



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 628: Amend On-Site Wastewater/Environment Statutes.

2023-2024 General Assembly

Committee: House Local Government - Land Use, Planning and Development. If favorable, refer to Rules, Calendar, and Operations of the House **Date:** April 27, 2023

Introduced by: Reps. Brody, Dahle, N. Jackson, Cairns **Prepared by:** Kyle Evans

Analysis of: PCS to First Edition **Staff Attorney**

H628-CSBRf-12

OVERVIEW: *The Proposed Committee Substitute (PCS) to House Bill 628 would make various changes to the on-site wastewater statutes, make changes to the On-Site Wastewater Contractors and Inspectors Certification Board, direct the Building Code Council to create an on-site wastewater existing systems affidavit, allow for a certified wastewater contractor to perform certain electrical work, and prohibit forced sewer connections in certain situations.*

CURRENT LAW & BILL ANALYSIS:

ON-SITE WASTEWATER CHANGES

Section 1 would make the following changes to the statutes governing on-site wastewater systems:

- Require the Department of Health and Human Services (Department) to develop a common form for use by local health departments (LHD) for Improvement Permits for on-site wastewater systems.
- For an application for an Improvement Permit (IP), Construction Authorization (CA), or an IP/CA combined for certain LHD-permitted systems, change the required review to a completeness review and shorten the period for that review from 10 days to 5 days and provide that the review period begins when the applicant submits to the LHD the IP, CA, or IP/CA application, the permit fee, the common form developed by the Department, and the soil evaluation, signed and sealed plans or evaluations, as applicable.
- Provide that the licensed soil scientist or geologist conducting the soil evaluation required by G.S. 130A-335(a2), or the professional engineer or Authorized On-site Wastewater Evaluator (AOWE) providing signed and sealed plans or evaluations required by G.S. 130A-335(a5) may request that the LHD revoke or suspend the IP, CA, or IP/CA issued pursuant to that soil evaluation or signed and sealed plans or evaluations, for cause.
- Authorize LHDs to assess fees for the CA or IP/CA of up to 40% of the fee established for similar systems permitted by the LHD.
- Clarify the scope of site conditions with respect to a professional engineer or AOWE's existing authority to delay construction until the site conditions can be determined to include soil wetness, grading or landscaping that damages the soil evaluation, soil compaction, and landscape position.

Jeffrey Hudson
Director



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- Provide that proposed on-site wastewater systems submitted to the LHD for approval pursuant to the existing hybrid on-site wastewater permitting program do not need to comply with rules requiring State review for certain large and industrial process wastewater systems.
- Clarify that a "unit of local government" shall not prohibit or regulate by ordinance the use of off-site wastewater systems or other Department-approved systems when the proposed systems meet those requirements. Current law only prevents municipalities from prohibiting or regulating by ordinance such systems.
- Make various technical and conforming changes.

Section 2 would remove a requirement that the access device for a septic tank be visibly marked.

Section 3 would make the following changes to the Engineered Option Permit (EOP) on-site wastewater system approval process:

- Eliminate the completeness review for on-site wastewater systems permitted under the EOP process.
- Allow the owner of a proposed system to apply for a building permit upon submitting a complete Notice of Intent to Construct (NOI) to the LHD and allow the engineer to issue an Authorization to Operate (ATO).
- Eliminate the requirement that the LHD attend the post-construction conference.
- Eliminate a notarization requirement for the owner's receipt of the engineer's report.
- Shift when the fee for an EOP must be paid to the LHD from the end of the process to the beginning and cap the fee at \$35.
- Allow system ownership to transfer to a new owner with the consent of the engineer issuing the EOP.
- Allow the engineer to revoke an NOI or ATO issued by that engineer, provided that the engineer gives reason for the revocation to the system owner and the applicable licensed professionals.
- Allow the owner of an EOP system to apply for an IP/CA from an LHD or obtain an NOI to repair a malfunctioning EOP system.
- Eliminate a Department report on the EOP program.
- Make various technical and conforming changes.

Section 4 would make the following changes to the AOWE on-site wastewater system approval process:

- Eliminate the completeness review for on-site wastewater systems permitted under the AOWE process.
- Allow the owner of a proposed system to apply for a building permit upon submitting a complete NOI to the LHD and allow the AOWE to issue an ATO. Current law allows the owner to apply for a building permit upon a determination of completeness by the LHD.
- Remove the ability of the LHD to conduct site visits.
- Eliminate a notarization requirement for the owner's receipt of the engineer's report.
- Shift when the fee for an AOWE must be paid to the LHD from the end of the process to the beginning and cap the fee at \$35.

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- Allow system ownership to transfer to a new owner with the consent of the engineer issuing the EOP.
- Allow the AOWE to revoke an NOI or ATO issued by that AOWE, provided that the AOWE gives reason for the revocation to the system owner and the applicable licensed professionals.
- Allow the owner of an AOWE system to apply for an IP/CA from an LHD or obtain an NOI to repair a malfunctioning AOWE system.
- Move rulemaking authority for the implementation of the AOWE system approval process from the Commission for Public Health to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board (Board). This section would also require that rules adopted by the Board pursuant to this authority be at least as stringent as rules adopted by the Commission.
- Eliminate a Department report on the AOWE program.
- Make various technical and conforming changes.

Section 5 would provide that an AOWE may conduct any required verifications or inspections required to place into operation an on-site wastewater system. This section would clarify that the Department, the Department's agents, and the LHD would be discharged and released from any liability arising out of an on-site wastewater system installed and inspected in this manner.

Section 6 would prohibit the Commission from imposing any conditions or limitations on an Accepted system more restrictive than the conditions or limitations imposed on the system's Innovative designation or as otherwise approved by rule. Further, Accepted system approvals would be limited to the manufacturer who submitted the petition and received Accepted status and the Commission, Department, or local health department cannot condition, delay, or deny the approval based on the location of nitrification lines. The section also removes the Commission's authority to designate nonproprietary wastewater systems as Accepted without a manufacturer petition.

This section would be effective when it becomes law and would apply retroactively to any wastewater system approvals issued by the Commission or Department.

NC ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD CHANGES

The Board is a State licensing board that certifies individuals to construct, install, repair, or inspect on-site wastewater systems in the State, including certifying Authorized On-Site Wastewater Evaluators (AOWEs).

Section 7 would change the criteria for two appointments made by the House of Representatives to the Board, as follows:

- Currently, one appointment must be employed as an environmental health specialist and engaged primarily in the inspection and permitting of on-site wastewater systems. This section would change that requirement to a person registered as an environmental health specialist engaged primarily in the inspection of on-site wastewater systems.
- Currently, one appointment must be a licensed soil scientist with experience in soil and site evaluations for on-site wastewater systems. This section would change that requirement to an AOWE.

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This section would be effective when it becomes law and would apply to terms beginning on or after that date.

Section 8 would give the Board authority to adopt rules governing the AOWE permitting process set out in G.S. 130A-336.2.

DIRECT THE BUILDING CODE COUNCIL TO CREATE AN ON-SITE WASTEWATER EXISTING SYSTEM AFFIDAVIT

Section 9 would direct the Building Code Council to work with the Department of Insurance to create an on-site wastewater existing system inspection affidavit and would prohibit local governments from withholding building permits where the proposed permitted project does not increase the design daily flow or wastewater strength of the existing system and the property owner submits the affidavit. The affidavit would require the property owner to affirm that any modifications will meet local and State on-site wastewater setback requirements.

The Building Code would be directed to create and distribute the affidavit no later than October 1, 2023.

WASTEWATER ELECTRICAL CHANGES

Section 9 would allow a person who is a Board-certified on-site wastewater contractor to perform limited electrical work without being a licensed electrician when the contractor is wiring a wastewater pump to a control panel for a wastewater system installed by the contractor.

PROHIBIT FORCED SEWER CONNECTIONS IN CERTAIN SITUATIONS

Current law allows cities and counties to require property owners located in the local government's jurisdiction to connect to the local government's water and sewer lines.

Section 10(a) would provide that:

- A city cannot require a property owner to connect to a city's sewer system when:
 - The city has inadequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.
 - The costs of connection, including the costs of underground piping and connections to the dwelling or building, exceed the costs of installing an on-site wastewater system.
- A city cannot require a property owner to connect to a city's water system if adequate water pressure cannot be achieved using the same piping size as the meter provides to the owner's premises.

Section 10(b) would provide that a county may only require a property owner to connect to the county's sewer line if the county has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.