

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 688*

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors: Representatives Gibson and Culp (Primary Sponsors).

Referred to: Finance.

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER
3 CONTRACTORS AND INSPECTORS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 90A of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 5.

8 "Certification of On-Site Wastewater Contractors and Inspectors.

9 "**§ 90A-70. Purpose.**

10 It is the purpose of this Article to protect the environment, public health, and safety
11 by ensuring the integrity and competence of on-site wastewater contractors and
12 inspectors; to require the examination of on-site wastewater contractors and inspectors
13 and the certification of their competency to supervise, conduct, or inspect the
14 construction, installation, repair, or inspection of on-site wastewater systems; to
15 establish minimum standards for ethical conduct, responsibility, training, experience,
16 and continuing education for on-site wastewater system contractors and inspectors; and
17 to provide appropriate enforcement procedures for rules adopted by the North Carolina
18 On-Site Wastewater Contractors and Inspectors Certification Board.

19 "**§ 90A-71. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) 'Board' means the North Carolina On-Site Wastewater Contractors and
22 Inspectors Certification Board.
23 (2) 'Department' means the Department of Environment and Natural
24 Resources.
25 (3) 'Inspector' means a person that evaluates and reports on or offers to
26 evaluate and report on the performance of an on-site wastewater
27 system.

- 1 (4) 'On-site wastewater system' means any wastewater system permitted
2 under the provisions of Article 11 of Chapter 130A of the General
3 Statutes.
- 4 (5) 'Contractor' means a person that constructs, installs, or repairs, or
5 offers to construct, install, or repair an on-site wastewater system in
6 the State.
- 7 (6) 'Person' means any and all persons, including individuals, firms,
8 partnerships, associations, public or private institutions, municipalities,
9 or political subdivisions, governmental agencies, or private or public
10 corporations organized and existing under the laws of this State or any
11 other state or country.
- 12 (7) 'Responsible charge' means the direct control and personal supervision
13 of the installation, construction, repair, or inspection of an on-site
14 wastewater system.

15 **"§ 90A-72. Certification required; applicability.**

16 (a) Certification Required. – No person shall construct, install, repair, or inspect,
17 or offer to construct, install, repair, or inspect an on-site wastewater system in the State
18 without first obtaining and holding the required level of certification for the specified
19 system. A certified on-site wastewater system inspector shall be required for any
20 professional performance inspection of an existing on-site wastewater system.

21 (b) Applicability. – This Article does not apply to the following:

- 22 (1) A person who constructs, installs, or repairs an on-site wastewater
23 system described as a single septic tank with a gravity-fed distribution
24 system when located on land owned by that person and that is intended
25 solely for use by that person and members of that person's immediate
26 family.
- 27 (2) A person licensed under Article 1 of Chapter 87 of the General
28 Statutes who constructs or installs an on-site wastewater system
29 ancillary to the building being constructed.

30 **"§ 90A-73. Creation and membership of the Board.**

31 (a) Creation and Appointments. – There is created the North Carolina On-Site
32 Wastewater Contractors and Inspectors Certification Board. The Board shall consist of
33 nine members appointed to three-year terms as follows:

- 34 (1) One member appointed by the Governor who, at the time of
35 appointment, is engaged in the construction, installation, repair, or
36 inspection of on-site wastewater systems, to a term that expires on 1
37 July of years that precede by one year those years that are evenly
38 divisible by three.
- 39 (2) One member appointed by the Governor who, at the time of
40 appointment, is a certified water treatment facility operator pursuant to
41 Article 2 of Chapter 90A of the General Statutes, to a term that expires
42 on 1 July of years evenly divisible by three.
- 43 (3) One member appointed by the Governor who is an employee of the
44 Division of Environmental Health to a term that expires on 1 July of

1 years that follow by one year those years that are evenly divisible by
2 three.

3 (4) One member appointed by the General Assembly upon
4 recommendation of the President Pro Tempore of the Senate who, at
5 the time of appointment, is engaged in the construction, installation,
6 repair, or inspection of on-site wastewater systems, to a term that
7 expires on 1 July of years that follow by one year those years that are
8 evenly divisible by three.

9 (5) One member appointed by the General Assembly upon
10 recommendation of the President Pro Tempore of the Senate who, at
11 the time of appointment, is engaged in the business of inspecting
12 on-site wastewater systems, to a term that expires on 1 July of years
13 that precede by one year those years that are evenly divisible by three.

14 (6) One member appointed by the General Assembly upon
15 recommendation of the President Pro Tempore of the Senate upon the
16 recommendation of the North Carolina Home Builders Association, to
17 a term that expires on 1 July of years evenly divisible by three.

18 (7) One member appointed by the General Assembly upon
19 recommendation of the Speaker of the House of Representatives who,
20 at the time of appointment, is engaged in the construction, installation,
21 repair, or inspection of on-site wastewater systems, to a term that
22 expires on 1 July of years evenly divisible by three.

23 (8) One member appointed by the General Assembly upon
24 recommendation of the Speaker of the House of Representatives who,
25 at the time of appointment, is (i) employed as an environmental health
26 specialist, and (ii) engaged primarily in the inspection and permitting
27 of on-site wastewater systems, to a term that expires on 1 July of years
28 that follow by one year those years that are evenly divisible by three.

29 (9) One member appointed by the General Assembly upon
30 recommendation of the Speaker of the House of Representatives who,
31 at the time of appointment, is (i) employed by North Carolina State
32 University Cooperative Extension Service, and (ii) is knowledgeable in
33 the area of on-site wastewater systems, to a term that expires on 1 July
34 of years that precede by one year those years that are evenly divisible
35 by three.

36 (b) Vacancies. – An appointment to fill a vacancy on the Commission created by
37 the resignation, dismissal, disability, or death of a member shall be for the balance of
38 the unexpired term. Vacancies in appointments made by the General Assembly shall be
39 filled as provided in G.S. 120-122.

40 (c) Oath. – Each member of the Board, before entering upon the discharge of the
41 duties of the Board, shall take and file with the Secretary of State an oath in writing to
42 perform properly the duties as a member of the Board and to uphold the Constitution of
43 North Carolina and the Constitution of the United States.

1 (d) Officers. – The Board shall elect a Chair from among its members. The Chair
2 shall serve from the time of their election until 30 June of the following year, or until a
3 successor is elected.

4 (e) Compensation. – Board members who are State employees shall receive no
5 per diem compensation for serving on the Board but shall be reimbursed for their
6 expenses in accordance with G.S. 138-6. All other Board members shall receive per
7 diem compensation and reimbursement in accordance with the compensation rate
8 established in G.S. 93B-5.

9 (f) Quorum. – A majority of the members of the Board constitutes a quorum for
10 the transaction of business.

11 (g) Meetings. – The Board shall meet at least twice each year and may hold
12 special meetings at the call of the Chair or a majority of the members of the Board.

13 (h) Staff. – The Board may employ staff to carry out the duties of the Board and
14 the provisions of this Article. The Board shall determine the compensation, duties, and
15 other terms and conditions of employment of the staff.

16 **"§ 90A-74. Powers and duties of the Board.**

17 The Board shall have the following general powers and duties:

- 18 (1) To adopt rules in the manner prescribed by Chapter 150B of the
19 General Statutes to govern its actions and to implement the provisions
20 of this Article.
- 21 (2) To determine the qualifications of persons who are certified pursuant
22 to this Article.
- 23 (3) To establish grades of certifications based on design capacity,
24 complexity, projected costs, and other features of approved on-site
25 wastewater systems.
- 26 (4) To develop and administer examinations for each grade of
27 certification. The Board may approve applications by recognized
28 associations for certification of its members after a review of the
29 requirements of the association to ensure that they are equivalent to the
30 requirements of the Board.
- 31 (5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry
32 out any of the other actions authorized by this Article.
- 33 (6) To establish, publish, and enforce rules of professional conduct of
34 persons who are certified pursuant to this Article.
- 35 (7) To maintain a record of all proceedings and make available to persons
36 licensed under this Article, and to other concerned parties, an annual
37 report of all Board action.
- 38 (8) To establish reasonable fees for application, certification, and renewal,
39 and other services provided by the Board.
- 40 (9) To conduct investigations for the purpose of determining whether
41 violations of this Article or grounds for disciplining persons certified
42 under this Article exist.
- 43 (10) To adopt a common seal containing the name of the Board for use on
44 all certificates and official reports issued by the Board.

1 (11) To conduct other services necessary to carry out the purpose of this
2 Article.

3 **"§ 90A-75. Expenses and fees.**

4 (a) Expenses. – All salaries, compensation, and expenses incurred or allowed for
5 the purposes of carrying out this Article shall be paid by the Board exclusively out of
6 the funds received by the Board as authorized by this Article. No salary, expense, or
7 other obligations of the Board may be charged against the General Fund of the State.
8 Neither the Board nor any of its members or employees may incur any expense, debt, or
9 financial obligation binding upon the State.

10 (b) Contributions. – The Board may accept grants, contributions, bequests, and
11 gifts that shall be kept in the same account as the funds deposited in accordance with
12 this Article and other provisions of the law.

13 (c) Fees. – All fees shall be established in rules adopted by the Board. The Board
14 shall establish fees sufficient to pay the costs of administering this Article, but in no
15 event shall the Board charge a fee at an annual rate in excess of the following:

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| 16 (1) <u>Application for basic certification</u> | <u>\$150.00</u> |
| 17 (2) <u>Application for each step grade</u> | <u>\$50.00</u> |
| 18 (3) <u>Certification renewal</u> | <u>\$100.00</u> |
| 19 (4) <u>Reinstatement of revoked or suspended</u>
20 <u>certification</u> | <u>\$500.00</u> |
| 21 (5) <u>Application for on-site wastewater</u>
22 <u>system inspector</u> | <u>\$200.00.</u> |

23 (d) Audit. – The Board is subject to the oversight of the State Auditor under
24 Article 5A of Chapter 147 of the General Statutes.

25 **"§ 90A-76. On-Site Wastewater Certification Fund.**

26 Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting
27 account within the Department. All fees collected pursuant to this Article shall be
28 credited to the Fund. The Fund shall be used for the costs of administering this Article.

29 **"§ 90A-77. Certification requirements.**

30 (a) Certification. – The Board shall issue a certificate of the appropriate grade
31 level to an applicant who satisfies all of the following conditions:

- 32 (1) Is at least 18 years of age.
- 33 (2) Files a properly completed application with the Board or submits a
34 recognized application from an accepted association.
- 35 (3) Is of good moral character and submits affidavits of three persons not
36 related to the applicant for whom the applicant provided on-site
37 wastewater services.
- 38 (4) Completes the training program designed by the Board specific to the
39 grade level for which the applicant is applying.
- 40 (5) Pays the applicable fees set by the Board for the particular application.

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

- 1 (1) Principles of public and environmental health associated with on-site
2 wastewater systems.
3 (2) Principles of construction and safety.
4 (3) Technical and practical knowledge of on-site wastewater systems
5 typical to the specified grade level.
6 (4) Laws and rules related to the installation, construction, repair, or
7 inspection of the specified on-site wastewater system.

8 (c) Location of Examinations. – The Board shall provide a minimum of three
9 examinations each year; one each in the coastal plain, the Piedmont, and the mountain
10 areas of the State.

11 (d) Approval of Certification Programs. – The Board may issue a certificate at
12 the appropriate grade level to an applicant from a recognized association after review
13 and approval of the continuing education program of the association.

14 (e) No Prior Experience. – Applicants with no prior experience in providing
15 on-site wastewater services shall, upon a properly completed application, complete a
16 basic on-site wastewater education program approved by the Board. Upon completion
17 of the basic on-site wastewater education program, the applicant shall be eligible to
18 participate in courses in an on-site wastewater systems training program designed by the
19 Board specific to the grade level for which the applicant is applying.

20 (f) No Degree Required. – An applicant shall not be required to hold or obtain an
21 educational diploma or degree to obtain a certificate. If the applicant meets all the
22 conditions for certification except for passage of the Board examination, the applicant
23 may take the examination on two more occasions without having to file for a new
24 application, pay an additional application fee, or repeat the training program. If the
25 applicant fails to pass the Board examination on three successive occasions, the
26 applicant must reapply to the Board, pay the application fee, and repeat the training
27 program.

28 (g) Certificate. – The certification shall show the full name of the certificate
29 holder. The certificate shall provide a unique identification number and shall be signed
30 by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that
31 the person named therein is entitled to all the rights and privileges of a certified on-site
32 wastewater contractor or inspector, at the grade level specified on the certificate, while
33 the certificate remains in effect.

34 (h) Replacement Certificate. – A new certificate to replace one lost, destroyed, or
35 mutilated shall be issued subject to rules adopted by the Board and with the payment of
36 a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed
37 twenty-five dollars (\$25.00).

38 **"§ 90A-78. Certification renewal.**

39 (a) Renewal. – All certifications shall expire at intervals determined by the Board
40 unless they are renewed. In no event may the interval determined by the Board be less
41 than one year. To renew a certification, a contractor or inspector must meet all of the
42 following conditions:

- 43 (1) Submit an application for renewal on the form prescribed by the
44 Board.

1 (2) Meet the continuing education requirements prescribed by the Board.

2 (3) Pay the certification renewal fee.

3 (b) Late Fee. – A contractor or inspector with an expired certificate may renew
4 the certification within 90 days of its expiration upon payment of a late fee set by the
5 Board. The late fee shall not exceed twenty-five dollars (\$25.00). If a certification is not
6 renewed within 90 days of its expiration, the certification shall not be renewed, and the
7 holder must apply for a new certificate.

8 **"§ 90A-79. Continuing education.**

9 (a) Requirements. – The Board shall require continuing education as a condition
10 of certification and renewal. The Board shall determine the number of hours, based on
11 grade levels applied for, up to a maximum of 12 hours per year, and the subject material
12 for the specified grade level. The Board shall maintain records of continuing education
13 coursework successfully completed by each certificate holder.

14 (b) Approval of Continuing Education Programs. – The Board may approve a
15 continuing education program or course if the Board finds that the program or course
16 offers useful educational experience that will enhance the construction, installation,
17 repair, or inspection of on-site wastewater systems. The Board may develop and offer
18 continuing education programs.

19 **"§ 90A-80. Responsibility of the certificate holder.**

20 (a) Responsibilities. – The certificate holder shall be responsible for all crew
21 actions and quality of workmanship. A certificate may be issued jointly to an individual
22 doing business under the name of the individual, under a trade name, or under the name
23 of a firm, partnership, association, or corporation. The certificate holder shall be the
24 person of responsible charge and shall assume all duties and liabilities for the
25 construction, installation, repair, or inspection of the system.

26 (b) Separation of Employment. – If the certificate holder is an employee of the
27 firm, partnership, association, or corporation, employment must continue for the
28 certificate to remain in force. If separation of the employee occurs, the firm, partnership,
29 association, or corporation must employ a certified contractor or inspector within 60
30 days for the certificate to remain in force.

31 **"§ 90A-81. Investigation of complaints.**

32 (a) Misconduct. – A person may refer to the Board charges of fraud, deceit,
33 negligence, incompetence, or misconduct against any contractor or inspector licensed
34 under this Article. The charges shall be in writing and sworn to by the complainant and
35 submitted to the Board. These charges, unless dismissed without a hearing by the Board
36 as unfounded or trivial, shall be heard and determined by the Board in accordance with
37 the provisions of Chapter 150B of the General Statutes. An association that receives
38 professional recognition of its own certification process by the Board shall be
39 responsible for the conduct and competency of its members.

40 (b) Records. – The Board shall establish and maintain detailed records regarding
41 complaints concerning each certified contractor or inspector. The records shall include
42 those certified by recognized associations. The records shall also detail the levels of
43 certification held by each contractor or inspector.

1 (c) Notification. – The Board shall notify local health departments of updates in
2 certifications, complaints, suspensions, or reinstatements.

3 **"§ 90A-82. Remedies.**

4 (a) Denial, Suspension, and Revocation of Certification. – The Board may deny,
5 suspend, or revoke a certificate under this Article for:

6 (1) A violation of this Article or a rule of the Board.

7 (2) The use of fraud or deceit in obtaining or renewing a certificate.

8 (3) Any act of gross negligence, incompetence, or misconduct in the
9 construction, installation, repair, or inspection of an on-site wastewater
10 system.

11 (b) Arbitration. – The Board may establish a voluntary arbitration procedure to
12 resolve complaints concerning a certificate holder or any work performed by the
13 certificate holder, or conflicts involving any certificate holder and the Division of
14 Environmental Health or a local health department.

15 (c) Injunction. – The Board may ask the Attorney General to seek an injunction
16 to restrain any person, firm, partnership, or corporation from violating the provisions of
17 this Article or rules adopted by the Board. The Attorney General may bring an action
18 for an injunction in the name of the State in the superior court of any county in which
19 the violator resides or the violator's principal place of business is located. In any
20 proceedings for an injunction, it shall not be necessary to allege or prove either that an
21 adequate remedy at law does not exist, or that substantial or irreparable damage would
22 result from the continued violation. Members of the Board shall not be personally or
23 professionally liable for any act or omission pursuant to this subsection. The Board shall
24 not be required to post a bond in connection with any action to obtain an injunction.

25 (d) Offenses. – A person who commits any one or more of the following offenses
26 is guilty of a Class 2 misdemeanor:

27 (1) Engages in or offers to engage in the construction, installation, repair,
28 or inspection of an on-site wastewater system without the appropriate
29 certificate for the specific grade of on-site wastewater system.

30 (2) Gives false or forged evidence of any kind in obtaining a certificate.

31 (3) Falsely impersonates a certificate holder."

32 **SECTION 2.(a)** In order to provide for a system of staggered three-year
33 terms for the members of the On-Site Wastewater Contractors and Inspectors
34 Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act,
35 the following provisions shall apply:

36 (1) The term of the member initially appointed to serve in the position
37 established by G.S. 90A-73(a)(1) shall be three years and shall expire
38 on 1 July 2008.

39 (2) The term of the member initially appointed to serve in the position
40 established by G.S. 90A-73(a)(2) shall be four years and shall expire
41 on 1 July 2009.

42 (3) The term of the member initially appointed to serve in the position
43 established by G.S. 90A-73(a)(3) shall be five years and shall expire
44 on 1 July 2010.

- 1 (4) The term of the member initially appointed to serve in the position
2 established by G.S. 90A-73(a)(4) shall be five years and shall expire
3 on 1 July 2010.
- 4 (5) The term of the member initially appointed to serve in the position
5 established by G.S. 90A-73(a)(5) shall be three years and shall expire
6 on 1 July 2008.
- 7 (6) The term of the member initially appointed to serve in the position
8 established by G.S. 90A-73(a)(6) shall be four years and shall expire
9 on 1 July 2009.
- 10 (7) The term of the member initially appointed to serve in the position
11 established by G.S. 90A-73(a)(7) shall be four years and shall expire
12 on 1 July 2009.
- 13 (8) The term of the member initially appointed to serve in the position
14 established by G.S. 90A-73(a)(8) shall be five years and shall expire
15 on 1 July 2010.
- 16 (9) The term of the member initially appointed to serve in the position
17 established by G.S. 90A-73(a)(9) shall be three years and shall expire
18 on 1 July 2008.

19 **SECTION 2.(b)** In the event that the General Assembly fails to appoint one
20 or more initial members to the On-Site Wastewater Contractors and Inspectors
21 Certification Board while the General Assembly is in session during 2003, the failure to
22 make an initial appointment shall be treated as though a vacancy had occurred, and the
23 vacancy may be filled by appointment as provided in G.S. 120-122.

24 **SECTION 3.** This act constitutes a recent act of the General Assembly
25 within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and
26 Inspectors Certification Board may adopt temporary rules to implement the provisions
27 of this act until 1 July 2005. Notwithstanding G.S. 150B-21.1(d), a temporary rule
28 adopted in accordance with this section shall remain in effect until a permanent rule
29 adopted to replace the temporary rule becomes effective. Prior to the adoption of
30 temporary rules under this section, the Board shall:

- 31 (1) Consult with persons who may be interested in the subject matter of
32 the temporary rule during the development of the text of the proposed
33 temporary rule.
- 34 (2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify
35 persons on the mailing list of its intent to adopt a temporary rule.
- 36 (3) Publish a notice of intent to adopt a temporary rule in the North
37 Carolina Register. The notice shall set out the text of the proposed
38 temporary rule and include the name of the person to whom questions
39 and written comments on the proposed rule may be submitted. The
40 Board shall accept written comments on the proposed temporary rule
41 for at least 30 days after the notice of intent to adopt the temporary
42 rule as published in the North Carolina Register.
- 43 (4) Hold at least one public hearing on the proposed temporary rule.

1 **SECTION 4.** Section 1 of this act is effective when it becomes law except
2 that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become
3 effective January 1, 2007. Sections 2, 3, and 4 of this act are effective when the act
4 becomes law.