

LEGISLATIVE BILL 94

Approved by the Governor March 20, 2003

Introduced by Schrock, 38

AN ACT relating to wastewater; to amend section 81-3453, Revised Statutes Supplement, 2002; to adopt the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act; to provide penalties; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 18 of this act shall be known and may be cited as the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act.

Sec. 2. The purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act are to:

(1) Protect the air, water, and land of the state through the certification and regulation of private onsite wastewater treatment system professionals in Nebraska;

(2) Require certified professionals for siting, layout, construction, reconstruction, alteration, modification, repair, inspection, and pumping of private onsite wastewater treatment systems and require that all siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping of any private onsite wastewater treatment system after the effective date of this act be done by certified professionals in accordance with the act and rules and regulations adopted under the act;

(3) Provide for the registration of all private onsite wastewater treatment systems constructed, reconstructed, altered, or modified after the effective date of this act;

(4) Protect the health and general welfare of the citizens of Nebraska; and

(5) Protect the air, water, and land of the state from potential pollution by providing for proper siting, layout, construction, reconstruction, alteration, modification, repair, and pumping of private onsite wastewater treatment systems.

Sec. 3. For purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, the definitions in sections 4 to 9 of this act shall be used.

Sec. 4. Advisory committee means the Private Onsite Wastewater Treatment System Advisory Committee created in section 10 of this act.

Sec. 5. Certified professional means a private onsite wastewater treatment system professional certified under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act to perform the tasks for which the certification has been issued.

Sec. 6. Council means the Environmental Quality Council.

Sec. 7. Department means the Department of Environmental Quality.

Sec. 8. Director means the Director of Environmental Quality.

Sec. 9. Private onsite wastewater treatment system means any system of piping, treatment devices, or other appurtenances that convey, store, treat, or dispose of domestic or nondomestic wastewater, but not including wastewater from a livestock waste control facility, on the property where it originates or on nearby property under the control of the user, which system is not connected to a public sewer system.

Sec. 10. The Private Onsite Wastewater Treatment System Advisory Committee is created. The advisory committee shall be composed of the following eleven members:

(1) Seven members appointed by the director as follows:

(a) Five private onsite wastewater treatment system professionals;  
and

(b) Two registered environmental health specialists or officials representing local public health departments which have established programs for regulating private onsite wastewater treatment systems;

(2) The Director of Health and Human Services Regulation and Licensure or his or her designated representative;

(3) The Director of Environmental Quality or his or her designated representative; and

(4) One representative with experience in soils and geology and one representative with experience in biological engineering, both of whom shall be designated by the vice chancellor of the University of Nebraska Institute

of Agriculture and Natural Resources.

Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide administrative support for the advisory committee.

Sec. 11. The advisory committee shall:

(1) Meet not less often than annually as determined by the director. The director may call special meetings of the advisory committee;

(2) Advise the department on proposed rules and regulations relating to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act;

(3) Advise the department on rules and regulations for the siting, layout, operation, and maintenance of private onsite wastewater treatment systems; and

(4) Advise the department on the administration of the act as requested by the director.

Sec. 12. The council shall adopt and promulgate rules and regulations to carry out the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. Such rules and regulations shall provide for, but not be limited to:

(1) Certification of private onsite wastewater treatment system professionals;

(2) Establishing categories for such professionals to be certified under the act;

(3) Temporary, provisional, and hardship certifications;

(4) Examination requirements for certification;

(5) Continuing education requirements for certification;

(6) A fee schedule which shall cover direct and indirect costs to administer the act, including, but not limited to, system registration, application for certification, examination, and renewal, late fees for renewal, temporary, provisional, and hardship certifications, and fees for continuing education classes offered or approved by the department;

(7) Requirements for the registration of private onsite wastewater treatment systems to be constructed, reconstructed, altered, modified, or inspected by professionals certified under the act; and

(8) Requiring that all private onsite wastewater treatment system siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping be performed by certified professionals in accordance with the act, rules and regulations adopted under the act, and other rules and regulations adopted and promulgated by the council.

Sec. 13. (1) Beginning January 1, 2004, a private onsite wastewater treatment system shall not be sited, laid out, constructed, reconstructed, altered, modified, repaired, inspected, or pumped unless the siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping is carried out or supervised by either a certified professional as required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act or a professional engineer licensed in Nebraska.

(2) Beginning January 1, 2004, any private onsite wastewater treatment system constructed, reconstructed, altered, modified, or inspected by a certified professional shall be registered with the department by the certified professional within forty-five days of completion of the construction, reconstruction, alteration, modification, or inspection. The certified professional shall submit the registration on forms provided by the department and shall include the registration fee. The registration fee shall be fifty dollars until rules and regulations adopted and promulgated under the act provide a schedule of system registration fees adequate to cover direct and indirect program costs.

(3) The department may issue a temporary provisional certificate which shall satisfy the requirements of subsection (1) of this section until December 31, 2005, to an individual who applies to the department and includes with the application (a) a fee of three hundred dollars and (b) a properly executed and sworn affidavit stating that the applicant was engaged in activity relating to the siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping of a private onsite wastewater treatment system for at least twelve months preceding the effective date of this act. The affidavit shall specify the activity or activities listed in this subsection in which the applicant was engaged during such time.

(4) All temporary provisional certificates issued pursuant to subsection (3) of this section shall be subject to all administrative and enforcement authority of the department under the act and any rules and regulations relating to private onsite wastewater treatment systems adopted and promulgated by the council under the Environmental Protection Act.

(5) All temporary provisional certificates issued under subsection (3) of this section shall expire on December 31, 2005. Any individual holding a temporary provisional certificate wishing to become a certified professional under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act shall before such date meet the requirements for such certification contained in the rules and regulations of the council adopted and promulgated pursuant to section 12 of this act.

Sec. 14. The director may revoke, suspend, or refuse to grant or renew a certificate issued pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, following opportunity for hearing, upon any reasonable ground, including, but not limited to, the following: (1) The certificate holder has engaged in fraud or deception; (2) the certificate holder has failed to meet the requirements of the act, the Environmental Protection Act, or rules and regulations of the council; (3) the certificate holder is unable to properly perform duties required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act; (4) the certificate holder has failed to maintain the minimum requirements of a certificate holder under the act; (5) the certificate holder has failed to demonstrate the required continuing education proficiency under the act; or (6) the certificate holder has failed to perform any other requirements of a certificate holder in accordance with the act or the rules and regulations adopted under the act.

Sec. 15. The Private Onsite Wastewater Treatment System Cash Fund is created. Fees collected pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 16. The requirements of sections 81-1506 to 81-1511 shall apply to certified professionals.

Sec. 17. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act does not apply to a private onsite wastewater treatment system at an electric generation facility site owned by a district organized under Chapter 70, article 6.

Sec. 18. Any person violating any provision of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act or rules and regulations adopted and promulgated pursuant to the act shall be subject to a civil penalty of not more than ten thousand dollars for each such violation. In the case of a continuing violation, each day shall constitute a separate violation.

Sec. 19. Section 81-3453, Revised Statutes Supplement, 2002, is amended to read:

81-3453. The provisions of the Engineers and Architects Regulation Act regulating the practice of engineering do not apply to the following activities:

(1) The construction, remodeling, alteration, or renovation of (a) a detached single-family through four-family dwelling of less than five thousand square feet above grade finished space or (b) a one-story commercial or industrial building or structure of less than five thousand square feet above grade finished space which does not exceed thirty feet in height unless such building or structure, or the remodeling or repairing thereof, provides for the employment, housing, or assembly of twenty or more persons. Any detached or attached sheds, storage buildings, and garages incidental to the dwelling are not included in the tabulation of finished space;

(2) The construction, remodeling, alteration, or renovation of farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage and if the structures are designed to be occupied by no more than twenty persons;

(3) Any public works project with contemplated expenditures for the completed project that do not exceed eighty thousand dollars;

(4) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(5) The teaching, including research and service, of engineering subjects in a college or university offering an Accrediting Board for Engineering and Technology accredited engineering curriculum of four years or more;

(6) The act does not prevent a public service provider or an organization who employs a design professional from performing professional services for itself;

(7) The practice of any other certified trade or legally recognized

profession;

(8) The offer to practice engineering by a person not a resident of and having no established place of business in this state if the person is legally qualified by licensure to practice engineering in his or her own state or country. The person shall make application to the board in writing and after payment of a fee established by the board may be granted a temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to such applicant with respect to any other work not set forth in the permit;

(9) The work of an employee or a subordinate of a person holding a certificate of licensure under the act or an employee of a person practicing lawfully under subdivision (8) of this section if the work is done under the direct supervision of a person holding a certificate of licensure or a person practicing lawfully under such subdivision;

(10) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;

(11) Financial institutions making disbursements of funds in connection with construction projects;

(12) Earthmoving and related work associated with soil and water conservation practices performed on farmland or any land owned by a political subdivision that is not subject to a permit from the Department of Natural Resources or for work related to livestock waste facilities that are not subject to a permit by the Department of Environmental Quality;

(13) The work of employees and agents of a political subdivision or a nonprofit entity organized for the purpose of furnishing electrical service performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance;

(14) Work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, which does not have a substantial impact upon public health, safety, and welfare, as determined by the board, or require the submission of reports or documents to public agencies;

(15) The construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the owner thereof to be designed or supervised by an engineer or unless legal requirements are imposed upon the owner of a water well as a part of a public water supply; ~~and~~

(16) Work performed in the exploration, development, and production of oil and gas or before the Nebraska Oil and Gas Conservation Commission; ~~and~~

(17) Siting, layout, construction, and reconstruction of a private onsite wastewater treatment system with a maximum flow from the facility of one thousand gallons of domestic wastewater per day if such system meets all of the conditions required pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act unless the siting, layout, construction, or reconstruction by an engineer is required by the Department of Environmental Quality, mandated by law or rules and regulations imposed upon the owner of the system, or required by the owner.

Sec. 20. Original section 81-3453, Revised Statutes Supplement, 2002, is repealed.