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SENATE BILL 537

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL  
DRILLERS LICENSING ACT; REQUIRING LICENSURE; CREATING A BOARD;  
PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING  
PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Water Well Drillers Licensing Act".

Section 2. DEFINITIONS.--As used in the Water Well  
Drillers Licensing Act:

A. "board" means the water well drillers advisory  
board;

B. "installer" means a person licensed by the  
state engineer to install or repair water well pumps and  
equipment; and

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1 C. "water well driller" means a person licensed by  
2 the state engineer to drill water, inject wells, de-water  
3 wells or monitor wells.

4 Section 3. LICENSE REQUIRED. --

5 A. It is unlawful for a person to:

6 (1) represent himself as a well driller  
7 unless he is licensed pursuant to the Water Well Drillers  
8 Licensing Act; or

9 (2) continue to act as a well driller if the  
10 license issued pursuant to the Water Well Drillers Licensing  
11 Act has expired or been revoked or suspended.

12 B. Driller trainees under the direct on-site  
13 supervision of a water well driller are exempt from the  
14 provisions of this section.

15 Section 4. BOARD CREATED-- MEMBERS-- QUALIFICATIONS--  
16 TERMS-- VACANCIES-- REMOVAL. --

17 A. The "water well drillers advisory board" is  
18 created.

19 B. The board is composed of seven members, five  
20 appointed by the state engineer, among whom:

- 21 (1) four are water well drillers and:  
22 (a) are residents of New Mexico;  
23 (b) have ten years or more experience  
24 as well drillers; and  
25 (c) represent the four geographic

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1 quadrants of the state; and

2 (2) one is representative of the general  
3 public.

4 C. The remaining two members of the board are the  
5 state engineer or his designee and the secretary of  
6 environment or his designee.

7 D. Members of the board shall not be employed by  
8 or own an interest in the same business.

9 E. The initial appointed members of the board  
10 shall serve staggered terms, one of the members appointed for  
11 a term ending July 1, 2000, one for a term ending July 1,  
12 2001, one for a term ending July 1, 2002 and two for terms  
13 ending July 1, 2003. Thereafter, appointments shall be made  
14 for terms of four years and be made in such a manner that the  
15 terms of no more than two board members expire on July 1 of  
16 each year. Vacancies shall be filled by appointment by the  
17 state engineer for the unexpired term within sixty days of the  
18 vacancy. Board members shall serve until their successors  
19 have been appointed and qualified.

20 F. A board member who misses three consecutive  
21 meetings without being excused may be removed by the state  
22 engineer as a member of the board.

23 G. The board shall meet at the call of the state  
24 engineer who shall serve as the chair, and appointed board  
25 members shall serve at the pleasure of the state engineer.

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1           H. Appointed members of the board may be  
2 reimbursed as provided in the Per Diem and Mileage Act, but  
3 shall receive no other compensation, perquisite or allowance.

4           I. The board is administratively attached to the  
5 office of the state engineer and shall advise the state  
6 engineer on administration of the Water Well Drillers  
7 Licensing Act.

8           Section 5. STATE ENGINEER--DUTIES.--The state engineer  
9 shall:

10           A. adopt and file in accordance with the State  
11 Rules Act rules to carry out the provisions of the Water Well  
12 Drillers Licensing Act and enforce the rules;

13           B. determine the qualifications of a water well  
14 driller;

15           C. establish standards of water well construction  
16 to protect ground water quality;

17           D. conduct the examination process for licensure  
18 and issue licenses;

19           E. review complaints concerning the conduct of a  
20 water well driller;

21           F. establish a record system for water well  
22 driller licenses;

23           G. consult with the board on the administration of  
24 the Water Well Drillers Licensing Act;

25           H. establish requirements for continued

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1 proficiency in water well drilling and pump installation; and

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

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

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

10 (3) inform the board of any unethical or  
11 unauthorized conduct known to the water well driller;

12 (4) accurately represent to the prospective  
13 client the qualifications and capabilities of the licensee and  
14 the licensee'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 the 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 6. REQUIREMENTS FOR LICENSURE. -- The state  
25 engineer shall issue or renew an annual license as a water

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1 well driller or installer to an applicant who:

2 A. files a completed application accompanied by a  
3 required fee of one hundred dollars (\$100) for a resident  
4 license or two hundred dollars (\$200) for a nonresident  
5 license;

6 B. is at least eighteen years of age;

7 C. has two years or more of experience in the well  
8 drilling or pump installation business;

9 D. passes an examination administered by or  
10 demonstrates to the state engineer at least ten years of  
11 experience in water well drilling or pump installation;

12 E. demonstrates at least ninety days of residency  
13 prior to submission of the application for licensure or holds  
14 a valid license from another state that provides reciprocity  
15 for New Mexico residents;

16 F. has no criminal record;

17 G. complies with all other requirements of law as  
18 a person doing business in the state; and

19 H. agrees to comply with ethical standards  
20 established by the state engineer.

21 Section 7. LICENSE AND REGISTRATION TERMS AND RENEWAL. --

22 A. The water well drilling license shall be  
23 displayed in a conspicuous place in the principal place of  
24 business.

25 B. A water well driller shall notify the state

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1 engineer within thirty days after a change in his address or  
2 any other information required by the board under conditions  
3 of the license.

4 C. No water well drilling license is transferable  
5 or reassignable.

6 Section 8. BOND REQUIRED. --

7 A. No license shall be issued pursuant to the  
8 Water Well Drillers Licensing Act unless the applicant files  
9 with the state engineer a surety bond in the sum of five  
10 thousand dollars (\$5,000). The bond shall run to the state,  
11 shall be executed and acknowledged by the applicant as  
12 principal and by a corporation that is licensed by the  
13 superintendent of insurance to transact the business of  
14 fidelity and surety insurance, as surety.

15 B. The surety bond shall provide for suit by a  
16 person who has a cause of action pursuant to the Water Well  
17 Drillers Licensing Act or rules adopted pursuant to that act.

18 C. No action shall be brought on a bond after the  
19 expiration of three years from the date of the occurrence of  
20 the act upon which a claim is based.

21 D. The bond shall be continuous in form and remain  
22 in full force concurrently with the license and any renewals  
23 unless terminated or canceled by action of the surety.

24 E. Upon the filing of thirty days' written notice  
25 with the board by a surety company of its withdrawal as the

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1 surety of a licensee, the board shall give notice by certified  
2 mail to the licensee of the withdrawal. The license of a  
3 licensee shall be void upon the termination of the bond by the  
4 surety company unless, prior to termination, a new bond has  
5 been filed with the board.

6 F. Should the license of a company to transact  
7 fidelity and surety insurance business in this state be  
8 canceled, revoked or otherwise terminated, all water well  
9 drilling business bonds for which the surety company is surety  
10 are canceled. Upon the cancellation, the license of any water  
11 well drilling business having a bond posted is suspended and  
12 shall remain suspended until a new and valid bond is filed.  
13 Failure of a licensee to file a new bond within thirty days  
14 after being advised by the state engineer revokes the license.

15 Section 9. DENIAL, SUSPENSION OR REVOCATION OF  
16 LICENSE. --In accordance with procedures set forth in the  
17 Uniform Licensing Act, the state engineer may deny, suspend or  
18 revoke any license held or applied for under the Water Well  
19 Drillers Licensing Act upon grounds that the licensee or  
20 applicant:

21 A. made a false statement or gave false  
22 information in connection with an application for a license or  
23 renewal or reinstatement of a license;

24 B. violated any provision of the Water Well  
25 Drillers Licensing Act;



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1 C. violated a rule or ethical standard of the  
2 state engineer adopted pursuant to the Water Well Drillers  
3 Licensing Act;

4 D. has been convicted of a felony or a crime  
5 involving moral turpitude or illegally using, carrying or  
6 possessing a deadly weapon;

7 E. has made a material misstatement of facts in a  
8 well record report or has failed to submit a well record  
9 report;

10 F. has failed to mark a water well rig;

11 G. has failed to advise a person for whom a well  
12 is being drilled, deepened or otherwise altered that injurious  
13 water has been encountered that poses a potential pollution  
14 hazard, and the well must be plugged or properly completed in  
15 accordance with the state engineer's rules;

16 H. has aided and abetted an unlicensed person to  
17 evade the provisions of the state engineer's rules;

18 I. has knowingly conspired with or acted as an  
19 agent, partner or associate of an unlicensed person;

20 J. has performed a service incompetently;

21 K. committed or permitted an employee to commit an  
22 act while the license was expired that would be cause for the  
23 suspension or revocation of a license or grounds for the  
24 denial of an application for a license;

25 L. has been chronically or persistently inebriated

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1 or addicted to the illegal use of dangerous or narcotic drugs;

2 M has been adjudged mentally incompetent or  
3 insane; or

4 N. while unlicensed or under suspended license,  
5 represented himself as a water well driller.

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

21 Section 11. PENALTIES. --

22 A. A person who fraudulently represents himself to  
23 be a water well driller is guilty of a misdemeanor and shall  
24 be punished by a definite term of imprisonment of less than  
25 one year or a fine of not more than one thousand dollars

1 (\$1,000) or both.

2 B. A person who violates a provision of the Water  
3 Well Drillers Licensing Act, except as provided for in  
4 Subsection A of this section, is guilty of a misdemeanor and  
5 shall be punished by a definite term of imprisonment of not  
6 more than six months or by a fine of not more than five  
7 hundred dollars (\$500) or both.

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