

Senate Bill 139

By: Senators Lee of the 29th, Ragan of the 11th, Gillis of the 20th and Hooks of the 14th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

24 Part 3 of Article 3 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, known
 25 as the "Water Well Standards Act of 1985," is amended by striking paragraphs (6), (13), and
 26 (32) of Code Section 12-5-122, relating to definitions, and inserting in lieu thereof new
 27 paragraphs (6), (13), and (32) to read as follows:

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

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

10 SECTION 3.

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

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

15 SECTION 4.

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

19 "12-5-127.

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

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

30 (c) Satisfactory proof of two years' experience in the water well construction business
 31 shall be made by presenting certified affidavits from one or more licensed water well
 32 contractors that the applicant has had at least two years of full-time water well construction
 33 experience. If the required experience was obtained under two or more licensed water well
 34 contractors, then a certified affidavit specifying exact dates of such experience shall be
 35 required from each licensed contractor. In lieu of the method described above, an applicant

1 may present other proof satisfactory to the council of two years' experience constructing
2 water wells. The council may require the applicant and the water well contractors who
3 swear to such affidavits to appear before the council to discuss the applicant's
4 qualifications.

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

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

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

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

35 ~~(h) Any person desiring to engage in the business of water well construction and not~~
36 ~~meeting the requirements for licensing as a water well contractor may apply to the council~~
37 ~~for a license as a water well contractor trainee. An applicant for a trainee license shall be~~

1 required to pass an examination approved by the council. The examination may be written
 2 or oral and shall relate to the applicant's knowledge of basic ground water and basic well
 3 construction. Upon satisfactory completion of at least two years' experience under the
 4 direct supervision of a licensed water well contractor, the trainee may apply for a license
 5 as a water well contractor and shall be required to pass an examination approved by the
 6 council.

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

29 SECTION 10.

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

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

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

11 SECTION 11.

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

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

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

17 (2) In such amount as determined by the director to ensure compliance with the
 18 procedures and standards contained in this part, but in any event not to exceed ~~\$50,000.00~~
 19 \$75,000.00."

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

25 SECTION 12.

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

28 "12-5-138.

29 The Board of Natural Resources is authorized and directed to establish rules and
 30 regulations to provide for the certification of persons who install pumps on or in water
 31 wells regulated under the provisions of subsection (b) of Code Section 12-5-133. The
 32 Board of Natural Resources is authorized to establish fees and the director is authorized to
 33 charge such fees for such certification and the annual renewal thereof; provided, however,
 34 that the fee for the pump installer shall not exceed the fee for the licensed water well
 35 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.