



NATIONAL ASSEMBLY

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Bill 36

An Act to amend the Financial Administration Act and other legislative provisions

Introduction

Introduced by
Mr Bernard Landry
Minister of Finance

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EXPLANATORY NOTES

This bill makes various amendments to the Financial Administration Act to facilitate its application and to give effect in part to the Budget Speech of 9 May 1996.

Under the bill, governmental compensation is made mandatory with respect to payments to be made by departments, bodies and public bodies to debtors of other departments and bodies. Hence, the bill makes the Comptroller of Finance responsible for applying governmental compensation on behalf of the Minister of Finance and contains the provisions that are necessary to that end.

The bill also enables the Government to establish special funds to be used to finance activities relating to the sale of property and services and to finance information technologies, and facilitates the financial management of the Conseil du trésor.

Amendments are also made to the Financial Administration Act to afford more flexibility to the financing fund and to public sector bodies in the management of their financing.

Lastly, the bill amends the Act respecting the Ministère du Revenu to allow for the exchange of information with the Comptroller of Finance for the purpose of the exercise of his powers and to ensure concordance with the provisions relating to governmental compensation.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (R.S.Q., chapter A-6);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Financial Administration Act (R.S.Q., chapter A-6) is amended by inserting, after section 13, the following section:

“13.1 Any payment to be made by or on behalf of a public body determined by the Minister and referred to in the second paragraph of section 14.1 to a person who is a debtor of a department, body or special fund referred to in the first paragraph of section 14.1 is subject to governmental compensation.

The Comptroller of Finance shall apply governmental compensation on behalf of the Minister.

The Comptroller, in accordance with the rules prescribed by the Minister, shall advise the public body which intends to make the payment, of the claim in respect of which he is applying governmental compensation, of the amount of the compensation and of the fact that such amount must be forwarded to the Minister to be paid into the consolidated revenue fund or, where applicable, into a special fund. He shall also advise the person entitled to the payment, of the compensation being applied.

Compensation shall be suspended where the claim is subject to an allocation procedure under Division IV of Chapter III of the Act respecting the Ministère du Revenu (chapter M-31) or to a compensation procedure applied by the department or body concerned, or where the payment susceptible of compensation belongs to a class determined by the Government.

This section applies notwithstanding section 33 of the Act respecting the Ministère du Revenu.”

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

“14.1 Every department or body referred to in the first paragraph of section 14 and every special fund shall furnish to the Comptroller, on request, any information he considers necessary for the purposes of sections 13, 13.1 and 14.

Every public body referred to in section 31.1.4 of the Act respecting the Ministère du Revenu shall, for the purposes of section 13.1, furnish to the Comptroller, on request, any information relating to payments to be made by the public body.

“14.2 The information referred to in section 14 or 14.1 may be furnished by the transfer of information files to be compared, coupled or cross-matched with any other file held by the Comptroller.

“14.3 The Minister shall prescribe an information transfer procedure and the form of the cross-matching code.

“14.4 The department or body shall advise the debtor of the existence and nature of the claim against him, of the time allotted for payment and of the cross-matching code which will be used in the application of governmental compensation.

“14.5 Compensation shall not be applied before the claim and the payment have been cross-matched by means of the cross-matching code and of at least one other piece of information obtained by the Comptroller.

“14.6 Information furnished to the Comptroller in accordance with sections 14 and 14.1 is confidential and no one, other than the Conseil du trésor as regards the information obtained for the purposes of section 14 or the Minister of Revenue for the purposes of his powers under Division IV of Chapter III of the Act respecting the Ministère du Revenu, may have access to such information except with the authorization of the person to whom the information relates or of the person authorized by law to give such authorization on his behalf.

The information so furnished must be recorded in an appropriate register.

“14.7 For the purposes of sections 14, 14.1 and 14.6, an agreement may, where applicable, be entered into with a department, body or public body for the purpose, in particular, of specifying the nature of the information communicated, the procedure used to ensure confidentiality and the security measures applied.

“14.8 This division shall prevail over any provision of any special Act.

“14.9 Sections 14, 14.1 and 14.6 apply notwithstanding sections 65 to 70 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

3. Section 23 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The Conseil shall determine the procedure for the preparation of the estimates.”

4. Section 36.1 of the said Act is amended

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

“The Minister may also effect a transaction referred to in the first paragraph between that fund and the consolidated revenue fund for the purposes of the management of the financing fund.”;

(2) by replacing the words “, which shall be payable out of that fund” in the fourth line of the fourth paragraph by the words “and for the financing fund, which shall be payable, respectively, out of the fund concerned”.

5. Section 40 of the said Act is amended by adding, at the end of the second paragraph, the following sentence: “The Minister may also, in the cases and circumstances and on the terms and conditions he determines, authorize a department or body to transfer any portion of an appropriation voted between divisions or subdivisions of that appropriation.”

6. Section 45 of the said Act is amended by replacing the words “designated by the Conseil du trésor” in the third line by the words “or member of the personnel designated by them”.

7. Section 46.2 of the said Act is replaced by the following section:

“46.2 Where the personnel of an administrative unit or any part thereof is transferred from one department or body to another, the appropriations voted for the personnel shall be transferred to the department or body taking charge of the personnel, if it is a body referred to in section 14.”

8. Section 51 of the said Act is amended by replacing the words “indicated by the Conseil du trésor” in the third and fourth lines by the words “or member of the personnel designated by them”.

9. Section 54 of the said Act is amended

- (1) by striking out the word “or” at the end of paragraph *c*;
- (2) by replacing the period at the end of paragraph *d* by “; or”;
- (3) by adding, after paragraph *d*, the following paragraph:

“(e) if such payment is subject to governmental compensation and compensation has not been applied.”;

- (4) by adding, at the end, the following paragraph:

“The Government may exclude, for the period it determines, a department, body or special fund, or part of their claims, from the application of subparagraph *e* of the first paragraph.”

10. Section 69.3 of the said Act is amended by adding, after paragraph 2, the following paragraph:

“(3) the sums collected following the assignment of loans under section 69.12.”

11. Section 69.5 of the said Act is amended by inserting, after the second paragraph, the following paragraph:

“Where the moneys were borrowed under a borrowing plan, the Minister shall determine the amount of the advance and the time of

its payment into the fund within the limits fixed in the order authorizing the advance and made under the borrowing plan.”

12. Section 69.7 of the said Act is amended by replacing the words “loans granted under section 69.6” in the third line of paragraph 3 by the words “transactions or loans made under sections 36.1 and 69.6 and of the assignment or alienation of the loans under section 69.12”.

13. The said Act is amended by inserting, after section 69.11, the following:

“69.12 The Minister may, for the purposes of securitization, assign or otherwise alienate loans made under section 69.6. The Minister may make any commitment payable out of the fund, conclude any contract in that respect and continue to manage the loans for the benefit of the assignee.

“DIVISION VII.2

“SPECIAL FUNDS

“69.13 The Government may, on the recommendation of the chairman of the Conseil du trésor and of the Minister, establish special funds to be used to finance activities relating to the sale of property or services and to finance information technologies of a department or government body referred to in section 14.

Such a fund may not, however, be established by the Government where such property or services are offered to the departments or bodies on an exclusive basis or where the latter are alone in offering such property or services.

“69.14 The Government shall determine, for each fund, the name under which the fund is to be established, the date of the beginning of its activities and its assets and liabilities. It shall also determine the nature of the property, services or assets financed by the fund and the nature of the costs chargeable to it. It shall designate the minister responsible for the fund.

The terms and conditions of management of the fund shall be determined by the Conseil du trésor.

“69.15 A fund shall be made up of the following sums, except interest earned:

(1) the sums collected from the sale of property or services that were financed by the fund;

(2) the sums paid into it by the minister responsible for the fund out of the appropriations granted for that purpose by the Parliament;

(3) gifts, legacies and other contributions paid into it to further the achievement of the objects of the fund;

(4) the sums paid into it by the Minister pursuant to the first paragraph of section 69.17 and the first paragraph of section 69.18.

“69.16 The management of the sums making up the fund shall be entrusted to the Minister. Such sums shall be paid to the order of the Minister and deposited with the financial institution he designates.

Notwithstanding section 13, the minister responsible for the fund shall keep the books of account for and record the financial commitments chargeable to the fund. The Minister shall also certify that such commitments and the payments arising therefrom do not exceed, and are consistent with, the available balances.

“69.17 The minister responsible for the fund may, as the manager of the fund, borrow from the Minister sums taken out of the financing fund established under section 69.1.

Any amount paid into a fund pursuant to such a loan shall be repayable out of that fund.

“69.18 The Minister may, with the authorization of the Government and subject to the conditions it determines, advance to the fund sums taken out of the consolidated revenue fund.

The Minister may, conversely, advance to the consolidated revenue fund, on a short-term basis and subject to the conditions he determines, any part of the sums making up the financing fund that is not required for its operation.

Any advance paid into a fund shall be repayable out of that fund.

“69.19 The sums necessary for the payment of the remuneration and expenses pertaining to the social benefits and

other conditions of employment of the persons assigned, in accordance with the Public Service Act (chapter F-3.1.1), to activities related to a fund shall be taken out of that fund.

“69.20 All surpluses accumulated by a fund shall be paid into the consolidated revenue fund on the date and to the extent determined by the Government.

“69.21 Sections 22 to 27, 33, 35, 45, 47 to 49, 49.2, 49.6, 51, 57 and 70 to 72, adapted as required, apply to a fund.

“69.22 The fiscal year of a fund ends on 31 March.

“69.23 Notwithstanding any provision to the contrary, the Minister of Finance shall, in the event of a deficiency in the consolidated revenue fund, pay out of the funds the sums required for the execution of a judgment against the Crown that has become *res judicata*.”

14. The heading of Division VIII.1 of the said Act is amended by inserting the words “BORROWING PLAN,” before the word “INSTRUMENTS”.

15. The said Act is amended by inserting, after section 72.1, the following section:

“72.1.1 Public sector bodies which have the power to borrow may, within the scope of a borrowing plan established by the body and the authorizations or approvals required by law for the exercise of their power to borrow, where the plan sets the maximum amount, the characteristics and limits relating to loans to be made, conclude without further authorization or approval any loan transaction under the plan, establish the amounts and other characteristics, and fix or accept the terms and conditions relating to each such transaction.”

16. The said Act is amended by inserting, after section 72.5, the following section:

“72.6 A public sector body may provide, notwithstanding any provision of any law applicable to it and within the scope of a borrowing plan referred to in section 72.1.1 or a program referred to in section 72.4, that the power to borrow or to conclude the transactions referred to in sections 72.2 and 72.3, or to approve their terms and conditions may be exercised on behalf of the body by not less than two officers authorized by the body.”

17. Section 31.1.3 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), replaced by section 273 of chapter 63 of the statutes of 1995, is again replaced by the following section:

“31.1.3 Section 31.1.1 does not apply in respect of an amount or part of an amount which is declared by law to be exempt from seizure, which constitutes an indemnity or the reimbursement of an insured service or of any other charge pertaining to an indemnity or which belongs to a class of payments determined by the Government under the fourth paragraph of section 13.1 of the Financial Administration Act.”

18. Section 69.1 of the said Act, amended by section 13 of chapter 46 of the statutes of 1994, by section 213 of chapter 1 of the statutes of 1995, by section 14 of chapter 36 of the statutes of 1995, by section 50 of chapter 43 of the statutes of 1995, by section 277 of chapter 63 of the statutes of 1995 and by section 22 of chapter 69 of the statutes of 1995, is again amended by replacing subparagraph *a* of the second paragraph by the following subparagraph:

“(a) the Comptroller of Finance, in respect of the exercise of the powers conferred by sections 13, 13.1, 14 and 14.1 of the Financial Administration Act (chapter A-6);”.

19. Sections 69.13 to 69.23, enacted by section 13 of this Act, have effect from 1 April 1996. Orders made before 31 December 1996 pursuant to sections 69.13 and 69.14 may have effect from that same date.

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