

**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~~chapter 23.-17 of the
2 North Dakota Century Code, relating to onsite wastewater treatment systems; to amend and
3 reenact ~~section 43-18-24~~sections 23-35-02 and 23-35-08 of the North Dakota Century Code,
4 relating to ~~onsite wastewater treatment system violations~~the powers and duties of the boards of
5 health and public health units; to repeal sections 23-35-02.2 and 23-35-02.3 of the North
6 Dakota Century Code, relating to the onsite wastewater recycling technical committee; and ~~to~~
7 ~~provide a penalty~~to provide an appropriation.

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

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

17 ~~—SECTION 2. A new section to chapter 43-18 of the North Dakota Century Code is created~~
18 ~~and enacted as follows:~~

19 ~~—Standards for onsite wastewater sewage treatment system installation, servicing,~~
20 ~~and inspection – Adoption of rules.~~

21 ~~—1. The board shall establish rules relating to the permitting and licensing for onsite~~
22 ~~wastewater sewage treatment systems.~~

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

4 — ~~3. Onsite wastewater sewage treatment system installation, servicing, and inspection~~
5 ~~must comply with the rules adopted by the board.~~

6 — ~~4. The board may not contract with a local public health unit to inspect an onsite~~
7 ~~wastewater sewage treatment system.~~

8 — **SECTION 3.** A new section to chapter 43-18 of the North Dakota Century Code is created
9 and enacted as follows:

10 — **Appeal to department of environmental quality.**

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

19 — **SECTION 4.** A new section to chapter 43-18 of the North Dakota Century Code is created
20 and enacted as follows:

21 — **License required.**

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

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

29 **SECTION 1.** Chapter 23.1 17 of the North Dakota Century Code is created and enacted as
30 follows:

23.1-17-01. Septic systems - Authority.

1. Notwithstanding any other provisions of law, the department has the exclusive authority to adopt rules regarding licensing, permitting, and inspections of onsite wastewater treatment systems.
2. The department shall provide technical assistance and guidance to municipalities and local public health units in all matters related to 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. Definitions.

1. "Department" means the North Dakota Department of Environmental Quality.
2. "Install" means to place or replace a part of an onsite wastewater treatment systems, whether new or existing to make it ready for use.
3. "License" means the authorization by the department for an individual to engage in the business of installation of onsite wastewater treatment systems.
4. "Onsite Wastewater Treatment System" means a wastewater treatment system or part thereof, serving a dwelling or building, or group thereof, which utilizes soil treatment and disposal. May be 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 a onsite wastewater treatment system based on the specific site and the rules adopted under this title.

23.1-17-03. Licensing.

1. An individual may not engage in the business of installing an onsite wastewater sewage 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 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 the license issued under this chapter if the licensed individual has practiced fraud or deception in obtaining the license or in the

1 individual's performance of a licensed activity; if reasonable care, judgment, or the
2 application of the individual's knowledge or ability was not used in the performance of
3 the individual's duties; or the individual violates a state or federal environmental law,
4 rule, standard, or permit when performing a licensed activity.

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

11 **23.1-17-04. Standards for onsite wastewater treatment systems, installation, and**
12 **inspection.**

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

15 2. The department may prescribe by rule a process for obtaining variances for existing
16 onsite wastewater treatment systems that are nonconforming or nonfunctional. This
17 process will consider impacts to the environment, impacts to public health, and the
18 cost of compliance.

19 3. Onsite wastewater sewage treatment system installation, and inspection must comply
20 with the rules adopted under this title.

21 **23.1-17-05. Appeal to the department.**

22 An action of a political subdivision denying, modifying, or revoking a permit to install, an
23 onsite wastewater treatment system may be appealed to the department by petition for review.
24 The appeal must be filed with the department within ten days of receiving notice of the denial,
25 modification or revocation. Upon receipt of the petition, the department shall review the
26 appealed decision and if it appears the permit was not issued or the permit was improperly
27 modified or revoked in accordance with the provisions of this title and rules adopted under this
28 title, the department shall provide its findings and recommendation to the political subdivision,
29 the licensed installer, and the owner of the property where the proposed onsite wastewater
30 treatment system is located.

31 **23.1-17-06. Fees.**

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

23.17-07. Enforcement.

1. A person that 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. A person that 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 rules relating to licensing individuals for the installation or servicing of onsite wastewater treatment systems, or for determining compliance with rules of the department, must be conducted in accordance with the provisions 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 2. AMENDMENT. Section 23-35-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. All land in the state must be in a public health unit.
2. At a minimum, a public health unit shall provide the following core functions:
 - a. Communicable disease control, which must include:
 - (1) Conducting of disease surveillance for the purpose of preventing and controlling communicable disease, with assistance from the department.

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

31 **SECTION 3. AMENDMENT.** Section 23-35-08 of the North Dakota Century Code is
32 amended and reenacted as follows:

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

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

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

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

21 **SECTION 54. REPEAL.** Sections 23-35-02.2 and 23-35-02.3 of the North Dakota Century
22 Code are repealed.

23 **SECTION 5. APPROPRIATION - DEPARTMENT OF ENVIRONMENTAL QUALITY –**
24 **ONSITE WASTEWATER TREATMENT SYSTEMS.** There is appropriated out of any moneys in
25 the general fund in the state treasury, not otherwise appropriated, the sum of \$99,500, or so
26 much of the sum as may be necessary, to the department of environmental quality for the
27 purpose of the regulation of onsite wastewater treatment systems, for the biennium beginning
28 July 1, 2025, and ending June 30, 2027. The department shall report to legislative management
29 prior to the opening of the 70th Legislative Assembly.