



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 137

Railway Act

Introduction

**Introduced by
Mr Sam L. Elkas
Minister of Transport**

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EXPLANATORY NOTES

The purpose of the bill is to permit a local railway company to be created by the deposit of articles of incorporation. The bill enables the Government to grant the railway companies it determines the power to expropriate for railway purposes.

The bill proposes that every rail carrier be required to obtain a certificate of competence before engaging in rail activities. The certificate will be issued by the Commission des transports du Québec.

The bill also provides that a dispute concerning, for instance, the intersection or connection of two railways, be settled through arbitration. In addition to laying down rules to govern the settlement of disputes, the bill requires a public rail carrier to issue, at the request of a shipper, a tariff applicable to the services that the shipper plans to offer.

ACT REPEALED BY THIS BILL:

- Railway Act (R.S.Q., chapter C-14).

ACTS AMENDED BY THIS BILL:

- Act respecting the Communauté urbaine de l'Outaouais (R.S.Q., chapter C-37.1);
- Act respecting the Communauté urbaine de Montréal (R.S.Q., chapter C-37.2);
- Act respecting the Communauté urbaine de Québec (R.S.Q., chapter C-37.3);
- Companies Act (R.S.Q., chapter C-38);
- Cooperatives Act (R.S.Q., chapter C-67.2);

- Special Corporate Powers Act (R.S.Q., chapter P-16);
- Act to ensure safety in guided land transport (R.S.Q., chapter S-3.3);
- Act respecting the Compagnie de chemin de fer de l'Outaouais (1993, chapter 244).

Bill 137

Railway Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE

1. This Act applies to all railways under the legislative authority of Québec.

However, it does not apply to a public body acting, within the scope of the Act establishing it, as a rail carrier.

CHAPTER II

RAILWAY UNDERTAKING

DIVISION I

EXPROPRIATION

2. The Government may, by order in council, grant a person the power to acquire by expropriation

(1) an existing railway or any lands comprised of the right of way of an existing or planned railway;

(2) any lands necessary for the construction of the railway's depots and stations;

(3) any other immovable property necessary for the construction or maintenance of the railway.

The maximum width of the right of way shall be 50 metres. Where authorized by the Government, that width may be increased.

3. The holder of the power to expropriate may, at any reasonable time, enter and travel on any lands the railway crosses and carry out all the operations necessary to establish the location of the railway, mark and delimit the areas of land required for the construction of the railway and determine the extent of work necessary to build the railway.

He must give notice to the owner of such lands at least forty-eight hours before exercising the powers conferred on him by this section.

He is liable for any damage caused to unexpropriated lands by the exercise of the powers conferred on him by this section, and must endeavour to keep any such damage to a minimum.

4. The order in council provided for in section 2 ceases to have effect if, five years after it comes into force, the railway has not yet been put into operation. At the request of the holder of the power to expropriate, the time limit may be extended by the Government, for the period it determines.

5. Before alienating or otherwise disposing of land acquired by way of expropriation for the purpose of putting a railway into operation, or before using such land for purposes other than railway purposes, the owner thereof must offer it, at the price at which he acquired it,

(1) to the expropriated party, where the railway has not been put into operation;

(2) to the Government, where the railway has been put into operation.

If the offer is refused, the owner of the land may dispose of it as he wishes.

DIVISION II

CERTIFICATE OF COMPETENCE

6. Every rail carrier must obtain, by way of a written request, a certificate of competence issued by the Commission des transports du Québec before carrying on rail transportation activities outside the boundaries of a commercial or industrial site belonging to the rail carrier.

7. A certificate of competence shall be issued if the applicant provides the Commission with

(1) a certificate of civil liability insurance for the amount determined by regulation providing coverage for any damage caused in the course of railway activities;

(2) an undertaking of the insurer to notify the Commission in case of cancellation, non-renewal or reduction of coverage;

(3) the information and documents prescribed by regulation.

The applicant may be exempted by the Commission from holding insurance if he produces proof of solvency in accordance with the regulatory requirements.

Where the carrier is to use all or part of a railway abandoned one year or more ago, with reference to the date indicated, as the case may be, in an abandonment order under the National Transportation Act, 1987 (R.S.C., 1985, chapter 28, 3rd Supplement) or in a notice of abandonment under section 48 of the Act to ensure safety in guided land transport (R.S.Q., chapter S-3.3), he must produce a declaration under oath of an engineer who has inspected the railway, stating that the railway may be used safely without the need to carry out the construction work referred to in the Act to ensure safety in guided land transport.

The applicant must, in addition, pay the fees for the issue of the certificate prescribed by regulation.

8. The holder of a certificate of competence must within forty-eight hours inform the Commission of any change in the information or the documents provided pursuant to section 7.

9. On its own initiative or where requested by the Attorney General or any interested person, the Commission may, after having afforded the interested person an opportunity to present his views, suspend a certificate of competence for the period it determines, or revoke it, if the holder of the certificate

(1) obtained the certificate on the basis of erroneous or false information;

(2) is no longer insured or solvent as required by section 7.

The suspension or revocation of the certificate has effect from the date the suspension or revocation is served on the interested person, or from any later date determined in the decision.

In that case, the rail carrier must cease his rail transportation activities.

DIVISION III

TARIFFS

10. This division applies to rail carriers offering their services for remuneration.

11. Within seven days of a shipper requesting it, a rail carrier must provide a tariff to the shipper in respect of any rail transportation services indicated by the shipper.

Where the shipper requests the establishment of a joint tariff by several rail carriers, the carriers must agree on such a tariff and provide it to the shipper within fifteen days of the request.

Where no joint tariff has been agreed on at the expiry of that period, each carrier must provide its own tariff to the shipper within forty-eight hours.

All tariffs must be established in accordance with the regulations.

12. The Commission may, on its own initiative or upon request, conduct studies and compile information for statistical purposes, inquire into any matter in respect of the rates or conditions applicable to a rail transportation.

In case of mediation or arbitration pursuant to Division IV, the Commission may, where requested, provide the mediator or the arbitrator with information obtained under the first paragraph.

13. A rail carrier must provide the Commission with all the information the latter requires for the purposes of section 12, and in particular rail transportation contracts that the parties have agreed to keep confidential.

14. Subject to the second paragraph of section 12, no person taking cognizance of a confidential rail transportation contract for the purposes of this Act or the Act to ensure safety in guided land transport may disclose the information contained in the contract.

DIVISION IV

ARBITRATION OF DISPUTES

15. On a written application to the Commission by either of the parties, a dispute may be submitted to an arbitrator if the matter of the dispute is any of the following:

(1) the intersection or connection of one railway with another, including the facilities for the exchange of rolling stock;

(2) transportation services involving two or more rail carriers;

(3) transportation by rail of the property of a shipper for which no alternative transportation service exists.

16. The applicant must transmit to the Commission a copy of the last offer made by him to the other party and a copy of the last offer he received from the other party, if any.

On receiving such documents, the president of the Commission shall notify the other party to the dispute of the application for arbitration.

17. Where the president of the Commission considers that the interests of the parties so require, he may, with their consent, refer them to a mediator designated by him from among the members of the Commission.

18. Unless the parties to the dispute agree otherwise, the mediation process may not continue for more than thirty days after the date on which the mediator is appointed.

Any oral or written information obtained during the mediation process is confidential and may be disclosed only with the consent of the parties.

19. The mediator shall transmit to the president his mediation report and a copy of the agreement signed by the parties, if any.

20. If the parties do not come to an agreement, the president shall notify them that he is referring the dispute to arbitration.

The parties have ten days after they receive the notice to select an arbitrator. If the parties fail to agree on an arbitrator, the president shall appoint an arbitrator *ex officio* and fix his fees. Every arbitrator appointed *ex officio* shall be chosen from a list established every five years by the president after consulting the Minister of Transport. The president may, in the same manner, amend the list at any time.

The president shall also appoint the clerk.

21. An arbitrator must be an expert in the field of railways. He must not have any interest in the dispute referred to him nor have acted as the representative of either party to the dispute.

22. If the arbitrator is unable to act, he shall be replaced according to the procedure for the original appointment.

23. Arbitration hearings shall be held in public; however, the arbitrator may, on his own initiative or on request by either of the parties, order that the hearings be held *in camera*.

24. The arbitrator shall hear the dispute with diligence and according to the procedure and the method of proof he considers appropriate.

In conducting the arbitration hearings, he has all the powers of a judge of the Superior Court; he may not, however, impose imprisonment.

25. At the request of the parties or the arbitrator, the witnesses shall be summoned by a written order signed by the clerk. The latter may administer oaths.

Any person duly summoned before an arbitrator who refuses to appear or to testify may be compelled to do so in accordance with the Code of Civil Procedure (R.S.Q., chapter C-25).

Witnesses are entitled to the same taxation of costs as witnesses in Superior Court. The costs taxed are payable by the party who summoned or examined the witness.

26. Where the party having applied for arbitration decides to abandon the proceedings, he must give written notice thereof to the arbitrator and the clerk.

27. The clerk shall communicate to the arbitrator or, as the case may be, to the parties to the dispute any document received for the purposes of the arbitration proceedings.

28. Unless the parties agree otherwise, the arbitrator's award must be rendered within sixty days of the arbitrator's appointment.

However, if he considers the interests of justice and of the parties to be served thereby, the president of the Commission may grant an additional period not exceeding thirty days, which may be renewed on the same conditions.

29. The arbitrator may require each of the parties to submit a final offer within the time limit he fixes. He shall decide in favour of one of the offers.

If one of the parties fails to make a final offer, the arbitrator may impose the other party's offer.

The arbitrator may, on any of the grounds set out in section 31, amend an offer he is imposing.

30. At any time before the final award is rendered, an arbitrator may render any interim decision he considers just and expedient.

31. In his arbitration award, the arbitrator shall take into account, in particular,

(1) rail safety;

(2) in the fixing of the compensation, the fair commercial value of the rail transportation services and, having regard to the private investments involved, that of the facilities used.

32. The arbitration award must be in writing and state the reasons on which it is based.

33. The arbitrator shall send the original of the award to the Commission and, at the same time, send a copy to each of the parties.

34. The arbitration award binds the parties for a period of not less than one year and not more than two years. However, the parties may at any time agree to amend all or part of the content of the award.

35. The award has the effect of an agreement signed by the parties.

Upon a suit being instituted by either party, the award may be executed under the authority of a court of competent jurisdiction.

36. The costs of mediation and of arbitration shall be shared in equal amounts by the parties, even where the mediation process or arbitration proceedings are abandoned.

CHAPTER III

REGULATIONS

37. The Government may, by regulation,

(1) determine the minimum amounts of insurance a rail carrier must hold;

(2) determine the requirements any proof of solvency in lieu of a certificate of insurance must meet, and determine the minimum amount required to guarantee solvency;

(3) prescribe the information and documents an applicant must provide to obtain a certificate of competence;

(4) prescribe the conditions governing the establishment of a tariff for a rail transportation service requested by a shipper;

(5) prescribe the amount of the fees payable for the certificate of competence, and for mediation under section 17.

CHAPTER IV

PENAL PROVISION

38. Any person guilty of an offence under section 6 or 8, the third paragraph of section 9, the first or third paragraph of section 11 or section 13 is liable to a fine of \$1 000 to \$6 000.

CHAPTER V

AMENDING PROVISIONS

39. The Railway Act (R.S.Q., chapter C-14) is repealed.

40. Section 186 of the Act respecting the Communauté urbaine de l'Outaouais (R.S.Q., chapter C-37.1) is repealed.

41. Section 306.58 of the Act respecting the Communauté urbaine de Montréal (R.S.Q., chapter C-37.2) is repealed.

42. Section 203 of the Act respecting the Communauté urbaine de Québec (R.S.Q., chapter C-37.3) is repealed.

43. Section 6 of the Companies Act (R.S.Q., chapter C-38) is amended by striking out the words “, except for the building and working of railways, other than existing tramways, the railroads of which are used exclusively for an urban system wholly operated within Québec” in the seventh, eighth, ninth and tenth lines of the first paragraph.

44. Section 123.5 of the said Act is amended by striking out the words “or to build and operate railroads” in the third line.

45. Section 124 of the said Act is amended by striking out the words “, except for the building and working of railways” in the third and fourth lines of paragraph 1.

46. Section 2 of the Cooperatives Act (R.S.Q., chapter C-67.2) is amended by striking out the words “, to build and operate railroads” in the third and fourth lines.

47. Division IX of the Special Corporate Powers Act (R.S.Q., chapter P-16) is repealed.

48. Section 4 of the Act to ensure safety in guided land transport (R.S.Q., chapter S-3.3) is amended by replacing the words “one kilometre” in the second and third lines of the second paragraph by the words “two kilometres”.

49. Section 48 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“The operator must also, in the case of a railway, have such notice published in a daily newspaper circulated in the territory in which the railway is situated.”

50. Section 87 of the said Act is repealed.

51. Section 2 of the Act respecting the Compagnie de chemin de fer de l’Outaouais (1993, chapter 244) is amended

(1) by striking out the words “, on the authorization of the Minister of Transport,” in the fifth and sixth lines of the first paragraph;

(2) by striking out the second paragraph.

52. Section 4 of the said Act is amended by striking out the second paragraph.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

53. The provisions of the Transport Act (R.S.Q., chapter T-12) not inconsistent with this Act and which govern inquiries, the powers of the Commission and of its members, the decisions of the Commission and the review of and appeal from such decisions apply,

adapted as required, to the matters submitted to the Commission under this Act.

54. The Commission may act, in accordance with section 151 of the National Transportation Act, 1987 (R.S.C., 1985, chapter 28, 3rd Supplement), to require any owner of a railway to connect his railway with a railway to which that Act applies.

55. Division I of Chapter XVIII of the Companies Act applies from (*insert here the date of coming into force of this Act*) to all railway companies with share capital constituted by an Act.

Where a company's existence is continued, the Act under which it was incorporated ceases to have effect from the date appearing on the certificate of continuance issued under section 123.136 of the Companies Act.

If any company referred to in the first paragraph has not obtained such a certificate of continuance by 1 July 1994, the company shall be governed by Part I of the said Act and the Act under which it was incorporated shall cease to have effect on 1 July 1994, except for the provisions relating to the head office, the board of directors and share capital.

56. Upon application to the Commission within three months from the date entered on the certificate of continuance issued under section 123.136 of the Companies Act, the railway companies referred to in the first paragraph of section 55 may obtain the certificate of competence referred to in Chapter II.

Upon application to the Commission within three months from (*insert here the date of coming into force of this Act*), Compagnie 2972-8979 Québec Inc., constituted on 12 March 1993 pursuant to Part IA of the Companies Act, may, without further formality, on presentation of the authorization of the Minister of Transport required under the second paragraph of section 2 of the Act respecting the Compagnie de chemin de fer de l'Outaouais, obtain the certificate of competence provided for in Chapter II.

Where an application referred to in the first paragraph relates to a railway in operation on the date thereof, it shall be granted without further formality.

57. Section 5 applies to the railway companies referred to in the first paragraph of section 55 or the second paragraph of section 56 only from 1 July 1994.

58. The Minister of Transport is responsible for the administration of this Act.

59. This Act comes into force on (*insert here the date of assent to this Act*), except sections 39 to 42 and paragraph 2 of section 51 which will come into force on 1 July 1994.