

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 814

Short Title: Well and Pump Contractors.

(Public)

Sponsors: Representative Gardner.

Referred to: State Government.

April 11, 1995

A BILL TO BE ENTITLED
AN ACT TO CREATE THE WELL CONTRACTORS AND PUMP CONTRACTORS
CERTIFICATION COMMISSION; TO AMEND THE WELL DRILLERS AND
PUMP INSTALLERS REGISTRATION REQUIREMENTS; AND MAKE
VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT.

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 AND PUMP CONTRACTORS CERTIFICATION
COMMISSION.**

"§ 143B-301.2. Definitions.

(a) As used in this Part:

(1) 'Commission' means the Well Contractors and Pump Contractors
Certification Commission.

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

(3) 'Secretary' means the Secretary of Environment, Health, and Natural
Resources.

(b) The definitions set forth in G.S. 87-85 and G.S. 87-97.1 apply in this Part.

1 **"§ 143B-301.3. Well Contractors and Pump Contractors Certification Commission**
2 **– creation; powers, and duties.**

3 (a) The Well Contractors and Pump Contractors Certification Commission is
4 created within the Department. The Commission shall:

5 (1) Adopt and modify rules with respect to the certification of well
6 contractors and pump contractors as provided by Article 7A of Chapter
7 87 of the General Statutes; and

8 (2) Exercise quasi-judicial powers in accordance with the provisions of
9 Chapter 150B of the General Statutes. The Commission shall make the
10 final agency decision on any matter involving the certification of well
11 contractors and pump contractors pursuant to Article 7A of Chapter 87
12 of the General Statutes and on civil penalties assessed for violations of
13 that Article or rules adopted pursuant to that Article.

14 (3) Adopt rules as may be required for federal grants-in-aid for programs
15 concerned with the certification of well contractors and pump
16 contractors, which grants-in-aid may be made available to the State by
17 the federal government. This section is to be liberally construed in
18 order that the State and its citizens may benefit from such grants-in-aid.

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

21 **"§ 143B-301.4. Well Contractors and Pump Contractors Certification Commission**
22 **– members; selection; removal; compensation; quorum; services.**

23 (a) The Commission shall consist of nine members appointed by the Secretary, to
24 be approved by the Environmental Management Commission, with the following
25 qualifications:

26 (1) Three members, recommended by their peers who are engaged in well
27 contractor activities and duly certified as well contractors under Article
28 7A of Chapter 87 of the General Statutes, with one member representing
29 each of the following interests:

30 a. One well contractor engaged largely in the construction,
31 installation, repair, alteration, or abandonment of domestic water
32 supply wells;

33 b. One well contractor engaged largely in the construction,
34 installation, repair, alteration, or abandonment of industrial,
35 municipal, or other large capacity water supply wells; and

36 c. One well contractor engaged largely in the construction,
37 installation, repair, alteration, or abandonment of nonwater
38 supply wells, such as monitoring or recovery wells.

39 (2) One member duly certified as a pump contractor under Article 7A of
40 Chapter 87 of the General Statutes who is not engaged in well
41 contractor activities;

42 (3) One member who is the Public Water Supply Section Chief in the
43 Division of Environmental Health of the Department;

- 1 (4) One member currently employed by a local county health department
2 that is located east of or traversed by Interstate 95 who is actively
3 engaged in well inspection and permitting;
- 4 (5) One member currently employed by a local county health department
5 that is located wholly west of Interstate 95 who is actively engaged in
6 well inspection and permitting;
- 7 (6) One member who is the Groundwater Section Chief in the Division of
8 Environmental Management of the Department, who shall serve as
9 Chairperson; and
- 10 (7) One member of the public at large who is not engaged in the activities
11 of a well contractor or a pump contractor and who is not an employee of
12 a business or firm engaged in well or pump contractor activities or an
13 employee of any State or county governmental agency.
- 14 (b) Persons appointed to the Commission to fill the positions of a well contractor
15 and a pump contractor shall, at the time of their appointment, qualify for certification as a
16 well contractor or pump contractor under Article 7A of Chapter 87 of the General
17 Statutes.
- 18 (c) Persons appointed to the Commission to fill the positions of a well contractor
19 shall be appointed as follows: one well contractor from a county east of, or traversed by
20 Interstate 95; and two well contractors from a county wholly west of Interstate 95. No
21 two well contractors shall reside or have their primary place of business within the same
22 county or within contiguous counties.
- 23 (d) Appointments to the Commission shall be for a term of three years, except that
24 the Groundwater Section Chief and the Public Water Supply Section Chief shall be
25 permanent members. Each term shall expire on June 30 of each year, except that
26 members of the Commission shall serve until their successors are appointed and duly
27 qualified as provided by G.S. 128-7.
- 28 (e) No member shall serve more than two consecutive terms, except as specified in
29 G.S. 143B-301.5(d).
- 30 (f) The Commission shall elect a Vice-Chairperson from among its members. The
31 Vice-Chairperson shall serve from the time of his or her election until June 30 of the
32 following year, or until his or her successor is elected.
- 33 (g) Any appointment to fill a vacancy on the Commission created by the
34 resignation, dismissal, death, or disability of a member shall be for the balance of the
35 unexpired term.
- 36 (h) The Secretary may make specific recommendations to the Governor for the
37 removal of any Commission member. The Governor may remove any member of the
38 Commission from office for misfeasance, malfeasance, and nonfeasance according to the
39 provisions of G.S. 143B-13.
- 40 (i) The members of the Commission shall receive per diem and necessary travel
41 and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-
42 15.

1 (i) A majority of the Commission shall constitute a quorum for the transaction of
2 business.

3 (k) All clerical and other services required by the Commission shall be supplied by
4 the Secretary of Environment, Health, and Natural Resources."

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

7 **"ARTICLE 7A.**

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

9 **"§ 87-98.1. Title.**

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

12 **"§ 87-98.2. Definitions.**

13 In addition to the definitions given in G.S. 87-85, the following terms shall apply in
14 this Article:

- 15 (1) 'Approved continuing education course' means an educational offering
16 approved by the Commission.
- 17 (2) 'Commission' means the Well Contractors and Pump Contractors
18 Certification Commission.
- 19 (3) 'Department' means the Department of Environment, Health, and
20 Natural Resources.
- 21 (4) 'Pump contractor' means any individual in the trade or business, who
22 undertakes to perform pump contractor activities or who undertakes to
23 personally supervise or personally manage the performance of pump
24 contractor activities on his or her own behalf or for any person, firm, or
25 corporation.
- 26 (5) 'Pump contractor activities' means any activity associated with the
27 installation or repair of well pumping equipment. 'Repair' includes, but
28 is not limited to, all activities associated with access to the interior of
29 the well casing or breaking of the well seal to affect repair of pumping
30 equipment or appurtenances thereto.
- 31 (6) 'Secretary' means the Secretary of Environment, Health, and Natural
32 Resources.
- 33 (7) 'Temporary certificate' means a certificate issued by the Commission
34 that grants permission to an individual to perform the activities of a well
35 contractor or a pump contractor, for specified well or pump contractor
36 activities, and for a period of time appropriate for the purposed activity,
37 but in no case in excess of 45 consecutive days.
- 38 (8) 'Well contractor' means any individual in the trade or business who
39 undertakes to perform well contractor activities, or who undertakes to
40 personally supervise or personally manage the performance of well
41 contractor activities on his or her own behalf or for any person, firm, or
42 corporation.

1 (9) 'Well contractor activities' means any activity associated with the
2 construction, installation, repair, alteration, or abandonment of any well.

3 **"§ 87-98.3. Purpose.**

4 It is the purpose of this Article to protect the public health and safety by ensuring the
5 integrity and competence of well contractors and pump contractors, and to protect and
6 beneficially develop the groundwater resources of the State; to require the examination of
7 well contractors and pump contractors and the certification of their competency to
8 supervise or conduct well or pump contractor activities; and to establish procedures for
9 their examination and certification.

10 **"§ 87-98.4. Certified well contractors required.**

11 (a) No well contractor shall perform well contractor activities without being duly
12 certified under this Article and without having paid all fees required under this Article.
13 This Article does not apply to an individual:

- 14 (1) Employed by, or who performs labor or services for, a certified well
15 contractor in connection with well contractor activities performed under
16 the personal supervision of a certified well contractor; or
17 (2) Who constructs, repairs, or abandons a well that is located on land
18 owned or leased by that individual.

19 (b) The Commission may adopt rules necessary to implement this Article,
20 including rules to specify the types of general construction activities or geophysical
21 activities that are not expressly related to the extraction of any fluid from the subsurface
22 and that are exempt from the certification requirements of this section.

23 **"§ 87-98.5. Certified pump contractors required.**

24 No pump contractor shall perform pump contractor activities without being duly
25 certified under this Article, and without having paid all fees required under this Article.
26 This Article does not apply to a individual:

- 27 (1) Employed by, or who performs labor or services for a certified pump
28 contractor in connection with pump contractor activities performed
29 under the personal supervision of a certified pump contractor; or
30 (2) Who installs or repairs pumps or pumping equipment associated with
31 wells that are located on land that is owned or leased by that individual.

32 **"§ 87-98.6. Certificate of persons engaged in well contractor or pump contractor**
33 **activities prior to January 1, 1996.**

34 Any individual:

- 35 (1) Who has actively and consistently engaged in well contractor or pump
36 contractor activities for a period of 10 years prior to January 1, 1996;
37 (2) Who was continuously registered with the Department as required by
38 G.S. 143-355(e) or the rules of the Commission or was working for a
39 firm or corporation so registered with the Department since 1992; and
40 (3) Who seeks certification as a well contractor or a pump contractor,
41 may submit an application under oath to the Commission, with an appropriate application
42 fee, requesting certification as a well contractor or a pump contractor without
43 examination. The Commission shall establish procedures and rules for receipt and

1 approval of these applications. The individual is required to maintain certification as a
2 well contractor or a pump contractor under this Article. If an individual receiving
3 certification under this section has his or her certification revoked or suspended by the
4 Commission, he or she will be required to obtain certification by examination in
5 accordance with this Article in order to continue performing well or pump contractor
6 activities.

7 **"§ 87-98.7. Certification of individuals holding a Grade A, B, or C water treatment**
8 **facility operator well certificate.**

9 Any individual may submit an application under oath to the Commission, requesting
10 certification as a pump contractor without examination, provided the individual:

- 11 (1) Establishes to the satisfaction of the Commission that the individual
12 holds a valid Grade A, B, or C water treatment facility operator well
13 certificate issued by the Department pursuant to Article 2 of Chapter
14 90A of the General Statutes; and
- 15 (2) Is employed by any subdivision of government, or any person, firm, or
16 corporation duly issued a Certificate of Public Convenience and
17 Necessity by the North Carolina Utilities Commission pursuant to
18 Article 6 of Chapter 62 of the General Statutes; and
- 19 (3) Pays the appropriate application fee.

20 The Commission shall establish procedures and rules for receipt and approval of these
21 applications. Any individual receiving certification under this section shall be deemed
22 certified as a pump contractor under this Article for as long as the individual remains in
23 the employment of any subdivision of government, or any person, firm, or corporation
24 duly issued a Certificate of Public Convenience and Necessity by the North Carolina
25 Utilities Commission. Any individual certified in accordance with this section may
26 perform pump contractor activities only for the subdivision of government, or any person,
27 firm, or corporation duly issued a Certificate of Public Convenience and Necessity by the
28 North Carolina Utilities Commission with whom the individual is employed. The
29 individual is required to maintain certification as a pump contractor under this Article. If
30 an individual, receiving certification under this section, has his or her other certification
31 revoked or suspended by the Commission, he or she will obtain certification to be
32 recertified by examination in accordance with this Article in order to continue performing
33 pump contractor activities.

34 **"§ 87-98.8. Types of certificates; sole certification.**

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

39 **"§ 87-98.9. Well contractor qualifications and examination.**

40 The Commission, with the advice and assistance of the Secretary, shall establish
41 minimum requirements of education, experience, and knowledge for each type of
42 certification for well contractors and shall establish procedures for receiving applications
43 for certification, conducting examinations and making investigations of applicants as may

1 be necessary and appropriate so that prompt and fair consideration will be given to each
2 applicant.

3 **"§ 87-98.10. Pump contractor qualifications and examination.**

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

10 **"§ 87-98.11. Issuance for certificates.**

11 (a) An applicant, upon satisfactorily meeting the appropriate requirements, shall
12 be certified to perform in the capacity of a well contractor or a pump contractor and shall
13 be issued a suitable certificate by the Commission designating the level of his or her
14 competency. A certificate shall be valid for one year unless:

15 (1) The certificate holder voluntarily surrenders the certificate to the
16 Commission;

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

18 (3) The certificate holder fails to pay the annual renewal fee when due.

19 Any individual failing to renew their certification within three months of the expiration of
20 the certificate is required to reapply for certification under this Article.

21 (b) An individual may receive temporary certification to construct wells or install
22 pumps upon submission of an application to the Commission and subsequent approval in
23 accordance with the criteria established by the Commission. A temporary certification
24 shall be granted only once per calendar year. To perform additional well contractor
25 activities or pump contractor activities during that same calendar year, the individual
26 shall apply for certification under this Article.

27 (c) Any person, firm, or corporation engaged in well contractor or pump
28 contractor activities shall continue to be registered with the Department pursuant to G.S.
29 143-355(e) until such time as the Commission terminates the registration requirements
30 pursuant to G.S. 143-355(e).

31 **"§ 87-98.12. Revocation or suspension of certificate.**

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

35 (1) That the well contractor or pump contractor has engaged in fraud or
36 deception;

37 (2) That reasonable care, judgment, or the application of the individual's
38 knowledge or ability was not used in the performance of his or her
39 activities;

40 (3) The individual has failed to renew his or her certificate under this
41 Article; or

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

1 **"§ 87-98.13. Fees.**

2 (a) The Commission, in establishing procedures for implementing the
3 requirements of this Article, shall develop and impose an appropriate schedule of fees
4 commensurate with the cost of implementing this Article.

5 (b) The Well Construction Fund is created as a nonreverting account within the
6 Department. The Fund shall be used for the costs of administering the programs
7 pursuant to this Article. All application fees, certification fees, and permit fees collected
8 by the State pursuant to Article 7 of this Chapter or pursuant to this Article shall be
9 credited to the Fund.

10 (c) The Department may collect fifty dollars (\$50.00) per registration from
11 persons seeking registration as a pump installer until such time as the Commission
12 terminates the registration requirement pursuant to G.S. 143-355(e).

13 **"§ 87-98.14. Promotion of training and other powers.**

14 The Commission and the Secretary may take all necessary and appropriate steps in
15 order to effectively and fairly achieve the purposes of this Article, including, but not
16 limited to, providing training for well contractors and pump contractors and cooperating
17 with educational institutions and private and public associations, persons, or corporations
18 in the promotion of training for well contractors and pump contractors.

19 **"§ 87-98.15. Responsibilities of well contractors and pump contractors.**

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

24 **"§ 87-98.16. Continuing education requirements.**

25 Prior to renewal of a certification for a well contractor or a pump contractor, each
26 individual certified as a well contractor or a pump contractor shall complete a requisite
27 number of hours, as determined by the Commission, of approved continuing education
28 courses for each certification period. Renewal of certification shall not be issued unless
29 this section is satisfactorily complied with.

30 **"§ 87-98.17. Injunctive relief.**

31 Upon violation of any of the provisions of or any order issued pursuant to this Article,
32 or any rules adopted by the Commission pursuant to this Article, the Secretary may,
33 either before or after the institution of proceedings for the collection of the penalty
34 imposed by this Article for such violations, request the Attorney General to institute a
35 civil action in the superior court in the name of the State for injunctive relief to restrain
36 the violation or require corrective action, and for such other or further relief in the
37 premises as the court deems proper. Initiating an action shall not relieve any party to the
38 proceedings from any penalty prescribed by this Article."

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

40 **"§ 87-94. Civil penalties.**

41 (a) Any person who violates any provision of this ~~Article~~, Article or Article 7A or
42 any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a
43 civil penalty of not more than one hundred dollars (\$100.00) for each violation, as

1 determined by the Secretary of Environment, Health, and Natural Resources. Each day
2 of a continuing violation shall be considered a separate offense. No person shall be
3 subject to a penalty who did not directly commit the violation or cause it to be
4 committed. The Secretary may recover the cost of enforcing the provisions of this
5 Article, or any order issued or any rule adopted pursuant to this Article.

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

8 ~~(1) Notified of the violation in accordance with the notice provisions set out~~
9 ~~in G.S. 87-91(a);~~

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

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

15 (c) In determining the amount of the penalty the Secretary shall consider factors
16 set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143-215.6 and G.S. 143B-
17 282.1 shall apply to civil penalties assessed under this section.

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

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

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

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

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

1 ~~domestic use (including household purposes, farm livestock, or~~
2 ~~gardens).~~"

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

4 "(e) Registration with Department Required; Registration Periods. – Every person,
5 firm or corporation engaged in the business of drilling, boring, coring or constructing
6 wells in any manner with the use of power machinery in this ~~State~~, State or engaged in
7 the business of installing or repairing of pumps or pumping equipment shall register
8 annually with the Department on forms to be furnished by the said Department. The
9 registration required hereby shall be made during the period from January 1 to January 31
10 of each year. The Well Contractors and Pump Contractors Certification Commission
11 may, by rule, terminate the registration requirements of this subsection upon
12 implementation of the well contractor and pump contractor certification program
13 established in Article 7A of Chapter 87 of the General Statutes."

14 Sec. 6. G.S. 87-91(b) is repealed.

15 Sec. 7. Initial appointments by the Secretary of Environment, Health, and
16 Natural Resources to the Well Contractors and Pump Contractors Certification
17 Commission created in Section 1 of this act shall serve for terms as follows:

18 (1) Two nonpermanent members shall serve for one-year terms.

19 (2) Two nonpermanent members shall serve for two-year terms.

20 (3) Three nonpermanent members shall serve for three-year terms.

21 The Secretary shall determine the terms of the initial members in accordance with this
22 section.

23 Sec. 8. This act is effective upon ratification.