

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1034  
Senate Judiciary II Committee Substitute Adopted 6/28/94

Short Title: Pub Cont/Wastewater Cont/Elevator.

(Public)

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Sponsors:

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Referred to: Finance.

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April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW PUBLIC CONTRACTS INVOLVING LESS THAN FIFTY  
2 THOUSAND DOLLARS TO BE AWARDED TO NONLICENSED  
3 CONTRACTORS, TO ESTABLISH THE NORTH CAROLINA ON-SITE  
4 WASTEWATER SYSTEM CONTRACTORS LICENSING BOARD, AND TO  
5 AMEND THE ELEVATOR SAFETY ACT.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 87-1 reads as rewritten:

9 "**§ 87-1. 'General contractor' defined; exceptions.**

10 For the purpose of this Article any person or firm or corporation who for a fixed  
11 price, commission, fee, or wage, undertakes to bid upon or to construct or who  
12 undertakes to superintend or manage, on his own behalf or for any person, firm, or  
13 corporation that is not licensed as a general contractor pursuant to this Article, the  
14 construction of any building, highway, public utilities, grading or any improvement or  
15 structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more,  
16 or undertakes to erect a North Carolina labeled manufactured modular building meeting  
17 the North Carolina State Building Code, shall be deemed to be a 'general contractor'  
18 engaged in the business of general contracting in the State of North Carolina.

19 This section shall not apply to persons or firms or corporations furnishing or erecting  
20 industrial equipment, power plan equipment, radial brick chimneys, and monuments.

21 This section shall not apply to any person or firm or corporation who constructs or  
22 alters a building on land owned by that person, firm or corporation provided such  
23 building is intended solely for occupancy by that person and his family, firm, or

1 corporation after completion; and provided further that, if such building is not occupied  
2 solely by such person and his family, firm, or corporation for at least 12 months  
3 following completion, it shall be presumed that the person, firm, or corporation did not  
4 intend such building solely for occupancy by that person and his family, firm, or  
5 corporation.

6 This section shall not apply to any person engaged in the business of farming who  
7 constructs or alters a building on land owned by that person and used in the business of  
8 farming, when such building is intended for use by that person after completion.

9 This section shall not apply to contractors performing construction or repair work  
10 under a contract awarded under G.S. 143-131 or to contractors performing highway  
11 construction or repair work for the Department of Transportation involving less than  
12 fifty thousand dollars (\$50,000)."

13 Sec. 2. Chapter 87 of the General Statutes is amended by adding a new  
14 Article to read:

15 **"ARTICLE 9.**

16 **"ON-SITE WASTEWATER SYSTEM CONTRACTORS.**

17 **"§ 87-120. Short title.**

18 This Article shall be known and may be cited as the North Carolina On-Site  
19 Wastewater System Contractors Licensing Act.

20 **"§ 87-121. Purposes.**

21 The purposes of this Article are to protect life, property, public health, and public  
22 welfare through the regulation of any person, partnership, association, or corporation in  
23 this State that constructs, installs, or repairs on-site wastewater systems; to establish  
24 minimum standards of ethical conduct, responsibility, training, experience, background,  
25 and continuing education for on-site wastewater system contractors; and to provide  
26 appropriate enforcement procedures for rules adopted by the Board.

27 **"§ 87-122. Definitions.**

28 The following definitions apply in this Article.

- 29 (1) 'Board' means the North Carolina On-Site Wastewater System  
30 Contractors Licensing Board.
- 31 (2) 'Construct' or 'construction' means any work, including excavation, for  
32 the assembly or building of an on-site wastewater system.
- 33 (3) 'Install' or 'installation' means building or setting into place an on-site  
34 wastewater system or a component part of an on-site wastewater  
35 system, but does not include delivery of a component part of an on-site  
36 wastewater system to the place where the on-site wastewater system is  
37 to be installed.
- 38 (4) 'On-site wastewater system' means any wastewater system permitted  
39 under the provisions of Article 11 of Chapter 130A of the General  
40 Statutes.
- 41 (5) 'On-site wastewater system contractor' or 'contractor' means any  
42 person, firm, partnership, or corporation in this State that, for valuable  
43 consideration, constructs, installs, or repairs, or offers to construct,  
44 install, or repair an on-site wastewater system.

- 1           (6) 'Repair' means the extension, alteration, replacement, or relocation of  
2           existing components of an on-site wastewater system.
- 3           (7) 'Responsible charge' means direct control and personal supervision of  
4           the installation, construction, or repair of an on-site wastewater  
5           system.

6 **"§ 87-123. License required.**

7       Except as provided in G.S. 87-134, no person, partnership, association, or  
8       corporation in this State shall construct, install, or repair, or offer to construct, install, or  
9       repair an on-site wastewater system without first obtaining a license as provided by this  
10       Article. No on-site wastewater system shall be approved by the Department of  
11       Environment, Health, and Natural Resources or any agent of the Department unless the  
12       on-site wastewater system is constructed, installed, or repaired under the responsible  
13       charge of a licensed on-site wastewater system contractor.

14 **"§ 87-124. Creation of the Board; membership; terms; vacancies; oath;**  
15       **compensation.**

16       (a) There is created the North Carolina On-Site Wastewater System Contractors  
17       Licensing Board. The Board shall consist of seven members appointed as follows:

- 18           (1) One member who is engaged in the business of constructing,  
19           installing, or repairing on-site wastewater systems, appointed by the  
20           General Assembly upon the recommendation of the Speaker of the  
21           House of Representatives.
- 22           (2) One member who is an environmental health specialist, appointed by  
23           the General Assembly upon the recommendation of the Speaker of the  
24           House of Representatives.
- 25           (3) One member who is a manufacturer or supplier of septic tanks or other  
26           on-site wastewater system components, appointed by the General  
27           Assembly upon the recommendation of the President Pro Tempore of  
28           the Senate.
- 29           (4) One member who is engaged in the business of constructing,  
30           installing, or repairing on-site wastewater systems, appointed by the  
31           General Assembly upon the recommendation of the President Pro  
32           Tempore of the Senate.
- 33           (5) One member who represents the public at large and who is not  
34           associated with the on-site wastewater systems industry, appointed by  
35           the Governor.
- 36           (6) One member who is engaged in the business of constructing,  
37           installing, or repairing on-site wastewater systems, appointed by the  
38           Governor.
- 39           (7) One member who is an employee of the Division of Environmental  
40           Health of the Department of Environment, Health, and Natural  
41           Resources, appointed by the Governor.

42       (b) Appointments to the Board to fill positions one through six shall be for a term  
43       of four years and until a successor is appointed and duly qualified. The terms of  
44       members appointed to fill positions one, three, and five shall expire on 30 June of years

1 evenly divisible by four. The terms of members appointed to fill positions two, four,  
2 and six shall expire on 30 June of years that follow by two years those years that are  
3 evenly divisible by four. A vacancy created by the resignation, death, or removal of a  
4 member prior to the expiration of the term shall be filled by appointment by the  
5 appointing authority for the balance of the unexpired term. A vacancy in positions one,  
6 two, three, or four, including a vacancy resulting from a failure of the General  
7 Assembly to make an appointment to that position, may be filled as provided in G.S.  
8 120-122. The member who is appointed to fill position seven shall serve at the pleasure  
9 of the Governor and for so long as the member is an employee of the Division of  
10 Environmental Health.

11 (c) Each member of the Board, before entering upon the discharge of the duties  
12 of the Board, shall take and file with the Secretary of State an oath in writing to perform  
13 properly the duties as a member of the Board and to uphold the Constitution of North  
14 Carolina and the Constitution of the United States.

15 (d) Payment of compensation and reimbursement of expenses of members of the  
16 Board shall be governed by G.S. 93B-5.

17 **"§ 87-125. Powers and duties of the Board.**

18 (a) The Board shall elect a Chair and a Secretary-Treasurer, each to serve a term  
19 of two years. The Board shall specify the duties of the Secretary-Treasurer and may  
20 require a bond for the faithful performance of those duties.

21 (b) The Board shall hold at least two regular meetings each year. Special  
22 meetings may be held on call of the Chair. The Chair shall call a meeting upon the  
23 request of any three members of the Board. Four members shall constitute a quorum for  
24 the conduct of business.

25 (c) The Board shall adopt and use a common seal.

26 (d) The Board shall adopt rules to govern its actions and to implement the  
27 provisions of this Article.

28 (e) The Board may employ a full-time executive secretary and any other  
29 personnel that it determines necessary to carry out the duties of the Board and the  
30 provisions of this Article. The Board shall determine the compensation, duties, and  
31 other terms and conditions of employment of its executive secretary and other  
32 employees.

33 (f) In order to protect the public health, safety, and welfare, the Board shall  
34 establish classes of licenses based on design capacity, complexity, or project cost of the  
35 on-site wastewater system.

36 (g) As a means to determine whether each applicant for a license is qualified to  
37 hold the class of license for which the applicant applies, the Board shall develop and  
38 administer an appropriate examination for each class of license. The Board shall  
39 determine the time and place at which license examinations shall be held, provided that  
40 an examination shall be held at least three times each year: once each in the coastal  
41 plain, piedmont, and mountain areas of the State.

42 (h) It shall be the responsibility and duty of the Board to conduct an investigation  
43 concerning all matters within its jurisdiction as provided in this Article. The Board may

1 expend its funds for salaries, fees, and per diem expenses, in connection with the  
2 investigation.

3 (i) A person may refer to the Board charges of fraud, deceit, negligence,  
4 incompetency, or misconduct against any contractor licensed under this Article. The  
5 charges shall be in writing and sworn to by the complainant and submitted to the Board.  
6 The charges, unless dismissed without a hearing by the Board as unfounded or trivial,  
7 shall be heard and determined by the Board in accordance with the provisions of  
8 Chapter 150B of the General Statutes.

9 (j) The Board shall establish and maintain detailed records regarding complaints  
10 concerning each licensee. The record shall include, for each licensee, the date and  
11 nature of each complaint, investigatory action taken by the Board, any findings by the  
12 Board, and the disposition of the matter.

13 (k) The Board shall immediately notify the local health department and the  
14 Secretary of State of its findings in the case of revocation or suspension of a license or  
15 the reissuance of a revoked license.

16 (l) The Board may accept grants, contributions, bequests, and gifts that shall be  
17 kept in the same account as the funds deposited in accordance with this Article and  
18 other provisions of law.

19 (m) The provisions of Chapter 93B of the General Statutes shall apply to the  
20 Board.

21 **"§ 87-126. Custody and use of funds.**

22 The Secretary-Treasurer or some other person designated by the Board shall deposit  
23 all funds payable to the Board in financial institutions designated by the Board as  
24 official depositories. Funds shall be deposited in the name of the Board and shall be  
25 used to pay all expenses incurred by the Board in carrying out the provisions of this  
26 Article. The Board is subject to the oversight of the State Auditor under Article 5A of  
27 Chapter 147 of the General Statutes.

28 **"§ 87-127. Expenses and fees.**

29 (a) All salaries, compensation, and expenses incurred or allowed for the purposes  
30 of carrying out this Article shall be paid by the Board exclusively out of the funds  
31 received by the Board as authorized by this Article. No salary, expense, or other  
32 obligations of the Board may be charged against the General Fund of the State. Neither  
33 the Board nor any of its officers or employees may incur any expense, debt, or financial  
34 obligation binding upon the State.

35 (b) All fees shall be established in rules adopted by the Board. The Board shall  
36 establish fees sufficient to pay the costs of administering this Article, but in no event  
37 shall the Board charge a fee at an annual rate in excess of the following:

38 (1) Application for license \$150.00

39 (2) License renewal 100.00

40 (3) Late renewal charge 25.00

41 (4) Reinstatement of expired, revoked, or suspended license 150.00.

42 (c) The Board may issue a license to any environmental health specialist  
43 employed by a local health department without charging a fee.

44 **"§ 87-128. Licensing requirements.**

1       (a) The Board shall issue a license in the appropriate class to an applicant who  
2 satisfactorily meets all of the following conditions:

- 3           (1) Files an application with the Board on a form prescribed by the Board.  
4           (2) Is at least 18 years of age.  
5           (3) Is of good moral character as shown by the affidavits of three persons  
6 who have been acquainted with the applicant for three years  
7 immediately preceding the submission of the affidavit.  
8           (4) Completes a training program approved by the Board for the class of  
9 license for which the applicant is applying.  
10          (5) Passes an oral or written examination for the class of license for which  
11 the applicant is applying. The examination must test the proficiency of  
12 the applicant in the following areas: (i) principles of public health  
13 associated with wastewater collection, treatment, and disposal; (ii)  
14 principles of construction safety and construction ethics; (iii) technical  
15 and practical knowledge of on-site wastewater systems design and  
16 construction, analysis of plans and specifications, principles of  
17 wastewater system repairs, and other matters related to wastewater  
18 system construction and performance; and (iv) laws and rules related  
19 to the installation, construction, and repair of on-site wastewater  
20 systems.  
21          (6) Pays the applicable fees set by the Board for application.

22       (b) An applicant shall not be required to hold or obtain an educational diploma or  
23 degree to obtain a license. If an applicant meets all of the conditions for licensure  
24 except for the passage of the Board examination, the applicant may take the  
25 examination on two more occasions without having to file a new application, pay an  
26 additional application fee, or repeat the training program. If an applicant fails to pass  
27 the Board examination on three successive occasions, the applicant must reapply to the  
28 Board, pay the application fee, and repeat the training program.

29       (c) The licenses shall show the full name of the registrant, shall give a serial  
30 number, shall be signed by the Chair and Secretary-Treasurer of the Board, and shall be  
31 embossed with the seal of the Board. Issuance of the license by the Board shall be  
32 **prima facie** evidence that the person named therein is entitled to all the rights and  
33 privileges of a licensed on-site wastewater system contractor while the license remains  
34 in full force and effect.

35       (d) A new license to replace a license lost, destroyed, or mutilated shall be issued  
36 subject to the rules adopted by the Board and payment of a fee set by the Board.

37 **"§ 87-129. License renewal.**

38       (a) All licenses shall expire at intervals determined by the Board unless they are  
39 renewed; in no event may the interval determined by the Board be less than one year.  
40 To renew a license, a licensee must meet all of the following conditions:

- 41           (1) Submit an application for renewal on a form prescribed by the Board.  
42           (2) Meet the continuing education requirements prescribed by the Board.  
43           (3) Pay the license renewal fee.

1       (b) A license that has expired may be renewed within 90 days of its expiration  
2 upon payment of a late fee as set by the Board. If a license is not renewed within 90  
3 days of its expiration, the license shall not be renewed, but the holder of the expired  
4 license may apply for a new license.

5 **"§ 87-130. Continuing education.**

6       (a) The Board shall require continuing education as a condition of license  
7 renewal. The Board shall determine the number of hours, up to a maximum of nine  
8 hours per year, and the subject matter of continuing education required as a condition of  
9 license renewal. The Board shall maintain records of continuing education coursework  
10 successfully completed by each licensee, including the subject and the number of hours  
11 of each course.

12       (b) The Board may grant approval to a continuing education program or course if  
13 the Board finds that the program or course offers an educational experience that will  
14 enhance the construction, installation, or repair of on-site wastewater systems. The  
15 Board may offer continuing education.

16 **"§ 87-131. Corporations; partnerships; persons doing business under trade name.**

17       A license may be issued in the name of a corporation, partnership, or designated  
18 trade name if one or more officers, general partners, or business owners are licensed in  
19 accordance with the provisions of this Article. An individual licensee shall be in  
20 responsible charge of all work done for construction, installation, or repair of on-site  
21 wastewater systems.

22 **"§ 87-132. Remedies.**

23       (a) The Board may, consistent with the provisions of Chapter 150B of the  
24 General Statutes, deny, suspend, or revoke a license of any person licensed under this  
25 Article for:

- 26       (1) A violation of this Article or of a rule of the Board.
- 27       (2) The use of any fraud or deceit in obtaining or renewing a license.
- 28       (3) Any act of gross negligence, incompetence, or misconduct in the  
29 practice of, or carrying on the business of, constructing, installing, or  
30 repairing an on-site wastewater system.

31       (b) The Board may request the Attorney General to seek an injunction to restrain  
32 any person, firm, partnership, or corporation from violating the provisions of this  
33 Article or rules adopted by the Board. The Attorney General may bring an action for an  
34 injunction in the name of the State in the superior court of any county in which the  
35 violation is occurring or in which the violator resides or the violator's principal place of  
36 business is located. In any proceeding for an injunction, it shall not be necessary to  
37 allege or prove either that an adequate remedy at law does not exist, or that substantial  
38 or irreparable damage would result from the continued violation. Members of the Board  
39 shall not be personally liable for any act or omission pursuant to this subsection. The  
40 Board shall not be required to post a bond in connection with an action to obtain an  
41 injunction.

42       (c) The Board may establish a voluntary arbitration procedure to resolve  
43 complaints concerning a licensee or work performed by a licensee.