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SECOND SUBSTITUTE SENATE BILL 5821

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State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Eide, Morton, Patterson, Swecker, McAuliffe and Fraser)

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; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

37 (8) "On-site wastewater design" means the development of plans,  
38 details, specifications, instructions, or inspections by application of

1 specialized knowledge in analysis of soils, on-site wastewater  
2 treatment systems, disposal methods, and technologies to create an  
3 integrated system of collection, transport, distribution, treatment,  
4 and disposal of on-site wastewater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) Reprimand an applicant, licensee, or practice permit holder;

1 (b) Suspend, revoke, or refuse to renew a license or practice  
2 permit;

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

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

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

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

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

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

37 (3) Members of the advisory committee shall serve until replaced by  
38 a subsequent appointment, but may resign prior to completing the term

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

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

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

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

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

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

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

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

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

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

34 (b) Administer licensing examinations;

35 (c) Review and approve or deny initial and renewal license  
36 applications;

1 (d) Conduct investigations of complaints alleging violations of  
2 this chapter;

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

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

8 (g) Take disciplinary action as provided for in RCW 18.43.110 and  
9 18.43.120.

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 10.** PRACTICE PERMITS--LICENSE. (1) On July 1,  
28 2000, any person who is authorized by a local health jurisdiction to  
29 prepare on-site wastewater treatment system designs in the state of  
30 Washington is eligible for a practice permit under this chapter. On or  
31 after July 1, 2000, any individual wishing to obtain a practice permit  
32 must make application to the board and pay the fee established by the  
33 director. A practice permit enables the permit holder to practice on-  
34 site design services only within local health jurisdictions where the  
35 permit holder had authorization to practice as of July 1, 2000.

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

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

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

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

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

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

32 (2) A minimum of four years of experience, as approved by the  
33 board, showing increased responsibility for the design of on-site  
34 wastewater treatment systems. The experience must include, but is not  
35 limited to, site soil assessment, hydraulics, topographic delineations,  
36 use of specialized treatment processes and devices, microbiology, and  
37 construction practices. Completion of two years of college level  
38 course work in subjects dealing with, but not limited to, soils,



1 hydraulics, topographic delineations, construction practices, and/or  
2 microbiology or completion of a two-year curriculum in on-site  
3 treatment systems, technology, and applications, as approved by the  
4 board, may be substituted for up to two years of the experience  
5 requirement.

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

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

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

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

33 NEW SECTION. **Sec. 14.** ISSUANCE OF LICENSE--SEAL. (1) The  
34 director shall issue a license to any applicant who meets the  
35 requirements of this chapter. The issuance of a license by the  
36 director is evidence that the person named is entitled to the rights

1 and privileges of a licensed on-site wastewater treatment system  
2 designer as long as the license remains valid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 20.** LOCAL HEALTH JURISDICTIONS--CERTIFICATE OF  
35 COMPETENCY. (1) Employees of local health jurisdictions who review,

1 inspect, or approve the design and construction of on-site wastewater  
2 treatment systems shall obtain a certificate of competency by obtaining  
3 a passing score on the written examination administered for licensure  
4 under this chapter. Eligibility to apply for the certificate of  
5 competency is based upon a written request from the local health  
6 director or designee and payment of a fee established by the director.  
7 Applications for a certificate of competency may not be accepted until  
8 on or after July 1, 2000. The certificate of competency is renewable  
9 upon payment of a fee established by the director.

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

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

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

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

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

34 (2) A local board of health may allow noncertified individuals to  
35 review designs of, and conduct inspections of, on-site wastewater  
36 treatment systems for a maximum of two years after the date of hire, if  
37 a certified individual reviews or supervises the work during that time.

1        NEW SECTION.    **Sec. 23.**    PROGRAM EVALUATION.    (1) By July 1, 2005,  
2    the department of licensing and department of health shall convene a  
3    review committee to evaluate the licensing and certification programs  
4    established under this chapter.

5        (2) By July 1, 1999, the director shall convene a work group to  
6    study the financial assurance of on-site wastewater system  
7    practitioners through bonding, insurance, risk pools, or similar  
8    methods. The study of financial assurance requirements for on-site  
9    wastewater system practitioners shall include consideration of  
10   responsibility for the loss of value of structures or property should  
11   an installed on-site wastewater treatment system fail or be otherwise  
12   inoperable. The work group shall provide recommendations to the  
13   director by December 1, 1999, and the director shall forward those  
14   recommendations to the governor.

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

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

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