

# Natural Resources Committee

## Nebraska Legislature

### Review of regulations for Wastewater Treatment Facilities Operators

Report as required by Neb. Rev. Stat. § 84-948

One Hundred Sixth Legislature

First Session

#### Committee Members

Senator Dan Hughes, Chair, District 44  
Senator Bruce Bostelman, Vice Chair, District 23  
Senator Joni Albrecht, District 17  
Senator Suzanne Geist, District 25  
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Senator Dan Quick, District 35

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## Occupational Board Reform Act

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

There were five such occupational regulations identified under the jurisdiction of the Natural Resources Committee.<sup>1</sup> The Committee selected two occupational licensing regulations to review this year: Private Onsite Wastewater Treatment System Professionals and Wastewater Treatment Facilities Operators. This report will address the latter.

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey results for all the committees are published on the Legislature’s website.

The Nebraska Department of Environment and Energy is the agency that oversees regulations for Wastewater Treatment Plant Operators. The response from the Wastewater Treatment Facilities Operators can be found at: [https://nebraskalegislature.gov/reports/committeesurvey\\_view.php](https://nebraskalegislature.gov/reports/committeesurvey_view.php)

### Committee Findings

Neb. Rev. Stat. § 84-948 requires the report to include the following with answers in bold:

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

**Title of regulated occupation: Wastewater Treatment Facilities Operators.**

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<sup>1</sup> (1) Wastewater Treatment Facilities Operator; (2) Wastewater Treatment Professional, Certified Onsite/Wastewater Treatment Operator, Certified (referred to collectively in this report as “Private Onsite Wastewater Treatment System Professionals”); (3) Underground Storage Tank Licenses; (4) Geologist; and (5) Water Well Driller

**Name of occupational board: There is no occupational board for this profession. The certification program is administered by the Department of Environment and Energy.**

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

**Wastewater Treatment Operator Certification Act, Neb. Rev. Stat. §§ 81-15,128 to 81-15,143; and**

**NAC Title 197, Rules and Regulations for the Certification of Wastewater Treatment Operators in Nebraska**

(c) The number of members of the occupational board and how the members are appointed;

N/A

(d) The qualifications for membership on the occupational board;

N/A

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

N/A

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

- **FY 2018-2019 Budget: \$ 80,157**
- **FY 2017-2018 Budget: \$ 94,265**
- **FY 2016-2017 Budget: \$ 94,680**
- **FY 2015-2016 Budget: \$ 95,308**
- **FY 2014-2015 Budget: \$ 88,744**

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

**936 (nine hundred thirty-six) Certificates Issued**

**3 (three) Certificates Revoked; There is no occupational board. The Department has revoked three certifications. All three revocations were due to the operator**

**repeatedly failing to use reasonable care in the performance of their duties. Failure to use reasonable care is evident where systems have not been properly operated and maintained.**

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

**Protect the air, water, and land of the State through regulation of wastewater treatment system operators in the State.**

(i) A statement from the occupational board on the effectiveness of the occupational regulations;

**The Department believes the statute, Neb. Rev. Stat. 81-15,128 to 81-15,143 and the associated regulation, NAC Title 197, Rules and Regulations for the Certification of Wastewater Treatment Operators in Nebraska have been effective in assuring that wastewater treatment plants in Nebraska are operated by well trained and competent operators. Maintaining a certification program is a required element of the EPA National Pollutant Discharge Elimination System program. Proper operation and maintenance can prolong the lifespan and sustainability of treatment facilities, protect the owner's financial investment, help the owner meet permitting requirements including discharge limits, and protect human health and the environment from polluted waters. The continuing education requirements ensure that wastewater operators are current with the latest developments, skills and new technologies in the wastewater industry.**

(j) A comparison of whether and how other states regulate the occupation.

**See the following:**

<https://nebraskalegislature.gov/pdf/SurveyDocs/comparison1576612327.pdf>

(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section ~~84-~~  
946 considering the following recommended courses of action for meeting such policies:

**The regulations appear to be consistent with Neb. Rev. Stat. § 84-946.**

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

N/A

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

**Neb. Rev. Stat. § 81-15,134 requires any plant operator be certified at least to the level of classification of the wastewater treatment facility to be supervised by such operator, thus protecting public health and safety. Additionally, the Nebraska Department of Environment and Energy require wastewater treatment facilities to submit to periodic inspections.**

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

N/A

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

N/A

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

N/A

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

N/A

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

N/A

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section [71-6222](#).

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if

applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section [84-946](#).

**N/A, no changes recommended.**

### **Conclusion**

The Committee recommends that the certification and occupational regulations of Wastewater Treatment Facilities Operators be continued with no modifications.