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Testimony in Opposition of
Senate Bill No. 2347
House Government and Veterans Affairs Committee
March 9, 2023

TESTIMONY OF
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Good morning Chairman Schauer and members of the House Government and Veterans Affairs Committee. My name is David Bruschwein, and I am the Director of the Division of Municipal Facilities in the North Dakota Department of Environmental Quality. I am here to testify in opposition to Senate Bill No. 2347 as written, but would like to offer an amendment to keep the $200,000 threshold for public improvements and pre-engineered units involving public drinking water, public wastewater, and public solid waste projects.

Under current state law, public improvements projects costing over $200,000 cannot proceed to construction without engineer-prepared plans and specifications. Senate Bill 2347 proposes to increase the cost threshold to $500,000 and $1,000,000 for pre-engineered units. If Senate Bill 2347 is enacted, the state and its political subdivisions could undertake projects up to $500,000 without engineer-prepared plans and specifications, or projects with pre-engineered units up to $1,000,0000.

The Department of Environmental Quality (DEQ) proposes an amendment to Senate Bill 2347 for the following reasons:

- The DEQ is responsible for reviewing and approving pre-construction plans for all projects involving drinking water systems, wastewater facilities, and solid waste management facilities. These reviews ensure that projects meet design standards. This is crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service, additional costs, and direct contamination of drinking water, groundwater, or surface waters.

- Based on the current threshold of $200,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards. It is an inefficient use of state resources and causes delays in project approval and construction. Increasing the threshold to $500,000 and $1 million for pre-engineered units would heighten this situation by involving larger and more complex projects. This will add more work to already heavy workloads and delay approval of all projects.

- The Department's role is to review and approve already-prepared projects to ensure that the design standards are met, not to design projects. We do provide design recommendations when asked. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid a conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.

- Setting $1,000,000 as the engineering threshold for pre-engineered units causes several concerns for the Department. This bill does not include a definition for a "pre-engineered unit". We expect pre-engineered units for drinking water and wastewater infrastructure would include water and wastewater treatment plant equipment and process units. These are complex designs requiring knowledge from an experienced engineer to determine appropriateness and feasibility. Vendors and manufacturers do not perform these services, which will put this responsibility onto the drinking water or wastewater operator. Furthermore, review and approval of pre-engineered units would require a significant increase in staff time to coordinate directly with vendors and manufacturers, who are often located out-of-state and have limited experience with North Dakota's climate, water resources, and design standards. This would place a burden on both the community and the Department's engineers.

- I would like to provide two recent examples of drinking water treatment units that previously required the review of a North Dakota licensed engineer, but could qualify as pre-engineered units under this bill.
    1. A drinking water system purchased an ozone generator for $319,100. Ozone can be used for many purposes in drinking water treatment, but one of the most critical is its ability to disinfect water containing bacteria and viruses. Individuals may be subject to gastrointestinal illnesses if ozone treatment is not properly designed.
    2. Another drinking water system is in the process of purchasing a pressure filter vessel for $561,180 to increase their drinking water treatment capacity. Filter vessels are used to remove contaminants from drinking water, but their effectiveness can depend on several factors like the raw water quality and treatment goals. Engineers are qualified to help systems choose appropriate filters to prevent contaminants from carrying over into finished water.

- For solid waste management facilities, it is critical to have engineers prepare plans and specifications that meet design and safety requirements for landfills and surface impoundments. The Environmental Protection Agency (EPA) and the North Dakota Solid Waste Management Rules require engineers to prepare plans and specifications for certain solid waste management facilities. Without the use of professional engineers, it will take longer for the Solid Waste Program to review and approve plans for solid waste management facilities.

- There has been discussion if drinking water systems, wastewater facilities and solid waste management facilities would be considered public works under NDCC 43-19.1-28

and therefore not included in this bill. Unfortunately, there is no definition of public works in that section. There is a definition of public works in NDCC 40-05-01, but the examples do not specifically include drinking water systems, rural water systems, and solid waste management facilities.

The DEQ takes its responsibility for public health, safety, and environmental protection seriously. Therefore, to ensure the protection of public health and the appropriate expenditure of public funds, we propose that the bill be amended to allow a $200,000 threshold for public improvements and pre-engineered units involving drinking water, wastewater, and solid waste projects. For the committee's review, we have provided an amendment to address this issue.

This concludes my testimony. I would be happy to answer any questions you have at this time.

PROPOSED AMENDMENT TO SENATE BILL NO. 2347

Page 1, line 12, remove "and"

Page 1, line 14 replace "." with "; and

Page 1, after line 14, insert:

c. A public improvement or pre-engineered unit being constructed as part of a drinking water system, wastewater facility, or solid waste management facility is two hundred thousand dollars.

Renumber accordingly