

NATIONAL ASSEMBLY

FIRST SESSION

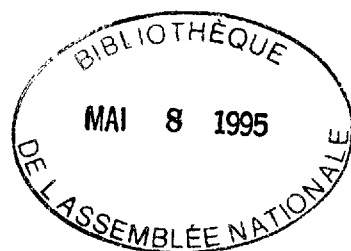
THIRTY-FIFTH LEGISLATURE

Bill 90

An Act to foster the development of manpower training

Introduction

**Introduced by
Madam Louise Harel
Minister of State for Concerted Action and
Minister of Employment**



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EXPLANATORY NOTES

The purpose of this bill is to improve manpower qualification and thereby foster employment and labour adjustment, re-employment and mobility. To that end, the bill provides that every employer, other than employers exempted by law or by the regulations, is required to participate each year in the development of manpower training by allotting for that purpose an amount representing 1 % of his total payroll.

The bill entrusts the Société québécoise de développement de la main-d'oeuvre with determining eligible manpower training expenditures by regulation approved by the Government. An employer may incur the expenditures for the benefit either of his personnel or of apprentices or trainees. Other types of expenditures such as equipment expenditures or payments made to bodies recognized by the Société may also be eligible.

Where an employer does not allot the amount fixed by law to manpower training expenditure, the employer will be required to pay into the Fonds national de formation professionnelle established by this bill a contribution equal to the difference between the statutory amount and the amount of his training expenditure. The contribution will be paid to the Minister of Revenue who will pay it into the Fund.

The bill provides that the Société, which has the control and administration of the Fund, may entrust the implementation of parts of the asset allocation plan to various bodies, and that financial support to manpower training may be granted by means of subsidies. The bill also contains various financial provisions and provisions relating to reports to be made by the Société.

Lastly, provisions conferring regulatory powers on the Société are contained in the bill as are special provisions applicable to the construction industry. Consequential and transitional provisions and provisions of a technical nature are also included in the bill.

LEGISLATION AMENDED BY THIS BILL:

– Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);

– Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20);

– Act respecting the Société québécoise de développement de la main-d'oeuvre (R.S.Q., chapter S-22.001).

Bill 90

An Act to foster the development of manpower training

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PRELIMINARY PROVISIONS

1. The object of this Act is to improve manpower qualification through increased investment in manpower training and through concerted action between management, unions and community partners and the education sector, and thereby foster employment and labour adjustment, re-employment and mobility.

2. This Act binds the Government, its departments and the bodies which are mandataries thereof.

CHAPTER II

EMPLOYER PARTICIPATION

DIVISION I

GENERAL PROVISIONS

3. Every employer whose total payroll for a calendar year exceeds the amount fixed by regulation of the Government is required to participate for that year in the development of manpower training by allotting an amount representing 1 % of his total payroll to eligible manpower training expenditure.

4. The total payroll is calculated in accordance with the schedule.

Salary or wages relating to enterprises exempted from participating in the development of manpower training by the regulations of the Société québécoise de développement de la main-d'oeuvre are not included in the calculation of the total payroll.

5. Eligible manpower training expenditures are determined in accordance with the regulations made by the Société.

Eligible manpower training expenditures are expenditures incurred by the employer for the benefit of his personnel, including apprentices, and may also be incurred for the benefit of trainees.

Eligible manpower training expenditures may be in the form of manpower training support, in particular the supply of personnel or equipment or the granting of training leave.

6. Expenditure incurred for the benefit of personnel may involve, in particular,

(1) training given by a recognized educational institution;

(2) training given by a training body or instructor accredited by the Société and, where required, for which accreditation has been granted;

(3) training given within the scope of a training plan established for an enterprise, government department or public body in accordance with the conditions set out by regulation of the Société, after consultation with a committee formed within the enterprise, government department or body and whose composition is consistent with the rules determined by regulation of the Société;

(4) the drawing up of the plan referred to in paragraph 3 and the assessment of personnel training needs.

7. Recognized educational institutions are

(1) the schools and adult education centres of the school boards and those of the Conseil scolaire de l'Île de Montréal;

(2) the general and vocational colleges;

(3) the institutions governed by the Act respecting private education (R.S.Q., chapter E-9.1), in relation to educational services for which a permit issued under that Act is required;

(4) the university level educational institutions and the bodies for which authorization to grant degrees, diplomas, certificates or other attestations of university studies in relation to the university education programs they offer is conferred by statute;

(5) the Conservatoire de musique et d'art dramatique du Québec;

(6) the Institut de tourisme et d'hôtellerie du Québec and the other institutions maintained by law by a government department or a body that is a mandatary of the Government;

(7) the institutions whose instructional program is the subject of an international agreement within the meaning of the Act respecting the Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles (R.S.Q., chapter M-21.1);

(8) the other institutions mentioned in the lists established by the Minister of Education under subparagraphs 1 to 3 of the first paragraph of section 56 of the Act respecting financial assistance for students (R.S.Q., chapter A-13.3), in relation to the study programs recognized by the Minister for the purposes of eligibility for financial assistance.

8. Payments made by an employer to a sectorial or regional association, a joint committee or other body recognized by the Société for the purposes of the implementation of a training plan accredited by the Société are eligible as expenditures incurred for the benefit of personnel, on the conditions fixed by regulation of the Société.

9. Expenditures incurred to acquire equipment are eligible to the extent of the pro-rated annual depreciation cost, calculated in accordance with the regulations of the Société, that corresponds to the use made of the equipment for training purposes.

Expenditures incurred to acquire, build or organize premises devoted exclusively to training are also eligible, to the extent of the annual depreciation cost calculated in accordance with the regulations of the Société.

10. Contributions paid by an employer in the construction industry to a vocational training fund administered by the Commission de la construction du Québec pursuant to the Act respecting labour relations, vocational training and manpower

management in the construction industry (R.S.Q., chapter R-20) are included in the calculation of the employer's participation in the development of manpower training.

The contributions are, for that purpose, considered to be eligible manpower training expenditures.

11. Charitable organizations or institutions the object of which is to provide free assistance directly to the needy, religious institutions and *fabriques* are exempted from participating in the development of manpower training. A regulation of the Société may provide for other exemptions.

DIVISION II

SUPPLETIVE PROVISIONS

12. An employer subject to the provisions of Division I whose total eligible manpower training expenditure applicable to a year is less than the amount of the participation fixed pursuant to section 3 for that year is required to pay into the Fonds national de formation professionnelle established under Chapter III a contribution equal to the difference between those amounts.

13. The contribution to the Fund in respect of a year must be paid to the Minister of Revenue on or before the day on which the employer is required to file the return provided for in Title XXVII of the Regulation respecting the Taxation Act (R.R.Q., 1981, chapter I-3, r.1) in respect of the payments to be made under section 1015 of the Taxation Act (R.S.Q., chapter I-3) in relation to the salary or wages for that year.

14. An employer subject to the provisions of Division I must file each year on the prescribed form a return in respect of the total payroll on which his participation in the development of manpower training must be calculated and in respect of his eligible manpower training expenditure.

Title XXVII of the Regulation respecting the Taxation Act (R.R.Q., 1981, chapter I-3, r.1), adapted as required, applies to the return.

15. The Minister of Revenue may consult the Société on the eligibility of any manpower training expenditure.

16. The Minister of Revenue shall, each year, remit to the Société the sums he is required to collect as the contribution referred to in section 12, after deduction of agreed collection costs; the Société shall pay the sums into the Fund.

17. An employer's payment of his contribution to the Fund releases him from the requirement to participate in manpower training development for the year concerned.

18. This division constitutes a fiscal law within the meaning of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

DIVISION III

REGULATION AND CERTIFICATES

19. The Société may make regulations to

(1) define, within the meaning of this chapter, eligible manpower training expenditure, and provide for exclusions, limits or deductions;

(2) establish rules for the calculation of eligible manpower training expenditure applicable to a year and authorize the carrying forward of such expenditure;

(3) exempt classes of employers or enterprises from the application of this chapter on such conditions as may be prescribed therein;

(4) generally, provide for any related or suppletive measures considered necessary to give effect to the provisions of this chapter.

The content of the regulations may vary according to the class of employer, enterprise or expenditure.

20. A regulation made pursuant to subparagraph 1 of the first paragraph of section 19 may, in particular,

(1) subject, where expedient, the eligibility of manpower training expenditure to accreditation or recognition by the Société of instruction, training, plans, programs, training instructors or bodies;

(2) set out the principles, criteria or factors taken into account by the Société for the purpose of granting accreditation or recognition or the conditions to be fulfilled for that purpose and, where expedient,

determine the fees payable and the period for which the accreditation or recognition is valid;

(3) determine the conditions to be fulfilled by accredited or recognized persons or bodies including the documents and information to be sent to the Société, related inspections and the conditions on which accreditation or recognition may be renewed, suspended or revoked;

(4) determine procedures for the substantiation of manpower training expenditures.

21. The regulations of the Société made pursuant to section 19 require the approval of the Government. Before recommending such approval, the Minister of Employment shall obtain the opinion of the Minister of Revenue which he shall attach to his recommendation.

22. The Société shall issue, at the request of an employer and on payment of the fees prescribed by regulation of the Société, a certificate attesting that a proposed initiative, action or activity may be eligible as a manpower training expenditure.

DIVISION IV

ANNUAL REPORT

23. The Société shall transmit each year to the Minister of Employment, before the date fixed by the Minister, a report on the participation of employers in the development of manpower training for the preceding year.

The report must be drawn up in the form determined by the Minister and contain any information he indicates.

The report may also contain any proposal intended to facilitate the achievement of the object of this Act.

24. The Minister shall table the annual report before the National Assembly within 15 days of receiving it or, if the Assembly is not sitting, within 15 days of resumption.

CHAPTER III

FONDS NATIONAL DE FORMATION PROFESSIONNELLE

DIVISION I

ESTABLISHMENT

25. The "Fonds national de formation professionnelle", hereinafter referred to as "the Fund", is established for the promotion and financial or technical support of manpower training and related measures and initiatives meeting the priority orientations and criteria for action defined by the asset allocation plan established under section 29.

26. The Fund consists of

(1) the sums remitted by the Minister of Revenue as employer contributions and the interest accrued thereon;

(2) the sums paid into the Fund by the Minister of Finance pursuant to sections 35 and 36.

27. The sums required for the remuneration of the persons assigned by the Société to the carrying out of this Act and for the payment of the expenses related to their social benefits and other conditions of employment shall be taken out of the Fund.

The consideration that may be paid to a body to cover administrative expenses incurred to implement any part of the asset allocation plan shall also be taken out of the Fund.

The Société may by by-law determine the maximum amount that may be taken out of the Fund for such purposes.

DIVISION II

ADMINISTRATION

28. The Société shall have full control over and exclusive administration of the Fund and may take any measure suitable to allocate the assets of the Fund. The Société may, however, entrust certain of those powers and duties to the regional council of a regional manpower development corporation, on the conditions it determines.

The assets of the Fund shall be held in the name of the Société or its delegate but shall not be mingled with those of the Société or its delegate.

29. The Société shall, each year, submit a plan for the allocation of the assets of the Fund to the Minister of Employment on the date the Minister determines.

The asset allocation plan must be drawn up in the form determined by the Minister and contain any information he indicates.

The asset allocation plan requires the approval of the Minister.

30. The regional councils of the regional manpower development corporations are responsible for advising the Société on any question relating to the asset allocation plan, in particular with respect to the adaptation of the plan to the needs of their regions.

31. The Société may, on the conditions it determines, entrust the regional council of a regional manpower development corporation or an employer association or other body accredited by the Société for that purpose, with the implementation of any part of the asset allocation plan.

32. The Société or a body referred to in section 31 may, within the scope of the asset allocation plan and the related programs of the Société, and on the conditions it determines, grant financial support to manpower training by means of subsidies.

33. A subsidy program must set out the eligibility criteria for and the scales and limits of subsidies and the terms and conditions on which a subsidy may be granted.

The scales and limits of the subsidies require the approval of the Minister.

DIVISION III

FINANCIAL PROVISIONS AND REPORTS

34. The Société may invest any sum paid into the Fund in the manner it determines by regulation.

Such a regulation requires the approval of the Government.

35. As the administrator of the Fund, the Société may borrow from the Minister of Finance sums taken out of the financing fund established at the Ministère des Finances under section 69.1 of the Financial Administration Act (R.S.Q., chapter A-6).

36. The Minister of Finance may, with the authorization of the Government and on the conditions it determines, advance to the Fund sums taken out of the consolidated revenue fund.

37. The Fund may not make payments or assume obligations the cost of which exceeds, in the same fiscal year, the sums at its disposal for the year in which the payments or obligations are made or assumed.

Nothing in this section shall prevent a commitment for a term of more than one fiscal year.

38. The Minister of Employment may require the Société to submit interim reports on the financial position of the Fund on the dates and in the form he determines.

The Minister may also require the Société to provide him with any information concerning the carrying out of this Act.

39. The fiscal year of the Fund ends on 30 June.

40. The Société shall file with the Minister of Employment, not later than 30 September each year, the financial statements of the Fund and a report on the activities of the Société concerning the carrying out of this Act for the preceding fiscal year.

The expenses relating to the carrying out of this Act shall be stated separately in the financial statements.

The report shall state the names of the recipients of subsidies and the amounts granted to each.

The financial statements and the report shall, in addition, contain any information that the Minister may prescribe.

41. The Minister shall table the activity report and the financial statements before the National Assembly within 15 days of receiving them or, if the Assembly is not sitting, within 15 days of resumption.

42. The books and accounts of the Fund shall be audited each year by the Auditor General and also whenever ordered by the Government.

The Auditor General's report shall accompany the activity report and the financial statements of the Fund.

CHAPTER IV

AMENDING PROVISIONS

ACT RESPECTING THE MINISTÈRE DU REVENU

43. Section 24.0.1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), amended by section 11 of chapter 46 of the statutes of 1994, is again amended by replacing the words “or the Act respecting labour standards (R.S.Q., chapter N-1.1)” in that part preceding subparagraph *a* of the first paragraph by the words “, the Act respecting labour standards (R.S.Q., chapter N-1.1) or the Act to foster the development of manpower training (*insert here the reference to that Act*).”

44. Section 62 of the said Act, amended by section 12 of chapter 46 of the statutes of 1994, is again amended by replacing the second paragraph by the following paragraph:

“This section does not apply in respect of Chapter III.1 of the Act respecting labour standards or Division II of Chapter II of the Act to foster the development of manpower training.”

45. Section 69.1 of the said Act, amended by section 213 of chapter 64 of the statutes of 1993, section 44 of chapter 79 of the statutes of 1993, section 13 of chapter 46 of the statutes of 1994 and section 213 of chapter 1 of the statutes of 1995, is again amended by adding, at the end of the second paragraph, the following subparagraph:

“(h) the Société québécoise de développement de la main-d’oeuvre, in respect of the name and address of an employer referred to in the Act to foster the development of manpower training, his total payroll, his eligible manpower training expenditure within the meaning of the regulations of the Société made pursuant to that Act and his contribution to the Fonds national de formation professionnelle.”

46. Section 93.2 of the said Act, amended by section 97 of chapter 15 of the statutes of 1993 and section 14 of chapter 46 of the statutes of 1994, is again amended by adding, after paragraph *j*, the following paragraph:

“(k) an assessment relating to contributions owed by a person under Division II of Chapter II of the Act to foster the development of manpower training, the amount of which does not exceed \$4 000.”

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING AND
MANPOWER MANAGEMENT IN THE CONSTRUCTION INDUSTRY

47. Section 4 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20), amended by section 4 of chapter 61 of the statutes of 1993 and by section 4 of chapter 8 of the statutes of 1995, is again amended by inserting the words “and any training fund established by a regulation made pursuant to subparagraph 12.1 of the first paragraph of section 123.1” after the word “purposes” in the second line of subparagraph 9 of the first paragraph.

48. Section 82 of the said Act, amended by section 53 of chapter 61 of the statutes of 1993 and by section 40 of chapter 8 of the statutes of 1995, is again amended by adding the words “or a regulation made pursuant to subparagraph 12.1 of the first paragraph of section 123.1” after the word “agreement” in the second line of the first paragraph of subparagraph *f* of the first paragraph.

49. Section 85.1 of the said Act is amended by adding, at the end, the following paragraph:

“A further purpose of vocational training is to foster manpower adjustment, re-employment and mobility.”

50. The said Act is amended by inserting, after section 85.4, the following section:

“85.4.1 Within the first two months of a year, the Commission shall issue, for the purposes of the Act to foster the development of manpower training (*insert here the reference to that Act*), statements of contributions paid by employers in the preceding year into a vocational training fund it administers.”

51. Section 122 of the said Act, amended by section 61 of chapter 61 of the statutes of 1993 and by section 55 of chapter 12 of the statutes of 1994, is again amended by replacing the words “or out of this Act” in the first line of subsection 1 by the words “, this Act or a regulation made pursuant to subparagraph 12.1 of the first paragraph of section 123.1”.

52. Section 123.1 of the said Act, amended by section 43 of chapter 8 of the statutes of 1995, is again amended by inserting, after subparagraph 12 of the first paragraph, the following subparagraph:

“(12.1) establish a manpower vocational training fund, impose on employers the payment of a contribution into the fund, establish the terms of payment and determine the terms and conditions of administration and use of the fund;”.

ACT RESPECTING THE SOCIÉTÉ QUÉBÉCOISE DE DÉVELOPPEMENT
DE LA MAIN-D'OEUVRE

53. Section 12 of the Act respecting the Société québécoise de développement de la main-d'oeuvre (R.S.Q., chapter S-22.001) is amended

(1) by inserting the words “or of the Fonds national de formation professionnelle” after the word “Société” in the third line of the first paragraph;

(2) by inserting the words “or of the Fund” after the word “Société” in the fourth line of the second paragraph.

54. The said Act is amended by inserting, after section 21, the following section:

“21.1 The Société shall exercise the powers and duties conferred on it by the Act to foster the development of manpower training (*insert here the reference to that Act*). In particular, it shall administer the Fonds national de formation professionnelle.”

55. Section 27 of the said Act is amended by adding, at the end, the following paragraph:

“This section does not apply to the programs of the Fonds national de formation professionnelle.”

56. Section 29 of the said Act is amended by adding the words “, except with respect to the exercise of the powers and duties conferred on him by the Act to foster the development of manpower training” after the word “functions” in the third line of the first paragraph.

57. Section 43 of the said Act is amended

(1) by inserting the words “and the education sector” after the word “partners” in the second line of paragraph 5;

(2) by inserting the words “, manpower training” after the word “assistance” in the first line of paragraph 6.

58. The said Act is amended by adding, at the beginning of Chapter IV, the following section:

"46.1 This chapter does not apply in respect of the Fonds national de formation professionnelle or of activities related to the carrying out of the Act to foster the development of manpower training."

CHAPTER V

FINAL PROVISIONS

59. Employer participation in manpower training applies from the year 1996.

60. Should the Société fail to make a first regulation pursuant to a provision of section 19 within such time as the Government considers reasonable, the Government may itself make such a regulation.

Before recommending that the regulation be made, the Minister of Employment shall obtain the opinion of the Minister of Revenue which he shall attach to his recommendation.

The regulation is deemed to be a regulation of the Société.

61. A regulation made under subparagraph 2 of the first paragraph of section 19 may authorize the carrying forward of manpower training expenditure incurred by an employer before the year in which he became subject to Division I of Chapter II.

62. The Minister of Employment is entrusted with the administration of this Act, except Division II of Chapter II, the administration of which shall be the responsibility of the Minister of Revenue.

63. The Minister shall, not later than (*insert here the date occurring five years after the date of coming into force of this Act*), and every five years thereafter, make a report to the Government on the implementation of this Act and on the advisability of maintaining the Act in force without change or of amending it.

The report shall be tabled before the National Assembly 15 days thereafter or, if the Assembly is not sitting, within 15 days of resumption.

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

SCHEDULE

TOTAL PAYROLL

1. The total payroll in respect of a year is the total of the amounts each of which is

(1) the salary or wages that an employer pays, allocates, grants or awards and the salary or wages that the employer is deemed to pay under the second paragraph of section 979.3 and section 1015.2 of the Taxation Act (R.S.Q., chapter I-3) to an employee;

(2) the salary or wages he pays to a trustee or custodian in respect of an employee;

(3) the portion referred to in section 43.2 of the Taxation Act of any contribution and the related tax, paid by the employer to the administrator of a multi-employer insurance plan within the meaning of section 43.1 of that Act in respect of an employee, except to the extent that that portion is otherwise covered in this paragraph.

2. For the purposes of the calculation of the total payroll,

“employee” means an employee within the meaning of section 1 of the Taxation Act who reports for work at an establishment of his employer in Québec or to whom a salary or wages, if he is not required to report for work at an establishment of his employer, are paid from such an establishment in Québec. The word “establishment” includes an establishment within the meaning of Chapter III of Title II of Book I of Part I of the Taxation Act;

“salary or wages” means the income computed in accordance with Chapters I and II of Title II of Book III of Part I of the Taxation Act, except sections 36.1 and 43.3 of that Act and section 58.1 thereof, where it refers to an amount that must be included in computing income under sections 979.9 to 979.11 of that Act, and any amount paid by an employer to a trustee or custodian, as the case may be, under a profit sharing plan, an employee trust or an employee benefit plan, within the meaning of section 1 of the Taxation Act.