

SENATE BILL 1232

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 62
and Title 68, Chapter 221, Part 9, relative to water.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 221, Part 9, is amended by deleting the part in its entirety.

SECTION 2. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new chapter:

62-77-101. This chapter shall be known and may be cited as the "Water and Wastewater Operator Certification Act".

62-77-102. Recognizing that correct operation of water and wastewater systems is necessary for the protection of the public health and the quality of the environment, it is declared to be the purpose of this chapter to prevent inadequate operation of all such systems through a system of certification of operators and penalties for noncompliance.

62-77-103. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the board of certification created in § 62-77-105;

(2) "Certificate" means a certificate of competency issued by the commissioner stating that the operator has met the requirements for the specified operator classification of the certification program;

(3) "Commissioner" means the commissioner of commerce and insurance or the commissioner's duly authorized representative;

(4) "Operator" means a person who is in direct charge, or that by education, training and experience is qualified to be in direct charge, of a water

treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system;

(5) "Wastewater collection system" means the entire system of pipes, valves, pumping stations, and appurtenances through which wastewater is collected and conveyed to the wastewater treatment plant;

(6) "Wastewater treatment plant" means the facility or group of units provided for the treatment of wastewater, either or both domestic and industrial wastes. Industrial wastes which do not enter a public wastewater system are excluded;

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer;

(8) "Water supply system" means the system of pipes, structures, and facilities through which water is obtained, treated, and sold, distributed, or otherwise offered to the public for household use or any use by humans, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals at least one hundred twenty (120) days or at least sixty (60) consecutive days out of the year. An industrial water system not delivering water for human consumption is excluded from this definition; and

(9) "Water treatment plant" means the portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

62-77-104.

(a) It is unlawful for any person, firm, or corporation, both municipal and private, operating a water supply system or wastewater system, to operate the water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the competency of the operators in direct

charge of such system are duly certified by the commissioner under this chapter in effect on and after the effective date of this act, under former title 68, chapter 221, part 9, in effect after May 25, 1984, and prior to the effective date of this act, or under former chapter 13, part 3 of this title in effect prior to May 25, 1984.

(b) Any municipality, utility district, corporation, or persons violating any provisions of this chapter or the rules and regulations adopted thereunder commits a Class C misdemeanor, and each day in violation constitutes a separate offense.

(c)

(1) Additionally, any municipality, utility district, corporation, or persons violating any provisions of this chapter, or the rules and regulations adopted thereunder, shall be subject to civil penalties up to ten thousand dollars (\$10,000) per day, for each day during which the violation occurs.

(2) The board has the duty and authority to levy these civil penalties, and the duty and authority to issue orders requiring compliance with this chapter.

62-77-105.

(a)

(1) A board of certification is established for the administration of the certification program.

(2) The board is charged with the responsibility of conducting all work necessary to promote the program and maintain records, and shall also promulgate rules and regulations required in performing its obligations.

(b) Such board shall be composed of the following members:

(1) Three (3) members who are currently employed as water or wastewater operators holding valid certificates. One (1) of these members shall hold a certificate of the highest class issued by the board. The governor shall consult with the president of the Tennessee Water and Wastewater Association to determine a qualified person for this post. There is no restriction on the classification or the certificate held by the remaining two (2) operator members. The governor shall consult with the president of the Tennessee Association of Utility Districts to determine a qualified person to fill one (1) of the remaining operator member posts and shall consult with the chairman of the Kentucky/Tennessee Section of the American Water Works Association to fill one (1) of the remaining operator member posts;

(2) One (1) member shall represent the municipalities of Tennessee. The governor shall consult with the president of the Tennessee Municipal League to determine a qualified person to fill this post;

(3) One (1) member shall be a licensed Tennessee engineer whose major field is civil engineering with a concentration in water or wastewater system projects. The governor shall consult with the president of the Tennessee Society of Professional Engineers to determine a qualified person to fill this post.

(4) One (1) ex officio, non-voting member shall serve on the board from the department of environment and conservation. The member will

be the director of the division of water resources or such qualified member of the director's staff as the director may designate.

(c)

(1) Board members shall serve for three-year terms except as designated herein, and all appointments shall expire on June 30 of the appropriate year. A board member shall continue to serve, however, until a successor has been appointed, or until the board member has been reappointed.

(2) Appointments to succeed a board member who is unable to serve such board member's full term shall be for the remainder of that term.

(3) Board members may be reappointed, but they do not succeed themselves automatically.

(4) Appointments to the board for the remainder of an unexpired term, and reappointments shall be made in the same manner as under subsection (b).

(5) Any board member who moves from Tennessee is automatically terminated from the board.

(d) At the first meeting each year after July 1, the board shall elect from its membership a chair, vice chair, and secretary.

(e) Each member of the board, other than the ex officio member, shall be entitled to be paid fifty dollars (\$50.00) for attendance at each meeting of the board at which a quorum is present and for actual and necessary expenses incurred. All reimbursement for travel expenses shall be in accordance with the

comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(f) A quorum of the board shall be at least three (3) members.

62-77-106. Duties and authority of the board include:

(1) Adopt, modify, repeal, promulgate in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and, after due notice, enforce rules and regulations which the board deems necessary for proper administration of this chapter;

(2) Hold at least one (1) examination annually at a designated time and place for the purpose of examining candidates for certification;

(3) Advertise and promote the program;

(4) Encourage other operators to become certified besides those required by law;

(5) Distribute applications and notices;

(6) Receive and evaluate applications;

(7) Prepare, conduct, and grade examinations;

(8) Set up a system of fees and late penalties for applicants to support the expenses of the program;

(9) Maintain all records of the program and maintain a register of certified operators;

(10) Promote and schedule regular training schools and programs; and

(11) Recommend to the commissioner the staff required to effectively administer the requirements of this chapter.

62-77-107. The board shall classify all water treatment plants, wastewater treatment plants, water distribution systems, and wastewater collection systems with due

regard to the size, type, physical conditions affecting such treatment plants, collection systems, and distributions systems, and according to the skill, knowledge, and experience that the operator must have to supervise successfully the operation of the plant or system, so as to protect the public health.

62-77-108. The commissioner, in accordance with the rules and regulations of the board, shall certify persons as to their qualifications to supervise successfully the operation of such water treatment plants, wastewater treatment plants, water distribution systems, and wastewater collection systems, after considering the recommendations of the board appointed by the governor.

62-77-109.

(a) All operators of water and wastewater systems are encouraged to become certified, although this chapter requires only that a person in direct charge of a water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system be certified.

(b) There is nothing in the chapter to prohibit a single person becoming a certified operator for more than one (1) of the functions listed in subsection (a).

(c) It is permissible for one (1) certified operator to have the responsibility for more than one (1) water and/or wastewater system where two (2) or more systems are involved in reasonable proximity to one another, and where the duties of operation are such that the work time of one (1) person may properly be divided among two (2) or more systems, or where a certified operator may adequately supervise the work of others in more than one (1) system.

62-77-110.

(a)

(1) Upon satisfactory fulfillment of the requirements and based upon recommendation of the board, the commissioner shall issue a suitable certificate to the applicant designating the applicant's competency.

(2) The certificate will indicate that portion of the plant or system for which the operator is qualified.

(3) Certificates shall be permanent except as noted subsequently in this chapter.

(b) Certificates shall be renewed annually upon payment of the renewal fee and the fulfillment of continuing education and/or experience requirements established by the board, unless revoked or replaced by one of a higher grade.

(c) Operators who desire to become certified in a higher grade must satisfactorily complete the requirements before the certificate is issued.

(d)

(1) Certificates shall be valid only so long as the holder uses reasonable care, judgment, and application of such holder's knowledge in the performance of such holder's duties.

(2) No certificate will be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

(e) Certificates may be issued, without examination, in a comparable classification to any person who holds a certificate in another state; provided, that the requirements of that state are comparable or higher; and provided further, that such requirements do not conflict with this chapter. Such issuance of a certificate may be contingent upon reciprocal privileges being granted by that state to an operator from Tennessee.

62-77-111. The board may revoke the certificate of an operator when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of such operator's knowledge was not used in performance of such operator's duties; or that the operator is incompetent to properly perform such operator's duties.

62-77-112.

(a) The board may allow a period of up to six (6) months for the replacement of a certified operator whose services have been lost by death, illness, or other unusual events.

(b) Further extensions of thirty (30) days, up to a total of one hundred eighty (180) additional days, may be granted if deemed necessary by the board.

(c) A system shall notify the board in writing within thirty (30) days of the loss of certified operator(s).

62-77-113.

(a) All fees collected under the provisions in this chapter shall be paid into the state treasury.

(b) The department of finance and administration, with the governor's approval, is authorized to allot to the department of commerce and insurance such funds as are necessary for the administration of this chapter, and the department of commerce and insurance is designated as the administrative agency for the board created by this chapter.

62-77-114.

(a) Any person may appeal any order, ruling, or civil penalty assessment issued by the board to the chancery court of Davidson County.

(b) Such appeal must be filed within sixty (60) days.

62-77-115.

(a) Any person may file with the commissioner a signed complaint against any person allegedly violating any provisions of this chapter.

(b) Unless the commissioner determines that such a complaint is duplicitous or frivolous, the commissioner shall immediately serve a copy of it upon the person or persons named therein, promptly investigate the allegations contained therein, and shall notify the alleged violator that the complaint has been referred to the board.

(c) In all cases, the commissioner shall notify the complainant of the commissioner's action or determination within ninety (90) days from the date of the commissioner's receipt of the written complaint.

(d) The department of commerce and insurance shall not be obligated to assist a complainant in gathering information or making investigations or to provide counsel for the purpose of drawing such complainant's complaint.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.