



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 30

**An Act to amend the Supplemental
Pension Plans Act, particularly with
respect to the funding and
administration of pension plans**

Introduction

**Introduced by
Madam Michelle Courchesne
Minister of Employment and Social Solidarity**

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EXPLANATORY NOTES

The purpose of this bill is to improve the funding of pension funds in order to protect the pension benefits of plan members and beneficiaries. A further purpose of the bill is to enhance the governance of pension plans and better define the scope of the responsibilities of pension committee members and other persons involved in the administration of pension plans.

The bill introduces a number of measures dealing with the solvency of pension plans. It requires accelerated funding of any amendment to a pension plan whose cost causes the solvency of the plan to drop below a certain threshold determined by the bill. It also requires that a pension fund maintain a provision for adverse deviation to provide adequate coverage for the risks associated with market fluctuations. On the other hand, the bill offers some flexibility to employers by allowing them to use a letter of credit to fulfill part of their obligations as to the funding of a pension plan.

As well, the bill allows plan members who are no longer active to protect their pension by requesting that it be guaranteed by an insurer. In addition, the bill provides that any appropriation of the surplus assets of a pension plan to the funding of an amendment to the plan must be equitable both for the group of active members and for the group of non-active members and beneficiaries. Under the bill, the optional confirmation procedure already established by the Act as regards the employer's right to a contribution holiday becomes applicable to this type of appropriation of the plan's surplus assets and a compulsory and final referral to arbitration is integrated into the process.

In another connection, the bill requires pension committees to establish and observe specific governance and operation standards. It also provides that all delegates, representatives and service providers involved in the administration of a pension plan must be selected by the pension committee and must act in the best interest of plan members and beneficiaries. The bill contains additional rules to protect and compensate pension committee members in liability matters.

Bill 30

AN ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT, PARTICULARLY WITH RESPECT TO THE FUNDING AND ADMINISTRATION OF PENSION PLANS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 14 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by inserting the following subparagraph after subparagraph 16 of the second paragraph:

“(16.1) in the case of a plan to which the second paragraph of section 146.4 does not apply, the employer’s right, if any, to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan;”;

(2) by inserting “the third paragraph of” after “to which” in the first line of subparagraph 17 of the second paragraph.

2. Section 21.1 of the Act is amended by inserting “16.1 or” after “subparagraph” in the first line.

3. Section 24 of the Act is amended by striking out subparagraph 4 of the second paragraph.

4. Section 26 of the Act is amended by replacing “contributions” by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions” in the eleventh line of subparagraph 2 of the first paragraph.

5. Section 33 of the Act is amended by inserting “92.2 or” after “pursuant to section” in the second line of the third paragraph.

6. Section 39 of the Act is amended by replacing subparagraphs 1 and 2 of the first paragraph by the following subparagraphs:

“(1) in the case of an insured plan, the current service contribution as established in section 40;

“(2) in the case of an uninsured plan, the sum of the following amounts:

(a) the current service contribution determined in accordance with sections 138 and 139; and

(b) the amortization payment determined in respect of the funding deficiency or the sum of the amortization payments determined in respect of the solvency deficiencies, whichever is higher.”

7. Section 39.1 of the Act is amended

(1) by replacing “sections 39 and 140” in the first line by “section 39”;

(2) by replacing “sections 39 and 140” in the third line of paragraph 2 by “section 39”.

8. Section 41 of the Act is amended

(1) by inserting “, less the portion the employer is relieved of paying under section 42.1,” after “employer contribution” in the first line of the first paragraph;

(2) by inserting “any portion of the contribution the employer is relieved of paying under section 42.1 and” after “plus” in the eighth line of the third paragraph.

9. Section 42 of the Act is replaced by the following section:

“42. If the amortization period for an unfunded actuarial liability begins in the course of a fiscal year of the plan, the amortization payment determined for that year must be paid in as many monthly payments as there are months in the portion of the fiscal year included in the amortization period.”

10. The Act is amended by inserting the following section after section 42:

“42.1. Under the conditions prescribed by regulation, an employer may, upon providing the pension committee with a letter of credit established in accordance with the regulations, be relieved of paying all or part of the portion of the employer contribution related to an amortization payment determined for a fiscal year of the plan in relation to the solvency deficiency.

However, employers who are parties to a multi-employer pension plan may not avail themselves of the provisions of the first paragraph.”

11. The Act is amended by inserting the following section after section 92.1:

“92.2. Every member who, under a pension plan, has become entitled to a pension to which section 60 applies may, before payment begins, request

that the pension be guaranteed by an insurer under the conditions prescribed by regulation.

If no pension of the type to which the member is entitled under the pension plan is available on the market, the pension committee may, in order to have an insurer guarantee the pension, replace the characteristics of the pension that make it unavailable on the market by similar characteristics that do not entail such a result.

The pension thus modified must, on the date payment begins, be of a value equal to that of the pension to which the member is entitled; however, if equal value cannot be attained because of the limits set under the Taxation Act, an amount equal to the difference between the value of the pension to which the member is entitled and the value of the modified pension must be paid to the member in a lump sum. These values must be established on the basis of the actuarial assumptions referred to in section 61.

The pension committee must have the pension guaranteed by an insurer not later than three years after payment of the pension begins. The pension committee must also, within the same period,

(1) have any additional pension purchased with the excess amount referred to in the first paragraph of section 83 guaranteed by an insurer, under the same conditions as the pension referred to in the first paragraph; and

(2) pay to the member any amount provided for in the third paragraph.

Section 83, with regard to additional voluntary contributions credited to the member, and section 104 do not apply to a member requesting that the pension referred to in the first paragraph be guaranteed. Within 60 days following the member's request, additional voluntary contributions and the sums to which those sections apply are to be either transferred to a pension plan within the meaning of section 98 or, if they are not to be converted into a pension, refunded to the member."

12. Section 101 of the Act is amended by replacing "142" in the first line by "143".

13. Chapter X of the Act, comprising sections 116 to 146, is replaced by the following:

"CHAPTER X

"SOLVENCY AND FUNDING

"DIVISION I

"GENERAL PROVISIONS

"116. This chapter does not apply

(1) to an insured pension plan in respect of which the insurer has undertaken to pay all costs and satisfy all rights arising from the termination of the plan;

(2) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled derive only and at all times from amounts credited to them; or

(3) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled are either pension benefits and refunds that are insured at all times or benefits described in paragraph 2.

“117. For the purposes of this chapter, a defined benefit-defined contribution plan shall be considered to be a defined benefit plan.

“118. Every pension plan shall be the subject of an actuarial valuation

(1) at the date on which it becomes effective;

(2) at the end of each fiscal year; or

(3) whenever so required by the Régie, at the date fixed by the Régie.

The actuarial valuations carried out under the first paragraph must be complete actuarial valuations, although the valuations provided for in subparagraph 2 of that paragraph may be partial actuarial valuations if the pension plan is both solvent and funded at the end of the fiscal year and if the assets of the plan on that date do not include any letters of credit. However, a plan must be the subject of a complete actuarial valuation not later than the date of the end of the last fiscal year of the plan occurring within three years after the date of the last complete actuarial valuation of the plan.

“119. The pension committee must transmit a report to the Régie on every actuarial valuation referred to in section 118:

(1) within nine months after the date of the actuarial valuation in the case of an actuarial valuation required under subparagraph 2 of the first paragraph of that section; or

(2) within the time fixed by the Régie, which shall be at least 60 days, in the case of an actuarial valuation required under subparagraph 3 of the first paragraph of that section.

“120. The funding of a pension plan must be based on an actuarial valuation report prepared at the request of the pension committee and transmitted to the Régie. Unless the report concerns a partial actuarial valuation carried out under the conditions set out in the second paragraph of section 118, it must refer to a complete actuarial valuation of the plan.

Except in the case provided for in section 121, an actuarial valuation report that has been transmitted to the Régie can be amended or replaced only at the request of or with the authorization of the Régie and subject to the conditions fixed by the Régie. If a report is amended or replaced, any unfunded actuarial liability determined by the valuation must be re-established and any actuarial certification required for the purposes of such valuation must be renewed.

“121. Any amendment to a pension plan having an impact on the funding of the plan must be considered for the first time not later than the latest of the following dates:

- (1) the date of the last actuarial valuation of the plan, the date of which is not later than the date the amendment is made; or
- (2) the effective date of the amendment, if that date coincides with the date on which the fiscal year of the plan ends or, if it does not, the date of the end of the fiscal year preceding the fiscal year in the course of which the amendment becomes effective.

If the actuarial valuation report was transmitted to the Régie and an amendment which should have been considered under the first paragraph was not taken into account, the report must be amended or replaced.

“122. Every certification required for the purpose of a partial actuarial valuation must reflect the financial position of the plan at the date of the actuarial valuation, estimated on the basis, in particular, of the actual rate of return of the pension fund, changes in interest rates determined on a solvency basis and the contributions actually paid into the pension fund since the last complete actuarial valuation of the plan.

If a partial actuarial valuation pertains to the amendments to a pension plan, it is limited to the determination of the value of the additional obligations arising from any amendment considered for the first time in the valuation or to the determination, on a funding basis, of the variation in the current service contribution arising from the amendment. The determination of the value or of variation must be based on the same assumptions and methods as were used for the most recent complete actuarial valuation, unless those assumptions and methods are not appropriate in view of the nature of the amendment made to the pension plan.

However, if the amendment to the pension plan increases the pensions already in payment and the additional obligations arising from the amendment are guaranteed by an insurer at the date on which the actuarial valuation report is prepared, the value of the obligations may be assumed to correspond to the premium paid to the insurer, discounted at the date of actuarial valuation according to the rate of return of the pension fund.

“DIVISION II

“SOLVENCY

“123. For the purpose of determining the solvency of a pension plan, the assets of the plan must be established according to their liquidation value or an estimate of that value and be reduced by the estimated amount of the administration costs to be paid out of the pension fund assuming that the pension plan is terminated on the valuation date.

The liabilities of the pension plan must be equal to the sum of the following values:

(1) the value of the obligations arising from the plan assuming that the plan is terminated on that date; and

(2) the value of the obligations arising from an amendment to the plan whose effective date is prior to the end of the plan’s fiscal year or of a part of that fiscal year immediately following the date of the valuation, such value having been computed on the assumption that the effective date of the amendment is the valuation date.

A letter of credit provided by the employer under section 42.1 forms part of the assets of the plan for the purpose of determining its solvency. The amount of the letter, or the total amount of such letters, may in no case exceed 15% of the value of the liabilities of the plan.

“124. If the plan provides expressly that the amount of a member’s pension must be established with reference to the progression of the member’s remuneration after termination, the value of the pension must be established assuming that the plan is terminated in such circumstances that the benefits accrued to the member in respect of the pension must be estimated at their maximum value. If the plan provides for other obligations the value of which depends on the circumstances in which the plan is terminated, they must be included in the liabilities to the extent provided in the scenario used for that purpose by the actuary in charge of the valuation.

If the liabilities established in accordance with section 123 and with the first paragraph are less than the value of the obligations arising from the pension plan assuming that the plan is terminated on the valuation date in such circumstances that the benefits accrued to the members must be estimated at their maximum value, the valuation report must also indicate the latter value.

“125. The liabilities of a pension plan under which refunds or benefits are guaranteed by an insurer must, for the purpose of determining the plan’s solvency, include the value corresponding to those benefits, and the plan’s assets must include an amount equal to that value.

“126. The values referred to in the second paragraph of section 123 and in section 124 are determined by applying sections 211 and 212 and

subparagraph 1 of the second paragraph of section 212.1, with the necessary modifications. In the case of pensions already in payment, inasmuch as they are not guaranteed by an insurer at the valuation date, those values must be determined according to an estimation of the premium that an insurer would charge to guarantee the pensions in the 30-day period following the valuation date.

“127. For the purpose of determining the degree of solvency of a pension plan, the value of the plan’s assets and that of its liabilities are both reduced by an amount representing the sum of the following values:

- (1) the value of any additional voluntary benefits paid into the pension fund, with accrued interest;
- (2) the value of the contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan, with accrued interest; and
- (3) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The degree of solvency of the plan at the date of a complete actuarial valuation corresponds to the value of the assets, increased by the special amortization contribution provided for in section 132 but reduced as provided in the first paragraph, over the value of the liabilities reduced in the same manner, expressed as a percentage.

“128. At the date of the actuarial valuation to which the pension plan is subject, a reserve must be established equal to the lesser of the following amounts:

- (1) the amount of the actuarial gains determined in the valuation;
- (2) the amount of the provision for adverse deviation calculated in accordance with the regulations.

The amount of the actuarial gains corresponds to the amount by which the plan’s assets, increased by the value of the amortization payments required to amortize a solvency deficiency determined in a prior actuarial valuation and which are not eliminated under section 131, exceed the plan’s liabilities, reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

“129. A pension plan is solvent if its assets are equal to or greater than its liabilities.

“130. If, at the date of an actuarial valuation of the pension plan, the plan’s assets do not cover its liabilities, an amount equal to the sum of the following amounts must be established at that date, using the same interest

rate as the one used to establish the plan's liabilities for the purpose of determining its solvency:

(1) the amount that represents the value of the amortization payments required to amortize a solvency deficiency determined in a prior actuarial valuation, which payments are not eliminated under section 131;

(2) the amount that corresponds to the amount by which the plan's liabilities, reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, exceed the sum of the plan's assets and the amount referred to in subparagraph 1.

At the same date, an amount must also be established equal to the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

“131. If, at the date of an actuarial valuation, the plan's assets are equal to or greater than the plan's liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128 and reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, any amortization payments remaining to be paid in connection with any solvency deficiency determined in a prior actuarial valuation are eliminated.

If the actuarial valuation report that made their elimination possible is later amended or replaced, the amortization payments must be re-established.

“132. If the actuarial valuation used to determine the value of the additional obligations arising from an amendment to the pension plan shows that the degree of solvency of the plan is less than 90%, a special amortization payment must be paid into the pension fund, payable in full on the day following the date of the valuation and equal to or greater than the lesser of:

(1) the amount established under the second paragraph of section 130; or

(2) the amount to be funded to ensure that the degree of solvency of the plan is equal to 90%.

“133. The solvency deficiency determined in a complete actuarial valuation corresponds to the sum of the amount established under subparagraph 2 of the first paragraph of section 130 and the amount by which the amount established under the second paragraph of that section exceeds the special amortization payment provided for in section 132. Any deficiency is reduced by the appropriation of the plan's surplus assets to the payment of the amount that represents the part of the value of the obligations referred to in the second paragraph of section 130.

The solvency deficiency determined in a partial actuarial valuation corresponds to the value of the additional obligations arising from any amendment considered for the first time in the valuation. It is not necessary to determine such a deficiency if the following conditions are met:

- (1) the plan's surplus assets are appropriated to the payment of the value of the obligations;
- (2) an actuary certifies in the valuation report that a complete actuarial valuation carried out at the date of the valuation would have allowed the establishment, in accordance with the third paragraph of section 146.1, of an amount that could be appropriated to the payment of employer contributions.

“DIVISION III

“FUNDING

“134. A plan is funded if, at the date of the actuarial valuation, the value of its assets, excluding any letter of credit provided by the employer, is equal to or greater than the value at that date of the obligations arising from the plan in respect of service credited to the members.

“135. If, at the date of an actuarial valuation of the pension plan, the plan's assets determined on a funding basis do not cover its liabilities determined on the same basis and reduced by the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation, an amount must be established at that date equal to the amount by which the liabilities thus reduced exceed the assets.

At the same date, an amount must also be established equal to the value of the additional obligations arising from any amendment to the plan considered for the first time in the valuation.

The funding deficiency corresponds to the sum of the amount established under the first paragraph and the amount established under the second paragraph. Any such deficiency is reduced by the amount which represents the part of the value of the obligations referred to in the second paragraph, if any, that is paid for by appropriation of the plan's surplus assets.

“136. The funding method used for an actuarial valuation must be consistent with generally accepted actuarial principles and be based on the assumption that the pension plan is perpetual.

The actuarial assumptions and methods used in verifying the funding of a plan must be suited, in particular, to the type of plan concerned, its obligations and the position of the pension fund.

“137. In addition to the other elements prescribed by regulation, an actuarial valuation must determine

(1) the current service contribution, expressed in currency or as a rate or percentage of the remuneration of active members estimated in the valuation, for the fiscal year or the part of the fiscal year of the pension plan that immediately follows the date of the valuation; and

(2) the value of the assets of the pension plan and of the obligations arising from the plan in respect of service credited to the members to the date of valuation.

“138. The current service contribution must be equal to or greater than the value of the obligations arising from the pension plan in respect of credited service completed during the year or the part of a year referred to in paragraph 1 of section 137. The contribution may, however, be less if it is determined on the basis of a funding method that maintains the plan fully or partially funded at all times.

“139. The value of the obligations referred to in section 137 or 138, which, under the plan, are to increase according, in particular, to the progression of the members’ remuneration, must include the estimated amount of the obligations when they become payable, assuming that contingencies based on actuarial assumptions as to survival, morbidity, mortality, employee turnover, eligibility for benefits or other factors will occur.

Furthermore, any pension benefit increase provided by the plan which becomes effective after the benefits begin to be paid must be taken into account in determining the value of the plan’s obligations.

“DIVISION IV

“AMORTIZATION OF UNFUNDED ACTUARIAL LIABILITIES

“140. Every unfunded actuarial liability must be amortized by dividing it into as many amounts as there are full months included in the amortization period.

“141. The monthly amortization payable for any fiscal year or any part of a fiscal year of the plan included in the amortization period must be established as a fixed amount at the date the unfunded actuarial liability is determined.

“142. The amortization period for an unfunded actuarial liability begins at the date of the actuarial valuation in which the unfunded liability is determined. It expires at the end of a fiscal year of the pension plan that ends:

(1) no later than five years after the date of the valuation, if the liability is a solvency deficiency; or

(2) no later than 15 years after the date of the valuation, if the liability is a funding deficiency.

“DIVISION V

“CONDITIONS GOVERNING THE PAYMENT OF BENEFITS

“143. The value of any benefit to which a member or a beneficiary becomes entitled under a pension plan and which corresponds to the following amounts must be paid in full:

(1) additional voluntary contributions credited to the member’s account, with accrued interest;

(2) member or employer contributions paid in respect of a member under terms in a defined benefit plan that are identical to those of a defined contribution plan, with accrued interest; and

(3) amounts credited to a member’s account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The periodic amounts payable as pension benefits, the benefit referred to in section 69.1, the value of any pension that must be guaranteed by an insurer under section 92.2 and the amount provided for in the third paragraph of that section must also be paid in full.

The value of any other benefit may be paid out of the pension fund only in proportion to the degree of solvency of the plan, up to 100%, as established in the last actuarial valuation report transmitted to the Régie.

“144. The actuary responsible for preparing the actuarial valuation report of the pension plan must determine whether the payment of the benefits that are transferable under an agreement referred to in section 106 could reduce the degree of solvency of the plan or, where that degree exceeds 100%, reduce it to a percentage lower than 100%.

If so, the payment of benefits is permitted only in the proportion fixed by the actuary to avoid such a consequence.

“145. The value of the benefits which, under section 143 or 144, cannot be paid may be paid up to 5% of the maximum pensionable earnings established under the Act respecting the Québec Pension Plan (chapter R-9) for the year during which the payment is to be made; the total amounts so paid since the last actuarial valuation may not, however, exceed 5% of the assets determined at the time of the actuarial valuation to ascertain the solvency of the pension plan.

“145.1. Despite the limits set in sections 143 to 145, the value of the benefits paid must be equal to or greater than the sum of the contributions paid by the member concerned and the amounts credited to the member’s account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

“146. The balance of the value of the benefits which, under the terms of sections 143 to 145.1, cannot be paid must be funded and paid within five years after the date of the initial payment or not later than the date on which the member concerned attains normal retirement age if that age is attained before the expiry of the five-year period.

If, under section 92.2, the pension committee has an insurer guarantee a member’s pension, the employer must pay into the pension fund, no later than the date on which the pension committee pays the premium required to guarantee the pension, an amount equal to the product obtained by multiplying the premium by the percentage amount by which 100% exceeds the degree of solvency established in the last actuarial valuation report transmitted to the Régie.”

14. The heading of Chapter X.1 of the Act is replaced by the following heading:

“APPROPRIATION OF SURPLUS ASSETS”.

15. Sections 146.1 to 146.3 of the Act are replaced by the following sections:

“146.1. The assets of a pension plan to which Chapter X applies may only be appropriated to the payment of employer contributions if the last actuarial valuation of the plan shows that:

(1) on a solvency basis, assets exceed liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128; or

(2) on a funding basis, assets exceed liabilities.

The maximum amount of assets that may be appropriated to the payment of employer contributions is determined in the last actuarial valuation of the pension plan.

In the case of a complete actuarial valuation, the maximum amount of assets is equal to the lesser of the following amounts:

(1) the surplus assets of the plan determined on a solvency basis, reduced by the reserve provided for in section 128; or

(2) the surplus assets of the plan determined on a funding basis.

In the case of a partial actuarial valuation, the maximum amount corresponds to the amount given by the actuary who certifies that a complete actuarial valuation carried out at the date of the valuation would have allowed the establishment, in accordance with the second paragraph, of a maximum amount equal to or greater than the amount given.

“146.2. In the case of a pension plan other than a plan referred to in section 146.1:

(1) the assets of the plan may only be appropriated to the payment of employer contributions if they exceed the value of the obligations arising from the plan, assuming that the plan is terminated; and

(2) the maximum amount of assets that may be appropriated for that purpose is limited to the portion of the assets that exceeds the value of the obligations arising from the plan, assuming that the plan is terminated.

“146.3. The appropriation of surplus assets to the payment of employer contributions must cease:

(1) in the case of a pension plan referred to in section 146.1, at the date of any actuarial valuation showing that there are no surplus assets, determined on a funding basis, or that assets determined on a solvency basis no longer exceed liabilities increased by the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128;

(2) in the case of a pension plan referred to in section 146.2, as soon as the condition set out in paragraph 1 of that section is no longer met.”

16. The Act is amended by inserting the following sections after section 146.3:

“146.3.1. The surplus assets of a pension plan may only be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan in a manner that is equitable both for the group of active members and the group of non-active members and beneficiaries. Anyone amending the plan must make sure this requirement is met.

In order to ensure equitable treatment, the main elements to be taken into consideration are the evolution of the pension plan, any amendments made to it and the circumstances in which those amendments were made, the origin of the surplus assets concerned, the use made in the past of any surplus assets, the characteristics of the benefits provided for under the plan and the characteristics of the pensions being paid out.

“146.3.2. Any disagreement concerning the application of section 146.3.1 is referred, on application by an interested party, to an arbitrator whose mandate is defined by the interested parties. If the arbitrator determines that the requirement of the first paragraph of that section has not been satisfied, the arbitrator shall determine how the situation is to be corrected. The arbitrator’s decision is binding on all interested parties.

“146.3.3. Sections 146.3.1 and 146.3.2 do not apply in the case of a pension plan to which the second paragraph of section 146.4 does not apply nor when an amendment confirming the employer’s right to appropriate the plan’s surplus assets to the payment of the value of the additional obligations arising from any amendment has been made to the plan in accordance with section 146.5.”

17. The heading of Division II of Chapter X.1 of the Act is replaced by the following heading:

“CONFIRMATION OF CERTAIN EMPLOYER’S RIGHTS REGARDING THE APPROPRIATION OF SURPLUS ASSETS”.

18. Section 146.4 of the Act is amended

(1) by replacing the first sentence by “The employer’s right to appropriate all or part of the surplus assets of a pension plan to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions may be confirmed by an amendment made to the plan in accordance with section 146.5.”;

(2) by adding the following paragraphs at the end:

“If an amendment referred to in the first paragraph is related to the appropriation of a plan’s surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan, it may apply only to a pension plan effective on 31 December 2009 or to a pension plan resulting from the division after that date of a pension plan that was effective on that date.

In addition, if the amendment is related to the appropriation of a plan’s surplus assets to the payment of employer contributions, it may apply only to a pension plan effective on 31 December 2000 or to a pension plan resulting from the division after that date of a pension plan that was effective on that date.”

19. Section 146.5 of the Act, amended by section 1 of chapter 5 of the statutes of 2005, is again amended

(1) by replacing “employer contributions” in the second line of the first paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”;

(2) by inserting “written” after “give effect to a” in the third line of the first paragraph;

(3) by replacing the first sentence of the second paragraph by the following sentence: “Any disagreement concerning the application of the first paragraph is referred, on application by the employer or one of the parties whose consent

is required under that paragraph, to an arbitrator whose mandate is defined by the interested parties.”

20. Section 146.6 of the Act is amended by replacing “employer contributions” in the second line of subparagraph 1 of the first paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

21. Section 146.7 of the Act is amended by replacing “employer contributions” in the third and fourth lines by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

22. Section 146.9 of the Act is amended by replacing “employer contributions” in the second line of the second paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

23. The Act is amended by inserting the following sections after section 151:

“**151.1.** The pension committee is presumed to have acted with prudence where it acted in good faith on the basis of an expert’s opinion.

“**151.2.** The pension committee may adopt internal by-laws establishing its rules of operation and governance. The committee ensures that they are complied with and reviews them regularly.

The internal by-laws determine, in particular,

(1) the duties and obligations of the committee members, delegates, representatives and service providers;

(2) the rules of ethics to which those persons are subject;

(3) the rules governing the appointment of the chair and secretary;

(4) the procedure for meetings and the frequency of meetings;

(5) the measures to be taken to provide professional development to committee members;

(6) the measures to be taken to ensure risk management;

(7) internal controls;

(8) the books and registers to be kept;

(9) the rules to be followed when selecting, remunerating, supervising or evaluating delegates, representatives or service providers;

(10) the standards that apply to the services rendered by the committee, its delegates and the service providers, namely those on communicating with plan members and beneficiaries.

In the event of a discrepancy between the text of the pension plan and the text of the internal by-laws as regards the operation and governance of the committee, the latter prevails.

“151.3. The secretary of the pension committee or any other person appointed by the committee provides the committee members with the documents and information needed to administer the pension plan.

Committee members have access to all information on the plan and may obtain a copy of any document. However, they may not have access to personal information unless it is required in the performance of their duties.”

24. Section 153 of the Act is amended

(1) by adding the following sentence: “The same applies to service providers and representatives who perform duties or exercise powers belonging to the committee.”;

(2) by adding the following paragraph:

“Service providers who do not perform duties or exercise powers belonging to the committee, in particular those preparing a report or providing expert advice, must act in the best interest of plan members and beneficiaries.”

25. Section 154 of the Act is amended by adding the following paragraph:

“Service providers and representatives who perform duties or exercise powers belonging to the pension committee are considered to be delegates.”

26. The Act is amended by inserting the following sections after section 154:

“154.1. Only the pension committee may select, hire and remunerate delegates, representatives and service providers.

“154.2. Delegates, representatives and service providers must submit reports on their work to the pension committee.

Delegates, representatives and service providers must report to the pension committee in writing any situation noted in the normal course of their duties that might adversely affect the financial interests of the pension fund and that requires correction.

If the pension committee fails to take immediate corrective measures, the delegate, representative or service provider must send a copy of the report to the Régie.

A person who, acting in good faith, sends a report to the committee or the Régie under the second or third paragraph may not be held liable.

“154.3. Delegates, representatives and service providers must provide the pension committee with the documents and information on the pension plan received from third persons, in particular from government authorities.

“154.4. Delegates, representatives and service providers may not exclude or limit their liability. Any clause to that effect is null.

Any clause to that effect in a contract terminated or in effect on (*insert the date of assent to this Act*) is null if it is abusive.

The abusive nature of such a clause is assessed, with the necessary modifications, with reference to the articles of the Civil Code on consumer contracts and contracts of adhesion.”

27. Section 161 of the Act is amended by replacing “containing the information prescribed by regulation and accompanied with the prescribed attestations, certificates and documents” at the end of the first paragraph by “drawn up on the form it provides and accompanied by the attestations and documents prescribed by regulation”.

28. Section 161.1 of the Act is repealed.

29. Section 162 of the Act is amended by adding the following sentence: “The cost of the professional development of committee members is an administration cost.”

30. The Act is amended by inserting the following section after section 162:

“162.1. The pension committee compensates members who sustain a loss in the performance of their duties and who have committed no fault.

If a member has committed a fault other than a deliberate or gross fault and is covered by liability insurance, the committee may compensate up to the amount of the deductible. Before making a decision, the committee must take the adverse effect of the fault on the financial interests of the pension assets and other circumstances into consideration.”

31. Section 172 of the Act is amended by inserting the following paragraph after the first paragraph:

“For the purposes of the first paragraph, the letter of credit provided by an employer under section 42.1 is considered to be a security in which the assets of the pension plan are invested and whose book value is equal to the amount of the letter of credit.”

32. Section 195 of the Act is amended

(1) by replacing “subdivision 1 of Division II” in the second line of the second paragraph by “Division III”;

(2) by replacing “initial or improvement unfunded actuarial liability” in the fourth line of that paragraph by “funding deficiency”;

(3) by replacing the first sentence of the fourth paragraph by the following sentence: “Furthermore, the Régie may not authorize such a division except where the plan into which a portion of the assets to be divided is to be transferred includes provisions which, in respect of the allocation of any surplus assets in case of termination and the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions but, in the latter case only, if the plan from which the assets are to be transferred is a plan to which subparagraph 16.1 or 17 of the second paragraph of section 14 applies or which was amended in that respect under section 146.5, are identical as to their effect to the provisions of the plan from which such assets are to be transferred.”

33. Section 196 of the Act is amended

(1) by inserting “16.1 or” after “subparagraph” in the second line of the fourth paragraph;

(2) by replacing “employer contributions” in the fourth and fifth lines of the fourth paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”;

(3) by replacing “employer contributions” in the third line of the fifth paragraph by “the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions”.

34. Section 217 of the Act is amended by replacing the second sentence by the following sentence: “The rate of interest must be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan if the amount due is due

(1) under a defined contribution plan;

(2) under provisions of the plan which relate to additional voluntary contributions;

(3) under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan;

(4) as member contributions that exceed the limits set under section 60; or

(5) as amounts credited to the plan following a transfer, even a transfer other than a transfer under Chapter VII.”

35. Section 218 of the Act is replaced by the following section:

“218. Where an employer withdraws from a multi-employer pension plan or a pension plan is terminated, the amounts to which the members and beneficiaries affected are entitled shall be paid out in the following order:

- (1) amounts corresponding to the following values, concurrently,
 - (a) the value of the additional voluntary benefits paid into the pension fund or to the insurer;
 - (b) the value of the member or employer contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan; and
 - (c) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII;
- (2) the value of other benefits, excluding those referred to in subparagraph 4, accrued under the plan and reduced under section 216; and
- (3) the value of any benefit reduction under section 216;
- (4) the value of benefits payable to members under pension plan terms granting them compensation for cessation of continuous employment due to technological or economic changes in the employer’s enterprise or to the division, merger, alienation or closing down of the enterprise.

If the assets are insufficient for the full satisfaction of the rights that are collocated in the same rank, payment shall be made proportionately to the value of the benefits concerned.

The benefits referred to in the first and second paragraphs are the benefits accrued under the plan at the date of termination. The value of those benefits must be established at that date, and is increased by the interest calculated in accordance with section 217.”

36. Section 237 of the Act is amended by replacing the third paragraph by the following paragraphs:

“If no pension of the type to which the member is entitled under the pension plan is available on the market, the pension committee may, in order to have an insurer guarantee the pension, replace the characteristics of the pension that make it unavailable on the market by similar characteristics that do not entail such a result.

The pension thus modified must, on the date payment begins, be of a value equal to that of the member’s vested pension; however, if equal value cannot be attained because of the limits set under the Taxation Act, an amount equal

to the difference between the value of the pension to which the member is entitled and the value of the modified pension must be paid to the member in a lump sum. These values must be established on the basis of the actuarial assumptions referred to in section 61.”

37. The heading of Chapter XIV of the Act is replaced by the following heading:

“PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC”.

38. Sections 241 and 242 of the Act are repealed.

39. Section 243 of the Act is replaced by the following section:

“**243.** A person concerned may contest a decision or order of the Régie before the Administrative Tribunal of Québec within 30 days of notification of the decision or order.”

40. Section 244 of the Act is amended

(1) by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(2.1) specify the conditions under which an employer may provide the pension committee with a letter of credit, as well as the form, amount and terms of such a letter;”;

(2) by inserting the following subparagraph after subparagraph 4 of the first paragraph:

“(4.1) determine, for the purposes of section 92.2, the conditions under which a member’s pension must be guaranteed by an insurer, as well as the terms of the pension contract;”;

(3) by inserting the following subparagraph after subparagraph 8 of the first paragraph:

“(8.0.1) determine the manner in which the provision for adverse deviation referred to in subparagraph 2 of the first paragraph of section 128 is calculated;”;

(4) by replacing subparagraph 8.3 of the first paragraph by the following subparagraph:

“(8.3) determine which attestations, certificates and documents must accompany the annual statement referred to in section 161;”;

(5) by replacing subparagraph 14 of the first paragraph by the following subparagraph:

“(14) prescribe the fees payable for the financing of expenses incurred by the Régie for the administration of this Act and the regulations and for any formality prescribed by this Act or the regulations, including fees which may be imposed as a penalty for a delay in carrying out such a formality or failure to provide within the time allotted any information or document provided for in this Act or required by the Régie;”.

41. Section 248 of the Act is amended by striking out subparagraph 4 of the first paragraph.

42. Section 250 of the Act is amended by striking out the second paragraph.

43. Section 253 of the Act is amended by replacing “publish periodically a bulletin” in the first line by “periodically post a bulletin on its website,”.

44. Section 257 of the Act is amended

(1) by replacing “41 to 43” in the second line of paragraph 1 by “41, 42, 43”;

(2) by striking out “140,” in the second line of paragraph 1.

45. Section 258 of the Act is amended by replacing “135, 142 to 144” in the first line of paragraph 1 by “143 to 145”.

46. Sections 306 to 306.6 of the Act are repealed.

47. Section 306.9 of the Act is amended

(1) by inserting “a pension plan that comes into force after 31 December 2009 pertaining to the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan and those of” after “provisions of” in the second line of the first paragraph;

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

“No amendment to a pension plan resulting from the division of a pension plan that was amended under section 146.5 in relation to the employer’s right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions may pertain to the subject of that amendment unless all the requirements set out in the first paragraph of section 146.5 and in section 146.6 are satisfied.”

TRANSITIONAL AND FINAL PROVISIONS

48. Sections 118 to 141 of the Supplemental Pension Plans Act, as they read before 1 January 2010, and the Act respecting the funding of certain

pension plans (2005, chapter 25) continue to apply to actuarial valuations dated prior to 15 December 2009.

49. This section applies only for the purposes of the first actuarial valuation of a pension plan dated after 14 December 2009.

The amount referred to in subparagraph 1 of the first paragraph of section 130 of the Supplemental Pension Plans Act, enacted by section 13 of this Act, is equal to the sum of the amounts, among the following, that remain to be paid at the date of the valuation:

(1) the amounts referred to in subparagraphs 1 to 3 of the second paragraph of section 137 of that Act as they read on 31 December 2009, that were taken into account in the last complete actuarial valuation dated prior to 15 December 2009;

(2) the amortization amounts determined in the valuation referred to in subparagraph 1 for the purposes of section 140 of that Act as it reads on 31 December 2009.

If, at the date of the valuation referred to in subparagraph 1 of the second paragraph, the value of the amounts referred to in that subparagraph exceeds the amount to be funded to ensure the solvency of the plan at that date, the amounts are adjusted by multiplying them by the quotient obtained by dividing the amount to be funded by their value.

To the amounts adjusted in accordance with the third paragraph are added the amortization amounts related to an unfunded liability referred to in the third paragraph of section 130 of the Supplemental Pension Plans Act, as it reads on 31 December 2009, and determined, if applicable, in an actuarial valuation of the plan carried out in accordance with that section at a date subsequent to the valuation referred to in subparagraph 1 of the second paragraph. The amortization amounts need not be added if an actuary certifies in the report on the actuarial valuation referred to in the first paragraph that none of those amounts were required to ensure the solvency of the plan at the date they were determined.

50. Section 30 applies even to matters pending before a court or an arbitrator on (*insert the date of introduction of this bill*).

51. Sections 37 to 39 apply to the decisions and orders rendered by the Régie from (*insert the date of assent to this Act*).

52. In addition to the transitional provisions provided for by this Act, the Government may, by regulation made before 1 July 2010, make any other transitional provision to ensure the application of the Supplemental Pension Plans Act as amended by this Act.

Such a regulation is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1). Despite section 17 of that Act, it comes into force on the date of its publication in the *Gazette officielle du Québec*, or on any later date specified in the regulation. However, once it is published and if it so provides, it may apply from any date not prior to *(insert the date of assent to this Act)*.

53. This Act will come into force on 1 January 2010; however,

(1) sections 30 and 50 have effect from *(insert the date of introduction of this bill)*;

(2) section 23, except to the extent that it enacts section 151.2 of the Supplemental Pension Plans Act, sections 24 to 29, sections 37 to 39, paragraph 4 of section 40 and sections 42, 43, 51 and 52 come into force on *(insert the date of assent to this Act)*;

(3) section 23, insofar as it enacts section 151.2 of the Supplemental Pension Plans Act, comes into force on *(insert the date occurring one year after the date of assent to this Act)*.

