

LEGISLATIVE CHANGES



JULY 7TH
BUDGET

EXPLANATORY NOTE

The paragraph printed at the beginning of the bill is not part of the proposed Act and has no force of law. In fact, this Bill contains no general purpose clause which would aid the courts in proper interpretation when it is applied. The government and individual public employers can, therefore, apply termination without cause for purposes other than restraint.

(Note the difference between this Bill and the Compensation Stabilization Amendment Act which has a Purpose of Act clause incorporated into the Act itself.)

Interpretation

1. In this Act "employee" means a person employed by a public sector employer but does not include a justice or a person employed as a justice; "public sector employer" means

- (a) the government,
- (b) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has
 - (i) on its board of management or board of directors, a majority of members who are appointed by an Act, a minister or the Lieutenant Governor of Council, or
 - (ii) employees appointed under the Public Service Act,
- (c) a municipality, including
 - (i) a municipality,
 - (ii) a regional district, and
 - (iii) an improvement district
 as defined in the Municipal Act,
- (d) a board of school trustees as defined in the School Act,
- (e) a university as defined in the University Act,
- (f) an institution as defined in the College and Institute Act,
- (g) a community care facility as defined in the Community Care Facility Act which receives funds from another public sector employer,
- (h) a hospital as defined in the Hospital Act or the Hospital Insurance Act which receives funds from another public sector employer,
- (i) a library board appointed under Section 18 of the Library Act, and
- (j) an employer designated in the Schedule.

Through the definition of "public sector employer" the bill covers all public sector employees including government employees, nurses, teachers, municipal employees, college employees and all employees of Crown Corporations, Boards, Agencies, Societies and Universities.

Termination of employees

2. (1) Notwithstanding the Labour Code and the Public Service Labour Relations Act, a public sector employer may terminate the employment of an employee without cause.

(2) A public sector employer that is bound by a collective agreement that is in force on July 7, 1983 does not have the power to terminate the employment of an employee under subsection (1) until the collective agreement expires.

(3) Subject to subsection (2), subsection (1) applies notwithstanding any provision of a collective agreement, and where there is an inconsistency between the power of termination under subsection (1) and any provision of a collective agreement, subsection (1) prevails.

(4) For the purposes of subsection (2), a collective agreement expires on the date, stated in the agreement, of its termination or expiry notwithstanding any term of the agreement or any rule of law that provides that the agreement, or any subsidiary agreement, continues in force after the termination or expiry date.

(5) A provision of a collective agreement entered into or renewed by a public sector employer after July 7, 1983 that is inconsistent with subsection (1) has no effect.

(6) Notwithstanding the School Act, this Act applies to a teacher who is employed by a school board.

(7) Where a school board intends to terminate the employment of a teacher under subsection (1), the termination takes effect at the end of the next school term, determined under the School Act.

SECTIONS 2(1) and 2(2)

Upon expiry of a collective agreement in force on July 7, an employer can terminate any of its employees without cause. Employees not covered by a collective agreement as of July 7 can be terminated without cause from that date on. This eliminates any right to the protection offered by Section 93 of the Labour Code or of collective agreements, against dismissal without cause.

SECTION 2(4)

"Duration" or "continuation" clauses often are contained in collective agreements to extend the terms and conditions of a contract throughout the period of negotiations for a new contract. Any clause or rights which relate to dismissal, termination, layoff, or any other protection which concerns separation from work on a temporary or permanent basis, cannot extend past the date of expiry.

As a result, seniority provisions and contractual protection against dismissal without cause, are void on the date the contract expires.

SECTION 2(5)

Clauses in agreements signed after July 7, 1983 which restrict the ability of an employer to dismiss without cause are null and void and provide no protection.

Regulations respecting termination

3. (1) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable respecting the implementation of terminations under section 2 (1).

(2) A regulation under subsection (1) may establish criteria to be applied within a unit into which employees have been designated under subsection (3)(a) for the purpose of determining which of the employees within the unit will have their employment terminated.

(3) A public sector employer is authorized to

(a) designate groups of employees into what it considers to be appropriate units for the purpose of applying the criteria referred to in subsection (2), and

(b) determine the manner of applying the criteria within units that have been designated under paragraph (a).

(4) A regulation under subsection (1) may, in respect of employees, as defined in the Public Service Act or appointed under section 2 of that Act, authorize the employer to reassign, relocate or reclassify any employee.

(5) For the purposes of the regulations, but without limiting the generality of subsections (1) and (2), the criteria referred to in subsection (2) may include

- (a) the skills, abilities and qualifications of employees
- (b) operational requirements and efficiency,
- (c) the seniority of employees, and
- (d) the seniority provisions of a collective agreement.

SECTION 3 (1) (2) and (3)

The government, through Order in Council has the option, if it so wishes, to set regulations which will establish criteria upon which terminations will be based. Individual employers will then have the unilateral and unfettered power to divide employees into whatever units it wants for the application of the criteria.

EMPLOYMENT STANDARDS AMENDMENT ACT, 1983
BILL 26

So, even if Cabinet sets criteria based on seniority for example, individual employers can set seniority units as small as they want and thereby fire whomever they please.

SECTION 3(4)

The Cabinet has the option of giving individual employers unlimited power to relocate, reassign, or reclassify any employee they choose.

Compensation

4. (1) The Lieutenant Governor in Council may make regulations that he considers necessary or advisable for providing for compensation for employees whose employment is terminated under section 2 (1) or under any other circumstance without cause.
- (2) A regulation may provide benefits to an employee whose employment is terminated including, but not limited to
 - (a) relocation and retraining allowances, and
 - (b) in respect of employees covered by the Pension (College) Act, the Pension (Municipal) Act, the Pension (Public Service) Act and the Pension (Teachers) Act, retirement benefits that are in addition to any benefits under the provisions of those Acts.
- (3) Compensation or benefits payable under this section to employees as defined in the Public Service Act or appointed under section 2 of that Act, may be authorized by the minister under whose administration the employee falls, and where a minister authorizes payment of a monetary benefit under this section, the Minister of Finance shall make the payment out of the consolidated revenue fund.
- (4) Where the employment of an employee is terminated under section 2 (1) or under any other circumstance without cause, the employee is entitled to compensation in accordance with the regulations made under subsection (1).
- (5) An employee may elect not to claim compensation under this section by delivering a notice to that effect to his employer, and where he so elects, he is not entitled to claim compensation under this section.
- (6) Where an employee fails to make an election under subsection (5) within 60 days of the effective date of the termination of his employment, he shall be deemed to have elected to be paid compensation under this section, and on receiving that compensation, he is not entitled to any other remedy referred to in subsection (7).
- (7) An employee who makes an election under subsection (5) has the right to seek any other remedy, other than reinstatement of his employment, that he may have arising out of the termination of his employment, but nothing in this section gives him any additional rights to be entitled to such a remedy that he did not have before this Act came into force.
- (8) Where a public sector employer fails to pay an employee compensation in accordance with this Act, the employee may claim that compensation in court.

SECTIONS 4(1) and (2)

These provisions leave it totally in the hands of Cabinet as to whether a fired employee gets any severance pay or not, and how much pay it will be.

SECTION 4(5)

If a fired employee chooses to take his/her dismissal to court or arbitration, he/she waives all rights to compensation under this section even if he/she loses in court.

SECTION 4(7)

If an employee opts for arbitration or court action, he/she is precluded from seeking as a remedy reinstatement of employment, or other remedies which may not have previously been available such as alternate employment, retraining, etc.

1. Section 1 of the Employment Standards Act, S.B.C. 1980, c.10, is amended
 - (a) by repealing the definition of "board",
 - (b) in the definition of "obligor" by striking out "a certificate" and substituting "an order or certificate",
 - (c) by adding the following definitions: "officer" means an industrial relations officer appointed under the Public Service Act;
 - (d) in paragraph (a) of the definition of "wages" by striking out "compensation", and substituting "money",
 - (e) in paragraph (c) of the definition of "wages" by striking out "by an order of the board," and substituting "pursuant to a certificate of the Director or an order of an officer", and
 - (f) in paragraph (d) of the definition of "wages" by striking out "or a collective agreement".

SECTION 1

Starting with the definitions section, the act dissolves the Employment Standards Board and transfers responsibilities to the Director.

The Director's former powers of investigation and preliminary judgement are delegated to Industrial Relations Officers appointed under the Public Service Act.

2. Section 2 is repealed and the following substituted:

Standards

2. (1) Subject to subsection (2), a requirement of or made under this Act is a minimum requirement, and an agreement to waive such a requirement, not being an agreement referred to in subsection (2), is void.
- (2) Where a collective agreement contains any provision respecting a matter set out in Column 1 of the following table, the Part of this Act set out opposite that matter in Column 2 does not apply in respect of employment pursuant to that collective agreement:

<u>Table</u>	
Column 1 Matter	Column 2 Part
Hours of work, overtime or special apparel	Part 3
Annual vacation or vacation pay	Part 4
Termination of employment or layoff	Part 5
Maternity or pregnancy leave	Part 7

- (3) Where a collective agreement contains no provision respecting a matter set out in Column 1 of the table to subsection (2), the Part of this Act set out opposite that matter in Column 2 shall be deemed to be incorporated in the collective agreement as part of its terms.

- (4) Where a Part is deemed by subsection (3) to be incorporated in a collective agreement and a dispute arises respecting the application or interpretation of the Part, the grievance procedure contained in the collective agreement or the arbitration provisions of the collective agreement shall apply for resolution of the dispute.

SECTION 4

This removes the legal obligation of the employer to make benefit payments to a fund, insurer, etc. and removes the right of the Union file a complaint under this Act to face the employer to comply with the collective agreement.

5. Section 12 is repealed and the following substituted:

Order of nonpayment by employer

12. (1) Where
- (a) the director or his authorized representative receives or obtains information within six (6) months after the last date on which an employer or person
 - (i) failed to make a payment of wages to an employee, or
 - (ii) received or failed to make a payment referred to in section 9, 17 (1), 19, 20, 23, 35.1 or 76 (2), and
 - (b) an officer is satisfied that wages or payments are owing and that no other proceeding for their recovery has been commenced, or, if commenced, has been discontinued,
- the officer may
- (c) arrange that the employer or person who received or failed to make payment pay the wages or payments directly to the employee or person entitled to them, or
 - (d) receive, on behalf of the employee or person entitled to them, from the employer or person who received or failed to make payment, any wages or payments agreed to be paid as the result of a compromise or settlement, and shall pay them to the employee or person entitled to them.
- (2) Where an officer is unable to resolve a complaint in accordance with this section, he may issue an order in writing requiring the obligor to pay forthwith to the director any wages or payments referred to in subsection (1) to which an employee or person is entitled.
- (3) An order issued under this section
- (a) may require an obligor to pay wages or make payments to more than one employee or person in respect of more than one failure to comply with this Act or the regulations,
 - (b) shall be served on the obligor, and
 - (c) shall state
 - (i) the amount to be paid by the obligor for an employee or person and how the amount was determined, and
 - (ii) that the obligor may, within eight (8) days after service of the order on him or within any further time the director allows, seek a review of the order under this section.
- (4) An obligor seeking a review of an order under this section shall, within eight (8) days after service of the order on him or within any further time the director allows, deliver to the director
- (a) written particulars of the request for review, including the reasons for it, and
 - (b) a certified cheque or money order payable to the director in
 - (i) the amount of \$100, or
 - (ii) an amount equal to 10% of the amount referred to in subsection (3) (c)(i), whichever is greater, and the amount of the cheque or money order shall be held as a deposit until the review is completed.

SECTION 5

1. Replaces the Board's powers with those of the Director of Employment Standards.
2. Changes the compulsory nature of Orders of the Board (for nonpayment by employers) to discretionary powers of the Director. (i.e. "the Board shall issue an order for payment" is now the Officer/Director may issue an order.) All provisions changed from shall to may.
3. The Act now proposes that even when an Order is issued, it only "may require an obligor to pay".

12. Section 19 is amended by renumbering it as section 19 (1) and by adding the following subsection:

(2) Notwithstanding subsection (1), where a corporation is in receivership, bankruptcy or is subject to action under section 178 of the Bank Act (Canada), a person who was a director or officer of the corporation is not personally liable for severance pay.

(5) Where the period for which a collective agreement is expressed to be made expires and the agreement is not renewed or replaced by a succeeding collective agreement, but employees who were covered by the collective agreement continue in their employment, an interested person may apply to the director for a declaration that it is no longer appropriate for the provisions of the collective agreement to continue to subsist or bind the employer or employees.

(6) The director may after an application under subsection (5) make inquiries he considers necessary to ascertain what progress has been made towards the conclusion of a new collective agreement, and where he considers that an appropriate time has passed without reasonable progress towards the conclusion of a new collective agreement, he may declare that the continued application of the provisions of the collective agreement is no longer appropriate.

(7) On the making of the declaration referred to in subsection (6),

- (a) no provision of the expired collective agreement is binding on the employer or employees, notwithstanding any provision to the contrary in the agreement, and
- (b) the provisions of this Act apply.

SECTION 2

This may be the most insidious section of the Act. Up to this time the Director could:

- (1) make variations to overtime wage provisions where there was mutual agreement between a union and an employer and where the varied conditions were not inconsistent with the intent of this Act;
- (2) vary the requirement that an employer clean and repair employer supplied uniforms upon application of both parties.

Also, sections of the Act relating to vacations, maternity leave and termination of employment/layoff, although negotiable at the bargaining table, were absolute minimums.

Employment Standards are proposed to no longer be minimum standards for all workers. A collective agreement can now be considered an agreement to waive the provisions of this Act if the minimum standards or higher cannot be achieved at the bargaining table.

Where a collective agreement is silent, the minimum standards of the Act apply. This is an incentive to employers to take a hard line on standards inferior to those provided for in this Act.

SECTION 2 (5) (6) (7)

This section provides that where a collective agreement contains clauses related to hours of work, vacations, uniforms, temporary layoff and maternity leave, and the provisions of that agreement are continued after the date of expiry through a "duration" clause, the Director can nullify not only these sections of the collective agreement, but every provision of the collective agreement upon the application of a single interested person.

3. Section 7 (2) is amended by adding "and" at the end of paragraph (c) and by repealing paragraph (d).

SECTION 3

Where an employee wishes his/her paycheque to be sent directly to a bank, employers need no longer apply.

4. Section 9 (2) is amended by striking out "or a collective agreement" and "or collective agreement".

SECTION 12

Directors and Officers of Corporations are no longer liable for a worker's wages when the company goes into bankruptcy or receivership.

22. Section 41 is amended

- (a) In paragraph (b) of the definition of "terminate" by striking out "board" and substituting "director or his authorized representative", and
- (b) In the definition of "severance pay" by adding at the end "but for the purposes of this definition, overtime wage as defined by section 26 shall not be included or taken into account for the purpose of determining or calculating normal weekly wages or average weekly wages".

SECTION 22

Severance pay now refers to average weekly wages including overtime. This amendment will specifically exclude overtime thereby limiting the amount of severance pay.

24. Section 43 is amended by repealing paragraph (d).

SECTION 24

Notice of termination must now be given to an employee on "temporary layoff".

26. Section 49 is repealed.

SECTION 26

Under the old Act, Section 49 provided for the Board's power to make an order for an employer to comply with this part. There is no longer any right to enforce compliance, short of going to court.

27. Section 56 is amended

- (a) by striking out "Where the board" and substituting "Where an officer",
- (b) by striking out "the board may" and substituting "the officer may",
- (c) In paragraph (c) by striking out "a person or reinstate an employee" and substituting "or reinstate a person",
- (d) In paragraph (d) by striking out "an employee" and substituting "a person", and
- (e) by repealing paragraph (e).

SECTION 27

Repeals the provision in the Act which allows Employment Standards to charge to an employer financial loss or damages payable to an employee, caused by a violation of the Maternity Leave section of the Act to the employer.

29. Section 59 is amended

- (a) by striking out "Where the board" and substituting "Where an officer",
- (b) by striking out "the board may" and substituting "the officer may",
- (c) In paragraph (c) by striking out "a person or reinstate an employee" and substituting "or reinstate a person",
- (d) In paragraph (d) by striking out "an employee" and substituting "a person", and
- (e) by repealing paragraph (e) and substituting the following:
 - (a) pay a person or employee reasonable and actual out of pocket expenses incurred by him by reason of the contravention.

SECTION 29

An award under this part of the act can no longer include financial loss or damages caused by a contravention. Instead, a person can only claim reasonable and actual out of pocket expenses when an employer is found to have threatened and coerced them because of a charge laid under this Act.

A worker must now take the prohibitively expensive route of the courts for a damage award for the mental, if not physical, anguish of bullying by an employer. It is also much harder to prove "harassment" in the courts.

31. Section 80 is amended by renumbering it as section 80(1) and by adding the following subsections:

(2) Recovery of wages pursuant to a complaint shall be limited to wages that became payable in the six (6) months immediately preceding the date of the complaint or, where the employment with the employer complained of has ceased, wages that became payable in the last six (6) months of employment with that employer.

(3) Remedies pursuant to a complaint that is made in respect of matters other than wages shall be limited to matters that arose in the six (6) months immediately preceding the date of the complaint or, where the employment with the employer complained of has ceased, to matters that arose in the last six (6) months of employment with that employer.

(4) The director or his authorized representative may decline to investigate a complaint where the employee or person

- (a) is proceeding with another action for the recovery of money for which the complaint has been made or
- (b) has sought and obtained recourse before a court, tribunal, arbitrator or other form of adjudication of the subject matter of the complaint.

SECTION 31

Places restriction on any claim under the Act to the last 6-month period of employment with the employer. It was previously open ended and therefore subject only to fairness and reasonableness.

Also, a new section is added which will allow the Director or even an officer to refuse to deal with a complaint when a grievance or court action has been started.

July, 1983

PUBLIC SERVICE LABOUR RELATIONS AMENDMENT ACT

INTRODUCTION

The Public Service Labour Relations Act (PSLRA) is the legislation which provides bargaining rights for employees of the Provincial Government. These employees fall into one of three bargaining units--the BCGEU, the Professional Employees Association and the Government Nurses.

The PSLRA currently specifies the matters which cannot be negotiated by the parties. The government pension plan is an example of one such subject.

EXPLANATORY NOTE

The paragraph at the beginning of the bill is not part of the proposed Act and has no force of law. In fact, this Bill contains no general purpose clause which would aid the courts in proper interpretation if the Bill was adopted. The government, as an employer, can therefore apply the broadest possible interpretation to those matters which may not be included in a collective agreement between the government and its employees. This Bill radically expands the list of items which are non-negotiable.

Content of collective agreement

13. (1) No collective agreement shall affect
 - (a) the powers and duties of the Public Service Commission or its delegate under the Public Service Act respecting the recruitment or appointment of employees to the public service, whether from within or from outside the public service,
 - (b) any matter included under the Pension (Public Service) Act,

- (c) the organization, establishment and administration of the ministries and branches of the government, including the right of the government to establish and eliminate positions, to assign duties to positions, to establish work scheduling and to determine programs and services and the method of their delivery,
 - (d) the right of the government to establish and administer systems of job evaluation and classification, and
 - (e) the procedures and methods of training or retraining all employees not affected by section 18, other than training programs that are administered by a branch or ministry and that apply to one occupational group only,
- and any provision in a collective agreement that is expressed to affect any of the matters referred to in paragraphs (a) to (e) is without effect.
- (2) Nothing in subsection (1) (d)
 - (a) affects the right of a union to negotiate
 - (i) levels of compensation, and
 - (ii) a procedure for review of the placement of an employee's position within the system, or
 - (b) renders ineffective a provision in a collective agreement respecting the matters referred to in paragraph (a) of this subsection.

The expansion of the areas which Unions in the Provincial Government Service are prohibited from negotiating are provided for in the one and only section of the Bill.

SECTION 13 (1)(a)

Expands the present inability of Unions to negotiate the appointment and promotion of employees (Section 20 of the present Public Service Act) to a prohibition against collective agreements containing any provisions which affect the powers and duties of the Public Service Commission. Specifically, this means the elimination of the following Articles of the BCGEU Master Agreement:

- 12.01 Union Observer
- 12.02 Notifications
- 12.05 Screening Committee
- 12.06 Transfer Without Posting
- 12.07 Interview Expenses
- 12.08 Postings
- 12.09 Selection Panels

The following Articles of the Master Agreement would either be eliminated or exist only under terms and conditions set by regulation by the Public Service Commission:

- 12.03 Appeal Procedure
- 31.02 Seniority on Applying for Regular Positions and Relocation Expenses

Section 13 (1)(a) would also mean that conversion of auxiliaries to regular could not take place.

SECTION 13 (1)(b)

This section remains essentially unchanged.

SECTION 13 (1)(c)

Any provision of a collective agreement affecting the organization (including reorganizations) and establishment of Ministries and Branches of the government service would be outlawed. Therefore, the following Master Agreement Articles would be wiped out:

- 32.13 Reorganizations
- 12.04 Relocations

The Reorganization Agreement negotiated between the BCGEU and the Government (and issued as Treasury Board Order 57) could also be abolished if the government so chose.

Section 13 (1)(c) would not allow a collective agreement to affect the establishment of work schedules. This means the elimination of the following Articles from the Master Agreement:

- 14.01 Hours of Work
- 14.02 Work Schedules
- 14.07 Points of Assembly & Work Start Times
- 14.08 Flextime
- 15.03 Notice of Work Schedules
- 15.05 Change of Shifts
- 15.06 Shortfall of annual Working Hours
- 16.02 Authorization and Application of Overtime
- 16.04 Recording of Overtime
- 16.05 Sharing of Overtime
- 16.08 No Layoff to Compensate for Overtime
- 16.09 Right to Refuse Overtime
- 16.10 Overtime for Part-time Employees
- 16.12 Rest Interval After Overtime
- 18.03 Vacation Scheduling

The following Master Agreement Articles could still be negotiated in some restricted form but would be largely dependent upon what hours of work and shift schedules would be imposed by the Government. In any event, these articles as we now know them would be severely restricted:

- 14.03 Conversion of Hours
- 14.04 Rest Periods
- 14.05 Standby Provisions
- 14.06 Meal Periods
- 15.01 Definition of Shifts and Shift Premiums
- 15.02 Shift Premium Entitlement
- 15.04 Short Changeover Premiums
- 16.01 Definition of Overtime
- 16.03 Overtime Entitlement
- 16.06 Overtime Compensation
- 16.07 Overtime Meal Allowance
- 16.11 Call-out Provisions

It should also be noted that all Component Agreement Articles dealing with hours of work would be nullified.

Section 13 (1)(c) would mean the assignment of duties would become a sole and exclusive management right. Therefore, Master Agreement Article 27.04, Substitution Pay, would be eliminated from the contract.

Section 13(1)(c) would also mean the Government, as an employer, would retain sole and exclusive right to establish and/or eliminate any positions in the government service. Therefore, the following Master Agreement Articles would be severely restricted, if not eliminated altogether:

- 11.01 Seniority Defined
- 11.03 Loss of Seniority
- 13.01 Layoff & Recall
- 13.02 Advance Notice
- 31.05 Layoff & Recall

Section 13 (1)(c) would give the government the total and absolute right to determine how programs and services are to be delivered to the public. This means the elimination of protection against contracting out and Article 24 would be eliminated from the Master Agreement.

SECTION 13 (1)(d)

The new legislation would wipe out any union input to the establishment and administrative systems of job evaluation and classifications. The following Articles of the Master Agreement would therefore be nullified:

- 28.01 Classification Specifications
- 28.02 Job Evaluation Plan
- 28.03 Classification and Salary Assignment

The Classification Appeal provisions of the agreement (Article 28.04) would also be affected but not necessarily eliminated. It is unclear at present what rights union members would have in this regard.

July, 1983

**COMPENSATION STABILIZATION AMENDMENT
ACT, 1983**

1. Section 2 of the Compensation Stabilization Act, S.B.C. 1982, c. 32, is amended in paragraph (a) by striking out "and" at the end and by adding the following:

(a.1) arbitrators of arbitration awards containing a compensation plan for public sector employees, and

This section severely limits the authority of independent arbitration boards by requiring them to make initial awards within the guidelines and regulations of this Act.

2. The following section is added:

Purpose of Act

2.1 The purpose of this Act is to establish a program that will encourage productivity and restrain and stabilize compensation in the public sector while ensuring that the paramount consideration for determining compensation is the public sector employer's ability to pay.

This section makes an employer's argument on inability to pay the major consideration for either an arbitration board or the Compensation Commissioner. It means that all an employer has to do is claim inability to pay or budget nothing for a wage increase to justify 0%.

3. Section 4 (1) is amended:

- (a) in paragraph (e) by striking out "and",
- (b) in paragraph (f) by striking out "a public sector employee has been placed" and substituting "a public sector employer has placed a public sector employee" and by adding "and" at the end, and
- (c) by adding the following:
 - (g) determine whether section 12.1 has not been complied with.

Imposes a legal obligation on public sector employers to place employees in groups. It also makes it mandatory for the Commissioner to determine whether or not the employer's ability to pay has been complied with by the employer.

4. Section 9 is amended:

- (a) in subsection (a) by striking out "to stabilize" and substituting "to restrain and stabilize", and
- (b) by repealing subsection (2) and substituting the following:
 - (a) compensation will be maintained or reduced, or
 - (b) increases in compensation will be limited.

The first amendment makes it law that the cabinet must issue wage guidelines to restrain public sector wages. The second part of this amendment removes the two year limit on the wage controls and makes them permanent.

5. The following section is added:

Ability to pay

12.1 In reaching or establishing a compensation plan for public sector employees, the parties to the plan, or the public sector employer or arbitrator establishing the plan shall give paramount consideration to the ability of the public sector employer to pay that compensation.

This section again emphasizes that the overriding consideration of wage determination shall not be comparability with other employers in the private or public sector; nor the labour market, nor ability to survive on an income nor cost of living but only the so called ability of an employer to pay.

6. Section 15 is amended:

- (a) in paragraph (b) by striking out "increase in", and
 - (b) by repealing paragraph (c) and substituting the following:
 - (c) shall provide:
 - (i) the parties to the compensation plan, or
 - (ii) where applicable, the arbitrator or arbitration board which made the award containing the compensation plan,
- with an opportunity to reach or establish a plan that is within the guidelines.

The first part of this section eliminates the reference to controlling an increase in compensation so the act would refer only to "maximum allowable compensation". It would permit the wage control Commissioner to state that a wage decrease is required by the legislation.

The second part makes the requirement for a wage decrease apply to an arbitration board.

7. Section 17 is amended:

- (a) in subsection (1) by striking out "stabilization" and substituting "restraint and stabilization",
- (b) in subsection (2) (a) by adding the following:
 - (1.1) requiring reductions in compensation,
- (c) in subsection (2) (a) (iii) by striking out "increases in",
- (d) in subsection (2) (f) by striking out "increase in",
- (e) in subsection (2) (f) by striking out "between increases in" and substituting "among",
- (f) in subsection (2) (f) (ii) by adding "or, where applicable, the arbitrator or arbitration board of the compensation plan has not specified otherwise" after "otherwise",
- (g) in subsection (2) (g) by striking out "any increase in compensation" and substituting "any compensation payable" and by striking out "and", and
- (h) in subsection (2) by adding the following paragraphs:
 - (g.1) allowing the commissioner to determine
 - (i) the percentage of productivity increase achieved by a public sector employee or group of public sector employees, and
 - (ii) the percentage of that productivity increase which may be taken into account when establishing or reaching a compensation plan for that employee or group of employees, and.

This amendment gives the wage control Commissioner the legal authority to require reduction in wages and to reallocate existing total compensation "among pay, benefit or prerequisites". In fact he could eliminate health and welfare benefits, premiums, etc. by adding the cost to another area of the agreement.

8. Section 18 is amended:

- (a) In subsection (1) by striking out everything following paragraph (b), and
- (b) by repealing subsection (2).

This eliminates the two year wage control period and makes controls permanent.

9. Section 21 is amended:

- (a) In paragraph (b) by striking out "increase in", and
 - (b) by repealing paragraph (c) and substituting the following:
 - (c) provide
 - (i) the parties to the compensation plan, or
 - (ii) where applicable, the arbitrator or arbitration board which made the award containing the compensation plan,
- with an opportunity to reach or establish a plan that is within the compensation regulations.

10. Section 22 (1) is amended:

- (a) In paragraph (b) by striking out "an increase in compensation in",
- (b) in paragraph (c) by striking out "the increases in compensation that are" and substituting "a compensation plan that is",
- (c) in paragraphs (d) and (e) by striking out "increase in", and
- (d) in paragraph (f) by striking out "that are increases in compensation that are" and substituting "for compensation that is".

These amendments also permit the wage control Commissioner to specify a reduction in wages.

11. The following sections are added:

Commissioner's decision or order final

24.1 A decision or order made by the commissioner is final and binding.

The new 24.1 eliminates any appeal of Peck's decisions.

No implementation of plan until approved

25.1 Notwithstanding any other provision of this Act, the guidelines or the compensation regulations, a public sector employer shall not implement a compensation plan until the commissioner has completed his review of it and has determined that the plan is within the guidelines or, where the plan is subject to Part 3, has determined that the plan is within the compensation regulations.

The new 25.1 prohibits an employer from implementing a wage increase or decrease until authorized by the Commissioner. Both increases or decreases could be retroactive.

12. Section 26 is amended by striking out "section 10 or 13" and substituting "section 10, 13 or 25.1".

13. Section 29 (1) is amended:

- (a) by adding "or 21" after "15", and
- (b) by striking out "may reconsider and revoke" and substituting "shall reconsider and may revoke".

14. Section 29 is amended:

- (a) In subsection (2) by striking out "refuses to reconsider the award under subsection (1)," and substituting the following:
 - (a) fails to comply with subsection (1), or
 - (b) does not revoke, amend or vary those aspects of the award relating to the compensation plan as permitted in subsection (1), and
- (b) In subsection (3) by striking out "increase in".

15. Section 34 (2) is amended by striking out "an increase in".

Commencement

16. A guideline made under Section 9 of the Compensation Stabilization Act, as amended by this Act, or a compensation regulation made under section 17 of the Compensation Stabilization Act, as amended by this Act, may be retroactive to the extent necessary to give it effect on and after July 7, 1983, but no guideline or compensation regulation may, 6 months after the date the Lieutenant Governor assents to this Act, be made retroactive.

These sections are housekeeping for purposes of clarification and legislative requirements. The newly announced guidelines of -5% to +5% are retroactive to July 7, 1983 and would cover all outstanding agreements.