

**Testimony**  
**House Bill 1426**  
**Senate Education Committee**  
**March 4, 2015; 11:15 a.m.**  
**North Dakota Department of Health**

Good morning, Chairman Flakoll and members of the Senate Education Committee. My name is Wayne Kern. I am Director of the North Dakota Department of Health's Division of Municipal Facilities, which is part of the Environmental Health Section. I am here to provide testimony in opposition to Sections 2 and 3 of engrossed House Bill 1426.

Under current state law, public works and public improvement projects costing over \$100,000 cannot proceed to construction without engineer-prepared plans and specifications. Sections 2 and 3 of engrossed House Bill 1426 propose to increase this threshold amount to \$150,000. If engrossed House Bill 1426 is enacted, the state and its political subdivisions would be allowed to undertake public works and public improvement projects up to \$150,000 without engineer-prepared plans and specifications.

The Department of Health opposes Sections 2 and 3 of engrossed House Bill 1426 for the following reasons:

- The Department of Health is responsible for review and approval, prior to construction, of all public works and public improvement projects involving water works, sewerage, and solid waste. These reviews are done to ensure that projects meet design standards. This is crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service and direct contamination of drinking water, groundwater or surface waters.
- Based on the current threshold of \$100,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards and can be quoted for construction purposes. Many times, communities realize that getting their submittal into an approvable condition is beyond their expertise and hire an engineer. This is inefficient and causes delays in project approval and construction. Increasing the threshold to \$150,000 dollars will exacerbate this situation as larger and more complex projects will be involved. This

will add more work to already heavy workloads and delay approval of all projects. More projects may be rejected and not approved, leading to further delays and expense for communities.

- The Department's role is to review and approve already-prepared projects to ensure that design standards are met, not to design projects. We are often asked and do provide design recommendations. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.
- The proposed increased threshold could reduce funding assistance opportunities for communities. Funding assistance agencies typically require engineer involvement in public works and public improvement projects. This is likely in recognition of their technical complexity and public health and safety implications.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for construction purposes. Over the last four years, we have experienced an increase from 150 to over 400 in the number of projects submitted each year for approval. Nearly all of these projects were prepared by engineers. This enabled timely review and approval. The proposed increased threshold has the potential to further reduce engineer involvement and our ability to approve projects in a timely manner. It also has the potential to impede needed public improvement projects statewide.

The Department takes its responsibility for public health, safety and environmental protection seriously. The current threshold of \$100,000 for engineer-prepared plans and specifications allows us to do this.

It is important to note that the current design services threshold of \$100,000 resulted from legislation introduced in 2007. The legislation came from an interim study committee that used a collaborative process involving input from a broad array of stakeholders.

Several bills have been introduced this session proposing changes to the design services threshold as well as other current requirements pertaining to public improvement projects. These changes need to be coordinated and further evaluated as to their consequences. Deferring these issues to an interim study would enable time to thoroughly evaluate current requirements and collaborate

with stakeholders on changes. The result could be one bill draft that addresses and balances pertinent issues and has stakeholder support.

In summary, the Department opposes Sections 2 and 3 of engrossed House Bill 1426. The Department proposes that the bill be amended to replace these Sections with a new Section that requires an interim legislative management study. The study would address current state law requirements for public improvement projects including the design services threshold.

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