

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1541

Introduced by

Representatives Koppelman, K. Anderson, Grueneich, Hagert, Nelson, Monson, Satrom,
Weisz

Senators Magrum, Myrdal, Klein, Thomas

1 A BILL for an Act to create and enact chapter 23.1-17 of the North Dakota Century Code,
2 relating to ~~septic systems and the environmental quality advisory committee~~ onsite wastewater
3 treatment systems; to amend and reenact sections 23-35-02, and 23-35-08, ~~23.1-01-03, and~~
4 ~~23.1-17-01~~ of the North Dakota Century Code, relating to the powers and duties of ~~the the~~
5 ~~department of environmental quality, boards of health, and~~ public health units and boards of
6 health; to repeal sections 23-35-02.2 and 23-35-02.3 of the North Dakota Century Code,
7 relating to the onsite wastewater recycling technical committee; to provide for a legislative
8 management report; to provide a penalty; and to provide an appropriation; ~~to provide for a~~
9 ~~transfer; and to provide an effective date.~~

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 **SECTION 1. AMENDMENT.** Section 23-35-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23-35-02. Public health units - Core functions.**

- 14 1. All land in the state must be in a public health unit.
- 15 2. At a minimum, a public health unit shall provide the following core functions:
- 16 a. Communicable disease control, which must include:
- 17 (1) Conducting of disease surveillance for the purpose of preventing and
- 18 controlling communicable disease, with assistance from the department.
- 19 (2) Assurance of the availability of community-based programs to provide
- 20 communicable disease prevention and control services.

- 1 (3) Recognition, identification, and response to a communicable disease event,
2 in collaboration with the department.
- 3 b. Chronic disease and injury prevention, which must include conducting programs
4 to reduce the burden of chronic disease and injury through policy, system, and
5 environmental change approach; prevention screening; and education.
- 6 c. Environmental public health, which must include:
- 7 (1) Prevention of environmental hazards by the provision of information and
8 education to facility operators and managers and to community members.
- 9 (2) Assurance of the availability of environmental health services to prevent and
10 respond to community and residential environmental hazards.
- 11 (3) Permitting and inspections of ~~septic water~~onsite wastewater treatment
12 systems in accordance with chapter 23.1-17. A public health unit shall
13 conduct a required in-person or virtual inspection of an onsite wastewater
14 treatment system within one business day of receiving the request for the
15 inspection. A public health unit may enter a cooperative agreement with a
16 county or city for the permitting and inspection of ~~septic~~onsite wastewater
17 treatment systems within the boundaries of the county or city. The
18 agreement may be terminated as provided in the agreement, by joint action
19 of all parties, or by an individual party no less than one year after providing
20 written notice to the other party.
- 21 d. Maternal, child, and family health, which must include:
- 22 (1) Assessment and monitoring of maternal and child health status to identify
23 and address problems.
- 24 (2) Implementation of programs to promote the health of women, children, and
25 youth, and their families, through policy, system, and environmental change
26 approaches; prevention screenings; and education.
- 27 e. Access to clinical care, which must include:
- 28 (1) Collaboration with health care system partners to foster access to clinical
29 care.
- 30 (2) Facilitation of linkages and referrals for appropriate clinical care, services,
31 and resources.

1 **SECTION 2. AMENDMENT.** Section 23-35-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23-35-08. Boards of health - Powers and duties.**

4 Except when in conflict with a local ordinance or a civil service rule within a board of
5 health's jurisdiction, or a tribal code, ordinance, or policy, each board of health:

- 6 1. Shall keep records and make reports required by the department.
- 7 2. Shall prepare and submit a public health unit budget.
- 8 3. Shall audit, allow, and certify for payment expenses incurred by a board of health in
9 carrying into effect this chapter.
- 10 4. May accept and expend any gift, grant, donation, or other contribution offered to aid in
11 the work of the board of health or public health unit.
- 12 5. May make rules regarding any nuisance, source of filth, and any cause of sickness
13 which are necessary for public health and safety, except for rules regarding the
14 licensing of ~~septic~~onsite wastewater system installers.
- 15 6. May establish by rule a schedule of reasonable fees that may be charged for services
16 rendered. Services may not be withheld due to an inability to pay any fees established
17 under this subsection. If a tribal board of health establishes fees for services rendered,
18 the fees may not exceed the highest corresponding fee of any of the public health
19 units that border the tribal public health unit.
- 20 7. May make rules in a health district or county public health department, as the case
21 may be, and in the case of a city public health department may recommend to the
22 city's governing body ordinances for the protection of public health and safety.
- 23 8. May adopt confinement, decontamination, and sanitary measures in compliance with
24 chapter 23-07.6 which are necessary when an infectious or contagious disease exists.
- 25 9. May make and enforce an order in a local matter if an emergency exists.
- 26 10. May inquire into any nuisance, source of filth, or cause of sickness.
- 27 11. Except in the case of an emergency, may conduct a search or seize material located
28 on private property to ascertain the condition of the property as the condition relates to
29 public health and safety as authorized by an administrative search warrant issued
30 under chapter 29-29.1.

- 1 12. May abate or remove any nuisance, source of filth, or cause of sickness when
- 2 necessary to protect the public health and safety.
- 3 13. May supervise any matter relating to preservation of life and health of individuals,
- 4 including the supervision of any water supply and sewage system.
- 5 14. May isolate, kill, or remove any animal affected with a contagious or infectious disease
- 6 if the animal poses a material risk to human health and safety.
- 7 15. Shall appoint a local health officer.
- 8 16. May employ any person necessary to effectuate board rules and this chapter.
- 9 17. If a public health unit is served by a part-time local health officer, the board of health
- 10 may appoint an executive director. An executive director is subject to removal for
- 11 cause by the board of health. The board of health may assign to the executive director
- 12 the duties of the local health officer, and the executive director shall perform these
- 13 duties under the direction of the local health officer.
- 14 18. May contract with any person to provide the services necessary to carry out the
- 15 purposes of the board of health.
- 16 19. Shall designate the location of a local health officer's office and shall furnish the office
- 17 with necessary equipment.
- 18 20. May provide for personnel the board of health considers necessary.
- 19 21. Shall set the salary of the local health officer, the executive director, and any assistant
- 20 local health officer and shall set the compensation of any other public health unit
- 21 personnel.
- 22 22. Shall pay for necessary travel of the local health officer, the local health officer's
- 23 assistants, and other personnel in the manner and to the extent determined by the
- 24 board.

25 — **SECTION 3. AMENDMENT.** ~~Section 23.1-01-03 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 — **23.1-01-03. Director -- Powers and duties.**

28 — ~~The director of the department of environmental quality shall:~~

29 — ~~1. Enforce all rules adopted by the department;~~

30 — ~~2. Hire employees as necessary to carry out the duties of the department and director;~~

31 — ~~3. Organize the department in the most efficient and effective manner;~~

- ~~4. Maintain, in conjunction with the department of health and human services, a laboratory to carry out the necessary tests and examinations for purposes of this title, and establish a fee schedule for the tests and examinations;~~
- ~~5. Issue bulletins, news releases, or reports as necessary to inform the public of environmental hazards;~~
- ~~6. Establish rules necessary for maintaining sanitation, including rules for approving plans for water works and sewage systems;~~
- ~~7. Maintain a central environmental laboratory and, if necessary, branch laboratories for the standard function of diagnostic, sanitary, and chemical examinations; and~~
- ~~8. AnyProvide optional training and educational opportunities to municipalities, local health boards, and septic contractors; and~~
- ~~9. Undertake any other action, including the collection and distribution of environmental quality data, necessary and appropriate for the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.~~

SECTION 3. Chapter 23.1-17 of the North Dakota Century Code is created and enacted as follows:

23.1-17-01. Definitions.

For the purpose of this chapter:

1. "Department" means the department of environmental quality.
2. "Install" means to place or replace a part of an onsite wastewater treatment system, whether new or existing, to make the wastewater treatment system ready for use.
3. "License" means the authorization by the department for an individual to engage in the business of installation of an onsite wastewater treatment system.
4. "Onsite wastewater treatment system" means a wastewater treatment system or part thereof, serving a dwelling, building, or group thereof, which uses soil treatment and disposal, and which is commonly known as a septic system.
5. "Permit" means the authorization by a local public health unit or other political subdivision for the installation of an onsite wastewater treatment system based on the specific site and rules adopted under this title.

23.1-17-0123.1-17-02. SepticOnsite wastewater treatment systems - Authority.

1. Notwithstanding any other provisions of law, the department ~~of environmental quality~~ has the exclusive authority to adopt rules regarding licensing, permitting, and inspections of ~~septic~~onsite wastewater treatment systems.
2. The department ~~of environmental quality~~ shall provide assistance and guidance to municipalities and local public health ~~boards~~units in all matters related to ~~septic~~onsite wastewater treatment systems.
3. An ordinance enacted or adopted by a county or city pursuant to a home rule charter, or enacted or adopted by any other political subdivision, which is in conflict with a rule adopted under this section is void.

~~23.1-17-02. Environmental quality advisory committee - Members - Appointment - Duties.~~

- ~~1. The environmental quality advisory committee consists of:~~
 - ~~a. The director of the department of environmental quality or the director's designee;~~
 - ~~b. Three representatives from local public health units, appointed by the governor;~~
~~and~~
 - ~~c. Three individuals who must be licensed septic installers, appointed by the governor from a list of names forwarded by a professional onsite wastewater recycling association.~~
- ~~2. An appointed member must have been a resident of the state for at least five years immediately preceding appointment to the committee.~~
- ~~3. The director or the director's designee shall serve as chairman of the committee and is an ex officio, nonvoting member of the committee.~~
- ~~4. The committee shall:~~
 - ~~a. Recommend standards and procedures relating to licensing, permitting, and inspections of septic systems;~~

- ~~b. Create and recommend a statewide technical guide for septic systems.~~

~~23.1-17-03. Environmental quality advisory committee - Terms of office - Vacancies.~~

- ~~Each appointed member of the committee shall qualify by taking the oath of office required of civil officers and shall hold office for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members must be arranged so no more than~~

~~two terms expire on June thirtieth of each year. To accomplish the staggering, the initial term of appointees may be for less than four years. The governor shall fill a vacancy on the committee by appointment from the class of members to which the member belonged.~~

~~**23.1-17-04. Inspections, repairs, and replacements.**~~

~~1. A local public health unit shall conduct a required in-person or virtual inspection of a septic system within one business day of receiving a request to inspect.~~

~~2. A local public health unit may not require the replacement of a repairable septic system within ten years of receipt of notice of noncompliance or before the completion of the sale of the property, whichever is sooner.~~

~~3. A local public health unit may not require the replacement of a functional septic system.~~

23.1-17-03. Licensing.

1. An individual may not engage in the business of installing an onsite wastewater treatment system unless licensed. To remain licensed in good standing, an installer shall comply with this chapter and any rules adopted under this title.

2. An individual is exempt from the licensing requirements of this chapter if the individual is installing an onsite wastewater treatment system on the individual's premises for the individual's use.

3. The department shall establish rules for the issuance, expiration, and renewal of licenses.

4. The department may revoke or suspend a license issued under this chapter if:

a. The licensed individual has practiced fraud or deception in obtaining the license or in the individual's performance of a licensed activity;

b. Reasonable care, judgment, or the application of the individual's knowledge or ability was not used in the performance of the individual's duties; or

c. The individual violates a state or federal environmental law, rule, standard, or permit when performing a licensed activity.

5. A license may not be revoked or suspended except after a hearing before the director of the department or the director's designated representative. If a license is suspended or revoked, a new application for certification may be considered by the department only after the conditions causing the suspension or revocation have been corrected.

1 and satisfactory evidence of this fact has been submitted to the department. A new
2 license may be granted by the department.

3 **23.1-17-04. Standards for onsite wastewater treatment systems, installation, and**
4 **inspection.**

5 1. The department shall establish rules relating to the permitting for onsite wastewater
6 treatment systems.

7 2. The department shall prescribe by rule a process for obtaining variances for existing
8 onsite wastewater treatment systems that are nonconforming or nonfunctional. The
9 process must consider impacts to the environment, impacts to public health, the cost
10 of compliance, and the least restrictive means of service.

11 3. Onsite wastewater treatment system installation and inspection must comply with the
12 rules adopted under this title.

13 **23.1-17-05. Appeal to the department.**

14 1. An action of a political subdivision denying, modifying, or revoking a permit to install an
15 onsite wastewater treatment system may be appealed to the department by petition for
16 review. The appeal must be filed with the department within ten days of receiving
17 notice of the denial, modification, or revocation.

18 2. Upon receipt of the petition, the department shall review the appealed decision and if it
19 appears the permit was not issued or the permit was improperly modified or revoked in
20 accordance with the provisions of this title and rules adopted under this chapter, the
21 department shall provide its findings and recommendations to the political subdivision,
22 the licensed installer, and the owner of the property where the proposed onsite
23 wastewater treatment system is located.

24 **23.1-17-06. Fees.**

25 The department by rule may provide for the payment and collection of reasonable fees for
26 the issuance of licenses for onsite wastewater system installers. The license fee must be based
27 on the anticipated cost of filing and processing the application, taking action on the requested
28 license, and conducting an oversight program to determine compliance or noncompliance with
29 the license. Any moneys collected from licensing fees must be deposited in the department
30 operating fund in the state treasury and any expenditure from the fund is subject to
31 appropriation by the legislative assembly.

23.1-17-07. Enforcement - Penalty.

1. An individual who violates a provision of this chapter or any rule, standard, order, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per violation.
2. An individual who willfully makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, or any rule, order, limitation, or other applicable requirement implementing this chapter, or that falsifies, tampers with, or willfully renders inaccurate any monitoring device or sample, is subject to a civil penalty not to exceed five thousand dollars per violation.

23.1-17-08. Administrative procedure and judicial review.

1. A proceeding under this chapter to adopt or modify a rule relating to licensing an individual for the installation or service of an onsite wastewater treatment system, or for determining compliance with rules of the department, must be conducted in accordance with the provision of chapter 28-32.
2. An appeal of a decision issued under subsection 1 must be conducted in accordance with the provisions of chapter 28-32.

~~— **SECTION 5. AMENDMENT.** Section 23.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**23.1-17-01. Septic systems - Authority.**~~

- ~~1. Notwithstanding any other provisions of law, the department of environmental quality, with majority approval of the environmental quality advisory committee, has the exclusive authority to adopt rules regarding licensing, permitting, and inspections of septic systems.~~
- ~~2. The department of environmental quality shall provide assistance and guidance to municipalities and local health boards in all matters related to septic systems.~~
- ~~3. An ordinance enacted or adopted by a county or city pursuant to a home rule charter, or enacted or adopted by any other political subdivision, which is in conflict with a rule adopted under this section is void.~~

SECTION 4. REPEAL. Sections 23-35-02.2 and 23-35-02.3 of the North Dakota Century Code are repealed.

1 **SECTION 5. APPROPRIATION - DEPARTMENT OF ENVIRONMENTAL QUALITY -**
2 ~~**SEPTIC**~~**ONSITE WASTEWATER TREATMENT SYSTEMS**~~**--ONE-TIME FUNDING - REPORT**~~
3 **TO LEGISLATIVE MANAGEMENT.** There is appropriated out of any moneys in the general
4 fund in the state treasury, not otherwise appropriated, the sum of \$99,500, or so much of the
5 sum as may be necessary, to the department of environmental quality for the purpose of the
6 regulation of ~~septic tanks and septic~~onsite wastewater treatment systems, for the biennium
7 beginning July 1, 2025, and ending June 30, 2027. ~~The funding provided in this section is~~
8 ~~considered a one-time funding item~~Before August 1, 2026, the department shall report to
9 legislative management on the use of the funds appropriated under this section.
10 ~~—SECTION 8. TRANSFER -- FUNDS UNDER THE CONTROL OF THE STATE BOARD OF~~
11 ~~PLUMBING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY -- SEPTIC SYSTEMS.~~
12 ~~—The state board of plumbing shall transfer any remaining funds at the end of the biennium,~~
13 ~~from the state plumbing board fund relating to sewer and water contractor fees, to the~~
14 ~~department of environmental quality operating fund for the purpose of the regulation of septic~~
15 ~~tanks and septic systems.~~
16 ~~—SECTION 9. EFFECTIVE DATE. Section 5 of this Act becomes effective on January 1,~~
17 ~~2026.~~