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01), enacted by section 44 of chapter 17 of the statutes of 2011, is amended by replacing the second paragraph by the following paragraph:

“For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts and the Community is deemed to be a public body, and the Minister of Municipal Affairs, Regions and Land Occupancy exercises, in respect of those contracts, the responsibility conferred on the Conseil du trésor by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act.”

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE QUÉBEC

45. Section 111.1.1 of the Act respecting the Communauté métropolitaine de Québec (R.S.Q., chapter C-37.02), enacted by section 46 of chapter 17 of the statutes of 2011, is amended by replacing the second paragraph by the following paragraph:

“For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts and the Community is deemed to be a public body, and the Minister of Municipal Affairs, Regions and Land Occupancy exercises, in respect of those contracts, the responsibility conferred on the Conseil du trésor by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act.”

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

46. Section 21.1 of the Act respecting contracting by public bodies (R.S.Q., chapter C-65.1), enacted by section 49 of chapter 17 of the statutes of 2011, is replaced by the following section:

“21.1. A contractor described in section 1 who is convicted, by a final judgment, of any offence determined by regulation is ineligible for public contracts as of the recording of the conviction in the register provided for in section 21.6. The conviction must be recorded in the register within 30 days after the date on which the judgment becomes final.”

47. Section 21.2 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is amended by replacing the first paragraph by the following paragraph:

“21.2. If an associate of a contractor described in section 1 is convicted, by a final judgment, of any offence referred to in section 21.1, the contractor is ineligible for public contracts as of the recording of the situation in the register provided for in section 21.6. The situation must be recorded in the register within 30 days after the date on which the judgment becomes final.”

48. The Act is amended by inserting the following section after section 21.2, enacted by section 49 of chapter 17 of the statutes of 2011:

“21.2.1. Despite section 21.1 and the first paragraph of section 21.2, the Government may, in the cases, on the conditions and in the manner determined by regulation, prescribe that a contractor or an associate of a contractor must be convicted, by final judgments, of a minimum number of offences referred to in section 21.1. In such cases, the contractor becomes ineligible for public contracts once all the relevant convictions have been recorded in the register.

For the purposes of this section, if the offence is an offence under the regulatory provisions determined by regulation whose administration and enforcement is the responsibility of the Minister of Revenue under section 24.2, section 573.3.1.1 of the Cities and Towns Act (chapter C-19), article 938.1.1 of the Municipal Code of Québec (chapter C-27.1), section 113.1 of the Act respecting the Communauté métropolitaine de Montréal (chapter C-37.01), section 106.1 of the Act respecting the Communauté métropolitaine de Québec (chapter C-37.02) or section 103.1 of the Act respecting public transit authorities (chapter S-30.01), the Minister of Revenue may, on a request made by the contractor within 30 days after the date on which the judgment becomes final, disregard a conviction in computing the minimum number of convictions if it is warranted in the public interest or there are extenuating circumstances.

For the purposes of the second paragraph, if the conviction involves an associate of the contractor, the Minister of Revenue must so inform the contractor.”

49. Section 21.3 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is replaced by the following section:

“21.3. The performance of a contract described in section 3 entered into with a public body or a body described in section 7 must cease if the contractor becomes ineligible for public contracts while the contract is in process and the body fails to apply to the Conseil du trésor, within 20 days after becoming ineligible, for authorization for continued performance of the contract or the Conseil du trésor does not grant the authorization within 10 days after it is applied for.

The Conseil du trésor may subject its authorization to certain conditions, including that the contractor agree to the implementation, at the contractor's own expense, of oversight and monitoring measures determined by regulation.

This section does not apply when section 65.2.1 of the Building Act (chapter B-1.1) is applicable.”

50. The Act is amended by inserting the following section after section 21.3, enacted by section 49 of chapter 17 of the statutes of 2011:

“**21.3.1.** A contractor that cannot continue to perform a public contract pursuant to the first paragraph of section 21.3 or the first paragraph of section 65.2.1 of the Building Act (chapter B-1.1) is deemed to have defaulted on performance of the contract.”

51. The Act is amended by inserting the following section after section 21.4, enacted by section 49 of chapter 17 of the statutes of 2011:

“**21.4.1.** A contractor who is ineligible for public contracts may not, for the time determined by regulation for the offence or group of offences committed, which may not exceed five years, submit a bid to obtain a contract described in section 3 with a public body or a body described in section 7, enter into such a contract by mutual agreement or enter into a subcontract that is directly related to such a contract.”

52. Section 21.5 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is amended

(1) by replacing the first paragraph by the following paragraph:

“**21.5.** Despite section 21.4.1, a public body or a body described in section 7 may, with the authorization of the minister responsible, enter into a contract with a contractor who is ineligible for public contracts under section 21.1, 21.2, 21.2.1 or 21.4 if the public body or body finds itself in one of the situations described in subparagraphs 2 to 4 of the first paragraph of section 13, provided the contractor agrees to the implementation, at the contractor's expense, of oversight and monitoring measures determined by regulation.”;

(2) by inserting “, 21.2.1” after “21.2” in the second paragraph.

53. Section 21.7 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is amended

(1) by inserting “, 21.2.1” after “21.2” in the portion before paragraph 1;

(2) by replacing paragraph 3 by the following paragraph:

“(3) the offence or offences of which the contractor was convicted or the offence or offences of which an associate of the contractor was convicted, resulting in the contractor being named in the register and, in the latter case, the name of the associate and the municipality in whose territory the associate resides;”.

54. Section 21.11 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is amended by adding “or that the conditions prescribed in section 21.5 have been met” at the end of the first paragraph.

55. Section 21.12 of the Act, enacted by section 49 of chapter 17 of the statutes of 2011, is amended by adding “as well as the name and, if applicable, Québec business number, of every legal person of which the contractor holds shares carrying more than 50% of the voting rights attached to the shares of the capital stock of the legal person that may be exercised under any circumstances” at the end of the second paragraph.

56. Section 23 of the Act is amended

(1) by replacing “entails” in subparagraph 8 of the first paragraph by “is considered for the purposes of”;

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

“(8.1) determine the cases and conditions in which and the procedure by which a contractor or an associate of the contractor must have been convicted, by a final judgment, of a minimum number of offences determined pursuant to subparagraph 8 and set the minimum number of offences;

“(8.2) determine the offences under regulatory provisions in respect of which a conviction may be disregarded by the Minister of Revenue pursuant to the second paragraph of section 21.2.1;”;

(3) by replacing subparagraph 9 of the first paragraph by the following subparagraph:

“(9) determine, for each offence or group of offences, the period of ineligibility for public contracts;”.

57. Section 59 of the Act is amended by adding “, except the second and third paragraphs of section 21.2.1, the administration of which falls under the responsibility of the Minister of Revenue” at the end.

MASTER ELECTRICIANS ACT

58. Section 21 of the Master Electricians Act (R.S.Q., chapter M-3) is amended by replacing “between \$500 and \$1,000” and “between \$1,000 and

\$2,000” in the introductory clause by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively.

MASTER PIPE-MECHANICS ACT

59. Section 20 of the Master Pipe-Mechanics Act (R.S.Q., chapter M-4) is amended by replacing “between \$500 and \$1,000” and “between \$1,000 and \$2,000” in the introductory clause by “\$5,000 to \$25,000” and “\$15,000 to \$75,000”, respectively.

ACT RESPECTING PUBLIC TRANSIT AUTHORITIES

60. Section 108.1.1 of the Act respecting public transit authorities (R.S.Q., chapter S-30.01), enacted by section 63 of chapter 17 of the statutes of 2011, is amended by replacing the second paragraph by the following paragraph:

“For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts and a transit authority is deemed to be a public body, and the Minister of Municipal Affairs, Regions and Land Occupancy exercises, in respect of those contracts, the responsibility conferred on the Conseil du trésor by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act.”

TRANSITIONAL AND FINAL PROVISIONS

61. The amounts paid into the reserve account over and above those required under section 50 of the Regulation respecting the guarantee plan for new residential buildings (R.R.Q., chapter B-1.1, r. 0.2) by La Garantie habitation du Québec inc (Qualité Habitation) and La Garantie Abris inc to cover exceptional losses may be paid into the guaranty fund as of its establishment, in accordance with an agreement to that effect between those managers and the Board.

62. The guaranty fund may, on the conditions prescribed by regulation, be used to compensate beneficiaries whose certificates were registered in a plan under the Regulation respecting the guarantee plan for new residential buildings before the coming into force of this section.

63. For a period of five years as of the coming into force of section 12 or the attainment of the target amount set by regulation, whichever occurs first, the Board may, as needed, advance the sums required to the guaranty fund, on the conditions the Board determines, when the manager of a guaranty plan is no longer able to meet the obligations of the guaranty plan, owing to its financial position.

64. To facilitate the transition between new managers and former managers, a non-profit legal person authorized by the Board to act as manager may be appointed to act, in accordance with the mandate assigned by the Board, as

provisional administrator of the managers authorized before the coming into force of section 11.

65. The results of an examination passed under section 58.1 of the Building Act (R.S.Q., chapter B-1.1), repealed by section 2, remain valid for a period of three years following the application for admission to the examination.

66. Pending cases that involve the exercise of a function described in section 109.6 of the Building Act may be continued and decided by the president and chief executive officer or a vice-president of the Board.

67. Despite section 11 of the Regulations Act (R.S.Q., chapter R-18.1), any first draft regulation under subparagraphs 8 to 13 of the first paragraph of section 23 of the Act respecting contracting by public bodies (R.S.Q., chapter C-65.1) may be adopted as early as the fifteenth day following the day it is published in the *Gazette officielle du Québec*.

68. This Act comes into force on 9 December 2011, except sections 11 to 13, 22, 29 and 30, which come into force on the date or dates to be set by the Government, sections 42 to 45, which come into force on the same date as that to be set by the Government for the coming into force of sections 41, 43, 44 and 46 of chapter 17 of the statutes of 2011, respectively, sections 46 to 55, which come into force on the same date as that to be set by the Government for the coming into force of section 49 of chapter 17 of the statutes of 2011, and section 60, which comes into force on the same date as that to be set by the Government for the coming into force of section 63 of chapter 17 of the statutes of 2011.