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COASTAL FERRY ACT

[SBC 2003] CHAPTER 14

Assented to March 27, 2003

Part 1 — Interpretation

Definitions

1 In this Act:

"ancillary services" means any services that are not directly related to the transportation of vehicles and passengers, including, without limitation,

(a) parking,

(b) catering and retail concessions,

~~(c) reservations,~~

(d) vessel maintenance,

(e) terminal maintenance, and

(f) other services not directly related to the provision of core ferry services;

"appointment area" means an area designated as an appointment area by the Lieutenant Governor in Council under section 5 (2);

"Authority" means the B.C. Ferry Authority established under section 2;

"BCFS" means British Columbia Ferry Services Inc., a company incorporated under the *Business Corporations Act*;

"Coastal Ferry Services Contract" means a contract referred to in section 27 and includes all related contracts that are, in the contract referred to in section 27, specified as forming part of the Coastal Ferry Services Contract, and, when used in relation to a ferry operator, means the contract referred to in section 27, including the specified related contracts, entered into by that person;

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"commissioner", subject to section 35 (7), means the British Columbia Ferries Commissioner appointed under section 35;

"competitive service" means a ferry transportation service, including, without limitation, a drop trailer service, that is the same as or substantially similar to a service being provided

(a) by a person other than a ferry operator, and

(b) in a geographical area that is sufficiently near to where the ferry transportation service is or may be provided that the 2 services could reasonably be in competition;

"company" has the same meaning as in the *Business Corporations Act*;

"core ferry services" means, in relation to a ferry operator, the ferry transportation services that the ferry operator is required to provide under the Coastal Ferry Services Contract;

"deputy commissioner" means a deputy commissioner appointed under section 35;

"designated ferry routes" means the ferry routes identified as designated ferry routes in current Coastal Ferry Services Contracts;

"drop trailer service" means a service in which a ferry operator

(a) loads on a vessel,

(b) transports on the vessel on a major route, and

(c) unloads from the vessel

a trailer left with the ferry operator for those purposes;

"executive", in relation to BCFS, means an individual who is the chief executive officer or an executive vice president of BCFS or who is, despite his or her title, acting in a similar capacity or performing similar functions to a chief executive officer or an executive vice president of BCFS;

"ferry operator" means each person who, under the terms of a Coastal Ferry Services Contract, is authorized to operate one or more ferries on one or more designated ferry routes;

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"ferry transportation services" means the transportation of vehicles and passengers on designated ferry routes, and does not include any ancillary services;

"first performance term", in relation to a Coastal Ferry Services Contract, means the period beginning on the effective date of that contract and ending on the day before the fifth anniversary of that effective date;

"generally accepted accounting principles" means generally accepted accounting principles used in Canada;

"inspector" means a person appointed to inspect operations of a ferry operator under section 46;

"maintenance subsidiary" means the subsidiary, if any, established by British Columbia Ferry Corporation under section 19 (4) for its maintenance and refit operations;

"major route" means any designated ferry route identified as a major route in a Coastal Ferry Services Contract;

"make public", in relation to a record or information, means post the record or information on a website accessible to the general public and publish, in 3 consecutive issues of a newspaper circulated in British Columbia, a notice setting out general information about the subject matter in relation to which the publication is made and directing the reader to that website for the particulars relating to that subject matter;

"performance term", in relation to a Coastal Ferry Services Contract, means the first performance term or any subsequent 4 year period, during the term of the contract, that begins on an anniversary, divisible by 4, of the day following the last day of the first performance term;

"price cap", in relation to a route group, means the price cap established in relation to that route group under section 39 or 40, as the case may be;

"public sector employer" has the same meaning as in the *Public Sector Employers Act*;

"qualified Authority candidate" means an individual who

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(a) does not hold elected public office of any type,

(b) is not an employee, steward, officer, director, elected official or member of any union representing employees of BCFS,

(c) is not an employee of a municipality, regional district, trust council or greater board within the appointment area, and

(d) is not an employee, director, officer or executive of BCFS;

"qualified BCFS candidate" means an individual who

(a) does not hold elected public office of any type,

(b) is not an employee, steward, officer, director, elected official or member of any union representing employees of BCFS,

(c) is not an employee of a municipality, regional district, trust council or greater board within the appointment area, and

(d) is not an employee, director or officer of the Authority or an employee, officer or executive of BCFS;

"qualified individual" means an individual who

(a) is not an employee or an officer, other than the chief executive officer, of British Columbia Ferry Corporation,

(b) does not hold elected public office of any type,

(c) is not an employee, steward, officer, director, elected official or member of any union representing employees of British Columbia Ferry Corporation, and

(d) is not an employee of a municipality, regional district, trust council or greater board within the appointment area;

"remuneration", in relation to a person, means all money and benefits,

including, without limitation, salary, incentives and pension contributions, provided or available to the person in return for the person performing or agreeing to perform services for, or acting or agreeing to act in a capacity for, the person by whom or on whose behalf the money and benefits are being provided or made available;

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"reservation fee" means the tariff charged by a ferry operator to allow a person to reserve passage for a vehicle on a vessel; .

"route group", in relation to a ferry operator, means a designated ferry route, or a grouping of designated ferry routes, that is identified as a route group in the Coastal Ferry Services Contract;

"tariff revenue" does not include service fees, any subsidies paid under the 1977 Federal Provincial Subsidy Agreement or any revenue realized from ancillary services.

Part 2 — Corporate Restructuring

Division 1 — B.C. Ferry Authority

Corporation established

2 (1) A corporation known as the B.C. Ferry Authority is established.

~~(2) The purposes of the Authority are to do any or all of hold, administer and sell a voting share in British Columbia Ferry Corporation after British Columbia Ferry Corporation is converted into a company.~~

(2) The purposes of the Authority are to

(a) do any or all of hold, administer and sell a voting share in BCFS, and

(b) oversee BCFS in accordance with Division 2.1.

(3) The Authority has the power and capacity of an individual of full capacity in relation to its purposes.

(4) The Authority has no share capital.

Capital

3 (1) For the purposes of section 2 (2), the government is to provide to the Authority the sum of \$1 000 as its capital, and the Authority is to pay that \$1 000 to British

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Columbia Ferry Corporation to purchase one voting share of British Columbia Ferry Corporation.

(2) No other person may

- (a) invest in the Authority,
- (b) provide any capital to the Authority,
- (c) have any interest in or right to capital of the Authority, or
- (d) receive a distribution of capital of the Authority.

(3) On the sale by the Authority of the share purchased by it in accordance with subsection (1),

- (a) the government is to receive a repayment of the capital, and
- (b) the term of office of the directors is deemed to expire and the Authority is dissolved.

(4) On dissolution of the Authority, all of the remaining assets of the Authority, if any, vest in the government.

First directors of Authority

4 (1) The first directors of the Authority are the individuals who, immediately before the coming into force of this Act, were the directors of British Columbia Ferry Corporation.

(2) The term of office of the first directors of the Authority expires March 31, 2004.

(3) In the event of a vacancy among the first directors of the Authority, the other directors may appoint a replacement director whose term of office expires March 31, 2004.

Directors appointed under this Division

5 (1) Directors of the Authority, other than its first directors who are in their first term of office with the Authority, must be **qualified individuals-Authority candidates** and must be appointed in accordance with this Division.

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(2) For the purposes of this Division, the Lieutenant Governor in Council may, by regulation, designate 4 appointment areas consisting of those coastal regional districts that the Lieutenant Governor in Council may prescribe.

(3) Subject to section 4, the board of directors of the Authority is to consist of 9 individuals of whom

(a) 4 are to be appointed from the nominees provided under section 6 (1) (a) or 7 (1) (a) by appointment areas, with one director being appointed out of the nominees provided by each of the 4 appointment areas,

(b) one is to be appointed from nominees provided under section 6 (1) (b) or 7 (1) (b) by the trade union representing the employees of British Columbia Ferry Corporation,

(c) 2 are to be appointed by the Lieutenant Governor in Council from ~~qualified individuals~~ Authority candidates, and

(d) 2 are to be appointed from ~~qualified individuals~~ Authority candidates.

(4) Subject to subsection (5) and to sections 4 and 6 (3), the term of office of a director of the Authority is 3 years, beginning on April 1 and ending on the third March 31 to follow the beginning of the director's term, and a director may be appointed for not more than 2 consecutive terms.

(5) A director of the Authority is removed as, and ceases to be, a director of the Authority on the passing of a resolution to that effect by the remaining directors.

Directors whose terms begin April 1, 2004

6 (1) For the purposes of appointing directors to replace the first directors of the Authority, on or before September 30, 2003,

(a) each appointment area must provide to the directors of the Authority a list of at least 3 and not more than 5 nominees who are qualified individuals, and

(b) the trade union representing the employees of British Columbia Ferry Corporation must provide to the directors of the Authority a list of at least 3 and not more than 5 nominees who are qualified individuals.

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(2) On or before the expiry of the term of the first directors of the Authority, the Lieutenant Governor in Council is, subject to section 12, to appoint 2 qualified individuals as directors, and must promptly notify the directors of the Authority of those appointments.

(3) After receiving the lists of nominees provided under subsection (1) and on or before the expiry of the term of the first directors of the Authority, the directors of the Authority are, subject to section 12, to appoint 7 individuals as directors in accordance with section 5 (3) (a), (b) and (d), and of the 9 individuals appointed under this section,

(a) 3 must be appointed for a term of one year,

(b) 3 must be appointed for a term of 2 years, and

(c) 3 must be appointed for a term of 3 years.

(4) If an appointment area or the trade union representing the employees of British Columbia Ferry Corporation does not comply with subsection (1), the directors of the Authority are, on or before the expiry of the term of the first directors of the Authority and subject to section 12, to appoint a qualified individual as director, and that director is deemed to be appointed from the nominees of that appointment area or trade union.

Subsequent directors

7 (1) For the purposes of appointing directors other than directors appointed under section 6,

(a) an appointment area is, at least 3 months before the expiry of the term of each director appointed from its nominees, to provide to the directors of the Authority a list of at least 3 and not more than 5 nominees who are ~~qualified individuals~~ Authority candidates, and

(b) the trade union representing the employees of British Columbia Ferry Corporation is, at least 3 months before the expiry of the term of a director appointed from its nominees, to provide to the directors of the Authority a list of at least 3 and not more than 5 nominees who are ~~qualified individuals~~ Authority candidates.

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(2) After receiving the lists of nominees provided under subsection (1), the directors of the Authority whose terms of office do not expire at the end of the fiscal year in which the lists were received must, subject to section 12, appoint as directors one of the nominees from each of the submitted lists.

(3) On or before the expiry of the term of each director appointed under section 5 (3) (c), the Lieutenant Governor in Council is, subject to section 12, to appoint a ~~qualified individuals~~ Authority candidate as a replacement director and must promptly notify the directors of the Authority of that appointment.

(4) On or before the expiry of the term of each director appointed under section 5 (3) (d), the directors of the Authority are, subject to section 12, to appoint a ~~qualified individuals~~ Authority candidate as a replacement director.

(5) If an appointment area or the trade union representing the employees of British Columbia Ferry Corporation does not comply with subsection (1), the directors of the Authority are, on or before the expiry of the term of the director for whose replacement the list was required under subsection (1) and subject to section 12, to appoint a ~~qualified individuals~~ Authority candidate as director, and that director is deemed to be appointed from the nominees of that appointment area or trade union.

Conflicts

- 8** (1) Subject to subsection (5), every director of the Authority who, in any way, directly or indirectly,
- (a) has a beneficial interest in a share, stock, bond, debenture or other security of a ferry operator,
 - (b) has a significant beneficial interest in a device, appliance, machine, article, patent or patented process, or a part of it, that is required or used by a ferry operator for the purpose of the ferry operator's equipment or service,
 - (c) has a significant beneficial interest in a contract for the construction of works or provision of a service for or by a ferry operator, or
 - (d) has a significant beneficial interest in a corporation or other person competing with British Columbia Ferry Corporation for marine transportation business,

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must disclose the nature and extent of the interest.

(2) The disclosure required of a director under subsection (1) must be made by the director at the first meeting of the directors held

(a) after he or she becomes a director, or

(b) if he or she is already a director, after he or she becomes in a position of conflict.

(3) A director of the Authority who is in a position of conflict described in subsection (1) (a) or (d), must, promptly after becoming aware of that fact,

(a) eliminate the circumstances that resulted in that position of conflict, or

(b) resign as director.

(4) If a director of the Authority is in a position of conflict described in subsection (1) (a) or (d) and does not comply with subsection (3) within 3 months after becoming aware of the conflict, the other directors of the Authority must remove that director from office.

(5) A director of the Authority who has a beneficial interest in a publicly held mutual fund or pension fund that contains any of the investments referred to in subsection (1) (a) is not, merely because of that interest, required to disclose that interest under subsection (1), or in a position of conflict of interest for the purposes of subsections (3) and (4), unless those investments make up more than 30% of the total mutual fund or pension fund holdings.

Application of the *Business Corporations Act*

9 (1) **Subject to this Act,** sections 124 (1) and (2), 126, 136, 140, 142 and 143 of the *Business Corporations Act* apply to the Authority and to its directors.

(2) A director who ceases to be qualified to act as a director of the Authority under section 124 (2) of the *Business Corporations Act* as it applies for the purposes of this section must promptly resign and may be removed by the other directors.

(3) For the purposes of subsection (1), a reference in sections 136, 140 and 142 of the *Business Corporations Act*, as they apply for the purposes of this section, to "articles" is deemed to be a reference to the bylaws of the Authority.

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When directors cease to hold office

10 A director ceases to hold office when

- (a) the term of office of that director expires in accordance with this Act,
- (b) the director dies or resigns, or
- (c) the director is removed in accordance with section 5 (5).

Vacancies among the directors

11 (1) If one of the directors of the Authority dies, resigns or is removed, a replacement for that director must, subject to subsection (2), be appointed in the same manner as that director was appointed.

(2) Without limiting subsection (1), if a departing director was appointed from the nominees of an appointment area or of the trade union representing the employees of British Columbia Ferry Corporation, the appointment area or the trade union, as the case may be, must promptly provide a list of nominees in compliance with section 7 (1), and the directors of the Authority must, subject to section 12, promptly appoint as the replacement director, one of the nominees from the submitted list.

(3) A replacement director appointed under subsection (1) holds office until the end of the term of the departing director and may be reappointed as a director for one further term only.

(4) If an appointment area or the trade union representing the employees of British Columbia Ferry Corporation does not comply with subsection (2), the directors of the Authority are, subject to section 12, to appoint a **qualified individual** ~~Authority~~ **candidate** as the replacement director, and that director is deemed to be appointed from the nominees of that appointment area or trade union.

Factors to be considered in appointments

12 When appointing directors under this Division, the appointing directors must select appointees in such a way as to ensure that, as a group, the directors are **qualified individuals** ~~Authority candidates~~ who hold all of the skills, and all of the experience, identified in the current vacancy skills and experience profile set out in the bylaws of the Authority under section 16 (2).

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Role of directors

- 13** (1) The directors may appoint one of their number as chair. ~~but in no event may the chief executive officer of British Columbia Ferry Corporation be the chair of the directors of the Authority.~~
- (2) Subject to this Division, the directors may establish their own procedures.
- (3) The directors of the Authority must manage the affairs of the Authority or supervise the management of those affairs and may do one or both of the following:
- (a) exercise the powers of the Authority on behalf of the Authority;
 - (b) delegate the exercise or performance of any power or duty conferred or imposed on them to a committee of directors appointed by the directors.
- (4) The directors may pass the resolutions they consider necessary or advisable to give effect to the purposes of the Authority and for the exercise of their powers or performance of their duties including, without limitation, resolutions respecting the calling and holding of meetings of the directors and the procedure to be followed at the meetings.
- (5) A resolution of the directors, if approved by the required number of directors by telex, telegraph, facsimile or other electronic transmission, telephone or any other similar means of communication and confirmed in writing or other graphic communication, is as valid and effectual as if it had been passed at a meeting of the directors properly called and constituted.
- (6) The directors must make public the location of the Authority's head office.
- (7) No act or proceeding of the directors is invalid merely because the composition of the board does not accord with section 5 (3) or 12.

Remuneration of directors

- 14** (1) In this section, "**directorial service**" means
- (a) attending any meeting of the board of directors of the Authority or of any committee of those directors, or
 - (b) attending the annual meeting of the Authority.
- (2) The following apply to each director of the Authority:

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(a) the director is entitled to an allowance, in the amount and on the terms established in the bylaws of the Authority, for actual reasonable expenses necessarily incurred in attending the meetings referred to in subsection (1);

~~(b) if, on any day for which the director is not receiving remuneration from British Columbia Ferry Corporation, the director performs directorial services for the Authority, the director is entitled to remuneration for that day equivalent to the daily remuneration that may be paid to a director of British Columbia Ferry Corporation for performing a similar service.~~

(b) the director is entitled to be paid remuneration, for any day on which the director performs a directorial service, in an amount and manner consistent with provincial public sector organizations in British Columbia.

Indemnification

15 (1) The Authority may indemnify a person who is a director or former director of the Authority, and the person's heirs and personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, actually and reasonably incurred by the person, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a director, including an action brought by the Authority, if

(a) the person acted honestly and in good faith with a view to the best interests of the Authority, and

(b) in the case of a criminal or administrative action or proceeding, the person had reasonable grounds for believing that the person's conduct was lawful.

(2) The Authority may purchase and maintain insurance for the benefit of a person referred to in this section against any liability incurred by the person as a director.

Bylaws

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- 16** (1) The directors must prepare a set of bylaws of the Authority that, in accordance with best practices for board governance, sets rules for its conduct, including rules respecting what constitutes a quorum for a meeting of the directors or any committee of directors, and the directors may amend the bylaws from time to time.
- (2) The directors must prepare a vacancy skills and experience profile to set out the skills and experience that must be represented on the board of directors and must include that vacancy skills and experience profile in the bylaws of the Authority.
- (3) At least 4 months before bylaws or amendments to bylaws are to take effect, the directors must make public the proposed bylaws or amendments and must deposit them in the Authority's head office.

Records

- 17** (1) The Authority must keep records in accordance with generally accepted accounting principles.
- (2) The Authority must keep the following records at its head office:
- (a) its bylaws;
 - (b) every amendment to its bylaws;
 - (c) every proposed set of bylaws or proposed bylaw amendment referred to in section 16 (3);
 - (d) a list of its current directors;
 - (e) each of the records that, under subsection (1), it is required to keep for the current and previous fiscal year;
 - (f) the minutes of every meeting of directors and of every meeting of every committee of directors;
 - (g) any lists or other records submitted to it under section 6, 7 or 11;
 - (h) copies of any notices published in a newspaper by or on behalf of the Authority;
 - (i) copies of every annual report made public by or on behalf of the Authority.

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- (3) Any person may, without charge, inspect during normal business hours all of the records that the Authority is required to keep under this section.
- (4) If a person requests a copy of a record that the Authority is required to keep under this section and pays the fee set in the bylaws of the Authority under subsection (5) in relation to that copy, the Authority must provide a copy of that record to that person promptly after receipt of the request and payment.
- (5) The Authority may, in its bylaws, set a reasonable fee for providing a copy of any of its records under subsection (4).
- (6) In addition to complying with subsection (2) (a) to (c), the Authority must maintain a website on which its bylaws, every amendment to its bylaws and every proposed set of bylaws or proposed bylaw amendments referred to in section 16 (3) are and remain publicly available without charge.

Annual meeting

- 18** (1) The Authority must hold an annual general meeting within 6 months after the end of each of its fiscal years.
- (2) An annual general meeting must be held in one of the appointment areas but need not be held in the same appointment area every year.
- (3) The directors must make public the date and location of the annual general meeting not more than 2 months before the date of the meeting.
- (4) At least 10 days before the date of an annual general meeting, the directors must make public an annual report that complies with subsection (5).
- (5) An annual report referred to in subsection (4) must include, in relation to the most recently completed fiscal year of the Authority,
 - (a) the audited financial statements of the Authority for the most recently completed fiscal year,
 - (b) the considerations taken into account by the directors in appointing directors in that fiscal year,
 - (c) any amendments made to the bylaws of the Authority in that fiscal year, and

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(d) the date, type and outcome of any meetings held in that fiscal year,
and

(e) the rate at which remuneration is paid to each director and the amount each director received for remuneration and expenses in that fiscal year.

(6) An annual general meeting of the Authority is open to any person, and any person attending the meeting may, subject to any reasonable restrictions imposed by the directors, address the meeting.

(7) The directors must place the annual report before the annual general meeting and must make a copy of that report available, without charge, to any person requesting a copy.

Division 2 — British Columbia Ferry Corporation

Conversion of British Columbia Ferry Corporation

19 (1) British Columbia Ferry Corporation may apply to be converted into a company.

(2) After British Columbia Ferry Corporation is converted into a company,

(a) an officer of the company must not be chair of the company's board of directors, and

(b) the president of the company need not be a director.

(3) On British Columbia Ferry Corporation's conversion into a company, the *Ferry Corporation Act* is repealed, and, without limitation, the corporation ceases to be an agent of the government and the Minister of Finance ceases to be the fiscal agent for the corporation.

(4) Without limiting British Columbia Ferry Corporation's ability to create subsidiaries at any time and for any purpose, that corporation may, after its conversion into a company as contemplated by this section, establish a subsidiary for its maintenance and refit operations.

British Columbia Ferry Corporation must pay expenses incurred by Authority

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20 (1) Both before and after its conversion, if any, British Columbia Ferry Corporation is responsible for paying any expenses that are incurred by the Authority in performing the Authority's obligations under **Division 1** of this Part or in otherwise conducting the Authority's affairs, including, without limitation, any remuneration paid or payable to the directors of the Authority under **Division 1** of this Part.

(2) Without limiting subsection (1), British Columbia Ferry Corporation must **both before and after its conversion**, promptly after being requested to do so by the directors of the Authority,

(a) pay to the Authority any money that the directors of the Authority, acting reasonably, consider necessary to meet the expenses that may be incurred by the Authority in performing its obligations under **Division 1** of this Part or in otherwise conducting the Authority's affairs, and

(b) reimburse the Authority for any expenses incurred by the Authority in performing its obligations under **Division 1** of this Part or in otherwise conducting the Authority's affairs that were not covered by payments provided under paragraph (a).

(3) Each annual financial statement for British Columbia Ferry Corporation must **both before and after its conversion** clearly indicate the amount of money provided under this section by **British Columbia Ferry Corporation to the Authority that corporation to the Authority** in the fiscal year for which the financial statements are prepared.

Sale of shares permitted

21 (1) The Minister of Finance may, on behalf of the government, sell to British Columbia Ferry Corporation the shares of British Columbia Ferry Corporation held by that minister for any one or more of cash, debt, securities, assets and shares of any type.

(2) Any shares obtained by the government as a result of a sale referred to in subsection (1) must, for so long as they remain under government control, be registered in the name of the Minister of Finance and be held by that minister on behalf of the government.

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Appointment of directors

21.1 The directors of the Authority, when electing directors to the board of BCFS, must select individuals in such a way as to ensure that, as a group, the directors of BCFS are qualified BCFS candidates who hold all of the skills, and all of the experience, needed to oversee the operation of BCFS in an efficient and cost effective manner.

Remuneration of directors

21.2 (1) Subject to subsection (2), the Authority may establish or amend a BCFS directors' compensation plan.

(2) A BCFS directors' compensation plan must

(a) establish the methodology by which remuneration for the directors of BCFS is to be determined, which methodology must result in remuneration for the directors of BCFS that is,

(i) subject to subparagraph (ii), consistent with the remuneration that organizations in Canada that are of a similar size and scope to BCFS provide to their directors, and

(ii) not greater than the remuneration that provincial public sector organizations in British Columbia provide to their directors, and

(b) identify the organizations that are being used as the comparisons for the purposes of paragraph (a).

(3) After it has established or amended a BCFS directors' compensation plan, the Authority must, in accordance with that plan, determine remuneration for the directors of BCFS and the terms on which it is to be paid.

(4) Promptly after the Authority has established or amended a BCFS directors' compensation plan and determined the remuneration for the directors of BCFS, the Authority must take all necessary actions to amend the articles of BCFS to

(a) adopt the BCFS directors' compensation plan as established or amended,

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(b) ensure that the articles require that all directors' remuneration be set and provided in accordance with the BCFS directors' compensation plan,

(c) set out the remuneration determined under subsection (3) that may be paid under that plan or amended plan, and

(d) ensure that the articles require BCFS to publish, in each fiscal year, details of the remuneration provided to its directors in the previous fiscal year.

(5) The Authority must not amend a provision in the articles of BCFS that relates to remuneration of the directors of BCFS or the terms on which it is to be paid unless that amendment is made in accordance with subsection (4).

(6) The Authority must, promptly after it has established or amended a BCFS directors' compensation plan, publish that plan or amended plan on its website.

Limits on directors' remuneration

21.3 A director of BCFS is not entitled to receive remuneration from BCFS in excess of

(a) the remuneration the director is entitled to receive under the BCFS directors' compensation plan as most recently established or amended by the Authority, or

(b) if a BCFS directors' compensation plan has not been established by the Authority, remuneration that the director would, under section 21.2 (2), be entitled to receive under a BCFS directors' compensation plan.

Remuneration of executives

21.4 (1) The Authority must take all necessary actions to ensure that the articles of BCFS include a requirement that BCFS not

(a) set or change the remuneration for an individual who is an executive, whether or not that person is assuming a different role as an executive, or

(b) set remuneration for an individual who is to become an executive,

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other than in accordance with an executive compensation plan approved by the Authority.

(2) The Authority must not approve an executive compensation plan for BCFS unless the plan

(a) establishes the methodology by which remuneration for the executives is to be determined, which methodology must result in remuneration for each executive of BCFS that is,

(i) subject to subparagraph (ii), consistent with the remuneration provided to individuals who, in organizations in Canada that are of a similar size and scope to BCFS, perform similar services or hold similar positions to that executive of BCFS, and

(ii) not greater than the remuneration that provincial public sector employers in British Columbia provide to individuals who, in those organizations, perform similar services or hold similar positions to that executive of BCFS,

(b) identifies the organizations that are being used as the comparisons for the purposes of paragraph (a), and

(c) sets out the remuneration for the executives and the terms on which it is to be paid.

(3) Promptly after the Authority has approved an executive compensation plan, the Authority must take all necessary actions to amend the articles of BCFS to

(a) adopt the executive compensation plan,

(b) ensure that the articles require that all executives' remuneration be set and provided in accordance with the executive compensation plan,

(c) set out the remuneration that may be provided under the executive compensation plan, and

(d) ensure that the articles require BCFS to publish, in each fiscal year, details of the remuneration provided to its executives in the previous fiscal year.

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(4) The Authority must not amend a provision included in the articles of BCFS under subsection (3) other than in accordance with that subsection.

(5) The Authority must, promptly after it has approved an executive compensation plan under this section, publish that plan on its website.

Limits on executive remuneration

21.5 An executive of BCFS is not entitled to receive remuneration from BCFS in excess of

(a) the remuneration the executive is entitled to receive under the executive compensation plan most recently approved by the Authority, or

(b) if an executive compensation plan has not been approved by the Authority, remuneration that the executive would, under section 21.4 (2), be entitled to receive under an executive compensation plan.

Division 3 – Employees

Transfer of employees

22 (1) It is deemed that the persons who were, immediately before the conversion of British Columbia Ferry Corporation into a company as contemplated by section 19, employees of British Columbia Ferry Corporation are, on that conversion, transferred to and become the employees of the converted company.

(2) On and after its conversion into a company as contemplated by section 19, British Columbia Ferry Corporation is neither an agent of the government nor a common employer with either or both of the Authority and the government, and neither the Authority nor the government is an employer of the employees referred to in subsection (1).

Transfer of employees to maintenance subsidiary

23 (1) In this section:

"designated employee" means any employee of British Columbia Ferry Corporation who has been designated by the Lieutenant Governor in Council under subsection (2);

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"transferred employee" means a designated employee who is transferred to the maintenance subsidiary by an order made under subsection (3).

(2) The Lieutenant Governor in Council may, by order, designate, by name, classification or other description, any employee of British Columbia Ferry Corporation.

(3) The Lieutenant Governor in Council may, for the purpose of effecting a transfer of designated employees under this section, make an order

(a) naming the maintenance subsidiary to be the employer to whom the designated employees are transferred, and

(b) setting the transfer date.

(4) An order under subsection (3) in relation to designated employees may be made only on the recommendation of British Columbia Ferry Corporation.

(5) On the transfer date set by an order under subsection (3), the employees designated in the order

(a) cease to be employees of British Columbia Ferry Corporation, and

(b) become employees of the maintenance subsidiary.

(6) A question or difference between the maintenance subsidiary and

(a) a transferred employee who is a member of a unit of employees for which a trade union has been certified under the *Labour Relations Code*,
or

(b) a trade union representing transferred employees,

respecting the application of the *Labour Relations Code* or the interpretation or application of this section, may be referred to the Labour Relations Board in accordance with the procedure set out in the *Labour Relations Code* and its regulations.

(7) The Labour Relations Board may, in respect of a question or difference referred to in subsection (6) of this section, decide the question or difference in any of the ways, and by applying any of the remedies, available under the *Labour Relations Code*.

(8) The maintenance subsidiary is neither an agent of the government nor a common employer with any or all of British Columbia Ferry Corporation, the

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Authority and the government, and British Columbia Ferry Corporation, the Authority and the government are not employers of the transferred employees.

(9) The Lieutenant Governor in Council may make an order under this section on or before October 31, 2003.

Transfer of employees not constructive dismissal

24 Without limiting sections 22 and 23, an employee who is transferred in accordance with either of those sections is deemed not to have been constructively dismissed.

Essential service designation and other *Labour Relations Code* matters

25 (1) In the event of a conflict between this Act and the *Labour Relations Code*, this Act prevails.

(2) Nothing in this Act affects the application of section 72 of the *Labour Relations Code* to, or any designation made under that section in relation to, British Columbia Ferry Corporation, and without limitation, it is deemed that the delivery of ferry services is necessary for the protection of the health, safety and welfare of the residents of British Columbia.

(3) For the purposes of section 38 of the *Labour Relations Code* and without limiting section 23 (8) of this Act, British Columbia Ferry Corporation must not be treated as one employer with the maintenance subsidiary.

This Part prevails over collective agreements

26 (1) A collective agreement that conflicts or is inconsistent with this Act is void to the extent of the conflict or inconsistency.

(2) If a provision of a collective agreement requires British Columbia Ferry Corporation to negotiate with a trade union to replace provisions of the agreement that are null and void or materially altered as a result of legislation, that provision is deemed not to apply in respect of this Act.

Part 3 — Establishment of Ferry System

Division 1 — Coastal Ferry Services Contracts

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Power to enter into contracts

27 The minister may, with the approval of the Lieutenant Governor in Council, enter into one or more contracts with one or more persons under which the minister agrees, on behalf of the government, to authorize the other contracting party to operate one or more ferries on one or more specified ferry routes.

Copy of Coastal Ferry Services Contract to be provided to commissioner

28 Promptly after entering into a Coastal Ferry Services Contract, the ferry operator must provide a copy of the Coastal Ferry Services Contract to the commissioner.

Rights of parties on termination of Coastal Ferry Services Contract

29 (1) If a Coastal Ferry Services Contract is terminated,

(a) all of the interests and rights transferred or granted to the ferry operator under the Coastal Ferry Services Contract, under any lease referred to in section 31 to the ferry operator under this Act vest in the government, and

(b) the ferry operator ceases to have any of those interests and rights.

(2) Nothing in subsection (1) (a) prevents the government from transferring or granting to another person, under this Act or otherwise, any or all of the interests and rights that vest in the government under that subsection.

Division 2 — Land Transactions

Transfer to BC Transportation Financing Authority

30 (1) In this Division:

"continuing highway properties" means the highway properties that are not surplus highway properties;

"ferry terminal properties" means the properties that are designated as ferry terminal properties in a regulation referred to in subsection (2) or (3);

"highway properties" means those ferry terminal properties that are designated as highway properties in a regulation referred to in subsection (2) or (3);

"improvements" includes fixtures;

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"minister", except in section 34, means the minister responsible for the administration of the *Transportation Act*, and, in section 34, includes that minister;

"municipality" has the same meaning as in the *Community Charter*;

"properties" includes rights, titles and interests in and to land, land covered by water and filled foreshore;

"public highway" has the same meaning as "highway" in the *Transportation Act*;

"surplus highway properties" means those highway properties that are designated as surplus highway properties in a regulation referred to in subsection (2) or (3).

(2) For the purposes of this Part, the Lieutenant Governor in Council may, by regulation,

(a) designate as ferry terminal property any property that

(i) is owned by

(A) the government, including, without limitation, BC Transportation Financing Authority, or

(B) British Columbia Ferry Corporation, and

(ii) the Lieutenant Governor in Council considers relates to the provision of ferry services,

(b) designate any ferry terminal property as a highway property, and

(c) designate any highway property as a surplus highway property.

(3) Subject to subsection (4), nothing in this section prevents the Lieutenant Governor in Council from amending a regulation referred to in subsection (2) and, without limitation, the Lieutenant Governor in Council may, by regulation,

(a) correct or update any legal description or other description of any of the properties included in the regulation,

(b) designate as ferry terminal properties any other properties owned by the government or British Columbia Ferry Corporation that the Lieutenant Governor in Council considers relates to the provision of ferry services, and

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(c) designate as highway properties or as surplus highway properties any ferry terminal properties included in the regulation referred to in subsection (2) or in paragraph (b) of this subsection.

(4) The Lieutenant Governor in Council must not, by regulation, remove any designation given to a property in a regulation referred to in subsection (2) or (3) (c), or remove any property from the regulation, unless BC Transportation Financing Authority and British Columbia Ferry Corporation agree that the removal is necessary to correct an error.

(5) Regulations referred to in subsection (2) or (3) may be made retroactive to April 1, 2003 or any later date that the Lieutenant Governor in Council may determine, and a regulation made retroactive is deemed to have come into force on the date specified in the regulation.

(6) Despite any enactment or law to the contrary, on the coming into force of a regulation referred to in subsection (2) or (3),

(a) the properties designated in the regulation as ferry terminal properties are, to the extent that they are not already owned by BC Transportation Financing Authority, transferred to and vested in BC Transportation Financing Authority subject to

(i) all liens, charges, encumbrances and tenancies registered against title,

(ii) the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, and

(iii) all exceptions and reservations set out in section 50 (1) (a) and (b) of the *Land Act*,

(b) any right of possession of properties designated in the regulation as highway properties that is vested in any municipality is removed, and

(c) properties designated in the regulation as surplus highway properties are discontinued and closed, and cease to be public highways.

(7) If, in a regulation under subsection (4), the Lieutenant Governor in Council removes the designation by which a ferry terminal property was designated as a

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highway property, the Lieutenant Governor in Council may, by regulation, return to any municipality any or all of the right of possession that was removed in respect of that property under subsection (6) (b).

(8) No compensation or payment of any kind is payable by the government or BC Transportation Financing Authority, and proceedings must not be commenced or maintained to claim compensation from the government or BC Transportation Financing Authority or to obtain a declaration that compensation is payable by the government or BC Transportation Financing Authority, whether for expropriation or otherwise, in respect of the effect of this Division, or any regulation referred to in this Division, on

(a) any of the ferry terminal properties,

(b) any right, title or interest of any person or other entity in or to any of the ferry terminal properties,

(c) any other land in any way affected by the Division or regulation, including, without limitation, for any loss of value of the land, for any injurious affection or for any business loss, and

(d) any claims, actions or demands under any enactment or at law.

(9) Subsection (8) does not apply to any compensation or payment of any kind that is or may become payable by the government or BC Transportation Financing Authority to British Columbia Ferry Corporation in relation to any of the ferry terminal properties.

(10) On and after any transfer referred to in subsection (6) (a), all uses to which any or all of the transferred ferry terminal properties were being or could be put immediately before the transfer, all modifications that had, before the transfer, been made to the ferry terminal properties and all things and other structures of any type that were, immediately before the transfer, located on, in, under or over the ferry terminal properties, are deemed to be wholly consistent with the local government requirements that would otherwise apply to the ferry terminal properties, including, without limitation, all local government zoning bylaws.

Leasing of ferry terminal properties

31 Despite any enactment or law to the contrary and despite any lien, charge, encumbrance, tenancy, condition, proviso, restriction, exception, reservation or right

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referred to in section 30 (6), after any transfer referred to in section 30 (6) (a), BC Transportation Financing Authority may enter into one or more leases, on any terms and conditions and for any purposes it considers appropriate, to lease any or all of the ferry terminal properties to any ferry operator.

Rights, powers and obligations of minister and ferry operator

- 32** (1) Without limiting section 34, the minister and the minister's ministry have, in relation to public highways on continuing highway properties, all of the rights and powers that the minister and that ministry respectively have in relation to public highways.
- (2) Nothing in subsection (1) of this section requires the government to take any action or provide any money for, or in relation to, any matter relating to the ferry terminal properties.
- (3) If, at law or under any enactment, the minister is provided with rights, powers or functions, the minister may, if BC Transportation Financing Authority enters into a lease referred to in section 31 with a ferry operator, delegate to the ferry operator, in any Coastal Ferry Services Contract entered into by the minister with that ferry operator, any or all of those rights, powers or functions as they relate to any or all of the ferry terminal properties leased to that ferry operator, and, in that event, the ferry operator is entitled to exercise those rights, powers or functions in relation to those ferry terminal properties during the currency of the Coastal Ferry Services Contract, subject to any limits or conditions imposed by the minister.
- (4) If, at law or under any enactment, obligations are imposed on the minister, the minister may, if BC Transportation Financing Authority enters into a lease referred to in section 31 with a ferry operator, impose on the ferry operator, in any Coastal Ferry Services Contract entered into by the minister with that ferry operator, any or all of those obligations as they relate to any or all of the ferry terminal properties leased to the ferry operator, and, in that event,
- (a) the minister is relieved from those obligations in relation to those ferry terminal properties, and
 - (b) the ferry operator must perform those obligations in relation to those ferry terminal properties.
- (5) Without limiting subsection (4) of this section, a ferry operator

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(a) has, in relation to the highway properties leased to that ferry operator in a lease referred to in section 31, the same duty of care that the minister would have were those highway properties public highways, and

(b) must maintain those highway properties.

(6) Without limiting any other liability a ferry operator may be subject to at law or under an enactment, if the ferry operator defaults in performing any of the ferry operator's obligations under subsections (4) and (5), the ferry operator is liable for any loss or damage sustained by any person because of the default.

Minister may take action for ferry operator

33 (1) If, for the purposes of providing core ferry services, a ferry operator considers it necessary to

(a) acquire, enter on, pass over or use any land,

(b) alter any feature of land,

(c) construct, relocate, remove or use roads on, to or from land, or

(d) place on, alter or remove from land any substance or structure,

and is unable to obtain the agreement of the owner of the land within a reasonable time and on reasonable terms, the ferry operator may refer the matter to the minister.

(2) If the minister is satisfied that the action under subsection (1) proposed by the ferry operator is reasonable and necessary for the provision of core ferry services, the minister may

(a) take the proposed action, or

(b) take any other action, mutually agreed between the minister and the ferry operator, that the minister has power to take under the *Transportation Act*.

(3) For the purpose of this section, the minister may acquire or expropriate any land, stream, water, watercourse, fence or wall, the appropriation of which the minister believes reasonable and necessary for the provision of core ferry services.

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(4) The minister may for the purposes of subsection (3) contract with all persons, guardians or trustees, not only for themselves, their personal representatives and assigns, but also for and on behalf of those they represent, whether infants, absentees, persons with a mental disorder or other persons otherwise incapable of contracting, who own or have an interest in the land, stream, water or watercourse.

(5) A contract, conveyance or other instrument made under subsection (4) is valid for all purposes.

Liability

- 34** (1) Despite any enactment or law to the contrary, neither the government nor any employee, agent, minister or ministry of the government has
- (a) any duty to develop, plan, design or construct any portion of ferry terminal properties that, under a lease referred to in section 31 or a Coastal Ferry Services Contract, a ferry operator is to construct,
 - (b) any duty to expand, extend, upgrade, remove, maintain, rehabilitate, operate, close or require the closure of any ferry terminal properties,
 - (c) any duty to instruct or supervise a ferry operator, and
 - (d) any duty of care with respect to any development, planning, design, construction, expansion, extension, upgrading, removal, maintenance, rehabilitation, operation or closure of, or any other activity in relation to, ferry terminal properties that, after the Coastal Ferry Services Contract entered into with the lessee of those ferry terminal properties takes effect, is
 - (i) done by any person other than the government or any employee, agent, minister or ministry of the government, or
 - (ii) omitted to be done.
- (2) Without limiting subsection (1), neither the government nor any employee, agent, minister or ministry of the government has any liability arising by operation of law in relation to anything done or omitted to be done on or in relation to any ferry terminal properties after the Coastal Ferry Services Contract entered into with the lessee of those ferry terminal properties takes effect, including, without limitation, any liability in an action based on

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- (a) nuisance,
- (b) the rule in Rylands v. Fletcher, or
- (c) non-delegable duty.

(3) Subject to subsection (4), no legal proceeding for damages or compensation of any kind lies or may be commenced or maintained against the government or any employee, agent, minister or ministry of the government in respect of the failure by the government, or by any employee, agent, minister or ministry of the government, to take any action in connection with a lease referred to in section 31 or a Coastal Ferry Services Contract or in connection with or against the ferry operator with whom the lease or contract was entered into, including, without limitation, the failure to take any action to terminate the lease or Coastal Ferry Services Contract or any or all of the interests, rights, powers, permits, approvals and authorizations transferred or granted under the lease or Coastal Ferry Services Contract, in response to a breach by the ferry operator of any provision of this Act, the regulations, the lease or Coastal Ferry Services Contract or any other agreement to which the government is a party.

(4) Subsection (3) does not apply to the government or any employee, agent, minister or ministry of the government if the failure referred to in subsection (3) is in bad faith.

(5) Despite any enactment or law to the contrary, no damages or compensation of any kind is payable by the government or by any employee, agent, minister or ministry of the government in respect of, and no legal proceeding for damages or compensation of any kind lies or may be commenced or maintained against the government or any employee, agent, minister or ministry of the government in respect of, anything that, after the coming into force of this Act, is done by any person other than the government or an employee, agent, minister or ministry of the government in connection with any ferry terminal properties, or that is omitted to be done in connection with any ferry terminal properties, including, without limitation, any development, planning, design, construction, expansion, extension, upgrading, removal, maintenance, rehabilitation, operation or closure of, or failing to close, any or all of the ferry terminal properties.

(6) If a ferry operator is an occupier of public highways on continuing highway properties, that ferry operator has the same liability, if any, under the *Occupiers*

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Liability Act in respect of those public highways as would the government were the government the occupier of those public highways.

Part 4 – Regulation of Ferry Operators

Division 1 – British Columbia Ferries Commissioner

British Columbia Ferries Commissioner

- 35** (1) The Lieutenant Governor in Council must appoint a British Columbia Ferries Commissioner and may appoint not more than 2 deputy commissioners.
- (2) The Lieutenant Governor in Council may, subject to this section, determine the remuneration and terms and conditions of appointment of the persons appointed under subsection (1).
- (3) After making an appointment under subsection (1), the Lieutenant Governor in Council must not change the remuneration and terms and conditions of appointment of the appointed person without the consent of that person.
- (4) Subject to subsection (5), the following apply to an appointment under subsection (1):
- (a) the appointment is for a term of at least 6, and not more than 8, years;
 - (b) despite section 4 (2) of the *Constitution Act*, the appointment must not be terminated by the Lieutenant Governor in Council;
 - (c) the appointment may be renewed.
- (5) An appointment of a person under subsection (1) is terminated if the person resigns or is
- (a) found to be incapable of managing the person's own affairs by reason of mental infirmity,
 - (b) found by the Supreme Court to be in a position of conflict of interest within the meaning of section 37, or to be in material breach of the person's duties or obligations under any provision of this Act, or
 - (c) convicted of an indictable offence under the *Criminal Code*.

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(6) The commissioner and the deputy commissioners must be reimbursed for actual reasonable expenses necessarily incurred in the performance of their duties under this Act.

(7) Deputy commissioners must, on the request of the commissioner, provide such assistance to the commissioner in the exercise of the commissioner's powers as may be requested by the commissioner, including, without limitation, exercising any of the decision making powers of the commissioner, and a reference in this Act to the commissioner includes a reference to the deputy commissioners if and to the extent that they have been requested to assist the commissioner.

(8) The fiscal year of the commissioner begins on April 1 in one year and ends on March 31 in the next year.

Employees and consultants

36 (1) The commissioner may appoint, in accordance with the *Public Service Act*, employees necessary to enable the commissioner to perform the duties of the office.

(2) For the purpose of the application of the *Public Service Act* to subsection (1) of this section, the commissioner is deemed to be a deputy minister.

(3) The commissioner may retain consultants, inspectors or other persons as may be necessary for the commissioner to perform the duties of the office and may establish their remuneration and other terms and conditions of their retainers.

(4) The *Public Service Act* does not apply in respect of a person retained under subsection (3) of this section.

Conflict of interest

37 (1) Subject to subsection (4), the commissioner and deputy commissioners must not, directly or indirectly,

(a) have a beneficial interest in a share, stock, bond, debenture or other security of a ferry operator,

(b) have a significant beneficial interest in a device, appliance, machine, article, patent or patented process, or a part of it, that is required or used by a ferry operator for the purpose of the ferry operator's equipment or service,

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(c) have a significant beneficial interest in a contract for the construction of works or the provision of a service for or by a ferry operator, or

(d) have a significant beneficial interest in a corporation or other person that is in competition with British Columbia Ferry Corporation for marine transportation business.

(2) The commissioner and any deputy commissioners in whom a beneficial interest referred to in subsection (1) is or becomes vested must divest himself or herself of the beneficial interest within 3 months after the later of his or her appointment or hiring, as the case may be, and his or her acquisition of the beneficial interest.

(3) The use or purchase by the commissioner or any deputy commissioner, for personal or domestic purposes, of ferry transportation or service from a ferry operator is not a contravention of this section, and does not disqualify the commissioner or deputy commissioner from acting in any matter affecting that ferry operator.

(4) A commissioner or deputy commissioner who has a beneficial interest in a publicly held mutual fund or pension fund that contains any of the investments referred to in subsection (1) (a) is not, merely because of that interest, in breach of this Act, or required to divest himself or herself of that interest, unless those investments make up more than 30% of the total mutual fund or pension fund holdings.

Division 2 — Regulation of Ferry Operators by Commissioner

Role of commissioner

38 (1) ~~The commissioner must~~ Without limiting any other power of the commissioner under this Act, the commissioner must, after considering public feedback obtained under this Act, regulate each ferry operator in relation to the core ferry services that are to be provided by that ferry operator and the tariffs, including, without limitation, reservation fees that may be charged for those core ferry services, and must undertake that regulation in accordance with the following principles:

(a) priority is to be placed on the financial sustainability of the ferry operators;

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- (b) ferry operators are to be encouraged to adopt a commercial approach to ferry service delivery;
- (c) ferry operators are to be encouraged to seek additional or alternative service providers on designated ferry routes through fair and open competitive processes;
- (d) ferry operators are to be encouraged to minimize expenses without adversely affecting their safe compliance with core ferry services;
- (e) cross subsidization from major routes to other designated ferry routes is
 - (i) to be eliminated within the first performance term of the first Coastal Ferry Services Contract to be entered into under this Act, and
 - (ii) before its elimination, to be minimized;
- (f) the designated ferry routes are to move towards a greater reliance on a user pay system so as to reduce, over time, the service fee contributions by the government.

(2) For the purposes of subsection (1), the commissioner is to do the following in relation to each ferry operator:

- (a) review the quarterly reports and annual reports of the ferry operator provided under sections 65 and 66 respectively to determine whether
 - (i) the ferry operator is providing the core ferry services, and
 - (ii) the weighted average of the tariffs charged in relation to the core ferry services applicable to each route group serviced by the ferry operator is within the price cap established for that route group;
- (b) monitor the ferry operator's provision to the public of the information that is to be provided under this Act in relation to the operations and performance of the ferry operator;
- (c) establish, in accordance with section 40, in advance of each performance term under the Coastal Ferry Services Contract, other than the first performance term, the price cap that is to apply to each route group to which the contract applies;

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(d) review and consider applications by the ferry operator for extraordinary price cap increases in accordance with section 42;

(e) review and consider applications by the ferry operator for reductions of service in accordance with section 43;

(f) review and consider applications by the ferry operator for route discontinuance in accordance with section 44.

(g) consider the interests of ferry users.

(3) The commissioner must not regulate ferry operators in relation to ancillary services.

(4) Despite subsection (1), the commissioner may remove a designated ferry route from regulation under this Act if the commissioner considers that sufficient competition is present on that designated ferry route so that regulation is no longer necessary.

Price cap for the first performance term

39 For the first performance term of the first Coastal Ferry Services Contract to be entered into under this Act,

(a) the price cap applicable to a route group is the average of the tariffs payable as at April 1, 2003 on the designated ferry routes that are included in that route group, and

(b) that price cap is, on each November 1 in the performance term, to increase,

(i) if the route group consists of major routes, by 2.8% over the previous year's price cap, and

(ii) for all other route groups, by 4.4% over the previous year's price cap.

Establishment of price caps for subsequent performance terms

40 (1) For the purposes of section 38 (2) (c), each ferry operator must, at least 18 months before the beginning of a performance term for which a price cap is to be set, provide to the commissioner, the Authority and the Minister of Transportation and Infrastructure information, satisfactory to the commissioner, respecting the

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following in relation to each designated ferry route that is included within a route group for which a price cap is to be set:

- (a) the core ferry services that the ferry operator has provided, and reasonably expects to provide, in the current performance term;
- (b) the tariffs for core ferry services, including, **without limitation, reservation fees** that the ferry operator has charged, and reasonably expects to charge, in the current performance term;
- (c) the service fees that have been paid, and that the ferry operator reasonably expects will be paid, by the government in the current performance term;
- (d) the revenues from all sources that the ferry operator has earned, and reasonably expects to earn, in the current performance term;
- (e) the following expenses that the ferry operator has incurred, and that the ferry operator reasonably expects will be incurred, in the current performance term:
 - (i) the operating expenses, including amortization of capital costs, that the ferry operator has reasonably allocated to the designated ferry route;
 - (ii) the portion of the ferry operator's administrative expenses that the ferry operator has reasonably allocated to the designated ferry route;
 - (iii) the portion of the expenses applicable to the terminals serving the applicable designated ferry route that the ferry operator has reasonably allocated to the designated ferry route **and the methodology by which those amounts have been allocated among its routes**;
- (f) the requests for proposal issued, or other actions taken, in the performance term by the ferry operator in accordance with section 69, the responses received by the ferry operator to those requests or actions, any unsolicited proposals received in the performance term by the ferry operator for the provision of ferry services by additional or alternative service providers on the designated ferry route and the results of those requests, actions, responses and proposals;

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(g) any other records considered by the ferry operator to be relevant to the setting of the price cap.

(1.1) Each ferry operator must provide to the commissioner, with the information submitted under subsection (1),

(a) a plan as to how the ferry operator intends to provide services more efficiently in the upcoming performance term, and

(b) the most recent capital plan prepared under section 64.1.

(1.2) Promptly after receiving the information referred to in subsections (1) and (1.1), the commissioner must publish that material on the commissioner's website.

(2) ~~After receiving the information referred to in subsection (1),~~ The commissioner must, at least 12 months before the beginning of a performance term for which a price cap is to be set,

~~(a) review the material provided by the ferry operator and any public comment provided to the commissioner in relation to the reports maintained under section 68 (3),~~

(a) review the information and plans provided to the commissioner under this section,

(a.1) make public a request for public comment in relation to the following:

(i) the reports maintained under section 68 (3);

(ii) the information and plans provided to the commissioner under this section;

(iii) any other information on the commissioner's website that relates to the commissioner's powers and duties under this section,

and review the comments received in response;

(b) make the determinations referred to in section 41 (3),

(c) prepare a report that describes ~~the determinations made under paragraph (b) of this subsection and the findings of the review, the~~

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findings of the review under paragraph (a) of this subsection and the determinations made under paragraph (b) and indicate in that report the commissioner's preliminary decision about what the price cap for each route group will be for the next performance term,

(d) issue the report referred to in paragraph (c) to the ferry operator and the government, and

(e) publish the report referred to in paragraph (c) in a manner that the commissioner is satisfied will bring it to the attention of the public.

(3) At least 9 months before the beginning of the performance term for which the price cap is to be set, a ferry operator referred to in subsection (1) must submit to the commissioner the most current version of the Coastal Ferry Services Contract that is to apply in respect of that upcoming performance term to indicate the changes, if any, to be made to

(a) the core ferry services, and

(b) the service fees to be provided to the ferry operator by the government.

(4) After receiving the Coastal Ferry Services Contract referred to in subsection (3), and at least 6 months before the beginning of the performance term for which the price cap is to be set, the commissioner must

(a) reconsider the preliminary decision included in the report referred to in subsection (2) (c) in the light of

(i) the Coastal Ferry Services Contract,

(ii) any additional information received by the commissioner from the ferry operator or from the government, and

(iii) any public comment received on the report, and

(b) issue the commissioner's final decision on the application to the ferry operator and the government.

Principles applicable to price cap review

41 (1) In this section, "**equity**" includes retained earnings and paid in capital.

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(2) In setting a price cap applicable to a route group, the commissioner must be guided by the following principles:

(a) the price cap must allow for a return sufficient to enable the ferry operator to recover

- (i) the portion of operating expenses, including all financing charges, that can reasonably be applied to the route group,
- (ii) the portion of administrative expenses that can reasonably be applied to the route group, and
- (iii) the reasonable capital costs that are to be
 - (A) incurred in relation to the route group, and
 - (B) amortized in accordance with generally accepted accounting principles on a straight line basis;

(b) the price cap, when combined with all other price caps applicable to all route groups serviced by the ferry operator, must enable the ferry operator to receive a pre-tax return on equity, which return is to be calculated by adding

- (i) an equity risk premium, provided that the equity risk premium is equivalent to that of other regulated businesses with reasonably similar risk characteristics, and
- (ii) a bond yield that is consistent with Government of Canada 30 year bonds or with Government of Canada bonds that in aggregate have a similar duration;

(c) the price cap must take into account the anticipated productivity gain determined under subsection (5);

(d) the ferry operator is, on an ongoing basis, to actively seek additional or alternative service providers to provide ferry services on the designated ferry routes included in the route group in order to reduce the costs of providing those services.

(3) For the purposes of subsection (2) (a) to (c), the commissioner must, in setting a price cap for a route group,

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(a) determine the portion of the following that, in the commissioner's opinion, acting reasonably, can reasonably be applied to the route group:

- (i) operating expenses;
- (ii) administrative expenses;
- (iii) the expenses applicable to the terminals serving the designated ferry routes included in that route group,

(b) take into account, for the purposes of subsection (2) (a), only the portion of the expenses that the commissioner determines, under paragraph (a) of this subsection, can reasonably be applied to the route group,

(c) determine whether it was reasonable, in the commissioner's opinion, acting reasonably, for the ferry operator to have incurred capital expenses in relation to a designated ferry route included in the route group, and take into account only those capital expenses that

- (i) are determined under this paragraph to be reasonable, or
- (ii) had been approved under section 55, and

(d) determine, based on current replacement costs, the appropriate value of capital assets deployed within, or in support of, the route group, and

(e) include in the price cap any reservation fees applicable to the route group.

(4) The commissioner must set the price cap for each route group without reference to the price cap set for any other route group operated by the ferry operator.

(5) For the purposes of this section, the commissioner must determine the productivity gain that, in the commissioner's opinion, acting reasonably, the ferry operator should achieve in the following performance term.

(6) The commissioner may, in the price cap set for a route group under this section, provide for that price cap to change annually during the applicable performance term at a specified rate equal to the British Columbia consumer price index minus a productivity factor for the route group, which productivity factor

(a) is established by the commissioner,

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(b) may be positive or negative, and

(c) reflects the anticipated productivity gain determined by the commissioner under subsection (5).

No extraordinary price cap increases without authorization

42 (1) A ferry operator may apply to the commissioner for an extraordinary price cap increase, in relation to a route group, that exceeds any increase available under section 39 (b) or 41 (6), and the commissioner may authorize the extraordinary price cap increase.

(2) An extraordinary price cap increase must not be authorized under subsection (1) unless an extraordinary situation exists such as

(a) the deployment of a new capital asset such as a vessel on one or more designated ferry routes in that route group during the currency of the applicable performance term of the Coastal Ferry Services Contract,

(b) an extraordinary increase in the price of any non-controllable input such as fuel,

(c) an unanticipated and extraordinary change in traffic levels on one or more designated ferry routes in that route group, or

(d) the introduction of new safety or other regulations that impose a new, unexpected and significant cost burden on the ferry operator.

(3) For the purposes of subsection (2), changes in labour costs or terms of employment, other than changes effected under regulations referred to in subsection (2) (d), do not constitute an extraordinary situation that would justify an extraordinary price cap increase under that subsection.

(4) Before authorizing an extraordinary price cap increase in relation to a route group, the commissioner must

(a) publicize the application in a manner that the commissioner is satisfied will bring the application to the attention of the public, and

(b) provide a period of at least one month within which persons wishing to comment on the application may do so.

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(5) Despite subsection (4), the commissioner must promptly, and in any event within one month after receiving the full information required by the commissioner in relation to an application under this section, issue to the ferry operator and the government the commissioner's preliminary decision on the application.

(6) A preliminary decision issued by the commissioner under subsection (5) becomes final and effective one month after the date of its issue unless, within that period,

(a) the decision is withdrawn by the commissioner, in which event the decision ceases to have any force or effect, or

(b) the decision is amended by the commissioner, in which event the decision, as amended, becomes final and effective one month after the date of its issue or on such other date, not later than one month after the date of the amendment to the decision, as may be specified by the commissioner in the amended decision.

No reduction of service without authorization

43 (1) A ferry operator must not, except as permitted by the applicable Coastal Ferry Services Contract, reduce service on a designated ferry route below the core ferry services required for that designated ferry route unless the ferry operator first obtains the authorization of the commissioner.

(2) A ferry operator that wishes to reduce service on a designated ferry route below the core ferry services required for that designated ferry route must make application to the commissioner for the authorization required by subsection (1) and must, in that application, justify the requested reduction.

(3) The commissioner may authorize a reduction in service under subsection (1) if the commissioner is of the opinion that the reduction is for a temporary period and is for an extraordinary situation.

(4) If the commissioner agrees to authorize a reduction in service on a designated ferry route, the ferry operator may reduce service on that designated ferry route in the manner, for the period and in accordance with the terms and conditions specified by the commissioner, but not otherwise.

No discontinuance without authorization

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- 44** (1) A ferry operator must not discontinue all or any part of a designated ferry route on which the ferry operator is to provide ferry transportation services under the Coastal Ferry Services Contract unless the ferry operator first obtains the authorization of the commissioner.
- (2) A ferry operator that wishes to discontinue a designated ferry route must make application to the commissioner for the authorization required by subsection (1) and must, in that application, justify the requested discontinuance.
- (3) Promptly after applying to the commissioner under subsection (2), the ferry operator must
- (a) provide a copy of the application to the minister, and
 - (b) provide public notice of the application in the manner, with the information and for the period required by the commissioner.
- (4) The commissioner may, before providing an authorization under this section, hold a public hearing on the application.
- (5) If a public hearing is held under subsection (4), the commissioner must
- (a) give notice of the public hearing in a manner that the commissioner is satisfied will bring the notice to the attention of the public, or
 - (b) order the ferry operator to provide notice of the hearing in the manner, with the information and for the period required by the commissioner.
- (6) Despite subsections (3) to (5), the commissioner,
- (a) promptly, and in any event within 3 months after receiving the full information required by the commissioner in relation to an application under this section, must issue the commissioner's preliminary decision on the application to the ferry operator and the government, and
 - (b) within 6 months after receiving the full information required by the commissioner in relation to that application, must issue the commissioner's final decision on the application to the ferry operator and the government.
- (7) In assessing an application for authorization under this section, the commissioner must consider whether

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- (a) another form of affordable transportation exists or is likely to be established to link the locations served by the designated ferry route,
- (b) it is possible to operate the designated ferry route economically at an affordable tariff level,
- (c) the government is willing to reduce the core ferry services required on, or increase its service fee contribution for, the designated ferry route, and
- (d) an extraordinary drop in traffic has occurred because of a change in the local economy or some other unanticipated factor.

(8) The commissioner must not authorize the discontinuance of a designated ferry route unless

- (a) the ferry operator has made a suitable economic case for the designated ferry route's discontinuance, and
- (b) the commissioner is satisfied that increasing tariffs on the designated ferry route would not, because of a reduction in user demand or otherwise, result in designated ferry route revenues increasing to the extent necessary to enable economic operation of the designated ferry route.

(9) If the commissioner agrees to authorize the discontinuance of a designated ferry route, the commissioner must

- (a) publish, promptly after issuing the final decision under subsection (6) (b), a notice in a manner that the commissioner is satisfied will bring the notice to the attention of the public, stating
 - (i) that the designated ferry route is to be discontinued, and
 - (ii) the date on which that discontinuance is to take place, which date is, subject to subsection (10), to be one year after the date on which the final decision was issued under subsection (6) (b),
- (b) order the ferry operator to post, on the ferries being used on that designated ferry route, notice of the authorization in the form, with the information and for the period required by the commissioner, and
- (c) provide the authorization to the ferry operator and the minister in writing.

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(10) The date on which a designated ferry route discontinuance authorized under this section is to take place may be a date that is less than one year after the date on which the final decision was issued under subsection (6) (b) if the commissioner considers that there are extraordinary circumstances that require that earlier date, and in that event, the commissioner must set, as the date on which the discontinuance of the designated ferry route is to take place, the latest practicable date for that discontinuance.

(11) A ferry operator that is authorized under this section to discontinue a designated ferry route may discontinue that designated ferry route in the manner, and in accordance with the terms and conditions, specified by the commissioner, but not otherwise.

Impact on price cap of service reductions or discontinuance

45 If, under section 43, the commissioner authorizes a reduction in service on a designated ferry route or, under section 44, authorizes a ferry operator to discontinue a designated ferry route, the price cap set for the applicable route group

(a) must be reviewed by the commissioner, and

(b) may be adjusted in the manner and to the extent the commissioner considers reasonable.

Regulation of unfair competitive advantage

45.1 (1) If a ferry operator is providing a competitive service, the commissioner must determine whether the ferry operator is pricing the service below the direct costs and an appropriate proportion of the indirect costs associated with providing that ferry transportation service, or has an unfair competitive advantage, including, without limitation, an advantage resulting from the ferry operator having been provided with

(a) use of, access to or ownership of vessels or terminals that are or had been owned by the government or a government body within the meaning of the *Financial Administration Act*,

(b) any tax exemption, or

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(c) any subsidy.

(2) If the commissioner makes the determination referred to in subsection (1), the commissioner must regulate the ferry transportation service in one of the following ways:

(a) make an order under section 69 (1) and, after an alternative service provider satisfactory to the commissioner has been located through a competitive process established in a plan approved under section 69 (4) (a) or created under section 69 (4) (b) (i), order the ferry operator to arrange with that alternative service provider, under contract, franchise agreement or otherwise, for the alternative service provider to provide the ferry transportation service;

(b) calculate the amount that the commissioner considers would be charged as a tariff for that ferry transportation service to recover the direct costs and an appropriate proportion of the indirect costs attributable to providing the service were none of the factors referred to in subsection (1) of this section present, and order the ferry operator to charge at least that tariff when providing that ferry transportation service.

Complaints process

45.2 (1) Each ferry operator must, within the period required by the commissioner,

(a) identify to the commissioner the process the ferry operator intends to use to deal with customer complaints,

(b) obtain the commissioner's approval of that process, and

(c) publish the approved customer complaints process in the manner required by the commissioner.

(2) The complaints process referred to in subsection (1) must include a process by which the ferry operator will report on the number, nature and disposition of the customer complaints received in the reporting period.

(3) The ferry operator may propose amendments to the complaints process approved under this section and may amend the complaints process in accordance with any such amendment that is approved by the commissioner.

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(4) The commissioner may order the ferry operator to amend its complaints process and, in that event, the ferry operator must, within the period required by the commissioner, provide the required amendments to the commissioner and obtain the commissioner's approval to the amended process.

(5) Each ferry operator must receive and process customer complaints in accordance with the complaints process approved by the commissioner under this section.

Inspections

46 (1) The commissioner may appoint a person to conduct an inspection of the operations of a ferry operator if

(a) the ferry operator fails to provide to the commissioner a report or other record the ferry operator is required to provide under this Act,

(b) in the commissioner's opinion, a report or other record provided by the ferry operator to the commissioner under this Act is or may be incomplete or incorrect, or

(c) after reviewing a report or other record provided by the ferry operator to the commissioner under this Act, the commissioner forms the opinion that the ferry operator is not or may not be providing one or more of the core ferry services.

(2) An inspector appointed under subsection (1)

(a) may require any person who has possession or control of any of the ferry operator's records or things to produce any of those records and things that may be relevant to the inspection,

(b) may inspect and remove any of the records and things produced under paragraph (a) that are relevant to the inspection for the purpose of making copies or extracts,

(c) may attend at the business premises of the ferry operator during business hours for the purpose of requesting the production of or inspecting any records or things relevant to the inspection,

(d) must carry identification in the prescribed form, and

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(e) must present the identification to the owner or occupant of the premises.

(3) On the request of an inspector, the ferry operator must

(a) make available for inspection all records, including, without limitation, all financial records, related to the provision of ferry service on designated ferry routes, and

(b) if applicable, permit the inspector to inspect any ferry terminal or thing used in or for the provision of ferry service on designated ferry routes including, without limitation, any vessel logs and other records related to schedules, traffic levels, frequency of ferry service and capacity of vessels.

(4) If an inspector removes any records or things under subsection (2) (b), the inspector must give a receipt for them to the person from whom they are taken.

(5) A person must not obstruct an inspector or withhold, destroy, conceal or refuse to produce any information, record or thing that is required by the inspector or is otherwise relevant to any of the matters in respect of which the inspection may be conducted.

(6) An inspector who removes any records or things may make copies of, take extracts from or otherwise record them and must return them within a reasonable time.

(7) Copies of or extracts from records or things removed under this section that are certified by the inspector as being true copies of or extracts from the originals are admissible in evidence to the same extent, and have the same evidentiary value, as the original records or things.

Jurisdiction in relation to liquidators and receivers

47 (1) The fact that a liquidator, receiver, manager or other official of a ferry operator, or a person seizing the ferry operator's property, has been appointed by a court in British Columbia, or is acting under the authority of a court, does not prevent the exercise by the commissioner of any jurisdiction conferred by this Act.

(2) A liquidator, receiver, manager or other official of a ferry operator, or a person seizing the ferry operator's property, is subject to the terms of the applicable Coastal

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Ferry Services Contract and must act in accordance with this Act and the orders and directions of the commissioner, whether the orders are general or particular, and without limitation, a reference in this Act to a ferry operator is deemed to include a reference to such a liquidator, receiver, manager, official or person seizing the ferry operator's property.

(3) Without limiting subsection (2), the liquidator, receiver, manager, official or person seizing the ferry operator's property, and any person acting under that person, must obey the orders of the commissioner, within the commissioner's jurisdiction, and the commissioner may enforce the commissioner's orders against the person even though the person is appointed by or acts under the authority of a court.

Division 3 – Orders, Decisions and Appeals of Commissioner

Orders of commissioner

48 (1) If a ferry operator fails to comply with any provision of this Act or the regulations or fails to provide core ferry services or if the average of the tariffs charged in relation to a route group exceeds the price cap for that route group, the commissioner may, **without limiting the commissioner's ability to make orders under this Act and** subject to subsection (2), order the ferry operator to comply with those requirements promptly or within such period as the commissioner may specify.

(2) If the average of the tariffs charged by a ferry operator in relation to a route group over any 4 consecutive quarters exceeds the price cap for that route group, the commissioner must not make an order under subsection (1) in relation to that price cap requirement unless, by the end of the quarter following the 4 consecutive quarters in which the price cap was exceeded, the average of the tariffs charged in relation to the route group over that quarter and the previous 3 quarters exceeds the price cap for that route group.

(3) If a ferry operator fails to comply with an order of the commissioner in relation to a route or route group, including, without limitation, an order of the commissioner under subsection (1), the commissioner may, without affecting the application of section 70 (1) to the ferry operator, reduce the price cap for the applicable route group.

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(4) Subject to subsection (5), an order of the commissioner takes effect immediately or on any later date specified in the order and must be promptly published by the commissioner in a manner that the commissioner is satisfied will bring the order to the attention of the public.

(5) A reduction under subsection (3) of a price cap takes effect 3 months after the issuance of the order for the reduction.

(6) If a work, act, matter or thing is, by order of the commissioner, required to be performed or completed within a specified time, the commissioner may, if the circumstances of the case in the commissioner's opinion so require, extend the time so specified.

Jurisdiction of commissioner exclusive

49 (1) The commissioner has exclusive jurisdiction in all cases and for all matters in which jurisdiction is conferred on the commissioner by this or any other enactment.

(2) Subject to section 50, an order, decision or proceeding of the commissioner must not be questioned, reviewed or restrained by any process or proceeding in any court.

Appeal to Court of Appeal

50 (1) An appeal on a question of law lies from a decision or order of the commissioner to the Court of Appeal with leave of a justice of that court.

(2) The party appealing must give notice of the application for leave to appeal, stating the grounds of appeal, to the commissioner, to the Attorney General and to any party adverse in interest, at least 2 clear days before the hearing of the application.

(3) If leave is granted, within 15 days after the granting, the appellant must give notice of appeal to the commissioner, to the Attorney General and to any party adverse in interest.

(4) The commissioner and the Attorney General may be heard by counsel on the appeal.

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(5) On the determination of the questions involved in the appeal, the Court of Appeal must certify its opinion to the commissioner, and the commissioner must conform to that opinion.

No automatic stay of proceedings while matter appealed

51 (1) An appeal to the Court of Appeal does not stay or suspend the operation of the decision, determination, order or proceeding appealed from, but the Court of Appeal may grant a suspension, in whole or in part, until the appeal is decided, on terms the court considers advisable.

(2) The commissioner may, in the commissioner's discretion, suspend the operation of the commissioner's decision, determination, order or proceeding from which an appeal is taken until the decision of the Court of Appeal is given.

Division 4 — Records and Reports of Commissioner

Records of the commissioner

52 (1) The commissioner must publish every decision, determination and order of the commissioner in a manner that the commissioner is satisfied will bring the record to the attention of the public.

(2) The commissioner must, in relation to each ferry operator, retain at the commissioner's office those of the following records that pertain to the present performance term and to the immediately preceding performance term, if any, of the Coastal Ferry Services Contract:

- (a) a record of every proceeding before the commissioner;
- (b) every decision, determination and order of the commissioner;
- (c) every application under section 42, 43, 44 or 55;
- (d) every record relied on by the commissioner in reaching any decision or in making any determination or order of the commissioner.

(3) Subject to the *Freedom of Information and Protection of Privacy Act*, any person may inspect, without charge, any of the records maintained by the commissioner under subsection (2).

Annual reports

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53 (1) Within 4 months after the end of each fiscal year, the commissioner must make a report to the Lieutenant Governor in Council for the preceding fiscal year, setting out briefly

(a) all applications and requests for decisions to the commissioner under this Act,

(b) all orders issued by the commissioner,

(c) the financial statements applicable to the office of the commissioner for that year along with full disclosure of the expenses of, and associated with, the office of the commissioner, and

(c.1) whether, in the commissioner's opinion, the Authority and the ferry operators have, in that year, performed their respective obligations under the Act,

(c.2) whether, in the commissioner's opinion, the ferry operators have, in that year, performed their respective obligations under the applicable Coastal Ferry Services Contract, and

(d) other information the Lieutenant Governor in Council directs.

(2) The report and the financial statements referred to in subsection (1) must be laid before the Legislative Assembly within 2 months after receipt, or, if the Legislative Assembly is not then sitting, within 15 days after the opening of the following session.

Division 5 – Other Rights and Obligations of Commissioner

Obligation to keep information confidential

54 Despite any obligation imposed on the commissioner under this Act to obtain, maintain or make available information or records, the commissioner, every deputy commissioner, every employee of the commissioner and every inspector must not disclose or be compelled to disclose any information or record that is obtained in, or that comes to the person's knowledge during, the course of the administration of this Act or the course of any inspection authorized under this Act, unless and only to the extent that such disclosure is consistent with the *Freedom of Information and Protection of Privacy Act*.

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Commissioner to consider proposed capital deployment

55 Before deploying capital assets on, or incurring capital expenditures in connection with, a designated ferry route or terminal, the ferry operator may apply to the commissioner and the commissioner must, within one month after the application, declare whether the capital assets proposed to be deployed on, or the capital expenditures proposed to be incurred in connection with, the designated ferry route or terminal are reasonably required.

Division 6 – Funding for the Commissioner

Definitions

56 In this Division:

"first fiscal year of the first commissioner" means the period that begins with the appointment of the first commissioner and ends on the following March 31;

"levy request" means a request for a special levy referred to in section 61 (1);

"operator's tariff revenue", in relation to a ferry operator, means the gross tariff revenue earned on the designated ferry routes serviced by the ferry operator in the most recently completed fiscal year;

"previous year's tariff revenue" means the total of all gross tariff revenue earned on all designated ferry routes by all ferry operators in the most recently completed fiscal year.

Commissioner expenses to be paid for by ferry operators

57 Subject to this Division, the ferry operators, as a group, are responsible for paying to the commissioner the money necessary to satisfy all of the reasonable expenses associated with the operation of the office of the commissioner, including any remuneration and expenses under section 35 (2) and (6) respectively, any remuneration of persons retained under section 36 and any remuneration and expenses of inspectors.

Ferry operator payments required for first fiscal year of the first commissioner

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58 (1) For the purposes of providing under section 57 for the reasonable expenses associated with the operation of the office of the commissioner for the first fiscal year of the first commissioner, each ferry operator must provide to the commissioner the following amounts at the following times:

(a) promptly after the appointment of the commissioner, 1/40 of 1% of the previous year's tariff revenue;

(b) at the beginning of each subsequent quarter of the first fiscal year of the first commissioner, 1/40 of 1% of the previous year's tariff revenue.

(2) Sections 61 and 62 do not apply to this section.

Commissioner to prepare budget for subsequent fiscal years

59 (1) On or before October 1 of each year, the commissioner must provide to each ferry operator and to the minister a budget for the next fiscal year that provides an estimate of the expenses referred to in section 57 that the commissioner reasonably expects to incur in that next fiscal year.

(2) In preparing a budget for a fiscal year, the commissioner must ensure that the budget for that fiscal year does not exceed the total of the following:

(a) for each quarter, if any, of that fiscal year in which the commissioner is to take any action under section 40, 1/20 of 1% of the previous year's tariff revenue;

(b) for every other quarter of that fiscal year, 1/40 of 1% of the previous year's tariff revenue.

Ferry operator payments required for subsequent fiscal years

60 Subject to sections 61 and 62, at the beginning of each quarter of a fiscal year, each ferry operator must pay to the commissioner the amount determined by the following formula:

$(1/4 \times \text{estimated expenses}) \times (\text{operator's tariff revenue} / \text{previous year's tariff revenue})$

where "**estimated expenses**" means the expenses estimated by the commissioner for the fiscal year under section 59 (1).

Special levy for extraordinary expenses

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61 (1) At any time in a fiscal year, the commissioner may submit to the ferry operators and the government a request for a special levy to obtain money additional to that being provided for that fiscal year under section 60 if

(a) the money is required to satisfy extraordinary expenses,

(b) the extraordinary expenses were not provided for in the budget prepared under section 59 in respect of that fiscal year, and

(c) it is essential to the commissioner's ability to carry out the commissioner's duties for the fiscal year under this Act that the additional money sought by the levy be provided to fund those extraordinary expenses.

(2) The commissioner must not submit a levy request under subsection (1) more than once in any fiscal year.

(3) Subject to subsection (4) and to section 62, if a levy request is made under subsection (1) in a fiscal year, each ferry operator must, at the beginning of each quarter of that fiscal year to follow the request, pay to the commissioner, in addition to the amount payable under section 60, the amount determined by the following formula:

$$\frac{\text{special levy} \times (\text{operator's tariff revenue} / \text{previous year's tariff revenue})}{\text{remaining quarters}}$$

where

"special levy" means the amount requested by the commissioner by the levy request;

"remaining quarters" means the number of remaining quarters in the fiscal year.

(4) Subject to section 62, if a levy request is made under subsection (1) in a fiscal year at a time when it is impracticable to include the amount requested in any quarterly payment to be paid in that fiscal year in accordance with subsection (3), each ferry operator must, promptly after the levy request, pay to the commissioner the amount determined by the following formula:

$$\text{special levy} \times (\text{operator's tariff revenue} / \text{previous year's tariff revenue})$$

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where "**special levy**" means the amount requested by the commissioner by the levy request.

Dispute resolution process

62 (1) If a ferry operator considers that the expenses included by the commissioner in a budget or levy request for a fiscal year exceed the amount that is reasonably required to cover the expenses referred to in section 57 for that fiscal year, the ferry operator may require that the matter be referred to arbitration by delivering to the commissioner and the minister, within one month after receipt of the budget or levy request, as the case may be, a notice requiring that arbitration.

(2) If a notice requiring arbitration is not provided by a ferry operator under subsection (1) within one month after receipt of a budget or levy request, as the case may be, the budget or levy request and the estimated expenses or extraordinary expenses, as the case may be, are deemed to have been agreed upon by the ferry operator and the commissioner.

(3) If a ferry operator does not provide a notice under subsection (1) in respect of a budget or levy request, the ferry operator must make the payments required under section 60 or 61, as the case may be, in relation to that budget or levy request, whether or not any other ferry operator seeks arbitration in relation to the budget or levy request and whether or not, in any other arbitration under this section in relation to that budget or levy request, the arbitrator determines that the expenses estimated by the commissioner in the budget or levy request are greater than or are less than the amount that is reasonably required to cover the expenses referred to in section 57 for that fiscal year.

(4) If a notice requiring arbitration is provided by a ferry operator under subsection (1) within one month after receipt of a budget or levy request, the *International Commercial Arbitration Act* applies to the dispute and, for that purpose,

(a) the ferry operator and the commissioner are deemed to have agreed to arbitrate the dispute referred to in paragraph (b) as if the commissioner were the claimant and the ferry operator were the respondent, and are deemed for that purpose to have entered into an arbitration agreement within the meaning of section 7 of the *International Commercial Arbitration Act*,

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(b) the dispute that is deemed to be submitted to arbitration is whether the expenses sought by the budget or the expenses sought by the levy request, as the case may be, exceed the amount that is reasonably required to cover the expenses referred to in section 57 for that fiscal year,

(c) any fees, costs, deposits and expenses payable in relation to the arbitration are to be borne by the ferry operator, and no costs or interest are to be awarded to either party, and

(d) the arbitration must be an arbitration with a sole arbitrator, and if the parties fail to agree on the arbitrator within 15 days after receipt by the commissioner of the notice requiring arbitration under subsection (1), or, in the case of an appointment required under section 15 of the *International Commercial Arbitration Act*, within 15 days after the termination of the mandate of the arbitrator to be replaced, the appointment must be made by the minister.

(5) Even though a dispute as to the reasonableness of the commissioner's expenses sought by the budget, or the expenses sought by the levy request, as the case may be, has been referred to arbitration under subsection (1), the ferry operators must, subject to subsection (6), make the payments required under section 60 or 61, as the case may be.

(6) If, as a result of an arbitration under subsection (1), the arbitrator determines that the expenses sought by the budget, or the expenses sought by the levy request, as the case may be, are greater than or are less than the amount that is reasonably required to cover the expenses referred to in section 57 for the applicable fiscal year, the ferry operators must, at the beginning of each of the remaining quarters of the fiscal year, pay the amount determined by the following formula:

$$\frac{\text{arbitrated expenses} \times (\text{operator's tariff revenue/previous year's tariff revenue}) - \text{amounts paid}}{\text{remaining quarters}}$$

where

"arbitrated expenses" means the amount that is determined by the arbitration to be reasonably required to cover the expenses referred to in section 57 for that fiscal year;

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"amounts paid" means the total of the amounts paid by the ferry operator under sections 60 and 61 in the fiscal year in respect of which the expenses are sought;

"remaining quarters" means the number of quarters in the fiscal year for which no payments have been made under sections 60 and 61.

Expenditures

63 (1) The first commissioner appointed under section 35 may, in the first fiscal year of the first commissioner, spend for the commissioner's expenses referred to in section 57 for that fiscal year, out of the consolidated revenue fund without an appropriation other than this section, an amount not greater than the amount that ferry operators are required to pay under section 58 for that fiscal year.

(2) The commissioner must not, in any subsequent fiscal year, spend for the commissioner's expenses referred to in section 57 for that fiscal year an amount that exceeds the amount that ferry operators are required to pay under section 60, 61 or 62, as the case may be, for that fiscal year, unless the government has authorized that greater expenditure.

Amount to be included in provincial budget

64 (1) In this section, **"budgeted amount"** means,

(a) if no ferry operator provides a notice under section 62 (1) in respect of a budget prepared under section 59 for a fiscal year, the estimate of the expenses referred to in section 57 that was included in the budget for that fiscal year,

(b) if a ferry operator provides a notice under section 62 (1) in respect of a budget prepared under section 59 for a fiscal year and the result of the arbitration on that budget is received by the government on or before January 15 of the fiscal year preceding the fiscal year for which the budget was prepared, the amount that is determined by the arbitration to be reasonably required to cover the expenses of the commissioner referred to in section 57 for the fiscal year for which the budget was prepared, or

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(c) if a ferry operator provides a notice under section 62 (1) in respect of a budget prepared under section 59 for a fiscal year and the result of the arbitration on that budget is received by the government after January 15 of the fiscal year preceding the fiscal year for which the budget was prepared, the maximum amount that may be included in the budget under section 59 (2).

(2) The budgeted amount must be included in the estimates for the minister for the next fiscal year of the government.

Division 7 – Obligations of Ferry Operators

Capital plan

64.1 (1) At least 18 months before the beginning of a performance term, a ferry operator must prepare a capital plan, in accordance with subsection (2), respecting the major capital expenditures, including, without limitation, all expenditures relating to improvements to or purchases of vessels or terminals, that the ferry operator anticipates incurring over the 10 year period beginning at the start of the upcoming performance term.

(2) A capital plan must indicate the following in relation to each major capital expenditure:

(a) the amount;

(b) the proposed timing;

(c) the type of proposed capital acquisition or expenditure;

(d) the options considered and the rationale for the proposed capital acquisition or expenditure.

Quarterly reports

65 Each ferry operator must provide to the commissioner, quarterly after the effective date of the Coastal Ferry Services Contract, or more or less often as the commissioner may order, a report, in a form satisfactory to the commissioner, respecting, for each of the designated ferry routes,

(a) tariffs and tariff revenue,

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- (b) ridership and traffic patterns,
- (c) frequency of ferry service,
- (d) capacity of the vessels, and
- (e) any other information that the commissioner may require relating to the core ferry services.

Annual reports

- 66** (1) In addition to the reports required under section 65, each ~~the~~ ferry operator,
- (a) within 4 months after each anniversary of the effective date of the Coastal Ferry Services Contract, must make a report to the commissioner for the 12 month period ending on the day before that anniversary, setting out, for that period,
 - (i) the services that were provided on the designated ferry routes, including financial statistics, traffic levels and other operating statistics,
 - (ii) any surveys, analyses or other records required by the commissioner respecting the quality of services provided by the ferry operator, and
 - (iii) a review, in summary form, of the proposals received or other actions taken by the ferry operator in accordance with section 69, and
 - (b) within 4 months after the end of each fiscal year of the ferry operator, must provide to the commissioner the ferry operator's audited financial statements for that fiscal year as they relate to operation of the designated ferry routes.
- (2) For the purposes of subsection (1) (a) (i), "**financial statistics**" includes information respecting the following for the 12 month period:
- (a) tariff revenue;
 - (b) operating expenses;
 - (c) capital costs;
 - (d) revenue from ancillary services.

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Duty to provide information

67 (1) In addition to the reports required under sections 65 and 66, each ferry operator must provide to the commissioner information reasonably required by the commissioner and, for the purposes of this Act, must answer all questions of the commissioner.

(2) A ferry operator that receives from the commissioner any form of return must fully and correctly answer each question in the return and deliver it to the commissioner.

Duty to keep records

68 (1) A ferry operator must have in British Columbia a records office in which it keeps all accounts and records that it is required to keep under this Act, under the Coastal Ferry Services Contract or by the commissioner, and must ensure that, at all times, the commissioner is aware of the current mailing address for that office.

(2) A ferry operator must not remove or permit to be removed from British Columbia a record required to be kept under subsection (1), except on the conditions, if any, and for the period, if any, specified by the commissioner.

(3) Without limiting subsection (1), a ferry operator must maintain the reports required under sections 65 and 66 at its records office and must make access to and copies of those records available to the public.

(4) Any person may examine and take extracts from any of the records maintained by the ferry operator under subsection (3) on payment of 50 cents, or any lesser sum that the ferry operator may require, for each record examined, and sections 46 (7) and (8) and 48 (1) of the *Business Corporations Act* apply.

Additional or alternative service providers

~~**69** (1) In each performance term of the Coastal Ferry Services Contract, the ferry operator must, in accordance with the plan prepared by it under subsection (2) in relation to that performance term, seek additional or alternative service providers to~~

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provide, under contract, franchise agreement or otherwise, ferry services on the designated ferry routes serviced by the ferry operator in an effort to reduce the costs of providing those services on those designated ferry routes.

(2) A ferry operator must, for each performance term, prepare a plan in which the ferry operator sets out the manner in which it intends to seek additional or alternative service providers to provide ferry services on the designated ferry routes serviced by the ferry operator and must provide that plan to the commissioner,

(a) in the case of a plan prepared in relation to the first performance term, within 12 months after the effective date of the Coastal Ferry Services Contract, and

(b) for each subsequent performance term, on or before the beginning of that performance term.

(3) If the commissioner considers that a ferry operator has failed to comply with this section, the commissioner may, in addition to any power the commissioner may exercise under section 48, do any or all of the following:

(a) adjust any productivity factor the commissioner is to establish under section 41 (6) to reflect that failure;

(b) order the ferry operator to prepare and provide to the commissioner, a plan, in form and content satisfactory to the commissioner, setting out the manner in which the ferry operator intends, over the period specified by the commissioner, to seek additional or alternative service providers to provide ferry services on the designated ferry routes serviced by the ferry operator;

(c) order the ferry operator to comply with the plan provided under paragraph (b).

Additional or alternative service providers

69 (1) A ferry operator must, if ordered to do so by the commissioner, seek additional or alternative service providers to provide, under contract, franchise agreement or otherwise, one or more ferry transportation services on one or more of the designated ferry routes serviced by the ferry operator.

(2) The commissioner may make an order under subsection (1),

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(a) in relation to ferry transportation services other than competitive services, in an effort to reduce the costs of providing those services on those designated ferry routes, and

(b) in relation to competitive services, to ensure that the ferry operator does not have an unfair competitive advantage in providing that ferry transportation service.

(3) Promptly after an order is made under subsection (1), the ferry operator that is the subject of the order must

(a) prepare a plan setting out the process the ferry operator intends to undertake to comply with the order, and

(b) provide that plan to the commissioner for approval.

(4) The commissioner may

(a) approve a plan provided to the commissioner under subsection (3)

(b) if the commissioner is satisfied that the plan proposes a fair and competitive process, or

(b) if a plan acceptable to the commissioner is not received by the commissioner promptly after the order is made under subsection (1),

(i) create a plan setting out the process the ferry operator must undertake to comply with the order, and

(ii) provide that plan to the ferry operator.

(5) Promptly after a plan is approved under subsection (4) (a) or provided to a ferry operator under subsection (4) (b) (ii), the ferry operator must comply with the order made under subsection (1) in accordance with the process set out in the plan.

(6) Promptly after complying with an order made under subsection (1), the ferry operator must report to the commissioner as to the ferry operator's activities in that regard, including, without limitation,

(a) the process by which alternative service providers were sought, and

(b) the results of the process.

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Part 5 – General

Division 1 – Offences and Penalties

Offences

70 (1) The following persons commit an offence:

(a) a person who fails or refuses to obey an order of the commissioner made under this Act;

(b) a ferry operator that wilfully or negligently makes a return or provides information to the commissioner that is false in any particular;

(c) a person who obstructs or interferes with a commissioner, inspector or person in the exercise of rights conferred or duties imposed under this Act;

(d) except so far as the person's public duty requires the person to report on or take official action, an officer or employee of the commissioner, or person having access to or knowledge of a return made to the commissioner or of information procured or evidence taken under this Act, other than a public inquiry or public hearing, who, without first obtaining the authority of the commissioner, publishes or makes known information, having obtained it from, or knowing it to have been derived from, the return, information or evidence.

(2) Subsection (1) (c) does not apply if the commissioner, inspector or person does not, on request at the time, produce a certificate of his or her appointment or authority.

(3) A person convicted of an offence under this section is liable to a penalty not greater than \$500 000.

(4) Nothing in or done under this section affects the liability of a ferry operator otherwise existing or prejudices enforcement of an order of the commissioner in any way otherwise available.

(5) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Division 2 – General Provisions

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This Act prevails

71 In the event of a conflict between this Act and any other enactment, this Act prevails.

Certified documents as evidence

72 (1) A copy of an order or other document in the commissioner's custody, purporting to be certified by the commissioner to be a true copy, is evidence of the document without proof of the signature.

(2) A certificate purporting to be signed by the commissioner stating that no order on a specified matter has been made by the commissioner is evidence of the fact stated without proof of the signature.

No waiver of rights

73 (1) Nothing in this Act releases or waives a right of action by the commissioner or by a person for a right, penalty or forfeiture that arises under a law of British Columbia.

(2) No penalty enforceable under this Act is a bar to or affects recovery for a right, or affects or bars a proceeding against or prosecution of a ferry operator, its directors, officers, agents or employees.

Freedom of Information and Protection of Privacy Act

74 For the purposes of the *Freedom of Information and Protection of Privacy Act*, all records that, immediately before the conversion of British Columbia Ferry Corporation into a company as contemplated by section 19 of this Act, were in the custody or under the control of British Columbia Ferry Corporation and were records to which the *Freedom of Information and Protection of Privacy Act* applied, are deemed, on that conversion of British Columbia Ferry Corporation into a company and until the records are disposed of in accordance with the *Document Disposal Act*, to be under the control of the minister's ministry.

Ombudsperson Act

75 The *Ombudsperson Act* does not apply to the Authority or to British Columbia Ferry Corporation after its conversion into a company as contemplated by section 19 of this Act.

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Power to make regulations

76 (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

(a) may make regulations designating appointment areas and prescribing the coastal regional districts that are to make up those appointment areas,

(b) may, in accordance with section 30, make regulations respecting ferry terminal properties as that term is defined in that section, and

(c) may make regulations respecting the form of identification to be carried by an inspector appointed under section 46.

Intent of Legislature

77 If a provision of this Act is held to be beyond the powers of the government, that provision must be severed from the remainder of the Act, and the remaining provisions of the Act have the same effect as if they had been originally enacted as a separate enactment and as the only provisions of this Act.

Spent

78–88 [*Consequential amendments. Spent. 2003-14-78 to 88.*]

Commencement

89 This Act comes into force on April 1, 2003.

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AMENDMENTS TO OTHER STATUTES

226 Schedule 2 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by adding the following:

Public Body: Ferry operators under the *Coastal Ferry Act* (each ferry operator)

Head: Chair (each ferry operator)

Public Body: B.C. Ferry Authority

Head: Chair .

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Transitional Provisions

Coastal Ferry Act transition – BCFS

246 (1) Words and terms used in this section have the same meaning as in the *Coastal Ferry Act*, and in this section:

"baseline remuneration", in relation to an individual who, on the date this Act receives First Reading in the Legislative Assembly, is a director of BCFS, means the remuneration that the individual was eligible to receive in that capacity immediately before the date on which this Act receives First Reading in the Legislative Assembly;

"transition period" means the period beginning on the date on which this Act receives First Reading in the Legislative Assembly and ending on September 30, 2010.

(2) Despite section 182 (5) of the *Business Corporations Act*, BCFS must hold an annual general meeting on September 30, 2010, whether or not an annual general meeting was held in the transition period.

(3) Before the BCFS annual general meeting on September 30, 2010, the Authority must prepare a BCFS directors' compensation plan in accordance with section 21.2 (2) of the *Coastal Ferry Act*, and sections 21.2 and 21.3 of that Act apply.

(4) At the BCFS annual general meeting on September 30, 2010, the Authority must replace the existing directors by electing or appointing directors in accordance with section 21.1 of the *Coastal Ferry Act*.

(5) An individual who, on the date this Act receives First Reading in the Legislative Assembly, is a director of BCFS is, despite sections 21.2 and 21.3 of the *Coastal Ferry Act*, entitled to receive his or her baseline remuneration until

(a) the term of office to which the director was most recently elected or appointed expires,

(b) the director dies or resigns,

(c) the director is replaced under subsection (4) of this section, or

(d) the director is removed under the *Coastal Ferry Act*.

Disclaimer: the BC Ferry Commission offers this unofficial document as a service to readers. It shows changes made to the 2003 Coastal Ferry Act when the Miscellaneous Statutes Amendment Act (no.3), 2010 (Bill 20) received Royal Assent on June 3, 2010. This document is believed accurate, but readers should refer directly to the Acts for official versions.

(6) Sections 21.4 and 21.5 of the *Coastal Ferry Act* do not apply to an individual who, on the date this Act receives First Reading in the Legislative Assembly, holds a position as an executive of BCFS if and for so long as that individual remains in that executive position with BCFS.

Coastal Ferry Act transition – Authority

247 (1) Words and terms used in this section have the same meaning as in the *Coastal Ferry Act* and, in this section, "**baseline remuneration**", in relation to a director of the Authority, means the remuneration that the individual was eligible to receive immediately before the date on which this Act receives First Reading in the Legislative Assembly.

(2) An individual who, on the date this Act receives First Reading in the Legislative Assembly, is a director of the Authority

(a) is, despite section 14 of the *Coastal Ferry Act*, entitled to receive his or her baseline remuneration until

(i) the term of office to which the director was most recently elected or appointed expires,

(ii) the director dies or resigns, or

(iii) the director is removed in accordance with section 5 (5) of the *Coastal Ferry Act*, and

(b) is not, despite paragraph (a), entitled to receive remuneration for performing any directorial service for the Authority on any day before October 1, 2010 on which he or she is receiving remuneration from BCFS.

(3) Promptly after the coming into force of the amendment to section 14 of the *Coastal Ferry Act* by this Act, the directors of the Authority must amend the bylaws of the Authority to reflect section 14 of the *Coastal Ferry Act* as amended by this Act, and, despite section 16 (3) of the *Coastal Ferry Act*, that amendment takes effect, subject to subsection (2) (b) of this section, immediately on the deposit of that amendment in the Authority's head office.

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