



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 61

An Act to amend the Environment Quality Act

Introduction

**Introduced by
Mr Pierre Paradis
Minister of the Environment**

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EXPLANATORY NOTES

The object of this bill is to amend the Environment Quality Act, in particular with respect to the environmental assessment procedure.

Under the bill, consideration must be given to any environmental questions involved in policies or programs of the Government or of one of its departments or agencies before such policies or programs are established. In addition, these programs or municipal programs may be subjected to the environmental assessment procedure. Any projects to be carried out under a program may also be subjected to the procedure applicable to projects.

The bill also provides that all projects determined by regulation, other than those to be carried out under a program, are to be subject to an environmental assessment procedure. Where a project involves minor issues or has a minor impact, the procedure includes a public consultation stage, and where the project involves major issues or has a major impact, the procedure may include also a public hearing or mediation.

The bill enables a fund to be established with a view to encouraging individuals, groups or municipalities to take part in public hearings, and introduces a number of amendments with respect to the composition and operation of the Bureau d'audiences publiques sur l'environnement.

Finally, it gives the Government the regulatory powers needed to administer the Act and contains some provisions of a transitional nature or for concordance.

Bill 61

An Act to amend the Environment Quality Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 2 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by inserting, after subparagraph *d* of the third paragraph, the following subparagraph:

“(d.1) establish and administer, on the conditions and according to the procedures determined by regulation of the Government, a fund designed to encourage the involvement of persons, groups and municipalities in public hearings;”.

2. Section 6.2 of the said Act is amended

(1) by replacing the word “five” in the first line of the first paragraph by the word “ten”;

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

“However, where required to expedite the affairs of the Bureau, the Government may appoint additional members, for the time and with the remuneration determined by it, to discharge the duties of the Bureau relating to inquiries.”

3. The said Act is amended by inserting, after section 6.2, the following sections:

“6.2.1 The members of the Bureau appointed under the first paragraph of section 6.2 shall remain in office notwithstanding the expiry of their terms until they are replaced or reappointed.

“6.2.2 Before taking office, the members shall swear or solemnly affirm that they will perform the duties of their office

impartially and honestly; the president shall do so before a judge of the Court of Québec, and the other members before the president of the Bureau.

“6.2.3 The members who are appointed under the first paragraph of section 6.2 shall devote their time exclusively to their duties.

“6.2.4 No member may, under pain of forfeiture of office, have any direct or indirect interest in an undertaking that might place his personal interest in conflict with his duties of office, unless such interest devolves on him by succession or gift and he renounces or disposes of it with dispatch.

“6.2.5 The president shall be responsible for the administration and general management of the Bureau.”

4. Section 6.3 of the said Act is amended

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

“It shall, within the scope of its functions, hold public hearings and act as a mediator when so required by the Minister.”;

(2) by replacing the word and figure “section 31.3” in the first line of the fourth paragraph by the words and figures “sections 31.3, 31.9.1, 31.9.7, 31.9.8 and 31.9.11”.

5. Section 6.4 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph:

“The Bureau may, simultaneously, hold several public hearings and mediate several matters.”;

(2) by inserting the words “and mediation sessions” after the word “hearings” in the first line of the second paragraph.

6. Section 6.5 of the said Act is amended by adding, at the end, the words “, except the power to order imprisonment”.

7. The said Act is amended by inserting, after section 6.5, the following section:

“6.5.1 In no case may the Bureau or its members be prosecuted for acts performed in good faith in the discharge of their duties.”

8. Section 6.6 of the said Act is replaced by the following section:

“6.6 The Bureau shall adopt internal management rules.

It shall also adopt rules of procedure for the conduct of public hearings and rules of ethics applicable to the members of the Bureau; these rules shall be submitted to the Government for approval.”

9. Section 6.9 of the said Act is amended by replacing the words “shall hold its hearings” in the second paragraph by the words “may hold hearings and mediation sessions”.

10. Section 22 of the said Act is amended by striking out the figures “31.5, 31.6,” in the sixth line of the fourth paragraph.

11. Section 31 of the said Act is amended by adding, at the end, the following paragraph:

“(s) determine, for the purposes of subparagraph *d.1* of the third paragraph of section 2, the conditions and procedures for establishing and administering the fund referred to in that subparagraph.”

12. Division IV.1 of Chapter I of the said Act is replaced by the following division:

“DIVISION IV.1

“ENVIRONMENTAL ASSESSMENT

“§ 1.—*Policies and programs*

“31.1 Consideration must be given to the environmental questions involved in any policy or program of the Government or of one of its departments or agencies before the policy or program is established.

Upon a request to the Minister of the Environment by the Minister responsible for the program or upon a decision of the Government, every such program shall also, before it is established, be subjected to the environmental assessment procedure provided for in this subdivision.

Similarly, municipal programs which involve environmental questions may, upon a request to the Minister of the Environment by the municipality, be subjected to the same assessment procedure before being established.

“31.2 Any program that is subject to the environmental assessment procedure pursuant to section 31.1 must be transmitted to the Minister accompanied with an environmental analysis, prepared in accordance with the requirements established by regulation, whereby the consequences of the program for the environment can be assessed.

“31.3 The Minister shall instruct the Bureau to make the program and the accompanying environmental analysis available to the public and to consult the public, in accordance with the procedures prescribed by regulation.

Upon expiry of the time prescribed by regulation, the Bureau shall hold a public hearing. It shall then transmit its analysis of the program and its findings to the Minister.

“31.4 In the case of a municipal program, the Minister shall transmit his analysis of the program, together with the report and analysis of the Bureau, to the municipality.

“31.5 In the case of a program of the Government or of one of its departments or agencies, the Minister shall transmit his analysis of the program, together with the report and analysis of the Bureau, to the Minister responsible for the program. The Government may then establish the program or authorize its establishment and fix its duration and any special conditions pertaining to it.

The Government shall also, upon the recommendation of the Minister, determine whether the projects to be carried out under the program are projects involving major issues or having a major impact, or projects involving minor issues or having a minor impact, where such projects are included in the class of projects that may be determined to be projects involving major issues or having a major impact or projects involving minor issues or having a minor impact.

Every decision made pursuant to this section shall be transmitted to the proponent of the program and to the persons, groups and municipalities having made representations at the public hearing.

Every project to be carried out under a program must comply with the conditions of that program.

“31.6 Where a project is to be carried out under a program of the Government or of one of its departments or agencies that has been subjected to the environmental assessment procedure, the Government may exempt that project from the application of the provisions of sections 31.8 to 31.9.12 that would otherwise be applicable to it.

In such a case, the Government shall issue the certificate of authorization provided for in subdivision 2 on the conditions it determines.

“31.7 The Minister may, at any time, request the proponent of a program that is subject to the assessment procedure to supply the information the Minister considers necessary for an assessment of the consequences of the program for the environment.

“§ 2.—*Projects*

“General provisions

“31.8 No person may undertake a project to which the provisions of this division apply unless the assessment procedure has been followed and unless that person holds a certificate of authorization issued by the Government in the case of a project involving major issues or having a major impact, or a certificate of authorization issued by the Minister in the case of a project involving minor issues or having a minor impact.

The following are projects involving major issues or having a major impact:

- (1) projects included in the class of projects involving major issues or having a major impact established by regulation;
- (2) projects determined, pursuant to section 31.5 or section 31.9.2, to be projects involving major issues or having a major impact.

Projects involving minor issues or having a minor impact are those determined, pursuant to section 31.5 or section 31.9.2, to be projects involving minor issues or having a minor impact.

In addition, where several projects having the same objective are submitted by a single proponent, the Minister may, taking account in particular of the characteristics of the territory, consider the projects to be a single project. In such a case, the project shall be considered to involve major issues or have a major impact.

“31.9 The proponent of a project shall transmit to the Minister a notice describing the project and indicating, in particular, its issues and impact in accordance with the requirements prescribed by regulation.

The notice serves to introduce an application for a certificate of authorization.

“31.9.1 The Minister shall instruct the Bureau to make available to the public the notice describing the project together with a document, which he shall attach, indicating the main issues and impact associated with the project and to consult the public, in accordance with the procedures prescribed by regulation. The Bureau shall report its findings to the Minister.

However, in the case of a project to be carried out under a program of the Government or of one of its departments or agencies that has been subjected to the environmental assessment procedure, only the notice describing the project shall be made public by the Bureau upon request of the Minister, except, in the case of a project involving major issues or having a major impact, where the Government has decided otherwise in its assessment of the program.

“31.9.2 The Minister shall determine whether the project is one involving major issues or having a major impact or one involving minor issues or having a minor impact, where it is included in the class of projects that may be determined to be projects involving major issues or having a major impact or projects involving minor issues or having a minor impact.

The decision of the Minister determining the project to be a project involving major issues or having a major impact must be approved by the Government.

The provisions of this section do not apply to projects carried out under a program of the Government or of one of its departments or agencies that has been subjected to the environmental assessment procedure provided for in subdivision 1.

“31.9.3 The Minister may, at any time, request the proponent of a project to supply the information the Minister considers necessary for an assessment, within the scope of the assessment procedure, of the consequences of the proposed project for the environment.

“Special provisions pertaining to projects involving
major issues or having a major impact

“31.9.4 The Minister shall indicate in a directive to the proponent of a project involving major issues or having a major impact the content, scope and extent of the environmental impact assessment statement to be prepared and transmitted to the Minister by the proponent within the time prescribed by regulation.

The Minister shall instruct the Bureau to make the directive public.

If, pursuant to section 31.9.20, the Minister extends the prescribed time, he may, if he considers it appropriate, issue a new directive or amend the directive already issued.

“31.9.5 The Minister shall analyse the file within the time prescribed by regulation. He shall then instruct the Bureau to make his analysis, the impact assessment statement together with any other document prescribed by regulation available to the public, and to consult the public, in accordance with the procedures prescribed by regulation.

“31.9.6 Any person, group or municipality may, within the time prescribed by regulation, apply to the Minister for a public hearing.

The application shall be in writing, shall include reasons and shall set out the interest of the applicant with respect to the milieu affected by the project.

“31.9.7 Unless the Government considers the application to be frivolous, the Minister shall instruct the Bureau to hold a public hearing, or where he considers it more appropriate, to act as a mediator.

The Bureau shall report its analysis of the project and its findings to the Minister.

“31.9.8 Where the project has been subjected to mediation and where the mediation has not produced the expected results, the Minister may instruct the Bureau to hold a public hearing.

“31.9.9 The Minister shall submit the application for a certificate of authorization to the Government, which may issue, on the conditions it determines, a certificate authorizing the carrying out of the project with or without amendments, or refuse to issue such a certificate.

The Government may determine measures for the monitoring and following-up of any project for which it has issued a certificate of authorization.

Every person, group or municipality having made representations shall be informed of the decision to issue or not to issue the certificate of authorization.

“Special provisions pertaining to projects involving
minor issues or having a minor impact

“31.9.10 The Minister shall indicate in a directive to the proponent of a project involving minor issues or having a minor impact the content, scope and extent of the environmental impact assessment statement to be prepared and transmitted to the Minister by the proponent within the time prescribed by regulation.

The Minister shall instruct the Bureau to make the directive public.

If, pursuant to section 31.9.20, the Minister extends the prescribed time, he may, if he considers it appropriate, issue a new directive or amend the directive already issued.

“31.9.11 The Minister shall instruct the Bureau to make the impact assessment statement together with any other document prescribed by regulation available to the public, and to consult the public, in accordance with the procedures prescribed by regulation. The Minister shall analyse the file within the time prescribed by regulation.

“31.9.12 The Minister may issue, on the conditions he determines, a certificate authorizing the carrying out of the project with or without amendments, or refuse to issue such a certificate.

The Minister may determine measures for the monitoring and following-up of any project for which he has issued a certificate of authorization.

The proponent of the project shall be informed of the decision to issue or not to issue the certificate of authorization.

“Attestation of environmental conformity

“31.9.13 Before undertaking each stage of a project, the holder of a certificate of authorization must transmit to the Minister the plans and specifications relating thereto, or any other document of the same nature indicated in the conditions of the certificate of authorization, together with an attestation of the conformity of the plans, specifications and other documents with the norms prescribed by regulation and the conditions imposed when the certificate of authorization was issued.

The attestation must be signed by any professional within the meaning of the Professional Code (R.S.Q., chapter C-26) and by any

other person belonging to a class established by regulation whose participation in the preparation of the project deals with a matter contemplated in the norms prescribed by regulation or the conditions imposed when the certificate of authorization was issued.

“31.9.14 Sections 95.3 to 95.5, 95.7 and 95.8 apply, with the necessary changes, to the attestation of environmental conformity referred to in section 31.9.13. A reference to section 95.1 in any of the said provisions shall be read as a reference to section 31.9.13.

“Miscellaneous provisions

“31.9.15 All documents, information or data made available to the public pursuant to the provisions of this division are subject to the provisions of sections 22 to 24 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1).

“31.9.16 The Government may make the provisions of this division applicable to a project to which they would not otherwise be applicable if that project is subject to an environmental assessment under legislation other than Québec legislation.

“31.9.17 The Minister may delegate, in writing, to the Minister responsible for a program of the Government or of one of its departments or agencies that has been subjected to the assessment procedure provided for in subdivision 1 the responsibility for the administration of the provisions of sections 31.9.10 to 31.9.12, except the provisions of the third paragraph of section 31.9.10 pertaining to the extension of the time limit, in respect of any project involving minor issues or having a minor impact to be carried out under that program.

“31.9.18 The Government may, where it considers it necessary in the public interest, exempt any project from all or some of the provisions of this division that would otherwise be applicable to it. If a project is exempted from all such provisions, the Government shall issue a certificate of authorization on the conditions it determines.

The Minister may, where the carrying out of a project is required in order to prevent a disaster or repair any damage caused by a disaster, exempt the project from the provisions of this division that would otherwise be applicable to it. In such a case, the Minister shall issue a certificate of authorization on the conditions he determines.

Where a project concerns the territory described in the second paragraph of section 31.9.20, only the Government may exempt it

from provisions of this division and only for reasons of national defense or state security or other reasons of public interest.

“31.9.19 The proponent of a project shall pay the duties and fees prescribed by regulation at the end of each stage in the environmental assessment procedure indicated in the regulations. In addition, he shall pay the duties and fees prescribed by regulation upon the issue of the certificate provided for in this subdivision.

“§ 3.—Regulatory powers

“31.9.20 The Government may make regulations to

(1) determine the projects to which this division applies and indicate whether they are projects belonging to the class of projects involving major issues or having a major impact, or to the class of projects that may be determined to be projects involving major issues or having a major impact or projects involving minor issues or having a minor impact;

(2) determine the content of the notice referred to in section 31.9 and the procedures for its presentation;

(3) determine the content of the document referred to in section 31.9.1, of the directive referred to in sections 31.9.4 and 31.9.10 and of the analysis referred to in section 31.9.5;

(4) determine the elements to be considered in the environmental analysis referred to in section 31.2 and the content, scope and extent of the environmental impact assessment statements referred to in sections 31.9.4 and 31.9.10, and the procedures for their presentation;

(5) prescribe the procedures for the public consultations provided for in sections 31.3, 31.9.1, 31.9.5 and 31.9.11, including the holding of information sessions, the publication of notices in the media and the form and content of such notices;

(6) prescribe the mode of publicizing the public hearings and mediation conducted by the Bureau;

(7) prescribe the time limits to be respected at the various stages of the environmental assessment procedure and the method of computing such time limits, including the time limit for transmitting a document, processing a file, making an application for a public hearing, undertaking a public hearing and filing a report;

(8) prescribe, for the purposes of each of sections 31.9.5 and 31.9.11, the documents to be made available to the public;

(9) identify the classes of persons qualified to sign an attestation of environmental conformity for the purposes of section 31.9.13;

(10) fix the duties and fees payable by the proponent of a project for the examination of an application for a certificate of authorization and for the issue or amendment of such a certificate, together with the period, terms and conditions of payment; such duties and fees may vary, in particular, according to one or more of the following factors:

(a) the class of the project;

(b) the nature, complexity or scope of the project;

(c) the cost of examining the application for a certificate of authorization;

(11) prescribe measures to ensure supervision of the carrying out of projects.

The Government may also make regulations respecting matters referred to in the first paragraph which will apply only to the territory bounded on the west by the 69th meridian, on the north by the 55th parallel, on the south by the 53rd parallel and on the east by the eastern boundary fixed by the Québec boundaries extension acts of 1912 (II George V, chapter 7) and Statutes of Canada (II George V, chapter 45). If the regulation is concerned with an aspect of subparagraph 1 of the first paragraph, it may be amended only following consultation with the Naskapi Village Corporation identified in paragraph 7.1 of section 131.

Any time limit prescribed under subparagraph 7 of the first paragraph may, where circumstances justify it, be modified by the Minister."

13. Section 106 of the said Act, amended by section 26 of chapter 30 of the statutes of 1991 and by section 8 of chapter 80 of the statutes of 1991, is again amended

(1) by replacing the figure "31.1" in the second line of the first paragraph by the figure "31.8";

(2) by replacing the figures "31.5, 31.6," in the first and second line of subparagraph *d* of the first paragraph by the figures "31.6, 31.9.9, 31.9.12, 31.9.18,".

14. Section 110 of the said Act is amended by replacing the figure "31.1" in the fifth line of the second paragraph by the figure "31.8".

15. Section 118.5 of the said Act, amended by section 29 of chapter 49 of the statutes of 1988 and by section 13 of chapter 80 of the statutes of 1991, is again amended

(1) by replacing the figures “31.1, 31.6” in paragraph *a* by the figures “31.6, 31.8”;

(2) by replacing the word and figure “section 31.3” in paragraph *c* by the words and figures “sections 31.9.4 and 31.9.10 and all environmental analyses filed under section 31.3”;

(3) by adding the words and figure “and section 31.9.13” after the figure “31.5” in paragraph *g*.

16. The provisions of Division IV.1 of the Environment Quality Act enacted by this Act apply to environmental impact assessments and reviews in progress on (*insert here the date of coming into force of this section*), from the stage in the procedure determined by the Minister.

17. The Regulation respecting the environmental impact assessment and review applicable to a part of the northeastern Québec region (R.R.Q., 1981, chapter Q-2, r. 10) as it read on (*insert here the date of the day preceding the date of coming into force of this section*) remains in force until it is replaced or repealed by a regulation made under the second paragraph of section 31.9.20 of the Environment Quality Act, enacted by section 12 of this Act.

For the purposes of the Regulation respecting the environmental impact assessment and review applicable to a part of the northeastern Québec region (R.R.Q., 1981, chapter Q-2, r. 10), the provisions of sections 31.1 to 31.9 of Division IV.1 of the Environment Quality Act, replaced by this Act, are deemed to remain in force.

18. The Government may exempt from the environmental assessment procedure provided for in Division IV.1 of the Environment Quality Act, enacted by section 12 of this Act, all or part of any project that becomes subject to that procedure after (*insert here the date of coming into force of this section*) if the project is begun not later than one year after the date it became subject to that procedure.

The Government shall publish a notice of its intention in the *Gazette officielle du Québec* at least fifteen days before making such a decision.

Notice of the decision shall subsequently be published in the *Gazette officielle du Québec*.

The Government shall, where it exempts a project from the environmental assessment procedure, issue a certificate of authorization containing the conditions it considers necessary for the protection of the environment.

19. A project which, on the day preceding the day on which the provisions of Division IV.1 of the Environment Quality Act, enacted by this Act, come into force, is not subject to the provisions of Division IV.1 of the Environment Quality Act as they read before being replaced by this Act, and which, on the day the provisions of Division IV.1 of the Environment Quality Act, enacted by this Act, come into force, becomes subject to those provisions, is exempt from the application of those provisions in either of the following cases:

(1) a certificate is issued for the project under section 22 before the day on which the provisions of sections 31.8 to 31.9.20 come into force;

(2) a certificate is issued after the coming into force of the provisions of sections 31.8 to 31.9.20 in response to an application for a certificate made prior to the 120th day preceding the day of such coming into force.

Any such project remains subject to the provisions of section 22 of the Environment Quality Act.

20. Any person who carried on an activity referred to in section 31.1 of the Environment Quality Act as it read before being replaced by this Act, without complying with the requirements of that section may, in the year in which this section comes into force, apply to the Minister to regularize his situation. The Minister shall submit the application to the Government, which may agree to it on the conditions it determines. An applicant who complies with the conditions so determined is deemed to have satisfied the requirements of section 31.1.

21. The provisions of this Act will come into force on the date or dates fixed by the Government.