

**REGULATION OF WELLS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: Carl W. Duckworth

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**LONG TITLE**

**General Description:**

This bill amends and repeals provisions relating to the regulation of water well drilling.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ authorizes the state engineer to commence an enforcement action against a person

that:

- fails to file a well driller report; or
- drills a well without a license;
- ▶ authorizes the state engineer to make rules to:
  - establish enforcement procedures for failure to meet construction standards;
  - set a fine amount; and
  - establish well driller report requirements;
- ▶ authorizes the state engineer to retain the money from a fine for inspection,

enforcement, and education;

- ▶ combines three sections into one section; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **58-55-305**, as last amended by Laws of Utah 2007, Chapter 186

32 **73-2-25**, as last amended by Laws of Utah 2007, Chapter 136

33 **73-3-25**, as last amended by Laws of Utah 2004, Chapter 191

34 **73-3b-208**, as enacted by Laws of Utah 1991, Chapter 146

35 REPEALS:

36 **73-3-22**, as last amended by Laws of Utah 2005, Chapter 215

37 **73-3-24**, as last amended by Laws of Utah 2004, Chapter 191



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **58-55-305** is amended to read:

41 **58-55-305. Exemptions from licensure.**

42 (1) In addition to the exemptions from licensure in Section 58-1-307, the following  
43 persons may engage in acts or practices included within the practice of construction trades,  
44 subject to the stated circumstances and limitations, without being licensed under this chapter:

45 (a) an authorized representative of the United States government or an authorized  
46 employee of the state or any of its political subdivisions when working on construction work of  
47 the state or the subdivision, and when acting within the terms of the person's trust, office, or  
48 employment;

49 (b) a person engaged in construction or operation incidental to the construction and  
50 repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation  
51 districts, and drainage districts or construction and repair relating to farming, dairying,  
52 agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel  
53 excavations, well drilling, as defined in ~~Subsection 73-3-24(3)~~ Section 73-3-25, hauling to  
54 and from construction sites, and lumbering;

55 (c) public utilities operating under the rules of the Public Service Commission on  
56 construction work incidental to their own business;

57 (d) sole owners of property engaged in building:

58 (i) no more than one residential structure per year and no more than three residential

59 structures per five years on their property for their own noncommercial, nonpublic use; except,  
60 a person other than the property owner or individuals described in Subsection (1)(e), who  
61 engages in building the structure must be licensed under this chapter if the person is otherwise  
62 required to be licensed under this chapter; or

63 (ii) structures on their property for their own noncommercial, nonpublic use which are  
64 incidental to a residential structure on the property, including sheds, carports, or detached  
65 garages;

66 (e) (i) a person engaged in construction or renovation of a residential building for  
67 noncommercial, nonpublic use if that person:

68 (A) works without compensation other than token compensation that is not considered  
69 salary or wages; and

70 (B) works under the direction of the property owner who engages in building the  
71 structure;

72 (ii) for purposes of this Subsection (1)(e), "token compensation" means compensation  
73 paid by a sole owner of property exempted from licensure under Subsection (1)(d) to a person  
74 exempted from licensure under this Subsection (1)(e), that is:

75 (A) minimal in value when compared with the fair market value of the services  
76 provided by the person;

77 (B) not related to the fair market value of the services provided by the person; and

78 (C) is incidental to providing of services by the person including paying for or  
79 providing meals or refreshment while services are being provided, or paying reasonable  
80 transportation costs incurred by the person in travel to the site of construction;

81 (f) a person engaged in the sale or merchandising of personal property that by its design  
82 or manufacture may be attached, installed, or otherwise affixed to real property who has  
83 contracted with a person, firm, or corporation licensed under this chapter to install, affix, or  
84 attach that property;

85 (g) a contractor submitting a bid on a federal aid highway project, if, before  
86 undertaking construction under that bid, the contractor is licensed under this chapter;

87 (h) (i) a person engaged in the alteration, repair, remodeling, or addition to or  
88 improvement of a building with a contracted or agreed value of less than \$1,000, including  
89 both labor and materials, and including all changes or additions to the contracted or agreed

90 upon work;

91 (ii) notwithstanding Subsection (1)(h)(i):

92 (A) work in the plumbing and electrical trades must be performed by a licensed  
93 electrician or plumber except as otherwise provided in this section;

94 (B) installation, repair, or replacement of a residential or commercial gas appliance or a  
95 combustion system must be performed by a person who has received certification under  
96 Subsection 58-55-308(2) except as otherwise provided in Subsection 58-55-308(2)(d) or  
97 58-55-308(3); and

98 (C) installation, repair, or replacement of water-based fire protection systems must be  
99 performed by a licensed fire suppression systems contractor or a licensed journeyman plumber;

100 (i) a person practicing a specialty contractor classification or construction trade which  
101 is not classified by rule by the director as significantly impacting the public's health, safety, and  
102 welfare;

103 (j) owners and lessees of property and persons regularly employed for wages by owners  
104 or lessees of property or their agents for the purpose of maintaining the property, are exempt  
105 from this chapter when doing work upon the property;

106 (k) (i) a person engaged in minor plumbing work incidental to the replacement or  
107 repair of a fixture or an appliance in a residential or small commercial building, or structure  
108 used for agricultural use, as defined in Section 58-56-4, provided that no modification is made  
109 to:

110 (A) existing culinary water, soil, waste, or vent piping; or

111 (B) a gas appliance or combustion system; and

112 (ii) except as provided in Subsection (1)(e), installation for the first time of a fixture or  
113 an appliance is not included in the exemption provided under Subsection (1)(k)(i);

114 (l) a person who ordinarily would be subject to the plumber licensure requirements  
115 under this chapter when installing or repairing a water conditioner or other water treatment  
116 apparatus if the conditioner or apparatus:

117 (i) meets the appropriate state construction codes or local plumbing standards; and

118 (ii) is installed or repaired under the direction of a person authorized to do the work  
119 under an appropriate specialty contractor license;

120 (m) a person who ordinarily would be subject to the electrician licensure requirements

121 under this chapter when employed by:

122 (i) railroad corporations, telephone corporations or their corporate affiliates, elevator  
123 contractors or constructors, or street railway systems; or

124 (ii) public service corporations, rural electrification associations, or municipal utilities  
125 who generate, distribute, or sell electrical energy for light, heat, or power;

126 (n) a person involved in minor electrical work incidental to a mechanical or service  
127 installation;

128 (o) a student participating in construction trade education and training programs  
129 approved by the commission with the concurrence of the director under the condition that:

130 (i) all work intended as a part of a finished product on which there would normally be  
131 an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed  
132 building inspector; and

133 (ii) a licensed contractor obtains the necessary building permits; and

134 (p) a delivery person when replacing any of the following existing equipment with a  
135 new gas appliance, provided there is an existing gas shutoff valve at the appliance:

136 (i) gas range;

137 (ii) gas dryer;

138 (iii) outdoor gas barbeque; or

139 (iv) outdoor gas patio heater.

140 (2) (a) A compliance agency as defined in Subsection 58-56-3(4) that issues a building  
141 permit to any person requesting a permit as a sole owner of property referred to in Subsection  
142 (1)(d) shall notify the division, in writing or through electronic transmission, of the issuance of  
143 the permit.

144 (b) The division shall evaluate the effectiveness of the notification requirement under  
145 Subsection (2)(a) and report its findings, including any recommendations for modification to or  
146 termination of the requirement, to the Legislature's Business and Labor Interim Committee  
147 prior to the 2008 General Session.

148 Section 2. Section **73-2-25** is amended to read:

149 **73-2-25. State engineer enforcement powers.**

150 (1) For purposes of this section, "initial order" means one of the following issued by  
151 the state engineer:

- 152 (a) a notice of violation; or
- 153 (b) a cease and desist order.
- 154 (2) (a) The state engineer may commence an enforcement action under this section if
- 155 the state engineer finds that a person:
- 156 (i) is diverting, impounding, or using water for which no water right has been
- 157 established;
- 158 (ii) is diverting, impounding, or using water in violation of an existing water right;
- 159 (iii) violates Section 73-5-4;
- 160 (iv) violates Section 73-5-9;
- 161 (v) violates a written distribution order from the state engineer;
- 162 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
- 163 or bank of a natural stream channel; [~~or~~]
- 164 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
- 165 Safety[~~;~~];
- 166 (viii) fails to submit a report required by Section 73-3-25; or
- 167 (ix) engages in well drilling without a license required by Section 73-3-25.
- 168 (b) To commence an enforcement action under this section, the state engineer shall
- 169 issue an initial order, which shall include:
- 170 (i) a description of the violation;
- 171 (ii) notice of any penalties to which a person may be subject under Section 73-2-26;
- 172 and
- 173 (iii) notice that the state engineer may treat each day's violation of the provisions listed
- 174 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).
- 175 (c) The state engineer's issuance and enforcement of an initial order is exempt from
- 176 Title 63, Chapter 46b, Administrative Procedures Act.
- 177 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 178 state engineer shall make rules necessary to enforce an initial order, which shall include:
- 179 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the
- 180 initial order if a person to whom an initial order is issued fails to respond to the order or abate
- 181 the violation;
- 182 (b) the right to a hearing, upon request by a person against whom an initial order is

183 issued; and

184 (c) provisions for timely issuance of a final order after:

185 (i) the person to whom the initial order is issued fails to respond to the order or abate  
186 the violation; or

187 (ii) a hearing held under Subsection (3)(b).

188 (4) A person may not intervene in an enforcement action commenced under this  
189 section.

190 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the  
191 state engineer shall serve a copy of the final order on the person against whom the order is  
192 issued by:

193 (a) personal service under Utah Rules of Civil Procedure 5; or

194 (b) certified mail.

195 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district  
196 court in:

197 (i) Salt Lake County; or

198 (ii) the county where the violation occurred.

199 (b) A person shall file a petition for judicial review of the state engineer's final order  
200 issued under this section within 20 days from the day on which the final order was served on  
201 that person.

202 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a  
203 final order issued under this section.

204 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the  
205 state may recover all court costs and a reasonable attorney fee.

206 Section 3. Section **73-3-25** is amended to read:

207 **73-3-25. Well driller's license -- Bond -- Revocation or suspension for**  
208 **noncompliance.**

209 [~~(1) (a) Every person that constructs a well in the state shall obtain a license from the~~  
210 ~~state engineer.~~]

211 [~~(b) The state engineer shall enact rules defining the form, the expiration date, and the~~  
212 ~~renewal cycle of the application for a license.~~]

213 [~~(c) Well drillers' licenses are not transferable. The state engineer shall enact rules for~~

214 well construction according to the procedures and requirements of Title 63, Chapter 46a, Utah  
215 Administrative Rulemaking Act.]

216 (1) As used in this section:

217 (a) "Well" means an open or cased excavation or borehole for diverting, using, or  
218 monitoring underground water made by any construction method.

219 (b) "Well driller" means a person with a license to engage in well drilling for  
220 compensation or otherwise.

221 (c) "Well drilling" means the act of drilling, constructing, repairing, renovating,  
222 deepening, cleaning, developing, or abandoning a well.

223 (2) (a) (i) A person [who constructs a well in this state must first] shall obtain a license  
224 as provided in this section before engaging in well drilling.

225 [(ii) Before a well driller's license will be issued, the applicant must]

226 (ii) The state engineer may enforce Subsection (2)(a)(i) in accordance with Sections  
227 73-2-25 and 73-2-26.

228 (b) A person applying for a well driller license shall file a well driller bond:

229 (i) with the state engineer[-]; and

230 [(iii) The bond shall be made payable to the Office of the State Engineer.]

231 (ii) payable to the Division of Water Rights.

232 (c) (i) Compliance with this section and the rules authorized by this section is required  
233 to obtain or renew a well driller license.

234 (ii) The state engineer may refuse to issue a license if it appears an applicant violated a  
235 rule authorized by this section.

236 (d) A well driller license is not transferable.

237 [(iv)] (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
238 Act, the state engineer may make rules [to set] establishing:

239 (a) the amount, form, and general administrative requirements of a well driller bond[-  
240 Proper compliance with the provisions of this section and the rules enacted under the authority  
241 of this section are required to obtain or renew a license.];

242 [(b) (i) Well drillers]

243 (b) the amount of a well driller fine;

244 (c) minium well drilling standards;



245 (d) well driller reporting requirements;  
 246 (e) the requirements for obtaining a well driller license, including:  
 247 (i) a well driller license application form;  
 248 (ii) the license expiration date; and  
 249 (iii) the license renewal cycle; and  
 250 (f) a procedure to enforce a well drilling standard or other well drilling requirement.  
 251 (4) (a) A well driller shall submit a report to the state engineer:  
 252 (i) containing data relating to each well;  
 253 (ii) within 30 days after the completion or abandonment of the well drilling;  
 254 (iii) on forms furnished by the state engineer; and  
 255 (iv) containing information required by the state engineer.  
 256 (b) In accordance with Sections 73-2-25 and 73-2-26, the state engineer may  
 257 commence an enforcement action against a person who fails to submit a report required by  
 258 Subsection (4)(a) within 90 days of the day on which the well driller license lapses.  
 259 (5) (a) A well driller shall comply with the rules [~~enacted by the state engineer under~~  
 260 ~~this chapter~~] authorized by this section.  
 261 [~~(ii)~~] (b) If the state engineer determines[~~, following an investigation, that the licensee~~  
 262 ~~that a well driller has failed to comply with [these rules] a rule, the state engineer may, in~~  
 263 ~~accordance with the procedures established in rule:~~  
 264 (i) (A) order that a well driller pay a fine; or  
 265 (B) revoke or suspend the license[~~, and~~]; and  
 266 (ii) exact the bond [~~and deposit the money as a nonlapsing dedicated credit~~].  
 267 (6) (a) The state engineer shall retain the money from a fine or exacting a bond as a  
 268 dedicated credit.  
 269 [~~(iii)~~] (b) The state engineer may expend [~~the funds~~]:  
 270 (i) money retained from a fine for:  
 271 (A) well drilling inspection;  
 272 (B) well drilling enforcement; or  
 273 (C) well driller education; and  
 274 (ii) money retained from exacting a bond to investigate or correct [~~any deficiencies~~  
 275 ~~which] a deficiency by a well driller that could adversely affect the public interest resulting~~

276 from noncompliance with [~~the rules promulgated under this chapter by any well driller~~] a rule  
277 authorized by this section.

278 [~~(iv) The state engineer may refuse to issue a license to a well driller if it appears that~~  
279 ~~there has been a violation of the rules or a failure to comply with Section 73-3-22.~~]

280 Section 4. Section **73-3b-208** is amended to read:

281 **73-3b-208. Proposed new well -- Compliance with water well construction rules.**

282 An applicant for a recovery permit who intends to construct a new well to recover  
283 stored water must comply with [~~Section 73-3-22 and~~] Sections [~~73-3-24 through~~] 73-3-25 and  
284 73-3-26, and rules adopted under those sections, regarding the construction of water wells.

285 Section 5. **Repealer.**

286 This bill repeals:

287 Section **73-3-22, Underground water -- Report of well and tunnel drillers.**

288 Section **73-3-24, Definitions.**

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**Legislative Review Note**  
**as of 2-13-08 1:57 PM**

**Office of Legislative Research and General Counsel**

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**S.B. 228 - Regulation of Wells**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

This bill authorizes the State Engineer to establish and impose fines for well drilling violations. The additional revenues the fines will be used by the Division of Water Rights for well drilling inspections, enforcement, and education. Enactment of this bill will require additional ongoing appropriation of \$2,500 from the Dedicated Credits to the Division of Water Rights.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Dedicated Credits	\$0	\$2,500	\$2,500	\$0	\$2,500	\$2,500
<b>Total</b>	<b>\$0</b>	<b>\$2,500</b>	<b>\$2,500</b>	<b>\$0</b>	<b>\$2,500</b>	<b>\$2,500</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.