

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

4

HOUSE BILL 2873*
Committee Substitute Favorable 6/29/06
Committee Substitute #2 Favorable 7/6/06
Fourth Edition Engrossed 7/10/06

Short Title: Safe Drinking Water/Private Wells.

(Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE
DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING
OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"§ 87-87. Authority to adopt rules, regulations, and procedures.

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping equipment, and equipment. The Environmental Management Commission shall be responsible for the administration of this Article. With respect thereto it Article and shall:

- (1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation

1 throughout the State, in connection with proposed rules and
2 regulations and amendments ~~thereto;~~thereto.

3 (2) Enforce the provisions of this Article, and any rules and regulations
4 not inconsistent with the provisions of this Article adopted pursuant
5 ~~thereto;~~thereto.

6 (3) Establish procedures and forms for the submission, review, approval,
7 and rejection of applications, notifications, and reports required under
8 this ~~Article;~~Article.

9 (4) Issue such additional regulations as may be necessary to carry out the
10 provisions of this ~~Article;~~ and Article.

11 (5) Neither adopt nor enforce any rule or regulation that concerns the civil
12 liability of an owner to a well driller for any costs or expenses of
13 drilling and installing a well for the owner.

14 (6) Adopt rules governing the permitting and inspection by the
15 Commission of private drinking water wells with a designed capacity
16 of 100,000 gallons per day or greater.

17 (7) Adopt rules governing the permitting and inspection by local health
18 departments of private drinking water wells pursuant to G.S. 87-97."

19 **SECTION 3.** G.S. 87-88 reads as rewritten:

20 "**§ 87-88. General standards and requirements.**

21 (a) Prior Permission. – Prior permission shall be obtained from the
22 Environmental Management Commission for the construction of (i) any water well or of
23 well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of
24 any well in a geographical area where the Environmental Management Commission
25 finds, after public hearings, such permission to be reasonably necessary to protect the
26 groundwater resources and the public welfare, safety and health, taking into
27 consideration other applicable State laws; provided, however, that the Environmental
28 Management Commission shall not reject any application under this subsection for
29 permission to construct a well except upon the ground that the well would not be in
30 compliance with a provision of this Article or with a rule or regulation of the
31 Environmental Management Commission adopted pursuant to the provisions of
32 G.S. 87-87 of this Article. Notification of approval or rejection of an application for
33 permission to construct a well shall be given the applicant within a period of 15 days
34 after receipt of such application. Private drinking water wells (i) with a designed
35 capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a
36 geographical area where the Environmental Management Commission has found that
37 prior permission is necessary shall be subject to permitting and inspection by the
38 Environmental Management Commission and shall not be subject to permitting and
39 inspection by a local health department. All other private drinking water wells shall be
40 subject to permitting and inspection by the local health department as provided in
41 G.S. 87-97.

42 (b) Reports. – Any person completing or abandoning any well shall furnish the
43 Environmental Management Commission a certified record of the construction or

1 abandonment of such well within a period of 30 days after completion of construction or
2 abandonment.

3 (c) Prevention of Contamination. – Every well shall be constructed and
4 maintained in a condition whereby it is not a source or channel of contamination of the
5 groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i)
6 of this section shall be operated in such a way that they shall not cause the violation of
7 applicable groundwater quality standards. Contamination as used herein shall mean the
8 act of introducing into water foreign materials of such a nature, quality, and quantity as
9 to cause degradation of the quality of the water.

10 (d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all
11 flowing artesian wells shall be maintained in a condition so that the flow of water can be
12 completely stopped when the well is not being put to a beneficial use. Valves shall be
13 closed when a beneficial use is not being made.

14 (e) Access Port. – Every water-supply well and such other wells, as may be
15 specified by the Environmental Management Commission, shall be equipped with a
16 usable access port or air line and to be a minimum of 0.5 inch inside diameter opening
17 so that the position of the water level can be determined at any time. Such port shall be
18 installed and maintained in such manner as to prevent entrance of water or foreign
19 material.

20 (f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that
21 contains nonpotable mineralized water is encountered in well construction, the stratum
22 shall be adequately cased or cemented off as conditions may require so that
23 contamination of the overlying or underlying groundwater zones will not occur.

24 (g) Polluted Water. – In constructing any well, all water-bearing zones that are
25 known to contain polluted water shall be adequately cased or cemented off so that
26 pollution of the overlying and underlying groundwater zones will not occur.

27 (h) Well Test. – Every water-supply well shall be tested for capacity by a method
28 and for a period of time acceptable to the Department and depending on the intended
29 use of the well.

30 (i) Chlorination of the Well. – Upon completion of the well construction and
31 pump installation, all water-supply wells installed for the purpose of obtaining
32 groundwater for ~~domestic-human~~ consumption and all private drinking water wells shall
33 be sterilized in accordance with standards for sterilization of drinking water wells
34 established by the U.S. Public Health Service.

35 (j) Use of Well for Recharge or Disposal. – No well shall be used for recharge,
36 injection or disposal purposes without prior permission from the Environmental
37 Management Commission.

38 (k) Abandonment of Wells. –

39 (1) Temporary Abandonment: When any well is temporarily removed
40 from service, the top of the well shall be sealed with a water-tight cap
41 or seal.

42 (2) Permanent Abandonment: Any well that is to be permanently
43 abandoned shall be filled, plugged, or sealed in such a manner as to

1 prevent the well from being a channel allowing the vertical movement
2 of water and a source of contamination of the groundwater supply.

- 3 (3) Abandonment of Water Supply Wells for Other Use: Any water supply
4 well that is removed from service as a potable water supply source
5 may be used for other purposes, including, but not limited to,
6 irrigation, commercial use, or industrial use, and such well is not
7 subject to either subdivision (1) or (2) of this subsection during its use
8 for other purposes."

9 **SECTION 4.** Article 7 of Chapter 87 of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

12 (a) Mandatory Local Well Programs. – Each county, through the local health
13 department that serves the county, shall implement a private drinking water well
14 permitting, inspection, and testing program. Local health departments shall administer
15 the program and enforce the minimum well construction, permitting, inspection, repair,
16 and testing requirements set out in this Article and rules adopted pursuant to this
17 Article.

18 (b) Permit Required. – Except for those wells required to be permitted by the
19 Environmental Management Commission pursuant to G.S. 87-88, no person shall:

20 (1) Construct or assist in the construction of a private drinking water well
21 unless a construction permit has been obtained from the local health
22 department.

23 (2) Repair or assist in the repair of a private drinking water well unless a
24 repair permit has been obtained from the local health department,
25 except that a permit shall not be required for the repair or replacement
26 of a pump.

27 (c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A
28 repair permit shall not be required for any private drinking water well maintenance
29 work that does not involve breaking or opening the well seal. A repair permit shall not
30 be required for any private drinking water well repair work that involves only the repair
31 or replacement of a pump.

32 (d) Well Site Evaluation. – The local health department shall conduct a field
33 investigation to evaluate the site on which a private drinking water well is proposed to
34 be located before issuing a permit pursuant to this section. The field investigation shall
35 determine whether there is any abandoned well located on the site, and if so, the
36 construction permit shall be conditioned upon the proper closure of all abandoned wells
37 located on the site in accordance with the requirements of this Article and rules adopted
38 pursuant to this Article. If a private drinking water well is proposed to be located on a
39 site on which a wastewater system subject to the requirements of Article 11 of Chapter
40 130A of the General Statutes is located or proposed to be located, the application for a
41 construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

42 (e) Issuance of Permit. – The local health department shall issue a construction
43 permit or repair permit if it determines that a private drinking water well can be
44 constructed or repaired and operated in compliance with this Article and rules adopted

1 pursuant to this Article. The local health department may impose any conditions on the
2 issuance of a construction permit or repair permit that it determines to be necessary to
3 ensure compliance with this Article and rules adopted pursuant to this Article.

4 (f) Expiration and Revocation. – A construction permit or repair permit shall be
5 valid for a period of five years except that the local health department may revoke a
6 permit at any time if it determines that there has been a material change in any fact or
7 circumstance upon which the permit is issued. The foregoing shall be prominently
8 stated on the face of the permit. The validity of a construction permit or a repair permit
9 shall not be affected by a change in ownership of the site on which a private drinking
10 water well is proposed to be located or is located if the location of the well is unchanged
11 and the well and the facility served by the well remain under common ownership.

12 (g) Certificate of Completion. – Upon completion of construction of a private
13 drinking water well or repair of a private drinking water well for which a permit is
14 required under this section, the local health department shall inspect the well to
15 determine whether it was constructed or repaired in compliance with the construction
16 permit or repair permit. If the local health department determines that the private
17 drinking water well has been constructed or repaired in accordance with the
18 requirements of the construction permit or repair permit, this Article, and rules adopted
19 pursuant to this Article, the local health department shall issue a certificate of
20 completion. No person shall place a private drinking water well into service without
21 first having obtained a certificate of completion. No person shall return a private
22 drinking water well that has undergone repair to service without first having obtained a
23 certificate of completion.

24 (h) Drinking Water Testing. – Within 30 days after it issues a certificate of
25 completion for a newly constructed private drinking water well, the local health
26 department shall test the water obtained from the well for the following parameters:
27 arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium,
28 manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial
29 indicators.

30 (i) Commission for Health Services to Adopt Drinking Water Testing Rules. –
31 The Commission for Health Services shall adopt rules governing the sampling and
32 testing of well water and the reporting of test results. The rules shall allow local health
33 departments to designate third parties to collect and test samples and report test results.
34 The rules shall also provide for corrective action and retesting where appropriate. The
35 Commission for Health Services may by rule require testing for additional parameters if
36 the Commission makes a specific finding that testing for the additional parameters is
37 necessary to protect public health.

38 (j) Test Results. – The local health department shall provide test results to the
39 owner of the newly constructed private drinking water well and, to the extent
40 practicable, to any leaseholder of a dwelling unit or other facility served by the well at
41 the time the water is sampled.

42 (k) Registry of Permits and Test Results. – Each local health department shall
43 maintain a registry of all private drinking water wells for which a construction permit or
44 repair permit is issued. The registry shall specify the physical location of each private

1 drinking water well and shall include the results of all tests of water from each well. The
2 local health department shall retain a record of the results of all tests of water from a
3 private drinking water well until the well is properly closed in accordance with the
4 requirements of this Article and rules adopted pursuant to this Article.

5 (l) Authority Not Limited. – This section shall not be construed to limit any
6 authority of local boards of health, local health departments, the Department of Health
7 and Human Services, or the Commission for Health Services to protect public health."

8 **SECTION 5.** G.S. 130A-4 reads as rewritten:

9 **"§ 130A-4. Administration.**

10 (a) Except as provided in subsection (c) of this section, the Secretary shall
11 administer and enforce the provisions of this Chapter and the rules of the Commission.
12 A local health director shall administer the programs of the local health department and
13 enforce the rules of the local board of health.

14 (b) When requested by the Secretary, a local health department shall enforce the
15 rules of the Commission under the supervision of the Department. The local health
16 department shall utilize local staff authorized by the Department to enforce the specific
17 rules.

18 (c) The Secretary of Environment and Natural Resources shall administer and
19 enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the
20 Commission.

21 (d) When requested by the Secretary of Environment and Natural Resources, a
22 local health department shall enforce the rules of the Commission and the rules adopted
23 by the Environmental Management Commission pursuant to G.S. 87-87 under the
24 supervision of the Department of Environment and Natural Resources. The local health
25 department shall utilize local staff authorized by the Department of Environment and
26 Natural Resources to enforce the specific rules."

27 **SECTION 6.** G.S. 130A-39(g) reads as rewritten:

28 "(g) A local board of health may impose a fee for services to be rendered by a
29 local health department, except where the imposition of a fee is prohibited by statute or
30 where an employee of the local health department is performing the services as an agent
31 of the State. Notwithstanding any other provisions of law, a local board of health may
32 impose cost-related fees for services performed pursuant to Article 11 of this Chapter,
33 "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this
34 Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11,
35 Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant
36 to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director
37 and approved by the local board of health and the appropriate county board or boards of
38 commissioners. The fees collected under the authority of this subsection are to be
39 deposited to the account of the local health department so that they may be expended for
40 public health purposes in accordance with the provisions of the Local Government
41 Budget and Fiscal Control Act."

42 **SECTION 7.** G.S. 143-300.8 reads as rewritten:

43 **"§ 143-300.8. Defense of local sanitarians.**

1 Any local health department sanitarian enforcing rules of the Commission for Health
2 Services or of the Environmental Management Commission under the supervision of the
3 Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~
4 G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of
5 G.S. 143-300.4, and shall be protected from liability in accordance with the provisions
6 of this Article in any civil or criminal action or proceeding brought against the
7 sanitarian in his official or individual capacity, or both, on account of an act done or
8 omission made in the scope and course of enforcing the rules of the Commission for
9 Health ~~Services~~.Services or of the Environmental Management Commission. The
10 Department of Environment and Natural Resources shall pay any judgment against the
11 sanitarian, or any settlement made on his behalf, subject to the provisions of
12 G.S. 143-300.6."

13 **SECTION 8.** G.S. 87-97, as enacted by Section 4 of this act, becomes
14 effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes
15 law. All other sections of this act become effective when this act becomes law.