
SAFETY AUTHORITY ACT

CHAPTER 38

Assented to May 29, 2003

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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 –DEFINITIONS**Definitions**

- 1** In this Act:

“**authority**” means the British Columbia Safety Authority established under section 3;

“**chief executive officer**” means the chief executive officer appointed under section 23;

“**senior officer**” has the same meaning as in the *Business Corporations Act*.

Application of other Acts

- 2** (1) Subject to subsection (2), the following Acts do not apply to the authority:

- (a) *Budget Transparency and Accountability Act*;
- (b) *Business Corporations Act*;
- (c) *Company Act*;
- (d) *Document Disposal Act*;
- (e) *Financial Administration Act*.

- (2) The Lieutenant Governor in Council, by regulation, may direct that provisions of the *Business Corporations Act* apply to the authority.

PART 2 –SAFETY AUTHORITY ESTABLISHED**British Columbia Safety Authority established**

- 3** (1) The British Columbia Safety Authority is established as a not for profit corporation without share capital and consisting of a board of directors appointed under section 8.

- (2) The authority has the power and capacity of a natural person of full capacity.
- (3) The authority may have a corporate seal, which may be engraved, lithographed, printed or otherwise mechanically reproduced.
- (4) The authority is not an agent of the government.

Status of assets if authority is dissolved

- 4 If the authority is dissolved, after payment of all debts and liabilities, its remaining property must be distributed to a not for profit successor corporation with similar purposes.

Purposes of authority

- 5 The purposes of the authority are
 - (a) to carry on activities throughout British Columbia that foster safety in the design, manufacture, disposal, construction, installation, operation, maintenance and use of technical products, equipment and systems, and
 - (b) for the purposes of paragraph (a), to carry on any necessary or advisable activities outside of British Columbia.

Authority may be designated as standard making body

- 6 The Lieutenant Governor in Council, by regulation, may designate the authority as a standard making body for the purposes of the *Regulations Act* and, if permitted under the regulations, the authority may publish standards for the purposes of the *Safety Standards Act*.

Revenue, borrowing and expenditure

- 7 (1) The authority may fund its operating costs and capital expenditures from the following:
 - (a) fees for certificates, licences or permits under the *Safety Standards Act* and other permissions authorized by regulation under that Act;
 - (b) fees or charges for the performance of any duty by the authority;
 - (c) charges for other services performed by the authority;
 - (d) money borrowed for operating costs and capital expenditures;
 - (e) any other revenue of the authority other than monetary penalties.
- (2) All money paid to the authority must be used for the purposes of the authority.
- (3) Any monetary penalties under the *Safety Standards Act* collected by or paid to the authority must be held in a separate fund by the authority and expended on accident prevention programs and safety education.

PART 3 –G OVERNANCE OF SAFETY AUTHORITY

Appointment of directors

- 8** (1) The board of directors is to consist of at least 9 but not more than 15 directors appointed as follows:
- (a) the minister may appoint up to 3 directors;
 - (b) the directors may appoint other directors, to a maximum of 15 directors on the board, from among eligible candidates recommended under section 9;
 - (c) the directors may appoint any director, other than a director appointed under paragraph (a), as the chair of the board.
- (2) The term of office of the chair is 5 years.
- (3) The term of office of a director other than the chair is 3 years.
- (4) A director may not serve as a director for more than 6 consecutive years unless the additional service is as the chair.
- (5) A person may not serve as the chair for more than 10 consecutive years.
- (6) A person who has served the maximum number of consecutive years under this section is not eligible to be reappointed as a director until after a break in service of at least 3 years.
- (7) The authority must
- (a) pay the remuneration of the chair and of the directors other than directors who are employees as defined in the *Public Service Act*, and
 - (b) reimburse the directors for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.
- (8) A vacancy on the board of directors does not impair the power and capacity of the authority.

Nominating process

- 9** (1) The board must appoint a nominating committee from among its members, including at least one director appointed by the minister under section 8 (1) (a), if any director is appointed under that section.
- (2) The nominating committee must
- (a) advertise in newspapers published in British Columbia for nominations to the board,
 - (b) prepare a list of qualified nominees to fill vacancies on the board, and
 - (c) from that list make a reasonable attempt to submit to the board at least one more nominee than the number required to fill the vacancies on the board.

- (3) In preparing the list of nominees, the nominating committee must base its selection on the principle of merit and must use a process designed to appraise the knowledge, skills and abilities of the nominees.
- (4) The board may make appointments only from the list of nominations submitted to the board by the nominating committee.

Persons qualified to be directors

- 10**
- (1) A person must not become a director or act as a director of the authority unless that person is an individual who is qualified to do so.
 - (2) An individual is not qualified to become a director or to act as a director of the authority if that individual is
 - (a) under the age of 18 years,
 - (b) found by a court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,
 - (c) an undischarged bankrupt, or
 - (d) convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or an unincorporated business, or of an offence involving fraud, unless
 - (i) the court orders otherwise,
 - (ii) 5 years have elapsed since the last to occur of
 - (A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,
 - (B) the imposition of a fine,
 - (C) the conclusion of the term of any imprisonment, and
 - (D) the conclusion of the term of any probation imposed, or
 - (iii) a pardon was granted or issued under the *Criminal Records Act* (Canada).
 - (3) A director who ceases to be qualified to act as a director of the authority must promptly resign.

Standard of conduct of director or officer

- 11**
- (1) A director or an officer of the authority, when exercising the powers and performing the duties and functions of a director or an officer of the authority, must do all of the following:
 - (a) act honestly and in good faith;
 - (b) act with a view to the best interests of the authority;
 - (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;
 - (d) act in accordance with this Act, the *Safety Standards Act* and the regulations under them;

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- (e) subject to paragraphs (a) to (d), act in accordance with any provisions of the *Business Corporations Act* that apply to the authority.
- (2) The appointment of a director appointed under section 8 (1) (b) may be rescinded only by a resolution of more than 2/3 of all the directors, stating that they consider the director to have failed to adhere to a standard of conduct under subsection (1).
- (3) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors and officers of a corporation.
- (4) No provision in a contract relieves a director from
 - (a) the duty to act in accordance with this Act, the *Safety Standards Act* and the regulations under them or any applicable provision of the *Business Corporations Act*, or
 - (b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that director in respect of any negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the authority.

How person ceases to be a director

- 12** (1) A director ceases to hold office when the director's term of office expires or when the director dies or resigns.
- (2) Every resignation of a director becomes effective at the time a written resignation is delivered to the authority or at the time specified in the resignation, whichever is later.

Meetings and quorum

- 13** (1) A simple majority of all the directors constitutes a quorum of the board.
- (2) If there is a tie vote of the directors present at a meeting of the board, the chair must cast a second and deciding vote.

Powers and duties of board

- 14** (1) The directors must manage the affairs of the authority or supervise the management of those affairs and may exercise the powers conferred on the authority under this Act or any other enactment.
- (2) The directors must appoint an audit committee as provided in the regulations.
- (3) A limitation or restriction on the powers or functions of the directors is not effective against a person who does not have knowledge of the limitation or restriction.

Decisions of board by resolution

- 15** All decisions of the board must be made by resolution.

Resolution of directors in writing

- 16** (1) A resolution of the directors or of any committee of them may not be passed without a meeting, except as permitted by subsection (3).
- (2) A meeting of directors or of a committee of directors may be held by
- (a) telephone, or
 - (b) other communications facilities
- so long as all participants in the meeting are able to hear each other, and a director who participates in the meeting by that means must be counted as present at the meeting.
- (3) A resolution of the directors may be passed without a meeting if all the directors consent to the resolution in writing and the consent is filed with the minutes of proceedings of the directors.
- (4) The authority must keep minutes of all proceedings at meetings of the board and its committees.

PART 4 –C ONFLICT OF INTEREST**Disclosable interests**

- 17** (1) For the purposes of this Part, a director, the chief executive officer or a senior officer holds a disclosable interest in a contract or transaction if
- (a) the contract or transaction is material to the authority,
 - (b) the authority has entered, or proposes to enter, into the contract or transaction, and
 - (c) either of the following applies to the director, chief executive officer or senior officer:
 - (i) the director, chief executive officer or senior officer has a material interest in the contract or transaction;
 - (ii) the director, chief executive officer or senior officer is a director or senior officer of, or has a material interest in, a person who has a material interest in the contract or transaction.
- (2) For the purposes of subsection (1) and this Part, the director, the chief executive officer or a senior officer does not hold a disclosable interest in a contract or transaction merely because
- (a) the contract or transaction relates to the remuneration of the director, chief executive officer or senior officer in that person's capacity as director, officer, employee or agent of the authority or of an affiliate of the authority, or
 - (b) the contract or transaction has been or will be made with or for the benefit of a corporation that is affiliated with the authority and the director, chief

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executive officer or senior officer is also a director or senior officer of that corporation or an affiliate of that corporation.

- (3) A director who has a disclosable interest in a contract or transaction is not entitled to vote on any director's resolution to approve that contract or transaction.

Obligation to account for profits

- 18** (1) Subject to subsection (2), a director, the chief executive officer or a senior officer is liable to account to the authority for any profit that accrues to that individual under or as a result of a contract or transaction in which that individual has a disclosable interest.
- (2) A director, the chief executive officer or a senior officer is not liable to account for and may retain the profit referred to in subsection (1) in any of the following circumstances:
- (a) before the contract or transaction is entered into and after the nature and extent of the conflict of interest is disclosed to the board, the contract or transaction is approved by the board;
 - (b) the contract or transaction was reasonable and fair to the authority at the time it was entered into and, after full disclosure of the nature and extent of the conflict of interest, the contract or transaction is approved by the board.

Powers of court

- 19** (1) In this section, “**court**” means the Supreme Court.
- (2) On an application by the authority or by a director, the chief executive officer or a senior officer, the court may, if it determines that a contract or transaction in which a director, the chief executive officer or a senior officer has a disclosable interest was fair and reasonable to the authority,
- (a) order that the director, the chief executive officer or a senior officer is not liable to account for any profit that accrues to the director, chief executive officer or senior officer under or as a result of the contract or transaction, and
 - (b) make any other order that the court considers appropriate.
- (3) Unless a contract or transaction in which a director, the chief executive officer or a senior officer has a disclosable interest has been approved in accordance with section 18 (2), the court may, on an application by the authority or by a director, the chief executive officer or a senior officer, make one or more of the following orders if the court determines that the contract or transaction was not fair and reasonable to the authority:
- (a) enjoin the authority from entering into the proposed contract or transaction;
 - (b) order that the director, chief executive officer or senior officer is liable to account for any profit that accrues to the director, chief executive officer or senior officer under or as a result of the contract or transaction;

- (c) make any other order that the court considers appropriate.

Validity of contracts and transactions

- 20** A contract or transaction with the authority is not invalid merely because
- (a) a director of the authority, the chief executive officer or a senior officer has an interest, direct or indirect, in the contract or transaction,
 - (b) a director of the authority, the chief executive officer or a senior officer has not disclosed an interest he or she has in the contract or transaction, or
 - (c) the directors have not approved the contract or transaction in which a director of the authority, the chief executive officer or a senior officer has an interest.

Limitation of obligations of director, chief executive officer or senior officer

- 21** Except as is provided in this Part, a director, the chief executive officer or a senior officer has no obligation to
- (a) disclose any direct or indirect interest that the director, chief executive officer or senior officer has in a contract or transaction, or
 - (b) account for any profit that accrues to the director, chief executive officer or senior officer under or as a result of a contract or transaction in which the director, chief executive officer or senior officer has a disclosable interest.

Disclosure of conflict of office or property

- 22** (1) If a director, the chief executive officer or a senior officer holds any office, or possesses any property, right or interest that could result, directly or indirectly, in the creation of a duty or interest that materially conflicts with that individual's duty or interest as director, chief executive officer or senior officer of the authority, the individual must disclose, in accordance with this section, the nature and extent of the conflict.
- (2) The disclosure required under subsection (1)
- (a) must be made to the directors promptly
 - (i) after that individual becomes a director, the chief executive officer or a senior officer, or
 - (ii) if that individual is already a director, the chief executive officer or a senior officer, after that individual begins to hold the office or possess the property, right or interest for which disclosure is required, and
 - (b) must be evidenced in a consent resolution, the minutes of a meeting or any other record deposited in the authority's records.

PART 5 – OFFICERS AND EMPLOYEES

Appointment of chief executive officer

- 23** The directors must appoint an individual as the chief executive officer of the authority to carry out the functions and duties that the board specifies and may set the remuneration of the chief executive officer.

Employees

- 24** (1) The chief executive officer, to the extent authorized by the board, may appoint officers and employees of the authority and may define their duties.
- (2) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the authority or to its employees.

PART 6 – FINANCIAL ADMINISTRATION

Accounting records required

- 25** (1) The authority must keep adequate accounting records for each of its financial years and must retain the accounting records kept for a financial year for at least 7 years.
- (2) On request, all books or records of account, documents and other financial records must be open for inspection by the minister or a person designated by the minister.

Fiscal year of authority

- 26** The fiscal year of the authority is the period of 12 months beginning on January 1 in each year and ending on December 31 of that year.

Financial statements

- 27** The authority must prepare annual financial statements in accordance with generally accepted accounting principles.

Annual reports

- 28** The authority must prepare and make publicly available within 6 months after the end of its fiscal year all of the following:
- (a) a report on its operations for the preceding fiscal year, including a report of an independent auditor who was engaged to express an opinion on the authority's financial statements for the preceding fiscal year after an audit conducted in accordance with generally accepted auditing standards;
 - (b) a report on the operational programs of the authority showing a comparison of actual results with expected results for that fiscal year.

Business plan

- 29** Before each fiscal year, the authority must prepare and make publicly available a business plan for the next 3 fiscal years.

Appointment of auditor

- 30** (1) The authority must appoint an independent auditor authorized under section 205 (a) or (b) of the *Business Corporations Act*.
- (2) Section 206 of the *Business Corporations Act* applies to the appointment of an auditor under subsection (1).

PART 7 –GENERAL**Appointment of temporary administrator**

- 31** (1) The Lieutenant Governor in Council may appoint an administrator to temporarily discharge the powers, duties and functions of the board if the Lieutenant Governor in Council identifies an immediate and direct threat to the ability of the board to function which could significantly compromise the system of safety standards.
- (2) On the appointment of an administrator, the members of the board cease to hold office unless otherwise ordered by the Lieutenant Governor in Council.
- (3) During the term of the administrator, the powers of any members of the board who continue to hold office are suspended unless otherwise provided by the Lieutenant Governor in Council.
- (4) The Lieutenant Governor in Council may specify one or more of the following:
- (a) the powers, duties and functions of an administrator appointed under this section;
 - (b) the terms and conditions for management of the property and affairs of the authority during the transition period preceding the ending of the appointment of the administrator;
 - (c) that the administrator must use the nominating process in accordance with sections 8 to 10 to fill any vacancies on the board and that the members appointed take office at the termination of the administrator's appointment.

Power to make regulations

- 32** (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 as follows:
- (a) directing that provisions of the *Business Corporations Act* apply to the authority;

- (b) respecting standards for the purposes of section 6;
- (c) specifying requirements for the composition of the audit committee and specifying the procedures and obligations of the members of the committee for the purposes of section 14 (2);
- (d) extending the time for compliance with section 29.

PART 8 – TRANSITIONAL PROVISIONS

Interim board appointments by minister

- 33**
- (1) Despite section 8, the minister may establish the interim board by appointing the chair of the interim board and setting the terms of office and the initial remuneration for the chair.
 - (2) The chair of the interim board must appoint 2 other interim directors from a list of candidates selected on the principle of merit using a process designed to appraise the knowledge, skills and abilities of candidates, and may set their terms of office and initial remuneration.
 - (3) Section 9 does not apply to the appointment of the interim board.

Powers and duties of interim board

- 34**
- (1) The interim board has all the powers of the board of the authority.
 - (2) Section 8 (3) does not apply to appointments to the board made by the interim board.
 - (3) Section 14 (2) does not apply to the interim board.
 - (4) Section 23 does not apply to the interim board, but the board may appoint a chief executive officer or may exercise all the powers of the chief executive officer.
 - (5) Sections 27 and 28 do not apply to the interim board, but the board must prepare a financial statement for the period of its administration and deliver a copy to the minister.
 - (6) Section 29 does not apply to the interim board.
 - (7) If the interim board appoints any of its members to the board, those persons may be appointed only for a term of one year.

Transitional business plan

- 35**
- (1) Within 3 months of taking office, the first board appointed under section 8 must prepare and make publicly available a business plan for the remainder of that fiscal year and the next 2 fiscal years.
 - (2) Section 29 does not apply during the year in which the business plan under subsection (1) is prepared and made publicly available.

Commencement

- 36** (1) This Act comes into force by regulation of the Lieutenant Governor in Council.
- (2) Part 8 is repealed by regulation of the Lieutenant Governor in Council.

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