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SENATE BILL 343

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Timothy Z. Jennings

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL DRILLERS LICENSING ACT; REQUIRING LICENSURE; PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Water Well Drillers Licensing Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Water Well Drillers Licensing Act:

A. "water well" includes water-producing wells, monitoring wells that are not subject to regulation by the energy, minerals and natural resources department and injection

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1 wells associated with aquifer storage or return flow credits;  
2 and

3 B. "water well driller" means a person licensed by  
4 the state engineer to drill a water well.

5 Section 3. [NEW MATERIAL] LICENSE REQUIRED.--

6 A. It is unlawful for a person to:

7 (1) drill a water well without being licensed  
8 pursuant to the Water Well Drillers Licensing Act; or

9 (2) represent himself as a water well driller  
10 unless he is licensed pursuant to the Water Well Drillers  
11 Licensing Act.

12 B. A driller trainee who is under the direct  
13 on-site supervision of a water well driller is exempted from  
14 the provisions of this section.

15 C. A person who constructs a driven well is  
16 exempted from the provisions of this section if the outside  
17 diameter of the casing of that well does not exceed two and  
18 three-eighths inches.

19 Section 4. [NEW MATERIAL] STATE ENGINEER--DUTIES.--The  
20 state engineer shall:

21 A. adopt rules to carry out the provisions of the  
22 Water Well Drillers Licensing Act and enforce the rules;

23 B. conduct an examination process for licensure and  
24 issue licenses;

25 C. establish requirements for continued proficiency

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1 in water well drilling; and

2 D. establish ethical standards of conduct for water  
3 well drillers, including that a water well driller shall:

4 (1) disclose to the client and the state  
5 engineer all known adverse conditions about the quantity and  
6 quality of ground water in the area of a prospective well;

7 (2) recommend that clients have well water  
8 analyzed;

9 (3) inform the state engineer of any unethical  
10 or unauthorized conduct of another water well driller known to  
11 the water well driller;

12 (4) accurately represent to the prospective  
13 client the qualifications and capabilities of the water well  
14 driller and the driller's equipment;

15 (5) not offer to perform services except in  
16 the class of well for which the water well driller is licensed  
17 and qualified by experience or knowledge;

18 (6) not evade contractual responsibility;

19 (7) not enter into a partnership or agreement  
20 with or give water well drilling equipment to a person not  
21 legally qualified to perform the services to be rendered; and

22 (8) not falsely promote services, mislead or  
23 deceive.

24 Section 5. [NEW MATERIAL] STATE ENGINEER--POWERS.--The  
25 state engineer may:

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1           A. obtain an injunction in district court against a  
2 person who drills a well in violation of the provisions of the  
3 Water Well Drillers Licensing Act;

4           B. suspend or revoke, upon notice and hearing, a  
5 water well driller's license for violation of the Water Well  
6 Drillers Licensing Act or rules adopted pursuant to that act;

7           C. recover in the district court of the county  
8 where the well involved is located any damages caused by a well  
9 drilled in violation of the Water Well Drillers Licensing Act;  
10 and

11           D. recover a civil penalty on behalf of the state  
12 in the amount of one thousand dollars (\$1,000).

13           Section 6. [NEW MATERIAL] REQUIREMENTS FOR LICENSURE--  
14 RENEWAL.--The state engineer shall issue or renew a biennial  
15 license as a water well driller to an applicant who:

16           A. files a completed application accompanied by a  
17 license application fee of twenty-five dollars (\$25.00) and a  
18 license or renewal fee to be established by the state engineer  
19 of not more than four hundred dollars (\$400);

20           B. is at least eighteen years of age;

21           C. for a new license, passes the national ground  
22 water association certification examination or an equivalent  
23 examination as determined by the state engineer;

24           D. for license renewal, applies for renewal no more  
25 than thirty days after the expiration of the license and

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1 completes at least eight hours of continuing education credits  
2 in courses approved by the state engineer; and

3 E. agrees to comply with the rules established by  
4 the state engineer.

5 Section 7. [NEW MATERIAL] LICENSE AND REGISTRATION  
6 TERMS.--

7 A. The water well drilling license shall be  
8 displayed in a conspicuous place in the water well driller's  
9 principal place of business.

10 B. A water well driller shall notify the state  
11 engineer within thirty days after a change of address or of any  
12 other information required under conditions of the license.

13 C. A water well drilling license is not  
14 transferable or reassignable.

15 Section 8. [NEW MATERIAL] BOND REQUIRED.--A license shall  
16 not be issued pursuant to the Water Well Drillers Licensing Act  
17 unless the applicant files with the state engineer a surety  
18 bond in the sum of ten thousand dollars (\$10,000) ensuring the  
19 applicant's compliance with the provisions of the Water Well  
20 Drillers Licensing Act.

21 Section 9. [NEW MATERIAL] DENIAL, SUSPENSION OR  
22 REVOCATION OF LICENSE.--In accordance with procedures set forth  
23 in the Uniform Licensing Act, the state engineer may deny,  
24 suspend or revoke a license held or applied for under the Water  
25 Well Drillers Licensing Act upon grounds that the water well

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1 driller or applicant:

2 A. made a false statement or gave false information  
3 in connection with an application for a license or renewal or  
4 reinstatement of a license; or

5 B. willfully violated any provision of the Water  
6 Well Drillers Licensing Act or rules established pursuant to  
7 that act.

8 Section 10. [NEW MATERIAL] FUND CREATED.--The "water well  
9 drillers fund" is established in the state treasury. License  
10 and examination fees received by the state engineer pursuant to  
11 the Water Well Drillers Licensing Act shall be deposited in the  
12 fund and are appropriated to the state engineer for the  
13 administration of that act. The state treasurer shall invest  
14 the fund as other state funds are invested, and all income  
15 derived from the fund shall be credited to the fund. All money  
16 in the fund is appropriated to the state engineer to carry out  
17 provisions of the Water Well Drillers Licensing Act.  
18 Disbursements from the fund shall be drawn on warrants of the  
19 secretary of finance and administration pursuant to vouchers  
20 signed by the state engineer or the state engineer's authorized  
21 representative. Balances in the fund shall remain in the fund  
22 and shall not revert to the general fund.

23 Section 11. [NEW MATERIAL] PENALTIES.--

24 A. A person who fraudulently represents himself to  
25 be a water well driller is guilty of a misdemeanor and shall be

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1 punished by a definite term of imprisonment of less than one  
2 year or a fine of not more than one thousand dollars (\$1,000)  
3 or both.

4 B. A person who violates a provision of the Water  
5 Well Drillers Licensing Act, except as provided for in  
6 Subsection A of this section, is guilty of a misdemeanor and  
7 shall be punished by a fine of not less than fifty dollars  
8 (\$50.00) nor more than five hundred dollars (\$500). Each day  
9 that a violation continues shall be construed as a separate  
10 offense for the purposes of this subsection.

11 Section 12. Section 72-12-15 NMSA 1978 (being Laws 1949,  
12 Chapter 178, Section 4) is amended to read:

13 "72-12-15. UNAUTHORIZED DRILLING--RELIEF.--~~[No person~~  
14 ~~owning or controlling lands shall permit the drilling of a well~~  
15 ~~thereon for water from an underground source, as herein~~  
16 ~~defined, by any person other than a driller licensed under the~~  
17 ~~provisions of this act. No person shall produce water from an~~  
18 ~~underground source through any well drilled in violation of~~  
19 ~~this act. No person shall apply water from such underground~~  
20 ~~source to land having no valid water right for the purpose to~~  
21 ~~which applied.]~~ The state engineer may apply for and obtain an  
22 injunction in the district court of the county in which ~~[any]~~ a  
23 well or land affected is situated, against ~~[any]~~ a person, firm  
24 or corporation who ~~[shall drill or begin]~~ drills or begins the  
25 drilling of a well in violation of the provisions of ~~[this act,~~

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1 ~~or who shall cause, allow or permit the drilling of a well by a~~  
2 ~~person other than a licensed driller upon land owned or~~  
3 ~~controlled by him, or who shall produce water from any well~~  
4 ~~drilled in violation of this act, or who shall apply water from~~  
5 ~~an underground source, as hereinabove defined, to lands having~~  
6 ~~no valid water right for the purpose to which applied] the~~  
7 Water Well Drillers Licensing Act or without first obtaining a  
8 permit to drill the well. This provision shall [~~in no wise be~~  
9 ~~construed to~~] not affect the existing right of a court of  
10 equity in the exercise of its general equity powers to grant  
11 relief to the state [~~of New Mexico~~] by injunction or  
12 otherwise."

13 Section 13. TEMPORARY PROVISION.--A person who has a  
14 driller's license on the effective date of this act shall have  
15 until July 1, 2005 to obtain a water well driller's license  
16 pursuant to the terms of this act.

17 Section 14. APPROPRIATION.--One hundred fifty thousand  
18 dollars (\$150,000) is appropriated from the general fund to the  
19 office of the state engineer for expenditure in fiscal year  
20 2005 to carry out the provisions of the Water Well Drillers  
21 Licensing Act. Any unexpended or unencumbered balance  
22 remaining at the end of fiscal year 2005 shall revert to the  
23 general fund.

24 Section 15. REPEAL.--Sections 72-12-12 through 72-12-14  
25 and 72-12-16 NMSA 1978 (being Laws 1949, Chapter 178, Sections

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1 1 through 3 and 5, as amended) are repealed.

2 Section 16. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2004.

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