CHAPTER 43-35
STATE BOARD OF WATER WELL CONTRACTORS

43-35-01. Declaration of policy.

The business or activity of constructing water wells is declared to be an industry affecting the public welfare, health, and safety of all the people of North Dakota and requires the exercise of the sovereign powers of the state for a public purpose, and it hereby is declared necessary that a state board of water well contractors be established, which in the exercise of its powers must be deemed to be an administrative agency within the purview of chapter 28-32.

43-35-02. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of water well contractors.
2. "Constructing" a well includes boring, digging, drilling, or excavating and installing casings, well screens, and other appurtenances.
3. "Drilling" means making any opening in the earth's surface by drilling, boring, or otherwise, and includes inserting any object into any part of the earth's surface for the purpose of obtaining an underground water supply except drainage tiles or similar devices designed primarily to improve land by removing excess water.
4. "Water well contractor" means any person who is certified to conduct the business of well drilling under the provisions of this chapter.
5. "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought, including test holes drilled for the purpose of exploration for and development of ground water, or through which ground water flows under natural pressure or is artificially withdrawn, provided that this definition does not include a natural spring, stock ponds, or holes drilled for the purpose of exploration for production of oil, gas, gravel, or other minerals.

43-35-03. State board of water well contractors - Members' appointment - Qualification.

The state board of water well contractors consists of the state engineer and the director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller or one monitoring well contractor appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

43-35-04. Appointive members to qualify - Terms of office - Filling vacancy.

Each appointive member to the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of four years or until a successor is appointed and qualified, except that the initial appointments must be for terms of two and four years, respectively, and expire on June thirtieth of the respective years. A vacancy on the board must be filled for the unexpired term in the same manner as was the member whose office is vacant.

43-35-05. Officers - Office.

The members of the board shall meet annually in July at a time and place designated by the chairman. The board shall select from the board's membership a chairman, vice chairman, and secretary-treasurer. Additional board meetings may be provided for in the bylaws or rules adopted by the board.

43-35-06. Secretary-treasurer - Bond - Executive officer.

Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of the secretary-treasurer's duties in an amount determined by the board, the premium for which is to be paid from board funds. The board shall appoint one of its members to serve as the executive officer for the board.

43-35-07. Compensation and reimbursement of expenses.

Each appointive member of the board is entitled to receive up to one hundred twenty-five dollars compensation per day and is entitled to receive reimbursement for expenses in the same amounts as provided for in sections 44-08-04 and 54-06-09 while attending board meetings or otherwise engaged in the official business of the board. The board shall establish the compensation rate by rule.

43-35-08. Office, administrative, and technical personnel - Compensation.

The board may employ such office, administrative, and technical personnel as it deems necessary and shall fix their compensation and prescribe their duties. It may retain legal counsel and incur such other expenses as and when deemed necessary to carry out the provisions of this chapter.

43-35-09. Deposit of fees - Use and appropriation of funds.

All fees received by the treasurer under this chapter must be deposited to the credit of the board in the Bank of North Dakota and disbursed only on order of the chairman and secretary-treasurer. Funds collected for certifying and inspections may be expended in such manner as the board deems necessary to best carry out the provisions of this chapter. All funds accruing to the credit of the state board of water well contractors are hereby permanently appropriated to the board for the purpose of this chapter.

43-35-10. Powers and duties of board.

The board has the power and it is its duty:

1. To effectively administer and carry out the provisions of this chapter.
2. To adopt bylaws, rules, and regulations for the conduct of the business affairs of the board and administration of its functions.

43-35-11. Certificate required.

A person, partnership, firm, corporation, or limited liability company may not engage in the business of water well contracting or water well pump and pitless unit installation, monitoring well contracting, or geothermal system drilling unless certified to do so by the board of water well contractors.

43-35-11.1. Conviction not bar to certification - Exceptions.

Conviction of an offense does not disqualify a person from certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a water well contractor, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-35-12. Examination - When held - Notice.

The board shall hold meetings at such times and such places as it shall designate for the purpose of administering an examination to those persons desiring to become certified as water well contractors, water well pump and pitless unit installers, monitoring well contractors, or geothermal system drillers. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers.

43-35-13. Certificate - How obtained - Fee - Bond.

1. Any person who takes the examination to become a certified water well contractor must first complete a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the board.

2. Any person who takes the examination to become a certified water well pump and pitless unit installer must first complete a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a career and technical education program of at least one year in water well pump and pitless unit installation.
3. Any person who takes the examination to become a certified monitoring well contractor must first complete a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board.
4. Any person who takes the examination to become a certified geothermal system driller must first complete either a minimum of one year of apprenticeship under the direct supervision of a certified geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a certified geothermal system driller, or, in the alternative, must first complete career and technical education relating to geothermal system drilling lasting at least one school year.
5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

43-35-14. Bond required.

Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with this chapter. The required amount of a surety bond is fifteen thousand dollars for a water well contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or geothermal system installation contractor.

43-35-15. Certification of persons previously engaged in contracting.

Repealed by S.L. 2011, ch. 325, § 3.

43-35-15.1. Certification of persons engaged in installation of water well pumps and pitless units prior to certification requirement.

Repealed by S.L. 2011, ch. 325, § 3.

43-35-15.2. Certification of persons engaged in monitoring well contracting prior to certification requirement.

Repealed by S.L. 2011, ch. 325, § 3.

43-35-15.3. Certification of persons engaged in drilling of geothermal systems before certification requirement.

Repealed by S.L. 2011, ch. 325, § 3.

43-35-16. Display of certification.

The board shall furnish each certified water well contractor a decal for each drill rig the contractor owns or leases. Such decal must be displayed in a conspicuous place on the drill rig.

43-35-17. Renewal of certificate - Continuing education.

1. A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. To renew a certificate, a certificate holder shall submit to the board a completed renewal application. The completed renewal application must be:
   a. Submitted to the board before April first in the year following the certificate's expiration;
   b. Accompanied by a fee in an amount set by the board not to exceed two hundred dollars;
   c. Accompanied by any continuing education reporting information required under this section; and
   d. Accompanied by a bond as provided in section 43-35-14.
2. Except as provided under subsection 3, every two years the renewal application must include reporting information verifying the applicant completed six hours of board-approved continuing education during the two-year reporting cycle.
3. A renewal application for certification as a water well pump and pitless unit installer must include reporting information verifying the applicant completed two hours of board-approved continuing education during the two-year reporting cycle.
4. The board shall adopt rules establishing continuing education standards.

43-35-18. Firm engaged in water well work to employ certified water well contractor - Exception.

No person, partnership, association, corporation, or limited liability company shall engage in the business of constructing a water well in this state unless at all times a certified water well contractor, who is responsible for the proper construction or alteration thereof, is in charge; provided, however, that nothing in this chapter shall be construed so as to prohibit any person, partnership, association, corporation, or limited liability company from constructing any water well on the person's or entity's own premises for the person's or entity's own use.

43-35-18.1. Firm engaged in installation of water well pump and pitless units to employ certified installer - Exception.

No person may engage in the business of installing water well pumps and pitless units in the state after July 1, 1986, unless a certified installer, who is responsible for the proper installation of the pump and pitless unit, is in charge of the installation. This chapter does not prohibit any person from installing water well pumps and pitless units on that person's own premises for that person's own use.

43-35-18.2. Firm engaged in monitoring well work to employ certified monitoring well contractor - Exception.

No person may engage in the business of constructing a monitoring well in this state unless at all times a certified monitoring well contractor, who is responsible for the proper construction or alteration thereof, is in charge. This section does not prohibit any person from installing monitoring wells on that person's own premises for that person's own use.

43-35-18.3. Firm engaged in drilling of geothermal systems to employ certified driller - Exception.

A person may not engage in the business of drilling geothermal systems in the state after July 1, 2008, unless a certified driller, who is responsible for the proper drilling of the geothermal system, is in charge of the drilling. This chapter does not prohibit a person from drilling geothermal systems on that person's own premises for that person's own use.

43-35-19. Standards for well drilling - Reports required.

All construction of water wells must comply with the rules adopted by the department of environmental quality. Within thirty days after the completion of each well, each water well contractor shall furnish to the board on forms provided by the board any information required by the department of environmental quality, including a log of formations penetrated, well depth, and casing size and weight. A copy of each report also must be furnished to the customer. All information submitted must remain the property of the board.

43-35-19.1. Standards for installation of water well pumps and pitless units.

Standards for installation of water well pumps and pitless units. All installation of water well pumps and pitless units must comply with the rules adopted by the department of environmental quality and the board.

43-35-19.2. Standards for installation of monitoring wells - Reports required.

All monitoring wells constructed must comply with the rules adopted by the department of environmental quality and the board. Each monitoring well contractor shall furnish all reports required by the rules of the department of environmental quality or the board.

43-35-19.3. Standards for drilling of geothermal systems.

All drilling of geothermal systems must comply with the rules adopted by the state geologist and the board.

43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated.

The board may suspend or revoke any certificate issued under this chapter if the holder is found guilty by the board of any violation of the rules adopted by the department of environmental quality or the board after a hearing held substantially in conformance with chapter 28-32. Six months after any certificate has been revoked, an application may be made for another certificate in the same manner as a new certificate is obtained.

43-35-21. Certification to nonresidents - Reciprocity.

To the extent other states providing for the certification of water well contractors, monitoring well contractors, water well pump and pitless unit installers, or geothermal system drillers provide for similar action, the board may grant certification to water well contractors, monitoring well contractors, water well pump and pitless unit installers, and geothermal system drillers certified by other states, upon payment by the applicant of the required fee and the furnishing of a bond as provided by section 43-35-14, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of such certificates in this state.

43-35-22. Violation of chapter - Penalty.

1. Any person contracting to drill a water well or monitoring well, install a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter or any person that willfully violates a provision of this chapter, is guilty of a class B misdemeanor.
2. In addition to criminal sanctions that may be imposed, the board or the district court may assess the cost to repair any damage caused by the violation, any costs incurred by the board in the action, and a civil penalty against a person that violates any provision of this chapter or any rule adopted by the board. The civil penalty may not exceed ten thousand dollars. The civil penalty may be adjudicated by the district court or through an administrative hearing under chapter 28-32.
3. If a person against which a civil penalty was assessed after an administrative hearing does not pay or appeal the civil penalty within thirty days of receiving notice of the order, interest begins to accrue on the unpaid amount of the civil penalty at the rate of twelve percent per annum and the board may pursue a judgment from the district court. Notwithstanding section 57-20-22, a violator shall pay to the board all interest and penalties. The proceeds of any civil penalty or interest received by the board, after

retention of any costs incurred by the board in the action, must be transferred to the state treasurer for deposit in the state general fund.

43-35-23. Continuing education - Preapproval requirements.

1. As provided under section 43-35-17, each certificate holder shall earn board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification.
2. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the department of environmental quality, the state water commission, or by any board-approved course provider.
3. A continuing education course must be disapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request disapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells.
4. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.