

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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1

HOUSE BILL 1351*

Short Title: Well and Pump Contractors.

(Public)

Sponsors: Representatives Culp; Locke, Mitchell, Tolson, Weatherly, and Ives.

Referred to: Health and Environment.

May 24, 1996

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE WELL CONTRACTORS AND PUMP CONTRACTORS
2 CERTIFICATION COMMISSION, TO AMEND THE WELL DRILLERS AND
3 PUMP INSTALLERS REGISTRATION REQUIREMENTS, AND TO MAKE
4 VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS
5 RECOMMENDED BY THE ENVIRONMENTAL REVIEW 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 and Pump 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 and Pump Contractors
15 Certification Commission is created within the Department. The Commission shall:

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

19 (2) Exercise quasi-judicial powers in accordance with the provisions of
20 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 and pump contractors pursuant to Article 7A of Chapter 87
3 of the General Statutes and on civil penalties assessed for violations of
4 that Article or rules 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 and pump
7 contractors. This subdivision is to be liberally construed in order that
8 the State and its 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
13 by the Governor, with the following qualifications:

14 (1) One member who is engaged in well contractor activities, who is
15 certified as a well contractor under Article 7A of Chapter 87 of the
16 General Statutes, and who is engaged primarily in the construction,
17 installation, repair, alteration, or abandonment of domestic water supply
18 wells.

19 (2) One member who is engaged in well contractor activities, who is
20 certified as a well contractor under Article 7A of Chapter 87 of the
21 General Statutes, and who is engaged primarily in the construction,
22 installation, repair, alteration, or abandonment of industrial, municipal,
23 or other large capacity water supply wells.

24 (3) One member who is engaged in well contractor activities, who is
25 certified as a well contractor under Article 7A of Chapter 87 of the
26 General Statutes, and who is engaged primarily in the construction,
27 installation, repair, alteration, or abandonment of nonwater supply
28 wells, such as monitoring or recovery wells.

29 (4) One member who is certified as a pump contractor under Article 7A of
30 Chapter 87 of the General Statutes and who is not engaged in well
31 contractor activities.

32 (5) One member who is employed by a local county health department that
33 is located east of or is traversed by Interstate 95 and who is actively
34 engaged in well inspection and permitting.

35 (6) One member who is employed by a local county health department that
36 is located wholly west of Interstate 95 and who is actively engaged in
37 well inspection and permitting.

38 (7) One member of the public at large who is not engaged in the activities
39 of a well contractor or a pump contractor and who is not an employee of
40 either a business or firm engaged in well or pump contractor activities
41 or a State or county governmental agency.

42 (b) Additional Qualifications. – Appointment of members to fill positions (1), (2),
43 and (3) shall be made from among all those persons who are recommended to the

1 Governor for appointment to the Commission by any person who is engaged in well
2 contractor activities and who is certified as a well contractor under Article 7A of Chapter
3 87 of the General Statutes. Of the three members appointed to fill positions (1), (2), (3),
4 one shall be a resident of a county that is located east of or is traversed by Interstate 95,
5 and two shall be residents of a county that is located wholly west of Interstate 95. None
6 of these three shall reside or have their primary place of business in the same county or in
7 contiguous counties.

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

16 (d) Officers. – The Commission shall elect a Chairperson and a Vice-chairperson
17 from among its members. These officers shall serve from the time of their election until
18 30 June of the following year, or until a successor is elected.

19 (e) Vacancies. – An appointment to fill a vacancy on the Commission created by
20 the resignation, dismissal, death, or disability of a member shall be for the balance of the
21 unexpired term.

22 (f) Continuing Education. – During a member's term on the Commission, the
23 member shall meet the annual continuing education requirements set for certified well
24 contractors and certified pump contractors. This requirement applies regardless of
25 whether the member is a certified well contractor or a certified pump contractor.

26 (g) Removal. – The Governor may remove any member of the Commission from
27 office for misfeasance, malfeasance, or nonfeasance.

28 (h) Compensation. – The members of the Commission shall receive per diem and
29 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-
30 5.

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

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

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

37 **"ARTICLE 7A.**

38 **"WELL CONTRACTORS AND PUMP CONTRACTORS CERTIFICATION.**

39 **"§ 87-98.1. Title.**

40 This Part may be cited as the North Carolina Well Contractors and Pump Contractors
41 Certification Act.

42 **"§ 87-98.2. Definitions.**

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

- 1 (1) Approved continuing education course. – An educational offering
2 approved by the Commission.
- 3 (2) Commission. – The Well Contractors and Pump Contractors
4 Certification Commission.
- 5 (3) Department. – The Department of Environment, Health, and Natural
6 Resources.
- 7 (4) Pump contractor. – An individual in the trade or business who
8 undertakes to perform pump contractor activities or who undertakes to
9 personally supervise or personally manage the performance of pump
10 contractor activities on his or her own behalf or for any person, firm, or
11 corporation.
- 12 (5) Pump contractor activities. – Any activity associated with the
13 installation or repair of well pumping equipment. 'Repair' includes all
14 activities associated with access to the interior of the well casing or
15 breaking of the well seal to effect repair of pumping equipment or
16 appurtenances thereto.
- 17 (6) Secretary. – The Secretary of Environment, Health, and Natural
18 Resources.
- 19 (7) Temporary certificate. – A certificate issued by the Commission that
20 grants permission to an individual to perform specified activities of a
21 well contractor or a pump contractor for a period of time appropriate for
22 the specified activity.
- 23 (8) Well contractor. – An individual in the trade or business who undertakes
24 to perform well contractor activities or who undertakes to personally
25 supervise or personally manage the performance of well contractor
26 activities on his or her own behalf or for any person, firm, or
27 corporation.
- 28 (9) Well contractor activities. – An activity associated with the
29 construction, installation, repair, alteration, or abandonment of any well.

30 **"§ 87-98.3. Purpose.**

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

37 **"§ 87-98.4. Certified well contractors required.**

38 No well contractor shall perform well contractor activities without being certified
39 under this Article. This Article does not apply to an individual who meets any of the
40 following descriptions:

- 41 (1) Is employed by, or performs labor or services for, a certified well
42 contractor in connection with well contractor activities performed under
43 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 individual.

3 (3) Does not engage in a well contractor activity. The Commission may
4 specify the types of general construction activities or geophysical
5 activities that are not expressly related to the extraction or injection of
6 any fluid from or into the subsurface and are therefore not a well
7 construction activity.

8 **"§ 87-98.5. Certified pump contractors required.**

9 No pump contractor shall perform pump contractor activities without being duly
10 certified under this Article. This Article does not apply to an individual who meets any
11 of the following descriptions:

12 (1) Is employed by, or performs labor or services for, a certified pump
13 contractor in connection with pump contractor activities performed
14 under the personal supervision of the certified pump contractor.

15 (2) Installs or repairs pumps or pumping equipment associated with wells
16 that are located on land that is owned or leased by that individual.

17 **"§ 87-98.6. Certificate of persons engaged in well contractor or pump contractor**
18 **activities prior to 1 January 1996.**

19 An individual who meets both of the following requirements is not required to take an
20 examination to receive a well contractor certificate or a pump contractor certificate:

21 (1) Has been actively and consistently engaged in well contractor or pump
22 contractor activities for a period of 10 years prior to 1 January 1996.

23 (2) Has been continuously registered with the Department as required by
24 G.S. 143-355(e) or the rules of the Commission or has been working for
25 a firm or corporation so registered with the Department since 1992.

26 To obtain a certificate under this section, a person must submit an application to the
27 Commission and pay the required fee. The Commission shall establish procedures and
28 rules for receipt and approval of these applications.

29 An individual who is certified under this section is required to maintain certification
30 as a well contractor or a pump contractor under this Article. If an individual receiving
31 certification under this section has his or her certification revoked or suspended by the
32 Commission, he or she will be required to obtain certification by examination in
33 accordance with this Article in order to continue performing well or pump contractor
34 activities.

35 **"§ 87-98.7. Certification of individuals holding a Grade A, B, or C water treatment**
36 **facility operator well certificate.**

37 An individual who meets all of the following requirements, as of 1 July 1996, is not
38 required to take an examination to receive a pump contractor certificate:

39 (1) Holds a Grade A, B, or C water treatment facility operator certificate
40 issued by the Department pursuant to Article 2 of Chapter 90A of the
41 General Statutes.

42 (2) Is employed by any subdivision of government or by a person to whom
43 a Certificate of Public Convenience and Necessity has been issued by

1 the North Carolina Utilities Commission pursuant to Article 6 of
2 Chapter 62 of the General Statutes.

3 To obtain a certificate under this section, a person must submit an application to the
4 Commission and pay the required fee. The Commission shall establish procedures and
5 rules for receipt and approval of these applications.

6 A certificate issued under this section is valid only while the individual remains in
7 the employment of a subdivision of government or a person to whom a Certificate of
8 Public Convenience and Necessity has been issued by the North Carolina Utilities
9 Commission. An individual who is certified under this section may perform pump
10 contractor activities only for the subdivision of government or the holder of the
11 Certificate of Public Convenience and Necessity with whom the individual is employed.

12 An individual who is certified under this section is required to maintain certification
13 as a pump contractor under this Article. If an individual receiving certification under this
14 section has his or her water treatment facility operator certification revoked or suspended
15 by the Commission, he or she will be required to obtain certification as a pump contractor
16 under this Article by examination in order to continue performing pump contractor
17 activities.

18 **"§ 87-98.8. Types of certificates; sole certification.**

19 The Commission, with the advice and assistance of the Secretary, shall establish the
20 appropriate types of certification for well contractors and pump contractors. Each
21 certification type established by the Commission shall be the sole certification required
22 within the jurisdiction of the Commission to perform activities within the State.

23 **"§ 87-98.9. 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 applications
27 for certification, conducting examinations, and making investigations of applicants as
28 may be necessary and appropriate so that prompt and fair consideration will be given to
29 each applicant.

30 **"§ 87-98.10. Pump contractor qualifications and examination.**

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

37 **"§ 87-98.11. Issuance and renewal of certificates.**

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

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

3 (2) The certificate is revoked or suspended by the Commission for cause.
4 (b) Renewal. – A certificate shall be renewed annually. An individual who fails to
5 renew a certificate within three months of the expiration of the certificate is required to
6 reapply for certification under this Article. An individual who applies to renew a
7 certificate must pay the required renewal fee.

8 (c) Temporary. – An individual may receive temporary certification to construct a
9 well or install a pump upon submission of an application to the Commission and
10 subsequent approval in accordance with the criteria established by the Commission. A
11 temporary certification shall be granted to the same individual only once per calendar
12 year and may not be valid for a period in excess of 45 consecutive days. To perform
13 additional well contractor activities or pump contractor activities during that same
14 calendar year, the individual shall apply for certification under this Article.

15 **"§ 87-98.12. Revocation or suspension of certificate.**

16 The Commission, in accordance with the procedure set forth in Chapter 150B of the
17 General Statutes, may revoke or suspend a certificate or may issue a written reprimand to
18 a well contractor or pump contractor if it finds any of the following:

19 (1) That the well contractor or pump contractor has engaged in fraud or
20 deception.

21 (2) That reasonable care, judgment, or the application of the individual's
22 knowledge or ability was not used in the performance of his or her
23 activities.

24 (3) The individual has failed to renew his or her certificate under this
25 Article.

26 (4) The individual has been grossly negligent or has demonstrated willful
27 disregard of any applicable laws or rules governing well construction.

28 **"§ 87-98.13. Fees and Fund.**

29 (a) Fees. – The Commission may set a fee for an examination for certification and
30 a fee for the annual renewal of a certification. The fee for an examination may not
31 exceed one hundred fifty dollars (\$150.00) and the annual renewal fee may not exceed
32 three hundred fifty dollars (\$350.00).

33 (b) Fund. – The Well Construction Fund is created as a nonreverting account
34 within the Department. The Fund shall be used for the costs of administering this
35 Article. All application fees, certification fees, and permit fees collected by the State
36 pursuant to Article 7 of this Chapter, and all fees collected pursuant to this Article shall
37 be credited to the Fund.

38 **"§ 87-98.14. Promotion of training and other powers.**

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

1 **"§ 87-98.15. Responsibilities of well contractors and pump contractors.**

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

6 **"§ 87-98.16. Continuing education requirements.**

7 Prior to renewal of a certification for a well contractor or a pump contractor, each
8 individual certified as a well contractor or a pump contractor shall complete a requisite
9 number of hours, as determined by the Commission, of approved continuing education
10 courses for each certification period. A contractor's certificate shall not be renewed
11 unless the contractor has complied with this section.

12 **"§ 87-98.17. Injunctive relief.**

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

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

21 **"§ 87-94. Civil penalties.**

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

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

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

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

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

38 (c) In determining the amount of the penalty the Secretary shall consider factors
39 set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ and G.S. 143B-
40 282.1 shall apply to civil penalties assessed under this section.

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

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

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

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

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

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

25 "(e) Registration with Department Required; Registration Periods. – Every person,
26 firm or corporation engaged in the business of drilling, boring, coring or constructing
27 wells in any manner with the use of power machinery in this State, State or engaged in the
28 business of installing or repairing pumps or pumping equipment shall register annually
29 with the Department on forms to be furnished by the said Department. The registration
30 required hereby shall be made during the period from January 1 to January 31 of each
31 year. Registration fees collected under this section shall be credited to the Well
32 Construction Fund created by G.S. 87-98.13."

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

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

35 Sec. 8. To provide for staggered terms, initial appointments by the Governor
36 to the Well Contractors and Pump Contractors Certification Commission created in
37 Section 1 of this act shall be as follows:

- 38 (1) Initial appointments to positions (1), (4), and (7) shall expire on 30 June
39 1998.
- 40 (2) Initial appointments to positions (2) and (5) shall expire on 30 June
41 1999.
- 42 (3) Initial appointments to positions (3) and (6) shall expire on 30 June
43 2000.

1 Sec. 9. Section 6 of this act becomes effective 1 July 1997. The remainder of
2 this act is effective upon ratification.