



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 72

**An Act to amend the Public Service Act
mainly with respect to staffing**

Introduction

**Introduced by
Madam Michelle Courchesne
Minister responsible for Government Administration and
Chair of the Conseil du trésor**

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EXPLANATORY NOTES

This bill makes various amendments to the Public Service Act.

Changes are made to the staffing process so that, among other things, candidates may be qualified earlier in the process and registered in a bank of qualified persons as of that moment, and therefore be appointed more quickly.

The bill replaces the notions of competitions and lists of candidates declared qualified with the concepts of qualification processes and banks of qualified persons.

The Conseil du trésor is empowered to make various rules applicable to the new staffing process, design a specific qualification process for persons who have held a student or intern position, and determine the conditions under which certain retired employees may be exempted from taking part in a qualification process prior to their appointment.

Deputy ministers and chief executive officers are specifically authorized to conduct an additional evaluation before making an appointment.

The power to fix the norms for the classification of public servants is transferred to the Conseil du trésor.

The minimum length of probationary periods for persons recruited as public servants is extended from 6 months to 12 months.

The bill provides for the appointment of a chief human resources officer within the Secrétariat du Conseil du trésor and determines the officer's main functions.

The Chair of the Conseil du trésor is conferred the responsibility of appointing Conseil du trésor representatives to the joint parity committee of peace officers, and of calling meetings of the committee.

In addition, new provisions are introduced regarding the management of the Commission de la fonction publique and its responsibilities, including an express authorization to offer mediation to parties.

Finally, the bill introduces amendments to the penal provisions and contains a number of technical and transitional provisions as well as consequential amendments.

LEGISLATION AMENDED BY THIS BILL:

- Public Service Act (R.S.Q., chapter F-3.1.1).

Bill 72

AN ACT TO AMEND THE PUBLIC SERVICE ACT MAINLY WITH RESPECT TO STAFFING

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PUBLIC SERVICE ACT

1. Section 13 of the Public Service Act (R.S.Q., chapter F-3.1.1) is amended by replacing “six” in the first and second paragraphs by “12”.

2. Section 35 of the Act is amended by replacing the first paragraph by the following paragraph:

“35. A candidate may appeal to the Commission de la fonction publique if he considers that the procedure used, within a promotion-only qualification process, to determine whether he is eligible or to evaluate him was irregular or illegal. An appeal application must be submitted in writing and received by the Commission within 15 working days of the sending of the notice advising the candidate that he does not meet the eligibility criteria for the qualification process, or informing him of the results of his evaluation as part of that process.”

3. Section 36 of the Act is replaced by the following section:

“36. The Commission de la fonction publique may refuse to hear an appeal brought under section 35 relating to a promotion qualification process where it considers that the application is frivolous or in bad faith, or that its intervention would clearly be of no use.”

4. Section 42 of the Act is amended

(1) by replacing “by way of competition” in the first paragraph by “by means of a qualification process”;

(2) by replacing “competition” in the second paragraph by “qualification process”.

5. Section 43 of the Act is amended

(1) by replacing “competition held to fill” in the first paragraph by “qualification process for the purpose of establishing a bank of qualified persons to fill”;

(2) by replacing “competition” wherever it appears in the third paragraph by “qualification process”.

6. Section 44 of the Act is replaced by the following section:

“**44.** The Chair of the Conseil du trésor is responsible for launching invitations for applications and for initiating qualification processes for the purpose of establishing banks of qualified persons.”

7. Section 46 of the Act is repealed.

8. Section 47 of the Act is amended by replacing “for a competition or candidate inventory” in the first paragraph by “for a qualification process”.

9. Section 49.1 of the Act is repealed.

10. The Act is amended by inserting the following section after section 49.1:

“**49.2.** A person is declared qualified if his eligibility has been established and he has successfully passed the evaluation procedure.

A bank of qualified persons is established as soon as one person is declared qualified.

Upon being qualified, a person is registered in a bank of qualified persons.”

11. Section 50 of the Act is replaced by the following section:

“**50.** The Chair of the Conseil du trésor may, on request or on the Chair’s own initiative, correct an error having occurred in determining the eligibility of candidates or evaluating candidates, and, if appropriate, add or remove the names of the persons concerned to or from a bank of qualified persons.”

12. The Act is amended by inserting the following sections after section 50:

“**50.0.1.** A person who was employed as a student or intern may be appointed to a position in the public service following qualification processes specific to student and intern positions. The Conseil du trésor determines the applicable qualification processes, the conditions of eligibility for and procedures governing access to those processes, and the effects of the qualification.

“**50.0.2.** Despite any incompatible provision, a retired public service employee may, without having to undergo the qualification process, be re-appointed under this Act to a position in the same class as the class he belonged to before retiring or to any other position with less stringent conditions of eligibility for which a deputy minister or a chief executive officer has recognized him as having the necessary skills. Such a re-appointment is only possible to meet a temporary need and where the person’s particular expertise and

experience are required. The Conseil du trésor prescribes the terms and conditions of such a re-appointment, which may only be for a fixed term.”

13. Section 50.1 of the Act is amended

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

“(1) the procedure for a qualification process to establish a bank of qualified persons;”;

(2) by replacing “competition or for a candidate inventory” in subparagraph 2 of the first paragraph by “qualification process”;

(3) by replacing “competition or a candidate inventory” in subparagraph 3 of the first paragraph by “qualification process”;

(4) by replacing “competition” in subparagraph 4 of the first paragraph by “qualification process”;

(5) by replacing “lists of certifications of qualification may be drawn up” in subparagraph 5 of the first paragraph by “a bank of qualified persons may be established, used and terminated”;

(6) by replacing “promotion without a competition” in subparagraph 6 of the first paragraph by “promotion without a qualification process”;

(7) by striking out subparagraph 7 of the first paragraph;

(8) by adding the following subparagraphs after subparagraph 7 of the first paragraph:

“(8) terms and conditions under which a person’s name may be removed from a bank of qualified persons;

“(9) rules on the information a candidate must provide, during the qualification process or following his registration in a bank of qualified persons, in order to update his file or professional profile;

“(10) terms and conditions under which the qualification of a person for appointment purposes may be maintained for certain positions despite the termination of the bank from which the person was appointed to such a position; and

“(11) norms for the classification of public servants.”

14. Section 53 of the Act is replaced by the following section:

“53. A deputy minister or a chief executive officer may appoint a person as soon as the person is registered in a bank of qualified persons. However, the Conseil du trésor may, by regulation, make exceptions to that rule.

Before making a choice, the deputy minister or the chief executive officer may conduct an additional evaluation based on the nature and particularities of the position to be filled.

If there is among the qualified persons 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 when making the appointment. The hiring objectives determined by the Conseil du trésor as regards the various components of Québec society must also be taken into consideration.

The application of this section cannot be the subject of an appeal under section 35.”

15. Section 53.0.1 of the Act is amended by replacing the first and second paragraphs by the following paragraphs:

“53.0.1. Within the same invitation for applications, a public servant may be appointed before the expiry of the time for appeal provided under section 35 and even if an appeal brought under that section is pending before the Commission de la fonction publique.

However, the appointment is conditional for as long as the last time for appeal that applies to candidates within the same invitation for applications has not expired and, as the case may be, for as long as any appeal brought by one of the candidates has not been settled. If warranted, the appointment must be re-evaluated by the deputy minister or the chief executive officer on the basis of the decision rendered by the Commission; where applicable, the appointment shall cease to have effect and the public servant shall be reinstated in the position held before the appointment.”

16. Section 54 of the Act is amended by replacing “with the regulation under section 126” in the first paragraph by “with the regulation under section 50.1”.

17. Section 70 of the Act is amended by replacing “the holding of recruitment or promotion competitions or to the certification of the qualification of candidates” in the second sentence of the first paragraph by “recruitment or promotion qualification processes, qualification, banks of qualified persons or certification of qualification”.

18. Section 71 of the Act is amended by inserting “Chair of the” after “shall be appointed by the” in the second paragraph.

19. Section 73 of the Act is amended by inserting “Chair of the” after “whenever requested by the”.

20. Section 99 of the Act is amended

(1) by replacing paragraphs 1 and 2 by the following paragraphs:

“(1) establishing and implementing recruitment and promotion qualification processes;

“(2) establishing conditions of eligibility for a qualification process;”;

(2) by striking out paragraph 3;

(3) by replacing “competition” in paragraph 4 by “qualification process”;

(4) by inserting the following paragraph after paragraph 4:

“(4.1) qualifying candidates and establishing banks of qualified persons;”;

(5) by replacing “without a competition” in paragraph 5 by “whose position is upgraded without a promotion qualification process”;

(6) by striking out paragraphs 7 to 11.

21. The Act is amended by inserting the following division after Division II of Chapter V:

“DIVISION II.1

“CHIEF HUMAN RESOURCES OFFICER

“104.1. The Government appoints a chief human resources officer within the Secrétariat du Conseil du trésor, in accordance with this Act.

“104.2. The functions of the chief human resources officer include

(1) developing a five-year human resources management strategy for the public service, proposing it for approval by the Conseil du trésor, coordinating its implementation and reporting every two and a half years to the Conseil du trésor on the achievement of results;

(2) proposing directions and policy frameworks in various areas of human resources management to the Conseil du trésor;

(3) proposing to the Conseil du trésor changes to the human resources management framework, taking into account organizational and societal changes;

(4) advising government departments and bodies, and the Conseil du trésor, on management and administrative organization, in particular to improve the

quality of service to the public and the efficiency of the organization and staff of government departments and bodies;

(5) advising and supporting government departments and bodies in implementing human resources management programs and activities;

(6) carrying out research, studies and surveys in human resources management, coordinating them with those carried out within government departments and bodies, and ensuring their diffusion;

(7) instituting and maintaining career planning and development support measures for management staff, in collaboration with government departments and bodies; and

(8) exercising any other function assigned by the Chair of the Conseil du trésor or by the Government.”

22. The Act is amended by inserting the following section after section 108:

“**108.1.** In addition to the powers and duties otherwise conferred on the chair of the Commission, the chair is responsible for the management and administration of the Commission.

The functions of the chair include

(1) fostering the participation of the members in the formulation of general directions for the Commission so as to maintain a high level of quality and coherence in its decisions;

(2) coordinating the activities of and assigning work to the members, who, in that respect, must comply with the chair’s orders and directives;

(3) seeing that standards of ethical conduct are observed;

(4) promoting professional development of the members as regards the exercise of their functions; and

(5) determining the cases where an appeal must be heard by more than one member.”

23. Section 115 of the Act is amended by replacing “competition or the establishment of a candidate inventory” in the third paragraph by “qualification process”.

24. Section 116 of the Act is amended by striking out subparagraph 1 of the first paragraph.

25. The Act is amended by inserting the following sections after section 116:

“116.1. The Commission may, if circumstances permit, offer mediation to the parties.

Mediation sessions are presided by a member or a public servant of the Commission designated for that purpose.

“116.2. Except with the consent of the parties, nothing that is said or written in the course of a mediation session may be admitted as evidence.

“116.3. A member who has conducted a mediation session may not have a decision-making role in the dispute in question.

“116.4. A mediator cannot be compelled to disclose anything revealed to or learned by the mediator in the exercise of mediation functions or to produce a document prepared or obtained in the course of such functions before a court, a body or a person or body of the administrative branch exercising adjudicative functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to a document contained in mediation records.”

26. Section 121 of the Act is amended by replacing the first paragraph by the following paragraphs:

“121. The Commission may, to expedite business, appoint substitute members for a term of not over one year. With the chair’s permission, a member whose term has expired may continue the examination of a matter and make a decision.

Substitute members do not take part in the Commission’s activities under section 115.”

27. Section 122 of the Act is amended by replacing “commissioner” by “member”.

28. Section 123 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The Commission, on application, may review or revoke any decision it has made

- (1) where a new fact is discovered which, had it been known in time, could have warranted a different decision;
- (2) where a party, owing to reasons considered sufficient, could not be heard;

(3) where a substantive or procedural defect is of a nature likely to invalidate the decision.

In the case described in subparagraph 3 of the second paragraph, the decision may not be reviewed or revoked by the member having made the decision.”

29. Section 126 of the Act is amended by striking out paragraph 4.

30. Section 129 of the Act is amended

(1) by replacing “at a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory” in the first paragraph by “in connection with a recruitment or promotion qualification process”;

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

“The name of a person found guilty of such an offence is removed from all banks of qualified persons established before the date of the judgment or from any qualification process underway on that date. In addition, the person ceases to be eligible for any qualification process for a period of two years and, if a public servant, the person is also liable to disciplinary action.

Proceedings for the offence described in the first paragraph are prescribed one year from the date on which the prosecutor became aware of the commission of the offence.”

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

31. In any Act other than the Public Service Act (R.S.Q., chapter F-3.1.1), the expression “promotion competition” or “competition for promotion” wherever it appears is replaced by “promotion qualification process”, unless the context indicates otherwise.

32. Competitions underway on the date of coming into force of section 4 are continued and the related lists of candidates declared qualified may be established and used in accordance with the Public Service Act and the regulations, directives and norms under that Act, as they read on the day prior to that date. The same applies to any establishment of candidate inventories underway on that date and the use of such inventories.

33. Lists of candidates declared qualified already established on the date of coming into force of section 4 may be used in accordance with the Public Service Act and the regulations, directives and norms under that Act, as they read on the day prior to that date.

34. The Conseil du trésor may, by regulation, determine the terms and conditions under which the qualification of a person for appointment to certain

positions may be maintained despite the termination of the list of candidates declared qualified from which the person was appointed to such a position.

35. The name of any person found guilty under section 129 of the Public Service Act after the coming into force of section 4 is removed from the lists of candidates declared qualified referred to in either of sections 32 and 33.

36. Until section 30 comes into force, section 129 of the Public Service Act is to read as follows:

“129. Every person who commits a fraudulent act, or incites a person to commit a fraudulent act, in connection with a recruitment or promotion competition, a grade advancement examination or the establishment of a candidate inventory is guilty of an offence and liable to a fine of \$700 to \$2,800.

A person who is found guilty of such an offence ceases to be eligible for any competition or examination for a period of two years. In addition, the person’s name is removed from all lists of candidates declared qualified existing on the date of the judgment or from the lists relating to competitions underway on that date and, if a public servant, the person is liable to disciplinary action.

Proceedings for the offence described in the first paragraph are prescribed one year from the date on which the prosecutor became aware of the commission of the offence.”

37. The length of the probationary period for a person appointed under the Public Service Act prior to the date of coming into force of section 1 remains the same despite the amendment made to section 13 of the Public Service Act by section 1.

38. This Act comes into force on (*insert the date of assent to this Act*), except sections 2 to 12, section 13 except where it enacts subparagraph 11 of the first paragraph of section 50.1 of the Public Service Act, sections 14, 15 and 17, paragraphs 1 to 5 of section 20 and sections 23, 30 to 33 and 35, which come into force on the date or dates to be set by the Government.

