

## LEGISLATIVE BILL 981

Approved by the Governor April 18, 1994

Introduced by Beutler, 28

AN ACT relating to water wells; to amend sections 46-1202 and 46-1234, Reissue Revised Statutes of Nebraska, 1943, and sections 46-602, 46-606, 46-659, 46-1201, 46-1203, 46-1224, 46-1227, 46-1240, and 46-1240.06, Revised Statutes Supplement, 1993; to provide for funding for a cost-sharing program for decommissioning illegal water wells as prescribed; to state intent; to create a fund; to change and eliminate provisions relating to registration and abandonment of water wells; to define terms; to change provisions relating to permits, fees, and rules and regulations; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 4 of this act if the program:

(a) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

(b) Applies to all water wells in the district;

(c) Is available for at least thirty water wells per year; and

(d) Provides at least seventy-five percent of the costs of decommissioning, up to a maximum of three hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

(2) As part of the application for cost sharing, the applicant shall provide the district with a copy of the notice required by section 46-602 which includes a notarized affidavit of the person decommissioning the water well. The affiant shall verify that the water well was decommissioned in accordance with state law, standards, rules, and regulations and using the materials described in the notice. Any person filing a false affidavit shall be guilty of making a false statement under oath or equivalent affirmation pursuant to section 28-915.01.

Sec. 2. The Legislature finds that accelerating the decommissioning of illegal water wells will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that completing such decommissioning can be most appropriately accomplished by accelerating, in a manner deemed appropriate by the Nebraska Natural Resources Commission, state financial input into the efforts currently being conducted. It is therefore the intent of the Legislature to embark upon an accelerated program for the decommissioning of Nebraska's illegal water wells and to recommend that the State of Nebraska and the Legislature annually appropriate ninety-nine thousand dollars from the General Fund to carry out this accelerated program during the years required for its completion.

Sec. 3. There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 1 to 4 of this act such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the Nebraska Natural Resources Commission from any source, federal, state, public, or private, to be used by the commission for the purpose of accelerating the decommissioning of illegal water wells. The commission shall allocate money from the fund for purposes of sections 1 to 4 of this act. The fund shall be exempt from provisions relating to lapsing of appropriations. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 4. The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The initial allocations each fiscal year shall be made by the Nebraska Natural Resources Commission to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. The allocations may be adjusted on or after March 1 of any year if the commission determines that one or more districts cannot reasonably be expected to use

their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 1 to 4 of this act. The commission shall adopt and promulgate rules and regulations to carry out such sections.

Sec. 5. For purposes of sections 1 to 4 of this act, the definitions found in sections 46-1209, 46-1212, and 46-1213 and sections 14 and 15 of this act shall be used.

Sec. 6. That section 46-602, Revised Statutes Supplement, 1993, be amended to read as follows:

46-602. (1) For each water well completed in this state on or after September 9, 1993, the water well contractor as defined in section 46-1213 constructing the water well and the owner of the water well shall complete the appropriate registration form after the completion of the water well. The registration form for all water wells other than test holes and dewatering wells with intended use of ninety days or less shall be filed with the Department of Water Resources by the owner within thirty days after completion of the water well. Registration shall be on a form provided by the Director of Water Resources. The form shall contain (a) the name, address, and signature of the owner, (b) the legal description of the water well, (c) the date drilling commenced and the date construction was completed, (d) the intended use of the water well, (e) the description and depth of geologic materials encountered, (f) the depth and diameter or dimension of the constructed water well and test hole, (g) the depth and diameter or dimension of the excavated hole if applicable, (h) the depth of the formation stabilizer or gravel pack and size of particles if used, (i) the depth and thickness of grout or other sealing materials if applicable, (j) casing information, including length, inside diameter, wall thickness, and type of material if applicable, (k) the static water level, (l) the water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable, (m) the yield of the water well in gallons per minute if applicable, (n) the identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law, (o) the name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Licensing Act to any person, other than the owner of the water well, who constructed the water well, (p) screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable, (q) the signature of the water well contractor, and (r) such additional information conformable to the statement of purpose contained in section 46-601 as the director requires. A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well, and one registration form and detailed site plan shall be completed for each such series. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15.124, one registration form shall be required which shall include a detailed site plan which shows the location of each such water well in the site and a log from each such water well. The Department of Water Resources shall be notified of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and shall include such evidence of ownership as the director by rule and regulation directs. The department shall use such notice to update the registration on file. The registration requirement in this subsection shall not apply to water wells constructed prior to September 9, 1993, unless previously required to be registered.

(2) Whenever a water well becomes an illegal water well as defined in section 15 of this act, the owner of the water well shall decommission the water well by completely filling and sealing any owner of a water well abandons the water well; he or she shall completely fill and seal the water well cavity in accordance with the rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. The method specified in such rules and regulations for filling and sealing water well cavities shall be designed to eliminate any safety hazard created by abandoned illegal water wells and to prevent deterioration in the quality of the underlying ground water. Written notice of any such abandonment shall be provided by the owner to the department within thirty sixty days. The department shall not collect a fee for the filing of the notice.

(3) When any water well contractor as defined in section 46-1213 or owner replaces an abandoned water well, the owner shall, within thirty days

after the completion of such replacement water well, give notice of replacement to the department by filing in the office of the department a completed water well registration form for the replacement water well.

(4) When any owner of an abandoned water well in a control area or management area desires to replace the abandoned water well, he or she shall, prior to commencing construction, obtain a permit pursuant to the Nebraska Ground Water Management and Protection Act. The owner of the abandoned water well may immediately proceed to construct a replacement water well and pump water without obtaining a permit if the pump installed in the replacement water well has a column size which is not greater than the pump formerly used in the abandoned water well. Following completion of the replacement water well, notice of such completion shall be given in the manner provided by subsection (3) of this section.

(5) For purposes of this section, replacement water well shall mean a water well which (a) replaces an abandoned water well within three years of the last operation of the abandoned water well and (b) is constructed within six hundred feet of the abandoned water well.

(6) For purposes of water well registration under this section, registration fees shall be collected as provided in sections 46-606 and 46-1224.

Sec. 7. That section 46-606, Revised Statutes Supplement, 1993, be amended to read as follows:

46-606. (1) The Director of Water Resources shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each water well registered under section 46-602 except as provided in subsection subsections (2), (3), and (4) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each of the first ten such water wells registered under section 46-602, and for each group of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224.

(3) For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the director shall collect in advance a fee of thirty dollars for each such series and the fee required by section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15.124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by section 46-1224 shall be collected.

(5) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. The State Treasurer shall credit the registration fees to the General Fund and shall credit the fees required by section 46-1224 to the Water Well Standards and Contractors' Licensing Fund.

Sec. 8. That section 46-659, Revised Statutes Supplement, 1993, be amended to read as follows:

46-659. (1) Any person who intends to construct a water well, except test holes, and dewatering wells with intended use of ninety days or less, and water wells which are designed and constructed to pump fifty gallons per minute or less, in a control area or management area in this state on land which he or she owns or controls shall, before commencing construction, file with the district in which the water well will be located an application for a permit on forms provided by the district. Forms shall be made available at each district in which a control area or management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) The application shall be accompanied by a seventeen-dollar-and-fifty-cent filing fee payable to the district, except as provided in subsection (8) of section 46-666, and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the

proposed use, (c) the intended location of the proposed water well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed water well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, and (h) such other information as the district requires. Before any water well having a capacity of less than one hundred gallons per minute is modified to withdraw ground water at a rate equal to or greater than one hundred gallons per minute, an application shall be filed for a permit pursuant to this section before water is so withdrawn.

(3) Any person who has failed or in the future fails to obtain a permit required by subsection (1) of this section shall make application for a late permit on forms provided by the district.

(4) The application for a late permit shall be accompanied by a two-hundred-fifty-dollar fee payable to the district, except as provided in subsection (8) of section 46-666, and shall contain the same information required in subsection (2) of this section.

Sec. 9. That section 46-1201, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1201. Sections 46-1201 to 46-1241 and sections 12 to 16 of this act shall be known and may be cited as the Water Well Standards and Contractors' Licensing Act.

Sec. 10. That section 46-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1202. It is hereby declared that the purpose of the Water Well Standards and Contractors' Licensing Act is to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors and pump installation contractors and the certification of water well drilling supervisors and pump installation supervisors in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper plugging decommissioning of abandoned illegal water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Sec. 11. That section 46-1203, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1203. For purposes of the Water Well Standards and Contractors' Licensing Act, unless the context otherwise requires, the definitions found in sections 46-1205 to 46-1216 and sections 12 to 16 of this act shall be used.

Sec. 12. Abandoned water well shall mean any water well the use of which has been accomplished or permanently discontinued, which has been decommissioned as described in the rules and regulations of the Department of Health, and the owner of which has filed a notice of abandonment with the Department of Water Resources if required by subsection (2) of section 46-602.

Sec. 13. Active status water well shall mean a water well which is in use and which is not an illegal water well.

Sec. 14. Decommissioned, when used in relation to a water well, shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the department.

Sec. 15. (1) Illegal water well shall mean any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard; or

(f) The water well is an illegal water well in accordance with section 46-657.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Sec. 16. Inactive status water well shall mean a water well that is

in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements:

(1) The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well;

(2) The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well; and

(3) The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

Sec. 17. That section 46-1224, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1224. (1) Except as provided in subsections (2) through (6) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Licensing Act. Except as provided in subsection (4) of this section, the fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Licensing Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

(2) The board shall set an application fee of no more than twenty-five dollars regardless of the number of licenses or certificates for which the application is being made. An individual may apply for one or more licenses and one or more certificates under a single application. Application fees paid shall be retained by the department whether such initial license or certificate is issued or denied.

(3) The board shall set a single license fee at not less than fifty dollars nor more than two hundred dollars annually and a certification fee at not less than twenty-five nor more than forty dollars annually. An individual who is licensed both as a pump installation contractor and a water well contractor shall pay a fee of not less than seventy-five dollars and not more than three hundred dollars. An individual who is certified as both a pump installation supervisor and water well drilling supervisor shall pay a fee of not less than thirty-five dollars and not more than fifty dollars.

(4) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump less than fifty gallons per minute and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or more. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered.

For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15.124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Water Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(5) The late fee for a late application by a licensee shall be five hundred dollars, and the late fee for a late application by a certificate holder shall be two hundred dollars.

(6) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars.

Sec. 18. That section 46-1227, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1227. The department, and the Environmental Quality Council, with the advice and consent of the board, shall jointly adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) plugging of abandoned decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a water well contractor, a pump installation contractor, a water well drilling supervisor, a pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department and the council jointly adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Sec. 19. That section 46-1234, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1234. Any licensed water well contractor constructing a water well for any customer shall as a part of the agreement include the proper plugging decommissioning of each abandoned water well constructed to explore for ground water pursuant to the agreement. Any failure to properly plug an abandoned any such water well pursuant to such agreement shall subject him or her to suspension, revocation, or refusal of renewal of his or her license.

Sec. 20. That section 46-1240, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1240. Any person who engages (1) in the construction of water wells, (2) in the installation of pumps and pumping equipment, or (3) 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, pumping systems, or chemigation regulation devices or who fails to plug or plugs decommission or decommissions an abandoned illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Licensing Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 21. That section 46-1240.06, Revised Statutes Supplement, 1993, be amended to read as follows:

46-1240.06. (1) The department may grant a variance from any rule, regulation, or standard adopted and promulgated by the department relating to the construction of water wells upon proof by a licensed water well contractor or owner of a proposed water well satisfactory to the department that the enforcement of the rule, regulation, or standard would create an unreasonable hardship or be unreasonable, impractical, or not feasible under the circumstances. A variance may be under such terms and conditions and for such time as the department may prescribe. The terms and conditions of a variance may include testing, monitoring, reporting, and additional construction or installation requirements.

(2) A variance shall be limited to the construction of a water well to replace an existing water well.

(3) Any person who owns or operates a water well in violation of the terms and conditions of a variance may be enjoined from continuing such activities. The injunction may include an order to properly abandon decommission the water well.

Sec. 22. That original sections 46-1202 and 46-1234, Reissue Revised Statutes of Nebraska, 1943, and sections 46-602, 46-606, 46-659, 46-1201, 46-1203, 46-1224, 46-1227, 46-1240, and 46-1240.06, Revised Statutes Supplement, 1993, are repealed.

Sec. 23. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.