

# NATURAL RESOURCES COMMITTEE

Nebraska Legislature

One Hundred Seventh Legislature

Second Session

Review of Regulations for Well Water Drillers

Report as required by Neb. Rev. Stat. §84-948

## Committee Members

Senator Bruce Bostelman, Chair, District 23

Senator Mike Moser, Vice Chair, District 22

Senator Raymond Aguilar, District 35

Senator John Cavanaugh, District 9

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## **Occupational Board Reform Act**

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

There were five such occupational regulations identified under the jurisdiction of the Natural Resources Committee (“Committee”). 1 This report will address the occupation of Well Water Driller, that includes: Contractor, Supervisor, Monitoring Tech, Pump Installation Contractor, Pump Installation Supervisor and Natural Resources Ground Water Technician.

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey results for all the committees are published on the Legislature’s website.

The Water Well Standards and Contractors’ Licensing Board oversees credentialing for Water Well Drillers and related occupations considered herein<sup>1</sup>. The response for those responding to the survey in the various areas can be found in the appropriate section herein and at the tab for Standing Committee Reports: Natural Resources on the Legislature’s website.

## **FOCUS POSITIONS AND BACKGROUND**

**BACKGROUND** Well Water Driller certification includes: Well Water Driller Contractor, Supervisor, Monitoring Tech, Pump Installation Contractor, Pump Installation Supervisor and Natural Resources Ground Water Technician.

The profession of water well drilling and related occupations is governed by the Water Well Standards and Contractors’ Licensing Board (“Board”). The Board was established in 1986 through LB310

LB810 (1986); codified at Neb. Rev. Stat. §§46-12-1 to 46-1241 established the Water Well Standards and Contractors’ Practice Act and the progeny of regulations found in 178 NAC10-11.

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<sup>1</sup> Neb. Rev. Stat. §46-1205

The Committee of Origin involved both the Natural Resources and Health & Human Services. Oversight authority is with DHHS-Div Public Health, Office of Rehabilitation & Community Services and with the Nebraska Department of Environment and Energy (NDEE).

The Licensing Board is composed of ten members, six of whom are appointed by the Governor as follows:

- (a) A licensed water well contractor representing irrigation water well contractors,
- (b) A licensed water well contractor representing domestic water well contractors,
- (c) A licensed water well contractor representing municipal and industrial water well contractors,
- (d) A licensed pump installation contractor,
- (e) A manufacturer or supplier of water well or pumping equipment, and
- (f) A holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environment and Energy or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state five (5) years. Each industry representative shall have had experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and still serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade association of each category.

§ 46-1217

### **THE FOCUS POSITIONS:**

Pump installation contractor. § 46-1209 (1986)

Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Licensed pump installation supervisor. §46-1210 (1986)

Any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Licensed water well contractor. §46-1213 (1986)

An individual who has obtained a license from the department and who is a principal, officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Licensed water well drilling supervisor. §46-1214. (1986)

Any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Licensed water well monitoring technician §46-1214.01

Any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

## **AGENCY RESPONSES to ELECTRONIC SURVEY**

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey results for all the committees are published on the Legislature's website.

The Water Well Standards and Contractors' Licensing Board oversees credentialing for Water Well Drillers and related occupations considered herein<sup>2</sup>. The response for those responding to the survey in the various areas can be found below and at the tab for Standing Committee Reports: Natural Resources on the Legislature's website.

### **General Information**

<b>Committee of Jurisdiction:</b>	Natural Resources
<b>Occupation Regulated:</b>	Water Well Contractor, Water Well Supervisor, Pump Installation Contractor, Pump Installation Supervisor, Water Well Monitoring Technician, Natural Resources Groundwater Technician
<b>Occupational Board:</b>	Water Well Standards and Contractors' Licensing Board
<b>Contact:</b>	David Miesbach
<b>Purpose:</b>	Provide for the protection of groundwater and public health through the licensing and regulation of water well and pump installation professionals.

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<sup>2</sup> Neb. Rev. Stat. §46-1205

**Regulated Professionals:** 743  
**Year Created:** 1986  
**Year Active:** 1986 - Board, 1988 - Rules and Regulations  
**Sunset Date:** None

**Authorization**

**Statutory Authorization:** Water Well Standards and Contractors' Practice Act (46-1201 to 46-1241)  
**Parent Agency:** NDEE

**Membership**

**Number of Members:** 10  
**Who Appoints:** 6 by the Governor, 4 Agency representatives (NDEE, NDNR, UNL-CSD, NDHHS)  
**Legislative Approval:** None  
**Qualifications of Members:** Resident of the State of Nebraska 5 year's experience in the category represented  
 Actively engaged in the business/category represented  
 Licensed by the Program  
**Per Diem:** Yes  
**Expense Reimbursement:** Yes  
**Term Length:** Governor appointees - 5 year terms, up to 2 terms  
**Terms Rotate or Expire at Once:** Terms Rotate

**Meetings**

**Required FY 2021-2020:** 1

<b>Held FY 2021- 2020:</b>	5
<b>Required FY 2020- 2019:</b>	1
<b>Held FY 2020- 2019:</b>	6
<b>Required FY 2019- 2018:</b>	1
<b>Held FY 2019- 2018:</b>	5
<b>Required FY 2018- 2017:</b>	1
<b>Held FY 2018- 2017:</b>	5
<b>Required FY 2017- 2016:</b>	1
<b>Held FY 2017- 2016:</b>	5

**Operations**

<b>Support Staff:</b>	.05 FTE
<b>Shared or Separate:</b>	Shared
<b>FY 2021- 2020 Budget:</b>	0
<b>FY 2020- 2019 Budget:</b>	0

**FY 2019-2018 Budget:** 0  
**FY 2018-2017 Budget:** 0  
**FY 2017-2016 Budget:** 0  
**Other Funding Sources:** None  
**Spending Authority:** No

**Other**

**Government Certificates Issued:** 286  
**Issued Certificate Descriptions:** Well Drilling Contractor - 14 Well Drilling Supervisor - 3 Natural Resources Groundwater Technician - 61 Pump Installation Contractor - 27 Pump Installation Supervisor - 4 Water Well Monitoring Technician - 88 Or these combinations of occupations: Well Drilling Contractor/Water Well Monitoring Technician - 11 Well Drilling/Pump Installation Contractor - 68 Well Drilling/Pump Installation Supervisor - 8 Well Drilling Supervisor/Water Well Monitoring Technician - 3

**Government Certificates Revoked:** 1  
**Revoked Certificate Descriptions:** License was suspended, not revoked. Well Drilling Contractor - 0 Well Drilling Supervisor – 0 Pump Installation Contractor - 0 Pump Installation Supervisor - 0 Water Well Monitoring Technician – 0 Natural Resources Groundwater Technician – 0 Or these combinations of occupations: Well Drilling Contractor/Water Well Monitoring Technician - 0 Well Drilling/Pump Installation Contractor - 1 Well Drilling/Pump Installation Supervisor - 0 Well Drilling Supervisor/Water Well Monitoring Technician - 0

**Government Certificates Denied:** 140



**Denied Certificate Descriptions:** Denials were for failed exams. Well Drilling Contractor - 9 Well Drilling Supervisor - 1 Pump Installation Contractor - 19 Pump Installation Supervisor - 3 Water Well Monitoring Technician - 71 Natural Resources Groundwater Technician – 21 Or these combinations of occupations: Well Drilling Contractor/Water Well Monitoring Technician - 1 Well Drilling/Pump Installation Contractor - 13 Well Drilling/Pump Installation Supervisor - 2 Well Drilling Supervisor/Water Well Monitoring Technician - 0

**Government Certificates Penalties Against:** 227

**Penalty Certificate Descriptions:** Penalties were assessed for reinstatement of license. (\$35/license) Well Drilling Contractor - 35 Well Drilling Supervisor – 2 Pump Installation Contractor - 30 Pump Installation Supervisor - 9 Water Well Monitoring Technician - 46 Natural Resources Groundwater Technician - 16 Or these combinations of occupations: Well Drilling Contractor/Water Well Monitoring Technician - 21 Well Drilling/Pump Installation Contractor - 62 Well Drilling/Pump Installation Supervisor - 4 Well Drilling Supervisor/Water Well Monitoring Technician - 2

**Explanation of Effectiveness :** <https://nebraskalegislature.gov/pdf/SurveyDocs/explanation1633639022.pdf>

**Potential Harm** Without proper well construction, groundwater in which >85% of Nebraskans rely on for drinking water may be impacted by contaminants from the surface or subsurface. Well construction regulations are drafted by the Board.

**Regulation Comparison:** <https://nebraskalegislature.gov/pdf/SurveyDocs/comparison1633639022.pdf>

**Subject to Regulations of Act(LB407):** No

**Survey Submitted:** October 7, 2021 03:37 PM

## COMMITTEE FINDINGS:

Pursuant to Nebraska Revised Statute §84-948, each report issued by a standing committee of the Legislature must contain the following information (*responses in italics*).

*The starting place for the findings was largely provided in answers submitted by the Nebraska Department of Environment and Energy through the survey and follow up communications.*

- 1) The title of the regulated occupation and the name of the occupational board responsible for the enforcement of the occupational regulations;

*Water Well Contractors, Water Well Supervisors, Pump Installation Contractors, Pump Installation Supervisors, Water Well Monitoring Technicians, and Natural Resources Groundwater Technicians must be certified under the Water Well Standards and Contractors' Practice Act. §46-1241. The occupational board responsible for the enforcement of the occupational regulations is the Water Well Standards & Contractors' Licensing Board. There are 743 regulated professionals in this field in Nebraska.*

- 2) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

*The Board was created in 1986; Rules and Regulations propounded in 1988 under the Water Well Standards and Contractors' Practice Act (§§46-1201 to 46-1241)*

- 3) The number of members of the occupational board and how the members are appointed;

*10 members; six (6) are appointed to a five year rotating term by the governor and may serve up to two (2) terms; 4 are representatives of agencies, Nebraska Department of Natural Resources, UNL-CSD, Nebraska Department of Health & Human Services.*

- 4) The qualifications for membership on the occupational board;

*To be qualified for board membership, a member must be a resident of the State of Nebraska 5 years' experience in the category represented, be actively engaged in the business or category represented by the Licensed program.*

- 5) The number of times the occupational board is required to meet during the year and the number of times it actually met;

*2022-2021 Required: 1; Held 5*

*2021-2020 Required: 1; Held 5*

*2020-2019 Required: 1; Held 6*

*2019-2018 Required: 1; Held 5*

*2018-2017 Required: 1; Held 5*

*2017-1016 Required: 1; Held 5*

- 6) Annual budget information for the occupational board for the five most recently completed fiscal years;
- There has not been any budget needs for this occupational board in any year.*

- 7) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational license, and registrations the occupational board has issued, revoked, denied, or assessed penalties

against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

*Issued: 286*

*Revoked: 2*

*Denied: 140 For failed exams; Well Drilling Contractors*

*Well Driller Supervisor 9*

*Pump Installation Contractor 1*

*Water Well Monitoring Tech 3*

*Natural Resources Groundwater Tech 71*

*Well Drilling/Pump Installation Supr. 13*

*Well Drilling Supervisor 2*

*Assessed penalties: Penalties were assessed for reinstatement of license at \$35/license)*

*Well Drilling Contractor: 35*

*Well Drilling Supervisor: 2*

*Pump Installation Contractors: 30*

*Water Well Monitoring Technician:46*

*Natural Resources Groundwater Tech: 16*

*Well contractor certificates expire on June 30 of even numbered years and must be renewed.*

- 8) A review of the basic assumption underlying the creation of the occupational regulations;

*The professionals subject to certification under this section provide protection of ground water through the licensing and regulation of water wells; protect the health and general welfare of the citizens of Nebraska; protect ground water resources from potential pollution by providing for proper siting and construction of water wells and property and proper decommissioning of water wells; and provide data on potential water supplies through well logs that promote the economic and efficient utilization of management of the water resources of the state.*

- 9) A statement from the occupational board on the effectiveness of the occupational regulations; and

*Board Effectiveness (Board provided response):*

*Title 178 regulations for Water Well Standards became effective in 1988. Over the years, as the Water Well Standards and Contractor's Licensing Board identified and investigated problem construction issues, regulations were changed as needed to protect public health and groundwater quality. One of the biggest changes to the construction standards came in 2014 after a regulation development study (In-Situ Study of Grout Materials 2001-2006 and 2007 Dye Tests) was published in 2009 by DHHS. This study looked at how different grouting materials (materials to seal the borehole) reacted in different geologic environments in Nebraska. From this study, several approved grouts were added to the regulations to further improve constructions standards. Nationally, other states changed their grouting standards based on this study.*

- 10) A comparison of whether and how other states regulate the occupation.

*Similar to surrounding states like Colorado, Iowa, Kansas, Missouri and South Dakota. According to its 2018 report, the American Water Works Association (AWWA)<sup>3</sup> reported that a significant challenge for providing resources and training is that operator certification requirements vary by state.*

*In Colorado, Well drillers and pump installers are required to maintain a current license. The State Board of Examiners of Water Well Construction and Pump Installation Contractors updates the list of licensed contractors on a quarterly basis. Contractors may be licensed for one or more types of construction or installation. The Colorado Board of Examiners (BOE) has authority to examine for, deny, approve, revoke, suspend, and renew the licenses of applicants and disseminate information to pump installation contractors and well construction contractors in order to protect and preserve the groundwater resources of the state. Colo. Rev. Stat. § 37-91-104.<sup>4</sup>*

*In Iowa, all work that meets the definition of "well services" as found in Iowa law and Iowa Administrative Code must be performed by an Iowa DNR Certified Well Contractor, or by the land owner. DNR Certified Well Contractors are individuals who meet minimum work experience requirements in areas required for certification, successfully passed state examinations which demonstrates their knowledge for basic well services and the state rules. They also must obtain continuing education to further their knowledge and skill sets.<sup>5</sup>*

*In Kansas. Licensed Water Well Contractors must be licensed and must renew their license annually. Licensing requires submitting to KDHE a completed application, successful completion of a written exam and submitting the required fees to Kansas Department of Health and Environment (KDHE). After becoming a Licensed Water Well Contractor, the contractor is required to renew their license annually. The purpose of the Water Well Program is to provide for the exploration and protection of groundwater through the licensing and regulation of water well contractors in Kansas and to protect the health and general welfare of the citizens of Kansas. The program oversees the proper construction, reconstruction, treatment and plugging of water wells.<sup>6</sup>*

*In Missouri, Private well construction has been regulated in the state since 1985 when the Missouri Water Well Drillers Act became law establishing well construction standards aimed at protecting Missouri's groundwater.<sup>7</sup> Chapter 259 RSMo creates the nine-member Missouri Well Installation Board. The board adopts and amends rules and regulations to govern the regulation of the well, heat pump, monitoring well, and pump installation industry in*

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<sup>3</sup> ABWWA Report prepared by J. Oxenford, Oxenford Consulting LLC and J. Ginley, Ginley Consulting, 2018.

<sup>4</sup> <https://dnrweblink.state.co.us/dwr/ElectronicFile.aspx?docid=3121539&dbid=0>

<sup>5</sup> <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Private-Well-Program/Contractor-Certification>

<sup>6</sup> <https://www.kdhe.ks.gov/347/Water-Well-Program>

<sup>7</sup> Sections 256.600 to 256.640 RSMo

*Missouri, to establish standards that will protect Missouri's groundwater, and to establish fees to administer the law*<sup>8</sup>.

In South Dakota, South Dakota Water Law requires every well driller to have a current South Dakota driller's license before performing or contracting to perform any well drilling work.<sup>9</sup>

*Requirements and standards for Water Drillers certification and/or licensing in each state can be found at <https://www.nda4u.com/training/licensing/>*

11) In addition, each report issued by a standing committee of the Legislature must analyze whether the occupational regulations meet the policy goals established under OBRA and consider the following recommended courses of action for meeting such policy goals (responses in italics):

*The regulation is designed to meet the goal to protect consumers*

While protecting public health and safety is a major reason for requiring the licensure of well drillers, the work itself often also falls under the purview of state and local building code enforcement. Without proper well construction, groundwater quality is at risk. Eighty-five percent (85%) of Groundwater is relied on for drinking water in Nebraska. Without proper construction, groundwater may be impacted by contaminants from the surface or subsurface.

## **CONCLUSION & RECOMMENDATIONS**

Among the policy goals established under OBRA is the goal to use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest. In the case of the category Water Well Contractor, which includes Water Well Supervisors, Pump Installation Contractors, Pump Installation Supervisors, Water Well Monitoring Technicians, Natural Resources Groundwater Technicians, the occupational regulations are designed to ensure that water, wells, and related systems are drilled and installed by competent, tested, trained, and insured professionals.

The Natural Resources Committee finds that the current certification and occupational regulations are consistent with the policy goals established under OBRA and recommends it be continued with no modification.

Potential Harm without the regulation:

Well drilling, construction, and re-construction is complex. Without proper well construction, and groundwater, there is risk to the more than 85% of Nebraskans that rely on the water for drinking water, which may be impacted by contaminants from practices.

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<sup>8</sup> <https://dnr.mo.gov/commissions-boards-councils/well-installation-board>

<sup>9</sup> <https://danr.sd.gov/OfficeOfWater/WaterRights/Wells/WellDrillerLicensing.aspx>