2019 SENATE POLITICAL SUBDIVISIONS

SB 2241

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB2241
1/24/2019
Job # 31382

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide a Legislative Management study relating to regulating the installation, maintenance, testing and repair of sewage treatment systems.

Minutes:

Written attachment #1 Mr. Dave Glatt
Written attachment #2 Mr. Keith Johnson
Written attachment #3 Mr. Tom Shimelfenig

Chairman Burckhard opened the hearing on SB2241. All senators are present.

Senator Jerry Klein, District 14, introduced SB2241 (:44-3:21). We need to dig into this issue with a legislative interim study. This is the bill before you. The issues are installation, maintenance, education issues, so that in a nutshell is what this does and why the study is necessary. It is an opportunity here to hear from the public and take a little more time as we work our way through these.

Senator Judy Lee: More of an organizational question. I maintain that legislators don't know everything about everything and that includes interim committee including my own and so I am wondering if you have considered the possibility of a task force of these various stakeholders who would be involved with perhaps a couple of legislators on it as a liaison to their legislative body to bring back the information ultimately. It's been successful in a couple of other areas, the experts are able to work together in between things to talk about the details.

Senator Jerry Klein: No, I have not. The discussion was never held about the task force issue. I think your comment was there is a lot of things we don't know about as we sit on committees but I think there's where everybody knows a little about something about something, and this I felt was an opportunity for those people to learn a lot more about something. The task force issue really wasn't discussed. I think the discussion was more getting the players in the room; as certainly the Health Department will be there, the Health Districts will be there, to provide opportunity and information and I think there is already have a great starting point. We just got to get this across the finish line. No, we've never had that discussion.

Senator Kannianen: Could you just describe what is in place now, in terms of whether they have permits required and maybe what a couple of the other concerns or issues are? You already talked about lack of or maybe there needs to be more coordination?

Senator Jerry Klein: I know there will be gentleman coming up who's testimony I hold in my hand that covers exactly those concerns and questions because the current code is kind of and a little bit of messy thing being in the plumbing code is my understanding. Some of the Department of Health code, it's kind of like. The idea here is that with a unified voice and a direction that we can find a way to gather this together and put it where it belongs so that installers know where it's at, district officials know how to administer it and are educated both installers and the folks out there. Because a lot of these folks have a lot of things to do certainly there is some issues. The issues that came forth were the inconsistency if you're in the Minot district, versus the Devils Lake district or the Jamestown district. The rules haven't been the same and I think that's what we are trying to do is create that consistency, so everybody knows going in what they have to do, what they have to do, what they have to bring to the table, what they need to know, what permits to get. Just trying to side-step your question there will be someone I believe from Custer Health that will speak to that.

Senator Judy Lee: My conclusion or my expectation after hearing and reading about this is that it is written as if it includes everything, but you didn't mean to include city water systems and other lines like sewer systems. You're talking about mound systems, septic systems the rural unincorporated non-community kinds of things or not? Would you just explain that for me please?

Senator Jerry Klein: Yes, but I wanted to make sure that it was broad enough that sometimes when we're sitting in that Interim Committee somebody will say well we should've studied this part and most of us would say, yes we should, then somebody will say it is not in there particularly. I don't believe that was ever the case. This is primary a rural issue as it and certainly now in the advent of some of the producers have built pretty nice looking shops out in the farm which provide housing. Which also then provides for a septic system that needs to be installed properly, but there are a variety of questions that relates to that. So everybody gets to know what the rules are, whether it's the producer going into this, the installer and also the public health unit.

Senator Judy Lee: I live in an area where the soil raises great crops is really hard on basements and doesn't perk with a hoot. But that results in rural sub-divisions coming up around our metropolitan area, that are putting in systems either individual septic systems or perhaps it might be a little subdivision system, mound system or whatever. But there has to be some consideration of whether or not there is a likelihood that that area will ever be annexed. Not next year, but 30 years from now. Moorhead, Minnesota, just went through that because of a bend in the river, and people ended up having to put in very expensive septic systems to meet the code, for about 3 years until an automatic annexation which was already in place took place and then they were connected to city sewers and they paid twice. So this is a rural issue in a sense of agriculture for example. I think it's going to be really important to look at what it needs in those areas and Bismarck has all kinds of urban sprawl here, and what the potential is to them to hook up to the city systems, what kinds of regulations you might be about that as well. Do you see that as being continued in it, because I hear more

that it is coming from a rural perspective and these are in townships, but there not staying in townships?

Senator Judy Lee: This came up from a rural perspective, mine and my constituent but it's much broader than that. That's when my visits with the Custer Health Unit created more discussion on my visits with Mr. Dave Glatt from the Health Department created more discussion. I tried to be a little encompassing here, I am hoping that I covered all the bases. But I think both those gentlemen will probably be able to answer that question for you more clearly as to what they believe are issues that are bumping up against our cities. I can't answer that clearly.

Mr. Dave Glatt, Environmental Health Section Chief for the North Dakota Department of Health, soon to be with fingers crossed the North Dakota Department of Environmental Quality. Testified in support of SB2241. **Written attachment #1.** (11:00-13:22)

Mr. Keith Johnson, Administrator of Custer Health in Mandan, ND. He spoke in support of SB2241. **Written attachment #2**. (13:48-18:33) He referred to Senator Lee's question as what do we know about sewage. There are some aspects of instituting a state-wide code where we are just plain going to need your help. I don't think we can do it from a task force level because we have to find a host state agency for one thing, and the task force can't tell a host state agency this is going to be your job. They can't allocate resources to make sure that they can do the job. So those things are things we are going be asking for your help on. Mr. Glatt continued with his written testimony.

Mr. Keith Johnson replied to the city fringe question. There is an interim kind of a solution in between annexation and total rural that I think is not been explored enough. That is utilization of the existing septic tanks to remove the solids and putting a pump chamber after everybody's tank and running through pressure line to a manhole that connects to the big pipe. That can be done with a 3- man crew and a ditch witch instead of the huge investment that it takes to lay in gravity sewer. It is not so cost prohibitive that you can't do that and then eventually annex and put it in up to municipal standards. That to me is one of the answers in the extraterritorial zone and I think cities that have adopted their extraterritorial zone, and most of the larger cities are out 4 miles, aren't they, maybe 5? We should probably be looking that as an eventual interim study to bringing these areas in because it is that is an area fraught with peril. Everyone gets angry immediately.

Senator Anderson: I think I support the idea of studying it and making sure that whatever the final solution we come with doesn't just mean that we have to install a lot of concrete next to each one of our houses when we already have 30 feet of sand to filter whatever goes down in there. Senator Lee's description of what happens in the Red River Valley is entirely different than where I live in McLean County because the system could be entirely different and still function better than there's because we have the filtration on the sand before you get to the water table. I think it's important that we take a good look at that and make that we don't just adopt one thing for everybody because we perceive that to be the best idea.

Mr. Keith Johnson: You are exactly right. There is no vision for taking local control away. If you ask Dave by far his preference is to have the locals administer it and then have the state just do the things the state does well which is state- wide education, and certification of

installers and regulators. Because we on the local level really cannot regulate ourselves in that regards.

Ms. Sherry Adams, South Western District Health Unit, (21:23-) Executive Officer for the counties in the SW. I am also an Environmental Health Specialist. I am just a big grey blob in the SW corner that has not adopted this yet. The reason behind it is two-fold. One the bill as an ordinance that was written isn't, we didn't think and our Board didn't think it was ready to be adopted. That is probably because of some of the issues we've talked about today. Primarily, soils is a lot different in Dickinson that it is up in Devils Lake. So there is a lot of tweaking that needs to be done. Our Board just didn't want to adopt it and then re-adopt it and then re-adopt, so that is probably the biggest reason we have not adopted it. We really truly support additional study either an Interim study or a Task force, whichever. So we are definitely in favor of that. I didn't want you to think that we weren't supporting what their saying, we just weren't ready yet to sign off on it.

Mr. Tom Shimelfenig, Contractor who spoke in support of SB2241. **Written attachment #3**. (22:52-26:09)

Senator Anderson: Do you have an estimate of how many of the septic tank installers are plumbers or have a plumber on staff and how many are contractors?

Mr. Tom Shimelfenig: No I do not.

Senator Judy Lee: I am pleased to hear that you are looking at forming a state wide association, because you all have the same goal in mind I know to do this work right. We all know that soil conditions vary so much from one place to another. So I think that will be good for you and the people you serve and for those of us trying to make sure everybody gets it done right too, so good new there. Thank you!

Senator Anderson: When I am looking at the map here that was passed out it looks like Wells are they their own Public Health Unit?

Mr. Tom Shimelfenig: No we are currently with Central Valley Health out of Jamestown. They are their own public health unit. The way our system is set up, we have our own County Health Unit, and we contract with Central Valley on various other things.

Senator Judy Lee: The committee may be interested to know that there are four permutations of public health units. It would be single county, multi-county, city –county that kind of thing so there is, every square inch in North Dakota is now in a public health unit and when I started in this legislative life, that was not true. There were parts of ND that were not in a Public Health Unit. I've know Mr. Johnson about that long.

Chairman Burckhard: Asked for those in favor of, opposed, or neutral testimony for SB2241. He then closed the hearing on SB2241.

Senator Judy Lee: I would like to have an opportunity to visit with my local folks, as they are fussy about this, about inspections. I am not worried about that, but I don't see or hear any

comments from some of the eastern area or from some of the urban areas so much. So maybe Mr. Johnson has a thought on that.

Mr. Keith Johnson: My son is your septic inspector. He is on this board that is pushing this initiative.

Senator Judy Lee: I would feel more comfortable if I had a chance to talk to my local folks and if you would be willing to just allow a little time for that.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB2241
1/25/2019
Job # 31486

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide a Legislative Management study relating to regulating the installation, maintenance, testing and repair of sewage treatment systems.

Minutes:

Chairman Burckhard opened the committee for discussion on SB2241.

Senator Judy Lee: I am wondering if on 2241 we might consider just a little phrase that would say something to the effect that of including participation by experts in the field, or something like that; or contractors. I am not trying to obstruct with that I just want to make it clear that it isn't just people like me who don't know a whole lot about the details of installing them but I just know that I want the toilet to flush and I want the water to go down the drain. I would like to make sure that the people who are working on it my house know what they are doing.

Chairman Burckhard: Where would you impose that to including participation from sewage

Senator Judy Lee: I am looking at the line that says on end of line 6, after that we could perhaps say something about study shall include experts, comments from people with knowledge of the field. Including contractors and others with expertise.

Senator Anderson: They have in here, "must include consideration of uniform set of rules" I am not sure that doesn't predispose what the goal is here.

Senator Judy Lee: They are looking for a uniform standard aren't they?

Senator Anderson: Yes, that was what the guy who brought the bill was looking for. I am not sure that a uniform set of rules is the best interest of all the disparaged counties, but maybe this will determine that.

Senator Kannianen: I am trying to wrap my mind around with my experience with the State Electrical Board for example. If they are wanting a uniform set of rules, uniform occupational licensing requirements, education requirements and so forth, I am just trying to wrap my

heard around how do you do that and still maintain any type of "options for maintaining local government control" over the regulation. I mean those things don't match at all. I don't know how you do that because you have to have a uniform set of rules that comes with a uniform set of inspection criteria, right, and regulation. I just don't know how that would work.

Chairman Burckhard: So evidently there is not a uniform set of rules for sewage treatment?

Senator Judy Lee: It can't be, because the soil in the areas in which each of us live is so different from the others. The land and the weather and the amount of rainfall that comes in the area where Senator Anderson lives, is very different from it is where Senator Dotzenrod lives. The Public Health Units are responsible for inspecting septic systems and the counties are responsible for setting those rules. The more I think about it, the more I am kind of comfortable with that because the counties have some responsibility that they need to step up and do, maybe that is the issue. But the uniform set of rule thing is troublesome because it's not going to be the same for your neighborhood or mine.

Senator Kannianen: One question I wished I would've asked yesterday what as far as their education if they have any kind of continuing education. I wished I asked what they are doing right now for licensing and education when they want to make that uniform. For plumbers there is the State Plumbing License, but for installing septic systems there is no. Just any excavator could do that, there's no license.

Senator Anderson: In answer to that you know you have to be certified by the State Health Department order at least the district health unit if you're going to install septic tanks. They do have a standard-criteria that your supposed to follow at least if you've adopted the Uniform Code and like our health unit has done that. The people from the Health Unit are the ones who inspect your septic system when you get it installed. Now those areas who haven't adopted it I am guessing they can do whatever they want yet, but most of the state has adopted those uniform rules. Right now it goes by the District Health Units where they've done that.

Senator Kannianen: Then as far as when the local health units do their inspections then, I am just wondering about education both for the installers and for the inspectors? Even making that kind of state wide uniform education, even that how would that work because of how every section of the state is different. I don't even know how the education piece would work much less the.

Senator Judy Lee: I am becoming more convinced that actually that leaving it in the control of the Public Health Units and the counties who participate in them may be the way to do it because it is going to be sensitive to what the soil conditions are. In order to be a contractor in ND you don't have to be licensed, all you need is a hammer and a pickup. So if you're an installing septic systems I think about my Dad going out with a caterpillar tractor and enlarging the drain field in the area outside of our farm site. Would he be able to do that if we do this? Would it have to be an official certification of some sort for somebody to expand the drain fields that would do it, or could Dad still go out and do it himself?

Chairman Burckhard: It sounds like we're making it more complicated.

Senator Anderson: I don't know what the specific training requirements are but I know that one of my neighbors installed septic systems and in order to do that to get the permission to do that from the Health Unit he had to attend some training and so forth. I don't know specifically what it was, I don't know who put it on. I think the State Health Department did but I am not sure. So that might be a question we could ask Mr. Glatt to come back and talk to us about that a little better and get some information. He would be happy to do that.

Chairman Burckhard: We aren't ready to finish this bill.

Senator Dotzenrod: Following on this discussion, if you remember when Mr. Shimelfenig was speaking to us his voice kind of wavered there a little bit. It surprised me because I thought the last thing you would get emotional about is sewer work. I visited with him afterwards in a small group here in the room and he started talking and his voice did the same thing again. I asked him about it. I said, were you nervous when you were up there or was there some reason that your voice got a little weak there and he said well in talking about these, I've had some really bad experiences in trying to deal with some of these projects and get approval and get them done. He was a little embarrassed but, I am looking at his testimony here and at the bottom of the second paragraph he says, "additionally the responsibility for application to install a rural septic system must be placed upon the property owner rather than holding installers hostage. It is a negotiating process necessarily anchored upon agreement between property owners and local public health units who permit these systems". These application processes should be implemented uniformly on a state wide basis. Evidently he was saying from where he is at one way he goes east and he gets good cooperation and is able to get these done, and they comply with the inspections and then the other way he says he apparently has had some trouble getting things done and I wish I would've had read this and absorbed this a little more when he was here. Because I would like to have, there are some questions I would have been wanting to ask him about more details on is the real issue here. Are there times when he has been prepared to do this work but then he's being held up for extra fees or held to install equipment that he doesn't think is needed but somebody in the area says well, we want you to do this way or else. I don't understand what is out there that is really the problem. Evidently there is something that is creating some trouble.

Senator Anderson: My guess is when he was getting over to the west into Sheridan County then he was dealing with the 1st District Health Unit which can be a little bit difficult to deal with sometimes. If they think, there's regulations that need to be followed then you have to do it their way. Of course that is the same area that I am in and that's why I made the comment about burying a bunch of concrete, because you have to have these two concrete tanks and one goes into the first tank and then has to go into the second tank and then eventually it gets out into the drain field. That's what the uniform requirement are now. Every time we go with one of these studies and we have uniform requirements the requirements always get stricter and stricter. They never get easier when you do those things. That may be some of what he is talking about.

Senator Kannianen: I don't want to get to far into the weaves, but just along those lines with this Tom Shimelfenig. I don't know exactly what his experiences are, like what he brought out, but his line about how the responsibility for the application to install rural septic systems is basically saying the burden should be on the property owner and not on the contractor.

But I don't know how that works, because with any other trade I mean the company that is doing the work has the responsibility to file the permit or certificate. So I am not exactly sure how that would work. I suppose maybe he's had so situations where the health department has held up some work and it's frustrating but I don't know how that would change. Whether the burden is on the home owner or on the contractor. What problem are they trying to solve with this bill, I don't see that as being one.

Senator Dotzenrod: It's not unusual for the Legislature to have a group within a certain trade come to the legislature and propose something that we colloquially we refer to as fence building. That we will see that every now and then, something the group wants to keep freelancers out and they want to make it more professionally and higher levels of certification. It's kind of keeps their trade group to the same participants. But I don't really see that here. I don't understand; this doesn't appear to be that kind of thing. It doesn't look to me like "There coming in and saying well were the group that know what we're doing and we don't want unprofessional sideline people coming in". I don't know if I see that in here. It appears to me the trouble is they just feel that there is an uncoordinated lack of uniformity of the requirements that are being imposed on them. That is sort of what I got. Maybe I am wrong.

Senator Anderson: I think that a couple of things are telling about this. One he came with a proposal to make it uniform to Senator Klein. Senator Klein hearing from other people didn't think he wanted to be that restrictive to say, you can only do it this way. So that's why he put it in as a study to satisfy his constituent who wanted to be uniform about this. I think that's telling that Senator Klein didn't take his side totally. He put it in as a study. I am always in favor or more information but I don't want to predispose something either with this study.

Senator Judy Lee: You, can ask Mr. Glatt if he wants to come back as we mentioned earlier. But the more I hear of these gentlemen talking about it the more inclined I am to lean towards a do not pass, but I don't know whether anybody else feels that way. They may feel the same way or not after Mr. Glatt would come, but the idea of uniformity. I am so comfortable with the public health units doing this, I guess as part of and maybe that is my bias. But they look at what the soil conditions are; they know the circumstances are for the expected population changes. If you're on 2.5 acres in my area, your fine. If you're on ½ acre you can't have a septic system and you can't set up those rules to be uniform between Slope County and Cass County or whatever. That's part of my problem.

Senator Anderson: One other thing here is Magram, the sponsor in the House and he has the power over there. So, I don't know whether before we act we want to talk to Senator Klein and see if he is that serious about it or talk to Rep. Magram.

Chairman Burckhard: I will talk to Sen. Klein and then we will bring in Mr. David Glatt back for some questions.

Senator Kannianen: Mentioned that Senator Luick does septic systems and perhaps the committee would like to talk to him.

Chairman Burckhard: closed the committee discussion on SB2241.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB2241
1/31/2019
Job # 31995

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide a legislative management study relating to regulating the installation, maintenance, testing, and repair of sewage treatment systems.

Minutes:

Chairman Burckhard asked the committee to discuss SB2241. All senators are present for committee discussion. This bill was introduced by Senator Klein who said it was primarily a rural issue. Sherry Adams from S.W District Health unit spoke. I don't think we had any opposition to it. Public health units are sensitive to the soil systems in their area. It provided legislative management study. I thought it originally hope to have Senator Luick speak to us on this topic. I still would like his input because he's the expert on this topic.

Senator J. Lee: You will notice on one of those messages that says it is public health day on February 6 which will be. It is Wednesday of next week. So we would have a chance to visit with some of these folks and that wouldn't be a terrible idea. The other thing that was mentioned by an earlier speaker that the letter from Grant Larson talks about the collaborative public health collaborative from Cass, Richland, Sargent, Ransom, Traill, and Steele counties. They have visited with their other colleagues and support this. It wouldn't be a bad deal to talk to somebody besides our own folks.

Chairman Burckhard: Do you mind if we put this on delay on this one until next week. We don't have that much work to do. We may get some House bills if they concern agency stuff only to work on before the crossover. We would only have this bill and SCR4011 next Thursday. I think we should wait on this one too. So we are done for the day. Thank you for your efforts and input.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB2241
2/7/2019
Job # 32352

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide a legislative management study relating to regulating the installation, maintenance, testing and repair of sewage treatment systems.

Minutes:

Chairman Burckhard asked the committee for discussion on SB2241. We heard it on January 24, 2019. This is primarily a rural issue I believe. We discussed it and Senator Klein introduced the bill and Sherry Adams from the SW District Health Unit spoke. This to provide a study regarding sewage treatment, system installation, maintenance testing and repair.

Senator Judy Lee: I might add that it is an urban issue in a sense that those areas that in the extraterritorial zoning areas around the urban areas are very much interested in making sure that those things are done properly. I think we all get affected by it.

Senator Anderson: Along with the gift that I got from the 1st District Health Unit, I want to disclose that now, because they gave me a gift when they were here. But I did talk with the Director of the 1st District Health Unit, and what she told me was when they first considered, we have adopted the 1st District Health Unit, the state-wide standard, but she felt that for the whole state it was premature when they did it to go ahead and adopt it. So I think she is supportive of the study and to take a look at the differences in different areas of the state and so forth. But she felt it was premature because the local areas had those concerns and I think the study may be will bring those out.

Chairman Burckhard: Was that Lisa Klutt?
Senator Anderson: Replied yes.

Chairman Burckhard: Any other discussion. We don't have a motion yet either I believe.

Senator Kannianen: It states in the study that a couple of things that will be looked at is the regulatory agency best able to regulate sewage treatment systems and maybe some of us could assume that they would find out that the local health units are the best ones. But, I mean that is part of the options for maintaining local government control so even though we do talk about the consideration of uniform rules and occupational licensing it does. I think it

should be a well-rounded study. In visiting with Senator Luick as well, I will **move a do pass on SB2241.**

2nd. Senator Judy Lee

Committee discussion:
Senator Dotzenrod: I will support the do pass motion, but I am not sure that I really understand exactly what those folks were in here to speak in favor of the bill, exactly what it was that they felt wrong in today's system. Is it that they found from Mr. Schimelfenig's testimony was he felt he was being held hostage by the disagreement between the property owner and the health unit. But I don't know if that's the problem that is going on all over. If you study it and you're going to solve that, is it a question of who's supposed to submit the request to the health unit, is that supposed to be the property owner or the installer? So I am a little confused about what exactly what is wrong with the system but it doesn't seem to me that it would do any harm and it would probably do a lot of good. There is a lot of difference in soil types all over the state. I think most of the installers know that and make the adjustment for that, so I will vote for it. But again I'm not real clear on what's really wrong with what has been going on.

Senator Anderson: I felt the guy who came in and testified was a little convicted and we're not going to be able to solve all of his problems. But he did express that there were different requirements in and different enforcement levels in different places that he worked which was across health units. That might be why some of this problem occurred but you're right, the issue between the property owner and the installer, obviously the property owner is finally responsible because the installer is going to be responsible for doing it right according to whatever thing is adopted.

Senator Judy Lee: I obviously support the idea of figuring out what is going on and appreciate also Senator Kannianen' s point about the proper regulatory agency being selected. I think it is terribly important that the installer get the permit, and in the same sense as every kind of contractor who works on anything needs to get the permit. Some place in that chain of command whether it depending on the way the construction management is being done, if it is a little project or a big one, somebody has got to get a permit. I think if you're a professional at what you do, you learn what the rules are in the place you're working. I think that for the guys who do this work which is terribly important, they are less interested in the paperwork, than they are in doing the job that way they think it should be done. In the same sense, as we've had discussions in our committee about child care providers who just want to take care of the kids and don't get their paperwork done. It is just human nature. But it has to be. You got to have a little paperwork if you're going to be serving the public. So it's okay if we test this stuff out.

Chairman Burckhard: Any other comment? Any other discussion on a do pass motion on SB2241.
Roll call vote: 6-0-0
Carrier: Senator Anderson

Date: 2.7.2019
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2241

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Kannianen Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	A				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6 No 0

Absent Senator Anderson

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2241: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2241 was placed on the Eleventh order on the calendar.

2019 HOUSE POLITICAL SUBDIVISIONS

SB 2241

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

SB 2241
3/1/2019
Job # 33074

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Carmen Hickle

Explanation or reason for introduction of bill/resolution:

An act to provide a legislative management study relating to regulating the installation, maintenance, testing, and repair of sewage treatment systems

Minutes: 1,2,3

Chairman J. Dockter: Opened the hearing on SB 2241.

Sen. Klein: Introduced the bill. The bill came about to provide conformity in the Health Districts in installing sewer systems. The work the group did was drafted and it now has been turned into a study. The districts in the state have different rules, so this is an attempt to have a study to learn what we need to learn, to educate the administrators and also the people involved.

Rep. Johnson: Is this mainly septic systems? Or are you talking about sewage treatment and drain fields?

Sen Klein: It is about septic systems and installation. Our systems are aging in North Dakota and the oversight from the state needs to be consistent. The attempt is to have a study, provide the rules, understand what they are and put them throughout the state so every health district knows and understands what's required of them and what's required of installers.

Keith Johnson: (Handout #1) Administrator of Custer Health. Read his testimony.

Rep. Johnson: How does it work in Burleigh County?

Mr. Johnson: Burleigh is administered by a zoning administrator outside the city limits of Bismarck. Within the city limits of Bismarck, they don't have a need, we used to do it from a Custer Health perspective before that it was zoning. It is probably the most confusing in the state to figure out how to install a septic system.

Rep K. Koppelman: How does the patchwork work now across the state? Are there different standards completely?

Mr. Johnson: The differences are variations of the state plumbing code. But there are significant variations in the licensure requirements and in soil sampling required beforehand and the inspection requirements for the process and approval for instillation. Most significantly there is a difference in the way a septic system is deemed to be failing or not.

Rep K. Koppelman: As you look towards uniformity how do you see that taking shape? If there is a state standard local government can make it stricter but not more lenient. Do you see that continuing to happen or do you see something that is strictly uniform?

Mr. Johnson: I think there will always be a local government that wants to have their own code. Having a uniform base and having it as uniform as possible is within everyone's interest. To an extent local control is preserved here because it is locally enforced and adopted but statewide standards for education, vender review, for installer licensure makes sense from a commerce and uniform standpoint.

Karl Rockeman: Director of the Division of Water Quality with North Dakota Department of Health Environmental Health Section. (Handout #2) Read his testimony.

Tom Schimelfenig: (Handout #3) Read his testimony.

Chairman J. Dockter: How many jurisdictions have you worked with?

Mr. Schimelfenig: Inaudible.

Chairman J. Dockter: They all vary?

Mr. Schimelfenig: They all vary. There are three that are close to the same.

Rep K. Koppelman: Do you find it difficult trying to comply with all the standards or is there a way you can do the jobs up to a certain level that you are meeting them all? Or are they different?

Mr. Schimelfenig: There is various different help in the health units that will assist us with that. Some give a lot of assistance and some don't give much.

Rep. Adams: If I want to put in a septic tank you have certain guidelines to follow, who inspects that?

Mr. Schimelfenig: It is the same person you work with at the beginning that comes out and inspects in the end. Our preference is to have the person there in the beginning and assist us getting things laid out as to how is has to be done rather than wait until the whole thing is done and then come and think what you did is not right.

Rep. Hatlestad: In all the places you have been can you see a code working for everybody with the different geologies in the different areas?

Mr. Schimelfenig: I do. The codes are based on soils and the setback from the water table.

Rep. Hatlestad: What kind of push back are you getting? You are trying to organize statewide septic contractors, is there people objecting to unification?

Mr. Schimelfenig: If you are talking from an installers standpoint we would like to see something more uniform.

Rep K. Koppelman: From the Health Department perspective do you see the condition where it would be a statutory code or would you see your department doing administrative rules to try to add specificity?

Mr. Rockman: In general, it is better to keep the statute somewhat general then get into the specificity with the administrative code.

Rep. Simons: Is your own county operating under these rules?

Mr. Schimelfenig: Yes, we are part of the Central Valley Health Unit.

Rep. Simons: So how did your county get on board with this?

Mr. Schimelfenig: We didn't have a permit until 2012, whenever I had to do a system in Wells County I would work with Jim Michaels.

Rep. Simons: Your county adopted this by itself.

Mr. Schimelfenig: No, it's through Central Valley because they are the ones that implement the code.

Rep. Simons: Keith Johnson said most of the counties are adopting this and going with it themselves. What is a good idea of the state forcing a county to do this if they don't want to?

Mr. Schimelfenig: The contractors I have talked with wants a uniform system. They all liked the approach of the installer and property owner and the regulator being on site at the beginning rather than waiting until the end. There are issues you face beforehand.

Rep. Magrum: Have you ever put a system in that has worked in the past but the regulator came out and didn't want to approve the system because they didn't understand the septic's as well as you did?

Mr. Schimelfenig: Yes, determining soil types needs a lot of understanding how it works. I enlisted Lake Region come down to help, we turned in the permits and got rejected. It was because my spacing is 6 feet apart, I keep my systems narrow and long because they work better that way. They wanted them to be 12 feet apart. That is part of the issue and them coming out at the end instead of the beginning and working with us to set this up. Allen McKay brings knowledge from Minnesota as they are one of the leading states doing a lot of study on this.

Rep. Magrum: Do you feel the new regulators are being educated in the field as well as the people that are regulating in the past, is that part of the problem?

Mr. Schimelfenig: I think that is part of the problem.

Rep. Magrum: Do you think the people who are regulators need to have prior experience in the field before they can become an inspector?

Mr. Schimelfenig: That is my feeling as well as a lot of the installers that are doing the work. We have looked back at the state plumbing code and to be an inspector you have to hold a master plumbers license; electrical system is the same way.

Keith Johnson: I would like to respond to a couple of questions. The model of adoption we envision is the same one as for the building code. There is a statewide code but it does not have a force and effect in law until the local jurisdiction adopts it. It gives you a uniform base on which to act. We are trying to put a system in place that not only regulate systems and installers but regulators as well. A new generation is going to take over and you have to have a system to educate them and that is what this study aims to do.

Rep. Longmuir: Made a do pass motion.

Rep. Johnson: Second the motion.

Rep. Simons: I know the people putting in these systems in at home don't want this. I say leave it at local control we don't need big government coming in. If you look at the map they are already doing this, we don't need these regulations to make this happen.

Chairman J. Dockter: This is a study and if Legislative Management picks this study then the parties not in favor of this could come to the hearings. We do have a motion for a do pass on the floor for the study.

Rep K. Koppelman: If we don't study this we might be back next session with another bill we don't like. The good news about a study is everyone can come in and have input. I have a technical amendment I would recommend, Legislative Management frowns on study resolutions that are shall study. We have traditionally said shall consider studying.

Rep. Longmuir: I would withdraw my motion.

Rep. Johnson: Withdrew second.

Rep K. Koppelman: Made a motion for an amendment that adds shall consider studying.

Rep. Adams: Second the motion.

Rep. Magrum: I would resist the motion because I think this should be studied. I had a bill last session trying to get the septic system under the plumbing board where the code is. That is where it was in the past and the plumbing board didn't want to deal with the septic's anymore so they gave it to the local Public Health units. The biggest problem is the older

regulators are retiring and the ones taking over don't have any experience in the field. If we go to different jurisdictions we have to have a separate license for jurisdictions. There are people complaining about this that is why they are trying to get one code throughout the state which makes it simpler for people. I think we really need a study, and if we don't do a shall, and they don't pick it we are going to have another two years where we don't have any agreements.

Rep K. Koppelman: The motion doesn't matter because Legislative Management still has the authority to reject any study. If you really want this studied, talk to Legislative Management after the session.

Chairman J. Dockter: There has been people that wanted to put the shall in but it is up to Legislative Management to pick the ones they will study.

Rep. Magrum: Do they pick the shall study or did they not pick them?

Chairman J. Dockter: They pick whatever topics they want to study so it doesn't matter.

Voice vote on the amendment carried.

Rep. Longmuir: Made a do pass as amended motion.

Rep. Adams: Second the motion.

Vote yes 12, no 2, absent 0.

Rep. Magrum: Will carry the bill.

DP 3/1/19

19.0981.01001
Title.02000

Adopted by the House Political Subdivisions Committee

March 1, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2241

Page 1, line 5, replace "study" with "consider studying"

Renumber accordingly

Date: 3-1-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2241

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 19.0981.01001

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Koppelman Seconded By Rep. Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:					
Vice Chairman Pyle:					
Rep. Ertelt:					
Rep. Fegley:					
Rep. Hatlestad:					
Rep. Johnson					
Rep K. Koppelman:					
Rep. Longmuir					
Rep. Magrum:					
Rep. Simons:					
Rep. Toman:					
Rep. Strinden:					
Rep. Adams:					
Rep. Guggisberg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

Date: 3-1-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2241

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 19.0981.01001

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☑ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Longmuir Seconded By Rep. Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:		/			
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson	/				
Rep K. Koppelman:	/				
Rep. Longmuir	/				
Rep. Magrum:	/				
Rep. Simons:		/			
Rep. Toman:	/				
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg	/				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Magrum

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2241: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2241 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "study" with "consider studying"

Renumber accordingly

2019 TESTIMONY

SB 2241

SB 2241
written att #1
p.1

Testimony
Senate Bill 2241
Senate Political Subdivisions Committee
January 24, 2019, 10:00 a.m.
North Dakota Department of Health - Environmental Health Section

Good morning Chairman Burckhard and members of the Political Subdivisions Committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health, soon to be the North Dakota Department of Environmental Quality. I am here today to testify in support of SB 2241.

The proper design, installation and maintenance of onsite sewage systems are essential elements in the protection of public and environmental health. This is especially important in rural subdivisions where multiple homes in close proximity rely on onsite sewage treatment to handle their domestic wastewater.

Historically, local public health units of various sizes have been the primary regulators of single residence onsite sewage treatment systems. This has enabled direct oversight by health professionals which are better able to address local building codes, licensing of contractors and regional soil conditions.

Although there are many positives with local control, which we continue to support, this arrangement results in some challenges. Some of the challenges include different onsite sewage system design, installation and licensing requirements from region to region, lack of oversight in areas which the local public health unit is unable to establish a program, and lack of needed training opportunities for installers.

To their credit, local health units have in recent history been working toward a unified code for potential adoption. Prior to getting to a uniform code, however, several questions remain:

- If adopted, how will regional differences in soil type and geology be incorporated into a uniform code?
- Should a state agency be responsible for training, licensing of contractors, approval of new technologies and enforcement? If so, how do we balance local and state jurisdictional issues to ensure a seamless implementation of the program?
- How will it be paid for at the local and state levels?

We believe SB 2241 presents an opportunity to answer some of these questions and move one step closer to a system where a statewide program can provide consumer and regulatory certainty. Contractors may be able to practice in several health units with a single certification, and public and environmental health will be protected throughout the state.

This concludes my testimony, and I would be happy to answer any questions you may have.

SB2241
1.24.2019
written att #2
p.1

Testimony in Support of SB2241
Keith Johnson, R.S.
Custer Health, Mandan ND Tel. 701-870-1455

I am the administrator of Custer Health, a five county public health unit based in Mandan. We have responsibility for regulating the installation of onsite sewer systems in our member counties of Mercer, Oliver, Morton, Grant, and Sioux Counties, as well as extended responsibilities in Emmons and Kidder Counties. I am here to support this bill.

The statewide code governing onsite septic systems is presently housed in the Plumbing Code. The Plumbing Board has never been completely comfortable with hosting this code, and has relied on the Administrative Authority provisions within the code to allow local health units, where able, to enforce it. Where that didn't happen, the State Health Dept. would step in, but in very limited ways. This code was last revised in 1992.

Two years ago, the local departments undertook an effort to adopt an updated code, and to make that adoption uniform across the state. I have included a map of the present state of code adoption across North Dakota. We have done well, in light of the fact that there are 28 different local health departments, and that not all adoption is by local health departments. We expect this map to continue to change as more local areas adopt this code.

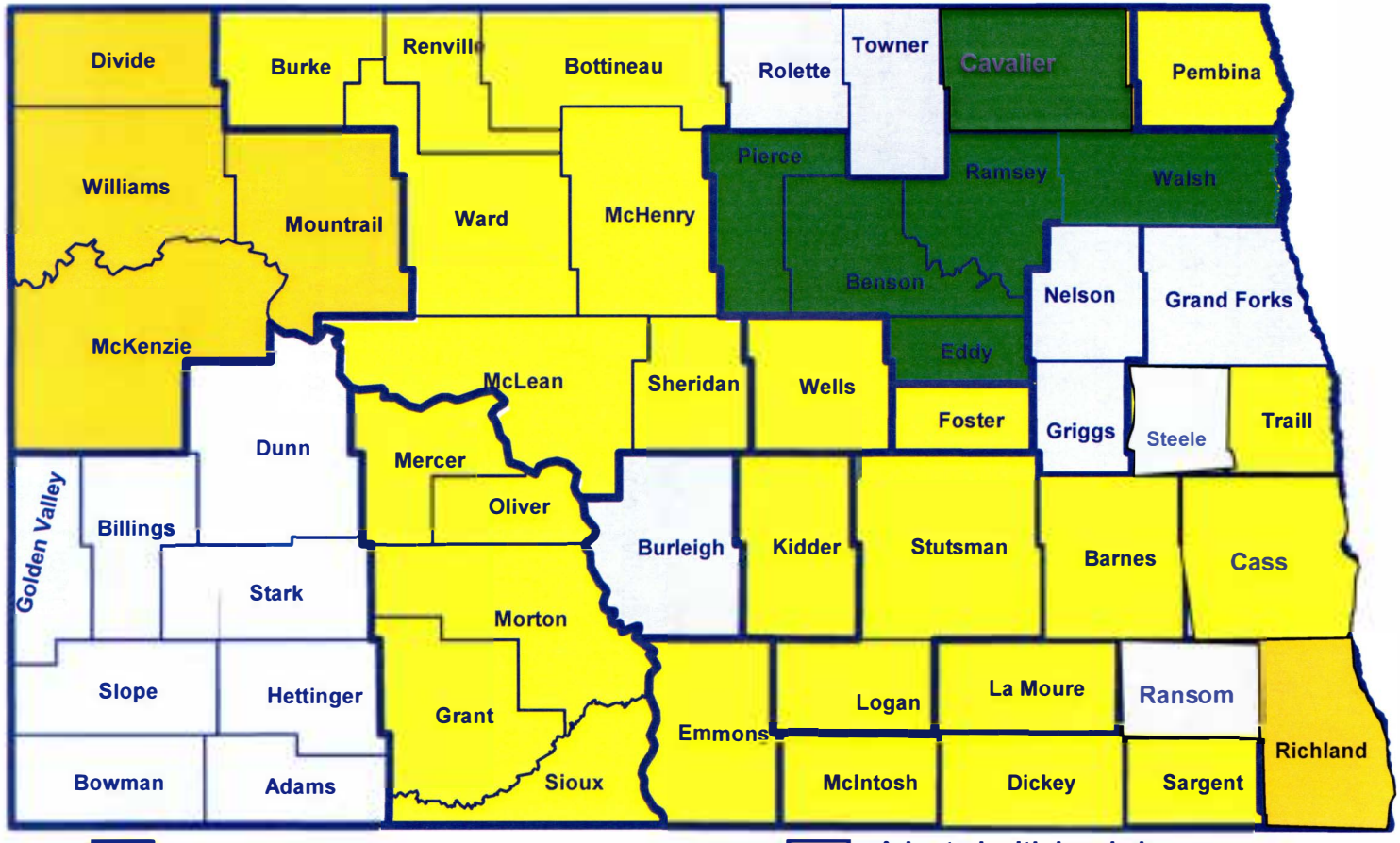
It is now time for the next logical step in this process. That step is the one taken by the bill before you now. We now need to consider how best to carry out the provisions of this code in a uniform, statewide manner. We need to :

- Provide statewide education for installers and regulators
- Maintain an accessible database of licensed installers
- Provide organized vendor review and acceptance of septic system products statewide.
- Ensure competency of local regulators.
- Designate a host state agency to house the code and to give them the resources to administer the statewide components of the code.

We have a committee of local regulators and installers in place to carry out these functions right now. We all view this as an interim measure, and not one that can do justice to the requirements of the law long term. We expect it to change to something more permanent and capable.

I urge your support for SB2241, and I thank Sen. Klein and the sponsors for having the vision to move this process forward.

Local Public Health Units



S.B. 2241
1-24-2019
written att #3

Testimony in Support of SB2241

Tom Shimelfenig
701-650-8792 (cell)

Chairman Senator Burckhard, members of the Senate Standing Committee on Political Subdivisions, contractors, equipment suppliers, members of North Dakota's public service, and guests. I am Tom Schimelfenig, a contractor from Fessenden, North Dakota who has been in the earth moving and sewer, septic system, and settling pond construction business for 40 years. I have participated in every North Dakota-based continuing education and training opportunity relative to sewer and septic system design, installation, and maintenance for each of the past 22 years. Currently, I serve on the interim committee formed by system contractors and local Environmental Health Practitioners who permit, inspect, and certify these systems. The committee has been meeting regularly for the past 2 years to assemble a proposed code for rural septic system design, installation, and maintenance, and identify the knowledge, skill and field experience necessary to correctly install and certify working systems that function as designed in our state's high plains soil profiles.

I speak before you today in support of this bill. We need a defined code that applies to all counties in our state and a set of administrative procedures that ensures correct administration of the code across all jurisdictions. Our state and district-level public health staff that is currently responsible for administration of the existing sewer/septic code must demonstrate mastery of contemporary high plains soil characteristics and system component training, and must also administer codified requirements uniformly and fairly across all political jurisdictions. Accomplishing this activity requires a level playing field between public health sanitarians, system installers, and component suppliers and vendors. Additionally, the responsibility for application to install a rural septic system must be placed upon the property owner rather than holding installers hostage to negotiating processes that necessarily must be anchored upon agreement between property owners and local public health units who permit these systems. This application process must be implemented uniformly on a statewide basis.

I believe that it is important that the statewide code be all in one place, and administered by the agency that hosts it. Presently, references to onsite sewage can be found in many places, from planning and zoning regulations to the plumbing code.

Finally, permit me to indicate that North Dakota's septic system installers are in the process of forming a state-wide association to address these issues and offer recurring continuing education for all septic contractors. Our proposed association will also be a member of the national association focused on similar issues.

Should you wish to explore my testimony before you today in more detail, I will attempt to answer any inquiry you may have.

#1
3-1-19

Testimony in Support of SB2241
Keith Johnson, R.S.
Custer Health, Mandan ND Tel. 701-870-1455

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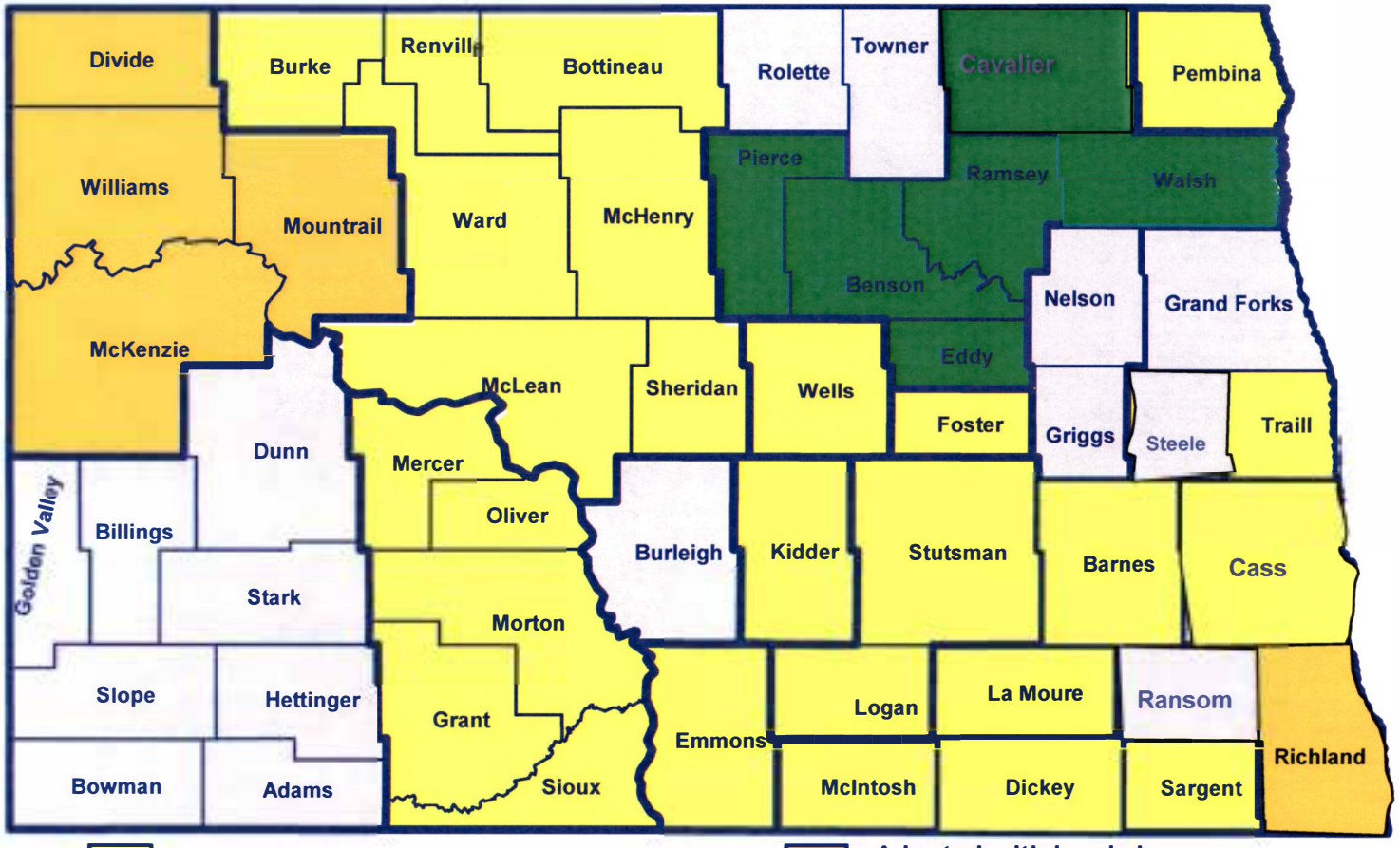
3-1-19

Local Public Health Units



#2

Testimony
Senate Bill 2241
House Political Subdivisions Committee
March 1st, 2019 9:00 AM
North Dakota Department of Health - Environmental Health Section

Good morning Chairman Dockter and members of the Political Subdivisions Committee My name is Karl Rockeman, and I am the Director of the Division of Water Quality within the North Dakota Department of Health's Environmental Health Section, soon to be the Department of Environmental Quality. The Division of Water Quality protects and monitors our water resources to ensure the quality of surface and ground water for the public's use. I am here today to testify in support of SB 2241.

The proper design, installation and maintenance of onsite sewage systems are essential elements in the protection of public and environmental health. This is especially important in rural subdivisions where multiple homes in close proximity rely on onsite sewage treatment to handle their domestic wastewater.

Historically, local public health units of various sizes have been the primary regulators of single residence onsite sewage treatment systems. This has enabled direct oversight by environmental health professionals which are better able to address local building codes, licensing of contractors and regional soil conditions.

Although there are many positives with local control, which we continue to support, this arrangement results in some challenges. Some of the challenges include different onsite sewage system design, installation and licensing requirements from region to region, lack of oversight in areas which the local public health unit is unable to establish a program, and lack of needed training opportunities for installers.

To their credit, local health units have in recent history been working toward a unified code for potential adoption. Prior to getting to a uniform code, however, several questions remain:

- If adopted, how will regional differences in soil type and geology be incorporated into a uniform code?
- Should a state agency be responsible for training, licensing of contractors, approval of new technologies and enforcement? If so, how do we balance

#2
SB 2241
3-1-19

local and state jurisdictional issues to ensure a seamless implementation of the program?

- How will it be paid for at the local and state levels?

We believe SB 2241 presents an opportunity to answer some of these questions and move one step closer to a system where a statewide program can provide consumer and regulatory certainty. Contractors may be able to practice in several health units with a single certification, and public and environmental health will be protected throughout the state.

This concludes my testimony, and I would be happy to answer any questions you may have.

#3

3-1-19

Testimony in Support of SB 2241
Tom Schimelfenig
(701) 650-8792 (mobile)

Good morning Chairman Representative Dockter and members of the House Standing Committee on Political Subdivisions, contractors and guests. I am Tom Schimelfenig, a contractor from Bowdon, N.D., who has been in the earth moving and sewer, septic system and settling pond construction business for 40 years. I have participated in every North Dakota-based continuing education and training opportunity relative to sewer and septic system design, installation and maintenance for each of the past 22 years. Currently I serve on the interim committee formed by system contractors and local Environmental Health Practitioners who permit, inspect and certify these systems. The committee has been meeting regularly for the past two years to assemble a proposed code for rural septic system design, installation and maintenance, and identify the knowledge, skills and field experience to correctly install and certify working systems that function as designed in our state's high plains soil profiles.

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Finally, North Dakota's septic system installers are in the process of forming a statewide association to address the issues and offer recurring continuing education for all septic contractors. Our proposed association will also be a member of the national association focused on similar issues.

Should you wish to explore my testimony before you today in more detail, I will attempt to answer any questions you may have.