

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 688*
Committee Substitute Favorable 7/7/05
Committee Substitute #2 Favorable 7/26/05
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 6/1/06

Short Title: Certify On-Site Wastewater Contractors.

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER
CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"§ 90A-70. Purpose.

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

"§ 90A-71. Definitions.

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and
Inspectors Certification Board.

(2) 'Contractor' means a person who constructs, installs, or repairs, or
offers to construct, install, or repair an on-site wastewater system in
the State.

- 1 (3) 'Conventional wastewater system' has the same meaning as in
2 G.S. 130A-343(a)(3).
- 3 (4) 'Department' means the Department of Environment and Natural
4 Resources.
- 5 (5) 'Inspector' means a person who conducts an inspection of an on-site
6 wastewater system at any time after the local health department has
7 issued an operation permit pursuant to G.S. 130A-337.
- 8 (6) 'On-site wastewater system' means any wastewater system permitted
9 under the provisions of Article 11 of Chapter 130A of the General
10 Statutes that does not discharge to a treatment facility or the surface
11 waters of the State.
- 12 (7) 'Person' means all persons, including individuals, firms, partnerships,
13 associations, public or private institutions, municipalities, or political
14 subdivisions, governmental agencies, or private or public corporations
15 organized and existing under the laws of this State or any other state or
16 country.

17 **"§ 90A-72. Certification required; applicability.**

18 (a) Certification Required. – No person shall construct, install, or repair or offer
19 to construct, install, or repair an on-site wastewater system in the State without being
20 certified as a contractor at the required level of certification for the specified system. No
21 person shall conduct an inspection or offer to conduct an inspection of an on-site
22 wastewater system without being certified as an inspector at the required level of
23 certification for the specified system.

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

- 25 (1) A person who is employed by, or performs labor and services for, a
26 certified contractor or inspector in connection with the construction,
27 installation, repair, or inspection of an on-site wastewater system
28 performed under the direct and personal supervision of the certified
29 contractor or inspector.
- 30 (2) A person who constructs, installs, or repairs an on-site wastewater
31 system described as a single septic tank with a gravity-fed distribution
32 system when located on land owned by that person and that is intended
33 solely for use by that person and members of that person's immediate
34 family.
- 35 (3) A person licensed under Article 1 of Chapter 87 of the General
36 Statutes who constructs or installs an on-site wastewater system
37 ancillary to the building being constructed.
- 38 (4) A person who is certified by the Water Pollution Control System
39 Operators Certification Commission and contracted to provide
40 necessary operation and maintenance on the permitted on-site
41 wastewater system.
- 42 (5) A person permitted under Article 21 of Chapter 143 of the General
43 Statutes who is constructing a water pollution control facility

1 necessary to comply with the terms and conditions of a National
2 Pollutant Discharge Elimination System (NPDES) permit.

3 (6) A person licensed under Article 1 of Chapter 87 of the General
4 Statutes as a licensed public utilities contractor who is installing or
5 expanding a wastewater treatment facility, including a collection
6 system, designed by a registered professional engineer.

7 (7) A plumbing contractor licensed under Article 2 of Chapter 87 of the
8 General Statutes, so long as the plumber is not performing plumbing
9 work that includes the installation or repair of a septic tank or similar
10 depository, or lines or appurtenances downstream from the point
11 where the house or building sewer lines from the plumbing system
12 meet the septic tank or similar depository.

13 **"§ 90A-73. Creation and membership of the Board.**

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

17 (1) One member appointed by the Governor who, at the time of
18 appointment, is engaged in the construction, installation, repair, or
19 inspection of on-site wastewater systems, to a term that expires on 1
20 July of years that precede by one year those years that are evenly
21 divisible by three.

22 (2) One member appointed by the Governor who, at the time of
23 appointment, is a certified water treatment facility operator pursuant to
24 Article 2 of Chapter 90A of the General Statutes, to a term that expires
25 on 1 July of years evenly divisible by three.

26 (3) One member appointed by the Governor who is an employee of the
27 Division of Environmental Health of the Department to a term that
28 expires on 1 July of years that follow by one year those years that are
29 evenly divisible by three.

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

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

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

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

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

12 (9) One member appointed by the General Assembly upon
13 recommendation of the Speaker of the House of Representatives who,
14 at the time of appointment, is (i) employed by the North Carolina
15 Cooperative Extension Service, and (ii) is knowledgeable in the area of
16 on-site wastewater systems, to a term that expires on 1 July of years
17 that precede by one year those years that are evenly divisible by three.

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

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

26 (d) Dual Office Holding. – Service on the Board may be in addition to any other
27 office a person is entitled to hold.

28 (e) Officers. – The Board shall elect a Chair from among its members. The Chair
29 shall serve from the time of election until 30 June of the following year, or until a
30 successor is elected.

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

36 (g) Quorum. – A majority of the members of the Board constitutes a quorum for
37 the transaction of business.

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

40 (i) Staff. – The Board may employ staff to carry out the duties of the Board and
41 the provisions of this Article. The Board shall determine the compensation, duties, and
42 other terms and conditions of employment of the staff.

43 **§ 90A-74. Powers and duties of the Board.**

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

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

30 **"§ 90A-75. Expenses and fees.**

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

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

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

- | | | |
|------------------|--|-----------------|
| 43 (1) | <u>Application for basic certification</u> | <u>\$150.00</u> |
| 44 (2) | <u>Application for each grade level</u> | <u>\$50.00</u> |

1	(3)	<u>Certification renewal</u>	<u>\$100.00</u>
2	(4)	<u>Reinstatement of revoked or suspended</u>	
3		<u>certification</u>	<u>\$500.00</u>
4	(5)	<u>Application for on-site wastewater</u>	
5		<u>system inspector</u>	<u>\$200.00.</u>

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

8 **"§ 90A-76. On-Site Wastewater Certification Fund.**

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

12 **"§ 90A-77. Certification requirements.**

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

- 15 (1) Is at least 18 years of age.
- 16 (2) Submits a properly completed application to the Board.
- 17 (3) If the applicant has prior experience providing on-site wastewater
18 system services, submits affidavits of three persons not related to the
19 applicant for whom the applicant provided on-site wastewater services.
- 20 (4) If the applicant has no prior experience, completes the basic on-site
21 wastewater education program approved by the Board.
- 22 (5) Completes any additional training program designed by the Board
23 specific to the grade level for which the applicant is applying.
- 24 (6) Pays the applicable fees set by the Board for the particular application
25 and grade level.
- 26 (7) For grade levels greater than conventional systems, passes a written or
27 oral examination that tests the applicant's proficiency in all of the
28 following areas:
- 29 a. Principles of public and environmental health associated with
30 on-site wastewater systems.
- 31 b. Principles of construction and safety.
- 32 c. Technical and practical knowledge of on-site wastewater
33 systems typical to the specified grade level.
- 34 d. Laws and rules related to the installation, construction, repair,
35 or inspection of the specified on-site wastewater system.

36 (b) Location of Examinations. – The Board shall provide a minimum of three
37 examinations each year; one each in the eastern, central, and western regions of the
38 State.

39 (c) Approval of Certification Programs. – The Board may issue a certificate at
40 the appropriate grade level to an applicant who has completed an approved training or
41 continuing education program.

42 (d) No Degree Required. – An applicant shall not be required to hold or obtain an
43 educational diploma or degree to obtain a certificate. An applicant that meets all the
44 conditions for certification except for passage of the Board examination may take the

1 examination on three successive occasions without having to file for a new application,
2 pay an additional application fee, or repeat any applicable training program. If the
3 applicant fails to pass the Board examination on three successive occasions, the
4 applicant must reapply to the Board, pay an additional application fee, and repeat the
5 training program.

6 (e) Certificate. – The certification shall show the full name of the certificate
7 holder. The certificate shall provide a unique identification number and shall be signed
8 by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that
9 the person named therein is entitled to all the rights and privileges of a certified
10 contractor or inspector, at the grade level specified on the certificate, while the
11 certificate remains in effect.

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

16 **"§ 90A-78. Certification renewal.**

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

21 (1) Submit an application for renewal on the form prescribed by the
22 Board.

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

24 (3) Pay the certification renewal fee.

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

30 **"§ 90A-79. Continuing education.**

31 (a) Requirements. – The Board shall require continuing education as a condition
32 of certification and renewal. The Board shall determine the number of hours, based on
33 grade levels applied for, up to a maximum of 12 hours per year, and the subject material
34 for the specified grade level. The Board shall maintain records of continuing education
35 coursework successfully completed by each certified contractor or inspector.

36 (b) Approval of Continuing Education Programs. – The Board may approve a
37 continuing education program or course if the Board finds that the program or course
38 provides useful educational information or experience that will enhance the
39 construction, installation, repair, or inspection of on-site wastewater systems. The Board
40 may develop and offer continuing education programs.

41 **"§ 90A-80. Investigation of complaints.**

42 (a) Misconduct. – A person may refer to the Board charges of fraud, deceit,
43 negligence, incompetence, or misconduct against any certified contractor or inspector.
44 The charges shall be in writing and sworn to by the complainant and submitted to the

1 Board. These charges, unless dismissed without a hearing by the Board as unfounded or
2 trivial, shall be heard and determined by the Board in accordance with the provisions of
3 Chapter 150B of the General Statutes. An association that receives professional
4 recognition of its own certification process by the Board shall be responsible for the
5 conduct and competency of its members.

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

10 (c) Notification. – The Board shall provide local health departments with
11 notification of changes in certifications, complaints, suspensions, or reinstatements
12 under this Article.

13 **"§ 90A-81. Remedies.**

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

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

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

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

21 (4) Failure to satisfactorily complete continuing education requirements
22 prescribed by the Board.

23 (b) Arbitration. – The Board may establish a voluntary arbitration procedure to
24 resolve complaints concerning a certified contractor or inspector or any work performed
25 by a certified contractor or inspector, or conflicts involving any certified contractor or
26 inspector and the Division of Environmental Health of the Department or a local health
27 department.

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

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

40 (1) Engages in or offers to engage in the construction, installation, repair,
41 or inspection of an on-site wastewater system without the appropriate
42 certificate for the grade level of on-site wastewater system.

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

44 (3) Falsely impersonates a certified contractor or inspector."

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

- 5 (1) The term of the member initially appointed to serve in the position
6 established by G.S. 90A-73(a)(1) shall be three years and shall expire
7 on 1 July 2009.
- 8 (2) The term of the member initially appointed to serve in the position
9 established by G.S. 90A-73(a)(2) shall be four years and shall expire
10 on 1 July 2010.
- 11 (3) The term of the member initially appointed to serve in the position
12 established by G.S. 90A-73(a)(3) shall be five years and shall expire
13 on 1 July 2011.
- 14 (4) The term of the member initially appointed to serve in the position
15 established by G.S. 90A-73(a)(4) shall be five years and shall expire
16 on 1 July 2011.
- 17 (5) The term of the member initially appointed to serve in the position
18 established by G.S. 90A-73(a)(5) shall be three years and shall expire
19 on 1 July 2009.
- 20 (6) The term of the member initially appointed to serve in the position
21 established by G.S. 90A-73(a)(6) shall be four years and shall expire
22 on 1 July 2010.
- 23 (7) The term of the member initially appointed to serve in the position
24 established by G.S. 90A-73(a)(7) shall be four years and shall expire
25 on 1 July 2010.
- 26 (8) The term of the member initially appointed to serve in the position
27 established by G.S. 90A-73(a)(8) shall be five years and shall expire
28 on 1 July 2011.
- 29 (9) The term of the member initially appointed to serve in the position
30 established by G.S. 90A-73(a)(9) shall be three years and shall expire
31 on 1 July 2009.

32 **SECTION 2.(b)** In the event that the General Assembly fails to appoint one
33 or more initial members to the On-Site Wastewater Contractors and Inspectors
34 Certification Board during the 2006 Regular Session, the failure to make an initial
35 appointment shall be treated as though a vacancy had occurred, and the vacancy may be
36 filled by appointment as provided in G.S. 120-122.

37 **SECTION 3.** Section 1 of this act is effective when this act becomes law
38 except that G.S. 90A-72, 90A-79, and 90A-81, as enacted by Section 1 of this act,
39 become effective 1 January 2008. Sections 2 and 3 of this act are effective when it
40 becomes law.