

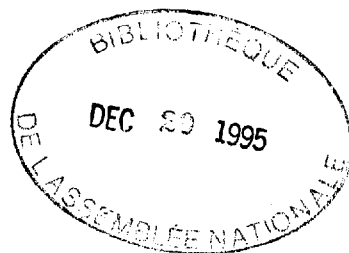
NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FIFTH LEGISLATURE

Draft Bill

An Act respecting semi-public companies in the municipal sector



Tabled by
Mr Guy Chevrette
Minister of Municipal Affairs

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EXPLANATORY NOTES

The object of this draft bill is to allow local municipalities, regional county municipalities and urban communities to constitute semi-public companies. The activities of such a company will be defined in an agreement between the company and the municipality or urban community that constituted it, although no semi-public company will be empowered to carry on activities relating to public safety or fire protection.

The draft bill provides that semi-public companies will be constituted in accordance with Part IA of the Companies Act. The founders of a company must include, in addition to the municipalities or urban communities involved, at least one commercial or industrial enterprise or a joint-stock company that is a mandatary of the Government. With respect to the operating rules of the company, the draft bill prescribes that the municipal founder must hold a majority of the votes attached to the shares of the company and more than half of its share capital. In addition, the board of directors of a semi-public company must include a majority of directors who are elected municipal officers.

Lastly, the draft bill sets out various rules governing the manner in which a municipality or urban community is to reach a decision regarding the constitution of a semi-public company, and subjects such companies to specific operating rules to supplement, or in some cases replace or amend, the rules applicable to companies pursuant to Part IA of the Companies Act.

LEGISLATION AMENDED BY THIS DRAFT BILL:

- Cities and Towns Act (R.S.Q., chapter C-19);
- Municipal Code of Québec (R.S.Q., chapter C-27.1).

Draft Bill

An Act respecting semi-public companies in the municipal sector

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

CONSTITUTION AND ORGANIZATION

1. Any municipality or urban community may join with any other founder to constitute, in accordance with Part IA of the Companies Act (R.S.Q., chapter C-38), a semi-public company whose activities are defined in an agreement under Chapter II.

2. For the purposes of this Act, the expression “municipal founder” means either a municipality or an urban community acting individually or a group of municipalities or urban communities acting jointly as a founder of a semi-public company.

Every decision, approval or authorization required from the municipal founder must be made or given by each municipality or urban community that is a founder of the company.

3. The name of a semi-public company must include the expression “Société d’économie mixte” or the abbreviation “SÉM”.

4. The articles of a semi-public company required to be filed with the Inspector General of Financial Institutions under the Companies Act (R.S.Q., chapter C-38) must be approved beforehand by the Minister of Municipal Affairs. A copy of the approval must be attached to the articles at the time of their filing.

The Minister may require that a local municipality's decision to act as a founder of a semi-public company be submitted, in respect of any element he indicates, to the qualified voters for approval.

5. Every by-law of a semi-public company under paragraph c of subsection 2 of section 91 of the Companies Act (R.S.Q., chapter C-38) or under section 92 or 93 of that Act and every unanimous shareholders' agreement described in section 123.91 of that Act must be approved by the Minister of Municipal Affairs.

6. Every general meeting of a semi-public company and every meeting of its board of directors and of its executive committee, if any, must be held in Québec.

7. The voluntary winding-up or the dissolution of a semi-public company must be authorized by the Minister of Municipal Affairs.

8. Every local municipality that passes a resolution authorizing it to act as a municipal founder must, as soon as the resolution is passed, send a copy of it to the regional county municipality or the urban community that includes the territory of the local municipality.

9. The passage of a resolution by a regional county municipality or by an urban community authorizing it to act as a municipal founder requires a two-thirds majority of the votes of council members.

10. Any local municipality whose territory is included in that of a regional county municipality that passed a resolution in accordance with section 9 may, within three months after the passage of the resolution, pass a resolution expressing its disagreement with the constitution of the company.

From the time the resolution is forwarded by registered mail to the regional county municipality, the local municipality is not subject to the jurisdiction exercised under the agreement referred to in section 31, the local municipality does not contribute to the payment of the expenditures entailed by the constitution of the company or by the agreement and the representatives of the local municipality on the council of the regional county municipality may not participate in subsequent deliberations and votes concerning the company.

11. A local municipality may not opt out pursuant to section 10 if the jurisdiction that is the subject of the constitution of the company is exclusive to the regional county municipality or if it is a jurisdiction to which the last paragraph of section 188 of the Act respecting land

use planning and development (R.S.Q., chapter A-19.1) applies, nor may the local municipality so opt out on or after the date referred to in section 123.16 of the Companies Act (R.S.Q., chapter C-38).

12. Any local municipality having opted out may pass a resolution to become subject to the jurisdiction exercised under the agreement referred to in section 31.

From the time the resolution is forwarded by registered mail to the regional county municipality, the local municipality shall contribute to the payment of the expenditures entailed by the constitution of the company and by the exercise of the jurisdiction under the agreement, and the representatives of the local municipality shall participate in the subsequent deliberations and votes concerning the company.

Any disagreement concerning contribution to the expenditures mentioned in the second paragraph may be resolved in accordance with the procedure prescribed in sections 468.53 and 469 of the Cities and Towns Act (R.S.Q., chapter C-19), adapted as required.

13. At least one of the founders joining with a municipal founder in accordance with section 1 must be either a person carrying on a commercial or industrial enterprise in the private sector whose interest in the share capital of the semi-public company cannot be less than 20% or a joint-stock company that is a mandatary of the Government.

14. The municipal founder must, at all times, hold a majority of the votes attached to the shares of the company and hold more than one-half of all classes of shares issued by the company.

15. The majority of the members of the board of directors of a semi-public company and of its executive committee, if any, must be members of the council of the municipal founder, and such majority must be equal to or greater than the proportion of the share capital held by the municipal founder.

Every municipality or urban community that is a founder of the company must be represented by at least one director.

16. The chairman of the board of directors of a semi-public company must be elected from among the majority of directors referred to in section 15.

The chairman also presides the executive committee of the board of directors, if any.

17. The term of office of a director representing the municipal founder may, notwithstanding section 88 of the Companies Act (R.S.Q., chapter C-38), exceed two years. However, the term of office shall not exceed four years.

The term of office of a director referred to in the first paragraph terminates when the director ceases to be a member of the council of the municipal founder.

18. The quorum at meetings of the board of directors of a semi-public company and of its executive committee, if any, is the majority of the directors who are members of the council of the municipal founder.

The first paragraph applies to the organization meeting of the directors, notwithstanding section 123.20 of the Companies Act (R.S.Q., chapter C-38).

19. Sections 14 and 15, the first paragraph of section 16 and section 18 do not apply where the municipal founder has joined with a joint-stock company that is a mandatary of the Government.

20. Any decision of the board of directors of a semi-public company that fixes or modifies the remuneration of directors must be approved by the municipal founder.

21. Expenditures incurred by a local municipality in respect of a semi-public company of which it is a founder, financed otherwise than under a loan by-law or out of a subsidy granted for that purpose, shall not exceed in any fiscal year an amount fixed each year by the municipality by by-law.

Such by-law, except in the case of Ville de Québec and Ville de Montréal, must be submitted to the qualified voters for approval if the amount fixed by the by-law represents more than 1% of the expenditures provided for in the budget of the municipality for the fiscal year concerned.

Such approval is required for any by-law which increases the amount fixed in accordance with this section beyond the limit applicable under the second paragraph or which increases the amount fixed by a by-law that was submitted for approval.

22. The market value of any property or service provided by a local municipality as payment for shares in a semi-public company of which it is a founder shall constitute an expenditure under section 21.

23. Subject to section 123.87 of the Companies Act (R.S.Q., chapter C-38), a municipality or urban community shall assume the defence of any member of its council acting as a director of a semi-public company who is the subject of civil proceedings under sections 29, 72, 96, 123.58, 123.64, 123.69 and 123.71 of the said Act or for any other act performed by the member as a director.

Any liability incurred by the member shall be assumed by the municipality or the urban community.

24. A person who, during his term of office as a member of the council of a municipality,

(1) directly or indirectly acquires or holds shares issued by a semi-public company founded by the local municipality of which he is a council member or the regional county municipality or urban community that includes the territory of the local municipality of which he is a council member,

(2) has a direct or indirect interest in a contract with a company referred to in paragraph 1,

is disqualified from holding office as a member of the council of any municipality.

25. Disqualification under section 24 is also incurred in the case of shares issued by a subsidiary of a company referred to in that section and the case of a direct or indirect interest in a contract with such a subsidiary.

26. A declaration of disqualification under sections 24 and 25 may be obtained by means of an action for declaration of disqualification under sections 308 to 312 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2).

Such disqualification persists until the expiry of a period of five years after the day on which the judgment declaring the person disqualified becomes *res judicata*.

27. Sections 24 and 25 do not apply in the cases described in paragraphs 1 and 2.1 to 9 of section 305 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2).

28. A director of a semi-public company must, on pain of dismissal, abstain from participating in any deliberation or any decision of the board of directors or of its executive committee, if any, that would place him in a situation where his personal interest would be in conflict with his obligations as a director.

29. A dismissal under section 28 may be decided only by a majority vote at a special general meeting of the shareholders of the company called for that purpose before the expiry of one year after the time when the act is alleged to have been committed.

Subject to this section, sections 123.77 to 123.79 of the Companies Act (R.S.Q., chapter C-38) apply in respect of a dismissal under section 28. Only those shareholders having the exclusive right to elect the director who is dismissed may elect the replacement for that director.

30. Any person who directly or indirectly acquires or holds shares issued by a semi-public company or by any of its subsidiaries or has a direct or indirect interest in a contract with any of those companies is disqualified from holding any position as an officer or employee, other than as an employee within the meaning of the Labour Code (R.S.Q., chapter C-27), of any local municipality that is a founder of the company, of any local municipality whose territory is included in that of a regional county municipality or an urban community that is a founder of the company or of any regional county municipality or urban community that is a founder of the company.

CHAPTER II

AGREEMENT

31. Any municipality or urban community that acts as a municipal founder of a semi-public company may enter into an agreement with the company in respect of the exercise of part of its jurisdiction, other than in matters of public safety or fire protection.

Any mandatar of the Government referred to in section 13 that is a founder of the semi-public company must be a co-signatory to the agreement entered into with the company.

The agreement must be approved by the Minister of Municipal Affairs.

32. A municipal founder associated with a mandatary of the Government referred to in section 13 is deemed to be competent to enter into an agreement with the semi-public company in relation to a field of activity within the mandate of the mandatary of the Government.

33. The agreement referred to in section 31 does not require the authorization or approval of the Minister of Municipal Affairs under section 29.3 of the Cities and Towns Act (R.S.Q., chapter C-19), article 14.1 of the Municipal Code of Québec (R.S.Q., chapter C-27.1), article 721 of the Charter of the city of Montréal (1959-60, chapter 102) or section 191a of the Charter of the city of Québec (1929, chapter 95).

Sections 573 and 573.1 of the Cities and Towns Act, articles 935 and 936 of the Municipal Code of Québec and article 107 of the Charter of the city of Montréal do not apply to the agreement.

34. The agreement referred to in section 31 must include

- (1) a detailed description of its subject;
- (2) the obligations of the parties including the obligations relating to their financial participation;
- (3) the procedure for determining the cost of carrying out the agreement;
- (4) the obligations of the parties in case of failure to execute all or part of the agreement;
- (5) the duration of the agreement and, where applicable, the terms and conditions for its renewal.

CHAPTER III

SPECIAL OBLIGATIONS AND POWERS

35. Every semi-public company must take out insurance, and maintain it in force, to cover the liability of its directors, officers and other representatives.

36. A semi-public company may not acquire shares in another company or an interest in a partnership unless the activities of that company or partnership complement the activities provided for in the agreement referred to in section 31.

No such shares or interest may be acquired without the authorization of the municipal founder.

37. Every decision whereby a semi-public company creates a subsidiary whose activities complement those provided for in the agreement referred to in section 31 or whereby the company, through the acquisition of shares or an interest under section 36, takes control of another company or of a partnership must be approved by the municipal founder and by the Minister of Municipal Affairs.

38. Every semi-public company is deemed to be a legal person established in the public interest for the purposes of article 916 of the Civil Code of Québec.

39. Any contract for the management of all or part of the agreement referred to in section 31 awarded by a semi-public company must be authorized by the municipal founder.

40. Section 39 does not apply to a contract which, if it were awarded by the municipal founder, would be exempted from the public call for tenders procedure or invitation to tender procedure that applies to the municipal founder, or to a contract that is awarded by the semi-public company in accordance with the tendering procedure that governs the awarding of such a contract by the municipal founder, adapted as required.

Where more than one party acts as a municipal founder, the municipal founder is deemed, for the purposes of the first paragraph, to be subject to the tendering procedure governing the party having the largest population.

41. The agreement referred to in section 31 may authorize a semi-public company to collect for a local municipality that is a founder of the company or for itself a unit or a subscription price from a person who, in the territory of the local municipality, uses property or services provided by the company or benefits from an activity of the company.

The price referred to in the first paragraph must be fixed by the local municipality, and Division III.1 of Chapter XVIII of the Act respecting municipal taxation (R.S.Q., chapter F-2.1) applies to the tariffing under the first paragraph.

42. Unless otherwise stipulated in the agreement referred to in section 31, a semi-public company may supply, for remuneration, services, expertise, raw materials, processed materials and

equipment related to the field of activities determined in the agreement to a person outside the territory of a municipality or urban community that is a founder of the company.

43. Any municipality or urban community may acquire any property, by agreement or by expropriation, in order to alienate or lease it, by onerous title, to the semi-public company of which the municipality or community is a founder or in order to supply the property as payment for shares in the company.

The amount corresponding to the market value of the property at the time of the acquisition by the local municipality constitutes an expenditure within the meaning of section 21 if the property is supplied as payment for shares in the company.

44. Each borrowing by a semi-public company by way of the issue of bonds must be authorized by the municipal founder.

45. Any municipality or urban community may guarantee the bonds, notes and other debt securities of the semi-public company of which it is a founder.

The guarantee granted to the holders of securities may cover not only the repayment of the principal and interest but also the payment of fees, costs and commitments connected therewith.

46. The amount up to which a municipality or an urban community may make a commitment under section 45 may not exceed the value of the share capital of the semi-public company it has subscribed.

In addition, any guarantee granted by a local municipality under section 45 is considered to be an expenditure within the meaning of section 21 of an amount corresponding to the capital value of the debt security at the time the commitment is made by the municipality.

47. A municipal founder authorizing a bond issue guaranteed in accordance with section 45 may require of the semi-public company that it sell its bonds in accordance with the rules governing the founder in like matters.

Where more than one party acts as a municipal founder, the latter is deemed, for the purposes of the first paragraph, to be subject to the rules relating to bond issues that govern the party having the largest population.

48. The Minister of Municipal Affairs may enter into an agreement with a semi-public company under which the Minister receives and opens the bids under section 47.

The agreement may, among other things, fix fees payable by the company.

49. A municipality or urban community may also stand surety for the semi-public company of which it is a founder in respect of commitments other than those mentioned in section 45.

However, a municipality having a population of less than 50 000 must obtain the authorization of the Minister of Municipal Affairs in order to stand surety for an obligation of \$50 000 or more. A municipality having a population of 50 000 or over and an urban community must obtain such authorization if the obligation for which it is to stand surety is of \$100 000 or more.

The amount up to which a local municipality stands surety constitutes, from the passage of the resolution by which the municipality stands surety, an expenditure within section 21.

CHAPTER IV

FINANCIAL PROVISIONS, DOCUMENTS AND REPORTS

50. The fiscal year of a semi-public company ends on 31 December.

51. Every semi-public company must, before 1 October each year, send to the municipal founder an estimate of the costs relating to the implementation of the agreement referred to in section 31 for the next fiscal year of the company and the financial participation required for that purpose from the municipal founder for that fiscal year.

52. Notwithstanding sections 123.98 to 123.100 of the Companies Act (R.S.Q., chapter C-38), the shareholders of a semi-public company must, in accordance with section 123.97 of that Act, appoint an auditor.

The company must inform the Minister of Municipal Affairs of the name of the auditor and inform him of any change of auditor.

53. If the shareholders of a semi-public company do not appoint an auditor for a fiscal year or if the directors do not fill a vacancy in

that position, the Minister may appoint the auditor and the latter is deemed to have been appointed by the shareholders or the directors, as the case may be.

54. Every semi-public company must, for each of the five fiscal years following the year it was constituted, send to the Minister of Municipal Affairs a copy of the documents and information mentioned in section 98 of the Companies Act (R.S.Q., chapter C-38) at the time or on the date determined in accordance with that section.

55. Every semi-public company must, in addition, provide the Minister of Municipal Affairs with any information he requires on its activities.

CHAPTER V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

56. This Act applies notwithstanding the Act respecting municipal industrial immovables (R.S.Q., chapter I-0.1) and the Municipal Aid Prohibition Act (R.S.Q., chapter I-15).

57. Section 99 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended by inserting the words “or guaranteed” after the word “issued” in the fifth line of the second paragraph.

58. Article 203 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended by inserting the words “or guaranteed” after the word “issued” in the eleventh line of the first paragraph.

59. The Minister of Municipal Affairs is responsible for the administration of this Act.

60. This Act comes into force on *(insert here the date of assent to this Act)*.