

House Bill 304 (AS PASSED HOUSE AND SENATE)

By: Representatives Purcell of the 122nd, Greene of the 134th, Powell of the 23rd, Crawford of the 91st, and Lord of the 103rd

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, relating to water well standards, so as to change certain provisions relating to definitions; to change certain provisions relating to powers and duties of the State Water Well Standards Advisory Council; to change certain provisions relating to licensing of water well contractors generally, applications for trainee licenses, and related violations; to change certain provisions relating to suspension and revocation of licenses, hearings, reissuance of revoked licenses, injunctions, cessation of well operations, and seizure of equipment; to change certain provisions relating to expiration and renewal of licenses and replacement of lost, destroyed, or mutilated licenses; to change certain provisions relating to standards for wells and boreholes; to change certain provisions relating to requirement of bond or letter of credit; to change certain provisions relating to authorization for the Board of Natural Resources to establish rules and regulations for pump installation certification and fees; to provide for standards for pump installations; to provide penalties for violations; 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, relating to water well standards, is amended by striking paragraphs (13) and (32) of Code Section 12-5-122, relating to definitions, and inserting in lieu thereof the following:

"(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, services, and repairs 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, services, and repairs pumps and pumping equipment."

SECTION 2.

Said part is further amended in Code Section 12-5-122, relating to definitions, by inserting a new paragraph to read as follows:

"(27.1) 'Pump contractor' means any person who engages in the business of installing, servicing, or repairing pumps and pumping equipment for water wells but who is not a driller or water well contractor."

SECTION 3.

Said part is further amended by striking Code Section 12-5-124, relating to powers and duties of the State Water Well Standards Advisory Council, and inserting in lieu thereof the following:

"12-5-124.

In carrying out this part, the council shall have the following powers and duties:

(1) To adopt and amend rules and regulations which may be reasonably necessary to govern the licensing of water well contractors and the regulation of proceedings before the council and to carry out such other powers and duties assigned to the council under this part. The council and all of its rules, regulations, and procedures are subject to and shall comply with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act';

(2) To pay into the state treasury all fees and moneys received by it;

(3) To adopt and have an official seal;

(4) To set the amount of all fees required by this part;

(5) To license water well contractors and certify pump contractors;

(6) To review the effect and practicality of standards set up in this part and recommend to the General Assembly adjustments and changes to achieve the purposes of this part;

(7) To review and recommend to the General Assembly any legislation which would improve the quality of relations between the water well drilling industry and the public; and

(8) To conduct hearings and institute and prosecute court actions as may be necessary to enforce compliance with any provisions of this part and any rules and regulations promulgated pursuant to this part that relate to water wells."

SECTION 4.

Said part is further amended by striking Code Section 12-5-127, relating to licensing of water well contractors generally, applications for trainee licenses, and related violations, and inserting in lieu thereof the following:

1 "12-5-127.

2 (a) Any person desiring to engage in the business of water well construction in this state
3 shall apply to the council for a license as a water well contractor. All such applications
4 shall be made on forms provided by the division and shall be accompanied by a fee to be
5 prescribed by the council but not exceeding \$400.00 per license period.

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

12 (c) Satisfactory proof of two years' experience in the water well construction business
13 shall be made by presenting certified affidavits from one or more licensed water well
14 contractors that the applicant has had at least two years of full-time water well construction
15 experience. If the required experience was obtained under two or more licensed water well
16 contractors, then a certified affidavit specifying exact dates of such experience shall be
17 required from each licensed contractor. In lieu of the method described above, an applicant
18 may present other proof satisfactory to the council of two years' experience constructing
19 water wells. The council may require the applicant and the water well contractors who
20 swear to such affidavits to appear before the council to discuss the applicant's
21 qualifications.

22 (d)(1) Any person wishing to engage in the water well construction business shall
23 designate himself or herself or at least one partner, officer, or full-time employee to fulfill
24 the above requirements. If the requirements are satisfactorily fulfilled, the person shall
25 be granted a license under this part, and such license shall cover water well construction
26 activities for which the person is responsible and so licensed. The partners, officers, and
27 employees of the person shall be allowed to engage in the activities covered by the
28 license if the individual who fulfilled the licensing requirements has performed or
29 approved such activities and such approval is posted at the site of the activity on forms
30 to be provided by the council for that purpose. Any such license shall be valid so long as
31 the designated partner, officer, or full-time employee is associated with the licensee or
32 until it otherwise expires.

33 (2) The provisions of paragraph (1) of this subsection notwithstanding, the water well
34 construction activities of the partners, officers, and employees of the individual who
35 fulfilled the licensing requirements shall continue to be authorized under a license which
36 was valid at the time of the licensee's death for a period of 180 days following the date
37 of such death.

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

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

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

~~(h)(1) Beginning July 1, 1995, the~~ 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, hearings, reissuance of revoked licenses, injunctions, cessation of well operations, and seizure of equipment, and inserting in lieu thereof the following:

"(a) The council ~~shall~~ may 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;

(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 and replacement of lost, destroyed, or mutilated licenses, and inserting in lieu thereof the following:

"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 not exceeding \$400.00 per renewal period as prescribed by the 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 striking subparagraph (1)(L) of Code Section 12-5-134, relating to standards for wells and boreholes, and inserting in lieu thereof the following:

"(L) The drilling contractor shall maintain in his or her 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 applicable penalty by the council;"

SECTION 8.

Said part is further amended by striking subsection (i) of Code Section 12-5-135, relating to requirement of bond or letter of credit, and inserting in lieu thereof the following:

"(i) No bond or irrevocable letter of credit provided for in this Code section shall be accepted by the director from any water well contractor or driller who shall drill any well or borehole for the purpose of injecting any surface water into the floridan aquifer in any county governed by the Georgia coastal zone management program provided by Code

Section 12-5-327 ~~after July 1, 1999, and before December 31, 2002~~ after the effective date of this subsection and before December 31, 2009."

SECTION 9.

Said part is further amended by striking Code Section 12-5-138, relating to authorization for the Board of Natural Resources to establish rules and regulations for pump installation certification and fees, and inserting in lieu thereof the following:

"12-5-138.

(a)(1)(A) The Board of Natural Resources council is authorized and directed to establish rules and regulations to provide for the certification of persons pump contractors who install, service, and repair pumps on or in water wells regulated under the provisions of subsection (b) of Code Section 12-5-133 this part and to provide standards for installation of such pumps in order to protect public health and safety. The council shall provide for classes of certificates which distinguish the levels of competencies of certificants to perform various tasks associated with such services.

The Board of Natural Resources council 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~~ contractor shall not exceed the fee for the licensed water well contractor. The director may require any person to meet certain qualifications in order to be eligible for certification as a pump ~~installer~~ contractor. The director may provide that persons who can document that they have been in the business of installing, servicing, and repairing pumps and pumping equipment prior to ~~July 1, 2001~~ December 31, 2003, may be granted a certification by paying the appropriate fees but without any requirement to pass any type of test.

(B) Any person wishing to engage in the business of a pump contractor shall designate himself or herself or at least one partner, officer, or full-time employee to fulfill the above certification requirements. If the requirements are satisfactorily fulfilled, the person shall be granted a certification under this Code section, and such certification shall cover pump contracting activities for which the person is responsible and so certified. The partners, officers, and employees of the person shall be allowed to engage in the activities covered by the certification if the individual who fulfilled the certification requirements has performed or approved such activities and such approval is posted at the site of the activity on forms to be provided by the council for that purpose. Any such certification shall be valid so long as the designated partner, officer, or full-time employee is associated with the certificant or until the certificate otherwise expires.

1 (2) The provisions of paragraph (1) of this subsection notwithstanding, the pump
2 contracting activities of the partners, officers, and employees of the individual who
3 fulfilled the certification requirements shall continue to be authorized under a certificate
4 which was valid at the time of the certificant's death for a period of 180 days following
5 the date of such death.

6 (3) The provisions of this subsection shall not prohibit a person licensed as an electrical
7 contractor, master plumber, or journeyman plumber under Chapter 14 of Title 43 from
8 engaging in any business activities or practices within the scope of such license without
9 being certified as a pump contractor.

10 (b) Any person who installs any pump on or in a water well in violation of any installation
11 standards adopted by the council pursuant to subparagraph (a)(1)(A) of this Code section
12 which violation causes or has the potential for causing contamination of ground water shall
13 be subject to civil penalties as provided in Code Section 12-5-133.1."

14 **SECTION 10.**

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