

Natural Resources Committee

Nebraska Legislature

Review of regulations for Private Onsite Wastewater Treatment System Professionals

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

One Hundred Sixth Legislature

First Session

Committee Members

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Senator Bruce Bostelman, Vice Chair, District 23
Senator Joni Albrecht, District 17
Senator Suzanne Geist, District 25
Senator Tim Gragert, District 40
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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.¹ 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 former.

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 Private Onsite Wastewater Treatment System Professionals can be found at:

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: Private Onsite Wastewater Treatment System Professionals.

¹ (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 Director of Environment and Energy and Environmental Quality Council, whose members are appointed by the Governor.

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

Private Onsite Wastewater Treatment System Contractors Certification and System, Neb. Rev. Stat. §§ 81-15,236 to 81-15,253; and

Regulation: NAC Title 124, Rules and Regulations for the Design, Operation, and Maintenance of On-site Wastewater Treatment Systems

(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: \$ 430,150**
- **FY 2017-2018 Budget: \$ 393,172**
- **FY 2016-2017 Budget: \$ 280,965**
- **FY 2015-2016 Budget: \$ 328,646**
- **FY 2014-2015 Budget: \$ 333,926**

(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;

None

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

To protect the air, water, and land of the State through certification and regulation of onsite wastewater treatment system professionals 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. §§ 81-15,236 to 81-15,253 and regulation NAC Title 124, Rules and Regulations for the Design, Operation and Maintenance of Onsite Wastewater Treatment Systems have been effective in assuring the proper siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, and pumping for onsite wastewater treatment systems (e.g. septic tanks) in the State. Prior to the statute there was no uniform mechanism to locate and inspect systems statewide. This led to 55-gallon drums being used as septic tanks or drain lines to the ditch to dispose of domestic wastewater in some places. Since the time of the statute and certification requirement, over 500 certified professionals and more than 24,000 systems have been newly installed or modified and registered with the Department. These systems meet the design requirements and are protective of human health and the environment.

The registration component is a valuable piece of information that the certification process provides; it requires installers to register new systems or modifications with the Department, which allows homeowners to see what is in the ground and where the system is located on their property. Some lending institutions require this information as part of property transactions. When a septic system is improperly designed or installed, it can lead to system failure and water well contamination, resulting in the homeowner expending thousands of dollars to install a properly designed system, treat or install new drinking water wells, and clean up wastewater that has backed up into their residence. The average cost to install a well and onsite system is approximately \$13,500, depending upon soil conditions and depth to groundwater.

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

See the following:

<https://nebraskalegislature.gov/pdf/SurveyDocs/comparison1576613202.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;

NAC Title 124-15 and Neb. Rev. Stat. § 81-15,248 requires periodic inspections for private onsite wastewater treatment systems, which will help promote general health and safety.

(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 Private Onsite Wastewater Treatment System Professionals be continued with no modifications.