

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 CS Regulation of Wells
SPONSOR(S): Stansel
TIED BILLS: IDEN./SIM. BILLS: SB 1090

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Water & Natural Resources Committee, Military & Veteran Affairs Committee, Agriculture & Environment Appropriations Committee, State Resources Council, and an empty row.

SUMMARY ANALYSIS

Committee Substitute for House Bill 1063 addresses several issues relating to water well contractors. Specifically, the committee substitute:

- Amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator...
Amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived...
Provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders...
Imposes a fine up to \$5,000 on persons who drill water wells without a license.

The committee substitute does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This committee substitute allows certain well water contractor licensees to avoid paying late fees and penalties associated with license renewal under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Law

Water Well Contractor License

Part III of Chapter 373, F.S., currently regulates the construction, repair, and abandonment of water wells. Pursuant to s. 373.302, F.S., the Legislature has found that “the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment.” Accordingly, s. 373.306, F.S., prohibits the construction, repair or abandonment of water wells that are inconsistent with Part III of Chapter 373, F.S.

A permit is required for the construction, repair, or abandonment of any water well.¹ In addition, anyone who wants to engage in business as a water well contractor must be licensed by the water management district. The licensure requirements for water well contractors are set forth in s. 373.323, F.S. In addition, the Department of Environmental Protection (DEP) has adopted rules that set forth the requirements for water well contractor licensure.² An applicant for a water well contractor license must submit an application to the water management district. The applicant must be at least 18 years of age and have a minimum of two years experience in the construction, repair, and abandonment of water wells.³ The applicant is required to take and pass an examination that has been prepared by the DEP. The examination is required to test: (1) the applicant’s knowledge of rules and regulations of Part III of Chapter 373, F.S., (2) the applicant’s ability to construct, repair, and abandon water wells, and (3) the applicant’s ability to supervise, direct, manage, and control the contracting activities of a water well contracting business.⁴ The water management district is required to issue a water well contractor license to any qualified applicant who passes the examination, pays the required application fee, and who completes at least 12 hours of approved course work.⁵

Renewals

Section 373.324, F.S., addresses issues relating to the renewal of water well contractor licenses. The DEP has adopted rules establishing a procedure for the biennial review of all licenses, and each water management district has incorporated the DEP rules by reference.⁶ The renewal requires the submittal of an application for renewal and proof of the completion of 12 classroom hours of continuing education during the biennial cycle. Any license not renewed at the end of the biennial cycle automatically reverts to an inactive status. Such inactive licenses can be reactivated only by meeting the requirements of s. 373.325, F.S., which require the payment of renewal and penalty fees. A license that has been inactive

¹ s. 373.313, F.S.

² Rule 62-531, Florida Administrative Code

³ s. 373.323(3), F.S.

⁴ s. 373.323(4), F.S.

⁵ s. 373.323(5), F.S.

⁶ Rule 62-531.330, Florida Administrative Code

for more than one year can be reactivated only by applying for licensure under the provisions of s. 373.323, F.S.

Penalties

Under s. 373.336, F.S., it is unlawful for any person to practice water well contracting without an active license. Any person found to be in violation of this provision is guilty of a misdemeanor of the second degree punishable as provided in s. 775.082 or s. 775.083, F.S.

Effect of Proposed Changes

Water Well Contractor

Committee Substitute for House Bill 1063 amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a facilitator when dealing with other appropriately licensed contractors for additional incidental work, such as electrical, fencing, construction of a pump house or vault, and landscaping that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less.

This provision allows a licensed water well contractor to ensure all primary and incidental work on a water well project is completed without the requirement of contracting/employing a general contractor under ch. 489, F.S. to supervise the project.

License Renewal

According to statute, it appears a license can be in one of three states: active, inactive, and expired. An active license is a license that is issued to a licensee that has completed all tests (in the case of a new or initial license) or continuing education (in the case of a renewal), and has paid all associated fees by a water management district. A licensee that misses the deadline for continuing education and renewal fees will have a license that lapses into inactive status. The licensee in that case may still convert their license to active status after meeting regular renewal requirements and paying all associated fees, to include penalties and late fees.

However, if a license remains on inactive status for too long, it will expire. The licensee in that situation will need to reapply for a new license and pay the non-refundable application fee, as well as take the coursework and tests again required for an initial or new license.

This committee substitute amends the license renewal provisions of s. 373.324, F.S., to direct the department to establish a fee structure (not to exceed \$20 per credit hour) for continuing education requirements. It allows the department to delegate the responsibilities of these requirements to the water management districts or to contract with private entities for such responsibilities. It further requires that the continuing education requirements for a license renewal be waived if the contractor obtained his first license within 180 days before the end of the biennial licensing cycle.

This committee substitute also provides that a servicemember, as defined in s. 250.01, F.S., or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted an active license extension for up to 180 days after the servicemember's return from those same orders to his or her Florida residence. During the 180-day extension, the eligible licensee may meet the statutory renewal requirements without penalty. The granting of the extension does not waive the requirement for the licensee to meet all renewal requirements to maintain an active license.

This provision appears to allow for an extension under any situation in which a servicemember or a servicemember and his or her spouse find themselves unable to renew their water well contractor license in a timely manner if the servicemember is on military orders. In other words, the extension may be granted if the servicemember is temporarily deployed on military orders or if the servicemember

is permanently moved to a new duty station on military orders. This provision also stipulates that in order for a licensee to be granted a waiver under this subsection, the servicemember must provide military orders or a letter from his or her commander as proof of eligibility.

Penalties

In addition to the penalties currently provided in s. 373.336, F.S., the bill imposes a fine up to \$5,000 on persons who drill water wells without a license. The policies and procedures for the enforcement of such fines are to be established by the DEP.

C. SECTION DIRECTORY:

- Section 1. Amends s. 373.323, F.S., to provide that a licensed water well contractor may facilitate work, with other licensed contractors, that is incidental to the water well construction, repair, or abandonment.
- Section 2. Amends s. 373.324, F.S., to address provisions relating to fees, continuing education requirements and the renewal of licenses for water well contractors.
- Section 3 Amends s. 373.333, F.S., to provide penalties for persons drilling wells without a license.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None
- 2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: None
- 2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This committee substitute does not reduce the percentage of a state tax shared with counties or municipalities. This committee substitute does not reduce the authority that municipalities have to raise revenues.

2. Other:

There do not appear to be any constitutional issues with this committee substitute.

B. RULE-MAKING AUTHORITY:

This committee substitute does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Committee on Military & Veteran Affairs approved two amendments to this bill.

- Amendment #1 clarifies that a licensed water well contractor's responsibility is to act as a facilitator and not as a prime contractor when dealing with other appropriately licensed contractors for the electrical, fencing, construction of a pump house or vault, and landscaping work that is necessary to complete construction, repair, or abandonment of a water well that is 100 square feet or less. The amendment also clarifies that nothing in this part of statute authorizes a licensed water well contractor to perform any services or work for which a license under ch. 489 is required.
- Amendment #2 provides that a servicemember or his or her spouse whose water well contractor license expires while the servicemember is on military orders, which move the servicemember more than 35 miles away from his or her Florida residence, is granted a 180-day extension upon return from those same orders to meet the license renewal requirements without penalty. However, the extension is waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.

The committee then reported the bill favorably by a vote of 7 to 0.

On April 11, 2006, the Agriculture and Environment Appropriations Committee approved two amendments to this bill:

- Amendment #1 creates a fee structure for continuing education requirements. It also allows for delegation of these requirements to the water management districts or for contracting out the responsibilities for them.
- Amendment #2 strikes the exception for the extension being waived if the licensee engages in water well contracting in the private sector for profit prior to completing all renewal requirements.