



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

2023-2024 General Assembly

<b>Committee:</b>	<b>Date:</b>	December 1, 2023
<b>Introduced by:</b>	<b>Prepared by:</b>	Kyle Evans Staff Attorney
<b>Analysis of:</b>	S.L. 2023-90	

**OVERVIEW:** *S.L. 2023-90 does the following:*

- *Makes various changes to the on-site wastewater statutes.*
- *Modifies the On-Site Wastewater Contractors and Inspectors Certification Board.*
- *Directs the Building Code Council to create an on-site wastewater existing systems affidavit.*
- *Allows for a certified wastewater contractor to perform certain electrical work.*
- *Eliminates an optional building inspection for private water wells and allows the well contractor to cover exposed pipes once installation is complete.*
- *Prohibits forced sewer connections in certain situations.*
- *Establishes a registered environmental health associate certification.*

*This act has various effective dates. Please see the full summary for details.*

**CURRENT LAW & BILL ANALYSIS:**

**ON-SITE WASTEWATER CHANGES**

**Section 1** makes the following changes to the statutes governing on-site wastewater systems:

- Requires the Department of Health and Human Services (DHHS) to develop a common form for use by local health departments (LHD) for Improvement Permits (IP) for on-site wastewater systems.
- For an application for an IP, Construction Authorization (CA), or an IP/CA combined for certain LHD-permitted systems, changes the required review to a completeness review and shortens the period for that review from 10 days to 5 days, and provides 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 DHHS, and the soil evaluation, and signed and sealed plans or evaluations, as applicable.
- Provides 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) can 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.
- Authorizes 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.

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- Clarifies 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.
- Provides 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.
- Clarifies that a "unit of local government" cannot prohibit or regulate by ordinance the use of off-site wastewater systems or other DHHS-approved systems when the proposed systems meet those requirements. Prior law only prevented municipalities from prohibiting or regulating by ordinance such systems.
- Makes various technical and conforming changes.

**Section 2** removes a requirement that the access device for a septic tank be visibly marked.

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

- Eliminates the completeness review for on-site wastewater systems permitted under the EOP process.
- Allows 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 allows the engineer to issue an Authorization to Operate (ATO).
- Eliminates the requirement that the LHD attend the post-construction conference.
- Eliminates a notarization requirement for the owner's receipt of the engineer's report.
- Shifts when the fee for an EOP must be paid to the LHD from the end of the process to the beginning, and caps the fee at \$35. This fee became applicable on September 1, 2023.
- Allows system ownership to transfer to a new owner with the consent of the engineer issuing the EOP.
- Allows 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.
- Allows 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.
- Eliminates a DHHS report on the EOP program.
- Makes various technical and conforming changes.

**Section 4** makes the following changes to the AOWE on-site wastewater system approval process:

- Eliminates the completeness review for on-site wastewater systems permitted under the AOWE process.
- Allows 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. Prior law allowed the owner to apply for a building permit upon a determination of completeness by the LHD.
- Removes the ability of the LHD to conduct site visits.

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- Eliminates a notarization requirement for the owner's receipt of the engineer's report.
- Shifts when the fee for an AOWE must be paid to the LHD from the end of the process to the beginning, and caps the fee at \$35. This fee became applicable on September 1, 2023.
- Allows system ownership to transfer to a new owner with the consent of the engineer issuing the EOP.
- Allows 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.
- Allows 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.
- Moves rulemaking authority for the implementation of the AOWE system approval process from the Commission for Public Health (Commission) to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board (Board). This section also requires that rules adopted by the Board pursuant to this authority be at least as stringent as rules adopted by the Commission.
- Eliminates a DHHS report on the AOWE program.
- Makes various technical and conforming changes.

**Section 5** provides that an AOWE can conduct any required verifications or inspections required to place into operation an on-site wastewater system. This section clarifies that DHHS, DHHS 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** provides that Accepted system approvals would be limited to the manufacturer who submitted the petition and received Accepted status and the Commission, DHHS, 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 became effective July 10, 2023, and applies retroactively to any wastewater system approvals issued by the Commission or DHHS.

## **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 AOWEs.

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

- Previously, one appointment required employment as an environmental health specialist and engaged primarily in the inspection and permitting of on-site wastewater systems. This section changes that appointment so that it's held by a person registered as an environmental health specialist engaged primarily in the inspection of on-site wastewater systems.
- Previously, one appointment required licensure as a licensed soil scientist with experience in soil and site evaluations for on-site wastewater systems. This section changes that appointment so that it's held by an AOWE.

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This section became effective July 10, 2023, and applies to terms beginning on or after that date.

**Section 8** gives 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 8.1** directs the Building Code Council to work with the Department of Insurance to create an on-site wastewater existing system inspection affidavit and prohibits 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 requires the property owner to affirm that any modifications will meet local and State on-site wastewater setback requirements.

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

## **WASTEWATER ELECTRICAL CHANGES**

**Section 9** allows 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 (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 LHD must notify the appropriate building inspector and (prior to the enactment of S.L. 2023-90) the inspector has the option of inspecting the well prior to the final inspection by the LHD. 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** repeals the optional building inspector review, but otherwise does not change or eliminate any inspections conducted by the LHD. This section also clarifies 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**

Generally, cities and counties can require property owners located in the local government's jurisdiction to connect to the local government's water and sewer lines.

**Section 10(a)** provides 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.

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- 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)** provides that a county can 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** establishes a certification for registered environmental health associates, who are 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 directs 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 DHHS, 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 prior 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 modifies each of these three separate education and experience qualifications in the following manner:

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- Applicants who graduate with a bachelor's or postgraduate degree from an EHAC-accredited program satisfy the education and experience qualification, and no longer have to complete one or more years of field experience in environmental health practice before meeting the qualification.
- Applicants who graduate with a bachelor's or postgraduate degree in public health 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 graduate 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 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 also establishes 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 prior law, the Board could only certify a registered environmental health specialist intern for not more than three years.

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

## Require Continuing Education for Registered Environmental Health Associates and Allow Advertisement as a Registered Environmental Health Associate

Registered environmental health specialists and specialist interns are required to complete continuing education as specified by the Board in order to renew their certifications and can advertise themselves by appending the letters "REHS" or "REHSI" to their name, as appropriate.

This section subjects registered environmental health associates to the same continuing education requirements and allows them to append the letters "RESHA" to their name.

Subsections (a) and (b) of this section become effective May 1, 2024. The remainder of this section became effective July 10, 2023.

## **WASTEWATER APPROVAL AUTHORITY TECHNICAL CORRECTION**

**Section 10.2** makes a technical correction to G.S. 130A-343(h), which was amended by Section 17(a) of S.L. 2023-63 and Section 6(a) of this act.

**EFFECTIVE DATE:** Except as otherwise provided, this act became effective July 10, 2023.