

REGULATION OF WELLS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Carl W. Duckworth

LONG TITLE

General Description:

This bill amends and repeals provisions relating to the regulation of water well drilling.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the state engineer to commence an enforcement action against a person

that:

- fails to file a well driller report; or
- drills a well without a license;
- ▶ authorizes the state engineer to make rules to:
 - establish enforcement procedures for failure to meet construction standards;
 - set a fine amount; and
 - establish well driller report requirements;
- ▶ authorizes the state engineer to retain the money from a fine for inspection,

enforcement, and education;

- ▶ combines three sections into one section; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 **58-55-305**, as last amended by Laws of Utah 2007, Chapter 186

32 **73-2-25**, as last amended by Laws of Utah 2007, Chapter 136

33 **73-3-25**, as last amended by Laws of Utah 2004, Chapter 191

34 **73-3b-208**, as enacted by Laws of Utah 1991, Chapter 146

35 REPEALS:

36 **73-3-22**, as last amended by Laws of Utah 2005, Chapter 215

37 **73-3-24**, as last amended by Laws of Utah 2004, Chapter 191

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **58-55-305** is amended to read:

41 **58-55-305. Exemptions from licensure.**

42 (1) In addition to the exemptions from licensure in Section 58-1-307, the following
43 persons may engage in acts or practices included within the practice of construction trades,
44 subject to the stated circumstances and limitations, without being licensed under this chapter:

45 (a) an authorized representative of the United States government or an authorized
46 employee of the state or any of its political subdivisions when working on construction work of
47 the state or the subdivision, and when acting within the terms of the person's trust, office, or
48 employment;

49 (b) a person engaged in construction or operation incidental to the construction and
50 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation
51 districts, and drainage districts or construction and repair relating to farming, dairying,
52 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel
53 excavations, well drilling, as defined in [~~Subsection 73-3-24(3)~~] Section 73-3-25, hauling to and
54 from construction sites, and lumbering;

55 (c) public utilities operating under the rules of the Public Service Commission on
56 construction work incidental to their own business;

57 (d) sole owners of property engaged in building:

58 (i) no more than one residential structure per year and no more than three residential
59 structures per five years on their property for their own noncommercial, nonpublic use; except,
60 a person other than the property owner or individuals described in Subsection (1)(e), who
61 engages in building the structure must be licensed under this chapter if the person is otherwise
62 required to be licensed under this chapter; or

63 (ii) structures on their property for their own noncommercial, nonpublic use which are
64 incidental to a residential structure on the property, including sheds, carports, or detached
65 garages;

66 (e) (i) a person engaged in construction or renovation of a residential building for
67 noncommercial, nonpublic use if that person:

68 (A) works without compensation other than token compensation that is not considered
69 salary or wages; and

70 (B) works under the direction of the property owner who engages in building the
71 structure;

72 (ii) for purposes of this Subsection (1)(e), "token compensation" means compensation
73 paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person
74 exempted from licensure under this Subsection (1)(e), that is:

75 (A) minimal in value when compared with the fair market value of the services provided
76 by the person;

77 (B) not related to the fair market value of the services provided by the person; and

78 (C) is incidental to providing of services by the person including paying for or providing
79 meals or refreshment while services are being provided, or paying reasonable transportation
80 costs incurred by the person in travel to the site of construction;

81 (f) a person engaged in the sale or merchandising of personal property that by its design
82 or manufacture may be attached, installed, or otherwise affixed to real property who has
83 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or
84 attach that property;

85 (g) a contractor submitting a bid on a federal aid highway project, if, before undertaking

86 construction under that bid, the contractor is licensed under this chapter;

87 (h) (i) a person engaged in the alteration, repair, remodeling, or addition to or
88 improvement of a building with a contracted or agreed value of less than \$1,000, including both
89 labor and materials, and including all changes or additions to the contracted or agreed upon
90 work;

91 (ii) notwithstanding Subsection (1)(h)(i):

92 (A) work in the plumbing and electrical trades must be performed by a licensed
93 electrician or plumber except as otherwise provided in this section;

94 (B) installation, repair, or replacement of a residential or commercial gas appliance or a
95 combustion system must be performed by a person who has received certification under
96 Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or
97 58-55-308(3); and

98 (C) installation, repair, or replacement of water-based fire protection systems must be
99 performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;

100 (i) a person practicing a specialty contractor classification or construction trade which is
101 not classified by rule by the director as significantly impacting the public's health, safety, and
102 welfare;

103 (j) owners and lessees of property and persons regularly employed for wages by owners
104 or lessees of property or their agents for the purpose of maintaining the property, are exempt
105 from this chapter when doing work upon the property;

106 (k) (i) a person engaged in minor plumbing work incidental to the replacement or repair
107 of a fixture or an appliance in a residential or small commercial building, or structure used for
108 agricultural use, as defined in Section 58-56-4, provided that no modification is made to:

109 (A) existing culinary water, soil, waste, or vent piping; or

110 (B) a gas appliance or combustion system; and

111 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or
112 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

113 (l) a person who ordinarily would be subject to the plumber licensure requirements

114 under this chapter when installing or repairing a water conditioner or other water treatment
115 apparatus if the conditioner or apparatus:

116 (i) meets the appropriate state construction codes or local plumbing standards; and

117 (ii) is installed or repaired under the direction of a person authorized to do the work
118 under an appropriate specialty contractor license;

119 (m) a person who ordinarily would be subject to the electrician licensure requirements
120 under this chapter when employed by:

121 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator
122 contractors or constructors, or street railway systems; or

123 (ii) public service corporations, rural electrification associations, or municipal utilities
124 who generate, distribute, or sell electrical energy for light, heat, or power;

125 (n) a person involved in minor electrical work incidental to a mechanical or service
126 installation;

127 (o) a student participating in construction trade education and training programs
128 approved by the commission with the concurrence of the director under the condition that:

129 (i) all work intended as a part of a finished product on which there would normally be
130 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed
131 building inspector; and

132 (ii) a licensed contractor obtains the necessary building permits; and

133 (p) a delivery person when replacing any of the following existing equipment with a
134 new gas appliance, provided there is an existing gas shutoff valve at the appliance:

135 (i) gas range;

136 (ii) gas dryer;

137 (iii) outdoor gas barbeque; or

138 (iv) outdoor gas patio heater.

139 (2) (a) A compliance agency as defined in Subsection 58-56-3(4) that issues a building
140 permit to any person requesting a permit as a sole owner of property referred to in Subsection
141 (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of

142 the permit.

143 (b) The division shall evaluate the effectiveness of the notification requirement under
144 Subsection (2)(a) and report its findings, including any recommendations for modification to or
145 termination of the requirement, to the Legislature's Business and Labor Interim Committee prior
146 to the 2008 General Session.

147 Section 2. Section **73-2-25** is amended to read:

148 **73-2-25. State engineer enforcement powers.**

149 (1) For purposes of this section, "initial order" means one of the following issued by the
150 state engineer:

151 (a) a notice of violation; or

152 (b) a cease and desist order.

153 (2) (a) The state engineer may commence an enforcement action under this section if
154 the state engineer finds that a person:

155 (i) is diverting, impounding, or using water for which no water right has been
156 established;

157 (ii) is diverting, impounding, or using water in violation of an existing water right;

158 (iii) violates Section 73-5-4;

159 (iv) violates Section 73-5-9;

160 (v) violates a written distribution order from the state engineer;

161 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
162 or bank of a natural stream channel; [~~or~~]

163 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
164 Safety[~~;~~];

165 (viii) fails to submit a report required by Section 73-3-25; or

166 (ix) engages in well drilling without a license required by Section 73-3-25.

167 (b) To commence an enforcement action under this section, the state engineer shall
168 issue an initial order, which shall include:

169 (i) a description of the violation;

170 (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
171 (iii) notice that the state engineer may treat each day's violation of the provisions listed
172 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

173 (c) The state engineer's issuance and enforcement of an initial order is exempt from
174 Title 63, Chapter 46b, Administrative Procedures Act.

175 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
176 state engineer shall make rules necessary to enforce an initial order, which shall include:

177 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the
178 initial order if a person to whom an initial order is issued fails to respond to the order or abate
179 the violation;

180 (b) the right to a hearing, upon request by a person against whom an initial order is
181 issued; and

182 (c) provisions for timely issuance of a final order after:

183 (i) the person to whom the initial order is issued fails to respond to the order or abate
184 the violation; or

185 (ii) a hearing held under Subsection (3)(b).

186 (4) A person may not intervene in an enforcement action commenced under this section.

187 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the
188 state engineer shall serve a copy of the final order on the person against whom the order is
189 issued by:

190 (a) personal service under Utah Rules of Civil Procedure 5; or

191 (b) certified mail.

192 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district
193 court in:

194 (i) Salt Lake County; or

195 (ii) the county where the violation occurred.

196 (b) A person shall file a petition for judicial review of the state engineer's final order
197 issued under this section within 20 days from the day on which the final order was served on

198 that person.

199 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a
200 final order issued under this section.

201 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the
202 state may recover all court costs and a reasonable attorney fee.

203 Section 3. Section **73-3-25** is amended to read:

204 **73-3-25. Well driller's license -- Enforcement.**

205 [~~(1) (a) Every person that constructs a well in the state shall obtain a license from the
206 state engineer.~~]

207 [~~(b) The state engineer shall enact rules defining the form, the expiration date, and the
208 renewal cycle of the application for a license.~~]

209 [~~(c) Well drillers' licenses are not transferable. The state engineer shall enact rules for
210 well construction according to the procedures and requirements of Title 63, Chapter 46a, Utah
211 Administrative Rulemaking Act.~~]

212 (1) As used in this section:

213 (a) "Well" means an open or cased excavation or borehole for diverting, using, or
214 monitoring underground water made by any construction method.

215 (b) "Well driller" means a person with a license to engage in well drilling for
216 compensation or otherwise.

217 (c) "Well drilling" means the act of drilling, constructing, repairing, renovating,
218 deepening, cleaning, developing, or abandoning a well.

219 (2) (a) (i) A person [~~who constructs a well in this state must first~~] shall obtain a license
220 as provided in this section before engaging in well drilling.

221 [~~(ii) Before a well driller's license will be issued, the applicant must~~]

222 (ii) The state engineer may enforce Subsection (2)(a)(i) in accordance with Sections
223 73-2-25 and 73-2-26.

224 (b) A person applying for a well driller license shall file a well driller bond:

225 (i) with the state engineer[-]; and

226 ~~[(iii) The bond shall be made payable to the Office of the State Engineer.]~~
227 (ii) payable to the Division of Water Rights.
228 (c) (i) Compliance with this section and the rules authorized by this section is required
229 to obtain or renew a well driller license.
230 (ii) The state engineer may refuse to issue a license if it appears an applicant violated a
231 rule authorized by this section.
232 (d) A well driller license is not transferable.
233 ~~[(iv)]~~ (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
234 Act, the state engineer may make rules [to set] establishing:
235 (a) the amount, form, and general administrative requirements of a well driller bond[=
236 Proper compliance with the provisions of this section and the rules enacted under the authority
237 of this section are required to obtain or renew a license.];
238 ~~[(b) (i) Well drillers]~~
239 (b) the amount of a well driller fine;
240 (c) minium well drilling standards;
241 (d) well driller reporting requirements;
242 (e) the requirements for obtaining a well driller license, including:
243 (i) a well driller license application form;
244 (ii) the license expiration date; and
245 (iii) the license renewal cycle; and
246 (f) a procedure to enforce a well drilling standard or other well drilling requirement.
247 (4) (a) A well driller shall submit a report to the state engineer:
248 (i) containing data relating to each well;
249 (ii) within 30 days after the completion or abandonment of the well drilling;
250 (iii) on forms furnished by the state engineer; and
251 (iv) containing information required by the state engineer.
252 (b) In accordance with Sections 73-2-25 and 73-2-26, the state engineer may
253 commence an enforcement action against a person who fails to submit a report required by

254 Subsection (4)(a) within 90 days of the day on which the well driller license lapses.

255 (5) (a) A well driller shall comply with the rules [enacted by the state engineer under
256 this chapter] authorized by this section.

257 [(ii)] (b) If the state engineer determines[~~, following an investigation, that the licensee]~~
258 that a well driller has failed to comply with [these rules] a rule, the state engineer may, in
259 accordance with the procedures established in rule:

260 (i) (A) order that a well driller pay a fine; or

261 (B) revoke or suspend the license[~~, and]; and~~

262 (ii) exact the bond [and deposit the money as a nonlapsing dedicated credit].

263 (6) (a) The state engineer shall retain the money from a fine or exacting a bond as a
264 dedicated credit.

265 [(iii)] (b) The state engineer may expend [the funds]:

266 (i) money retained from a fine for:

267 (A) well drilling inspection;

268 (B) well drilling enforcement; or

269 (C) well driller education; and

270 (ii) money retained from exacting a bond to investigate or correct [any deficiencies

271 which] a deficiency by a well driller that could adversely affect the public interest resulting from

272 noncompliance with [the rules promulgated under this chapter by any well driller] a rule

273 authorized by this section.

274 [(iv)] The state engineer may refuse to issue a license to a well driller if it appears that
275 there has been a violation of the rules or a failure to comply with Section 73-3-22.]

276 Section 4. Section **73-3b-208** is amended to read:

277 **73-3b-208. Proposed new well -- Compliance with water well construction rules.**

278 An applicant for a recovery permit who intends to construct a new well to recover

279 stored water must comply with [~~Section 73-3-22 and]~~ Sections [~~73-3-24 through]~~ 73-3-25 and

280 73-3-26, and rules adopted under those sections, regarding the construction of water wells.

281 Section 5. **Repealer.**

282 This bill repeals:

283 Section **73-3-22, Underground water -- Report of well and tunnel drillers.**

284 Section **73-3-24, Definitions.**