

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH50646-TA-12 (04/09)

Short Title: Protect Private Drinking Water Resources. (Public)

Sponsors: Representatives Harrison, Coleman, and Blue (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND WATER QUALITY FOR
RESIDENTS OF THE STATE WHO RECEIVE DRINKING WATER FROM
PRIVATE WELLS OR IMPROVED SPRINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-98 reads as rewritten:

"§ 87-98. **Bernard Allen Memorial Emergency Drinking Water Fund.**

(a) The Bernard Allen Memorial Emergency Drinking Water Fund is established ~~within~~ under the control and direction of the Department. The Fund shall be a nonreverting, interest-bearing fund consisting of monies appropriated by the General Assembly or made available to the Fund from any other source and investment interest credited to the Fund.

(b) The Fund may be used to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well or improved spring that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. ~~The funds~~ Fund may also be used to ~~cover~~ pay the costs of testing by the Department of private drinking water wells and improved springs for suspected contamination up to once every three years upon request by a person who uses the well for ~~contamination~~ and for the provision of alternative drinking water supplies to persons whose drinking water well or improved spring is contaminated.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give

1 priority to the provision of services under this section to instances when an alternative
2 source of funds is not available. The ~~funds~~ Fund shall not be used for remediation of
3 groundwater contamination. Nothing in this section expands, contracts, or modifies the
4 obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General
5 Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify
6 receptors, or remediate groundwater or soil contamination. The Fund shall not be used
7 to provide alternative water supply to households with incomes greater than two
8 hundred percent (200%) of the current poverty level. The Fund shall not be used to
9 provide alternative drinking water supplies unless the concentration of one or more
10 contaminants in the private drinking water well or improved spring exceeds the
11 Maximum Contaminant Level, or the federal drinking water action level as defined in
12 40 Code of Federal Regulations § 141.1 through § 141.571 (1 July 2006) and 40 Code
13 of Federal Regulations § 143.3 (1 July 2006). The Fund shall not be used to provide
14 temporary water supplies in any calendar quarter until all needs for permanent
15 replacement water supplies that have been identified in that calendar quarter have been
16 met through hookups to public water supplies, repair, or replacement of contaminated
17 wells. In disbursing monies from the Fund, preference shall be given to providing
18 permanent replacement water supplies by connection to public water supplies and repair
19 or replacement of contaminated wells over the provision of temporary water supplies.

20 (d) The Department shall establish criteria by which the Department is to
21 evaluate applications and disburse ~~funds~~ monies from this Fund and may adopt any
22 rules necessary to implement this section.

23 (e) The Department, in consultation with the Commission for Health Services
24 and local health departments, shall report no later than 1 October of each year to the
25 Environmental Review Commission, the House of Representatives and Senate
26 Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal
27 Research Division of the General Assembly on the implementation of this section. The
28 report shall include the purpose and amount of all expenditures from the Fund during
29 the prior fiscal year, a discussion of benefits and deficiencies realized as a result of the
30 implementation of this section, and may also include recommendations for any
31 legislative action."

32 **SECTION 2.** The first report required by G.S. 87-98(e), as enacted by
33 Section 1 of this act, shall be submitted on or before 1 October 2008.

34 **SECTION 3.** There is appropriated from the General Fund to the Bernard
35 Allen Memorial Emergency Drinking Water Fund the sum of two million dollars
36 (\$2,000,000) for the 2007-2008 fiscal year and the sum of two million dollars
37 (\$2,000,000) for the 2008-2009 fiscal year. It is the intention of the General Assembly
38 that this appropriation be a recurring appropriation.

39 **SECTION 4.** Chapter 130A of the General Statutes is amended by adding a
40 new Article to read:

41 "Article 10A.

42 "Protection of Private Drinking Water Wells and Improved Springs.

43 "§ 130A-330.1. Purpose.

1 The purpose of this Article is to ensure the safety and quality of potable water from
2 private drinking water wells and improved springs in the State.

3 **"§ 130A-330.2. Definitions.**

4 As used in this Article:

- 5 (1) 'Certified laboratory' has the same meaning as in G.S. 130A-313.
6 (2) 'Contaminant' has the same meaning as in G.S. 130A-313.
7 (3) 'Department' means the Department of Environment and Natural
8 Resources.
9 (4) 'Drinking water rules' has the same meaning as in G.S. 130A-313.
10 (5) 'Fund' means the Bernard Allen Memorial Emergency Drinking Water
11 Fund established by G.S. 87-98.
12 (6) 'Groundwater standards' means water quality standards for
13 groundwater adopted by the Environmental Management Commission
14 pursuant to G.S. 143-214.1.
15 (7) 'Improved spring' means a natural release of groundwater to the
16 surface without the assistance of a pump, that has been protected by
17 casing, grouting, and sealing as required by Article 7 of Chapter 87 of
18 the General Statutes.
19 (8) 'Owner' means each person who has a recorded present or future
20 interest in real estate and each person who is named in a real estate
21 contract except that 'owner' does not mean or include the trustee in a
22 deed of trust, or the owner or holder of a mortgage, deed of trust,
23 mechanic's or materialman's lien, or other lien or security interest in
24 the real property, or the owner of any easement or license encumbering
25 the real property.
26 (9) 'Private drinking water well' has the same meaning as in G.S. 87-85.
27 (10) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser'
28 in a real estate contract.
29 (11) 'Real estate contract' means a contract for the transfer of ownership of
30 real property.
31 (12) 'Real property' means a lot, tract, or parcel of land, and any business
32 dwelling unit located thereon that is described in a real estate contract.
33 (13) 'Transfer' means the transfer, sale, exchange, installment land sales
34 contract, option, or lease with option to purchase of real estate
35 property.
36 (14) 'Water test' means a test of drinking water conducted in accordance
37 with G.S. 130A-330.4 and rules adopted by the Commission pursuant
38 to this Article.
39 (15) 'Well user' means a person or group of persons residing in the same
40 dwelling unit or working at the same business at which drinking water
41 is supplied from a private drinking water well.

42 **"§ 130A-330.3. Scope of the Article.**

43 The provisions of this Article shall apply to all transfers of real property in the State
44 unless the transfer occurs under one of the following conditions:

- 1 (1) Transfers pursuant to court order, including transfers ordered by a
2 court in administration of an estate, transfers pursuant to a writ of
3 execution, transfers by foreclosure sale, transfers by a trustee in
4 bankruptcy, transfers by eminent domain, and transfers resulting from
5 a decree for specific performance.
- 6 (2) Transfers to a beneficiary from the grantor or his successor in interest
7 in a deed of trust, or to a mortgagee from the mortgagor or his
8 successor in interest in a mortgage, if the indebtedness is in default;
9 transfers by a trustee under a deed of trust or a mortgagee under a
10 mortgage, if the indebtedness is in default; transfers by a trustee under
11 a deed of trust or a mortgagee under a mortgage pursuant to a
12 foreclosure sale, or transfers by a beneficiary under a deed of trust who
13 has acquired the real property at a sale conducted pursuant to a
14 foreclosure sale under a deed of trust.
- 15 (3) Transfers by a fiduciary in the course of the administration of a
16 decedent's estate, guardianship, conservatorship, or trust.
- 17 (4) Transfers from one or more co-owners solely to one or more other
18 co-owners.
- 19 (5) Transfers made solely to a spouse or a person or persons in the lineal
20 line of consanguinity of one or more transferors.
- 21 (6) Transfers between spouses resulting from a decree of divorce or a
22 distribution pursuant to Chapter 50 of the General Statutes or
23 comparable provision of another state.
- 24 (7) Transfers made by virtue of the record owner's failure to pay any
25 federal, State, or local taxes.
- 26 (8) Transfers to or from the State or any political subdivision of the State.

27 **§ 130A-330.4. Water testing criteria and procedures.**

28 (a) The Commission shall establish criteria and procedures to test water provided
29 from private drinking water wells and improved springs to determine whether the water
30 complies with drinking water rules. The criteria and procedures shall include an analysis
31 for at least the following contaminants:

- 32 (1) Bacteria (total coliform).
- 33 (2) Nitrates.
- 34 (3) Heavy metals.
- 35 (4) Volatile organic compounds where potential sources of these
36 contaminants are present.
- 37 (5) Radon.
- 38 (6) Radium-222 and Radium-226.

39 (b) The Commission may require testing for contaminants not listed in subsection
40 (a) of this section in any area of the State where additional contaminants may pose a
41 threat to public health.

42 (c) A water test conducted pursuant to this Article shall be completed by a
43 certified laboratory.

1 (d) The Commission shall develop a standard report form that certified
2 laboratories shall use to report the results of a water test conducted pursuant to this
3 Article.

4 (e) A certified laboratory shall submit results of the water test to the owner no
5 later than 15 days after completion of any analysis required by transfer, sale, or lease of
6 property or as required to obtain a well permit under a local well program. A certified
7 laboratory shall electronically submit the results of a water test conducted pursuant to
8 this Article to the Department and to the State Health Director no later than 15 days
9 after completion of the analysis.

10 **"§ 130A-330.5. Water test required before transfer of real property; rental or**
11 **leased properties.**

12 (a) No person shall transfer real property to which water is supplied from a
13 private drinking water well or improved spring for human consumption unless a water
14 test has been conducted on the well in accordance with this Article within six months
15 prior to the transfer.

16 (b) Closing on a transfer of real property to which water is supplied from a
17 private drinking water well or improved spring for human consumption shall not occur
18 unless both the owner and the purchaser have received and reviewed a copy of the
19 results of the most recent water test. At closing, both the owner and purchaser shall
20 certify in writing that they have received and reviewed the results of the most recent
21 water test.

22 (c) The lessor of any rental or leased property to which water is supplied from a
23 private drinking water well or improved spring for human consumption shall conduct a
24 water test pursuant to this Article at least once every three years. The lessor shall
25 provide a copy of the results of the most recent water test to the tenants of each rental or
26 leased property no later than 30 days after receipt of the test results. The lessor shall
27 also provide a copy of the results of the most recent water test to a new lessee prior to
28 the signing of a rental or lease agreement."

29 **SECTION 5.** Article 21 of Chapter 143 of the General Statutes is amended
30 by adding a new Part to read:

31 "Part 11. Groundwater Quality Database.

32 **"§ 143-215.74J. Definitions; Groundwater Quality Database established.**

33 (a) The definitions in G.S. 130A-330.2 apply to this Part.

34 (b) The Department shall establish a Groundwater Quality Database as a resource
35 center and repository for the results of groundwater quality monitoring conducted and
36 submitted pursuant to programs administered by the Department under Articles 9, 10,
37 and 10A of Chapter 130A and Articles 21 and 21A of Chapter 143 of the General
38 Statutes. The Department shall:

39 (1) Collect, maintain, and make available the information contained in the
40 Database in a manner that is accessible to State agencies, local
41 governments, and the general public.

42 (2) Assess the quality and reliability of the data and organize the Database
43 in a usable format. The Database shall include geographic information
44 sufficient to map the groundwater resources of the State and to map

1 areas in which groundwater contamination exceeds groundwater
2 standards.

- 3 (3) Prescribe the format for submission of information and ensure quality
4 control for all data collected or submitted.

5 **"§ 143-215.74K. Public notification.**

6 (a) If the results of a water test indicate an exceedance of groundwater or
7 drinking water standards, the Department shall provide notice of the exceedance to all
8 of the following within 15 business days of receipt of the water test results:

- 9 (1) The local health department that serves the county in which the well or
10 improved spring is located.
11 (2) Owners of real property served by any other private drinking water
12 well or improved spring that is located within a 1,500-foot radius of
13 the well or improved spring.
14 (3) Well users who occupy a dwelling or work at a business within a
15 1,500-foot radius of the well or improved spring.

16 (b) The Commission, in consultation with the State Health Director, shall
17 establish criteria and procedures for notification required by this section. The
18 notification shall be issued in both English and Spanish and shall include all of the
19 following information:

- 20 (1) The location of the well from which the sample was collected.
21 (2) The name of each contaminant, the groundwater water standard, and
22 the level of exceedance of each contaminant that exceeds a
23 groundwater or drinking water standard.
24 (3) The potential health effects that may result from exposure to each
25 contaminant that exceeds a groundwater or drinking water standard.
26 (4) Contact information for the local health department and the
27 appropriate regional office of the Department.
28 (5) Any other information required by the rules of the Commission.

29 **"§ 143-215.74L. Annual report.**

30 The Department shall report no later than 1 October of each year to the
31 Environmental Review Commission on the status of groundwater quality in the State.
32 The report shall include information on the status of the Groundwater Quality Database,
33 public notification efforts, groundwater monitoring efforts conducted by the
34 Department, and trends in groundwater quality. The report may also include an analysis
35 of issues related to groundwater quality, identification of deficiencies in groundwater
36 quality information, and recommendations to improve the quality of groundwater
37 resources in the State."

38 **SECTION 6.** The first report required pursuant to G.S. 143-215.74L, as
39 enacted by Section 5 of this act, is due on or before 1 October 2008.

40 **SECTION 7.** There is appropriated from the General Fund to the
41 Department of Environment and Natural Resources the sum of four hundred thousand
42 dollars (\$400,000) for the 2007-2008 fiscal year and the sum of four hundred thousand
43 dollars (\$400,000) for the 2008-2009 fiscal year to implement the provisions of Section
44 5 of this act. It is the intention of the General Assembly that this appropriation be a

1 recurring appropriation. Funds appropriated by this section shall be used to hire one
2 additional staff member in each of the seven regional offices of the Department for
3 investigation and notification functions and up to three staff members in the central
4 office of the Department to establish and maintain the Groundwater Quality Database.

5 **SECTION 8.** Nothing in this act shall be construed to limit or preempt the
6 authority of a local health department or local board of health to make or cause to be
7 made an inspection or test of a private well as may be necessary to ensure the health and
8 safety of the residents of the State.

9 **SECTION 9.** Nothing in this act shall be construed to modify the liability of
10 any person who is responsible for an exceedance of groundwater or drinking water
11 standards to the State or to third parties.

12 **SECTION 10.** Sections 3, 5, and 7 of this act become effective 1 July 2007.
13 G.S. 130A-330.5, as enacted by Section 4 of this act, becomes effective 1 January 2008.
14 The remainder of Article 10A of Chapter 130A of the General Statutes, as enacted by
15 Section 4 of this act, and Sections 1, 2, 6, 8, 9, and 10 of this act are effective when this
16 act becomes law.