



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 104

**An Act to increase the number of
zero-emission motor vehicles in Québec
in order to reduce greenhouse gas and
other pollutant emissions**

Introduction

**Introduced by
Mr. David Heurtel
Minister of Sustainable Development, the Environment and
the Fight Against Climate Change**

**Québec Official Publisher
2016**

EXPLANATORY NOTES

This bill establishes a system of credits and charges applicable to the sale or lease in Québec, by motor vehicle manufacturers, of new motor vehicles as defined. The motor vehicle manufacturers concerned must accumulate a number of credits determined by regulation. The credits may be accumulated by selling or leasing new motor vehicles that are completely or partially electrically propelled or by acquiring credits from another motor vehicle manufacturer. Under the bill, motor vehicle manufacturers that have not accumulated the required number of credits must pay a charge to the Minister of Sustainable Development, the Environment and the Fight Against Climate Change.

The bill also provides that the Minister is to keep a register in which the information that motor vehicle manufacturers must report annually and the credits they accumulate are entered.

The Minister is granted the necessary powers to administer the proposed legislation, in addition to powers of investigation. Monetary administrative penalties are set and penal provisions are introduced.

Furthermore, under the bill, a motor vehicle manufacturer may contest before the Administrative Tribunal of Québec the number of credits entered for it in the register by the Minister or the Minister's refusal to register information it has reported.

Lastly, the bill contains transitional and final provisions necessary for its application.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting administrative justice (chapter J-3).

Bill 104

AN ACT TO INCREASE THE NUMBER OF ZERO-EMISSION MOTOR VEHICLES IN QUÉBEC IN ORDER TO REDUCE GREENHOUSE GAS AND OTHER POLLUTANT EMISSIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

1. The purpose of this Act is to reduce the quantity of greenhouse gases and other pollutants emitted into the atmosphere by motor vehicles travelling on Québec roads and so reduce their adverse environmental effects.

2. In this Act,

“gross vehicle weight rating” means the value specified by the motor vehicle manufacturer as the weight of a single loaded vehicle;

“model year” means the year used by a motor vehicle manufacturer to designate a particular vehicle model irrespective of the year in which the vehicle was produced; and

“motor vehicle” means a motor vehicle that is used to carry up to nine persons at a time or property on a public highway and whose gross vehicle weight rating is less than 4,500 kg.

Mopeds and motorcycles within the meaning of section 4 of the Highway Safety Code (chapter C-24.2) are not motor vehicles as defined in the first paragraph.

CHAPTER II

CREDITS AND CHARGES

3. When, on average, for three consecutive model years, more than 4,500 new motor vehicles are sold or leased in Québec by a motor vehicle manufacturer, that manufacturer must, for the model year that immediately follows the last of those three consecutive model years, accumulate credits whose number is determined according to the parameters, calculation method and conditions determined by government regulation.

If the average number of new motor vehicles referred to in the first paragraph is equal to or less than 4,500, a motor vehicle manufacturer may, even if not required to do so, accumulate credits according to the same parameters, calculation method and conditions as those provided for in this chapter.

4. The Government may, by regulation, classify motor vehicle manufacturers by category. The parameters, calculation method and conditions referred to in section 3 may then vary according to the category of manufacturer to which they apply.

5. Each year, the Minister must draw up a list, by model year, of the new motor vehicles whose sale or lease enables a motor vehicle manufacturer to accumulate credits. The Minister must publish the list in the *Gazette officielle du Québec* and post it on the department's website not later than 1 May of each year. The Minister may, in the list, include specifications for each of those vehicles.

The Minister may update the list at any time, and must publish and post the amended list as set out in the first paragraph.

6. A motor vehicle manufacturer may accumulate credits under section 3

(1) by selling or leasing, in Québec, new motor vehicles whose number, for each model year, is established according to the calculation method determined by government regulation and which meet the following conditions and any conditions the Government may determine by regulation:

(a) they must be completely or partially electrically propelled;

(b) the battery or cell that powers the electric motor used to propel the vehicle must be rechargeable from a source that is not on board the vehicle; and

(c) they must appear in the list drawn up under section 5; or

(2) by acquiring them from another motor vehicle manufacturer that has accumulated them under this Act.

7. A motor vehicle manufacturer may alienate its credits by onerous title or by gratuitous title to another motor vehicle manufacturer to which this Act applies. The contract between the parties must be evidenced in writing.

The alienation of a credit under the first paragraph must be reported to the Minister by each party to the contract in the manner prescribed by government regulation.

For the purposes of section 8, the Minister does not consider an alienation of credits and does not enter it in the register kept under section 11 unless both parties to the contract have reported the alienation.

8. At the end of each period of three consecutive calendar years, the Minister establishes, not later than 1 June following that period, the number of credits accumulated by a motor vehicle manufacturer for each of the three model years that corresponds to one of the three calendar years concerned.

A motor vehicle manufacturer that has not accumulated the number of credits required to fulfill its obligations under this Act or the regulations must, within three months after the Minister sends a notice of claim, pay to the Minister a charge whose parameters, calculation method, conditions and terms of payment are determined by government regulation.

The Government determines, by regulation, the value of a credit for the purpose of calculating the charge.

9. A motor vehicle manufacturer that, at the end of a period referred to in section 8, has accumulated a number of credits greater than that required to fulfill its obligations under this Act or the regulations may use or alienate the excess credits subsequently.

CHAPTER III

REGISTER

10. A motor vehicle manufacturer referred to in the first paragraph of section 3 must, not later than 1 June of each year, report to the Minister the information determined by government regulation; the regulation must also prescribe the manner in which the report is to be made. Motor vehicle manufacturers referred to in the second paragraph of section 3 may report this information at any time.

A motor vehicle manufacturer's report must be accompanied by the certificate of a chartered professional accountant attesting to the accuracy of the information reported.

11. The Minister keeps a register in which the Minister enters the information reported by motor vehicle manufacturers under section 10.

12. The Minister also enters in the register, for each motor vehicle manufacturer concerned, the credits established under the first paragraph of section 8. The Minister must give the motor vehicle manufacturer prior written notice of the number of credits the Minister intends to enter, and grant it at least 15 days to submit observations. At the end of that time, the Minister notifies the Minister's decision to the motor vehicle manufacturer.

13. In addition to the other conditions set out in Chapter II that must be met in order for a credit to be entered in the register, any new motor vehicle that is considered in calculating the credit must be registered in Québec when the report required under section 10 is made.

14. The Minister may refuse to enter in the register any information reported by a motor vehicle manufacturer that is false or inaccurate.

The Minister must give the motor vehicle manufacturer prior notice of the Minister's intention and grant it at least 15 days to submit observations. The notice must include the reasons on which the refusal is based. At the end of that time, the Minister notifies the Minister's decision to the motor vehicle manufacturer.

15. The Government may, by regulation, determine what information in the register is public.

CHAPTER IV

INVESTIGATION

16. The Minister may designate a person to investigate any matter relating to the administration of this Act and the regulations.

The investigator may be accompanied by a person with special expertise.

17. An investigator must, on request, identify himself or herself and produce a certificate of authority signed by the Minister.

18. An investigator may not be sued for any act performed in good faith in the performance of the functions of office.

CHAPTER V

MONETARY ADMINISTRATIVE PENALTIES

19. A monetary administrative penalty of \$1,000 may be imposed on a motor vehicle manufacturer that, in contravention of this Act, fails to provide information or documents required under this Act or necessary for its application, or fails to file them in the prescribed time.

20. The Government or the Minister may, in a regulation made under this Act, specify that a failure to comply with the regulation may give rise to a monetary administrative penalty. The regulation may define the conditions for applying the penalty and set forth the amounts or the methods for determining them. The amounts may, in particular, vary according to the degree to which the standards have been infringed, without exceeding \$2,000 in the case of a natural person and \$10,000 in any other case.

21. Persons designated by the Minister may impose the monetary administrative penalties provided for in sections 19 and 20.

For the purposes of the first paragraph, the Minister develops and makes public a general framework for applying such administrative penalties in connection with penal proceedings, specifying, in particular, the following elements:

- (1) the purpose of the penalties, such as urging the motor vehicle manufacturer to take rapid measures to remedy the failure and deter its repetition;
- (2) the categories of functions held by the persons designated to impose penalties;
- (3) the criteria that must guide designated persons when a failure to comply has occurred, such as the type of failure, its repetitive nature and the measures taken by the motor vehicle manufacturer to remedy the failure;
- (4) the circumstances in which a penal proceeding is deemed to have priority; and
- (5) the other procedures connected with such a penalty, such as the fact that it must be preceded by notification of a notice of non-compliance.

The general framework must give the categories of administrative or penal sanctions as defined by the Act or the regulations.

22. No decision to impose a monetary administrative penalty may be notified to a motor vehicle manufacturer for a failure to comply with this Act or the regulations if a statement of offence has already been served for a failure to comply with the same provision on the same day, based on the same facts.

23. In the event of a failure to comply with this Act or the regulations, a notice of non-compliance may be notified to the motor vehicle manufacturer concerned urging that the necessary measures be taken immediately to remedy the failure. Such a notice must mention that the failure may give rise to a monetary administrative penalty and penal proceedings.

24. When a person designated by the Minister imposes a monetary administrative penalty on a motor vehicle manufacturer, the designated person must notify the decision by a notice of claim compliant with that described in section 47.

No accumulation of monetary administrative penalties may be imposed on the same motor vehicle manufacturer for failure to comply with the same provision if the failure occurs on the same day and is based on the same facts. In cases where more than one penalty would be applicable, the person imposing the penalty decides which one is most appropriate in light of the circumstances and the purpose of the penalties.

25. The motor vehicle manufacturer may apply in writing for a review of the decision within 30 days after notification of the notice of claim.

The Minister designates the persons responsible for reviewing decisions on monetary administrative penalties. They must not come under the same administrative authority as the persons who impose the penalties.

26. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for reviewing the decision renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner. That person may confirm, quash or vary the decision under review.

27. The application for review must be dealt with promptly. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state that the applicant has the right to contest the decision before the Administrative Tribunal of Québec within the time prescribed for that purpose.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or produce documents, the interest provided for in the third paragraph of section 47 on the amount owing ceases to accrue until the decision is rendered.

28. The imposition of a monetary administrative penalty for failure to comply with the Act or the regulations is prescribed two years after the date of the failure to comply.

However, if false representations have been made to the Minister or to a functionary or investigator, the monetary administrative penalty may be imposed within two years after the date on which the investigation that led to the discovery of the failure to comply was begun.

In the absence of evidence to the contrary, the Minister's or investigator's certificate constitutes conclusive proof of the date on which the investigation was begun.

29. If a failure to comply for which a monetary administrative penalty may be imposed continues for more than one day, it constitutes a new failure for each day it continues.

CHAPTER VI

PROCEEDINGS BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

30. A motor vehicle manufacturer may contest, before the Administrative Tribunal of Québec,

(1) the number of credits entered in the register for the motor vehicle manufacturer by the Minister under section 12; or

(2) a refusal by the Minister, under section 14, to register any information reported by the motor vehicle manufacturer.

31. A motor vehicle manufacturer may contest, before the Administrative Tribunal of Québec, a notice of claim notified to it, other than a notice of claim notified to it in accordance with section 24, or a review decision confirming the imposition of a monetary administrative penalty.

When rendering its decision, the Administrative Tribunal of Québec may make a ruling with respect to interest accrued on the penalty while the matter was pending before the Tribunal.

32. A proceeding must be brought within 60 days of notification of the contested decision.

CHAPTER VII

PENAL PROVISIONS

33. Anyone who fails to provide information or documents required under this Act or necessary for its application, or fails to file them in the prescribed time, is liable to a fine of not less than \$1,000 nor more than \$100,000 in the case of a natural person and to a fine of not less than \$3,000 nor more than \$600,000 in any other case.

34. Anyone who hinders a functionary or investigator in the performance of the functions of office or misleads them by concealment or false declarations is liable to a fine of not less than \$2,500 nor more than \$250,000 in the case of a natural person and to a fine of not less than \$7,500 nor more than \$1,500,000 in any other case.

35. Despite sections 33 and 34, the Government or, as applicable, the Minister may determine the regulatory provisions made under this Act whose contravention constitutes an offence and renders the offender liable to a fine the minimum and maximum amounts of which are set by the Government or the Minister. The Government may provide that, despite article 231 of the Code of Penal Procedure (chapter C-25.1), a contravention renders the offender liable to the fine, a term of imprisonment, or both the fine and imprisonment.

The maximum penalties under the first paragraph may not exceed those prescribed in section 34.

36. The fines prescribed in sections 33 and 34 or the regulations are doubled for a second offence and tripled for a subsequent offence. The maximum term of imprisonment is five years less a day for a second or subsequent offence.

If an offender commits an offence under this Act or the regulations after having been previously found guilty of any such offence and if, without regard to the amounts prescribed for a second or subsequent offence, the minimum

fine to which the offender was liable for the first offence was equal to or greater than the minimum fine prescribed for the second offence, the minimum and maximum fines and, if applicable, the minimum and maximum terms of imprisonment prescribed for the second offence become, if the prosecutor so requests, those prescribed in the case of a second or subsequent offence.

This section applies to prior findings of guilty pronounced in the two-year period preceding the second offence or, if the minimum fine to which the offender was liable for the prior offence is that prescribed in section 34, in the five-year period preceding the second offence. Fines for a third or subsequent offence apply if the penalty imposed for the prior offence was the penalty for a second or subsequent offence.

37. If an offence under this Act or the regulations is committed by a director or officer of a motor vehicle manufacturer, the minimum and maximum fines that would apply in the case of a natural person are doubled.

38. If an offence under this Act or the regulations continues for more than one day, it constitutes a separate offence for each day it continues.

39. Whoever does or omits to do something in order to assist a person to commit an offence under this Act or the regulations, or advises or encourages or incites a person to commit such an offence, is considered to have committed the same offence.

40. In any penal proceedings relating to an offence under this Act or the regulations, proof that the offence was committed by an agent, mandatary or employee of any party is sufficient to establish that it was committed by that party, unless the party establishes that it exercised due diligence and took all necessary precautions to prevent the offence.

41. If a motor vehicle manufacturer or an agent, mandatary or employee of a motor vehicle manufacturer commits an offence under this Act or the regulations, its director or officer is also presumed to have committed the offence unless it is established that they exercised due diligence and took all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the partnership's affairs.

42. In determining the penalty, the judge may take into account aggravating factors such as

(1) the intentional, negligent or reckless nature of the offence;

(2) the behaviour of the offender after committing the offence, as, for example, whether the offender attempted to cover it up;

(3) the increase in revenues or decrease in expenses that the offender obtained, or intended to obtain, by committing the offence or by omitting to take measures to prevent it; and

(4) the failure to take reasonable measures to prevent the commission of the offence despite the offender's financial ability to do so, given such considerations as the size of the offender's undertaking and the offender's assets, turnover and revenues.

A judge who, despite the presence of an aggravating factor, decides to impose the minimum fine must give reasons for the decision.

43. On an application made by the prosecutor and submitted with the statement of offence, the judge may impose on the offender, in addition to any other penalty, a further fine not exceeding the financial benefit realized by the offender as a result of the offence, even if the maximum fine has also been imposed.

44. In the judgment, the judge may order an offender found guilty of an offence under this Act or the regulations

(1) to refrain from any action or activity that may lead to the continuation or repetition of the offence;

(2) to carry out any action or carry on any activity to prevent the offence from being continued or repeated;

(3) to provide security or consign a sum of money to guarantee performance of those obligations; or

(4) to make the finding of guilty public, under the conditions determined by the judge.

45. When determining a fine higher than the minimum fine prescribed in this Act or the regulations, or when determining the time within which an amount must be paid, the judge may take into account the offender's ability to pay, provided the offender furnishes proof of assets and liabilities.

46. Penal proceedings for offences under this Act or the regulations are prescribed after the longer of

(1) five years from the date the offence was committed;

(2) two years from the date on which the investigation that led to the discovery of the offence was begun if false representations were made to the Minister or to a functionary or investigator.

In the cases referred to in subparagraph 2 of the first paragraph, the Minister's or investigator's certificate constitutes, in the absence of evidence to the contrary, conclusive proof of the date on which the investigation was begun.

CHAPTER VIII

MISCELLANEOUS PROVISIONS

47. The Minister may claim payment from a person of any amount owed to the Minister under this Act or the regulations by notification of a notice of claim. However, in the case of a monetary administrative penalty, the claim is made by the person designated by the Minister under section 22.

A notice of claim must state the amount of the claim, the reasons for it and the time from which it bears interest. In the case of a monetary administrative penalty, the notice of claim must mention the right to obtain a review of the decision and the time within which an application for review must be filed. In any other case, the notice of claim must mention the right to contest the claim before the Administrative Tribunal of Québec and the time within which such a proceeding must be brought.

The notice must also include information on the procedure for recovery of the amount owing, in particular with regard to the issue of a recovery certificate under section 51 and its effects.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

Notification of a notice of claim interrupts the prescription provided for in the Civil Code with regard to recovery of an amount owing.

48. The directors and officers of a motor vehicle manufacturer that has defaulted on payment of an amount owed to the Minister under this Act or the regulations are solidarily liable, with the motor vehicle manufacturer, for the payment of the amount, unless they establish that they exercised due care and diligence to prevent the failure which led to the claim.

49. The reimbursement of an amount owed to the Minister under this Act or the regulations is secured by a legal hypothec on the debtor's movable and immovable property.

50. The debtor and the Minister may enter into a payment agreement with regard to the amount owing. Such an agreement, or payment of the amount owing, does not constitute, for the purposes of penal proceedings or any other administrative penalty under this Act or the regulations, an acknowledgement of the facts giving rise to it.

51. If the amount owing is not paid in its entirety or the payment agreement is not adhered to, the Minister may issue a recovery certificate on the expiry of the time for applying for a review of the decision, on the expiry of the time for contesting the review decision before the Administrative Tribunal of Québec or on the expiry of 30 days after the Tribunal's final decision confirming all or part of the Minister's decision or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time referred to in the first paragraph if the Minister is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor's name and address and the amount of the debt.

52. Once a recovery certificate has been issued, any refund owed to a debtor by the Minister of Revenue may, in accordance with section 31 of the Tax Administration Act, be withheld for payment of the amount due referred to in the certificate.

The withholding interrupts the prescription provided for in the Civil Code with regard to recovery of an amount owing.

53. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

54. The debtor is required to pay a recovery charge in the cases, under the conditions and in the amount determined by the Minister by order.

55. In all civil or penal proceedings instituted under this Act, the cost of any investigation, at the rate established by ministerial regulation, is included in the cost of the proceedings.

56. The Minister keeps a register relating to the monetary administrative penalties imposed by the persons the Minister designates for that purpose under this Act or the regulations.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure that gave rise to the penalty and the legislative or regulatory provisions under which it was imposed;
- (3) if the penalty was imposed on a legal person, the legal person's name and the address of its head office or of one of its establishments or of the business establishment of one of its agents;

(4) if the penalty was imposed on a partnership or association without legal personality, the name and address of the partnership or association;

(5) if the penalty is imposed on a natural person, the person's name and the name of the municipality in whose territory the person resides;

(6) the amount of the penalty imposed;

(7) the date of receipt of an application for review and the date and conclusions of the decision;

(8) the date a proceeding is brought before the Administrative Tribunal of Québec and the date and conclusions of the decision rendered by the Tribunal, as soon as the Minister is made aware of the information;

(9) the date a proceeding is brought against the decision rendered by the Administrative Tribunal of Québec, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Minister is made aware of the information; and

(10) any other information the Minister considers to be of public interest.

57. The Minister keeps a register of the following information relating to findings of guilty for offences under this Act or the regulations:

(1) the date of the finding of guilty;

(2) the nature of the offence and the legislative or regulatory provisions under which the offender was found guilty;

(3) the date of the offence;

(4) if the offender is a legal person, the legal person's name and the address of its head office or of one of its establishments or of the business establishment of one of its agents;

(5) if the offender is a partnership or association without legal personality, the name and address of the partnership or association;

(6) if the offender is a natural person, the person's name and the name of the municipality in whose territory the person resides;

(7) if the offender is an officer or director of a legal person, partnership or association without legal personality, the officer's or director's name, the name of the municipality in whose territory the officer or director resides and, as applicable, the name and address of the legal person's head office or of one of its establishments or of the business establishment of one of its agents, or the name and address of the partnership or association;

(8) the penalty imposed by the judge;

(9) the date a proceeding is brought against the decision rendered, the nature of the proceeding and the date and conclusions of the decision rendered by the competent court, as soon as the Minister is made aware of the information; and

(10) any other information the Minister considers of public interest.

58. The information contained in the registers kept under sections 56 and 57 is public. The Minister promptly posts the information on the department's website.

59. The sums paid to the Minister under this Act or the regulations are credited to the Green Fund in accordance with section 15.4 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (chapter M-30.001) and are to be used to finance measures to mitigate the impact of climate change on the environment, including measures to reduce greenhouse gas and other pollutant emissions into the atmosphere.

60. When the activities described in section 3 are carried on by a legal person, partnership or association without legal personality in which a motor vehicle manufacturer holds, directly or indirectly, more than 33% of the voting rights attached to the shares or other equity securities, this Act applies, with the necessary modifications, to that legal person, partnership or association.

61. The Société de l'assurance automobile du Québec must, at the Minister's request, provide the Minister with any information enabling the Minister to ensure compliance with this Act and the regulations.

62. The Minister may, by agreement, delegate the keeping of the register established under section 11 and the administration of all or part of a regulation made under this Act to a person or body.

The Minister may also, by agreement, delegate to another minister or to a body all or some of the powers relating to the recovery of an amount owing under this Act or the regulations.

CHAPTER IX

AMENDING PROVISION

ACT RESPECTING ADMINISTRATIVE JUSTICE

63. Schedule III to the Act respecting administrative justice (chapter J-3) is amended by adding the following paragraph at the end:

“(7) proceedings under section 30 or 31 of the Act to increase the number of zero-emission motor vehicles in Québec in order to reduce greenhouse gas and other pollutant emissions (*insert the year and chapter number of that Act*).”

CHAPTER X

TRANSITIONAL AND FINAL PROVISIONS

64. The 2018 model year is the first one for which the obligation to accumulate credits under the first paragraph of section 3 applies and for which charges may be required under the second paragraph of section 8.

The date on which the Minister first establishes, under the first paragraph of section 8, the number of credits accumulated by a motor vehicle manufacturer is 1 June 2019.

New motor vehicles for the 2016 and 2017 model years sold or leased in Québec give entitlement to credits if they meet the conditions set out in sections 6 and 13, according to the value, parameters, calculation method and conditions determined by government regulation.

65. This Act also applies to new motor vehicles for the 2016, 2017 and 2018 model years that are sold or leased in Québec before the date of its coming into force.

66. The Minister must, not later than (*insert the date that is four years after the date of coming into force of this section*), report to the Government on the implementation of this Act and, every five years after that, report to the Government on its carrying out.

The report is tabled by the Minister in the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption.

67. The Minister responsible for the environment is responsible for the administration of this Act.

68. This Act comes into force on the date of coming into force of the first regulation made under it.