



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 61

**An Act respecting the Agence des
partenariats public-privé du Québec**

Introduction

**Introduced by
Madam Monique Jérôme-Forget
Minister responsible for Government Administration and
Chair of the Conseil du trésor**

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EXPLANATORY NOTES

This bill establishes the Agence des partenariats public-privé du Québec.

The agency's mission is to contribute to the renewal of public infrastructures and the enhancement of services delivered to citizens through public-private partnership projects.

The agency is responsible for advising the Government on any public-private partnership matter, particularly as regards project selection and prioritization, for informing public bodies, the business community and the general public on the concept of public management in the public-private partnership mode and for developing and applying promotion strategies to foster public-private partnerships.

It is also responsible for providing expertise to government departments and bodies, institutions in the education and health and social services networks and municipal bodies in the evaluation of public-private partnership projects, the assessment of their feasibility and the negotiation, conclusion and management of public-private partnership contracts. All public bodies are required to utilize the services of the agency for their public-private partnership projects, except in the cases and subject to the conditions determined by the Government.

The bill sets out the organizational and operational rules applicable to the agency. It provides that the agency may form committees of experts chosen for their knowledge and expertise in fields related to public-private partnership. The main function of these committees is to issue advisory opinions on matters submitted to them by the agency concerning public-private partnership projects and to make recommendations regarding the feasibility and carrying out of projects and any specific aspect of them.

As well, the bill includes financial provisions specifying, among other things, the conditions applicable to the financial commitments the agency and its subsidiaries are authorized to make, and contains transitional and consequential amendments necessary for the establishment of the agency.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001);
- Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1).

Bill 61

AN ACT RESPECTING THE AGENCE DES PARTENARIATS PUBLIC-PRIVÉ DU QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT

1. An agency is established under the name “Agence des partenariats public-privé du Québec”. The agency may also operate under the name “Partenariats Québec”.

2. The agency is a legal person and a mandatary of the State.

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

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

3. The head office of the agency is located where the agency determines in the territory of the Communauté métropolitaine de Québec. The agency may, however, move its head office elsewhere with the authorization of the Government. Notice of the location and any relocation of the head office of the agency is published in the *Gazette officielle du Québec*.

The agency may hold its meetings anywhere in Québec.

CHAPTER II

MISSION AND POWERS

4. The mission of the agency is to contribute to the renewal of public infrastructures and the enhancement of services delivered to the citizens through public-private partnerships.

5. In pursuing its mission, the agency

(1) advises the Government on any public-private partnership matter, particularly as regards project selection and prioritization;

(2) operates a public-private partnership knowledge and expertise centre accessible to all interested persons and, for that purpose, collects and analyzes information on public-private partnerships in Canada and abroad;

(3) informs public bodies, the business community and the general public on the concept of public management in the public-private partnership mode;

(4) develops and applies promotion strategies to foster public-private partnerships;

(5) encourages, accepts, evaluates and proposes partnership projects for the delivery of infrastructures, equipment and public services; and

(6) provides expert services to public bodies for the evaluation of the feasibility of their infrastructure, equipment and public service delivery projects in the public-private partnership mode, for the selection of partners and for the negotiation, conclusion and management of partnership contracts.

6. A public-private partnership contract is a long-term contract under which a public body allows a private-sector enterprise to participate, with or without a financial contribution, in designing, constructing or operating a public work. The purpose of the contract can be the delivery of a public service.

The contract must stipulate the results to be achieved and determine how responsibilities, investment, risks and profits are to be shared so as to enhance the services delivered to citizens.

7. For the purposes of this Act, public bodies include

(1) government departments;

(2) persons and government bodies and enterprises referred to in section 2 of the Financial Administration Act (R.S.Q., chapter A-6.001);

(3) general and vocational colleges governed by the General and Vocational Colleges Act (R.S.Q., chapter C-29);

(4) the Comité de gestion de la taxe scolaire de l'île de Montréal and school boards governed by the Education Act (R.S.Q., chapter I-13.3) and school boards governed by the Education Act for Cree, Inuit and Naskapi Native Persons (R.S.Q., chapter I-14);

(5) university establishments governed by the University Investments Act (R.S.Q., chapter I-17);

(6) public institutions governed by the Act respecting health services and social services (R.S.Q., chapter S-4.2) and local health and social service network development agencies established under that Act;

(7) public institutions governed by the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) and regional councils established under that Act;

(8) municipal bodies within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1); and

(9) any other body designated by the Government.

8. A public body must utilize the agency's services for the evaluation of the feasibility of its infrastructure, equipment or public service delivery projects in the public-private partnership mode, for the selection of partners and for the negotiation and conclusion of public-private partnership contracts, except in the cases and subject to the conditions determined by the Government.

The first paragraph applies to bodies referred in paragraphs 3 to 5 and 8 of section 7 only to the extent that the infrastructure, equipment or public service delivery project is financed in whole or in part, in any form whatever, by the Government or a government body.

9. A public body must provide to the agency any information it requests concerning its infrastructure, equipment or public service delivery projects.

10. The agency issues advisory opinions, attaching any recommendations it may have, on any matter within its purview that is submitted to it by the chair of the Conseil du trésor.

11. When an investment project is of considerable importance, the Government may give the agency a mandate to evaluate its feasibility in the public-private partnership mode project and, possibly, to select a partner and negotiate and conclude a partnership contract for the carrying out of the project.

12. Subject to the applicable legislative provisions, the agency 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.

Likewise, the agency may enter into an agreement with a public body or any other person or entity, and participate in projects with them.

13. A public body that is a party to a partnership contract may, subject to the conditions it determines, delegate to a partner any function or power, other than a regulatory power, that is required for the carrying out of the contract.

It may authorize the subdelegation of any function or power subject to the same conditions.

14. With the authorization of the Government and if useful in the pursuit of its mission, the agency may acquire or constitute one or more subsidiaries.

A legal person more than 50% of whose voting rights attached to all issued and outstanding shares are held by the agency or a partnership in which more than 50% of the interest is held by the agency is a subsidiary of the agency. A legal person or partnership the majority of whose directors may be elected by the agency is also a subsidiary of the agency.

15. Sections 2 and 13 apply, with the necessary modifications, to subsidiaries of the agency all of whose shares are held directly or indirectly by the agency. Such subsidiaries are considered mandataries of the State.

16. The agency 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 in a legal person or an interest in a partnership in excess of the limits or contrary to the conditions determined by the Government;

(4) dispose of shares in a legal person or an interest in 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.

The Government may determine that a provision of the first paragraph applies to all subsidiaries of the agency or to only one of them.

The first paragraph does not apply to transactions between the agency and its subsidiaries or between the subsidiaries of the agency.

17. Despite sections 58 to 60 and the first paragraph of section 61 of the Public Administration Act (R.S.Q., chapter A-6.01), the agency determines the terms of its contracts by regulation.

The second paragraph of section 61 of that Act applies to such a regulation, with the necessary modifications.

A regulation under the first paragraph is submitted to the Government for approval, on the recommendation of the Conseil du trésor, and the Government may approve it with or without amendments.

18. For the purposes of a mandate received from the Government under section 11 or from a public body, the agency may, with the authorization of the Government, acquire by expropriation any immovable or real right necessary to carry out a partnership project.

For the same purposes, it may lease or dispose of any property it owns.

19. The agency exercises any other function assigned to it by the Government.

CHAPTER III

ORGANIZATION AND OPERATION

20. The affairs of the agency are administered by a board of directors composed of

(1) the director general of the agency, who is a member of the board by virtue of office; and

(2) not more than eight other members, appointed by the Government.

21. The director general of the agency is appointed by the Government for a term not exceeding five years; the other board members are appointed for a term not exceeding three years.

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

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

23. The positions of chair of the board of directors and director general may be held concurrently.

24. The director general is responsible for the administration and direction of the agency in keeping with its regulations, by-laws and policies. The functions of director general are exercised on a full-time basis.

The chair calls and presides at meetings of the board of directors, sees to the proper conduct of the board's proceedings 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.

25. A vacant position on the board of directors, other than that of director general, is filled by the Government for the unexpired portion of the term of the member to be replaced.

Absence from the number of board meetings determined in the internal by-laws of the agency, in the cases and circumstances specified, constitutes a vacancy.

26. The remuneration, employment benefits and other conditions of employment of the director general are determined by the Government.

The other board members receive no remuneration except in the cases, on the conditions and to the extent that may be 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.

27. The quorum at meetings of the board of directors is the majority of its members, including the director general or the chair.

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.

28. 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.

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

30. 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.

31. The minutes of the meetings of the board of directors, approved by the board and certified by the chair, the director general, the secretary or another person authorized by the agency, are authentic. The same applies to documents and copies emanating from the agency or forming part of its records, if they are so certified.

32. An intelligible transcription of a decision or other data stored by the agency in a computer or in any electronic form is a document of the agency and is evidence of its contents if it is certified by a person referred to in section 31.

33. A deed, document or writing is binding on and may be attributed to the agency only if it is signed by the chair, the director general, the vice-chair, the secretary or another personnel member authorized by the agency and, in the latter case, only to the extent determined by the by-laws of the agency.

34. The internal by-laws of the agency may, 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 31.

35. The agency may determine the mode of operation of the board of directors in its internal by-laws. It may provide for the creation of an executive committee and any other committee, determine their mode of operation and delegate powers of the board to them.

The agency may also provide for the delegation of powers of the board of directors to a personnel member.

36. The secretary and the other members of the personnel of the agency are appointed in accordance with the staffing plan established by by-law of the agency.

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

37. Any personnel member of the agency who has a direct or indirect interest in an enterprise causing the personnel member's personal interest to conflict with that of the agency must, on pain of forfeiture of office, disclose the interest in writing to the director general.

38. The chair of the Conseil du trésor may issue directives concerning the policies and general objectives to be pursued by the agency.

Directives are submitted to the Government for approval. Once approved, they are binding on the agency.

Directives are laid before 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

COMMITTEES OF EXPERTS

39. The agency may form one or more committees of experts chosen for their knowledge and expertise in fields related to public-private partnership, such as infrastructure project management, service delivery, law, labour relations, financing and communications.

40. Committee members are appointed from the public and private sectors by the chair of the Conseil du trésor, on the recommendation of the agency's board of directors, for the term specified in their notice of appointment.

41. Committee members receive the remuneration and allowances determined by the chair of the Conseil du trésor.

The rules concerning the reimbursement of expenses incurred in the exercise of committee functions are also determined by the chair of the Conseil du trésor.

42. A committee meets as often as is necessary, at the request of the chair of the board of directors or the director general of the agency.

43. A committee issues an advisory opinion on any matter submitted to it by the agency concerning a public-private partnership project and makes recommendations regarding the feasibility and carrying out of the project and any specific aspect of the project.

A committee also gives an advisory opinion on any other matter within its purview that is submitted to it by the agency.

44. A committee member may not, unless duly authorized, disclose or communicate to any other person confidential information that has come to the committee member's knowledge in the exercise or in connection with the exercise of committee functions. A committee member may not use information so obtained for personal benefit or for the benefit of a third person.

The agency determines, in its internal by-laws, the mode of operation of the committees and the rules applicable to committee members, particularly as regards ethics and conduct.

CHAPTER V

FINANCIAL PROVISIONS

45. The Government may, subject to the conditions it determines,

(1) guarantee payment of the principal and interest on any loan contracted by the agency or a subsidiary referred to in section 15 and guarantee their obligations; and

(2) authorize the Minister of Finance to advance to the agency or one of its subsidiaries any amount considered necessary to meet their obligations or pursue their mission.

The sums required for the purposes of this section are taken out of the consolidated revenue fund.

46. The agency may determine a tariff of commissions, professional and other fees for the use of its goods and services.

47. The operations of the agency are funded by the revenue it derives from its financial operations, the commissions and professional and other fees it charges and the other monies it receives.

48. The monies received by the agency must be allocated to the payment of its obligations. The agency retains any surpluses, unless the Government decides otherwise.

49. The Government reimburses the costs and expenses incurred by the agency in carrying out the mandates received under section 11.

50. Each year, the agency submits its budgetary estimates for the following fiscal year to the chair of the Conseil du trésor, in accordance with the form and content and the schedule determined by the chair of the Conseil du trésor.

The estimates are submitted to the Government for approval.

CHAPTER VI

ACCOUNTS AND REPORTS

51. The fiscal year of the agency ends on 31 March.

52. Not later than 31 July each year, the agency files its financial statements and an operations report for the preceding fiscal year with the chair of the Conseil du trésor.

The financial statements and the operations report must contain all the information required by the chair of the Conseil du trésor.

53. The chair of the Conseil du trésor lays the financial statements and operations report before the National Assembly within 30 days of their receipt or, if the Assembly is not sitting, within 30 days of resumption.

54. The agency formulates a business plan, which must include the operations of its subsidiaries, in accordance with the schedule and the form and content determined by the chair of the Conseil du trésor. The plan is submitted to the Government for approval.

On expiry, the business plan continues to apply until a new plan is approved.

55. The Auditor General audits the books and accounts of the agency each year and whenever so ordered by the Government.

The Auditor General's report must be submitted with the agency's operations report and financial statements.

56. The agency must communicate to the chair of the Conseil du trésor any information required by the chair of the Conseil du trésor concerning its operations and the operations of its subsidiaries.

CHAPTER VII

AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

57. Schedule 2 to the Financial Administration Act (R.S.Q., chapter A-6.001), amended by Order in Council 1081-2003 dated 15 October 2003, is again amended by inserting "Agence des partenariats public-privé du Québec" in alphabetical order.

ACT RESPECTING TRANSPORT INFRASTRUCTURE PARTNERSHIPS

58. The Act respecting transport infrastructure partnerships (R.S.Q., chapter P-9.001) is amended by inserting the following section after section 1:

"1.1. Section 8 of the Act respecting the Agence des partenariats public-privé du Québec (*insert the year and chapter number of this Act*) applies to a partnership agreement that constitutes a public-private partnership contract within the meaning of that Act, except in the cases and subject to the conditions determined by the Government."

59. Section 5 of the said Act is amended by striking out the second paragraph.

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

60. Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2), amended by section 554 of chapter 45 of the statutes of 2002 and by Order in Council 464-2004 dated 12 May 2004, is again amended by inserting "The Agence des partenariats public-privé du Québec" in alphabetical order.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

61. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10), amended by Conseil du trésor Decisions 200156, 200157 and 200158 dated 9 September 2003, 200479

dated 9 December 2003, 200671 dated 24 February 2004 and 200976 dated 20 April 2004 and by section 555 of chapter 45 of the statutes of 2002, is again amended by inserting “Agence des partenariats public-privé du Québec” in alphabetical order in paragraph 1.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

62. Schedule II to the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1), amended by Conseil du trésor Decisions 200156, 200157 and 200158 dated 9 September 2003, 200479 dated 9 December 2003, 200671 dated 24 February 2004 and 200976 dated 20 April 2004 and by section 703 of chapter 45 of the statutes of 2002, is again amended by inserting “the Agence des partenariats public-privé du Québec” in alphabetical order in paragraph 1.

CHAPTER VIII

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

63. The records and other documents of the Direction des partenariats d’affaires of the Secrétariat du Conseil du trésor become records and documents of the Agence des partenariats public-privé du Québec.

64. Subject to the conditions of employment applicable to them, employees of the Secrétariat du Conseil du trésor assigned to the Direction des partenariats d’affaires in office on (*insert the date preceding the date of coming into force of this section*) become employees of the Agence des partenariats public-privé du Québec provided that a decision of the Conseil du trésor providing for their transfer is made before (*insert the date occurring one year after the date of coming into force of this section*).

65. Subject to the conditions of employment applicable to them, employees referred to in section 64 hold the positions and exercise the functions assigned to them by the agency.

66. An employee of the agency who, when appointed to the agency, was a public servant with permanent tenure may request a transfer to a position in the public service or take part in a promotion competition for such a position, in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

67. Section 35 of the Public Service Act applies to an employee referred to in section 66 who takes part in a promotion competition for a position in the public service.

68. An employee referred to in section 66 who applies for a transfer or takes part in a promotion competition 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 the agency.

If an employee is transferred under section 66, the deputy minister or chief executive officer determines the employee's classification in accordance with the assessment provided for in the first paragraph.

If an employee is promoted under section 66, the classification assigned to the employee must take into account the criteria set out in the first paragraph.

69. In the event of a partial or total discontinuance of the operations of the agency or a shortage of work, an employee referred to in section 66 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 68.

70. A person who, in accordance with the applicable conditions of employment, refuses to be transferred to the agency is assigned to the agency 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 69, which person remains in the employ of the agency.

71. Subject to remedies available under a collective agreement, an employee referred to in section 66 whose employment is terminated or who is dismissed may bring an appeal under section 33 of the Public Service Act.

72. A regulation under section 58 of the Public Administration Act applies to the agency until the date a regulation under section 17 of this Act takes effect.

[[**73.** The sums required to carry out this Act during the fiscal year 2005-2006 are taken out of the consolidated revenue fund to the extent determined by the Government.]]

74. Not later than (*insert the date occurring five years after the date of coming into force of section 5*) and subsequently every five years, the chair of the Conseil du trésor must ensure that the carrying out of this Act is the subject of an independent report.

The chair of the Conseil du trésor lays the report before the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption. The report is examined by the appropriate committee of the National Assembly.

75. The chair of the Conseil du trésor is responsible for the administration of this Act.

76. This Act comes into force on the date or dates to be set by the Government.

