

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 953

Short Title: Wastewater System Contractors.

(Public)

Sponsors: Representatives H. Hunter; Flaherty, Hackney, Hensley, Holt, B. Miller, R. Thompson, and Wright.

Referred to: State Government.

April 15, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA LICENSING BOARD OF ON-
3 SITE WASTEWATER SYSTEM CONTRACTORS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 87 of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 9.**

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

9 **"§ 87-115. This Article is The North Carolina Licensing Board of On-Site**
10 **Wastewater System Contractors Act and may be cited by that name.**

11 **"§ 87-116. Purposes.**

12 The purposes of this Article are to protect life, property, public health, and public
13 welfare through the regulation of any person, partnership, association, or corporation in
14 this State that constructs, installs, or repairs wastewater systems as defined in G.S.
15 130A-334; to establish for on-site wastewater contractors minimum standards of ethical
16 conduct, responsibility, training, experience background, and continuing education; and
17 to provide appropriate enforcement procedures of the Board's regulations.

18 **"§ 87-117. Definitions.**

19 The following definitions apply in this Article, unless the context otherwise requires:

- 20 (1) Board. – The North Carolina Licensing Board for On-Site Wastewater
21 Contractors.
22 (2) Construct. – Any work for the placement, excavation, assembly, or
23 building of an on-sight wastewater system.

- 1 (3) On-Site Contractor or Wastewater Contractor. – Any person, firm,
2 partnership, or corporation in this State, who for valuable
3 consideration constructs, installs, or repairs, or offers to construct,
4 install, or repair an on-site wastewater system permitted by the
5 Commission for Health Services, Department of Environment, Health,
6 and Natural Resources including a conventional septic tank system,
7 modified septic tank system, alternative wastewater system, innovative
8 wastewater system, or industrial process wastewater system.
- 9 (3) Repair. – The extension, alteration, replacement, or relocation of
10 existing components of a wastewater system.
- 11 (4) Install. – The building or setting into place component parts of an on-
12 site wastewater system.
- 13 (5) 'On-Site Wastewater System'. – Any system permitted under the
14 provision of Article 11 of Chapter 130A of the General Statutes.
- 15 (6) 'Repair'. – The extension, alteration, replacement, or relocation of
16 existing components of a wastewater system.
- 17 (7) Responsible Charge. – The direct control and personal supervision of
18 the installation, construction, or repair of an on-site wastewater
19 system.

20 **"§ 87-118. Certificate required.**

21 On and after January 1, 1996, it shall be unlawful for any person, partnership,
22 association, or corporation in this State to construct, install, or repair, or offer to
23 construct, install, or repair an on-site wastewater system without first obtaining a license
24 as provided by this Article. No on-site wastewater system shall be approved by the
25 North Carolina Department of Environment, Health, and Natural Resources or any
26 agent of the Department unless the on-site wastewater system is constructed, installed,
27 or repaired under the responsible charge of a licensed on-site wastewater contractor.

28 **"§ 87-119. Creation and membership of the Board; vacancies; oath.**

29 (a) There is created the North Carolina Licensing Board of On-Site Wastewater
30 Contractors consisting of seven members appointed by the Governor; four contractors
31 from the three different geographical regions of the State who are engaged in the
32 practice of construction, installing, or repairing on-site wastewater systems, one
33 member who is an on-site wastewater systems inspector, and two persons who have no
34 ties with the on-site wastewater industry to represent the interests of the public at large.
35 All appointments shall be for seven years with the term of one member expiring each
36 year. The Governor shall use the following selection criteria in determining the four
37 contractors: Of the four contractors appointed by the Governor, one shall be a
38 manufacturer, two shall be installers, and one shall be a supplier of septic or other
39 wastewater systems or system components.

40 Any vacancy on the Board shall be filled for the unexpired term by the initial
41 appointing authority and all members shall serve until the successors are appointed and
42 qualify.

43 (b) Each member of the Board shall, before entering upon the discharge of the
44 duties of the Board, take and file with the Secretary of State an oath in writing to

1 perform properly the duties as a member of the Board and to uphold the Constitution of
2 North Carolina and the Constitution of the United States. Payment of compensation and
3 reimbursement of expenses of Board members shall be governed by G.S. 93B-5.

4 **"§ 87-120. Powers and duties of the Board.**

5 (a) The Board shall within 30 days after its appointment meet in the City of
6 Raleigh. The Board shall elect a chair and a secretary-treasurer each to serve for two
7 years. Thereafter, officers shall be elected biannually. The Secretary-Treasurer shall
8 give bond approved by the Board for the faithful performance of the Secretary-
9 Treasurer's duties, as the Board may, from time to time determine. The Board shall
10 have a common seal, shall formulate rules to govern its actions, and may employ the
11 personnel it deems necessary to carry out the provisions of this Article.

12 (b) The Board, after holding its meeting as provided in subsection (a) of this
13 section, shall hold at least two regular meetings each year. Special meetings may be
14 held at the times and places that the rules of the Board provide; or as may be required in
15 carrying out the provisions thereof. A quorum of the Board shall consist of not less than
16 four members.

17 (c) The Board shall adopt rules to implement the provisions of this Article.

18 The action by the Board in carrying out any of the powers specified herein shall be
19 binding upon all persons licensed under this Article.

20 (d) The Board may employ a full-time executive secretary and any assistants
21 necessary for the performance of the Board's duties under this Article. The Board shall
22 establish the compensation and duties of the executive secretary.

23 (e) The Board may apply for an injunction in the name of the State, in the
24 established manner provided in cases of civil procedure, without bond, to enforce the
25 provisions of this Article or any rule adopted by the Board and to restrain any violation
26 of this Article or of a rule adopted by the Board. In such proceedings, it shall not be
27 necessary to allege or prove either that an adequate remedy of law does not exist, or that
28 substantial or irreparable damage would result from the continued violation. The
29 members of the Board shall not be personally liable under this proceeding.

30 (f) The Board may subject an applicant for licensing to such examination as it
31 deems necessary to determine the qualifications of the applicant.

32 (g) The Board may issue an appropriate certificate of licensure to any applicant
33 who in the opinion of the Board, has met the requirements established under this Article
34 and by the Board.

35 (h) It shall be the responsibility and duty of the Board to conduct an investigation
36 concerning all matters within its jurisdiction as provided in this Article. The Board may
37 expend its funds for salary, fees, and per diem expenses, in connection with the
38 investigation.

39 (i) The Board may revoke or suspend the license of any contractor licensed
40 under this Article who is found guilty of any fraud or deceit in obtaining a license, gross
41 negligence, incompetency, or misconduct in the practice of the contractor's profession,
42 or violation of any provisions of this Article. Any person may refer to the Board
43 charges of fraud, deceit, negligence, incompetency, or misconduct against any
44 contractor licensed under this Article. The charges shall be in writing and sworn to by

1 the complainant and submitted to the Board. The charges, unless dismissed without a
2 hearing by the Board as unfounded or trivial, shall be heard and determined by the
3 Board in accordance with the provisions of Chapter 150B of the General Statutes.

4 (j) The Board shall establish and maintain a system of detailed records regarding
5 complaints of each licensee and the record shall include, for each licensee the date and
6 nature of each complaint, investigatory action taken by the Board, any findings by the
7 Board, and the disposition of the matter.

8 (k) The Board may reissue a license to any person, partnership, firm, or
9 corporation whose license has been revoked, or suspended provided five or more
10 members of the Board vote in favor of the reissuance for reasons the Board may deem
11 sufficient.

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

15 (l) In order to protect the public health, property, safety, and welfare, the Board
16 may establish classes of licenses based on design capacity, complexity, or project costs
17 of the wastewater system.

18 The Board shall establish rules for the licensing requirements of each class of
19 contractor.

20 (m) Examinations shall be formulated by the Board at such time and place as the
21 Board shall determine, but shall be held at least three times yearly; once each in the
22 coastal plains, piedmont, and mountain areas of North Carolina. Further, the Board
23 shall determine the cost required for examination.

24 (n) The Board may accept grants, contributions, requests, and gifts that shall be
25 kept in the same account as the funds deposited in accordance with this Article and the
26 laws of North Carolina.

27 (o) The Board shall adopt rules to implement this Article.

28 (p) The provisions of Chapter 93B of the General Statutes shall apply to the
29 Board.

30 **"§ 87-121. Custody and use of funds.**

31 The Secretary-Treasurer or the Board's designee shall deposit all funds payable to
32 the Board in financial institutions designated by the Board as official depositories. The
33 funds shall be deposited in the name of the Board and shall be used to pay all expenses
34 incurred by the Board in carrying out the provisions of this Article. The Board is
35 subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the
36 General Statutes.

37 **"§ 87-122. Expenses and fees.**

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

1 (b) All fees shall be established in rules adopted by the Board in amounts
2 sufficient to pay the cost of administration of this Article but in no event shall they
3 exceed an annual rate as follows:

4 (1) Application for license \$150.00

5 (2) License renewal 100.00

6 (3) Late renewal charge 25.00

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

8 **"§ 87-123. Licensing requirements for an on-site wastewater contractor.**

9 (a) The Board shall issue a license upon payment of the fees as fixed by the
10 Board to any applicant who has satisfactorily met all the requirements of this Article
11 and rules as administered by the Board. The licenses shall show the full name of the
12 registrant, shall give a serial number, shall be signed by the chair and Secretary-
13 Treasurer of the Board, and shall be embossed with the seal of the Board. Issuance of
14 the license by the Board shall be **prima facie** evidence that the person named therein is
15 entitled to all the rights and privileges of a licensed contractor while the license remains
16 in full force and effect.

17 (b) All licenses shall expire at intervals determined by the Board, unless licenses
18 are renewed. All applications for renewal shall be filed with the Board under the rules it
19 has adopted and shall be accompanied by a renewal fee prescribed by the Board. A
20 license which has expired for failure to renew may only be restored after application and
21 payment of the prescribed restoration fee provided the renewal applicant meets all the
22 other provisions of this Article and rules adopted by the Board.

23 (c) All license fees shall be paid in advance. Renewal applications and fees shall
24 be due 30 days prior to the license expiration date.

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

27 (e) The Board may give an oral exam to license an on-site wastewater system
28 contractor in accordance with the Board's rules.

29 **"§ 87-124. License renewal.**

30 (a) The Board shall adopt rules for the renewal of a license. The Board shall
31 require continuing education as a condition of license renewal. The Board shall provide
32 for the late renewal licensure upon payment of a late fee as set by the Board but late
33 renewal may not be granted more than 90 days after expiration of the license.

34 (b) Any person who has failed to renew the person's license for more than 90
35 days after expiration may have it reinstated by applying to the Board for reinstatement,
36 furnishing a statement and other Board-required information-related reason for failure to
37 apply for renewal prior to the deadline, and paying the required fee. The Board may
38 require evidence of competency to resume practice before reinstating the applicant's
39 license.

40 **"§ 87-125. Continuing education.**

41 (a) The Board shall determine the number of hours and subject matter of
42 continuing education required as a condition of license renewal. The Board may offer
43 continuing education.

1 (b) Upon request, the Board may grant approval to a continuing education
2 program or course upon finding that the program or course offers an educational
3 experience designed to enhance the practice of on-site wastewater systems' construction,
4 installation, or repairs.

5 (c) The Board shall maintain and distribute as appropriate, records of educational
6 course work successfully completed by each licensee, including the subject and the
7 number of hours of each course. The Board may establish and issue a certificate of
8 certification to any environmental health specialist without fee to the local health
9 department.

10 **"§ 87-126. Corporations; partnerships; persons doing business under trade name.**

11 A license may be issued in the name of a corporation, partnership, or designated
12 trade name, provided, one or more officers, general partners, or business owners are
13 licensed in accordance with the provisions of this Article and provided such persons are
14 in responsible charge of all work done for construction, installation or repairs of on-site
15 wastewater systems.

16 **"§ 87-127. Remedies.**

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

20 (1) A violation of this Article or of a rule of the Board.

21 (2) The use of any fraud or deceit in obtaining or renewing a license.

22 (3) Any act of gross negligence, incompetence, or misconduct in the
23 practice of or carrying on the business of constructing, installing, or
24 repairing wastewater systems.

25 (b) As an additional remedy, the Board may proceed in a superior court of
26 appropriate jurisdiction to enjoin and restrain any person, firm, partnership, corporation,
27 or business from violating the provisions of this Article. The Board shall not be
28 required to post bond in connection with obtaining either provisionally, preliminary, or
29 permanent injunctive relief pursuant to the North Carolina Rules for Civil Procedure.

30 (c) The Board may establish a system of arbitration to deal with certain classes of
31 complaints.

32 (d) A person is guilty of a misdemeanor punishable by a fine of not more than
33 five hundred dollars (\$500.00), by imprisonment of not more than six months, or both,
34 if the person:

35 (1) Engages in or offers to engage in, or carry on the business of installing
36 or repairing on-site wastewater systems as defined in this Article,
37 without first having been licensed under the provisions of this Article;

38 (2) Is a nonlicensed holder, firm, partnership, or corporation and gives any
39 false or forged evidence of any kind in obtaining a license;

40 (3) Falsely impersonates any other licensee;

41 (4) Attempts to use an expired or revoked license at anytime during a
42 period the Board has suspended or revoked the license; or

43 (5) Violates the provisions of this Article or the rules adopted by the
44 Board.

1 **"§ 87-128. Attorney General as advisor.**

2 The Attorney General or the Attorney General's designee shall act as legal advisor to
3 the Board.

4 **"§ 87-129. Article not applicable to certain persons.**

5 This Article shall not apply to a person, who constructs, installs, or repairs a
6 conventional septic tank system on land owned by that person provided the system is
7 intended solely for the use by that person after completion. Further, this Article shall
8 not include any operations now or hereafter under the jurisdiction, for the issuance of
9 licenses, by any Board or Commission pursuant to the laws of North Carolina."

10 Sec. 2. This act becomes effective January 1, 1994.