

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1442

Short Title: Protect Private Drinking Well Users' Health. (Public)

Sponsors: Representatives Harrison, Justice, Blue, Glazier (Primary Sponsors); Bryant, Cotham, Fisher, Goodwin, Hall, Hughes, Insko, Jones, Lucas, Luebke, Mackey, Weiss, and Wray.

Referred to: Health, if favorable, Environment and Natural Resources, if favorable, Appropriations.

April 13, 2009

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 DRINKING WATER WELLS OR IMPROVED SPRINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 10A.

"Protection of Private Drinking Water Wells and Improved Springs.

"§ 130A-330.1. Purpose.

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

"§ 130A-330.2. Definitions.

As used in this Article:

- (1) 'Certified laboratory' has the same meaning as in G.S. 130A-313.
- (2) 'Contaminant' has the same meaning as in G.S. 130A-313.
- (3) 'Department' means the Department of Environment and Natural Resources.
- (4) 'Drinking water rules' has the same meaning as in G.S. 130A-313.
- (5) 'Fund' means the Bernard Allen Memorial Emergency Drinking Water Fund established by G.S. 87-98.
- (6) 'Groundwater standards' means water quality standards for groundwater adopted by the Environmental Management Commission pursuant to G.S. 143-214.1.
- (7) 'Improved spring' means a natural release of groundwater to the surface without the assistance of a pump that has been protected by casing, grouting, and sealing, as required by Article 7 of Chapter 87 of the General Statutes.
- (8) 'Owner' means each person who has a recorded present or future interest in real estate and each person who is named in a real estate contract except that 'owner' does not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.
- (9) 'Private drinking water well' has the same meaning as in G.S. 87-85.



- 1 (10) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser' in a
2 real estate contract.
- 3 (11) 'Real estate contract' means a contract for the transfer of ownership of real
4 property.
- 5 (12) 'Real property' means a lot, tract, or parcel of land, and any business
6 dwelling unit located thereon that is described in a real estate contract.
- 7 (13) 'Transfer' means the transfer, sale, exchange, installment land sales contract,
8 option, or lease with option to purchase of real estate property.
- 9 (14) 'Water test' means a test of drinking water conducted in accordance with
10 G.S. 130A-330.4 and rules adopted by the Commission pursuant to this
11 Article.
- 12 (15) 'Well user' means a person or group of persons residing in the same dwelling
13 unit or working at the same business at which drinking water is supplied
14 from a private drinking water well or improved spring.

15 **"§ 130A-330.3. Scope of the Article.**

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

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

43 **"§ 130A-330.4. Water testing criteria and procedures.**

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

- 48 (1) Bacteria (total coliform).
- 49 (2) Nitrates.
- 50 (3) Heavy metals.

1 (4) Volatile organic compounds where potential sources of these contaminants
2 are present.

3 (5) Radon.

4 (6) Radium-222 and Radium-226.

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

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

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

12 (e) A certified laboratory shall submit results of the water test to the owner no later than
13 15 days after completion of any analysis required by transfer, sale, or lease of property or as
14 required to obtain a well permit under a local well program. A certified laboratory shall
15 electronically submit the results of a water test conducted pursuant to this Article to the
16 Department and to the State Health Director no later than 15 days after completion of the
17 analysis.

18 **"§ 130A-330.5. Water test required before transfer of real property; rental or leased**
19 **properties.**

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

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

28 (c) The lessor of any rental or leased property to which water is supplied from a private
29 drinking water well or improved spring for human consumption shall conduct a water test
30 pursuant to this Article at least once every three years. The lessor shall provide a copy of the
31 results of the most recent water test to the tenants of each rental or leased property no later than
32 30 days after receipt of the test results. The lessor shall also provide a copy of the results of the
33 most recent water test to a new lessee prior to the signing of a rental or lease agreement."

34 **SECTION 2.** Article 21 of Chapter 143 of the General Statutes is amended by
35 adding a new Part to read:

36 "Part 12. Groundwater Quality Database.

37 **"§ 143-215.74P. Definitions; Groundwater Quality Database established.**

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

39 (b) The Department shall establish a Groundwater Quality Database as a resource
40 center and repository for the results of groundwater quality monitoring conducted and
41 submitted pursuant to programs administered by the Department under Article 7 of Chapter 87,
42 Articles 9, 10, and 10A of Chapter 130A, and Articles 21 and 21A of Chapter 143 of the
43 General Statutes. The Department shall:

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

47 (2) Assess the quality and reliability of the data and organize the Database in a
48 usable format. The Database shall include geographic information sufficient
49 to map the groundwater resources of the State and to map areas in which
50 groundwater contamination exceeds groundwater standards.

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

3 **"§ 143-215.74Q. Public notification of known contamination; free water tests for well**
4 **users near contamination.**

5 (a) The Department shall notify, to the extent practicable, all residents aged 18 and over
6 who reside within a 1,500-foot radius of the known boundaries of each groundwater
7 contamination site or incident identified in the Database or otherwise known to the Department.
8 The notification shall be issued in both English and Spanish and shall include all of the
9 following information:

- 10 (1) The location of the groundwater contamination.
11 (2) The name of each contaminant known to be present at the groundwater
12 contamination site or incident at levels that exceed a groundwater or
13 drinking water standard, the groundwater standard, and the level of
14 exceedance of each contaminant that exceeds a groundwater or drinking
15 water standard.
16 (3) The potential health effects that may result from exposure to each
17 contaminant that exceeds a groundwater or drinking water standard.
18 (4) Instructions explaining how the well user resident can voluntarily request a
19 water test of water provided from a private drinking water well by contacting
20 the local well program, required under G.S. 87-97 and administered by the
21 local health department that serves the county in which the well is located.
22 (5) Contact information for the local well program and the closest regional
23 office of the Department.

24 (b) The Department shall offer well users notified under subsection (a) of this section
25 free water tests to test water provided from a private drinking water well pursuant to
26 G.S. 130A-330.4. The Department shall provide all of the following information to each well
27 user whose well water is tested under this subsection:

- 28 (1) The location of the well from which the sample was collected.
29 (2) The name, groundwater standard, and level of each contaminant for which
30 the well was tested.
31 (3) The potential health effects of each contaminant detected in the water
32 sample.
33 (4) If any contamination is found to exceed groundwater standards, instructions
34 for how the resident can seek alternative drinking water supplies or
35 treatment of contaminated water from the Department on a temporary or
36 permanent basis and whether the resident is eligible to have these costs paid
37 from the Bernard Allen Memorial Emergency Drinking Water Fund
38 pursuant to G.S.87-98.
39 (5) Contact information for the local well program and the closest regional
40 office of the Department.
41 (6) Any other information required by the rules of the Commission.

42 (c) If the results of any water test known to the Department indicate an exceedance of
43 groundwater or drinking water standards, the Department shall provide notice of the
44 exceedance to all of the following within 15 business days of receipt of the water test results:

- 45 (1) The local health department that serves the county in which the well or
46 improved spring is located.
47 (2) Owners of real property served by any other private drinking water well or
48 improved spring that is located within a 1,500-foot radius of the well or
49 improved spring.
50 (3) Well users who occupy a dwelling or work at a business within a 1,500-foot
51 radius of the well or improved spring.

1 (d) The notification required under subsection (c) of this section shall be issued in both
2 English and Spanish and shall include all of the information required for notification under
3 subdivisions (1) through (6) of subsection (b) of this section.

4 (e) The Commission, in consultation with the State Health Director, shall establish
5 criteria and procedures for notification required by this section.

6 **"§ 143-215.74R. Grants to local well programs for well tests.**

7 (a) To facilitate coordination and support of notification and testing activities under
8 G.S. 143-215.74Q with the local well programs required under G.S. 87-97 and administered by
9 the local health departments, the Department shall develop a program to provide grants to cover
10 the costs of notification and water tests of water provided from private drinking water wells in
11 the vicinity of known groundwater contamination. The Department shall approve grants to any
12 eligible local well program that applies for grant funds so long as funds are available. The
13 Department shall consider for grant assistance any local well program that meets all of the
14 following criteria:

15 (1) The local well program identified one or more groundwater contamination
16 sites or incidents that it determines pose a threat to public health, based on
17 the toxicity of contaminants, the known concentration and geographic extent
18 of contamination, the contaminants' propensity to migrate, and the number of
19 drinking water wells estimated to be in the area.

20 (2) The local well program provides notice in accordance with the provisions of
21 G.S. 143-215.74Q(a).

22 (3) The local well program provides free water tests and these water tests are
23 conducted in accordance with the provisions of G.S. 143-215.74Q(b), and, in
24 addition, the certified laboratory that conducted the water test must
25 electronically submit the results of the water test to the Department no later
26 than 30 days after completion of the analysis.

27 (b) Grants under this section shall not exceed twenty thousand dollars (\$20,000) to each
28 local well program for any calendar year.

29 (c) The Department shall establish any additional criteria for eligibility to receive grants
30 under this section.

31 **"§ 143-215.74S. Annual report.**

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

39 **SECTION 3.** G.S. 87-97(a) reads as rewritten:

40 "(a) Mandatory Local Well Programs. – Each county, through the local health
41 department that serves the county, shall implement a private drinking water well permitting,
42 inspection, and testing program. Local health departments shall administer the program and
43 enforce the minimum well construction, permitting, inspection, repair, and testing requirements
44 set out in this Article and rules adopted pursuant to this Article. Local well programs may
45 provide notification and free water testing of private drinking water wells under
46 G.S. 143-215.74R."

47 **SECTION 4.** The first report required pursuant to G.S. 143-215.74S, as enacted by
48 Section 2 of this act, is due on or before October 1, 2010.

49 **SECTION 5.(a)** There is appropriated from the General Fund to the Department of
50 Environment and Natural Resources the sum of two hundred fifty thousand dollars (\$250,000)

1 for the 2009-2010 fiscal year and the sum of two hundred fifty thousand dollars (\$250,000) for
2 the 2010-2011 fiscal year for the Division of Environmental Health to allocate as follows:

3 (1) The sum of one hundred sixty thousand dollars (\$160,000) for the
4 2009-2010 fiscal year and the sum of one hundred sixty thousand dollars
5 (\$160,000) for the 2010-2011 fiscal year shall be used to provide grants to
6 local health departments for their mandatory local well programs under
7 G.S. 87-97 for conducting water tests under G.S. 143-215.74Q, as enacted
8 by Section 2 of this act.

9 (2) The sum of ninety thousand dollars (\$90,000) for the 2009-2010 fiscal year
10 and the sum of ninety thousand dollars (\$90,000) for the 2010-2011 fiscal
11 year shall be used by the Department to implement Part 12 of Article 21 of
12 Chapter 143 of the General Statutes, as enacted by Section 2 of this act.

13 **SECTION 5.(b)** It is the intention of the General Assembly that the appropriation
14 under subsection (a) of this act be a recurring appropriation.

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

19 **SECTION 7.** Nothing in this act shall be construed to modify the liability of any
20 person who is responsible for an exceedance of groundwater or drinking water standards to the
21 State or to third parties.

22 **SECTION 8.** Sections 2, 3, and 5 of this act become effective July 1, 2009.
23 G.S. 130A-330.5, as enacted by Section 1 of this act, becomes effective January 1, 2010. The
24 remainder of Article 10A of Chapter 130A of the General Statutes, as enacted by Section 1 of
25 this act, and Sections 4, 6, 7, and 8 of this act are effective when this act becomes law.