

2023 SENATE INDUSTRY AND BUSINESS

SB 2253

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2253
1/30/2023

Relating to regulation of onsite wastewater treatment system installers and to the onsite wastewater recycling treatment technologies guide, permits for installation of an onsite wastewater recycling treatment technologies guide, permits for installation of an onsite wastewater treatment system, and investigation of onsite wastewater treatment systems.

2:15 PM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Uniformity for wastewater installers
- Onsite wastewater board
- Installer licenses
- Wastewater treatment and disposal
- Septic regulation
- Local public health

2:15 PM Senator Klein introduced SB 2253.

2:19 PM Senator Jeff Magrum, District 8, testified in favor of SB 2253. #19604

2:33PM Chairman D. Larsen recessed the meeting.

2:46 PM Chairman D. Larsen called the meeting back to order on SB 2253.

3:01 PM Tom Schimelfenig, a Licensed Plumber, Chairman of the Onsite Wastewater Technical Review Committee, testified for a Do Pass on SB 2253. #17907

3:19 PM Daren Jespersen, Licensed Contractor, and serves on the Onsite Wastewater Technical Review Committee, testified in favor of SB 2253. # 19377

3:29 PM Bruce Ellingson, Wastewater Industry, North Dakota State Plumbing Board Licensee, testified in favor of SB 2253. (verbal)

3:46 PM Aaron Johnson, Fargo Cass Public Health and Environmental Health Practitioner, gave testimony opposed to SB 2253. #17426

4:05 PM Javin Bedard, Environmental Health Manager, Grand Forks Public Health, testified opposed to SB 2253. # 17734

4:20 PM Chairman D. Larsen recessed the meeting.

4:27 PM Chairman D. Larsen called the meeting on SB 2253 back to order.

4:27 PM Lisa Westman, Director of Environmental Health, First District Health Unit, provided neutral testimony on SB 2253. #19378

4:35 PM Lisa Clute, Executive Officer, First District Health Unit, gave neutral testimony on SB 2253. (verbal)

4:43 PM Dave Glatt, Director of Department of Environmental Quality, testified neutral on SB 2253. (verbal)

4:54 PM Jason Hugtames, Contractor, gave neutral testimony on SB 2253 (verbal)

Additional written testimony:
Daphne JohnsonClark, #17487

5:05 PM Chairman D. Larsen closed the hearing on SB 2253.

5:06 PM Chairman D. Larsen adjourned the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2253
2/8/2023

A bill relating to regulation of onsite wastewater treatment systems installers; relating to the onsite wastewater recycling treatment system, and investigation of onsite wastewater treatment systems; and relating to the onsite wastewater recycling technical committee; to provide an effective date.

10:42 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Senator Barta, Senator Klein, Senator Boehm. Members absent: Vice Chairman Kessel.

Discussion Topics:

- Bill review
- Licensing
- Consistent health district codes
- Board membership

10:42 AM Chairman D. Larsen discussed SB 2253 and opened meeting up for discussion.

10:45 AM Committee discussion.

10:49 AM Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2253
2/15/2023

A BILL for an Act relating to regulation of onsite wastewater treatment system installers; relating to the onsite wastewater treatment recycling system, investigation of onsite wastewater treatment systems, and sewer and water installers, relating to the onsite wastewater recycling technical committee

9:26 AM Chairman Larsen called the committee to order.
Senators Klein, Boehm, Larsen, Kessel, and Barta were present.

Discussion Topics:

- Board structure
- Plumbing system
- Uniform code

9:28 AM Tom Schimelfening, Plumber, Fessenden North Dakota, verbally discussed the bill and answered questions.

9:46 AM Lisa Westman, Director of Environmental Health, First District Health Unit, verbally answered questions.

10:23 AM Ken Musik, Inspector, Southwestern Health District 3, verbally answered questions.

10:42 AM Senator Klein moved amendment LC 23.0323.02005.

10:46 AM Senator Barta seconded.

10:46 AM Roll Call Vote.

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

10:46 AM Senator Barta moved DO PASS AS AMENDED SB 2253

10:47 AM Senator Klein seconded DO PASS AS AMENDED SB 2253

10:47 AM Roll Call Vote, DO PASS AS AMENDED SB 2253

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed 5-0-0. DO PASS SB 2253.

Senator Larsen will carry

10:47 AM Senator Larsen adjourned the committee work.

Dave Owen on behalf of Brenda Cook, Committee Clerk

February 15, 2023

AG
2-15-23
(12)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2253

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "23-35-02.2" insert ", 43-18.2-01, and 43-18.2-03"

Page 1, line 5, remove "and"

Page 1, line 5, after "systems" insert ", and sewer and water installers"

Page 2, line 9, replace "regulated" with "enforced"

Page 2, line 12, remove ", not to exceed one hundred"

Page 2, line 13, remove "dollars,"

Page 2, line 16, remove "Each day a violation continues is"

Page 2, replace line 17 with:

"SECTION 2. AMENDMENT. Section 43-18.2-01 of the North Dakota Century Code is amended and reenacted as follows:

43-18.2-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of plumbing.
2. "Sewer and water contractor" means any person who installs, plans, and manages the installation and repair of building sewer and water service.
3. "Sewer and water installation" means the installation of building sewer and water service and the repair of existing building sewer and water service.
4. "Sewer and water installer" means any person, other than a sewer and water contractor, who installs and repairs building sewer and water service.
5. "Sewer and water service" does not include installing an onsite wastewater treatment system.

SECTION 3. AMENDMENT. Section 43-18.2-03 of the North Dakota Century Code is amended and reenacted as follows:

43-18.2-03. Licenses.

~~No~~A person, firm, corporation, or limited liability company, except ~~plumbers~~a plumber holding a valid ~~license~~license under chapter 43-18, may ~~not~~ engage in the business of sewer and water contractor or sewer and water installer unless registered and licensed by the board ~~to do so~~under this chapter. ~~This~~A license issued under this chapter allows the licensee to do plumbing necessary for sewer and water installation. This chapter does not regulate the installation of an onsite wastewater treatment system."

Page 3, line 2, replace "five licensees." with ":

- a. Four licensees, who are actively practicing installers, appointed by the governor;
- b. Three representatives from local public health units who are licensed environmental health practitioners in this state appointed by the governor from a list of names forwarded by local public health units;
and
- c. One representative from the department of environmental quality as appointed by the director of the department of environmental quality.

3."

Page 3, line 2, after "initial" insert "appointed"

Page 3, line 7, replace the first "a" with "an appointed"

Page 5, line 18, replace "Section" with "Sections"

Page 5, line 18, after the first "1" insert ", 2, and 3"

Page 5, line 18, replace "becomes" with "become"

Page 5, line 19, replace "3" with "5"

Renumber accordingly

AK
2/15/83
(2-2)

REPORT OF STANDING COMMITTEE

SB 2253: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2253 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "23-35-02.2" insert ", 43-18.2-01, and 43-18.2-03"

Page 1, line 5, remove "and"

Page 1, line 5, after "systems" insert ", and sewer and water installers"

Page 2, line 9, replace "regulated" with "enforced"

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Page 3, line 2, replace "five licensees." with ":

- a. Four licensees, who are actively practicing installers, appointed by the governor;
- b. Three representatives from local public health units who are licensed environmental health practitioners in this state appointed by the governor from a list of names forwarded by local public health units; and
- c. One representative from the department of environmental quality as appointed by the director of the department of environmental quality.

3."

Page 3, line 2, after "initial" insert "appointed"

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Page 5, line 18, replace "Section" with "Sections"

Page 5, line 18, after the first "1" insert ", 2, and 3"

Page 5, line 18, replace "becomes" with "become"

Page 5, line 19, replace "3" with "5"

Renumber accordingly

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2253

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2253
3/15/2023

Relating to the onsite wastewater recycling technical committee; to provide a penalty; and to provide an effective date.
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Chairman Louser called meeting to order 2:49 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Environmental Health
- Sewage Treatment
- License for recycling wastewater
- Public Health Unit Contractors
- Department of Environmental Quality Code

In Favor:

David Glatt, Director, ND Department of Environmental Quality (no written testimony)

Opposed:

Daren Jespersen, ND Onsite Wastewater Recycling Association ("NDOWRA") (no written testimony)

Tom Schimelfenig, NDOWRA, Proposed amendment and testimony, #25530

Jason Hovdenes, J & R Dirtworks (no written testimony)

Chris Trzpuć, Dirty Deeds Excavating (no written testimony)

Neutral:

Liza Westman, Director, Environmental Health, First District Health Unit, #25531

Additional written testimony:

Javin Bedard, Environmental Health Manager, Grand Forks Public Health, #25285

Steve Kemp, Commissioner, Williams County, #25250

James Heckman, Environmental Director, First District Health Unit in Minot, ND, #25057

Allen Anderson, Director/Administrator, Walsh County Health District, #25044

Daphne Johnson Clark, Team Leader, Environmental Health Services, Upper Missouri District Health Unit, #25033

Chairman Louser adjourned the meeting 3:27 PM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2253
3/28/2023

Relating to the onsite wastewater recycling technical committee; to provide a penalty; and to provide an effective date.
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Chairman Louser called meeting to order 11:03 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Committee work

Representative Ruby moved a do not pass.
Representative Koppelman seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	AB
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 11-2-1

Representative Ruby will carry the bill.

Chairman Louser adjourned the meeting 11:12 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2253, as engrossed: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2253 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2253

Testimony
To the
Senate Industry, Business, and Labor Committee
on
SB 2253

Good morning, Chairman Larsen and members of the committee. I am Aaron Johnson and I work for Fargo Cass Public Health (FCPH) as an Environmental Health Practitioner. I am also the onsite septic system inspection program lead. Fargo Cass Public Health serves as the regulatory agency for all septic systems in Cass, Richland, Sargent, and Traill counties. We also provide septic system consulting in Ransom and Steele counties, which do not have septic inspection programs. Prior to my current position, I worked for 9 years as the septic system inspection lead for Custer Health in Mandan, which served 7 counties for onsite septic regulation.

Fargo Cass Public Health employs two Environmental Health Practitioners (EHP) that conduct onsite septic system inspections for installation, repair, and evaluation of condition. We hold national credentialing as Registered Environmental Health Sanitarians through the National Environmental Health Association, as well as state credentialing in North Dakota as licensed Environmental Health Practitioners. Additionally, we attend yearly continuing education through the University of Minnesota Onsite Sewage Treatment Program as well as in-state trainings to maintain these state and national credentials. In 2022, FCPH conducted 143 inspections which include site evaluation, design, and install follow up. There were 26 contractor licenses in 2022. An average of 4 hours is spent on each permit including travel time.

My testimony today is in opposition to SB2253. Local public health units continue to be committed to developing a statewide onsite septic code and having reciprocity of installer licensure between all health units. We support the concept of a statewide licensing board, and we support having industry involvement in deciding the way forward for both licensure and code development. SB2253 hinders these efforts in the following ways:

1. Section 1 part 6 caps the permit fee for local public health units in Century Code, which will result in requiring taxpayer dollars to support the mandated programs, especially in counties that currently do not have an inspection program. Historically, local public health has worked with installers and homeowners to keep costs of the programs low. There is no cost analysis provided for local public health, or a specific amount of taxpayer money requested to cover this unknown cost.
2. Section 2, Board Appointment 2. This section removes all public health professionals from the board after August 1, 2024 and replaces the board with 5 members who have no educational or background requirements. The concept of this board was to bring industry and regulation together, so that the experience of both combined with the scientific training of regulators could produce a code that can be adopted across North Dakota. Without public health regulators on the board, members will lack the training and scientific background necessary to adapt code to the wide variety of soil and ground conditions in North Dakota, and also removes the impartial third party when deciding on infractions of code. Public health will be required to enforce whatever code is developed,

and if that code is not created with best scientific practices in mind, inspectors cannot use it without violating the requirements of our state licensure.

3. Section 2, Licensure-Fees creates a gated licensure portal for installers that restricts entry into the field of septic system installation through an apprenticeship program. While public health supports the concept of a licensure board, this gated system would create potential hardships on new and expanding excavation businesses through increased costs and scarcity of willing mentor license holders. Education of installers in North Dakota has always been a combined effort of local regulators educating on-site, and industry professionals sharing their knowledge at in-state trainings.
4. Section 2, Statewide Technical guide 2.c. The requirement of engineered plans has historically been decided through the involvement of the Department of Environmental Quality (DEQ). This would best be addressed by the inclusion of a DEQ member on the board.
5. The board should be made up of 4 Public Health Environmental Health Practitioners, 4 installers with the addition of one Department of Environmental Quality representative. SB 2256 is a bill that includes the addition of DEQ to the board. This board composition holds true to the spirit of the legislation passed in 2021, and builds on it without creating unfunded mandates for both local public health as well as North Dakota installers.

Thank you for your time and attention on this important issue. Public health continues to be committed to improving onsite septic system regulations throughout the state.

I would be happy to answer any questions.

Testimony
To the
Senate Industry, Business, and Labor Committee
on
SB 2253

Good morning, Chairman Larsen and members of the committee. I am Daphne JohnsonClark, Team Leader for Environmental Health Services for Upper Missouri District Health Unit and have been with UMDHU since 2003. UMDHU provides local public health services to Divide, McKenzie, Mountrail, and Williams counties. I have a staff of 2 Environmental Health Practitioners. One staff member is trained to do site evaluations, inspect onsite septic systems for proper installation and/or repair, work with homeowners and contractors to develop septic plans, and to license contractors. She has completed several trainings including with University of Minnesota Onsite Sewage Treatment Program, attended in state trainings and conferences to obtain continuing education credits to maintain state EHP and working towards national REHS credential. In 2021 we issued 165 permits issued for septic systems. There were 103 contractor licenses in 2022.

I am neutral on SB2253. I had the privilege to serve on the Onsite Wastewater Technical Committee during the interim. I feel there we worked hard in a short period of time that being, said there are still some items that need to be worked through.

I was at the health unit during the oil boom and I believe that gives me a unique perspective on two important areas: Having all stakeholders at the table and being able to maintain flexibility to adjust to local issues in a timely and effective manner.

1. Section 2, Board Appointment 2. Removing Public Health off the board after August 1, 2024, would then put the installers alone in charge of the code that Public Health would need to enforce. Public Health will play a critical roll, as you can see from the duties assigned in the bill, in the success or failure of this moving forward and we need to have representation.
2. Section 2, Statewide Technical guide 2.c. Circumstances under which a registered professional engineer shall prepare plans and specifications is an area where Department of Environmental Quality (DEQ) should be involved as this is part of their regulations. This is why their membership on the Board is so important. During the oil boom DEQ and UMDHU worked closely together on septic issues as it was one of the largest public health issues at that time. Our working together as a team was indispensable.
3. Soils and terrain differ across the state and each local area need the ability to be stronger than the technical guide. There needs to be an addition that allows this. This was another insight I gained during the oil boom. Our code had to be changed during this time many times as gaps would become apparent, and fixes needed to be put into place. For example: our regular installers knew that bed systems would not work in our soils however new installers coming in that used them in other areas were trying to put them in. We then had to make an addition to our code that disallows bed systems unless they consult with us prior to installation and we confer on if that will work or not. Once again during this time and many changes our partnership with DEQ was important. When I started at the health unit in 2003 at UMDHU we issued 40 septic permits and I remember the individual I worked with was excited because that meant we

were growing. In 2012 We permitted 1099 systems at the height of the boom. These are the changes that public health needs to remain flexible to meet at a local level.

Thank you for your time.



Public Health
Prevent. Promote. Protect.

Grand Forks Public Health

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Testimony
To the
Senate Industry, Business, and Labor Committee
on
SB 2253

Good afternoon, Chairman Larsen and members of the committee. I am Javin Bedard, Environmental Health Manager for Grand Forks Public Health (GFPH). GFPH provides environmental services within Grand Forks County and for three additional Public Health Units; Pembina, Walsh, Nelson/Griggs. Our services are funded by and through State Aid allocated for regional environmental health services, amounting to \$70,000 per biennium for GFPH. I am testifying today in opposition to SB 2253.

The proper treatment and disposal of wastewater is fundamental to public health to prevent disease. As such, Environmental Health Practitioners in the state have worked together to create a common septic code and pursued its adoption across the state. Septic contractors were invited and participated in the creation of this code; public comment was also permitted as part of each local adoption process. During the last legislative session, HB 1183 modified North Dakota Century Code 23-35 to mandate local public health units adoption of a code created by a new board, the Onsite Wastewater Recycling Technical Committee, comprised of Environmental Health Practitioners and septic contractors. The bill before you proposes, yet again, a new board for oversight, except now comprised of five licensees. GFPH opposes these changes, in principle, as it provides for the septic industry to be self-regulating with the authority to instruct local public health on what oversight is allowed. There are other effective systems of oversight that could be considered, such as the current model that local public health already uses in the regulation of food safety with State oversight.

Septic regulation oversight could effectively be delivered through a partnership of local public health and the Department of Environment Quality (DEQ). The improper treatment and disposal of wastewater causes water pollution, and its regulation is fundamental to environmental protection and oversight, which is the purview of DEQ. This is well recognized, DEQ already provides oversight of wastewater treatment for public systems, septic pumpers, private systems serving 25 people or more, and/or systems greater than 2,500 gallons per day. DEQ is also responsible for subsurface drain field systems serving more than 20 people under class V injection well regulations. Failing private sewage disposal systems are known to be a contributing factor in nonpoint water pollution and should also have DEQ's preventive oversight, in conjunction with the programs they already facilitate and oversee. I don't think DEQ is unwilling to provide such oversight; however, I understand DEQ's past reluctance to take on a program without adequate resources. Directing an unfunded mandate for programmatic oversight

is not conducive to creating successful programs, and while DEQ avoided that, it was handed to local public health by HB 1183 last session. I am currently faced with providing septic oversight in five counties with a budget of \$35,000 per year. I am here asking for more help than this.

Local public health is more than willing to provide septic oversight but has lacked adequate resources to do so comprehensively across the state. Local public health has previously requested state agency oversight to facilitate having a statewide septic regulation and licensing of contractors. I submit to you to consider amending this bill to place DEQ in charge of septic system regulation, to provide for contractor training and licensing, to review and approve septic technologies and materials, and to facilitate local public health or county zoning as the local permitting, inspection, and enforcement agencies. Please also consider that adequate funding will be necessary for the success of any system of oversight decided upon.

Thank you for your time and consideration.









January 30, 2023

Senate Business, Industry and Labor Committee
Senate Bill 2253

Good afternoon Chairman Larsen, and Members of the committee:

My name is Daren Jespersen. I'm a Licensed Contractor from Minot. I have been involved in the industry for over 45 years, I grew up working for my father, and eventually myself. I also hold a N.D. State Plumbing Board Water and Sewer Contractor license.

I also currently serve on the Onsite wastewater Technical Review Committee (OWRTC) established during the 2021 legislative session.

I am here to request a "do pass" on SB 2253.

As a Septic System contractor, the job can sometimes be difficult in good situations. It becomes even more difficult when the rules, standards, and permitting vary from location to location for no reason other than "that's the way we do it here". All while the job is the same or very similar.

It doesn't serve anyone, least of all the Homeowner / Customer when rules vary. It only adds to the cost, and confusion for all involved when things are done one way here and another there. There are contractors who are licensed in three or four different jurisdictions, and things may be done three or four different ways.

The OWRTC, through the past year have done a huge amount of work, to alleviate these issues, and more. We as Professional Contractors have brought rules, and standards to hold ourselves too. We as Professional Contractors have brought forth a tiered licensing system, so new contractors have to gain knowledge and experience to be able to advance to more complicated septic systems. Thereby helping to protect the customer from unneeded expense.

We have brought other industry professionals, and studies in to educate ourselves, and the public health members of the committee.

For example:

Dave Lentz, an engineer who has worked in the wastewater industry for over 25 years.

John Buchanan, over fifty years experience as a soil scientist in Tennessee and a university educator.

Randall O Chelette, the Executive director of the Texas Onsite Wastewater Association.

Dr Steven Berkowitz, A Soil Scientist, and Professor from North Carolina with almost fifty years of experience. Berkowitz and others did a study comparing the performance of Chamber systems, Ez1203h Polystyrene ball systems, and conventional rock and pipe systems.

A study titled: Lateral Movement of Water in the Capillary Fringement under Drainfields. By Amoozegar, Niewoehner, and Lindbo. Which was the basis for reducing the system size by 25%, therefore reducing the cost to the Homeowner.

We brought in Blaine Schatz with the NDSU Extension Service, to assist us with an, in the field soils education course for Contractors, new Contractors, and Enviromental Health Practitioners

at the research stations around the state. Through that Dr. Kelly Rush, Dr. Islander, and Dr. Bezberuah all Professors in Environmental Engineering at NDSU, we're working on an education curriculum at NDSU for Engineering students wanting to specialize in Environmental Engineering.

We as Professional Contractors, and more specifically the North Dakota Onsite Wastewater Association (NDOWRA), have taken over the responsibility of our own Continuing Education. Utilizing nationally accredited courses, and North Dakota specific courses. We utilize NDSU soil evaluators, NCRS soil scientists, and Nationally accredited instructors.

We are Professional Contractors. We take pride in our profession, workmanship, and integrity. The Contractors on the OWRTC have for the last year, at their own expense, taken the initiative to create better industry standards, and provide for more professionalism for all involved .

We as Professional Contractors can regulate ourselves and our industry effectively.

So again, I urge a "do Pass" on SB 2253

Members of the Committee, I thank you for the opportunity to speak to you today. I will stand for any questions.

Testimony
To the
Senate Industry, Business, and Labor Committee
on
SB 2253

Good morning, Chairman Larsen and members of the committee. I am Lisa Westman, Director of Environmental Health at First District Health Unit. First District provides local public health services to Bottineau, Burke, McHenry, McLean, Renville, Sheridan, and Ward counties. I have a staff of 6 Environmental Health Practitioners. One staff member coordinates our septic program and is trained to do site evaluations, inspect onsite septic systems for proper installation and/or repair, work with homeowners and contractors to develop septic plans, and to license contractors. He has completed several trainings with University of Minnesota Onsite Sewage Treatment Program and attended conference for the National Onsite Wastewater Recycling Association. He regularly attends in state trainings and conferences to obtain continuing education credits to maintain the state EHP and national REHS credential. In 2022 we issued 162 permits which includes site evaluation, design, and install follow up. There were 52 contractor licenses in 2022. An average of 4 hours is spent on each permit including travel time.

I am neutral on SB2253. I had the privilege to serve on the Onsite Wastewater Technical Committee during the interim. We worked hard to develop a statewide code that could be adopted by all local health units. There are some barriers that need to be worked out prior to public health units adopting the code. Local public health units are committed to developing a statewide onsite septic code and reciprocity between all health units. We support the concept of a licensing board; however, the following bullets indicate the barriers that need to be addressed prior to our support of this bill.

1. This bill is directed to all Public Health Units. There are counties in North Dakota that the planning and zoning departments permit onsite septic systems. The board has not yet solicited comments and input from these counties.
2. Section 1, 6. Sets the fee for the permit issued by local Public Health. Local Boards of Health work to keep the costs reasonable and limit the taxpayer dollars needed to support the contractors and homeowner's expense. The proposed fee would require either state or local taxpayer support. The costs of this program have not been identified, nor the amount of tax dollars needed to support this.
3. Section 2, Board Appointment 2. Removing Public Health off the board after August 1, 2024, would then put the installers alone in charge of the code that Public Health would need to enforce. Only installers would then be able to adjust the code, and many are not trained in the science to do so. Public Health cannot enforce a code that is not based on the science that they are trained on. The code that is adopted must be science based and account for the unique locations, soil structure, and terrain throughout the state.
4. Section 2, Statewide Technical guide 2.a. There are differences among Public Health units and a standardized permit form may not be possible. This item could be addressed in the future with both public health and installers at the table.
5. Section 2, Statewide Technical guide 2.c. Circumstances under which a registered professional engineer shall prepare plans and specifications is an area where Department of Environmental Quality should be involved as it is part of their regulations. This is why their membership on the Board is so important.

6. The board should remain made up of 4 Public Health Environmental Health Practitioners, 4 installers with the addition of one Department of Environmental Quality representative. SB 2256 is a bill that includes the addition of DEQ to the board.

Thank you for your time and attention on this important issue. Public health continues to be committed to improving on site septic system regulations throughout the State.

I would be happy to answer any questions and my administrator, Lisa Clute, is also here that I may defer questions you may have to her.

23.0323.02001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2253

Introduced by

Senators Klein, Magrum, Myrdal, Vedaa

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
 2 Code, relating to regulation of onsite wastewater treatment system installers; to amend and
 3 reenact ~~sections~~ sections 23-35-02.2, 43-18.2-01, and 43-18.2-03 of the North Dakota Century
 4 Code, relating to the onsite wastewater recycling treatment technologies guide, permits for
 5 installation of an onsite wastewater treatment system, ~~and~~ investigation of onsite wastewater
 6 treatment systems, and sewer and water installers; to repeal section 23-35-02.3 of the North
 7 Dakota Century Code, relating to the onsite wastewater recycling technical committee; to
 8 provide a penalty; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Section 23-35-02.2 of the North Dakota Century Code is
 11 amended and reenacted as follows:

12 **23-35-02.2. Public health units to adopt Adoption of onsite wastewater recycling**
 13 **treatment technologies guide - Issuance of permit for onsite wastewater treatment**
 14 **system installation - Inspection - Penalty.**

- 15 1. Each public health unit and board of health shall adopt, administer, and enforce the
 16 statewide technical guide for onsite wastewater recycling treatment technologies and
 17 ~~sewage distribution technologies~~ established by the onsite wastewater recycling
 18 ~~technical committee~~ board.
- 19 2. In accordance with the statewide technical guide for onsite wastewater recycling
 20 treatment technologies, a public health unit or board of health shall issue a permit for
 21 installation of an onsite wastewater treatment system.
- 22 3. A person may not install an onsite wastewater treatment system without a permit
 23 issued under this section. If the public health unit or board of health denies a permit

- 1 under this section, the denial must be in writing and accompanied by findings of fact
2 supporting the decision to deny the permit.
- 3 4. A public health unit and board of health may inspect a newly constructed onsite
4 wastewater treatment system. If, upon inspection the public health unit or board of
5 health determines any part of the system is not constructed in accordance with the
6 minimum standards of the statewide technical guide, the permit applicant or installer,
7 or both, shall correct the defects. A system may not be placed in service until all
8 defects have been corrected.
- 9 5. A public health unit and board of health shall receive and investigate a report of
10 unsanitary conditions in existence at an onsite wastewater system site or that any
11 construction or work regulated under this section is dangerous; unsafe; unsanitary; a
12 nuisance; a risk to life, health, or property; or otherwise in violation of the statewide
13 technical guide.
- 14 6. The public health unit or board of health may charge a fee, not to exceed one hundred
15 dollars, for issuance of a permit, conducting an inspection, reviewing a plan,
16 evaluating a site, filing a variance request, and filing an appeal under this section.
- 17 7. Violation of the statewide technical guide for onsite wastewater recycling treatment
18 technologies is an infraction for each violation. ~~Each day a violation continues is~~
19 ~~considered a separate offense.~~

20 **SECTION 2. AMENDMENT.** Section 43-18.2-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-18.2-01. Definitions.**

23 In this chapter, unless the context or subject matter otherwise requires:

- 24 1. "Board" means the state board of plumbing.
- 25 2. "Sewer and water contractor" means any person who installs, plans, and manages the
26 installation and repair of building sewer and water service.
- 27 3. "Sewer and water installation" means the installation of building sewer and water
28 service and the repair of existing building sewer and water service.
- 29 4. "Sewer and water installer" means any person, other than a sewer and water
30 contractor, who installs and repairs building sewer and water service.

1 5. "Sewer and water service" does not include installing an onsite wastewater treatment
2 system.

3 **SECTION 3. AMENDMENT.** Section 43-18.2-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-18.2-03. Licenses.**

6 ~~No~~ A person, firm, corporation, or limited liability company, except plumbers a plumber
7 holding a valid licenses license under chapter 43-18, may not engage in the business of sewer
8 and water contractor or sewer and water installer unless registered and licensed by the board to
9 ~~do so~~ under this chapter. This A license issued under this chapter allows the licensee to do
10 plumbing necessary for sewer and water installation. This chapter does not regulate the
11 installation of an onsite wastewater treatment system.

12 **SECTION 4.** A new chapter to title 43 of the North Dakota Century Code is created and
13 enacted as follows:

14 **Definitions.**

15 As used in this chapter:

- 16 1. "Board" means the onsite wastewater board.
- 17 2. "Board of health" has the meaning provided under section 23-35-01.
- 18 3. "Licensee" means an installer issued a license under this chapter.
- 19 4. "Public health unit" has the meaning provided under section 23-35-01.
- 20 5. "Regulatory authority" means a public health unit or board of health.

21 **Board - Appointment.**

- 22 1. Beginning on the effective date of this Act, the onsite wastewater board is comprised
23 of the onsite wastewater recycling technical committee established under section
24 23-35-02.3.
- 25 2. Beginning August 1, 2024, the governor shall replace the members of the board with
26 five licensees. The terms of office of the initial members must be staggered so no
27 more than two terms expire on the thirty-first day of July of each year and thereafter
28 the term of each member is three years. Each member shall qualify by taking the oath
29 required of civil officers and shall hold office until a successor is appointed. The
30 governor shall replace a vacancy on the board by appointment for the unexpired term.
31 The governor may remove a member from the board upon a showing of good cause.

5- *three installers Level 1, Level 2 & Level 3 Installers.*
Board members
once 3 years
& Citizen

1 3. A level two installer license, which qualifies the licensee to install multiple tanks,
2 mounds, at-grades, beds, and pressurized systems with pumps. The fee for licensure
3 and license renewal as a level two installer is two hundred twenty-five dollars per year.

4 4. A level three master level installer license, which qualifies the licensee to install
5 commercial systems, industrial systems, and systems that accept more than two
6 thousand five hundred gallons [9463.53 liters] per day. The fee for licensure and
7 license renewal as a level three master level installer is two hundred twenty-five
8 dollars per year.

9 **Licensure of out-of-state installers.**

10 The board shall issue a license to an applicant who is licensed as an installer by an out-of-
11 state jurisdiction if the applicant is in good standing in the out-of-state jurisdiction.

12 **Regulatory authority.**

13 A licensed installer shall comply with the statewide technical guide for onsite wastewater
14 recycling treatment technologies adopted by the regulatory authority when installing an onsite
15 wastewater treatment system.

16 **Disciplinary actions.**

17 Installation of an onsite wastewater treatment system by a licensee in violation of this
18 chapter or rules adopted by the board is cause for revocation of, suspension of, or refusal to
19 renew a license. Disciplinary actions must be conducted in accordance with chapter 28-32.

20 **Statewide technical guide.**

21 1. The board shall develop and publish a statewide guide for onsite wastewater recycling
22 treatment technologies for adoption by regulatory authorities under section 23-35-02.2.

23 2. At a minimum, the statewide technical guide for onsite wastewater recycling treatment
24 technologies must address:

25 a. A standardized onsite wastewater treatment system permit form.

26 b. The length of time a permit is valid following issuance.

27 c. Circumstances under which a registered professional engineer shall prepare
28 plans and specifications.

29 d. The minimum size lot in which a new onsite wastewater treatment system may
30 be installed.

31 e. The terms under which a septic tank may be abandoned.

- 1 f. The minimum requirements for an onsite wastewater treatment system soil
2 treatment area.
- 3 g. Circumstances under which special systems of treatment and disposal may be
4 provided.
- 5 h. Circumstances under which the regulatory authority may issue a variance.
- 6 i. The process for appeal of an order or determination of the regulatory authority.
- 7 j. Circumstances under which a regulatory authority may suspend or revoke a
8 permit.
- 9 k. Circumstances under which a regulatory authority may issue an order to cease
10 and desist.

11 **SECTION 5. REPEAL.** Section 23-35-02.3 of the North Dakota Century Code is repealed.

12 **SECTION 6. EFFECTIVE DATE.** ~~Section~~Sections 1, 2, and 3 of this Act becomes
13 effective January 1, 2025, and section ~~35~~5 of this Act becomes effective August 1, 2024.

Testimony
To the
House Industry, Business, and Labor Committee
on
SB 2253

Good morning, Chairman Louser and members of the committee. I am Daphne Johnson Clark, Team Leader for Environmental Health Services for Upper Missouri District Health Unit and have been with UMDHU since 2003. UMDHU provides local public health services to Divide, McKenzie, Mountrail, and Williams counties. I have a staff of 2 Environmental Health Practitioners. One staff member is trained to do site evaluations, inspect onsite septic systems for proper installation and/or repair, work with homeowners and contractors to develop septic plans, and to license contractors. She has completed several trainings including with University of Minnesota Onsite Sewage Treatment Program, attended in state trainings and conferences to obtain continuing education credits to maintain state EHP and working towards national REHS credential. In 2021 we issued 165 permits issued for septic systems. In NW North Dakota there were 103 contractor licenses in 2022.

I am neutral on SB2253. I served on the Onsite Wastewater Technical Committee during the interim. Although it's true we worked hard in a short period of time there are still some items that need to be worked through.

I was at the health unit during the oil boom, and I believe that gives me a unique perspective on two important areas: Having all stakeholders at the table and being able to maintain flexibility to adjust to local issues in a timely and effective manner.

1. We want to assure we have a technical guide that protects investment made by the people of ND that own septic systems and assure they receive the best system they can. Although Local Public Health had input on the guide, installers had the majority of members on the board and therefore passed elements of the septic guide that will lead to septic failures. For example, putting water softener water into the drainfield will lead to early failure and frozen septic systems. When a septic system fails it frequently backs up into the home. This can lead to thousands of dollars worth of damage. Even when it doesn't back up into the home it can run off the septic owner's property and on to a neighbor's property leaving the possibility of property damage and illness. The technical guide as it stands right now has gaps that will lead to early failures. It currently is not written with the public's health in mind and is why I am concerned. **The guide needs to be reviewed by North Dakota Department of Environmental Quality.**
2. Section 2, Statewide Technical guide 2.c. Circumstances under which a registered professional engineer shall prepare plans and specifications is an area where Department of Environmental Quality (DEQ) should be involved as this is part of their regulations. This is why review by them is so important and **why it should go through their rule making process.** During the oil boom DEQ and UMDHU worked closely together on septic issues as it was one of the largest public health issues at that time. Our working together as a team was indispensable.

3. The Technical Guide at this point still is not finished. **There may be areas where it conflicts with DEQ regulations. Technical guides (codes) need changes over time** and there is no mechanism to do this as this bill is written.
4. Since the technical guide has no “home” it would be **better suited to be in Administrative Rules under DEQ**. If put into Century Code, it then would have to wait until a legislative session to have changes made. This could lead to harms and serious public health concerns.
5. An insight I gained while we responded to the oil boom was that our code had to be changed during this time many times as gaps would become apparent, and fixes needed to be put into place. For example: our regular installers knew that bed systems would not work in our soils however new installers coming in that used them in other areas were trying to put them in. We then had to make an addition to our code that disallows bed systems unless they consult with us prior to installation, and we confer on if that will work or not. Once again during this time and many changes our partnership with DEQ was important. When I started at the health unit in 2003 at UMDHU we issued 40 septic permits and I remember the individual I worked with was excited because that meant we were growing. In 2012 We permitted 1099 systems at the height of the boom. **The code needs to be able to remain responsive to situations like this and won't be able to do so if it is in century code but will if it is in administrative code under DEQ.**

Thank you for your time.

Testimony
To the
House Industry, Business, and Labor Committee
on
SB 2253

Good afternoon, Chairman Louser and members of the committee. My name is Allen Anderson and I'm the Director/Administrator for Walsh County Health District. I have been the director since 2021. Walsh County Health District has an agreement in place for Environmental Health services with Grand Forks Public Health. Their Environmental Health Practitioners serve our jurisdiction in relation to septic systems and other environmental health issues.

I am testifying neutral on SB 2253.

Establishment of a uniform code and technical guide in North Dakota would serve citizens the best. Protection of their health and safety and protection of their financial investments into their properties should be the priorities.

While it's very important to establish a uniform septic code and standards in North Dakota, this bill needs amendments to address all vested parties and adequately serve the health and safety of North Dakota residents. I will attempt to go through the areas of the bill where improvements would greatly enhance the bill.

1. It should be noted that Local Public Health has no desire to license septic installers. This can be handled by industry itself.
2. Section 2, "Statewide Technical guide 2.c." Circumstances under which a registered professional engineer shall prepare plans and specifications is an area where Department of Environmental Quality (DEQ) should be involved as this is part of their regulations.
3. The Division of Environmental Quality needs to be more established in this bill in regard to reviewing the technical guide and then subsequently housing the guide under its administrative rules. DEQ brings the necessary qualifications and its own established regulations. Therefore, it's imperative to ensure that the technical guide does not conflict with established regulations. If the technical guide gets put into Century Code, then it can only be modified during legislative session. I feel that it needs more flexibility than this, especially given the wide variety of soils and situations that are encountered across the state.
4. Section 4 of this bill, under "Board - Appointment" would then put the installer majority in charge of the technical guide that Public Health is to enforce. I recommend the board be made up of 4 Public Health Environmental Health Practitioners, 4 installers and one Department of Environmental Quality representative for the code development and maintenance. This bill has written has many directives for Local Public Health but does not provide equal representation.

Thank you for your time. I'm available for any questions.

Testimony for SB 2253

My name is James Heckman, I am a retired Environmental Director from First District Health Unit in Minot. I was selected by the ND Onsite Wastewater Recycling Association, and approved by the Governor to be on the Onsite Wastewater Technical Committee (NDOWTC). I have been elected by the committee to be the secretary for the committee. I also own my own excavation equipment and have been involved with water/wastewater installation for over 40 years, either installation, design or inspection.

The NDOWTC was given the task of compiling a code for onsite wastewater installers that could be universally accepted and used by the entire state of North Dakota.

As a Public Health employee, I was always cautious when making policy/codes. The only reason government needs to create codes is to protect the general public from issues out of their control. Codes are meant to primarily protect the ultimate consumer and secondarily, protect the service provider if the conditions of the code are followed and thirdly to protect the environment. Codes were NOT created for the benefit of regulators.

As secretary of the NDOWTC, I had repeatedly asked for items of concern from all the members of the committee. At the October 2022 meeting I again asked the committee members for any items of concern they might have with the prescriptive part of the code, which provides installation directives. The committee agreed at that time that the prescriptive part of the code was acceptable, with no dissention, although a formal vote was not taken at that time.

The onsite code the committee started with was based entirely on the old Plumbing Code found in Century Code. Several years ago, representatives from all the health units and contractors discussed this code, changed a few items and generally approved the code to be used by all the health units. That updated code has been used for many years by several health units that adopted it as written, without any complaints from regulators that I am aware of.

It has come to my attention that Public Health has provided testimony that they think the code is far from complete. My question is this: "If the onsite code was acceptable prior to the creation of the NDOWTC, then why is it now incomplete?" The OWTC committee made small changes to clarify confusing statements and changed wording to eliminate the possibility of individual interpretation, but basically left most of the code unchanged. Furthermore, what areas are incomplete and why didn't those issues get brought forward to the committee?

The creation of a Onsite Wastewater Licensure Board consisting primarily of contractors would be the most cost effective way to move forward. The committee envisioned a board similar to the Plumbing Board or the Electrical Board and other licensure boards made up of peers of each prospective profession.

Public Health could provide regulatory over-site as long as the inspector/s have at least the equivalent training as a Level 3 Installer, or Master Installer.

If Public Health does not want to provide regulatory over-site, an independent third party design/inspection program could be provided by NDSU and the Ext. Service. The committee has been in contact with NDSU and the Ext. Service with this possibility and they were very receptive of the idea of a training program for regulators and possible research projects.

I thank you for your time, patience and willingness to address this issue.

James K. Heckman – REHS



**Testimony
Senate Bill 2253
House Industry, Business & Labor | March 15, 2023 | 2:15 pm**

Chairman Louser and members of the Committee,

Thank you for accepting my neutral testimony for Senate Bill 2253 in writing as I am not able to be in Bismarck today. My name is Steve Kemp and I have been a Williams County Commissioner since 2016. As Commissioner, I hold the Economic Development Portfolio and I am also a member of the Upper Missouri District Health Unit (UMDHU) Board of Health.

UMDHU is a valuable asset in our community. Over the past decade, northwestern North Dakota has experienced an incredible amount of change and development with the growth of the oil industry. UMDHU officials have worked hard to emphasize the importance of environmental health as well as implement the appropriate codes and rules. In the next 10 years, we will see further expansion of not just the oil industry, but the energy sector as a whole, with the anticipation of several new value-added natural gas projects coming into the County. These projects will bring a new wave of population growth as we hope that families will continue to call our area home as new jobs open up.

With the development of both industry and the increase of our population, which has nearly doubled since 2010, UMDHU has had to work extra hard to ensure the integrity of the construction of septic systems. There have for sure been lessons learned, both on the County side when it comes to development, as well as with UMDHU, but the best path forward is that public health and the Department of Environmental Quality get to remain at the forefront of the development and implementation of rules and regulations for septic systems.

I stand neutrally today as I primarily would like to emphasize the important role of local public health officials for current and future discussion of this bill.

SB 2253 would call for only three members of local public health to serve on the onsite wastewater recycling technical committee, however, four seats will be filled by installers. To maintain equal representation of installers with local public health officials, it is respectfully requested to increase the number of local public health members to four.

Additionally, to ensure that the rules and regulations for septic systems remain in the best interest of environmental and human health, we support having such rules live within administrative code with the Department of Environmental Quality for development, oversight, and guidance. Flexibility is key for responding to our everchanging community and new industries that establish themselves in North Dakota.

As our region continues to experience residential, commercial, and industrial growth, it is more important than ever that our local officials – in all capacities – continue to have a seat at the table.

Thank you for your time and consideration.

Sincerely,

Steve Kemp, Williams County Commissioner

**Steve Kemp
District 2 County Commissioner**



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Testimony
To the
House Industry, Business, and Labor Committee
on
SB 2253

Good afternoon, Chairman Louser and members of the committee. I am Javin Bedard, Environmental Health Manager for Grand Forks Public Health (GFPH). GFPH provides environmental services within Grand Forks County and for three additional Public Health Units: Pembina, Walsh, and Nelson/Griggs. I am testifying today in opposition to SB 2253, unless amended as noted below.

Local public health has long worked to improve the installation and oversight of onsite wastewater treatment systems and wants to continue to collaboratively work to achieve statewide licensure of contractors and a common code. To continue to that common goal, GFPH would like to see some amendments to this bill to place the created Technical Guide for Onsite Wastewater Recycling under the Department of Environmental Quality in administrative rules and be less disruptive to some regulatory programs where zoning officials have current oversight. Please consider the following amendments:

Page 1, lines 15-18: Change to state that local public health units shall adopt, administer, and enforce, or have county zoning administer and enforce upon mutual agreement as their designee, septic regulations as promulgated in administrative rules by the Department of Environmental Quality.

Page 5, lines 23-31: delete

Page 6, lines 1-13: delete

GFPH also supports contractor's desire to establish a licensing board. Language from the original bill could be reinserted regarding the licensing board's makeup as follows:

Page 3: lines 23-29 replace existing with:

Beginning August 1, 2024, the governor shall replace the members of the board with five licensees.

Respectfully submitted,

Javin Bedard, RS/REHS, EHP

March 15, 2023

**House Industry, Business and Labor Committee
Senate Bill 2253**

Good afternoon Chairman Louser and Members of the House Industry, Business and Labor Committee:

My name is Tom Schimelfenig. I've been in the onsite wastewater industry for 45 years, and I've been licensed by the N.D. State Plumbing Board for 35 years.

I also currently serve as chairman of the Onsite Wastewater Technical Review Committee (OWRTC), established in N.D. Century Code during the 2021 legislative session.

As originally drafted, SB 2253 puts in place a uniform statewide code for the design, installation, permitting and inspection of onsite wastewater systems and establishes a licensing board to regulate the industry into the future and ensure compliance with the statewide uniform code.

Although I facilitated SB 2253, I cannot support the bill as it stands today. Amendments were made by the Senate Committee that we do not support, particularly the make-up of the licensing board.

Before I go into those details, I want to provide some background information on what has transpired over the past four years and how we got to this point.

In 2019, licensed onsite wastewater installers in North Dakota brought forth Senate Bill 2241, which authorized a study to determine the best program for developing a unified code and licensing board for onsite wastewater systems.

We completed the study during the interim, and as a result introduced House Bill 1183 in the 2021 Legislative Session establishing the Onsite Wastewater Technical Review Committee (OWRTC), which I currently chair.

Throughout the past year, the OWRTC has been tasked with the following:

- Creating a statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies.
- Recommending standards and procedures for issuing an installer license.
- Recommending continuing education requirements for installer license renewal.
- Recommending reasonable fees for issuing or renewing an installer license.

SB 2253 is a culmination of those efforts. It puts in place a uniform statewide code and clearly defines how professionals will be licensed and how their work will be evaluated.

Public health is responsible for issuing permits and inspecting newly-installed systems.

Licensed contractors are responsible for designing and installing systems that meet the new uniform code, as well as identifying solutions for repair and expansion of existing systems.

SB 2253 also establishes an onsite wastewater board, following a process and model utilized by other industries in the state for decades.

For example, the State Plumbing Board is led by licensed plumbers. The board is made up of two licensed plumbers, an engineer, a member of the Department of Environmental Quality, and a public citizen.

The State Electrical Board is led by licensed electricians. The board is made up of three licensed electricians, an engineer and a member of the public.

The North Dakota Board of Water Well Contractors is made up of water well contractors, a member of DEQ, a pump and pitless unit contractor, a geothermal well driller, and a public citizen.

In 1987, onsite wastewater contractors were licensed through the State Plumbing Board, and the board regulated the installation of centralized systems in municipal areas, both water and sewer.

Mr. Chairman and members of the committee: I ask you, have we had any problems with any of these industries and the way they are currently regulated? The answer is no. If we did, someone would be introducing a bill to have the make-up of the problematic board changed.

Therefore, we believe the onsite wastewater industry can likewise be effectively regulated by licensed veteran professionals with decades of experience, with input from public health and DEQ.

To that end, I recommend that SB 2253 be amended as follows:

Under Section 4 Board Appointment, #2 "Beginning August 1, 2024, the governor shall replace the members of the board with one representative of a public health unit who is not an installer, and three licensees, all of whom must be actively practicing installers. The director of the department of environmental quality or the director's designee shall serve as an ex-officio member."

As the bill stands currently, the licensing board would have eight members, which would not only be more expensive to operate than the five-member board but also not have a tie-breaking vote due to its even number of members. I don't think this is in the best interest of the industry or the citizens of North Dakota.

Again, unless the amendment to the licensing board make-up is changed to get in line with other similar boards, I cannot support this bill.

I appreciate your time and consideration, and I am willing to answer any questions you may have.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2253

Page 2, line 4, after the underscored period insert:

"a. Under this subsection, an inspector must have a level three master level installer license issued by the onsite wastewater board.

b."

Page 3, line 23, remove the underscored colon

Page 3, remove lines 24 through 28

Page 3, line 29, replace "the director of the department of environmental quality" with "one representative of a public health unit who is not an installer, and three licensees, all of whom must be actively practicing installers. The director of the department of environmental quality or the director's designee shall serve as an ex officio member"

Page 4, line 1, after "each" insert "appointed"

Renumber accordingly

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2253

Introduced by

Senators Klein, Magrum, Myrdal, Vedaa

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to regulation of onsite wastewater treatment system installers; to amend and
3 reenact sections 23-35-02.2, 43-18.2-01, and 43-18.2-03 of the North Dakota Century Code,
4 relating to the onsite wastewater recycling treatment technologies guide, permits for installation
5 of an onsite wastewater treatment system, investigation of onsite wastewater treatment
6 systems, and sewer and water installers; to repeal section 23-35-02.3 of the North Dakota
7 Century Code, relating to the onsite wastewater recycling technical committee; to provide a
8 penalty; and to provide an effective date.

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

10 **SECTION 1. AMENDMENT.** Section 23-35-02.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23-35-02.2. ~~Public health units to adopt~~Adoption of onsite wastewater recycling**
13 **treatment technologies guide - Issuance of permit for onsite wastewater treatment**
14 **system installation - Inspection - Penalty.**

15 1. Each public health unit and board of health shall adopt, administer, and enforce the
16 statewide technical guide for onsite wastewater recycling treatment technologies and
17 sewage distribution technologies established by the onsite wastewater recycling
18 technical committee board.

19 2. In accordance with the statewide technical guide for onsite wastewater recycling
20 treatment technologies, a public health unit or board of health shall issue a permit for
21 installation of an onsite wastewater treatment system.

22 3. A person may not install an onsite wastewater treatment system without a permit
23 issued under this section. If the public health unit or board of health denies a permit

1 under this section, the denial must be in writing and accompanied by findings of fact
2 supporting the decision to deny the permit.

3 4. A public health unit and board of health may inspect a newly constructed onsite
4 wastewater treatment system.

5 a. Under this subsection, an inspector must have a level three master level installer
6 license issued by the onsite wastewater board.

7 b. If, upon inspection the public health unit or board of health determines any part of
8 the system is not constructed in accordance with the minimum standards of the
9 statewide technical guide, the permit applicant or installer, or both, shall correct
10 the defects. A system may not be placed in service until all defects have been
11 corrected.

12 5. A public health unit and board of health shall receive and investigate a report of
13 unsanitary conditions in existence at an onsite wastewater system site or that any
14 construction or work enforced under this section is dangerous; unsafe; unsanitary; a
15 nuisance; a risk to life, health, or property; or otherwise in violation of the statewide
16 technical guide.

17 6. The public health unit or board of health may charge a fee for issuance of a permit,
18 conducting an inspection, reviewing a plan, evaluating a site, filing a variance request,
19 and filing an appeal under this section.

20 7. Violation of the statewide technical guide for onsite wastewater recycling treatment
21 technologies is an infraction for each violation.

22 **SECTION 2. AMENDMENT.** Section 43-18.2-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **43-18.2-01. Definitions.**

25 In this chapter, unless the context or subject matter otherwise requires:

- 26 1. "Board" means the state board of plumbing.
27 2. "Sewer and water contractor" means any person who installs, plans, and manages the
28 installation and repair of building sewer and water service.
29 3. "Sewer and water installation" means the installation of building sewer and water
30 service and the repair of existing building sewer and water service.

- 1 4. "Sewer and water installer" means any person, other than a sewer and water
2 contractor, who installs and repairs building sewer and water service.
3 5. "Sewer and water service" does not include installing an onsite wastewater treatment
4 system.

5 **SECTION 3. AMENDMENT.** Section 43-18.2-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-18.2-03. Licenses.**

8 ~~No~~A person, ~~firm, corporation, or limited liability company,~~ except ~~plumbers~~a plumber
9 holding ~~a valid licenses~~license under chapter 43-18, may ~~not~~ engage in the business of sewer
10 and water contractor or sewer and water installer unless registered and licensed by the board ~~to~~
11 ~~do~~under this chapter. ~~This~~A license issued under this chapter allows the licensee to do
12 plumbing necessary for sewer and water installation. This chapter does not regulate the
13 installation of an onsite wastewater treatment system.

14 **SECTION 4.** A new chapter to title 43 of the North Dakota Century Code is created and
15 enacted as follows:

16 **Definitions.**

17 As used in this chapter:

- 18 1. "Board" means the onsite wastewater board.
19 2. "Board of health" has the meaning provided under section 23-35-01.
20 3. "Licensee" means an installer issued a license under this chapter.
21 4. "Public health unit" has the meaning provided under section 23-35-01.
22 5. "Regulatory authority" means a public health unit or board of health.

23 **Board - Appointment.**

- 24 1. Beginning on the effective date of this Act, the onsite wastewater board is comprised
25 of the onsite wastewater recycling technical committee established under section
26 23-35-02.3.
27 2. Beginning August 1, 2024, the governor shall replace the members of the board with:
28 ~~a. Four licensees, who are actively practicing installers, appointed by the governor;~~
29 ~~b. Three representatives from local public health units who are licensed~~
30 ~~environmental health practitioners in this state appointed by the governor from a~~
31 ~~list of names forwarded by local public health units; and~~

1 ~~c. One representative from the department of environmental quality as appointed by~~
2 ~~the director of the department of environmental quality~~ one representative of a
3 public health unit who is not an installer, and three licensees, all of whom must be
4 actively practicing installers. The director of the department of environmental
5 quality or the director's designee shall serve as an ex officio member.

6 3. The terms of office of the initial appointed members must be staggered so no more
7 than two terms expire on the thirty-first day of July of each year and thereafter the term
8 of each appointed member is three years. Each member shall qualify by taking the
9 oath required of civil officers and shall hold office until a successor is appointed. The
10 governor shall replace a vacancy on the board by appointment for the unexpired term.
11 The governor may remove an appointed member from the board upon a showing of
12 good cause.

13 **Board powers and duties.**

- 14 1. The board shall:
- 15 a. Adopt rules to implement this chapter, including setting education and experience
 - 16 qualifications for licensure and continuing education requirements for licensure
 - 17 renewal.
 - 18 b. Issue a license to a qualified applicant who pays the required fee.
 - 19 c. Elect from its membership a presiding officer and a secretary.
- 20 2. The board may hire an executive director or other staff to assist the board with
21 administration of this chapter.

22 **Application.**

23 This chapter applies to the installation of all onsite wastewater treatment systems within the
24 state.

25 **Licensure required - Penalty.**

26 Beginning January 1, 2025, a person may not engage in installing an onsite wastewater
27 treatment system unless licensed by the board. A violation of this section is an infraction.

28 **Exemptions.**

29 The board shall establish by rule exemptions to the licensure requirements of this chapter
30 which address installations for new construction. The rules adopted under this section may

1 distinguish between the type of system being installed and may require a property owner to
2 attend a board-approved training as a condition to perform the work.

3 **Licensure - Fees.**

4 The board shall issue the following licenses to a qualified applicant who pays the required
5 fee:

- 6 1. An apprentice installer license, which qualifies the licensee to work under a level one,
7 two, or three license holder. The fee for licensure and license renewal as an
8 apprentice installer is twenty-five dollars per year.
- 9 2. A level one installer license, which qualifies the licensee to install a septic tank and
10 conventional trench system. The fee for licensure and license renewal as a level one
11 installer is two hundred twenty-five dollars per year.
- 12 3. A level two installer license, which qualifies the licensee to install multiple tanks,
13 mounds, at-grades, beds, and pressurized systems with pumps. The fee for licensure
14 and license renewal as a level two installer is two hundred twenty-five dollars per year.
- 15 4. A level three master level installer license, which qualifies the licensee to install
16 commercial systems, industrial systems, and systems that accept more than two
17 thousand five hundred gallons [9463.53 liters] per day. The fee for licensure and
18 license renewal as a level three master level installer is two hundred twenty-five
19 dollars per year.

20 **Licensure of out-of-state installers.**

21 The board shall issue a license to an applicant who is licensed as an installer by an out-of-
22 state jurisdiction if the applicant is in good standing in the out-of-state jurisdiction.

23 **Regulatory authority.**

24 A licensed installer shall comply with the statewide technical guide for onsite wastewater
25 recycling treatment technologies adopted by the regulatory authority when installing an onsite
26 wastewater treatment system.

27 **Disciplinary actions.**

28 Installation of an onsite wastewater treatment system by a licensee in violation of this
29 chapter or rules adopted by the board is cause for revocation of, suspension of, or refusal to
30 renew a license. Disciplinary actions must be conducted in accordance with chapter 28-32.

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Statewide technical guide.

1. The board shall develop and publish a statewide guide for onsite wastewater recycling treatment technologies for adoption by regulatory authorities under section 23-35-02.2.
2. At a minimum, the statewide technical guide for onsite wastewater recycling treatment technologies must address:
 - a. A standardized onsite wastewater treatment system permit form.
 - b. The length of time a permit is valid following issuance.
 - c. Circumstances under which a registered professional engineer shall prepare plans and specifications.
 - d. The minimum size lot in which a new onsite wastewater treatment system may be installed.
 - e. The terms under which a septic tank may be abandoned.
 - f. The minimum requirements for an onsite wastewater treatment system soil treatment area.
 - g. Circumstances under which special systems of treatment and disposal may be provided.
 - h. Circumstances under which the regulatory authority may issue a variance.
 - i. The process for appeal of an order or determination of the regulatory authority.
 - j. Circumstances under which a regulatory authority may suspend or revoke a permit.
 - k. Circumstances under which a regulatory authority may issue an order to cease and desist.

SECTION 5. REPEAL. Section 23-35-02.3 of the North Dakota Century Code is repealed.

SECTION 6. EFFECTIVE DATE. Sections 1, 2, and 3 of this Act become effective January 1, 2025, and section 5 of this Act becomes effective August 1, 2024.

Testimony
To the
House Industry, Business, and Labor Committee
on
SB 2253

Good morning, Chairman Louser and members of the committee. I am Lisa Westman, Director of Environmental Health at First District Health Unit. First District provides local public health services to Bottineau, Burke, McHenry, McLean, Renville, Sheridan, and Ward counties. I have a staff of 6 Environmental Health Practitioners. One staff member coordinates our septic program and is trained to do site evaluations, inspect onsite septic systems for proper installation and/or repair, work with homeowners and contractors to develop septic plans, and to license contractors. Our office licensed 52 contractors for septic installation in 2022. He has completed several trainings with University of Minnesota Onsite Sewage Treatment Program and attended the conference for the National Onsite Wastewater Recycling Association. He regularly attends in state trainings and conferences to obtain continuing education credits to maintain the state EHP and national REHS credentials. In 2022 we issued 162 permits which includes site evaluation, design, and install follow up. An average of 4 hours is spent on each permit including travel time.

We at First District feel we have a solid septic program and good relationships with the installers. We assure response to installers and homeowner questions in a timely manner to resolve issues. Throughout this legislative session I have heard from several contractors wondering why this bill is necessary and what the issues are because they like the system the way it is and do not see reason for change. Local Public Health is committed to cooperating with the installers to ensure there is a good septic system installation process for the homeowners, their neighbors and water supplies.

We want to assure that every contractor that is currently providing services is still allowed to do so. The majority are private business owners and regulation should work in conjunction with and validate their business, not hinder it. Some installers have indicated to me that the licensure process laid out in this bill is concerning. This example was brought to me, what happens if a level 2 installer is putting in a system and they run into an issue that a level 3 installer is only qualified to install? Does this stop progress? Is it more cost and time to the homeowner? About 15% of the plans we design end up revised due to issues found on site during installation. These are questions without answers.

I had the privilege to serve on the Onsite Wastewater Technical Committee during the interim. The committee is made up of 8 members, consequently tied votes are broken by the chairman. This committee was formed as a result of last legislative session and was charged with creating a statewide technical guide. We began with a base code that was originally put together by regulators and installers working cooperatively. Excellent revisions were made to ensure cost effective installation and repairs to systems could be done with evidence-based practices and could be adopted by all local health units. At this time the regulations have not been adopted by the committee, not all members are in agreement that they are science based and with the homeowner in mind. Actions by this legislative session may impact these regulations.

Overall, the regulations need to be an application of proven methods to ensure the homeowners get the best product in a cost-effective way and limit potential impacts to communities, lakes, rivers, and drinking water. We are often contacted by banks or buyers of homes to provide information about the septic system at a current property and as EHP's we hold a certain professional liability to assure we are working with the best tools.

Cooperation amongst all stakeholders is required to achieve the best product. DEQ has a stake in this as well and agreed to participate in the resolution. This bill recreates another system that is not

necessary when we know how other regulations and codes function throughout the state. Utilize the system that has worked, the regulations belong in the administrative rules for the Department of Environmental Quality.

I am neutral on SB 2253 because although some work needs to be done, it is a step forward and Public Health continues to be committed to improving onsite septic system regulations throughout the State.

Thank you for your time and attention on this important issue.