

SENATE BILL 5306

State of Washington

52nd Legislature

1991 Regular Session

By Senators Metcalf, Owen and Barr; by request of Department of Ecology.

Read first time January 28, 1991. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to water well construction and well driller
2 licensing; amending RCW 18.104.020, 18.104.030, 18.104.040, 18.104.050,
3 18.104.070, 18.104.100, 43.21B.110, 18.104.150, 89.16.055, 18.104.155,
4 and 18.104.180; adding new sections to chapter 18.104 RCW; creating new
5 sections; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the public
8 health and the environment are threatened by inadequately regulated
9 water well construction and decommissioning. The purpose of this act
10 is to enhance the authority of the department of ecology in
11 administering the water well construction program.

12 **Sec. 2.** RCW 18.104.020 and 1983 1st ex.s. c 27 s 14 are each
13 amended to read as follows:

1 The definitions set forth in this section apply throughout this
2 chapter, unless a different meaning is plainly required by the context.

3 (1) "Abandoned well" means a well that is unused, unmaintained,
4 and, in the opinion of the department, is not intended for future use.

5 (2) "Constructing a well" or "construct a well" means and includes
6 boring, digging, drilling, or excavating and installing casing,
7 sheeting, lining, or well screens, whether in the installation of a new
8 water well or in the alteration of an existing water well.

9 ~~((+2))~~ (3) "Decommission" means to fill or plug a water well so
10 that it will not produce water, serve as a channel for movement of
11 water or pollution, or allow the entry of pollutants into the well or
12 aquifers.

13 (4) "Department" means the department of ecology.

14 ~~((+3))~~ (5) "Dewatering well" means a cased or lined excavation or
15 boring that is intended to withdraw or divert ground water for the
16 purpose of facilitating construction, restoration of water quality, or
17 other purposes not directly associated with making beneficial use of
18 the water being removed from an underground formation.

19 (6) "Director" means the director of the department of ecology.

20 ~~((+4))~~ (7) "Ground water" means and includes ground waters as
21 defined in RCW 90.44.035, as now or hereafter amended.

22 ~~((+5))~~ (8) "Monitoring well" means a water well designed to obtain
23 a representative ground water sample or designed to measure the water
24 level elevation.

25 (9) "Observation well" means a water well designed to measure the
26 depth to the water level elevation.

27 (10) "Operator" means any person, other than a person exempted by
28 RCW 18.104.180, who is employed by a water well contractor for the
29 control and supervision of the construction of a water well or for the
30 operation of water well construction equipment.

1 (~~(6)~~) (11) "Pollution" and "contamination" have the meanings
2 provided in RCW 90.48.020.

3 (12) "Resource protection well" means a water well used to
4 determine the existence or migration of pollutants within an
5 underground formation. A resource protection well may also be a
6 monitoring well, observation well, piezometer, spill response well, or
7 other cased boring.

8 (13) "Water supply well" means a water well that is intended to
9 withdraw, dewater, or recharge ground water.

10 (14) "Water well" means and includes any excavation that is
11 drilled, cored, bored, washed, driven, dug, jetted, or otherwise
12 constructed when the intended use of the well is for the location,
13 diversion, artificial recharge, observation, monitoring, protection, or
14 withdrawal of ground water. "Water well" does not mean an excavation
15 made for the purpose of obtaining or prospecting for oil, natural gas,
16 minerals, or products of mining, or quarrying, or for inserting media
17 to repressure oil or natural gas bearing formations, or for storing
18 petroleum, natural gas, or other products.

19 (~~(7)~~) (15) "Water well contractor" means any person, firm,
20 partnership, copartnership, corporation, association, or other entity
21 engaged in the business of constructing water wells.

22 **Sec. 3.** RCW 18.104.030 and 1971 ex.s. c 212 s 3 are each amended
23 to read as follows:

24 It is unlawful:

25 (1) For any (~~water well contractor~~) person to construct, alter,
26 or decommission a water well (~~for compensation~~) without complying
27 with the licensing provisions of this chapter;

28 (2) For any (~~water well contractor~~) person to construct, alter,
29 or decommission a water well (~~for compensation~~) without complying

1 with the rules ((and regulations)) for water well construction adopted
2 pursuant to this chapter;

3 (3) For any water well ((construction operator to supervise the
4 construction of a water well without having an operators license as
5 provided in this chapter)) drilling rig to be operated without a
6 licensed operator at the site except as provided for in the well
7 drilling apprenticeship program established by the department;

8 (4) For a person to commence construction of a water well until the
9 notice of intent has been filed in accordance with RCW 18.104.048;

10 (5) For a prospective water well owner to have a water supply well
11 drilled without first obtaining a water right permit, if a permit is
12 required;

13 (6) For a person to tamper with or remove a water well
14 identification tag except during well alteration. The water well
15 contractor shall replace the identification tag if it is removed during
16 well alteration. If nothing remains to which a replacement tag can be
17 affixed the contractor shall inform the department of these
18 circumstances.

19 **Sec. 4.** RCW 18.104.040 and 1971 ex.s. c 212 s 4 are each amended
20 to read as follows:

21 The department shall have the power:

22 (1) To issue, deny, suspend or revoke licenses pursuant to the
23 provisions of this chapter;

24 (2) To enter upon lands for the purpose of inspecting, sampling,
25 taking measurements from, or tagging any water well, drilled or being
26 drilled, at all reasonable times;

27 (3) To call upon or receive professional or technical advice from
28 any public agency or any person;

1 (4) To make such rules ~~((and regulations))~~ governing licensing
2 ~~((hereunder))~~ and water well construction as may be appropriate to
3 carry out the purposes of this chapter. Without limiting the
4 generality of the foregoing, the department may in cooperation with the
5 department of ~~((social and))~~ health ~~((services))~~ make rules ~~((and~~
6 ~~regulations))~~ regarding:

7 (a) Standards for the construction and maintenance of water wells
8 and their casings;

9 (b) Methods of capping, sealing ((artesian)), and decommissioning
10 water wells ((and water wells to be abandoned or which may contaminate
11 other)) to prevent contamination of ground water resources and to
12 protect public health and safety;

13 (c) Methods of artificial recharge of ground water bodies and of
14 construction of water wells which insure separation of individual water
15 bearing formations;

16 (d) The manner of conducting and the content of examinations
17 required to be taken by applicants for license hereunder;

18 (e) Reporting requirements of water well contractors;

19 (f) Limitations on water well construction in areas identified by
20 the department as requiring intensive control of withdrawals in the
21 interests of sound management of the ground water resource;

22 (5) To require the water well contractor and the property owner to
23 take whatever measures are necessary to guard against waste and
24 contamination of the ground water resources;

25 (6) To require a water well owner to decommission any water well
26 that is (a) abandoned, (b) unusable, (c) not intended for future use,
27 (d) in such disrepair that its continued use is impractical, (e) is an
28 environmental, safety, or public health hazard, or (f) for which the
29 water right has been relinquished as provided in chapter 90.14 RCW;

1 (7) To require a water well contractor to alter or, if necessary,
2 decommission a water well that was not constructed in accordance with
3 the standards in effect at the time the well was constructed. Proper
4 maintenance of a water well is the responsibility of the well owner;

5 (8) To require a water well owner to securely cap any inactive
6 water well or seal from contamination any active water well;

7 (9) To place or require the placement of a well identification tag
8 on existing water wells;

9 (10) To require water well drillers to place a well identification
10 tag on new water wells that they construct and on existing water wells
11 on which they perform work.

12 **Sec. 5.** RCW 18.104.050 and 1971 ex.s. c 212 s 5 are each amended
13 to read as follows:

14 (1) In order to enable the state to protect the welfare, health,
15 and safety of its citizens, any water well contractor shall furnish a
16 water well report to the director within thirty days after the
17 completion of the construction or alteration by him of any water well.
18 The director, by regulation, shall prescribe the form of the report and
19 the information to be contained therein.

20 (2) Water well contractors shall remit a well drilling fee to the
21 department with the water well report required in subsection (1) of
22 this section as follows:

23 (a) The fee for a new water supply well serving a single residence,
24 or providing water for noncommercial stockwatering, or both, is one
25 hundred dollars.

26 (b) The fee for other new water supply wells is two hundred
27 dollars.

1 (c) The fee for new resource protection wells is fifty dollars per
2 well except that the total fees for a retail petroleum fuels marketing
3 site shall not exceed one hundred fifty dollars.

4 (d) The fee for water well decommissioning is fifty dollars.

5 (e) The fee for dewatering wells is one hundred dollars per
6 dewatering project except that the fee for a dewatering project with
7 more than twenty wells is two hundred dollars.

8 **Sec. 6.** RCW 18.104.070 and 1987 c 394 s 2 are each amended to read
9 as follows:

10 ~~((Except as provided in RCW 18.104.180,))~~ (1) No person may
11 contract to engage in the construction, alteration, or decommissioning
12 of a water supply well ((and no person may)) or act as an operator for
13 that purpose without first obtaining a water supply well construction
14 license by applying to the department.

15 (2) A person shall be qualified to receive a water supply well
16 construction operators license if ((he)) the person:

17 ~~((1))~~ (a) Has made application ((therefor)) to the department and
18 has paid to the department an application fee of ((twenty-five)) two
19 hundred dollars. The fee for a water supply well drilling endorsement
20 for a resource protection well drilling license is fifty dollars; and

21 ~~((2))~~ (b) Has at least two years of water supply well drilling
22 field experience ((with a licensed well driller or)); or has one year
23 of water supply well drilling field experience, and an equivalent of at
24 least one school year of qualifying educational training that satisfies
25 the criteria established by department rule; or has completed an
26 apprenticeship program that satisfies the criteria established by
27 department rule followed by one year of water supply well drilling
28 field experience; and

1 (~~(3)~~) (c) Has passed a written examination as provided for in RCW
2 18.104.080(~~(:— PROVIDED, That should any applicant establish his~~
3 ~~illiteracy to the satisfaction of the department, such applicant shall~~
4 ~~be entitled to an oral examination in lieu of the written examination~~
5 ~~authorized herein)~~).

6 (3) An operator licensed under this section may acquire a license
7 endorsement for drilling resource protection, monitoring, or
8 observation wells by complying with the provisions of section 7 of this
9 act.

10 NEW SECTION. Sec. 7. A new section is added to chapter 18.104 RCW
11 to read as follows:

12 (1) No person may contract to engage in the construction,
13 alteration, or decommissioning of a resource protection well or act as
14 an operator for that purpose without first obtaining a resource
15 protection well construction license by applying to the department.

16 (2) A person shall be qualified to receive a resource protection
17 well construction operators license if the person:

18 (a) Has made license application to the department and has paid to
19 the department an application fee of two hundred dollars; and

20 (b) Has at least two years of resource protection well drilling
21 field experience; or has one year of resource protection well drilling
22 field experience and an equivalent of at least one school year of
23 qualifying educational training that satisfies the criteria established
24 by department rule; or has completed an apprenticeship program that
25 satisfies the criteria established by department rule followed by one
26 year of resource protection well drilling field experience; and

27 (c) Has passed a written examination as provided for in RCW
28 18.104.080.

1 (3) The fee for a resource protection, monitoring, and observation
2 well drilling endorsement for a water supply well drilling license is
3 fifty dollars.

4 (4) An operator licensed under this section may acquire a license
5 endorsement for water supply well drilling by complying with the
6 provisions of RCW 18.104.070.

7 **Sec. 8.** RCW 18.104.100 and 1971 ex.s. c 212 s 10 are each amended
8 to read as follows:

9 (1) The term for the effectiveness of any license issued pursuant
10 to this chapter shall be ~~((one))~~ two years~~((, commencing on the date~~
11 ~~the license is issued))~~. ~~((Every))~~ A license shall be renewed
12 ~~((annually))~~ upon payment of a renewal fee of ~~((ten))~~ one hundred
13 dollars and completion of an approved eight hour refresher course
14 focusing on new legal requirements and well drilling technology. The
15 fee for renewal of a license and an endorsement is one hundred twenty-
16 five dollars.

17 (2) The license shall expire at the end of its effective term if a
18 licensee fails to submit an application for renewal, ((together with))
19 fails to remit the renewal fee, ((before the end of the effective term
20 of his license, his license shall be suspended for thirty days on
21 notice by the director. If his renewal fee is paid prior to the end of
22 said suspension period, the suspension shall automatically terminate.
23 If during the period of suspension renewal is not completed, his
24 license shall be revoked: PROVIDED, That the director shall give the
25 licensee ten days notice prior to the revocation of any license for
26 failure to renew)) or fails to complete the required eight-hour
27 refresher course.

28 A person whose license ~~((is revoked under this section))~~ expires
29 and who thereafter desires to engage in the ~~((supervision of))~~

1 construction of water wells must make application for a new license
2 ~~((and))~~, pay ~~((twenty-five dollars))~~ the same fee that applies for a
3 new license, and meet the requirements for a new license as provided in
4 RCW 18.104.070 and section 7 of this act. The department may waive the
5 testing requirement for formerly licensed operators.

6 (3) The department may refuse to renew a license if the licensee
7 has not complied with a regulatory order issued by the department or
8 has not paid a civil penalty levied in accordance with this chapter,
9 unless the order or penalty is under appeal.

10 (4) The department may issue a temporary license to enable a former
11 licensee to comply with an order to correct problems with a water well.

12 NEW SECTION. Sec. 9. A new section is added to chapter 18.104 RCW
13 to read as follows:

14 (1) The department may, when requested by the governing body of a
15 county, city, or town, delegate to the governing body the authority to
16 administer portions of the water well construction program if the
17 department determines the governing body has:

18 (a) The resources, expertise, and capability to administer the
19 program as described in a written proposal submitted to the department;
20 and

21 (b) Indicated an intention to administer the program in accordance
22 with the provisions of this chapter and the rules adopted by the
23 department pertaining to minimum standards for construction and
24 maintenance of water wells.

25 (2) The authority to license water well contractors, renew
26 licenses, receive state notices of intent, and well reports, and
27 receive state well drilling fees as provided by this chapter shall be
28 exercised solely by the department. At their discretion, local
29 governments that have been delegated authority under this section may

1 adopt water well construction standards that are more stringent than
2 the state's construction standards. These local standards must be
3 approved by the director of the department prior to adoption.

4 (3) The specific authorities delegated to a local governing body
5 must be clearly stated in a memorandum of agreement between the
6 department and the local governing body. A memorandum of agreement
7 effecting the delegation shall be limited in term to four years and
8 shall be subject to withdrawal of the delegation in accordance with
9 subsection (5) of this section. Prior to the expiration of a
10 memorandum of agreement, the department and the local governing body
11 shall jointly review the administration of the program by the local
12 governing body to identify any deficiencies. A new memorandum of
13 agreement continuing the delegation may be adopted when an existing
14 memorandum of agreement expires.

15 (4) Any delegation authorized under this section shall take effect
16 on the effective date of an implementing ordinance. Ordinances may not
17 be adopted without prior approval of the department.

18 (5) Any portion of the water well construction program delegated
19 under the provisions of this chapter shall be administered in
20 accordance with this chapter, other applicable laws, the rules of the
21 department implementing this chapter, and local ordinances. Whenever
22 the department determines, after a public hearing, that a county, city,
23 or town is not administering the program in such manner, it shall
24 notify the local government and, if corrective action is not taken
25 within a reasonable time, not to exceed ninety days, the department
26 shall withdraw the delegation by issuance of an order.

27 (6) The department shall promptly furnish the local governing body
28 with a copy of each water well report received in the area covered by
29 a delegated program.

1 (7) The department and local governing bodies that are delegated
2 authority over portions of the water well construction program shall
3 coordinate to reduce duplication of effort, and shall share all
4 appropriate information including technical reports, legal actions,
5 well reports, and any needed or proposed changes in water well
6 construction and maintenance standards.

7 (8) Any person aggrieved by a ruling under a delegated program may
8 obtain review of the program before the pollution control hearings
9 board in the same manner as review is obtained of rulings of the
10 department under RCW 18.104.130.

11 **Sec. 10.** RCW 43.21B.110 and 1989 c 175 s 102 are each amended to
12 read as follows:

13 (1) The hearings board shall only have jurisdiction to hear and
14 decide appeals from the following decisions of the department, the
15 director, and the air pollution control boards or authorities as
16 established pursuant to chapter 70.94 RCW, local governing bodies
17 delegated authority to administer portions of the water well
18 construction program pursuant to section 9 of this act, or local health
19 departments:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
21 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350.

22 (b) Orders issued pursuant to section 9 of this act, RCW
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 90.14.130, and
24 90.48.120.

25 (c) The issuance, modification, or termination of any permit,
26 certificate, or license by the department or any air authority in the
27 exercise of its jurisdiction, including the issuance or termination of
28 a waste disposal permit, the denial of an application for a waste

1 disposal permit, or the modification of the conditions or the terms of
2 a waste disposal permit.

3 (d) Decisions of local health departments regarding the grant or
4 denial of solid waste permits pursuant to chapter 70.95 RCW.

5 (e) Any other decision by the department or an air authority which
6 pursuant to law must be decided as an adjudicative proceeding under
7 chapter 34.05 RCW.

8 (f) Decisions of local governing bodies delegated authority to
9 administer portions of the water well construction program as provided
10 for in section 9 of this act.

11 (2) The following hearings shall not be conducted by the hearings
12 board:

13 (a) Hearings required by law to be conducted by the shorelines
14 hearings board pursuant to chapter 90.58 RCW.

15 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
16 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

17 (c) Proceedings by the department relating to general adjudications
18 of water rights pursuant to chapter 90.03 or 90.44 RCW.

19 (d) Hearings conducted by the department to adopt, modify, or
20 repeal rules.

21 (3) Review of rules (~~and regulations~~) adopted by the hearings
22 board shall be subject to review in accordance with the provisions of
23 the Administrative Procedure Act, chapter 34.05 RCW.

24 NEW SECTION. Sec. 11. The department shall initiate a pilot
25 project for identifying and tagging existing water wells. The pilot
26 project must, if possible, be located within an existing designated
27 ground water management area or ground water subarea established under
28 chapter 90.44 RCW. The purpose of the pilot project is to evaluate the
29 cost of a state-wide well identification effort. The department shall

1 prepare a report of its evaluation of the pilot project and the
2 estimated level of effort and cost to locate, identify, and tag all
3 water wells in the state.

4 **Sec. 12.** RCW 18.104.150 and 1971 ex.s. c 212 s 15 are each amended
5 to read as follows:

6 ~~((All receipts realized in the administration of this chapter shall
7 be paid into the general fund.))~~

8 (1) All water well drilling and license fees paid under provisions
9 of this chapter shall be credited by the state treasurer to the
10 reclamation revolving account established by chapter 89.16 RCW.
11 Subject to legislative appropriation, the funds collected under this
12 chapter shall be allocated and expended by the director for the salary,
13 benefits, office space, equipment, data collection and management, and
14 indirect costs associated with water well construction, water well
15 driller education and licensing, and water well identification.

16 (2) The department may contract with local governing bodies
17 delegated portions of the water well construction program to provide
18 funds from the reclamation revolving account to assist in supporting
19 water well inspectors hired by the local governing body. Funds provided
20 to a local governing body from the reclamation revolving account shall
21 not exceed the revenues generated from well drilling fees from the area
22 in which authority is delegated to the local governing body.

23 **Sec. 13.** RCW 89.16.055 and 1981 c 216 s 1 are each amended to read
24 as follows:

25 In addition to the powers provided in RCW 89.16.050, the department
26 of ecology is authorized and empowered to:

1 (1) Conduct surveys, studies, investigations, and water right
2 examinations for proposed reclamation projects or the rehabilitation of
3 existing reclamation projects that may be funded fully or partially
4 from the receipts of the sale of bonds issued by the state of
5 Washington.

6 (2) Support the preparation for and administration of proceedings,
7 provided in RCW 90.03.110 or 90.44.220, or both, pertaining to river
8 systems or other water bodies that are associated with existing or
9 proposed reclamation projects.

10 (3) Conduct a regulatory program for water well construction as
11 provided in chapter 18.104 RCW.

12 Funds of the account established by RCW 89.16.020 may, as
13 appropriated by the legislature, be used in relation to the powers
14 provided in this section, notwithstanding any other provisions of
15 chapter 89.16 RCW that may be to the contrary.

16 **Sec. 14.** RCW 18.104.155 and 1987 c 394 s 1 are each amended to
17 read as follows:

18 (1) The department of ecology may levy a civil penalty of up to
19 ((one hundred)) ten thousand dollars per day for violation of this
20 chapter or rules or orders of the department adopted or issued pursuant
21 to it.

22 (2) The department shall adopt rules establishing criteria for the
23 determination of appropriate penalty levels for various classes of
24 violations. These criteria shall take into account the seriousness of
25 a violation, including the threat posed to public health, damage or
26 potential damage to public resources, damage or potential damage to the
27 property interests of other individuals, and the recurrence of the
28 violation. Until these rules are in effect, the department shall be
29 guided by these criteria in determining the amount of civil penalty to

1 levy, but shall not levy a civil penalty provided for in this section
2 in excess of one thousand dollars.

3 (3) Procedures of RCW 90.48.144 shall be applicable to all phases
4 of levying of such a penalty as well as review and appeal of them.

5 (4) For each notice regarding a violation, resulting from the
6 improper construction of a well, that is sent to a water well
7 contractor or water well construction operator, the department shall
8 send a copy of the notice for information purposes only to the owner of
9 the land on which the improperly constructed well is located.

10 **Sec. 15.** RCW 18.104.180 and 1971 ex.s. c 212 s 18 are each amended
11 to read as follows:

12 No license hereunder shall be required of((÷

13 ~~(1) Any individual who personally drills a well on land which is~~
14 ~~owned or leased by him or in which he has a beneficial interest as a~~
15 ~~contract purchaser and is used by the individual for farm or~~
16 ~~noncommercial domestic use only.~~

17 (2) ~~Any~~) an individual who performs labor or services for a water
18 well contractor in connection with the drilling of a water well at the
19 direction and under the supervision and control of a licensed operator
20 who is present at the drilling site.