To: Office of the Legislative Counsel
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March 4, 2020

From: Theresa Scratch
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Bill 236
Railways Act (amended)
An Act to Amend Chapter 11 of the Acts of 1993, the Railways Act

My name is Theresa Scratch and I have been involved in an application before the Nova Scotia Utility and Review Board concerning the Board's present legislated mandate under the *Railways Act* s. ***39 (1)*** *The Board may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under this Act.* The complaint raised concerns about a shortline railway's non-compliance with licensing requirements for safety, insurance and financial matters as required for **the duration of the Licence.** [Railways Act s. 17(1) & (2)]

The Board determined that the matter constitutes a complaint pursuant to s. 39(1) of the Railways Act and formally initiated a public hearing process on November 2018 (NSUARB case # M08802). The matter was before the Board on Friday last, February 28, 2020, to determine standing of the Complainant and jurisdiction of the Board. The Board and Parties to the matter: Uniacke Trails Association; Windsor & Hantsport Railway Company; Transportation Infrastructure & Renewal; and the Municipality of East Hants, were advised that these proposed amendments would receive 1st reading that day, February 28th. As there were no details on the proposed amendments, the Board adjourned the Hearing to consider any impacts of those amendments on the Complaint, if any.

Although I do agree that the Railways Act of 1993 requires amendments to ensure safe operations of shortlines under Provincial jurisdiction in Nova Scotia, there are several amendments I would ask the committee to consider further.

As you will all know the purpose of the Act is to ensure safe operations of railways in the Province as stated in Section 2 of the Railways act. Many of the proposed amendments in Bill 236 refer to "safe condition" without clear definition of what "safe condition" is. Section 22(1) refers to *safe condition according to the regulations and industry standards*. Section 33 states:

> *In determining for the purposes of this Act whether railway operations are safe railway operations, or whether an act, practice or thing constitutes a threat to safe railway operations, regard shall be had not only to the safety of persons and property transported by railways but also to the safety of other persons and other property*

This section of the Act acknowledges that railway operations involve more than the transport of people and freight and the Act should apply to all aspects of a railway whether actively operating, suspended or discontinued.

Allowing for a licenced railway that is not operating trains and not subject to the Act and regulations, fails to address safe operations in all situations.

Clause 1. adds a definition for a "**non-operating railway**".
This proposed amendment provides a new status of licenced railway, a "non-operating railway", however, the amended Act does not define how and when, and under whose jurisdiction, a licenced railway, operating pursuant to the NS Railways Act, becomes a licenced non-operating railway that does not need to operate in accordance with its licence and the Railways Act, except where expressly provided.

> **Clause 1**
> *(db) "non-operating railway" means a railway that is the subject of a valid licence but is not actively operating in accordance with its licence and has not had an application made for its discontinuance or abandonment;*
>
> **Clause 2**
> *(c) provides that the Act does not apply to non-licensed or non-operating railways except where expressly provided.* (underline added)

The Railways Act, s.52(1) and s.52A, recognizes two agreements between the Province and railway companies that deem the agreements to be licences pursuant to the Railway and subject to the Act and regulations.
Will the Cape Breton & Central Nova Scotia Railway Limited and the Windsor & Hantsport Railway be classified as "non-operating railways" which are no longer subject to the Act and regulations, except where expressly provided? Which provisions of the Act do apply to the "non-operating railway"?

The definition of a non-operating railway, which includes "no application made for discontinuance", appears to allow a licenced railway to discontinue service without complying with Section 41(1) of the Railways Act and NS Railway Discontinuance and Abandonment Regulations. How is the discontinuance permitted without adhering to the requirements of s.41(1) where the railway company shall....

> *Discontinuance of Service*
> **41 (1)** *No railway company shall discontinue a railway service until the railway company gives in accordance with the regulations ...*

The "non-operating railway" is licenced however, it is not clear or certain that the non-operating railway is subject to any regulations or conditions. The concept of a non-operating licence is a conflicting concept and subject to confusion, misinterpretation and possible litigation. Clarity is required.

Clause 2:
Amends **Section 4** of the Railways Act which states:

> *Application of Act*
> *This Act* ***applies to all railways, railway companies and railway services*** *within the legislative authority of the Province but does not apply to an industrial railway.*

The proposed amendment adds s. (c) below which provides for an exception:

> ....
> *(c) provides that the Act does not apply to non-licensed or non-operating railways except where expressly provided.* (underline added)

Whereas the Act does not apply to a non-operating railway, this Clause 2 appears to remove the provision, under s. 21(1), for the Board to oversee its legislated authority to suspend or revoke a licence or any part thereof for failure to comply with the Act, the regulations or the terms and conditions of the licence. Does this Clause 2 amendment also mean the Board may not hear a complaint under Section 39(1) of the Act?

Clause 5: The Railways Act Sections 17(1) and (2) refer to a requirement to meet safety standards, maintain prescribed insurance coverage and financial viability for the duration of the licence.
Section 17 is further amended by adding immediately after subsection (2) the following subsection:

> *17 (3) The duties imposed under subsection (2) continue to apply to a licence holder or former licence holder even if the licence has been* ***suspended or revoked*** *until such time as the railway has been sold or transferred to another person.*

This amendment includes a specific provision for the "non-licenced railway", as defined in the Act as *an operating railway whose licence has been suspended or revoked.* The Clause 5 amendment should express the same specific provision for the "non-operating railway" to confirm this non-operating, yet licenced railway, is included under 17(3) as *a licence holder* and subject to the same conditions. The non-operating railway is defined in the Act as a valid licence holder. Amendments to s. 17(3) needs clarification to include a specific reference to the non-operating railway.

The amendment s. 17(3) concludes that....*until such time as the railway has been sold or transferred* ***to another person.***

The Nova Scotia Discontinuance and Abandonment Regulations require:

> *(c) if the railway line is no longer to be used for any railway service, a statement that the railway line or the operating interest in the railway line is available* ***for sale, lease or transfer to a railway company for continued operation.***

If there is no sale within a stipulated timeframe there is a mandatory requirement to offer the railway line to the Crown for net salvage value.

Both amendments **Clause 5**, Railways Act s. 17(3) ….***to another person*** and **Clause 7**, Railways Act s. 21(8) *where an application is deemed to have been made under subsection (7) and the former licence holder has not sold the railway* ***to another person...***

Legislation, both Provincial and Federal, require the sale, lease or transfer of a railway line to a railway company for continued railway operation, otherwise there is a mandatory offer to Government for net salvage value. This provision protects

the public interest in the railway corridor. I would suggest the phrase "to another person" be replaced with "to a railway company for continued operation".

In effect **Clauses 1, 2 and 5** appear to allow the non-operating railway to discontinue service and abandon without being subject to the Act and regulations which set out a specific process.

Provincially expropriated corridors for railway purposes have been protected for public purposes through Federal and Provincial legislation. These amendments appear to relinquish control over these expropriated corridors by establishing a non-operating railway licence that is not subject to the Railways Act or any other legislation and terms and conditions.

The Province may wish to allow a non-operating railway that is considered to be a temporarily suspended or idled railway service however, this "class" of non-service railway should have defined time limits, and terms and conditions that address all aspects to ensure maintenance, insurance and financial viability are maintained throughout that specified time limit. This cannot be done by making the railway exempt from the Act.

Clause 8

The amendment to Section 22(1) should have an expressed provision that applies to the non-operating railway with regard to an obligation to maintain maintenance. The Railways Act, Section 22, *Safe Operation of railway,* is applicable to a railway company that is operating a railway, whereas the "non-operating railway" is not actively operating by definition.

> **22 (1)** A railway company shall operate the railway company's railway safely and maintain it in a safe condition according to the regulations and industry standards. 1993, c. 11, s. 22; 2001, c. s. 33.
> (2) The obligation respecting maintenance in subsection (1) continues to apply
> (a) while the railway company's licence to operate is suspended or revoked;
> (b) while the railway company has discontinued use of the railway;
> (c) while the railway company has abandoned the railway.

Section 22(1) applies to an operating railway, a suspended or revoked railway ("non-licensed), a discontinued and abandoned railway however Section 22(1) does not specifically refer/apply to a "non-operating railway" which is otherwise not subject to the Act.

The amendment, Section 22(2), obligates a railway company to continue to respect the maintenance requirement in s. 22(1), including while that railway company has discontinued use of the railway. The **Clause 8** amending s. 22(2)(b) does not seem to include the "non-operating railway" which is defined as *not actively operating* but has not formally discontinued service. There should be a requirement under legislation for the "non-operating railways" to address the same maintenance requirements as an operating or discontinued railway.

It is apparent from an existing railway licence arrangement that an amendment to the Railways Act is necessary to allow for revocation of a railway licence when a railway company no longer has operational rights over a railway line owned by another company. If a railway company has no operating rights and no insurance for a railway line, there should not be a valid railway licence.

As stated previously, the proposed amendments to the Railways Act were not made available to the public until late last Friday afternoon, February 28, 2020. In this short time, I have identified several issues, noted above, that I respectfully request you consider. I strongly support the Province's interest to improve railway safety legislation.

Thank you.

Regards,

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Bill 236
Railways Act (amended)
An Act to Amend Chapter 11 of the Acts of 1993, the Railways Act

These comments are in addition to comments forwarded for Law Amendments Bill 236 early today. I would ask you to consider an amendment to Clause 39(1) of the *Railways Act, 1993, c. 11, s. 1.*

The public's right, standing, to file a complaint to the Nova Scotia Utility & Review Board, under Section 39(1), has been challenged. The Railways Act, s.39(1) reads:

> ***Complaint to or arbitration by Board***
> ***39 (1)*** *The Board may inquire into, hear and determine a complaint concerning any act, matter or thing prohibited, sanctioned or required to be done under this Act.*

I would ask that consideration be given to confirming for certainty that no one is excluded from bringing a complaint to the Board. The legislation provides jurisdiction for the Board to decide whether to hear the complaint or not. The legislation should guarantee that the public as well as consumers of rail services have the ability to bring issues forward through the NSUARB.

Thank you

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March 1, 2020

Subject: Amendments to the Railway Act

I am writing regarding the amendments to the Railways Act that I understand underwent first reading on Friday, February 28, 2020.

I am confused over the definitions of "non-operating" and "non-licensed" railways. It appears that the Railways Act will not apply to railways that are deemed to be "non-operating" or "non-licensed". Is this what is intended in the amendments?

A non operating railway that does not have to follow the Railways Act is a huge safety issue. These amendments will permit a railroad company to cease service, presumably without notice, neglect their infrastructure, cease all maintenance practices neglecting washed out, plugged and crushed culverts. Erosion will lead to unsupported railway tracks due to lack of maintenance.
Unmaintained infrastructure including buildings, tracks and culverts, etc. could potentially cause damage to adjacent public and private property.

The general public, especially minors, will access unmaintained railway infrastructure and eventually injury and or death to individuals will occur.

By allowing a non operating railway, these amendments remove the requirement that a railway must file for discontinuance and eventually abandonment when the company ceases operation. This would allow a rail company to maintain ownership of their corridor forever without another rail company having the opportunity to purchase their infrastructure to resume rail service. Without having to file for discontinuance and or abandonment the Province would never have an opportunity to purchase the non operating railroad for a Provincially owned rail or commuter service, gas or water pipeline, trails or other uses that such an "abandoned" corridor might provide.

Non operating and non licensed railways should not be permitted to exist within the amended Railway Act.

Thank you,
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March 4, 2020

Subject: Amendments to the Railway Act – Law Amendments Committee

I am writing further to my previous email and letter regarding the amendments to the Railways Act that I understand underwent first reading on Friday, February 28, 2020. My first letter expressed my concern over the confusing terms "non-operating" and "non-licensed railways.

I am currently involved in a NSUARB hearing regarding my complaint that the Windsor & Hantsport Railway Company (W&HRC) is not acting in accordance with their operating license, the Railways Act and it's Regulations and therefore the Board should revoke the operating license of the W&HRC.
The hearing has been stalled because the legal counsel for W&HRC has challenged our right to bring our complaint before the Board as they claim we have no "standing" to do so.

A railway corridor (often expropriated from the public) is for the benefit of the public and the Provinces economy. It is not solely for the economic gain of its owner or shareholders.
The Railways Act should expressly provide for the right of the public to file a complaint with the NSUARB when the rail company is acting outside their license, the Railways Act and Regulations.

Please forward my concern to the Law Amendments Committee meeting March 5, 2020.

Thank you,
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