



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 3

**An Act to foster the financial health and
sustainability of municipal defined
benefit pension plans**

Introduction

**Introduced by
Mr. Pierre Moreau
Minister of Municipal Affairs and Land Occupancy**

**Québec Official Publisher
2014**

EXPLANATORY NOTES

This bill provides that municipal defined benefit pension plans must be restructured with a view to improving their financial health and ensuring their sustainability.

To that end, pension plans must be amended from 1 January 2014 to provide for the equal sharing of costs and the sharing of future deficiencies for service subsequent to 31 December 2013 between the active members and the municipal body, as well as for the establishment of a stabilization fund. In addition, the maximum cost of the plan, which comprises the current service contribution and the stabilization contribution, must not exceed 18% of the overall payroll.

The plans must also be amended to provide that deficiencies attributable to members who are active on 1 January 2014, for service accumulated prior to that date, are to be assumed in equal parts between those active members and the municipal body. The municipal body is also authorized to suspend indexation of the pensions of members who are retired before 1 January 2014 so that those members assume their portion of the deficiencies; the remaining deficiencies are borne by the municipal body.

An actuarial valuation must be prepared for each plan as at 31 December 2013.

Various conditions are established regarding the amendments to be made to the plans. In particular, the normal pension accumulated by active members as at 1 January 2014 cannot be amended, except for certain conditions. Automatic indexation of the pensions of active members is prohibited but an ad hoc indexation may be paid under certain conditions, if a plan's financial situation so allows. Certain rules are set out regarding the funding of any additional obligations of plans.

The bill establishes a restructuring process with a one-year negotiation period, which can be extended for a three-month period, renewable only once. The parties may also resort to conciliation, and if negotiations fail, the Minister may appoint an arbitrator to settle the dispute. The bill provides that the arbitrator's decision must be rendered within six months and sets out the various factors the arbitrator must take into consideration in rendering the decision.

Lastly, miscellaneous and transitional provisions are included in order to require municipal bodies to publicly present the financial situation of any pension plans they have established, and in order to grant an extension with respect to plans that are the subject of an agreement entered into in the past three years.

Bill 3

AN ACT TO FOSTER THE FINANCIAL HEALTH AND SUSTAINABILITY OF MUNICIPAL DEFINED BENEFIT PENSION PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND APPLICATION

1. The purpose of this Act is to require the amendment of any defined benefit pension plan constituted under the Supplemental Pension Plans Act (chapter R-15.1) and established by a municipal body, with a view to improving the plan's financial health and ensuring its sustainability. To that end, a restructuring process and special restructuring rules are provided.

For the purposes of this Act, a defined benefit-defined contribution pension plan is considered a defined benefit plan. However, only the defined benefit component of such a pension plan is subject to restructuring.

2. For the purposes of this Act, "municipal body" means

(1) a municipality;

(2) any body declared by law to be a mandatary or agent of a municipality and any body whose board of directors is composed in the majority of members of the council of a municipality and whose budget is adopted by that council;

(3) a metropolitan community, an intermunicipal board, a public transit authority, an intermunicipal board of transport and any other public body whose board of directors is composed in the majority of elected municipal officers.

CHAPTER II

RESTRUCTURING

DIVISION I

GENERAL PROVISIONS

3. All pension plans subject to this Act must be the subject of a complete actuarial valuation established on the basis of the data as at 31 December 2013.

The report on the actuarial valuation must be sent to the Régie des rentes du Québec (Board) not later than 31 December 2014.

The valuation must be established using the Canadian Institute of Actuaries' 2014 Public Sector Mortality Table (CPM2014Publ), a maximum interest rate of 6%, and the other demographic assumptions from the previous actuarial valuation.

The portion of any deficiency attributable to members who are retired on 31 December 2013 and the portion attributable to members who are active on 1 January 2014 must be presented separately. To determine the portion of the deficiency attributable to each of these groups, plan assets are apportioned in proportion to the liabilities determined on a funding basis. If a plan includes a defined contribution component, the assets and liabilities of that component are not taken into account for the purposes of the apportionment.

Any member who is not receiving a retirement pension is an active member for the purposes of this Act.

4. The amendments the parties agree to make at the end of the restructuring process undertaken in accordance with this chapter must contain separate provisions for service subsequent to 31 December 2013 and for service ending on that date.

DIVISION II

SERVICE SUBSEQUENT TO 31 DECEMBER 2013

5. All pension plans must be amended to provide that, from 1 January 2014,

(1) the current service contribution is to be shared equally between the municipal body and the active members;

(2) any related deficiency is to be assumed in equal parts by the municipal body and the active members; and

(3) a stabilization fund, funded by a stabilization contribution and aimed at protecting the plan from adverse deviation likely to affect the plan in the future, is to be established.

On 1 January 2014, the sum of the current service contribution and the stabilization contribution must not exceed 18% of the overall payroll of the active members. The sum applicable to police officers and firefighters is 20%.

Despite subparagraph 1 of the first paragraph, if the active members are contributing to the current service contribution in a proportion of 35% or less on 31 December 2013, the plan may be amended so as to increase that proportion incrementally by 10% of that current service contribution by not later than

1 January 2017 and so that the proportion reaches 50% by not later than 1 January 2020.

6. The stabilization contribution provided for in subparagraph 3 of the first paragraph of section 5 represents 10% of the current service contribution, established without taking into account any margin for adverse deviation determined by the Canadian Institute of Actuaries. It is paid in equal parts by the municipal body and the active members into the fund described in that subparagraph. Actuarial gains generated from 1 January 2014 must also be paid into the fund.

The required value of the stabilization fund must be calculated in the same manner as the provision for adverse deviation established with respect to the plan's obligations prior to 1 January 2014.

7. The municipal body and the active members cease to pay the stabilization contribution once the stabilization fund reaches the value prescribed in section 6. However, they may continue to pay the contribution if the parties have agreed on an indexation, payable out of the fund, of the pensions.

DIVISION III

SERVICE PRIOR TO 1 JANUARY 2014

8. Regarding deficiencies identified as at 31 December 2013, all pension plans must be amended to provide that, from 1 January 2014,

(1) indexation of the pensions of members who are retired on 31 December 2013 may be suspended if the municipal body so decides;

(2) the members who are active on 1 January 2014 and the municipal body assume in equal parts the deficiencies attributable to them for service accumulated prior to that date, subject to the conditions set out in this division.

9. Suspending indexation of the pensions of members who are retired on 31 December 2013 reduces the portion of the deficiencies attributable to them by the value of the indexation.

The remaining deficiencies are borne by the municipal body. The period provided to reimburse them is 15 years and they may in no case be consolidated.

10. The portion of the deficiencies attributable to members who are active on 1 January 2014 must be assumed through the reduction of the benefits under the pension plan, with respect to those members, from that date.

The portion of the deficiencies attributable to the municipal body must be reimbursed over a period of 15 years and the deficiencies may in no case be consolidated.

11. The municipal body and the active members may also agree to share the cost of the deficiencies, in a proportion of up to 60% for the municipal body and up to 40% for the active members if other elements of the overall remuneration are amended. They must then be able to demonstrate that their agreement has the same effect as equally sharing the costs of the pension plan solely on the basis of the conditions set out in the plan.

12. Any new deficiency attributable to the active members in relation to service prior to 1 January 2014 and identified in an actuarial valuation subsequent to 31 December 2013 is borne by the municipal body.

DIVISION IV

IMPLEMENTATION CONDITIONS

13. No pension plan may provide for the automatic indexation of pensions, subject to paragraph 1 of section 8.

However, with respect to both service subsequent to 31 December 2013 and service prior to 1 January 2014, an ad hoc indexation may be provided for in the event that a surplus defined in the second paragraph of section 15 is identified in an actuarial valuation subsequent to that of 31 December 2013.

If the abolition of the automatic indexation of pensions with respect to service prior to 31 December 2013 represents an amount in excess of the portion of the deficiencies attributable to active members which is determined under paragraph 2 of section 8, the amount exceeding that portion must be recorded as an actuarial gain in the reserve.

If a plan provided for indexation with respect to service prior to 1 January 2014, that indexation must be resumed according to the formula already provided in the plan, taking into account only the period elapsed since the last actuarial valuation. It is paid from the fiscal year following the actuarial valuation, but not retroactively.

14. A pension plan may provide, with respect to active members, for the amendment, suspension, abolition or restoration of any benefits from 1 January 2014, other than the normal pension and the surviving spouse's pension. However, the definition of the salary or wages on which the normal pension of members who are active on 1 January 2014 is based can be amended. The accrual rate of such members' normal pension can, however, be amended only with respect to service subsequent to 31 December 2013.

The additional pension benefit provided for in section 60.1 of the Supplemental Pension Plans Act must be abolished on 1 January 2014 with respect to the active members.

15. The plan must provide that any additional obligation resulting from an amendment to the plan must be paid in full on the day following the date of

the actuarial valuation establishing the value of the additional obligation. Any surplus assets of the pension plan may be allocated to the payment of such an obligation.

The surplus assets represent, with respect to service subsequent to 31 December 2013, the difference between the plan's assets and the sum of its liabilities and the amount corresponding to the prescribed value of the stabilization fund or, with respect to service prior to 1 January 2014, the difference between the plan's assets and the sum of its liabilities and the provision for adverse deviation. The present value of amortization payments relating to the deficiencies referred to in the second paragraph of section 9 or the second paragraph of section 10 must be included in the value of the assets.

However, no additional obligation may be undertaken until indexation of pensions has been resumed with respect to service prior to 1 January 2014.

16. The surplus assets of the plan cannot be allocated to the payment of contributions, unless a fiscal rule so requires.

17. Sections 20 and 21 of the Supplemental Pension Plans Act do not apply to an amendment made to a plan under this Act.

CHAPTER III

RESTRUCTURING PROCESS

DIVISION I

NEGOTIATIONS

18. Negotiations between municipal bodies and active members must be undertaken not later than 1 February 2015 with a view to reaching an agreement for the amendment of the pension plan in accordance with this Act.

Not later than 15 January 2015, the municipal body sends every association representing active members concerned by the plan a written notice of not less than 8 nor more than 15 days stating the date, time and place its representatives will be ready to meet the association's representatives.

A copy of the notice is sent to the Minister. Failing such a notice, negotiations are deemed to have begun on 1 February 2015.

19. If the active members of a plan are represented by more than one association, negotiations are conducted separately or jointly by those associations in accordance with the usual rules.

20. Negotiations must begin and continue diligently and in good faith in order to reach an agreement within 12 months after they began.

21. At the joint request of the parties, the Minister may extend negotiations by three months. This extension may be renewed only once.

22. If the parties reach an agreement, they send the Minister a notice of agreement.

Likewise, the parties inform the Minister if they are unable to reach an agreement, unless a conciliator has been appointed, in which case the notice is sent to the conciliator.

DIVISION II

CONCILIATION

23. The parties may, at any time during the negotiation period, retain the services of a conciliator, to be chosen jointly from a list drawn up by the Minister of Labour.

If the parties disagree, the Minister appoints the conciliator.

24. The conciliation process does not alter the negotiation period.

25. The parties are required to attend all meetings to which they are convened by the conciliator.

26. The conciliator's costs and fees are borne in equal parts by the parties.

27. If an agreement is reached on all the matters submitted to the conciliator, the conciliator reports on the agreement to the minister responsible for the administration of this Act.

28. At the expiry of the negotiation period or as soon as it is clear to the conciliator that conciliation will not enable the parties to reach an agreement, the conciliator submits to the parties a report stating the matters on which they agree, those still in dispute and any recommendation the parties failed to implement.

At the same time, the conciliator forwards a copy of the report to the minister responsible for the administration of this Act.

DIVISION III

ARBITRATION

29. At the expiry of the negotiation period, an arbitrator is appointed to settle the dispute if no agreement has been sent to the Minister.

An arbitrator may also be appointed before the end of such a period at the joint request of the parties or on receiving the report provided for in section 28 from the conciliator.

30. The Minister draws up a list of arbitrators on the basis of the criteria and the expertise and experience profiles determined by the Minister. This list is published in the *Gazette officielle du Québec*.

The Minister determines the arbitrators' costs and fees, which are borne by the parties.

An arbitrator cannot have any pecuniary interest in the dispute submitted to him or her or have acted as an attorney, adviser or representative of any of the parties.

31. The arbitrator is chosen jointly by the parties from the same list as that provided for in section 30. If the parties cannot agree, the Minister appoints the arbitrator.

32. The arbitrator is assisted by assessors unless the parties reach an agreement to the contrary within 15 days of the arbitrator's appointment.

Within 15 days of the arbitrator's appointment, each party designates an assessor to assist it. If a party does not designate an assessor within the prescribed time, the arbitrator may proceed in the absence of that party's assessor.

The arbitrator may proceed in the absence of an assessor who does not attend after having been convened.

33. Each party pays its assessor's costs and fees.

34. Each party pays the costs and fees of its expert witnesses.

The costs and fees of expert witnesses summoned on the initiative of the arbitrator are borne by the parties.

35. The arbitrator must render a decision within six months after the dispute is referred to him or her.

36. No legal proceedings may be brought against an arbitrator for an act performed in good faith while carrying out the functions of office.

37. The parties may come to an agreement at any time on any of the matters in dispute.

38. The arbitrator renders a decision in accordance with the rules of law.

The arbitrator must take into account, among other considerations, taxpayers' ability to pay, intergenerational equity, the sustainability of the pension plan, compliance with cost-sharing principles and the objectives set out in this Act, contribution holidays and any improvements made to the plan.

In addition, the arbitrator must take into account the past concessions granted by the members with respect to other elements of the overall remuneration.

The arbitrator's decision is binding on the parties from the time it is rendered. No appeal lies from the arbitrator's decision.

39. The arbitrator sends a copy of the decision to the Minister.

40. Chapters V and VI of Title I of Book VII, except articles 945.6 to 945.8, of the Code of Civil Procedure (chapter C-25) apply, with the necessary modifications, to arbitration provided for in this Act.

41. Except on a question of jurisdiction, no recourse under articles 33 and 834 to 846 of the Code of Civil Procedure may be exercised, nor any injunction granted, against an arbitrator acting in his or her official capacity.

DIVISION IV

REGISTRATION OF AMENDMENTS

42. As soon as an agreement has been sent to the Minister under section 22 or 28 or after an arbitration decision has been sent to the Minister under section 39, the resulting amendments to the pension plan are communicated to the Board for registration.

43. A new actuarial valuation established on the basis of the data as at 31 December 2013 must be made taking into account the amendments made to the plan. This actuarial valuation must be sent to the Board.

44. If the Board is unable to register an amendment to the plan resulting from an agreement or from an arbitrator's decision because of its non-compliance with this Act or the Supplemental Pension Plans Act, the Board must inform the pension committee.

The committee must in turn inform the parties to the agreement or, if applicable, the arbitrator. In such a case, the parties must amend their agreement or the arbitrator must amend the decision to bring the amendments to the plan into compliance with this Act and the Supplemental Pension Plans Act. If the parties do not agree, Division III applies.

DIVISION V

MISCELLANEOUS PROVISIONS

45. The existence of a collective agreement or any other valid agreement does not preclude the application of this Act.

46. The signing of an agreement may take place only after being authorized by secret ballot by a majority vote of the members of the association representing the active members who exercise their right to vote.

If the negotiations are carried out jointly by two or more associations, the ballot is held in accordance with the usual rules. In the absence of such rules, the signing must be authorized, by secret ballot, by a vote in which the majority is calculated taking into account all the active members, regardless of which group they belong to.

47. A municipal body must take measures to allow active members who are covered by a pension plan established by a collective agreement, but who are not represented by an association, as well as active members who are covered by a plan established otherwise than by a collective agreement, to submit observations on the proposed amendments to the plan.

If 30% or more of those active members object to the amendments, the amendments cannot be applied, unless a decision of the arbitrator so authorizes.

48. If a collective agreement is in force, any agreement reached or any decision made by the arbitrator under this chapter that amends the terms of the collective agreement has the effect of amending the collective agreement. If negotiations are in progress to renew the collective agreement, the agreement or the decision is, from the date it becomes effective, deemed to be part of the most recent collective agreement.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

49. Not later than 19 January 2015, the council of the municipal body must hold a sitting during which it presents a report, based on the conclusions of the actuarial valuation described in section 3, on the financial situation of each of the pension plans it has established. The report must contain

- (1) a summary of the main provisions of the plan;
- (2) the value of the plan's assets;
- (3) the value of the plan's liabilities;
- (4) the deficiency or surplus attributable to the members who are retired;

(5) the deficiency or surplus attributable to the active members;

(6) the current service contribution payable by the municipal body and that payable by the active members, both expressed as a percentage of the overall payroll;

(7) the amortization payment;

(8) the overall payroll of the active members.

50. Despite section 5 and until an agreement is reached between the municipal body and the active members or until the decision of the arbitrator under Chapter III, the municipal body assumes any increase in the portion of the current service contribution attributable to active members from 1 January 2014.

The difference between the value of the current service contribution paid by the municipal body from 1 January 2014 until the date of the agreement or of the arbitrator's decision and the contribution that should have been paid under section 5, from which the value of the increase in the contribution referred to in the first paragraph must be subtracted, is allocated to the payment of the current service contribution of the municipal body for the following year and, if applicable, for subsequent years.

51. If an agreement regarding a pension plan was entered into by a municipal body and some or all of its employees during the three years preceding the date of assent to this Act, negotiations may begin not later than 1 January 2016 if the parties so agree. In such a case, the reference actuarial valuation is the valuation prepared on the basis of the data as at 31 December 2014 and the deadlines prescribed in Chapter III apply, with the necessary modifications. The maximum applicable interest rate is determined by the Minister.

52. If an agreement regarding a plan entered into by a municipal body and some or all of its employees during the three years preceding the date of assent to this Act provides for the establishment of a stabilization fund, the stabilization fund provided for in subparagraph 3 of the first paragraph of section 5 is deemed to have been established.

The rules set out in this Act apply to such a fund from 1 January 2014 if negotiations between the parties begin on 1 February 2015 and from 1 January 2015 if the parties agree to begin negotiations on 1 January 2016.

For the purposes of the actuarial valuation of such a plan, service prior to the establishment of the fund is deemed to be prior service within the meaning of Division III of Chapter II.

53. For the purposes of this Act, members who have begun receiving a retirement pension or those who filed an application with the plan administrator

for that purpose between 1 January 2014 and (*insert the date of introduction of this bill*) are considered members who are retired on 31 December 2013.

54. The initial deficiencies of the pension plans of Ville de Montréal and Ville de Québec, for which averaging measures over a period of more than 20 years were granted, are not taken into account in calculating the plan's deficiencies for the purposes of this Act.

55. The Board may issue technical directives relating to the administration of this Act.

56. This Act applies despite any provision to the contrary.

57. The Minister of Employment and Social Solidarity is responsible for the administration of this Act.

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

