Creation of Mobilité Infra Québec: Major powers for this new agency

May 14, 2024

On May 9, 2024, Bill 61, *An Act enacting the Act respecting Mobilité Infra Québec and amending certain provisions relating to shared transportation* (Bill 61),was introduced before the National Assembly of Québec.[1]

Bill 61 enacts the *Act respecting Mobilité Infra Québec*, which establishes Mobilité Infra Québec and sets out its main mission: to conduct opportunity analyses for and plan or carry out complex transportation projects with a view to sustainable mobility.[2]

The scope of Mobilité Infra Québec's powers

Pursuant to Bill 61, a complex transportation project entrusted to Mobilité Infra Québec may involve building, rebuilding or repairing immovables or civil engineering structures intended for transportation or useful for a transportation system, as well as developing or improving an intelligent transportation system. A project carried out by Mobilité Infra Québec would entail the acquisition of all the property required to operate a transportation system, such as rolling stock.[3]

Under the broad powers issued by Bill 61, Mobilité Infra Québec may, for instance: acquire, by mutual agreement or by expropriation, on its own behalf, on behalf of one of its subsidiaries or on behalf of the government, a local municipality, a public transit authority, the Réseau de transport métropolitain or the Autorité régionale de transport métropolitain, any immovable it considers necessary in connection with the planning or carrying out of a complex transportation project.[4]

When carrying out mobility planning—and taking into account the instructions provided by the Minister—Mobilité Infra Québec may also plan the coordination of the various transportation services and the maintenance, improvement and replacement of transportation equipment and infrastructure.

Bill 61 states that, when planning or carrying out a complex transportation project, Mobilité Infra Québec and a municipality affected by the project may reach an agreement with regard to:

- the temporary occupation of public roads during construction, reconstruction or repair work for the project;
- the modification of public roads; and
- the reconfiguration of public roads in the vicinity of the work for the project due to a modification referred to in the previous paragraph.[5]

If such an agreement is not established within 60 days after a notice of occupation is received from Mobilité Infra Québec, Mobilité Infra Québec may start occupying the public roads and, if applicable, commence the work specified in that notice, in accordance with the documents sent to the municipality concerned, without having to pay the municipality an amount of money or any other consideration.[6]

The provisions governing the occupation of public roads apply, with the necessary modifications, to waterworks, sewer systems or networks of underground conduits, other works that may be located under the surface of the public roads affected by a complex transportation project, and overhead networks, where those waterworks, systems, networks and other works are owned by a municipality.[7]

Under Bill 61, Mobilité Infra Québec may also intervene in a project insofar as it is entrusted to it by the government while a tender process is in progress. In such a case, the project remains under the responsibility of the body that initiated the call for tenders until the contract is entered into.[8]

If a request for qualifications is in progress, Mobilité Infra Québec is responsible for the tender process following the qualification process.[9]

Mobilité Infra Québec may also cancel or suspend any tender or qualification process in progress.[10]

As soon as a responsibility or function is entrusted to Mobilité Infra Québec in relation to a complex transportation project, Mobilité Infra Québec replaces the client in the contracts that concern the project, except as determined by the government. In such a case, the initial client is discharged of its obligations for the future. Mobilité Infra Québec also retains a remedy against the initial client for any failure to fulfil its obligations.[11]

Key takeaways

Bill 61 intends to give Mobilité Infra Québec great latitude in facilitating the development of complex infrastructure projects. The powers entrusted to this entity are reminiscent of the powers granted to CDPQ Infra in the construction of the Réseau express métropolitain (REM).

It remains to be seen how such provisions will be applied. Ideally, industry stakeholders would not be adversely affected by frictions between Mobilité Infra Québec and municipalities or bodies that may have conditions imposed on them against their will. In these cases, there is a real risk that uncooperative parties may impede major transportation infrastructure projects in the province.

By its very nature, the right of substitution sparks concerns of its own, particularly for public bodies, private partners, funders, or other private sector entities who may be

party to a complex transportation project that could wind up in Mobilité Infra Québec's hands.

Conclusion

Bill 61 marks a significant development in how major public infrastructure projects are organized and set in motion. The bill as tabled now needs to be studied before it can be passed. We will keep you informed of any developments tied to Bill 61 in the coming months.

In the meantime, we invite you to check out our related article on Bill 62, *An Act mainly to diversify the acquisition strategies of public bodies and increase their agility in carrying out infrastructure projects.*

If you have any questions about the above, please reach out to BLG's Infrastructure and Construction groups.

Footnotes

[1] Bill 61, *An Act enacting the Act respecting Mobilité Infra Québec and amending certain provisions relating to shared transportation* – National Assembly of Québec (assnat.qc.ca).

[2] S. 4, *Act respecting Mobilité Infra Québec*.

[3] *Ibid*.

[4] S. 8, *Act respecting Mobilité Infra Québec*.

[5] S. 31, *Act respecting Mobilité Infra Québec*.

[6] S. 36, *Act respecting Mobilité Infra Québec*.

[7] S. 42, *Act respecting Mobilité Infra Québec*.

[8] S. 61, *Act respecting Mobilité Infra Québec*.

[9] *Ibid*.

[10] *Ibid*.

[11] S. 62, *Act respecting Mobilité Infra Québec*.

By

Pascale Dionne, Patrice Morin, François Nolet-Lévesque

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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