

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 261*

Short Title: Well Contractors Certification.

(Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION
2 COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED,
3 AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION
4 ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
5 COMMISSION.
6

7 The General Assembly of North Carolina enacts:

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

10 **"PART 9A. WELL CONTRACTORS CERTIFICATION COMMISSION.**

11 **"§ 143B-301.10. Definitions.**

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

13 **"§ 143B-301.11. Creation, powers, and duties of the Commission.**

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

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

18 (2) Exercise quasi-judicial powers in accordance with the provisions of
19 Chapter 150B of the General Statutes. The Commission shall make the
20 final agency decision on any matter involving the certification of well

1 contractors pursuant to Article 7A of Chapter 87 of the General Statutes
2 and on civil penalties assessed for violations of that Article or rules
3 adopted pursuant to that Article.

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

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

10 **"§ 143B-301.12. Membership of Commission.**

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

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

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

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

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

42 (5) One member appointed by the General Assembly upon recommendation
43 of the Speaker of the House of Representatives who, at the time of

1 appointment, is (i) employed by a local county health department and
2 (ii) actively engaged in well inspection and permitting.

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

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

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

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

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

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

33 (f) Continuing Education. – During a member's term on the Commission, the
34 member shall meet the annual continuing education requirements established for certified
35 well contractors. This requirement applies regardless of whether the member is a
36 certified well contractor.

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

39 (h) Compensation. – The members of the Commission shall receive per diem and
40 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-
41 5.

42 (i) Quorum. – A majority of the membership of the Commission constitutes a
43 quorum for the transaction of business.

1 (j) Services. – All clerical and other services required by the Commission shall be
2 supplied by the Secretary."

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

5 **"ARTICLE 7A.**

6 **"WELL CONTRACTORS CERTIFICATION.**

7 **"§ 87-98.1. Title.**

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

9 **"§ 87-98.2. Definitions.**

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

11 (1) 'Commission' means the Well Contractors Certification Commission.

12 (2) 'Department' means the Department of Environment, Health, and
13 Natural Resources.

14 (3) 'Person' means a natural person.

15 (4) 'Secretary' means the Secretary of Environment, Health, and Natural
16 Resources.

17 (5) 'Well contractor' means a person in trade or business who undertakes to
18 perform a well contractor activity or who undertakes to personally
19 supervise or personally manage the performance of a well contractor
20 activity on the person's own behalf or for any person, firm, or
21 corporation.

22 (6) 'Well contractor activity' means the construction, installation, repair,
23 alteration, or abandonment of any well.

24 **"§ 87-98.3. Purpose.**

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

30 **"§ 87-98.4. Well contractor certification required; applicability.**

31 (a) No well contractor shall perform any well contractor activity without being
32 certified under this Article.

33 (b) The Commission may specify the types of general construction activities or
34 geophysical activities that are not directly related to locating, testing, or withdrawing
35 groundwater; evaluating, testing, developing, draining, or recharging any groundwater
36 reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of
37 water from or into any aquifer and are therefore not well construction activities.

38 (c) This Article does not apply to a person who meets any of the following
39 descriptions:

40 (1) Is employed by, or performs labor or services for, a certified well
41 contractor in connection with well contractor activity performed under
42 the personal supervision of the certified well contractor.

1 (2) Constructs, repairs, or abandons a well that is located on land owned or
2 leased by that person.

3 **"§ 87-98.5. Certification without examination.**

4 (a) Unless the applicant is found to have engaged in an act that would constitute
5 grounds for disciplinary action under G.S. 87-98.9, the Commission shall issue a well
6 contractor certificate without examination fee to any person who has been actively and
7 continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July
8 1992, 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. The Commission shall establish procedures
15 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 **"§ 87-98.6. Types of certification; sole certification.**

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

26 **"§ 87-98.7. Well contractor qualifications and examination.**

27 The Commission, with the advice and assistance of the Secretary, shall establish
28 minimum requirements of education, experience, and knowledge for each type of
29 certification for well contractors and shall establish procedures for receiving applications
30 for certification, conducting examinations, and making investigations of applicants as
31 may be necessary and appropriate so that prompt and fair consideration will be given to
32 each applicant.

33 **"§ 87-98.8. Issuance and renewal of certificates; temporary certification.**

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

38 (1) The certificate holder voluntarily surrenders the certificate to the
39 Commission.

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

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

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

8 **"§ 87-98.9. Disciplinary actions.**

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

- 13 (1) Engaged in fraud or deception in connection with obtaining certification
14 or in connection with any well contractor activity.
15 (2) Failed to use reasonable care, judgment, or the application of the
16 person's knowledge or ability in the performance of any well contractor
17 activity.
18 (3) Been grossly negligent or has demonstrated willful disregard of any
19 applicable laws or rules governing well construction.
20 (4) Failed to satisfactorily complete continuing education requirements
21 established by the Commission.

22 **"§ 87-98.10. Fees; Well Construction Fund.**

23 (a) Fees. – The Commission may set a fee for certification by examination, an
24 annual fee for certification renewal, and a fee for temporary certification. The fee for
25 certification by examination may not exceed one hundred fifty dollars (\$150.00), the
26 annual fee may not exceed three hundred fifty dollars (\$350.00) per year, and the
27 temporary certification fee shall not exceed one hundred dollars (\$100.00). A well
28 contractor certificate is void if the well contractor fails to pay the annual fee within 30
29 days of the date the fee is due.

30 (b) Fund. – The Well Construction Fund is created as a nonreverting account
31 within the Department. All fees collected pursuant to this Article shall be credited to the
32 Fund. The Fund shall be used for the costs of administering this Article.

33 **"§ 87-98.11. Promotion of training and other powers.**

34 The Commission and the Secretary may take all necessary and appropriate steps in
35 order to effectively and fairly achieve the purposes of this Article. They may provide
36 training for well contractors and cooperate with educational institutions and private and
37 public associations, persons, or corporations in providing training for well contractors.

38 **"§ 87-98.12. Responsibilities of well contractors.**

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

43 **"§ 87-98.13. Continuing education requirements.**

1 In order to continue to be certified under this Article, a well contractor shall
2 satisfactorily complete the number of hours of approved continuing education required by
3 the Commission. The Commission shall establish the minimum number of hours of
4 continuing education that shall be required to maintain certification, shall specify the
5 scope of required continuing education courses, and shall approve continuing education
6 courses.

7 **"§ 87-98.14. Injunctive relief.**

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

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

16 **"§ 87-94. Civil penalties.**

17 (a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of
18 this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall
19 be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each
20 violation, as determined by the Secretary of Environment, Health, and Natural Resources.
21 Each day of a continuing violation shall be considered a separate offense. No person
22 shall be subject to a penalty who did not directly commit the violation or cause it to be
23 committed.

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

- 26 (1) ~~Notified of the violation in accordance with the notice provisions set out~~
27 ~~in G.S. 87-91(a),~~
28 (2) ~~Informed by said notice of remedial action, which if taken within 30~~
29 ~~days from receipt of the notice, will effect compliance with this Article~~
30 ~~and the regulations under it, and~~
31 (3) ~~Warned by said notice that a civil penalty can be assessed for failure to~~
32 ~~comply within the specified time.~~

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

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

39 (e) ~~If any civil penalty has not been paid within 30 days after notice of assessment~~
40 ~~has been served on the violator, the Secretary shall request the Attorney General to~~
41 ~~institute a civil action in the Superior Court of any county in which the violator resides or~~
42 ~~has his or its principal place of business to recover the amount of the assessment, unless~~
43 ~~the violator contests the assessment or requests remission of the assessment in whole or~~

1 ~~in part. If any civil penalty has not been paid within 30 days after the final agency~~
2 ~~decision or court order has been served on the violator, the Secretary shall request the~~
3 ~~Attorney General to institute a civil action in the Superior Court of any county in which~~
4 ~~the violator resides or has his or its principal place of business to recover the amount of~~
5 ~~the assessment."~~

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

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

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

17 "(e) Registration with Department Required; Registration Periods. – Every person,
18 firm or corporation engaged in the business of drilling, boring, coring or constructing
19 wells in any manner with the use of power machinery in this ~~State,~~ State shall register
20 annually with the Department on forms to be furnished by the said Department. The
21 registration required hereby shall be made during the period from January 1 to January 31
22 of each year. Registration fees collected under this section shall be credited to the Well
23 Construction Fund created by G.S. 87-98.10."

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

25 Section 7. G.S. 87-91(b) is repealed.

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

- 28 (1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June
29 2001.
30 (2) Initial appointments to positions (3) and (4) shall expire on 30 June
31 1999.
32 (3) Initial appointments to positions (5) and (6) shall expire on 30 June
33 2000.

34 (b) In the event that the General Assembly fails to appoint one or more initial
35 members to the Well Contractors Certification Commission while the General Assembly
36 is in session during 1997, the failure to make an initial appointment shall be treated as
37 though a vacancy had occurred, and the vacancy may be filled by appointment as
38 provided in G.S. 120-122.

39 Section 9. This act constitutes a recent act of the General Assembly within the
40 meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt
41 temporary rules to implement the provisions of this act.

42 Section 10. Sections 1, 3, 4, and 7 through 10 of this act are effective when
43 they become law. Section 2 of this act is effective when it becomes law except that G.S.

- 1 87-98.4(a) and G.S. 87-98.14, as enacted by Section 2 of this act, become effective 1
- 2 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act
- 3 becomes effective 1 January 1999.