

LEGISLATIVE BILL 508

Approved by the Governor March 16, 2006

Introduced by Schrock, 38

AN ACT relating to water; to amend sections 46-286, 46-602, 46-602.01, 46-1208, 46-1217, 46-1233.01, 46-1238, 46-1239, 46-1404, and 46-1405, Reissue Revised Statutes of Nebraska, and section 81-2121, Revised Statutes Supplement, 2004; to define and redefine terms; to change provisions relating to registration, construction, opening, and decommissioning of water wells, breaking seals, and installation of pumps; to change membership provisions for the Water Well Standards and Contractors' Licensing Board; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 46-286, Reissue Revised Statutes of Nebraska, is amended to read:

46-286 Headwater segment of a natural stream shall mean that portion of a natural stream that is shown as an intermittent stream on the most recently published United States Geological Survey topographic quadrangle map near its origin which exhibits a natural configuration in the land surface and serves to concentrate and give direction to overland flow. Such portion of a natural stream shall have a flow of such intermittent occurrence as to afford usage by normal tillage or grazing practices.

Sec. 2. Section 46-602, Reissue Revised Statutes of Nebraska, is amended to read:

46-602 (1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2) (a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well it replaces being replaced, if applicable, and (ii) the date the original water well was or will be decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimus use approved by the applicable natural resources district. shall be included on the registration form.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces an abandoned water well within three years after the last operation of the abandoned water well and the original water well is decommissioned either before or within one hundred eighty days after such construction, (ii) or replaces a water well that has not been abandoned but will not be used after construction of the new water well and the original water well will be abandoned decommissioned within one year one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) will continue to be used

but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimus use and approved by the applicable natural resources district, and (ii) is constructed to provide water to the same tract of land served by the water well being replaced.

~~(b)~~ (c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of abandonment decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimus use approved by the applicable natural resources district. Such notices, as required, - Such notice shall be completed by (i) the water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) 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. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) 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, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) ~~The department~~ Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. ~~The department~~ shall use such notice to update the registration on file. ~~The department~~ shall not collect a fee for the filing of the notice.

(7) The water well contractor or pump installation contractor responsible therefor shall notify the department on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the water well contractor or pump installation contractor shall notify the department on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. The water well contractor who decommissions the water well, the pump installation contractor who decommissions the water well, or the owner if

the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of abandonment to the Department of Natural Resources within sixty days. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

Sec. 3. Section 46-602.01, Reissue Revised Statutes of Nebraska, is amended to read:

46-602.01 Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a water well contractor as defined in section 46-1213 or a pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Sec. 4. Section 46-1208, Reissue Revised Statutes of Nebraska, is amended to read:

46-1208 Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Sec. 5. Section 46-1217, Reissue Revised Statutes of Nebraska, is amended to read:

46-1217 There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ~~nine~~ ten members, ~~five~~ six of whom shall be appointed by the Governor as follows: (1) A water well contractor representing irrigation water well contractors, (2) a water well contractor representing domestic water well contractors, (3) a water well contractor representing municipal and industrial water well contractors, (4) a pump installation contractor, and (5) a manufacturer or supplier of water well or pumping equipment, and (6) a holder of a license or certificate issued under the Water Well Standards and Contractors' Licensing Act employed by a natural resources district. The Director of Health and Human Services Regulation and Licensure or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director. ~~The director or his or her designated representative of the Department of Health and Human Services Regulation and Licensure, the director or his or her designated representative of the Department of Environmental Quality, the director or his or her designated representative of the Department of Natural Resources, and the director or his or her designated representative 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. Each member shall be a resident of the state. Each appointed member of the board shall have had at least five years of 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 while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Licensing Act, with the exception of members initially appointed, shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Sec. 6. Section 46-1233.01, Reissue Revised Statutes of Nebraska, is amended to read:

46-1233.01 ~~Except as provided in section 46-1233, no water well shall be opened or the seal broken by any person other than an owner of the water well unless~~ (1) In addition to the provisions of section 46-1233, the opening of a water well or the breaking of the seal is of a water well may be carried out by a the owner of the water well or by any of the following in the course of their employment:

- (1) A certified water well monitoring technician;
- (2) A certified ~~or~~ natural resources ground water technician; ~~or~~ (2) the opening or breaking of the seal is carried out by the
- (3) A certified operator of a public water system or someone under his or her supervision; or
- (4) A state electrical inspector. in the course of his or her employment.

Sec. 7. Section 46-1238, Reissue Revised Statutes of Nebraska, is amended to read:

46-1238 Any person who fails to employ or use at least one individual appropriately licensed or certified and available, ~~in accordance with section 46-1233,~~ or any person who engages, without a license or certificate for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or 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, in addition to the other penalties provided in the Water Well Standards and Contractors' Licensing Act, may be enjoined from continuing such activities.

Sec. 8. Section 46-1239, Reissue Revised Statutes of Nebraska, is amended to read:

46-1239 Any person who fails to employ or use at least one individual appropriately licensed or certified and available, ~~in accordance with section 46-1233,~~ or any person who engages, without a license or certificate for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

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. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. ~~The department shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.~~

Sec. 9. Section 46-1404, Reissue Revised Statutes of Nebraska, is amended to read:

46-1404 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 Department of Natural Resources 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. Subsequent allocations for any district which has had a cost-share program for

three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources 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 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Sec. 10. Section 46-1405, Reissue Revised Statutes of Nebraska, is amended to read:

46-1405 Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

- (1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;
- (2) Applies to all water wells in the district;
- (3) Is available for at least thirty water wells per year; and
- (4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of ~~three~~ five 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.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Sec. 11. Section 81-2121, Revised Statutes Cumulative Supplement, 2004, is amended to read:

81-2121 Nothing in the State Electrical Act shall be construed to:

(1) Require employees of municipal corporations, public power districts, public power and irrigation districts, electric membership or cooperative associations, public utility corporations, railroads, telephone or telegraph companies, or commercial or industrial companies performing manufacturing, installation, and repair work for such employer to hold licenses while acting within the scope of their employment;

(2) Require any person doing work for which a license would otherwise be required under the act to hold a license issued under the act if he or she is the holder of a valid license issued by any city or other political subdivision, so long as he or she makes electrical installations only in the jurisdictional limits of such city or political subdivision and such license issued by the city or political subdivision meets the requirements of the act;

(3) Cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, moving walks, dumbwaiters, stagelifts, manlifts, or appurtenances thereto beyond the terminals of the controllers. The licensing of elevator contractors or constructors shall not be considered a part of the licensing requirements of the act;

(4) Require a license of any person who engages any electrical appliance where approved electrical outlets are already installed;

(5) Prohibit an owner of property from performing work on his or her principal residence, if such residence is not larger than a single-family dwelling, or farm property, excluding commercial or industrial installations or installations in public-use buildings or facilities, or require such owner to be licensed under the act; ~~or~~

(6) Require that any person be a member of a labor union in order to be licensed; or

(7) Prohibit a pump installation contractor or pump installation supervisor credentialed under the Water Well Standards and Contractors' Licensing Act from wiring pumps and pumping equipment at a water well location to the first control.

Sec. 12. Original sections 46-286, 46-602, 46-602.01, 46-1208, 46-1217, 46-1233.01, 46-1238, 46-1239, 46-1404, and 46-1405, Reissue Revised Statutes of Nebraska, and section 81-2121, Revised Statutes Cumulative Supplement, 2004, are repealed.