

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2873*

Short Title: Safe Drinking Water/Private Wells. (Public)

Sponsors: Representatives Insko, L. Allen (Primary Sponsors); Hackney and Wray.

Referred to: Rules, Calendar, and Operations of the House.

May 30, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO ADOPT
3 RULES CONCERNING PERMITTING INSPECTION AND TESTING OF
4 PRIVATE WATER SUPPLY WELLS AND WELLS SERVING TRANSIENT
5 WATER SYSTEMS AND TO APPROPRIATE FUNDS FOR LOCAL WELL
6 INSPECTION AND TESTING PROGRAMS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 8 of Chapter 130A is amended by adding the following
9 Part:

10 "Part 13. Permitting Inspection of Drinking Water Wells.

11 "§ 130A-285. Short title.

12 This Article shall be known and may be cited as the North Carolina Safe Drinking
13 Water from Wells Act.

14 "§ 130A-285.1. Purpose.

15 The General Assembly of North Carolina finds that water supply wells serving
16 individual residences and transient water systems play an important part in meeting the
17 State's drinking water needs. The General Assembly further finds that public health and
18 safety may be threatened by the improper location, construction, operation, repair,
19 maintenance, and abandonment of drinking water wells. Improper siting or construction
20 of water supply wells may result in contamination of the drinking water by bacteria and
21 other substances that have adverse health effects. It is the intent of the General
22 Assembly to protect public health and safety and to safeguard the State's groundwater
23 resources by providing consistent statewide enforcement of regulations governing
24 location, construction, operation, repair, maintenance, and abandonment of private
25 wells.

26 "§ 130A-285.2. Authority.

27 The Department of Environment and Natural Resources shall enforce this Part and
28 the rules adopted pursuant to this Part. The North Carolina Commission for Health
29 Services shall adopt rules setting minimum standards for local well programs

1 established pursuant to this Part and shall regulate private and transient wells. The rules
2 shall address all of the following:

- 3 (1) Issuance, denial, suspension, and revocation of private and transient
4 well construction permits and private and transient well repair permits.
- 5 (2) Well inspections.
- 6 (3) Testing of water quality in private wells and transient wells.
- 7 (4) Coordination of the permitting of private wells and transient wells with
8 permitting of on-site wastewater treatment and disposal systems on the
9 same site.

10 **"§ 130A-285.3. Definitions.**

11 The following definitions apply to this Part unless the context requires otherwise:

- 12 (1) Abandoned well. – As defined in G.S. 87-85(1).
- 13 (2) Commission. – The North Carolina Commission for Health Services or
14 its successor, unless otherwise indicated.
- 15 (3) Construction of a well. – As defined in G.S. 87-85(5).
- 16 (4) Department. – The Department of Environment and Natural
17 Resources, unless otherwise indicated.
- 18 (5) Human consumption. – The term includes the use of water for
19 household purposes, drinking, bathing, cooking, and gardening.
- 20 (6) Maintenance. – Normal or routine activities to maintain a well in
21 working condition so long as the work does not break the well seal.
- 22 (7) Operation. – The process, frequency, and duration of withdrawing
23 water or other fluids from a well by any means.
- 24 (8) Person. – As defined in G.S. 87-85(9).
- 25 (9) Private well. – Any excavation that is cored, bored, drilled, jetted, dug,
26 or otherwise constructed to obtain groundwater for human
27 consumption and that serves or is proposed to serve 14 or fewer
28 service connections or that regularly serves or is proposed to serve 24
29 or fewer individuals.
- 30 (10) Repair. – As defined in G.S. 87-85(12).
- 31 (11) Secretary. – The Secretary of the Department of Environment and
32 Natural Resources.
- 33 (12) Transient well. – Any excavation that is cored, bored, drilled, jetted,
34 dug, or otherwise constructed to obtain groundwater for human
35 consumption and that serves or is proposed to serve a noncommunity
36 water system that does not regularly serve at least 25 of the same
37 persons over six months per year.

38 **"§ 130A-285.4. Scope.**

39 No person shall construct, operate, repair, or abandon, or cause to be constructed,
40 operated, repaired, or abandoned, any private well or transient water system well
41 contrary to the provisions of this Part and applicable rules.

42 **"§ 130A-285.5. Permits required for construction or repair.**

43 No person shall commence or assist in the construction or repair of a private well or
44 transient water system well unless a well construction permit or repair permit has been

1 obtained from the local health department. No well construction permit or repair permit
2 shall be required for maintenance.

3 **"§ 130A-285.6. General requirements for well construction permits.**

4 (a) The minimum standards for well construction shall be the well construction
5 standards adopted by the Environmental Management Commission pursuant to the
6 North Carolina Well Construction Act, G.S. 87-87.

7 (b) Application for a well construction permit shall be made in accordance with
8 this Part.

9 (c) The local health department shall do a field investigation to evaluate a
10 proposed site for a private well in accordance with this Part and shall issue a well
11 construction permit upon determining that a well can be constructed and operated in
12 compliance with this Part. The local health department may impose conditions on the
13 issuance of a well construction permit. The field investigation shall determine whether
14 there are any abandoned wells on the site, and if so, the well construction permit shall
15 be conditioned upon any abandoned well being brought into compliance with this Part.

16 (d) For sites that will have both a well and an on-site wastewater treatment and
17 disposal system pursuant to Article 11 of this Chapter, an application for a well
18 construction permit shall be accompanied by a site plan showing the location of the
19 proposed facility the well is to serve, the location of the well, the location of the on-site
20 wastewater treatment and disposal system, and other information that may be required
21 by rule.

22 (e) Prior to denial of a well construction permit, the local health department shall
23 advise the applicant of any possible alternatives to the proposal set out in the
24 application. When a well construction permit is denied, the local health department
25 shall issue the site evaluation in writing, setting out the reasons for the denial. The
26 evaluation also shall inform the applicant of the right to an informal review by the
27 Department, the right to appeal pursuant to G.S. 130A-24 and Chapter 150B of the
28 General Statutes, and the right to have the appeal held in the county where the site for
29 the proposed well is located.

30 (f) The Department, upon request by an applicant for a private well construction
31 permit, shall provide a technical review of any construction design submitted by the
32 applicant. The construction design shall be evaluated by professional peers of those
33 who prepared the system design. The results of the technical review shall be available
34 prior to a decision by the local health department and shall not affect an applicant's right
35 to a contested hearing under G.S. 130A-24 and Chapter 150B of the General Statutes.

36 **"§ 130A-285.7. Well repair permit.**

37 (a) The local health department shall evaluate a proposed repair of a private well
38 or transient water system well in accordance with this Part and shall issue a well repair
39 permit upon determining compliance with this Part. The local health department may
40 issue a well repair permit upon recommendations from a certified well contractor. The
41 local health department may impose conditions on the issuance of a well repair permit.

42 (b) Prior to denial of an application for a well repair permit, the local health
43 department shall advise the applicant of any possible alternatives to the proposal set out
44 in the application. When an application is denied, the local health department shall

1 issue the site evaluation in writing, setting out the reasons for the denial. The evaluation
2 also shall inform the applicant of the right to an informal review by the Department, the
3 right to appeal pursuant to G.S. 130A-24 and Chapter 150B of the General Statutes, and
4 the right to have the appeal held in the county where the site for the proposed well is
5 located.

6 **"§ 130A-285.8. Expiration and revocation of well construction and repair permits.**

7 Any well construction permit or well repair permit shall prominently state all of the
8 following:

9 (1) The permit will be valid for a period of five years.

10 (2) The permit is subject to revocation if there are changes in the facts or
11 circumstances upon which the permit was issued.

12 (3) Well construction and repair permits shall not be affected solely by a
13 change in ownership of the proposed well site, provided both the site
14 for the well and the usage are unchanged and the site and the well
15 remain under the ownership or control of the person owning the
16 facility.

17 **"§ 130A-285.9. Inspection; certification of completion required.**

18 (a) Prior to issuing a certification of completion for a private well or transient
19 water system well, the local health department shall inspect the well to determine
20 whether it was installed or repaired in compliance with the construction or repair permit
21 as applicable.

22 (b) The local health department shall issue a certificate of completion authorizing
23 a well to be put into use or reuse upon determining that the well is properly constructed
24 or repaired and that the well can be operated in accordance with this Part and any
25 conditions of the construction or repair permit.

26 (c) No person shall use or reuse a private well or transient water system well
27 until a certificate of completion has been issued.

28 (d) A certificate of completion shall not be affected solely by a change in
29 ownership of the site for the well, provided both the well site and the usage are
30 unchanged and the site and the well remain under the ownership or control of the person
31 owning the facility.

32 **"§ 130A-285.10. Testing.**

33 (a) Following the installation of a private well or transient water system well, the
34 quality of the water shall be tested for the following parameters: arsenic, barium,
35 cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury,
36 nitrites, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators. The
37 sampling and testing shall be performed in a manner prescribed by the Commission for
38 Health Services. Copies of the results shall be provided to the local health department,
39 the property owner, and the user of the well.

40 (b) The test results provided pursuant to subsection (a) of this section shall
41 compare the results to the applicable groundwater standard adopted by the
42 Environmental Management Commission pursuant to G.S. 143-215.

1 (c) For wells installed after July 1, 2008, the owner shall disclose the most recent
2 results of well testing of any kind to the prospective purchaser at the time of sale of the
3 property where the well is located.

4 (d) Nothing in this Part shall prevent a local board of health from adopting more
5 stringent testing than set out in this statute.

6 **"§ 130A-285.11. Limitation on electrical service.**

7 Where a private well is to be a source of water for human consumption, no person
8 shall allow permanent electrical service to a facility upon construction, location, or
9 relocation of the facility until the official electrical inspector with jurisdiction as
10 provided in G.S. 143-143.2 certifies to the electrical supplier that the required certificate
11 of completion has been issued pursuant to this Part.

12 **"§ 130A-285.12. Protection of groundwater.**

13 Protection of groundwater. – No well shall be located, operated, or repaired in any
14 manner that may adversely affect the quality of groundwater.

15 **"§ 130A-285.13. Abandonment of private wells and wells serving transient water
16 systems.**

17 Any private well or transient water system well now abandoned or hereafter deemed
18 to have been abandoned as defined in this Part shall be brought into compliance with the
19 abandonment standards adopted by the Environmental Management Commission
20 pursuant to G.S. 87-87, the North Carolina Well Construction Act.

21 **"§ 130A-285.14. Notice of violation, remedial action order.**

22 (a) Whenever the local health department has reasonable grounds to believe that
23 there has been a violation of this Part or any rule adopted pursuant to this Part, the local
24 health department shall give written notice to the person or persons alleged to be in
25 violation. The notice shall set out the provision of this Part and applicable rules alleged
26 to be violated and the facts alleged to constitute the violation. The local health
27 department also may issue an order requiring specific remedial action. An order
28 requiring remedial action shall specify the action to be taken, the date by which the
29 action shall be completed, the possible consequences of failing to comply with the
30 order, and the procedure by which the alleged violator may seek review of the order.

31 (b) The notice may be served by any means authorized under G.S. 1A-1, Rule 4.

32 (c) A notice of violation and order requiring remedial action do not constitute
33 agency action that may be appealed pursuant to G.S. 130A-24 or Chapter 150B of the
34 General Statutes."

35 **SECTION 2.** G.S. 87-85(13) reads as rewritten:

36 "(13) "Water supply well" means ~~any well intended or usable as a source of~~
37 ~~water supply, but not to include a well constructed by an individual on~~
38 ~~land which is owned or leased by him, appurtenant to a single family~~
39 ~~dwelling, and intended for domestic use (including household~~
40 ~~purposes, farm livestock, or gardens).any well intended or used as a~~
41 ~~source of water supply."~~

42 **SECTION 3.** G.S. 130A-22 is amended by adding a new subsection to read:

43 "(c2) The Secretary of Environment and Natural Resources may impose an
44 administrative penalty on a person who willfully violates Part 13, Article 8 of this

1 Chapter, rules adopted by the Commission for Health Services pursuant to Part 13,
2 Article 8, or any condition imposed upon a permit issued pursuant to Part 13, Article 8.
3 Each day of a continuing violation shall constitute a separate violation. The penalty
4 shall not exceed one hundred dollars (\$ 100.00) per day."

5 **SECTION 4.** G.S. 130A-22(d) reads as rewritten:

6 "(d) In determining the amount of the penalty in subsections (a), ~~(b) and (e)~~, (b),
7 (c), and (c2), the Secretary and the Secretary of Environment and Natural Resources
8 shall consider the degree and extent of the harm caused by the violation and the cost of
9 rectifying the damage."

10 **SECTION 5.** G.S. 130A-39(g) reads as rewritten:

11 "(g) A local board of health may impose a fee for services to be rendered by a
12 local health department, except where the imposition of a fee is prohibited by statute or
13 where an employee of the local health department is performing the services as an agent
14 of the State. Notwithstanding any other provisions of law, a local board of health may
15 impose cost-related fees for services performed pursuant to Article 11 of this Chapter,
16 "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this
17 Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11,
18 Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant
19 to Part 13 of Article 8 of this Chapter, "Permitting an Inspection of Drinking Water
20 Wells." Fees shall be based upon a plan recommended by the local health director and
21 approved by the local board of health and the appropriate county board or boards of
22 commissioners. The fees collected under the authority of this subsection are to be
23 deposited to the account of the local health department so that they may be expended for
24 public health purposes in accordance with the provisions of the Local Government
25 Budget and Fiscal Control Act."

26 **SECTION 6.** There is appropriated from the General Fund to the
27 Department of Environment and Natural Resources the sum of one million seventy-one
28 thousand seventy-nine dollars (\$1,071,079) in recurring funds and twenty-seven
29 thousand five hundred fifty dollars (\$27,550) in nonrecurring funds for the 2006-2007
30 fiscal year to be used to provide start-up funding for local well permitting, inspection,
31 and testing programs and to fund five positions in the Department of Environment and
32 Natural Resources to provide technical support and oversight for local well programs.

33 **SECTION 7.** This act becomes effective July 1, 2006.