

TESTIMONY OF

David Glatt, Director of the North Dakota Department of Environmental Quality

Good afternoon, Chairman Larson and members of the Judiciary Committee. My name is David Glatt, and I am the director of the North Dakota Department of Environmental Quality (DEQ). The DEQ is responsible for the implementation and enforcement of many of the environmental protection programs in North Dakota. These programs include the Clean Water Act, Clean Air Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. I am here today to testify in opposition to SB 2296.

The DEQ implements several environmental quality protection programs that at times are complex and require an in-depth technical knowledge of not only the regulations but how they are implemented specifically in North Dakota.

This knowledge is critical to ensure the rules are applied appropriately for our ecosystems, climate, businesses, and municipalities. SB 2296 Section 2 Judicial deference (1) seeks to limit technical and real-world input of DEQ in a proceeding before an administrative law judge. If the measure is passed in its current form, we are concerned about the following consequences:

- Interpretation of technical environmental protection rules would be left to parties with a limited knowledge of the state-specific conditions, resulting in inappropriate outcomes or those with an agenda contrary to legal intent. Examples have been the belief that crude oil discharged into a stream is not a violation of state statutes or air pollution controls and that inappropriate emission sources for North Dakota should be approved.

Also, we are concerned with the impact of language in Section 2, Judicial Deference (2):

- The phrase "... the administrative law judge shall exercise doubt in favor of a reasonable interpretation that limits agency power..." could result in North Dakota laws and rules being less stringent than federal law, putting DEQ authority to implement the regulations at the local level at risk. The result would be federal implementation of important environmental protection laws and rules.

In addition, the reference to "...maximizes individual liberty" is confusing as to who and how it would apply. Does it apply to the complainant or to an individual's ability to enjoy the environment?

- Examples could be a person might not like an oil well in the vicinity of their residence as it interferes with their individual liberty because they think it makes too much noise or a grandfather wanting to take his grandchildren fishing downstream of a discharge into a stream where he might believe the stream is too contaminated to fish (even if the discharge complies with applicable law). Whose individual liberty must the administrative law judge maximize --the defendant, or the person with actual or perceived impact?

It is important to note that the DEQ has a history of common-sense implementation of regulations following the law and appropriate science.

Keeping an arm's length from all parties our laws and rules are implemented to protect all North Dakotans, acknowledging that we do not all live upstream or upwind.

This concludes my testimony, and I will stand for questions.