



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 60

**An Act to amend the Public Service
Act and other provisions**

Introduction

**Introduced by
Mr. Christian Dubé
Minister Responsible for Government Administration
and Chair of the Conseil du trésor**

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EXPLANATORY NOTES

This bill provides for changes to the recruitment and promotion processes for public servants so as to ensure that the latter are chosen following a selection process rather than a qualification process. It eliminates the notion of banks of qualified persons and provides for rules governing the manner in which positions are filled rather than the manner in which persons who could potentially fill a position in the public service are qualified.

Under the bill, deputy ministers and chief executive officers are now responsible for the staffing process within their own government department or body. The bill also provides for rules with which the deputy ministers and chief executive officers must comply when hiring.

The Conseil du trésor is empowered to establish various standards applicable to the new staffing process, including the types of evaluation tools that must be used in selecting a candidate. The Conseil du trésor is also empowered to determine the cases and situations in which a deputy minister or a chief executive officer may select a candidate otherwise than through a selection process and to determine the rules to be followed in those cases and situations.

The Chair of the Conseil du trésor is given the power to provide consulting services on evaluation tools to deputy ministers and chief executive officers as well as to develop, administer and correct examinations at their request. The Chair of the Conseil du trésor also has the power to conduct an audit on the manner in which public servants are recruited and promoted by deputy ministers and chief executive officers.

The Conseil du trésor may establish equivalencies to the minimum conditions of eligibility not only for classes of positions or grades, but also for a particular position. The Chair of the Conseil du trésor is also given the power to authorize a deputy minister or a chief executive officer to initiate a selection process by using an equivalency established by the Conseil du trésor. Furthermore, a person may participate in a selection process and be appointed to a position even if that person does not meet the minimum conditions of eligibility, provided that the person is in the process of meeting such conditions.

The Conseil du trésor is granted the power to implement a pilot project concerning the recruitment and promotion of certain public servants until the rules proposed by the bill in connection with the selection process come into force.

The six-month minimum probationary period for each person hired as a public servant is increased to one year, and the Conseil du trésor is given the power to determine certain terms and conditions relating to the probationary period.

When a public servant, who was elected as a Member or holds another elective office or becomes a political employee, decides to exercise his right to return to the public service, he regains his position in the government department or body and the classification to which he belonged at the time of his departure. The bill eliminates the public servant's right to require that the Chair of the Conseil du trésor reassess his qualifications and rehire him by priority in a position corresponding to those qualifications when returning to the public service.

Under the bill, the Chair of the Conseil du trésor is allowed to request that the Commission de la fonction publique conduct a special audit on any matter within its jurisdiction. The Commission is also allowed to correct any clerical error on its own initiative.

The bill specifies that the Government has the power to determine the rules applicable to public servants who cease to perform their duties.

Finally, the bill introduces a number of transitional provisions and consequential amendments.

LEGISLATION AMENDED BY THIS BILL:

- Public Administration Act (chapter A-6.01);
- Act respecting the Agence du revenu du Québec (chapter A-7.003);
- Act respecting the Autorité des marchés publics (chapter A-33.2.1);
- Act respecting the Conseil des arts et des lettres du Québec (chapter C-57.02);
- Act respecting the Conservatoire de musique et d'art dramatique du Québec (chapter C-62.1);

- Act respecting the regulation of the financial sector (chapter E-6.1);
- Act respecting Financement-Québec (chapter F-2.01);
- Public Service Act (chapter F-3.1.1);
- Act respecting Institut national de santé publique du Québec (chapter I-13.1.1);
- Act respecting Investissement Québec (chapter I-16.0.1);
- National Museums Act (chapter M-44);
- Public Protector Act (chapter P-32);
- Act respecting the Société des établissements de plein air du Québec (chapter S-13.01);
- Act respecting the Société du parc industriel et portuaire de Bécancour (chapter S-16.001);
- Act respecting the Société du Plan Nord (chapter S-16.011);
- Act mainly to establish the Centre d’acquisitions gouvernementales and Infrastructures technologiques Québec (2020, chapter 2).

REGULATION AMENDED BY THIS BILL:

- Règlement sur la preuve et la procédure de la Commission de la fonction publique (chapter F-3.1.1, r. 3.01, French only).

REGULATIONS REPEALED BY THIS BILL:

- Règlement sur le classement des fonctionnaires (chapter F-3.1.1, r. 2, French only);

- Regulation respecting the qualification process and qualified persons (chapter F-3.1.1, r. 3.1);
- Regulation respecting promotion further to the upgrading of a position (chapter F-3.1.1, r. 4.1).

Bill 60

AN ACT TO AMEND THE PUBLIC SERVICE ACT AND OTHER PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PUBLIC SERVICE ACT

1. Section 13 of the Public Service Act (chapter F-3.1.1) is amended

- (1) by replacing “six months” in the first paragraph by “one year”;
- (2) by replacing “six months” in the second paragraph by “one year”;
- (3) by adding the following paragraph at the end:

“The Conseil du trésor shall determine the manner in which the length of the probationary period is calculated, and any other terms and conditions relating to the probationary period.”

2. Section 14 of the Act is amended

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

“A public servant obtains permanent tenure if he meets the following conditions:

- (1) he has successfully completed his probationary period; and
- (2) he has been employed continuously in the public service for two years.”;

- (2) by inserting “of subparagraph 2” after “meaning” in the second paragraph.

3. Section 15 of the Act is amended by inserting “as well as any other terms and conditions” after “such a period”.

4. Section 26 of the Act is replaced by the following section:

“26. A public servant elected in a provincial election ceases to be subject to this Act, except sections 30, 129 and 130.”

5. Section 27 of the Act is amended by replacing the second paragraph by the following paragraph:

“Where the public servant is granted full leave without pay, he ceases to be subject to this Act, except sections 30, 129 and 130.”

6. Section 28 of the Act is amended

(1) by replacing “29, 30 and 129 to 131” in the first paragraph by “30, 129 and 130”;

(2) by striking out the second paragraph.

7. Section 29 of the Act is repealed.

8. Section 30 of the Act is replaced by the following section:

“30. When a public servant contemplated in sections 26, 27 or 28 ceases to engage in the activities referred to in those sections, he regains the classification in the government department or body to which he belonged at the time of his departure and to which he would have been entitled had he remained in the class of positions to which he belonged before engaging in those activities.

To that end, the public servant must file an application in writing with the deputy minister or the chief executive officer in the government department or body to which he belonged within the time and on the conditions determined by the Conseil du trésor.”

9. Sections 30.1 and 31 of the Act are repealed.

10. Section 33 of the Act is amended by replacing “Except where jurisdiction in the matters enumerated in this paragraph is assigned to another authority under a collective agreement, a public servant” in the first paragraph by “A public servant who is not governed by a collective agreement”.

11. Sections 35 and 36 of the Act are repealed.

12. Subdivision 1 of Division II of Chapter III of the Act is replaced by the following subdivision:

“§1.—*Recruitment and promotion processes for public servants*

“42. Public servants are recruited and promoted by means of selection processes.

“43. Each deputy minister and chief executive officer shall establish and implement selection processes for recruiting and promoting public servants within his government department or body.

However, in particular situations determined by the Conseil du trésor and in accordance with the terms and conditions it determines, the Chair of the Conseil du trésor may establish and implement selection processes for recruiting and promoting public servants for several government departments and bodies, while allowing the departments and bodies to select a candidate from among the candidates who participated in the process.

The Chair of the Conseil du trésor is competent to conduct an audit of the manner in which public servants are recruited and promoted by deputy ministers and chief executive officers governed by this Act. For that purpose, the Chair of the Conseil du trésor may designate a person in writing to conduct the audit.

“44. Before filling one or more positions through recruitment or promotion, a deputy minister or a chief executive officer shall publish an employment offer inviting interested persons to apply. The employment offer is published in such a manner that it is accessible and that the persons likely to have the desired profile have a reasonable opportunity to apply.

The Conseil du trésor shall determine the elements that must appear in a published employment offer including the information relating to the manner and form in which an interested person must apply.

The Conseil du trésor shall also determine the period during which the employment offer must be published, the means to be taken to make it accessible and any other terms or conditions relating to its publication.

“45. The deputy minister or the chief executive officer shall determine the profile of the person sought for each position to be filled, and the profile must appear in the published employment offer.

“46. The profile of the person sought for a position to be filled must be consistent with the Conseil du trésor’s directives, including those providing for minimum conditions of eligibility, or their equivalencies, for classes of positions, grades or a position, and allow the implementation of government policies regarding, in particular,

(1) affirmative action programs intended, in particular, for women, members of visible and ethnic minorities, handicapped persons and Aboriginal peoples; and

(2) recruitment, whether from educational institutions or from all or any category of the persons employed in the education and health and social services sectors.

In addition, the profile may, in particular, include additional requirements to the minimum conditions of eligibility, or their equivalencies, for classes of positions, grades or a position as well as for assets. Those additional requirements and assets must take into account the nature and particularities of the position to be filled.

The profile of the person sought for a position to be filled through promotion may also require that only public servants belonging to a specific entity or geographical area may apply for the position to be filled. The Conseil du trésor shall define what constitutes an entity and a geographical area.

“47. A person interested in a position to be filled in the public service must apply in the manner and form and according to the other terms specified in the published employment offer.

“48. To fill a position, a deputy minister or a chief executive officer may only consider the applications submitted in accordance with section 47.

“49. A deputy minister or a chief executive officer shall select, from among the candidates who duly applied, the candidate whose profile best corresponds, in his opinion, to the profile sought for the position to be filled.

The selected candidate must have been evaluated by the deputy minister or the chief executive officer with at least one type of evaluation tool established by the Conseil du trésor. The latter may also determine any other terms or conditions in connection with the evaluation of a candidate.

If, among the qualified persons, there is one to whom an affirmative action program or a program designed to ensure the hiring of handicapped persons applies, the deputy minister or the chief executive officer must take the objectives of the program into consideration. The hiring objectives determined by the Conseil du trésor as regards the various components of Québec society must also be taken into consideration.

“50. When an examination administered during a selection process is identical or equivalent to an examination administered during a preceding selection process, a candidate’s examination result is deemed to be the result the candidate obtained during the preceding selection process if it was obtained within the time period determined by the Conseil du trésor.

The Chair of the Conseil du trésor shall establish a list of the examinations that are considered identical or equivalent.

A public body may communicate to the deputy minister or the chief executive officer any information that is necessary for the purposes of the first paragraph.

“50.1. The Chair of the Conseil du trésor may provide to deputy ministers or chief executive officers consulting services regarding evaluation tools. The Chair may also develop examinations that may be administered during a selection process.

In addition, at the request of the deputy minister or the chief executive officer, the Chair may administer such examinations and correct them. The Chair then transmits to the deputy minister or the chief executive officer the examination results the candidates obtained.

“50.2 The Conseil du trésor may determine any other standards related to the selection process.

“50.3. The Conseil du trésor may determine the cases and situations in which a deputy minister or a chief executive officer may select a person who holds or has already held a position in the public service to fill a position otherwise than in accordance with the rules under this subdivision. The Conseil du trésor may also determine the rules and procedures that the deputy ministers or chief executive officers must follow to fill a position in those cases and situations.

“50.4. When a position needs to be filled again within a time period determined by the Conseil du trésor, the deputy minister or the chief executive officer may fill the position again without repeating the selection process, by selecting a candidate from among those who were evaluated on the terms and conditions determined by the Conseil du trésor.

A deputy minister or a chief executive officer may also select a candidate without repeating the selection process when a position similar to a position that has been filled is to be filled within a time period and on the terms and conditions determined by the Conseil du trésor.”

13. Section 51 of the Act is amended by replacing “combler” in the French text by “pourvoir”.

14. Sections 53, 53.0.1 and 53.2 of the Act are repealed.

15. Section 54 of the Act is amended by replacing “regulation under subparagraph 11 of the first paragraph of section 50.1” in the first paragraph by “standards determined by the Conseil du trésor under section 54.1”.

16. The Act is amended by inserting the following section after section 54:

“54.1. The Conseil du trésor shall determine the standards for the classification of public servants.”

17. Section 63 of the Act is amended by replacing “54” by “54.1”.

18. Section 70 of the Act is amended, in the introductory clause of the first paragraph,

(1) by replacing “the powers of the Commission de la fonction publique or the powers of the chairman of the Conseil du trésor relating to” by “the powers of the Commission de la fonction publique, the powers of the Chair of the Conseil du trésor or the powers of a deputy minister or a chief executive officer relating to”;

- (2) by replacing all occurrences of “qualification” by “selection”;
- (3) by striking out “, banks of qualified persons”.

19. Section 99 of the Act is amended

- (1) by striking out paragraphs 1 to 5;
- (2) by replacing “five-year” and “every two and a half years” in paragraph 7.1 by “multiyear” and “at mid-term and at the end of the term”, respectively.

20. Section 102 of the Act is amended by striking out “sections 30 and 31,” in the first paragraph.

21. Section 115 of the Act is amended

- (1) by replacing “system of recruitment and promotion” in subparagraph 2 of the first paragraph by “recruitment and promotion”;
- (2) by replacing the third paragraph by the following paragraph:

“The Commission must also conduct a special audit on any matter within its jurisdiction when the Chair of the Conseil du trésor requests it. The Commission must report its audit findings to the Chair of the Conseil du trésor.”

22. The Act is amended by inserting the following section after section 123:

“123.0.1. A decision containing an error in writing or calculation or any other clerical error may be corrected on the record and without further formality by the member who rendered the decision.

If the member is unable to act or has ceased to hold office, another member designated by the chair of the Commission may correct the decision.”

23. Section 123.1 of the Act is repealed.

24. Section 126 of the Act is amended by inserting the following paragraph after paragraph 1:

“(1.1) determine the standards applicable to public servants who cease to perform their duties;”.

25. Section 129 of the Act is amended

- (1) by replacing “qualification” in the first paragraph by “selection”;

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

“The application of a person found guilty of such an offence may not be considered for a position to be filled in the public service for a period of five years unless the person has obtained a pardon and, if a public servant, the person is also liable to disciplinary action.”

PUBLIC ADMINISTRATION ACT

26. Section 32 of the Public Administration Act (chapter A-6.01) is amended by adding the following paragraph at the end:

“The Conseil du trésor may establish equivalencies to the minimum conditions of eligibility referred to in subparagraph 1 of the first paragraph, which may be established with respect to a position.”

27. The Act is amended by inserting the following sections after section 32:

“32.1. The Chair of the Conseil du trésor may authorize, on the terms and conditions he determines, a deputy minister or a chief executive officer to initiate a selection process using an equivalency established by the Conseil du trésor in addition to the equivalencies referred to in the third paragraph of section 32.

The Chair may do the same before a deputy minister or a chief executive officer selects a person otherwise than through a selection process in accordance with section 50.3 of the Public Service Act (chapter F-3.1.1).

“32.2. A person may be appointed to a position even though the person does not meet the minimum conditions of eligibility, or the equivalencies provided, if the person successfully completes a human resources development program approved by the Conseil du trésor on the terms and conditions it determines.

“32.3. A person who does not meet the minimum conditions of eligibility but is in the process of meeting them within a time period and on the terms and conditions determined by the Conseil du trésor may participate in the selection process or be appointed to a position.”

28. Section 248 of the Act is repealed.

ACT RESPECTING THE AGENCE DU REVENU DU QUÉBEC

29. Section 183 of the Act respecting the Agence du revenu du Québec (chapter A-7.003) is amended by striking out the second paragraph.

30. Section 184 of the Act is amended by striking out the third paragraph.

31. Section 185 of the Act is amended by striking out the fourth paragraph.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS PUBLICS

32. Section 264 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) is amended by striking out the second paragraph.

ACT RESPECTING THE CONSEIL DES ARTS ET DES LETTRES DU QUÉBEC

33. Section 39 of the Act respecting the Conseil des arts et des lettres du Québec (chapter C-57.02) is amended by striking out the second paragraph.

ACT RESPECTING THE CONSERVATOIRE DE MUSIQUE ET D'ART DRAMATIQUE DU QUÉBEC

34. Section 90 of the Act respecting the Conservatoire de musique et d'art dramatique du Québec (chapter C-62.1) is amended by striking out the second paragraph.

ACT RESPECTING THE REGULATION OF THE FINANCIAL SECTOR

35. Section 721 of the Act respecting the regulation of the financial sector (chapter E-6.1) is amended by striking out the second paragraph.

ACT RESPECTING FINANCEMENT-QUÉBEC

36. Section 62 of the Act respecting Financement-Québec (chapter F-2.01) is repealed.

ACT RESPECTING INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC

37. Section 41 of the Act respecting Institut national de santé publique du Québec (chapter I-13.1.1) is repealed.

ACT RESPECTING INVESTISSEMENT QUÉBEC

38. Section 168 of the Act respecting Investissement Québec (chapter I-16.0.1) is repealed.

NATIONAL MUSEUMS ACT

39. Section 46 of the National Museums Act (chapter M-44) is repealed.

PUBLIC PROTECTOR ACT

40. Section 37.1 of the Public Protector Act (chapter P-32) is repealed.

ACT RESPECTING THE SOCIÉTÉ DES ÉTABLISSEMENTS DE PLEIN AIR DU QUÉBEC

41. Section 40 of the Act respecting the Société des établissements de plein air du Québec (chapter S-13.01) is repealed.

ACT RESPECTING THE SOCIÉTÉ DU PARC INDUSTRIEL ET PORTUAIRE DE BÉCANCOUR

42. Section 50 of the Act respecting the Société du parc industriel et portuaire de Bécancour (chapter S-16.001) is repealed.

ACT RESPECTING THE SOCIÉTÉ DU PLAN NORD

43. Section 94 of the Act respecting the Société du Plan Nord (chapter S-16.011) is amended by striking out the second paragraph.

ACT MAINLY TO ESTABLISH THE CENTRE D'ACQUISITIONS GOUVERNEMENTALES AND INFRASTRUCTURES TECHNOLOGIQUES QUÉBEC

44. Section 89 of the Act mainly to establish the Centre d'acquisitions gouvernementales and Infrastructures technologiques Québec (2020, chapter 2) is amended by striking out the third paragraph.

RÈGLEMENT SUR LE CLASSEMENT DES FONCTIONNAIRES

45. The Règlement sur le classement des fonctionnaires (chapter F-3.1.1, r. 2, French only) is repealed.

RÈGLEMENT SUR LA PREUVE ET LA PROCÉDURE DE LA COMMISSION DE LA FONCTION PUBLIQUE

46. Chapter V of the Règlement sur la preuve et la procédure de la Commission de la fonction publique (chapter F-3.1.1, r. 3.01, French only), comprising sections 23 to 31, is repealed.

REGULATION RESPECTING THE QUALIFICATION PROCESS AND QUALIFIED PERSONS

47. The Regulation respecting the qualification process and qualified persons (chapter F-3.1.1, r. 3.1) is repealed.

REGULATION RESPECTING PROMOTION FURTHER TO THE UPGRADING OF A POSITION

48. The Regulation respecting promotion further to the upgrading of a position (chapter F-3.1.1, r. 4.1) is repealed.

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

49. In any Act other than the Public Service Act (chapter F-3.1.1), “promotion-only qualification process” wherever it appears is replaced by “promotion selection process”, unless the context indicates otherwise.

50. The qualification processes under way on the date of coming into force of section 12 are continued and, if applicable, the related banks of qualified persons may be established, used and terminated in accordance with the Public Service Act and the regulations, directives and standards under that Act, as they read on the day prior to that date.

The same applies to banks of qualified persons already established on the date of coming into force of section 12.

51. When a person’s qualification or certification of qualification is maintained under the Regulation respecting the qualification process and qualified persons (chapter F-3.1.1, r. 3.1) on the date of coming into force of section 47, it continues to be maintained and the person may be appointed to a position in accordance with the provisions of the regulation concerning the maintenance of such qualification or certification of qualification, as they read on the day before that date.

52. The lists of candidates declared qualified that are valid on the day before the date of coming into force of section 12 and that may be used in accordance with sections 35 and 36 of the Act to amend the Public Service Act mainly with respect to staffing (2013, chapter 25) may no longer be used as of the date of coming into force of that section.

53. When an examination administered during a selection process is identical or equivalent to an examination administered during a preceding qualification process, a candidate’s examination result is deemed to be the result the candidate obtained during the preceding qualification process if it was obtained within the time period determined by the Conseil du trésor.

The Chair of the Conseil du trésor shall establish a list of the examinations that are considered identical or equivalent.

A public body may communicate to the deputy minister or the chief executive officer any information that is necessary for the purposes of the first paragraph.

54. Any person found guilty of an offence under section 129 of the Public Service Act after the coming into force of section 25 is removed from the banks of qualified persons referred to in section 50.

The five-year period provided for in section 129, as it read before the coming into force of section 25, continues until the end of the period after the coming into force of section 25. Therefore, the application of a person found guilty under section 129 before it was amended by section 25 may not be considered for a position to be filled in the public service for the remainder of that period.

55. The Règlement sur le classement des fonctionnaires (chapter F-3.1.1, r. 2, French only) continues to apply as it reads on the day before the date of coming into force of section 45, until the Conseil du trésor determines the standards for the classification of public servants in accordance with section 54.1 of the Public Service Act enacted by section 16.

56. Until section 12 comes into force and despite any provision to the contrary, the Conseil du trésor may implement a pilot project concerning the recruitment and promotion of public servants for one or more classes of positions or one or more specific positions. The pilot project must be substantially consistent with the selection process provided in section 12.

The Conseil du trésor shall publish in the *Gazette officielle du Québec* the pilot project with a notice stating its intention to implement the project within 30 days after publication of that notice and indicating that any interested person may, within that time, send comments to the person designated in the notice.

57. Paragraph 1 of section 1 and sections 2 and 3 only apply to probationary periods that begin after (*insert the date preceding the date of coming into force of paragraph 1 of section 1*).

58. Sections 4 to 7 only apply to elected public servants as of the date of their coming into force.

The same applies to public servants who perform their duties on an office staff or as a member of the staff of a Member.

59. The provisions of this Act come into force on the date or dates to be set by the Government, except sections 1, 2, 57 and 58, which come into force on (*insert the date of assent to this Act*).

