

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 261\*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/3/97

Short Title: Well Contractors Certification.

(Public)

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Sponsors:

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Referred to: Finance.

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February 27, 1997

A BILL TO BE ENTITLED

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

7 The General Assembly of North Carolina enacts:

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

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

11 **"§ 143B-301.10. Definitions.**

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

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

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

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

18 (2) Exercise quasi-judicial powers in accordance with the provisions of  
19 Chapter 150B of the General Statutes. The Commission shall make the

1 final agency decision on any matter involving the certification of well  
2 contractors pursuant to Article 7A of Chapter 87 of the General Statutes  
3 and on civil penalties assessed for violations of that Article or rules  
4 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. This  
7 subdivision is to be liberally construed in order that the State and its  
8 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 as  
13 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

41       (h) Compensation. – The members of the Commission shall receive per diem and  
42 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-  
43 5.

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

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

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

7 **"ARTICLE 7A.**

8 **"WELL CONTRACTORS CERTIFICATION.**

9 **"§ 87-98.1. Title.**

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

11 **"§ 87-98.2. Definitions.**

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

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

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

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

17 (4) 'Secretary' means the Secretary of Environment, Health, and Natural  
18 Resources.

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

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

26 **"§ 87-98.3. Purpose.**

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

32 **"§ 87-98.4. Well contractor certification required; applicability.**

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

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

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

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

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

6 **"§ 87-98.5. Types of certification; sole certification.**

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

11 **"§ 87-98.6. Well contractor qualifications and examination.**

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

18 **"§ 87-98.7. Issuance and renewal of certificates; temporary certification.**

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

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

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

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

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

36 **"§ 87-98.8. Disciplinary actions.**

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

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

- 1           (2) Failed to use reasonable care, judgment, or the application of the  
2           person's knowledge or ability in the performance of any well contractor  
3           activity.
- 4           (3) Been grossly negligent or has demonstrated willful disregard of any  
5           applicable laws or rules governing well construction.
- 6           (4) Failed to satisfactorily complete continuing education requirements  
7           established by the Commission.

8 **"§ 87-98.9. Fees; Well Construction Fund.**

9           (a) Fees. – The Commission may set a fee for certification by examination, an  
10 annual fee for certification renewal, and a fee for temporary certification. The fee for  
11 certification by examination may not exceed one hundred fifty dollars (\$150.00); the  
12 annual fee may not exceed three hundred fifty dollars (\$350.00) per year; and the  
13 temporary certification fee shall not exceed one hundred dollars (\$100.00). A well  
14 contractor certificate is void if the well contractor fails to pay the annual fee within 30  
15 days of the date the fee is due.

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

19 **"§ 87-98.10. Promotion of training and other powers.**

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

24 **"§ 87-98.11. Responsibilities of well contractors.**

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

29 **"§ 87-98.12. Continuing education requirements.**

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

36 **"§ 87-98.13. Injunctive relief.**

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

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

2 **"§ 87-94. Civil penalties.**

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

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

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

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

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

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

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

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

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

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

1           ~~appurtenant to a single family dwelling, and intended for domestic use~~  
2           ~~(including household purposes, farm livestock, or gardens)."~~

3           Section 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 shall register  
7 annually with the Department on forms to be furnished by the said Department. The  
8 registration required hereby shall be made during the period from January 1 to January 31  
9 of each year. Registration fees collected under this section shall be credited to the Well  
10 Construction Fund created by G.S. 87-98.9."

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

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

13           Section 8. (a) To provide for staggered terms, initial appointments to the Well  
14 Contractors Certification Commission under G.S. 143B-301.12(a), as enacted by Section  
15 1 of this act, shall be as follows:

16           (1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June  
17           2001.

18           (2) Initial appointments to positions (3) and (4) shall expire on 30 June  
19           1999.

20           (3) Initial appointments to positions (5) and (6) shall expire on 30 June  
21           2000.

22           (b) The requirement that members of the Well Contractors Certification  
23 Commission who are appointed to positions (1), (2), (3), and (4) be certified as well  
24 contractors under Article 7A of Chapter 87, as enacted by Section 1 of this act, shall not  
25 apply to initial appointments.

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

31           Section 9. (a) Unless an applicant is found to have engaged in an act that would  
32 constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of  
33 this act, the Well Contractors Certification Commission shall issue a well contractor  
34 certificate without examination to any person who has been actively and continuously  
35 engaged in well contractor activity since 1 July 1986 and who, since 1 July 1992, has  
36 been:

37           (1) Continuously registered with the Department as required by G.S. 143-  
38           355(e), or

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

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



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

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

9 Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when  
10 they become law. Section 2 of this act is effective when it becomes law except that G.S.  
11 87-98.4(a) and G.S. 87-98.13, as enacted by Section 2 of this act, become effective 1  
12 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act  
13 becomes effective 1 January 1999.