

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

### ENGROSSED SENATE BILL NO. 2267

Introduced by

Senators Myrdal, Klein, Magrum

Representatives K. Anderson, Koppelman

1 A BILL for an Act to create and enact ~~three new sections to chapter 43-18~~ a new chapter to  
2 title 23.1 of the North Dakota Century Code, relating to onsite wastewater treatment systems; to  
3 amend and reenact ~~section 43-18-24~~ sections 23-35-02 and 23-35-08 of the North Dakota  
4 Century Code, relating to ~~onsite wastewater treatment system violations~~ the powers and duties  
5 of the boards of health and public health units; to repeal sections 23-35-02.2 and 23-35-02.3 of  
6 the North Dakota Century Code, relating to the onsite wastewater recycling technical  
7 committee; to provide for a legislative management report; ~~and~~ to provide a penalty; and to  
8 provide an appropriation.

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

10 ~~— SECTION 1. AMENDMENT. Section 43-18-24 of the North Dakota Century Code is~~  
11 ~~amended and reenacted as follows:~~  
12 ~~— 43-18-24. Violation of chapter - Penalty.~~  
13 ~~— Any person that violates the state plumbing code adopted under section 43-18-09; violates~~  
14 ~~section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23; or works under the license of~~  
15 ~~another person in a manner that is in violation of section 43-18-13, or installs or services an~~  
16 ~~onsite wastewater sewage treatment system without being licensed under this chapter is guilty~~  
17 ~~of a class B misdemeanor.~~  
18 ~~— SECTION 2. A new section to chapter 43-18 of the North Dakota Century Code is created~~  
19 ~~and enacted as follows:~~

1 ~~Standards for onsite wastewater sewage treatment system installation, servicing,~~  
2 ~~and inspection -- Adoption of rules.~~

3 ~~1. The board shall establish rules relating to the permitting and licensing for onsite-~~  
4 ~~wastewater sewage treatment systems.~~

5 ~~2. The board shall establish standards and procedures for issuing, renewing, denying,~~  
6 ~~suspending, or revoking a permit or license to install, service, or inspect an onsite-~~  
7 ~~wastewater sewage treatment system.~~

8 ~~3. Onsite wastewater sewage treatment system installation, servicing, and inspection-~~  
9 ~~must comply with the rules adopted by the board.~~

10 ~~4. The board may not contract with a local public health unit to inspect an onsite-~~  
11 ~~wastewater sewage treatment system.~~

12 ~~SECTION 3. A new section to chapter 43-18 of the North Dakota Century Code is created~~  
13 ~~and enacted as follows:~~

14 ~~Appeal to department of environmental quality.~~

15 ~~An action of the board denying, modifying, or revoking a permit to install, service, or inspect~~  
16 ~~a wastewater sewage treatment system or an action of the board denying or revoking a license-~~  
17 ~~may be appealed to the department of environmental quality by petition for review. The appeal-~~  
18 ~~must be filed with the department of environmental quality within ten days of receiving notice-~~  
19 ~~from the board. Upon receipt of the petition, the department of environmental quality shall-~~  
20 ~~review the appealed decision and if it appears the permit or license was not issued or the-~~  
21 ~~license was improperly revoked in accordance with the provisions of this chapter and rule-~~  
22 ~~adopted by the board, the department may issue the permit or license.~~

23 ~~SECTION 4. A new section to chapter 43-18 of the North Dakota Century Code is created~~  
24 ~~and enacted as follows:~~

25 ~~License required.~~

26 ~~1. An individual may not engage in the business of installing or servicing an onsite-~~  
27 ~~wastewater sewage treatment system unless licensed by the board. To remain-~~  
28 ~~licensed in good standing, an installer shall comply with this chapter and any rules-~~  
29 ~~adopted by the board.~~

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

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

6 **23-35-02. Public health units - Core functions.**

- 7 1. All land in the state must be in a public health unit.
- 8 2. At a minimum, a public health unit shall provide the following core functions:
- 9 a. Communicable disease control, which must include:
- 10 (1) Conducting of disease surveillance for the purpose of preventing and  
11 controlling communicable disease, with assistance from the department.
- 12 (2) Assurance of the availability of community-based programs to provide  
13 communicable disease prevention and control services.
- 14 (3) Recognition, identification, and response to a communicable disease event,  
15 in collaboration with the department.
- 16 b. Chronic disease and injury prevention, which must include conducting programs  
17 to reduce the burden of chronic disease and injury through policy, system, and  
18 environmental change approach; prevention screening; and education.
- 19 c. Environmental public health, which must include:
- 20 (1) Prevention of environmental hazards by the provision of information and  
21 education to facility operators and managers and to community members.
- 22 (2) Assurance of the availability of environmental health services to prevent and  
23 respond to community and residential environmental hazards.
- 24 (3) Permitting and inspections of onsite wastewater treatment systems in  
25 accordance with section 3 of this Act. A public health unit shall conduct a  
26 required in-person or virtual inspection of an onsite wastewater system  
27 within one business day of receiving the request for the inspection. A public  
28 health unit may enter a cooperative agreement with a county or city for the  
29 permitting and inspection of onsite wastewater treatment systems within the  
30 boundaries of the county or city. A cooperative agreement may be  
31 terminated as provided in the agreement, by joint action of all parties, or by

1 an individual party no less than one year after providing written notice to the  
2 other party.

3 d. Maternal, child, and family health, which must include:

4 (1) Assessment and monitoring of maternal and child health status to identify  
5 and address problems.

6 (2) Implementation of programs to promote the health of women, children, and  
7 youth, and their families, through policy, system, and environmental change  
8 approaches; prevention screenings; and education.

9 e. Access to clinical care, which must include:

10 (1) Collaboration with health care system partners to foster access to clinical  
11 care.

12 (2) Facilitation of linkages and referrals for appropriate clinical care, services,  
13 and resources.

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

16 **23-35-08. Boards of health - Powers and duties.**

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

19 1. Shall keep records and make reports required by the department.

20 2. Shall prepare and submit a public health unit budget.

21 3. Shall audit, allow, and certify for payment expenses incurred by a board of health in  
22 carrying into effect this chapter.

23 4. May accept and expend any gift, grant, donation, or other contribution offered to aid in  
24 the work of the board of health or public health unit.

25 5. May make rules regarding any nuisance, source of filth, and any cause of sickness  
26 which are necessary for public health and safety, except rules regarding the licensing  
27 of onsite wastewater treatment system installers.

28 6. May establish by rule a schedule of reasonable fees that may be charged for services  
29 rendered. Services may not be withheld due to an inability to pay any fees established  
30 under this subsection. If a tribal board of health establishes fees for services rendered,

- 1 the fees may not exceed the highest corresponding fee of any of the public health
- 2 units that border the tribal public health unit.
- 3 7. May make rules in a health district or county public health department, as the case
- 4 may be, and in the case of a city public health department may recommend to the
- 5 city's governing body ordinances for the protection of public health and safety.
- 6 8. May adopt confinement, decontamination, and sanitary measures in compliance with
- 7 chapter 23-07.6 which are necessary when an infectious or contagious disease exists.
- 8 9. May make and enforce an order in a local matter if an emergency exists.
- 9 10. May inquire into any nuisance, source of filth, or cause of sickness.
- 10 11. Except in the case of an emergency, may conduct a search or seize material located
- 11 on private property to ascertain the condition of the property as the condition relates to
- 12 public health and safety as authorized by an administrative search warrant issued
- 13 under chapter 29-29.1.
- 14 12. May abate or remove any nuisance, source of filth, or cause of sickness when
- 15 necessary to protect the public health and safety.
- 16 13. May supervise any matter relating to preservation of life and health of individuals,
- 17 including the supervision of any water supply and sewage system.
- 18 14. May isolate, kill, or remove any animal affected with a contagious or infectious disease
- 19 if the animal poses a material risk to human health and safety.
- 20 15. Shall appoint a local health officer.
- 21 16. May employ any person necessary to effectuate board rules and this chapter.
- 22 17. If a public health unit is served by a part-time local health officer, the board of health
- 23 may appoint an executive director. An executive director is subject to removal for
- 24 cause by the board of health. The board of health may assign to the executive director
- 25 the duties of the local health officer, and the executive director shall perform these
- 26 duties under the direction of the local health officer.
- 27 18. May contract with any person to provide the services necessary to carry out the
- 28 purposes of the board of health.
- 29 19. Shall designate the location of a local health officer's office and shall furnish the office
- 30 with necessary equipment.
- 31 20. May provide for personnel the board of health considers necessary.

1 21. Shall set the salary of the local health officer, the executive director, and any assistant  
2 local health officer and shall set the compensation of any other public health unit  
3 personnel.

4 22. Shall pay for necessary travel of the local health officer, the local health officer's  
5 assistants, and other personnel in the manner and to the extent determined by the  
6 board.

7 **SECTION 3.** A new chapter to title 23.1 of the North Dakota Century Code is created and  
8 enacted as follows:

9 **Definitions.**

10 For the purposes of this chapter:

- 11 1. "Department" means the department of environmental quality.  
12 2. "Install" means to place or replace a part of an onsite waster treatment system,  
13 whether new or existing, to make it ready for use.  
14 3. "License" means authorization by the department for an individual to engage in the  
15 business of installing an onsite wastewater treatment system.  
16 4. "Onsite wastewater treatment system" means a wastewater treatment system or part  
17 thereof, serving a dwelling or building, or group thereof, which uses soil treatment and  
18 disposal. The term commonly may be known as a septic system.  
19 5. "Permit" means authorization from a local public health unit or other political  
20 subdivision to install an onsite wastewater treatment system, in accordance with the  
21 specific site and rules adopted under this title.

22 **Septic systems - Authority.**

- 23 1. Except as otherwise provided by law, the department has the exclusive authority to  
24 adopt rules regarding licensing, permitting, and inspections of onsite wastewater  
25 treatment systems.  
26 2. The department shall provide technical assistance and guidance to municipalities and  
27 local public health units on all matters related to onsite wastewater treatment systems.  
28 3. An ordinance enacted or adopted by a county or city in accordance with a home rule  
29 charter, or an ordinance enacted or adopted by any other political subdivision, in  
30 conflict with a rule adopted under this section is void.

**Licensing.**

1. An individual may not engage in the business of installing an onsite wastewater treatment system unless the individual is licensed. To remain licensed in good standing, a licensee 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 sewage 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 licensee practices 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 licensee's knowledge or ability is not used in the performance of the licensee's duties; or
  - c. The licensee 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 licensure may be considered by the department only after the conditions causing the suspension or revocation have been corrected, and evidence of this fact is submitted to the satisfaction of the department.

**Standards for onsite wastewater treatment systems - Installation - Inspection.**

1. The department shall establish rules relating to permitting onsite wastewater treatment systems.
2. The department may prescribe by rule a process for obtaining variances for existing nonconforming or nonfunctional onsite wastewater treatment systems. The process shall consider the:
  - a. Environmental impact;
  - b. Impact to public health;
  - c. Cost of compliance; and

1 d. Least restrictive means.

2 3. Onsite wastewater sewage treatment system installation and inspections must comply  
3 with the rules adopted in accordance with this title.

4 **Appeal to the department.**

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

9 2. Upon receipt of the petition, the department shall review the appealed decision and  
10 the petition to determine whether the denial, modification, or revocation was made in  
11 accordance with the provisions of this title and rules. The department shall provide its  
12 findings and recommendation to the political subdivision, the licensed installer, and the  
13 owner of the property where the proposed onsite wastewater treatment system is  
14 located.

15 **Fees.**

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

23 **Enforcement.**

24 1. An individual who violates a provision of this chapter or any rule, standard, order, or  
25 permit condition adopted in accordance with this chapter is subject to a civil penalty  
26 not to exceed twelve thousand five hundred dollars per violation.

27 2. An individual who willfully makes a false statement, false representation, or false  
28 certification in an application, record, report, plan, or other applicable requirement  
29 implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate  
30 any monitoring device or sample, is subject to a civil penalty not to exceed five  
31 thousand dollars per violation.

1 **Administrative procedure and judicial review.**

2 1. A proceeding under this chapter to adopt or modify rules relating to licensing  
3 individuals for the installation or servicing of onsite wastewater treatment systems, or  
4 for determining compliance with rules of the department, must be conducted in  
5 accordance with the provisions of chapter 28-32.

6 2. An appeal of a decision issued under subsection 1, must be conducted in accordance  
7 with the provisions of chapter 28-32.

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

10 **SECTION 5. APPROPRIATION - DEPARTMENT OF ENVIRONMENTAL QUALITY -**

11 **ONE-TIME FUNDING - REPORT.** There is appropriated out of any moneys in the general fund  
12 in the state treasury, not otherwise appropriated, the sum of \$99,500, or so much of the sum as  
13 may be necessary, to the department of environmental quality for the purpose of regulation of  
14 onsite wastewater treatment systems, for the biennium beginning July 1, 2025, and ending  
15 June 30, 2027. The department shall provide a report to the legislative management prior to  
16 August 1, 2026. The appropriation in this section is considered a one-time funding item.