

1 SENATE BILL NO. 243

2 INTRODUCED BY S. BOULANGER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE LICENSURE OF GEOTHERMAL WELL
5 CONSTRUCTORS; REVISING POWERS AND DUTIES OF THE BOARD OF WATER WELL CONTRACTORS;
6 PROVIDING AN EXEMPTION FOR CONSTRUCTORS OF CERTAIN GEOTHERMAL WELL SYSTEMS;
7 AMENDING THE APPLICATION PROCESS; PROVIDING QUALIFICATIONS FOR CONSTRUCTORS OF A
8 GEOTHERMAL WELL; REQUIRING A BOND; PROVIDING FOR FEES; PROVIDING FOR RECIPROCITY;
9 PROVIDING FOR INJUNCTIONS; AMENDING LANGUAGE RELATED TO CLAIMS AND COUNTERCLAIMS;
10 AMENDING LANGUAGE RELATED TO COMPLETION OF CONTRACTS BY A SUCCESSOR; AND AMENDING
11 SECTIONS 37-43-101, 37-43-102, 37-43-202, 37-43-302, 37-43-303, 37-43-305, 37-43-306, 37-43-307,
12 37-43-308, 37-43-314, 37-43-401, AND 37-43-402, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. **Section 1. Licensed geothermal well constructor to supervise construction of**
17 **geothermal wells.** (1) Any firm, corporation, or partnership may engage in the business of constructing or
18 installing geothermal wells if a licensed geothermal well constructor is in charge of all geothermal well
19 construction or installation.

20 (2) The licensed geothermal well constructor must be physically present at the site throughout the
21 construction or installation of the geothermal well.

22
23 **Section 2.** Section 37-43-101, MCA, is amended to read:

24 **"37-43-101. Purpose.** It is the purpose of this chapter to reduce and minimize the waste and
25 contamination of ground water resources within this state by reasonable regulation and licensing of drillers or
26 makers of water wells, ~~and monitoring wells, and geothermal wells~~ and to protect the health and general welfare
27 by providing a means for the development of the natural resource of underground water in an orderly, sanitary,
28 and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells, ~~and~~
29 monitoring wells, ~~and geothermal wells~~ is in the best interest of the public, and the waste and contamination of
30 ground water resources through inefficient or incompetent operations of drillers or makers of water wells, ~~and~~

1 monitoring wells, and geothermal wells is prohibited. For the protection of the public and for the conservation of
 2 underground water resources, it is necessary that standards be set and maintained to insure that competency
 3 in the drilling and making of water wells, ~~and~~ monitoring wells, and geothermal wells in this state is obtained."
 4

5 **Section 3.** Section 37-43-102, MCA, is amended to read:

6 **"37-43-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions
 7 apply:

8 (1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and
 9 performs labor and services for a licensed water well contractor and whose duties are directly related to well
 10 drilling or drilling rig operation.

11 (2) "Board" means the board of water well contractors provided for in 2-15-3307.

12 (3) "Department" means the department of natural resources and conservation provided for in Title 2,
 13 chapter 15, part 33.

14 (4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density,
 15 movement, pressure, stratigraphy, or other physical properties of soil or rock.

16 (5) "Geothermal well" means a well drilled as part of a geothermal system that transfers energy either
 17 from the ground by way of a closed loop or from ground water by way of an open loop for the purpose of heating
 18 or cooling.

19 (6) "Geothermal well constructor" means a person who oversees construction, drilling, or installation of
 20 or abandonment of geothermal wells for geothermal systems.

21 ~~(5)(7)~~ (a) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water
 22 quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of
 23 ground water.

24 (b) The term does not include geotechnical borings, perk test holes, and ground water exploration holes
 25 that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

26 ~~(6)(8)~~ "Monitoring well constructor" means a natural person who installs monitoring wells.

27 ~~(7)(9)~~ (a) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
 28 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

29 (b) The term does not include:

30 (i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters

1 or for the purpose of stock watering or irrigation when the depth is 25 feet or less; or
 2 (ii) an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or
 3 products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for
 4 storing petroleum, natural gas, or other products.

5 ~~(8)~~(10) "Water well contractor" or "contractor" means a ~~natural~~ person who contracts on behalf of a firm,
 6 corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well, monitoring well,
 7 or geothermal well on lands other than the person's own for compensation.

8 ~~(9)~~(11) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site
 9 causing a water well to be drilled, altered, or rehabilitated."

10

11 **Section 4.** Section 37-43-202, MCA, is amended to read:

12 **"37-43-202. Powers and duties.** (1) The board may exercise the authority granted to it by this chapter.

13 (2) The board shall adopt rules and orders to effectuate this chapter.

14 (3) The board shall adopt rules to establish mandatory ~~water well~~ construction standards and
 15 enforcement procedures for water wells and geothermal wells for a geothermal system of open-loop design. The
 16 standards must address the protection of the drilling site; specifications for casing materials; materials and
 17 specifications for well screens; casing perforations; well development procedures; proper sealing and grouting;
 18 temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for
 19 yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and
 20 information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness
 21 and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate
 22 standards.

23 (4) The board shall adopt minimum standards regarding the construction, use, and abandonment of
 24 monitoring wells. The standards must be designed to protect the state's ground water resource from degradation
 25 by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown
 26 that noncompliance results in equal or greater protection of the ground water resource.

27 (5) The board shall adopt minimum standards regarding the construction of geothermal wells of
 28 closed-loop design.

29 ~~(5)~~(6) The board may request the department to inspect water wells, ~~or~~ monitoring wells, or geothermal
 30 wells drilled or being drilled, and the department has access to these wells at reasonable times.

1 ~~(6)~~(7) The board may establish a program for training apprentices and licensed or prospective water well
 2 contractors, water well drillers, ~~and~~ monitoring well constructors, and geothermal well constructors to more
 3 effectively carry out this chapter.

4 ~~(7)~~(8) The board shall set and enforce standards and rules governing the licensing, registration, and
 5 conduct of water well drillers, water well contractors, ~~and~~ monitoring well constructors, and geothermal well
 6 constructors.

7 ~~(8)~~(9) The board shall set fees commensurate with costs. The board may establish fees, including but
 8 not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board
 9 costs not related to specific programs may be equitably distributed as determined by the board. The board shall
 10 maintain records sufficient to support the fees charged for each program area.

11 ~~(9)~~(10) The rules of the board must be compiled in printed form for distribution to interested persons, for
 12 which the department may charge a fee. Sums realized from these sales must be deposited in the state special
 13 revenue fund for the use of the board.

14 ~~(10)~~(11) The board shall:

15 (a) authorize the department to issue licenses to qualified water well contractors, water well drillers, ~~and~~
 16 monitoring well constructors, and geothermal well constructors in this state;

17 **(b) authorize the department to issue a geothermal well constructor's endorsement to qualified water well**
 18 **contractors;**

19 ~~(b)~~(c) cause examinations to be made of applicants for licenses;

20 ~~(c)~~(d) take disciplinary action and issue orders pursuant to this chapter; and

21 ~~(d)~~(e) generally perform duties that will carry out this chapter.

22 ~~(11)~~(12) The board shall pay to the department its share of the assessed costs of the department in
 23 administering this chapter.

24 **(13) The board may grant temporary permits to qualified applicants and qualified water well contractors**
 25 **seeking licensure as geothermal well constructors.**"

26

27 **Section 5.** Section 37-43-302, MCA, is amended to read:

28 **"37-43-302. License required -- permits issued.** (1) (a) The drilling, making, or construction of water
 29 wells, ~~and~~ monitoring wells, or geothermal wells is declared to be a business and activity affecting the public
 30 interest and requiring reasonable standards of competence. Except as provided in 37-43-202(13) and subsection

1 (2) of this section, it is unlawful for any water well contractor, water well driller, ~~or~~ monitoring well constructor, or
 2 geothermal well constructor to construct, alter, or rehabilitate a water well, ~~or~~ a monitoring well, or a geothermal
 3 well without first having obtained a valid license ~~therefor~~ as provided for in this chapter.

4 (b) An individual who is licensed as a water well contractor is not required to have a separate water well
 5 driller's license to perform the actual construction work on ~~the well~~ water wells or a separate license to install
 6 monitoring wells.

7 (c) An individual who is licensed as a water well contractor is required to have a geothermal well
 8 constructor's endorsement to construct geothermal wells.

9 (2) A license is not required for:

10 (a) a person who drills, alters, or rehabilitates a water well, ~~or~~ monitoring well, or geothermal well on land
 11 that is owned or leased by the person if:

12 (i) the land is used by the person for farming, ranching, or agricultural purposes or as the person's
 13 residence;

14 (ii) the person obtains a permit from the board; and

15 (iii) the construction of the well conforms to the minimum construction standards for water wells, ~~or~~
 16 monitoring wells, or geothermal wells set by board rule; ~~or~~

17 (b) an apprentice ~~water well driller~~ who performs labor or services for a licensed water well contractor,
 18 ~~or a water well driller, a monitoring well constructor, or a geothermal well constructor~~ in connection with the drilling
 19 of a water well at the direction and under the personal supervision of a licensed water well contractor ~~or, water~~
 20 well driller-, monitoring well constructor, or geothermal well constructor; or

21 (c) a person who constructs or installs a geothermal system of horizontal design or a geothermal system
 22 that is less than 25 feet in depth from the natural surface of the ground.

23 (3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application
 24 containing the applicant's name and mailing address, the location of the proposed well, the nature of the
 25 applicant's ownership interest in the property on which the well is to be located, the construction or installation
 26 method to be used, and the use for the proposed well.

27 (b) The board shall promptly issue a permit if it finds that:

28 (i) the well is located on land that the applicant owns or leases and that the applicant uses for farming,
 29 ranching, or agricultural purposes or as the applicant's residence; and

30 (ii) the construction or installation method to be used meets the minimum standards for water wells ~~or,~~

1 monitoring wells, or geothermal wells set by board rule."

2

3 **Section 6.** Section 37-43-303, MCA, is amended to read:

4 **"37-43-303. Application -- fee.** (1) Except as provided in 37-43-302(2), a person desiring to engage in
5 the drilling, making, construction, alteration, or rehabilitation of one or more ~~water or monitoring wells for~~
6 ~~underground water~~ water wells, monitoring wells, or geothermal wells in this state shall first file an application with
7 the department for a license. The application must set forth the applicant's qualifications, the equipment proposed
8 to be used in the contracting, and other matters required by the board on forms adopted by the board.

9 (2) The department shall charge a fee prescribed by the board for filing an application. The application
10 shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state
11 special revenue fund for the use of the board.

12 (3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is
13 qualified to conduct water well, ~~or~~ monitoring well, or geothermal well construction operations. In the granting of
14 licenses, the board shall have due regard for the interest of this state in the protection of its underground waters."

15

16 **Section 7.** Section 37-43-305, MCA, is amended to read:

17 **"37-43-305. Examination and qualifications.** (1) Under board rules pertaining to the business of drilling
18 and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or
19 otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

20 (2) The qualifications for a water well contractor's license are:

21 (a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling
22 and construction of water wells;

23 (b) knowledge of types of water well construction;

24 (c) knowledge of types of drilling tools and their uses;

25 (d) knowledge of geology in its relation to well construction;

26 (e) possession of adequate equipment by the applicant to complete satisfactory water wells under the
27 standards of the board;

28 (f) financial responsibility of the applicant;

29 (g) successful completion of an examination given by the department; and

30 (h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water

1 well contractor or equivalent education, experience, or both, as determined by the board.

2 (3) The qualifications for a water well driller's license are:

3 (a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling
4 and water well construction;

5 (b) knowledge of types of water well construction;

6 (c) knowledge of types of drilling tools and their uses;

7 (d) knowledge of geology in its relation to well construction;

8 (e) employment by a licensed water well contractor;

9 (f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water
10 well contractor or driller or equivalent education, experience, or both, as determined by the board; and

11 (g) successful completion of an examination given by the department.

12 (4) The qualifications for a license to construct monitoring wells are:

13 (a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and
14 construction of monitoring wells;

15 (b) knowledge of types of monitoring well construction;

16 (c) knowledge of types of drilling tools used for monitoring wells and their uses;

17 (d) knowledge of geology;

18 (e) financial responsibility of the applicant;

19 (f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed
20 monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

21 (g) successful completion of an examination related specifically to drilling of monitoring wells given by
22 the department.

23 (5) The qualifications for a license to construct a geothermal well are:

24 (a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and
25 construction of geothermal wells;

26 (b) knowledge of types of geothermal well construction;

27 (c) knowledge of types of drilling tools used for geothermal wells and their uses;

28 (d) knowledge of geology;

29 (e) financial responsibility of the applicant;

30 (f) 1 or more years of experience in drilling geothermal wells under the direct supervision of a licensed

1 geothermal well constructor or equivalent education, experience, or both, as determined by the board; and
 2 (g) successful completion of an examination related specifically to the drilling of geothermal wells given
 3 by the department.

4 ~~(5)~~(6) The department shall give examinations at times and places the board determines. Failure of an
 5 applicant to successfully complete the examination disqualifies the applicant from making further application for
 6 a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application
 7 must be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not
 8 entitle the applicant to a refund of the fee."

9

10 **Section 8.** Section 37-43-306, MCA, is amended to read:

11 **"37-43-306. Bond to be required.** (1) The department, on issuance of a water well contractor's, ~~or~~
 12 monitoring well constructor's, or geothermal well constructor's license under this chapter, shall require, before
 13 the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate
 14 of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of \$4,000,
 15 conditioned that the licensee will comply with the rules of the board.

16 (2) A person who is licensed in more than one category need supply only one surety bond or its
 17 equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board,
 18 for \$4,000.

19 (3) A state or federal employee who is bonded by the state or federal government is not required to
 20 supply a bond during the course of employment with the state or federal government. A bond is required if the
 21 person ceases government employment.

22 (4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having
 23 more than two licensed water well contractors, ~~or monitoring well constructors,~~ geothermal well constructors may
 24 submit one bond in the amount of \$10,000 for the entire firm, corporation, or partnership."

25

26 **Section 9.** Section 37-43-307, MCA, is amended to read:

27 **"37-43-307. Annual renewal -- fee -- revocation for nonrenewal.** (1) The term for licenses issued
 28 under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee
 29 under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by
 30 the board.

1 (2) Subject to subsection (3), if a licensee does not apply for renewal of the license before the first day
 2 of a license year and remit to the department the renewal fee, the license must be suspended by the board.
 3 Subject to subsection (3), if the license remains suspended for a period of more than 30 days after the first day
 4 of a license year, it must be revoked by the board. However, the department, prior to this revocation, shall notify
 5 the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the
 6 board on the license; by mailing notice to the licensee at the address appearing for the licensee in the records
 7 and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has
 8 occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license
 9 has been revoked through the person's own fault desires to engage in the business of water well drilling, or
 10 monitoring well construction, or geothermal well construction in this state or contracting for those services, the
 11 person shall apply under 37-43-303. Notice of suspension must be given to a licensee when the suspension
 12 occurs.

13 (3) This section may not be interpreted to conflict with the provisions of 37-1-138."
 14

15 **Section 10.** Section 37-43-308, MCA, is amended to read:

16 "**37-43-308. Reciprocity.** If a person holding a license entitling the person to drill water wells, or
 17 monitoring wells, or geothermal wells in another state applies for a Montana water well contractor's, water well
 18 driller's, or monitoring well constructor's, or geothermal well constructor's license, the board may waive the
 19 apprenticeship requirements and examination requirements if it finds that the standards and requirements of the
 20 state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require
 21 the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling
 22 of water wells, or monitoring wells, or geothermal wells in this state."
 23

24 **Section 11.** Section 37-43-314, MCA, is amended to read:

25 "**37-43-314. Injunctions.** The board may maintain an action to enjoin a person from engaging in the
 26 drilling, making, or construction of water wells, or monitoring wells, or geothermal wells until a license to practice
 27 is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court."
 28

29 **Section 12.** Section 37-43-401, MCA, is amended to read:

30 "**37-43-401. ~~No action~~ Action or counterclaim not to be maintained except by licensee. ~~No An~~**

1 action or counterclaim ~~shall~~ may not be maintained by any water well contractor, water well driller, ~~or~~ monitoring
 2 well constructor, or geothermal well constructor in any court in this state with respect to any agreement, work,
 3 labor, or materials for which a license is required by this chapter or to recover the agreed price or any
 4 compensation under ~~any such~~ the agreement or for any ~~such~~ work, labor, or materials for which a license is
 5 required by this chapter without alleging and proving that ~~such~~ the water well contractor, water well driller, ~~or~~
 6 monitoring well constructor, or geothermal well constructor had a valid license at the time of making ~~such~~ the
 7 agreement and of supplying ~~such~~ the labor, work, or materials."

8

9 **Section 13.** Section 37-43-402, MCA, is amended to read:

10 **"37-43-402. Completion of contracts by successor in interest of licensee.** Upon the transfer by
 11 operation of law to the successor in interest of the rights of a licensed water well contractor's ~~or monitoring well~~
 12 ~~constructor's rights~~ contractor, monitor well constructor, or geothermal well constructor under a contract or
 13 agreement for the drilling, making, or construction of a water well, ~~or~~ monitoring well, or geothermal well, the
 14 successor in interest to ~~such~~ the rights ~~shall~~ must be permitted to engage in the business of drilling, making, or
 15 ~~construction of~~ constructing water wells, ~~or~~ monitoring wells, or geothermal wells to the extent necessary to
 16 perform the obligations of ~~said~~ the licensee under ~~such~~ the contract or agreement, provided that ~~such~~ the
 17 engagement in business ~~shall~~ must be under the supervision of a licensed water well contractor, ~~or~~ monitoring
 18 well constructor, or geothermal well constructor."

19

20 **NEW SECTION. Section 14. Codification instruction.** [Section 1] is intended to be codified as an
 21 integral part of Title 37, chapter 43, part 1, and the provisions of Title 37, chapter 43, part 1, apply to [section 1].

22

- END -