

TO: CITY MANAGER 2004 APRIL 28

FROM: CHIEF BUILDING INSPECTOR

SUBJECT: SAFETY STANDARDS ACT AND REGULATIONS

PURPOSE: To respond to Council's request for information on the proposed content of the Safety Standards Act and related regulations with respect to the submission by the B.C. Federation of Labour.

RECOMMENDATIONS:

- 1) **THAT** staff continue to address unresolved matters and issues of concern with the Ministry of Community, Aboriginal and Women's Services, as related to the creation of the Safety Standards Act, the Safety Authority Act and associated regulations, as outlined in Sections 3.0 and 4.0 of this report.
- 2) **THAT** a copy of this report be forwarded the Ministry of Community, Aboriginal and Women's Services, P. O. Box 9951, Stn. Prov. Government, Victoria, B.C. V8W 9R3.
- 3) **THAT** a copy of this report be forwarded to Mr. Jim Sinclair, President, B.C. Federation of Labour, 200 - 5118 Joyce Street, Vancouver, B.C. V5R 4H1.

REPORT

1.0 BACKGROUND

At its regular meeting of 2004 March 22, Council received a submission by the B.C. Federation of Labour outlining a number of concerns regarding the introduction of legislation creating a new Safety Standards Authority and a new Safety Standards Act and related regulations under the Safety Systems Transformation Project. The submission also contained a request for Council's support of a resolution prepared by the B.C. Federation of Labour to be forwarded to the Provincial Government (*attached*). This report addresses the concerns raised in the submission to Council and provides information on the current status of the Safety Systems Transformation Project with respect to the Safety Standards Act and related regulations.

The majority of comments made in the submission are general in nature and may apply to one or several of the applicable regulations. The City of Burnaby, however, only provides safety inspections involving electrical and low pressure gas installations, therefore, the comments contained herein relate to those regulations only.

2.0 CURRENT STATUS

As outlined in a prior report to Council in May 2003, the creation of a new Safety Authority Act (Bill 20), Safety Standards Act (Bill 19) and associated safety regulations is based on the fundamental position that many of the services traditionally delivered by the Province can be more effectively provided by non-governmental bodies under appropriate guidelines and supervision. The Safety Standards Act was passed in the Legislature on 2003 March 24 and, along with the regulations, became effective on 2004 April 01. Municipalities, through representation on local government, trade and industry task groups, have had an opportunity to review the Act and related regulations during their creation and to provide input with respect to identified concerns.

Only recently have the final versions of the Safety Standards Act and associated regulations been available for review. While local government and other participants still have concerns and are apprehensive regarding some of the content of the regulations, their implementation and the structure and impact of the new Safety Authority, ongoing discussions with the Province have resulted in many constructive amendments to the regulations. Participants have been assured that the Province will continue this dialogue with local government with the intent to satisfactorily address outstanding issues. It should be noted that the final release of the regulations is dated 2004 March 22, therefore, it is possible that the contents of these regulations had not been reviewed by the B.C Federation of Labour prior to their submission.

The provincial Safety System is built on a legislative framework consisting of various statutes, regulations and local government bylaws incorporating national and provincial codes governing the installation and operation of regulated products. The Local Government Act and the Vancouver Charter enable municipalities to administer safety services in the areas of building, plumbing and fire safety. The new safety system regulations apply to electrical systems, gas systems, refrigeration equipment, boilers and pressure vessels, elevating devices, aerial tramways, amusement rides and intraprovincial railways.

The new Safety Standards Act is intended to consolidate and streamline existing legislation, while the companion Safety Authority Act establishes an independent agency¹ to manage the delivery of safety services. However, contrary to comments contained in the brief submitted by the B.C. Federation of Labour, the Province retains the responsibility to oversee the delivery of safety services in the province and for the development of regulations and policies pertaining to the delivery of those safety services.

¹ This independent agency, the Safety Authority, is intended to be an independent, not-for-profit corporation established by statute and operating at arm's length from government. It is intended to finance service delivery through a cost-recovered, user pay model, and continue the legal, technical and operational relationships currently in place between the Province and local governments which conduct inspections.

3.0 RESPONSE TO CONCERNS REGARDING THE NEW SAFETY AUTHORITY

The following are concerns raised by the BC Federation of Labour with respect to the new Safety Authority and related staff comments.

- 3.1** *“Changes to the safety standards in BC will be dramatic as the government changes the legislation and regulations from a proactive government department that educates, implements and polices, to an organizational structure that will be less regulated with the inspection of regulated work being put into hands of contractors and employers who perform the same work.”*

Section 26 of the new Safety Standards General Regulation requires that a Field Safety Representative (FSR)² must request an inspection required under the Act or on the permit from the regulatory authority. This paragraph of the regulation allows municipalities to require inspections of any work performed under a permit issued by that municipality. It is, therefore, intended that work within the City will continue to comply with the required inspection provisions of the electrical and gas bylaws.

- 3.2** *“In the future, semi-skilled and non-skilled workers will now be required to perform work that compulsory trades people are required to perform today.”*

While the electrical and gas regulations dictate the qualification requirements for persons performing regulated work, the Safety Standards General Regulation has provisions for unqualified persons to do this work under the direct supervision of a qualified person, subject to certain conditions outlined in Section (5) of the general regulation. Under the previous Act and regulation, only registered apprentices were allowed to work if supervised by a qualified person. This concern has been raised on a number of occasions with some recent success being achieved. The final version of the electrical and the gas regulations include a definition for “*Trainee*” which means a trainee under the Industry Training Authority Act. Section 12 of the electrical regulations now limits the number of unqualified workers under the supervision of a qualified person to four for small residential projects and two trainees for larger projects. Unfortunately, this change does not appear to have been included in the new gas regulations to-date. Staff and other participants will, therefore, continue to express this concern with the intent to achieve supervisory controls similar to that contained in the electrical regulations.

² A Field Safety Representative is a trained and certified trades person which represents a company for the installation of equipment or devices, capable of declaring work to have been done to recognized codes and standards.

- 3.3 *“Striking administrative agreements with cities and municipalities is a key part of the plan even though most municipalities were never consulted on the matter.”*

Municipalities and other stakeholders have been a participant in the public consultation process. Burnaby has been represented on the Local Government Task Group, as well as technical task groups for electrical and gas safety. Extensive meetings have been held over the past year and while there are still items of concern within the regulations that local governments will continue to pursue, a large number of critical concerns appear to have been addressed in the latest version of the Act and regulations.

4.0 **RESPONSE TO CONCERNS REGARDING THE NEW SAFETY STANDARDS ACT**

The following are concerns raised by the BC Federation of Labour with respect to the new Safety Standards Act and related staff comments.

4.1 **Administrative Agreements**

“In the future, the new authority can enter into agreement with municipalities to administer the Act and regulations.”

There are eleven municipalities that provide electrical and/or gas inspection services as part of an integrated building inspection program in B.C. The Province, through its Safety Engineering Division, has traditionally provided service coverage to the remainder of B.C., however, this changed on 2004 April 01 when the newly established independent agency, the Safety Authority, was delegated the authority to do so. The new Safety Standards Act also provides for delegating authority to municipalities through an Administrative Agreement, to continue administering the Act within their jurisdiction. In keeping with the provisions of the new Safety Standards Act, those local governments who currently enforce regulations relating to electrical or gas installations, such as Burnaby, will be required to enter into an Administrative Agreement with the Province to continue to provide this safety service. While originally the Agreement was to be completed by 2004 April 01, a recent transition regulation was adopted to extend this deadline to 2004 May 31. This extension was agreed to in order to complete changes that were required to the Administrative Agreement resulting from extensive discussions with local government representatives.

The revised Administrative Agreement has recently been received from the Province and has been reviewed by staff. A report appearing elsewhere on this agenda requests authorization to enter into the Administrative Agreement to continue to provide electrical and gas inspection services in the interest of public safety within its jurisdiction. The Agreement does not place any additional responsibility on local government to provide an increased scope of safety services.

“Current standards of safety that cities and municipalities have put into by-laws that are not in compliance with the new Act and regulations will be deemed not in effect.”

The Burnaby electrical and gas bylaws contain administrative requirements only and refer to the enforcement of applicable Codes, as adopted by the Province. The adoption of the new Act and regulations, therefore, does not affect the contents of either bylaw, nor the scope of duties of the applicable Burnaby inspection staff.

4.2 Certificate of Qualification

“They have now thrown the door open to unqualified, untrained workers working under the supervision of someone who is qualified to do that work.”

The electrical and gas safety regulations establish the requirements for qualifications and appear to have re-instated the same requirements for Field Safety Representatives as in the current regulations, Class “A”, “B”, or “C”. While the ratio of supervision of unqualified or trainee workers has been established in the electrical regulations, this does not appear to have been addressed in the gas safety regulations, which remains a concern as noted under Section 3.2 above.

“In the future, semi-skilled workers will now be required to perform work that compulsory trade's people are required to perform now. This clearly is a lowering of standards from the old legislation and will put British Columbia at risk.”

In addition to the classes “A”, “B”, and “C”, previous drafts of the regulations included several other classifications for Field Safety representatives, such as “FA” for Fire Alarm Installer and “LO” for Low Energy Installation. Removal of these classifications results in a requirement for a minimum Class “C” qualification for this type of installation, which is a considerably higher qualification and, therefore, more restrictive than before.

“This will allow a worker, who is qualified for a particular aspect of electrical work, to supervise as many as can be handled by non-trained, non-qualified workers off the street.”

Section (5) of the Safety System General Regulation allows non-qualified workers to perform electrical work under the supervision of qualified workers. However, Section (12) of the electrical safety regulation allows only a ratio of 1 to 2 or 1 to 4, depending on the level of current and voltage. The previous regulation allowed a maximum ratio of one qualified to two apprentices (apprentices have achieved specified education and work under a qualified tradesperson for a designated period of time).

“For those who do obtain the modularized certificates, under the new Industrial Training Authority, there is no laddering system for them to become a fully qualified trades person.”

The new Act and general regulation do not prevent anyone from obtaining any degree of qualification. In fact, the existing regulation allows for certain levels of less restrictive qualifications such as “LO” which would allow the installation of low energy systems, as mentioned above. However, details of the regulations pertaining to training and the mandate and responsibilities of the new Industry Training Authority are not available at this time.

4.3 Self - Inspection

“The new Act and regulations are going to allow construction companies and others to self inspect their own work.”

The previous regulation also allowed contractors to post a self-declaration form which has been used with discretion by some municipalities. As outlined in the applicable Burnaby electrical and gas bylaws, inspections are required of all electrical and low pressure gas installations and will continue to be conducted by City staff.

“The Provincial Electrical Inspectors, for instance, who will now work under the new Authority will not be required to inspect all work in the province.”

Provincial electrical inspectors historically have not inspected all the work in the province. They do not inspect work within those jurisdictions currently providing this service, and conduct randomly-selected inspections of other installations. Under the proposed new Safety System, provincial safety officers will continue to conduct random inspections, based on a computer risk assessment program, which will include trades performance information.

“FSR’s” (Field Safety Representatives), did exist in the old regulations but they were not required to perform final inspections.”

Section 26(b) of the new Safety System General Regulation requires that Field Safety Representatives call the City for the inspection of installations. As outlined in above, the City will continue to conduct required inspections, including final inspections of gas and electrical installations.

“In the home renovation industry, a FSR can be the owner of the company, the worker who does the work and the person who inspects and reports out to the authority, compliance with the codes.”

This situation exists under the current regulations. A one-person operation is also the owner, the accredited and registered representative for the company, and is required to review or inspect the work prior to calling for inspection by the City in which the safety service is regulated or otherwise the Safety Authority. Because Burnaby conducts its own inspections, this is not an area of potential concern. However, other communities without the capacity to conduct inspections could have concerns with this provision as it currently exists.

4.4 Quality of Training

“The new regulations are silent on the issue of who is responsible for training or what type of training will be required by those who do regulated work.”

A new industry training authority has been established which operates independently from the Safety Authority, although the details of the mandate and responsibilities of this new authority have not yet been made available for review. Section (2) of the Safety System General Regulation outlines the requirements for certificate of qualification. Both the electrical and gas regulations refer to the Industry Training Authority Act in the definition of *“industry training credential.”*

4.5 Equivalent Standards Agreements

“Self-inspection will also occur under the new Equivalent Standards Agreements (ESA). These Agreements will be in the form of a contract between the Authority and a company that will allow all aspects of the safety system to be controlled and run by the corporation, including oversight.”

Equivalent Standards Agreements are intended to provide flexibility to the industry and be an objective-based rather than results-based approach to enforcement of the Act and regulations. The effectiveness of such models will be discussed once the pilot projects have been completed and the results reviewed.

While there are currently no guidelines or procedures established, assurances have been given that local governments will be directly involved in the review and consultation process. It is likely that Equivalent Standards Agreements will apply to operations rather than installations, however, there are many issues which remain unclear and which must be the subject of further review and discussion.

4.6 Registration of Certified Individuals

“The registration of qualified individuals will no longer be required.”

As outlined in Section 4.2 above, Section (2) of the Safety System General Regulation addresses the requirements for certification qualification.

4.7 Advisory Board

“Advisory Boards for each compulsory trade has been the backbone of the system in the review and control of standards in the province. The new Advisory Boards will be created at the discretion of the new Authority.”

Advisory boards were a requirement of the previous gas and electrical safety acts. These boards provided advice to the Ministry on matters affecting gas and electrical safety. There is ample evidence that public safety has been positively influenced over the years by active and supportive volunteer gas and electrical industry groups working co-operatively with the Province.

Clause 81 in the Safety Standards Act permits the Minister to establish one or more advisory boards to provide advice to the Minister on safety, safety standards, qualification and licensing, enforcement and other related matters. While we are confident that newly constituted advisory boards will be established, it is of concern that the Province has dissolved the existing boards and that there will be an undetermined period of time where essential, structured liaison between the Province, the authority and industry will not be available. Staff are of the opinion that dissolving the boards introduces an unnecessary risk during this major transformation in the delivery of the provincial safety system. The previous boards provide a measure of governance and risk management for the Ministry and the public.

4.8 New System of Penalties

“There have yet to be proposed regulations on this matter.”

Sections (4) and (78) of the Act establishes guidelines for imposing monetary penalties, including limits and imprisonment on individuals or corporations.

Staff have been informed that the Monetary Penalty Regulation is under development and that this will be discussed with local government participants in the near future.

4.9 Liability Exposure

“The issue of liability and insurance costs need to be investigated by municipalities that will enter into agreements with the new Authority to administer the new system in their jurisdiction.”

This has been reviewed by the City Solicitor as well as solicitors acting for other local governments, with the general conclusion that there is no apparent change in liability exposure. The Administrative Agreement will essentially acknowledge existing procedures which are outlined in local government bylaws for the delivery of safety services relating to gas and electrical installations.

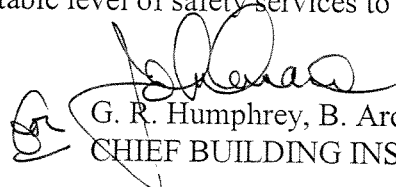
5.0 CONCLUSION

Local government, trade and industry task groups have been actively participating in discussions surrounding the Safety System Transformation Project, including the creation of the Safety Standards Act, the Safety Authority Act and associated regulations. Unresolved issues remain, in addition to areas of concern, including the ratio of qualified personnel to semi-skilled or non-skilled workers as it relates to the gas regulations, the development of Equivalent Standards Agreements, the dissolution of advisory boards in advance of the formation of newly constituted advisory boards, monetary penalties regulation and the training, mandate and responsibilities of the new Industry Training Authority. As such, staff will continue ongoing review and participation in the development and implementation of the regulations.

While it is likely that not all areas of concern will be addressed to the satisfaction of all parties, local government participation has resulted in many substantive changes to the wording and requirements contained in the regulations. The regulations must be considered living documents which are subject to continued review and discussion as the transformation project moves forward. It is expected that opportunities will be provided to further review and discuss the contents of these documents and to hopefully affect amendments to address existing unresolved concerns and new ones as they arise. The Safety Standards Act and regulations have been adopted by the Province and became effective on 2004 April 01. Future efforts should, therefore, concentrate on ensuring that the Province lives up to their promise of continued dialogue and the provision of opportunities to make further amendments to maintain an acceptable level of safety services to the public.

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G. R. Humphrey, B. Arch.,
CHIEF BUILDING INSPECTOR

cc: Director Planning & Building
City Solicitor

RESOLUTION TO COUNCIL

(as submitted by the BC Federation of Labour to Council at its meeting of 2004 March 22)

WHEREAS the provincial government has passed legislation creating a new Safety Standards Authority that will remove our safety standards system from government control; and

WHEREAS the provincial government is currently creating new **Safety Standards Act and Regulations** for the compulsory trades that deregulates the qualifications required to perform regulated work; and

WHEREAS the new regulations will no longer require government oversight of regulated work; now

THEREFORE BE IT RESOLVED that the City of Burnaby write a letter to Minister Murray Coell expressing our opposition to both the creation of the new authority and the **Safety Standards Act** changes; and

BE IT FURTHER RESOLVED that Council requests a meeting with local MLA's to express our concerns on these matters.