

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 912*

Short Title: Certification of Wastewater Site Evaluators. (Public)

Sponsors: Representatives Brubaker, Culpepper, Goforth, and Gorman (Primary Sponsors).

Referred to: Finance.

April 8, 2003

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE CERTIFICATION OF WASTEWATER SITE
EVALUATORS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 90A of the General Statutes is amended by adding a new Part to read:

"Part 3. Certification of Wastewater Site Evaluators.

"§ 90A-48. Purpose.

The purposes of this Part are to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the water resources of the State, to protect the investment of homeowners and others who purchase property served by wastewater systems, and to promote the highest of technical competence and ethical standards among those who design and install wastewater systems by requiring examination of site evaluators and certification of their competency.

"§ 90A-48.1. Definitions.

(a) As used in this Part:

(1) 'Certified Site Evaluator' means a person who is certified by the Commission under this Part.

(2) 'Commission' means the Water Pollution Control System Operators Certification Commission.

(3) 'Wastewater system' means a wastewater system, as defined in G.S. 130A-334, that is designed to treat 3,000 gallons of wastewater per day or less and that disposes of effluent by means of a subsurface disposal field.

(b) The definitions set out in G.S. 130A-334 apply to this Part.

"§ 90A-48.2. Certified Site Evaluator; functions.

(a) A Certified Site Evaluator may perform any of the following functions:

- 1 (1) Collection of site-specific information necessary for the design,
2 permitting, and installation of a wastewater system.
- 3 (2) Evaluation and recommendation of specific wastewater system
4 technologies on the basis of their applicability to a particular site.
- 5 (3) Development of performance criteria for the operation of a wastewater
6 system.
- 7 (4) Development of installation, operation, and maintenance requirements
8 for a wastewater system.
- 9 (5) Determination as to whether an improvement permit or an
10 authorization to construct should be issued for a site to be served by a
11 wastewater system.

12 (b) A Certified Site Evaluator may not perform the practice of soil science unless
13 the Certified Site Evaluator is also a Licensed Soil Scientist under the provisions of
14 Chapter 89F of the General Statutes.

15 (c) An application for an improvement permit or an authorization to construct for
16 construction that will be served by a wastewater system shall be certified by a Certified
17 Site Evaluator before the application is submitted to a local health department. An
18 application for an improvement permit or an authorization to construct for construction
19 that will be served by a wastewater system shall be reviewed and approved or denied
20 only by a Certified Site Evaluator employed by the local health department.

21 (d) No person shall perform the duties of a Certified Site Evaluator without being
22 certified as provided in this Part. A Certified Site Evaluator may be assisted by other
23 persons if the Certified Site Evaluator directly supervises and assumes responsibility for
24 the work.

25 **"§ 90A-48.3. Qualifications for certification; training; examination.**

26 (a) The Commission shall develop and administer a certification program for a
27 Certified Site Evaluator that provides for training, examination of applicants, and
28 investigation of the qualifications of applicants. An applicant for certification must be
29 one or more of the following:

- 30 (1) A Professional Engineer licensed under Chapter 89C of the General
31 Statutes.
- 32 (2) A Licensed Geologist licensed under Chapter 89E of the General
33 Statutes.
- 34 (3) A Licensed Soil Scientist licensed under Chapter 89F of the General
35 Statutes.
- 36 (4) A Registered Sanitarian licensed under Article 4 of Chapter 90A of the
37 General Statutes.

38 (b) The Commission, in cooperation with the Division of Environmental Health
39 of the Department of Environment and Natural Resources and the Cooperative
40 Extension Service, shall develop and administer a training program for Certified Site
41 Evaluators. An applicant for initial certification shall complete 30 hours of classroom
42 instruction prior to taking the examination. In order to remain certified, a Certified Site
43 Evaluator shall complete 45 hours of approved additional training during each three-
44 year period following initial certification.

1 (c) The certificate of a Certified Site Evaluator who fails to complete approved
2 additional training within 60 days of the end of the three-year period is void. A Certified
3 Site Evaluator whose certificate is voided by reason of failure to complete approved
4 additional training may be renewed only if the person reapplies to the Commission for
5 certification, pays the examination fee, and successfully completes the examination.

6 **"§ 90A-48.4. Fees; certificate renewals.**

7 (a) An applicant for certification under this Part shall pay a fee of three hundred
8 dollars (\$300.00) for the examination and initial certification.

9 (b) A Certified Site Evaluator shall pay an annual renewal fee of one hundred
10 dollars (\$100.00). The certificate of a Certified Site Evaluator who fails to pay the
11 annual renewal fee within 30 days after the fee is due is void and may be renewed only
12 by payment of the annual renewal fee plus a late fee of one hundred dollars (\$100.00).
13 A Certified Site Evaluator who fails to pay the annual renewal fee and late fee within
14 120 days may be recertified only as provided in G.S. 90A-48.3(c).

15 **"§ 90A-48.5. Suspension; revocation of certificate.**

16 (a) The Commission, in accordance with the provisions of Chapter 150B of the
17 General Statutes, may suspend or revoke the certificate of any Certified Site Evaluator
18 who:

19 (1) Engages in fraud or deceit in connection with obtaining certification or
20 in connection with the performance of the duties of a Certified Site
21 Evaluator.

22 (2) Fails to exercise reasonable care, judgment, or use of the site
23 evaluator's knowledge and ability in the performance of the duties of a
24 Certified Site Evaluator.

25 (b) In addition to suspension or revocation of a certificate, the Commission may
26 levy a civil penalty of not more than one thousand dollars (\$1,000) per violation against
27 any Certified Site Evaluator or person acting as a Certified Site Evaluator for a violation
28 of any requirement of this Part.

29 (c) The clear proceeds of civil penalties levied pursuant to this subsection shall
30 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
31 115C-457.2.

32 **"§ 90A-48.6. Rules.**

33 The Commission shall adopt rules to implement the provisions of this Part."

34 **SECTION 2.** G.S. 130A-334 is amended by adding a new subdivision to
35 read:

36 "(1) 'Certified Site Evaluator' means a person who is certified under the
37 provisions of Part 3 of Article 3 of Chapter 90A of the General
38 Statutes."

39 **SECTION 3.** G.S. 130A-336 reads as rewritten:

40 **"§ 130A-336. Improvement permit and authorization for wastewater system**
41 **construction required.**

42 (a) Any proposed site for a residence, place of business, or place of public
43 assembly in an area not served by an approved wastewater system shall be evaluated by
44 the local health department in accordance with rules adopted pursuant to this Article. An

1 improvement permit shall be issued in compliance with the rules adopted pursuant to
2 this Article. An improvement permit shall include:

- 3 (1) For permits that are valid without expiration, a plat or, for permits that
4 are valid for five years, a site plan.
- 5 (2) A description of the facility the proposed site is to serve.
- 6 (3) The proposed wastewater system and its location.
- 7 (4) The design wastewater flow and characteristics.
- 8 (5) The conditions for any site modifications.
- 9 (6) Any other information required by the rules of the Commission.

10 (a1) The improvement permit shall not be affected by change in ownership of the
11 site for the wastewater system provided both the site for the wastewater system and the
12 facility the system serves are unchanged and remain under the ownership or control of
13 the person owning the facility. No person shall commence or assist in the construction,
14 location, or relocation of a residence, place of business, or place of public assembly in
15 an area not served by an approved wastewater system unless an improvement permit
16 and an authorization for wastewater system construction are obtained from the local
17 health department. This requirement shall not apply to a manufactured residence
18 exhibited for sale or stored for later sale and intended to be located at another site after
19 sale.

20 (b) The local health department shall issue an authorization for wastewater
21 system construction authorizing work to proceed and the installation or repair of a
22 wastewater system when it has determined after a field investigation that the system can
23 be installed and operated in compliance with this Article and rules adopted pursuant to
24 this Article. This authorization for wastewater system construction shall be valid for a
25 period equal to the period of validity of the improvement permit, not to exceed five
26 years, and may be issued at the same time the improvement permit is issued. No person
27 shall commence or assist in the installation, construction, or repair of a wastewater
28 system unless an improvement permit and an authorization for wastewater system
29 construction have been obtained from the Department or the local health department.
30 No improvement permit or authorization for wastewater system construction shall be
31 required for maintenance of a wastewater system. The Department and the local health
32 department may impose conditions on the issuance of an improvement permit and an
33 authorization for wastewater system construction.

34 (c) Unless the Commission otherwise provides by rule, plans, and specifications
35 for all wastewater systems designed for the collection, treatment, and disposal of
36 industrial process wastewater shall be reviewed and approved by the Department prior
37 to the issuance of an authorization for wastewater system construction by the local
38 health department.

39 (d) If a local health department repeatedly fails to issue or deny improvement
40 permits for conventional septic tank systems within 60 days of receiving completed
41 applications for the permits, then the Department of Environment and Natural
42 Resources may withhold public health funding from that local health department.

43 (e) When a local health department issues an improvement permit or
44 authorization to construct based upon work performed by a Licensed Soil Scientist and

1 a Certified Site Evaluator, the improvement permit or authorization to construct shall
2 bear a statement that reads:

3 "The soil and site work necessary to issue this improvement permit or authorization
4 to construct was performed by: _____, a Licensed Soil Scientist, License
5 # _____, and _____, a Certified Site Evaluator, Certification #
6 _____."

7 (f) When a local health department denies an application for an improvement
8 permit or authorization to construct prepared by a Licensed Soil Scientist and Certified
9 Site Evaluator, the denial shall specifically identify the provisions of G.S. 130A-336 or
10 rules adopted pursuant to G.S. 130A-336 on which the denial was based. No complete
11 application for an improvement permit or authorization to construct prepared by a
12 Licensed Soil Scientist and Certified Site Evaluator shall be denied without prior
13 contact between the applicant and local health department as documented in a written
14 permit application review checklist. Prior to health department denial, the written permit
15 application review checklist must be given to the applicant which identifies the date and
16 time of contacts between the local health department and applicant to resolve
17 deficiencies in the soil evaluation or proposed wastewater system."

18 **SECTION 4.** Article 2 of Chapter 47 of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 47-30.1A. Plats and subdivision; additional requirements for lots not served by**
21 **a public sewer system.**

22 A Licensed Soil Scientist licensed under Chapter 89F of the General Statutes who is
23 also a Certified Site Evaluator certified under G.S. 90A-48 shall prepare a signed and
24 sealed report that determines the soil types within the proposed subdivision and states
25 the potential of each proposed lot to be permitted for a wastewater system by the local
26 health department in accordance with Article 11 of Chapter 130A of the General
27 Statutes. Unless otherwise prescribed by a local planning board, the report shall address
28 topography, landscape position, soil morphology, saprolite morphology, soil depth,
29 depth to seasonal high water table, presence of any restrictive horizons, estimated long
30 term acceptance rate of wastewater application, and any additional information pertinent
31 to the siting and approval of a proposed wastewater system."

32 **SECTION 5.** G.S. 47-30.2(a) reads as rewritten:

33 "(a) The board of commissioners of each county shall, by resolution, designate by
34 name one or more persons experienced in mapping or land records management as a
35 Review Officer to review each ~~map and plat~~ map, plat, and soil scientist report required
36 to be submitted for review before the map or plat is presented to the register of deeds for
37 recording. Each person designated a Review Officer shall, if reasonably feasible, be
38 certified as a property mapper pursuant to G.S. 147-54.4. A resolution designating a
39 Review Officer shall be recorded in the county registry and indexed on the grantor
40 index in the name of the Review Officer."

41 **SECTION 6.** G.S. 143B-301 reads as rewritten:

42 **"§ 143B-301. Water Pollution Control System Operators Certification**
43 **Commission – members; selection; removal; compensation; quorum;**
44 **services.**

1 (a) The Water Pollution Control System Operators Certification Commission
2 shall consist of ~~11~~13 members. Two members shall be from the animal agriculture
3 industry and shall be appointed to three-year terms by the Commissioner of Agriculture.
4 ~~Nine~~Eleven members shall be appointed by the Secretary of Environment and Natural
5 Resources with the approval of the Environmental Management Commission ~~with the~~
6 ~~following qualifications:~~to three-year terms as follows:

7 (1) ~~Two members~~One member shall be currently employed as a water
8 pollution control facility operators,operator, water pollution control
9 system superintendents—superintendent or directors,director, water and
10 sewer superintendents—superintendent or directors,director, or an
11 equivalent positions—position with a North Carolina
12 municipality;municipality, to a term that expires on 1 July of years
13 evenly divisible by three.

14 (2) One member shall be currently employed as a water pollution control
15 facility operator, water pollution control system superintendent or
16 director, water and sewer superintendent or director, or an equivalent
17 position with a North Carolina municipality, to a term that expires on 1
18 July of years that precede by one year those years that are evenly
19 divisible by three.

20 ~~(2)~~(3) One member shall be manager of a North Carolina municipality
21 having a population of more than 10,000 as of the most recent federal
22 ~~census;~~census, to a term that expires on 1 July of years that follow by
23 one year those years that are evenly divisible by three.

24 ~~(3)~~(4) One member shall be manager of a North Carolina municipality
25 having a population of less than 10,000 as of the most recent federal
26 ~~census;~~census, to a term that expires on 1 July of years evenly divisible
27 by three.

28 ~~(4)~~(5) One member shall be employed by a private industry and shall be
29 responsible for supervising the treatment or pretreatment of industrial
30 ~~wastewater;~~wastewater, to a term that expires on 1 July of years that
31 precede by one year those years that are evenly divisible by three.

32 ~~(5)~~(6) One member who is a faculty member of a four-year college or
33 university and whose major field is related to wastewater
34 ~~treatment;~~treatment, to a term that expires on 1 July of years that
35 follow by one year those years that are evenly divisible by three.

36 (7) One member who is a faculty member of a four-year college or
37 university and whose major field is related to water pollution control,
38 to a term that expires on 1 July of years evenly divisible by three.

39 ~~(6)~~(8) One member who is employed by the Department of Environment and
40 Natural Resources and works in the field of water pollution ~~control,~~
41 control, pursuant to Article 21 of Chapter 143 of the General Statutes,
42 who shall serve asat the pleasure of the Secretary and shall be the
43 Chairman—Cochair of the Commission;Commission.

1 (9) One member who is employed by the Department of Environment and
2 Natural Resources and works in the field of wastewater systems,
3 pursuant to Article 11 of Chapter 130A of the General Statutes, who
4 shall serve at the pleasure of the Secretary and shall be the Cochair of
5 the Commission.

6 ~~(7)~~(10) One member who is employed by a commercial water pollution
7 control system operating firm; and firm, to a term that expires on 1 July
8 of years that follow by one year those years that are evenly divisible by
9 three.

10 ~~(8)~~(11) One member shall be currently employed as a water pollution control
11 system collection operator, superintendent, director, or equivalent
12 position with a North Carolina municipality. municipality, to a term
13 that expires on 1 July of years that precede by one year those years that
14 are evenly divisible by three.

15 (b) ~~Appointments to the Commission shall be for a term of three years. Terms~~
16 ~~shall be staggered so that three terms shall expire on 30 June of each year, except that~~
17 ~~members~~ Members of the Commission shall serve until their successors are appointed
18 and duly qualified as provided by G.S. 128-7.

19 (c) The Commission shall elect a ~~Vice Chairman~~ Vice-Chair from among its
20 members. The ~~Vice Chairman~~ Vice-Chair shall serve ~~from the time of his election until~~
21 ~~30 June of the following year, or until his successor is elected.~~ a one-year term, subject
22 to reelection.

23 (d) Any appointment to fill a vacancy on the Commission created by the
24 resignation, dismissal, death or disability of a member shall be for the balance of the
25 unexpired term.

26 (e) The Governor shall have the power to remove any member of the
27 Commission from office for misfeasance, malfeasance, and nonfeasance according to
28 the provisions of G.S. 143B-13.

29 (f) The members of the Commission shall receive per diem and necessary travel
30 and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S.
31 143B-15.

32 (g) A majority of the Commission shall constitute a quorum for the transaction of
33 business.

34 (h) All clerical and other services required by the Commission shall be supplied
35 by the Secretary of Environment and Natural Resources."

36 **SECTION 7.** In order to provide for a system of staggered three-year terms
37 for the members of the Water Pollution Control System Operators Certification
38 Commission, the following provisions shall apply:

39 (1) The term of the member appointed to serve in the position established
40 by G.S. 143B-301(a)(1) shall be four years and shall expire on 1 July
41 2007.

42 (2) The term of the member appointed to serve in the position established
43 by G.S. 143B-301(a)(2) shall be three years and shall expire on 1 July
44 2006.

- 1 (3) The term of the member appointed to serve in the position established
2 by G.S. 143B-301(a)(3) shall be five years and shall expire on 1 July
3 2008.
- 4 (4) The term of the member appointed to serve in the position established
5 by G.S. 143B-301(a)(4) shall be four years and shall expire on 1 July
6 2007.
- 7 (5) The term of the member appointed to serve in the position established
8 by G.S. 143B-301(a)(5) shall be three years and shall expire on 1 July
9 2006.
- 10 (6) The term of the member appointed to serve in the position established
11 by G.S. 143B-301(a)(6) shall be five years and shall expire on 1 July
12 2008.
- 13 (7) The term of the member initially appointed to serve in the position
14 established by G.S. 143B-301(a)(7) shall be four years and shall expire
15 on 1 July 2007.
- 16 (8) The term of the member appointed to serve in the position established
17 by G.S. 143B-301(a)(10) shall be five years and shall expire on 1 July
18 2008.
- 19 (9) The term of the member appointed to serve in the position established
20 by G.S. 143B-301(a)(11) shall be three years and shall expire on 1 July
21 2006.

22 **SECTION 8.** Unless an applicant is found to have engaged in conduct that
23 would constitute grounds for suspension or revocation of certification under G.S.
24 90A-48.5, as enacted by Section 1 of this act, the Water Pollution Control System
25 Operators Certification Commission shall certify an applicant as a Certified Site
26 Evaluator without examination if the applicant is qualified under G.S. 90A-48.3, as
27 enacted by Section 1 of this act, and if the applicant demonstrates to the satisfaction of
28 the Commission that the applicant has actively and continuously engaged in evaluation
29 of sites for at least five years beginning 1 July 2000.

30 **SECTION 9.** Subdivisions (1) and (1a) of G.S. 130A-334 are recodified as
31 subdivisions (1a) and (1b).

32 **SECTION 10.** This act constitutes a recent act of the General Assembly
33 within the meaning of G.S. 150B-21.1. The Water Pollution Control System Operators
34 Certification Commission may adopt temporary rules to implement the provisions of
35 this act until 1 July 2005. Notwithstanding G.S. 150B-21.1(d), a temporary rule
36 adopted in accordance with this section shall remain in effect until a permanent rule
37 adopted to replace the temporary rule becomes effective. Prior to the adoption of
38 temporary rules under this section, the Board shall:

- 39 (1) Consult with persons who may be interested in the subject matter of
40 the temporary rule during the development of the text of the proposed
41 temporary rule.
- 42 (2) Notify persons on the mailing list that the Commission maintains
43 pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of
44 its intent to adopt a temporary rule.

1 (3) Publish a notice of intent to adopt a temporary rule in the North
2 Carolina Register. The notice shall set out the text of the proposed
3 temporary rule and include the name of the person to whom questions
4 and written comments on the proposed rule may be submitted. The
5 Board shall accept written comments on the proposed temporary rule
6 for at least 30 days after the notice of intent to adopt the temporary
7 rule as published in the North Carolina Register.

8 (4) Hold at least one public hearing on the proposed temporary rule.

9 **SECTION 11.** Section 1 of this act is effective when it becomes law except
10 that G.S. 90A-48.2, 90A-48.4, and 90A-48.5, as enacted by Section 1 of this act,
11 become effective 1 July 2005. Sections 2 and 6 through 11 of this act are effective when
12 the act becomes law. Sections 3, 4, and 5 of this act become effective 1 July 2005.