

2001

CHAPTER 36

An Act to amend *The Railway Act*

(Assented to June 28, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Railway Amendment Act, 2001*.

S.S. 1989-90, c.R-1.2 amended

2 *The Railway Act* is amended in the manner set forth in this Act.

Section 2 amended

3(1) Clause 2(h) is amended by striking out “*The Highways and Transportation Act*” and substituting “*The Highways and Transportation Act, 1997*”.

(2) Clause 2(i) is amended by striking out “*The Highways and Transportation Act*” and substituting “*The Highways and Transportation Act, 1997*”.

(3) Subclause 2(l)(i) is amended by striking out “railway” and substituting “train”.

(4) Clause 2(n) is amended by striking out “line”.

(5) The following clause is added after clause 2(o):

“(o.1) ‘track’ includes all track that is suitable to receive and load traffic”.

New sections 3 and 3.1

4 Section 3 is repealed and the following substituted:

“Compliance with Act

3(1) Subject to subsection (2), no person shall construct, acquire, alter, operate, discontinue service on or dismantle all or any part of a railway, except in accordance with this Act.

(2) This Act does not apply to any construction of, alteration to, dismantling of, maintenance of or repair to all or a part of a railway line if service on the railway line or part of the railway line being constructed, altered, dismantled, maintained or repaired will be offered at the same level and in substantially the same way as it was offered before the construction, alteration, dismantling, maintenance or repair.

“Power of minister to exempt

3.1(1) The minister may exempt all or any part of any railway or class of railways from all or any provision of this Act on any terms and conditions that the minister may impose.

(2) The minister shall cause a notice of every exemption made pursuant to this section to be published in the Gazette”.

Section 5 amended

5 Subsections 5(3) and (4) are repealed and the following substituted:

“(3) At the time it applies pursuant to subsection (1) to construct, acquire or alter a railway line, the minister may require a railway company to submit to the minister all or any of the following:

- (a) an operating authority certificate with respect to that railway line;
- (b) an order of the board confirming that, in the board’s opinion and taking into consideration the public interest:
 - (i) the railway owner is a fit owner for the railway line;
 - (ii) the railway operator is a fit operator for the railway line;
 - (iii) the railway owner and railway operator are adequately insured against claims arising from the operation of the railway line;
- (c) a railway safety management plan in a form and with contents acceptable to the minister; and
- (d) any additional information that the minister may require.

“(4) A person who makes an application pursuant to subsection (1) shall give written notice of the application, in the form and manner specified by the minister, to:

- (a) those municipalities in which the railway line is situated; and
- (b) any other persons that the minister directs”.

New section 5.1

6 The following section is added after section 5:

“Further requests for information

5.1(1) The minister may at any time request a railway company to which an authorization certificate, operating authority certificate or temporary operating authority certificate has at any time been issued pursuant to this Act to provide the minister with all or any of the following:

- (a) a railway safety management plan in a form and with contents acceptable to the minister;
- (b) any additional information that the minister may require.

(2) No railway company to which a request is made pursuant to subsection (1) shall fail to comply with the request within the time and in the manner that the minister may direct”.

Section 6 amended

7(1) Subsection 6(1) is repealed and the following substituted:

“(1) Subject to subsection (1.1), on receipt of an application pursuant to section 5, the minister may:

- (a) reject the application; or

(b) where the minister is satisfied that the application is in the public interest:

(i) issue an authorization certificate authorizing the person to proceed, in whole or in part, with the construction, acquisition or alteration of the railway line; and

(ii) make any order that the minister considers necessary.

“(1.1) The minister shall make a decision pursuant to subsection (1) within 90 days after the date the minister receives an application that, in the minister’s opinion, is complete and accurate”.

(2) Subsection 6(3) is repealed and the following substituted:

“(3) Where an application pursuant to section 5 is to construct or alter a railway line the minister may make orders doing all or any of the following:

(a) requiring any person to do any thing necessary to permit the desired construction or alteration;

(b) subject to section 13, apportioning the costs of the construction or alteration, or the maintenance of the construction or alteration, between those persons that the minister decides”.

New section 19

8(1) Subsection 19(1) is repealed and the following substituted:

“(1) For cause, the board may do all or any of the following:

(a) suspend an operating authority certificate or temporary operating authority certificate;

(b) alter an operating authority certificate or temporary operating authority certificate;

(c) amend an operating authority certificate or temporary operating authority certificate;

(d) cancel an operating authority certificate or temporary operating authority certificate”.

(2) Subsection 19(4) is repealed and the following substituted:

“(4) Without limiting the generality of subsection (1), the board may refuse to issue or may suspend, alter, amend or cancel an operating authority certificate or temporary operating authority certificate if:

(a) the holder of the certificate has been convicted of contravening all or any provision of any Act, any Act of another jurisdiction or any regulations made pursuant to an Act or an Act of another jurisdiction dealing with the transport of goods or passengers and the time for an appeal has expired or, if an appeal has been taken, the appeal is dismissed;

(b) the certificate was issued in error;

(c) the board is satisfied that the holder has not paid a fee or charge imposed pursuant to this Act or the regulations;

(d) if a misrepresentation of a material fact has been made in the application for the certificate or in any information, report or document required by this Act to be furnished by the applicant or the holder of an operating authority certificate or temporary operating authority certificate; or

(e) the holder of the operating authority certificate or temporary operating authority certificate contravenes any terms and conditions of the certificate or any order or direction of the minister, the board or an inspector issued pursuant to this Act”.

(3) The following subsections are added after subsection 19(5):

“(6) If the holder of an operating authority certificate or temporary operating authority certificate that has been suspended pursuant to this section does not resume operating the railway line within 30 days after the suspension is ended or any additional period that the board may allow, the holder is deemed to have given notice to the board pursuant to section 22 requesting authorization to discontinue service on the railway.

“(7) In the circumstances mentioned in subsection (6), the board may:

(a) issue a temporary operating authority certificate to another person; and

(b) make any orders that it considers necessary respecting the temporary operating authority certificate issued pursuant to clause (a).

“(8) Unless the board orders otherwise, the other provisions of this Act respecting the application for and issuance of temporary operating authority certificates apply to a temporary operating authority certificate issued pursuant to subsection (7)”.

New sections 22 to 22.2

9 Section 22 is repealed and the following substituted:

“Discontinuance of service

22(1) No holder of an operating authority certificate shall discontinue in whole or in part the service authorized by that certificate except in accordance with this section.

(2) The holder of an operating authority certificate who intends to discontinue in whole or in part the service authorized by the certificate shall give the board written notice of that intention of not less than:

(a) 180 days before the day it intends to discontinue the service; or

(b) any shorter period that the board may allow.

(3) In addition to notifying the board pursuant to subsection (2), the holder of an operating authority certificate shall give notice of its intention to any other person directed by the minister in the form directed by the minister.

“Dismantling of railway

22.1(1) A railway company that wishes to dismantle all or any part of a railway line shall:

- (a) provide at least 60 days’ written notice of its intention to do so to the board; and
 - (b) advertise its intention to do so, in at least one newspaper having general circulation in Saskatchewan, at those times and in a form acceptable to the board.
- (2) For the purposes of clause (1)(b), an advertisement must include:
- (a) a description of the railway line or part of the railway line to be dismantled and how it is to be sold;
 - (b) a statement that the advertisement is directed to persons interested in buying, leasing or acquiring the railway line or the part of the railway line to be dismantled for the purpose of continuing service on the railway line or the part of the railway line;
 - (c) the date by which persons mentioned in clause (b) must make their interest known in writing to the railway company; and
 - (d) the process the railway company intends to follow for receiving and evaluating the offer of each person who makes his or her interest known in accordance with the advertisement.
- (3) For the purposes of clause (2)(c), the date by which persons must make their interest known in writing to the railway company must be at least 60 days after the date the advertisement was first published.
- (4) A railway company shall negotiate in good faith and in accordance with the process it discloses with a person who makes his or her interest known.
- (5) A railway company has four months or any further or lesser period or periods that the board may authorize to reach an agreement with an interested person after the date stated in the advertisement by which persons must make their interest known.
- (6) If an agreement is not reached within the period mentioned in subsection (5), the railway company shall do one of the following:
- (a) continue providing service on the railway line; or
 - (b) offer, in writing, to sell the railway line or the part of the railway line to the Government of Saskatchewan or a municipality for not more than its net salvage value in accordance with section 22.2.

“Sale to government

22.2(1) If a railway company decides to make a written offer pursuant to clause 22.1(6)(b), the railway company shall send the written offer to the minister and the council of every municipality in which the railway or the part of the railway to be dismantled is located.

- (2) The minister has 30 days after the date the minister received the written offer to accept the offer.
- (3) If the minister does not accept the written offer within 30 days after the date that the minister received the written offer, the council of a municipality in which the railway or the part of the railway to be dismantled is located may accept the offer.
- (4) An acceptance mentioned in subsection (3) must be made within 60 days from the date the offer was received by the municipality.
- (5) If the railway company and the minister are unable to agree on the net salvage value, either party may apply to the Court of Queen's Bench to determine the net salvage value of the railway line.
- (6) If the railway company and the councils are unable to agree on the net salvage value, either party may apply to the board to determine the net salvage value of the railway line.
- (7) On an application pursuant to subsection (6), the board shall determine the net salvage value within 45 days after the date the board received the application or within any further period that the board considers appropriate".

New section 23.1

10 The following section is added after section 23:

"Orders of inspector

23.1(1) In this section, 'Act' means this Act, the regulations, any order of the minister or the board issued pursuant to this Act or the terms or conditions of any authorization certificate, operating authority certificate or temporary operating authority certificate.

(2) If, in the opinion of an inspector, a railway owner or railway operator is not complying with this Act or there is an unsafe condition, the inspector may order the railway owner or railway operator to remedy that non-compliance or that unsafe condition.

(3) The inspector may, in the order, specify the time within which the order must be complied with".

New section 26

11 Section 26 is repealed and the following substituted:

"Minister may order inspection

26 The minister may direct an inspector to inspect all or any part of a railway and provide the minister with a written report where the minister:

- (a) receives a complaint about the state of repair of any part of a railway; or
- (b) for any reason considers an inspection of a railway to be necessary".

Section 27 repealed

12 Section 27 is repealed.

Section 28 amended

13 Subsection 28(1) is amended by striking out “including an order prescribing or respecting any of the matters described in clauses 27(a) to (h)”.

Section 31 amended

14 Subsection 31(1) is repealed and the following substituted:

“(1) The minister may make orders:

(a) prescribing the classes of accidents that shall be reported by a railway company immediately to the minister and requiring them to be reported;

(b) prescribing the contents of accident reports and the manner and form in which those accident reports are to be provided to the minister.

“(1.1) The minister shall cause all orders made pursuant to subsection (1) to be printed in the Gazette”.

New Parts V and V.1

15 Part V is repealed and the following substituted:

**“PART V
Rates, Service and Obligations as a Carrier**

**“DIVISION 1
Rates**

“Rates

36 Subject to the other provisions of this Act, each railway company may determine the rates to be charged for the carriage of traffic on its railway and the manner in which those rates are to be paid.

“Joint tariff

37(1) Where traffic is to move over any continuous railway line, portions of which are operated by two or more railway companies, those companies shall, at the request of the shipper intending to move the traffic, agree on:

(a) a joint tariff for the continuous route; and

(b) the apportionment of the rate set out in the joint tariff.

(2) Where the railway companies operating a continuous route fail to agree on a joint tariff or the apportionment of a rate set out in a joint tariff pursuant to subsection (1), any shipper intending to move traffic over that continuous route or portion of that route may apply to the board for an order:

(a) determining the route;

(b) fixing the rate for the route;

(c) apportioning that rate among those companies; and

(d) determining the dates, no earlier than the date the application was received by the board, when the rate fixed pursuant to clause (b) shall come into effect.

(3) Subject to subsection (4), where the board receives an application pursuant to subsection (2), it may make the order requested.

(4) Where the board makes an order pursuant to subsection (3), it shall do so within 90 days of the date the application was received by the board.

**“DIVISION 2
Service and Obligations as Carrier**

“Contracts limiting liability

38(1) A railway company shall not limit or restrict its liability to a shipper with respect to the transportation of traffic of the shipper otherwise than by means of a written agreement signed by the shipper or by an association or other body representative of shippers.

(2) In the absence of an agreement mentioned in subsection (1), a railway company may limit or restrict its liability with respect to any traffic, and specify the terms and conditions of the limitation or restriction, only to the extent:

- (a) that the board, by order, on the application of the railway company, may specify with respect to that traffic; or
- (b) where no order pursuant to clause (a) has been made with respect to that traffic, that is generally applicable to a common carrier.

“Obligations as carrier

39(1) In this section, ‘**other railway company**’ includes a railway company that:

- (a) is under the legislative jurisdiction of the Parliament of Canada; and
- (b) desires to receive, move, deliver or interchange goods and return rolling stock with a railway company within the meaning of this Act.

(2) Where reasonable, every railway company shall provide adequate and suitable accommodation for:

- (a) the receiving, moving, transporting and delivering of traffic;
- (b) the interchange of traffic without delay or disadvantage between its railway lines and the railway lines of other railway companies; and
- (c) the return of rolling stock.

(3) For the purposes of subsection (2), adequate and suitable accommodation includes reasonable facilities for the receiving, carrying and delivering by the railway company:

- (a) at the request of any other railway company, of through traffic and, in the case of goods shipped by carload, of the car with the goods shipped in it, to and from the railway of that other company, at a through rate; and

(b) at the request of any person interested in through traffic, of that traffic at through rates.

(4) Every railway company that has or operates a railway that forms part of a continuous line of transportation with or that intersects any other railway, or that has any terminus, station or wharf near to any terminus, station or wharf of any other railway, shall afford all reasonable facilities for delivering to that other railway, or for receiving from or carrying by its railway, all the traffic arriving by that other railway without any unreasonable delay, so that:

(a) no obstruction is offered to the public desiring to use those railways as a continuous line of transportation; and

(b) all reasonable accommodation, by means of the railways of those companies, is at all times afforded to the public for that purpose.

(5) Where subsections (2) to (4) have not been waived pursuant to subsection (6), any person who suffers damage as a result of a breach of this section by a railway company may bring an action against the railway company to recover damages.

(6) The board may, by order, waive any of the requirements of subsections (2) to (4) on the application of a railway company.

(7) Where the board considers it to be appropriate, the board may cancel in whole or in part, or may amend or vary, an order made pursuant to subsection (5) on the application of:

(a) a person seeking carriage of the person's traffic by a railway company that has received an order pursuant to subsection (6); or

(b) a person who is aggrieved by a decision of a railway company described in clause (a).

“Confidential contracts

39.1(1) A railway company and a shipper may enter into a contract that the parties agree to keep confidential respecting all or any of the following:

(a) the rates to be charged by the railway company to the shipper;

(b) reductions or allowances of rates in tariffs that have been issued and published or rates in tariffs or confidential contracts that have previously been lawfully charged;

(c) any conditions relating to the transportation of goods to be moved by the railway company;

(d) the manner in which the railway company shall fulfil its obligations pursuant to section 39.

(2) No party to a confidential contract mentioned in subsection (1) is entitled to submit matters to the board for final offer arbitration pursuant to Division 3 without the consent of all parties to the confidential contract.

**“DIVISION 3
Final Offer Arbitration**

“Final offer arbitration

40(1) A shipper may submit the matter in writing to the board for a final offer arbitration where:

- (a) the shipper is dissatisfied with:
 - (i) any rates charged or proposed to be charged by a railway company for the movement of traffic; or
 - (ii) any of the conditions associated with the movement of traffic; and
- (b) the matters mentioned in clause (a) cannot be resolved between the shipper and the railway company.

(2) A submission pursuant to subsection (1) must be made in the manner prescribed in the regulations and contain those details that are prescribed in the regulations.

(3) On receipt of a submission pursuant to subsection (1), the board shall appoint an arbitrator who shall conduct the arbitration and decide the matter to be arbitrated in the manner prescribed in the regulations.

(4) In making a decision, the arbitrator shall select the final offer of either the shipper or the railway company.

(5) A decision of an arbitrator pursuant to this section:

- (a) is final and binding on all parties to the arbitration;
- (b) is enforceable as if it were an order of the board; and
- (c) unless the parties agree otherwise, is applicable to the parties for a period of one year from the date the submission was received by the board or for any lesser period that the arbitrator considers appropriate having regard to the negotiations between the parties that took place before the submission was received.

(6) In the decision, the arbitrator shall determine if any moneys are owing to one of the parties as a result of the arbitration and the reasonable rate of interest on those moneys.

(7) If the arbitrator determines that moneys are owing to one of the parties, the party whom the arbitrator determines owes the money shall pay those moneys, together with interest determined pursuant to subsection (6), to the party to whom the moneys are owed.

(8) *The Arbitration Act, 1992* does not apply to an arbitration conducted pursuant to this Division.

**“PART V.1
Interjurisdictional Co-operation**

“Interjurisdictional co-operation

40.1 For the purposes of fulfilling its responsibilities or exercising its powers pursuant to this Act, the board may:

- (a) enter into agreements with any other body empowered by a statute of Canada, of any province or territory of Canada or any state of the United States of America to administer or regulate railways;
- (b) hold hearings, or participate in any other procedures, inside or outside Saskatchewan in conjunction with that other body; and
- (c) consult with that other body in arriving at its decisions”.

Section 45 repealed

16 Section 45 is repealed.

Section 47 amended

17(1) Subsection 47(5) is amended by striking out “revoke” and substituting “cancel”.

(2) Subsection 47(6) is amended by striking out “revoke” and substituting “cancel”.

New sections 52 to 53.2

18 Sections 52 and 53 are repealed and the following substituted:

“Offence and penalty

52(1) No person shall contravene:

- (a) any provision of this Act or the regulations;
- (b) an order of the board;
- (c) an order of the minister; or
- (d) any term or condition of an authorization certificate, operating authority certificate or temporary operating authority certificate that has been issued to that person.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$100,000 and, where the offence is a continuing offence, a further fine of not more than \$1,000 for each day or part of a day during which the offence continues.

“Regulations

53(1) The Lieutenant Governor in Council may make regulations:

- (a) prescribing the speeds at which trains may be operated;
- (b) prescribing the use of warning devices in various aspects of a railway’s operation;
- (c) prescribing fire safety requirements along rights of way of railways;
- (d) prescribing the qualifications required of persons who operate engines on railways, requiring those persons to be licensed and providing for the suspension and cancellation of those licences;

- (e) prescribing hours of service of railway companies;
- (f) respecting any utility passing over or under a railway line;
- (g) respecting any matter that the Lieutenant Governor in Council considers necessary to govern the activities of railway companies during the construction of a railway line;
- (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to ensure the safe operation of railways;
- (i) respecting the returns required to be filed by railway companies with the board, including regulations:
 - (i) prescribing the classes of returns required;
 - (ii) prescribing the form and manner in which returns are to be made;
 - (iii) prescribing the financial information and detail regarding the financial transactions of the railway company required to be filed with the board;
 - (iv) declaring information provided to the board pursuant to this section to be confidential and inadmissible in evidence;
- (j) prescribing matters respecting:
 - (i) the crossing of public highways and other roads by railway lines;
 - (ii) the operation of trains near, on or across public highways;
- (k) prescribing the classes of crossings and safety features required by railway lines and requiring the maintenance of those crossings and safety features;
- (l) prescribing matters respecting the provision of access to private property that is adjacent to a railway line;
- (m) determining who shall pay any costs associated with the requirements of regulations made pursuant to clauses (j) to (l);
- (n) prescribing requirements to be met with respect to bridges, tunnels or other structures over, through or under which railway lines pass;
- (o) prescribing specifications for all equipment and devices to be used on railways;
- (p) prescribing and requiring the payment of fees and charges that are payable to the minister or the board in connection with the carrying out of the minister's or the board's duties pursuant to this Act or the regulations;
- (q) prescribing the extent of authority granted by authorization certificates, operating authority certificates or temporary operating authority certificates;

- (r) prescribing the terms and conditions pursuant to which operating authority certificates and temporary operating authority certificates may be issued;
 - (s) prescribing any other matter respecting operating authority certificates or temporary operating authority certificates that the Lieutenant Governor in Council considers necessary;
 - (t) prescribing classes of trains that are exempt from section 35;
 - (u) respecting final offer arbitrations conducted pursuant to this Act;
 - (v) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
 - (w) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
 - (x) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.
- (2) The board may make regulations:
- (a) prescribing the amount of and terms and conditions that must be in any insurance policy, bond or certificate that is required to be filed with the board or maintained by a railway owner or railway operator pursuant to this Act;
 - (b) requiring the filing of rates with the board and prescribing the manner and contents of that filing;
 - (c) requiring the publication of rates and prescribing the manner of publication;
 - (d) requiring the filing with the board of any agreement between one or more railway companies and a shipper respecting the movement of traffic at rates other than published rates.
- (3) Any regulation made pursuant to subsection (1) or (2) may adopt by reference, in whole or in part, with any changes that the Lieutenant Governor in Council considers necessary, any code, standard or regulation, and may require compliance with any code, standard or regulation so adopted.

“Minister’s power to delegate

53.1(1) The minister may delegate to any board, commission, agency or person the exercise of any of the powers given to, or the fulfilment of any of the responsibilities imposed on, the minister pursuant to this Act and the regulations.

(2) The minister may impose any terms and conditions on a delegation pursuant to this section that the minister considers appropriate.

(3) A decision or action of a delegate in relation to the exercise or performance of any power or responsibility delegated to that delegate pursuant to subsection (1) is deemed to be a decision or action of the minister.

“Board’s power to delegate

53.2(1) The board may delegate to any other board, commission or person the exercise of any of the powers given to, or the fulfilment of any of the responsibilities imposed on, the board pursuant to this Act and the regulations.

(2) The board may impose any terms and conditions on a delegation pursuant to this section that the board considers appropriate.

(3) On the board’s own motion or on the application of a person affected by a decision made or action taken by a delegate pursuant to subsection (1), the board may:

(a) review the decision or action; and

(b) if the board considers it appropriate, substitute any decision or action that the board considers suitable.

(4) A decision or action of a delegate in relation to the exercise or performance of any power or responsibility delegated to that delegate pursuant to subsection (1) is deemed to be a decision or action of the board”.

Section 56 amended

19 Subsection 56(1) is amended by striking out “made pursuant to section 21”.

Coming into force

20 This Act comes into force on proclamation.