

Flood of Legislation as House Moves into Final Week

Community Charter Receives Third Reading

The Community Charter (Bill 14) completed the committee stage debate on the evening of May 8th and on May 9th the committee's report was received and after third reading, the Charter was declared an "Act". Consequential and transition amendments will be introduced this week. The Charter will however, not be brought into effect until December 31, 2003.

Inside this Issue

Since the last edition of In the House on April 30th, 2003 23 bills have been introduced. This issue reports on these and with special focus on amendment to right to farm (Bill 48), energy policy (Bills 39 and 40); and four bills relating to the Ministry of Water, Land and Air Protection. Despite this flood of legislation two bills of interest to UBCM have not been introduced – the consequential and transition amendments related to the Community Charter and legislation on bylaw tribunals. The week of May 19th is a break week for the House, leaving just one week after that to complete this legislative session.

The following are some of the key for topics of interested covered in this circulation.

- right to farm (page 1)
- ministerial approval of farm bylaws (page 1)
- electrical transmission corporation (page 2)
- energy rates – BCUC (page 2)
- municipal pension plan (page 2)
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- integrated pest management (page 6)
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Bill 48 - Agriculture, Food and Fisheries Statutes Amendment Act, 2003

Moves to strengthen the "Provincial Interest" in agriculture and aquaculture.

This Bill makes amendments to the *Farm Practices Protection (Right to Farm) Act* and the *Local Government Act*.

The *Farm Practices Protection (Right to Farm) Act* has added a definition of Crown land that includes land or land covered by water. The Lieutenant Governor in Council has been provided the authority to designate Crown land as a 'farming area', for the purposes of applying the Right to Farm provisions, on lands described as

1. land within the Agricultural Land Reserve;
2. land designated as 'farming area' under the *Farm Practices Protection (Right to Farm) Act*; or,
3. land on which a valid aquaculture license is held.

The effect of this amendment is that Crown land, including land covered by water, can be designated as a farming area in advance of possible use for agriculture or aquaculture purposes. This designation is linked to the LGA amendment.

The *Local Government Act* has been amended to include these three categories of lands in the definition of 'farming area'. An amendment to section 917 prohibits local governments from exercising any other powers under the *Local Government Act* (or soon the Community Charter) that, if enacted under section 917, would require the Minister of Agriculture's approval. Where a local government has been declared to be subject to section 917, the effect is to require all bylaws that would effect agriculture or aquaculture to require Ministerial approval. There are currently four municipalities which have been designated (Kelowna, Delta, Langley Township and Abbotsford).

In introducing the amendments, Minister of Agriculture, Food and Fisheries, the Hon John van Dongen, said:

This legislation amends the Farm Practices Protection Act and the right-to-farm provisions of the Local Government Act. Together those statutes provide the legislative framework for the right-to-farm system.

The right-to-farm system enables the province to ensure that there is a proper balance between provincial objectives for agriculture and aquaculture and the farming industry standards of practice and local government regulatory authority over these activities. The system requires local governments to

which the system has been applied to get the approval of the Minister of Agriculture, Food and Fisheries for zoning and farm bylaws. The system was established in 1995 and has operated with a high degree of success.

Through operational experience we have learned, however, that local governments have on occasion avoided or sought ways to circumvent the intent of the legislation. Also, the current wording of the Act does not cover aquaculture as effectively as was originally intended. The amendments I'm introducing today address both of these matters and ensure that the legislation provides the legal support needed to achieve the province's policy goals for the right-to-farm system for agriculture and aquaculture.

Bills Respecting the Provincial Energy Plan

Following up on several commitments in the 2002 Provincial energy plan, "Energy for our Future: A Plan for BC" the Province has introduced three Acts this session.

Energy and Mines Statutes Amendment Act, 2003 (Bill 10) includes an amendment to the *BC Hydro and Power Authority Act* that enables the Lieutenant Governor in Council authority to designate an agreement for support services for the utility. This follows through on the Province's goal to contract out its administrative services.

The Transmission Corporation Act, 2003 (Bill 39) is a new Act that provides for the separation of BC Hydro transmission and distribution functions. The BC Transmission Corporation will be responsible for operation, control, use, management, and maintenance of the transmission system and the provision of service in relation to the transmission system, in agreement with the BC Hydro and Power Authority. The transmission corporation will provide access to transmission for independent power producers as well as BC Hydro and will maintain access to external markets for trade of surplus electricity. The Act provides for government ownership of the corporation.

The Transmission Corporation Act clarifies the role of the BC Utilities Commission to regulate transmission, generation and distribution, including setting terms and rates for transmission. Until the transmission corporation seeks an order from BCUC to establish transmission rates (late 2004), transmission must be provided by BC Hydro.

The Utilities Commission Amendment Act, 2003 (Bill 40) provides for several changes to the *Utilities Commission Act* as the province increases the regulatory authority of the Commission. The Chair of the Commission can now appoint a deputy Chair or deputy Commissioner and can divide the Commission into divisions. The Commission will also assume responsibility for dealing with common carriers, purchasers and processors of oil and gas.

The Commission can now require plans from utilities that address expenditures for capital, for the acquiring of energy from other sources, and for activities associated with reducing energy demand which will all be used in determining energy rates. The Commission has authority to set the rate setting model as it deems advisable. This Act repeals Part 2 of the *Utilities Commission Act* which required energy removal certificates for export of energy outside of the province. The amendments to this bill include the repeal of the *Economic Development Electricity Rate Act, 1996*, which established the provision for low cost surplus electricity supply to new customers.

Bill 49 – Pension Statutes Amendment Act

Amends several statutes including the *Public Sector Pension Plan Act*.

It simplifies the process for appointments to the BC Pension Corporation Management Board (UBCM, the provincial government and Health Employees Association still appoint one of the 8 directors from the Municipal Pension Plan).

It transfers responsibility for post-retirement benefit contracts from government to the Board of Trustees and clarifies that post-retirement benefits are not pension benefits for the purposes of the *Pension Benefits Standards Act*.



Other New Legislation

Bill 34 – Industry Training Authority Act

This Bill repeals and replaces the "Industry Training and Apprenticeship Act". This Bill establishes the Industry Training Authority with a board of up to 9 directors appointed by the Minister. The Authority will have powers of authority respecting training programs including:

- designate a training program, including a training program for a trade or occupation as a recognized program.
- recommend to the Minister that a training program, including a training program for a trade or an occupation, be designated as an accredited program under the regulations.

Bill 35 – Advanced Education Statutes Amendment Act, 2003

This Bill amends a number of the acts administered by the Ministry of Advanced Education. Some of these are:

- it amends sections of certain acts because of the repeal of

the "Open Learning Agency Act". Some of these are "Municipal Finance Authority Act", "Financial Information Act", Freedom of Information and Protection of Privacy Act", "College and Institute Act".

- "College and Institute Act" – adds new section 5.1 allowing the minister by order to designate certain degrees, rewrites section 31 "Limitation on Expenditure" to allow for a deficit management plan to be submitted to the Minister. A similar amendment has also been made to the "Institute of Technology Act".
- Will give university faculty, staff and students more flexibility in electing members to boards and senates as well as removing the requirement that government appoint members to university senates and foundations.

Bill 36 – Business Number Act

This Act will establish a single number system for BC businesses as opposed to the current system where businesses may have various numbers for accessing government ministries.

Allows for agreements to provide for municipal participation.

Bill 37 – Skills Development and Labour Statues Amendment Act, 2003

This Bill amends two Acts, the "Employment Standards Act", and the "Workers' Compensation Act".

Some amendments to the "Employment Standards Act" are:

- allows employment of children under 15 if the written consent of the child's parent or guardian has been received. If the child is under 12 the director's permission is needed and if permission is granted the director may set the conditions of employment.
- employers must pay minimum wage, "an employer must not directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages in a pay period to comply with section (1) in relation to any other pay period.
- removes the 6 month time limit on dealing with overtime credited to an employee over time bank, it also enables an employer to close an employee's time bank after they give notice but they must deal with the overtime wages within 6 months.

Some of the amendments to the "Workers Compensation Act" are:

- expands Section 5.1 to include recognition of a psychologists as well as a physicians diagnosis to determine whether a

worker is entitle to compensation for mental stress.

- adds a new section 94.1 "Lay Advocates" to advise employers and employees on the interpretation and administration of the Act.
- provides monthly benefits for life to all surviving partners and repeals subsections 3(d) & (e) and reenacts them to provide monthly benefits to partners without dependents.

Bill 38 – Personal Information Protection Act

The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information, and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

The "Commissioner" for the purposes of the Act means the commissioner appointed under the "Freedom of Information and Protection of Privacy Act".

For the purposes of this Act "organization" includes a person, an unincorporated association, a trade union, a trust or a not for profit organization but does not include;

- an individual acting in a personal or domestic capacity or acting as an employee,
- a public body
- the Provincial Court, the Supreme Court, or the Court of Appeal
- The Nisga'a Government, as defined in the Nisga'a final agreement
- a private trust for one or more designated individuals who are friends or members of the family of the settlor.

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www.civicnet.bc.ca

Recent circulars of interest:

- In the House (March 21) Recent Legislation, other Activities and Announcements
- In the House (March 28) Legislation and Other Breaking News
- In the House (April 11) Provincial Policy Update
- In the House (April 30) House back in Sesion

Bill 41 – Judicial Compensation Act

This Bill will establish a compensation commission for judges and one for judicial justices for the Provincial Court. These commissions will report on all matters respecting the remuneration, allowances, and benefits of judges and judicial justices. These sections have been removed from the Provincial Court Act.

Bill 44 – Forest Statutes Amendment Act (No. 2) 2003

Some of the Statutes amended by this Bill are:

“Forest Act” – Some of these amendments are; adds a new Part, Part 2.1 “Timber Supply analysis within Timber Supply Areas”. This Part will require a “Data Package and Timber supply analysis” to assist the chief forester in making a determination of allowable annual cut. Before being submitted to the chief forester those jointly responsible must make the package publicly available for review and comment.

- repeals and reenacts Section 89 so that it specifies circumstances under which a marine log brand may be applied.
- Section 114 adds definition of “District Manager” and “Forest Stewardship Plan” and modifies the definition of “Forest Development Plan” to reflect the “Forest and Range Protection Act”.
- clarifies circumstances in which road use permits for timber harvesting and industrial use may be granted.

“Forest Practices Code of British Columbia Act” – adds a new section 1.1 to Section 64 “Road Deactivation” which says “If the regulations respecting road deactivation conflict with a road deactivation prescription, the regulation prevails over the prescription to the extent of the conflict”

“Range Act” – it repeals and reenacts the offence provisions to more clearly state the offences and adds two subsections outlining potential defenses such as due diligence, mistake of fact, and officially induced error.

Bill 45 – Forest (Revitalization) Amendment Act (No. 2), 2003

This bill makes a number of amendments mainly to the “Forest Act” in line with the Provinces forest revitalization plan.

This Bill changes the legislation so that any future forest licences, tree farm licences, or timber sale licence will be

awarded on a more market based pricing system. It establishes stronger rules and enforcement system to prevent abuses.

It also introduces a new Part. Part 7.2 “Community Salvage Licences”. When applications for these licences are evaluated they must take in to account things such as:

- social and economic benefits to BC including contributing to government revenues,
- providing opportunities for achieving a range of community objectives, including employment and other social, environmental and economic benefits,
- providing for the use of qualified timber,
- encouraging cooperation within the community and among stakeholders.

The term of these licences must not exceed 5 years.

Bill 50 – School Amendment Act, 2003

Some of the amendments made under this Act are:

- amends “School Planning Council” adds a new section by adding a student in grade 10, 11 or 12 one student from one of those grades will be appointed by the principal to the council.
- allows school districts to use short term leases of school property to generate operating revenue.
- allows for school boards to establish rules governing the exercise of its discretion for students applying to attend an educational program at a school outside their catchment areas. These rules must be publicly available.

Bill 51 – Teaching Profession Amendment Act, 2003

Some of the amendments made under this Bill will repeal sections to re-define the Council to consist of:

- 8 members elected to serve on the council as the representatives of the zones. (was previously 15).
- 11 persons appointed by the Cabinet on the recommendation of the minister. (was previously 2 and 2 appointed by Minister).
- One person nominated jointly by the Dean of the Faculty of Education. (was previously one).

Adds a new section that provides where a member who has reason to believe that another member is guilty of professional misconduct must promptly provide the registrar a written and signed report on the matter.

Bill 52 – Private Career Training Institutions Act

This Bill will continue the Private Post-Secondary Education Commission under the name of the Private Career Training Institutions Agency and will consist of the registered institutions. The agency will:

- register and accredit private sector institutions
- have the power to suspend or cancel the accreditation if necessary
- establish a Student Training Completion Fund and provide for the refund of tuition fees to be made from the fund to a student if a registered institution ceases to operate.

Bill 54 – Pharmacists, Pharmacy Operations and Drug Scheduling Amendment Act, 2003

This Bill repeals and replaces the “PharmaNet Committee” with a “PharmaNet Stewardship Committee” consisting of no more than 7 persons. The Committee must include:

- one person appointed by the Minister
- one person nominated by the council of the College of Physicians and Surgeons of BC
- one person nominated by the council of the College of Pharmacists.
- one person engaged in health research
- one person chosen as representative of the general public.

This will transfer the responsibility for dealing with requests to access PharmaNet from the College of Pharmacists to the new PharmaNet stewardship committee within the Ministry of Health Services.

Bill 58 – Insurance Corporation Amendment Act, 2003

This Bill will make the BC Utilities Commission the agency responsible to oversee the setting the corporation rates for universal compulsory automobile insurance. The Cabinet may by regulation, issue directions to the commission respecting factors, criteria and guidelines that the commission must or must not use in regulating or fixing rates for the corporation.

The commission must ensure that the universal compulsory automobile insurance business and the revenue of the corporation, other than revenue from the corporations optional automobile business, are not used to subsidize the corporation optional automobile insurance business.

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New Legislation from Water, Land and Air Protection

Bill 53 - Integrated Pest Management Act

The new legislation:

- Defines integrated pest management plans and requires that the principles be applied in a pest management plan;
- Eliminates the requirement for ministry approval of pest management plans in favour of a notice and confirmation;
- Requires the person who wants to use pesticide to have a pest management plan prepared, in accordance with the regulations and a declaration that the user will comply with the Act and regulations;
- Requires that information be provided in a pesticide use notice for purposes of pesticide use that will enable the ministry to monitor and inspect pesticide use;
- Provides for the enactment of regulations that limit requirements under the Act for permits, certificates and pest management plans to prescribed pesticides – only pesticides classified as high risk will require a permit - and prescribed uses of pesticides;
- Provides for a category of person known as “qualified monitors” who will perform required professional services for pesticide users and will reduce the monitoring required by government;
- Introduces additional sentencing options for the courts, such as prohibit the person from repeating the offence, direct the person to perform community service, take action to remedy or avoid any harm to the environment etc.;
- Introduces administrative penalties – ticketing offences – for minor violations of the Act;
- Increases the level of fines to individuals to up to \$200,000 and to corporations up to \$400,000 for major violations;
- Authorizes the Minister and/or administrator under the Act to make technical regulations establishing standards for pesticide use in the province, such as:
 - Prescribing requirements for public notification;
 - Prescribing requirements for public consultation, manner and extent of the consultations, records that must be prepared or kept about the consultations, public access to these records and fees that may be charged;
 - Prescribing requirements for monitoring and assessment of pesticides, pesticide residues and site conditions in relation to uses or proposed uses of pesticides;

- Prescribing circumstances in which or criteria for determining when a person must engage the services of a qualified monitor;
- Prescribing requirements that a person or class of persons be bonded under the Bonding Act or hold public liability insurance against personal injury and property damage.

The Act specifically restricts a municipality or regional district from making bylaws in relation to prescribed pesticide uses in the following areas:

- In the management of pests for purposes of protecting human health and the environment (i.e. use of pesticide for predator control – wolf control programs etc.);
- In the management of non-indigenous pests (i.e. aerial application of pesticides to control the gypsy moth etc.);
- On land used for agriculture, forestry, transportation, public utilities and pipelines.

Bill 55 – Water, Land and Air Protection Statutes Amendment Act

The legislation is intended to meet the provincial government’s de-regulation initiative by removing 345 unnecessary regulatory requirements. Under the Act the following are repealed:

- Park (Regional) Act
- Drainage and Dyking Adjustment Act and various Dyking Assessment Adjustment Acts
- Commercial River Rafting Safety Act
- Weather Modification Act
- West Coast National Park Act

The Act proposes a variety of consequential amendments to other legislation, such as:

Local Government Act – provides regional districts with authority over regional parks, permits regional districts to sell or exchange regional parks and trails; provides that proceeds of disposition must be placed in a special fund; and that counter petition opportunities must be provided before the sale or transfer.

Park Act – cleans up definitions and authorizes the cabinet to make specified regulations.

Protected Areas of British Columbia Act – clarifies the description of a number ecological reserves and parks around the province.

The Act introduces a number of amendments to the *Wildlife Act* these changes are intended to empower the director to impose hunting, angling and firearm prohibitions, broaden seizure powers of a conservation officer, address the management of wildlife that is seized, provide for forfeiture of property in relation to an offence and broaden court powers when an offence is committed.

Bill 56 – Flood Hazard Statutes Amendment Act

The Act amends a number of Acts related to flood hazard management:

Dike Maintenance Act:

The legislative amendments broaden the powers of the inspector to:

- make orders relative to construction and maintenance of dikes;
- give orders to persons on whose land a dike is located;
- require diking authorities to provide reports, to inspect records, and to audit a diking authority’s construction and maintenance program
- amend or revoke an order;
- take remedial action for failure to carry out an order and to require the diking authority to pay the costs of the remedial action
- make regulations that establish standards, operation and maintenance in relation to dikes

Drainage, Ditch and Dike Act:

- Gives discretion to the minister to transfer the powers and duties of the commissioners of the development district and any assets and liabilities to a municipality or regional district;
- Amends the Act so that a development district transferred to a regional district would deemed to be a service area of that regional district under the Local Government Act;
- Establishes a sunset clause – Act is repealed on December 31, 2010 or on a later date prescribed by regulation.

Land Title Act:

Section 82 – repeals the authority to designate a flood plain, and to set conditions and to require registration of restrictive covenants for development on land that may be subject to flooding.

Section 86(1) – provides authority for approving officers to require an engineering report in respect of, and to require

registration of restrictive covenants for, development on land that may be subject to flooding.

Section 219 (adds new sections) – authorizing the approving officer to modify or discharge a restrictive covenant that was formerly required under Section 82 of the Act.

Local Government Act:

Section 910 – removes the authority of the minister to designate flood plains and to set construction requirements for development on a designated flood plain, but requires local government bylaws in respect of these things to have regard for ministry policies and standards.

Flood Hazard Management Program

The provincial government has indicated that it is providing \$1 million to assist local government with future flood plain planning – i.e. flood plain maps and flood hazard information.

The intent of the new provincial flood hazard model is to develop agreements on the transfer of under-resourced dyking authorities to larger authorities – likely local government – over the next seven years.

The provincial government as part of its overall approach to flood hazard management will continue to work with local governments and the federal Department of Fisheries and Oceans on gravel removal from rivers – an important component of reducing flood risk.

The Ministry of Water, Land and Air Protection will continue to provide flood forecasts and assessment expertise before and after floods. Emergency response capabilities will continue to be co-ordinated under the Provincial Emergency Program.

Bill 57 - Environmental Management Act

The new legislation repeals the Environment Management Act and the Waste Management Act. The waste management scheme proposed by this Bill differs from the early approach in the following way:

- Responsibilities under the Environmental Management Act are assigned only to the Director;
- Narrows the scope of prohibitions in relation to waste management;
- Eliminates the need for a permit for the storage of hazardous waste and requires that it be stored in accordance with the regulations;
- Renames “special waste” as hazardous waste;

- Authorizes the minister to enact codes of practice, so that industry sectors may be exempted from requirements under the Act if they comply with the applicable code of practice;
- Narrows the definition of “contaminated site” so that the presence of any quantity of hazardous waste no longer brings the site within the definition;
- Provides for a category of persons known as “approved professionals” who may perform professional services in respect of contaminated sites;
- Eliminates “conditional certificates of compliance” in relation to contaminated sites;
- Authorizes the director to establish protocols that must be complied with in relation to technical matters associated with contaminated sites;
- Authorizes the minister to require area based management plans in the interests of environmental management;
- Introduces an administrative penalty scheme as an alternative to prosecution;
- Authorizes regulations respecting economic incentives to encourage environmentally responsible behaviour;
- Adds regulation making authority in relation to the development of land that is subject to flooding;
- Assigns regulation making powers to the minister.

The intent of the ministry in this new legislation is to focus its efforts on high risk sites where there is the greatest potential for harm to human health and the environment from the discharge:

- decrease reliance on site-specific authorizations;
- introduce a risk based authorization approach (site specific approvals, code of practice, notification of activity);
- foster partnerships with stakeholders to co-develop the standards.

New Assistant to Minister Abbott

Fraser Randall, executive assistant to Minister of Transportation Judith Reid, is appointed ministerial assistant to Minister of Community, Aboriginal and Women's Services George Abbott. Cameron Thorn is leaving to become director of municipal affairs and research at the Urban Development Institute. Jay Schlosar who also worked in the Minister's office has gone to the Premier's office.

In other appointments, Brenda Gibson is the new deputy Inspector of Municipalities.

The Government House leader indicated that of the new Bills introduced only Bills 29, 39, 40, 45, 50, 51, 58, 61, 64 & 66 will be finalized at this session.