

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 277

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO IRRIGATION AND DRAINAGE; AMENDING SECTION 42-238, IDAHO CODE,  
TO PROVIDE ADDITIONAL REQUIREMENTS RELATING TO WELL CONSTRUCTION STANDARDS AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-238, Idaho Code, be, and the same is hereby amended to read as follows:

42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) The director of the department of water resources is hereby vested with the duties relating to the licensing of well drillers and operators of well drilling equipment as provided for in this act so as to protect the ground water resources against waste and contamination. Qualifications for well drillers and operators of well drilling equipment shall be adopted by rule of the water resource board.

(2) It shall be unlawful for any person to drill a well in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, without first complying with the provisions of this chapter. It shall be unlawful for any person to abandon a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the director of the department of water resources. Authorization is required from the director prior to the abandonment and the person abandoning the well shall submit to the director a report describing the abandonment.

(3) For the purpose of this act, a "person" shall be defined as any individual who drills or abandons any well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association which drills or abandons, or contracts to drill or abandon any well for hire or otherwise in this state.

(4) A driller's license shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a two hundred dollar (\$200) application fee.

(5) The director shall require that an applicant for a driller's license successfully pass a written or oral examination, and be required to submit references and other detailed information describing past drilling experience to allow the director to determine if the applicant is qualified to drill wells in the state.

(6) The water resource board shall adopt rules for licensing and renewal of licenses of well drillers in compliance with chapter 52, title 67, Idaho Code. The board is authorized to adopt rules on professional responsibility and continuing education requirements, not to exceed twenty (20) hours during each licensing period. Notwithstanding other provisions of this chapter, the director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously

1 constructed wells improperly or constructed a well without a valid driller's  
2 license. The rules may also allow for the director to issue a license with  
3 limitations on the type, size or depth of wells the applicant is authorized  
4 to construct. A copy of the proposed rules for licensing of well drillers  
5 shall be furnished to each well driller holding a current license at the time  
6 such proposed rules are promulgated or modified. The rules shall provide for  
7 the consideration of such factors as the applicant's:

8 (a) Knowledge of Idaho water laws and the rules of the water resource  
9 board in connection with the drilling of wells including proper well  
10 construction standards and procedures;

11 (b) Knowledge of the various types of drilling tools and their use;

12 (c) General knowledge of underground geology and ground water hydrology  
13 and their relation to well construction;

14 (d) Ownership or access to equipment capable of adequately construct-  
15 ing a well;

16 (e) Knowledge of types of well casing and their use;

17 (f) Knowledge of special well drilling problems and their solution,  
18 including additional requirements for licensing for drillers who con-  
19 struct wells in areas of drilling concern or for the production of low  
20 temperature geothermal resources as defined in section 42-233, Idaho  
21 Code, and for the production of geothermal resources as provided in  
22 chapter 40, title 42, Idaho Code;

23 (g) Previous drilling experience; and

24 (h) History of compliance with well drilling laws and rules.

25 (7) If it is determined that the applicant for a driller's license is  
26 not qualified, the director shall deny the application. If it is determined  
27 that the applicant is qualified, a license shall be issued upon the filing  
28 with the director of a surety bond or cash bond in the penal sum of not less  
29 than five thousand dollars (\$5,000), or more than twenty thousand dollars  
30 (\$20,000) as determined by the director based on the applicant's history of  
31 compliance with well drilling laws and rules, the size and depth of the wells  
32 the applicant proposes to drill, the complexity of the wells, the resource to  
33 be recovered, the area of operation of the applicant, and other relevant fac-  
34 tors the director determines are in the public interest. The surety or cash  
35 bond shall be conditioned upon the proper compliance with the provisions of  
36 this chapter, chapter 40, title 42, Idaho Code, and rules promulgated pur-  
37 suant thereto. Such bond shall be made payable to the director.

38 (8) Employees of drilling firms, copartnerships, corporations or asso-  
39 ciations are authorized to operate drilling equipment for the driller after  
40 obtaining an operator's permit from the director. Such employees shall be  
41 designated as operators.

42 (a) A driller is responsible for adequate supervision of the operators  
43 during the construction of each well. A driller shall be responsible  
44 for the work of the operators employed by the driller.

45 (b) An operator shall only operate drilling equipment for the driller  
46 listed on the operator's permit.

47 (c) An operator's permit shall be obtained by filing with the director  
48 an application in writing on a form provided by the director accompanied  
49 by a twenty-five dollar (\$25.00) application fee.

1 (d) The applicant for an operator's permit shall successfully complete  
2 a written or oral examination.

3 (e) The water resource board shall adopt rules for the issuance, revo-  
4 cation and renewal of an operator's permit in accordance with chapter  
5 52, title 67, Idaho Code. The board is also authorized to adopt rules on  
6 professional responsibility and continuing education requirements not  
7 to exceed twenty (20) hours during each permitting period. The rules  
8 shall consider such factors as:

9 (i) Knowledge of Idaho water laws and the rules of the water re-  
10 source board in connection with the drilling of wells;

11 (ii) Demonstrated previous compliance with well drilling laws and  
12 rules including well construction standards; and

13 (iii) General understanding of well drilling equipment, well con-  
14 struction techniques, basic geology and map reading.

15 (9) Driller's licenses and operator's permits issued under this sec-  
16 tion shall expire on March 31 in the second year after issuance or upon re-  
17 vocation of the license by the director as provided for in this act. The  
18 driller's license can be renewed effective April 1 of every other year upon  
19 written application on forms provided by the director and the filing of a one  
20 hundred dollar (\$100) renewal fee plus a fifteen dollar (\$15.00) renewal fee  
21 for each operator employed by the licensed driller. Drillers renewing li-  
22 censes in 1997 shall be assessed a licensing fee prorated monthly based upon  
23 the annual fee schedule. Thereafter, driller licenses and operator permits  
24 will be renewed upon expiration for a two (2) year period. Documents demon-  
25 strating compliance with the continuing education requirements of the rules  
26 shall be submitted to the director along with other license and permit re-  
27 newal documents. The renewal request must be accompanied by a new bond or  
28 evidence that the previous bond is still in effect. The renewal may then  
29 be granted by the director if he determines that the driller or operator has  
30 complied with the rules promulgated pursuant to this act. The fees collected  
31 for the licensing of well drillers and permitting of operators are nonre-  
32 fundable and shall be deposited in the water administration fund with the  
33 state treasurer with other fees collected by the director.

34 (10) The licensed driller and permitted operators shall have a card on  
35 hand, provided by the director, to indicate that the driller or operator  
36 is presently licensed or permitted at all times when he is operating the  
37 drilling equipment. The director may also require other identification to  
38 be posted on the drilling equipment as he deems helpful in the administration  
39 of this act.

40 (11) Well driller's report. In order to enable a comprehensive survey  
41 of the extent and occurrence of the state's ground water resource, every well  
42 driller is hereby required to keep available for inspection at the well site  
43 a daily well log and pertinent data concerning each well, and its construc-  
44 tion or abandonment, that is constructed or abandoned under the driller's  
45 direction in Idaho, including wells excepted under sections 42-227 and  
46 42-228, Idaho Code, and complete a report on forms furnished by the direc-  
47 tor. These reports shall be properly prepared and signed by the driller and  
48 deposited with the director within thirty (30) days following the completion  
49 of the well. When the driller signs the report, the driller shall attest  
50 that all information on the report is accurate to the best of the driller's

1 knowledge and that the driller has met all minimum well construction stan-  
2 dards, low temperature geothermal resource well construction standards,  
3 geothermal resource well construction standards and area of drilling con-  
4 cern standards as adopted by the water resource board. The reports shall  
5 become a permanent record in the office of the director for hydrologic and  
6 geologic analysis and research, and shall be available for public use. The  
7 report shall include such data as the director deems necessary to provide the  
8 information that will be valuable for future reference and study.

9 (12) Well construction standards. The water resource board shall adopt  
10 minimum standards for new well construction, modification and abandonment  
11 of existing wells, low temperature geothermal resource well construction  
12 and geothermal well construction in this state under the provisions of chap-  
13 ter 52, title 67, Idaho Code. Such standards shall require each well to be  
14 so constructed as to protect the ground water of the state from waste and  
15 contamination and may include additional requirements for wells drilled in  
16 "areas of drilling concern" as designated in accordance with subsection (15)  
17 of this section. Every licensed well driller will be furnished a copy of  
18 the adopted standards by the director, and will be required to construct or  
19 abandon each well in compliance with the adopted standards. Such standards  
20 shall be consistent with all of the following:

21 (a) Use of approved sealing materials and required annular space. Well  
22 casings shall be sealed in the required annular space with approved ma-  
23 terial to prevent the possible downward movement of contaminated sur-  
24 face waters or other fluids in any annular space around the well cas-  
25 ing. Proper sealing is also required to prevent the movement of ground  
26 water either upward or downward from zones of different pressure, tem-  
27 perature or quality within the well or outside the casing. All casing to  
28 be sealed shall be adequately centralized to ensure uniform seal thick-  
29 ness around the well casing. Surface seals shall extend to not less than  
30 eighteen (18) feet.

31 (b) Sealing of wells. Sealing requirements described in this paragraph  
32 are minimum standards that apply to all wells. The director may estab-  
33 lish alternate minimum sealing requirements in specific areas when it  
34 can be determined through detailed studies of the local hydrogeology  
35 that a specific alternate minimum will provide protection of the ground  
36 water from waste and contamination.

37 (i) Consolidated formations. When a water well is drilled into  
38 and acquires water from an aquifer that consists of consolidated  
39 formations that are above the water table, casing shall be in-  
40 stalled so that it extends and is sealed to a depth not less than  
41 eighteen (18) feet.

42 (ii) Unconsolidated formations without confining layers of clay.  
43 When a water well is drilled into and acquires water from an un-  
44 confined aquifer that is overlain with unconsolidated formations,  
45 such as sand and gravel without confining layers of clay, well cas-  
46 ing shall extend to at least five (5) feet below the water table and  
47 be sealed to a depth not less than eighteen (18) feet.

48 (c) Sealing artesian wells.

49 (i) Unconsolidated formations. When artesian water is encoun-  
50 tered in unconsolidated formations, the production zone or open

1 interval shall be limited to zones of like pressure, temperature  
 2 and quality. Well casing shall extend from land surface into the  
 3 lowermost confining layer above the final production zone and  
 4 shall be sealed in between aquifers:

5 1. From land surface to a depth of at least eighteen (18)  
 6 feet; and

7 2. Through all confining layers; and

8 (A) A minimum of five (5) feet of seal material shall  
 9 be placed into or through the lowermost confining layer  
 10 above the production zone; or

11 (B) Five (5) feet into or through the lowermost confin-  
 12 ing layer above the production zone.

13 3. If the well depth is less than thirty-eight (38) feet, the  
 14 well shall be cased and sealed from land surface to the con-  
 15 fining layer in direct contact with the production zone or to  
 16 a depth of eighteen (18) feet, whichever is greater.

17 (ii) Consolidated formations. When artesian water is encountered  
 18 in a consolidated formation, well casing shall be installed and  
 19 sealed from land surface to a depth of at least eighteen (18) feet  
 20 and if the consolidated formation is overlain by a permeable for-  
 21 mation and water will rise above the consolidated formation, well  
 22 casing shall extend and be sealed at least five (5) feet into the  
 23 confining portion of the consolidated formation.

24 (iii) Control device. Pursuant to section 42-1603, Idaho Code, if  
 25 the well flows at land surface, it shall be equipped with a con-  
 26 trol device approved by the director so that the flow can be com-  
 27 pletely stopped. If leaks occur around the well casing or adjacent  
 28 to the well, the well shall be completed with seals, casing or ce-  
 29 ment grout to eliminate the leakage.

30 1. Flowing artesian wells shall be equipped with an approved  
 31 pressure gage fitting that will allow for measurement of  
 32 shut-in pressure of a flowing well. All pressure gage fit-  
 33 tings shall include control valves such that the pressure  
 34 gage can be removed without resulting in artesian flow from  
 35 the well.

36 2. The well driller shall not move his well drilling rig from  
 37 the site until all requirements have been satisfied. Some  
 38 mixing of water may be allowed to develop an adequate water  
 39 well; however, the mixing shall be restricted to water zones  
 40 of similar pressure, temperature and quality. The driller  
 41 shall take precautions to case and seal out zones that may  
 42 lead to waste or contamination.

43 (13) Penalties for violation. Drilling of a well without first obtain-  
 44 ing a license as required in this section shall be a criminal misdemeanor,  
 45 and the employees of the department of water resources are hereby empowered  
 46 to issue Idaho uniform citations, as provided by the rules of the court for  
 47 magistrate's division of the district court, to any person who drills a well  
 48 without first obtaining the required license. When the director of the de-  
 49 partment of water resources determines that any person is in substantial vi-  
 50 olation of any provision of this section or any rule, permit, condition of

1 approval or order issued or promulgated pursuant to this section, the direc-  
2 tor may commence an administrative enforcement action by issuing a written  
3 notice of violation in accordance with the provisions of section 42-1701B,  
4 Idaho Code. Failure of the driller to comply with the provisions of section  
5 42-238(11), Idaho Code, will allow the director to proceed to collect the  
6 necessary data on the well or wells in any manner available to him, and the  
7 cost of this data collection may be charged against the driller's bond in the  
8 amount of the expenses incurred up to the total amount of the bond.

9 (a) Failure of the driller to comply with the provisions of section  
10 42-238(11), Idaho Code, is also cause for the director to revoke an ac-  
11 tive license, or refuse to renew a license, until such time as the well  
12 driller's report or reports are properly completed and on file in the  
13 office of the director. If it is found that a driller has intentionally  
14 submitted inaccurate or false information in the signed well driller's  
15 report as provided in subsection (11) of this section, or has failed  
16 to file a report within the time frame required, the driller shall be  
17 liable for a civil penalty as provided in section 42-1701B, Idaho Code.  
18 In addition, this shall be cause for the director to suspend an active  
19 license for a period not in excess of one (1) year or to not renew a li-  
20 cense.

21 (b) Failure of the driller to comply with the provisions of section  
22 42-238(12), Idaho Code, will allow the director to proceed to repair,  
23 reconstruct or abandon a well so that it complies with the adopted min-  
24 imum standards of well construction and abandonment, and the costs of  
25 this work may be charged against the driller's bond in the amount of the  
26 expenses incurred up to the total amount of the bond.

27 (c) Failure of the driller to comply with the provisions of section  
28 42-238(12), Idaho Code, is also cause for the director to revoke an  
29 active license or refuse to renew a license until such time as the well  
30 driller has repaired or reconstructed the well or wells so that they  
31 meet the adopted minimum standards. Any driller, well owner or well  
32 pump installer causing a well to be altered or modified so as to not  
33 meet the construction standards provided for under this section, shall  
34 be deemed to have violated the provisions of this section and shall be  
35 subject to the enforcement provisions of section 42-1701B, Idaho Code.  
36 The director may also require that the well driller present evidence to  
37 show that he and his equipment are now capable of constructing a well in  
38 a proper manner, before the license is renewed.

39 (14) Appeals. Refusal to issue, refusal to renew, or revocation of a  
40 well driller's license or operator's permit by the director shall be cause  
41 for the well driller to seek a public hearing before the water resource  
42 board. No formal petition shall be required from the affected driller or  
43 operator, but a simple statement, in writing, requesting a hearing shall be  
44 sufficient. The board shall notify the driller or operator, and the direc-  
45 tor, of the date set for the hearing, which shall be at least fifteen (15)  
46 days after the notice is sent by certified mail to the well driller or oper-  
47 ator at his address of record with the department. A certified transcript  
48 of the proceedings and the evidence received at such hearing shall be main-  
49 tained by the board. The board shall affirm, modify or reject the director's  
50 decision, and make its decision in the form of an order to the director. The

1 hearing shall be conducted in accordance with chapter 52, title 67, Idaho  
2 Code, and rules of practice and procedure adopted by the water resource  
3 board. Any party to the hearing may seek judicial review of any final order  
4 of the water resource board pursuant to chapter 52, title 67, Idaho Code.

5 (15) Drilling in a designated "area of drilling concern." The director  
6 of the department of water resources may designate as he determines nec-  
7 essary, "areas of drilling concern" on an aquifer by aquifer basis within  
8 which drillers must comply with the additional requirements of this section.  
9 The director shall designate "areas of drilling concern" to protect public  
10 health and to prevent waste or contamination of ground or surface water be-  
11 cause of factors such as aquifer pressure, vertical depth of the aquifer,  
12 warm or hot ground water, or contaminated ground or surface waters. It is  
13 unlawful for any person not meeting the requirements of this subsection to  
14 drill a well for any purpose in a designated "area of drilling concern." Any  
15 person drilling a new well or deepening or modifying an existing well for any  
16 purpose in an "area of drilling concern" as designated by the director as  
17 herein provided shall comply with the following additional requirements:

18 (a) Additional bonding requirements, as determined by the director, to  
19 ~~insure~~ ensure that the well is constructed or abandoned in compliance  
20 with the adopted standards for well construction.

21 (b) Additional experience and knowledge in drilling wells encountering  
22 warm water or pressurized aquifers as required by rules adopted by the  
23 water resource board.

24 (c) Document that specialized equipment needed to drill wells in "ar-  
25 eas of drilling concern," as determined by the director, is or will be  
26 available to the driller.

27 (d) Provide a notice of intent to drill, deepen or modify a well, submit  
28 plans and specifications for the well and a description of the drilling  
29 methods that will be used, as required by the director, and receive the  
30 written approval of the director before commencing to drill, deepen, or  
31 modify any well in a designated "area of drilling concern."

32 Prior to designating an "area of drilling concern," the director shall  
33 conduct a public hearing in or near the area to determine the public interest  
34 concerning the designation. Notice of the hearing shall be published in two  
35 (2) consecutive weekly issues of a newspaper of general circulation in the  
36 area prior to the date set for hearing.

37 In the event an area has been designated as an "area of drilling concern"  
38 and the director of the department of water resources desires to remove such  
39 designation or modify the boundaries thereof, he shall likewise conduct a  
40 public hearing following similar publication of notice prior to taking such  
41 action.