



To: Planning Committee **Date:** January 20, 2016
From: Gavin Woo, P. Eng. **File:**
 Senior Manager, Building Approvals
Re: Provincial Government Legislation of the Building Act

Staff Recommendation

That the staff report titled "Provincial Government Legislation of the Building Act" (dated January 20, 2016, from the Senior Manager, Building Approvals) be received for information.

Gavin Woo, P. Eng.
Senior Manager, Building Approvals
(604-276-4113)

Att. 1

REPORT CONCURRENCE		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Policy Planning	<input checked="" type="checkbox"/>	
Development Applications	<input checked="" type="checkbox"/>	
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS: DW	APPROVED BY CAO

Staff Report

Origin

The Provincial Government has enacted the Building Act (the “Act”) for the intended purpose of unifying building regulations and their implementation throughout British Columbia.

Background

Over the previous 25 years, the Province has conducted a number of reviews of the building regulatory system, each time pursuing incremental changes. In 2004, a “modernization strategy” was established but was not implemented, as government priorities shifted to focus on the “greening” of the BC Building Code during 2006.

In 2010, the Province reintroduced the modernization strategy initiative and announced potential regulatory changes requiring mandatory certification of building officials. At that time, staff was concerned with the impact of this requirement and the lack of consultation. As a result, a meeting with Mr. Jeff Vasey, Executive Director of the Building Policy Branch of the Provincial Government was convened in Victoria to express these concerns. During that meeting, our input was acknowledged with a commitment for consideration in future Provincial Government proposals.

Again in 2012, the Province issued an industry White Paper entitled “A Modern Building Regulatory System”, presenting two broad initiatives:

1. Firstly, a system for mandatory certification of building officials including continuing professional development.
2. Secondly, to remove any existing local bylaws regulating building standards beyond the BC Building Code.

Realizing the operational complexities that these initiatives present to municipal operations and policies, staff along with representatives from other municipal governments met with the Province to voice concerns and petition for clarification of the proposals. Local governments requested that the Province clarify comments received by the Branch prior to advancing legislative changes.

Based on past processes involving the BC Building Code, there have been five similar reviews undertaken since 1994, with very few proposals advancing to the implementation stage. However, despite previous staff comments from the City of Richmond and other local governments, the Provincial government introduced and brought into force the Act in 2015 with the following broad initiatives:

1. Removal of all building regulations imposed by municipalities extraneous to the BC Building Code in order to achieve consistent implementation of building regulations throughout the province. The Province is the sole authority to adopt building standards, requiring existing bylaws established by local governments to conform with provincial regulations.

2. Providing a process where innovative building measures currently outside the scope of the BC Building Code may be evaluated and applied as a Provincial regulation.
3. Requiring a minimum level of certification for those interpreting building regulations and acting as building officials.

Despite enactment, the Act's administrative rules have not been established and will necessarily become defined over a period of phased implementation for the various components. City staff are actively engaging the Province in discussion and written communication at this time to offer feedback and participate in further consultation. In particular, joint efforts with other municipalities such as City of North Vancouver and City of Surrey, have been designed to solicit clarifications from the Province on precisely the criteria to determine if local regulations stemming from OCP requirements, rezoning, sustainability initiatives, building bylaw and other City policies are in conflict with provisions of the Building Act.

Analysis

Consistency of Building Regulations

Section 5 of the Building Act states that municipal building requirements are not applicable when the matter is already subject to provincial building regulations as described in the Building Code. A two-year transition period is given to provide sufficient time for local governments to rescind or address through building regulation variance any bylaws conflicting with provincial building regulations.

As mentioned above, it is incumbent on the Provincial Government to explain clearly through its Administrative Rules how it intends to determine whether a municipal building regulation is in conflict. To date, the City has received no written response to requests for clarification and to meet for formal discussion in the intervening years after the industry White Paper or presently after the enactment. However, we have been in discussion with officials at the Buildings Standards Branch since the enactment and may report the following.

The Act is designed to remove local building regulations established by municipal government bylaws that are beyond the BC Building Code. Examples would likely include measures for "sustainable" building features which exceed Code requirements or residential sprinkler systems. City staff are currently reviewing Richmond's Bylaws, development approval processes and permits to determine what if any conflicts may arise from current local building regulations.

At this time, Bylaws that may likely be impacted by the Act include the following:

- Green Roofs & Other Options Involving Industrial & Office Buildings Outside the City Centre – Bylaw 8385 (2008)
- The Zoning Bylaw's requirement for additional handicap accessible parking may likely be impacted by the Act, as it mandates more handicap accessible parking than required by the BC Building Code.

Others items less likely to be impacted by the Act include:

- Those secured by Council through the discretionary rezoning approval process, including negotiated provisions such as increased sustainability or energy efficiency features, sound attenuation measures to address aircraft noise and accessible housing features. It should be noted, however, that restricting the City's ability to secure these items to the discretionary rezoning approval process, may have a significant impact on the City's initiatives and policies contained in the Official Community Plan.

It is unclear the Act's ramifications on incentive systems that municipalities may use for securing developmental features outside requirements for discretionary rezoning. The City has a history of using a density bonusing approach for securing certain items in consultation with the development community. This approach has been successfully used as it provides a win-win as demonstrated by the provision of Basic Universal Housing Unit requirements in the Zoning Bylaw. The density bonus approach has provided a voluntarily incentive for developers to increase accessible housing in the City. The Act brings into question whether this density bonusing approach to secure voluntary provision of items beyond BC Building Code requirements will be acceptable moving forward.

Staff will be reviewing the City's bylaws further and seek greater clarity from the Province with regards to how the Act will impact other building, planning, zoning, fire and business licensing regulations within the City. In the event that current requirements contained in a bylaw or development approval process are impacted by the Act, staff will investigate alternative approaches that may be available to ensure the overall intent of the building requirement is not lost. There may be financial considerations involved in the cost to review the City's existing bylaws and apply for the necessary variances in order to preserve any affected City building regulations. The cost of these variances will likely be determined based on their complexity and will be set out by the province.

All pertinent information will be provided to Council immediately upon results of continued consultation with the provincial government.

Qualification of Officials

Prior to the Act, there have been no formal qualification requirements for building officials. The intent is to improve quality of service and technical competency of building officials province-wide through standardized qualifications, requiring work only within achieved qualification levels, and registration provincially. These sections of the Act will be brought into force according to the following schedule. Building officials will have six months to join the Building Officials' Association of B.C. and start the qualification process with three and a half years to meet the exam requirements.

The City currently has requirements for professional skill and expertise along with a program of continuing education that ensures a more than adequate standard of service from our entire building official staff. This is also acknowledged by the Provincial Ministry in previous consultations that make it clear that proposed qualification requirements are intended to address issues in smaller, more remote communities where it is more difficult to recruit or retain qualified staff rather in larger city centres with a larger pool of qualified staff.

It is our intention to have all City building officials meet the appropriate qualification level for their job description within the four year legislative transition period. However, we share the concern with other municipalities that competent current building officials may not be capable of passing the required examinations despite having exemplary work and technical records.

Since 2007, senior Building Approvals staff have been formally lobbying the Ministry for a “grandfathering” or alternative certification process involving a combination of continuing education and examination based on field review and conditions. This is a view shared by our colleagues in other municipalities facing the prospect of losing the services senior technical staff. Despite a previous face to face meeting with Ministry officials in Victoria and requests for updated information, no communications have been received regarding the prospects of an alternative certification process leveraging the experience of senior staff while fulfilling the intention of the Act.

Once in force, building officials will be required to either be exempt building professionals (Professional Engineer or Architect) or meet the qualifications set out in the Act for their level of work. In order to be qualified as a building official, non-exempt personnel will be required to pass qualifying exams, satisfy continuing professional development requirements set out by the province, be a member of a prescribed professional association, satisfy any other requirements as set out by regulation, and be entered on the provincial register as a qualified building official.

The Building Approvals department staff comprises of 35 building officials, of whom four are professionals (Engineer or Architect), three are Registered Building Officials (RBO) with the Building Officials Association of BC (BOABC). The remaining staff members have varying levels of certification with either the BOABC or the Plumbing Officials Association of BC (POABC), or are licensed plumbers.

Longer term cost implications of the Act will involve the qualification of all building officials, once that section of the Act is in effect. Building Approvals staff are currently at varying levels of qualification, but it would be beneficial for the City to train all staff to the highest, appropriate level of qualification. We estimate the cost of training current full time staff to the highest level of qualification to be approximately \$35,000, in addition to remuneration for time spent in class and in writing exams. There will be an associated cost for registration of qualified building officials and maintenance of certifications. Those costs have not yet been determined.

Innovative Proposals

Despite mandating a level of consistency in the application of building regulations, the Act does allow for municipality-specific variations in building regulation. Local governments must apply for this variation and should the minister determine it is acceptable, the variation is written as a Provincial regulation applicable to that specific municipality or area of that municipality.

Examples of innovation include new materials and techniques currently not included or described in the BC Building Code. Presently there are proposals for timber buildings using new manufacturing materials and techniques that vastly exceed the height and encompass uses currently not considerable under the BC Building Code. The Innovation component would allow

the Province to develop specific regulation amending the code provisions to permit such construction.

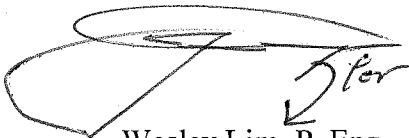
Individual applicants are also permitted to write to the Province to request building regulation variations for specific projects. While the City currently has procedures in place for applicants to apply for Alternative Solutions for non-Code conforming items, we anticipate the provisions of the Act will allow applicants to apply directly to the province for matters that are out of the scope of any applicable building regulation. This provision of the Act has not yet come into force.

Financial Impact

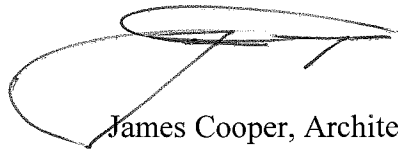
None.

Conclusion

The Act has been enacted with partial implementation. Full implementation gradually over a transition period will allow the City to adapt local bylaws in response. The particular sections of the Act that will have the most significant effect involve those that require qualification and additional training of City Staff and potential removal of building regulations specified in some City bylaw. Staff will continue to review existing bylaws and engage Provincial officials in the coming months to ensure that the City will have all pertinent information critical for an effective response.



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Att. 1: Building Act



HONOURABLE RICH COLEMAN
MINISTER OF NATURAL GAS DEVELOPMENT
AND MINISTER RESPONSIBLE FOR HOUSING
AND DEPUTY PREMIER

BILL 3 – 2015

BUILDING ACT

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

Part 1 – Interpretation and Application

Definitions

1 In this Act:

"administrative agreement" means an agreement under section 14 [administrative agreement];

"administrative authority" means the person with whom the minister enters into an administrative agreement;

"appeal board" means the Building Code Appeal Board continued under section 19 [Building Code Appeal Board];

"building activity" means

- (a) the construction of new buildings, or
- (b) the alteration, repair or demolition of existing buildings;

"building regulation" means a regulation under section 3 (1) (a), (b) or (c) [building regulations];

"extraprovincial building credential" means an official recognition, conferred by another jurisdiction in Canada, that attests to an individual being qualified or authorized to perform in that jurisdiction work that is the same as or is substantially similar to the work of a qualified building official;

"local authority" means any of the following:

- (a) a municipality;
- (b) a regional district;
- (c) the Nisga'a Lisims Government;
- (d) a treaty first nation;
- (e) the board of governors of the University of British Columbia;
- (f) any other authority prescribed by regulation of the Lieutenant Governor in Council;

"qualified building official" means a person who is qualified as a building official under section 11 [qualification as building official];

"register" means the register established under section 12 [register of qualified building officials];

"registrar" means the registrar designated under section 12.

Application of Act

2 This Act does not apply to the following:

- (a) the City of Vancouver;

(b) buildings in, on or about a mine, within the meaning of the Mines Act, other than bunkhouses, cook houses and related residential facilities.

Part 2 – Building Regulations

Building regulations

3 (1) The minister may make regulations as follows:

- (a) establishing one or more building codes;
- (b) regulating building generally for matters not included in a building code;
- (c) providing in respect of a matter or class of matters referred to in subsection (2) (f) that all or part of a building regulation

(i) does not apply, or

(ii) applies with modifications or additions.

(2) A regulation under subsection (1) may do one or more of the following:

- (a) prescribe requirements in respect of building activities;
- (b) prescribe requirements for the reduction of safety risks on sites where building activities occur;
- (c) prescribe requirements in respect of one or more of the following:

(i) the design of buildings or planning of building activities;

(ii) the inspection of buildings or building activities;

(iii) the designs, plans, notices, reports or other records relating to an activity referred to in subparagraph (i) or (ii);

(iv) the preparation, retention or inspection of records;

(v) any other matter that the minister considers necessary or advisable;

(d) require that building activities, or activities referred to in paragraph (c) (i) or (ii), be performed by, or records referred to in paragraph (c) (iii) be prepared by, persons in specified classes of persons;

(e) adopt by reference, in whole or in part and with any changes the minister considers necessary, any code or standard set by a provincial, national or international body or any other code or standard

making body, as the code or standard stands at a specific date, as it stands at the time of adoption or as amended from time to time;

(f) provide differently for different buildings, materials, geographic areas, local authorities, circumstances or other matters, or classes of buildings, materials, geographic areas, local authorities, circumstances or other matters;

(g) establish classes of persons, buildings, materials, geographic areas, local authorities, circumstances or other matters;

(h) specify circumstances or conditions under which all or part of the regulation applies;

(i) authorize a specified local authority to provide, in a particular case, that requirements in a building regulation to provide for the future installation of a solar domestic hot water system do not apply in relation to a building to be newly constructed in the jurisdiction of the local authority if the local authority is satisfied that the site where the building will be constructed does not permit effective use of solar domestic hot water systems.

Enforcement of building regulations by local authorities

4 A building regulation has the same force and effect as the following:

- (a) a bylaw, rule, law or prescribed instrument that is validly enacted by a local authority;
- (b) a bylaw that is validly enacted under the University Endowment Land Act.

Restrictions on local authority jurisdiction

5 (1) In this section, "local building requirement" means a requirement in respect of building activities that is enacted by a local authority other than a treaty first nation or the Nisga'a Lisims Government.

(2) This section applies despite any of the following:

- (a) the Community Charter;
- (b) the Fire Services Act;
- (c) the Islands Trust Act;
- (d) the Local Government Act;
- (e) the University Act;
- (f) any other Act prescribed by regulation of the Lieutenant Governor in Council.

(3) Subject to subsection (4), a local building requirement has no effect to the extent that it relates to a matter that is

- (a) subject to a requirement, in respect of building activities, of a building regulation, or
- (b) prescribed by regulation as a restricted matter.

(4) Subsection (3) does not apply in relation to a matter that is prescribed by regulation as an unrestricted matter.

Regulation of building by treaty first nations

6 If, under the final agreement of a treaty first nation, the government is required to negotiate and attempt to reach agreement with the treaty first nation enabling the treaty first nation to establish standards, for buildings or structures to which a building regulation applies, that are different from or in addition to the standards established by the building regulation, the minister, on behalf of the government, may enter into an agreement reached in the negotiation.

Request by local authority for variation

7 (1) One or more local authorities may make a written request to the minister that the minister make a building regulation in respect of the local authority or local authorities, as applicable.

- (2) The request under subsection (1) must
 - (a) be made in a form and manner acceptable to the minister, and
 - (b) be accompanied by any prescribed fee.

Request by person for variation

8 (1) Subject to any applicable regulations, a person may make a written request to the minister that the minister make a building regulation in respect of

- (a) a building, or
 - (b) multiple buildings on a single site.
- (2) The request under subsection (1) must
- (a) be made in a form and manner acceptable to the minister, and
 - (b) be accompanied by any prescribed fee.

Power to engage or retain consultants or specialists

9 (1) For the purposes of reviewing a request under section 7 or 8, the minister may engage or retain consultants or specialists the minister considers necessary and may determine their remuneration.

(2) The Public Service Act does not apply to a person engaged or retained under subsection (1).

Local authority building decisions

10 (1) In this section, "exempt building professional" means

(a) a member of a prescribed professional association, or

(b) a person in a prescribed class of persons.

(2) A local authority must not allow or require a person to decide on behalf of the local authority whether a matter conforms to a building regulation, unless

(a) the person is a qualified building official and the matter is within the person's current scope of practice as listed in the register, or

(b) the person is an exempt building professional.

(3) A person must not decide on behalf of a local authority whether a matter conforms to a building regulation, unless

(a) the person is a qualified building official and the matter is within the person's current scope of practice as listed in the register, or

(b) the person is an exempt building professional.

Part 3 – Building Officials

Division 1 – Building Officials

Qualification as building official

11 (1) In order to be qualified as a building official, a person must

(a) meet the following qualification requirements:

(i) pass one or more qualifying exams specified by the minister;

(ii) satisfy requirements, specified by the minister, respecting continuing professional development;

(iii) be a member in good standing of a prescribed professional association;

(iv) any additional qualification requirements prescribed by regulation,

(b) be entered in the register as a qualified building official, and

(c) not be suspended under Part 5 [Administrative Penalties].

(2) For the purposes of this section, the minister may, by regulation,

(a) establish different scopes of practice and different classes of building officials by scope of practice, and

(b) provide for the recognition of extraprovincial building credentials and the classification of holders of extraprovincial building credentials into the different classes of building officials.

(3) For the purposes of this section, the minister may

(a) specify different qualifying exams under subsection (1) (a) (i), held by the minister or any other person,

(i) for different scopes of practice, and

(ii) for persons in different classes of building officials who hold different extraprovincial building credentials,

(b) specify different requirements under subsection (1) (a) (ii) for different classes of building officials, including, without limitation, by reference to materials or training provided by the minister or any other person,

(c) hold qualifying exams referred to in subsection (1) (a) (i), and

(d) provide materials or training for continuing professional development referred to in subsection (1) (a) (ii).

(4) A person must pay the following fee to take a qualifying exam held under subsection (3) (c):

(a) to the minister, if the power to hold qualifying exams under subsection (3) (c) is not delegated under section 15 [power to delegate administration], a prescribed fee, if any;

(b) to the administrative authority, if the power to hold qualifying exams under subsection (3) (c) is delegated under section 15, a fee, if any, set by the administrative authority in accordance with section 17 [power of administrative authority to set fees for matters under its administration].

(5) A person must pay the following fee to receive materials or training provided under subsection (3) (d):

(a) to the minister, if the power to provide materials or training under subsection (3) (d) is not delegated under section 15, the prescribed fee, if any;

(b) to the administrative authority, if the power to provide materials or training under subsection (3) (d) is delegated under section 15, the fee, if any, set by the administrative authority in accordance with section 17.

Register of qualified building officials

12 (1) The minister must designate, in writing, an individual as the registrar.

(2) The Public Service Act and the Public Service Labour Relations Act do not, by virtue of a designation under subsection (1), apply to the individual designated under that subsection.

(3) The registrar must establish and maintain a register of persons who are qualified building officials that includes the following information about each person:

(a) the name of the person;

(b) the current scope of practice of the person and the date on which the person qualified for that scope of practice;

(c) if applicable, each previous scope of practice of the person and the dates on which the person was qualified for that scope of practice;

(d) any other information prescribed by regulation.

(4) The registrar must enter a person in the register if the person

(a) applies in writing in the form required by the registrar,

(b) pays the following annual fees, as applicable:

(i) to the minister, if the administration of some or all of the provisions referred to in section 15 (1) [power to delegate administration] is not delegated under that section, the annual fee prescribed for the purposes of section 13 (b) (i) [annual report and annual fees];

(ii) to the administrative authority, if the administration of some or all of the provisions referred to in section 15 (1) is delegated under that section, the annual fee set by the administrative authority for the purposes of section 13 (b) (ii), and

(c) satisfies the registrar that the person meets the qualification requirements under section 11 (1) (a) [qualification as building official].

(5) The registrar must remove a person from the register if the person

- (a) fails to meet a qualification requirement under section 11 (1) (a),
 - (b) fails to make an annual report in accordance with section 13 (a),
 - (c) fails to pay an annual fee required under section 13 (b), or
 - (d) requests to be removed from the register.
- (6) A person entered in the register who ceases to be a member in good standing of a professional association referred to in section 11 (1) (a) (iii) must promptly notify the registrar in writing.
- (7) For the purposes of this section,
- (a) the registrar may require a professional association referred to in section 11 (1) (a) (iii) to advise the registrar of whether a person is a member in good standing of the professional association, and
 - (b) if required under paragraph (a) to advise the registrar of whether a person is a member in good standing, a professional association must do so.
- (8) The registrar must retain, for the prescribed number of years, a record of the information referred to in subsection (3) for each person who is removed from the register.
- (9) The registrar must make the register, and the records required to be retained under subsection (8), available to the public by one or both of the following means:
- (a) posting the register and records on a publicly accessible website maintained by or on behalf of the government;
 - (b) having the register and records available for public inspection in the office of the registrar during regular office hours.

Annual report and annual fees

13 A person entered in the register must, annually, in accordance with the regulations,

- (a) make an annual report to the registrar declaring whether the person
 - (i) is a member in good standing of the professional association referred to in section 11 (1) (a) (iii) [qualification as building official], and
 - (ii) has completed any applicable continuing professional development requirements referred to in section 11 (1) (a) (ii), and
- (b) pay the following annual fees, as applicable:

(i) to the minister, if the administration of some or all of the provisions referred to in section 15 (1) [power to delegate administration] is not delegated under that section, the annual fee prescribed in respect of that administration;

(ii) to the administrative authority, if the administration of some or all of the provisions referred to in section 15 (1) is delegated under that section, the annual fee set by the administrative authority in accordance with section 17 [power of administrative authority to set fees for matters under its administration] in respect of that administration.

Division 2 – Administration

Administrative agreement

14 (1) Subject to the approval of the Lieutenant Governor in Council unless that approval is not required by subsection (2), the minister may enter into an agreement with a person respecting the administration by the person of some or all of the provisions of Division 1 [Building Officials], Part 5 [Administrative Penalties] and the regulations contemplated by Division 1 or Part 5.

(2) Approval of the Lieutenant Governor in Council is not required in the case of an administrative agreement that

(a) is entered into by the minister with a person

(i) with whom the minister has previously entered into an administrative agreement that is in effect, and

(ii) to whom a delegation under section 15 [power to delegate administration] has been made that is in effect, and

(b) does not contemplate a further delegation, or a rescission of a delegation, under section 15.

(3) An administrative agreement must include provisions that specify all of the following:

(a) the services to be delivered by the administrative authority;

(b) the performance objectives of the administrative authority;

(c) the terms of the financial arrangement between the administrative authority and the government, including the collection and payment of fees due to the administrative authority or the government and any other financial transitional matters;

(d) the right of access of the administrative authority to records created by the government and the right of access of the government to records created by the administrative authority;

(e) the requirements for records management by the administrative authority;

- (f) the requirement that the administrative authority report to the government any matters in respect of the operation of powers administered by the administrative authority under this Act;
- (g) a requirement that the administrative authority carry adequate insurance;
- (h) provisions of indemnification between the administrative authority and the government;
- (i) the obligations of the parties if the agreement is terminated;
- (j) the time period of the agreement or the procedure for the review of the agreement by the administrative authority and the government;
- (k) procedures for the settlement of disputes;
- (l) a specification of the liability of the administrative authority arising out of the administrative authority carrying out its administration of this Act and the regulations;
- (m) any other matter prescribed by regulation of the Lieutenant Governor in Council.

(4) The administrative authority must comply with the terms of the administrative agreement, and may not carry out the administration referred to in subsection (1) except in accordance with that agreement.

(5) Subject to the approval of the Lieutenant Governor in Council, the minister may amend or revoke the administrative agreement without the consent of the administrative authority if the minister gives the administrative authority prior written notice.

Power to delegate administration

15 (1) If the minister enters into an administrative agreement with a person, the Lieutenant Governor in Council may, by regulation, delegate to the person the administration of some or all of the provisions of Division 1 [Building Officials], Part 5 [Administrative Penalties] and the regulations contemplated by Division 1 or Part 5, including any power, function or duty of the minister, except a power to make regulations.

(2) If an amendment to a delegation regulation could substantively affect an administrative agreement, the minister must give reasonable notice to the administrative authority of the proposed amendment and must consult on it with the administrative authority.

(3) If the Lieutenant Governor in Council repeals a regulation under subsection (1), the administrative agreement is terminated.

Delegation does not make person an agent of government

16 A person to whom a delegation under section 15 [power to delegate administration] is made is not an agent of the government for the purposes of the delegation.

Power of administrative authority to set fees
for matters under its administration

17 (1) Despite any power of the Lieutenant Governor in Council or the minister to prescribe fees for matters under the administration of the government, the administrative authority may set fees in accordance with a fee-setting process established by the administrative authority for any matter required under the administrative authority's administration.

(2) The fee-setting process established under subsection (1) must be in accordance with criteria that are established by regulation.

Power to order audit

18 The Lieutenant Governor in Council may direct a person to conduct an audit of the person to whom administration is delegated under section 15 [power to delegate administration].

Part 4 – Building Code Appeal Board

Building Code Appeal Board

19 (1) The Building Code Appeal Board is continued, consisting of the following members appointed by the minister after a merit-based process:

- (a) one member designated as the chair;
- (b) one member designated as the vice chair;
- (c) other members appointed after consultation with the chair.

(2) If the appeal board sits as a tribunal under section 26 (3) of the Administrative Tribunals Act, a majority of the appeal board is a quorum.

(3) The following sections of the Administrative Tribunals Act apply to the appeal board:

- (a) sections 1 to 8, 10, 11, 13, 18, 26, 27, 32, 36, 39, 44, 46.3, 51, 56 and 58;
- (b) section 9.

Appeals

20 (1) The following persons may, by filing an application with the appeal board in accordance with this section, appeal a decision of a local authority on whether a matter conforms to a building regulation:

- (a) the owner of the building to which the decision relates;

(b) a person, other than an employee, retained under contract or subcontract by the person referred to in paragraph (a) to provide services in respect of the design, construction, alteration, repair or demolition of the building.

(2) An application under subsection (1) must

(a) be in writing or in another form authorized by the rules of the appeal board,

(b) include any information prescribed by regulation,

(c) be signed by the applicant or the applicant's counsel or agent, and

(d) be accompanied by any applicable application fee prescribed by regulation.

Appeal board decisions

21 (1) The appeal board may confirm, vary or reverse a decision under appeal.

(2) The decision of the appeal board is final and binding and not open to review in any court.

Part 5 – Administrative Penalties

Definition

22 In this Part, "Safety Standards Appeal Board" means the Safety Standards Appeal Board established under the Safety Standards Act.

Administrative penalties

23 (1) The registrar may impose an administrative penalty on a person if the registrar is satisfied on a balance of probabilities that the person has contravened

(a) section 10 (2) or (3) [local authority building decisions], or

(b) subsection (2) of this section.

(2) A person must not knowingly give false or misleading information to the registrar

(a) in an application under section 12 (4) [register of qualified building officials], or

(b) in a report under section 13 (a) [annual report and annual fees].

(3) Before the registrar imposes an administrative penalty on a person, the registrar must consider the following:

- (a) previous enforcement actions for contraventions of a similar nature by the person;
 - (b) the gravity and magnitude of the contravention;
 - (c) whether the contravention was repeated or continuous;
 - (d) whether the contravention was deliberate;
 - (e) any economic benefit derived by the person from the contravention;
 - (f) the person's efforts to correct the contravention.
- (4) The registrar may not impose an administrative penalty on a person if the person demonstrates to the satisfaction of the registrar that the person exercised due diligence to prevent the contravention.

Available administrative penalties

24 (1) A local authority on whom an administrative penalty is imposed is liable to a monetary penalty of not more than the amount prescribed by regulation of the Lieutenant Governor in Council.

(2) An individual on whom an administrative penalty is imposed is liable to one or more of the following administrative penalties:

- (a) a monetary penalty of not more than the amount prescribed by regulation of the Lieutenant Governor in Council;
- (b) a suspension, for a period of time the registrar considers appropriate, of the individual's status as a qualified building official;
- (c) removal from the register, if applicable, and a permanent ban on being entered in the register.

Notice of administrative penalty

25 If the registrar imposes an administrative penalty on a person, the registrar must serve on the person a notice imposing the administrative penalty that specifies the following:

- (a) the contravention;
- (b) the administrative penalty imposed;
- (c) if a monetary penalty is imposed,
 - (i) the amount of the monetary penalty, and
 - (ii) the date by which the monetary penalty must be paid;

- (d) if a suspension is imposed, the period of time during which the suspension has effect;
- (e) if a ban is imposed, the date on which the ban takes effect;
- (f) the right of the person to request a reconsideration under section 29.

Due date of monetary penalty

26 A person on whom a monetary penalty is imposed must pay the monetary penalty to the Minister of Finance within 30 days after the latest of the following dates, as applicable:

- (a) the date on which the notice under section 25 is served on the person;
- (b) if the person requests a reconsideration under section 29, the date on which the notice referred to in section 29 (4) (b) is served on the person, unless the monetary penalty is rescinded under section 29 (4) (a);
- (c) if the person commences an appeal under section 30, the date on which the decision of the Safety Standards Appeal Board is served on the person, unless the decision appealed is reversed by the Safety Standards Appeal Board.

Enforcement of monetary penalty

27 (1) On the date that a monetary penalty is payable under section 26, the penalty constitutes a debt payable to the Minister of Finance by the person on whom the penalty is imposed.

(2) If a person fails to pay a monetary penalty as required under section 26, the Minister of Finance may file with the Provincial Court a certified copy of the notice imposing the monetary penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

(3) If an individual who is a qualified building official fails to pay a monetary penalty as required under section 26, the registrar may suspend the individual's status as a qualified building official until the penalty is paid.

(4) For the purposes of section 11 (1) (c) [qualification as building official], if the registrar suspends an individual's status as a qualified building official under subsection (3) or section 23 [administrative penalties], the registrar must indicate in the register that the individual's status is suspended.

Limitation period

28 (1) The time limit for giving a notice imposing an administrative penalty is 2 years after the date on which the act or omission alleged to constitute the contravention first came to the attention of the registrar.

(2) A certificate purporting to have been issued by the registrar and certifying the date referred to in subsection (1) is proof of that date.

Reconsiderations

29 (1) A person who receives notice under section 25 of an administrative penalty may, within 30 days after the notice is served on the person, request the registrar to reconsider the administrative penalty.

(2) A request under subsection (1) must be in writing and must identify the error the person believes was made or the other grounds on which a reconsideration is requested.

(3) On receipt by the registrar of a request under subsection (1), the administrative penalty to be reconsidered as a result of the request

(a) is stayed, if the administrative penalty is a monetary penalty, and

(b) is not stayed, if the administrative penalty is not a monetary penalty, unless the registrar orders that the administrative penalty is stayed.

(4) As soon as practicable after receiving a request under subsection (1), the registrar must

(a) confirm, vary or rescind the administrative penalty, and

(b) serve on the person a notice of the following:

(i) the decision of the registrar;

(ii) the reasons for the decision;

(iii) the right of the person to appeal the decision under section 30.

(5) The registrar may conduct a written, electronic or oral reconsideration, or any combination of them, as the registrar, in his or her sole discretion, considers appropriate.

Appeals

30 (1) A person who receives notice under section 29 (4) (b) of a decision of the registrar may, within 30 days after the notice is served on the person, appeal the decision to the Safety Standards Appeal Board.

(2) Subject to subsection (3), the commencement of an appeal does not operate as a stay of the decision being appealed, unless the Safety Standards Appeal Board orders otherwise.

(3) The commencement of an appeal with respect to an administrative penalty that is a monetary penalty operates as a stay of the decision under section 29 (4) (a) that did not rescind the administrative penalty.

(4) Sections 45, 52 (2), 53, 59 and 60 of the Safety Standards Act apply to an appeal under this Part.

(5) Sections 1, 11 to 22, 24, 28, 29, 31 (1) (a) to (e), (2) and (3), 32, 34 (3) and (4), 35 to 42, 44, 46.3, 47 (1) (c) and (2), 50 to 58, 60 and 61 of the Administrative Tribunals Act apply to an appeal under this Part.

Part 6 – Cost-Recovery

Division 1 – Requests for Variations

Definitions

31 In this Division:

"calculated amount", in respect of a request under section 7 or 8, means the amount calculated under section 34 (3) (a) [reconciliation of recoverable costs];

"received amount", in respect of a request under section 7 or 8, means the amount referred to in section 34 (1) (b);

"recoverable cost" means a cost that is recoverable according to section 32;

"responsible person", in respect of a request under section 7 or 8, means the local authority or person who made the request;

"specified minimum amount" means an amount prescribed for the purposes of section 34 (3) (b) (ii) and (c).

Costs that may be recovered

32 (1) Subject to subsection (2), the following costs to the government arising from a request under section 7 or 8 are recoverable under this Division:

(a) the reasonable costs of an employee of the government participating in the determination of the request, calculated on an hourly basis in accordance with the prescribed rate;

(b) the reasonable costs to engage or retain a consultant or specialist under section 9 in relation to the request.

(2) A cost is not recoverable under this Division if the service to which the cost relates is performed before the responsible person pays an amount to the minister in response to a notice under section 33 (1) (b).

Request in respect of recoverable costs

33 (1) The minister may, after conducting a preliminary review of a request under section 7 or 8,

(a) estimate the recoverable costs to determine the request,

(b) serve on the responsible person written notice of

(i) the amount estimated under paragraph (a),

(ii) the date by which the minister requires that amount to be paid, and

(iii) the liability that the responsible person may incur under section 34 if the responsible person pays an amount in response to the notice, and

(c) dismiss the request if the responsible person fails to pay the amount estimated under paragraph (a) by the date specified in the notice.

(2) An estimate under subsection (1) (a) must be made in accordance with the regulations.

(3) An amount received by the minister in response to a notice under subsection (1) (b) is conclusively deemed not to be trust funds within the meaning of the Financial Administration Act and must be paid into the consolidated revenue fund.

Reconciliation of recoverable costs

34 (1) This section does not apply in relation to a request under section 7 or 8, unless

(a) notice is served under section 33 (1) (b) in respect of the request, and

(b) the responsible person pays an amount to the minister in response to that notice.

(2) If the minister considers, at any time before a request under section 7 or 8 is determined or withdrawn, that the recoverable costs to determine the request are likely to exceed the amount estimated under section 33 (1) (a), the minister must promptly serve on the responsible person written notice of the amount by which the minister estimates those recoverable costs will exceed the amount estimated under section 33 (1) (a).

(3) Within the prescribed number of days after a request under section 7 or 8 is determined or withdrawn, the minister must

(a) calculate the recoverable costs arising from the request,

(b) serve on the responsible person written notice that

(i) states the calculated amount and the difference between the calculated amount and the received amount, and

(ii) if the calculated amount exceeds the received amount by at least the specified minimum amount, requires the responsible person to pay the difference between those amounts within 30 days after the notice is served on the responsible person, and

(c) if the received amount exceeds the calculated amount by at least the specified minimum amount, refund to the responsible person from the consolidated revenue fund the difference between those amounts.

(4) A calculation under subsection (3) (a) must be made in accordance with the regulations.

(5) A responsible person who is required by a notice under subsection (3) (b) to pay an amount must do so within 30 days after the notice is served on the responsible person.

(6) On the date that an amount is payable under subsection (5), the amount constitutes a debt payable to the government by the responsible person.

(7) If the responsible person fails to pay an amount as required under subsection (5), the minister may file with the Supreme Court or the Provincial Court a certified copy of the notice under subsection (3) (b) and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

Division 2 – Applications to Appeal Board

Definitions

35 In this Division:

"calculated amount", in respect of an application under section 20 [appeals], means the amount calculated under section 38 (3) (a) [reconciliation of recoverable costs];

"received amount", in respect of an application under section 20, means the amount referred to in section 38 (1) (b);

"recoverable cost" means a cost that is recoverable according to section 36;

"specified minimum amount" means an amount prescribed for the purposes of section 38 (3) (b) (ii) and (c).

Costs that may be recovered

36 (1) Subject to subsection (2), the following costs to the government arising from an application under section 20 are recoverable under this Division:

(a) the reasonable costs of a member of the appeal board participating in the determination of the application, calculated on a daily basis in accordance with the prescribed rate;

(b) the reasonable costs to engage or retain a person under section 27 (2) of the Administrative Tribunals Act in relation to the application.

(2) A cost is not recoverable under this Division if the service to which the cost relates is performed before the applicant pays an amount to the minister in response to a notice under section 37 (1) (b).

Request in respect of recoverable costs

37 (1) The minister may, after conducting a preliminary review of an application under section 20,

(a) estimate the recoverable costs to determine the application,

(b) serve on the applicant written notice of

(i) the amount estimated under paragraph (a),

(ii) the date by which the minister requires that amount to be paid, and

(iii) the liability that the applicant may incur under section 38 if the applicant pays an amount in response to the notice, and

(c) dismiss the application if the applicant fails to pay the amount estimated under paragraph (a) by the date specified in the notice.

(2) An estimate under subsection (1) (a) must be made in accordance with the regulations.

(3) An amount received by the minister in response to a notice under subsection (1) (b) is conclusively deemed not to be trust funds within the meaning of the Financial Administration Act and must be paid into the consolidated revenue fund.

Reconciliation of recoverable costs

38 (1) This section does not apply in relation to an application under section 20, unless

(a) notice is served under section 37 (1) (b) in respect of the application, and

(b) the applicant pays an amount to the minister in response to that notice.

(2) If the minister considers, at any time before an application under section 20 is determined or withdrawn, that the recoverable costs to determine the application are likely to exceed the amount estimated under section 37 (1) (a), the minister must promptly serve on the applicant written notice of the amount by which the minister estimates those recoverable costs will exceed the amount estimated under section 37 (1) (a).

(3) Within the prescribed number of days after an application under section 20 is determined or withdrawn, the minister must

(a) calculate the recoverable costs arising from the application,

(b) serve on the applicant written notice that

(i) states the calculated amount and the difference between the calculated amount and the received amount, and

(ii) if the calculated amount exceeds the received amount by at least the specified minimum amount, requires the applicant to pay the difference between those amounts within 30 days after the notice is served on the applicant, and

(c) if the received amount exceeds the calculated amount by at least the specified minimum amount, refund to the applicant from the consolidated revenue fund the difference between those amounts.

(4) A calculation under subsection (3) (a) must be made in accordance with the regulations.

(5) An applicant who is required by a notice under subsection (3) (b) to pay an amount must do so within 30 days after the notice is served on the applicant.

(6) On the date that an amount is payable under subsection (5), the amount constitutes a debt payable to the government by the applicant.

(7) If the applicant fails to pay an amount as required under subsection (5), the minister may file with the Supreme Court or the Provincial Court a certified copy of the notice under subsection (3) (b) and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of that court.

Part 7 – General

How to serve notices

39 (1) All notices required under this Act to be served on a person

(a) must be served in a manner prescribed by regulation of the Lieutenant Governor in Council, and

(b) if served in a manner referred to in paragraph (a), are deemed to be received by the person at the time prescribed for the manner by regulation of the Lieutenant Governor in Council.

(2) On application by any person, the Supreme Court may, for the purposes of this Act,

(a) give directions on how to serve a notice on a person, or

(b) dispense with service of a notice if the court is satisfied that the person already has actual notice of the contents of the notice and is avoiding service.

(3) If the court makes an order dispensing with service of a notice, the notice takes effect without being served.

(4) This section does not apply to a notice or other document of

(a) the appeal board, or

(b) the Safety Standards Appeal Board under Part 5 [Administrative Penalties].

Offence Act

40 Section 5 of the Offence Act does not apply to this Act or the regulations.

Regulations of minister

41 (1) The minister may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting any other provision of this Act, the minister may make regulations as follows:

(a) respecting any matter for which regulations are contemplated by this Act, other than matters for which regulations are expressly contemplated to be made by the Lieutenant Governor in Council;

(b) prescribing matters as restricted for the purposes of section 5 (3) (b) [restrictions on local authority jurisdiction] or unrestricted for the purposes of section 5 (4);

(c) for the purposes of section 7 (2) (b) [request by local authority for variation] or 8 (2) (b) [request by person for variation], establishing classes of requests and prescribing different fees for those different classes;

(d) specifying matters in relation to which a person may, or may not, make a request under section 8 (1);

(e) establishing classes of persons for the purposes of section 10 (1) (b) [local authority building decisions];

(f) for the purposes of section 11 (4) (a) or (5) (a) [qualification as building official], prescribing different fees by reference to different scopes of practice or different classes of building officials;

(g) prescribing an annual fee for the purposes of sections 12 (4) (b) (i) [register of qualified building officials] and 13 (b) (i) [annual report and annual fees];

(h) for the purposes of section 13, respecting the form and manner in which, and the time when, an annual report must be made and the time when the annual fee must be paid;

(i) for the purposes of section 20 (2) (b) or (d) [appeals], establishing classes of applications and providing differently for those different classes;

(j) respecting estimations and calculations of recoverable costs for the purposes of Part 6 [Cost-Recovery];

(k) defining a word or expression used but not defined in this Act.

(3) Section 3 (2) (f) to (h) applies in relation to regulations under subsection (2) (b) of this section.

Regulations of Lieutenant Governor in Council

42 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are expressly contemplated by this Act to be made by the Lieutenant Governor in Council.

Part 8 – Transitional Provisions and Consequential and Related Amendments

Transitional Provisions

Transition – restrictions on local authority jurisdiction

43 Section 5 [restrictions on local authority jurisdiction] does not apply in relation to a local authority until the date that is 2 years after the date the section comes into force.

Transition – local authority building decisions

44 (1) In this section:

"first cutoff date" means the date that is 6 months after the date section 10 comes into force;

"second cutoff date" means the date that is 4 years after the date section 10 comes into force.

(2) Section 10 [local authority building decisions] does not apply,

(a) before the first cutoff date, in relation to a person, and

(b) on any date that is after the first cutoff date and before the second cutoff date, in relation to a person who is a member in good standing of a professional association referred to in section 11 (1)

(a) (iii) [qualification as building official].

Transition – Building Code Appeal Board

45 Despite section 19 [Building Code Appeal Board], the appeal board continued by that section consists of the chair of the appeal board and the members of the appeal board until a vice chair of the appeal board is appointed under that section.

Consequential and Related Amendments

Building Officials' Association Act

46 Section 1 of the Building Officials' Association Act, S.B.C. 1997, c. 16, is amended by repealing the definition of "building regulations" and substituting the following:

"building regulations" has the same meaning as "building regulation" in the Building Act; .

Community Charter

47 Section 9 (1) (d) of the Community Charter, S.B.C. 2003, c. 26, is repealed.

48 Section 55 (2) (a) is amended by striking out "Provincial building code" and substituting "Provincial building regulations".

49 Section 63 (b) and (f) is repealed and the following substituted:

(b) smoke alarms;

(f) rental units and residential property, as those are defined in the Residential Tenancy Act, that are subject to a tenancy agreement, as defined in that Act.

50 Section 1 of the Schedule is amended by repealing the definitions of "Provincial building code" and "Provincial building regulations" and substituting the following:

"Provincial building regulations" has the same meaning as "building regulation" in the Building Act; .

Homeowner Protection Act

51 Section 12 (a) of the Homeowner Protection Act, S.B.C. 1998, c. 31, is amended by striking out "British Columbia Building Code;" and substituting "building regulations within the meaning of the Building Act;".

Local Government Act

52 Section 289 (a) of the Local Government Act, R.S.B.C. 1996, c. 323, is repealed and the following substituted:

(a) the Provincial building regulations, .

53 Section 290 is amended

(a) in subsections (1) and (3) by striking out "Provincial building code" and substituting "Provincial building regulations", and

(b) in subsection (1) (a) by striking out "then current building code" and substituting "then current Provincial building regulations".

54 Section 692 is repealed.

55 Section 693 is repealed.

56 Section 693.1 (2) is repealed.

57 Section 694 (1) (l), (n) and (n.1) is repealed and the following substituted:

(l) require the installation of smoke alarms in existing buildings and other structures and, in relation to this, establish standards and specifications for required smoke alarms and their installation;

(n) require the maintenance of "rental units" and "residential property", as defined in the Residential Tenancy Act, that are subject to a "tenancy agreement" as defined in that Act, in accordance with the standards specified in the bylaw;

(n.1) require the maintenance of "manufactured homes", "manufactured home sites" and "manufactured home parks", as defined in the Manufactured Home Park Tenancy Act, that are subject to a "tenancy agreement" as defined in that Act, in accordance with the standards specified in the bylaw.

Public Sector Employers Act

58 The Schedule to the Public Sector Employers Act, R.S.B.C. 1996, c. 384, is amended by striking out "Building Code Appeal Board (Local Government Act)" and substituting "Building Code Appeal Board (Building Act)".

Strata Property Act

59 Section 70 (2) (a) of the Strata Property Act, S.B.C. 1998, c. 43, is amended

(a) by repealing subparagraph (i) and substituting the following:

(i) a building regulation within the meaning of the Building Act, , and

(b) in subparagraph (iv) by striking out "section 692 (5) of the Local Government Act," and substituting "section 6 of the Building Act,".

60 Section 242 (5) (c) is repealed and the following substituted:

(c) the building regulations within the meaning of the Building Act, except, in relation to a treaty first nation that has entered into an agreement described in section 6 of that Act, to the extent that the agreement enables the treaty first nation to establish standards that are different from those established by the building regulations.

University Endowment Land Act

61 Section 12 (1) (b) of the University Endowment Land Act, R.S.B.C. 1996, c. 469, is amended by striking out "sections 692 to 698" and substituting "sections 694 to 698".

Wood First Act

62 Sections 2 and 3 (a) of the Wood First Act, S.B.C. 2009, c. 18, are amended by striking out "British Columbia Building Code" and substituting "building regulations within the meaning of the Building Act".

Commencement

63 This Act comes into force by regulation of the Lieutenant Governor in Council.