



BILL NO. 86

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

An Act to Provide Protection for the NewPage Port Hawkesbury Pension Plans

CHAPTER 12
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 17, 2012**

The Honourable Marilyn More
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act to Provide Protection for the NewPage Port Hawkesbury Pension Plans

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *NewPage Port Hawkesbury Pension Plans Act*.

2 (1) In this Act,

(a) “administrator” means Morneau Shepell Ltd or any successor appointed by the Superintendent to administer the pension plans;

(b) “election date” means the date sixty days after the date on which the administrator of a pension plan provides the members, former members and other persons entitled to benefits under the pension plans with the information required by subsections 8(2) and 8(3);

(c) “former member” means a former member of a pension plan;

(d) “member” means a member of a pension plan;

(e) “Minister” means the Minister of Labour and Advanced Education;

(f) “*Pension Benefits Regulations*” means the *Pension Benefits Regulations* made pursuant to the *Pension Benefits Act*;

(g) “pension funds” means the pension funds of the pension plans;

(h) “pension plan” means any of the pension plans;

(i) “pension plans” means all of the following pension plans, including any pension plans that result from a consolidation of any of the following pension plans:

(i) Pension Plan for Mill Employees of NewPage Port Hawkesbury Corp.,

(ii) Pension Plan for the Office and Clerical Hourly Employees of NewPage Port Hawkesbury Corp.,

(iii) Pension Plan for the Woodland Hourly Employees of NewPage Port Hawkesbury Corp.,

(iv) Pension Plan for the Salaried Non-Union Employees of NewPage Port Hawkesbury Corp. and Associated and Affiliated Companies;

(j) “prescribed” means prescribed by the regulations;

(k) “retired member” means a former member of a pension plan who has terminated employment or membership in the pension plan and is in receipt of a pension payable from the pension fund;

(l) “wind-up date” means July 1, 2023, or such other date as may be prescribed.

(2) Except as otherwise provided in this Act, words and expressions used in this Act have the same meaning as in the *Pension Benefits Act*.

(3) A reference in this Act to the wind-up of the pension plans or any of them includes the wind-up of the pension plans in whole or in part.

(4) Where there is a conflict between this Act and the *Pension Benefits Act*, this Act prevails.

3 This Act applies to the members, former members and other persons entitled to receive benefits under the pension plans, each trade union that represents members and the administrator of the pension plans.

4 (1) The administrator shall make any amendments to the pension plans necessary to make the pension plans comply with this Act.

(2) Notwithstanding subsection 20(1) of the *Pension Benefits Act*, amendments made to the pension plans, or any of them, pursuant to subsection (1) are not void if they are made to the pension plans before the pension plans are wound up.

5 (1) The amount of the pension that is being paid to a retired member of a pension plan must, as of the prescribed date, be reduced in accordance with the regulations.

(2) The amount of a pension that is paid to a member or former member who retires on or after the date this Act comes into force must, as of the later of the prescribed date and the date on which the member or former member retires, be reduced in accordance with the regulations.

6 (1) The effective date of the wind-up of the pension plans is the date fixed by the Governor in Council.

(2) The date fixed by the Governor in Council pursuant to subsection (1) may be before or after the coming into force of this Act.

7 (1) The members, former members or other persons entitled to benefits under the pension plans may, in the prescribed manner,

(a) elect to participate in the pension plans during an extended wind-up period that extends until the wind-up date; or

(b) elect to participate in the wind-up of the pension plans without extension of the wind-up period.

(2) The election must be made no later than the election date.

(3) Where a member, former member or other person entitled to benefits under a pension plan fails to make an election in accordance with subsections (1) and (2), the member, former member or other person is deemed to have elected to participate in the pension plans during an extended wind-up period pursuant to clause (1)(a).

(4) A member, former member or other person entitled to benefits under a pension plan who has made an election or is deemed to have made an election under this Section is not permitted to rescind the election or deemed election, and the election or deemed election is final and not subject to challenge, review or appeal.

(5) Where, immediately following the election date,

(a) the prescribed percentage of members, former members and other persons entitled to benefits under the pension plans have elected or are deemed to have elected to participate in the pension plans during the extended wind-up period; and

(b) the total value of the assets held in the pension plans by the members, former members and other persons entitled to benefits under the pension plans who have elected or are deemed to have elected to participate in the pension plans during the extended wind-up period, expressed as a percentage of the total value of all assets held in the pension plans, is equal to or exceeds the prescribed percentage,

the wind-up period is extended until the wind-up date.

(6) Where the wind-up period is not extended under subsection (5), the pension plans must be wound up in accordance with the *Pension Benefits Act*.

(7) The administrator shall, in the prescribed manner and within the prescribed period, provide the results of the election to the Superintendent and to each person referred to in clauses 8(1)(a) to (f).

8 (1) For the purpose of the election conducted pursuant to Section 7, the administrator shall, in the prescribed manner, provide the information required by subsection (2) to

(a) the Superintendent;

(b) each member who is affected by the wind-up or partial wind-up of the pension plan;

(c) each former member who is affected by the wind-up or partial wind-up of the pension plan;

(d) each trade union that represents members;

(e) the advisory committee of the pension plan; and

(f) any other person entitled to a payment from the pension fund who is affected,

within sixty days of the prescribed date.

(2) The administrator shall provide to the persons referred to in subsection (1)

(a) the name of the pension plan and its Provincial registration number;

(b) that an extended wind-up of the pension plan is proposed;

(c) the wind-up date for the pension plan under the proposed extended wind-up;

(d) the effective date of the wind-up of the pension plan, if known;

(e) the time period in relation to which a member or former member must make the election under Section 7 or be deemed to have elected to participate in the extended wind-up of the pension plans;

(f) notice that each member, former member or other person entitled to a pension, deferred pension, any other benefit or a refund is to be provided with an individual statement setting out the person's entitlements and options under the plan;

(g) notice that there are insufficient assets to pay all pension benefits and a detailed statement setting out

(i) an estimate of the plan's assets, solvency ratio expressed as a percentage of solvency funding, solvency deficiencies and going-concern unfunded liabilities as at September 30, 2011, and

(ii) the information referred to in subclause (i) projected to the wind-up date, together with the actuarial assumptions relied upon in preparing the projected information;

(h) the prescribed information;

(i) any information that the Superintendent may, by notice in writing to the administrator, require; and

(j) any information that the administrator determines ought to be provided.

(3) At the same time that the information required by subsection (2) is provided to the persons referred to in clauses (1)(a) to (f), the administrator shall give to each person entitled to a pension, deferred pension or other benefit, or a refund in respect of the pension plan, a statement setting out the person's entitlement under the pension plan, the options available to the person and, without limiting the generality of the foregoing,

(a) the information required by subsection 35(2) of the *Pension Benefits Regulations* to the extent it is relevant to the pension plan;

(b) for retired members, a statement of the pension received by the retired member and a detailed description of the reductions that would be made to the retired member's pension calculated as if the wind-up period were extended and as if it were not extended until the wind-up date;

(c) for members, former members and other persons entitled to benefits under the pension plans who are entitled to a transfer pursuant to subsection 78(2) of the *Pension Benefits Act*,

(i) the commuted value of the deferred pension or other benefit to which the person is entitled calculated as if

(A) the pension plan were fully funded,

(B) the wind-up period were extended until the wind-up date, and

(C) the wind-up period were not extended until the wind-up date,

and

(ii) the transfer options for the commuted value of the deferred pension that are available to the member, former member or other person entitled to benefits if the wind-up period were to be extended and if it were not to be extended until the wind-up date;

- (d) the prescribed information;
- (e) any information that the Superintendent may, by notice in writing to the administrator, require; and
- (f) any information that the administrator determines ought to be provided.

9 (1) Where the wind-up period of the pension plans has been extended, on and after the effective date of the wind-up of the pension plans until the date of the distribution of the assets of the pension funds, only the following payments may be made out of the pension funds in respect of members, former members and other persons entitled to benefits under the pension plans who have elected or are deemed to have elected to participate in the extended wind-up period:

- (a) subject to Section 5, pensions or other benefits for which payments had commenced before the effective date of the wind-up;
- (b) pensions or other benefits for which members, former members or other persons entitled to benefits become eligible after the effective date of the wind-up;
- (c) refunds of member contributions with interest to members who terminate employment before the effective date of the wind-up and who are not entitled to a pension or deferred pension;
- (d) payment of a pre-retirement death benefit;
- (e) the reasonable operating fees and expenses of the administrator, as approved by the Superintendent; and
- (f) any other prescribed payment.

(2) Notwithstanding subsection (1), where a member, former member or other person entitled to benefits under a pension plan elects not to extend the wind-up period, the administrator shall

- (a) proceed with a partial wind-up of the pension plans in respect of the persons who so elect; and
- (b) pay the amounts owing in respect of the persons who so elect in accordance with the *Pension Benefits Act*.

(3) The value of any projected or actual investment earnings included in a report filed by the administrator under Section 11 must be taken into account when calculating and making payments under this Section or ordering the reduction of any of those payments under Section 82 of the *Pension Benefits Act*.

10 A wind-up report in respect of the pension plans must be prepared in accordance with the *Pension Benefits Act* and *Pension Benefits Regulations*.

11 (1) Where the wind-up period for the pension plans has been extended in accordance with Section 7, the administrator shall, on an annual basis during the extended wind-up period,

- (a) cause the pension plans to be reviewed;

(b) cause a report to be prepared by a person authorized under Section 14 of the *Pension Benefits Regulations*;

(c) file the report with the Superintendent no later than six months after the valuation date of the report;

(d) at the same time as the report is filed with the Superintendent, provide a summary statement containing the prescribed information to the members, former members and other persons entitled to benefits; and

(e) provide to the Superintendent an estimate of the proposed or anticipated annual operating fees and expenses for the administration of the pension plans.

(2) A report required under subsection (1) must

(a) show any gain or loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and

(b) contain any information that may be prescribed.

12 (1) Where the wind-up period for the pension plans has been extended, the administrator may, on and after the effective date of the wind-up of the pension plans,

(a) receive money for the pension funds from any source;

(b) invest up to forty per cent of the pension funds in non-fixed income investments; and

(c) upon providing the prescribed notice of the change to the affected retired members in the prescribed manner and within the prescribed period, decrease the pensions being paid to retired members in accordance with the regulations,

for the purpose of improving the funded ratio of the pension plans.

(2) Where the wind-up period for the pension plans has been extended, the administrator may, on and after the effective date of the wind-up of the pension plans, increase the pensions being paid to retired members in accordance with the regulations.

(3) A source from which money is received under clause (1)(a) is not a pension fund within the meaning of the *Pension Benefits Act*.

13 No action or other proceeding for damages lies or may be instituted against Her Majesty in right of the Province, the Minister, the Superintendent, or the administrator of the pension plans, or any of them, in relation to any act or omission done in good faith, while acting under the authority of this Act, the regulations, the *Pension Benefits Act* or the *Pension Benefits Regulations*, with respect to a decrease in the value of the assets in the pension funds, or in any of them.

14 (1) The Governor in Council may make regulations

(a) prescribing a date other than July 1, 2023, to be the wind-up date;

(b) prescribing a date for the purpose of Section 5;

- (c) respecting the reduction of pensions that are being paid to retired members;
- (d) respecting the reduction of pensions that are to be paid to members or former members who retire on a date on or after the coming into force of this Act;
- (e) prescribing the manner in which the members, former members and other persons entitled to benefits under the pension plans may make an election pursuant to subsection 7(1);
- (f) prescribing the percentage of the members, former members or other persons entitled to benefits under the pension plans who must elect to participate in the pension plans during an extended wind-up in order to extend the wind-up period in relation to the pension plans;
- (g) prescribing the percentage of the total value of all assets held in the pension plans that the members, former members or other persons entitled to benefits under the pension plans who have elected or are deemed to have elected to participate in the pension plans during an extended wind-up are required to hold in order to extend the wind-up period in relation to the pension plans;
- (h) prescribing the manner in which and the period of time within which the administrator is to provide the results of an election under Section 7 to the Superintendent and to each person referred to in clauses 8(1)(a) to (f);
- (i) prescribing the manner in which the information required by subsection 8(2) is to be provided to each person referred to in clauses 8(1)(a) to (f);
- (j) prescribing a date for the purpose of subsection 8(1);
- (k) prescribing information that is to be provided by the administrator to each person referred to in clauses 8(1)(a) to (f) for the purpose of making an election under Section 7;
- (l) prescribing information that is to be provided by the administrator under subsection 8(3) to each person entitled to a pension, deferred pension or other benefits, or a refund in respect of the pension plan;
- (m) prescribing additional payments that may be made out of the pension fund during the extended wind-up period;
- (n) prescribing the content of the summary statements to be provided to members, former members and other persons entitled to benefits under the pension plans;
- (o) prescribing the content of the reports referred to in Section 11;
- (p) prescribing the notice to be provided to retired members pursuant to clause 12(1)(c) and the manner in which and the period within which such notice is to be provided;
- (q) respecting the decrease or increase by the administrator under Section 12 of pensions being paid to retired members based on the funded ratio of the pension plans;
- (r) defining any word or expression used but not defined in this Act;

(s) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.
