

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 688\*  
Committee Substitute Favorable 7/7/05

Short Title: Certify On-Site Wastewater Contractors.

(Public)

Sponsors:

Referred to:

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) 'Certified on-site wastewater system inspector' means a person who is  
26 certified under this Article to conduct an inspection of an existing  
27 on-site wastewater system at the time of resale.  
28 (4) 'On-site wastewater system' means any wastewater system permitted  
29 under the provisions of Article 11 of Chapter 130A of the General

1 Statutes that does not discharge to a treatment facility or the surface  
2 waters.

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

6 (6) 'Person' means all persons, including individuals, firms, partnerships,  
7 associations, public or private institutions, municipalities, or political  
8 subdivisions, governmental agencies, or private or public corporations  
9 organized and existing under the laws of this State or any other state or  
10 country.

11 (7) 'Responsible charge' means the direct control and personal supervision  
12 of the installation, construction, repair, or inspection of an on-site  
13 wastewater system.

14 **"§ 90A-72. Certification required; applicability.**

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

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

21 (1) A person who constructs, installs, or repairs an on-site wastewater  
22 system described as a single septic tank with a gravity-fed distribution  
23 system when located on land owned by that person and that is intended  
24 solely for use by that person and members of that person's immediate  
25 family.

26 (2) A person licensed under Article 1 of Chapter 87 of the General  
27 Statutes who constructs or installs an on-site wastewater system  
28 ancillary to the building being constructed.

29 (3) A person who is certified by the Water Pollution Control System  
30 Operators Certification Commission and contracted to provide  
31 necessary operation and maintenance on the permitted on-site  
32 wastewater system.

33 (4) A person permitted under Article 21 of Chapter 143 of the General  
34 Statutes who is constructing a water pollution control facility  
35 necessary to comply with the terms and conditions of a National  
36 Pollutant Discharge Elimination System (NPDES) permit.

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

41 (6) A plumbing contractor licensed under Article 2 of Chapter 87 of the  
42 General Statutes unless the plumbing contractor constructs, installs,  
43 repairs, or inspects, or offers to construct, install, repair, or inspect an  
44 on-site wastewater system in the State.

1 **"§ 90A-73. Creation and membership of the Board.**

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

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

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

14 (3) One member appointed by the Governor who is an employee of the  
15 Division of Environmental Health to a term that expires on 1 July of  
16 years that follow by one year those years that are evenly divisible by  
17 three.

18 (4) One member appointed by the General Assembly upon  
19 recommendation of the President Pro Tempore of the Senate who, at  
20 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 that follow by one year those years that are  
23 evenly divisible by three.

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

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

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

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

1           (9) 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 (i) employed by North Carolina State  
4 University Cooperative Extension Service, and (ii) is knowledgeable in  
5 the area of on-site wastewater systems, to a term that expires on 1 July  
6 of years that precede by one year those years that are evenly divisible  
7 by three.

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

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

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

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

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

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

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

31 **"§ 90A-74. Powers and duties of the Board.**

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

33           (1) To adopt rules in the manner prescribed by Chapter 150B of the  
34 General Statutes to govern its actions and to implement the provisions  
35 of this Article.

36           (2) To determine the qualifications of persons who are certified pursuant  
37 to this Article.

38           (3) To establish grades of certifications based on design capacity,  
39 complexity, projected costs, and other features of approved on-site  
40 wastewater systems.

41           (4) To develop and administer examinations for each grade of  
42 certification. The Board may approve applications by recognized  
43 associations for certification of its members after a review of the

1 requirements of the association to ensure that they are equivalent to the  
2 requirements of the Board.

3 (5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry  
4 out any of the other actions authorized by this Article.

5 (6) To establish, publish, and enforce rules of professional conduct of  
6 persons who are certified pursuant to this Article.

7 (7) To maintain a record of all proceedings and make available to persons  
8 licensed under this Article, and to other concerned parties, an annual  
9 report of all Board action.

10 (8) To establish reasonable fees for application, certification, and renewal,  
11 and other services provided by the Board.

12 (9) To conduct investigations for the purpose of determining whether  
13 violations of this Article or grounds for disciplining persons certified  
14 under this Article exist.

15 (10) To adopt a common seal containing the name of the Board for use on  
16 all certificates and official reports issued by the Board.

17 (11) To conduct other services necessary to carry out the purposes of this  
18 Article.

19 **"§ 90A-75. Expenses and fees.**

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

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

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

32 (1) Application for basic certification \$150.00

33 (2) Application for each step grade \$50.00

34 (3) Certification renewal \$100.00

35 (4) Reinstatement of revoked or suspended  
36 certification \$500.00

37 (5) Application for on-site wastewater  
38 system inspector \$200.00.

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

41 **"§ 90A-76. On-Site Wastewater Certification Fund.**

42 Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting  
43 account within the Department. All fees collected pursuant to this Article shall be

1 credited to the Fund. The Fund shall be used solely for the costs of administering this  
2 Article.

3 **"§ 90A-77. Certification requirements.**

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

6 (1) Is at least 18 years of age.

7 (2) Files a properly completed application with the Board or submits a  
8 recognized application from an accepted association.

9 (3) Is of good moral character and submits affidavits of three persons not  
10 related to the applicant for whom the applicant provided on-site  
11 wastewater services.

12 (4) Completes the training program designed by the Board specific to the  
13 grade level for which the applicant is applying.

14 (5) Pays the applicable fees set by the Board for the particular application.

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

18 (1) Principles of public and environmental health associated with on-site  
19 wastewater systems.

20 (2) Principles of construction and safety.

21 (3) Technical and practical knowledge of on-site wastewater systems  
22 typical to the specified grade level.

23 (4) Laws and rules related to the installation, construction, repair, or  
24 inspection of the specified on-site wastewater system.

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

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

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

37 (f) No Degree Required. – An applicant shall not be required to hold or obtain an  
38 educational diploma or degree to obtain a certificate. If the applicant meets all the  
39 conditions for certification except for passage of the Board examination, the applicant  
40 may take the examination on two more occasions without having to file for a new  
41 application, pay an additional application fee, or repeat the training program. If the  
42 applicant fails to pass the Board examination on three successive occasions, the  
43 applicant must reapply to the Board, pay the application fee, and repeat the training  
44 program.

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

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

11 **"§ 90A-78. Certification renewal.**

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

16               (1) Submit an application for renewal on the form prescribed by the  
17 Board.

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

19               (3) Pay the certification renewal fee.

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

25 **"§ 90A-79. Continuing education.**

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

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

36 **"§ 90A-80. Responsibility of the certificate holder.**

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

43       (b) Separation of Employment. – If the certificate holder is an employee of the  
44 firm, partnership, association, or corporation, employment must continue for the

1 certificate to remain in force. If separation of the employee occurs, the firm, partnership,  
2 association, or corporation must employ a certified contractor or inspector within 60  
3 days for the certificate to remain in force.

4 **"§ 90A-81. Investigation of complaints.**

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

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

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

19 **"§ 90A-82. Remedies.**

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

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

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

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

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

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

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



- 1           (1)   Engages in or offers to engage in the construction, installation, repair,  
2           or inspection of an on-site wastewater system without the appropriate  
3           certificate for the specific grade of on-site wastewater system.
- 4           (2)   Gives false or forged evidence of any kind in obtaining a certificate.
- 5           (3)   Falsely impersonates a certificate holder."

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

- 10          (1)   The term of the member initially appointed to serve in the position  
11               established by G.S. 90A-73(a)(1) shall be three years and shall expire  
12               on 1 July 2008.
- 13          (2)   The term of the member initially appointed to serve in the position  
14               established by G.S. 90A-73(a)(2) shall be four years and shall expire  
15               on 1 July 2009.
- 16          (3)   The term of the member initially appointed to serve in the position  
17               established by G.S. 90A-73(a)(3) shall be five years and shall expire  
18               on 1 July 2010.
- 19          (4)   The term of the member initially appointed to serve in the position  
20               established by G.S. 90A-73(a)(4) shall be five years and shall expire  
21               on 1 July 2010.
- 22          (5)   The term of the member initially appointed to serve in the position  
23               established by G.S. 90A-73(a)(5) shall be three years and shall expire  
24               on 1 July 2008.
- 25          (6)   The term of the member initially appointed to serve in the position  
26               established by G.S. 90A-73(a)(6) shall be four years and shall expire  
27               on 1 July 2009.
- 28          (7)   The term of the member initially appointed to serve in the position  
29               established by G.S. 90A-73(a)(7) shall be four years and shall expire  
30               on 1 July 2009.
- 31          (8)   The term of the member initially appointed to serve in the position  
32               established by G.S. 90A-73(a)(8) shall be five years and shall expire  
33               on 1 July 2010.
- 34          (9)   The term of the member initially appointed to serve in the position  
35               established by G.S. 90A-73(a)(9) shall be three years and shall expire  
36               on 1 July 2008.

37           **SECTION 2.(b)** In the event that the General Assembly fails to appoint one  
38 or more initial members to the On-Site Wastewater Contractors and Inspectors  
39 Certification Board while the General Assembly is in session during 2005, the failure to  
40 make an initial appointment shall be treated as though a vacancy had occurred, and the  
41 vacancy may be filled by appointment as provided in G.S. 120-122.

42           **SECTION 3.** This act constitutes a recent act of the General Assembly  
43 within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and  
44 Inspectors Certification Board may adopt temporary rules to implement the provisions

1 of this act until 1 July 2007. Notwithstanding G.S. 150B-21.1(d), a temporary rule  
2 adopted in accordance with this section shall remain in effect until a permanent rule  
3 adopted to replace the temporary rule becomes effective. Prior to the adoption of  
4 temporary rules under this section, the Board shall:

- 5 (1) Consult with persons who may be interested in the subject matter of  
6 the temporary rule during the development of the text of the proposed  
7 temporary rule.
- 8 (2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify  
9 persons on the mailing list of its intent to adopt a temporary rule.
- 10 (3) Publish a notice of intent to adopt a temporary rule in the North  
11 Carolina Register. The notice shall set out the text of the proposed  
12 temporary rule and include the name of the person to whom questions  
13 and written comments on the proposed rule may be submitted. The  
14 Board shall accept written comments on the proposed temporary rule  
15 for at least 30 days after the notice of intent to adopt the temporary  
16 rule as published in the North Carolina Register.
- 17 (4) Hold at least one public hearing on the proposed temporary rule.

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