

SENATE BILL 2100

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 120; Title 68, Chapter 221 and Title 69,
Chapter 3, Part 1, relative to permitting.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-120-101(b)(2)(B), is amended by deleting the subdivision and substituting:

(B) It is adequately enforcing its code and performing any examinations of construction plans and specifications and inspections within thirty (30) days of the request and as required by the state fire marshal under this section.

SECTION 2. Tennessee Code Annotated, Section 68-120-101(d)(1), is amended by inserting ", and inspections during," immediately after "prior to".

SECTION 3. Tennessee Code Annotated, Section 68-120-101, is amended by adding the following as a new subsection:

(k)

(1) As used in this subsection (k):

(A) "Conflict of interest" means:

(i) Employment or other affiliation with, or financial interest in, the individual, firm, or corporation engaged in the construction project to be inspected or examined; and

(ii) A relationship with a family member or other individual involved in the construction project, examination of plans, or inspection that could create an appearance of impropriety;

(B) "Third-party inspector" means an individual registered with the state fire marshal to perform the third-party inspections authorized under this subsection (k) and who is also:

(i) Registered as an engineer with the Tennessee state board of examiners for architects and engineers;

(ii) Registered as an architect with the Tennessee state board of examiners for architects and engineers; or

(iii) Certified pursuant to § 68-120-113 or § 68-120-118 as appropriate to the type of inspection being performed, by the International Code Council, National Fire Protection Association, or other nationally or internationally recognized certifying organization as a building, plumbing, mechanical, or electrical inspector; and

(C) "Third-party plans examiner" means an individual registered with the state fire marshal to perform the third-party plans examinations authorized under this subsection (k) and who is also:

(i) Registered as an engineer with the Tennessee state board of examiners for architects and engineers;

(ii) Registered as an architect with the Tennessee state board of examiners for architects and engineers; or

(iii) Certified by the International Code Council or National Fire Protection Association as a plans examiner for the type of plans being examined.

(2)

(A) In a local jurisdiction acting pursuant to subdivision (b)(2), a person may engage a third-party plans examiner to examine plans and specifications prior to construction, in lieu of examination by the local jurisdiction.

(B) If a person engages a third-party plans examiner in lieu of examination by the local jurisdiction as authorized by subdivision (k)(2)(A), then the person, or the person's designee, shall submit the appropriate fee and a stamped and sealed copy of all plans that were examined to the local jurisdiction, and shall also provide:

(i) The building name, intended address, and local jurisdiction of the structure;

(ii) The third-party plans examiner's name and registration number assigned by the state fire marshal;

(iii) A sworn statement under penalty of perjury by the third-party plans examiner, declaring that the plans comply with the applicable codes and that no deficiencies remain;

(iv) A statement of the applicable codes of the local jurisdiction and the codes used to perform the plans examination;

(v) The occupancy classification of the structure; and

(vi) Other information as the state fire marshal may reasonably require, including the minimum requirements of the state fire marshal for use and occupancy.

(C) No later than ten (10) business days after submission of the documents required under subdivision (k)(2)(B), the local jurisdiction shall:

(i) Approve the plans, if the plans comply with adopted codes;

(ii) Provide to the person, or the person's designee, a report of deficiencies; or

(iii) Request additional information necessary to ensure compliance with applicable codes.

(D)

(i) If ten (10) business days pass and the local jurisdiction fails to take an action as required by subdivision (k)(2)(C), then the local jurisdiction must refund any associated plan review fees that were collected. In addition, the person, or the person's designee, may file a withdrawal of review with the local jurisdiction, and may file the information listed in subdivision (k)(2)(B), a copy of the withdrawal of review, and the appropriate fee with the state fire marshal's office.

(ii) No later than ten (10) business days after submission of the person's, or the person's designee's, withdrawal of review under subdivision (k)(2)(D)(i) and all required documentation and fees, the state fire marshal's office shall:

(a) Approve the plans, if the plans comply with adopted codes;

(b) Provide to the person, or the person's designee, a report of deficiencies; or

(c) Request additional information necessary to ensure compliance with applicable codes.

(iii) If the state fire marshal's office approves the plans, then the third-party plans examiner shall file with the local jurisdiction a copy of the approval from the state fire marshal. The filing of this approval has the same effect as if the local jurisdiction had approved the plans.

(iv) If the state fire marshal's office provides a report of deficiencies, or if the state fire marshal's office requests additional information, then the person's, or the person's designee's, submission of a substantive response begins a new ten-business-day period.

(v) If, after receiving substantive responses to all reported deficiencies and requests for additional information, ten (10) business days pass and the state fire marshal's office fails to take an action required as required by subdivision (k)(2)(D)(ii), then the state fire marshal shall complete the examination and refund any associated plan review fee the state fire marshal collected from the applicant.

(3)

(A) In a local jurisdiction acting pursuant to subdivision(b)(2), a person may engage a third-party inspector to complete locally required building construction inspections and provide the inspection reports to the local jurisdiction no later than ten (10) business days after the date of inspection.

(B) If a person engages a third-party inspector to complete locally required building inspections as authorized by subdivision (k)(3)(A), then

the person, or the person's designee, shall submit the appropriate fee, a copy of any building inspection report for that structure, and any approved plans and fire safety codes, and shall also provide:

- (i) The building name, location, and jurisdiction of the structure;
- (ii) The third-party plans inspector's name and registration number assigned by the state fire marshal;
- (iii) The type of inspection conducted;
- (iv) A sworn statement under penalty of perjury by the third-party inspector that either:
 - (a) States no deficiencies of the applicable codes were identified; or
 - (b) Identifies all deficiencies of the applicable codes;
- (v) A statement of the applicable codes of the local jurisdiction;
- (vi) The occupancy classification for which the structure was inspected; and
- (vii) Other information as the state fire marshal may reasonably require, including the minimum requirements of the state fire marshal for use and occupancy.

(C) No later than ten (10) business days after submission of the documents required in subdivision (k)(3)(B), the local jurisdiction shall:

- (i) Accept the inspection;

(ii) Reject the inspection and provide to the person, or the person's designee, a report of deficiencies; or

(iii) Request additional information regarding the inspection.

(D)

(i) If ten (10) business days pass and the local jurisdiction fails to either accept or reject the inspection as required by subdivision (k)(3)(C), then the local jurisdiction shall refund any associated inspection fee the local jurisdiction collected. In addition, the person, or the person's designee, may submit a notice of withdrawal to the local jurisdiction, and the person, or the person's designee, may submit the inspection report and documents required by subdivision (k)(3)(B), approved plans, and appropriate fee to the state fire marshal's office.

(ii) No later than ten (10) business days after submission of the person's, or the person's designee's, submission of withdrawal under subdivision (k)(3)(D) and all required documents and fees, the state fire marshal's office shall:

(a) Accept the inspection;

(b) Reject the inspection and provide to the person, or the person's designee, a report of deficiencies; or

(c) Request additional information regarding the inspection.

(iii) If the state fire marshal's office approves the inspection conducted by the third-party inspector, then the person, or the person's designee, shall file with the local jurisdiction a copy of the approval from the state fire marshal. The filing of this approval has the same effect as if the local jurisdiction had approved the inspection.

(iv) If the state fire marshal's office rejects the inspection, a new inspection and a new inspection report must be completed after the date of rejection, and must be submitted to the state fire marshal's office prior to further consideration.

(v) If the state fire marshal's office requests additional information pursuant to subdivision (k)(3)(D)(ii)(c), then the person's, or the person's designee's, submission of a substantive response begins a new ten-business-day period.

(vi) If, after receiving a new inspection or substantive responses to all requests for additional information, ten (10) business days pass and the state fire marshal's office fails to take an action as required by subdivision (k)(3)(D)(ii), then the state fire marshal shall complete the examination and refund any inspection fee the state fire marshal collected.

(4) A third-party inspector or third-party examiner shall not conduct an inspection or examination if the third-party inspector or third-party examiner has a conflict of interest. The state fire marshal's office may reject an applicant's submission if the office determines the third-party inspector or third-party examiner had a conflict of interest.

(5) The fee charged by the local government for a third-party plans examination or third-party inspection must be the same amount charged by the local government to perform the same service.

(6) This subsection (k) does not apply to state buildings, educational occupancies, or any other occupancy requiring an inspection by the state fire marshal for initial licensure, except that agencies licensed by the department of human services may engage third-party inspectors.

(7)

(A) An applicant who believes the local jurisdiction has either interpreted the adopted building code incorrectly or rejected a plan or inspection in error may file a proceeding in the court of competent jurisdiction seeking a determination that the third-party plans examiner's or third-party inspector's report complies with the requirements of this subsection (k) and all relevant codes and legal requirements, as appropriate, and seek an order requiring the local jurisdiction to accept the plans or inspection.

(B) An applicant who believes the state fire marshal has interpreted the adopted building code incorrectly or rejected a plan or inspection in error may seek a determination in accordance with the Uniform Administrative Procedures Act, that the third-party plans examiner's or third-party inspector's report complies with the requirements of this subsection (k) and all relevant codes and legal requirements, as appropriate, and seek an order requiring the state fire marshal's office to accept the plans or inspection.

SECTION 4. Tennessee Code Annotated, Section 68-120-118(g), is amended by deleting the subsection and substituting:

(g) Notwithstanding this section to the contrary, a person entering into employment as a state, municipal, or county building, plumbing, mechanical, or electrical inspector may perform field inspections as of the date of employment, but shall obtain certification within twelve (12) months of employment.

SECTION 5. Tennessee Code Annotated, Section 68-120-121, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 68-221-403, is amended by adding the following as a new subsection:

(m)

(1) As used in this subsection:

(A) "Conflict of interest" means:

(i) Employment or other affiliation with, or financial interest in, the individual, firm, or corporation engaged in the permit package, inspection report, or construction of the subsurface sewage disposal system; and

(ii) A relationship with a family member or other individual involved in the permit package, inspection report, or construction of the subsurface sewage disposal system that could create an appearance of impropriety;

(B) "Contract county" means a county that has contracted with the department under subdivision (a)(10); and

(C) "Third-party water resources engineer" means an engineer qualified by education or experience in wastewater design, including

subsurface sewage disposal systems or land application systems, and
who is:

(A) Registered with the Tennessee state board of
examiners for architects and engineers;

(B) Registered with the department as a third-party water
resources engineer; and

(C) Not employed by the department or the contract
county.

(2) A person may engage a third-party water resources engineer to
prepare a permit package to install a subsurface sewage disposal system
pursuant to subdivision (a)(6) in lieu of the department or the contract county.
The person, or the person's designee, may submit the permit package to the
department or, as applicable, to the contract county, in a form required by the
department or the contract county. The permit package must include:

(A) The appropriate fee;

(B) A copy of the complete subsurface sewage disposal system
application, including a soils map prepared by a soil scientist certified by
the department;

(C) A copy of the sealed plans for the subsurface sewage
disposal system;

(D) A completed but unsigned permit for construction of the
subsurface disposal system;

(E) A sworn statement under penalty of perjury by the third-party
water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) The subsurface sewage disposal system application package complies with this part, the rules adopted pursuant to this part, and standards of the contract county that are more stringent than those required by this part or rules adopted pursuant to this part;

(iii) There are no remaining deficiencies with the application package; and

(iv) All information in the completed but unsigned permit is accurate and complete; and

(F) Such other information as the department or the contract county may reasonably require.

(3) A person may engage a third-party water resources engineer to conduct the final inspection of a subsurface sewage disposal system pursuant to subdivision (a)(4) in lieu of the department or the contract county. The person, or the person's designee, shall submit the following to the department or the contract county in a form required by the department or the contract county no more than five (5) business days after the date of inspection:

(A) The appropriate fee, if a fee is required;

(B) A copy of the inspection report prepared by the third-party water resources engineer, including photographs of all key components of the system;

(C) A completed, but unsigned, certificate of completion of the subsurface disposal system;

(D) A sworn statement under penalty of perjury by the third-party water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) The subsurface sewage disposal system was installed in accordance with the permit;

(iii) There are no remaining deficiencies with the subsurface sewage disposal system; and

(iv) All information in the completed but unsigned permit is accurate and complete; and

(E) Such other information as the department or the contract county may reasonably require.

(4) No later than ten (10) business days after submission of the permit package or inspection report pursuant to this subsection (m), the department or the contract county shall review the submission and:

(A) Approve the submission;

(B) Reject the submission and submit a report of deficiencies found in the submission to the third-party water resources engineer and applicant; or

(C) Request additional information needed to determine compliance with this part, the rules promulgated pursuant to this part, and standards of the contract county that are more stringent than those required by this part or rules adopted pursuant to this part.

(5) If the department or the contract county approves the permit package, then it shall issue the permit for construction of the subsurface disposal system at

the time of approval. If the department or the contract county approves the final inspection report, then it shall issue the certificate of completion of the subsurface sewage system at the time of approval.

(6) If the department or the contract county rejects the third-party permit package or final inspection report, or requests additional information, receipt by the department or the contract county of a substantive response to that rejection or request begins a new ten-business-day period for review.

(7) If the department or the contract county fails to approve, reject, or request additional information concerning the permit package or inspection report within ten (10) business days of submission, then the department or the contract county shall refund the associated fee but still complete the review.

(8) A third-party water resources engineer shall not prepare a permit package or conduct a final inspection if the third-party water resources engineer has a conflict of interest.

(9) In reviewing a third-party water resources engineer's permit package or inspection report filed pursuant to this subsection (m), the department's or contract county's determination that a conflict of interest exists constitutes grounds for rejection.

(10) The fee charged by the department or contract county for a third-party water resources engineer permit package or final inspection must be the same amount charged by the department or the contract county to perform the same services.

(11) If the department or the contract county rejects a third-party water resources engineer's permit package, the applicant may seek a variance pursuant to § 68-221-410.

SECTION 7. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following as new subdivisions:

() "Conflict of interest" means:

(A) Employment or other affiliation with, or financial interest in, the individual, firm, or corporation engaged in preparing an engineering report or plans, a permit package, or an inspection report, or engaged in inspecting the non-discharging treatment works or sewerage system, or the development served by the non-discharging treatment works or sewerage system; and

(B) A relationship with a family member or other individual involved in preparing the engineering report or plans, the permit package, inspection report, or inspecting the non-discharging treatment works or the development served by the treatment works that could create an appearance of impropriety;

() "Third-party water resources engineer" means an engineer qualified by education or experience in wastewater design, including subsurface sewage disposal systems or land application systems, who is:

(A) Registered with the Tennessee state board of examiners for architects and engineers;

(B) Registered with the department as a third-party water resources engineer; and

(C) Not employed by the department or the contract county;

() "Third-party wetland professional" means an individual who is:

(A) Certified as a professional wetland scientist by the Society of Wetland Scientists or another wetland certifying entity acceptable to the department;

(B) Registered with the department as a third-party wetland professional, having met the qualifications required by the department; and

(C) Not employed by the department;

() "Wetland" means:

(A) An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and

(B) A type of waters that are not wet weather conveyances, and generally include swamps, marshes, bogs, and similar areas;

SECTION 8. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following as new subsections:

(y)

(1) A person may engage a third-party water resources engineer to review engineering reports, plans, and specifications to construct, install, or modify a non-discharging treatment works or sewerage system, including the collection system, treatment facility, and land application components, pursuant to subdivision (b)(2).

(2) After completion of the preliminary project discussion with the department, an applicant may engage a third-party water resources engineer to review the engineering report and preliminary plans. After the department has approved the engineering report and preliminary plans and granted site approval, the applicant may engage a third-party water resources engineer to review the final plans and specifications. Each review must be submitted by the person, or the person's designee, in a form acceptable to the department, and must include:

(A) The appropriate fee, if a fee is required;

(B) As applicable, a copy of the engineering report and preliminary plans, or the final plans and final specifications, each of which must be sealed;

(C) The intended address, parcel number or numbers, and county of the property to be served by the non-discharging treatment works or sewerage system;

(D) The basis of design for the non-discharging treatment works or sewerage system, including, as applicable, any modifications to the approved engineering report and any additional information required by the department;

(E) A sworn statement under penalty of perjury by the third-party water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) The engineer has reviewed the engineering report, plans, or specifications;

(iii) As applicable, there are no remaining deficiencies with the copy of the engineering report and preliminary plans, or the final plans and final specifications; and

(iv) All information is complete and complies with generally-accepted wastewater engineering practices; and

(F) Such other information as the department may reasonably require.

(3) A person may engage a third-party water resources engineer to conduct a final inspection of a non-discharging treatment works or sewerage

system when construction has been completed. No later than ten (10) business days after completing the inspection, the person or the third-party water resources engineer who conducted the inspection shall submit the following to the department in a form required by the department:

(A) The appropriate fee, if a fee is required;

(B) A copy of the inspection report prepared by the third-party water resources engineer, including the permit number;

(C) A sworn statement under penalty of perjury by the third-party water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) Whether the non-discharging sewerage system was installed in conformance with approved plans and specifications, or what necessary revisions and alterations were made to comply with the approved plans and specifications;

(iii) There are no remaining deficiencies with the non-discharging treatment works or sewerage system; and

(iv) All information is complete and complies with generally accepted wastewater engineering practices; and

(D) Such other information as the department may reasonably require.

(4) No later than ten (10) business days after submission of the third-party water resources engineer's construction permit review or inspection report pursuant to this subsection (y), the department shall review the submission and:

(A) Approve the submission;

(B) Reject the submission and submit a report of deficiencies found in the submission to the third-party water resources engineer and applicant; or

(C) Request additional information needed to determine compliance with this part and the rules promulgated pursuant to this part.

(5) If the department approves the construction permit review, then it shall issue conditional construction permit approval at the same time.

Construction shall not commence until after issuance of the associated state operating permit. If the public comment period results in a state operating permit that requires changes to the approved construction permit, then the applicant shall submit revised plans and specifications to the department and receive department approval prior to commencing construction.

(6) If the department approves the inspection report, then it shall approve the installed non-discharging treatment works or sewerage system at the same time it approves the inspection report.

(7) If the department submits a report of deficiencies found in the third-party permit review or inspection report, or requests additional information, receipt by the department of a response to that request begins a new ten-business-day period for review.

(8) If the department does not approve, reject, or request additional information concerning the permit review or inspection report within ten (10) business days of submission, then the department shall refund the entire associated fee but still complete the review.

(9) A third-party water resources engineer shall not conduct a construction permit review or inspection if the third-party water resources engineer has a conflict of interest.

(10) In reviewing a third-party water resources engineer's construction permit review or inspection report filed pursuant to this subsection (y), the department's determination that a conflict of interest exists constitutes grounds for rejection.

(11) The fee charged by the department for a third-party water resources engineer construction permit review or inspection must be the same amount charged by the department to perform the same services.

(12) If the department rejects a third-party water resources engineer's plans review, the applicant may appeal that determination in accordance with § 69-3-105(i).

(13) This subsection (y) does not apply to plans for animal feeding operations.

(z)

(1) For a general aquatic resource alteration permit to authorize wetland alterations, a person may engage a third-party wetland professional to review an application submitted pursuant to subdivision (b)(1) in lieu of department review. After the applicant has submitted an aquatic resource inventory and the department has concurred with this inventory, a third-party wetland professional may submit a permit application review to the department in a form required by the department. The permit application review must include:

(A) The appropriate fee;

(B) A copy of the completed application package;

(C) A sworn statement under penalty of perjury by the third-party wetland professional, stating the following:

(i) The name and registration number of the third-party wetland professional;

(ii) The application complies with this part and the rules adopted pursuant to this part;

(iii) The proposed activity is eligible for coverage under a specified general permit to authorize impacts on wetlands;

(iv) There are no remaining deficiencies with the application; and

(v) All information in the application is complete; and

(D) Such other information as the department may reasonably require.

(2) No later than ten (10) business days after submission of the permit application review pursuant to this subsection (z), the department shall review the submission and:

(A) Approve the submission;

(B) Reject the submission and submit a report of deficiencies found in the submission to the third-party wetland professional and applicant; or

(C) Request additional information needed to determine compliance with this part and the rules promulgated pursuant to this part.

(3) If the department approves the permit application review, then it shall issue coverage under the applicable general permit at the same time.

(4) If the department submits a report of deficiencies found in the submission, or requests additional information, receipt by the department of a substantive response to that request begins a new ten-business-day period for review.

(5) If the department fails to approve, reject, or request additional information concerning the permit application review within ten (10) business days of submission, the department shall refund the entire associated fee but still complete the review.

(6) A third-party wetland professional shall not conduct a permit application review if the third-party wetland professional has a conflict of interest.

(7) In reviewing a third-party wetland professional's permit review filed pursuant to this subsection (z), the department's determination that a conflict of interest exists constitutes grounds for rejection.

(8) The fee charged by the department for a third-party wetland professional's permit review must be the same amount charged by the department to perform the same service.

(9) If the department rejects a third-party wetland professional's permit review, the permit applicant may appeal that determination in accordance with § 69-3-105(i).

SECTION 9. This act takes effect October 1, 2024, the public welfare requiring it.