

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 978*

Environment and Natural Resources Committee Substitute Adopted 7/17/93

Short Title: On-Site Wastewater System Contractors.

(Public)

Sponsors:

Referred to: Finance.

June 7, 1993

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

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 **"§ 87-120. Short title.**

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

12 **"§ 87-121. Purposes.**

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

19 **"§ 87-122. Definitions.**

20 Unless a different meaning is required by the context, as used in this Article:

- 21 (1) 'Board' means the North Carolina On-Site Wastewater System
22 Contractors Licensing Board.

- 1 (2) 'Construct' or 'construction' means any work, including excavation, for
2 the assembly or building of an on-site wastewater system.
- 3 (3) 'Install' or 'installation' means building or setting into place an on-site
4 wastewater system or a component part of an on-site wastewater
5 system, but does not include delivery of a component part of an on-site
6 wastewater system to the place where the on-site wastewater system is
7 to be installed.
- 8 (4) 'On-site wastewater system' means any wastewater system permitted
9 under the provisions of Article 11 of Chapter 130A of the General
10 Statutes.
- 11 (5) 'On-site wastewater system contractor' or 'contractor' means any
12 person, firm, partnership, or corporation in this State, that, for valuable
13 consideration constructs, installs, or repairs, or offers to construct,
14 install, or repair an on-site wastewater system.
- 15 (6) 'Repair' means the extension, alteration, replacement, or relocation of
16 existing components of an on-site wastewater system.
- 17 (7) 'Responsible charge' means direct control and personal supervision of
18 the installation, construction, or repair of an on-site wastewater
19 system.

20 **"§ 87-123. License required.**

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

28 **"§ 87-124. Creation of the Board; membership; terms; vacancies; oath;**
29 **compensation.**

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

- 32 (1) One member who is engaged in the business of constructing,
33 installing, or repairing on-site wastewater systems, appointed by the
34 General Assembly upon the recommendation of the Speaker of the
35 House of Representatives.
- 36 (2) One member who is an environmental health specialist, appointed by
37 the General Assembly upon the recommendation of the Speaker of the
38 House of Representatives.
- 39 (3) One member who is a manufacturer or supplier of septic tanks or other
40 on-site wastewater system components, appointed by the General
41 Assembly upon the recommendation of the President Pro Tempore of
42 the Senate.
- 43 (4) One member who is engaged in the business of constructing,
44 installing, or repairing on-site wastewater systems, appointed by the

1 General Assembly upon the recommendation of the President Pro
2 Tempore of the Senate.

3 (5) One member who represents the public at large and who is not
4 associated with the on-site wastewater systems industry, appointed by
5 the Governor.

6 (6) One member who is engaged in the business of constructing,
7 installing, or repairing on-site wastewater systems, appointed by the
8 Governor.

9 (7) One member who is an employee of the Division of Environmental
10 Health of the Department of Environment, Health, and Natural
11 Resources, appointed by the Governor.

12 (b) Appointments to the Board to fill positions one through six shall be for a term
13 of four years and until a successor is appointed and duly qualified. The terms of
14 members appointed to fill positions one, three, and five shall expire on 30 June of years
15 evenly divisible by four. The terms of members appointed to fill positions two, four,
16 and six shall expire on 30 June of years that follow by two years those years that are
17 evenly divisible by four. A vacancy created by the resignation, death, or removal of a
18 member prior to the expiration of the term shall be filled by appointment by the
19 appointing authority for the balance of the unexpired term. A vacancy in positions one,
20 two, three, or four, including a vacancy resulting from a failure of the General
21 Assembly to make an appointment to that position, may be filled as provided in G.S.
22 120-122. The member who is appointed to fill position seven shall serve at the pleasure
23 of the Governor and for so long as the member is an employee of the Division of
24 Environmental Health.

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

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

31 **"§ 87-125. Powers and duties of the Board.**

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

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

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

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

42 (e) The Board may employ a full-time executive secretary and any other
43 personnel that it determines necessary to carry out the duties of the Board and the
44 provisions of this Article. The Board shall determine the compensation, duties, and

1 other terms and conditions of employment of its executive secretary and other
2 employees.

3 (f) The Board may request the Attorney General to seek an injunction to restrain
4 any person, firm, partnership, or corporation from violating the provisions of this
5 Article or rules adopted by the Board.

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

9 (h) As a means to determine whether each applicant for a license is qualified to
10 hold the class of license for which the applicant applies, the Board shall develop and
11 administer an appropriate examination for each class of license. The examination shall
12 test the applicant's technical and practical knowledge of principles of on-site wastewater
13 system design and operation, analysis of plans and specifications, principles and
14 practices of on-site wastewater system construction and installation, and other matters
15 related to the performance of on-site wastewater systems. The Board shall determine
16 the time and place at which license examinations shall be held, provided that an
17 examination shall be held at least three times each year; once each in the coastal plain,
18 piedmont, and mountain areas of the State.

19 (i) It shall be the responsibility and duty of the Board to conduct an investigation
20 concerning all matters within its jurisdiction as provided in this Article. The Board may
21 expend its funds for salaries, fees, and per diem expenses, in connection with the
22 investigation.

23 (j) The Board may revoke or suspend the license of any contractor licensed
24 under this Article who is found guilty of any fraud or deceit in obtaining a license, gross
25 negligence, incompetency, or misconduct in the practice of the contractor's profession,
26 or violation of any provisions of this Article. Any person may refer to the Board
27 charges of fraud, deceit, negligence, incompetency, or misconduct against any
28 contractor licensed under this Article. The charges shall be in writing and sworn to by
29 the complainant and submitted to the Board. The charges, unless dismissed without a
30 hearing by the Board as unfounded or trivial, shall be heard and determined by the
31 Board in accordance with the provisions of Chapter 150B of the General Statutes.

32 (k) The Board shall establish and maintain detailed records regarding complaints
33 concerning each licensee. The record shall include, for each licensee, the date and
34 nature of each complaint, investigatory action taken by the Board, any findings by the
35 Board, and the disposition of the matter.

36 (l) The Board shall immediately notify the local health department and the
37 Secretary of State of its findings in the case of revocation or suspension of a license or
38 the reissuance of a revoked license.

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

42 (n) The provisions of Chapter 93B of the General Statutes shall apply to the
43 Board.

44 **"§ 87-126. Custody and use of funds.**

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

7 **"§ 87-127. Expenses and fees.**

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

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

17 (1) Application for license \$150.00

18 (2) License renewal 100.00

19 (3) Late renewal charge 25.00

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

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

23 **"§ 87-128. Licensing requirements.**

24 (a) The Board shall adopt rules establishing requirements of each class of license.
25 An applicant shall not be required to hold or obtain an educational diploma or degree to
26 obtain a license. The Board shall issue a license in the appropriate class to any
27 applicant who satisfactorily meets all the requirements for that class of license and who
28 pays the fee established by the Board. The licenses shall show the full name of the
29 registrant, shall give a serial number, shall be signed by the Chair and Secretary-
30 Treasurer of the Board, and shall be embossed with the seal of the Board. Issuance of
31 the license by the Board shall be **prima facie** evidence that the person named therein is
32 entitled to all the rights and privileges of a licensed on-site wastewater system
33 contractor while the license remains in full force and effect.

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

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

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

1 (e) The Board may give an oral exam to license an on-site wastewater system
2 contractor in accordance with rules adopted by the Board.

3 **"§ 87-129. License renewal.**

4 The Board shall adopt rules for the renewal of a license prior to the expiration of the
5 license. A license that has expired may be renewed within 90 days of its expiration
6 upon payment of a late fee as set by the Board. If a license is not renewed within 90
7 days of its expiration, the license shall not be renewed, but the holder of the expired
8 license may apply for a new license.

9 **"§ 87-130. Continuing education.**

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

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

20 **"§ 87-131. Corporations; partnerships; persons doing business under trade name.**

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

26 **"§ 87-132. Remedies.**

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

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

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

32 (3) Any act of gross negligence, incompetence, or misconduct in the
33 practice of, or carrying on the business of, constructing, installing, or
34 repairing an on-site wastewater system.

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

1 Board shall not be required to post a bond in connection with an action to obtain an
2 injunction.

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

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

8 (1) Engages in or offers to engage in the construction, installation, or
9 repair of an on-site wastewater system if the person does not hold a
10 valid license of the appropriate class.

11 (2) Gives any false or forged evidence of any kind in obtaining a license.

12 (3) Falsely impersonates any other licensee.

13 **"§ 87-133. Attorney General as advisor.**

14 The Attorney General or an attorney designated by the Attorney General shall act as
15 legal advisor to the Board.

16 **"§ 87-134. Article not applicable to certain persons.**

17 This Article shall not apply to:

18 (1) A general contractor licensed under Article 1 of this Chapter or to a
19 plumbing contractor licensed under Article 2 of this Chapter.

20 (2) A person who constructs, installs, or repairs a conventional septic tank
21 system that is located entirely on land owned by that person and that is
22 intended solely for use by that person and members of that person's
23 immediate household."

24 Sec. 2. The On-Site Wastewater System Contractors Licensing Board shall
25 hold an initial meeting in the City of Raleigh within 30 days after all members of the
26 Board have been appointed. The member of the Board who is appointed to position
27 seven as specified in G.S. 87-124, as enacted by Section 1 of this act, shall serve as
28 temporary Chair of the Board for the purpose of convening the initial meeting of the
29 Board. The terms of initial appointments to the Board pursuant to G.S. 87-124, as
30 enacted by Section 1 of this act, to positions one, three, and five, as specified in G.S. 87-
31 124, shall expire 30 June 1996. The terms of initial appointments to the Board pursuant
32 to G.S. 87-124, as enacted by Section 1 of this act, to positions two, four, and six, as
33 specified in G.S. 87-124, shall expire 30 June 1998.

34 Sec. 3. This act becomes effective 1 October 1993, except that G.S. 87-123,
35 as enacted by Section 1 of this act, becomes effective 1 January 1996.