

1 HOUSE BILL 103

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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9  
10 AN ACT

11 RELATING TO CERTIFICATION; PROVIDING FOR AND ADDING CATEGORIES  
12 OF CERTIFICATION SERVICES TO THE UTILITY OPERATORS  
13 CERTIFICATION ACT; PROVIDING FOR LATE FEES; PROVIDING  
14 DEFINITIONS; ESTABLISHING FEES.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 61-33-2 NMSA 1978 (being Laws 1992,  
18 Chapter 44, Section 2, as amended) is amended to read:

19 "61-33-2. DEFINITIONS.--As used in the Utility Operators  
20 Certification Act:

21 A. "certification examination" means an examination  
22 that is required for certification pursuant to the Utility  
23 Operators Certification Act;

24 B. "certification renewal review" means an  
25 application for a currently certified operator or sampler

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1 pursuant to the Utility Operators Certification Act;

2 C. "certification testing application review" means  
3 a review of the testing application for certification;

4 ~~[A.]~~ D. "certified operator" means a person who is  
5 certified by the department as being qualified to operate one  
6 of the classifications of public water supply systems or public  
7 wastewater facilities;

8 ~~[B.]~~ E. "commission" means the water quality  
9 control commission;

10 ~~[C.]~~ F. "department" means the department of  
11 environment;

12 ~~[D.]~~ G. "domestic liquid waste" means human excreta  
13 and water-carried waste from typical residential plumbing  
14 fixtures and activities, including waste from toilets, sinks,  
15 bath fixtures, clothes or dishwashing machines and floor  
16 drains;

17 ~~[E.]~~ H. "domestic liquid waste treatment unit"  
18 means any system that is designed to discharge less than two  
19 thousand gallons per day and that is subject to rules  
20 promulgated by the environmental improvement board pursuant to  
21 Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a  
22 watertight unit designed, constructed and installed to  
23 stabilize only domestic liquid waste and to retain solids  
24 contained in such domestic liquid waste, including septic  
25 tanks;

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1           I. "equivalency application review" means a review  
2 of an equivalency application for certified operators who hold  
3 valid certificates or licenses issued by a state, territory or  
4 foreign jurisdiction;

5           J. "examination review" means a post-examination  
6 assessment of an applicant's previous examination score;

7           K. "late penalty" means a monetary amount for a  
8 renewal application that is received by the department after  
9 the established fee deadline;

10           ~~[F-]~~ L. "operate" means performing any activity,  
11 function, process control decision or system integrity decision  
12 regarding water quality or water quantity that has the  
13 potential to affect the proper functioning of a public water  
14 supply system or public wastewater facility or to affect human  
15 health, public welfare or the environment;

16           ~~[G-]~~ M. "person" means any agency, department or  
17 instrumentality of the United States and any of its officers,  
18 agents or employees, the state or any agency, institution or  
19 political subdivision thereof, any public or private  
20 corporation, individual, partnership, association or other  
21 entity, and includes any officer or governing or managing body  
22 of any political subdivision or public or private corporation;

23           ~~[H-]~~ N. "public wastewater facility" means a system  
24 of structures, equipment and processes designed to collect and  
25 treat domestic and industrial waste and dispose of the

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1 effluent, but does not include:

2 (1) any domestic liquid waste treatment unit;

3 or

4 (2) any industrial facility subject to an  
5 industrial pretreatment program regulated by the United States  
6 environmental protection agency [~~under~~] pursuant to the  
7 requirements of the federal Clean Water Act of 1977; and

8 [~~F.~~] O. "public water supply system" means:

9 (1) a system for the provision through pipes  
10 or other constructed conveyances to the public of water for  
11 human consumption or domestic purposes if the system:

12 (a) has at least fifteen service  
13 connections; or

14 (b) regularly serves an average of at  
15 least twenty-five individuals at least sixty days of the year;  
16 and

17 (2) includes any water supply source and any  
18 treatment, storage and distribution facilities under control of  
19 the operator of the system."

20 SECTION 2. Section 61-33-4 NMSA 1978 (being Laws 1973,  
21 Chapter 394, Section 4, as amended) is amended to read:

22 "61-33-4. POWERS AND DUTIES OF COMMISSION.--The  
23 commission may adopt rules relating to the administration and  
24 enforcement of the Utility Operators Certification Act. The  
25 commission shall:

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1           A. adopt rules that classify public water supply  
2 systems and public wastewater facilities based on:

3                   (1) size and type of system or facility;

4                   (2) capacity of the system or facility based  
5 on the size of the serviced area and the number and size of the  
6 users to be served;

7                   (3) type and character of the water or  
8 wastewater to be treated; and

9                   (4) physical conditions affecting the  
10 treatment plants, collection systems and distribution systems;

11           B. adopt rules providing standards and criteria for  
12 the certification of operators based on their qualifications  
13 and their ability to operate public water supply systems or  
14 public wastewater facilities of the various classifications;

15           C. appoint a seven-member board from certified  
16 operators to function with the commission to establish  
17 qualifications of operators, classify public water supply  
18 systems and public wastewater facilities, adopt rules and  
19 advise the department on the administration of the Utility  
20 Operators Certification Act. Two board members selected by the  
21 board shall sit as commission members on matters to which that  
22 act is applicable;

23           D. adopt and file under the State Rules Act rules  
24 necessary to carry out the provisions of the Utility Operators  
25 Certification Act; ~~[and]~~

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1           E. adopt rules providing criteria for identifying  
2 the minimum number of certified operators needed to operate the  
3 various classifications of public water supply systems or  
4 public wastewater facilities in order to protect human health,  
5 public welfare or the environment; and

6           F. provide for the department to administer a  
7 program for certification or review of qualifications of an  
8 operator pursuant to the standards established pursuant to  
9 Subsection B of this section or for the assistance of an  
10 operator applicant through:

11                           (1) a certification examination;

12                           (2) a certification testing application  
13 review;

14                           (3) an equivalency application review; or

15                           (4) an examination review."

16           SECTION 3. Section 61-33-5 NMSA 1978 (being Laws 1973,  
17 Chapter 394, Section 5, as amended) is amended to read:

18           "61-33-5. APPLICATION REQUIREMENTS--FEES--FUND CREATED--  
19 ENDORSEMENT.--

20           A. An applicant for certification as a certified  
21 operator shall:

22                           (1) [~~make~~] submit an application on forms  
23 [~~furnished~~] provided by the department;

24                           (2) submit evidence satisfactory to the  
25 department that the applicant has reached the age of majority;

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1 and

2 (3) pay ~~[in advance to the department fees set~~  
3 ~~by rule not to exceed:~~

4 (a) ~~for examination for certification in~~  
5 ~~each classification \$100;~~

6 (b) ~~for renewal of a certificate after a~~  
7 ~~period set by rule \$40; and~~

8 (c) ~~for issuance of a certificate by~~  
9 ~~endorsement \$100] to the department all applicable fees at the~~  
10 time the application is submitted, including a late penalty,  
11 which shall be applied to a certification renewal application  
12 for each month that the application is received by the  
13 department after the established fee deadline for up to one  
14 year.

15 B. The department shall collect fees for the  
16 following services at the following initial rates:

17 (1) certification testing application review,  
18 \$25.00;

19 (2) certification renewal review application,  
20 \$50.00;

21 (3) equivalency application review, \$50.00;

22 (4) examination review, \$25.00;

23 (5) late penalty, \$25.00; and

24 (6) certification examination, \$60.00.

25 C. The commission may approve subsequent

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1 adjustments in the fees for the services listed in Subsection B  
2 of this section and may promulgate rules pursuant to the State  
3 Rules Act and the Water Quality Act to establish reasonable  
4 fees for additional services necessary to support the purposes  
5 of the Utility Operators Certification Act; provided that:

6 (1) fees may not be increased more than once  
7 per calendar year; and

8 (2) the fee for certification examination  
9 shall not be greater than the fee charged by the association of  
10 boards of certification or other examination provider approved  
11 by the department.

12 D. A fee paid by an applicant approved by the  
13 department for a scheduled examination shall not be refundable.

14 ~~[B.]~~ E. Fees collected pursuant to Subsection A of  
15 this section shall be deposited with the state treasurer in the  
16 "public water supply system operator and public wastewater  
17 facility operator fund", hereby created. The fund shall be  
18 used solely for the purpose of administering and enforcing the  
19 Utility Operators Certification Act. The fund shall be  
20 administered by the department. Money in the fund shall be  
21 retained by the department for use, subject to appropriation by  
22 the legislature. Balances in the fund at the end of any fiscal  
23 year shall not revert to the general fund, but shall accrue to  
24 the credit of the fund. Earnings on the fund shall be credited  
25 to the fund.

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1                   ~~[G.]~~ F. The department may, in its discretion,  
2 endorse for certification without examination an operator who  
3 submits evidence satisfactory to the department that the  
4 applicant has reached the age of majority and holds a valid  
5 license or certification in any state, territory or foreign  
6 jurisdiction having standards equal to or exceeding those of  
7 New Mexico.

8                   ~~[D. Fees shall not be increased more than once per~~  
9 ~~calendar year. The first increase of the fees shall not result~~  
10 ~~in any fee greater than thirty dollars (\$30.00). Any~~  
11 ~~subsequent increase of the fees shall not be more than five~~  
12 ~~percent of the existing fee.]"~~

13                   SECTION 4. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2021.