

NATURAL RESOURCES COMMITTEE

Nebraska Legislature
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Second Session

Review of Regulations for
Private Onsite Wastewater Treatment System Professionals
Report as required by Neb. Rev. Stat. §84-948

Committee Members

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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 (“Committee”).¹ This report will address the occupation of Private Onsite Wastewater Treatment System Professionals.

FOCUS POSITION & BACKGROUND:

The Nebraska Department of Environment and Energy is the agency that oversees regulations for Wastewater Treatment Facility Operators and oversees credentialing for the Wastewater Treatment Facilities Operators and Private Onsite Wastewater Treatment System Professionals.² https://nebraskalegislature.gov/reports/committeesurvey_view.php

The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act was established in 2003. The Act is codified at Neb. Rev. Stat. section 15,237 and is regulated by the Nebraska Department of Environment and Energy

Nearly all rural homes rely on an onsite wastewater system for treatment of household wastewater. It is ultimately the responsibility of the land owner to ensure onsite wastewater systems are properly installed as the homeowner would bear the cost of correcting any problems. When individuals unfamiliar with the requirements do this work, there is a greater risk of improperly sized or improperly designed systems being installed that can lead to wastewater pollution entering into a drinking water supply resulting in adverse impacts to human health.

COMMITTEE FINDINGS:

The Committee recommends that the certification and occupational regulations of Private Onsite Wastewater Treatment System Professionals be continued with no modification.

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

² Neb. Rev. Stat. §§81-15,128 to 81-15,143

The purpose of the certification requirement is to protect the air, water, and land of the State and the health of its citizens through certification and regulation of onsite wastewater treatment system professionals. Prior to enactment of the legislation, Lancaster and Douglas counties had certification requirements for onsite wastewater professionals. Through the legislation, the state established state-wide minimum certification requirements.

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.

AGENCY RESPONSE

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: (Agency Response in Bold lettering)

(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 Professional.

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

(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 nd

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 2024-2023 Budget:	265,138
FY 2023-2022 Budget:	258,219
FY 2022-2021 Budget	262,713
FY 2021-2020	304,431
FY2020-2019 Budget	449,395

*Budget entirely fee funded; collection authorized by Neb. Rev. Stat. 81-15,284.01; cash funds 81-15,250 and 81-15,250

(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:

545 (five hundred forty-five Certificates issued; Certificate expires on December 31 of each odd numbered year

0 Certificates Revoked

0 Certificates Denied

No penalties have been imposed in the last 5 years.

(h) A review of the basic assumptions and 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:

There is no occupational board. The Department of Environment and Energy offers the following statement of effectiveness:

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.

(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 Department compared Onsite Wastewater Treatment (OWT) requirements in the State to other States' in EPA Region 7 (Kansas, Missouri, and Iowa). Nebraska requires both installers and pumpers to pass an exam and pay a fee for initial certification. The certification expires on December 31 of each odd-numbered year and to renew a certification the individual must pay a fee and obtain 12 hours of continuing education (CE). Missouri is similar to Nebraska in requiring installers to pass an exam and pay a fee to become certified. Missouri also has a (CE) requirement for individuals to renew their certification, and the certification lasts for three years.

Missouri requires fewer CEs each subsequent renewal (e.g. the longer an individual has been certified the fewer CEs are required).

<https://health.mo.gov/living/environment/onsite/professionals.php>

Both Kansas and Iowa primarily rely on individual county-level staff to regulate onsite wastewater. In Iowa, local health boards regulate systems with less than 4 houses or less than 15 people, while the State regulates larger systems. In Iowa there is no requirement for installers to be certified, but pumpers must be licensed by the State. Instead of relying on certified professionals in Iowa the local sanitarian inspects all new systems prior to completing the construction.

<https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Private-Septic-Systems>

Just over half of Kansas counties require installers to be licensed, but initial certification and renewal requirements vary by county.

<http://www.kdheks.gov/nps/lepp/>

(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:

N/A

(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 the 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 systemic 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 consumers 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 Professionals 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 Professionals be continued with no modification.