

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

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LLS NO. 13-0166.01 Jery Payne x2157

SUNSET BILL

**Sunset Process - Senate Agriculture,
Natural Resources, and Energy Committee**

SHORT TITLE: "Sunset Water & Wastewater Operators Board"

DEADLINES: Finalize by: 23 JAN 2013 File by: 25 JAN 2013

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE WATER AND WASTEWATER**
 102 **FACILITY OPERATORS CERTIFICATION BOARD, AND, IN**
 103 **CONNECTION THEREWITH, IMPLEMENTING THE**
 104 **RECOMMENDATIONS OF THE 2012 SUNSET REPORT BY THE**
 105 **DEPARTMENT OF REGULATORY AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sunset Process - Senate Agriculture, Natural Resources, and

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Energy Committee. The bill continues the water and wastewater facility operators certification board (board) until 2020 and implements recommendations in the sunset report:

- Currently, one member of the board represents the Colorado rural water association. This member is replaced with a representative of water facilities serving less than 3,300 people.
- Currently, the board may exempt industrial wastewater facilities from having a certified operator if the exemption does not endanger public health or the environment. This authority is expanded to include nonindustrial facilities.
- Certain statutes are reorganized.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 ***Recommendation 1***

3 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **amend**
4 (44) introductory portion and (51.5) introductory portion; **repeal** (44) (j);
5 and **add** (51.5) (d) as follows:

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for termination, continuation, or reestablishment.**

8 (44) The following agencies, functions, or both, ~~shall~~ terminate on July
9 1, 2013:

10 (j) ~~The water and wastewater facility operators certification board,~~
11 ~~created by section 25-9-103, C.R.S.;~~

12 (51.5) The following agencies, functions, or both, ~~shall~~ terminate
13 on September 1, 2020:

14 (d) THE WATER AND WASTEWATER FACILITY OPERATORS
15 CERTIFICATION BOARD, CREATED BY SECTION 25-9-103, C.R.S.;

16 **SECTION 2.** In Colorado Revised Statutes, 25-9-103, **amend** (4)
17 as follows:

18 **25-9-103. Water and wastewater facility operators**
19 **certification board - composition - repeal of article.** (4) This article is

1 repealed, effective ~~July 1, 2013~~ SEPTEMBER 1, 2020. Prior to ~~such~~ THE
2 repeal, the water and wastewater facility operators certification board
3 shall be reviewed as provided for in section 24-34-104, C.R.S.

4 ***Recommendation 2***

5 **SECTION 3.** In Colorado Revised Statutes, 25-9-103, **amend** (1)
6 introductory portion and (1) (f) as follows:

7 **25-9-103. Water and wastewater facility operators**
8 **certification board - composition - repeal of article.** (1) There is
9 hereby created the water and wastewater facility operators certification
10 board, which ~~shall constitute~~ CONSTITUTES a section of the division of
11 administration of the department and ~~shall consist~~ CONSISTS of the
12 following ten members:

13 (f) A representative ~~from the Colorado rural water association~~ OF
14 WATER FACILITIES SERVING LESS THAN THREE THOUSAND THREE HUNDRED
15 PEOPLE; and

16 ***Recommendations 3 & 4***

17 **SECTION 4.** In Colorado Revised Statutes, **amend** 25-9-104 as
18 follows:

19 **25-9-104. Duties of board - rules.** (1) (a) The board shall elect
20 a chair and secretary each year and shall establish rules in accordance
21 with article 4 of title 24, C.R.S., setting forth the requirements governing
22 certification for water and wastewater facility operators, including:

- 23 (I) Application for certification;
- 24 (II) Admission to the examinations;
- 25 (III) Setting and coordination of examination schedules;
- 26 (IV) Recording and issuing of certificates for the class of operator
27 for which the applicant is found to be qualified;

1 (V) Renewal of certificates;
2 (VI) Issuance of certificates based on reciprocity;
3 (VII) Minimum standards of operator performance; and
4 (VIII) Standards for the accreditation of training programs. The
5 ~~board may select and appoint one or more independent nonprofit~~
6 ~~corporations to carry out the administration of the program and~~
7 ~~examinations, including, but not limited to, maintaining records of~~
8 ~~certified operators; notifying operators of expiration of certification;~~
9 ~~providing information on accredited training requirements; preparing and~~
10 ~~furnishing the examination material; collecting fees as set forth in section~~
11 ~~25-9-108; setting the times, dates, and places for holding examinations,~~
12 ~~one of which shall be given at least annually, in accordance with rules of~~
13 ~~the board; grading examination papers; evaluating work experience of~~
14 ~~applicants; evaluating continuing training achievements for renewal of~~
15 ~~certification; and evaluating requests for reciprocity. The board shall~~
16 ~~ensure that an office is maintained for contact with operators and~~
17 ~~employers. The board shall also ensure, through the use of subject matter~~
18 ~~experts, that all certification examinations test for information that is~~
19 ~~relevant to the knowledge that is necessary to operate the level of facility~~
20 ~~for which certification is sought. The board may adopt such rules in~~
21 ~~accordance with article 4 of title 24, C.R.S., as are necessary to ensure the~~
22 ~~proper administration of the program and shall enter into contracts with~~
23 ~~any nonprofit corporation selected or appointed by the board to ensure~~
24 ~~that each nonprofit corporation receives applications and fees; conducts~~
25 ~~such examinations as may be directed by the board; records the results~~
26 ~~thereof; notifies applicants of results; recommends issuance of~~
27 ~~certificates; provides feedback to examinees upon request following each~~

1 ~~examination, and prepares and distributes an annual report. With the~~
2 ~~permission of the board, a nonprofit corporation contracted with by the~~
3 ~~board may enter into subsidiary agreements with other nonprofit~~
4 ~~corporations, educational institutions, and for-profit corporations to carry~~
5 ~~out the duties assigned by the board; except that any such subsidiary~~
6 ~~agreements shall be subject to prior approval by the board. The board~~
7 ~~shall be responsible for and shall retain the final authority for all actions~~
8 ~~and decisions carried out on behalf of the board by any such nonprofit~~
9 ~~corporation, educational institution, or for-profit corporation. Such~~
10 ~~authority shall include, but shall not be limited to, the authority to modify;~~
11 ~~suspend, or reverse any action or decision of any nonprofit corporation,~~
12 ~~educational institution, or for-profit corporation.~~

13 (b) ~~In order to qualify for consideration to administer the duties~~
14 ~~set forth in this section, a nonprofit corporation must have expertise in~~
15 ~~training and testing procedures, as well as demonstrated knowledge of~~
16 ~~water and wastewater treatment, collection, and distribution systems.~~

17 (2) (a) The board may promote and assist in regular training
18 schools and programs designed to aid applicants and other interested
19 persons to acquire the necessary knowledge to meet the certification
20 requirements of this article.

21 (b) THE BOARD SHALL ENSURE THAT AN OFFICE IS MAINTAINED FOR
22 CONTACT WITH OPERATORS AND EMPLOYERS.

23 (c) THE BOARD SHALL ENSURE, THROUGH THE USE OF SUBJECT
24 MATTER EXPERTS, THAT ALL CERTIFICATION EXAMINATIONS TEST FOR
25 INFORMATION THAT IS RELEVANT TO THE KNOWLEDGE THAT IS NECESSARY
26 TO OPERATE THE LEVEL OF FACILITY FOR WHICH CERTIFICATION IS
27 SOUGHT.

1 (3) (a) The board shall establish classes of:
2 (I) Certified water treatment facility operators;
3 (II) ~~classes of~~ Domestic wastewater treatment facility operators;
4 (III) ~~classes of~~ Industrial wastewater treatment facility operators;
5 (IV) ~~classes of~~ Water distribution system operators;
6 (V) ~~classes of~~ Wastewater collection system operators;
7 (VI) ~~classes of~~ Operators for small systems; and
8 (VII) ~~classes of~~ Other persons who require and qualify for
9 multiple certifications.

10 (b) In establishing each classification, the board shall differentiate
11 the various levels of complexity to be encountered in water and
12 wastewater facility operation and the appropriate qualifications for
13 certification for each class. The board shall set minimum education,
14 experience, examination, and ongoing training requirements for each
15 class.

16 (4) EXCEPT AS PROVIDED IN SECTION 25-9-104.4, the board shall
17 ~~maintain for~~ ESTABLISH FOR each water and wastewater facility a
18 minimum class of certified operators required for its supervision. ~~except~~
19 ~~that the board may exempt certain industrial wastewater treatment~~
20 ~~facilities or classes of facilities from the requirement to operate under the~~
21 ~~supervision of a certified operator, based upon a determination that such~~
22 ~~an exemption is not inconsistent with the goal of assuring adequate~~
23 ~~operation of water and wastewater facilities to protect public health and~~
24 ~~the environment. In determining whether to provide such an exemption,~~
25 ~~the board may consider criteria including, but not limited to:~~

- 26 (a) ~~Discharges of limited duration;~~
27 (b) ~~The sensitivity of the receiving waters;~~

1 (c) ~~The level of toxic pollutants in the discharge; and~~
2 (d) ~~Situations where chemical, mechanical, or biological treatment~~
3 ~~techniques are not required to meet permit limits, including, but not~~
4 ~~limited to, sedimentation ponds at mining operations for construction~~
5 ~~materials, as that term is defined in section 34-32.5-103 (3), C.R.S.~~

6 (5) (a) The board shall establish a procedure whereby any decision
7 of the board, the division, or any organization performing duties on behalf
8 ~~of the division~~ NONPROFIT CORPORATION CONTRACTING WITH THE BOARD
9 can be ~~subject to appeal~~ APPEALED to the board.

10 (b) THE BOARD MAY ADOPT RULES AS NECESSARY TO ENSURE THE
11 PROPER ADMINISTRATION OF THE PROGRAM.

12 (c) THE BOARD MAY PROMULGATE RULES TO ALLOW THE DIVISION
13 TO IMMEDIATELY SUSPEND OR REVOKE A CERTIFICATION IF IMMEDIATE
14 ACTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR ENVIRONMENT.

15 (6) The board ~~shall~~ MAY exercise such other powers and duties as
16 ~~are deemed~~ necessary within the scope of this article. The board in
17 accordance with the "State Administrative Procedure Act", article 4 of
18 title 24, C.R.S., shall establish criteria for the discipline or reprimand of
19 any water or wastewater facility operator and for the suspension or
20 revocation of the certification of any ~~such~~ AN operator. ~~Such~~ THE criteria
21 ~~shall~~ MUST include: ~~but shall not be limited to:~~

22 (a) Willfully or negligently violating, causing, or allowing the
23 violation of rules promulgated ~~pursuant to~~ UNDER this article or failing to
24 comply with ~~the provisions of~~ this article;

25 (b) Submitting false or misleading information on any document
26 provided to the department, the board, or any organization acting on
27 behalf of the board;

1 (c) Using fraud or deception in the course of employment as an
2 operator;

3 (d) Failing to conform with minimum standards in the
4 performance of an operator's duties; and

5 (e) Engaging in dishonest conduct during an examination.

6 ~~(6.5) The division shall have the primary responsibility for the~~
7 ~~investigation of instances of possible misconduct by water and~~
8 ~~wastewater facility operators and shall report the results of any~~
9 ~~investigation to the board and make recommendations regarding~~
10 ~~appropriate disciplinary action to the board. The board may promulgate~~
11 ~~rules in accordance with article 4 of title 24, C.R.S., to allow the division~~
12 ~~to immediately suspend or revoke certifications where such immediate~~
13 ~~action is necessary to protect the public health or environment.~~

14 (7) Members of the board shall serve without compensation but
15 ~~shall be reimbursed~~ ARE ENTITLED TO REIMBURSEMENT for their necessary
16 expenses.

17 (8) The board shall MAY exercise its powers and perform its duties
18 and functions as if it were transferred to the department by a **type 1**
19 transfer under the "Administrative Organization Act of 1968", article 1
20 of title 24, C.R.S.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 25-9-104.2,
22 25-9-104.3, and 25-9-104.4 as follows:

23 **25-9-104.2. Contracting - rules.** (1) THE BOARD MAY SELECT
24 AND APPOINT ONE OR MORE INDEPENDENT NONPROFIT CORPORATIONS TO
25 CARRY OUT THE ADMINISTRATION OF THE PROGRAM AND EXAMINATIONS.
26 THE BOARD MAY PROMULGATE A RULE ESTABLISHING THE SCOPE AND
27 STANDARDS OF THE INDEPENDENT NONPROFIT CORPORATION'S DUTIES.

1 THE CONTRACT MUST SPECIFICALLY ADDRESS EACH DUTY OR FUNCTION
2 REQUIRED BY LAW.

3 (2) TO QUALIFY FOR CONSIDERATION TO ADMINISTER THE DUTIES
4 OF THIS SECTION, A NONPROFIT CORPORATION MUST HAVE EXPERTISE IN
5 TRAINING AND TESTING PROCEDURES AS WELL AS DEMONSTRATED
6 KNOWLEDGE OF WATER AND WASTEWATER TREATMENT, COLLECTION, AND
7 DISTRIBUTION SYSTEMS.

8 (3) WITH THE PRIOR APPROVAL OF THE BOARD FOR EACH
9 AGREEMENT, A NONPROFIT CORPORATION CONTRACTED BY THE BOARD
10 MAY ENTER INTO SUBSIDIARY AGREEMENTS WITH OTHER NONPROFIT
11 CORPORATIONS, EDUCATIONAL INSTITUTIONS, AND FOR-PROFIT
12 CORPORATIONS TO CARRY OUT THE DUTIES ASSIGNED BY THE BOARD.

13 (4) THE BOARD IS RESPONSIBLE FOR AND RETAINS THE FINAL
14 AUTHORITY FOR ALL ACTIONS AND DECISIONS CARRIED OUT ON BEHALF OF
15 THE BOARD BY A NONPROFIT CORPORATION, EDUCATIONAL INSTITUTION,
16 OR FOR-PROFIT CORPORATION. THE BOARD MAY MODIFY, SUSPEND, OR
17 REVERSE ANY ACTION OR DECISION OF ANY NONPROFIT CORPORATION,
18 EDUCATIONAL INSTITUTION, OR FOR-PROFIT CORPORATION.

19 **25-9-104.3. Duties of the division - investigations.** THE DIVISION
20 SHALL INVESTIGATE INSTANCES OF POSSIBLE MISCONDUCT BY WATER AND
21 WASTEWATER FACILITY OPERATORS, REPORT THE RESULTS OF ANY
22 INVESTIGATION TO THE BOARD, AND MAKE RECOMMENDATIONS
23 REGARDING APPROPRIATE DISCIPLINARY ACTION TO THE BOARD.

24 **25-9-104.4. Exemptions.** (1) THE BOARD MAY EXEMPT
25 WASTEWATER FACILITIES OR CLASSES OF FACILITIES FROM THE
26 REQUIREMENT TO OPERATE UNDER THE SUPERVISION OF A CERTIFIED
27 OPERATOR IF THE EXEMPTION DOES NOT ENDANGER THE PUBLIC HEALTH

1 OR THE ENVIRONMENT. IN DETERMINING WHETHER TO PROVIDE SUCH AN
2 EXEMPTION, THE BOARD MAY CONSIDER THE FOLLOWING CRITERIA:

- 3 (a) DISCHARGES OF LIMITED DURATION;
4 (b) THE SENSITIVITY OF THE RECEIVING WATERS;
5 (c) THE LEVEL OF TOXIC POLLUTANTS IN THE DISCHARGE; AND
6 (d) SITUATIONS WHERE CHEMICAL, MECHANICAL, OR BIOLOGICAL
7 TREATMENT TECHNIQUES ARE NOT REQUIRED TO MEET PERMIT LIMITS,
8 INCLUDING SEDIMENTATION PONDS AT MINING OPERATIONS FOR
9 CONSTRUCTION MATERIALS, AS DEFINED BY SECTION 34-32.5-103 (3),
10 C.R.S.

11 **SECTION 6. Effective date.** This act takes effect July 1, 2013.

12 **SECTION 7. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.