



## Legislative Implications of Four Governance Renewal Initiatives

1. **Differentiated Tax Requisition**  
Current Legislation  
Comments  
Recommendations
2. **Transfer of Land Use Authority**  
Current Legislation  
Comments  
Recommendations
3. **Legislated Object Dispute Resolution**  
Current Legislation  
Comments  
Recommendations
4. **Island Service Coordination**  
Current Legislation  
Comments  
Recommendations

### Attachments

- 1 - Legislation Relevant to Differentiated Tax Requisition
- 2 – Legislation Relevant to Transfer of Land Use Authority
- 3 – Legislation Relevant to Legislated Object Dispute Resolution
- 4 – Legislation Relevant to Island Service Coordination

# Legislative Implications of Governance Options

## 1. Differentiated Tax Requisition

### CURRENT LEGISLATION

#### Budget

- Section 14(3) of the *Islands Trust Act* requires that the Islands Trust Council budget set out separately the anticipated expenditures of:
  - the trust council and executive committee
  - the **general operations** of local trust committees
  - operations of a local trust committee **that are additional operations not included in general operations** of all the trust committees
  - administrative operations of the trust fund board

#### Requisitions, apportionment and tax rates

- Section 47(2(a) of the *Islands Trust Act* permits requisitions **outside municipal areas** for the cost of operations of:
  - the trust council and the executive committee
  - administration of the trust fund board
  - all local trust committees
- Section 47 (2)(b) permits requisitions **within municipalities** for the cost of operations of:
  - the trust council and executive committee
  - administration of the trust fund board.
- Section 47(5) indicates that if Trust Council's annual budget sets out anticipated expenditures related to **additional operations of a local trust committee**, then a special requisition may be made in respect of that local trust area.

#### COMMENTS

- Legislation currently permits the division of local trust committee operations into '**general**' and '**additional**' operations for the purposes of budgeting and requisitions.
- All local trust committees contribute to the cost of **general** operations, whereas legislation permits that '**additional**' operations of an individual local trust committee can be funded by special requisition from the local trust area involved.

- Current practice is to define all operations of all local trust committees as **'general'** operations. No operations are currently defined as **'additional'** for the purposes of budgeting and requisitions.
- Decisions regarding the definition of **'general'** and **'additional'** operations for the purposes of budgeting are within the discretion of Trust Council
- Trust Council could decide to redefine the **'general operations'** of local trust committees to include fewer operations than are currently considered 'general'. This would minimize the portion of the local trust committee **'general' operations** budget that Council requisitions from all local trust areas.
- Trust Council could decide to redefine **'additional' operations** of local trust committees to include a greater proportion of current activities. Individual requisitions within each local trust area would then fund activities defined as an **'additional operation'**.
- Each local trust committee could then determine the extent to which they wished to engage in **additional operations** and consequently the extent to which they would requisition taxes from their community.

#### **RECOMMENDATIONS ABOUT REQUESTS FOR LEGISLATIVE CHANGE**

- That Trust Council use the existing mechanism in the *Islands Trust Act* if it wishes to requisition taxes differently.
- That modifications to the *Islands Trust Act* regarding budgets and requisitions only be sought if experience determines they are necessary.

## 2. Transfer of Land use Authority

### CURRENT LEGISLATION

#### A. Subdivision Approval Authority

- Section 77.1(1) of the *Land Title Act* permits the Lieutenant Governor in Council to pass an order that would authorize trust council to appoint an approving officer for the Islands Trust area.
- Section 77.1(2) of the *Land Title Act* indicates that such an order would only be passed if requested by resolution of trust council and recommended by the Minister of Transportation.
- Section 77.1(3) of the *Land Title Act* indicates that such an order may include requirements that must be met, conditions about the appointment of an approving officer and provisions about the transition period.
- Section 83.1 of the *Land Title Act* requires that an approving officer appointed by trust council must refer all subdivision applications to the Ministry of Transportation.
- Subdivision plans cannot be approved unless the Ministry of Transportation consents. All requirements or conditions required by the Ministry must be imposed by the Islands Trust approving officer as directed.
- Requirements and conditions required by the Ministry are to be based on highway requirements and standards, traffic capacity, subdivision access, or the requirements of any provincial Act.
- Section 931(1)(f) of the *Local Government Act* permits the trust council to specify fees and charges to cover the average costs for the processing of subdivision applications.

#### B. Building Inspection Function

- Section 796(1) of the *Local Government Act* allows Regional Districts to operate services that the RD board considers necessary or desirable within all or part of the Regional District.
- Section 796(3) states that Regional Districts can operate their services through another public authority, person or organization.
- Section 363(1) allows a Regional District to charge fees for services provided.
- Section 37 of the *Islands Trust Act* allows the trust council and the board or a regional district to enter into agreements respecting the coordination of official community plans and the trust policy statement with services to be provided in the trust area by the regional district.

#### C. Agricultural Land Commission – non-farm land use and subdivision

- Section 26 of the *Agricultural Land Commission Act* provides for the delegation of Section 25 powers relating to applications for subdivisions and

non-farm land uses to local governments, including local trust committees and island municipalities.

- Delegation of decision-making is based on an agreement between the Commission and a local government. Generally the basis of the agreement is an Official Community Plan and/or land use bylaw that has been endorsed by the Commission.

#### **D. Other Functions**

- Section 54 of the Islands Trust Act permits the Lieutenant Governor in Council to grant additional powers and provide exceptions to trust bodies
  - Additional powers include powers to regulate, prohibit or impose requirements.
  - Requirements or conditions established by other acts can be modified or exempted.
- Such powers and exemptions cannot
  - Confer authority already available to a trust body
  - Override absolute prohibition contained in an enactment
  - Confer authority to impose a new tax
  - Confer authority to grant new tax exemption
  - Eliminate a requirement for obtaining assent of electors

### **COMMENTS**

#### **A. Subdivision Approval Authority**

- Assumption of the subdivision approval function could provide for better coordination and communication about local issues during the processing of subdivision applications.
- Subdivision approval is an administrative function, rather than one that is influenced by political discretion. Assumption of the subdivision approval function would not enable local trust committees to prevent subdivisions that are consistent with local zoning regulations and other pre-determined requirements.
- Assumption of the subdivision approval function would not change the road standards imposed by the Ministry of Transportation.
- Staff from the Ministry of Transportation have indicated that, while the Islands Trust Council could assume the subdivision approval function for a portion of the trust area, the provincial preference is for an entire area to be transferred if transfer is considered.
- The Ministry would place conditions on the transfer of approval authority. Conditions would include the development of a referral process, the preparation of a business plan for cost recovery, staff training and provisions for the transitional period.

- The subdivision approval function carries liabilities related to decisions of the approving officer regarding items such as unstable lands, flood protection and contaminated sites.

## **B. Building Inspection Function**

- Current legislation permits a regional district to contract the building inspection function to another party such as the Islands Trust or a local trust committee.
- Assumption of the building inspection function by the Islands Trust could result in more coordinated interpretation of zoning regulations when building permits are issued.
- The building inspection and permitting function is an administrative one that does not involve political discretion. Building permits must be issued for structures that comply with local zoning and building regulations.
- Assumption of the building inspection function is unlikely to result in changes to building regulations or standards. Provincial initiatives could lead to further standardization of these regulations.
- Assumption of the building inspection function could improve efficiency for applicants and lead to some economies due to 'one stop shopping'.
- The issue of withholding of building permits during times of zoning change may require some regulatory adjustment if the Islands Trust contracted to perform the building inspection function.

## **C. Agricultural Land Commission**

- Delegation of decision-making about subdivision and non-farm land use is a voluntary process, assumed by a local government if it is willing to do so and if the Commission agrees that a community's Official Community Plan and land use regulations are consistent with the Commission's goals.
- Delegation can be terminated by either party with notice.
- Delegation would give a local government the authorization to act on behalf of the ALC when landowners apply for non-farm land uses and subdivision within the ALR.
- Delegation of decision-making would not permit a local government to amend the boundaries of the Agricultural Land Reserve (add or remove properties).
- Delegation of decision-making would not enable a local government to prohibit farm uses allowed by the *Agricultural Land Commission Act* or the *Farm Practices Protection ("Right to Farm") Act*.
- Delegation agreements can cover all non-farm land use and subdivision decisions in the ALR or only specified ones (i.e. home and home site severance)
- Delegation agreements are customized for each local government. They cover topics such as
  - Area of application
  - Powers delegated

- Communications
  - Fees
  - Enforcement and monitoring
  - Staff training
- Decisions must be made according to the purpose of the ALC (to preserve agricultural land and encourage and enable farming).
- Potential benefits
  - Enhanced local autonomy and accountability
  - Faster application processing for applicants
  - Entire application fee retained by local trust committee
  - Decisions based on local knowledge and may more closely reflect community needs
- Potential concerns
  - Potential for greater local controversy regarding some applications
  - Increase in staff time requirement to respond to public concerns
  - May require changes to OCPs and LUBs (regarding permitted uses and minimum lot sizes) before delegation can occur
  - Amount of the application fee is fixed by the Land Commission and not by the local government.

## **RECOMMENDATIONS**

Use mechanisms within existing legislation if Trust Council wishes to consider assumption of subdivision approval, building permit or ALR subdivision and non-farm use decisions.

### 3. Legislated Object Dispute Resolution

#### CURRENT LEGISLATION

- Section 9 of the Islands Trust Act permits the Trust Council to enter into agreements with the Province for the purpose of carrying out the object of the Trust.
- Section 54 of the *Islands Trust Act* permits the Lieutenant Governor in Council to grant additional powers and provide exceptions to trust bodies
  - Additional powers include powers to regulate, prohibit or impose requirements.
  - Requirements or conditions established by other acts can be modified or exempted.
- Such powers and exemptions cannot
  - Confer authority already available to a trust body
  - Override absolute prohibition contained in an enactment
  - Confer authority to impose a new tax
  - Confer authority to grant new tax exemption
  - Eliminate a requirement for obtaining assent of electors
- Models exist in other legislation to require parties to consult regarding overlapping mandates, to mediate conflicts and to coordinate activities. Some examples are:
  - Section 13 of the *Agricultural Land Commission Act* identifies 'community issues' and the opportunity to refer to disputes between the Agricultural Land Commission and a local government to an independent dispute resolution facilitation process.
  - Section 868 (2) of the *Local Government Act* indicates that the Provincial Government may enter into agreements with a local government 'respecting Provincial commitments to act consistently with a regional growth strategy and to take actions necessary to implement a regional growth strategy'. Under Section 867, a local government can establish an intergovernmental advisory committee to 'facilitate coordination of Provincial and local government actions, policies and programs as they relate to the development and implementation of the regional growth strategy'.
  - Section 284(1)(b) of the *Community Charter* provides a dispute resolution process where a dispute arises between a municipality and the Provincial government of a Provincial government corporation.

#### COMMENTS

- The Islands Trust Act already contains provisions that allow for the creation of agreements with provincial agencies. Implementation of such agreements depends on a number of factors, including resources and priorities of both the Islands Trust and the provincial government.

- Introduction into *the Islands Trust Act* of a section similar to section 867 of the *Local Government Act* would require a legislative change, but would be consistent with practices available to regional districts.
- The establishment of an intergovernmental advisory committee to coordinate implementation of the *Islands Trust Policy Statement* may lead to better provincial recognition of the Islands Trust object.
- The establishment of an intergovernmental advisory committee could lead to requirements for greater provincial consultation during amendments to the Islands Trust Policy Statement.

## **RECOMMENDATION**

- Continue to seek agreements and coordination with provincial agencies through existing sections of the *Islands Trust Act*. Apply more staff resources to this purpose.
- Wait until the next phase of the *Community Charter* development to consider seeking the ability to form intergovernmental advisory committees.

## 4. Island Service Coordination

### CURRENT LEGISLATION

#### Local Community Commissions

- Section 838 of the *Local Government Act* allows Regional District Boards to establish communities within electoral areas that are administered by Local Community Commissions.
- Regional Districts can delegate various administrative functions to Local Community Commissions.
- Local Community Commissions are established by Regional District Boards through bylaws that identify items such as the boundaries of the community to be administered, meeting times, terms of office, size of the Commission, and terms, conditions and restrictions on activities of the Commission.
- The establishment of a Local Community Commission requires the assent of voters within the area affected, unless that requirement is waived by the Minister of Community, Aboriginal and Women's Services.
- A Local Community Commission consists of the Electoral Area Director for the community and 4 elected commissioners. The number of elected commissioners can be expanded to 6 by bylaw of the Regional District.
- Members of a Local Community Commission must be qualified to hold local government office under section 66 of the *Local Government Act*
- The term of office for elected commissioners is one or three years, as determined by the bylaw that establishes the Commission.
- Remuneration for elected commissioners is established by the Regional District.

#### Appointed Commissions

- Regional District Boards can also establish appointed commissions to operate regional district services, undertake operation and enforcement in relation to the local government's exercise of its regulatory authority, and manage property or an interest in property held by the local government.
- An appointed commission can consist of both elected and non-elected officials.
- An appointed commission can have decision-making authority.
- Not all powers of a Regional District Board can be delegate. An appointed commission cannot make bylaws, levy taxes, expropriate property, acquire land or appoint officers.

#### Service Coordination Agreements

Section 37 of the *Islands Trust Act* allows trust council and a regional district to enter into agreements regarding the coordination of official community

plans, and the trust policy statement with services provided in the trust area by the regional district.

## COMMENTS

- The powers of a Regional District to establish an **appointed** commission provide greater flexibility than the powers to establish an **elected** local community commission.
- To ensure a greater degree of coordination of community planning and servicing functions, a Regional District Board could establish an appointed commission that included other elected officials. However, such a commission would only have responsibility for regional district services and could result in some confusion of roles for other elected officials.
- Delegation of powers to a commission could improve local accountability regarding the delivery of services to a community, while freeing a Regional District Board from involvement in detailed discussion of such services.
- Creation of a service coordination agreement subject to Section 37 of the *Islands Trust Act* could include creation of a body responsible for implementing the agreement and this body could improve coordination between land use planning and service delivery functions.

## RECOMMENDATION

- Explore with Regional Districts the potential for creation of service coordination agreements and/or appointed commissions for the coordination of regional district services.

## **Attachments**

### **Excerpts from Relevant Legislation**

DRAFT

**Attachment 1  
Current Legislation  
relevant to  
Differentiated Tax Requisition**

**Islands Trust Act**

**[RSBC 1996] CHAPTER 239**

**(Excerpts)**

**Part 2 — Trust Council**

**Budget**

- 14** (1) On or before March 31 in each year, the trust council must, by bylaw, adopt an annual budget for the trust for the next fiscal year.
- (2) Subject to subsection (6), a bylaw under subsection (1) has no effect until it is approved by the minister.
- (3) The budget must
- (a) show separately revenues obtained from appropriations, including operating grants and anticipated recoveries from taxes levied under sections 48 and 49, and other sources,
  - (b) show appropriated surpluses of prior years, and
  - (c) set out separately the anticipated expenditure relating to
    - (i) operations of the trust council and of the executive committee, except the operations of the executive committee acting as a local trust committee under section 23 (5),
    - (ii) general operations of the local trust committees, including the operations of the executive committee acting as a local trust committee under section 23 (5) and excluding the operations referred to in subparagraph (iii),
    - (iii) operations of a local trust committee that are additional operations not included within the general operations of all the local trust committees under subparagraph (ii), and
    - (iv) administrative operations of the trust fund board.

(4) A deficit that is incurred in any of the classes of operations referred to in subsection (3) (c) (i) to (iv) must be carried forward as an expenditure against that class of operations in the next year.

(5) The limit of the budgeted expenditure for a class of operations referred to in subsection (3) (c) (i) to (iv) is the budgeted revenue for that class.

(6) Before the annual budget is approved by the minister, an expenditure is not lawful if

(a) it is not provided for in the proposed annual budget, or

(b) the total expenditures under the proposed annual budget would, as a result of the expenditure, exceed 25% of the total proposed annual budget.

(7) After the annual budget is approved by the minister, an expenditure is not lawful if it is not provided for in the annual budget.

## Part 7 — Recovery of Costs

### Requisitions, apportionment and tax rates

47 (1) In this Part:

**"converted value of land and improvements"** means the net taxable value of land and improvements multiplied by a percentage prescribed for the purposes of this section;

**"improvements"** means improvements as defined in the *Assessment Act*;

**"local trust area"** includes the area for which the executive committee acts as local trust committee under section 23 (5);

**"net taxable value of land and improvements"** means the net taxable value of land and improvements for hospital district purposes;

**"property value tax"** means a tax on the net taxable value of land and improvements that is levied by means of a variable tax rate system under which individual tax rates are determined and imposed for each class of property prescribed under section 19 of the *Assessment Act*.

(2) On or before April 25 in each year, the minister may deliver requisitions

(a) to the Minister of Finance and Corporate Relations in relation to

(i) the cost of operations of the trust council and the executive committee, except the operations of the executive committee acting as a local trust committee under section 23 (5), and the administrative operations of the trust fund board, and

(ii) the cost of operations of the local trust committees, and

(b) to each municipality in the trust area in relation to

(i) the cost of operations of the trust council and the executive committee, except the operations of the executive committee acting as a local trust committee under section 23 (5), and

(ii) the cost of administrative operations of the trust fund board.

### (3) Requisitions

(a) under subsection (2) (a) (i) and (b) must be for the purpose of recovering part of the amount appropriated by the Legislature to carry out the operations referred to in those provisions, and

(b) under subsection (2) (a) (ii) must be for the purpose of recovering all of the amount appropriated by the Legislature to carry out the operations referred to in that provision.

(4) Subject to subsection (5), a requisition under subsection (2) (a) (ii) must be made in respect of all local trust areas.

(5) If the annual budget sets out anticipated expenditures under section 14 (3) (c) (iii) relating to additional operations of a local trust committee, a special requisition under subsection (2) (a) (ii) of this section may be made in respect of the local trust area.

(6) The amount that is to be recovered by means of requisitions under subsections (2) (a) (i) and (2) (b) must be apportioned between the municipalities and the local trust areas on the basis of the converted value of land and improvements in the trust area.

(7) The assessment commissioner of the British Columbia Assessment Authority must, as soon as practicable after the relevant information is available, provide to the secretary and the minister

(a) the net taxable value of land and improvements, and

(b) the converted value of land and improvements

in each local trust area and each municipality, all or part of which is in the trust area.

**Collection outside municipalities**

**48** (1) The Minister of Finance and Corporate Relations must, on receiving a requisition under section 47 (2) (a) (i) or (ii), direct that the amount requisitioned, together with any additional sum that minister may direct to cover the costs and outlays of assessment and collection, be recovered by means of a property value tax levied in the part of the trust area in respect of which the requisition is made.

(2) The exemptions in sections 129 to 131 of the *School Act* apply for the purposes of this section.

(3) A tax levied under this section must be collected under and in accordance with the *Taxation (Rural Area) Act* as if it were a tax imposed under that Act and the provisions of that Act respecting the assessment, levy, collection and recovery of taxes and the addition of penalty and interest on unpaid taxes apply to taxes levied under this section.

**Collection in municipalities**

**49** (1) Subject to subsection (2), if a municipality receives a requisition under section 47 (2) (b), the municipality must recover the amount requisitioned by means of a property value tax levied in the municipality.

(2) The exemptions in sections 129 to 131 of the *School Act* apply for the purposes of this section.

(3) The amount referred to in subsection (1) is a debt due by the municipality to the government and must be paid by the council of the municipality to the Minister of Finance and Corporate Relations on or before August 1 of the current year.

**Attachment 2  
Current Legislation  
relevant to  
Transfer of Land Use Authority**

**Legislation relevant to Subdivision Approval**

**LAND TITLE ACT**

**[RSBC 1996] CHAPTER 250**

**(EXCERPTS)**

**Appointment of regional district and islands trust approving officers**

**77.1** (1) Subject to subsection (2), the Lieutenant Governor in Council may, by order, do one or more of the following:

- (a) authorize a regional district board to appoint a person as an approving officer for the rural area of the regional district;
- (b) authorize the trust council under the *Islands Trust Act* to appoint a person as an approving officer for the rural area of the trust area under that Act;
- (c) if an order under paragraph (a) or (b) applies, provide that section 83.1 does not apply in relation to the regional district or trust area.

(2) An order under subsection (1) (a) or (b) must be requested by resolution of the regional district board or trust council, as applicable, and must be recommended by the Minister of Transportation and Highways.

(3) An order under subsection (1) (a) or (b) may include one or more of the following:

- (a) requirements that must be met before the authorization becomes effective;
- (b) conditions relating to the appointment of the approving officer under this section;
- (c) provisions respecting the transition to the exercise of authority by an approving officer appointed under this section including, without limiting this, exceptions and modifications respecting how applications that are pending at the time the authorization becomes effective are to be dealt with.

(4) If a regional district board or the trust council is authorized under subsection (1), it must appoint an approving officer for the rural area of its jurisdiction.

(5) An approving officer appointed under this section must be

- (a) the regional district or trust area engineer,
- (b) the chief planning officer,
- (c) some other employee of the regional district or trust council appointed by the board or council, as applicable, or
- (d) a person who is under contract with the regional district or trust council.

## **LOCAL GOVERNMENT ACT —**

### **[RSBC 1996] CHAPTER 323**

#### **Fees related to applications and inspections**

**931** (1) A local government may, by bylaw, impose one or more of the following types of fees:

- (f) subdivision application fees, which may vary with the number, size and type of parcels involved in a proposed subdivision.

(2) A fee imposed under subsection (1) must not exceed the estimated average costs of processing, inspection, advertising and administration that are usually related to the type of application or other matter to which the fee relates.

## **Legislation Relevant to Building Inspection Function**

### **LOCAL GOVERNMENT ACT —**

#### **[RSBC 1996] CHAPTER 323**

**(Excerpts)**

#### **Part 24 — Regional Districts**

#### **Division 3 — Fees and Charges**

#### **Imposition of fees and charges**

**363** (1) A council may, by bylaw, impose a fee or charge payable in respect of all or part of a service of the municipality or the exercise of regulatory authority by the municipality.

(2) Without limiting subsection (1), a bylaw under this section may do one or more of the following:

- (a) if the bylaw is in relation to an authority to provide a service or regulate outside the municipality, apply outside the municipality;
- (b) base the fee or charge on any factor specified in the bylaw, including by establishing different rates or levels of fees in relation to different factors;
- (c) establish different classes of persons, property, businesses and activities and different fees or charges for different classes;
- (d) establish terms and conditions for payment, including discounts, interest and penalties;
- (e) provide for the reduction, waiving or refund of a fee or charge if, as specified in the bylaw, a person
  - (i) has already paid towards the costs to which the fee or charge relates,
  - (ii) does not require the service to which the fee or charge relates,
  - (iii) no longer undertakes the activity or thing for which a licence, permit or approval was required, or
  - (iv) has prepaid towards the costs of the service to which the fee or charge relates and use of the service by the person is discontinued;
- (f) establish fees for obtaining copies of documents that are available for public inspection.

(3) As an exception, a council may not establish a fee or charge under this section

- (a) in relation to Part 3 [*Elections*] or 4 [*Other Voting*], or
- (b) in relation to any other matter for which another provision of this Act specifically authorizes the imposition of a fee or charge.

(4) A municipality must make available to the public, on request, a report respecting how a fee or charge imposed under this section was determined.

#### **Division 4 — Services and Powers**

#### General authority for services

**796** (1) Subject to the specific limitations and conditions established by or 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.

(2) The authority under subsection (1) includes the authority to operate a service in an area outside the regional district as well as in the regional district itself.

(3) A regional district service may be operated directly by the regional district **or through another public authority, person or organization.**

## ISLANDS TRUST ACT

### [RSBC 1996] CHAPTER 239

#### Service coordination agreements with regional districts

**37** (1) The trust council and the board of a regional district, all or part of which is in the trust area, may enter into agreements respecting the coordination of official community plans, and the trust policy statement with services to be provided in the trust area by the regional district.

(2) An agreement under subsection (1) may provide for the sharing by the trust council and the regional district of the costs of the services covered by the agreement.

(3) The trust council, a local trust committee or the executive committee acting as a local trust committee must not adopt a bylaw that is contrary to or at variance with an agreement under subsection (1).

(4) The trust council or the executive committee must not approve a bylaw of a local trust committee that is contrary to or at variance with an agreement under subsection (1).

(5) Despite section 791 of the *Local Government Act*, the regional board directors who represent a municipality or electoral area, all or part of which is in the trust area, may vote in relation to an agreement under this section.

# Legislation Relevant to ALR land use and subdivision decisions

## BILL 21 -- 2002

### AGRICULTURAL LAND COMMISSION ACT

#### (Excerpts)

#### Non-farm use and subdivision application by owner

**25** (1) On an application for permission for non-farm use under section 20 (3) or for subdivision under section 21 (2), the commission may do one of the following:

- (a) refuse permission;
- (b) grant permission;
- (c) grant permission for an alternative non-farm use or subdivision.

(2) If the commission makes a decision under subsection (1) (b) or (c), it may impose terms it considers advisable.

(3) An application under this section may not proceed unless authorized by a resolution of the local government if, on the date the application is made, the application

- (a) applies to land that is zoned by bylaw to permit agricultural or farm use, or
- (b) requires, in order to proceed, an amendment to an official settlement plan, an official community plan, an official development plan or a zoning bylaw.

(4) In deciding an application under this section, the commission may meet with the applicant or may make a decision on the basis of written representations only.

(5) The commission must deliver its written decision to the owner.

#### Delegation of section 25 powers to local governments and other authorities

**26** (1) The commission may enter into an agreement with any of the following to enable a local government or an authority to exercise some or all of the commission's power to decide applications for non-farm use or subdivision with respect to lands within the jurisdiction of the local government or authority:

- (a) a local government;
- (b) an agent of the government, a public body or a public officer prescribed by regulation.

(2) An agreement under subsection (1) between the commission and an authority may exempt a non-farm use in a specified area within the jurisdiction of the authority from the requirement of an application on the condition that the authority conducts audits and reports to the commission as required by the agreement.

(3) If an agreement is entered into under subsection (1), the local government or authority must, with respect to an application covered by the agreement,

(a) consider each application in the prescribed manner, and

(b) advise the commission in the prescribed manner of each application received and of the decision made on each application.

(4) A decision made by a local government or authority under this section must be made by resolution of the local government or the governing body of the authority.

(5) If the commission delegates its power to decide applications under section 25 to a local government or an authority by an agreement entered into under this section, the decision of the local government or authority is a decision of the commission for the purposes of this Act.

(6) If an authority has the power to decide an application under an agreement entered into under subsection (1), an application that would otherwise be required to be submitted to the local government under section 34 (3) must be made directly to the authority.

(7) If a local government or an authority has the power to decide an application under an agreement entered into under subsection (1),

(a) the local government or authority may retain the entire fee payable under section 34 with respect to the application, and

(b) sections 39 to 45 apply to the application as if the application were before the commission.

## **Legislation Relevant to Other Functions**

### **Islands Trust Act**

#### **[RSBC 1996] CHAPTER 239**

##### **(Excerpts)**

**Additional powers and exceptions may be granted to a trust body**

**54 (1)** In this section, "**trust body**" includes

- (a) the executive committee,
  - (b) a specified local trust committee or a described class of local trust committees,
  - (c) the trust council, and
  - (d) the trust fund board.
- (2) The Lieutenant Governor in Council may, by regulation,
- (a) grant a power to a trust body, or
  - (b) provide for a trust body an exception to or a modification of a requirement established by an enactment.
- (3) Section 251 of the *Local Government Act* applies for the purposes of subsection (2).
- (4) Without limiting subsection (2), a regulation made under this section may allow the trust body to delegate the power granted, or to transfer the benefit received, to one or more of the other trust bodies.
- (5) A regulation made under this section must not do any of the following:
- (a) confer an authority otherwise available to a trust body;
  - (b) anything prohibited under section 251 (2) (b) to (e) of the *Local Government Act*;
  - (c) any other thing prohibited by regulation under subsection (6).
- (6) The Lieutenant Governor in Council may, by regulation, prescribe additional limitations on the authority under this section.

**Attachment 3  
Current Legislation  
relevant to  
Legislated Object Dispute Resolution**

**Islands Trust Act**

**[RSBC 1996] CHAPTER 239**

**(Excerpts)**

**Coordination agreements with other government bodies**

**9** (1) For the purpose of carrying out the object of the trust, the trust council may enter into, on its own behalf or on behalf of one or more local trust committees, agreements with one or more of the following respecting the coordination of activities in the trust area:

- (a) the government of British Columbia;
- (b) the government of Canada;
- (c) an agent of the government of British Columbia or Canada;
- (d) a municipality, regional district, board of school trustees or francophone education authority;
- (e) a first nation.

(2) An agreement under subsection (1) is subject to the approval of the minister.

(3) If there is a conflict between an agreement under subsection (1) and a bylaw or agreement of a local trust committee, the agreement under subsection (1) prevails.

**Additional powers and exceptions may be granted to a trust body**

**54** (1) In this section, "**trust body**" includes

- (a) the executive committee,
- (b) a specified local trust committee or a described class of local trust committees,
- (c) the trust council, and

- (d) the trust fund board.
- (2) The Lieutenant Governor in Council may, by regulation,
  - (a) grant a power to a trust body, or
  - (b) provide for a trust body an exception to or a modification of a requirement established by an enactment.
- (3) Section 251 of the *Local Government Act* applies for the purposes of subsection (2).
- (4) Without limiting subsection (2), a regulation made under this section may allow the trust body to delegate the power granted, or to transfer the benefit received, to one or more of the other trust bodies.
- (5) A regulation made under this section must not do any of the following:
  - (a) confer an authority otherwise available to a trust body;
  - (b) anything prohibited under section 251 (2) (b) to (e) of the *Local Government Act*;
  - (c) any other thing prohibited by regulation under subsection (6).
- (6) The Lieutenant Governor in Council may, by regulation, prescribe additional limitations on the authority under this section.

## EXAMPLES OF MANDATED CONSULTATION AND DISPUTE RESOLUTION IN EXISTING LEGISLATION

### BILL 21 -- 2002

#### AGRICULTURAL LAND COMMISSION ACT

##### Dispute resolution on community issues

- 13** (1) In this section, "**community issue**" means a matter concerning one or more of the following:
- (a) an application for a use of agricultural land for a school, hospital, publicly funded institution or public utility, or another purpose prescribed by regulation;
  - (b) a regional growth strategy under the *Local Government Act*;

- (c) the form and content of the official community plan of a local government;
  - (d) an agreement under section 26 (1).
- (2) If a dispute arises on a community issue, the commission and the local government may agree to attempt to resolve the dispute by a method of facilitated dispute resolution.
- (3) If an agreement is made under subsection (2), the commission and the local government may appoint a facilitator.
- (4) In making a recommendation to resolve a dispute, a facilitator must give weight to the following values in descending order of priority:
- (a) agricultural values, including the preservation of agricultural land and the promotion of agriculture;
  - (b) environmental, economic, social and heritage values, but only if
    - (i) those values cannot be replaced or relocated to land other than agricultural land, and
    - (ii) giving weight to those values results in no net loss to the agricultural capabilities of the area.
- (5) Each party must pay its own costs under this section.
- (6) The provisions of this section do not restrict or limit the provisions of section 2, 3 or 46.

**LOCAL GOVERNMENT ACT — *Continued***  
**[RSBC 1996] CHAPTER 323**

**Part 25 — Regional Growth Strategies**

**Division 4 — General**

**Implementation agreements**

**868** (1) Without limiting section 176 [*corporate powers*], a local government may enter into agreements respecting the coordination of activities relating to the implementation of a regional growth strategy.

(2) For the purposes of this section, the Provincial government may enter into agreements under subsection (1) respecting Provincial commitments to act consistently with a regional growth strategy and to take actions necessary to implement a regional growth strategy.

(3) In addition to agreements with the Provincial government and its agencies, agreements under subsection (1) may be made with the federal government and its agencies, other local governments, first nations, school district boards, greater boards, the Greater Vancouver Transportation Authority, improvement district boards and other local authorities.

## **BILL 14 -- 2003**

### **COMMUNITY CHARTER -- *continued***

#### **Part 9 -- Governmental Relations**

##### **Division 1 -- Provincial-Municipal Relations**

##### **Division 3 -- Dispute Resolution**

###### **Request for assistance in relation to intergovernmental dispute**

**284** (1) If a dispute arises between a municipality and

- (a) another local government, or
- (b) the Provincial government or a Provincial government corporation,

and the parties cannot resolve the dispute, one or more of the parties may apply to a dispute resolution officer for help in resolving the dispute.

(2) If an application is made under subsection (1), the dispute resolution officer

- (a) must review the matter,
- (b) may attempt to help the parties to resolve the dispute by any process the officer considers appropriate, including by using or referring the matter to mediation or another non-binding resolution process, and
- (c) may assist the parties in determining how costs of the process are to be apportioned.

(3) This Division applies to the City of Vancouver.

#### **Voluntary binding arbitration**

**285** If the parties to a dispute agree, a dispute resolution officer must direct the dispute to resolution by binding arbitration under section 287 [*final proposal arbitration*] or 288 [*full arbitration*].

#### **Mandatory binding arbitration**

**286** (1) This section applies to disputes between local governments respecting

- (a) an intermunicipal boundary highway, an intermunicipal transecting highway, an intermunicipal bridge or an intermunicipal watercourse, or
- (b) a prescribed matter.

(2) If a party to the dispute applies to a dispute resolution officer then, subject to subsection (3), the officer must direct the dispute to binding arbitration under section 287 [*final proposal arbitration*] or 288 [*full arbitration*].

(3) Before directing a dispute to binding arbitration under this section, the dispute resolution officer may direct the dispute to mediation or another non-binding resolution process.

(4) The choice of arbitration process under this section is to be determined by agreement between the parties but, if the dispute resolution officer considers that the parties will not be able to reach agreement, the officer may direct which process is to be used.

(5) If more than one local government is involved in a matter that has been directed to binding arbitration under this section, the arbitrator may direct that the matter is to be settled for all local governments in the same arbitration.

(6) If a local government does not adopt the bylaws required under section 290 [*implementation of arbitrator's decision*] in relation to an arbitration under this section, the Lieutenant Governor in Council may, on the recommendation of the minister, implement the terms and conditions of the arbitrator's decision.

(7) An order under subsection (6) is deemed to be a bylaw of the local government.

#### **Final proposal arbitration**

**287** The following apply to a dispute referred to in section 285 or 286 that is to be resolved by final proposal arbitration:

- (a) the dispute is to be resolved by a single arbitrator;

(b) the arbitrator is to be selected, from the list prepared under section 289 (1) [*arbitrator list*], by agreement among the parties to the dispute or, if the dispute resolution officer considers that these parties will not be able to reach agreement, by the officer;

(c) subject to any applicable regulations, the arbitrator must conduct the proceedings on the basis of a review of written documents and written submissions only, and must determine each disputed issue by selecting one of the final written proposals for resolving that issue submitted by one of the participating parties;

(d) the matter in dispute will be as settled by the arbitrator after incorporation of the final proposals selected by the arbitrator under paragraph (c);

(e) no written reasons are to be provided by the arbitrator.

#### **Full arbitration**

**288** The following apply to a dispute referred to in section 285 or 286 that is to be resolved by full arbitration:

(a) the dispute is to be resolved by a single arbitrator, who is to be selected in accordance with section 287 (b) [*final proposal arbitration*];

(b) subject to any applicable regulations, the arbitrator may conduct the proceedings at the times and in the manner he or she determines;

(c) the matter will be as settled by the arbitrator, who is not restricted in his or her decision to submissions made by the parties on the disputed issues;

(d) the arbitrator must give written reasons for the decision.

#### **General provisions regarding arbitration process**

**289** (1) The minister must, after consultation with representatives of the Union of British Columbia Municipalities, prepare a list of persons who may be arbitrators under this Division.

(2) If a dispute between local governments is referred to arbitration under this Division, subject to a direction by the arbitrator or to an agreement between the parties,

(a) the fees and reasonable and necessary expenses of the arbitrator, and

(b) the administrative costs of the process, other than the costs incurred by the parties participating in the process,

are to be shared proportionately between the parties participating in the process on the basis of the converted value of land and improvements in their jurisdiction.

(3) The time limit for bringing any judicial review of a decision of an arbitrator under this Division is the end of the period for agreement under section 290 (1).

#### **Implementation of arbitrator's decision**

**290** (1) During the 60 days after a matter is settled under section 287 [*final proposal arbitration*] or 288 [*full arbitration*], the parties may agree on a settlement that differs from the decision of the arbitrator.

(2) At the end of the period referred to in subsection (1), unless agreement is reached as referred to in that subsection, the decision of the arbitrator becomes binding on the parties.

(3) If the decision becomes binding under subsection (2), the parties to the arbitration must adopt the bylaws and take the other actions required to implement the terms and conditions of the arbitrator's decision within 90 days after it becomes binding under that subsection.

(4) Despite any other provision of this Act or any other Act, approval of the electors or assent of the electors is not required for a bylaw referred to in subsection (3).

(5) A dispute resolution officer may extend the time period under subsection (1) before or after it has expired.

#### **Regulations respecting arbitrations**

**291** The minister may make regulations respecting arbitrations under this Division and, without limiting this, may make regulations respecting one or more of the following:

(a) matters that an arbitrator must or may consider;

(b) the authority of an arbitrator to resolve the terms and conditions for a dispute;

(c) the authority of an arbitrator to require the cooperation of the parties to the arbitration and their officials and representatives in relation to the arbitration.

**Attachment 4  
Current Legislation  
relevant to  
Island Service Coordination**

**LOCAL GOVERNMENT ACT — *Continued*  
[RSBC 1996] CHAPTER 323**

**Corporate powers of local governments**

**176** (1) Subject to the specific limitations and conditions established by or under this or another Act, the corporate powers of a local government include the following:

- (a) to make agreements respecting
  - (i) the local government's services, including agreements respecting the undertaking, provision and operation of its services, other than the exercise of its regulatory authority,
  - (ii) operation and enforcement in relation to the local government's exercise of its regulatory authority, and
  - (iii) the management of property or an interest in property held by the local government;
- (b) to make agreements with a public authority respecting
  - (i) activities, works or services within the powers of a party to the agreement, other than the exercise of regulatory authority, including agreements respecting the undertaking, provision and operation of activities, works and services,
  - (ii) operation and enforcement in relation to the exercise of regulatory authority within the powers of a party to the agreement, and
  - (iii) the management of property or an interest in property held by a party to the agreement;
- (c) to provide assistance for the purpose of benefiting the community or any aspect of the community;
- (d) to acquire, hold, manage and dispose of land, improvements, personal property or other property, and any interest or right in or with respect to that property;

(e) to delegate its powers, duties and functions, including those specifically established by an enactment, to its officers and employees, its committees or its members, or to other bodies established by the local government;

(f) to engage in commercial, industrial and business undertakings and incorporate a corporation or acquire shares in a corporation for that purpose;

(g) to establish commissions to

(i) operate services of the local government,

(ii) undertake operation and enforcement in relation to the local government's exercise of its regulatory authority, and

(iii) manage property or an interest in property held by the local government.

(2) In exercising its powers under subsection (1), a local government may establish any terms and conditions it considers appropriate.

(3) The powers of a local government under subsection (1) may be exercised outside the boundaries of the municipality or regional district.

## **Part 24 — Regional Districts**

### **Local community commissions**

**838** (1) A board may, by bylaw, establish in an electoral area one or more local communities to be administered by local community commissions.

(2) A bylaw establishing a local community, or a bylaw amending or repealing such a bylaw, has no effect unless it receives the assent of the electors in the area of the local community and is approved by the inspector.

(3) As an exception to subsection (2), the minister may waive the requirement for assent of the electors to a bylaw that amends or repeals a bylaw establishing a local community.

(4) For the purposes of obtaining the assent of the electors as required by this section, Part 4 applies and the voting area is to be the proposed local community or the local community, as applicable.

(5) A bylaw establishing a local community must do the following:

- (a) name the local community;
  - (b) establish the boundaries of the local community;
  - (c) establish the time and manner of holding annual general meetings of the commission;
  - (d) establish either
    - (i) that elections for commissioners are to be held every 3 years at the time of the general local election, or
    - (ii) that elections for commissioners are to be held each year at a time specified in the bylaw.
- (6) A bylaw establishing a local community may do one or more of the following:
- (a) establish the manner of holding elections for commissioners, if this is to be different from that provided by the application of Part 3;
    - (a.1) provide that the number of elected commissioners is to be 6;
  - (b) [Repealed 1998-34-186.]
  - (c) set terms, conditions and restrictions on activities of the commission.
- (7) A bylaw under subsection (6) (a) must be adopted at least 8 weeks before the general voting day for the election to which it first applies.
- (8) The commission for a local community consists of
- (a) unless the bylaw provides otherwise under subsection (6) (a.1), 4 elected commissioners, and
  - (b) the director for the electoral area in which the local community is located.
- (8.1) A commissioner must have the qualifications to hold office as a director.
- (9) Except as provided by a bylaw under subsection (6) (a), Part 3 applies to the election of commissioners.
- (10) The term of office for elected commissioners is to be
- (a) 3 years or until their successors are elected, whichever is later, if the bylaw establishing the local community specifies that elections are to be held every 3 years, or

(b) one year or until their successors are elected, whichever is later, if the bylaw establishing the local community specifies that elections are to be held each year.

(11) At each annual general meeting, the commissioners must elect a chair and a vice chair.

(12) Section 788, as it applies to committee members, applies to the remuneration and reimbursement of commissioners.

G:\EXEC\Council\Trust Area Governance\2003\LA Legislative Implications of Governance Options Aug 2003.doc

DRAFT