

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-358
HOUSE BILL 251

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

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

"§ 143B-301.12. Membership of Commission.

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

- (1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities,

- (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.
- (2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.
- (3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.
- (4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.
- (5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.
- (6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.
- (7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. – Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of,

or has a principal place of business in, the same county as another member of the Commission.

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

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

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

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

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

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

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

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

"ARTICLE 7A.

"Well Contractors Certification.

"§ 87-98.1. Title.

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

"§ 87-98.2. Definitions.

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

- (1) Commission. – The Well Contractors Certification Commission.
- (2) Department. – The Department of Environment, Health, and Natural Resources.
- (3) Person. – A natural person.
- (4) Secretary. – The Secretary of Environment, Health, and Natural Resources.
- (5) Well contractor. – A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor

activity on the person's own behalf or for any person, firm, or corporation.

- (6) Well contractor activity. – The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

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

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

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

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

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

"§ 87-98.5. Types of certification; sole certification.

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

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

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

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

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

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

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

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

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

"§ 87-98.8. Disciplinary actions.

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

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

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

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

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

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

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

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

"§ 87-98.10. Promotion of training.

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

"§ 87-98.11. Responsibilities of well contractors.

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

"§ 87-98.12. Continuing education requirements.

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

"§ 87-98.13. Injunctive relief.

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

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

"§ 87-94. Civil penalties.

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

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

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

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

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

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

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

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

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

"(e) Registration with Department Required; Registration Periods. – Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State, State~~ shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 24th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 12:50 p.m. this 4th day of August, 1997