

**March 15, 2023**

**House Industry, Business and Labor Committee  
Senate Bill 2253**

Good afternoon Chairman Louser and Members of the House Industry, Business and Labor Committee:

My name is Tom Schimelfenig. I've been in the onsite wastewater industry for 45 years, and I've been licensed by the N.D. State Plumbing Board for 35 years.

I also currently serve as chairman of the Onsite Wastewater Technical Review Committee (OWRTC), established in N.D. Century Code during the 2021 legislative session.

As originally drafted, SB 2253 puts in place a uniform statewide code for the design, installation, permitting and inspection of onsite wastewater systems and establishes a licensing board to regulate the industry into the future and ensure compliance with the statewide uniform code.

Although I facilitated SB 2253, I cannot support the bill as it stands today. Amendments were made by the Senate Committee that we do not support, particularly the make-up of the licensing board.

Before I go into those details, I want to provide some background information on what has transpired over the past four years and how we got to this point.

In 2019, licensed onsite wastewater installers in North Dakota brought forth Senate Bill 2241, which authorized a study to determine the best program for developing a unified code and licensing board for onsite wastewater systems.

We completed the study during the interim, and as a result introduced House Bill 1183 in the 2021 Legislative Session establishing the Onsite Wastewater Technical Review Committee (OWRTC), which I currently chair.

Throughout the past year, the OWRTC has been tasked with the following:

- Creating a statewide technical guide for onsite wastewater recycling treatment technologies and sewage distribution technologies.
- Recommending standards and procedures for issuing an installer license.
- Recommending continuing education requirements for installer license renewal.
- Recommending reasonable fees for issuing or renewing an installer license.

SB 2253 is a culmination of those efforts. It puts in place a uniform statewide code and clearly defines how professionals will be licensed and how their work will be evaluated.

Public health is responsible for issuing permits and inspecting newly-installed systems.

Licensed contractors are responsible for designing and installing systems that meet the new uniform code, as well as identifying solutions for repair and expansion of existing systems.

SB 2253 also establishes an onsite wastewater board, following a process and model utilized by other industries in the state for decades.

For example, the State Plumbing Board is led by licensed plumbers. The board is made up of two licensed plumbers, an engineer, a member of the Department of Environmental Quality, and a public citizen.

The State Electrical Board is led by licensed electricians. The board is made up of three licensed electricians, an engineer and a member of the public.

The North Dakota Board of Water Well Contractors is made up of water well contractors, a member of DEQ, a pump and pitless unit contractor, a geothermal well driller, and a public citizen.

In 1987, onsite wastewater contractors were licensed through the State Plumbing Board, and the board regulated the installation of centralized systems in municipal areas, both water and sewer.

Mr. Chairman and members of the committee: I ask you, have we had any problems with any of these industries and the way they are currently regulated? The answer is no. If we did, someone would be introducing a bill to have the make-up of the problematic board changed.

Therefore, we believe the onsite wastewater industry can likewise be effectively regulated by licensed veteran professionals with decades of experience, with input from public health and DEQ.

To that end, I recommend that SB 2253 be amended as follows:

Under Section 4 Board Appointment, #2 "Beginning August 1, 2024, the governor shall replace the members of the board with one representative of a public health unit who is not an installer, and three licensees, all of whom must be actively practicing installers. The director of the department of environmental quality or the director's designee shall serve as an ex-officio member."

As the bill stands currently, the licensing board would have eight members, which would not only be more expensive to operate than the five-member board but also not have a tie-breaking vote due to its even number of members. I don't think this is in the best interest of the industry or the citizens of North Dakota.

Again, unless the amendment to the licensing board make-up is changed to get in line with other similar boards, I cannot support this bill.

I appreciate your time and consideration, and I am willing to answer any questions you may have.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2253

Page 2, line 4, after the underscored period insert:

"a. Under this subsection, an inspector must have a level three master level installer license issued by the onsite wastewater board.

b."

Page 3, line 23, remove the underscored colon

Page 3, remove lines 24 through 28

Page 3, line 29, replace "the director of the department of environmental quality" with "one representative of a public health unit who is not an installer, and three licensees, all of whom must be actively practicing installers. The director of the department of environmental quality or the director's designee shall serve as an ex officio member"

Page 4, line 1, after "each" insert "appointed"

Renumber accordingly

FIRST ENGROSSMENT

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2253

Introduced by

Senators Klein, Magrum, Myrdal, Vedaa

Representatives Nelson, Weisz

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century  
2 Code, relating to regulation of onsite wastewater treatment system installers; to amend and  
3 reenact sections 23-35-02.2, 43-18.2-01, and 43-18.2-03 of the North Dakota Century Code,  
4 relating to the onsite wastewater recycling treatment technologies guide, permits for installation  
5 of an onsite wastewater treatment system, investigation of onsite wastewater treatment  
6 systems, and sewer and water installers; to repeal section 23-35-02.3 of the North Dakota  
7 Century Code, relating to the onsite wastewater recycling technical committee; to provide a  
8 penalty; and to provide an effective date.

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

10 SECTION 1. AMENDMENT. Section 23-35-02.2 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 ~~23-35-02.2. Public health units to adopt~~Adoption of onsite wastewater recycling  
13 treatment technologies guide - Issuance of permit for onsite wastewater treatment  
14 system installation - Inspection - Penalty.

15 1. Each public health unit ~~and board of health~~ shall adopt, ~~administer, and enforce~~ the  
16 statewide technical guide for onsite wastewater recycling treatment technologies and  
17 ~~sewage distribution technologies~~ established by the onsite wastewater recycling  
18 ~~technical committee~~board.

19 2. In accordance with the statewide technical guide for onsite wastewater recycling  
20 treatment technologies, a public health unit or board of health shall issue a permit for  
21 installation of an onsite wastewater treatment system.

22 3. A person may not install an onsite wastewater treatment system without a permit  
23 issued under this section. If the public health unit or board of health denies a permit



1           under this section, the denial must be in writing and accompanied by findings of fact  
2           supporting the decision to deny the permit.

3           4. A public health unit and board of health may inspect a newly constructed onsite  
4           wastewater treatment system.

5           a. Under this subsection, an inspector must have a level three master level installer  
6           license issued by the onsite wastewater board.

7           b. If, upon inspection the public health unit or board of health determines any part of  
8           the system is not constructed in accordance with the minimum standards of the  
9           statewide technical guide, the permit applicant or installer, or both, shall correct  
10           the defects. A system may not be placed in service until all defects have been  
11           corrected.

12           5. A public health unit and board of health shall receive and investigate a report of  
13           unsanitary conditions in existence at an onsite wastewater system site or that any  
14           construction or work enforced under this section is dangerous; unsafe; unsanitary; a  
15           nuisance; a risk to life, health, or property; or otherwise in violation of the statewide  
16           technical guide.

17           6. The public health unit or board of health may charge a fee for issuance of a permit,  
18           conducting an inspection, reviewing a plan, evaluating a site, filing a variance request,  
19           and filing an appeal under this section.

20           7. Violation of the statewide technical guide for onsite wastewater recycling treatment  
21           technologies is an infraction for each violation.

22           **SECTION 2. AMENDMENT.** Section 43-18.2-01 of the North Dakota Century Code is  
23           amended and reenacted as follows:

24           **43-18.2-01. Definitions.**

25           In this chapter, unless the context or subject matter otherwise requires:

- 26           1. "Board" means the state board of plumbing.  
27           2. "Sewer and water contractor" means any person who installs, plans, and manages the  
28           installation and repair of building sewer and water service.  
29           3. "Sewer and water installation" means the installation of building sewer and water  
30           service and the repair of existing building sewer and water service.

1 4. "Sewer and water installer" means any person, other than a sewer and water  
2 contractor, who installs and repairs building sewer and water service.

3 5. "Sewer and water service" does not include installing an onsite wastewater treatment  
4 system.

5 **SECTION 3. AMENDMENT.** Section 43-18.2-03 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **43-18.2-03. Licenses.**

8 ~~No~~A person, firm, corporation, or limited liability company, except ~~plumbers~~a plumber  
9 holding ~~a valid licenses~~license under chapter 43-18, may not engage in the business of sewer  
10 and water contractor or sewer and water installer unless registered and licensed by the board ~~to~~  
11 ~~do so~~under this chapter. ThisA license issued under this chapter allows the licensee to do  
12 plumbing necessary for sewer and water installation. This chapter does not regulate the  
13 installation of an onsite wastewater treatment system.

14 **SECTION 4.** A new chapter to title 43 of the North Dakota Century Code is created and  
15 enacted as follows:

16 **Definitions.**

17 As used in this chapter:

- 18 1. "Board" means the onsite wastewater board.
- 19 2. "Board of health" has the meaning provided under section 23-35-01.
- 20 3. "Licensee" means an installer issued a license under this chapter.
- 21 4. "Public health unit" has the meaning provided under section 23-35-01.
- 22 5. "Regulatory authority" means a public health unit or board of health.

23 **Board - Appointment.**

- 24 1. Beginning on the effective date of this Act, the onsite wastewater board is comprised  
25 of the onsite wastewater recycling technical committee established under section  
26 23-35-02.3.
- 27 2. Beginning August 1, 2024, the governor shall replace the members of the board with:  
28 ~~a. Four licensees, who are actively practicing installers, appointed by the governor;~~  
29 ~~b. Three representatives from local public health units who are licensed~~  
30 ~~environmental health practitioners in this state appointed by the governor from a~~  
31 ~~list of names forwarded by local public health units; and~~

1 ~~c. One representative from the department of environmental quality as appointed by~~  
2 ~~the director of the department of environmental quality~~ one representative of a  
3 public health unit who is not an installer, and three licensees, all of whom must be  
4 actively practicing installers. The director of the department of environmental  
5 quality or the director's designee shall serve as an ex officio member.

6 3. The terms of office of the initial appointed members must be staggered so no more  
7 than two terms expire on the thirty-first day of July of each year and thereafter the term  
8 of each appointed member is three years. Each member shall qualify by taking the  
9 oath required of civil officers and shall hold office until a successor is appointed. The  
10 governor shall replace a vacancy on the board by appointment for the unexpired term.  
11 The governor may remove an appointed member from the board upon a showing of  
12 good cause.

13 **Board powers and duties.**

- 14 1. The board shall:
- 15 a. Adopt rules to implement this chapter, including setting education and experience
  - 16 qualifications for licensure and continuing education requirements for licensure
  - 17 renewal.
  - 18 b. Issue a license to a qualified applicant who pays the required fee.
  - 19 c. Elect from its membership a presiding officer and a secretary.
- 20 2. The board may hire an executive director or other staff to assist the board with
- 21 administration of this chapter.

22 **Application.**

23 This chapter applies to the installation of all onsite wastewater treatment systems within the

24 state.

25 **Licensure required - Penalty.**

26 Beginning January 1, 2025, a person may not engage in installing an onsite wastewater

27 treatment system unless licensed by the board. A violation of this section is an infraction.

28 **Exemptions.**

29 The board shall establish by rule exemptions to the licensure requirements of this chapter

30 which address installations for new construction. The rules adopted under this section may



1 distinguish between the type of system being installed and may require a property owner to  
2 attend a board-approved training as a condition to perform the work.

3 **Licensure - Fees.**

4 The board shall issue the following licenses to a qualified applicant who pays the required  
5 fee:

- 6 1. An apprentice installer license, which qualifies the licensee to work under a level one,  
7 two, or three license holder. The fee for licensure and license renewal as an  
8 apprentice installer is twenty-five dollars per year.
- 9 2. A level one installer license, which qualifies the licensee to install a septic tank and  
10 conventional trench system. The fee for licensure and license renewal as a level one  
11 installer is two hundred twenty-five dollars per year.
- 12 3. A level two installer license, which qualifies the licensee to install multiple tanks,  
13 mounds, at-grades, beds, and pressurized systems with pumps. The fee for licensure  
14 and license renewal as a level two installer is two hundred twenty-five dollars per year.
- 15 4. A level three master level installer license, which qualifies the licensee to install  
16 commercial systems, industrial systems, and systems that accept more than two  
17 thousand five hundred gallons [9463.53 liters] per day. The fee for licensure and  
18 license renewal as a level three master level installer is two hundred twenty-five  
19 dollars per year.

20 **Licensure of out-of-state installers.**

21 The board shall issue a license to an applicant who is licensed as an installer by an out-of-  
22 state jurisdiction if the applicant is in good standing in the out-of-state jurisdiction.

23 **Regulatory authority.**

24 A licensed installer shall comply with the statewide technical guide for onsite wastewater  
25 recycling treatment technologies adopted by the regulatory authority when installing an onsite  
26 wastewater treatment system.

27 **Disciplinary actions.**

28 Installation of an onsite wastewater treatment system by a licensee in violation of this  
29 chapter or rules adopted by the board is cause for revocation of, suspension of, or refusal to  
30 renew a license. Disciplinary actions must be conducted in accordance with chapter 28-32.



1       **Statewide technical guide.**

2       1. The board shall develop and publish a statewide guide for onsite wastewater recycling  
3       treatment technologies for adoption by regulatory authorities under section 23-35-02.2.

4       2. At a minimum, the statewide technical guide for onsite wastewater recycling treatment  
5       technologies must address:

6       a. A standardized onsite wastewater treatment system permit form.

7       b. The length of time a permit is valid following issuance.

8       c. Circumstances under which a registered professional engineer shall prepare  
9       plans and specifications.

10      d. The minimum size lot in which a new onsite wastewater treatment system may  
11      be installed.

12      e. The terms under which a septic tank may be abandoned.

13      f. The minimum requirements for an onsite wastewater treatment system soil  
14      treatment area.

15      g. Circumstances under which special systems of treatment and disposal may be  
16      provided.

17      h. Circumstances under which the regulatory authority may issue a variance.

18      i. The process for appeal of an order or determination of the regulatory authority.

19      j. Circumstances under which a regulatory authority may suspend or revoke a  
20      permit.

21      k. Circumstances under which a regulatory authority may issue an order to cease  
22      and desist.

23      **SECTION 5. REPEAL.** Section 23-35-02.3 of the North Dakota Century Code is repealed.

24      **SECTION 6. EFFECTIVE DATE.** Sections 1, 2, and 3 of this Act become effective

25      January 1, 2025, and section 5 of this Act becomes effective August 1, 2024.