

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 251
Committee Substitute Favorable 6/9/97

Short Title: Well Contractors Certification.

(Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

“PART 9A. WELL CONTRACTORS CERTIFICATION COMMISSION.

“§ 143B-301.10. Definitions.

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

“§ 143B-301.11. Creation, powers, and duties of the Commission.

(a) Creation and Duties. – The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the

1 final agency decision on any matter involving the certification of well
2 contractors pursuant to Article 7A of Chapter 87 of the General Statutes
3 and on civil penalties assessed for violations of that Article or rules
4 adopted pursuant to that Article.

5 (3) Adopt rules as may be required to secure a federal grant-in-aid for a
6 program concerned with the certification of well contractors. This
7 subdivision is to be liberally construed in order that the State and its
8 citizens may benefit from federal grants-in-aid.

9 (b) Delegation. – The Commission may, by rule, delegate to the Secretary any of
10 its powers, other than the power to adopt rules.

11 **"§ 143B-301.12. Membership of Commission.**

12 (a) Appointments. – The Commission shall consist of seven members appointed as
13 follows:

14 (1) One member appointed by the General Assembly upon recommendation
15 of the Speaker of the House of Representatives who, at the time of
16 appointment, is (i) engaged in well contractor activities, (ii) certified as
17 a well contractor under Article 7A of Chapter 87 of the General
18 Statutes, (iii) engaged primarily in the construction, installation, repair,
19 alteration, or abandonment of domestic water supply wells, and (iv) a
20 resident of a county that is located east of or is traversed by Interstate
21 95.

22 (2) One member appointed by the General Assembly upon recommendation
23 of the Speaker of the House of Representatives who, at the time of
24 appointment, is (i) engaged in well contractor activities, (ii) certified as
25 a well contractor under Article 7A of Chapter 87 of the General
26 Statutes, (iii) engaged primarily in the construction, installation, repair,
27 alteration, or abandonment of domestic water supply wells, and (iv) a
28 resident of a county that is located wholly west of Interstate 95.

29 (3) One member appointed by the General Assembly upon recommendation
30 of the President Pro Tempore of the Senate who, at the time of
31 appointment, is (i) engaged in well contractor activities, (ii) certified as
32 a well contractor under Article 7A of Chapter 87 of the General
33 Statutes, and (iii) engaged primarily in the construction, installation,
34 repair, alteration, or abandonment of industrial, municipal, or other large
35 capacity water supply wells.

36 (4) One member appointed by the General Assembly upon recommendation
37 of the President Pro Tempore of the Senate who, at the time of
38 appointment, is (i) engaged in well contractor activities, (ii) certified as
39 a well contractor under Article 7A of Chapter 87 of the General
40 Statutes, and (iii) engaged primarily in the construction, installation,
41 repair, alteration, or abandonment of nonwater supply wells, such as
42 monitoring or recovery wells.

1 (5) One member appointed by the General Assembly upon recommendation
2 of the Speaker of the House of Representatives who, at the time of
3 appointment, is (i) employed by a local county health department and
4 (ii) actively engaged in well inspection and permitting.

5 (6) One member appointed by the General Assembly upon recommendation
6 of the President Pro Tempore of the Senate who, at the time of
7 appointment, is (i) employed by a local county health department and
8 (ii) actively engaged in well inspection and permitting.

9 (7) One member appointed by the Governor who is (i) appointed from the
10 public at large, (ii) not engaged in well contractor activities, and (iii) not
11 an employee of a firm or corporation engaged in well contractor
12 activities or a State or county governmental agency.

13 (b) Additional Qualifications. – Appointment of members to fill positions (1), (2),
14 (3), and (4) shall be made from among all those persons who are recommended for
15 appointment to the Commission by any person who is engaged in well contractor
16 activities and who is certified as a well contractor under Article 7A of Chapter 87 of the
17 General Statutes. No person shall be appointed to the Commission who is a resident of,
18 or has a principal place of business in, the same county as another member of the
19 Commission.

20 (c) Terms. – Appointments to the Commission shall be for terms of three years.
21 The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June
22 of years evenly divisible by three. The terms of members appointed to fill positions (3)
23 and (4) shall expire on 30 June of years that follow by one year those years that are
24 evenly divisible by three. The terms of members appointed to fill positions (5) and (6)
25 shall expire on 30 June of years that precede by one year those years that are evenly
26 divisible by three. Members shall serve until their successors are appointed and
27 qualified. No member shall serve more than two consecutive terms.

28 (d) Officers. – The Commission shall elect a Chair and a Vice-Chair from among
29 its members. These officers shall serve from the time of their election until 30 June of
30 the following year, or until a successor is elected.

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

35 (f) Removal. – The Governor may remove any member of the Commission from
36 office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

37 (g) Compensation. – The members of the Commission shall receive per diem and
38 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-
39 5.

40 (h) Quorum. – A majority of the membership of the Commission constitutes a
41 quorum for the transaction of business.

42 (i) Services. – All clerical and other services required by the Commission shall be
43 supplied by the Secretary."

1 Section 2. Chapter 87 of the General Statutes is amended by adding a new
2 Article to read:

3 **“ARTICLE 7A.**

4 **“WELL CONTRACTORS CERTIFICATION.**

5 **“§ 87-98.1. Title.**

6 This Article may be cited as the North Carolina Well Contractors Certification Act.

7 **“§ 87-98.2. Definitions.**

8 The definitions in G.S. 87-85 and the following definitions apply in this Article:

- 9 (1) Commission. – The Well Contractors Certification Commission.
10 (2) Department. – The Department of Environment, Health, and Natural
11 Resources.
12 (3) Person. – A natural person.
13 (4) Secretary. – The Secretary of Environment, Health, and Natural
14 Resources.
15 (5) Well contractor. – A person in trade or business who undertakes to
16 perform a well contractor activity or who undertakes to personally
17 supervise or personally manage the performance of a well contractor
18 activity on the person's own behalf or for any person, firm, or
19 corporation.
20 (6) Well contractor activity. – The construction, installation, repair,
21 alteration, or abandonment of any well.

22 **“§ 87-98.3. Purpose.**

23 It is the purpose of this Article to protect the public health and safety by ensuring the
24 integrity and competence of well contractors, to protect and beneficially develop the
25 groundwater resources of the State, to require the examination of well contractors and the
26 certification of their competency to supervise or conduct well contractor activity, and to
27 establish procedures for the examination and certification of well contractors.

28 **“§ 87-98.4. Well contractor certification required; applicability.**

29 (a) Certification Required. – No well contractor shall perform any well contractor
30 activity without being certified under this Article. The Commission may specify the
31 types of general construction activities or geophysical activities that are not directly
32 related to locating, testing, or withdrawing groundwater; evaluating, testing, developing,
33 draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or
34 otherwise causing the movement of water from or into any aquifer and are therefore not
35 well construction activities.

36 (b) Applicability. – This Article does not apply to a person who meets any of the
37 following descriptions:

- 38 (1) Is employed by, or performs labor or services for, a certified well
39 contractor in connection with well contractor activity performed under
40 the personal supervision of the certified well contractor.
41 (2) Constructs, repairs, or abandons a well that is located on land owned or
42 leased by that person.

43 **“§ 87-98.5. Types of certification; sole certification.**

1 The Commission, with the advice and assistance of the Secretary, shall establish the
2 appropriate types of certification for well contractors. Each certification type established
3 by the Commission shall be the sole certification required to engage in well contractor
4 activity in the State.

5 **"§ 87-98.6. Well contractor qualifications and examination.**

6 The Commission, with the advice and assistance of the Secretary, shall establish
7 minimum requirements of education, experience, and knowledge for each type of
8 certification for well contractors and shall establish procedures for receiving applications
9 for certification, conducting examinations, and making investigations of applicants as
10 may be necessary and appropriate so that prompt and fair consideration will be given to
11 each applicant.

12 **"§ 87-98.7. Issuance and renewal of certificates; temporary certification.**

13 (a) Issuance. – An applicant, upon satisfactorily meeting the appropriate
14 requirements, shall be certified to perform in the capacity of a well contractor and shall
15 be issued a suitable certificate by the Commission designating the level of the person's
16 competency. A certificate shall be valid for one year or until any of the following occurs:

17 (1) The certificate holder voluntarily surrenders the certificate to the
18 Commission.

19 (2) The certificate is revoked or suspended by the Commission for cause.

20 (b) Renewal. – A certificate shall be renewed annually by payment of the annual
21 fee. A person who fails to renew a certificate within three months of the expiration of the
22 certificate must reapply for certification under this Article.

23 (c) Temporary Certification. – A person may receive temporary certification to
24 construct a well upon submission of an application to the Commission and subsequent
25 approval in accordance with the criteria established by the Commission and upon
26 payment of a temporary certification fee. A temporary certification shall be granted to
27 the same person only once per calendar year and may not be valid for a period in excess
28 of 45 consecutive days. To perform additional well contractor activity during that same
29 calendar year, the person shall apply for certification under this Article.

30 **"§ 87-98.8. Disciplinary actions.**

31 The Commission may issue a written reprimand to a well contractor or, in accordance
32 with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend
33 or revoke the certificate of a well contractor if the Commission finds that the well
34 contractor has:

35 (1) Engaged in fraud or deception in connection with obtaining certification
36 or in connection with any well contractor activity.

37 (2) Failed to use reasonable care, judgment, or the application of the
38 person's knowledge or ability in the performance of any well contractor
39 activity.

40 (3) Been grossly negligent or has demonstrated willful disregard of any
41 applicable laws or rules governing well construction.

42 (4) Failed to satisfactorily complete continuing education requirements
43 established by the Commission.

1 **"§ 87-98.9. Fees; Well Construction Fund.**

2 (a) Fees. – The Commission may set a fee for certification by examination, an
3 annual fee for certification renewal, and a fee for temporary certification. The fee for
4 certification by examination may not exceed one hundred dollars (\$100.00), the annual
5 fee may not exceed two hundred dollars (\$200.00) per year, and the temporary
6 certification fee shall not exceed one hundred dollars (\$100.00). A well contractor
7 certificate is void if the well contractor fails to pay the annual fee within 30 days of the
8 date the fee is due.

9 (b) Fund. – The Well Construction 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 for the costs of administering this Article.

12 **"§ 87-98.10. Promotion of training.**

13 The Commission and the Secretary may provide training for well contractors and
14 cooperate with educational institutions and private and public associations, persons, or
15 corporations in providing training for well contractors.

16 **"§ 87-98.11. Responsibilities of well contractors.**

17 All persons receiving certification under this Article to perform well contractor
18 activities in this State shall be responsible for complying with all statutes, rules, and
19 generally accepted construction practices, including all local rules or ordinances
20 governing well contractor activities.

21 **"§ 87-98.12. Continuing education requirements.**

22 In order to continue to be certified under this Article, a well contractor shall
23 satisfactorily complete the number of hours of approved continuing education required by
24 the Commission. The Commission shall establish the minimum number of hours of
25 continuing education that shall be required to maintain certification, shall specify the
26 scope of required continuing education courses, and shall approve continuing education
27 courses.

28 **"§ 87-98.13. Injunctive relief.**

29 Upon violation of this Article, a rule adopted under this Article, or an order issued
30 under this Article, the Secretary may, either before or after the institution of proceedings
31 for the collection of any penalty imposed under this Article for the violation, request the
32 Attorney General to institute a civil action in the superior court in the name of the State
33 for injunctive relief to restrain the violation or require corrective action and for any other
34 relief the court finds proper. Initiating an action shall not relieve any party to the
35 proceedings from any penalty prescribed by this Article."

36 Section 3. G.S. 87-94 reads as rewritten:

37 **"§ 87-94. Civil penalties.**

38 (a) Any person who violates any provision of this ~~Article~~, Article, Article 7A of
39 this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall
40 be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each
41 violation, as determined by the Secretary of Environment, Health, and Natural Resources.
42 Each day of a continuing violation shall be considered a separate offense. No person

1 shall be subject to a penalty who did not directly commit the violation or cause it to be
2 committed.

3 ~~(b) No penalty shall be assessed until the person alleged to be in violation has~~
4 ~~been:~~

5 ~~(1) Notified of the violation in accordance with the notice provisions set out~~
6 ~~in G.S. 87-91(a),~~

7 ~~(2) Informed by said notice of remedial action, which if taken within 30~~
8 ~~days from receipt of the notice, will effect compliance with this Article~~
9 ~~and the regulations under it, and~~

10 ~~(3) Warned by said notice that a civil penalty can be assessed for failure to~~
11 ~~comply within the specified time.~~

12 (c) In determining the amount of the penalty the Secretary shall consider factors
13 set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A
14 and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

15 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
16 and the specific reasons therefor by registered or certified mail, or by any means
17 authorized by G.S. 1A-1, Rule 4.

18 ~~(e) If any civil penalty has not been paid within 30 days after notice of assessment~~
19 ~~has been served on the violator, the Secretary shall request the Attorney General to~~
20 ~~institute a civil action in the Superior Court of any county in which the violator resides or~~
21 ~~has his or its principal place of business to recover the amount of the assessment, unless~~
22 ~~the violator contests the assessment or requests remission of the assessment in whole or~~
23 ~~in part. If any civil penalty has not been paid within 30 days after the final agency~~
24 ~~decision or court order has been served on the violator, the Secretary shall request the~~
25 ~~Attorney General to institute a civil action in the Superior Court of any county in which~~
26 ~~the violator resides or has his or its principal place of business to recover the amount of~~
27 ~~the assessment."~~

28 Section 4. G.S. 87-85(14) reads as rewritten:

29 "(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or
30 otherwise constructed for the purpose of locating, testing or
31 withdrawing groundwater or for evaluating, testing, developing,
32 draining or recharging any groundwater reservoirs or aquifer, or that
33 may control, divert, or otherwise cause the movement of water from or
34 into any aquifer. ~~Provided, however, this shall not include a well~~
35 ~~constructed by an individual on land which is owned or leased by him,~~
36 ~~appurtenant to a single family dwelling, and intended for domestic use~~
37 ~~(including household purposes, farm livestock, or gardens)."~~

38 Section 5. G.S. 143-355(e) reads as rewritten:

39 "(e) Registration with Department Required; Registration Periods. – Every person,
40 firm or corporation engaged in the business of drilling, boring, coring or constructing
41 wells in any manner with the use of power machinery in this State, ~~State~~ shall register
42 annually with the Department on forms to be furnished by the said Department. The
43 registration required hereby shall be made during the period from January 1 to January 31

1 of each year. Registration fees collected under this section shall be credited to the Well
2 Construction Fund created by G.S. 87-98.9."

3 Section 6. G.S. 143-355(e) is repealed.

4 Section 7. G.S. 87-91 reads as rewritten:

5 "**§ 87-91. Notice. Notice of violation; remedial action order.**

6 (a) Whenever the Environmental Management Commission has reasonable
7 grounds to believe that there has been a violation of this ~~Article,~~ Article or any rule or
8 ~~regulation~~ adopted pursuant thereto, to this Article, the Environmental Management
9 Commission or Department shall give written notice to the person or persons alleged to
10 be in violation. ~~Such~~ The notice shall identify the provision of this ~~Article,~~ or ~~regulation~~
11 ~~issued hereunder,~~ Article or rule adopted pursuant to this Article alleged to be violated and
12 the facts alleged to constitute ~~such~~ the violation. The Environmental Management
13 Commission may also issue an order requiring specific remedial action. An order
14 requiring remedial action shall specify the action to be taken, the date by which the action
15 must be completed, the possible consequences of failing to comply with the order, and
16 the procedure by which the alleged violator may seek review of the order.

17 (b) ~~Such Department shall serve the notice and any order requiring remedial action~~
18 ~~on the person alleged to be in violation, shall be served on the person by sending the~~
19 ~~same to such person by registered or certified mail to his last known post office address~~
20 ~~or by personal service by an agent or employee of the Department of Environment,~~
21 ~~Health, and Natural Resources, and may be accompanied by an order of the~~
22 ~~Environmental Management Commission requiring described remedial action, which if~~
23 ~~taken within the time specified in such order, will effect compliance with the~~
24 ~~requirements of this Article and the rules issued hereunder. Such order shall become~~
25 ~~final unless a request for a hearing as hereinafter provided is made within 30 days from~~
26 ~~the date of service of such order. In addition to, or in lieu of such order, the~~
27 ~~Environmental Management Commission may appoint a time and place for such person~~
28 ~~to be heard. Notice by the Environmental Management Commission or Department may~~
29 ~~be given to any person upon whom a summons may be served in accordance with the~~
30 ~~provisions of law governing civil actions in the superior courts of this State. The~~
31 ~~Environmental Management Commission may prescribe the form and content of any~~
32 ~~particular notice. The notice may be served by any means authorized under G.S. 1A-1,~~
33 Rule 4."

34 Section 8. (a) To provide for staggered terms, initial appointments to the Well
35 Contractors Certification Commission created in Section 1 of this act shall be as follows:

36 (1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June
37 2001.

38 (2) Initial appointments to positions (3) and (4) shall expire on 30 June
39 1999.

40 (3) Initial appointments to positions (5) and (6) shall expire on 30 June
41 2000.

42 (b) In the event that the General Assembly fails to appoint one or more initial
43 members to the Well Contractors Certification Commission while the General Assembly

1 is in session during 1997, the failure to make an initial appointment shall be treated as
2 though a vacancy had occurred, and the vacancy may be filled by appointment as
3 provided in G.S. 120-122.

4 Section 9. (a) Unless an applicant is found to have engaged in an act that would
5 constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of
6 this act, the Well Contractors Certification Commission shall issue a well contractor
7 certificate without examination to any person who, since 1 July 1992, has been actively
8 and continuously engaged in well contractor activity and who has been:

9 (1) Continuously registered with the Department as required by G.S. 143-
10 355(e), or

11 (2) Employed by a firm or corporation that has been continuously registered
12 with the Department as required by G.S. 143-355(e).

13 (b) To obtain certification under this section, a person must submit an application
14 to the Commission and pay the annual fee prior to 1 January 1999. The Commission
15 shall establish procedures and rules for receipt and approval of these applications.

16 (c) A well contractor who is certified under this section must continuously
17 maintain the certification in good standing in order to remain certified. A certificate
18 issued under this section that lapses, is suspended, or is revoked may not be renewed or
19 reinstated. A person whose certification under this section lapses, is suspended, or is
20 revoked must apply for certification by examination in order to be recertified.

21 Section 10. This act constitutes a recent act of the General Assembly within
22 the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may
23 adopt temporary rules to implement the provisions of this act.

24 Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when
25 they become law. Section 2 of this act is effective when it becomes law except that G.S.
26 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1
27 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act
28 becomes effective 1 January 1999.