

TESTIMONY OF

**David Bruschwein, Director of the Division of Municipal Facilities**

Good morning, Chairman Wobbema and members of the Senate Workforce Development Committee. My name is David Bruschwein, and I am the Director of the Division of Municipal Facilities at the North Dakota Department of Environmental Quality. I am here to testify about the Department's proposed amendment to SB 2110.

### **Background**

The amendment is a result of the questions by this committee on the procedure and due process protections when imposing a penalty for violations of the chapter under section 23.1-07-08. In reviewing other chapters under Title 23.1, we noticed the chapters on regulating radiation, hazardous waste, air pollution, and solid waste had a specific section on administrative procedure and judicial review. To maintain uniformity with similar chapters under Title 23.1, the Department thinks there should be a specific judicial procedure section for Chapter 23.1-07.

### **Section 5: Amendment**

Section 5 of the bill proposes a new section to chapter 23.1-07 for administrative procedure and judicial review under this chapter. This section specifically states that both rulemaking and enforcement of rules under this chapter "must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as provided under that chapter." We hope this addition to ch. 23.1-07 helps clarify the process of enforcing rules adopted under this chapter and how someone subject to an enforcement action may respond to or appeal the alleged violations.

Mr. Chairman and committee members, this concludes my testimony. I ask for your support for SB2110 as it is amended here. I would be happy to answer any questions.

**PROPOSED AMENMENTS TO  
SENATE BILL NO. 2110**

Introduced by

Workforce Development Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new section to chapter 23.1-07 of the North Dakota  
2 Century Code, relating to administrative procedure and judicial review of the promulgation and  
3 enforcement of rules under this chapter: to amend and reenact subsection 1 of section  
4 23.1-07-04 and sections 23.1-07-05, 23.1-07-06, and 23.1-07-08 of the North Dakota Century  
5 Code, relating to the certification and penalization of water distribution and wastewater systems  
6 operators; and to provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 23.1-07-04 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 1. A certificate issued under this chapter is valid for only one year and expires on the first  
11 day of ~~July~~January of the year after which it was issued.

12 **SECTION 2. AMENDMENT.** Section 23.1-07-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **23.1-07-05. Fees.**

15 The department ~~may charge a fee for certificates issued under this chapter, but the fees~~  
16 ~~may not exceed fifty dollars for the initial certificate, or twenty five dollars for the annual renewal~~  
17 ~~certificate~~by rule may prescribe and provide for the payment and collection of reasonable fees  
18 for certificates issued under this chapter. The fees must be based on the anticipated cost of  
19 filing and processing applications for operator certification, preparing and administering  
20 examinations, and the annual renewal of certificates. All receipts from the fees must be  
21 deposited in the state treasury to be credited to a special fund to be known as the "operators'  
22 certification fund" to be used by the department to administer and enforce this chapter and  
23 financially assist the department in conducting operator training programs. Any surplus at the  
24 end of the fiscal year must be retained by the department for future expenditures.

1       **SECTION 3. AMENDMENT.** Section 23.1-07-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **23.1-07-06. Duties of the department.**

4       The department shall:

- 5       1. Hold at least one examination each year, administered by the department or a third-  
6       party examination service, at a designated time and place for the purpose of  
7       examining candidates for certification.
- 8       2. Promote the program of certification of water supply and wastewater disposal system  
9       operators.
- 10      3. Distribute notices and applications and to receive and evaluate applications.
- 11      4. Collect fees for initial certification and annual renewal.
- 12      5. Prepare, conduct, and grade examinations. The department may use a third-party  
13      examination service to prepare, conduct, and grade examinations.
- 14      6. Maintain records of operator qualifications, certification examination results, and a  
15      register of certified operators.
- 16      7. Promote and schedule regular training schools and programs.
- 17      8. Adopt rules necessary to carry out this chapter.

18       **SECTION 4. AMENDMENT.** Section 23.1-07-08 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20       **23.1-07-08. Violations - Penalty.**

21       Any

- 22      1. A person that violates this chapter, a rule implementing this chapter, or an order issued  
23      by the department under this chapter is subject to a civil penalty not to exceed five  
24      thousand dollars per day of violation.
- 25      2. A person violating that willfully violates this chapter or the rules adopted under this  
26      chapter, after written notice of the violation by the department, is guilty of a class A  
27      misdemeanor.
- 28      3. A person that willfully makes a false statement, representation, or certification in an  
29      application, record, report, plan, or other document filed or required to be maintained  
30      under this chapter or any rule, order, limitation, or other applicable requirement  
31      implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate  
32      any monitoring device or sample is guilty of a class A misdemeanor, unless the penalty

Legislative Assembly

1 for the violation is otherwise specifically provided for and made exclusive in this  
2 chapter.

3 **SECTION 5. AMENDMENT.** A new section to chapter 23.1-07 of the North Dakota Century

4 Code is created and enacted as follows:

5 **Administrative procedure and judicial review**

6 A proceeding under this chapter to adopt or modify rules relating to the certification and  
7 regulation of drinking water and wastewater system operators, or for determining compliance  
8 with rules of the department, must be conducted in accordance with the provisions of chapter  
9 28-32, and appeals may be taken as provided under that chapter.