

HOUSE SUBSTITUTE TO SENATE BILL 139

A BILL TO BE ENTITLED

AN ACT

To amend Part 3 of Article 3 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, known as the "Water Well Standards Act of 1985," so as to change the provisions relating to the composition, appointment, and terms of members of the State Water Well Standards Advisory Council; to change the provisions relating to meetings of the council; to repeal certain provisions relating to licenses for water well contractor trainees; to require water well contractors to provide certain information to owners of water wells; to provide that nothing in this Act shall prohibit a person from drilling a well on his or her own property if such property is his or her primary residence; to provide that a person is prohibited from drilling a well or wells on property he or she owns and is developing for resale unless such person has a license as a water well contractor; to change certain provisions concerning licensing; to provide penalties for violations of licensing requirements; to provide that a person licensed as a water well contractor is not required to be licensed under Chapter 14 of Title 43, when in the course of constructing a water well, he or she makes certain electrical or plumbing connections or performs other electrical or plumbing work incidental to the drilling and construction of the well; to change the provisions relating to violations under said part and evidence necessary for convictions under said part; to provide for civil penalties and procedures for imposing penalties; to provide for judicial review; to provide that the Board of Natural Resources is authorized and directed to establish rules and regulations to provide for the certification of persons who install pumps on water wells regulated under the provisions of said Act; to authorize the assessment of fees for such certification; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 3 of Article 3 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, known as the "Water Well Standards Act of 1985," is amended by striking paragraphs (6), (13), and

(32) of Code Section 12-5-122, relating to definitions, and inserting in lieu thereof new paragraphs (6), (13), and (32) to read as follows:

"(6) 'Construction' means all acts necessary to construct a well or borehole for any intended purpose or use, including locating and drilling, ~~but excluding~~ and the installation of pumps and pumping equipment."

"(13) 'Driller' means any person who engages in drilling or drilling operations and the installation of pumps and pumping equipment. Driller shall not include a person who only installs pumps and pumping equipment."

"(32) 'Water well contractor' means any person engaging in the business of constructing water wells and installing pumps and pumping equipment. Water well contractor shall not include a person who only installs pumps and pumping equipment."

SECTION 2.

Said part is further amended by striking subsections (a), (b), and (d) of Code Section 12-5-123, relating to creation of the State Water Well Standards Advisory Council, and inserting in lieu thereof new subsections (a), (b), and (d) to read as follows:

"(a) The State Water Well Standards Advisory Council is created. The council shall be composed of the following:

(1) A member appointed by the Governor from the public at large, who shall not be in any way connected with the well drilling industry. The member representing the public on July 1, ~~1985~~ 2001, shall continue to serve in this position from July 1, ~~1985~~ 2001, to ~~July 1, 1986~~ June 30, 2002;

(2) A member appointed by the commissioner of natural resources. The member appointed by the commissioner of natural resources serving on July 1, 2001, shall continue to serve in this position until June 30, 2002;

(3) A member appointed by the Governor representing the farming industry. The member representing the farming industry on July 1, 2001, shall continue to serve in this position until June 30, 2003;

(4) Four members representing the water well drilling industry appointed by the Governor who shall be licensed and practicing drillers. The members who are water well drillers serving on July 1, ~~1985~~ 2001, shall continue to serve in these positions ~~from July 1, 1985, to July 1, 1986~~ until June 30, 2002, at which time the Governor shall appoint two members to terms ending June 30, 2003; one member to a term ending June 30, 2004; and one member to a term of office ending June 30, 2005. The members serving on such date shall be eligible for reappointment; and

(5) A member appointed by the Governor who is a registered professional geologist or registered professional engineer. The member who is a registered professional geologist

1 or registered professional engineer serving on July 1, 2001, shall continue to serve in such
2 position until June 30, 2004.

3 (b) ~~Each~~ The successor to each member appointed pursuant to the provisions of
4 subsection (a) of this Code section shall be appointed for a term of three years, and the
5 Governor shall fill any vacancy in the council, except for the member appointed by the
6 commissioner of natural resources, with each successor appointed in the same manner as
7 his predecessor."

8 "(d) The council shall meet at such times and at such designated places as it may determine
9 but shall hold at least ~~two~~ three regular meetings each year. An affirmative vote of a
10 majority of the members present shall be necessary to transact business. Four members
11 shall constitute a quorum."

12 **SECTION 3.**

13 Said part is further amended by striking paragraph (5) of Code Section 12-5-124, relating to
14 powers and duties of the State Water Well Standards Advisory Council, and inserting in lieu
15 thereof a new paragraph (5) to read as follows:

16 "(5) To license water well contractors ~~and water well contractor trainees;~~"

17 **SECTION 4.**

18 Said part is further amended by striking Code Section 12-5-127, relating to licensing of water
19 well contractors generally and application for trainee licenses, and inserting in lieu thereof
20 a new Code Section 12-5-127 to read as follows:

21 "12-5-127.

22 (a) Any person desiring to engage in the business of water well construction in this state
23 shall apply to the council for a license as a water well contractor. All such applications
24 shall be made on forms provided by the division and shall be accompanied by a fee to be
25 prescribed by the council.

26 (b) An applicant for a license as a water well contractor shall be required to have two
27 year's experience working in the water well construction business under a licensed water
28 well contractor and shall be required to pass an examination administered by the council.
29 The examination may be written, oral, or practical work, or any combination of the three.
30 The examination shall relate to the applicant's knowledge of basic ground water, basic
31 well construction, and the general contents of this part.

32 (c) Satisfactory proof of two years' experience in the water well construction business
33 shall be made by presenting certified affidavits from one or more licensed water well
34 contractors that the applicant has had at least two years of full-time water well construction
35 experience. If the required experience was obtained under two or more licensed water well

1 contractors, then a certified affidavit specifying exact dates of such experience shall be
2 required from each licensed contractor. In lieu of the method described above, an applicant
3 may present other proof satisfactory to the council of two years' experience constructing
4 water wells. The council may require the applicant and the water well contractors who
5 swear to such affidavits to appear before the council to discuss the applicant's
6 qualifications.

7 (d) Any person wishing to engage in the water well construction business shall designate
8 himself or at least one partner, officer, or full-time employee to fulfill the above
9 requirements. If the requirements are satisfactorily fulfilled, the person shall be granted
10 a license under this part, and such license shall cover water well construction activities for
11 which the person is responsible and so licensed. The partners, officers, and employees of
12 the person shall be allowed to engage in the activities covered by the license if the
13 individual who fulfilled the licensing requirements has performed or approved such
14 activities and such approval is posted at the site of the activity on forms to be provided by
15 the council for that purpose. Any such license shall be valid so long as the designated
16 partner, officer, or full-time employee is associated with the licensee or until it otherwise
17 expires.

18 (e) The council, upon application, may issue an appropriate license to any person who
19 holds a similar license in any state, territory, or possession of the United States, if the
20 requirements for the license do not conflict with this part and are of a standard not less than
21 that specified by this part and by rules and regulations promulgated under this part;
22 provided, however, that such other state, territory, or possession grants similar reciprocity
23 to license holders in this state.

24 (f) Nothing in this Code section shall be construed to require the registration of a person
25 who constructs a well on his own or leased property intended for use only in a
26 single-family house which is his permanent residence or intended for use only for farming
27 purposes on his farm, which well produces less than 25,000 gallons per day, so long as the
28 waters to be produced are not intended for use by the public or in any residence other than
29 his own.

30 (g) The State of Georgia preempts the field of licensing water well contractors. Licenses
31 issued by the council shall authorize bona fide holders thereof to engage in the business
32 authorized by such licenses anywhere within the territorial limits of the state. No provision
33 of this part shall be construed as prohibiting or preventing a municipality or county from
34 fixing, charging, assessing, or collecting any business license fee, registration fee, tax, or
35 gross receipt tax on any profession covered by this part or upon any related profession or
36 anyone engaged in any related profession governed by this part.

~~(h) Any person desiring to engage in the business of water well construction and not meeting the requirements for licensing as a water well contractor may apply to the council for a license as a water well contractor trainee. An applicant for a trainee license shall be required to pass an examination approved by the council. The examination may be written or oral and shall relate to the applicant's knowledge of basic ground water and basic well construction. Upon satisfactory completion of at least two years' experience under the direct supervision of a licensed water well contractor, the trainee may apply for a license as a water well contractor and shall be required to pass an examination approved by the council.~~

~~(i)~~(h)(1) Beginning July 1, 1995, the council shall be authorized to require persons seeking renewal of licenses under this Code section to complete continuing education of not more than four hours annually. The council may provide courses and shall approve such courses offered by the division, institutions of higher learning, technical colleges, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to water well construction or standards provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of Technical and Adult Education shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs shall be in the areas of safety, environmental protection, ground-water geology, technological advances, business management, or government regulation. Continuing education courses shall be designed for water well contractors having variable educational backgrounds. Courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) All provisions of this subsection relating to continuing professional education shall be administered by the council.

(3) The council shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the council deems appropriate.

(4) This Code section shall apply to each licensing and renewal cycle which begins after the 1993-1994 renewal.

(i) No license shall be granted unless the council specifically authorizes the granting of such license. Staff members of the council may not issue licenses without the specific authorization of the council.

(j) Any person who violates the provisions of this Code section with regard to licensing shall not be eligible to apply for or receive a license under this Code section for a period of two years after being convicted of such violation."

SECTION 5.

Said part is further amended by striking subsection (a) of Code Section 12-5-129, relating to suspension and revocation of licenses, and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) The council shall suspend or revoke a license upon a finding of one or more of the following grounds:

(1) Material misstatement in the application for license;

(2) Willful disregard or violation of Code Section 12-5-133 or any law of the State of Georgia relating to wells, including any violation of standards or rules adopted pursuant to this part;

(3) Willfully aiding or abetting another in the violation of Code Section 12-5-133 or any law of the State of Georgia relating to wells;

(4) Incompetency in the performance of the work of a water well contractor;

(5) Making substantial misrepresentations or false promises in connection with the occupation of a water well contractor; ~~and~~

(6) Failure to provide and maintain on file at all times with the director a performance bond or irrevocable letter of credit as required by Code Section 12-5-135; and

(7) Allowing an unlicensed driller to use or to work under such licensee's license in any way. However, this paragraph shall not apply to any employee of a licensed driller who receives only a salary or hourly wage or a bona fide business partner."

SECTION 6.

Said part is further amended by striking Code Section 12-5-130, relating to expiration and renewal of licenses, in its entirety and inserting in lieu thereof a new Code Section 12-5-130 to read as follows:

"12-5-130.

All licenses expire biennially. All applications for renewal shall be filed with the division prior to the expiration date, accompanied by a renewal fee prescribed by the ~~council~~ division. A license which has expired for failure to renew may be restored only after application and payment of the prescribed restoration fee. A new license to replace any license lost, destroyed, or mutilated may be issued, subject to the rules of the council and payment of a fee set by the council."

SECTION 7.

Said part is further amended by adding between Code Sections 12-5-131 and 12-5-132 a new Code Section 12-5-131.1 to read as follows:

1 "12-5-131.1.

2 (a) Nothing in this part shall prohibit a person from drilling a well on his or her own
3 property if such property is his or her primary residence. A person is prohibited from
4 drilling a well or wells on property he or she owns and is developing for resale unless such
5 person has a license as a water well contractor.

6 (b) Notwithstanding any other provisions of law, a person licensed as a water well
7 contractor pursuant to Code Section 12-5-127 is not required to be licensed under
8 Chapter 14 of Title 43, when in the course of constructing a water well, he or she makes
9 certain electrical or plumbing connections or performs other electrical or plumbing work
10 incidental to the drilling and construction of the well; provided, however, that any such
11 electrical and plumbing work meets or exceeds all applicable local, state, or federal codes,
12 whichever is most stringent."

13 SECTION 8.

14 Said part is further amended by striking in its entirety Code Section 12-5-133, relating to
15 penalties for violation of said part and confiscation of equipment, and inserting in lieu thereof
16 a new Code Section 12-5-133 to read as follows:

17 "12-5-133.

18 (a) Any person who engages in or follows the business or occupation of, or advertises,
19 holds himself or herself out, or acts, temporarily or otherwise, as a water well contractor
20 without having first secured the required license or renewal thereof or any person who
21 otherwise violates any provisions of this part shall be guilty of a misdemeanor and, upon
22 conviction thereof, shall be fined not less than \$100.00 and not more than \$1,000.00. Each
23 day during which such violation exists or continues shall constitute a separate offense. In
24 addition to or in lieu of any fine imposed for acting without the required license, any person
25 violating any provision of this part may have his or her drilling rigs and commercial
26 vehicles confiscated in accordance with Code Section 12-5-137.

27 (b) In order to prove a violation of this part, it shall not be necessary for a state or local
28 enforcement official to actually observe a well being drilled by a person who does not
29 possess a valid license as required by this part. Other evidence of a violation of this part,
30 including, but not limited to, bills, invoices, photographs, proposals, or any form of
31 advertising, may be sufficient for a conviction.

32 SECTION 9.

33 Said part is further amended by adding between Code Section 12-5-133 and 12-5-134 a new
34 Code Section 12-5-133.1 to read as follows:

35 "12-5-133.1.

(a) In addition to the provisions of Code Section 12-5-133, any person violating any provision of this part or the rules or regulations effective under this part shall be liable for a civil penalty not to exceed \$5,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this part or any rule or regulation effective under this part, he or she may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this part or any rule or regulation effective under this part, the hearing officer shall issue his or her decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

(c) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with this part or to correct the violation or failure;

(4) Any prior violations of or failures by such person to comply with statutes, rules, regulations, or orders administered, adopted, or issued by the director or the council;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure."

SECTION 10.

Said part is further amended by striking subparagraph (1)(L) of Code Section 12-5-134, relating to standards for wells and boreholes, and inserting in lieu thereof a new subparagraph (1)(L) to read as follows:

"(L) The drilling contractor shall maintain in his office and shall furnish the owner a copy of the well construction data within 30 days of the well completion. The data shall include: name of the owner of the well, location of the well, size of pump installed if pump is installed by the drilling contractor, total depth of well, borehole diameter,

casing depth, size and type of casing material, grouting information, static water level, pumping water level and yield if test pumped, confirmation of well disinfection and description of method used for disinfection, dates of well construction, name and address and state certificate number of pump installer if the contractor does not install the pump, name and address of contractor, and water well contractor's license number. Any estimate of gallons per minute of water that the well is expected to produce shall not be considered under any circumstances to be a guarantee of the quantity of the water produced by the well. The failure of any water well contractor to provide any of such written information shall not subject such contractor to any penalty by the council;"

SECTION 11.

Said part is further amended by striking subsections (b) and (f) of Code Section 12-5-135, relating to the requirement of a bond or letter of credit, in their entirety and inserting in lieu thereof new subsections (b) and (f) to read as follows:

"(b) The bond or letter of credit required in subsection (a) of this Code section shall be:

(1) Conditioned upon faithful compliance with the conditions and terms of this part; and

(2) In such amount as determined by the director to ensure compliance with the procedures and standards contained in this part, but in any event not to exceed ~~\$50,000.00~~ \$75,000.00."

"(f) If a business has more than one water well contractor, that business, in lieu of obtaining bonds or irrevocable letters of credit for each individual licensee, may substitute a blanket bond or blanket irrevocable letter of credit for all water well contractors within that business. The blanket bond or blanket irrevocable letter of credit shall be payable to the director in an amount not to exceed ~~\$50,000.00~~ \$75,000.00."

SECTION 12.

Said part is further amended by adding, following Code Section 12-5-137, a new Code Section 12-5-138 to read as follows:

"12-5-138.

The Board of Natural Resources is authorized and directed to establish rules and regulations to provide for the certification of persons who install pumps on or in water wells regulated under the provisions of subsection (b) of Code Section 12-5-133. The Board of Natural Resources is authorized to establish fees and the director is authorized to charge such fees for such certification and the annual renewal thereof; provided, however, that the fee for the pump installer shall not exceed the fee for the licensed water well contractor. The director may require any person to meet certain qualifications in order to

1 be eligible for certification as a pump installer. The director may provide that persons who
2 can document that they have been in the business of installing pumps and pumping
3 equipment prior to July 1, 2001, may be granted a certification by paying the appropriate
4 fees but without any requirement to pass any type of test."

5 **SECTION 13.**

6 All laws and parts of laws in conflict with this Act are repealed.