



A review of the proposed *Water Protection Act*

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Manitoba has an abundant supply of fresh water. This resource is becoming a hot commodity as national and global demand for water and its spin-offs increase (e.g., hydro electricity, agricultural production, etc.). Recognizing this, the provincial government is taking steps to improve the protection afforded to this valuable resource to ensure that Manitoba is positioned to take competitive advantage of its water in a sustainable manner.

To this end, *Bill 22*, known as *The Water Protection Act*, has been introduced. This proposed legislation is progressive and enabling, and is intended to complement the provisions of *The Drinking Water Safety Act (Manitoba)*. It includes provisions

- to allow water quality standards, objectives and guidelines to be established and implemented;
- to establish water quality management zones and to regulate activities within those zones;
- to prohibit and otherwise regulate harmful non-native species;
- to allow water conservation programs to be established;
- to require the preparation of watershed management plans, and for their adoption in local development plans; and
- to allow for the declaration of a serious water shortage, and for the taking of action to address such shortages.

Much of the above will be accomplished by regulations to be made by the Lieutenant-Governor in Council after the Bill becomes law. It also proposes the establishment of a new advisory body, the Manitoba Water Council (with dissolution of the Manitoba Water Commission) and a new Water Stewardship Fund to support projects relating to water management and water quality.

So what does this mean for municipalities? If this Bill is passed, municipalities could be called upon to develop (or at least comment on) watershed management plans; amend or create their development plans and zoning by-laws to conform with regulations passed under the legislation and/or approved watershed management plans; and face stiff penalties if they commit an offence.

Water protection

The Bill gives the Province the ability to designate areas of Manitoba as 'water quality management zones,' in which any use, activity or thing may be governed, regulated or prohibited through regulations under the Act [Bill 22 s. 4]. When considering the sorts of regulations the Lieutenant-Governor may pass, the Bill indicates that it includes:

- Governing, regulating or prohibiting the discharge or other release of a pollutant into water;
- Respecting the siting, construction or operation of onsite wastewater management systems; and
- Governing, regulating or prohibiting the access of livestock to water bodies or areas adjacent to water bodies [Bill 22 s. 33].

The Bill provides that the Minister must provide an opportunity for public consultation regarding a proposed regulation or amendment [Bill 22 s.33(3)].

If the Lieutenant-Governor, on recommendation of the Minister, designates an area wholly or partly within a municipality to be a 'water quality management zone,' and passes regulations regulating or prohibiting certain land uses, activities

or things within the zone, a municipality will have to review its Development Plan and by-laws. This review must determine if any conflict exists between them and the new provincial regulations. If a conflict exists the provincial law will supercede any municipal enactment.

Manitoba could use this authority to assist municipalities that have not been able to put development plans in place, but that have an immediate need to protect fragile ecosystems. Or, depending on the circumstances, it could use this authority to supercede municipal planning activities/initiatives under the *Planning Act* and/or *Municipal Act*. For example, the Province could use this authority to prohibit intensive livestock operations within a 'water quality management zone' where a municipality would have otherwise permitted them (or where there is no planning law in place to prohibit them).

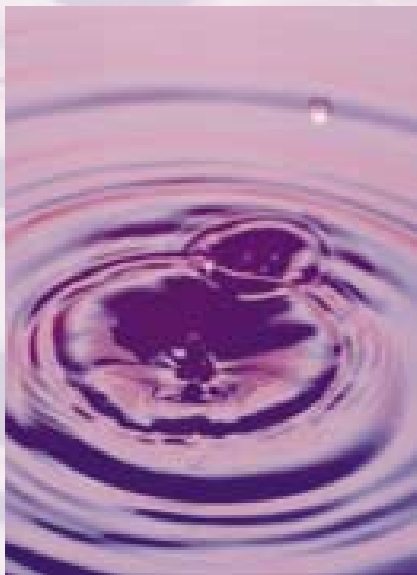
Planning

The most important parts of the Bill from a municipality's view are the provisions relating to watershed management. Part 3 says the Lieutenant-Governor may pass a regulation specifying the boundaries of a watershed and designate a 'water planning authority' to develop a watershed management plan for it. A 'water planning authority' may be either

- The board of a conservation district;
- The board of a planning district;
- **The council of a municipality;**
- Any other person or entity, or
- Any joint authority consisting of two or more entities or person described above.

The Lieutenant-Governor can prescribe the date by which the water planning authority must submit its watershed management plan for approval by the Minister; the terms of reference for the preparation of the plan, and any other terms or conditions that the Lieutenant-Governor in Council considers necessary [Bill 22 s.9].

In developing a plan, the authority must consider a number of prescribed factors:



- Water quality standards, objectives and guidelines that apply to the watershed;
- Whether a water quality management zone is included within any part of the watershed and any regulations in relation to that zone;
- Studies that the authority considers relevant relating to water, land use, demographics, the capacity of the environment to accommodate development, and any other matter related to present or future physical, social or economic factors
- Comments received through public consultation or public meetings;
- Prescribed water management principles;
- Relevant provincial land use policies, development plans, and zoning by-laws;
- Any other information that the authority considers relevant [Bill 22 s. 10].

The Bill requires the authority to undertake extensive consultations with interested parties including conservation and planning district boards, municipal councils, Indian Bands, the public and any other person specified by the Minister [Bill 22 s. 12].

Once the plan is prepared, it is submitted to the Minister who will consider it, with or without the advice of the Manitoba Water Council. The Minister may approve it or refer it back to the authority for revision in accordance with any directions that he/she makes [Bill 22 s. 14].

The development of a watershed management plan will obviously be technical in nature, time consuming and costly. Selecting an authority that has the capacity to undertake such a work will be critical to the success of the proposed legislation. Depending on how the Lieutenant-Governor designates watersheds and authorities, municipality's may find that they have more or less influence/responsibility over the creation of a watershed management plan than they would like.

Regarding watershed management plans, the Bill indicates that they must "specify linkages between water management and land use planning so as to facilitate the adoption, in a development plan or other planning instrument, of some or all of the provisions of the watershed management plan" [Bill 22 s. 11(1)(c)]. Thus, it is contemplated that municipalities and planning districts will endeavor to mesh the planning activities for land and water together.

Costs

The pragmatist in us all of is likely asking 'who is going to pay for this?' While the Bill provides for the establishment of the Water

Stewardship Fund, it is not clear whether planning authorities will be able to rely on it for full reimbursement of the costs incurred to complete a plan. The Bill indicates the purpose of the Fund is to provide grants in support of research, projects or activities 'that further the purpose of the Act' or which assist in the implementation of watershed management plans or water conservation programs [Bill 22 s. 24(3)].

It is also not entirely clear where the money needed to establish the Fund will come from. The Bill provides that the Fund will consist of:

- (a) Amounts appropriated by an Act of the Legislature for the fund;
- (b) Contributions received from any source by way of grant, gift, donation or bequest;
- (c) Interest or other income earned from the investment of money in the fund;
- (d) Amounts received under a Federal-Provincial agreement or any other agreement; and
- (e) Any other money received by the fund [Bill 22 s. 24(1)].

It remains to be seen from where the Legislature will decide to appropriate the money.

Compliance

The compliance provisions of the Bill permit the Minister to designate enforcement officers with broad inspection powers [Bill s. 25-27] and encourage individual reporting of violations, including legislative protection for 'whistle blowers' such as employees [Bill 22 s. 30]. There are severe penalties

for offenders. For example, a corporation guilty of an offence under the Act is liable, on summary conviction, to a fine of not more than \$500,000 for a first offence and not more than \$1,000,000 for each subsequent offence. A corporation's director or officer is also guilty of the offence if he authorized, permitted or acquiesced in the commission of an offence. If convicted, he/she could face, for a first offence, a fine of not more than \$50,000 or imprisonment for a term of not more than six months, or both. For each subsequent offence, he/she could receive a fine of not more than \$100,000 or one year of imprisonment or both [Bill s. 28].

Conclusion

Watershed protection and management planning are admirable objectives. This Bill is the first step in reaching such a goal. Whether the rest of the steps will fall into place depends largely on the quality and quantity of technical support and financial assistance provided by the Province to the designated planning authorities and the enthusiasm of stakeholders. Planning activities of this nature are aimed at providing certainty to the marketplace and protection to the environment. If stakeholders are convinced of the importance of such objectives and that the proposed process will lead to their attainment the momentum to complete watershed management plans should be there.

Update: The Legislative Standing Committee met on September 23, 2004 to hear public presentations on the Bill. The AMM's presentation to this committee is available at www.amm.mb.ca/legpresentations.htm. •



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