

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

2

SENATE BILL 1348*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/18/96

Short Title: Well Contractors Certification.

(Public)

Sponsors:

Referred to:

May 27, 1996

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

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

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

7 "**§ 143B-301.12. Membership of Commission.**

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

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

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

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

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

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

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

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

9 (b) Additional Qualifications. – Appointment of members to fill positions (1),
10 (2), (3), and (4) shall be made from among all those persons who are recommended for
11 appointment to the Commission by any person who is engaged in well contractor
12 activities and who is certified as a well contractor under Article 7A of Chapter 87 of the
13 General Statutes. No person shall be appointed to the Commission who is a resident of,
14 or has a principal place of business in, the same county as another member of the
15 Commission.

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

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

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

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

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

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

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

1 (a) Unless the applicant is found to have engaged in an act that would constitute
2 grounds for disciplinary action under G.S. 87-98.9, the Commission shall issue a well
3 contractor certificate without examination fee to any person who has been actively and
4 continuously engaged in well contractor activity since 1 July 1986 and who, since 1 July
5 1992, has been:

6 (1) Continuously registered with the Department as required by G.S. 143-
7 355(e), or

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

10 (b) To obtain certification under this section, a person must submit an application
11 to the Commission and pay the annual fee. The Commission shall establish procedures
12 and rules for receipt and approval of these applications.

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

18 **"§ 87-98.6. Types of certification; sole certification.**

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

23 **"§ 87-98.7. Well contractor qualifications and examination.**

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

30 **"§ 87-98.8. Issuance and renewal of certificates; temporary certification.**

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

36 (1) The certificate holder voluntarily surrenders the certificate to the
37 Commission.

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

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

42 (c) Temporary Certification. – A person may receive temporary certification to
43 construct a well upon submission of an application to the Commission and subsequent
44 approval in accordance with the criteria established by the Commission and upon

1 payment of a temporary certification fee. A temporary certification shall be granted to
2 the same person only once per calendar year and may not be valid for a period in excess
3 of 45 consecutive days. To perform additional well contractor activity during that same
4 calendar year, the person shall apply for certification under this Article.

5 **"§ 87-98.9. Disciplinary actions.**

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

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

19 **"§ 87-98.10. Fees; Well Construction Fund.**

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

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

30 **"§ 87-98.11. Promotion of training and other powers.**

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

35 **"§ 87-98.12. Responsibilities of well contractors.**

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

40 **"§ 87-98.13. Continuing education requirements.**

41 In order to continue to be certified under this Article, a well contractor shall
42 satisfactorily complete the number of hours of approved continuing education required
43 by the Commission. The Commission shall establish the minimum number of hours of
44 continuing education that shall be required to maintain certification, shall specify the

1 scope of required continuing education courses, and shall approve continuing education
2 courses.

3 **"§ 87-98.14. Injunctive relief.**

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

11 Sec. 3. G.S. 87-94 reads as rewritten:

12 **"§ 87-94. Civil penalties.**

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

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

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

29 (c) In determining the amount of the penalty the Secretary shall consider factors
30 set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-
31 215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

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

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

1 ~~(f) The Secretary of Environment, Health, and Natural Resources may delegate~~
2 ~~his powers and duties under this section to the Director of the Division of~~
3 ~~Environmental Management of the Department."~~

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

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

14 Sec. 5. G.S. 143-355(e) reads as rewritten:

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

22 Sec. 6. G.S. 143-355(e) is repealed.

23 Sec. 7. G.S. 87-91(b) is repealed.

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

- 27 (1) Initial appointments to positions (1), (2), and (7) shall be for two years
28 and shall expire on 30 June 1998.
29 (2) Initial appointments to positions (3) and (4) shall be for three years and
30 shall expire on 30 June 1999.
31 (3) Initial appointments to positions (5) and (6) shall be for four years and
32 shall expire on 30 June 2000.

33 (b) In the event that the General Assembly fails to appoint one or more initial
34 members to the Well Contractors Certification Commission while the General
35 Assembly is in session during 1996, the failure to make an initial appointment shall be
36 treated as though a vacancy had occurred and the vacancy may be filled by appointment
37 as provided in G.S. 120-122.

38 Sec. 9. The repeal of G.S. 87-94(f) by Section 4 of this act is intended to
39 repeal redundant language and does not alter the power of the Secretary of
40 Environment, Health, and Natural Resources to assign or reassign any function vested in
41 the Secretary or the Department of Environment, Health, and Natural Resources under
42 G.S. 143B-10(a).

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

4 Sec. 11. Sections 1, 3, 4, and 7 through 11 of this act are effective upon
5 ratification. Section 2 of this act is effective upon ratification except that G.S. 87-
6 98.4(a) and G.S. 87-98.14, as enacted by Section 2 of this act become effective 1
7 January 1998. Section 5 of this act becomes effective 1 July 1996. Section 6 of this act
8 becomes effective 1 January 1998.