

Shortline Railways Act, 1995

S.O. 1995, CHAPTER 2

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Definitions

1. In this Act,

“Minister” means the Minister of Transportation; (“ministre”)

“railway” means a railway or any part of it including railway lines, stations, depots, wharves, rolling stock, equipment, stores, real and personal property and works connected with a railway and any bridge, tunnel, structure and crossings used in the operation of a railway; (“chemin de fer”)

“railway line” means the land, structures and track on which a railway may be operated and includes any part of it; (“ligne ferroviaire”)

“shortline railway” means a railway within the legislative jurisdiction of the Province of Ontario; (“chemin de fer d’intérêt local”)

“shortline railway company” means a municipality or person that operates or intends to operate a shortline railway. (“compagnie de chemin de fer d’intérêt local”) 1995, c. 2, s. 1; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. T, s. 13.

Application

2. (1) This Act applies and *The Railways Act* does not apply to all shortline railways except those operated by a corporation incorporated by a special Act. 2006, c. 19, Sched. T, s. 14.

Same

(2) Despite subsection (1), this Act applies and *The Railways Act* does not apply to a shortline railway operated by a corporation that is incorporated by a special Act and is designated in the regulations. 2006, c. 19, Sched. T, s. 14.

Corporate structure

3. The *Business Corporations Act* or the *Corporations Act*, as appropriate, applies to a corporation operating a shortline railway despite section 2 of the *Business Corporations Act*, sections 3, 4, 17, 117, 229 and 272 of the *Corporations Act* and *The Railways Act*. 1995, c. 2, s. 3.

Licence

4. No person or municipality shall operate a shortline railway unless it is licensed to do so under this Act. 1995, c. 2, s. 4.

Construction, alteration

4.1 No person or municipality shall construct or alter a shortline railway except in accordance with the regulations. 2006, c. 19, Sched. T, s. 15.

Registrar

5. (1) The Minister may appoint a registrar of shortline railways. 1995, c. 2, s. 5 (1).

Issuing licences

- (2) The registrar may issue a licence to operate a shortline railway if the registrar is satisfied,
- (a) that there is adequate liability insurance coverage for the operation of the shortline railway; and
 - (b) that any requirements set out under this Act and the regulations have been met. 1995, c. 2, s. 5 (2).

Conditions

(3) The licence may contain conditions which may vary for each licensee. 1995, c. 2, s. 5 (3).

Fees

(4) The Minister may charge fees for licences. 1995, c. 2, s. 5 (4).

Notification

6. The licensee shall immediately notify the registrar if,
- (a) the liability insurance coverage is cancelled or altered;
 - (b) the manner in which the railway is operated has changed so that the liability insurance coverage may no longer be adequate; or
 - (c) the address of the licensee changes. 1995, c. 2, s. 6.

Suspension or revocation

7. The registrar may suspend or revoke any licence,
- (a) if, in his or her opinion, the liability insurance coverage is no longer adequate;
 - (b) if the licensee has failed to pay any fee required under this Act;
 - (c) if the licensee has failed to comply with any condition of the licence; or
 - (d) if the licensee has contravened this Act or the regulations. 1995, c. 2, s. 7.

Notice

8. (1) If the registrar refuses to issue a licence to an applicant or intends to revoke or suspend a licence, he or she shall notify the applicant or licensee of the refusal or intention,
- (a) by sending a copy of the notice by registered mail to the last address shown on the records of the registrar; or
 - (b) by having a copy of the notice delivered to the last address shown on the records of the registrar. 1995, c. 2, s. 8 (1).

Contents of notice

(2) The notice shall set out the reasons for the refusal, suspension or revocation and advise that an appeal may be made to the Ontario Municipal Board by filing a request for a hearing with the Board and with the registrar within 15 days after the notice is served under subsection (1). 1995, c. 2, s. 8 (2).

Timing

(3) The notice under subsection (1) shall be deemed to be served five days after it is mailed under clause (1) (a) or on the date it is delivered under clause (1) (b). 1995, c. 2, s. 8 (3).

Immediate effect

(4) The suspension or revocation takes effect on the date the notice is deemed to be served under subsection (3) and remains in effect even if an appeal is filed unless the Ontario Municipal Board orders otherwise. 1995, c. 2, s. 8 (4).

Hearing

(5) One member of the Ontario Municipal Board shall hold a hearing on the appeal within 30 days after the request for a hearing is filed under subsection (2). 1995, c. 2, s. 8 (5).

Parties

(6) The only parties to the hearing are the registrar and the applicant or licensee who requested the hearing. 1995, c. 2, s. 8 (6).

Order

(7) The Ontario Municipal Board may by order affirm the refusal, suspension or revocation of the licence or may make such other order consistent with this Act that the Board considers appropriate. 1995, c. 2, s. 8 (7).

Decision final

(8) The decision of the Ontario Municipal Board is final. 1995, c. 2, s. 8 (8).

Non-application

9. (1) Sections 5.1 and 21.2 of the *Statutory Powers Procedure Act* and sections 43, 94 and 95 and subsections 96 (1) and (2) of the *Ontario Municipal Board Act* do not apply to any hearing under this Act. 1995, c. 2, s. 9 (1).

Same

(2) Part V of the *Ontario Municipal Board Act* does not apply to the Ontario Municipal Board in respect of shortline railways. 1995, c. 2, s. 9 (2).

Discontinuance

10. (1) A shortline railway company shall comply with this section before discontinuing the operation of a railway line. 2006, c. 19, Sched. T, s. 16 (1).

Advertisement

(2) A shortline railway company that proposes to discontinue the operation of a railway line shall,

- (a) advertise its intention to do so in a newspaper or newspapers having general circulation in the municipalities most affected by the proposal; and
- (b) notify the registrar of its intention. 1995, c. 2, s. 10 (2); 2006, c. 19, Sched. T, s. 16 (2).

Contents

(3) The advertisement shall contain the following information:

- 1. A statement that the shortline railway company no longer intends to operate a railway line.
- 2. A statement that the railway line is available for sale, lease or transfer for continued operation to a body authorized under this Act to operate a shortline railway.
- 3. A description of the railway line.
- 4. The date by which interested persons must make their interest known in writing to the company which date must be no earlier than 30 days after the first publication of the advertisement. 1995, c. 2, s. 10 (3); 2006, c. 19, Sched. T, s. 16 (3).

Process

(4) The shortline railway company shall immediately disclose to each interested person the process which it intends to follow for receiving and evaluating the offers it receives. 1995, c. 2, s. 10 (4).

Negotiations

(5) The shortline railway company shall negotiate in good faith and in accordance with the process it has established. 1995, c. 2, s. 10 (5).

Failure to transfer

(6) If the shortline railway company fails to reach an agreement within 90 days after the final date stated in the advertisement or if an agreement is reached but the transfer is not completed in accordance with the agreement, the shortline railway company shall offer to sell, lease or otherwise transfer the railway line for its net salvage value to the Minister on behalf of the Government of Ontario and to the council of each municipality in which the railway line is located. 1995, c. 2, s. 10 (6).

Acceptance of offer

(7) The Government of Ontario or any municipality may accept the offer in writing within 30 days of it being received but if more than one of them accepts the offer the following shall determine which offer is accepted:

1. The Government of Ontario is first in priority.
2. If the Government of Ontario has not accepted the offer in the required time period, the municipality which first submitted a written acceptance is next in priority.
3. If more than one municipality submits a written acceptance on the same day, the matter shall be determined by draw. 1995, c. 2, s. 10 (7).

Dispute

(8) If, within 90 days after acceptance of an offer, agreement cannot be reached between the parties on the net salvage value, the matter shall be referred to an independent appraiser. 1995, c. 2, s. 10 (8).

Appraisal

(9) The independent appraiser shall investigate the matter and determine the net salvage value no later than 30 days after the matter is referred or such greater time period as may be agreed upon by the parties. 1995, c. 2, s. 10 (9).

Binding determination

(10) The determination of the independent appraiser is final and binding on the parties. 1995, c. 2, s. 10 (10).

Costs

(11) The costs of the appraiser shall be borne equally between the two parties. 1995, c. 2, s. 10 (11).

No agreement

(12) If the parties are unable to agree on an independent appraiser to determine net salvage value, net salvage value shall be determined by arbitration. 1995, c. 2, s. 10 (12).

Same

(13) If the parties are unable to agree on the arbitrator or the terms of reference of the arbitration, either party may apply to a judge of the Superior Court of Justice for an order appointing an arbitrator and fixing the terms of arbitration. 1995, c. 2, s. 10 (13); 2006, c. 19, Sched. C, s. 1 (1).

Application of Act

(14) The *Arbitration Act, 1991* applies to the arbitration. 1995, c. 2, s. 10 (14).

Disposal

(15) If the railway line or the shortline railway company's operating interest in it is not transferred under this section, the shortline railway company may discontinue operating the railway line and, if applicable, dispose of any or all of the assets connected with the railway line. 1995, c. 2, s. 10 (15).

Municipal operation

11. (1) A municipality may own and operate a shortline railway within or outside of its municipal boundaries so long as part of the railway line is located within the municipality. 1995, c. 2, s. 11 (1).

Joint operation

(2) A municipality may enter into agreements with other municipalities to jointly operate a shortline railway so long as part of the railway line is located within each of the municipalities. 1995, c. 2, s. 11 (2).

Taxes

(3) Despite paragraph 9 of section 3 of the *Assessment Act*, a municipality that operates a railway line outside of its municipal boundaries is liable for taxation on that portion of the railway line located on land outside of its municipal boundaries. 1995, c. 2, s. 11 (3).

Subsequent operators

12. If a corporation or municipality that has acquired an operating railway line under section 10 intends to discontinue the operation of the railway line, it shall comply with the procedures set out in section 10 before discontinuing the operation. 1995, c. 2, s. 12.

Agreements

13. (1) If a commuter rail authority or a passenger railway company operates a commuter or passenger rail service over any part of a railway line of a shortline railway company, the shortline railway company shall enter into an agreement with the authority or company to allow the continued use of the railway line for that purpose. 1995, c. 2, s. 13 (1).

Same, new operations

(2) If a commuter rail authority or a passenger railway company wishes to initiate operations over any part of the railway line of a shortline railway company, it shall notify the shortline railway company which shall enter into an agreement with the commuter rail authority or passenger railway company to allow the use of the railway line for that purpose. 1995, c. 2, s. 13 (2).

Limitation

(3) Subsections (1) and (2) apply only to commuter rail service operated on a regularly scheduled inter-regional rail transit system and to passenger rail service operated between major urban centres on a long distance, regularly-scheduled basis. 1995, c. 2, s. 13 (3).

Contents

(4) The agreement shall set out such terms as may be appropriate to allow the operation of the commuter or passenger rail service, including any compensation to the shortline railway company. 1995, c. 2, s. 13 (4).

Terms

(5) The terms must be fair and reasonable. 1995, c. 2, s. 13 (5).

Failure to agree

(6) If the parties fail to reach an agreement, the matter shall be settled by arbitration. 1995, c. 2, s. 13 (6).

Application to court

(7) If the parties are unable to agree on the arbitrator or the terms of reference of the arbitration, either party may apply to a judge of the Superior Court of Justice for an order appointing an arbitrator and fixing the terms of the arbitration. 1995, c. 2, s. 13 (7); 2006, c. 19, Sched. C, s. 1 (1).

Application

(8) The *Arbitration Act, 1991* applies to the arbitration. 1995, c. 2, s. 13 (8).

Inspectors

14. (1) The Minister may appoint any person, including federal railway safety inspectors designated under the *Railway Safety Act* (Canada) as shortline railway inspectors for the purposes of this Act. 1995, c. 2, s. 14 (1).

Powers

(2) A shortline railway inspector appointed under subsection (1) has all the powers of a railway safety inspector under the *Railway Safety Act* (Canada). 1995, c. 2, s. 14 (2).

Inspection fees

(3) The Minister may charge fees for the costs of carrying out inspections. 1995, c. 2, s. 14 (3).

Same

(4) The fees may be imposed as fixed charges or on a cost recovery basis or using any other criteria that the Minister considers to be reasonable. 1995, c. 2, s. 14 (4).

Federal-provincial agreements

15. (1) The Minister may enter into agreements with the federal government or with any federal regulatory authority, person or class of persons concerning the administration of this Act and the regulation of railway safety, accident investigation and railway crossings in relation to shortline railways and shortline railway companies. 1995, c. 2, s. 15 (1).

Enforcement, administration

(2) For the purposes of subsection (1) the Minister may, by agreement, authorize any federal regulatory authority, person or class of persons to enforce and administer applicable federal law, as it exists from time to time, in relation to shortline railways and shortline railway companies in the same manner and to the same extent as the law applies to railways within federal jurisdiction or in accordance with any other terms as agreed upon. 1995, c. 2, s. 15 (2).

Crossings

16. (1) Subject to the *Canada Transportation Act* (Canada), every decision, order, rule, regulation and direction made by the Canadian Transportation Agency or any predecessor thereof in relation to road crossings and utility crossings continue to apply to those crossings, even though the crossings have passed from federal to provincial jurisdiction, until revoked or amended by the Canadian Transportation Agency under section 15 or otherwise under this Act. 1995, c. 2, s. 16 (1).

Definition

(2) In this section,

“road crossings” and “utility crossings” have the same meaning as in the *Canada Transportation Act* (Canada). 1995, c. 2, s. 16 (2).

Fees

17. (1) The Minister may charge fees for accident investigations and any other costs incurred by the Government of Ontario in relation to shortline railways under an agreement with the federal government. 1995, c. 2, s. 17 (1).

Same

(2) The fees may be imposed as fixed charges or on a cost recovery basis or using any other criteria that the Minister considers to be reasonable. 1995, c. 2, s. 17 (2).

Entry for safety reasons

18. The employees and agents of a shortline railway company may enter upon land not belonging to the shortline railway company and remove from that land anything, including trees and brush, that might threaten the safe operation of the railway by obscuring the clear view of a road or railway line. 1995, c. 2, s. 18.

Entry in emergencies

19. The employees and agents of a shortline railway company may enter upon land not belonging to the shortline railway company if there has been a railway accident and if no other course of action is practical. 1995, c. 2, s. 19.

Restoration of land

20. If an entry is made under section 18 or 19, the shortline railway company shall, so far as is practicable, restore the land to its original state. 1995, c. 2, s. 20.

Protection from liability

21. No action or other proceeding for damages may be instituted against any employee or agent of the Crown in right of Ontario for any act done under this Act in good faith in the execution or intended execution of the person’s duty or for any alleged neglect or default in the execution in good faith of the person’s duty. 1995, c. 2, s. 21.

Offence

22. (1) Every person or municipality which contravenes this Act or the regulations or an order made under this Act or a condition of a licence is guilty of an offence and, on conviction, is liable to,

- (a) in the case of a corporation or municipality, a fine of not more than \$100,000; and
- (b) in the case of an individual, a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or both. 1995, c. 2, s. 22 (1).

Same

(2) If a corporation is guilty of an offence under subsection (1), any officer or director of the corporation who authorizes, permits or acquiesces in the offence is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or both. 2006, c. 19, Sched. T, s. 17.

Exception

(3) Subsection (2) does not apply to members of council of a municipality. 1995, c. 2, s. 22 (3).

Provincial offences

(4) Even if an agreement has been entered into under section 15 authorizing a federal regulatory authority to enforce and administer applicable federal law, the offence provisions set out in this Act apply and the federal offence provisions do not apply to shortline railways and shortline railway companies. 1995, c. 2, s. 22 (4).

Regulations

23. (1) The Lieutenant Governor in Council may make regulations,

- (a) designating corporations for the purpose of subsection 2 (2);
- (a.1) respecting the construction and alteration of shortline railways;
- (b) prescribing requirements for the purpose of clause 5 (2) (b);
- (c) respecting the discontinuance of shortline railway services or the abandonment of shortline railway lines;
- (d) respecting shortline railway inspectors and shortline railway inspections;
- (e) adopting by reference in whole or in part with such changes as the Lieutenant Governor in Council considers necessary, any Act, regulation, code, standard, procedure or rule in relation to railways;
- (f) respecting road and utility crossings;
- (g) respecting the operation of shortline railways;
- (h) exempting any railway or shortline railway company from the application of this Act or any part of this Act. 1995, c. 2, s. 23 (1); 2006, c. 19, Sched. T, s. 18.

Scope

(2) A regulation may be general or specific in nature and may apply in respect of any class of person or thing. 1995, c. 2, s. 23 (2).

24. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1995, c. 2, s. 24.

25. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1995, c. 2, s. 25.

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