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**SUBSTITUTE HOUSE BILL 2098**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Agriculture & Ecology (originally sponsored by Representatives G. Chandler and Linville)

Read first time 03/02/1999.

1 AN ACT Relating to professional designers of on-site wastewater  
2 treatment systems; adding a new section to chapter 70.118 RCW; adding  
3 a new chapter to Title 18 RCW; prescribing penalties; and making an  
4 appropriation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** PURPOSE--PROHIBITION. (1) In order to  
7 safeguard life, health, and property and to promote the public welfare,  
8 the legislature finds that it is in the public interest to permit the  
9 limited practice of engineering by qualified individuals who are not  
10 registered as professional engineers under chapter 18.43 RCW. The  
11 increased complexity of on-site wastewater treatment systems, changes  
12 in treatment technology, and the need to protect ground water and  
13 watershed areas make it essential that qualified professionals design  
14 the systems. Furthermore, the legislature finds that individuals who  
15 have been authorized by local health jurisdictions to design on-site  
16 wastewater treatment systems have performed these designs in the past.  
17 However, it is desirable to establish a state-wide licensing program to  
18 create uniform application of design practices, standards for designs,  
19 individual qualifications, and consistent enforcement efforts

1 applicable to all persons who design on-site wastewater treatment  
2 systems, including persons licensed to practice as professional  
3 engineers under chapter 18.43 RCW. It is further desirable to  
4 establish a certification program applicable to all persons who inspect  
5 or approve on-site wastewater treatment systems on behalf of a local  
6 health jurisdiction.

7 (2) It is unlawful for any individual to practice or offer to  
8 practice the design of on-site wastewater treatment systems unless  
9 licensed in accordance with this chapter or licensed as a professional  
10 engineer under chapter 18.43 RCW.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
12 section apply throughout this chapter unless the context clearly  
13 requires otherwise.

14 (1) "Advisory committee" means a group of individuals with broad  
15 knowledge and experience in the design, construction, and regulation of  
16 on-site wastewater treatment systems, appointed under this chapter to  
17 offer recommendations to the board and the director on the  
18 administration of the program established under this chapter.

19 (2) "Board" means the board of registration for professional  
20 engineers and land surveyors as defined in chapter 18.43 RCW.

21 (3) "Designer," "licensee," or "permit holder" means an individual  
22 authorized under this chapter to perform design services for on-site  
23 wastewater treatment systems.

24 (4) "Director" means the director of the Washington state  
25 department of licensing.

26 (5) "Engineer" means a professional engineer licensed under chapter  
27 18.43 RCW.

28 (6) "Practice of engineering" has the meaning set forth in RCW  
29 18.43.020(5).

30 (7) "On-site wastewater treatment system" means an integrated  
31 system of components that: Convey, store, treat, and/or provide  
32 subsurface soil treatment and disposal of wastewater effluent on the  
33 property where it originates or on adjacent or other property and  
34 includes piping, treatment devices, other accessories, and soil  
35 underlying the disposal component of the initial and reserve areas, for  
36 on-site wastewater treatment under three thousand five hundred gallons  
37 per day when not connected to a public sewer system.

1 (8) "On-site wastewater design" means the development of plans,  
2 details, specifications, instructions, or inspections by application of  
3 specialized knowledge in analysis of soils, on-site wastewater  
4 treatment systems, disposal methods, and technologies to create an  
5 integrated system of collection, transport, distribution, treatment,  
6 and disposal of on-site wastewater.

7 (9) "Local health jurisdiction" or "jurisdictional health  
8 department" means an administrative agency created under chapter 70.05,  
9 70.08, or 70.46 RCW, that administers the regulation and codes  
10 regarding on-site wastewater treatment systems.

11 (10) "Practice permit" means an authorization to practice granted  
12 to an individual who designs on-site wastewater treatment systems and  
13 who has been authorized by a local health jurisdiction to practice on  
14 or before July 1, 2000.

15 (11) "License" means a license to design on-site wastewater  
16 treatment systems under this chapter.

17 (12) "Certificate of competency" means a certificate issued to  
18 employees of local health jurisdictions indicating that the certificate  
19 holder has passed the licensing examination required under this  
20 chapter.

21 NEW SECTION. **Sec. 3.** UNPROFESSIONAL CONDUCT. (1) The following  
22 conduct, acts, and conditions constitute unprofessional conduct for any  
23 person issued, or applying for, a practice permit or license under this  
24 chapter:

25 (a) Any act involving moral turpitude, dishonesty, or corruption  
26 relating to the practice of on-site wastewater treatment designs or  
27 inspections, whether or not the act constitutes a crime;

28 (b) Misrepresentation or concealment of a material fact in applying  
29 for, obtaining, or reinstating a practice permit or license;

30 (c) Any advertising which is false, fraudulent, or misleading;

31 (d) Incompetence, gross negligence, or malpractice that results in  
32 injury to an individual, damage to property, or adverse impact on the  
33 environment;

34 (e) As determined by the board, failure to provide to the board in  
35 a timely manner any lawfully requested information or documentation  
36 regarding a pending application, license renewal application, or  
37 administrative proceeding;

1 (f) Failure to comply with an order issued or approved by the  
2 board;

3 (g) Aiding or abetting a person in engaging in practice without a  
4 required practice permit or license;

5 (h) Practicing beyond the scope of practice as defined by law or  
6 rule;

7 (i) Misrepresentation or fraud in any aspect of the conduct of the  
8 business or profession of designing on-site wastewater treatment  
9 systems;

10 (j) Failure to adequately supervise auxiliary staff to the extent  
11 that the consumer's health or safety is at risk;

12 (k) Interference with an investigation or disciplinary proceeding  
13 by willful misrepresentation of facts before the board or its  
14 authorized representative, or by the use of threats or harassment  
15 against any person who may serve as a witness in any adjudicative  
16 proceeding before the board;

17 (l) Practicing with a practice permit or license issued under this  
18 chapter that is expired, suspended, or revoked;

19 (m) Being willfully untruthful or deceptive in any document,  
20 report, statement, testimony, or plan that pertains to the design or  
21 construction of an on-site wastewater treatment system;

22 (n) Submission of a design or as-built record to a local health  
23 jurisdiction, to the department of health, or to the department of  
24 ecology, that is knowingly based upon false, incorrect, misleading, or  
25 fabricated information; and

26 (o) Any act or omission that is contrary to the standard of  
27 practice for individuals authorized to practice under this chapter.

28 (2) If an act constitutes a crime, conviction in a criminal  
29 proceeding is not a condition precedent to disciplinary action. Upon  
30 conviction, however, the judgment and sentence is conclusive evidence,  
31 at the ensuing disciplinary hearing, of guilt of the crime described in  
32 the complaint, indictment, or information, and of violation of the  
33 statute on which it is based. For the purposes of this section,  
34 conviction includes all instances in which a plea of guilty or nolo  
35 contendere is the basis for the conviction and in all proceedings in  
36 which the sentence has been deferred or suspended.

37 NEW SECTION. **Sec. 4.** DISCIPLINE. (1) The board, upon finding a  
38 violation of this chapter, has the exclusive power to:

1 (a) Reprimand an applicant, licensee, or practice permit holder;  
2 (b) Suspend, revoke, or refuse to renew a license or practice  
3 permit;

4 (c) Deny an application for a practice permit or license; and

5 (d) Impose any monetary penalty not exceeding one thousand dollars  
6 for each violation upon an applicant, licensee, or permit holder.

7 (2) Any person may file with the board a complaint alleging  
8 violation of this chapter. All complaints alleging violation of this  
9 chapter must be in writing and sworn to by the person making the  
10 allegation.

11 (3) All procedures related to hearings on any complaint alleging  
12 violations of this chapter must comply with provisions governing  
13 adjudicative proceedings as set forth in chapter 34.05 RCW, the  
14 administrative procedure act.

15 NEW SECTION. **Sec. 5.** ADVISORY COMMITTEE. (1) There is created an  
16 advisory committee, which shall provide recommendations to the board  
17 and the director concerning the implementation of this chapter. The  
18 advisory committee shall consist of five members who are conversant  
19 with and experienced in the design, inspection, construction, and/or  
20 maintenance of on-site wastewater treatment systems, and who are  
21 otherwise eligible for licensure under this chapter. Each member of  
22 the committee must be a resident of the state and must have a minimum  
23 of seven years of continuous experience with on-site wastewater  
24 treatment systems immediately prior to appointment.

25 (2) The director shall appoint to the committee individuals from  
26 across the state, thus utilizing geographic and experiential diversity  
27 as much as possible. The terms of the members of the advisory  
28 committee shall be a maximum of three years, except that the initial  
29 appointees to the committee shall serve the following terms: Two  
30 members for two years and three members for three years. No member of  
31 the advisory committee is eligible for reappointment to a third  
32 consecutive term, but any member is eligible for reappointment after an  
33 absence of at least one year from the committee. Any member who is  
34 reappointed following an absence of at least one year from the  
35 committee is eligible for reappointment to a second consecutive term  
36 and is again eligible for reappointment after an absence of at least  
37 one year from the committee.

1 (3) Members of the advisory committee shall serve until replaced by  
2 a subsequent appointment, but may resign prior to completing the term  
3 of employment. The director may for just cause remove a committee  
4 member. The director shall appoint a new member to fill any vacancy on  
5 the advisory committee for the remainder of the unexpired term.  
6 Members of the advisory committee shall not be compensated, but shall  
7 be reimbursed for expenses incurred in accordance with RCW 43.03.050  
8 and 43.03.060. Three members constitutes a quorum.

9 (4) At the request of the advisory committee, the director may  
10 appoint temporary additional members to the advisory committee for  
11 assistance with rule development, examination development, and  
12 technical advice on complaints. Members temporarily appointed must  
13 meet the same minimum qualifications as regular members of the advisory  
14 committee. Temporary members have all the powers, duties, and  
15 immunities of regular members of the advisory committee and shall be  
16 reimbursed for expenses incurred in accordance with RCW 43.03.050 and  
17 43.03.060. The director shall limit the term of temporary members to  
18 one year, but may for just cause extend the original appointment up to  
19 one additional year.

20 NEW SECTION. **Sec. 6.** DIRECTOR'S AUTHORITY. The director may:

21 (1) Appoint and reappoint members to the advisory committee,  
22 including temporary additional members, and remove committee members  
23 for just cause;

24 (2) Employ administrative, clerical, and investigative staff as  
25 necessary to administer and enforce this chapter;

26 (3) Establish fees for applications, examinations, and renewals in  
27 accordance with chapter 43.24 RCW;

28 (4) Issue practice permits and licenses to applicants who meet the  
29 requirements of this chapter; and

30 (5) Exercise rule-making authority to implement this section.

31 NEW SECTION. **Sec. 7.** BOARD--AUTHORITY--DUTIES. (1) The board  
32 may:

33 (a) Adopt rules to implement this chapter including, but not  
34 limited to, evaluation of experience, examinations, and scope and  
35 standards of practice;

36 (b) Administer licensing examinations;

1 (c) Review and approve or deny initial and renewal license  
2 applications;

3 (d) Conduct investigations of complaints alleging violations of  
4 this chapter;

5 (e) Conduct adjudicative proceedings in accordance with the  
6 administrative procedure act, chapter 34.05 RCW;

7 (f) Issue investigative subpoenas to compel the production of  
8 records, maps, and other documents, as may be related to the  
9 investigation of violations of this chapter; and

10 (g) Take disciplinary action as provided for in RCW 18.43.110 and  
11 18.43.120.

12 (2) The board shall consider recommendations of the advisory  
13 committee made in accordance with this chapter.

14 NEW SECTION. **Sec. 8.** ADVISORY COMMITTEE--AUTHORITY. The advisory  
15 committee shall make recommendations to the board regarding:

16 (1) Development and adoption of rules to implement this chapter  
17 including, but not limited to, evaluation of experience, examinations,  
18 and scope and standards of practice;

19 (2) Development of the material content of examinations for  
20 licensure or for a certificate of competency under this chapter;

21 (3) Review of complaints and investigations pertaining to the  
22 practice of the design of on-site wastewater treatment systems; and

23 (4) Any other duties deemed necessary by the director or the board.

24 NEW SECTION. **Sec. 9.** IMMUNITY. The director, members of the  
25 board, and individuals acting on behalf of the director are immune to  
26 liability in any civil action or criminal case based on any acts  
27 performed in the course of their duties under this chapter, except for  
28 acts displaying intentional or willful misconduct.

29 NEW SECTION. **Sec. 10.** PRACTICE PERMITS--LICENSE. (1) On July 1,  
30 2000, any person who is authorized by a local health jurisdiction to  
31 prepare on-site wastewater treatment system designs in the state of  
32 Washington is eligible for a practice permit under this chapter. On or  
33 after July 1, 2000, any individual wishing to obtain a practice permit  
34 must make application to the board and pay the fee established by the  
35 director. A practice permit enables the permit holder to practice on-

1 site design services only within local health jurisdictions where the  
2 permit holder had authorization to practice as of July 1, 2000.

3 (2) A practice permit is renewable annually upon payment of the fee  
4 established by the director. All practice permits issued under this  
5 chapter expire June 30, 2003.

6 (3) Any person who practices or offers to practice the design of  
7 on-site wastewater treatment systems must obtain a license under this  
8 chapter by July 1, 2003. A license issued under this chapter enables  
9 the licensee to perform design services for on-site wastewater  
10 treatment systems in all counties in the state. A person wishing to  
11 obtain a license to practice the design of on-site wastewater treatment  
12 systems may obtain the license by one of the methods described in this  
13 chapter. Beginning on July 1, 2001, the board will accept applications  
14 for the license.

15 (4) On July 1, 2000, all programs administered by local health  
16 jurisdictions that license or otherwise authorize the practice of on-  
17 site wastewater treatment systems designs must discontinue. On or  
18 after July 1, 2000, each person practicing on-site design services in  
19 the state of Washington must hold a practice permit or a license  
20 described in this chapter.

21 (5) Local health jurisdictions, the department of health, and the  
22 department of ecology retain authority: (a) To administer local  
23 regulations and codes for approval or disapproval of designs for on-  
24 site wastewater treatment systems; (b) to issue permits for  
25 construction; (c) to evaluate soils and site conditions for compliance  
26 with code requirements; and (d) to perform on-site wastewater treatment  
27 design work as authorized in state and local board of health rules.

28 NEW SECTION. **Sec. 11.** APPLICANTS VIA WRITTEN EXAMINATION--  
29 EXPERIENCE REQUIREMENTS. All applicants for licensure under this  
30 chapter, except as provided in section 19 of this act, must pass a  
31 written examination administered by the board and must also meet the  
32 following minimum requirements:

33 (1) A high school diploma or equivalent; and

34 (2) A minimum of four years of experience, as approved by the  
35 board, showing increased responsibility for the design of on-site  
36 wastewater treatment systems. The experience must include, but is not  
37 limited to, site soil assessment, hydraulics, topographic delineations,  
38 use of specialized treatment processes and devices, microbiology, and



1 construction practices. Completion of two years of college level  
2 course work in subjects dealing with, but not limited to, soils,  
3 hydraulics, topographic delineations, construction practices, and/or  
4 microbiology or completion of a two-year curriculum in on-site  
5 treatment systems, technology, and applications, as approved by the  
6 board, may be substituted for up to two years of the experience  
7 requirement.

8 NEW SECTION. **Sec. 12.** EXPERIENCE FROM OUTSIDE STATE. Experience  
9 in on-site design, inspection, and/or construction activities acquired  
10 outside the state of Washington may satisfy the experience requirements  
11 under this chapter. The board shall consider the experience according  
12 to the level of complexity of the design work and evidence that the  
13 experience shows increased responsibility over designs. The experience  
14 may be considered only to the extent that it can be independently  
15 verified by the board.

16 NEW SECTION. **Sec. 13.** APPLICATION--REFERENCES--FEES. (1)  
17 Application for licensure must be on forms prescribed by the board and  
18 furnished by the director. The application must contain statements,  
19 made under oath, demonstrating the applicant's education and work  
20 experience.

21 (2) Applicants shall provide not less than two verifications of  
22 experience from licensed professional engineers, on-site wastewater  
23 treatment system designers licensed under this chapter, or state/local  
24 regulatory officials in the on-site wastewater treatment field who have  
25 direct knowledge of the applicant's qualifications to practice in  
26 accordance with this chapter and who verify the applicant's work  
27 experience.

28 (3) The director, as provided in RCW 43.24.086, shall determine an  
29 application fee for licensure as an on-site wastewater treatment system  
30 designer. A nonrefundable application fee must accompany the  
31 application. The director shall ensure that the application fee  
32 includes the cost of the examination and the cost issuance of a license  
33 and certificate. A candidate who fails an examination may apply for  
34 reexamination. The director shall determine the fee for reexamination.

35 NEW SECTION. **Sec. 14.** ISSUANCE OF LICENSE--SEAL. (1) The  
36 director shall issue a license to any applicant who meets the

1 requirements of this chapter. The issuance of a license by the  
2 director is evidence that the person named is entitled to the rights  
3 and privileges of a licensed on-site wastewater treatment system  
4 designer as long as the license remains valid.

5 (2) Each person licensed under this chapter shall obtain an inking  
6 stamp, of a design authorized by the board, that contains the  
7 licensee's name and license number. Plans, specifications, and reports  
8 prepared by the registrant must be signed, dated, and stamped.  
9 Signature and stamping constitute certification by the licensee that a  
10 plan, specification, or report was prepared by or under the direct  
11 supervision of a licensee.

12 (3) Those persons who obtain a certificate of competency as  
13 provided in chapter 70.118 RCW do not have the privileges granted to a  
14 license holder under this chapter and do not have authority to obtain  
15 and use a stamp as described in this section.

16 NEW SECTION. **Sec. 15.** RENEWAL--PENALTY FEE. (1) Practice permits  
17 and licenses issued under this chapter are valid for one year and may  
18 be renewed under the conditions described in this chapter. An expired  
19 practice permit or license is invalid and must be renewed before lawful  
20 practice can resume. Any permit holder or licensee who fails to pay  
21 the renewal fee within ninety days following the date of expiration  
22 shall be assessed a penalty fee as determined by the director and must  
23 pay the penalty fee and the base renewal fee before the practice permit  
24 or license may be returned to a valid status.

25 (2) Any license or practice permit issued under this chapter that  
26 is not renewed within two years of its date of expiration must be  
27 canceled. Following cancellation, a person seeking to renew must  
28 reapply as a new applicant under this chapter.

29 (3) The director, in conformance with RCW 43.24.140, may modify the  
30 duration of the license. The director, as provided in RCW 43.24.086,  
31 shall determine the fee for applications and for renewals of practice  
32 permits and licenses issued under this chapter.

33 NEW SECTION. **Sec. 16.** PERSONS EXEMPT FROM LICENSURE. A person  
34 engaged in any of the following activities is not required to be  
35 licensed in accordance with this chapter:

1 (1) A licensed professional engineer, as provided in chapter 18.43  
2 RCW, if the professional engineer performs the design work in  
3 accordance with this chapter and rules adopted under this chapter; or

4 (2) An employee or a subordinate of a person licensed under chapter  
5 18.43 RCW as a professional engineer, or a person licensed under this  
6 chapter if the work is performed under the direct supervision of the  
7 engineer or licensee and does not include final design decisions.

8 NEW SECTION. **Sec. 17.** UNLICENSED PRACTICE--PENALTY. (1) On or  
9 after July 1, 2003, it is a gross misdemeanor for any person, not  
10 otherwise exempt from the requirements of this chapter, to: (a)  
11 Perform on-site wastewater treatment systems design services without a  
12 license; (b) purport to be qualified to perform those services without  
13 having been issued a standard license under this chapter; (c) attempt  
14 to use the license or seal of another; (d) attempt to use a revoked or  
15 suspended license; or (e) attempt to use false or fraudulent  
16 credentials.

17 (2) The board may exercise its authority under RCW 18.43.120 in  
18 dealing with persons described in subsection (1) of this section.

19 NEW SECTION. **Sec. 18.** CONTINUING COMPETENCY. The board shall  
20 require licensees and holders of certificates of competency under this  
21 chapter to obtain continuing professional development or continuing  
22 education. The board may also require these licensees and certificate  
23 holders to demonstrate maintenance of knowledge and skills as a  
24 condition of license or certificate renewal, including peer review of  
25 work products and periodic reexamination.

26 NEW SECTION. **Sec. 19.** COMITY. Any person holding a license  
27 issued by a jurisdiction outside the state of Washington authorizing  
28 that person to perform design services for the construction of on-site  
29 wastewater treatment systems may be granted a license without  
30 examination under this chapter, if:

31 (1) The education, experience, and/or examination forming the basis  
32 of the license is determined by the board to be equal to or greater  
33 than the conditions for the issuance of a license under this chapter;  
34 and

35 (2) The individual has paid the applicable fee and has submitted  
36 the necessary application form.

1        NEW SECTION.    **Sec. 20.**    LOCAL HEALTH JURISDICTIONS--CERTIFICATE OF  
2    COMPETENCY.    (1) Employees of local health jurisdictions who review,  
3    inspect, or approve the design and construction of on-site wastewater  
4    treatment systems shall obtain a certificate of competency by obtaining  
5    a passing score on the written examination administered for licensure  
6    under this chapter.    Eligibility to apply for the certificate of  
7    competency is based upon a written request from the local health  
8    director or designee and payment of a fee established by the director.  
9    Applications for a certificate of competency may not be accepted until  
10   on or after July 1, 2000.    The certificate of competency is renewable  
11   upon payment of a fee established by the director.

12        (2) Issuance of the certificate of competency does not authorize  
13   the certificate holder to offer or provide on-site wastewater treatment  
14   system design services.    However, nothing in this chapter limits or  
15   affects the ability of local health jurisdictions to perform on-site  
16   design services under their authority in chapter 70.05 RCW.

17        NEW SECTION.    **Sec. 21.**    OPERATING ACCOUNT ESTABLISHED.    (1) All  
18   fees and fines collected under this chapter shall be paid into the  
19   professional engineers' account established under RCW 18.43.150.  
20   Moneys in the account may be spent only after appropriation and must be  
21   used to carry out all the purposes and provisions of this chapter and  
22   chapter 18.43 RCW, including the cost of administering this chapter.

23        (2) The director shall biennially prepare a budget request based on  
24   the anticipated cost of administering licensing and certification  
25   activities.    The budget request shall include the estimated income from  
26   fees contained in this chapter.

27        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 70.118  
28   RCW to read as follows:

29        (1) The local board of health shall ensure that individuals who  
30   conduct inspections of on-site wastewater treatment systems or who  
31   otherwise conduct reviews of such systems are qualified in the  
32   technology and application of on-site sewage treatment principles.    A  
33   certificate of competency issued by the department of licensing is  
34   adequate demonstration that an individual is competent in the  
35   engineering aspects of on-site wastewater treatment system technology.

36        (2) A local board of health may allow noncertified individuals to  
37   review designs of, and conduct inspections of, on-site wastewater

1 treatment systems for a maximum of two years after the date of hire, if  
2 a certified individual reviews or supervises the work during that time.

3 NEW SECTION. **Sec. 23.** The sum of . . . . . dollars, or as much  
4 thereof as may be necessary, is appropriated for the fiscal year ending  
5 June 30, 2000, from the general fund to the department of licensing for  
6 purposes of this act.

7 NEW SECTION. **Sec. 24.** PROGRAM EVALUATION. (1) By July 1, 2005,  
8 the department of licensing and department of health shall convene a  
9 review committee to evaluate the licensing and certification programs  
10 established under this chapter.

11 (2) By July 1, 1999, the director shall convene a work group to  
12 study the financial assurance of on-site wastewater treatment system  
13 practitioners through bonding, insurance, risk pools, or similar  
14 methods. The work group shall provide recommendations to the director  
15 by December 1, 1999, and the director shall forward those  
16 recommendations to the governor.

17 NEW SECTION. **Sec. 25.** CAPTIONS NOT LAW. Captions used in this  
18 chapter constitute no part of the law.

19 NEW SECTION. **Sec. 26.** Sections 1 through 21, 24, and 25 of this  
20 act constitute a new chapter in Title 18 RCW.

--- END ---