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LEGISLATIVE SUMMARY



Bill C-27: An Act to amend the Pension Benefits Standards Act, 1985

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**Brett Capstick
Raphaëlle Deraspe**

Economics, Resources and International Affairs Division
Parliamentary Information and Research Service

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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CONTENTS

1	BACKGROUND.....	1
1.1	Target Benefit Plans.....	1
1.2	Federal Initiatives and Provincial Legislation.....	2
1.2.1	Federal Initiatives	2
1.2.2	Provincial Legislation.....	2
2	DESCRIPTION AND ANALYSIS	3
2.1	Target Benefit Plans.....	3
2.1.1	The Structure of a Target Benefit Plan.....	3
2.1.2	The Establishment of a Target Benefit Plan.....	5
2.1.3	The Conversion of Existing Pension Plans to a Target Benefit Plan.....	5
2.1.4	The Administration of a Target Benefit Plan.....	6
2.2	The Purchase of Life Annuities	7
2.3	Regulations	8
2.4	Coming into Force.....	8

LEGISLATIVE SUMMARY OF BILL C-27: AN ACT TO AMEND THE PENSION BENEFITS STANDARDS ACT, 1985

1 BACKGROUND

Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985,¹ was introduced in the House of Commons on 19 October 2016 on behalf of the Minister of Finance.

The purpose of the bill is to provide a framework for the establishment, administration and supervision of target benefit pension plans for both single and multiple employers under the jurisdiction of the federal government; these plans are also referred to as shared-risk pension plans.

Bill C-27 also provides for the elimination of the “boomerang risk” associated with the purchase of “buy-out annuities” for former pension plan members and their survivors.

“Boomerang risk” refers to the risk that a pension plan carries to pay the portion of pensions that is not covered by Assuris if the insurer from which buy-out annuities were purchased goes bankrupt. Assuris is the not-for-profit agency that protects Canadians in the event that their insurance company becomes bankrupt.²

A “buy-out annuity” is an arrangement made by a pension plan administrator with an insurance company in an effort to absolve the pension plan from its obligations or fiduciary responsibilities to the retirees covered by the pension plan. Under such an arrangement, a pension plan administrator pays a premium to an insurance company to purchase an annuity contract on behalf of each retiree, and the insurer pays the retirees’ pensions. However, the conditions under which the pension plan administrator is absolved of its obligations or responsibilities depends on the legislation governing the plan. For example, federally regulated plans must ensure that, after the purchase of a buy-out annuity, their solvency ratio is not reduced; if it is reduced, additional contributions to the plan are required.³

1.1 TARGET BENEFIT PLANS

According to the Office of the Superintendent of Financial Institutions, a defined benefit pension plan involves employer and employee contributions that enable “[plan] members [to receive] a defined pension income when they retire.”⁴ In comparison, under a defined contribution pension plan, “the employer and employee contribute a set or defined amount and the amount of pension income that the member receives upon retirement is determined by, among other things, the amount of contributions accumulated and the investment income earned.”⁵

Target benefit plans are often described as a hybrid between a defined benefit pension plan and a defined contribution pension plan. Like a defined benefit plan, a target benefit plan aims to provide a predetermined benefit. However, a target benefit plan is also designed to provide greater flexibility regarding contribution and

retirement benefit amounts because these amounts are based on the plan's investment performance. In general, in a target benefit plan, the amount of the retirement benefit is not fixed, and employees and retirees bear the risks associated with a plan's investment performance.⁶

In a target benefit plan, both the employer's contributions to, and its liability in relation to, the plan are limited to contributions that are contractually required;⁷ these contributions can vary within a predetermined range.⁸ While a minimum retirement benefit is guaranteed, contribution and benefit amounts can be modified according to the plan's investment performance.⁹ Employees and retirees are responsible for any funding shortfalls, which are to be met through increased contributions and/or reduced pension benefits, and the individuals are entitled to any funding surpluses.¹⁰

1.2 FEDERAL INITIATIVES AND PROVINCIAL LEGISLATION

Most pension standards legislation in Canada does not allow for target benefit plans, and must be amended to allow for the implementation of such plans.¹¹ In particular, a main feature of a target benefit plan is the ability to reduce accrued benefits when a plan has insufficient assets to meet the targeted level of benefits, and most pension standards legislation does not allow for the modification of accrued benefits.

1.2.1 FEDERAL INITIATIVES

During the April–June 2014 period, the Department of Finance undertook public consultations on a potential federal framework for target benefit plans that would be available to federally regulated private-sector workplaces and Crown corporations that sponsor pension plans that are subject to the *Pension Benefits Standards Act, 1985*. The Department of Finance stated that the proposed framework for such plans “would not impact the core public sector pension plans which are governed by statutes such as the *Public Service Superannuation Act*, the *Canadian Forces Superannuation Act* and the *Royal Canadian Mounted Police Superannuation Act*.”¹²

In the 2015 federal budget, the government noted that it was assessing target benefit plans as a voluntary option for Crown corporations and federally regulated private-sector pension plan sponsors.¹³ Bill C-27 is the result of that assessment.

1.2.2 PROVINCIAL LEGISLATION

To date, New Brunswick, Alberta and British Columbia have amended their pension standards legislation to allow for target benefit plans; other provinces have not yet done so, or have only partially modified their legislation.

New Brunswick introduced a shared-risk pension plan model, which is essentially a target benefit plan model, through *An Act to Amend the Pension Benefits Act*, which came into force on 1 July 2012.¹⁴ In December 2012, New Brunswick passed Bill 20, *An Act to Amend the Pension Benefits Act*, to facilitate the conversion of an existing pension plan to a shared-risk pension plan.¹⁵

Alberta's new pension legislation – *Employment Pension Plans Act*¹⁶ – came into force on 1 September 2014 and included provisions for target benefit plans. However, Alberta's model does not permit the conversion of a defined benefit pension plan to a target benefit plan retroactively.¹⁷

On 30 September 2015, British Columbia's *Pension Benefits Standards Act* came into effect, allowing for target benefit plans and the retroactive conversion of a defined benefit pension plan to a target benefit plan for multi-employer pension plans only.¹⁸

In 2012 and 2013, Quebec introduced legislation and regulations in relation to target benefit plans; they applied to the pulp and paper sector only.¹⁹ On 7 December 2012, the *Act to provide for the establishment of target-benefit pension plans in certain pulp and paper sector enterprises* came into force²⁰ and, on 6 November 2013, the *Regulation respecting target-benefit pension plans in certain pulp and paper sector enterprises* under the *Supplemental Pension Plans Act* was published in the *Gazette officielle du Québec*.

Saskatchewan's pension regulator has said that target benefit plans can be introduced in that province without amendments to its pension standards legislation.²¹

Nova Scotia's *Pension Benefits Act* came into effect on 1 June 2015, but the provisions for target benefit plans have not yet been proclaimed into force.²²

Similarly, Ontario's *Securing Pension Benefits Now and for the Future Act, 2010* added provisions to Ontario's *Pension Benefit Act* that allow target benefit pension plans, but these provisions have not yet come into force.²³

2 DESCRIPTION AND ANALYSIS

Bill C-27 amends the *Pension Benefits Standards Act, 1985*, which regulates private pension plans – including pooled registered pension plans – provided to employees whose employment falls under the jurisdiction of the federal government.²⁴

2.1 TARGET BENEFIT PLANS

The bill provides a framework for the structure, establishment, conversion to and administration of target benefit plans.

2.1.1 THE STRUCTURE OF A TARGET BENEFIT PLAN

The bill introduces the structural requirements for a target benefit plan. In particular, a target benefit plan requires a funding policy that sets out the following:

- the plan's target benefit formula on the day on which the plan is established;
- if different from the target benefit formula, the manner in which pension benefits provided by the plan are determined;
- the employer's contributions and, if any, the employees' contributions to the plan;

- the plan's objectives with respect to the stability of pension benefits;
- a deficit recovery plan outlining the deficit recovery measures, the circumstances under which the measures are triggered, and the order in which the measures are to be implemented;
- a surplus utilization plan outlining the surplus utilization measures, the circumstances under which the surplus utilization measures are triggered and the order in which the measures are to be implemented, and specifying that the first surplus utilization measure to be taken is the cancellation – in the reverse order of their implementation – of any measures under the deficit recovery plan that are still in place; and
- any other content that may be prescribed by regulation.

Once a target benefit plan's funding policy is established, the following amendments are prohibited from being made to it:

- changes to the plan's objectives with respect to the stability of pension benefits;
- changes that would have the effect of retroactively reducing an accrued pension benefit or credit; and
- changes that would have the effect of retroactively reducing an immediate or deferred pension benefit.

As is the case with a defined benefit pension plan or a defined contribution pension plan, all amendments to a target benefit plan's funding policy are null and void unless they are authorized by the Superintendent of Financial Institutions.

Under a target benefit plan, calculating a member's pension benefit solely on the basis of the individual's contributions, as well as the gains and losses allocated to those contributions, is prohibited. As well, returning any surplus in the plan to the employer is prohibited.

A target benefit plan must either pay interest on any required contributions made to the plan by its members at a rate equal to or greater than the rate that is fixed by the Superintendent, or it must credit the members' contributions with the interest, gains and losses reasonably attributed to the operation of the portion of the pension fund relating to plan members' required contributions. Any "additional voluntary contributions"²⁵ made by members are similarly credited with the interest, gains and losses reasonably attributed to the operation of the portion of the pension fund relating to plan members' additional voluntary contributions.²⁶

Where a target benefit plan member becomes eligible to retire, but ceases to be a plan member or dies before he or she begins receiving pension benefits, the plan must allow the plan member's pension benefit or credit to be transferred to another pension plan or a prescribed retirement savings plan, or an immediate or deferred life annuity to be purchased for the member or the member's survivor.

If a target benefit plan is to be terminated, any individual who is entitled to a pension benefit from the plan can transfer his or her pension credit to another pension plan or

a prescribed retirement savings plan, or use the credit to purchase an immediate or deferred life annuity.

Forthcoming regulations will also address the amount by which a pension benefit can increase when a target benefit plan member retires, ceases to be a plan member or dies, as well as the employer's requirements upon the termination of a target benefit plan.

These provisions are contained in clauses 5(1), 6, 8, 18, 19, 20(1) to 20(3) and 22, which amend sections 8(1)(c)(ii), 9(1.1) and 9(1.2), 10(6), 23(1), 25(4), 26, and 29(6) and 29(6.1), respectively, of the *Pension Benefits Standards Act, 1985*; and in clauses 7 and 17, which create sections 9.4 and 9.6, and 21.1, respectively.

2.1.2 THE ESTABLISHMENT OF A TARGET BENEFIT PLAN

Bill C-27 allows for the establishment of a target benefit plan. In particular, a plan's administrator is required to file a declaration that the plan complies with the Act and its regulations. This declaration, which must be made within 60 days after the plan's establishment, is filed with the Superintendent, at which point the plan is registered as a target benefit plan.

The administrator of a newly created target benefit plan cannot approve the plan's funding policy unless actuarial modelling demonstrates that the plan's pension benefits will be sufficiently stable to meet its objectives.

These provisions are found in clauses 1(1) and 1(4), 11, and 14, which amend sections 2(1), 10.2(1) and 16.1(4)(e), respectively, of the *Pension Benefits Standards Act, 1985*; and in clauses 7 and 9, which create sections 9.8 and 10.01, respectively.

2.1.3 THE CONVERSION OF EXISTING PENSION PLANS TO A TARGET BENEFIT PLAN

The bill allows an employer to provide any individual who is entitled to a pension credit, or is receiving a pension benefit from a defined benefit or defined contribution pension plan, with an opportunity to convert the credit or benefit into a credit in (or benefit from) a target benefit plan. The individual must consent to the conversion, and must be provided with a clear, simple and Superintendent-approved written explanation of the target pension plan's provisions. This explanation must also be provided to the individual's spouse or common-law partner.

On behalf of a plan member whom it represents, an authorized bargaining agent may consent to the conversion of a defined benefit or defined contribution pension plan into a target benefit plan. In this case, the written explanation of the target benefit plan's provisions does not need to be provided to the plan member and the member's spouse or common-law partner. The credit or benefit in a defined benefit pension or a defined contribution pension will immediately be transferred to the target benefit plan when it is established for an individual who consents to the conversion to a target benefit plan credit or benefit – either on the individual's own behalf or

through the authorized bargaining agent. The individual's "period of employment" will also be transferred to the target benefit plan if required to calculate the pension benefit or credit.

Regarding the conversion of pension plans, the employer is responsible for transferring assets from the relevant defined benefit or defined contribution pension plan to the target benefit plan in the form and manner directed by the Superintendent; forthcoming regulations will address the valuation of those assets. If the pension plan that is to be converted is a defined benefit pension plan, the employer must pay an amount into the target benefit plan; forthcoming regulations will prescribe that amount.

If a defined benefit pension plan is converted to a target benefit plan and the latter is terminated within the first five years of its establishment, an individual is entitled to the pension benefit that the defined benefit plan would have provided if that benefit had exceeded that of the target benefit plan. Forthcoming regulations will set out any supplementary payments that the employer may be required to make.

These provisions are found in clause 1(3), which amends section 2(1) of the *Pension Benefits Standards Act, 1985*; and in clauses 1(5), 7, 12 and 22(3), which create sections 2(3.1), 9.7, 10.21 and 29(6.21), respectively.

2.1.4 THE ADMINISTRATION OF A TARGET BENEFIT PLAN

Bill C-27 establishes a governance framework for target benefit plans. In particular, a target benefit plan must be administered by a board of trustees or other similar body in accordance with the terms of the plan's governance policy.

The board or similar body must include at least one individual chosen jointly by the target benefit plan's members and by employees who are eligible for membership in the plan. In circumstances to be prescribed in forthcoming regulations, the board or similar body must also include at least one individual chosen jointly by the plan's former members and the survivors of members or former members who are entitled to pension benefits from the target benefit plan or from a defined benefit pension plan or defined contribution pension plan that was converted to the target benefit plan, as the case may be. Forthcoming regulations will prescribe the process by which these individuals are chosen.

A target benefit plan's board or similar body is required to file actuarial reports in relation to the plan with the Superintendent each year, and at any other time that the Superintendent may request. Forthcoming regulations may prescribe the timing of, and circumstances under which, the actuarial modelling for the plan is to be conducted. A final actuarial report is required when a target benefit plan is terminated in whole or in part.

Before any amendment is made to a target benefit plan, certain individuals – including plan members and former plan members, their spouses or common-law partners, and persons entitled to a pension benefit from the plan – must be notified of the proposed amendment using clear and simple language.

Furthermore, a target benefit plan must have a governance policy that adheres to forthcoming regulations.

These provisions are contained in clauses 2, 5(2), 13 and 22(4), which amend sections 7(1), 8(6), 12(2) and 29(9), respectively, of the *Pension Benefits Standards Act, 1985*; and in clauses 3, 4, 7 and 21, which create sections 7.11, 7.31, 9.5 and 9.7, and 28.1, respectively.

2.2 THE PURCHASE OF LIFE ANNUITIES

In addition to providing a framework for the structure of, establishment of, conversion to and administration of target benefit plans, Bill C-27 amends the *Pension Benefits Standards Act, 1985* to allow pension administrators to purchase certain immediate or deferred life annuities for a defined benefit pension plan's former member or the member's survivor in order to satisfy – in full or in part – its pension obligations to that individual. Forthcoming regulations will prescribe the specific immediate or deferred life annuities that may be purchased to satisfy those obligations.

Regarding the purchase of an immediate or deferred life annuity that would fully satisfy a pension administrator's pension obligations, such an annuity must satisfy the following four conditions:

- it replaces a defined benefit pension;
- the pension plan authorizes such a purchase;
- the life annuity would provide a former plan member or the member's survivor with a benefit that is equal to the amount that the individual would have received under the defined benefit pension plan as of the day of the annuity's purchase; and
- the pension administrator complies with the notice requirements that are to be prescribed in forthcoming regulations.

An immediate or deferred life annuity may be purchased to satisfy a portion of a pension administrator's pension obligations; the pension plan remains responsible for the difference between the annuity and the amount of the defined benefit pension.

Additionally, if a pension administrator wishes to purchase an annuity to replace – wholly or partially – an individual's defined benefit pension, the administrator must obtain the Superintendent's approval of the provider of that annuity, unless that provider is a life company.²⁷

Bill C-27 amends the definition of "former member" of a pension plan to exclude an individual for whom a life annuity was purchased that fully satisfies the pension administrator's pension obligations with respect to the individual's benefits.

These provisions are contained in clause 1(2), which amends section 2(1)(b), and in clause 15, which creates section 17.1 in the *Pension Benefits Standards Act, 1985*.

2.3 REGULATIONS

Under the bill, the Governor in Council may make regulations regarding the following:

- a target benefit plan's governance policy;
- a target benefit plan's funding policy, deficit recovery plan and surplus utilization plan;
- the actuarial modelling of a target benefit plan;
- the content of the written explanation and information that is required to convert a defined benefit pension plan or defined contribution pension plan to a target benefit plan;
- the determination and payment of the amount that an employer must pay into a target benefit plan that is created through a conversion from a defined benefit pension plan or defined contribution pension plan;
- the determination of assets to be transferred when a defined benefit pension plan or defined contribution pension plan is converted to a target benefit plan;
- the notice required for amendments to a target benefit plan; and
- the determination and payment of the amount that an employer must pay into a target benefit plan that was converted from a defined benefit pension plan if the former is terminated within five years of its establishment, and the circumstances under which a payment is to be made.

2.4 COMING INTO FORCE

Clause 24 provides for the provisions of Bill C-27 to come into force on days to be fixed by an order of the Governor in Council, in the following order:

- the provisions created or amended by clauses 1(2) and 15, which allow for prescribed life annuities to satisfy, in full, the pension benefit obligations of certain individuals; and
- the provisions created or amended by the remainder of the bill, which set out the details of target benefit plans, namely clauses 1(1) and 1(3) to 1(5), as well as clauses 2 to 14 and 16 to 23.

NOTES

1. [Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985](#), 1st Session, 42nd Parliament (first reading version, 19 October 2016).
2. For more information, see Normandin Beaudry, Actuaries conseil inc., "[Bill C-27: An Act to amend the Pension Benefits Standards Act, 1985](#)," *NB Bulletin*, Vol. 19, No. 17, November 2016.
3. For more information, see Morneau Shepell Ltd., [Purchasing Annuities For a Pension Plan: The Buy-in and Buy-out Approach](#).
4. Office of the Superintendent of Financial Institutions, [Defined Benefit Plan](#).

5. Office of the Superintendent of Financial Institutions, [Defined Contribution Plan](#). Furthermore, the *Pension Benefits Standards Act, 1985* defines “member” as “a person who has become a member of the pension plan and has neither ceased membership in the plan nor retired.” See [Pension Benefits Standards Act, 1985](#), R.S.C. 1985, c. 32 (2nd Supp.), s. 2(1).
6. Jana R. Steele, Angela Mazerolle and Mel Bartlett, [Target-Benefit Plans in Canada – An Innovation Worth Expanding](#), Commentary no. 411, C.D. Howe Institute, July 2014, p. 10.
7. Department of Finance, [Consultation Paper – Pension Innovation for Canadians: The Target Benefit Plan](#), 24 April 2014.
8. Steele, Mazerolle and Bartlett (2014), p. 7.
9. Department of Finance, [Frequently Asked Questions on Proposed Target Benefit Plan \(TBP\) Framework](#), 24 April 2014.
10. Department of Finance (2014), *Consultation Paper*.
11. Steele, Mazerolle and Bartlett (2014), p. 9.
12. Department of Finance (2014), *Frequently Asked Questions*.
13. Government of Canada, [Strong Leadership: A Balanced-Budget, Low-Tax Plan for Jobs, Growth and Security](#), Budget 2015, 21 April 2015, p. 259.
14. [An Act to Amend the Pension Benefits Act](#), S.N.B. 2012, c. 38.
15. Legislative Assembly of New Brunswick, [Bill 20, An Act to Amend the Pension Benefits Act](#).
16. [Employment Pension Plans Act](#), S.A. 2012, c. E-8.1.
17. The “retroactive” conversion of a pension benefit to another pension benefit would take place when a benefit that an individual is already receiving is converted to a different benefit; this situation should be distinguished from the conversion of a pension benefit or credit which the individual has yet to receive or to which the individual has yet to become entitled.
18. [Pension Benefits Standards Act](#), S.B.C. 2012, c. 30.
19. Retraite Québec, [Target-benefit pension plan](#).
20. Assemblée nationale du Québec, [Bill n°15 : An Act to provide for the establishment of target-benefit pension plans in certain pulp and paper sector enterprises](#).
21. Jana Steele, “[Rethinking Plan Design & Funding: Pension Innovation in Canada](#),” *Pensions and Benefits Law Blog*, Osler, Hoskin & Harcourt LLP, 4 November 2015.
22. [An Act Respecting Pension Benefits](#) (short title: *Pension Benefits Act*), S.N.S. 2011, c. 41.
23. [An Act to amend the Pension Benefits Act and the Pension Benefits Amendment Act, 2010](#) (short title: *Securing Pension Benefits Now and for the Future Act, 2010*), S.O. 2010, c. 24.
24. A pooled registered pension plan is “a type of pension plan that is similar to a defined contribution plan; however, employer contributions are not mandatory.” See Office of the Superintendent of Financial Institutions, [Pooled Registered Pension Plan](#).
25. An “additional voluntary contribution” is “an optional contribution by a member that does not give rise to an obligation on the employer to make additional contributions.” See *Pension Benefits Standards Act, 1985*, s. 2(1).

26. For example, with a contributory defined benefit pension plan, the 50% employer cost rule requires employers to pay at least 50% of the commuted value of the plan member's pension benefits. The commuted value is the amount of an immediate lump-sum payment estimated to be equal in amount to a future series of payments based on current market conditions. If a plan member's contributions, plus the interest attributed to them, comprise more than 50% of the commuted value of a member's pension benefits, the employer must supplement the member's pension benefits so that its contribution is at least 50% of the commuted value. See Office of the Superintendent of Financial Institutions, [Pension Members' Guide 2016](#), January 2016.
27. A "life company" is a company that is permitted to insure risks that fall within the class of life insurance. See [Insurance Companies Act](#), S.C. 1991, c. 47, s. 2(1).