

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 410

Short Title: On-Site Wastewater System Contractors.

(Public)

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Sponsors: Senator Odom.

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Referred to: Agriculture/Environment/Natural Resources (Assessment Report G.S. 120-149)

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March 20, 1995

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 that  
15 constructs, installs, or repairs on-site wastewater systems in this State; 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.**

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

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

22 **"§ 87-123. License required.**

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

30 **"§ 87-124. Creation of the Board; membership; terms; vacancies; oath;**  
31 **compensation.**

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

- 34 (1) One member who is engaged in the business of constructing, installing,  
35 or repairing on-site wastewater systems, appointed by the President Pro  
36 Tempore of the Senate.
- 37 (2) One member who is an advocate for environmental concerns, appointed  
38 by the President Pro Tempore of the Senate.
- 39 (3) Two members who are engaged in the business of constructing,  
40 installing, or repairing on-site wastewater systems, appointed by the  
41 Speaker of the House of Representatives.
- 42 (4) One member who is a manufacturer or supplier of septic tanks or other  
43 on-site wastewater system components, appointed by the Governor.

1           (5) Two members who represent the public at large and who are not  
2           associated with the on-site wastewater systems industry, appointed by  
3           the Governor.

4           (b) An appointment to the Board to fill each of the positions set forth in  
5 subdivisions (1) through (6) of subsection (a) of this section shall be for a term of four  
6 years and until a successor is appointed and duly qualified. The terms of members  
7 appointed to fill positions set forth in subdivisions (1), (3), and (5) of subsection (a) of  
8 this section shall expire on 30 June of years evenly divisible by four. The terms of  
9 members appointed to fill positions set forth in subdivisions (2), (4), and (6) of subsection  
10 (a) of this section shall expire on 30 June of years that follow by two years those years  
11 that are evenly divisible by four. A vacancy created by the resignation, death, or removal  
12 of a member prior to the expiration of the term shall be filled by appointment by the  
13 appointing authority for the balance of the unexpired term. A vacancy in positions set  
14 forth in subdivision (1), (2), (3), or (4) of subsection (a) of this section, including a  
15 vacancy resulting from a failure of the General Assembly to make an appointment to that  
16 position, may be filled as provided in G.S. 120-122. The member who is appointed to fill  
17 the position set forth in subdivision (7) of subsection (a) of this section shall serve at the  
18 pleasure of the Governor and for so long as the member is an employee of the Division of  
19 Environmental Health.

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

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

26 **"§ 87-125. Powers and duties of the Board.**

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

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

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

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

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

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

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

4       (h) As a means to determine whether each applicant for a license is qualified to  
5 hold the class of license for which the applicant applies, the Board shall develop and  
6 administer appropriate written and oral examinations for each class of license. The  
7 examinations shall test the applicant's technical and practical knowledge of principles of  
8 on-site wastewater system design and operation, analysis of plans and specifications,  
9 principles and practices of on-site wastewater system construction and installation, and  
10 other matters related to the performance of on-site wastewater systems. The Board shall  
11 determine the time and place at which license examinations shall be held, provided that a  
12 written examination shall be held at least three times each year; once each in the coastal  
13 plain, Piedmont, and mountain areas of the State. The Board, in its discretion, shall  
14 determine which applicants will be administered the oral examination in lieu of the  
15 written examination; provided, however, any applicant who is unable to read shall be  
16 administered the oral examination in lieu of the written examination.

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

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

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

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

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

40       (n) The provisions of Chapter 93B of the General Statutes shall apply to the Board.  
41 **"§ 87-126. Custody and use of funds.**

42 The Secretary-Treasurer or some other person designated by the Board shall deposit  
43 all funds payable to the Board in financial institutions designated by the Board as official

1 depositories. Funds shall be deposited in the name of the Board and shall be used to pay  
2 all expenses incurred by the Board in carrying out the provisions of this Article. The  
3 Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of  
4 the General Statutes.

5 **"§ 87-127. Expenses and fees.**

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

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

15 (1) Application for license \$150.00

16 (2) License renewal 100.00

17 (3) Late renewal charge 25.00

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

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

21 **"§ 87-128. Licensing requirements.**

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

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

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

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

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

1 **"§ 87-129. License renewal.**

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

7 **"§ 87-130. Continuing education.**

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

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

17 **"§ 87-131. Corporations; partnerships; persons doing business under trade name.**

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

23 **"§ 87-132. Remedies.**

24 (a) The Board may, consistent with the provisions of Chapter 150B of the General  
25 Statutes, deny, suspend, or revoke a license of any person licensed under this 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 Article  
33 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 or  
38 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.

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

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

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

8 (3) Falsely impersonates any other licensee.

9 **"§ 87-133. Attorney General as advisor.**

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

12 **"§ 87-134. Article not applicable to certain persons.**

13 This Article shall not apply to:

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

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

20 Sec. 2. The On-Site Wastewater System Contractors Licensing Board shall  
21 hold an initial meeting in the City of Raleigh within 30 days after all members of the  
22 Board have been appointed. The member of the Board who is appointed to position  
23 seven as specified in G.S. 87-124, as enacted by Section 1 of this act, shall serve as  
24 temporary Chair of the Board for the purpose of convening the initial meeting of the  
25 Board. The terms of initial appointments to the Board pursuant to G.S. 87-124, as  
26 enacted by Section 1 of this act, to positions one, three, and five, as specified in G.S. 87-  
27 124, shall expire 30 June 1997. The terms of initial appointments to the Board pursuant  
28 to G.S. 87-124, as enacted by Section 1 of this act, to positions two, four, and six, as  
29 specified in G.S. 87-124, shall expire 30 June 1999.

30 Sec. 3. This act becomes effective 1 October 1995, except that G.S. 87-123, as  
31 enacted by Section 1 of this act, becomes effective 1 January 1999.