

**GOING GREEN, THE NEW B.C. LEGISLATION**

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*Bill Buholzer and Alyssa Bradley*

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### I. INTRODUCTION

It is difficult to decide which aspect of the “climate change” problem, whose existence is being denied by an ever-diminishing number of informed persons, is the most dramatic: the magnitude of the effort that will be required to arrest and reverse the phenomenon, or the speed at which measures to effect such changes will be required if major environmental collapses are to be avoided. Our experience in British Columbia to date indicates two things very clearly: that the provincial government is prepared to take very significant legislative steps to deal with climate change, and that it is willing to take those steps very rapidly, with little or no advance warning. Local government enabling legislation has in the past been enacted in this province only after reasonably extensive consultation with local governments and their organizations, and the pace of legislative change has often been observed to be at best leisurely, and at worst lethargic. Climate change is changing that.

During the Spring 2008 session of the Legislative Assembly, the government passed the following: the *Carbon Tax Act* (Bill 37, imposing a tax on carbon-based fuels), the *Greenhouse Gas Reduction (Cap and Trade) Act* (Bill 18); the *Greenhouse Gas Reduction (Emission Standards) Statutes Amendment Act* (Bill 31, adding a new Part, dealing with greenhouse gas (GHG) reduction at waste management and electricity generating facilities to the *Environmental Management Act*); the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* (Bill 16, applicable to fuel suppliers); the *Greenhouse Gas Reduction (Vehicle Emissions Standards) Act* (Bill 39, applicable to vehicle manufacturers); the *Local Government (Green Communities) Statutes Amendment Act* (Bill 27); and the *Housing Statutes Amendment Act* (Bill 10). The Province’s initiatives have not been limited to the Legislative Assembly; for example, the Cabinet amended the Motor Vehicle Act Regulations with very little fanfare during the summer of 2008 to give municipal councils the authority to permit the operation of “neighbourhood zero emission vehicles”, such as ZENN cars, on highways with speed limits up to 50 km/hr, thereby opening the (garage) door to the more widespread local use of electric vehicles (which were previously limited to highways with 40 km/hr speed limits). Similar legislative initiatives, and a similar pace of change in legislation, are very likely to become the norm as the Province copes with climate change. In this paper, we examine the first round of changes directly impacting local governments.

### II. PROVINCIAL GHG REDUCTION TARGETS

The Province has enlisted municipalities and regional districts in the campaign to achieve GHG emission reduction targets announced in last February’s Speech from the Throne (33% reduction from 2007 levels by 2020, 80% reduction by 2050, interim targets for 2012 and 2016 to be announced). B.C., along with Manitoba and Québec, is a participant in the Western Climate Initiative, an intergovernmental effort exploring means to implement climate change mitigation strategies; U.S. jurisdictions involved in the initiative to date include the states of Arizona,

California, Montana, New Mexico, Oregon, Utah and Washington.<sup>1</sup> (Other Canadian provinces and U.S. and Mexican states have “observer” status in the initiative.) The 2008 Throne Speech indicated that legislation would be introduced to require B.C. local governments to incorporate GHG reduction targets and supporting strategies in their regional growth strategies and official community plans. Legislation passed during the Spring 2008 session of the Legislature, the *Local Government (Green Communities) Statutes Amendment Act* (Bill 27) and the *Housing Statutes Amendment Act* (Bill 10), has clarified the Province’s initial intentions regarding the local government role in battling climate change. Elsewhere in Canada, Manitoba’s provincial government is updating its provincial land use policies to ensure that local development plans and local land use decisions reflect that province’s climate change mitigation objectives. In Ontario, which has also adopted GHG reduction targets (6% below 1990 levels by 2014, 15% by 2020, 80% by 2050), the government has announced its intention to provide grants and other incentives to assist municipalities in reducing their own GHG emissions, and has introduced energy efficiency requirements to the Building Code. Québec is assisting municipalities to compile GHG emission inventories, and considering anti-idling legislation. British Columbia appears to be the only Canadian jurisdiction thus far that has indicated a clear intention to marshal local development regulatory powers in the climate change campaign.

### III. B.C.’S CLIMATE CHANGE ACTION CHARTER

Over the past year, many B.C. municipalities have signed the “Climate Change Action Charter”, a document that commits signatory local governments to develop strategies and take action to achieve a number of goals, including carbon neutrality in their own operations by 2012, measuring and reporting on their greenhouse gas emissions profile, and creating complete, compact and energy efficient communities by, among other things, adopting zoning practices that encourage efficient land use patterns. (The “Charter” is expressly not intended to be binding or impose legal obligations or have any legal effect, so signatory local governments have apparently not unlawfully fettered their legislative powers by agreeing to enact such zoning bylaws.)<sup>2</sup> The other signatories, the Province and the Union of B.C. Municipalities, undertake to support local governments in these commitments.

### IV. BILL 27 - LOCAL GOVERNMENT (GREEN COMMUNITIES) STATUTES AMENDMENT ACT

On May 29, 2008, the Province passed Bill 27, the *Local Government (Green Communities) Statutes Amendment Act, 2008*. Bill 27 amends the *Local Government Act* to provide local

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<sup>1</sup> WCI documentation may be reviewed at [www.westernclimateinitiative.org](http://www.westernclimateinitiative.org). The Climate Action Secretariat of the government of B.C. is at [www.climateactionsecretariat.gov.bc.ca](http://www.climateactionsecretariat.gov.bc.ca).

<sup>2</sup> Several local government regulatory measures to address GHG emissions are suggested in “Hot Properties: How Global Warming Could Transform B.C.’s Real Estate Sector”, a November 2007 report prepared for the Real Estate Institute of B.C. by the David Suzuki Foundation. The report stresses the influence of urban form on GHG emissions, as well as suggesting zoning and development guidelines protecting residents against such climate change phenomena as rising ocean levels and increased flood and wildfire hazards. The report can be viewed at [http://www.reibc.org/Conference/Hot\\_Properties.pdf](http://www.reibc.org/Conference/Hot_Properties.pdf).

governments with powers to address climate change and energy and water efficiency. Bill 27 also amends the *Community Charter*, the *Vancouver Charter*, the *Greater Vancouver Sewerage and Drainage District Act*, and the *Greater Vancouver Water District Act*.

**A. Regional growth strategies and OCPs: regional and local GHG reduction targets**

Bill 27 amends the enabling legislation for B.C. regional growth strategies and OCPs by mandating regional and local GHG reduction targets and regional and local policies with respect to achieving these targets. (Transitional provisions give local governments until 2010 to comply in relation to OCPs, and 2011 in relation to regional growth strategies.) These provisions raise some challenges in relation to the setting of targets and the measurement of performance in relation to them. Signatories to the Climate Change Action Charter are obliged to develop a capability for measuring and reporting on their GHG emissions profile. Most regional districts and municipalities have little or no data on the volume of GHG that is emitted within their boundaries, and it is not immediately clear how local governments will establish realistic GHG reduction targets, know whether they have reached them, or monitor how they are doing as the battle against climate change proceeds. The Western Climate Initiative is developing a reporting system to support the cap-and-trade program that the participants are planning to implement in relation to their GHG reduction targets. Presumably this reporting system will form the basis of B.C. regional and local government GHG emissions monitoring and performance assessment, and will be the means by which the Province will, as it has promised to do in the Climate Change Action Charter, support local governments in developing measurement and reporting capacity in relation to GHG emissions.

**B. Development permit areas: energy conservation, water conservation and the reduction of GHG emissions**

Bill 27 amends the enabling legislation for local governments to establish development permit areas for the purpose of promoting energy conservation, water conservation and the reduction of GHG emissions. Bill 27 provides that a development permit issued under the new development permit areas may include requirements respecting the following:

- landscaping, (including restrictions on the type and placement of trees and other vegetation in proximity to buildings)
- siting of buildings and other structures,
- form and exterior design of buildings and other structures,
- specific features in the development; and
- machinery, equipment and systems external to buildings and other structures.

The list does not include matters which usually come to mind in green initiatives such as plumbing, appliances, insulation, heating, air conditioning, and lighting within buildings. This is

because the concurrent authority regime in relation to building regulations currently does not permit local governments to establish building standards. Local government initiatives under the development permit scheme will therefore need to focus on matters external to the building such as the placement of trees, the location of buildings and the type of irrigation and outdoor lighting systems.

The development permit scheme also only addresses new developments. The development permit scheme may therefore assist in reducing GHG emissions and conserving water and energy; however, it will be a more effective tool in a broader legislative scheme with the Province that addresses the internal performance of old and new buildings.

### **C. Off street parking: alternative transportation infrastructure**

Bill 27 amends the enabling legislation for local governments to use off-street parking money in-lieu for providing alternative transportation infrastructure that supports walking, bicycling, public transit or other alternative forms of transportation. Bill 27 also amends the enabling legislation to allow local governments to in their parking bylaws impose requirements on the basis of transportation needs assessed at the time a development is approved in accordance with criteria specified in the bylaw rather than on the basis of predetermined parking ratios for particular classes of land use. The amendments enable local governments to encourage the use of alternative forms of transportation infrastructure and the creation of more compact communities.

### **D. Development cost charges: low environmental impact developments**

Bill 27 amends the enabling legislation to exempt dwelling units that are no larger than 29 square metres from paying development cost charges (DCCs) and to enable local governments to increase the size of units that are exempt from DCCs.

Bill 27 also provides local governments with broader authority to, by bylaw, (but subject to any provincial regulations) waive or reduce DCCs for:

- not-for-profit rental housing;
- not-for-profit affordable rental housing;
- a subdivision of small lots designed to result in low greenhouse gas emissions; or
- a development that is designed to result in low environmental impact.

In setting DCCs, the amendments require local governments to consider how development designed to result in low environmental impact may affect capital costs of infrastructure and whether the charges will discourage such development.

Similar to development permit areas, DCC programs will only address new developments. The amendments provide local governments with some of the tools they need to encourage developers to consider “greener” developments. The challenge for local governments will be determining whether the cost of DCCs will discourage such developments and the criteria under which the local government may wish to waive or reduce DCCs.

## **V. BILL 10 – HOUSING STATUTES AMENDMENT ACT, 2008**

On March 31, 2008, Bill 10, the *Housing Statutes Amendment Act, 2008* came into force. Bill 10 amends the building regulation provisions in the *Local Government Act*, the *Community Charter* and the *Vancouver Charter*. Bill 10 also amends the *Architects Act* and the *Engineers and Geoscientists Act*. The amendments are largely enabling and a first step in providing local governments with the tools they need to address GHG emissions and water and energy efficiency in buildings and to meet their goals under the B.C. Climate Change Action Charter. Further amendments or regulations will be necessary, however, in order for local governments to make full use of these new powers.

### **A. B.C. Building Code**

Bill 10 expands the powers of the Minister of Community Development in relation to the B.C. Building Code. Previously, the Minister had the power to establish a building code governing standards for the construction and demolition of buildings. Bill 10 expands this authority to include the alteration and repair of buildings. This is presumably to enable the Province to address GHG emissions and water and energy efficiency in existing as well as new buildings.

The Province is currently in the process of “greening” the Building Code. The first amendments, mainly revisions regarding energy and water efficiency (such as new insulation standards for small buildings; new heating, refrigeration and air conditioning standards for larger buildings; and low flow toilets and other water saving plumbing fixtures for new construction and renovations) came into force on September 5, 2008.<sup>3</sup> Further energy efficiency standards for new buildings are planned for 2010.

Bill 10 also provides the Minister with the authority under the enabling legislation to make the Building Code or parts of it inapplicable to all or part of a municipality or regional district. This new power enables the Minister to impose new requirements in relation to GHG emissions and water and energy efficiency on a selective or gradual basis.

### **B. Local Government Building Regulations**

Bill 10 broadens a local government’s building regulation powers. Previously, local governments could only exercise their authority to enact bylaws in relation to buildings and other structures for matters relating to the “health, safety or protection of persons or property”. Bill 10 broadens a

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<sup>3</sup> See B.C. Reg. 73/2008

local government's authority to enact bylaws for the provision of access to a building for a person with disabilities, the conservation of energy or water and the reduction of GHG emissions.

However, as noted above, a local government's building regulation powers is an area of concurrent authority with the Province. A local government is prohibited from adopting a bylaw in relation to building standards unless the Province assents by way of a regulation, agreement or the approval of the Minister.

Buildings and Other Structures Bylaws Regulation, B.C. Reg. 86/2004 limits the scope of a local government's authority to establish standards for buildings. B.C. Reg. 86/2004 allows local governments to establish standards for buildings that are specifically exempt from the Building Code or are not buildings for the purpose of the Building Code. A local government may also establish standards if they are not different from or additional to the standards established by the Building Code, or if they do not extend or change the application or scope of the Building Code. This results in a very narrow scope of authority for local governments to regulate in relation to building standards. The amendments broadening a local government's building regulation powers in relation to GHG emissions and water and energy efficiency will therefore not likely have any significant effect without additional powers being given to local governments to make use of these powers.

Local governments may be able to use their new building regulation powers in the administration of the Building Code, a matter not governed by B.C. Reg. 86/2004. Decisions respecting building permits and building inspections may now be based not only on health and safety matters but also on GHG emissions and energy or water conservation. The scope of these decisions, however, will likely still be restricted by the concurrent authority regime.

### **C. Professional Certification**

Bill 10 also expands the types of professionals that may be included in the safety certification process. The amendment allows local governments to require applicants for building permits to provide the local government with a certification by a professional engineer, geoscientist or architect specialized in a particular area. This amendment complements the amendments made to the *Architects Act* and the *Engineers and Geoscientists Act*. This is presumably to permit local governments to require the appropriate experts to deal with new and complex building technologies such as "green" building features.

## **VI. CONCLUSION**

The first round of changes to the enabling legislation for local governments requires local governments to consider their own carbon footprint as well as provides local governments with new powers to encourage the reduction of GHG emissions and improve water and energy efficiency. To date, these new powers are largely enabling. The number of legislative initiatives this year, however, indicates that the provincial government is prepared to take significant

legislative steps to deal with climate change. Local governments should therefore be prepared for possible further legislative changes to come.