

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL 3024

By: Roggow and Balkman of the  
House

and

Laster of the Senate

COMMITTEE SUBSTITUTE

An Act relating to waters and water rights; amending 82 O.S. 2001, Section 1020.16, which relates to licensing of well drillers and pump installers; adding procedures and requirements for licensing of certain persons by the Oklahoma Water Resources Board; authorizing certain inspection; adding authorization for certain administrative fines; stating legislative findings; authorizing the towing and impoundment of certain equipment; providing requirements and procedures regarding towing and impoundment; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1020.16, is amended to read as follows:

Section 1020.16 A. All persons engaged in the commercial drilling or commercial plugging of groundwater wells, monitoring wells, observation wells, wells utilized for heat exchange purposes, including but not limited to heat pump wells and geothermal wells, and in the commercial drilling or plugging of geotechnical borings and all persons engaged in the commercial installation of water well pumps in this state shall make application for and become licensed with the Oklahoma Water Resources Board. After July 1, 1990, persons required to be licensed pursuant to this section shall pay an annual fee as required by the Board. Such fees shall be deposited and expended as provided in subsection B of this section:

1. The Board may prepare examinations and establish other requirements for applications to obtain, maintain, and renew licenses and operator certifications. The examinations shall test the knowledge and skills of:

- a. water well drillers in the construction, alteration, and repair of wells and boreholes, including proper sealing and abandonment of wells and boreholes, and the rules promulgated by the Board regarding water well and borehole drilling and plugging, and
- b. pump installers in the planning, installation, operation, and repair of pumping equipment and water wells including sealing and abandonment, pumping efficiency, and the rules promulgated by the Board regarding pump installation; and

2. The Board may inspect any water well, monitoring well, boring, water well pump, or abandoned well and borehole. Authorized representatives of the Board, with consent of the owner of the land on which the well or borehole is located and at reasonable times or as allowed by the district court as requested by the Board, may enter upon and shall be given access to any premises for the purpose of inspection. Upon the basis of such inspections, if the Board finds noncompliance with applicable laws or rules or that a health hazard exists, the Board may disapprove use of the well and provide notice to the owner of the land on which the well is located and to the well driller, if known, of such disapproval. If disapproved, no well shall thereafter be used until brought into compliance and any health hazard is eliminated. Any person aggrieved by the disapproval of a well shall be afforded the opportunity of a hearing before the Board.

B. 1. There is hereby created within the Oklahoma Water Resources Board the Well Drillers and Pump Installers Remedial

Action Indemnity Fund. The Indemnity Fund shall be administered by the Board.

2. The Indemnity Fund shall be excluded from budget and expenditure limitations. Except as otherwise provided by subsection C of this section, the monies deposited in the Indemnity Fund shall at no time become part of the general budget of the Oklahoma Water Resources Board or any other state agency. Except as otherwise provided by subsection C of this section, no monies from the Indemnity Fund shall be transferred for any purpose to any other state agency or any account of the Board or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expenses. Monies in the Indemnity Fund shall only be expended for remedial actions necessary, without notice and hearing, to protect groundwater from pollution or potential pollution from wells, or boreholes under the jurisdiction of the Board that do not meet minimum standards for construction or that have been abandoned or as may be recommended by the Well Drillers and Pump Installers Advisory Council.

3. The fees collected pursuant to subsection A of this section shall be first credited to the "Well Drillers and Pump Installers Remedial Action Indemnity Fund". The Indemnity Fund shall be maintained at Fifty Thousand Dollars (\$50,000.00).

4. Expenditures from the Indemnity Fund required pursuant to the provisions of this section shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act upon terms and conditions established by the Department of Central Services and shall not exceed Five Thousand Dollars (\$5,000.00) for each well, borehole or pump for which action is taken.

5. Except in situations where the Governor has declared an emergency and a claim by the owner of the well or borehole for costs of remedial action is not paid by private insurance or other relief, the Board shall seek reimbursement as recommended by the Well

Drillers and Pump Installers Advisory Council for any remedial action taken or required by the Board. Any monies received as reimbursement shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in subsection C of this section.

C. When the Well Drillers and Pump Installers Remedial Action Indemnity Fund reaches Fifty Thousand Dollars (\$50,000.00), the fees, monies received as reimbursement, and administrative penalties recovered under subsection E of this section shall be deposited in a separate account in the Water Resources Board Revolving Fund designated as the Well Drillers and Pump Installers Regulation Account, which shall be a continuing account not subject to fiscal year limitations. Monies in said account shall be used by the Board for inspections, licensing, enforcement and education, reimbursing per diem and travel costs for members of the Well Drillers and Pump Installers Advisory Council pursuant to the State Travel Reimbursement Act, and as otherwise determined to be necessary to implement the provisions of this section.

D. Before any person or firm licensed pursuant to this section shall commence the commercial drilling or plugging of any well or borehole or commence installation of any pump, such person or firm shall file with the Board such data or information as the Board may by rule require. After completion, the driller or installer shall file a completion report showing such data as the Board may require together with a log of the well and pumping test data if applicable.

E. The Board may, after notice and hearing, impose administrative penalties of up to Five Hundred Dollars (\$500.00) and may revoke, suspend or deny renewal of the license or operator certification for each violation of the Board's rules and regulations regarding license or certification requirements or minimum construction or installation standards. Each day a violation continues shall constitute a separate violation. Such

administrative penalties shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in subsection C of this section. In addition to imposing administrative penalties, the Board may issue orders to holders of valid licenses and operator certifications and to persons who are required to become licensed under the provisions of this section prohibiting actions that constitute violations of rules promulgated pursuant to this section and requiring actions to be taken to remedy violations or other noncompliance with rules regarding minimum standards for construction of wells and borings, the plugging of wells and borings, and the installation of water well pumps. If the Board has reasonable cause to believe that the condition of a well, boring, or the installation of a pump is in imminent danger of causing pollution to water resources, the Board may issue such orders without notice and hearing; provided, that notice and opportunity for hearing to show cause why such order should be vacated shall be provided as soon as practicable after compliance with such orders.

F. The Board is authorized to create a Well Drillers and Pump Installers Advisory Council. The Board shall establish rules stating the qualifications for membership and organization of the Council. Meetings of the Council shall be held at the call of the Executive Director of the Board. The Council shall have the following duties:

1. To recommend rules to the Board, provided such written recommendations have been concurred upon by a majority of the membership of the Council; and

2. To review and recommend approval or denial of use of monies in the Well Drillers and Pump Installers Remedial Action Indemnity Fund for:

- a. remedial actions to protect groundwater from pollution or potential pollution from wells, or boreholes under

the jurisdiction of the Board which do not meet minimum standards for construction or that have been abandoned, and

- b. inspections, licensing, enforcement and education by the Board.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1020.16A of Title 82, unless there is created a duplication in numbering, reads as follows:

A. There is an ever-increasing demand for water in this state necessitating the construction of water wells. The general health, safety, and welfare must be protected by providing a means for the proper development of the natural resource of groundwater in an orderly, sanitary, reasonable, and safe manner, without waste, so that sufficient potable supplies for the continued economic growth of Oklahoma may be assured. To that end it is essential that persons engaged in water well drilling and pump installation cooperate with the State of Oklahoma in the development of groundwater resources.

B. With the ever-increasing demand for water in this state necessitating the construction of water wells and pump installation, the general health, safety, and welfare must be protected by clarifying the jurisdiction of the Oklahoma Water Resources Board over the commercial drilling or commercial plugging of groundwater wells, monitoring wells, observation wells, wells utilized for heat exchange purposes, including but not limited to heat pump wells and geothermal wells, and over the commercial drilling or plugging of geotechnical borings and in the commercial installation of water well pumps.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1020.16B of Title 82, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that certain persons continuously violate Oklahoma law requiring the proper training, licensing and construction of wells and borings and the installation of water well pumps, that such persons do not pay the required indemnity fund fee to protect well owners, that construction of water wells by those persons is a threat to the general health, safety, and welfare of Oklahomans because the Oklahoma Water Resources Board does not have knowledge of their actions and has no means of holding them accountable for the failure to develop water in an orderly, sanitary, reasonable, and safe manner; and that because those persons pose a great threat to the citizens of Oklahoma, the Oklahoma Water Resources Board must have the ability to impound water well drilling rigs and equipment of violators.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1020.16C of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In addition to the authority of the Oklahoma Water Resources Board to impose administrative penalties and to revoke, suspend or deny renewal of licenses and operator certifications, the Board may require the towing and impoundment of water well drilling rigs and commercial vehicles used in the commercial drilling or plugging of wells or boreholes or in the commercial installation of water well pumps if the Board determines that the rig or commercial vehicle is being used for commercial drilling, plugging or pump installation by:

1. A person who does not hold a valid well drilling or pump installation license from the Board as required by Section 1020.16 of Title 82 of the Oklahoma Statutes; or

2. A person who holds a valid license but has failed to comply with a previous Board order involving the drilling or plugging of a well or borehose or the installation of a pump.

B. Before the Board causes the towing and impoundment of the drilling rig or commercial vehicle, the Board shall first provide at least ten (10) days' notice to the person using the drilling rig or commercial vehicle to immediately cease and desist from all activities associated with the commercial drilling or plugging of wells or boreholes or in the commercial installation of water well pumps. The notice shall not be required if the Board has cause to believe the drilling rig or commercial vehicle will be moved from the site known to the Board. The notice may be given personally by an employee of the Board or by certified mail to the last-known address of the person using the drilling rig or commercial vehicle. The Board may provide opportunity for hearing before directing the impoundment.

C. The towing and impoundment of a drilling rig or commercial vehicle pursuant to this section shall be conducted by a wrecker or towing service licensed by the Department of Public Safety whose location is nearest the drilling rig or commercial vehicle to be towed and impounded.

D. After the impoundment of the drilling rig or commercial vehicle, the registered or legal owner of the rig or vehicle or an agent of the registered or legal owner may contest the validity of the towing and impoundment action by filing a written request for a hearing with the Board unless the Board has previously provided an opportunity for hearing. The written request must be received within ten (10) days following the actual or constructive notice to the owner, agent, or person using the drilling rig or commercial vehicle that the drilling rig or commercial vehicle has been towed and impounded. The hearing shall be held within seventy-two (72) hours, excluding weekends and holidays, after the request for hearing is received by the Board. The Board, with the consent of the person requesting the hearing, may schedule the hearing by

telephone and conduct the hearing on the merits by telephone conference call.

E. 1. The hearing examiner shall determine from the evidence presented whether the person using the drilling rig or commercial vehicle held a valid license or operator certification from the Board at the time of the towing and impoundment or failed to comply with the previous Board order.

2. If evidence shows that the person held a valid license or operator certification while using the drilling rig or commercial vehicle or had complied with the previous Board order at the time of the towing and impoundment, the Board will bear the cost of the towing and impoundment and the wrecker or towing company operator shall waive the storage costs in such cases as a condition of eligibility to respond to a service call request from a public agency.

3. If the evidence shows that the person did not hold a valid license or operator certification while using the drilling rig or commercial vehicle at the time of the towing and impoundment, the owner or agent shall bear the cost of the towing and impoundment, including storage costs.

4. In either case described in paragraphs 2 or 3 of this subsection, the drilling rig or commercial vehicle shall not be released from impoundment until costs as provided in this subsection have been paid and the Board determines that the person using the drilling rig or commercial vehicle has obtained a valid license or operator certification for commercial drilling, plugging or pump installation, complied with the previous Board order, or satisfied other requirements imposed by the Board by order after notice and opportunity for hearing.

F. Failure by the owner of the drilling rig or the agent of the owner to timely request or timely appear at a scheduled hearing shall satisfy the hearing requirement of this section.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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