

As Engrossed: 1/14/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL 1440

4 **By: Representatives Stephens and O. Miller**

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7

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 17, CHAPTER 43 TO ADD
9 A NEW SUBCHAPTER TO REDUCE THE NUMBER OF WATER WELL
10 CONTRACTOR BONDS POSTED BY LICENSED WATER WELL
11 CONTRACTORS; TO CREATE A WATER WELL CONSTRUCTION
12 COMMISSION INDEMNITY FUND; TO CREATE AN ABANDONED WELL
13 FUND; TO REPEAL SUBSECTIONS (a) AND (c) OF ARKANSAS CODE
14 17-43-309 CONCERNING WATER WELL CONTRACTOR'S BONDS; AND
15 FOR OTHER PURPOSES."

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. Arkansas Code Title 17, Chapter 43 is amended to add the
20 following new subchapter:

21

22 "SUBCHAPTER 4.

23

24 17-43-401. This subchapter shall be known as the 'Water Well
25 Construction Commission Indemnity Act'.

26

27 17-43-402. Definitions. As used in this subchapter:

28 (a) 'Commission' means the Arkansas Water Well Construction Commission;

29 (b) 'Water well construction' means all acts necessary to obtain water
30 from wells, including initial contracting, construction, pump installation,
31 repair, abandonment, plugging and destruction.

32 (c) 'Amount of the contract or water well contract' means the cost of
33 the construction of the well, including, but not limited to, the cost of
34 drilling, casing, screens, grout, seals, and pump installation, and excluding
35 the cost of systems employed, constructed, or installed on the discharge side

1 of the pressure tank or beyond the point of discharge from the pump when no
2 tank is employed, or to pivot systems, ditches, pumping stations, structures,
3 or other things for which the contractor need not hold a water well contractor
4 license, or registration certificate to install or construct.

5 (d) 'Corrective action' means the minimal action required to bring a
6 water well or pumping equipment into compliance with current regulations or to
7 eliminate a hazard or reduce the potential for ground water contamination.

8 (e) 'Damages' means direct, actual, compensatory damages relating to
9 the actual loss of a water well or pumping equipment and items included as a
10 part of the amount of the contract, as herein defined. Rescissory damages
11 shall not include damages to property other than the water well or pumping
12 equipment. Damages does not include criminal damages to property except where
13 damage was to the water well or pumping equipment by a license holder.
14 Damages does not include punitive damages.

15

16 17-43-403. Powers & Duties. The commission shall have the following
17 powers and duties:

18 (1) To adopt, promulgate, and enforce rules and regulations regarding
19 Water Well Contractor License Bonds, Bond Fees, Water Well Contractor
20 Licenses, and Collections for Damages resulting from failing to comply with
21 regulatory requirements;

22 (2) To administer and enforce all laws, rules and regulations relating
23 to water well construction, the Water Well Construction Commission Indemnity
24 Fund, and the Abandoned Well Fund;

25 (3) To use appropriate legal remedies to recover costs to public funds
26 administered by the commission, assess and collect fines, to distribute funds
27 for corrective action;

28 (4) To establish and set bond fees;

29 (5) To establish water well contractor bonding requirements; (6) To
30 establish procedures and forms for the submission, review, and approval of
31 applications and notifications;

32 (7) To accept and administer funds and grants as may be available to the
33 commission for planning, development, implementation, enforcement, remedial
34 action, and preventive action for an abandoned well program;

35 (8) To establish and promulgate rules establishing the amount of water

1 well contractor's bonds and bond fees based on a contractor's past performance
2 or violations of the rules and regulations under this chapter, construction
3 methods, type or class of construction, and business practices. The
4 commission shall not exempt any one person or group of persons from the
5 bonding or bond fee requirements of this subchapter;

6 (9) Perform other such duties consistent with the purposes of this
7 chapter.

8
9 17-43-404. Regulations Generally. Any and all proceedings taken under
10 this subchapter shall be subject to the Administrative Procedure Act, unless
11 otherwise provided by provisions contained herein. *Prior to implementing any
12 rules or regulations promulgated by the Commission, the Commission shall file
13 the rules and regulations with the Joint Interim Committee on Agriculture and
14 Economic Development for its review.*

15
16 17-43-405. Arkansas Water Well Construction Commission Indemnity Fund.

17 (a) There is hereby established a cash fund to be known as the 'Arkansas
18 Water Well Construction Commission Indemnity Fund', hereinafter referred to
19 as 'Indemnity Fund'.

20 (b) The Indemnity Fund shall consist of any funds attributable to
21 collections made or recovered under this subchapter or funds appropriated by
22 the General Assembly including all interest earned upon money deposited into
23 the fund, and money recovered by the commission having been paid from the
24 fund.

25 (c) The fund will be administered by the executive secretary who shall
26 make disbursements from the indemnity fund as authorized by the commission.

27 (d) Money in the fund may be expended by the executive secretary solely
28 for the following purposes;

29 (1) To pay any costs associated with the operation of the fund;

30 (2) To pay reasonable and necessary costs and expense of the
31 commission for taking corrective action;

32 (3) To pay damages;

33 (4) To transfer amounts greater than fifty thousand dollars
34 (\$50,000.00) on June 30 of each year.

35 (e) All funds, in the Indemnity Fund, in excess of fifty thousand

1 dollars (\$50,000.00) on June 30 of each year shall be transferred into the
2 Abandoned Well Fund.

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4 17-43-406. Procedures. (a) All persons having been damaged, by a
5 licensed water well contractor or person in his employ, by reason of violation
6 of any provisions set out in this chapter or the rules and regulations shall
7 be paid the amount of damages specified by the commission, after a proper
8 hearing, from the Water Well Construction Commission Indemnity Fund, provided:

9 (1) All administrative remedies have been exhausted with the
10 commission and so certified by the commission;

11 (2) The limitation of damages paid from the fund shall not exceed
12 twenty thousand dollars (\$20,000.00), or one half (1/2) the balance of the
13 Indemnity Fund, whichever is less;

14 (3) All measures to recover damages from other means and sources,
15 such as other performance or licensing bonds, and civil action have been
16 exhausted;

17 (4) The amount paid for damages shall not exceed the amount of
18 the contract, as herein defined, or the cost of corrective action, whichever
19 is less;

20 (5) No payment for corrective action or damages shall be paid
21 from the fund if the contractor, at the time of well construction, was not
22 properly licensed.

23

24 17-43-407. Abandoned Well Fund. There is hereby established a cash
25 fund to be known as the 'Abandoned Well Fund' to be used by the commission
26 for the administration of an Abandoned Well Program. The fund shall consist
27 of funds transferred by the commission pursuant to this subchapter federal
28 grants, private donations and matching funds or other funds appropriated by
29 the General Assembly for the execution of an Abandoned Well Program.

30

31 17-43-408. Indemnity Requirement. (a) All persons engaged in the
32 business of water well construction shall obtain a water well contractor
33 license as required by this chapter and shall pay a bond fee to the commission
34 in lieu of posting bond. Upon application for license and payment of a bond
35 fee, the contractor binds and indemnifies himself and his successor to the

1 commission for the use and benefit of the public the full penal sum of any
2 amount paid for damages, from the Indemnity Fund, up to twenty thousand
3 dollars (\$20,000.00) per year. In no event shall a claim for damages be
4 processed for consideration for well construction five (5) years after
5 completion or damages awarded in excess of the amount of the contract.

6 (b) The commission shall deposit said fees into one or more banks
7 qualifying for the deposit of public funds.

8 (c) Claims paid from the Indemnity Fund shall be recovered by the
9 commission when practical. The commission may recover damages paid from the
10 fund by filing action in the circuit court of Pulaski County and if the
11 commission prevails in the action, the defendant, shall be directed to pay,
12 reasonable attorneys' fees, cost of the commission and any disbursements from
13 the Indemnity Fund.

14 (d) The commission shall not license as a water well contractor any
15 person who has not paid a bond fee, or license any person whose acts or
16 omissions caused a disbursement from the Indemnity Fund which is not fully
17 recovered.

18 (e) For any water well contract that exceeds twenty thousand dollars
19 (\$20,000.00), the contractor shall post a performance bond equal to the amount
20 of the contract or may post a water well contractor's license bond or may hold
21 a general contractor's license, pursuant to §§ 17-22-101 et seq. In no
22 instance shall a water well contractor's license bond be accepted in lieu of
23 submission of paying a bond fee. A water well contractor license bond may be
24 required, by the commission, in addition to paying a bond fee, as a short term
25 punitive measure. This section shall not be construed to require a water well
26 contractor engaged in water well construction to obtain a general contractor's
27 license.

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29 17-43-409. Fees. (a) All bond fees shall be due at the time of renewal
30 or application for a water well contractor license.

31 (b) Beginning August 1, 1991, the bond fee shall be one-half (1/2)
32 percentage of the amount of the water well contractor's current bond
33 requirement and not less than fifty dollars (\$50.00.) For subsequent years,
34 the commission may set bond fees by regulation. In no instance shall the bond
35 fee, for any water well contractor, be less than fifty dollars (\$50.00) nor

1 more than one (1) percentage of the maximum water well contract entered into
2 during a licensing year."

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4 SECTION 2. (a) Subsection (a) and subsection (c) of §17-43-309 are
5 repealed.

6 (b) All other laws and parts of laws in conflict with this act are
7 hereby repealed.

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9 SECTION 3. All provisions of this act of a general and permanent nature
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
11 Revision Commission shall incorporate the same in the Code.

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13 SECTION 4. If any provision of this act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect
15 other provisions or applications of the act which can be given effect without
16 the invalid provision or application, and to this end the provisions of this
17 Act are declared to be severable.

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19 */s/Stephens and O. Miller*

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