

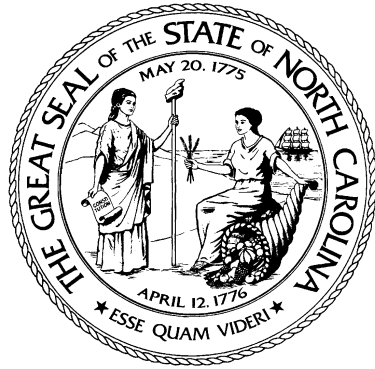
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report

For

**CERTIFY ON-SITE WASTEWATER
CONTRACTORS**

House Bill 688
Senate Bill 568



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 26, 2005

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the certification of wastewater contractors. This report constitutes both the preliminary and final assessment report.

Representative Drew Saunders

**LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(2005-2006)**

Representative Drew Saunders, Chair

Senator Stan Bingham

Representative Harold Brubaker

Senator Kay Hagan

Representative Becky Carney

Senator David Hoyle

Representative Bruce Goforth

Senator Vernon Malone

Representative Earline Parmon

Staff

Ms. Cindy Avrette, Committee Counsel

Ms. Judy Collier, Research Assistant

Ms. Ruth Fish, Committee Clerk

PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- 1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- 2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- 3) Whether practice of the profession requires specialized skill or training.
- 4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
- 5) Whether the public can effectively be protected by other means.
- 6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding on other committees considering the proposal.

HOUSE BILL 688/SENATE BILL 568
CERTIFY ON-SITE WASTEWATER CONTRACTORS

BACKGROUND¹

Current Standards.

Under current law, persons who install, extend, repair, or inspect on-site wastewater systems are not regulated. In order to install or repair an on-site wastewater system, a person is only required to register with the local health department. However, the wastewater systems themselves are regulated by the Department of Environment and Natural Resources.

CERTIFICATION REQUIREMENTS

Who Must Be Certified.

Any person who constructs, installs, repairs, or inspects an "on-site wastewater system" must hold the required level of certification for the particular system. Also, a certified on-site wastewater system inspector is required for any professional performance inspection of an existing on-site wastewater system. An "on-site wastewater system" is defined as "any wastewater system permitted under Article 11 of Chapter 130A of the General Statutes."

Exemptions from Certification.

Persons not required to be certified include:

- A landowner who constructs, installs, or repairs an on-site wastewater system described as a single septic system so long as it is intended for use by that person and members of that person's immediate family.

¹ **Source:** *Response to Questionnaire for the Legislative Committee for New Licensing Boards.* A copy of the questionnaire is attached to this report.

- A licensed general contractor who constructs or installs an on-site wastewater system ancillary to the building being constructed.

Initial Certification Requirements.

General Requirements: All applicants for certification must meet the following conditions:

- Be at least 18 years old.
- File a properly completed application with the Board or submit a recognized application from an accepted association.
- Be of good moral character and submit three (3) affidavits of persons not related to the applicant for whom the applicant has provided on-site wastewater services.
- Complete the training program designed by the Board specific to the grade level for which the applicant is applying. Grade levels are established by the Board based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- Pay the applicable fee.

Examination: For grade levels greater than a conventional system or for a conventional system as defined in G.S. 130A-343(a)(3), the applicant must pass a written or oral exam that tests the applicant's proficiency in the following areas:

- Principles of public environmental health associated with on-site wastewater systems.
- Principles of construction and safety.
- Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
- Laws and rules related to the installation, construction, repair or inspection of the on-site wastewater system.

Approval of Certification Programs from Recognized Associations: The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

Applicants with No Prior Experience: Applicants with no prior experience in providing on-site wastewater services must:

- Complete an application; and
- Complete a basic on-site wastewater education program approved by the Board.

After meeting the above conditions, the applicant is then eligible to participate in training courses designed by the Board for the grade level for which the applicant is applying.

No Degree Requirement: Applicants are not required to hold a degree to be certified.

Certification Renewal Requirements.

Expiration of Certification: The time frame for certification renewals is determined by the Board. However, renewal terms cannot be less than one year.

Renewal Requirements: A contractor or inspector must meet all of the following conditions for certification renewal:

- Submit a renewal application.
- Meet continuing education requirements as determined by the Board, up to a maximum of 12 hours per year.
- Pay the renewal fee.

Fees. Fees are set by the Board and cannot exceed the following amounts:

Purpose of Fee	Fee Amount
Application for basic certification	\$150.00
Application for each step grade	\$50.00
Certification renewal	\$100.00
Reinstatement of revoked or suspended certification	\$500.00
Application for on-site wastewater system inspector certification	\$200.00
Replacement of a certificate	\$25.00
Late renewal	\$25.00

Disciplinary Actions. The Board may:

- Investigate complaints of fraud, deceit, negligence, incompetence, or misconduct.
- Deny, suspend, or revoke a certificate for:
 - Violation of governing law or rules.
 - Use of fraud or deceit in obtaining or renewing a certificate.
 - Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.
- Seek injunctive relief.
- Establish a voluntary arbitration procedure to resolve complaints.

Criminal Penalties. A person who commits any of the following offenses is guilty of a

Class 2 misdemeanor:

- Engages or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate.
- Gives false or forged evidence in obtaining a certificate.

GOVERNING BOARD

North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

The Board will consist of nine members appointed as follows:

- Governor
 - One person engaged in the construction, installation, repair or inspection of on-site wastewater systems.
 - One certified water treatment facility operator.
 - One employee of the Division of Environmental Health.
- General Assembly Upon Recommendation of the President Pro Tem of the Senate
 - One person engaged in construction, installation, repair, or inspection of on-site wastewater systems.
 - One person who inspects on-site wastewater systems.
 - One person recommended by the NC Home Builders Association.
- General Assembly Upon Recommendation of the Speaker of the House.
 - One person engaged in construction, installation, repair, or inspection of on-site wastewater systems.
 - One person who is
 - Employed as an environmental health specialist; and
 - Engaged primarily in the inspection and permitting of on-site wastewater systems.
 - 1 person who is
 - Employed by the North Carolina State University Cooperative Extension Service; and
 - Knowledgeable in the area of on-site wastewater systems.

Powers of the Board. The Board has general administrative powers as well as the power to:

- Determine qualifications for certification.

- Establish grades of certifications based on design capacity, complexity, projected costs and other features of approved on-site wastewater systems.
- Develop and administer examinations for each grade of certification and the power to approve applications by recognized associations for certification of its members after a review of the associations' requirements to ensure that they are equivalent to the requirements of the Board.
- Disciplinary powers.
- Establish fees, not to exceed statutory maximums.

FINDINGS AND RECOMMENDATIONS

ON-SITE WASTEWATER CONTRACTORS

Findings. The Legislative Committee on New Licensing Boards finds that the sponsors have met the six criteria by which the Committee judges licensure proposals. Specifically, the Committee finds that:

- 1) The unregulated practice of on-site wastewater contractors can substantially harm or endanger the public health, safety, or welfare because the installation of new on-site wastewater systems, their repair and extensions, and the inspection of existing systems at the time of property transfer are not currently regulated in a way that would provide the public with assurance of competent construction practices. The current requirement of registration with the local health department does not adequately protect the state's environmental health or the public health of the individual citizens of North Carolina.
- 2) The profession possesses qualities that distinguish it from ordinary labor since it requires proficiencies in specialized technologies and equipment such as lasers, pumps, alarm panels, pretreatment devices, telemetry units and disinfection equipment such as UV exposure. The construction of on-site wastewater systems begins with the protection of the site and adherence to the original permit, requiring a knowledge of plan review, soils and hydraulics and a trained eye for potential problems with the functioning of a system.
- 3) The profession of on-site wastewater contractor requires specialized skill or training.
- 4) A substantial majority of the public does not have the knowledge or experience to evaluate the competence of a professional on-site wastewater contractor.
- 5) The public cannot be effectively protected by other means.
- 6) Licensure would not have a substantial adverse economic impact upon the recipient of the services of a professional on-site wastewater contractor.

Recommendation. The Legislative Committee on New Licensing Boards recommends the licensing of on-site wastewater contractors. This assessment report constitutes both the preliminary and final assessment report for the licensure of on-site wastewater contractors. This report is based on the proposed licensing of on-site wastewater contractors as set out in House Bill 688 and Senate Bill 568, the response to the Committee's questionnaire (Attachment), and testimony before the Committee on May 26, 2005.

ATTACHMENT

*Response to Questionnaire for the
Legislative Committee on New Licensing
Boards*

April 25, 2005

Legislative Committee On New Licensing Boards

House Bill 688

Senate Bill 568

CERTIFY ON-SITE WASTEWATER CONTRACTORS

The following are responses to queries requested by the Board.

1. In what ways has the marketplace failed to adequately regulate the profession or occupation?

The installation of new on-site wastewater systems, their repair and extensions, and the inspection of existing systems at time of property transfer are under no current statewide regulation that enables the public to be assured of competent construction practices. Today, any person wishing to install or repair an on-site wastewater system in North Carolina can do so simply by registering with the local health department. This “ease of entry” does not adequately protect the public health, the environmental health of North Carolina, or the property values of the citizen.

2. Have there been any complaints about the unregulated profession or occupation?

The nature of the on-site wastewater system tends to make it difficult to receive a true number of specific complaints. When a builder or homeowner is dissatisfied with the workmanship of the installer, the complaint is usually lodged with the local health department. The LHD must then take action to find if the system was installed improperly and who is at fault. Without a license or certification, there is little leverage that can be placed against the installer. Many times, without adequate required training that licensure brings, the LHD will arrive at a site and be confronted with a situation where a system is installed in conflict with the design and construction requirements or installation permits. This may have been brought about by a decision by the homeowner or builder. If the LHD catches the error the permit may have to be modified or the system turned down. The error may even put the entire site in jeopardy and additional suitable sites found. If the error is not found the system shall fail to perform as expected, usually causing premature failure. This legislation would provide for added “Checks and Balances” between the permitting and inspection process.

3. In what ways has the public health, safety, or welfare sustained harm or in imminent danger of harm because of lack of state regulation.

The growing population density within North Carolina has increased the potential for groundwater contamination and disease due to surfacing malfunctioning on-site systems. While the continued management and maintenance of the on-site wastewater system is considered the most important factor in system performance, no one can fully expect the system to

be maintained or operated when the initial installation was improper. Centralized water and sewer can only be extended to a certain percentage of the citizens of North Carolina. On-site wastewater systems must still be regarded as a permanent option for wastewater treatment. The sale of existing homes with on-site wastewater systems must also be addressed. There is no specific training involved with these inspections. This legislation would also require specific requirements for these private system inspectors as well as establish the depth of this inspection.

4. Is there potential for substantial harm or danger by the profession or occupation to the public health, safety, and welfare?

The State of North Carolina is typically #1 or #2 nationally in the number of new installations each year. There is an average of 42,000 to 45,000 new systems installed each year and over 1.5 million on-site wastewater systems operating in North Carolina. The resulting number of gallons per day treated by these systems and returning treated wastewater back into the groundwater table is staggering. An improperly constructed on-site wastewater system will certainly run greater risk of contaminating the groundwater resources than a system installed correctly.

5. Has this potential for substantial harm or danger to the public been recognized by other States or the federal government through licensing or certification?

Yes! The EPA has issued guidelines and recommendations and has included installer accreditation (licensure) as a key to improvement of on-site wastewater systems. North Carolina is perhaps the last of the major users of on-site wastewater systems not to have a formal procedure to certify or license installer/contractors. There has already been established a protocol and certification that can be achieved for on-site system home inspectors through NSF and NAWT. These certifications are not specific to North Carolina regulations and rules and are relatively more costly to acquire than the one envisioned by this legislation.

6. Will there be economic advantage to licensing to the public?

Wastewater treatment, either by centralized sewer or on-site systems, is a necessity. The statewide requirement of licensing or certification will build another safeguard for the public by requiring adequate education and training for the practitioners. This can be correlated into real dollar amounts if the system malfunctions or need repair or replacement due to improper workmanship, usually in the thousands of dollars.

7. What will be the economic disadvantage of licensing to the public?

There will be a possible disadvantage to the public with the anticipated cost increase of the system due to the expense of the licensing procedure. This cost will be averaged out over the year by the licensed installer, but the bidding process will still minimize the impact of the requirement. When

viewed in relation to the benefits gained, the disadvantages are quickly outweighed.

8. What will be the economic advantages of licensing to the practitioner?

Licensure of any occupation or industry should always benefit the practitioners who are currently acting within the existing rules and regulations, and against those who consistently seek shortcuts within the system in search of more profits. Licensure will provide a statewide procedure to train and enforce the industry. This will certainly be a great improvement over the patchwork requirements from county to county. Since almost every contractor works in multiple counties, the advantage of a statewide approach is evident. In the long term, the success of licensure will benefit the reputation of the on-site wastewater technology. Since no State can expect to have the ability to provide centralized sewer to everyone, the safeguards that can be established for the on-site wastewater systems will increase the satisfaction within the public and promote sustained use of this technology into the next generation.

9. What will be the economic disadvantages of licensing to the practitioner?

The economic disadvantages will be in the expense of the fees and related costs of continuing education. There will also be the threat of losing the ability to install on-site systems if improper workmanship leads to actions by the Board. Like any industry, the disadvantages are only as great as the practitioner lets them be. The current installer/contractor doing shoddy work would, with passage of this Bill, be subject to greater inspection and punishment. There would be greater entry requirements. A person could not just suddenly decide to become an on-site system installer. This disadvantage should not be viewed as government's interference into free enterprise. The assumption by the public to expect basic training and moral guidelines from the professional practitioners should act as a guide.

10. Does the current inspection process provide for identification of errors and potential problems?

The current process establishes an evaluation of the site for suitability and for a final inspection to make sure the system was installed as per the original permit. This Bill would not, and should not, relieve the local health department of its permitting and inspection program. This legislation would simply impose an additional level of performance, however this would take place during the installation process itself and would give greater assurance that the work would be done as per the conditions of the permit.

11. Please detail the specific specialized skills or training that distinguish the occupation or profession from ordinary labor?

The installer/contractor must begin with a knowledge of the Rules of North Carolina, and any specific requirements of the proprietary system being installed. This is then joined with the excavation requirements, including the

use of certain equipment such as lasers, pumps, alarm panels, and installation procedures. The more advanced systems will also include knowledge of pretreatment devices, telemetry units, and disinfection equipment such as UV exposure. This technology is very different from that obtained by plumbers or utility contractors. To this end, this Bill sets up grades of certifications so that the individual practitioner can choose the level of system they want. Higher technology will require a higher degree of skill and knowledge.

12. What are other qualities of the profession or occupation that distinguish it from ordinary labor?

The construction of on-site wastewater systems begins with the protection of the site and the adherence to the original permit. This will require a knowledge of plan review, a common knowledge of soils and hydraulics, and a trained eye for potential problems that may have been overlooked in the evaluation process. Centralized sewers and utilities do not depend on the soils for treatment. The existing on-site wastewater systems inspectors must also have this knowledge, since the ability to judge if the system will function as expected and what repairs must be made to improve a failing system will come from a knowledge of how and why a system operates.

13. Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?

The Bill exempts (1) a person installing a conventional (single tank and gravity distribution field) system for their personal use of their immediate family, and (2) a person licensed under Article 1 of Chapter 87 of the General Statutes (the licensed general contractor). Exemption (1) is typically granted to individuals in other construction areas. The restriction to the most basic of on-site systems should give reasonable safeguards against groundwater contamination. This exemption does not eliminate the final inspection process by the LHD. Exemption (2) was offered because the existing responsibilities of the General Contractor are still intact. In reality, the role of the General Contractor is as a project manager and as such, this Bill will aid the General Contractor in obtaining quality workmanship from the professional installers. The language in the Bill gives the exemption only if the person installing the system is also the General Contractor of the site, meaning a person holding a General Contractor's license could not advertise to the public as an on-site system installer unless they were the GC of the project. This exemption also guarantees that a specific technology could be installed anywhere in the State by the GC even if there were no private, professional installers certified at that level in that section of the State, therefore no interruption of services.

14. What is the approximate number of persons who will be regulated under this Bill?

As stated previously, there are approximately 42,000 to 45,000 new systems installed in North Carolina each year. Without a statewide registration or

certification program it would be impossible to determine how many persons install systems. A conservative estimate would be 1500-2000 professional installer/contractors. These are the persons who routinely install on-site wastewater systems. The number of private inspectors of existing systems who provide their services at time of property transfer will be dependent on the number of lending institutions and home buyers who request this service be done. The number of requests for this service is growing, given to the awareness of potential problems with malfunctioning on-site systems and the economic impact of an undisclosed problem.

15. Does the occupational group have an established code of ethics, a voluntary certification program, or other means to ensure a minimum quality of service?

Currently, there is not a voluntary certification program because there is no benefit to the practitioner to incur the added expense. Likewise, without a requirement to adhere to a standard of ethical practice, there is little chance that a voluntary standard would evolve. The only current standard is found within a few counties that have individually established a simple registration process. This is very inadequate and fails to protect the public or the industry from untrained or unethical installers.