

**FIRST ENGROSSMENT
with House Amendments**

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 a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to onsite wastewater treatment systems; to amend and reenact sections
3 23-35-02 and 23-35-08 of the North Dakota Century Code, relating to the powers and duties of
4 the boards of health and public health units; to repeal sections 23-35-02.2 and 23-35-02.3 of the
5 North Dakota Century Code, relating to the onsite wastewater recycling technical committee; to
6 provide for a legislative management report; to provide a penalty; and to provide an
7 appropriation.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

11 **23-35-02. Public health units - Core functions.**

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

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

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

1 **23-35-08. Boards of health - Powers and duties.**

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

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

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

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

25 **Definitions.**

26 For the purposes of this chapter:

- 27 1. "Department" means the department of environmental quality.
- 28 2. "Install" means to place or replace a part of an onsite waster treatment system,
29 whether new or existing, to make it ready for use.
- 30 3. "License" means authorization by the department for an individual to engage in the
31 business of installing an onsite wastewater treatment system.

- 1 4. "Onsite wastewater treatment system" means a wastewater treatment system or part
2 thereof, serving a dwelling or building, or group thereof, which uses soil treatment and
3 disposal. The term commonly may be known as a septic system.
4 5. "Permit" means authorization from a local public health unit or other political
5 subdivision to install an onsite wastewater treatment system, in accordance with the
6 specific site and rules adopted under this title.

7 **Septic systems - Authority.**

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

16 **Licensing.**

- 17 1. An individual may not engage in the business of installing an onsite wastewater
18 treatment system unless the individual is licensed. To remain licensed in good
19 standing, a licensee shall comply with this chapter and any rules adopted under this
20 title.
21 2. An individual is exempt from the licensing requirements of this chapter if the individual
22 is installing an onsite wastewater sewage treatment system on the individual's
23 premises for the individual's use.
24 3. The department shall establish rules for the issuance, expiration, and renewal of
25 licenses.
26 4. The department may revoke or suspend a license issued under this chapter if:
27 a. The licensee practices fraud or deception in obtaining the license or in the
28 individual's performance of a licensed activity;
29 b. Reasonable care, judgment, or the application of the licensee's knowledge or
30 ability is not used in the performance of the licensee's duties; or

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

3 5. A license may not be revoked or suspended except after a hearing before the director
4 of the department, or the director's designated representative. If a license is
5 suspended or revoked, a new application for licensure may be considered by the
6 department only after the conditions causing the suspension or revocation have been
7 corrected, and evidence of this fact is submitted to the satisfaction of the department.

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

9 1. The department shall establish rules relating to permitting onsite wastewater treatment
10 systems.

11 2. The department may prescribe by rule a process for obtaining variances for existing
12 nonconforming or nonfunctional onsite wastewater treatment systems. The process
13 shall consider the:

14 a. Environmental impact;

15 b. Impact to public health;

16 c. Cost of compliance; and

17 d. Least restrictive means.

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

20 **Appeal to the department.**

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

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

1 **Fees.**

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

9 **Enforcement.**

- 10 1. An individual who violates a provision of this chapter or any rule, standard, order, or
11 permit condition adopted in accordance with this chapter is subject to a civil penalty
12 not to exceed twelve thousand five hundred dollars per violation.
- 13 2. An individual who willfully makes a false statement, false representation, or false
14 certification in an application, record, report, plan, or other applicable requirement
15 implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate
16 any monitoring device or sample, is subject to a civil penalty not to exceed five
17 thousand dollars per violation.

18 **Administrative procedure and judicial review.**

- 19 1. A proceeding under this chapter to adopt or modify rules relating to licensing
20 individuals for the installation or servicing of onsite wastewater treatment systems, or
21 for determining compliance with rules of the department, must be conducted in
22 accordance with the provisions of chapter 28-32.
- 23 2. An appeal of a decision issued under subsection 1, must be conducted in accordance
24 with the provisions of chapter 28-32.

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

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

28 **ONE-TIME FUNDING - REPORT.** There is appropriated out of any moneys in the general fund
29 in the state treasury, not otherwise appropriated, the sum of \$99,500, or so much of the sum as
30 may be necessary, to the department of environmental quality for the purpose of regulation of
31 onsite wastewater treatment systems, for the biennium beginning July 1, 2025, and ending

Sixty-ninth
Legislative Assembly

- 1 June 30, 2027. The department shall report to the legislative management prior to August 1,
- 2 2026. The appropriation in this section is considered a one-time funding item.