



NATIONAL ASSEMBLY

THIRD SESSION

THIRTY-FOURTH LEGISLATURE

Bill 20

An Act to amend the Supplemental Pension Plans Act

Introduction

Introduced by
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Minister of Income Security



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EXPLANATORY NOTES

This bill proposes various amendments to the Supplemental Pension Plans Act.

The main purpose of the amendments is to define the responsibilities of the pension committee in the event of a delegation of powers and extend the requirement of financial auditing to all pension plans. Other amendments are made to limit deposits with the same insurer and regulate loans and investments in real estate. Another amendment will require the agenda of the annual meeting of the members to include the subject-matters determined by regulation.

Other amendments are made in order to improve the benefits of the members and to rearrange various technical provisions of the Act, such as termination of the disability pension, suspension of the payment of an annuity at the request of the annuitant and rules governing funding. Circumstances giving rise to arbitration are specified and the rules applicable to plan terminations, the rights of members in the event of a termination and the payment of related benefits are clarified. The information that must be sent to non-active members is simplified and the repercussions of periods of layoff with a right of recall or periods of invalidity on the active membership of a member are clarified. Lastly, an amendment is made to fix a limit for charges relating to the apportionment of benefits between spouses.

Finally, the bill contains transitional provisions.

Bill 20

An Act to amend the Supplemental Pension Plans Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 36 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by striking out the words “or, where the plan provides that, despite such termination, the member continues to be a member for a given period, until the end of that period, which may in no case, notwithstanding the second paragraph of section 5, exceed 24 consecutive months” in the second, third, fourth and fifth lines of paragraph 2;

(2) by adding, at the end, the following paragraph:

“The plan may, however, provide that the member remains an active member for a given period after the end of his period of continuous employment. Notwithstanding the second paragraph of section 5, the said period, increased by any period of layoff with a right of recall referred to in section 54, shall not exceed 24 consecutive months.”

2. Section 54 of the said Act is amended by adding, at the end of the first paragraph, the words “and periods of disability during which the member continues to accumulate benefits. A period of layoff with a right of recall shall not, for the purposes of this paragraph and notwithstanding the second paragraph of section 5, be considered to be a period of temporary interruption beyond 24 consecutive months, unless the plan so permits and the employee consents thereto”.

3. Section 58 of the said Act is amended by adding, at the end, the following paragraphs:

“A defined benefit plan or a defined contribution-defined benefit plan, however, may provide that payment of a pension may be suspended for a given period at the request of the member when the member is re-employed by an employer party to the plan or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, by one of the employers who are parties to the plan, subject to the following conditions:

(1) if the suspension begins before the first day of the month following the month during which the member attains 65 years of age or, in the case of a member who attains 65 years of age on the first day of a month, before that day, the member accumulates new benefits in respect of his work during the period of suspension preceding that day, in accordance with the terms and conditions provided under the plan for employees of his class;

(2) if the pension suspended is a retirement pension reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension;

(3) if the suspension continues or begins after the day referred to in subparagraph 1, the pension of which payment was suspended shall be adjusted to take account of any recalculation of the reduction pursuant to subparagraph 2 and of any new accumulated benefits referred to in subparagraph 1. The adjustment formula shall be the same as that prescribed in the plan, pursuant to the second paragraph of section 79, for the amount of pension not paid during a postponement period.

Furthermore, the additional pension resulting from the contributions paid during suspension of the pension shall be established in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension resulting from contributions paid during a postponement period.

Suspension of the pension ends upon termination of the member's period of continuous employment or at the time established under paragraph 2 of section 80.”

4. The said Act is amended by inserting, after section 82, the following section:

“82.1 Notwithstanding section 58, the plan may provide that payment of the disability pension is interrupted when the member ceases to be disabled within the meaning of the plan.

The value of the benefits accumulated by the member in respect of service credited under the plan before payment of the disability

pension begins shall not, at the time payment of the pension is interrupted, be less than the amount m calculated according to the following formula:

$$a \times \frac{b}{c} = m$$

where

“ a ” represents the value of the benefits earned by the member on the date on which payment of the disability pension begins, established regardless of qualification requirements;

“ b ” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension is interrupted and each anniversary date thereafter;

“ c ” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension begins and each anniversary date thereafter.

Values are established on the date on which payment of the disability pension is interrupted, according to actuarial assumptions and methods identical to those transmitted to the Régie and used on that date to determine the value of the pension benefits to which section 60 applies.”

5. Section 88 of the said Act is replaced by the following section:

“88. Where a member whose pension was postponed dies during the postponement period, his spouse shall be entitled to a pension the value of which shall be equal to or greater than the higher of

(1) the value of the pension the spouse would have been entitled to receive pursuant to section 87 if payment of the postponed pension had begun on the day preceding the death of the member, unless the spouse has waived such pension;

(2) the value of the death benefit the spouse would have been entitled to receive pursuant to section 86.

Where only part of the pension has been postponed, the spouse is entitled, in addition to the pension to which he is entitled pursuant to section 87 in respect of the partial pension the member was receiving, to a pension the value of which must be equal to or greater than the higher of the values described in the first paragraph, reduced by multiplying it by the fraction that the part of the postponed pension is of the total pension.

Where the member does not have a spouse, his assigns shall be entitled to the pension benefit referred to in section 86, reduced as provided in the second paragraph of this section in the case of partial postponement of the pension.”

6. The said Act is amended by inserting, after section 110, the following section:

“110.1 The cost of producing the statement referred to in section 108 and the expenses incurred for effecting the transfer of benefits between spouses may be claimed from the spouses only up to the limit fixed by the Minister, after consultation with the Régie, and published in the *Gazette officielle du Québec*. The limit may vary according to the type of plan.

The costs and expenses claimed from the spouses shall be paid in equal share by them through a reduction of the value of their respective benefits, unless they choose another method of payment. This paragraph does not apply, however, to the portion of the costs and expenses that may be claimed from the spouse of a member if no transfer of benefits has taken place.”

7. Section 112 of the said Act is amended by adding, at the end, the following paragraph:

“However, in the annual statement sent to a member who has ceased to be an active member, the pension committee need not include any information other than information concerning the financial position of the pension plan, but must provide the other information

(1) in the first annual statement following the date on which the member ceased to be an active member, unless the member ceased to be an active member in the 180 days preceding the date on which the annual statements were sent and the statement of benefits referred to in section 113 had been furnished to him before the date of that sending;

(2) every five years when the statement must set out the benefits accumulated by the member as of the date of the last statement of benefits furnished to him, up to the last complete fiscal year, and those accumulated since he joined the plan, up to the end of that fiscal year.”

8. Section 127 of the said Act is amended by adding, at the end, the words “or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, in respect of a period prior to the date of coming into force of an

amendment to provide for the participation of a new employer. In the latter case, however, the unfunded liability must pertain only to the crediting of service to members who were employed by the new employer”.

9. Section 134 of the said Act is amended

(1) by inserting the words “or with an amount determined pursuant to subparagraph 3 of the second paragraph of section 137” after the word “liabilities” in the fourth line;

(2) by striking out the words and figures “subparagraphs 2 to 4 of the first paragraph and the second paragraph of” in the tenth and eleventh lines;

(3) by adding, at the end, the following paragraph:

“However, where the degree of solvency of a pension plan is less than 100 %, no reduction authorized by the first paragraph may be made that would cause an amount payable to be determined pursuant to subparagraph 4 of the second paragraph of section 137 or to be higher than it would have been without the reduction.”

10. The French text of section 140 of the said Act is amended by replacing the words “d’amélioration” in the fourth line of the third paragraph by the words “de modification”.

11. Section 154 of the said Act is replaced by the following section:

“154. The pension committee is accountable for the person to whom it has delegated powers if, among other things, it was not authorized to do so; if it was so authorized, it is accountable only for the care with which it selected the delegate and gave him instructions.”

12. Section 157 of the said Act is amended

(1) by inserting, before the first paragraph, the following paragraph:

“157. The assets of the plan may not serve to secure any obligations other than those of the plan. Only an immovable hypothec may encumber a plan’s assets and only to the extent determined by regulation or authorized pursuant to section 247.1.”;

(2) by striking out the second paragraph.

13. Section 161 of the said Act is amended by replacing the words “to the extent” in the fourth line of the second paragraph by the words “, except in the cases”.

14. The said Act is amended by inserting, after section 161, the following sections:

“161.1 The accountant shall submit his audit report to the pension committee.

He shall also report to the pension committee any situation or operation concerning the interests of the pension fund that, in his opinion, is not satisfactory and requires rectification. In particular, he shall inform the committee of any situation or operation which led him to believe that the committee or the person or body to whom or to which powers have been delegated has not adhered to sound financial practices or is contravening this Act or a regulation thereunder. He shall transmit a copy of his report to the Régie.

Within 60 days of receipt of a report under the second paragraph, the pension committee shall inform the Régie of the corrective measures it intends to take with regard to the situation or operation reported by the accountant.

“161.2 No accountant incurs any civil liability for making, in good faith, a report under the second paragraph of section 161.1.”

15. Section 166 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“The subjects determined by regulation must, in addition, appear on the agenda of the meeting.”

16. Section 173 of the said Act is amended by adding, at the end of paragraph 3, the words “, but only up to the coverage offered by the Canadian Life and Health Insurance Compensation Corporation”.

17. Section 211 of the said Act is amended

(1) by replacing the words “total or partial termination of a pension plan” in the first and second lines of the first paragraph by the words “partial termination of a pension plan and every member affected by the total termination of a plan who was still active on the date of termination”;

(2) by inserting, after the first paragraph, the following paragraph:

“The same right is granted to every member affected by the total termination of the plan who ceased to be an active member during any period prior to the date of termination that is determined by the Régie, in circumstances which, in the opinion of the Régie, are similar to those mentioned in section 165.1. The decision of the Régie regarding the notice of termination of the plan or terminating the plan must specify the period so determined and the non-active members to whom the right is granted.”

18. Sections 212 and 213 of the said Act are replaced by the following section:

“212. The benefits of members or beneficiaries affected by the termination of a pension plan shall be assessed in accordance with actuarial assumptions and methods identical to those which were sent to the Régie and which, on either of the following dates, were used to determine the value of the pension benefits to which section 60 applies and to which the members or beneficiaries were entitled on that date:

(1) on the date on which the member ceased to be an active member in case of partial termination of the plan or, in case of total termination, if the benefits to be assessed are the benefits of the following members or beneficiaries:

(a) a member who ceased to be an active member prior to total termination and who, on the date of such termination, had already elected for payment of his benefits within the time limits set out in subparagraph 1 of the second paragraph of section 99 or in section 236, or who was still within the time limit to exercise such an election, and the beneficiaries whose benefits derive from service credited to such a member;

(b) a member to whom the second paragraph of section 211 applies;

(2) on the date of termination, if the benefits to be assessed are the benefits of any other member or beneficiary affected by the total termination of the plan.

The first paragraph does not apply to a pension that must be guaranteed by an insurer pursuant to section 237.”

19. The French text of section 226 of the said Act is amended by replacing the words “d’amélioration” in the last line of the second paragraph by the words “de modification”.

20. Section 230.7 of the said Act is amended

(1) by inserting, after the third line of the first paragraph, the following case:

“– at least one member or beneficiary opposes the draft agreement submitted by the employer when the proposed method of apportionment, under the terms of the second paragraph of section 230.2, admits of no opposition;”;

(2) by inserting, at the end of the fifth line of the first paragraph and after the figure “230.2”, the words “or within the additional period granted by the Régie pursuant to the first paragraph of section 230.5”;

(3) by replacing the figure “230.4” in the seventeenth line of the first paragraph by the figure “230.5”.

21. Section 240.1 of the said Act is replaced by the following section:

“240.1 The share of the surplus assets to which a member or beneficiary is entitled may be paid to him in a lump sum, transferred into a plan referred to in section 98 or used to purchase a pension or other pension benefit, according to the chosen option he indicates to the pension committee. The share may not, however, be used to purchase a pension the value of which exceeds the amount that, under a registered pension plan as defined in section 1 of the Taxation Act, may be transferred directly into another plan.”

22. Section 240.2 of the said Act is amended by adding, at the end, the following paragraphs:

“However, if the date of partial termination precedes the date of total termination of the plan by seven years or more, the members whose benefits have been paid shall retain their status as members for the said purpose only if they assert their rights with the pension committee within the prescribed time limits.

Whenever the provisions of the second paragraph must be applied, the notice required to be published under the second paragraph of section 230.4 must set out the rules established by this section. However, where a case has been referred to arbitration under section 230.7 without publication of the notice, the pension committee shall, upon being informed of the referral to arbitration, cause to be published in a newspaper circulated in the region of Québec where the greatest number of members who were active at the date of termination reside, a notice setting out the application for arbitration together with the rule established by this section, and informing

interested parties that, until the matter is taken under advisement, they are entitled to assert their rights with the pension committee. A copy of the public notice must be sent without delay to the Régie.

The Régie may, however, exempt the pension committee from the obligation to publish the notice if it is attested in writing that all members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally."

23. Section 240.3 of the said Act is amended

(1) by replacing the words " , at the time of its total termination, had 15 members or less," in the first and second lines of paragraph 1 by the words "is totally terminated";

(2) by inserting the words "or pursuant to this Act" after the word "plan" in the fifth line of paragraph 1;

(3) by striking out the words " , other than a multi-employer plan," in the first and second lines of paragraph 2;

(4) by replacing paragraph 3 by the following paragraph:

"(3) any multi-employer plan which is totally terminated may, on the conditions fixed by the Régie, be exempted from the application of all or some of the provisions of sections 220 to 227."

24. Section 244 of the said Act, amended by section 3 of chapter 45 of the statutes of 1993, is again amended

(1) by inserting, after subparagraph 8.1 of the first paragraph, the following subparagraphs:

"(8.2) prohibit that the assets of a pension plan be charged with an immovable hypothec or determine the maximum proportion of the book value of the assets of a plan that may be charged with an immovable hypothec;

"(8.3) prescribe the cases in which the financial audit of the financial report referred to in section 161 is not required;

"(8.4) determine the subjects, other than those mentioned in the first paragraph of section 166, that must appear on the agenda of the annual meeting;"

(2) by inserting, after the first paragraph, the following paragraph:

“A regulation made under subparagraph 8.2 or 9 may prescribe the cases in which and the types of plans to which it applies. It may also prescribe the conditions on which it applies to loans or investments existing on the date it comes into force.”

25. The said Act is amended by inserting, after section 247, the following section:

“247.1 The Régie, on the conditions it fixes, may authorize a departure from the limits established by a regulation made under subparagraph 8.2 or, with respect to real estate investments, under subparagraph 9 of the first paragraph of section 244.”

26. Section 294 of the said Act is amended by inserting the words “of the first paragraph” after the word and figure “subparagraph 2” in the first line.

27. The said Act is amended by inserting, after section 300, the following section:

“300.1 If a member dies during the period in which all or part of his pension is postponed, the second paragraph of section 299 does not apply; however, the value of the benefit provided for in that paragraph shall, in determining the spouse’s benefits, be added to the value established under subparagraph 2 of the first paragraph of section 88 or, where there is no spouse, to the value of the benefit referred to in the third paragraph of that section.”

28. The English text of section 307 of the said Act is amended by replacing the words “An additional period of 12 months” in the first line of the second paragraph by the words “Moreover, a period of 12 months from that date”.

29. The said Act is amended by inserting, after section 307, the following section:

“307.1 The limit prescribed in paragraph 3 of section 173 applies to deposits made or to be made under a management contract, as it read on (*insert here the date of assent to this Act*), only from the expiry of the term of the investment stipulated in the contract.”

30. The said Act is amended by replacing section 311.4 by the following section:

“311.4 A member or a beneficiary whose share of the surplus assets is established in a draft termination report or a supplement

thereto approved by the Régie before (*insert here the date of assent to this Act*) may avail himself of section 240.1 for as long as the pension committee has not paid his benefits in full.”

31. For the purpose of computing, in respect of a member laid off before (*insert here the date of assent to this Act*), the 24-month period provided for in the first paragraph of section 54 of the said Act, the time elapsed on that date shall be taken into account.

32. This Act comes into force on (*insert here the date of assent to this Act*), except section 6 which will come into force on the date fixed by the Government.