

## LEGISLATIVE BILL 131

Approved by the Governor April 6, 1993

Introduced by Beutler, 28

AN ACT relating to water wells; to amend sections 46-601, 46-602, 46-602.01, 46-604, 46-606, 46-608, 46-609, 46-610, 46-611, 46-613.01, 46-613.02, 46-625, 46-630, 46-636, 46-637, 46-638, 46-639, 46-651, 46-653, 46-654, 46-659, 46-660, 46-661, 46-662, 46-663, 46-666, 46-667, 46-675, 46-677, 46-678, 46-680, 46-684, 46-1208, 46-1212, 46-1217, 46-1224, 46-1225, 46-1235, 46-1236, 46-1237, and 46-1241, Reissue Revised Statutes of Nebraska, 1943, and sections 46-640, 46-657, 46-673.09, 46-1201, 46-1203, 46-1223, and 46-1240, Revised Statutes Supplement, 1992; to change provisions relating to water well registration; to define, redefine, and eliminate terms; to change and authorize fees; to change, provide, and eliminate penalties; to change and eliminate log requirements; to change provisions of the Water Well Standards and Contractors' Licensing Act; to authorize disciplinary actions and provide procedures for disciplinary actions; to provide reinstatement procedures; to change and provide hearing procedures; to provide immunity for the Water Well Standards and Contractors' Licensing Board; to harmonize provisions; to provide operative dates; to repeal the original sections, and also sections 46-603, 46-607, 46-612, and 46-1204, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 46-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-601. The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state. Complete information as to the occurrence and the use of ground water in the state is essential to the development of a sound ground water policy. The registration of all water wells, ~~except wells used solely for domestic purposes~~, in this state should be required.

Sec. 2. For purposes of Chapter 46, article 6, water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water

reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Sec. 3. That section 46-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-602. (1) For each water well completed in this state on or after the operative date of this section, 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. The owner of each well, except wells used solely for domestic purposes, completed in this state shall complete appropriate registration forms within twenty days after the completion of the well. Registration shall be in such form as the director may direct and shall contain a statement of (a) the location of the well, (b) the date of its completion, (c) the intended use of the well, (d) the size of the well, (e) the actual capacity of the well expressed in gallons per minute, (f) the identification, by number, of a permit issued pursuant to section 46-660, if applicable, (g) such evidence of ownership of the well as the director may by rule and regulation direct, (h) the license number issued pursuant to the Water Well Standards and Contractors' Licensing Act of any person, other than the

~~owner of the well, who drilled the well, and (i) such additional information conformable to the statement of purpose contained in section 46-601 as the director might require. 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 may by rule and regulation direct directs. The department shall use such notice to update the well registration on file. The registration requirement in this subsection shall not apply to water wells constructed prior to the operative date of this section unless previously required to be registered. in that office.~~

~~(2) If the well has been drilled by any person other than the owner, the registration shall be furnished to the person actually drilling such well, to be forwarded with the certificate of the well driller required by section 46-603:~~

~~(3) (2) Whenever any owner of a registered well or a well required to be registered pursuant to subsections (1) and (2) of this section water well abandons such the water well, he or she shall completely fill and seal the water well cavity in accordance with the rules and regulations of the Department of Water Resources until such rules and regulations are superseded and replaced by the rules and regulations adopted and promulgated 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 water wells and to prevent deterioration in the quality of the underlying ground waters water. Written notice of any such abandonment shall be provided by the owner to the Department of Water Resources within sixty days department within thirty days. The department shall not collect a fee for the filing of the notice.~~

~~(4) (3) When any owner of an abandoned registered well or a well required to be registered replaces such well, he or she 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 and well driller certificate forms form for the replacement water well. No fee shall be collected for filing notice of abandonment or for the registration of the replacement of a registered well.~~

~~(5) (4) When any owner of an abandoned water well in a control area or management area desires to replace such the abandoned water well, he or she shall, prior to commencing construction, obtain a permit pursuant to section 46-659 the Nebraska Ground Water Management and Protection Act. The owner of such the abandoned water well may immediately proceed to dig 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 ~~any such~~ the replacement water well, notice of such completion shall be given in the manner provided by subsection (4) (3) of this section.

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

Sec. 4. That section 46-602.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-602.01. Prior to commencing construction of a water well in a ~~ground-water~~ control area or management area, a ~~well driller~~ water well contractor as defined in section 46-1213 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed has obtained a permit as required by ~~section 46-659. If a permit has not been obtained, the well driller may assist in obtaining the permit~~ the Nebraska Ground Water Management and Protection Act.

Any person who, ~~on or after August 30, 1981,~~ commences or causes construction of ~~such~~ 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 a ~~Class IV misdemeanor~~ an offense punishable as provided in section 46-613.02.

Sec. 5. That section 46-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-604. The Director of Water Resources shall retain the ~~certificate of well driller and the~~ registration form required by section 46-602 and shall provide ~~one copy of each~~ a copy to the natural resources district within ~~whose boundaries~~ which the water well is located, ~~and one copy of each~~ to the Conservation and Survey Division of the University of Nebraska, to the owner of the water well, and to the water well contractor as defined in section 46-1213. By January 31 of each year, each water well contractor shall file a report with the Department of Water Resources of any water well he or she drilled during the previous year if a copy of the registration form was not received by the water well contractor pursuant to this section.

Sec. 6. That section 46-606, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-606. (1) The Director of Water Resources shall collect in advance a registration fee of ~~twenty thirty~~ thirty dollars and the fee required by section 46-1224 for each water well registered under section 46-602 except as provided in subsection (2) 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) 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. ~~except that no fee shall be charged for registration of any well for which a permit was obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. The director shall pay such fees monthly into the state treasury and the State Treasurer shall credit such fees to the General Fund.~~

Sec. 7. That section 46-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-608. The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state, † that the drilling of irrigation water wells in the state without regard to spacing is detrimental to the public welfare, † and that the spacing of irrigation water wells should be regulated.

Sec. 8. That section 46-609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-609. (1) ~~After August 30, 1981, no~~ No irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well except (a) any water well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres, (b) ~~and~~ ~~except~~ as provided in section 46-610, and (c) ~~PROVIDED,~~ that any irrigation water well which replaces an irrigation water well drilled prior to September 20, 1957, and which is less than six hundred feet from a registered irrigation water well shall be drilled within fifty feet of the old water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of thirty days after completion of such water well.

Sec. 9. That section 46-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-610. (1) Any person may apply to the Director of Water Resources for a special permit to drill an irrigation water well without regard to the spacing requirements of section 46-609; and shall pay a fee to the Department of Water Resources of twelve dollars and fifty cents, which fee shall be ~~paid into the state treasury by the director and by remitted to~~ the State Treasurer placed in for credit to the General Fund. Such application shall be in such form as the director ~~may direct,~~ directs and shall contain a statement of the proposed location of ~~such~~ the irrigation water well, the reason for seeking such special permit, the legal description of the land to be irrigated by ~~such~~ the irrigation water well, the number of acres to be irrigated, the proposed size of

~~such~~ the irrigation water well, the estimated capacity of ~~such~~ the irrigation water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to ~~drill~~~~such~~ construct the irrigation water well.

(2) A separate application, like that provided for in subsection (1) of this section, shall be submitted for each irrigation water well for which a special permit is sought. When considering the approval or rejection of any application, the director shall consider the size, shape, and irrigation needs of the property for which such special permit is sought, the known ground water supply, ~~and~~ the effect on the ground water supply and the surrounding land of the irrigation water well for which such special permit is sought, any waiver or agreement allowing the new irrigation water well by the owner of any registered irrigation water well less than six hundred feet from the location of the proposed new irrigation water well, and such other information as may be available. Such application may be approved or disapproved in whole or in part or may be approved with conditions, and the special permit shall be issued or refused accordingly.

Sec. 10. That section 46-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-611. The prohibitions of section 46-609 shall not apply to the location of more than one irrigation water well by a landowner on his or her own farm, so long as each such irrigation water well is at least six hundred feet from any other irrigation water well located on a neighboring farm under separate ownership.

Sec. 11. That section 46-613.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-613.01. The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or ~~any~~ other entity intending to withdraw ground water from any water well ~~or pit~~ located in the State of Nebraska and transport it for use in another state shall apply to the Department of Water Resources for a permit to do so. In determining whether to grant such permit, the Director of Water Resources shall consider:

- (1) Whether the proposed use is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on surface or ground water supplies needed to meet reasonable future

demands for water in the area of the proposed withdrawal; and

(4) Any other factors consistent with the purposes of this section that the director deems relevant to protect the interests of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the ~~local natural resources~~ district or the Department of Water Resources.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

Sec. 12. That section 46-613.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-613.02. Any person violating ~~the provisions of section 46-613.01 shall be guilty of a Class IV misdemeanor and shall be enjoined from further transporting such water for use in another state until such provisions are complied with~~ any provision of sections 46-601 to 46-613.01 and section 2 of this act or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. The Department of Water Resources may enforce such sections by instituting proceedings, actions, and prosecutions.

Sec. 13. That section 46-625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-625. At least a majority of the members of the board of directors shall be resident owners of irrigation water wells subject to registration under the provisions of sections 46-601 to ~~46-613~~ 46-613.02 and section 2 of this act. Each member of the board shall take an oath of office that he or she shall faithfully perform the duties of director. When such oath is ~~so~~ filed, such person ~~so elected~~ shall take and hold office until his or her successor is elected and qualified. When a vacancy occurs on the board, such vacancy shall be filled by the remaining members of the board.

Sec. 14. That section 46-630, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-630. Whenever the board of directors ~~shall determine~~ determines that rules and regulations are necessary in order to insure the proper conservation of ground water within the district, it shall confer with the three state agencies and ground water users within the district. No rules and regulations shall be adopted until after a public hearing and unless the board of directors finds such rules and regulations to be in the interest of public health, safety, and welfare. Notice of such hearing shall be given as provided in section 46-618, and in addition the publication shall set out in general terms the rules and regulations proposed. The board shall, within seven days after such hearing, announce the rules and regulations adopted and shall cause notice thereof to be published in a newspaper of general circulation throughout the district. Notice of such

rules and regulations shall also be sent to all known ground water users throughout such district by regular mail. The board shall have authority to compel compliance with such rules and regulations by an action brought in the district court of the county in which any failure to comply is found to exist. Any rules and regulations adopted by such board of directors shall be consistent with the purposes of the Nebraska Ground Water Management and Protection Act and sections 2-3225, 46-602, 46-603, 46-629, and 46-630, and ~~46-656 to 46-674,~~ shall not conflict with rules and regulations adopted pursuant to section 46-663 or 46-666, and shall, prior to adoption, receive concurrent approval by the natural resources district or districts encompassed in whole or in part by the ground water conservation district.

Sec. 15. For purposes of sections 46-636 and 46-637, water well shall have the same meaning as in section 2 of this act.

Sec. 16. That section 46-636, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-636. The Legislature finds that the pumping of water for irrigation purposes from pits water wells located within fifty feet of the bank of any natural stream may have a direct effect on the surface flow of such stream.

Sec. 17. That section 46-637, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-637. The use of water described in section 46-636 may only be made after securing a permit from the Department of Water Resources for such use. In approving or disapproving applications for such permits, the Director of Water Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section shall not apply to water wells located within fifty feet of the bank of any natural stream which were in existence on the operative date of this section.

Sec. 18. That section 46-638, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-638. (1) The Director of Water Resources of the State of Nebraska is hereby authorized to grant and administer permits to public water suppliers: (a) To locate, develop, and maintain ground water supplies through water wells or other means and to transport water into the area to be served; and (b) to continue existing use of ground water and the transportation of ground water into the area served.

(2) For the purposes of sections ~~46-638 to 46-655;~~ the Municipal and Rural Domestic Ground Water Transfers Permit Act and sections 46-651 to 46-655, (a) public water supplier shall mean a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes and (b) water well shall have the same meaning as in section 2 of this act.



Sec. 19. That section 46-639, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-639. An applicant which desires to avail itself of the ~~provisions of sections 46-638 to 46-650~~ Municipal and Rural Domestic Ground Water Transfers Permit Act shall make application in writing to the Director of Water Resources for a permit. The application shall include (1) a statement of the amount of water for which a permit is desired together with an exhibit of maps showing the location of all water wells; and (2) such other information as the director ~~may deem~~ deems necessary or desirable. ~~The application~~ and shall be accompanied by a fee in the amount of fifty dollars for the first five million gallons per day and an additional twenty dollars for each additional increment of five million gallons per day requested. The fee shall be based on the amounts of water requested on a daily average basis.

Sec. 20. That section 46-640, Revised Statutes Supplement, 1992, be amended to read as follows:

46-640. Upon receipt of an application filed under section 46-639, the director shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which the water well field or any part of such water well field is or is proposed to be located. The notice shall contain a description of the lands upon which such water well field is or is proposed to be located, the amount of water requested, the number of water wells constructed or proposed, and any other relevant information. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections specifically stating the grounds for each objection within two weeks after the date of final publication in the office of the director.

Sec. 21. That section 46-651, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-651. (1) Except as provided in section 46-653 or 46-654, (a) ~~after November 18, 1965,~~ no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) ~~and~~ no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) ~~and (b) after August 24, 1979,~~ no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) The well-spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of only thirty days following completion of such water well.

Sec. 22. That section 46-653, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-653. Any person may apply to the Director of Water

Resources for a special permit to drill a water well without regard to the spacing requirements of section 46-651. Such application shall be ~~in such form as~~ on a form prescribed and furnished by the director shall prescribe and furnish, and shall contain a statement of the precise location of the proposed water well, facts justifying the request for such special permit, the proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which ~~the director shall transmit~~ shall be remitted to the State Treasurer for ~~deposit in the state treasury to the credit of~~ credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for special permit, the known ground water supply, and such other pertinent information as may be available, ~~to him~~. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

Sec. 23. That section 46-654, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-654. (1) Any public water supplier having a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act is hereby granted the protection of sections 46-651 to 46-655 for all water wells for which a permit has been or in the future is granted by the Department of Water Resources under such act.

(2) If in its application for a permit pursuant to such act a public water supplier requests the protection of the spacing requirements of section 46-651 for test holes and water wells under construction and if the permit is granted, the director shall identify in the permit the area to which the spacing protection will apply and the spacing protection of section 46-651 shall then apply to such area for a period of one year from the date the permit is granted. The director shall notify, by certified or registered mail, owners and occupiers of land affected by the granting of such spacing protection, according to information supplied by the applicant. Costs of providing such notice shall be borne by the applicant. Owners or occupiers of land not receiving the notice required by this subsection shall not be bound by the spacing requirements until the applicant's water wells are completed. Such protection may be extended by the director, by a similar procedure, upon application by the public water supplier and good cause shown, for additional one-year periods.

Sec. 24. That section 46-657, Revised Statutes Supplement, 1992, be amended to read as follows:

46-657. ~~As used in~~ For purposes of the Nebraska Ground Water Management and Protection Act, section 2 of this act, and ~~in sections 46-601 to 46-613.01~~ 46-613.02 and 46-636 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership,

association, corporation, municipality, irrigation district, or agency or political subdivision of the state;

(2) Ground water shall mean that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

~~(3) Well shall mean any artificial opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn. A series of wells developed and pumped as a single unit shall be considered as one well. For purposes of the act, well shall not mean any artificial opening or excavation in which a pump of less than one hundred gallons per minute capacity is to be installed and which is to be used solely for supply of ground water for domestic purposes;~~

~~(4) Construction of a well shall mean boring, drilling, jetting, digging, or excavating and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;~~

~~(5) (3) Contamination or contamination of ground water shall mean nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;~~

~~(6) (4) District shall mean a natural resources district operating pursuant to Chapter 2, article 32;~~

~~(7) (5) Director shall mean the Director of Water Resources;~~

~~(8) (6) Illegal water well shall mean (a) any water well operated or constructed without or in violation of a permit required by the act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;~~

~~(9) (7) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 46-658;~~

~~(10) (8) To commence construction of a water well shall mean the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;~~

~~(11) Well driller shall mean any person who constructs, reconstructs, alters, or repairs a well. The term shall not include a person who performs labor or services for a well driller at his or her direction and under his or her supervision;~~

~~(12) (9) Management area shall mean any area so designated by a district pursuant to sections 46-673.01 to 46-673.06;~~

~~(13) (10) Ground water reservoir life goal shall mean the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;~~

(14) (11) Board shall mean the board of directors of a district;

(15) (12) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;

(16) (13) Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep;

(17) (14) Subirrigation or subirrigated land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(18) (15) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs;

(19) (16) Special ground water quality protection area shall mean any area designated as such by the Director of Environmental ~~Control~~ Quality following a public hearing, with boundaries approved by the Director of Environmental ~~Control~~ Quality, in which contamination of ground water is occurring or is likely to occur in the reasonably foreseeable future;

(20) (17) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental ~~Control~~ Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(21) (18) Allocation shall mean the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time not to exceed five years; ~~and~~

(22) (19) Rotation shall mean a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, or monthly basis or of irrigated acres on an annual basis; ~~and~~

(20) Water well shall have the same meaning as in section 2 of this act.

Sec. 25. That section 46-659, Reissue Revised Statutes of Nebraska, 1943, 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, 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 ~~may require~~ 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. 26. That section 46-660, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-660. An application for a permit or late permit for a water well in a control area or management area shall be denied only if the district in which the water well is to be located finds (1) that the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the district, (2) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit. If the district finds that the application is incomplete or defective, it shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached or denied not later than thirty days after receipt by the district of a complete and properly prepared application. A permit issued shall specify all regulations and controls adopted by a district relevant to the construction or utilization of the proposed water well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The district shall transmit one copy of each permit

issued to the director.

Sec. 27. That section 46-661, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-661. The issuance by the district of a permit pursuant to section 46-660 or registration of a water well by the director pursuant to section 46-602 shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of ~~such a~~ the water well or to violate any rule, regulation, or control properly adopted after such date.

Sec. 28. That section 46-662, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-662. When any permit is approved, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the water well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant ~~shall fail~~ fails to complete the project under the terms of the permit, the district may withdraw the permit.

Sec. 29. That section 46-663, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-663. Regardless of whether or not any portion of a district has been designated as a control area, management area, or special ground water quality protection area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(2) Require such reports from ground water users as may be necessary;

(3) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(4) Report to and consult with the Department of Environmental Control Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(5) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to ~~it~~ the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from ~~such~~ illegal water wells.

Sec. 30. That section 46-666, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-666. (1) A district in which a control area has been

designated pursuant to subsection (1) of section 46-658 shall by order adopt one or more of the following controls for the control area:

(a) It may determine the permissible total withdrawal of ground water for each day, month, or year and allocate such withdrawal among the ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells; and

(e) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a control area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-673.08 to 46-673.12, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the control area or management area, will encourage a high degree of water use efficiency, or will improve the administration of the area.

(3) The adoption, amendment, or repeal of any authorized control in a control area shall be subject to the approval of the director. The director may hold a public hearing to consider testimony regarding the control prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In approving the adoption, amendment, or repeal of an authorized control in a control area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a control area or management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to subsection (1) of this section or sections 46-673.08 to 46-673.12 may contain different water allocations for different irrigation distribution systems, on the condition that such different water allocations shall be authorized for no more than five years from the time such allocations are adopted, and different provisions for different categories of ground water use or portions of the control area or management area. Any differences in such provisions shall recognize and be directed toward such varying ground water uses, distribution irrigation systems, or varying conditions. The provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion or contamination of the ground water supply in the control area or any portion of the control area is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) of this section, it may, with the approval of the director, close all or a portion of the control area to the issuance of any additional permits for a period of one calendar year. Such areas may be further closed thereafter by a similar procedure for additional one-year periods. Any such area may be reopened at any time the district determines that conditions warrant new permits at which time the district shall consider all previously submitted applications for permits in the order in which they were received.

(6) The district shall cause a copy of each order adopted pursuant to this section or sections 46-673.08 to 46-673.12 to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten days prior to the date set for the effective date of such order.

(7) Whenever a control area or management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections 46-665 and 46-673.08 to 46-673.12 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(8) If at the end of eighteen months following the designation of a control area pursuant to section 46-658 a district encompassed in whole or in part by a control area has not adopted any specific controls pursuant to subsection (1) of this section, the power to specify controls shall vest in the director who shall, within ninety days after the end of the eighteen months, adopt and promulgate by rule and regulation such controls as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. Subject to section 46-667, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district involved. When the controls adopted by the director pursuant to this subsection are in effect in a district, all application fees for water well permits in such district pursuant to section 46-659 shall be payable to the director.

(9) If the power to adopt controls in a control area is vested in the director, he or she shall be provided with a copy of all information, testimony, and data available to the district or districts as a result of the public hearing for the adoption of controls. At his or her discretion, the director may conduct one or more additional public hearings prior to making his or her determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 31. That section 46-667, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-667. If at any time after a twelve-month period from



the date of the order of the district or director, as the case may be, adopting a control pursuant to section 46-666 the governing body of any municipal corporation owning water wells within the affected control area or five percent of the water well owners in a control area allege by petition to the director that the adopted control is not being enforced uniformly, equitably, or in good faith, the director shall hold a hearing within sixty days, notice of which shall be given in the manner provided in section 46-658. The director shall receive evidence at the hearing to determine whether or not the adopted control is being enforced uniformly, equitably, and in good faith and if the director determines that the control is not being so enforced, then the enforcement power set out in section 46-666 shall vest in the director for a period of twelve months. At the end of the twelve-month period, enforcement shall revert to the district or districts involved. Nothing in this section shall restrict the right of a municipality or five percent of water well owners in a control area to repetition at any time for another hearing for the enforcement of controls.

Sec. 32. That section 46-673.09, Revised Statutes Supplement, 1992, be amended to read as follows:

46-673.09. A district may manage the use of water in a management area for water quantity or quality purposes or both by any of the following means:

- (1) Allocating the total permissible withdrawal of ground water;
- (2) Rotation of use of ground water;
- (3) Well-spacing requirements pursuant to section 46-673.12;
- (4) Requiring the use of flow meters on water wells;
- (5) Best management practices;
- (6) Requiring the analysis of water or deep soils for fertilizer and chemical content; or
- (7) Educational programs designed to protect water quality.

Sec. 33. That section 46-675, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-675. The Legislature finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users in situations where industrial users withdraw significant quantities of ground water from the aquifers of the state and in situations where such ground water is transferred from the water well site for use at another location.

Sec. 34. That section 46-677, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-677. ~~After August 30, 1981, any~~ Any person who desires to withdraw a total of three thousand or more acre-feet of ground water, per year, from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any water wells, obtain from the director a permit to authorize the withdrawal and any transfer of such ground water. ~~As used in~~ For purposes of this section, industrial purposes shall include manufacturing, commercial, and

power generation uses of water.

Sec. 35. That section 46-678, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-678. (1) Applications for permits required by section 46-677 shall be on forms provided by the director and shall contain:

(a) A statement of the amount of ground water which the applicant proposes to use;

(b) A statement of the proposed use and whether the ground water will be transferred for use at a location other than the water well site;

(c) A hydrologic evaluation of the impact of the proposed use on the surrounding area;

(d) The date when the applicant expects to first use the ground water; and

(e) Such other relevant information as the director may deem necessary or desirable.

(2) Such applications shall be accompanied by an exhibit of maps showing the location, depth, and capacity of the proposed water wells.

Sec. 36. That section 46-680, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-680. After the director has accepted the application made under section 46-677 as a completed application, the director shall set a time and place for a public hearing on the application. The hearing shall be held within or in reasonable proximity to the area in which the water wells would be located. The hearing shall be scheduled within ninety days after the application is accepted by the director.

Sec. 37. That section 46-684, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-684. (1) A permit granted pursuant to section 46-683 shall be revoked, following a hearing conducted in the same manner as hearings conducted pursuant to section 46-680, if the director determines that the permitholder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit; or for a period of three consecutive years thereafter.

(2) If it appears to the director that a permitholder has withdrawn more ground water than the amount specified in the permit or has violated any of the conditions specified in the permit, the director shall give written notice to the permitholder of the alleged violation.

Within thirty days following receipt of such notice, the permitholder may:

(a) File an application to amend the permit as provided in section 46-683.01;

(b) Request a hearing before the director; or

(c) Take appropriate measures to comply with the permit.

If the permitholder fails to take action pursuant to subdivision (2)(a), (2)(b), or (2)(c) of this section, the director may issue an order requiring compliance with the permit and seek, if appropriate, a

court injunction prohibiting further violations of the permit.

If the permit holder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the water wells are located. Within forty-five days following the hearing, the director shall issue an order containing specific findings of fact with reference to the alleged violation and directing the permit holder, if necessary, to cease and desist from further violations of the permit.

(3) Nothing in this section shall limit the penalty provisions of section 46-687.

Sec. 38. That section 46-1201, Revised Statutes Supplement, 1992, be amended to read as follows:

46-1201. Sections 46-1201 to 46-1241 and sections 44, 48, 49, 52 to 54, and 56 to 61 of this act shall be known and may be cited as the Water Well Standards and Contractors' Licensing Act.

Sec. 39. That section 46-1203, Revised Statutes Supplement, 1992, be amended to read as follows:

46-1203. For ~~the~~ purposes of the Water Well Standards and Contractors' Licensing Act, unless the context otherwise requires, the definitions found in sections ~~46-1204~~ 46-1205 to 46-1216 shall be used.

Sec. 40. That section 46-1208, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Sec. 41. That section 46-1212, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1212. Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil; or natural gas, ~~minerals, or products mined or quarried~~ or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Sec. 42. That section 46-1217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1217. There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of nine members, five 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. The director or his or her designated representative of the Department of Health, the director or his or her designated representative of the Department of Environmental Control Quality, the director or his or her designated representative of the Department of Water Resources, and the director or his or her designated representative of the Conservation and Survey Division of the University of Nebraska 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. 43. That section 46-1223, Revised Statutes Supplement, 1992, be amended to read as follows:

46-1223. (1) The department with the assistance of the board shall cause examination to be made of applicants for ~~initial~~ licensure or certification. The board shall determine the type, categories, contents, and required passing grade of examinations to be administered to applicants for licensing or certification. Examinations shall be held at such times and places as the department, with the advice of the board, may determine. The department shall act within ninety days upon all completed applications for licensure or certification.

(2) Examinations for water well monitoring supervisors shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board. The board may adopt any nationally developed standard examinations as constituting part or all of the Nebraska examinations.

(3) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within four months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved. ~~Failure of an applicant to pass upon retaking the examination shall disqualify him or her from making further application for a period of~~

six months:

(4) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Sec. 44. Members of the board shall not be liable for damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of the board if the member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Sec. 45. That section 46-1224, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1224. (1) Except as provided in subsections (2) ~~and~~ ~~(3)~~ 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. ~~Such~~ Except as provided in subsection (4) of this section, the fees shall be paid to the department and ~~by it paid into the state treasury, and remitted to~~ the State Treasurer shall credit all money generated by the fees 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 ~~72-1269~~ 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 ~~three~~ two hundred dollars annually; and a certification fee at not less than twenty-five nor more than ~~forty~~ thirty dollars annually. ~~This subsection shall not require an~~ An individual who is licensed both as a pump installation contractor and a water well contractor ~~or an~~ 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 to pay more than one license or certification fee 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. 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. 46. That section 46-1225, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1225. (1) The board shall require that each individual licensed or certified pursuant to the Water Well Standards and Contractors' Licensing Act shall attend at least ~~twelve~~ eighteen hours of continuing education in any three-year period in approved schools, clinics, forums, lectures, courses of study, or educational seminars relating to the practice of such profession or occupation as a prerequisite for the renewal of a license or certificate. The board shall consult with the appropriate professional academies, professional societies, and professional associations in the development of educational programs designed to promote the utilization and application of new techniques, advances, and the achievements of research assuring expansive and comprehensive service to the public. Such continuing education shall be obtained at a school, clinic, forum, lecture, course of study, or educational seminar approved by the board which may be held either within or outside the state. At least ~~twelve~~ eighteen hours of approved schools, clinics, forums, lectures, courses of study, or educational seminars shall be available at approved schools, clinics, forums, lectures, courses of study, or educational seminars held within the State of Nebraska in any three-year period. The department may contract with institutions of higher learning, professional organizations, or qualified individuals to provide continuing education programs if the continuing education required pursuant to this section is not otherwise available.

(2) Each renewal applicant shall, on or before the date of expiration of his or her license or certificate in the year the requirement applies, certify on an affidavit form provided by the board that he or she has complied with the continuing education requirement during the

preceding period. The board shall, on or before the date of expiration of the license or certificate in the year the requirement applies, report all licensees and certificate holders who have complied with the educational requirement to the Director of Health. Any licensee or certificate holder who has not complied with the educational requirement shall not be issued a renewal license or certificate, unless he or she is exempted from the requirement or he or she is unable to comply with the requirement due to circumstances beyond his or her control as determined by the board. Procedures for denial refusal of renewal of licenses and certificates or reinstatement of licenses and certificates shall be in accordance with section 46-1237.

Sec. 47. That section 46-1235, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1235. In cases other than those relating to failure to meet the requirements for an initial license, ~~renewal of a license~~; or an initial certificate, or renewal of a certificate; the department may deny, refuse renewal of, suspend, or revoke licenses or certificates or may take other disciplinary action for any of the following grounds acts or offenses:

(1) Practice of fraud or deceit in obtaining a license or certificate;

(2) Violation of the Water Well Standards and Contractors' Licensing Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(3) Incompetence or gross negligence in the performance of any activity for which licenses or certificates are issued pursuant to the ~~Water Well Standards and Contractors' Licensing Act~~ act; or

(4) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or certificate holder or of members of the general public;

(5) Practice of the trade fraudulently, beyond the authorized scope, or with manifest incapacity;

(6) Practice of the trade while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical disability;

(7) Permitting, aiding, or abetting the practice of the trade or the performance of activities requiring a license or certificate by a person not licensed or certified to do so;

(8) Having had a license or certificate denied, refused renewal, limited, suspended, or revoked or having been disciplined in any other manner by another state or jurisdiction to practice water well construction, water well drilling, or pump installation based upon acts by the applicant, licensee, or certificate holder similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license or certificate or the taking of other disciplinary action by another state or jurisdiction shall be conclusive evidence;

(9) Unprofessional conduct as may be defined in rules and

regulations of the board with approval of the department:

(10) Practice of the trade while the license or certificate to do so is suspended or practice of the trade in contravention of any limitation placed upon the license or certificate; or

(11) Failing to file the report required by section 46-604.

A licensee or certificate holder shall not engage in the practice of the trade after a license or certificate is revoked or during the time for which it is suspended. If a license or certificate is suspended, the suspension shall be for a definite period of time to be fixed by the Director of Health, and such license or certificate shall be automatically reinstated upon the expiration of such period if the current renewal fee has been paid. If such license or certificate is revoked, such revocation shall be for one year.

~~No individual whose license or certificate has been refused renewal, suspended, or revoked shall be eligible to apply for a license or certificate for one year from the date of the final order.~~

~~The department shall have the authority to reinstate, for good cause shown, any license or certificate that has been refused renewal, suspended, or revoked. No license may be reinstated if the former licensee fails to provide sufficient evidence of adequate restitution to any person suffering damages or injury as a result of the actions of the former licensee that are governed by the Water Well Standards and Contractors' Licensing Act or the rules and regulations adopted and promulgated thereunder.~~

Sec. 48. The authority of the Director of Health to discipline a licensee or certificate holder by placing him or her on probation pursuant to section 46-1235 and section 53 of this act shall include, but not be limited to, the following:

(1) To require the licensee or certificate holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or technical examination, or both, or any or all of such combinations of written, oral, practical, and technical at the option of the director; or

(2) To restrict or limit the extent, scope, or type of practice of the licensee or certificate holder upon consultation with the board.

Sec. 49. (1) A person who has been disciplined by means other than suspension or revocation of his or her license or certificate may apply for reinstatement of the license or certificate at any time.

(2) A person whose certificate or license has been revoked may apply for reinstatement of the license or certificate after a period of not less than one year has elapsed from the date of revocation.

(3) The application for reinstatement shall state such pertinent facts as may be required by the department and shall be accompanied by at least two verified recommendations of the activities of the applicant since the date of the suspension, revocation, or other discipline. The department shall prescribe forms for application for reinstatement. An applicant for reinstatement shall complete the



continuing education requirements of section 46-1225 before reinstatement.

(4) In determining whether to approve an application for reinstatement, the department may (a) investigate and consider the activities of the applicant since the disciplinary action was taken, including, but not limited to, activities prohibited by the Water Well Standards and Contractors' Licensing Act, the act or offense for which disciplinary action was taken, the applicant's conduct while the license or certificate was in good standing, and the applicant's general reputation for truth, professional ability, and good character, (b) require the applicant to take additional training, and (c) require the applicant to pass the examination.

(5) Denial of an application for reinstatement may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 50. That section 46-1236, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1236. All licenses and certificates issued pursuant to the Water Well Standards and Contractors' Licensing Act shall expire on December 31 of the year for which issued. A license or certificate may be renewed on or before December 31 of each year upon payment of the annual fee established pursuant to section 46-1224. If a licensee or certificate holder has not paid for the renewal of his or her license or certificate on or before December 1, he or she shall be notified by certified or registered mail on or before December 15 that the license or certificate will expire. A license or certificate not renewed on or before December 31 or the first working day thereafter shall expire and may not be renewed except as provided in this section. Any licensee or certificate holder who fails to renew his or her license before December 31 shall be given a second notice by certified or registered mail on or before January 15 advising him or her (1) of the failure to renew and (2) that the license or certificate has expired. The department shall suspend action for sixty days following the date of expiration and upon the receipt of the renewal fee, together with the late fee set in section 46-1224, within sixty days of expiration, shall renew the license or certificate. An expired license or certificate may not be renewed after the sixty-day period without passing the examination required in section 46-1223. A license or certificate once expired may not be reinstated without passing an examination.

Sec. 51. That section 46-1237, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1237. If the department proposes to deny, refuse renewal of, suspend, or revoke a license or certificate or otherwise discipline a licensee or certificate holder for any of the reasons enumerated in the Water Well Standards and Contractors' Licensing Act, it shall send to the applicant, licensee, or certificate holder, by certified or registered mail, a notice setting forth the specific reasons for the proposed action. The denial, refusal of renewal, suspension, ~~or~~ revocation, or other disciplinary action shall become final thirty days after the mailing of the notice unless the applicant, licensee, or certificate holder, within such

period, gives written notice of a desire for a hearing. The applicant, licensee, or certificate holder shall then be given an opportunity for a formal hearing before the department and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the action in question shall be affirmed or set aside, and a copy of the decision setting forth the findings of fact and the specific reasons upon which the decision is based shall be sent by either certified or registered mail to the applicant, licensee, or certificate holder. The decision shall become final thirty days after the copy is mailed; unless the applicant, licensee, or certificate holder, within such period, appeals the decision. ~~Any such appeal shall be in accordance with the Administrative Procedure Act.~~

Sec. 52. The department may temporarily suspend or limit a license or certificate without notice or hearing if the Director of Health determines that there is reasonable cause to believe that grounds exist under section 46-1235 for the revocation, suspension, or limitation of the license or certificate and that the licensee's or certificate holder's continuation in practice would constitute an imminent danger to public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or limitation. A continuance of the hearing shall be granted by the department upon written request of the licensee or certificate holder, and such a continuance shall not exceed thirty days. An order of temporary suspension or limitation shall take effect when served in person upon the licensee or certificate holder. A temporary suspension or limitation shall not be in effect for a period in excess of one hundred eighty days. At the end of such one-hundred-eighty-day period, the license or certificate shall be reinstated unless the department has revoked, suspended, or limited the license or certificate after notice and hearing.

Sec. 53. (1) All proceedings under the Water Well Standards and Contractors' Licensing Act shall be summary in nature and triable as equity actions. Affidavits may be received in evidence at the discretion of the Director of Health. The department may administer oaths, subpoena witnesses and compel their attendance, and issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as a district court. Depositions may be used by either party.

(2) Upon the completion of any hearing, the director may enter an order to exercise any or all of the following powers irrespective of the petition:

(a) Issue a censure or reprimand against the licensee or certificate holder;

(b) Suspend judgment;

(c) Place the licensee or certificate holder on probation;

(d) Place a limitation on the license or certificate and upon the right of the licensee or certificate holder to practice the trade to such

extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(e) Impose a civil penalty under section 46-1240. The amount of the penalty shall be based on the severity of the violation;

(f) Enter an order of suspension;

(g) Enter an order of revocation; or

(h) Dismiss the action.

(3) If a licensee or certificate holder fails to appear, either in person or by counsel, at the time and place designated in a notice, the director, after receiving satisfactory evidence of the truth of the charges, shall order the license or certificate revoked or suspended or shall order any other appropriate disciplinary action.

(4) Any order issued under the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 54. If an order issued under the Water Well Standards and Contractors' Licensing Act is adverse to the licensee or certificate holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the department is the unsuccessful party, the costs shall be paid out of any money in the Bureau of Environmental Health of the department available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the department when it is the successful party, which the department certifies cannot be collected from the defendant, shall be paid out of any available funds in the bureau.

Sec. 55. That section 46-1240, Revised Statutes Supplement, 1992, 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 an abandoned 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. 56. Any person who files or attempts to file with the department any false or forged diploma or certificate or affidavit of

identification or qualification shall be guilty of forgery.

Sec. 57. Any person who presents to the department a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license or certificate, who falsely impersonates anyone to whom a license or certificate has been issued by the department, who falsely holds himself or herself out to be a person licensed or certified by the department, or who aids and abets another who is not licensed or certified to practice any trade for which a license or certificate is required by the Water Well Standards and Contractors' Licensing Act in practicing the trade shall be guilty of a Class IV felony.

Sec. 58. The department shall enforce the Water Well Standards and Contractors' Licensing Act and for that purpose shall make necessary investigations relative thereto. Every licensee or certificate holder and member of the board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated. He or she shall also report to the department the name of every person without a license or certificate that he or she has reason to believe is engaged in practicing any trade for which a license or certificate is required by the act.

Sec. 59. The opening of an office for the practice of any trade for which a license is required by the Water Well Standards and Contractors' Licensing Act, the announcing to the public in any manner the intention to practice such trade, the use of any professional degree or designation or any sign, card, circular, device, or advertisement as a practitioner of any such trade or as a person skilled in the same shall be prima facie evidence of engaging in such trade.

Sec. 60. (1) Whenever the Director of Health has reason to believe that a violation of any provision of the Water Well Standards and Contractors' Licensing Act or any rule or regulation adopted and promulgated by the department is occurring or has occurred, he or she may cause an administrative order to be served upon the person alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person named in the order requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the person appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the person not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a chemical, material, procedure, or act which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall

comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(3) The director shall afford to the alleged violator an opportunity for a hearing before the department.

Sec. 61. (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 the water well.

Sec. 62. That section 46-1241, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1241. Any licensed owner of a water well or water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. ~~The well and shall furnish a copy of such log to the owner of the well. Such log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor, unless the owner has prohibited the release of such log.~~

The well log shall include the following information:

- (1) ~~Location~~ Legal description of the water well;
- (2) Description and depth of geologic materials encountered;
- (3) Depth of finished well and diameter or dimension of constructed water well and test hole;
- (4) ~~Diameter of drilled hole~~ Depth and diameter or dimension of excavated hole if applicable;
- (5) Depth of formation stabilizer or gravel pack and size of particles, if used;
- (6) Depth and thickness of grout, ~~puddled-clay,~~ or other sealing material if applicable;
- (7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;

(8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

(9) Static water level;

(10) Water level when pumped at the designed designated rate, giving the rate of pumping and amount of time pumped, if applicable; and

(11) Yield of water well in gallons per minute or gallons per hour if applicable;

(12) Signature of water well contractor;

(13) Dates drilling commenced and construction completed;

(14) Intended use of the water well;

(15) Name, address, and signature of the owner;

(16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;

(17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Licensing Act of any person, other than the owner of the water well, who constructed the water well; and

(18) Other data as the board reasonably requires.

Sec. 63. Sections 38, 61, 63, 64, and 66 of this act shall become operative on their effective date. The other sections of this act shall become operative three calendar months after adjournment of this legislative session.

Sec. 64. That original section 46-1201, Revised Statutes Supplement, 1992, is repealed.

Sec. 65. That original sections 46-601, 46-602, 46-602.01, 46-604, 46-606, 46-608, 46-609, 46-610, 46-611, 46-613.01, 46-613.02, 46-625, 46-630, 46-636, 46-637, 46-638, 46-639, 46-651, 46-653, 46-654, 46-659, 46-660, 46-661, 46-662, 46-663, 46-666, 46-667, 46-675, 46-677, 46-678, 46-680, 46-684, 46-1208, 46-1212, 46-1217, 46-1224, 46-1225, 46-1235, 46-1236, 46-1237, and 46-1241, Reissue Revised Statutes of Nebraska, 1943, and sections 46-640, 46-657, 46-673.09, 46-1203, 46-1223, and 46-1240, Revised Statutes Supplement, 1992, and also sections 46-603, 46-607, 46-612, and 46-1204, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 66. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.