



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

2023-2024 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 21, 2023
Introduced by:	Reps. Brody, Dahle, N. Jackson, Cairns	Prepared by:	Kyle Evans
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *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, eliminate an optional building inspection for private water wells and allow the well contractor to cover exposed pipes once installation is complete, prohibit forced sewer connections in certain situations, and establish a registered environmental health associate certification.*

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.

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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. This fee would be applicable beginning September 1, 2023.
- 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. This fee would be applicable beginning September 1, 2023.

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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 provide that 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.

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

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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.

REPEAL OPTIONAL BUILDING INSPECTION FOR PRIVATE DRINKING WATER WELLS AND MODIFY PERMIT AUTHORIZATION

The North Carolina Well Construction Act charges the local health departments with administering a well construction program and enforcing the minimum well construction, permitting, inspection, repair, and testing requirements in the Act. The Act further provides that when a permit for a private drinking water well is issued the local health department shall notify the appropriate building inspector and the inspector has the option of inspecting the well prior to the final inspection by the local health department. Additionally, a permit for a private drinking water well includes authorization for piping and electrical work to be performed by the well contractor.

Section 9.5 would repeal the optional building inspector review, but would otherwise not change or eliminate any inspections conducted by the local health department. This section would also allow clarify the permit authorization with respect to water pipes and electrical wiring to allow the well contractor to cover a ditch used to run water pipes or electrical wiring as soon as the activities concerning the water pipes and electrical wiring are completed.

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.

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- 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.

ESTABLISH A REGISTERED ENVIRONMENTAL HEALTH ASSOCIATE CERTIFICATION
Article 4 of Chapter 90A of the General Statutes governs environmental health practice, and authorizes the Board of Environmental Health Specialist Examiners to issue certificates of registration authorizing people to carry out environmental health practice, including registered environmental health specialists and registered environmental health specialist interns.

Certification for Registered Environmental Health Associates

Section 10.1 would establish a certification for registered environmental health associates, who would be allowed to perform all of the following duties while working under the responsible charge of a registered environmental health specialist:

- Permitting and inspections of private water wells.
- Inspections of Category I food establishments, temporary food establishments, and limited food service establishments.
- Inspections of lodging establishments.
- Permitting and inspections of any Type II or Type III on-site wastewater systems, including system layouts and existing wastewater systems.
- Inspections of migrant housing.
- Inspections of private, public, and religious schools.
- Inspections of local confinement facilities.
- Inspections of residential care facilities.

This section would direct the Board of Environmental Health Specialist Examiners to issue a certificate of registration as a registered environmental health associate to any person who satisfactorily completes general and specialized training in environmental health approved by the Department of Health and Human Services, and graduates with an associate, bachelor's, or postgraduate degree either (i) from a program that is accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC), or (ii) having earned a minimum of 15 semester hours in the physical, biological, natural, life, or health sciences.

Modify Education and Experience Qualifications for Registered Environmental Health Specialists

Under current law, to become certified as a registered environmental health specialist or a registered environmental health specialist intern, an applicant must satisfy at least one of three separate education and experience qualifications.

This section would modify each of these three separate education and experience qualifications in the following manner:

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- Applicants who graduated with a bachelor's or postgraduate degree from an EHAC-accredited program would satisfy the education and experience qualification, and would no longer have to complete one or more years of field experience in environmental health practice before meeting the qualification.
- Applicants who graduated with a bachelor's or postgraduate degree in public health would satisfy the education and experience qualification upon completing one year of experience in the field of environmental health practice, rather than completing two years.
- Applicants who graduated with a bachelor's or postgraduate degree while earning 30 semester hours (or 45 quarter hours) of the physical, biological, natural, life, or health sciences would satisfy the education and experience qualification upon completing one year of experience in the field of environmental health practice, rather than completing two years.

Furthermore, this section would also establish a new option for satisfying the education and experience qualification for applicants who have worked five or more continuous years as a registered environmental health associate.

Limit Period of Certification for Registered Environmental Health Specialist Interns

Registered environmental health specialist interns are individuals who possess the necessary educational qualifications required for certification as a registered environmental health specialist but have not yet completed the experience and specialized training requirements. Under current law, the Board may only certify a registered environmental health specialist intern for not more than three years.

This section would decrease the maximum time someone can be certified as a registered environmental health specialist intern from three years to two years.

Subsection (a) of this section becomes effective May 1, 2024. The remainder of this section is effective when it becomes law.

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