



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-THIRD LEGISLATURE

Bill 595

**An Act respecting self-managed
personal assistance for persons with
disabilities**

Introduction

**Introduced by
Mr. Joël Arseneau
Member for Îles-de-la-Madeleine**

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EXPLANATORY NOTES

The purpose of this bill is to promote and guarantee the autonomy of persons with disabilities. To that end, the bill establishes a self-managed personal assistance program, which includes financial assistance. The bill defines self-managed personal assistance and specifies the principles that must guide the development of the program.

The bill establishes the Self-Managed Personal Assistance Program and provides that Retraite Québec will administer it.

The bill provides that, to be eligible for the Self-Managed Personal Assistance Program, a person with a disability must reside in Québec and need for self-managed personal assistance.

The bill states that a service provider whose services are retained by a person with a disability may take any action that the person would take themselves if not for their disability.

The bill sets out the reciprocal rights and obligations relating to the program.

The bill provides for the procedure for establishing and paying the financial assistance benefit granted by Retraite Québec. It specifies the method for calculating the basic benefit and the expenses that may justify an increase in the basic benefit.

The bill provides for remedies that may be exercised before Retraite Québec and, subsequently, pursued before the Administrative Tribunal of Québec.

The bill creates the obligation for Retraite Québec to submit to the Minister of Families, Seniors and the Status of Women, for subsequent tabling in the National Assembly, reports on the activities under this Act and on its implementation.

Bill 595

AN ACT RESPECTING SELF-MANAGED PERSONAL ASSISTANCE FOR PERSONS WITH DISABILITIES

AS every person who is free should be able to choose how they are assisted when they need it;

AS every person should be able to contribute actively to society;

AS the dignity of a person depends, among other things, on that person's accountability;

AS active participation by persons with disabilities in social and community life contributes to their well-being while also benefiting society as a whole;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

1. The purpose of this Act is to promote and guarantee the autonomy of persons with disabilities by establishing a financial assistance program for self-managed personal assistance adapted to their needs, enabling them to agree, with the person of their choice, upon the services they wish to receive.

The primary purpose of the Act is to enable every person with a disability to exercise determining influence over the content and implementation of a self-managed personal assistance plan by providing that they are free to decide the degree of control they wish to exercise over the provision of services. The control exercised by a person with a disability extends to their choices regarding who may assist them, the tasks to be performed, the times when the tasks must be performed, and the manner in which they must be performed.

2. For the purposes of this Act, “self-managed personal assistance” means any assistance agreed upon by a service provider and a person with a disability that enables the latter to participate fully in social life, in both the public and private spheres, and to carry out everyday activities, such as those related to personal hygiene, eating, dressing, and household tasks, as well as activities outside the home, at work, and during leisure time.

3. The following principles guide the application of this Act:

- (1) the freedom of the person and the choices of persons with disabilities;
- (2) respect for the dignity and autonomy of persons with disabilities;
- (3) the right of every person with a disability to financial assistance measures and to social measures likely to ensure the person an acceptable standard of living;
- (4) the social participation of persons with disabilities;
- (5) the accessibility of personalized assistance based on the abilities, preferences, aspirations and individual needs of persons with disabilities;
- (6) the accessibility of self-managed personal assistance without differential treatment based on, among other factors, the nature or cause of disability, on gender, on sexual orientation, on age, on ethnicity, on social status or on financial or family situation; and
- (7) the adaptability of self-managed personal assistance to the evolving needs of persons with disabilities.

CHAPTER II

SELF-MANAGED PERSONAL ASSISTANCE PROGRAM

DIVISION I

ESTABLISHMENT, OBJECT AND ELIGIBILITY

4. The Self-Managed Personal Assistance Program is hereby established.

5. The purpose of the Self-Managed Personal Assistance Program is to grant financial assistance to persons with disabilities to enable them to retain the services of one or more service providers to perform activities that they would perform themselves if not for their disability.

Retraite Québec administers the program.

6. To be eligible for financial assistance, a person with a disability must reside in Québec.

Further eligibility requirements are prescribed by government regulation. The financial assistance must be determined solely on the basis of the need for self-managed personal assistance, regardless of the cause of the disability, the age of the person with a disability, or the person's financial and family situation.

7. A person with a disability who resides in an alternative living environment is not eligible for financial assistance.

Despite the first paragraph, a person with a disability who resides in such an environment at the time of their application is eligible for such assistance, in accordance with the modalities determined by regulation of the Minister, provided that the person undertake with the Minister to establish, within one year of their application, self-managed personal assistance enabling them to live outside an alternative living environment.

8. A person with a disability may retain personal assistance services from natural persons, even if they are family members, or from non-profit legal persons established for a private interest.

9. Despite any provision to the contrary, a service provider whose services are retained by a person with a disability may take any action that the person would take themselves if not for the person's disability.

DIVISION II

RECIPROCAL RIGHTS AND OBLIGATIONS

10. Retraite Québec must assist any person who requests it to facilitate the person's understanding of the program and, if applicable, of their eligibility. Among other things, Retraite Québec must assist the person in making an application for financial assistance.

11. A person wishing to obtain financial assistance must apply to Retraite Québec according to the procedure prescribed by regulation of Retraite Québec and provide it with any document or information necessary to ascertain the person's eligibility and to determine the amount of the assistance to be granted.

Retraite Québec records in the person's file any application the person makes.

12. A person required to produce a medical report must do so according to the procedure prescribed by Retraite Québec.

An unfavourable decision of Retraite Québec must be accompanied by the report of the physician whom Retraite Québec designated to perform a new medical examination.

13. Retraite Québec must, with dispatch, examine applications for financial assistance made in accordance with section 11 and make a decision. An unfavourable decision must be made in writing.

14. Retraite Québec must provide a person to whom financial assistance is granted with information on the rights and obligations under this Act.

15. When a person with a disability is unable to administer the financial assistance granted, Retraite Québec may, subject to the conditions prescribed by government regulation, pay the financial assistance to a person or body designated by Retraite Québec.

The person or body administers the financial assistance according to the standards determined by government regulation and reports to Retraite Québec on the form required by the latter.

16. An annual statement detailing how the financial assistance was used must be filed in the manner prescribed by regulation of Retraite Québec.

For the basic amount of the benefit, it is sufficient to submit a time sheet signed by the service provider indicating the number of hours of assistance provided. Supporting documents are required for expenses related to any increase in the basic amount.

The amount of financial assistance applicable to a given month may be carried over to a subsequent month, even if those months fall in different statement years.

17. Retraite Québec may suspend payment of financial assistance if a statement is not filed within the prescribed time limit, unless the person establishes that timely filing was impossible.

18. At least 10 days before reducing or ceasing to pay an amount granted under this Act on the ground that a person did not declare their real situation, Retraite Québec must give the person a written notice, with reasons.

19. The person may submit observations before that time limit has expired and, if need be, produce documents to complete the file.

20. Retraite Québec takes the necessary measures to ensure the quality of the services offered.

21. Any person may apply to Retraite Québec or to the Minister for information on any matter within the scope of this Act, or for assistance in safeguarding that person's rights.

22. Retraite Québec and the Minister must

(1) monitor the level of satisfaction of persons having taken advantage of the program;

(2) take the appropriate measures to remedy or prevent the recurrence of prejudicial situations and prevent the occurrence of similar situations; and

(3) give due consideration to the opinions and observations expressed by persons having taken advantage of the program.

DIVISION III

ESTABLISHMENT AND PAYMENT OF BENEFITS

23. The financial assistance provided within the framework of the Self-Managed Personal Assistance Program takes the form of a monetary benefit.

24. The benefit includes a basic amount, which may be increased in the cases provided for in this division.

The basic amount is calculated by multiplying the hourly rate prescribed by government regulation for personal assistance services by the average number of hours of assistance required per month.

The hourly rate must be competitive.

25. The number of hours of assistance required per month is determined by taking into account

(1) the assessment of the person with a disability who wishes to benefit from the program, who may be supported by a person of their choice; and

(2) the assessment by a professional, mandated by Retraite Québec, with the relevant experience and skills, which may be specified by regulation of Retraite Québec.

The person with a disability, supported by a person of their choice, and the professional mandated by Retraite Québec may consult with each other in order to carry out their respective assessments.

The assessments must take into account, in particular,

(1) any activity that enables the person with a disability to fulfill the social role they would have had if not for their disability, including within their family, school, workplace or community; and

(2) activities for maintaining health and well-being.

The number of hours of assistance required per month is reassessed every two years.

The conditions for applying this section may vary depending on the situation of the person and taking into account the availability of professionals in that person's locality or region who can carry out the assessment.

26. The basic amount is increased when the person with a disability establishes, by producing a medical report, that they require specialized assistance or when the person must be supported, due to a cognitive or psychological impairment, by a third party in order to manage the assistance services.

The amount is also increased, where applicable, to take in to account

- (1) payroll processing and other administrative costs;
- (2) training for assistants;
- (3) the cost of equipment to facilitate the work of assistants and maintain a safe working environment;
- (4) the cost of liability insurance that the person with a disability holds as an employer; and
- (5) the costs associated with support from assistants on outings or when moving about.

27. Despite any provision to the contrary, receiving a benefit does not prevent the person with a disability from taking advantage of other programs or receiving other financial assistance.

28. Benefits are granted from the month following the month of the application.

29. Benefits are paid on a monthly basis subject to the conditions determined by government regulation.

30. The basic monthly amount of a benefit must be indexed annually, as prescribed by government regulation.

DIVISION IV

REMEDIES

31. A person to whom a decision of Retraite Québec under this Act applies may apply in writing for a review of the decision within 90 days of the date on which the person was advised of the decision.

32. The review is carried out by two persons, one of whom must be a physician and the other, a professional working in the social sector.

33. Retraite Québec must assist any person who requests help in making an application for the review of a decision.

34. An application for review may not be refused on the ground that it was received after the deadline if the applicant establishes that it was impossible to act sooner.

If the application is refused on that ground, the decision may be contested before the Administrative Tribunal of Québec within 15 days after the date on

which the applicant is advised of the decision. If the Tribunal quashes the decision, the file is returned to the person or persons who made the decision.

35. A person who applies for the review of a decision must be given the opportunity to submit observations and, if need be, to produce documents to complete their file.

36. An application for review does not suspend execution of the decision.

37. An application for review must be processed promptly, and the review decision must be made within 30 days of the receipt of the application or, in a case described in the second paragraph of section 34, within 30 days of the decision of the Administrative Tribunal of Québec returning the file for review. Where a person has asked for time to submit observations or to produce documents, the review decision must be made within 30 days of the submission of observations or the production of the documents.

38. The review decision must be in writing and drafted in clear and concise terms, contain reasons and be notified to the applicant with the statement that the decision may be contested before the Administrative Tribunal of Québec.

39. A person who feels wronged by a review decision may contest it before the Administrative Tribunal of Québec within 60 days of notification of the decision.

Moreover, a person may contest before the Tribunal the decision whose review the person applied for if the person in charge of the review does not dispose of the application within 90 days following its receipt or following the decision of the Tribunal returning the file for review in accordance with the second paragraph of section 34. However, the time limit runs from the time observations are submitted or documents are produced if a person requested more time for that purpose.

40. If a review decision or a decision of the Administrative Tribunal of Québec recognizes that a person with a disability is entitled to an amount initially refused, or increases the amount initially granted, Retraite Québec is required to pay interest in the cases, on the conditions and at the rate determined by government regulation.

CHAPTER III

MISCELLANEOUS AND FINAL PROVISIONS

41. Retraite Québec prepares a report on its activities under this Act for each fiscal year, not later than 30 September following the end of that year.

In addition, no later than five years after this Act comes into force, Retraite Québec reports on its implementation.

The reports are sent to the Minister of Families, Seniors and the Status of Women, who tables them in the National Assembly within 30 days after the sending or, if the Assembly is not sitting, within 30 days of resumption.

42. The Minister of Families, Seniors and the Status of Women is responsible for the administration of this Act.

43. This Act comes into force on (*insert the date that is six months after the date of assent to this Act*).

