

Building Act

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About the Author

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What is the purpose of the Act?

This is a stand alone Act that authorizes the Province to regulate Building activities throughout BC, including establishing codes, inspection and enforcement, certification of inspectors and other building officials, establishing fees for many activities and procedures and other matters.

The authority to establish building codes and the regulations enacting them have been transferred from the Local Government Act to the Building Act. The Building Act does not change the Community Charter (CC) sections regarding professional certification of plans (s. 55), geotechnical reports for hazardous conditions (s. 56), and the note against title for contravention of building regulations (s. 57).

To whom or what does the Building Act apply?

It applies to every local authority, person and thing mentioned in the Building Act but it does not apply (see section 2) to the City of Vancouver or to buildings in, on or about a mine, within the meaning of the Mines act, other than bunkhouses, cook houses and related residential facilities.

What code or other changes in building standards are brought about by the Building Act?

No changes have been made to the current edition of the BC Building Code by the Building Act itself but the Regulations under the Building Act are still in the drafting stage. They can be much more expansive than the regulations under the sections of the Local Government Act (LGA), repealed when the Building Act came into force – former sections 692, 693, and 693.1(2).

The LGA has undergone a renumbering process to bridge the huge gaps left by parts and sections that have been removed over the years, most notably with the enactment of the Community Charter. Now there are specific service powers for regional districts in Part 9 of the revised LGA.

In contrast to the establishment by the Building Act of provincial government control over most aspects of Building Activity regulation, the limitation “to the extent that any standards established under this authority do not exceed those established by the Provincial building regulation” on the authority of council to regulate by bylaw (s. 8(3)(g) - [spheres of authority — protection of persons and property] will be deleted from CC subclauses 63 (b) and (f) – smoke alarms and property subject to tenancy agreements respectively – when section 49 of the Building Act comes into force.

The definition of “building regulation” in section 1 of the Building Act refers to subsection 3(1) (a), (b) or (c) of that Act. However, subsection 3(2) [see below] contains a broader range of possibilities than section 3(1).

Section 3 – Building Regulations

Subsection 3(1) lists the following regulations the minister may make (edited somewhat for brevity):

- (a) establishing one or more building codes
- (b) regulating building generally for matters not included in a building code (see sections 5 to 9 under which local governments can no longer do this without obtaining permission by regulation under section 3(2)(f).)

- (c) providing in respect of a matter or class of matters referred to in subsection 2(f) [variations for different buildings, materials, geographic area, local authorities*, circumstances or other matters or classes of them] that all or part of a building regulation
 - (i) does not apply or
 - (ii) applies with modifications or additions.

*The local authorities are defined by this list:

- municipality
- regional district
- Nisga'a Lisims Govt.
- Treaty First Nation (FN)
- Board of Governors of UBC
- Any other prescribed authority

As you can see, subsection 3(2) expands the regulatory authority under subsection 3(1) by stating that the regulations made under subsection 3(1) may prescribe one or more of the following:

- (a) requirements re Building Activities
- (b) safety risks on building sites
- (c) requirements for one or more of
 - (i) design of buildings or planning of Building Activities
 - (ii) inspection of buildings or Building Activities
 - (iii) designs, plans, notices, reports or other records
 - (iv) preparation, retention or inspection of records
 - (v) any other matter (the "catch all" provision)

And there are many more ... see clauses (d) to (i).

What is the legal effect of the Building Act on Codes?

Under section 4, a building regulation, e.g. the BC Building Code, will still have the same force and effect as a bylaw enacted by a local authority or under the University Endowment Lands Act.

Section 5 - Restrictions on Local Authority Jurisdiction

The focus of the provincial government, as expressed in its publications over many years, was to achieve uniformity of building regulations throughout the province. This is achieved in section 5, by taking away the power of local governments to add their own regulations to the bylaws under which they institute a permitting and inspection regime for Building Activities.

Section 5 of the Building Act, which came into force on December 15, 2015, prohibits local governments, except the City of Vancouver (the Nisga'a Lisims Government and treaty First Nations will be considered separately in treaty agreements) from adopting a local building requirement

concerning building activities that does not conform to a building regulation as defined by that Act. Building activities are defined as the construction of new buildings, or the alteration, repair or demolition of existing buildings.

The rules regarding concurrent authority in the regulation under Community Charter section 9(1)(d) will be repealed by section 47 of the Building Act, not yet in force. The repeal under section 47 will not occur until section 5 comes into force.

However, section 8 (not yet in force) leaves the door open for variations but only under the control of the province. The passage of time will show how section 5 might play out as local governments and the development community bring their persuasive abilities and ingenuity to applications for variations. It will be interesting to see who is successful and what kinds of variations are allowed.

Section 5 will not apply until 2 years after the date the section comes into force. Local governments have 2 years to phase out their tailor made bylaws. However, they may apply to the minister under s. 7 for a variation regulation. Likewise, a person (see definition in s. 23 Interpretation Act - individual, corporation, partnership – essentially any legal entity) may apply for a variation in respect of a single building or multiple buildings on a single site.

The minister will impose fees for these applications; may retain consultants or specialists to review any application (implies recommendations to the minister by the consultant /specialist); and has the power under Part 6 to recover its costs of the application, consultant's review and minister's decision.

Section 10 – Local Authority Decisions

Another aim of the Provincial Government in developing and enacting the Building Act was to achieve consistency throughout the province in the application of the codes by BC local governments. This is the purpose of Part 2, section 10 and Division 1, Part 3 of the Building Act.

You will have to look at Bill 3 – 2015 for these provisions, as they are not yet in force.

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/4th-session/bills/third-reading/gov03-3>

The strategy is to regulate the standards and control the training of building officials rather than prohibit and create offences for inconsistent applications. Section 10 prohibits a local authority (see definition above) from allowing or requiring a person to decide, on behalf of the local authority, whether a matter conforms to a building regulation unless 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 the person is an exempt building professional. The register of qualified building officials is established by section 12.

What is a qualified building official?

Section 11 sets out what a person must do to become a "qualified building official":

- • pass one or more qualifying exams specified by the minister
- satisfy requirements, specified by the minister, respecting continuing professional development

- be a member in good standing of a prescribed professional association [BOABC, Architectural Institute of BC (AIBC) and Association of Professional Engineers and Geoscientists (APEG) expect to be prescribed professional associations]
- any additional qualification requirements prescribed by regulation
- be entered in the register as a qualified building official
- make the annual report and pay the fees required by section 13

The key take away is that local governments will have to hire “qualified building officials” to administer and enforce building regulations because it is unlawful under the Building Act for persons who do not meet the qualifications of that Act to do the job. There are penalties in Part 5 of the Building Act for local governments and persons who disregard this requirement.

Part 3 – Building Officials

Part 3, sections 11 - 13 of the Building Act sets out how a person becomes a qualified building professional, is listed in the register as such, and maintains their qualification.

For local governments and building officials, this is a radical step. Hiring practices will have to change and there will be an increased cost of operating a building inspection service. The local governments, as the employers of building officials, will be bound by contracts or collective agreements to assume the costs of training, certification, registration, continuing professional development and memberships in professional associations, all mandated by Part 3 of the Building Act and the eventual regulations under that Act. As of the date of this paper, there are no regulations in place.

How the local authorities will recover the added costs of the service is a matter for speculation. Some predict building permit fees will be increased; other say property taxes will rise, since safe buildings benefit everyone; or it could be a combination of fees and taxes.

The role of the BOABC

Consistency is a companion issue to the Province’s concerns about the lack of standardization of building regulations throughout BC. The Building Officials’ Association of BC has long been concerned about the lack of uniformity in how the BC Building Code and other codes are interpreted by local building officials, although not so much about code standardization, as this is beyond the scope of BOABC’s legislative authority under the Building Officials’ Association Act.

In 1997, the Province granted BOABC the status of a self-governing profession by enacting the Building Officials’ Association Act (BOA Act). That Act gave BOABC legislative authority for a number of activities in relation to its members that would further the BOABC’s objects set out in the Act. They include the training and certification mentioned below.

BOABC’s approach over the last few decades has been to institute its own educational and examination programs leading to certification of qualifications for its members and others who might be interested in them, as well as annual continuing professional development (CPD) programs and code update courses whenever there are changes to the Codes.

Course content of the educational materials and the examination questions and answers have been given approval by the International Codes Council (ICC) and they are adhered to by BOABC.

BOABC has also offered the additional designations of Registered Building Official (RBO) and Registered Building Inspector (RBI) for individuals who have obtained certification plus years of relevant experience. Both the titles and initials are protected under the Building Officials' Association Act from unauthorized use by others, as well as trademarked by BOABC.

For more information about the BOABC see www.boabc.org.

Part 3, Division 2 - Administration

Administrative Agreement

The Minister, by regulation or specifying by letter pursuant to section 11, will control most of what the BOABC was doing in regard to education and registration, at least at the basic levels of qualification. BOABC, under the BOA Act, will still have control over its certification program and conferring the RBO and RBI designations.

Although the Province reserves to itself the authority to administer the provisions of Division 1 [Building Officials], Part 5 [Administrative Penalties] and the regulations contemplated by Division 1 or Part 5, it may contract out all or some of them under an administrative agreement.

Minister Coleman is quoted in Hansard as saying "the ministry intends to delegate the administration of the new building official qualifications to the Building Officials' Association of British Columbia. This established organization, incorporated under the Building Officials' Association Act, currently does develop and administer exams and continued professional development as well as its own voluntary building officials' certification program. . . . It would become the body that would take care of the ongoing qualifications and the new qualifications for building officials".

Appeals

The Building Code Appeal Board, formerly functioning under the Local Government Act, is continued under section 19 of Part 4 of the Building Act, where the procedures for appeals and decisions of the board are set out.

Administrative Penalties

The trend towards administrative tribunals and procedures, rather than judicial proceedings, is illustrated in Part 5, as it is for "minor" local government bylaw infractions.

Part 6 - Cost Recovery

Part 6 was alluded to in the section on requests for variation regulations. Costs of appeals to the appeal board are also provided for in Part 6. Local governments pay the costs. However, if the application is made by an individual or non-local government entity, they will pay the costs, which can be extensive – consultants and the like.

Part 7 – General

In Part 7, you will find directions on how to serve notices under the Act; that section 5 of the Offence Act does not apply to this Act or the regulations under it (see Administrative Penalties above); the minister's regulatory powers; and the regulatory powers of the Lieutenant Governor in Council (Cabinet).

Part 8 - Transitional Provisions and Consequential

These are mostly "housekeeping" provisions, such as bringing definitions and terms in other Acts into consistency with the Building Act, but a few are substantial.

A Regional District Question

Q. What happens to Regional Districts who don't manage a Building Code scheme of any kind - no permits and no inspections?

A. The answer is "nothing".

The Building Act does not force regional districts to provide building inspection services. That is optional under section 332 of the Local Government Act and remains unaffected by the Building Act. (See excerpts below of legislative references.) That is reinforced by Part 9, Division 1 – Building Regulation, section 297, which states that the Division applies to a regional district only if it provides a service in relation to building inspection.

The Building Act focuses on regulating the qualifications of Building Officials who may make decisions on building regulations. The Building Act does not remove the discretion of a regional district board and its electors under section 332 of the Local Government Act to determine whether or not to provide a building inspection service in all or any part of the regional district.

Sections 47 and 56, Part 8, Consequential Amendments of the Building Act, respectively, (not in force yet) repeal subsections 9(1)(d) of the Community Charter and former 693.1(2) of the Local Government Act (shown as struck through below). Sections 47 and 56 will leave intact former LGA section 693.1(1), which was not revised because of redundancy, and sections 796 and 797.1, now 332 and 333. Under section 332, regional districts may provide whatever services the regional board considers to be necessary or desirable for all or part of the regional district.

Local Government Act

Part 21 – Building Regulations

Division 2 – Regional District Building Regulations

Restrictions on authority

693.1 (1) This Division applies only to a regional district that provides a service referred to in section 797.1(1)(a) [building inspection].

(2) As a further restriction, section 9 [spheres of concurrent authority] of the Community Charter applies in relation to a regional district bylaw under this Part respecting matters referred to in subsection (1)(d) [building regulation] of that section.

General authority for services

- 796** (1) Subject to the specific limitations and conditions established under this or another Act, a regional district may operate any service that the board considers necessary or desirable for all or part of the regional district.

Specific regulatory and other powers

- 797.1** (1) If a board establishes any of the following services, the indicated provisions apply in relation to the service:

- (a) in relation to building inspection, Division 2 [Regional District Building Regulations] of Part 21;

Community Charter

Spheres of concurrent authority

- 9** (1) This section applies in relation to the following:

- ~~(d) bylaws under section 8 (3) (l) [buildings and other structures] establishing standards that are or could be dealt with by the Provincial building regulations; ...~~
- (3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is
- (a) in accordance with a regulation under subsection (4),
- (b) in accordance with an agreement under subsection (5), or
- (c) approved by the minister responsible.

We should expect the following regulation under subsection 9(4) of the Community Charter to be repealed as a consequence of the repeal of subsection 9(4) by section 47 of the Building Act when the regulations under that Act are made:

B.C. Reg. 86/2004, Buildings and Other Structure, Bylaws Regulations, under section 9 of the Community Charter.

Key dates

Section 5 – Restrictions on local authority jurisdiction (variation) (transition section 43)

Section 5 will not apply until 2 years after the date the section comes into force. This will give local governments 2 years plus the time from now until the in force date to apply for a variation to keep their special regulations alive. They should start thinking about that now.

Section 10 – local authority building decisions (transition section 44)

This section will not apply in relation to a person who is a member in good standing of a professional association (to be prescribed by regulation) in the time period that commences the day after the date that is 6 months after the date section 10 comes into force and ends on the day before the date that is 4 years after the in force date of section 10.

This section will not apply in relation to other persons until the day after the date that is 6 months from the date section 10 comes into force.

The sections of the Building Act that are now in force are shown in the table on page 9.

The following sections are not in force as of the date at the bottom of this page:

- 8 – request for variations
- 10 - prohibitions on local authority using unqualified building officials
- 11 – 13 - building officials – qualifications, registration, annual report and fees
- 22 – 30 - administration penalties
- 31- 34 - cost recovery
- 35 – 38 - applications to Appeal Board
- 44 - transition – local authority building decisions
- 47- consequential repeal of CC subsection 9(1)(d)
- 49 - consequential changes to CC subclauses 63 (b) and (f) – smoke alarms and property subject to tenancy agreements, respectively

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February 17, 2016

BUILDING ACT

Section	Change	Citation	Effective date
1 to 4	en	2015-2-1 to 4	18 Sep 2015 (BC Reg 172/2015)
5	en	2015-2-5	15 Dec 2015 (BC Reg 233/2015)
6	en	2015-2-6	18 Sep 2015 (BC Reg 172/2015)
7, 9	en	2015-2-7,9	15 Dec 2015 (BC Reg 233/2015)
14 to 18	en	2015-2-14 to 18	18 Sep 2015 (BC Reg 172/2015)
19	en	2015-2-19(part)	18 Sep 2015 (BC Reg 172/2015)
	en	2015-2-19(rem)	18 Dec 2015 (BC Reg 240/2015)
	am	2015-10-43	18 Dec 2015 (BC Reg 240/2015)
20, 21	en	2015-2-20,21	18 Sep 2015 (BC Reg 172/2015)
39 to 42	en	2015-2-39 to 42	18 Sep 2015 (BC Reg 172/2015)
43	en	2015-2-43	15 Dec 2015 (BC Reg 233/2015)
45	en	2015-2-45	18 Sep 2015 (BC Reg 172/2015)
46	en	2015-2-46 [conseq]	18 Sep 2015 (BC Reg 172/2015)
48	en	2015-2-48 [conseq]	18 Sep 2015 (BC Reg 172/2015)
50 to 55	en	2015-2-50 to 55 [conseq]	18 Sep 2015 (BC Reg 172/2015)
58	en	2015-2-58 [conseq]	18 Sep 2015 (BC Reg 172/2015)
		• 2015-2-58 [conseq] am by BC Reg 172/2015 eff 18 Sep 2015 under RS1996-440-12, continued by 2015-41-26 eff 17 Nov 2015 (RA)	
59 to 62	en	2015-2-59 to 62 [conseq]	18 Sep 2015 (BC Reg 172/2015)