

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1620*

Short Title: On-Site Wastewater System Contractors.

(Public)

Sponsors: Representatives Goodwin and Culp.

Referred to: Ways and Means.

May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE ON-SITE WASTEWATER SYSTEM CONTRACTORS
2 LICENSING BOARD, TO REQUIRE THAT ON-SITE WASTEWATER SYSTEM
3 CONTRACTORS BE LICENSED, TO ESTABLISH LICENSING
4 REQUIREMENTS FOR ON-SITE WASTEWATER SYSTEM CONTRACTORS,
5 AND TO CREATE REMEDIES FOR VIOLATIONS OF THE LICENSING
6 REQUIREMENTS AND OTHER VIOLATIONS, AS RECOMMENDED BY THE
7 ENVIRONMENTAL REVIEW COMMISSION.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. Article 7 of Chapter 143B of the General Statutes is amended by
11 adding a new Part to read:

12 “Part 9B. On-Site Wastewater System Contractors Licensing Board.

13 “§ 143B-301.20. Definitions.

14 The definitions in G.S. 87-122 apply in this Part.

15 “§ 143B-301.21. On-Site Wastewater System Contractors Licensing Board.

16 (a) Creation. – The On-Site Wastewater System Contractors Licensing Board is
17 created.

18 (b) Membership. – The Board shall consist of nine members:

19 (1) One member shall be engaged in the business of constructing, installing,
20 or repairing on-site wastewater systems and shall be appointed by the

- 1 General Assembly upon the recommendation of the Speaker of the
2 House of Representatives.
- 3 (2) One member shall be an environmental health specialist and shall be
4 appointed by the General Assembly upon the recommendation of the
5 Speaker of the House of Representatives.
- 6 (3) One member shall be a representative of the Cooperative Extension
7 Service and shall be appointed by the General Assembly upon the
8 recommendation of the Speaker of the House of Representatives.
- 9 (4) One member shall be a manufacturer or supplier of septic tanks or other
10 on-site wastewater system components and shall be appointed by the
11 General Assembly upon the request of the President Pro Tempore of the
12 Senate.
- 13 (5) One member shall be engaged in the business of constructing, installing,
14 or repairing on-site wastewater systems and shall be appointed by the
15 General Assembly upon the recommendation of the President Pro
16 Tempore of the Senate.
- 17 (6) One member shall be an operator of on-site wastewater systems in
18 North Carolina who is certified under Chapter 90A of the General
19 Statutes and shall be appointed by the President Pro Tempore of the
20 Senate.
- 21 (7) One member shall be engaged in the business of constructing, installing,
22 or repairing on-site wastewater systems and shall be appointed by the
23 Governor.
- 24 (8) One member shall be the Executive Vice-President of the North
25 Carolina Home Builders Association, Inc., or the Executive Vice-
26 President's designee.
- 27 (9) One member shall be an employee of the Division of Environmental
28 Health of the Department of Environment and Natural Resources.
- 29 (c) Terms. – The member serving under subdivision (9) of subsection (b) of this
30 section shall serve at the pleasure of the Governor. All appointments to the Board under
31 subdivisions (1) through (7) of subsection (b) of this section shall be for a term of four
32 years. The terms of members appointed to fill positions under subdivisions (1) and (2) of
33 subsection (b) of this section shall expire on 30 June of years evenly divisible by four.
34 The terms of members appointed to fill positions under subdivisions (3) and (4) of
35 subsection (b) of this section shall expire on 30 June of years that follow by one year
36 those years that are evenly divisible by four. The terms of members appointed to fill
37 positions under subdivisions (5) and (6) of subsection (b) of this section shall expire on
38 30 June of years that follow by two years those years that are evenly divisible by four.
39 The terms of members appointed to fill positions under subdivision (7) of subsection (b)
40 of this section shall expire on 30 June of years that precede by one year those years that
41 are evenly divisible by four. Members shall serve until a successor is appointed and duly
42 qualified. No member subject to a four-year term shall serve more than two consecutive
43 terms.

1 (d) Oath of Office. – Each member of the Board, before discharging the duties of
2 the Board, shall file with the Secretary of State a written oath to properly perform the
3 duties of a member of the Board and to uphold the Constitution of North Carolina and the
4 Constitution of the United States.

5 (e) Vacancies. – For a member with a four-year term, an appointment to fill a
6 vacancy on the Board created by the resignation, dismissal, disability, or death of a
7 member shall be for the balance of the unexpired term. A vacancy in an appointment,
8 including a vacancy resulting from a failure of the General Assembly to make an
9 appointment to that position, may be filled as provided in G.S. 120-122.

10 (f) Officers. – The Board shall elect a Chair and a Secretary-Treasurer, each to
11 serve a term of two years. The Board shall specify the duties of the Secretary-Treasurer
12 and may require a bond for the faithful performance of those duties.

13 (g) Quorum. – Five members shall constitute a quorum for the conduct of
14 business.

15 (h) Services. – The Board may employ a full-time Executive Secretary and any
16 other personnel that it determines necessary to carry out the duties of the Board and the
17 provisions of this Part and Article 9 of Chapter 87 of the General Statutes. The Board
18 shall determine the compensation, duties, and other terms and conditions of employment
19 of its Executive Secretary and other employees.

20 (i) Compensation. – Members of the Board shall be compensated and reimbursed
21 for expenses at the rates set forth in G.S. 93B-5.

22 **"§ 143B-301.22. Powers and duties of the Board.**

23 (a) Meetings. – The Board shall hold at least two regular meetings each year.
24 Special meetings may be held on call of the Chair. The Chair shall call a meeting upon
25 the request of any three members of the Board.

26 (b) Use of Seal. – The Board shall adopt and use a common seal.

27 (c) Adoption of Rules. – The Board shall adopt rules to govern its actions and to
28 implement the provisions of this Part and Article 9 of Chapter 87 of the General Statutes.

29 (d) Classes of Licenses. – The Board shall establish classes of licenses for on-site
30 wastewater system contractors based on the design capacity, complexity, projection costs,
31 or other differing features of approved on-site wastewater systems. A license to
32 construct, install, or repair a conventional system shall be a Class 1 license.

33 (e) Written Examinations. – The Board shall develop and administer written
34 examinations for each class or grade of license. The Board shall determine the time,
35 place, and frequency of examinations. The Board shall provide an examination at least
36 three times a year: one each in the coastal plain, Piedmont, and mountain areas of the
37 State.

38 (f) Investigations. – The Board shall conduct an investigation concerning all
39 matters within its jurisdiction under this Part and Article 9 of Chapter 87 of the General
40 Statutes. The Board may expend its funds for salaries, fees, and per diem expenses in
41 connection with the investigation.

42 (g) Consideration of Complaints. – A person may refer to the Board charges of
43 fraud, deceit, negligence, incompetency, or misconduct against any contractor licensed

1 under Article 9 of Chapter 87 of the General Statutes. The charges shall be in writing,
2 sworn to by the complainant, and submitted to the Board. These charges, unless
3 dismissed without a hearing by the Board as unfounded or trivial, shall be heard and
4 determined by the Board in accordance with the provisions of Chapter 150B of the
5 General Statutes.

6 (h) Records of Complaints. – The Board shall establish and maintain detailed
7 records regarding complaints concerning each licensee. The record shall include, for
8 each licensee, the date and nature of each complaint, investigatory action taken by the
9 Board, any findings by the Board, and the disposition of the matter.

10 (i) Notice of Findings. – The Board shall immediately notify the appropriate local
11 health departments and the Secretary of State of its findings in the case of revocation or
12 suspension of a license or the reissuance of a revoked license.

13 (j) Acceptance of Funds. – The Board may accept grants, contributions, bequests,
14 and gifts. Grants, contributions, bequests, and gifts shall be kept in the same account as
15 any other funds deposited under this Part and Article 9 of Chapter 87 of the General
16 Statutes.

17 (k) Applicability of Occupational Licensing Rules. – The Board is subject to the
18 provisions of Chapter 93B of the General Statutes.”

19 Section 2. Chapter 87 of the General Statutes is amended by adding a new
20 Article to read:

21 **“ARTICLE 9.**

22 **“ON-SITE WASTEWATER SYSTEM CONTRACTORS LICENSING.**

23
24 **“§ 87-120. Short title.**

25 This Article may be cited as the On-Site Wastewater System Contractors Licensing
26 Act.

27 **“§ 87-121. Purposes.**

28 The purposes of this Article are: to protect property, public health, and environmental
29 health through the regulation and education of any person, partnership, association, or
30 corporation in this State that constructs, installs, or repairs on-site wastewater systems; to
31 establish minimum standards regarding ethical conduct, responsibility, training,
32 experience, background, and continuing education for on-site wastewater system
33 contractors; and to provide appropriate enforcement procedures for rules adopted by the
34 Board pursuant to this Article or Part 9B of Article 7 of Chapter 143B of the General
35 Statutes.

36 **“§ 87-122. Definitions.**

37 As used in this Article:

38 (1) ‘Board’ means the On-Site Wastewater System Contractors Licensing
39 Board created in Part 9B of Article 7 of Chapter 143B of the General
40 Statutes.

41 (2) ‘Construct’ or ‘construction’ means any work, including excavation, that
42 acts to set into place any on-site wastewater system and its components.

- 1 (3) 'Conventional system' means an on-site wastewater system consisting of
2 only a septic tank with a gravity rock and pipe distribution system.
- 3 (4) 'Install' or 'installation' means any work that constructs on-site
4 wastewater components together to form an on-site wastewater system
5 at the jobsite.
- 6 (5) 'On-site wastewater system' means any wastewater system permitted
7 under the provisions of Article 11 of Chapter 130A of the General
8 Statutes.
- 9 (6) 'On-site wastewater system contractor' means any person, firm,
10 partnership, or corporation that for valuable consideration, constructs,
11 installs, or repairs, or offers to construct, install, or repair an on-site
12 wastewater system in North Carolina.
- 13 (7) 'Repair' means the extension, alteration, replacement, or relocation of
14 existing components of an on-site wastewater system.
- 15 (8) 'Responsible charge' means having direct control and personal
16 supervision of the installation, construction, or repair of an on-site
17 wastewater system.

18 **"§ 87-123. License required.**

19 Except as provided in G.S. 87-132, no person, partnership, association, or corporation
20 shall construct, install, or repair, or offer to construct, install, or repair an on-site
21 wastewater system in North Carolina without first obtaining a license under this Article.
22 No on-site wastewater system shall be approved by the Department of Environment and
23 Natural Resources or any agent of the Department unless the on-site wastewater system is
24 constructed, installed, or repaired under the responsible charge of an on-site wastewater
25 system contractor licensed under this Article.

26 **"§ 87-124. Custody and use of funds.**

27 The Secretary-Treasurer of the Board or other person designated by the Board shall
28 deposit all funds payable to the Board in financial institutions designated by the Board as
29 official depositories for the Board. Funds shall be deposited in the name of the Board
30 and shall be used to pay all expenses incurred by the Board to implement this Article or
31 Part 9B of Article 7 of Chapter 143B of the General Statutes. The Board is subject to the
32 oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General
33 Statutes.

34 **"§ 87-125. Expenses and fees.**

35 (a) All salaries, compensation, and expenses incurred or allowed for the purposes
36 of carrying out this Article or Part 9B of Article 7 of Chapter 143B of the General
37 Statutes shall be paid by the Board exclusively out of the funds received by the Board as
38 authorized by this Article or Part 9B of Article 7 of Chapter 143B of the General Statutes.
39 No salary, expense, or other obligations of the Board may be charged against the General
40 Fund. Neither the Board nor any of its officers or employees may incur any expense,
41 debt, or financial obligation binding upon the State.

42 (b) All fees shall be established by rules adopted by the Board. The Board shall
43 establish fees sufficient to pay the costs of administering this Article and Part 9B of

Article 7 of Chapter 143B of the General Statutes, but in no event shall the Board charge a fee at an annual rate in excess of the following:

- | | |
|--|--|
| (1) | Application _____ for license \$ 150.00. |
| (2) | License _____ renewal \$ 100.00. |
| (3) | Late renewal charge \$ 25.00. |
| (4) <u>Reinstatement of expired, revoked, or suspended license</u> | \$ 150.00. |
| (5) | <u>Grade-step certifications</u> \$ 50.00. |

(c) The Board may issue a license to any environmental health specialist while employed by a local health department without charging an initial fee or a reduced renewal fee.

"§ 87-126. Licensing requirements.

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

- (1) Files an application with the Board on a form prescribed by the Board.
- (2) Is at least 18 years of age.
- (3) Is of good moral character as shown by the affidavits of three persons not related to the applicant for whom the applicant provided septic tank contracting services as an employee of a septic tank contractor or the local health department.
- (4) Completes a training program approved by the Board for the class or grade of license for which the applicant is applying.
- (5) Passes an oral or written examination for the class or grade of license for which the applicant is applying. The examination must test the proficiency of the applicant in all of the following areas:
 - a. Principles of public and environmental health associated with on-site wastewater collection, treatment, and disposal.
 - b. Principles of construction and safety.
 - c. Technical and practical knowledge of on-site wastewater systems design and construction, knowledge of plans and specifications, principles of on-site wastewater system repairs, and other matters related to systems, construction, and performance.
 - d. Laws and rules related to the installation, construction, or repair of applicable on-site wastewater systems.

(6) Pays the applicable application fee set by the Board.

(b) An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a license. If an applicant meets all the conditions for licensure except for the passage of the Board examination, the applicant may take the examination on two

1 more occasions without having to file for a new application, pay an additional application
2 fee, or repeat the training program. If an applicant fails to pass the Board examination on
3 three successive occasions, the applicant must reapply to the Board, pay the application
4 fee, and repeat the training program in order to be eligible for reconsideration for a
5 license under this Article.

6 (c) The licenses issued by the Board under this Article shall show the full name of
7 the registrant; show the full name of the party of responsible charge, if different from the
8 registrant; contain a serial number; be signed by the Chair and Secretary-Treasurer of the
9 Board; and be embossed with the seal of the Board.

10 (d) Holding a valid license issued by the Board is prima facie evidence that the
11 person named in the license is entitled to all the rights and privileges of a licensed on-site
12 wastewater contractor at the class or grade level in which the license is issued.

13 (e) A license to replace a lost, destroyed, or mutilated license shall be issued
14 subject to the rules adopted by the Board and the payment of a fee adopted by rule by the
15 Board.

16 **"§ 87-127. License renewal.**

17 (a) All licenses shall expire at an interval to be determined by the Board, which
18 interval shall be at least one year. A license may be renewed prior to its expiration. To
19 renew a license, a licensee shall meet all of the following requirements:

20 (1) Submit an application for renewal on a form prescribed by the Board.

21 (2) Meet the continuing education requirements prescribed by the Board.

22 (3) Pay the license renewal fee set by the Board.

23 (b) A license that has expired may be renewed within 90 days of its expiration
24 upon payment of a late fee as set by the Board. If a license is not renewed within 90 days
25 of its expiration, the license shall not be renewed, and the holder of an expired license
26 may apply for a new license.

27 **"§ 87-128. Continuing education.**

28 (a) The Board shall require continuing education as a condition of license renewal.
29 The Board shall determine the number of hours of continuing education required, based
30 on both:

31 (1) The class of license applied for, not to exceed 12 hours per year.

32 (2) The subject matter of continuing education required for that class or
33 grade of license.

34 (b) The Board shall maintain records of continuing education coursework
35 successfully completed by each licensee, including the subject and number of hours of
36 each course.

37 (c) The Board may offer continuing education, or the Board may grant approval to
38 a continuing education program or course when the Board finds that the program or
39 course offers educational experience that will enhance the construction, installation, or
40 repair of on-site wastewater systems.

41 **"§ 87-129. Corporations; partnerships; persons doing business under trade name.**

42 A license may be issued in the name of a corporation, partnership, designated trade
43 name, or an individual doing business under that individual's name. The license shall be

1 issued to the entity in responsible charge. If the license is held by any legal entity other
2 than an individual, the license ceases to be in force for that individual once that
3 employment is discontinued.

4 **"§ 87-130. Remedies.**

5 (a) Consistent with the provisions of Chapter 150B of the General Statutes, the
6 Board may deny, suspend, or revoke a license of any party licensed under this Article for:

7 (1) A violation of this Article, Part 9B of Article 7 of Chapter 143B of the
8 General Statutes, or a rule of the Board.

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

10 (3) Any act of gross negligence, incompetence, or misconduct in the
11 practice of, or in carrying out, the business of constructing, installing, or
12 repairing an on-site wastewater system.

13 (b) The Board may request the Attorney General to seek an injunction to restrain
14 any person, firm, partnership, or corporation from violating the provisions of this Article,
15 Part 9B of Article 7 of Chapter 143B of the General Statutes, or rules adopted by the
16 Board. The Attorney General may bring an action for an injunction in the name of the
17 State in the superior court of any county in which the violation is occurring, in which the
18 violation resides, or in which the violator's principal place of business is located. In any
19 proceedings for an injunction, it is not necessary to allege or prove either that an adequate
20 remedy at law does not exist, or that substantial or irreparable damage would result from
21 the continued violation. Members of the Board shall not be personally liable for any act
22 or omission pursuant to this subsection. The Board shall not be required to post a bond in
23 connection with any action to obtain an injunction.

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

26 (d) A person who commits any one or more of the following offenses is guilty of a
27 Class 2 misdemeanor:

28 (1) Engages in or offers to engage in the construction, installation, or repair
29 of an on-site wastewater system without being licensed by the Board at
30 the appropriate class or grade of license.

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

32 (3) Falsely impersonates a licensee.

33 **"§ 87-131. Attorney General as advisor.**

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

36 **"§ 87-132. Exemptions to Article.**

37 This Article does not apply to general contractors licensed under Article 1 of this
38 Chapter. This Article does not apply to a person who constructs, installs, or repairs a
39 conventional system that is located entirely on land owned by that person and that is
40 intended solely for use by that person and members of that person's immediate
41 household."

1 Section 3. To provide for staggered terms, initial appointments under
2 subdivisions (1) through (7) of G.S. 143B-301.21(b) to the On-Site Wastewater System
3 Contractors Licensing Board, created by Section 1 of this act, shall be as follows:

4 (1) Initial appointments to members appointed under G.S. 143B-
5 301.21(b)(1) and G.S. 143B-301.21(b)(2) shall expire on 30 June 2004.

6 (2) Initial appointments to members appointed under G.S. 143B-
7 301.21(b)(3) and G.S. 143B-301.21(b)(4) shall expire on 30 June 2005.

8 (3) Initial appointments to members appointed under G.S. 143B-
9 301.21(b)(5) and G.S. 143B-301.21(b)(6) shall expire on 30 June 2002.

10 (4) Initial appointments to members appointed under G.S. 143B-
11 301.21(b)(7) shall expire on 30 June 2003.

12 Section 4. The On-Site Wastewater System Contractors Licensing Board shall
13 hold an initial meeting in the City of Raleigh within 30 days after all members of the
14 Board have been appointed. The member of the Board who is appointed under G.S. 87-
15 124(b)(9), as enacted by Section 1 of this act, shall serve as temporary Chair of the Board
16 for the purpose of convening the initial meeting of the Board.

17 Section 5. This act constitutes a recent act of the General Assembly within the
18 meaning of G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC
19 2C.0102(11), the On-Site Wastewater System Contractors Licensing Board may adopt
20 temporary rules to implement this act until 1 October 2001.

21 Section 6. Sections 1 through 6 of this act become effective when they become
22 law, except that G.S. 87-123, as enacted by Section 2 of this act, becomes effective 1
23 January 2002.