

Testimony
Senate Bill 2327
House Energy and Natural Resources Committee
March 3, 2017, 9:00 a.m.
North Dakota Department of Health

Good morning Chairman Porter and members of the House Energy and Natural Resources Committee. My name is David Glatt, and I am the Environmental Health Section Chief for the North Dakota Department of Health. I am here today to testify in support of SB 2327.

The department's Environmental Health Section has been in existence for more than 40 years, implementing a variety of state and federally mandated environmental protection programs. Historically, we have implemented federal programs at the state level through primacy agreements associated with the Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Clean Air Act. We also implement a radiation program through an agreement with the Nuclear Regulatory Commission. The Environmental Health Section has been at the leading edge of efforts designed to protect the air, land and water to ensure a safe and quality environment. Our programs are based on following the applicable science and the law and are implemented by a current professional staff of 174.25 FTEs. Our staff includes engineers, scientists, chemists, microbiologists and administrative support staff.

Many of our programs operate at a complex technical level requiring highly trained professionals to conduct permitting, inspection, enforcement, monitoring and analysis activities. I have included a current organizational chart of the department's Environmental Health Section and a contact list for specific programs and activities.

SB 2327 proposes to create a new stand-alone Department of Environmental Quality which would continue to implement the same environmental protection programs as the existing Environmental Health Section. As identified in this proposed legislation, no new programs would be created or eliminated. It would maintain the status quo but under a different and separate organizational structure. SB 2327 acknowledges the vital function of environmental programs in the state by:

- > Identifying a stand-alone Department of Environmental Quality able to establish and implement critical policies and standards.
- > Elevating the Department of Environmental Quality to a cabinet level agency, the director of which would be appointed by the Governor.

Establishing a new department with the current scope of responsibilities will require up to two years to:

- > Allow the U.S. Environmental Protection Agency and the Nuclear Regulatory Commission time to review and approve the reorganization to ensure all federal/state primacy agreements remain intact and are not disrupted.
- > Amend all environmental laws and rules to reflect the new organization. The majority of the amendments in the 153-page bill relate to changing the name from Department of Health to Department of Environmental Quality.
- > Evaluate how to best organize both the proposed Department of Environmental Quality and the existing Department of Health to address anticipated internal fiscal impacts while showing a zero state fiscal impact.
- > Consolidate the Air Quality Advisory Board and the Water Pollution Control Advisory Board into a new Environmental Quality Advisory Board appointed by the Governor.

Upon meeting the goals and necessary approvals of the transition to a new Department of Environmental Quality, the Environmental Health Section Chief must certify all work has been satisfactorily accomplished pursuant to SB 2327.

Since proposed, there have been several concerns expressed regarding SB 2327. I will take a few minutes to address these.

- > “SB 2327 will establish a ‘mini EPA’.”

As indicated earlier in my testimony, North Dakota has historically implemented environmental protection programs via state legislation. The state has chosen to implement many federal environmental protection laws and rules rather than turn that responsibility back to a federal bureaucracy located out of Denver or Washington, D.C. This approach has resulted in a more cost-effective, responsive, transparent and accountable regulatory framework serving the citizens of the state.

In recent history, the Environmental Health Section has followed a more independent operational path due to its complex and functionally separate priorities and mission, as compared to the Department of Health. SB 2327 does not establish a “mini” EPA; rather it acknowledges the importance of environmental protection in the state, elevating that responsibility to a cabinet level agency designed to maintain and continue with existing programs that have been operating in the state for decades. It does not create new or eliminate existing programs; it only transfers an existing section from the Department of Health to a newly formed Department of Environmental Quality.

- > “The creation of a Department of Environmental Quality will result in more regulations.”

First and foremost, the Environmental Health Section follows the law and applicable science in the pursuit of common-sense environmental protection. Secondly, the laws which set the boundaries within which any state agency operates are established by this legislative body.

Legislation allows an agency to pursue the development of rules to implement the laws. Before rules are considered approved, they must go through an exhaustive process which includes an agency and public input/comment period, in addition to a review by the administrative rules committee (chaired by legislative members). This process can take up to a year to complete in many cases. In addition, Environmental Health Section rules must have a strong science-based foundation and identify realistic outcomes to protect public health and the environment before they are considered. This has resulted in the implementation of straightforward,

common-sense rules in the state. This process of legislative and public oversight will continue in the proposed Department of Environmental Quality.

- > “Agricultural interests are not adequately represented in the new Department of Environmental Quality.”

The North Dakota Department of Health - Environmental Health Section currently interacts with two advisory committees (the Air Pollution Control Advisory Council and the Water Pollution Control Board) and the State Health Council when determining regulatory policies. Of the 22 members on the two advisory committees, the Air Pollution Control Advisory Council does not have any defined agricultural representation. There are three agricultural representatives on the Water Pollution Control Advisory Board. The State Health Council, which has 11 members, does not have any agricultural industry representation.

As proposed, the Department of Environmental Quality Advisory Board will consist of nine appointed positions, the State Engineer, State Geologist and the director of the North Dakota Game and Fish Department. The board will have at least one agricultural representative. When compared to the existing organization, agricultural interests may actually have a greater voice as this board will be advising on all agency activities and not a select subset (e.g., water).

This concludes my testimony. I am happy to answer any questions.