

CHAPTER 401

H.B. No. 1347

AN ACT

relating to the regulation of certain drillers by the Texas Water Well Drillers Board.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended by amending Subsections (e), (f), (g), and (i), and by adding Subsections (o), (p), (q), (r), (s), (t), and (u) to read as follows:

(e) "Water well" shall mean any artificial excavation constructed for the purpose of exploring for or producing *groundwater* [~~ground-water~~]. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce *groundwater* [~~ground-water~~]. *The term shall not include any injection water source well regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code.*

(f) "Water well driller" shall mean any person, [~~(including an owner, operator, contractor, or [and] drilling supervisor,)]~~ who engages [~~for compensation~~] in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a licensed [~~water well~~] driller and is not primarily responsible for the drilling operations.

(g) "Licensed [~~water well~~] driller" shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of this Act.

(i) "Well log" shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board *or the commission* [~~, on forms prescribed by the Board~~].

(o) "Dewatering well" means an artificial excavation constructed to produce *groundwater* to cause a lowering of the water table or potentiometric surface. *The term shall not include any dewatering well which is used for the production of, or to facilitate the production of, any minerals under a State regulatory program.*

(p) "Monitoring well" means an artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. *The term shall not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.*

(q) "Well" means a water well, injection well, dewatering well, or monitoring well.

(r) "Injection well driller" means a person, including an owner, operator, contractor, or drilling supervisor, who engages in the drilling, boring, coring, or construction of an injection well as defined by Section 2(n) of this Act, but does not include a person who drills, bores, cores, or constructs an injection well under the direct supervision of a licensed injection well driller and who is not primarily responsible for the drilling operation.

(s) "Monitoring well driller" means a person, including an owner, operator, contractor, or drilling supervisor, who engages in the drilling, boring, coring, or construction of a monitoring well.

(t) "Dewatering well driller" means a person, including an owner, operator, contractor, or drilling supervisor, who engages in the drilling, boring, coring, or construction of a dewatering well, but does not include a person who drills, bores, cores, or constructs a dewatering well under the direct supervision of a licensed dewatering well driller and who is not primarily responsible for the drilling operation.

(u) "Driller" means a water well driller, injection well driller, dewatering well driller, or monitoring well driller.

SECTION 2. Subsections (a) and (j), Section 3, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) It shall be unlawful for any person to act as or to offer to perform services as a [~~water well or injection well~~] driller without first obtaining a license in the manner prescribed herein and pursuant to the rules of the Water Well Drillers Board.

(j) Each applicant shall have been a resident of the State of Texas for not less than 90 days prior to making application for a license as a [~~water well~~] driller *under this Act*.

SECTION 3. Section 5, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. REPORTING OF WELL LOGS. (a) Every licensed [~~water well~~] driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log *as provided by Board rule on forms prescribed by the commission*, and within 60 [30] days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the commission, and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a commission copy, shall include the name, mailing address, and telephone number of the Board and the *commission* [~~department~~].

(b) *The commission may adopt rules relating to the information to be submitted.*

(c) The well logs [log] required herein shall at the request in writing to the commission, by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

SECTION 4. Subsections (b), (c), (d), and (m), Section 6, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Six (6) members shall be [~~water well~~] drillers who have the following qualifications:

(1) Each such driller shall be a citizen of the State of Texas.

(2) Each such driller shall have experience in the [~~water~~] well drilling business prior to his appointment.

(3) Each such driller shall be conversant in [~~water~~] well drilling, completion and plugging methods and techniques.

(4) Each such driller shall be a licensed [~~water well~~] driller.

(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

A. Gulf Coast Area.

B. Trans-Pecos Area.

C. Central Texas Area.

D. North-East Texas Area.

E. Panhandle-South Plains Area.

(6) It is further provided that no more than one (1) driller member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the [~~water~~] well drilling business.

(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of [~~water~~] well drilling; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of [~~water~~] well drilling.

(d) A Board member or an employee of the Board or the commission connected with the administration of this Act may not be an officer, employee, or paid consultant of a

trade association in the [water] well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(m) The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques and of *groundwater* [ground-water] formations to the extent that the performance by such person of services as a [water-well] driller would create a serious risk of polluting fresh water. *The commission may prescribe additional requirements for the examination of monitoring well drillers, and may prescribe additional requirements relating to water conservation for the examination of dewatering well drillers.* Each [Provided, however, that each] applicant shall have the right to have such examination given him orally, in lieu of in writing.

SECTION 5. Section 7(a), The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Board shall adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of this Act, including all rules governing applications for a license, qualifications of applicants, marking of [water] well drilling rigs and equipment, standards of conduct for licensed [water-well] drillers and all rules governing procedure and practice before the Board. Be it further provided, however, that before the Board may adopt any substantive rule under this Act, it must mail a copy of the proposed rule or amendment together with an informative summary of the rule or amendment to each person licensed under this Act, at least twenty (20) days prior to the proposed adoption date of such a proposed rule.

SECTION 6. Section 8(a), The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the Board under this Act. Grounds for revocation, suspension, probation, or reprimand shall include intentional misstatement or misrepresentation of fact on an application or well log; failure to keep and transmit [water] well logs as provided herein; failure to advise a person for whom a well is being drilled that injurious water has been encountered, is a pollution hazard, and must be forthwith plugged in an acceptable manner; or being found to be an incompetent [water-well] driller.

SECTION 7. Section 8A(a), The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If a person fails to comply with a provision of this Act or a rule or regulation adopted by the board or the *commission* [department] under this Act, the person may be assessed a civil penalty by the board in an amount not to exceed \$2,500 [for each act of noncompliance].

SECTION 8. Section 12, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), as amended by Chapters 437 and 795, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

Sec. 12. CIVIL PENALTY. Any person who fails to comply with the provisions of this Act, or with any rule or regulation promulgated by the board or the *commission* [department] under this Act, shall be subject to a civil penalty of not less than \$200 and not more than \$1,000 [Ten Thousand Dollars (\$10,000)] for each day of noncompliance and for each act of noncompliance, as the court may deem proper. A firm, partnership, association, corporation, or other group or combination with which the person was connected in relation to the act of noncompliance is also subject to the civil penalty. The action may be brought by the board in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides. Full authority is also given the executive director to enforce by injunction, mandatory injunction or other appropriate remedy, in courts having jurisdiction in the county where the offending activity is occurring, the provisions of this Act. At the request of the board or the executive director, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the

injunctive relief and civil penalty, authorized in this section. Any party to a suit may appeal from a final judgment as in other civil cases. The obtaining of a license under the provisions of this Act by a person shall not act to relieve that person from liability under any statutory law or the Common Law.

SECTION 9. Section 13, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. MARKING RIGS WITH IDENTIFICATION NUMBER. It is the duty of all [~~licensed water well~~] drillers to see that all rigs used by them or their employees in the [~~water~~] well drilling business are marked with legible identification numbers at all times; the "identification number" to be used on the rigs shall be the "license number" which appears on the driller's license; the Board shall set out in detail in its rules the specific method and manner for marking the rigs. Any licensed driller has thirty (30) days to comply with the regulations provided in this section.

SECTION 10. Section 14, The Water Well Drillers Act (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. PLUGGING OF WATER WELLS. (a) It shall be the duty of each driller licensed under this Act to complete a well under standards and procedures adopted by the *commission* [~~department~~].

(b) It shall be the duty of each driller licensed under this Act to give notice to the *commission* and the landowner or person having a well drilled when the driller encounters water injurious to vegetation, to land, or to fresh water, and the well must be plugged, *repaired*, or properly completed in order to avoid injury or pollution. The driller shall assure that the well is plugged, *repaired*, or *properly* completed under standards and procedures adopted by the *commission* [~~department~~].

(c) *Not later than six (6) months after the date on which a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person who possesses an abandoned or deteriorated well shall ensure that the well is plugged or capped under standards and procedures adopted by the commission. A licensed driller who knows of an abandoned or deteriorated well shall notify the landowner or person possessing the well that the well must be plugged or capped in order to avoid injury or pollution. For the purposes of this subsection, a well is considered to be abandoned if it has not been used for six (6) months, and is considered to be deteriorated if its condition will cause, or is likely to cause, pollution of any water in this State, including groundwater.*

(d) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the executive director; appropriate forms shall be furnished by the executive director upon request.

SECTION 11. (a) This Act takes effect September 1, 1987.

(b) A person is not required to be licensed under this Act as a monitoring well driller or dewatering well driller until January 1, 1988.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1987, by a non-record vote. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 17, 1987.

Effective Sept. 1, 1987.

CHAPTER 402

H.B. No. 1364

AN ACT

providing for agreements in aid of turnpike projects between the State Department of Highways and Public Transportation or counties, political subdivisions (including cities), or local governmental entities and the Texas Turnpike Authority, and the issuance of bonds.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature hereby finds that it is a benefit to the state and its inhabitants to encourage the construction, improvement, maintenance, and operation of turnpike projects by the Texas Turnpike Authority and in connection therewith to authorize joint venture agreements between the State Department of Highways and Public Transportation and the authority and agreements between local governmental entities and the authority.

SECTION 2. In this Act the following words shall be defined:

- (1) "Authority" shall mean the Texas Turnpike Authority or any successor thereto.
- (2) "Bonds" shall mean and include all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution.
- (3) "Commission" shall mean the State Highway and Public Transportation Commission or any successor thereto.
- (4) "Cost" shall have the meaning described in Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes).
- (5) "Department" shall mean the State Department of Highways and Public Transportation or any successor thereto.
- (6) "Local governmental entity" shall mean any county, political subdivision of a county, a number of adjoining counties, political subdivision of the state, defined district, town, village, or municipal corporation, and except for the purposes of Section 5 hereof, includes any nonprofit corporations, including but not limited to transportation corporations created under the Texas Transportation Corporation Act (Article 1528l, Vernon's Texas Civil Statutes).
- (7) "Turnpike projects" shall have the meaning described in Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes).

SECTION 3. (a) Upon a finding by the commission that a project is immediately needed to relieve traffic congestion on existing state highways or such project, if constructed in the shortest possible time, will provide to the state a free highway more economically than if the department constructed such project, the commission on behalf of the department is authorized to enter into agreements with the authority, and the authority is authorized to enter into agreements with the department, for the purpose of joint ventures with respect to the sharing of costs of such project as a turnpike, toll road, or toll bridge to be owned and operated by the authority. Such agreements shall not exceed 40 years in term and may be payable from any money lawfully available to the department, and may be subject to legislative appropriation if the source of payment is intended to be derived from sources that require legislative appropriations. Such agreements may also specify the length of time that the applicable project will remain a toll facility, and the use of revenues therefrom, may provide for the use of revenues from any project for a project or projects that are extensions of such original project or extensions thereto or are part of an integrated system of turnpike projects, and shall provide that when the project is no longer a toll facility it will become a part of the state highway system.

(b) The authority is authorized to issue bonds payable from, in whole or in part, payments to be made pursuant to a contract.

SECTION 4. It is recognized that existing federal law permits federal funds to be used for that portion of costs of turnpike projects that are toll bridges and federal law

may hereafter permit federal funds to be used for all or any portion of the costs of turnpike projects. Accordingly, the department is, without limiting the generality of Section 3 hereof, authorized to use federal funds for any purpose described in this Act.

SECTION 5. Under authority of Subsection (b) of Article III, Section 52, of the Texas Constitution local governmental entities may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the authority, not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within such local governmental entity, except that the total indebtedness of any city or town shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of turnpike projects of the authority, or in aid thereof.

SECTION 6. Under authority of Subsection (c) of Article III, Section 52, of the Texas Constitution, any county is authorized to issue its bonds in an amount not to exceed one-fourth of the assessed valuation of the real property in the county for the construction, maintenance, and operation of all or any portion of turnpike projects of the authority, or in aid thereof, upon a vote of the majority of the qualified voters voting thereon. Such county may levy and collect taxes to pay interest on such bonds as it comes due and provide a sinking fund for the redemption of such bonds.

SECTION 7. Within any constitutional limitations and in addition to the powers granted in Sections 5 and 6 hereof, local governmental entities may issue bonds or enter into and make payments under agreements with the authority, not to exceed 40 years in term, and pledge revenues from any available source, including annual appropriations, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the purposes of construction, maintenance, and operation of any portion of turnpike projects of the authority.

SECTION 8. (a) This Act is cumulative of all laws affecting the issuance of bonds by local governmental entities, particularly, but not by way of limitation, provisions of Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), are hereby made applicable to and shall apply to all bonds issued to this Act, regardless of any classification of any such local governmental entities thereunder; provided, however, in the event of any conflict between such laws and this Act, the provisions of this Act shall prevail.

(b) Any election held as required by or to permit action pursuant to this Act shall be held generally in conformance with Chapter 1, Title 22, Vernon's Texas Civil Statutes, or other law applicable to the local governmental entity.

(c) This Act is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any such law conflicts with this Act, the provisions of this Act shall prevail.

(d) This Act is cumulative of all laws affecting the authority, and the authority is authorized to enter into all agreements necessary or convenient to effectuate the purposes of this Act. Particularly, but not by way of limitation, the provisions of Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6674v, Vernon's Texas Civil Statutes), Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), and Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), are hereby made applicable to the bonds issued by the authority hereunder.

SECTION 9. This Act shall be liberally construed in conformity with the intention of the legislature herein expressed.

SECTION 10. The enactment of this Act prior to the approval of any constitutional provision or federal act with respect to any portion of the subject of this Act shall not affect the validity of this Act, and this Act shall nevertheless become effective since, in

the judgment of the legislature, the department, the authority, and local governmental entities have the authority to jointly participate in the cost of many projects under existing constitutional provisions.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 30, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1364 on May 26, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 22, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 17, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.