



FAST FACTS



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Bill 40: the Trojan pig

One of the most controversial issues confronting rural municipalities in recent years has been the proliferation of intensive livestock operations (ILOs) in swine. It is an issue that has literally torn communities apart, as rural people came to grips with the implications that hog factories present to the structure and integrity of their rural economy, community, and environment.

This spring Intergovernmental Affairs Minister Maryann Mihychuk introduced legislation that she said would provide the livestock industry with greater certainty and predictability in the approval processes for such operations. In reality, the proposed changes to the *Planning Act* contained in Bill 40 will not only eliminate meaningful public participation but transfer control of the process and outcome to the provincial government and to ILO promoters.

Currently, the Manitoba *Planning Act* requires that proponents of large-scale ILOs must seek approval from the local municipal council. The proponents must demonstrate to the council that the proposal is "necessary or desirable for, and compatible with the neighborhood, community and general environment, and ... will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property..."

In making its decision the municipal council holds conditional-use hearings, considers the evidence presented by the proponent, testimony from the public, and a report prepared by a provincially appointed technical review committee [TRC]. A council's decision is final, binding,

and unappealable. In short, the current system is a democratic and locally-controlled project assessment and review process which, if all participants act in good faith, leads to council decisions that conform to the requirements of efficient, sustainable, and locally self-determined development planning. Increasingly in recent years municipal councils have, after going through this process, rejected ILO proposals.

As a result the Doer government, which like its predecessor is committed to expanded factory production of hogs, had identified the planning process as the problem. The government's belief is that community divisions are the result of the hearing process, not the dilemmas presented by ILOs. As a result, the current *Planning Act* provision for conditional use hearings is, in the case of ILOs, to be replaced with a process over which the provincial government will exercise control.

The proposed changes to the *Planning Act* will require local jurisdictions to adopt development plans by January 1, 2007. These plans must include a livestock operations policy that identifies those areas where applications for new or expanding livestock operations will not be considered, may be approved, or may be approved up to a certain size.

If a local jurisdiction fails to meet the deadline, or if the development plan submitted on the basis of public consultation is at variance with what the province deems desirable for that area, then the Minister of Intergovernmental Affairs may impose her own development plan.

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The mandatory development plan requirement and deadline removes the current ability for councils to say “no” to ministerial interventions, by refusing to adopt a development plan that contains ministerial requirements at variance with local wishes. This ensures that public participation in the development plan, while formally present, is substantively meaningless.

Mihychuk has emphasized that municipalities will be able to ban ILOs under Bill 40. This is however, an all or nothing option: if a municipality wishes to ban ILOs or set size limits, the ban or limits must apply to all forms of livestock production. This provision reflects the erroneous view, originating with ILO promoters, that there is no essential difference between factory and family farms except size. While existing operations would be exempted from newly imposed bans or limitations, that exemption would end should the existing owner choose to sell the operation, thereby substantially reducing, if not completely extinguishing, the equity built up over the years in livestock production infrastructure. Under these conditions, no council is likely to impose a ban.

The NDP is replacing an assessment process with an approval process. Indeed, the option for council to reject an application is not specifically provided for in the proposed amendments. Moreover, in Bill 40, the burden of proof in relation to the decision categories has been shifted away from the applicant to the council. Councils will have to justify every decision they make, including whether any of the conditions they may wish to place on a development are “relevant and reasonable”.

Secondly, the role of the technical review committee (TRC) has been substantially enhanced. The TRC will now define what the “relevant and reasonable” conditions are that Councils may impose on applications over 300 animal units. A council’s authority will be reduced to merely formally imposing “measures to implement recommendations” made by the TRC. The government is significantly narrowing the range of conditions that a council may impose. For example, councils will no longer be able to specify any conditions relating to the application, use, and storage (aside from covers and shelterbelts) of manure.

To make matters worse, the Minister is on record as stating that it will be “government policy” to have the TRC submit only its recommendations, rather than complete reports and the attending background materials, to councils. This will completely insulate the TRC review from public input and public scrutiny.

Indeed the technical review committee will be the mechanism through which the Provincial government will assume jurisdiction over the environmental and health

aspects related to ILOs. However, the public in rural Manitoba has little confidence in the TRC’s role in the existing process. Time after time during the Conditional Use Hearing process people have exposed gross errors and omissions in TRC Reports.

Finally, should councils impose conditions that are at variance with those specified by the TRC, they will be open to industry lawsuits, since the conditions a council may impose must be “relevant and reasonable.” Such action will likely succeed, because the courts will interpret the TRC’s conditions as the authoritative, legally binding standard. The irony of this lies in the opportunity Bill 40 provides corporate ILO promoters to obtain, by means of litigation, the regulations that govern them.

There is no question that Bill 40 will provide the livestock industry, specifically Hog Factories, with greater “certainty” and “predictability”. The Minister controls the ‘up-front’ planning process, and the ‘back-end’ approval process is controlled by the provincially appointed TRC, supplemented by corporate ILO litigation. Thus, Bill 40 has been specifically designed to ensure that ILO expansion proceeds in accordance with the requirements of corporate planning as opposed to planning in the public interest.

Bill 40 is a complete package, one that cannot be fixed by making this or that amendment. It must, therefore, be withdrawn.

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