



NATIONAL ASSEMBLY

FIRST SESSION

FORTIETH LEGISLATURE

Bill 191

An Act to establish Pharma-Québec

Introduction

**Introduced by
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Member for Mercier**

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EXPLANATORY NOTES

This bill establishes Pharma-Québec, a legal person and a mandatory of the State whose mission is to ensure the procurement of medications at the lowest cost possible for the people and the health institutions of Québec. Pharma-Québec ensures the quality and safety of products in accordance with the recommendations of the clinical and pharmaco-economic medication assessment program put in place by the Institut national d'excellence en santé et en services sociaux.

The functions of Pharma-Québec include providing a joint medication and vaccine procurement service, determining the reimbursement schedule for patented products and drawing up a list of medications the cost of which is guaranteed by the basic plan established by the Act respecting prescription drug insurance.

Pharma-Québec may build and operate facilities for producing generic medications and vaccines. It may also develop new pharmaceutical products in the interest of the public health network by investing up to five percent of its budget in research and development in order to ensure the vitality and independence of pharmaceutical research.

In addition, the bill contains amending and transitional provisions, in particular with regard to transfers of employees from the Ministère de la Santé et des Services sociaux and the Régie de l'assurance maladie du Québec to Pharma-Québec.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (chapter A-6.001);
- Public Protector Act (chapter P-32);
- Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2);
- Act respecting the Government and Public Employees Retirement Plan (chapter R-10);

- Act respecting the Pension Plan of Management Personnel (chapter R-12.1);
- Act respecting health services and social services (chapter S-4.2).

Bill 191

AN ACT TO ESTABLISH PHARMA-QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT

1. A legal person is established under the name “Pharma-Québec”.

2. Pharma-Québec is a mandatary of the State.

Its property forms part of the domain of the State, but the execution of its own obligations may be levied against its property.

It binds none but itself when it acts in its own name.

3. Pharma-Québec’s head office is located in the territory of Ville de Québec.

Notice of the location and any relocation of the head office is published in the *Gazette officielle du Québec*.

CHAPTER II

MISSION AND POWERS

4. Pharma-Québec’s mission is to ensure the procurement of medications at the lowest cost possible for the people and the health institutions of Québec.

Pharma-Québec must provide people with fair and reasonable access to the medications required by their state of health, while ensuring the quality and safety of products in accordance with the recommendations of the clinical and pharmaco-economic medication assessment program put in place by the Institut national d’excellence en santé et en services sociaux established by the Act respecting the Institut national d’excellence en santé et en services sociaux (chapter I-13.03).

5. Pharma-Québec’s functions, in the pursuit of its mission, include

(1) providing a joint medication and vaccine procurement service through public tendering, bundling arrangements and volume agreements;

(2) determining the reimbursement schedule for patented products after establishing the amount reimbursable for each therapeutic class, which amount is based on the price of the medication offering the best cost–therapeutic benefit ratio, according to the assessment conducted by the Institut national d’excellence en santé et en services sociaux within the scope of its mission;

(3) drawing up a list of medications the cost of which is guaranteed by the basic plan established by the Act respecting prescription drug insurance (chapter A-29.01), and exercising the functions assigned to the Minister by Divisions I, II and III of Chapter IV of that Act;

(4) building and operating facilities, under public control, for producing generic medications and vaccines; and

(5) investing up to five percent of its budget in research and development devoted to new pharmaceutical products in order to ensure the long-term vitality and independence of pharmaceutical research, in the sole interest of the public health network.

6. The Minister and Pharma-Québec may enter into an agreement under which they undertake to carry out, on each other’s behalf and subject to the terms of the agreement, specific operations related to Pharma-Québec’s mission or the Minister’s functions.

The agreement provides for the remuneration of Pharma-Québec or the Minister, if expedient.

The agreement also defines the duties, powers and responsibilities of the partners in the medication field, in particular the Régie de l’assurance maladie du Québec, the Institut national d’excellence en santé et en services sociaux, the Minister, the relevant branches and divisions within the Government, the institutions established under section 79 of the Act respecting health services and social services (chapter S-4.2) and section 64 of the Act respecting health services and social services for Cree Native persons (chapter S-5), and Pharma-Québec.

The agreement must be approved by the Government.

7. Pharma-Québec may enter into an agreement with any person for the carrying out of its mission, subject to the terms of the agreement.

Pharma-Québec may, in particular, enter into agreements with volunteer and community groups and private enterprises to ensure their active participation at all levels of decision-making and of services planning, management and evaluation.

8. Subject to the applicable legislative provisions, Pharma-Québec may enter into an agreement with a government other than that of Québec, with a

department of such a government, with an international organization or with a body of such a government or organization.

CHAPTER III

ORGANIZATION AND OPERATION

9. Pharma-Québec is administered by a board of directors consisting of 13 members, namely,

(1) a president and chief executive officer, who is a member of the board by virtue of office; and

(2) 12 other members, appointed by the Government as follows:

(a) four persons from the scientific and professional fields;

(b) four representatives of the social and community sectors, including at least one person representing users of the health network and one person from the consumer rights sector;

(c) one representative of the Régie de l'assurance maladie du Québec;

(d) one representative of the Institut national de santé publique du Québec established under the Act respecting Institut national de santé publique du Québec (chapter I-13.1.1);

(e) one representative of the Institut national d'excellence en santé et en services sociaux; and

(f) one representative of the Minister of Health and Social Services.

10. The Government appoints the president and chief executive officer for a term of up to five years and the other board members for a term of up to four years.

On the expiry of their term, board members remain in office until replaced or reappointed.

11. The chair and the vice-chair of the board of directors are appointed by the Government from among the board members.

12. The offices of chair of the board of directors and president and chief executive officer may not be held concurrently.

13. The president and chief executive officer is responsible for the administration and management of Pharma-Québec in keeping with its regulations, by-laws and policies. The office of president and chief executive officer is a full-time position.

If the president and chief executive officer is absent or unable to act, the board of directors may designate a member of Pharma-Québec's personnel to exercise the functions of that position.

14. The chair calls and presides at meetings of the board of directors, sees to the proper functioning of the board and exercises any other functions assigned by the board.

The vice-chair exercises the functions of the chair when the latter is absent or unable to act.

15. A vacancy on the board of directors, other than in the position of chair or president and chief executive officer, is filled by the Government for the unexpired portion of the term of the member to be replaced.

Non-attendance at a number of board meetings determined by the by-laws of Pharma-Québec constitutes a vacancy in the cases and circumstances specified in the by-laws.

16. The remuneration, employment benefits and other conditions of employment of the president and chief executive officer are determined by the Government.

The other board members receive no remuneration except in the cases, on the conditions and to the extent determined by the Government. They are entitled, however, to the reimbursement of expenses incurred in the exercise of their functions in the cases, on the conditions and to the extent determined by the Government.

17. The quorum at meetings of the board of directors is the majority of its members.

Decisions of the board are made by a majority vote of the members present. In the case of a tie vote, the person presiding at the meeting has a casting vote.

18. The members of the board of directors may waive notice of a meeting. Attendance at a meeting of the board constitutes a waiver of notice, unless the members are present to contest the legality of the meeting.

19. If all agree, the board members may take part in a meeting by means of equipment enabling all participants to communicate directly with one another.

20. Written resolutions, signed by all board members entitled to vote, have the same value as if they had been adopted during a meeting of the board of directors.

A copy of all such resolutions is kept with the minutes of the proceedings or other equivalent record book.

21. The minutes of the meetings of the board of directors, approved by the board and certified by the chair, the president and chief executive officer, the secretary or another person authorized by Pharma-Québec, are authentic. The same applies to documents and copies emanating from Pharma-Québec or forming part of its records, if they are so certified.

22. A deed, document or writing is binding on and may be attributed to Pharma-Québec only if it is signed by the chair, the president and chief executive officer, the vice-chair, the secretary or a member of Pharma-Québec's personnel and, in the latter case, only to the extent determined by by-law of Pharma-Québec.

23. Pharma-Québec may, by by-law and subject to specified conditions, allow a signature to be affixed by means of an automatic device, an electronic signature to be affixed, or a facsimile of a signature to be engraved, lithographed or printed on specified documents. However, the facsimile has the same force as the signature itself only if the document is countersigned by a person referred to in section 22.

24. Pharma-Québec may determine, by by-law, the mode of operation of the board of directors. It may form an executive committee, a scientific committee and any other committee, determine their mode of operation and delegate powers of the board to them.

25. Pharma-Québec adopts standards of ethics and professional conduct for its personnel. The standards must contain provisions that include, as a minimum, the requirements for public servants under the Public Service Act (chapter F-3.1.1). The standards are published by Pharma-Québec in its operations report.

26. The members of Pharma-Québec's personnel are appointed in accordance with the staffing plan established by by-law of Pharma-Québec.

Subject to the provisions of a collective agreement, the standards and scales of remuneration, employment benefits and other conditions of employment of the members of the personnel are determined by by-law of Pharma-Québec in accordance with the conditions defined by the Government.

27. The Minister may issue directives concerning the policies and general objectives to be pursued by Pharma-Québec.

Directives are submitted to the Government for approval. Once approved, they are binding on Pharma-Québec.

Directives are tabled in the National Assembly within 15 days of their approval by the Government or, if the Assembly is not sitting, within 15 days of resumption.

CHAPTER IV

FINANCIAL PROVISIONS

28. Pharma-Québec may not, without the Government's authorization,

(1) contract a loan that causes the total of its current outstanding loans to exceed the amount determined by the Government;

(2) make a financial commitment in excess of the limits or contrary to the conditions determined by the Government;

(3) acquire or hold shares or an interest in a legal person or a partnership in excess of the limits or contrary to the conditions determined by the Government;

(4) dispose of shares or an interest in a legal person or a partnership in excess of the limits or contrary to the conditions determined by the Government;

(5) acquire or dispose of other assets in excess of the limits or contrary to the conditions determined by the Government; or

(6) accept a gift or legacy to which a charge or condition is attached.

29. The Government may, on the conditions and in the manner it determines,

(1) guarantee payment of the principal and interest on any loan contracted by Pharma-Québec and guarantee its obligations; and

(2) authorize the Minister of Finance to advance to Pharma-Québec any amount considered necessary to meet its obligations or pursue its mission.

30. Pharma-Québec finances its activities out of the amounts it receives and the appropriations it is granted annually for that purpose by Parliament. Any surplus amount is retained by Pharma-Québec unless the Government decides otherwise.

31. Each year, Pharma-Québec submits its budget estimates for the following fiscal year to the Minister, in accordance with the form and content and the schedule that the Minister determines.

The estimates are submitted to the Minister for approval.

CHAPTER V

ACCOUNTS AND REPORTS

32. The fiscal year of Pharma-Québec ends on 31 March.

33. Not later than 31 July each year, Pharma-Québec must file its financial statements and operations report for the preceding fiscal year with the Minister.

The financial statements and the operations report must include all the information required by the Minister.

34. The Minister tables Pharma-Québec’s financial statements and operations report in the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.

35. The Auditor General audits Pharma-Québec’s books and accounts each year and whenever so ordered by the Government.

The Auditor General’s report must be submitted with Pharma-Québec’s financial statements and operations report.

36. Pharma-Québec must provide the Chair of the Conseil du trésor with any information the Chair of the Conseil du trésor requires on Pharma-Québec’s operations or those of its subsidiaries.

CHAPTER VI

AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

37. Schedule 2 to the Financial Administration Act (chapter A-6.001) is amended by inserting the following in alphabetical order:

“Pharma-Québec”.

PUBLIC PROTECTOR ACT

38. Section 15 of the Public Protector Act (chapter P-32) is amended by adding the following paragraph at the end:

“(9) Pharma-Québec.”

ACT RESPECTING THE PROCESS OF NEGOTIATION OF THE COLLECTIVE AGREEMENTS IN THE PUBLIC AND PARAPUBLIC SECTORS

39. Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2) is amended by inserting the following in alphabetical order:

“— Pharma-Québec”.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

40. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (chapter R-10) is amended by inserting the following in paragraph 1 in alphabetical order:

“Pharma-Québec”.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

41. Schedule II to the Act respecting the Pension Plan of Management Personnel (chapter R-12.1) is amended by inserting the following in paragraph 1 in alphabetical order:

“Pharma-Québec”.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

42. Section 383 of the Act respecting health services and social services (chapter S-4.2) is repealed.

43. Section 431 of the Act is amended by inserting the following subparagraph after subparagraph 7 of the second paragraph:

“(7.1) administer the Act to establish Pharma-Québec (*insert the year and chapter number of this Act*);”.

CHAPTER VII

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

44. The documents of the Ministère de la Santé et des Services sociaux and the Régie de l’assurance maladie du Québec relating to the procurement of medications and vaccines become documents of Pharma-Québec to the extent and on the conditions determined by the Government.

45. Subject to the conditions of employment applicable to them, the employees of the Ministère de la Santé et des Services sociaux or the Régie de l’assurance maladie du Québec assigned to the procurement of medications and vaccines in office on (*insert the date of coming into force of this section*) become employees of Pharma-Québec, insofar as a decision of the Conseil du trésor providing for their transfer is made before (*insert the date that is one year after the date of coming into force of this section*).

46. The employees of Pharma-Québec who are represented by a certified association at the time of their transfer continue to be represented by that

association, and the collective agreements in force at that time continue to apply.

47. Subject to the conditions of employment applicable to them, the employees referred to in section 45 hold the positions and perform the duties assigned to them by Pharma-Québec.

48. An employee of Pharma-Québec referred to in section 45 who, when appointed to Pharma-Québec, was a public servant with permanent tenure may request a transfer to a position in the public service or take part in a competition for promotion to such a position, in accordance with the Public Service Act (chapter F-3.1.1).

49. Section 35 of the Public Service Act applies to an employee referred to in section 48 who takes part in a competition for promotion to a position in the public service.

50. An employee referred to in section 48 who applies for a transfer or takes part in a competition for promotion may ask the Chair of the Conseil du trésor for an assessment of the classification the employee would be assigned in the public service. The assessment must take into account the employee's classification on the last day of employment in the public service and the experience and training acquired in the course of employment with Pharma-Québec.

If an employee is transferred under section 48, the deputy minister or chief executive officer of the body determines the employee's classification in accordance with the assessment provided for in the first paragraph.

If an employee is promoted under section 48, the classification assigned to the employee must take into account the criteria set out in the first paragraph.

51. In the event of a partial or total discontinuance of the operations of Pharma-Québec or a shortage of work, an employee referred to in section 48 is entitled to be placed on reserve in the public service with the classification held on the last day of employment in the public service.

In that case, the Chair of the Conseil du trésor determines the employee's classification taking into account the criteria set out in the first paragraph of section 50.

52. A person who, in accordance with the applicable conditions of employment, refuses to be transferred to Pharma-Québec is assigned to Pharma-Québec until the Chair of the Conseil du trésor is able to place the person in accordance with section 100 of the Public Service Act. The same applies to a person placed on reserve in accordance with section 51, who remains in the employ of Pharma-Québec in the meantime.

53. Subject to remedies available under a collective agreement, an employee referred to in section 45 whose employment is terminated or who is dismissed may bring an appeal under section 33 of the Public Service Act.

54. Despite sections 10 and 16, the Government appoints Pharma-Québec's first president and chief executive officer before 31 March 2014, for a term not exceeding three years.

The Government also appoints the board of directors under section 9 before 31 March 2014.

55. The Minister must enter into an agreement with Pharma-Québec under section 6 before 31 March 2014.

56. Before 31 March 2014, the Minister must table in the National Assembly a proposal for pooling the resources allocated to the procurement of medications and vaccines.

In accordance with section 30, the Minister must also table in the National Assembly a budget for the fiscal year 2014-2015. The budget must include estimates for the resources referred to in the first paragraph.

57. The transfer of branches from one government department to another under this Act or of functions from one minister to another or the exercise of a minister's functions under the direction of another minister must have been ordered by the Government in accordance with section 9 of the Executive Power Act (chapter E-18) before 1 June 2014. For the purposes of this Act, Pharma-Québec is considered to be a minister or a government department within the meaning of that section.

A minister or Pharma-Québec has the same powers and performs the same duties, with respect to such branches or functions, as the minister under whose control or responsibility the branches or functions formerly fell or the minister under whose direction the functions are exercised, as the case may be.

An order under the fourth paragraph of section 6 has the effect of an order under section 9 of the Executive Power Act.

58. The Minister of Health and Social Services is responsible for the administration of this Act.

59. The provisions of this Act come into force on the date or dates to be set by the Government.

