
SECOND SUBSTITUTE HOUSE BILL 2098

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives G. Chandler and Linville)

Read first time 03/08/1999.

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; creating a new section; and prescribing
4 penalties.

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.** PROGRAM EVALUATION. (1) By July 1, 2005,
4 the department of licensing and department of health shall convene a
5 review committee to evaluate the licensing and certification programs
6 established under this chapter.

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

13 NEW SECTION. **Sec. 24.** CAPTIONS NOT LAW. Captions used in this
14 chapter constitute no part of the law.

15 NEW SECTION. **Sec. 25.** Sections 1 through 21, 23, and 24 of this
16 act constitute a new chapter in Title 18 RCW.

17 NEW SECTION. **Sec. 26.** If specific funding for the purposes of
18 this act, referencing this act by bill or chapter number, is not
19 provided by June 30, 1999, in the omnibus appropriations act, this act
20 is null and void.

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