

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 600

Short Title: On-Site Wastewater System Contractors.

(Public)

Sponsors: Representatives Culp, Brawley; J. Brown, W, Brown, Carpenter, Dickson, Hill, H. Hunter, Justus, Mitchell, Nye, Sexton, Tallent, Weatherly, and Yongue.

Referred to: Business & Labor.

March 29, 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 (5) 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 (2) and (5) of subsection (a) of this
8 section shall expire on 30 June of years evenly divisible by four. The terms of members
9 appointed to fill positions set forth in subdivisions (1), (3), and (4) of subsection (a) of
10 this section shall expire on 30 June of years that follow by two years those years that are
11 evenly divisible by four. A vacancy created by the resignation, death, or removal of a
12 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), or (3) of subsection (a) of this section, including a vacancy
15 resulting from a failure of the General Assembly to make an appointment to that position,
16 may be filled as provided in G.S. 120-122.

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

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

23 **§ 87-125. Powers and duties of the Board.**

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (n) The provisions of Chapter 93B of the General Statutes shall apply to the Board.
38 **§ 87-126. Custody and use of funds.**

39 The Secretary-Treasurer or some other person designated by the Board shall deposit
40 all funds payable to the Board in financial institutions designated by the Board as official
41 depositories. Funds shall be deposited in the name of the Board and shall be used to pay
42 all expenses incurred by the Board in carrying out the provisions of this Article. The

1 Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of
2 the General Statutes.

3 **"§ 87-127. Expenses and fees.**

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

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

13 (1) Application for license \$150.00

14 (2) License renewal 100.00

15 (3) Late renewal charge 25.00

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

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

19 **"§ 87-128. Licensing requirements.**

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

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

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

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

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

42 **"§ 87-129. License renewal.**

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

6 **"§ 87-130. Continuing education.**

7 (a) The Board shall require continuing education as a condition of license renewal.
8 The Board shall determine the number of hours, up to a maximum of nine hours per year,
9 and the subject matter of continuing education required as a condition of license renewal.
10 The Board shall maintain records of continuing education courses successfully completed
11 by each licensee, including the subject and the number of hours 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 trade
18 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
20 responsible for all work done for construction, installation, or repair of on-site wastewater
21 systems.

22 **"§ 87-132. Remedies.**

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

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

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

41 (c) The Board may establish a voluntary arbitration procedure to resolve
42 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 a person who constructs, installs, or repairs a
14 conventional septic tank system that is located entirely on land owned by that person and
15 that is intended solely for use by that person and members of that person's immediate
16 household."

17 Sec. 2. The On-Site Wastewater System Contractors Licensing Board shall
18 hold an initial meeting in the City of Raleigh within 30 days after all members of the
19 Board have been appointed. The member of the Board who is appointed pursuant to G.S.
20 87-124(a)(1), as enacted by Section 1 of this act, shall serve as temporary Chair of the
21 Board for the purpose of convening the initial meeting of the Board. Notwithstanding the
22 provisions of G.S. 87-124(b), as enacted in Section 1 of this act, to the contrary, initial
23 appointments to the Board shall serve for terms to expire as follows: The terms of
24 members appointed pursuant to subdivisions (2) and (5) of G.S. 87-124(a), as enacted by
25 Section 1 of this act, shall expire June 30, 1997, and the terms of members appointed
26 pursuant to subdivisions (1), (3), and (4) of G.S. 87-124(a), as enacted by Section 1 of
27 this act, shall expire June 30, 1999.

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