

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063

Regulation of Wells

SPONSOR(S): Stansel

TIED BILLS:

IDEN./SIM. BILLS: SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u>8 Y, 0 N</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Military & Veteran Affairs Committee</u>	<u></u>	<u>Marino</u>	<u>Cutchins</u>
3) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill addresses several issues relating to water well contractors. Specifically, the bill:

- Amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a *prime* contractor if the majority of the work to be performed under a contract is within the scope of the water well contractor's license.
- Amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived if the contractor has obtained his first license within 180 days before the end of the biennial licensing cycle.
- Provides that the license of any water well contractor who is serving on active duty as a member of the U.S. Armed Forces shall be kept in an active-license status as long as the contractor is an active-duty member of the U.S. Armed Forces and for a period of 6 months after discharge from active-duty status.
- Requires the DEP to adopt rules that would exempt from the license renewal requirements any licensed water well contractor who is a spouse of active-duty member of the U.S. Armed Forces when the family is required to relocate out of state due to an active-duty assignment.
- Imposes a fine up to \$5,000 on persons who drill water wells without a license.

The bill 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 bill 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 a water well which is 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 which 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 for more than one year can be reactivated only by applying for licensure under the provisions of s. 373.323, F.S.

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

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

The bill amends the water well contractor licensure requirements of s. 373.323, F.S., to allow a licensed water well contractor to act as a prime contractor if the majority of the work to be performed under a contract is within the scope of the water well contractor's license. In such a situation, the licensed water well contractor may contract with another water well contractor for the remaining work or he may contract with another contractor for work that does not require a water well contracting license.

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. 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 tests again required for an initial or new license.

The bill amends the license renewal provisions of s. 373.324, F.S., to require that the continuing education requirements for a license renewal be waived if the contractor has obtained his first license within 180 days before the end of the biennial licensing cycle.

The bill provides that the license of any water well contractor who is serving on active duty as a member of the U.S. Armed Forces shall be kept in an active-license status as long as the contractor is an active-duty member of the U.S. Armed Forces and for a period of 6 months after discharge from active-duty status.

The bill requires the DEP to adopt rules that would exempt from the license renewal requirements any licensed water well contractor who is a spouse of active-duty member of the U.S. Armed Forces when the family is required to relocate out of state due to an active-duty assignment.

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 act as a prime contractor.

Section 2. Amends s. 373.324, F.S., to address provisions relating to 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:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Environmental Protection to adopt changes to current rules that require that the continuing education requirements for a license renewal be waived if the contractor obtains his first license within 180 days before the end of the biennial licensing cycle.

The bill also requires DEP to adopt rules that would exempt from the license renewal requirements any licensed water well contractor who is a spouse of an active-duty member of the U.S. Armed Forces when the family is required to relocate out of state due to an active-duty assignment.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a licensed water well contractor may act as a "prime contractor" if the majority of the work to be performed under a contract is within the scope of the water well contractor's license.

The bill does not provide a definition of "prime contractor," nor is there a definition of this term found in any other section of the Florida Statutes. Under Chapter 489, F.S., construction contracting is

regulated by the Department of Business and Professional Regulation. The term "general contractor" is defined in s. 489.(3)(a), F.S., as "a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113."

Allowing a water well contractor to act as a "prime contractor" may result in conflicts with the provisions of Chapter 489, F.S., relating to the licensing of general contractors.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None