

The Misguided Moratorium: Bill 17, *The Environment Amendment Act* (*Permanent Ban on Building or Expanding Hog Facilities*)

B R E N D A N B U R N S

I. INTRODUCTION

Bill 17, *The Environment Amendment Act (Permanent Ban on Building or Expanding Hog Facilities)*,¹ was introduced on 10 April 2008. The bill proposed a permanent moratorium on the expansion of the hog industry within three regions of Manitoba. Since it was tabled the bill received heavy criticism and a great deal of media coverage. Despite receiving strong opposition, however, Bill 17 was enacted into law on 9 October 2008.

This paper will explore the origins, development, and merits of Bill 17, with a particular emphasis on the bill's movement through the legislative process. This analysis will also provide a great opportunity to examine how the Legislative Assembly of Manitoba passed a bill despite strong political and public opposition.

II. SUMMARY OF BILL 17

Bill 17 bans the construction, expansion, or modification of confined livestock areas for pigs or pig manure storage facilities within three regions of Manitoba:

1. Southeastern Manitoba: ... an intensively-developed area (which) does not have sufficient land base to allow for further sustainable spreading of livestock manure.
2. The Red River Valley Special Management Zone: this high risk area (is) a vulnerable region because it is a flood-prone area...
3. The Interlake: this region borders on Lake Winnipeg to the east and Lake Manitoba to the west. In addition, wetlands and other marginal and ecologically-sensitive land

¹ Bill 17, *The Environment Amendment Act (Permanent Ban on Building or Expanding Hog Facilities)* 2nd Sess, 39th Leg, Manitoba, 2008 (assented to 9 October 2008), SM 2008, c 39 amending CCSM c E125 [Bill 17 or bill or *Act*].

make the region unsustainable for further hog industry expansion.²

These combined areas encompass 35 rural municipalities and an estimated 6.5 million acres of land.³

While the bill allows a director, appointed by the Minister of Conservation, the discretion to issue a permit authorizing the construction of a pig manure storage facility or a pig storage facility in the restricted zones, this discretion is very limited.⁴ A permit for a manure storage facility may only be issued if the director is satisfied that the new facility will implement environmentally sound techniques, or if there is a need to modify, repair, or upgrade an existing storage facility.⁵ A permit for the construction of a hog storage facility, on the other hand, may only be issued to replace an existing facility that is so damaged that it is deemed irreparable or so old that it should no longer be used. No permit may be issued which would allow an increase in the hog storage capacity of a hog operation.⁶ Thus, despite allowing the director some discretion, the bill prevents any increase in the number of hogs housed, or capable of being housed, in the three regions mentioned earlier.

III. ORIGINS

Since the early 1990s, Manitoba has emerged as a dominant pork producer in North America. Manitoba's total hog production increased from 3.2 million hogs in 1990 to nearly 9 million in 2007.⁷

With the rapid growth of the hog industry, concerns emerged over the potential effects hog operations might have on surface and ground water quality. Nutrients such as phosphorus and nitrogen enter the hog production cycle in the rations (grain or pelleted feed) that are fed to hogs.⁸ While these nutrients are necessary for hogs' healthy development, hogs cannot absorb all the nitrogen

² Government of Manitoba, News Release, "Struthers Announces Regional Moratorium on Hog Industry Expansion" (3 March 2008), online: Government of Manitoba <<http://news.gov.mb.ca>> [Government of Manitoba News Release].

³ "Hog producers to rally at legislature", *Winnipeg Free Press* (24 September 2008), online: Winnipeg Free Press <<http://www.winnipegfreepress.com>>; Chinta Puxley, "Ban on expansion of Manitoba hog farmers becomes law despite farmer opposition", *Canadian Press* (24 September 2008).

⁴ *Act, supra* note 1, s 40.1(4).

⁵ *Act, supra* note 1, s 40.1(2)(a)–(d).

⁶ *Act, supra* note 1, s 40.1(5).

⁷ Manitoba Clean Environment Commission, *Environmental Sustainability and Hog Production in Manitoba* (Winnipeg: Manitoba Clean Environment Commission, 2007) at 26 [CEC Report].

⁸ *Ibid* at 38.

and phosphorus in their feed. All the excess nutrients are excreted.⁹

As crops also need these nutrients, hog manure is an effective fertilizer.¹⁰ However, matching nutrient levels in the manure to the specific crop can be a difficult task. Ideally “nutrients should not be applied to the fields at rates greater than the rate at which crops will remove them from the soil.”¹¹ The intake of different nutrients varies by crop and typical crop removal ratios of nitrogen-to-phosphorus are much lower than typical ratios in hog manure. Essentially, crops usually need a large amount of nitrogen and a smaller amount of phosphorus. While some crops need six-times the amount of nitrogen as phosphorus, hog manure usually has more balanced ratios, sitting between two-to-four times the amount of nitrogen to phosphorus. Farmers usually apply the needed nitrogen requirement, resulting in an over-application of phosphorus from the manure to the soil.¹²

After the manure is applied to fields, the nutrients (particularly the over-applied phosphorus) can travel into water systems through infiltration into groundwater, runoff and overland flow from fields, or losses at any point in the transportation process.¹³ Once in the water systems, these nutrients can have a very negative effect on the ecosystem. While phosphorus is not a direct threat to human health, it can change the biological balance of freshwater. Specifically, nutrient loading results in Eutrophication, the excessive growth of aquatic plants and algae. Eutrophication can impact “the aesthetic appeal of [lakes], safety of water for recreational uses and consumption, aquatic habitat, biodiversity, and long-term ecosystem sustainability.”¹⁴

Public demands for a moratorium on the expansion of the hog industry in Manitoba began as early as 2002. Groups such as the Provincial Coalition for Responsible Resource Management, Hog Watch Manitoba, and the Canadian Medical Association called for a moratorium on the expansion of the hog industry in the province until scientific research on the associated health risks of

⁹ *Ibid.*

¹⁰ *Ibid.* “Nitrogen improves the vigour, yield, and protein levels of a crop, while phosphorus is critical for all growth processes, promoting root development, early flowering, efficiency of water use, energy transfer, photosynthesis, respiration, cell division, and uniform ripening.”

¹¹ *Ibid* at 40.

¹² *Ibid.*

¹³ *Ibid* at 38.

¹⁴ Lake Winnipeg Stewardship Board, *Reducing Nutrient Loading to Lake Winnipeg and its Watershed: Our Collective Responsibility and Commitment to Action – Report to the Minister of Water Stewardship* (Winnipeg: Manitoba Water Stewardship, 2006) at 22–23 [*Reducing Nutrient Loading to Lake Winnipeg*].

the industry could be assessed.¹⁵ While no moratorium was imposed, the Manitoba government progressively imposed stricter environmental regulations on the hog industry.

By 2003 it became very clear that the nutrient-loading problem with Manitoba's waterways was not going away. Commercial fishers were reporting increased algae concentrations in their nets and two of Lake Winnipeg's beaches had to be closed.¹⁶ In an effort to protect Lake Winnipeg the provincial government established the Lake Winnipeg Stewardship Board ("LWSB") and directed them to identify actions that could help reduce nitrogen and phosphorus loading.¹⁷ In February of 2005 the LWSB released its interim report. While no recommendations were directed specifically at the hog industry, several of the LWSB's recommendations focused on nutrient loss from the agricultural industry.¹⁸

On 8 November 2006, the Honourable Stan Struthers, Minister of Conservation and New Democratic Party ("NDP") MLA for Dauphin-Roblin, announced that there would be a moratorium on the construction or expansion of hog barns in Manitoba while the province's Clean Environment Commission ("CEC")¹⁹ conducted its review of the hog industry. The province claimed this temporary moratorium was one of several measures aimed at "protecting water quality and reducing the amount of phosphorus in Lake Winnipeg."²⁰

The CEC's objective was to determine the environmental effectiveness of current regulations on the hog industry, and to determine whether, based on these regulations, the industry could be maintained indefinitely in light of its environmental impacts.²¹

The CEC submitted their report to Minister Struthers on 18 December 2007, which included a total of 48 recommendations.²² Ultimately, the CEC

¹⁵ "Further evidence prompts environmental organizations to call on Manitoba government to implement a moratorium on the expansion of the hog industry" (December 2002), online: Hog Watch Manitoba <<http://www.hogwatchmanitoba.org>>; "Canadian Medical Association Moratorium" (December 2002), online: Hog Watch Manitoba <<http://www.hogwatchmanitoba.org>>.

¹⁶ *Reducing Nutrient Loading to Lake Winnipeg*, *supra* note 14 at 3.

¹⁷ *Ibid* at 1.

¹⁸ *Ibid* at 60–71.

¹⁹ CEC Report, *supra* note 7 at 178 ("The CEC is an arms-length provincial agency... (that) encourages and facilitates public involvement in environmental matters and offers advice and recommendations to the Minister of Conservation with respect to environmental issues, project approvals and environmental licenses").

²⁰ "Pork Producers Flay Manitoba Ban" (23 November 2006), online: CBC News <<http://www.cbc.ca/news>> [CBC News].

²¹ CEC Report, *supra* note 7 at ix.

²² *Ibid* at 155.

concluded that the hog industry would not remain environmentally sustainable if it continued to grow with the regulations that were in place. However, the CEC determined that environmental sustainability in Manitoba's hog industry is achievable, and that their recommendations, if implemented, could ensure that all future growth in the industry became environmentally sustainable.²³

Although there was no explicit recommendation for a total moratorium in the CEC report, on 3 March 2008 Minister Struthers announced that he would be tabling an amendment to *The Environment Act* in the spring, which would impose three new regional moratoriums on new or expanding hog operations in Manitoba. Minister Struthers claimed these moratoriums were necessary to protect Manitoba's water and ensure the long-term environmental sustainability of the hog industry.²⁴ Struthers also announced that the pause on new or expanding hog operations imposed in 2006 would be lifted for the rest of the province subject to new, stricter requirements based on the CEC's recommendations. These included strengthening phase-in dates for regulatory phosphorus thresholds, extending the ban on winter spreading, and monitoring existing phosphorus application provisions.

IV. FIRST AND SECOND READINGS

On 10 April 2008 Minister Struthers moved, seconded by the Honourable Christine Melnick, Minister of Water Stewardship and NDP MLA for Riel, that Bill 17, *The Environment Amendment Act (Permanent Ban on Building or Expanding Hog Facilities)* be read for the first time. After a voice vote, the motion passed.²⁵ Debate for the second reading began on 20 May 2008, and, after a voice vote, the motion passed on 22 May 2008.

From the moment the bill was first announced, the Legislature divided along party lines, with both the Progressive Conservatives ("PCs") and the Liberals, the two opposition parties, providing fierce criticisms of the NDP's proposed bill. Although these readings and their surrounding debates were over a month apart, the same themes surrounded them both.

One of the primary criticisms raised by the opposition parties was that the government had not assessed the economic impact the bill would have on the hog industry and the entire province.²⁶ At the time the Manitoba hog industry had 7 500 jobs associated with it and was the largest commodity in Manitoba's

²³ CEC Report, *supra* note 7 at 153.

²⁴ Government of Manitoba News Release, *supra* note 2.

²⁵ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 20 (10 April 2008) at 511 [*Debates* (10 April 2008)].

²⁶ *Ibid* at 515–528 (Hugh McFayden).

agricultural economy, contributing over two billion dollars a year to Manitoba's economy.²⁷ Despite its past economic prosperity, however, the hog industry faced very tough economic challenges. The low feed prices and low Canadian dollar that had sparked the hog industries growth in the 1990s were gone. Hog producers now faced rising feed costs, lower sale prices on hogs, a high Canadian dollar, and pending U.S. actions attempting to restrict the flow of Canadian imports (country-of-origin labelling).²⁸ Although opposition members admitted these factors were largely outside the province's control, the NDP was criticized both for its general lack of budgetary support for the agricultural industry and for imposing a moratorium during these hard economic times.²⁹

Mrs. Mavis Taillieu, PC MLA for Morris, dubbed Bill 17 the "Kill Bill", claiming that it flew in the face of economic development and would kill the hog industry.³⁰ She asserted that, if passed, the bill would discourage youth from pursuing careers in Manitoba's hog industry, destroy the future of the industry, and harm spinoff industries that rely on it. Furthermore, it would hurt entire communities. Mr. Kelvin Goertzen, the PC MLA for Steinbach, noted that while hog farmers routinely donate to charities, churches, and hospitals, this moratorium, in combination with the challenges already facing the hog industry, would limit their ability to make charitable donations within these rural communities.³¹

Another area of criticism was that the government lacked scientific justification to enact Bill 17. Nowhere in the CEC study were there any recommendations for a moratorium. Yet almost immediately after the CEC report was released the NDP tried to link the report with a moratorium.³² The opposition claimed the government had no evidence to say that the hog industry was causing significant problems in Lake Winnipeg. Cliff Graydon, PC MLA for Emerson, pointed out that Dr. Michael Trevan, Dean Faculty of Agriculture and Food Sciences at the University of Manitoba, stated that the total contribution of phosphate from the hog industry in Lake Winnipeg was probably as low as 1.5%, and, consequently, if you "took all the hog barns out of production in Manitoba, it would make no difference to the lake."³³

²⁷ CEC Report, *supra* note 7 at 47, 56.

²⁸ *Debates* (10 April 2008), *supra* note 25.

²⁹ CEC Report, *supra* note 7 at 57–58.

³⁰ *Debates* (10 April 2008), *supra* note 25 at 548–549 (Mavis Taillieu).

³¹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 44 (21 May 2008) at 2297–2298 (Leonard Derkach) [*Debates* (21 May 2008)].

³² Government of Manitoba News Release, *supra* note 2.

³³ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 45B (22 May 2008) at 2376 (Cliff Graydon).

Besides lacking scientific justification, opposition members also believed the moratorium would do nothing to protect Manitoba's water. They noted that, rather than set a target for phosphorus reduction in Lake Winnipeg, the bill simply locks phosphorus emissions at current levels. Mr. Leonard Derkach, the PC MLA for Russell, commented that the bill "gives people a false sense of what's being done for the environment when truly nothing is being done for the environment."³⁴

With its lack of scientific grounding, members of the opposition attacked the NDP and claimed that the bill was politically motivated. They argued that by using the hog industry as a scapegoat the bill allowed the NDP to appear as though they were helping protect the environment.³⁵ Members of the opposition went so far as to suggest that in proposing Bill 17 the NDP had no real interest in protecting Manitoba's waters, but were interested solely in retaining votes.³⁶

During these two readings combined, only Premier Gary Doer and the Honourable Rosann Wowchuk, Minister of Agriculture and NDP MLA for Swan River, said anything in the NDP's defence. Even then, their rebuttals focused on the NDP's general budgetary and financial assistance policies towards the agricultural industry as a whole and not on Bill 17. At no point in either reading did Minister Struthers or any other member of the NDP provide any justification or explanation for the moratorium.

V. COMMITTEE STAGE

The Manitoba Legislative Assembly Standing Committee on Agriculture and Food held public hearings on Bill 17 for six days between 6 June 2008 and 12 June 2008.³⁷ Each day the committee sat and heard public submissions for eight

³⁴ *Debates* (21 May 2008), *supra* note 31 at 2302 (Leonard Derkach).

³⁵ *Ibid* at 2301 (Kelvin Goertzen).

³⁶ *Ibid* at 2306 (Leonard Derkach).

³⁷ Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 1 (6 June 2008) [*Committee* (6 June 2008)]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 2 (7 June 2008) [*Committee* (7 June 2008)]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 3 (9 June 2008) [*Committee* (9 June 2008) No 3]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 4 (9 June 2008) [*Committee* (9 June 2008) No 4]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 5 (10 June 2008) [*Committee* (10 June 2008)]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 6 (11 June 2008) [*Committee* (11 June 2008)]; Manitoba, Legislative Assembly, *Standing Committee on Agriculture and Food*, 39th Leg, 2nd Sess, vol LX No 7 (12 June 2008) [*Committee* (12 June 2008)].

to 14 ½ hours, for a total of 65 ½ hours over the six-day period. Over 430 groups and individuals registered to express their views on the bill. Although not all those who registered were heard due to time restraints, a total of 316 oral and written presentations were made to the committee, setting a new record as the most committee stage submissions for any bill in the history of Manitoba.³⁸ Over 95% of these presenters were in opposition of Bill 17.

A large number of presenters, 148 in total, were hog farmers. An additional 92 presenters were industry groups closely associated with the hog industry, such as the Manitoba Pork Council. Presenters were only placed into a group if they specifically stated they were a member of that particular group or if this determination could be easily inferred from their presentation. Another 23 presenters can be characterized as an “unknown” category, which represents presenters who gave no explicit or implicit indication of their occupation or affiliation to any group or industry. In addition, 17 presenters were farmers of other varieties than hog farmers and seven presenters were from government, including reeves and a number of mayors. Six presenters were lobbyist groups, including the Canadian Taxpayers Federation, the Winnipeg Humane Society, Hog Watch Manitoba, and the Concerned Citizens of the Sturgeon Creek Watershed. Other presenters, 23 in total, included reverends, nurses, university professors, teachers, students, and lawyers. Due to the massive number of presenters and the large overlap in their submissions, it is easiest to examine the committee stage by separating the presenters into general groups and then discussing only the most influential and noteworthy.

A. Hog Farmers

The largest and most vocal group of presenters were the hog farmers. Not only would Bill 17 directly impact them, it could actually ruin their livelihoods. Many hog farmers claimed they were struggling to make ends meet because of the economic difficulties facing the hog industry, and only through expansion could they make their operations economically sustainable.³⁹ If Bill 17 passed they would have no option but to sell their farms and set up new operations outside the moratorium. They also stated they could not trust the Manitoba government to keep its moratorium-free zones and thus were feeling compelled to move into jurisdictions such as North Dakota or Saskatchewan, which are friendly towards the agricultural sector and have more relaxed regulations.

Hog farmers also expressed concerns over the future of their family farms,

³⁸ Steve Lambert, “Hog farmers line up at legislature to oppose Manitoba moratorium”, *Canadian Press* (6 June 2008); Bruce Owen, “Hog-ban still stinks, farmers tell committee”, *Winnipeg Free Press* (7 June 2008) A9.

³⁹ *Committee* (9 June 2008) No 4, *supra* note 37 at 421 (Marinus Hop).

many of which had been passed down for several generations.⁴⁰ In order to pass a farm down to a child, farmers claimed they must first expand the farming operation, so that both the parents and the child can make an income from the farm. This moratorium made this impossible and would force many rural youths to seek careers outside the hog industry.

A large number of hog farmers also expressed resentment towards the bill because they felt they were being unfairly blamed for all the pollution in Lake Winnipeg. They noted that Bill 17 only imposes a moratorium on the hog industry, and not on any other agricultural sector that contributes phosphorus to Lake Winnipeg. Several hog farmers noted the government's idle position towards the effects of the City of Winnipeg's sewage system on Lake Winnipeg.⁴¹

Overall, the hog farmers did not believe that the hog industry was as significant a contributor to the pollution in Lake Winnipeg as the government made it appear. Hog farmers profess to be good stewards of the land. They have a vested interest in creating good environmental practices because their industry and their families rely on the water being clean. They take steps to improve the environmental sustainability of their farms such as using soil testing to reduce over application of phosphorus, and using manure injection as opposed to manure spreading in order to reduce the risks of nutrient runoff.

Furthermore, the hog industry was already one of the most heavily regulated industries in Manitoba. Over the last several years the government had continually been making the *Livestock Manure and Mortalities Management Regulations* ("LMMMR") more stringent. Hog farmers claimed the government had not allowed them enough time to work with these regulations to determine if they were affective. By placing a moratorium on the industry, hog farmers felt they had no incentive to spend any time or money on developing and implementing more environmentally sound farming methods.

Despite this, hog farmers expressed a willingness and genuine desire to work with the government collaboratively to create environmental solutions that would allow for sustainable growth in the hog industry. Many even suggested that the government adopt the CEC's recommendations as opposed to implementing a moratorium.

B. Farmers in Other Sectors

Several farmers from other agricultural sectors, such as dairy, cattle, grain, and egg farmers also spoke out at the committee stage and expressed concerns over the government's use of a moratorium. These farmers expressed concerns that

⁴⁰ *Ibid* at 356 (Dennis Thiessen).

⁴¹ *Ibid* at 376 (Garry Verhoog). Note: the City of Winnipeg sewage pipes overflow during periods of heavy rain and dump raw sewage into the river.

the government may impose moratoriums on their industries in the future.⁴²

C. Hutterites and Mennonites

There are over 100 hog farming Hutterite and Mennonite colonies in Manitoba.⁴³ These colonies represent approximately half of Manitoba's hog production. Many Hutterites, as well as a few Mennonites, spoke during the committee hearings, claiming the bill was an attack on their way of life. When the population of a colony increases to the point where unemployment becomes a problem, the colony will split and set up a sister or daughter colony. One of the centrepieces of the development of a new colony is the building of a hog barn as it provides the new colony with a sound financial foundation. By preventing the building of new hog barns Bill 17 effectively eliminates the ability of Hutterites and Mennonites to build new colonies in Manitoba. Consequently, new colonies will be forced out of Manitoba, and many youths from existing colonies will be forced to relocate to urban centres to find employment.

D. Scientific Community

Several scientists and professors from the University of Manitoba also spoke at the committee stage and expressed their opposition toward the bill. Both Dr. Don Flaten from the National Centre for Livestock and Environment, University of Manitoba, and Dr. Karin Wittenberg, Faculty of Agriculture and Food Sciences, University of Manitoba, criticized the bill as an ineffective tool for reducing nutrient loading into Lake Winnipeg. Dr. Wittenberg claimed that innovative-incentive based regulatory tools would be more effective than a moratorium.⁴⁴ Dr. Flaten, who has done numerous studies on phosphorus and sat on the LWSB, noted that the hog industry is just one of several contributors to the phosphorus in Lake Winnipeg, and that a moratorium was not the proper method to control the hog industry or any other industry's phosphorus contributions.⁴⁵

E. Supporters of Bill 17

Although the vast majority of the presenters were opposed to the bill, 16 presenters, comprised of seven oral submissions and nine written submissions supported the bill. All 16 presenters felt the bill should not be localized but should be equally applied throughout Manitoba. One of the strongest voices of

⁴² *Committee* (11 June 2008), *supra* note 37 at 557 (Doug Sisson).

⁴³ CEC Report, *supra* note 7 at 42; *Committee* (7 June 2008), *supra* note 37 at 215 (Jack Hoffer).

⁴⁴ *Committee* (11 June 2008), *supra* note 37 at 597–600.

⁴⁵ *Committee* (7 June 2008), *supra* note 37 at 282–285.

support came from Hog Watch Manitoba, who felt the moratorium should be used as a safeguard while the province creates new phosphorus regulations.

While the NDP launched the bill as a water protection measure, several of the presenters who supported the bill were motivated by concerns other than water conservation. These included combating the corporatization of hog production, curbing cruelty toward hogs, and combating odours associated with hog production.

At the end of the committee hearings, Minister Struthers claimed he had listened to all the presenters and that the presenters' comments would be analyzed and could lead to amendments to the bill.⁴⁶ However, the actions of NDP MLAs in the committee hearings seemed to suggest otherwise. On numerous occasions members of the opposition parties or individuals making presentations made comments about NDP MLAs playing on their Blackberries rather than listening to the presentations. Ultimately the effects of the committee hearings were not realized until the report stage.

VI. THE ZERO PER CENT SOLUTION

On 15 September 2008, the MPC presented Minister Struthers with a proposed amendment to Bill 17 which would remove the moratorium and replace it with new restrictions requiring that operations in the designated areas:

- Limit manure application on crop land for new or expanding operations to a rate of 1x phosphorus removal (a rate at which the crop will use all phosphorus in the manure applied to the ground over five years)
- Not apply manure in the winter to reduce runoff; and
- Require that manure be incorporated into the ground either through direct injection or through working it in within 48 hours.⁴⁷

The MPC dubbed their amendment the "Zero Per Cent Solution", as it would allow for all applied phosphorus to be taken up and used by crops, leaving little to no phosphorus run off.⁴⁸ The MPC claimed this was a compromise under which Manitoba hog farmers could protect the environment, as the amendments mirrored recommendations from the CEC report and continued to expand their industry at the same time.⁴⁹

⁴⁶ Owen, *supra* note 38.

⁴⁷ Manitoba Pork Council, News Release, "Manitoba hog farmers present the Zero Per Cent Solution" (14 September 2008), online: Manitoba Pork Council <<http://manitobapork.com>> [Zero Per Cent Solution].

⁴⁸ Paul Turenne, "Manitoba Pork Council doesn't want ban on hog barn expansion", *Canadian Press* (15 September 2008).

⁴⁹ Zero Per Cent Solution, *supra* note 47.

Minister Struthers rejected the proposed amendment, however. Instead, he insisted that the moratorium set out in Bill 17 was necessary to protect Manitoba's waters.⁵⁰

VII. REPORT STAGE AMENDMENTS

The report stage amendments on Bill 17 began on 17 September 2008 and lasted until 24 September 2008. During this stage, Ralph Eichler, the PC MLA for Lakeside, proposed ten amendments to Bill 17, all of which he claimed were created through consultations with the industry. While members of the opposition parties believed that Bill 17 as a whole should be withdrawn and that no amount of amendments could make the bill good legislation, they unanimously supported these amendments as a means of making the bill more palatable.⁵¹ Despite the unanimous support from opposition MLAs, all these proposed amendments were rejected by the NDP.

The first proposed amendment called for eliminating the schedule in Bill 17 which listed all the rural municipalities to which the moratorium applied, replacing it with regulations. Mr. Eichler claimed that this amendment would simply move the listed municipalities out of the *Act* and into the regulation. While doing little to change the moratorium at the moment, this amendment would provide the government with greater flexibility to amend or eliminate the moratorium in the future as new science and technology become available. This would save the government the hassle of having to bring any changes before the house, and thus would also result in saving taxpayers money.⁵²

Despite the sound reasoning behind this amendment, Minister Struthers claimed they were rejecting it because legislation is much stronger than regulation. He claimed the NDP did not want to weaken their approach towards the protection of Manitoba's water or its stance towards the 35 rural municipalities that would be under the moratorium.⁵³

The second and third amendments proposed by Mr. Eichler were to allow the director to provide a permit for the expansion or building of new hog barns or manure storage facilities subject to "an environmentally sound treatment that does not result in an increased amount of phosphorus being added to an area

⁵⁰ Larry Kusch, "Minister kills bid to alter hog ban", *Winnipeg Free Press* (16 September 2008) B5.

⁵¹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 73B (23 September 2008) at 3429 (Cliff Cullen) [*Debates* (23 September 2008)]; Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 70 (17 September 2008) at 3274 (Hon Jon Gerrard) [*Debates* (17 September 2008)].

⁵² *Debates* (17 September 2008), *ibid* at 3263 (Ralph Eichler).

⁵³ *Ibid* at 3264–3266 (Hon Stan Struthers).

described in the regulations.”⁵⁴ Mr. Eichler claimed these were scientifically based approaches to nutrient management that were in line with the government’s objectives of helping to clean up Lake Winnipeg by reducing nutrient loading into the lake.⁵⁵ Minister Struthers claimed these amendments were much less amendments than they were attempts to gut the bill, and thus he could not allow them.

The fourth proposal was an amendment to the issuance of permits for the building of manure storage facilities that would make it possible for the director to issue a permit authorizing “the construction, expansion, or modification of a storage facility that handles manure from a livestock production operation having less than 300 animal units of pigs.”⁵⁶ This amendment would essentially make it so that the moratorium only applied to operations of over 300 hogs, therefore allowing smaller operations to grow. Adopting this amendment would give smaller, newer, younger producers the chance to establish their hog operations and would show that the government was still committed to the economic development of the hog industry in Manitoba.⁵⁷

While Minister Struthers did not claim this amendment would gut Bill 17, he still claimed he could not accept the amendment. He claimed there was a misconception about hog producers with 300 animals being smaller than they actually are. This is because allowing numerous producers to increase in size would mean thousands more hogs in the province.⁵⁸

The fifth proposal was for an amendment to grant the director the discretion to allow for modifications or construction resulting in a maximum of up to 300 animal units where he can be certain such modifications resulted from new technology. Much like the last proposed amendment, this would aid smaller producers and provide them with incentives to implement environmentally sound technology.⁵⁹ Minister Struthers claimed this amendment was redundant, and it duplicated an exception already built into Bill 17.⁶⁰ From reading all the sections in Bill 17, however, it is apparent that there is no exception that would allow for any increase in the number of hogs.

The sixth amendment proposed to change the words in section 41(1)(d), striking out the phrase “or prohibiting” wherever it occurs. Mr. Eichler suggested that “prohibiting” is too strong a word, as it ties the director’s hands. Rather, he

⁵⁴ *Ibid* at 3275 (Ralph Eichler).

⁵⁵ *Ibid* at 3266–3269 (Ralph Eichler).

⁵⁶ *Debates* (23 September 2008), *supra* note 51 at 3426 (Ralph Eichler).

⁵⁷ *Ibid* at 3426–3428 (Ralph Eichler).

⁵⁸ *Ibid* at 3428–3429 (Hon Stan Struthers).

⁵⁹ *Ibid* at 3439 (Ralph Eichler).

⁶⁰ *Ibid* at 3440 (Ralph Eichler).

suggested using a word such as “restricting” as it would allow for some flexibility.⁶¹ Once again Minister Struthers claimed the amendment was an unacceptable attempt to gut the bill.

While Mr. Eichler originally had four additional recommended amendments, he withdrew them all as they were dependent on the adoption of either of the first two amendments.⁶²

VIII. THIRD READING

The third reading officially took place on 24 September 2008, but the debate surrounding it had been ongoing since 16 September 2008 when the report stage began. Numerous MLAs spoke against Bill 17 and called upon the government to withdraw the bill. The majority of the arguments put forward by the opposition parties mirrored those already stated at the committee stage and the earlier readings.

Members of the opposition parties continually reiterated that the bill lacked any scientific justification. References were made to the fact that the CEC report did not recommend a moratorium. In addition, quotes from Dr. Flaten, Dr. Wittenberg, and other scientists and academics who had denounced the bill at the committee stage or in the media, were provided on numerous occasions.⁶³

Opposition members also echoed earlier comments about the bill being ineffective, as it would do nothing to change existing practices or to reduce current phosphorus contributions from the hog industry, but rather would just cap the number of hogs at current levels. They claimed the bill would discourage hog farmers from making environmental moves, lead the hog industry to withdraw its funding support for scientific research, and ultimately be more harmful than helpful to the environment. Opposition MLAs claimed they were in favour of clean water, but that they were against this bill because it did nothing to actually clean the water in Lake Winnipeg.⁶⁴

Opposition MLAs continually reiterated the opinions brought forward by hog farmers about the economic effects of the bill. Based on the committee hearings and report stage, the opposition parties also raised concerns that passing

⁶¹ *Ibid* at 3443 (Ralph Eichler).

⁶² *Ibid* at 3427–3428 (Ralph Eichler).

⁶³ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 69B (16 September 2008) at 3221–3222 (Ralph Eichler) [*Debates* (16 September 2008)]; Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 71A and 71B (18 September 2008) at 3300 [*Debates* (18 September 2008)]; see also *Debates* (17 September 2008), *supra* note 51 at 3296 (Ralph Eichler), 3475 (Heather Stefanson); also *Debates* (23 September 2008), *supra* note 51 at 3437 (Larry Maguire).

⁶⁴ *Debates* (17 September 2008), *supra* note 51 at 3273 (Mavis Taillieu).

this bill would lead farmers to lose confidence in the legislative and democratic process as a whole. All these farmers came forward to have their say as part of the democratic process, to share with the government their ideas about how they could make the environment a better place, about how the bill could be altered to allow for sustainable growth. But the government did not listen to them or take any of their input.⁶⁵ People came forward with an expectation that they would be listened to, but now felt betrayed. They felt like the whole process was just a sham.⁶⁶

Opposition members also attacked the bill as a piece of politically motivated legislation. The NDP had been in power for nine years and during this time the condition of Lake Winnipeg had worsened. By creating a moratorium on the hog industry they found a solution that cost them no money to implement, while being controversial enough that it would rouse public attention and give the impression that they were doing something to protect Lake Winnipeg.⁶⁷ The moratorium allowed Premier Doer to maintain his urban support while coming across as “Mr. Environment.”⁶⁸ Opposition members noted that urban Manitobans have no knowledge about phosphorus or the hog industry.⁶⁹ Urban Manitobans do care about Lake Winnipeg, however, and by blaming the hog industry for the pollution in the lake, the NDP could pit urban Manitobans against rural Manitobans.

Unlike the earlier readings, during the third reading the NDP finally responded to opposition criticism of the bill. Premier Doer claimed the moratorium was necessary. He stressed that this bill was not a blanket moratorium, as hog expansion was still allowed in two-thirds of the province, and that only three distinct geographical areas, all of which pose risks associated with expansion, would be covered by the moratorium.⁷⁰

Minister Struthers also spoke up in defence of Bill 17. He claimed the bill was a means of protecting Manitoba’s water, and that by opposing it, the opposition parties would be voting against clean water. Essentially, Minister Struthers tried to frame Bill 17 as a black and white option, either you are in favour of the bill and committed to protecting Manitoba’s waters, or you are against the bill and opposed to protecting Manitoba’s water. Furthermore,

⁶⁵ *Ibid* at 3274 (Mavis Taillieu).

⁶⁶ *Ibid* at 3281 (Kelvin Goertzen).

⁶⁷ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 74 (24 September 2008) at 3486 (Hugh McFayden), 3469 (Stuart Briesse) [*Debates* (24 September 2008)].

⁶⁸ *Ibid* at 3478 (Kevin Lamoureux).

⁶⁹ *Debates* (23 September 2008), *supra* note 51 at 3435 (Blaine Pedersen).

⁷⁰ *Debates* (16 September 2008), *supra* note 63 at 3223–3224 (Hon Gary Doer).

Minister Struthers took the political motivation criticism used by the opposition parties and attempted to turn it against them, claiming that the opposition parties had opposed every water protection regulation his government had ever put forward. He criticized the opposition parties for taking an “ideological, very partisan, very political opposition...to any kind of water protection method” and he called on them to drop “their political opposition to Bill 17 and move forward in protecting Manitoba’s water.”⁷¹

On 24 September 2008, the official date of the third reading, 150 hog producers and their supporters rallied outside the legislature to protest Bill 17 and to express support for the Zero Per Cent Solution.⁷² Despite the opposition at the committee hearings and all three readings, and both the Progressive Conservatives and the Liberals voting against it, Bill 17 was passed without amendments in a recorded vote of 32 in favour and 19 against.⁷³

IX. ANALYSIS

It is undeniable that water pollution, particularly phosphorus loading into Lake Winnipeg, is a major problem in Manitoba. Furthermore, despite all the comments made in Legislative debates to the contrary, it would be unfair to claim that any politician in the Manitoba Legislative Assembly is not in favour of protecting Manitoba’s water. The ultimate question for Bill 17 is not whether politicians or hog farmers were interested in protecting Manitoba’s waters, but whether Bill 17 amounted to good public policy.

To determine whether a bill amounts to good public policy, many factors must be taken into consideration. These factors will vary depending on the nature of the particular bill. Bill 17 was a highly controversial piece of environmental protection legislation which targeted a single industry, and received vast amounts of public criticism in both the media and committee hearings. Factors such as whether the bill was based on sound science, whether the bill would be effective at protecting the environment, whether the bill balanced the needs of hog farmers and the environment, whether the bill was discriminatory, whether viable alternatives to the bill were considered, and whether the bill reflected poorly on the democratic process should all be taken into consideration in determining whether Bill 17 is good public policy.

⁷¹ *Debates* (18 September 2008), *supra* note 63 at 3297–3298 (Hon Stan Struthers).

⁷² “Pork Producers Disappointed by Passage of Bill 17”, *Farmscape* (27 September 2008), online: *Farmscape* <<http://www.farmscape.com>>.

⁷³ *Debates* (24 September 2008), *supra* note 67 at 3489.

A. Scientific Justification

After the CEC report was issued, Minister Struthers announced that he was accepting the principles of the report, its 48 recommendations, and was launching a plan of action that included a moratorium.⁷⁴ This implied that the moratorium had science supporting it. The CEC's recommendations included such things as changing the phase-in dates for the phosphorus regulations and winter manure application bans set out in the *LMMMR*, reviewing the effectiveness of current phosphorus application provisions in the *LMMMR*, determining phosphorus thresholds for soils in different regions of Manitoba, and working with organizations to develop scientifically based environmentally and economically sound management practices to reduce phosphorus run-off.⁷⁵ At no point in the CEC report did they explicitly recommend a moratorium.

Similarly, the LWSB's recommendations to the government did not include imposing a moratorium on the hog industry or any other agricultural or industrial sector. Rather, like the CEC report, they recommended creating phosphorus regulations for the agricultural industry.

Despite the fact that both the CEC and LWSB reports did not recommend a moratorium, Minister Struthers claimed the moratorium was based on the CEC's recommendations and science. He provided no other scientific justification for Bill 17, nor could any be found. Dr. Michael Trevan, Dean of the University of Manitoba Faculty of Architecture and Food Sciences, even stated that he could "find no evidence that anybody can use to say that we need to cease expansion (of the hog industry) over the whole of central and southern Manitoba."⁷⁶ Ultimately, Bill 17 lacked scientific justification.

B. Effectiveness

In addition to lacking scientific justification, Bill 17 fails to achieve its goal of protecting Manitoba's water. The only scientific information available suggests that hog manure is a very minor contributor of phosphorus to Lake Winnipeg. Scientists such as Dr. Wittenberg and Dr. Trevan, claim that the hog industry only contributes 1–1.5% of the annual phosphorus loading of Lake Winnipeg.⁷⁷ Thus, even if the hog industry was eliminated in Manitoba, no more than 1.5% of the total phosphorus contributions entering Lake Winnipeg would be eliminated.

⁷⁴ Government of Manitoba News Release, *supra* note 2.

⁷⁵ CEC Report, *supra* note 7 at 95.

⁷⁶ "Strategy Session Planned to Fight Hog Ban" (7 April 2008), online: The Pig Site <<http://www.thepigsite.com>>.

⁷⁷ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 2nd Sess, vol LX No 45B (22 May 2008) at 2376 (Cliff Graydon).

Worse yet, Bill 17 does not even eliminate or reduce the limited phosphorus contributions of the hog industry in Lake Winnipeg. Instead, the bill halts the expansion of the hog industry in certain regions, capping the number of hogs and the industry’s phosphorus contributions at current levels. As nutrient loading into Lake Winnipeg increased 10% over the last three decades, a reduction, rather than a cap, in nutrient loading is necessary to improve the condition of Lake Winnipeg.⁷⁸ By failing to reduce the hog industry’s current levels of phosphorus loading into Lake Winnipeg, Bill 17 will fail in its objective of cleaning up the lake.

Bill 17 may actually lead to an increase in the phosphorus loading into Lake Winnipeg. As illustrated by Figure 1, the LWSB found that 53% of the phosphorus loading into Lake Winnipeg came from upstream jurisdictions outside Manitoba.⁷⁹

Category	Average Total Phosphorus (t/yr)			% of Total Phosphorus to Lake Winnipeg (% of Manitoba sources)		
Upstream jurisdictions	4,200			53%		
United States (Red River)		2,500			32	
United States (Souris River)		200			3	
Saskatchewan and Alberta (Assiniboine and Saskatchewan)		400			5	
Ontario (Winnipeg River)		800			10	
Ontario (Other rivers)		300			3	
Manitoba Sources	3,700			47%		
Manitoba Point Sources		700			9 (19)	
City of Winnipeg (Wastewater Sources)			400			5 (11)
All others(Wastewater sources)			300			4 (8)
Manitoba Watershed Processes		2,500			32 (67)	
Natural background & undefined sources**			1,300			17 (35)
Present day agriculture			1,200			15 (32)
Atmospheric Deposition		500			6 (14)	
Internal Lake Processes	Currently there are no estimates available for internal phosphorus cycling that may occur in the lake.					
Overall annual total phosphorus load to Lake Winnipeg	7,900			100%		
* An update of these loading figures is currently being prepared by Manitoba Stewardship. **Estimated natural background and undefined sources would also include contributions from sources such as forests, wildlife and septic fields.						

Figure 1: Summary of Estimated Annual Phosphorus Loading to Lake Winnipeg, 1994–2001 (tonnes per year, rounded to the nearest 100 tonnes)

⁷⁸ Reducing Nutrient Loading to Lake Winnipeg, *supra* note 14 at 1.

⁷⁹ *Ibid* at 25.

Many farmers indicated that in response to the moratorium they would move to other jurisdictions with more relaxed environmental regulations, such as North Dakota and Saskatchewan.⁸⁰ Both these jurisdictions are part of the Lake Winnipeg Watershed, and consequently the phosphorus from these farmers' new hog operations would still load into Lake Winnipeg. Due to the fact that these other jurisdictions have more relaxed environmental regulations on the hog industry than Manitoba's pre-moratorium regulations, hog farmers who move out of Manitoba may actually load more phosphorus into Lake Winnipeg from outside the province than they ever did while they were operating within it. If the government wants to stop phosphorus loading to Lake Winnipeg, they should be working with these other jurisdictions to reduce their phosphorus loading, rather than driving phosphorus contributors into these more relaxed jurisdictions.⁸¹

C. Minimal Impairment

To create good public policies, the government should consider all its options and select the most appropriate and least drastic means for achieving its objective. While it is often difficult to determine the most appropriate option, for a bill to amount to good public policy it should at least be a reasonable means of achieving its objective. Moratoriums, such as Bill 17, can be difficult to justify because the government needs to be able to show that only a ban could achieve their objective.

Alternatives to a moratorium were presented to the government that were believed to help achieve the intended outcome while simultaneously diminishing the economic and social side effects that are associated with a moratorium. These included the Zero Per Cent Solution proposed by the Manitoba Pork Council, the amendments proposed by Mr. Eichler during the report stage, and the countless recommendations for sustainable nutrient application policies proposed by the CEC. These alternatives, like the moratorium, would ensure that the hog industry's phosphorus run off levels would not increase. Unlike the moratorium, however, these other solutions would allow for the hog industry to expand, largely eliminating the social and economic effects associated with a moratorium.

Furthermore, options beyond phosphorus application regulations or moratoriums existed for reducing the Manitoba hog industry's phosphorus loading which the government did not appear to consider. For instance, over the past decade, feed producers have developed a technique by which they can inject an enzyme into hog feed which increases the ratio of phosphorus hogs

⁸⁰ *Committee* (6 June 2008), *supra* note 37 at 5.

⁸¹ *Ibid* at 25.

absorb from their feed.⁸² By using this enzyme injection, feed producers can reduce the amount of phosphorus added to hog feed, which would then reduce the amount of phosphorus excreted by hogs and ultimately reduce the amount of phosphorus loading into Lake Winnipeg from hog operations. Many producers have already started adding this enzyme to their feed mixes, but because of federal regulations that mandate a specific level of phosphorus in animal feed, no corresponding reduction in the phosphorus in hog feeds has been made.⁸³ The CEC recommended that the provincial government work with the federal government to remove or modify these feed regulations so that these new developments could be implemented. By imposing a moratorium instead of one of these less intrusive and less impairing alternatives, Bill 17 further amounts to bad public policy.

D. Discriminatory

Bill 17 only imposes a moratorium on the expansion of the hog industry, and not on any other agricultural or industrial sector that contributes phosphorus to Lake Winnipeg. While pork producers in the designated regions are being told they cannot expand, the same restrictions do not apply to other agricultural enterprises.⁸⁴ For instance, although the government claims there are flooding concerns and insufficient room for expansion of the hog industry in the moratorium zones, they allow the expansion of cattle operations in all these same regions. While cattle manure does not contain as much nutrient content as hog manure, cattle produce far more manure. In fact, the CEC found that 70% of the annual manure phosphorus in Manitoba comes from cattle.⁸⁵ Furthermore, while an estimated 70–80% of hog manure is injected into the soil to reduce run off,⁸⁶ cattle manure is simply deposited directly onto pastureland making cattle manure more vulnerable to runoff than hog manure. So, the hog industry is being singled out, even though they may not be the largest or most significant agricultural contributor of phosphorus to Lake Winnipeg.

Hog farmers also feel they are being unfairly targeted as substandard environmental citizens. They profess to be good stewards of the land who are actively taking steps to improve the environmental sustainability of their

⁸² CEC Report, *supra* note 7 at 64–65.

⁸³ *Ibid.* These regulations were created in 1983, long before producers began adding this enzyme to hog feed. The Canadian Food Inspection Agency (CFIA) under the authority of the federal *Feeds Act* (RSC 1985, c F-9) evaluates and approves ingredients for use in livestock feeds. The *Feeds Regulations* (SOR/83-593) under the *Feeds Act* set out, on a species-by-species basis, minimum and maximum levels of nutrient in feeds.

⁸⁴ *Supra* note 3.

⁸⁵ CEC Report, *supra* note 7 at 39.

⁸⁶ *Ibid* at 65.

industry. Numerous hog farmers spoke during the committee stage about environmentally friendly steps they have taken, such as filing manure management plans, adopting new techniques in manure application such as direct injection, and applying new manure management procedures such as testing soil for phosphorus levels. Yet, the government failed to recognize the efforts of hog farmers. Despite already being one of the most heavily regulated industries in Manitoba, and one of the most heavily regulated hog industries in North America, the government imposed a moratorium.⁸⁷ Hog farmers are not opposed to protecting Manitoba's waterways and are open to the development of new environmental protection regulations. However, by failing to recognize their efforts and imposing a moratorium solely on their industry and not on other phosphorus contributors such as the cattle industry or municipal sewage systems, the government can be viewed as discriminating against the hog industry.

E. Economic-Environmental Balance

The Precautionary Principle supports the "proposition that early preventive action is appropriate even in the absence of scientifically documented need when delay would impose increased costs and greater risks of environmental harm."⁸⁸ To encourage a consistent application of the Precautionary Principle in Canada, the Canadian government formulated a set of guiding principles.⁸⁹ According to the guiding principles several factors should be taken into consideration when applying the Precautionary Principle, including ensuring that mechanisms exist for re-evaluating the basis of the environmental regulations, creating increased public involvement, ensuring the measures are non-discriminatory, and ensuring the precautionary measures are proportional to the potential severity of the risk.⁹⁰ Furthermore, the guiding principles hold that "precautionary measures should be cost-effective, with the goal of generating (i) an overall net benefit for society at least cost, and (ii) efficiency in the choice of measures."⁹¹ Thus, while environmental protection should take precedence, even when scientific justification is lacking, environmental regulations should at least take into consideration economic effects.

It has already been noted that Bill 17 is discriminatory and not the most proportionate means of addressing any environmental risk posed by hog

⁸⁷ *Ibid* at 78.

⁸⁸ Jamie Benidickson, *Environmental Law*, 3d ed (Ottawa: Irwin Law, 2008) at 25.

⁸⁹ Government of Canada, Privy Council Office, *A Canadian Perspective on the Precautionary Approach/Principle* (Discussion Document, September 2001).

⁹⁰ Benidickson, *supra* note 88 at 26.

⁹¹ *Ibid*.

operations. Furthermore, Bill 17 does not create a net benefit for society at least cost nor does it create an efficiency in the choice of matters.

The CEC acknowledged that the government must “develop an implementation strategy that works with producers and other members of society to ensure the industry’s social and economic sustainability.”⁹² While Minister Struthers, in his initial press release announcing the moratorium, claimed he recognized that the bill would have an impact on the livelihood of producers,⁹³ there is no evidence that the government took this into consideration in the creation of the bill. It does not appear as though the government did any analysis of how the moratorium would affect the hog industry and Manitoba’s economy in general, nor did they attempt to balance the needs of the environment with those of the industry.

Although claims that the moratorium would kill Manitoba’s hog industry may be an over-exaggeration, there is no denying that shutting down expansion in the biggest hog producing areas of the province will have a significant, negative impact on the hog industry.⁹⁴ In these tough economic times, hog producers are already struggling to finance changes in their operations to comply with recent changes to the *LMMMR*. In order to finance these required changes, farmers have been looking to expand their operations and increase revenue. This moratorium restricts this option and will make it very difficult for hog producers to finance the changes to their operations necessary to comply with the *LMMMR*. In particular, small farms will suffer most because they are the less able to accommodate the costs associated with the new rules. Many small hog farmers at the committee hearings indicated that they were already struggling to keep their operations economically sustainable. With this moratorium they indicated that they would be forced to sell their farms. Furthermore, they indicated the moratorium could deter young people from starting in the industry, eliminate family farming practices, and drive Manitoba’s Hutterite hog farming population into urban centres or jurisdictions outside the province. Overall the moratorium could result in a drastic decrease in the number of hog operations in the province, and send many farmers out of the province or into other industries.

Bill 17 would also greatly diminish the contributions that the hog industry makes to Manitoba’s economy. The hog industry is the largest single commodity in Manitoba’s agricultural sector.⁹⁵ According to the George Morris Centre’s analysis, the hog-production sector generates \$1.7 billion in economic activity in Manitoba. By restricting the hog industry, this bill also affects other sectors such

⁹² CEC Report, *supra* note 7 at xi.

⁹³ Government of Manitoba News Release, *supra* note 2.

⁹⁴ *Supra* note 50.

⁹⁵ CEC Report, *supra* note 7 at 25.

as the feed industry, pork packaging plants, and rural businesses in the moratorium zones. Furthermore, if a large number of hog farmers do leave the province, this will reduce the tax collecting powers of the government, and could affect its ability to provide its current services.

After the bill was passed, the Honourable Rosann Wowchuk, Minister of Agriculture and Food and Rural Initiatives, stated in the government's defence that there would be "some flexibility when enforcing the rules if producers implement environmentally friendly technology."⁹⁶ She also stated that the government would provide financial support for producers to meet the new regulations and to implement new technology.⁹⁷ From reading the bill, however, there does not seem to be any flexibility in allowing for the expansion in the number of hogs, which is what hog producers ultimately want. The bill, in the form in which it was passed, provides for little to no flexibility at all, and the government rejected numerous proposed amendments that actually would have allowed for flexibility in the bill. Ultimately, for a bill that may not be effective at achieving its goal of protecting water, it will have a heavy economic effect.

F. Effect on Democratic Process

The democratic process involves the participation, or at the least access to participation, of individuals and groups in the policy making process. While not every piece of legislation will be loved, the government has an obligation to consider public opinion. Minister Struthers recognized this obligation and the importance that the committee stage has on this aspect of the democratic process. He claimed it is the best opportunity for the public to be able to express their opinions on a piece of legislation. At the closing of the committee hearings for Bill 17, Minister Struthers commended all the public input. He claimed that he appreciated all the advice received. He indicated that the comments would be analyzed and could result in amendments to the bill.⁹⁸ While his comments sounded exceptional, ultimately actions speak louder than words, and the behaviour of his political party did not reflect meaningful consideration.

While NDP MLAs attended the committee hearings, they did not appear to listen to the presenters. This was evident by the repeated remarks made both by presenters and members of the opposition parties during the committee stage about NDP MLAs being more interested in playing with their Blackberries than listening to the presentations.⁹⁹ Furthermore, despite the fact that there were

⁹⁶ "Flexibility In Bill 17" (7 October 2008), online: Pembina Valley Online <<http://www.pembinavalleyonline.com>>.

⁹⁷ *Ibid.*

⁹⁸ "Strong Public Interest Demonstrated During Legislative Committee Hearings into Bill 17", *Farmscape* (13 June 2008), online: *Farmscape* <<http://www.farmscape.ca>>.

⁹⁹ *Committee* (9 June 2008) No 4, *supra* note 37 at 351 (Leonard Derkach).

more submissions on Bill 17 than any other bill in Manitoba's history, with over 95% of presenters speaking out in opposition of Bill 17, the government refused to make any amendment to the bill or withdraw it. The government rejected the MPC's Zero Per Cent Solution and rejected all of Mr. Eichler's recommended amendments. Furthermore, these rejections were made with little justification other than claims the amendments would "gut the Bill". The government seems to have conducted the committee hearings as a necessary formality, and nothing more. They claim to have consulted with the public, but they appear to have had their mind made up before they even heard a single presenter.

This is not what the legislative process is about. People came forward, many of them travelling great distances, and staying late into the night with an expectation that the government would actually listen to them and consider their opinions. However, after the behaviour of the government during the committee stage and its rejection of numerous logical and scientifically based compromises, hog farmers, and perhaps a greater segment of the public, have a much less optimistic view of the legislative process.

X. CONCLUSION

Bill 17 is questionable public policy. The bill will likely negatively alter the social landscape of rural Manitoba and have a negative impact on the hog industry and Manitoba's economy. Rather than create a piece of legislation which could actually help the environment, the NDP spent \$750 000 on a report they did not bother to follow and 65 ½ hours on public hearings which they did not listen to.

By placing this moratorium on the hog industry in this manner, the NDP have not only discriminated against hog producers, but have abused the democratic process. Bill 17 showed both the power of party politics and the flaws with the legislative process. The NDP, simply due to the fact that they held a majority of seats in the House, were able to pass what can be viewed as an ineffective and unjustified piece of legislation. Furthermore, they were able to do this without taking into consideration any of the views of the opposition parties or the public.

Despite the NDP's claims that this bill was not politically motivated, it is clearly a piece of partisan policy. The NDP have been trying to portray themselves as Manitoba's environmental party. By imposing a moratorium on the hog industry, they found a "cause" that would cost them nothing, gain them media attention, and would only hurt an industry that did not support them in the first place. While only time will tell whether their political incentives will pay off, it is self-evident that the behaviour of the governing party reflects poorly on the legislative process and democratic governance as a whole.