

STATE OF NEW YORK

1103--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. JAFFEE, COOK, STECK, ABINANTI, FAHY, L. ROSENTHAL, GALEF, JEAN-PIERRE, D'URSO, GOTTFRIED, CAHILL, McDONOUGH, RICHARDSON, EPSTEIN, THIELE, WILLIAMS, ROMEO, BUTTENSCHON, SAYEGH, MONTESANO, STIRPE, TAYLOR, GRIFFIN, FALL, RIVERA, ARROYO, LAWRENCE, DeSTEFANO, ORTIZ, BARRON, COLTON -- Multi-Sponsored by -- M. of A. DAVILA, DINOWITZ, ENGLEBRIGHT, MORINELLO, PERRY, SIMON, WALKER -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, the public health law and the real property law, in relation to enacting the "private well testing act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "private well testing act".
3 § 2. Subdivision 1 of section 3-0315 of the environmental conservation
4 law, as amended by section 12 of part T of chapter 57 of the laws of
5 2017, is amended to read as follows:
6 1. The department in conjunction with the commissioner of health shall
7 create and maintain a geographic information system, and associated data
8 storage and analytical systems for purposes of collecting, streamlining,
9 and visualizing integrated data, permits, and relevant sites about
10 drinking water quality including, but not limited to, incorporating
11 supply well and monitoring well data, emerging contaminant data, water
12 quality monitoring data, pertinent data from remediation and landfill
13 sites, permitted discharge locations and other potential contamination
14 risks to water supplies. Such system shall also incorporate information
15 from the source water assessment program collected by the department of
16 health, information collected pursuant to section eleven hundred eleven
17 of the public health law, data from annual water supply statements

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD02776-02-9

1 prepared pursuant to section eleven hundred fifty-one of the public
2 health law, information from the database pursuant to title fourteen of
3 article twenty-seven of this chapter, and any other existing data
4 regarding soil and groundwater contamination currently gathered by the
5 department, as well as data on contamination that is readily available
6 from the United States geological survey and other sources determined
7 appropriate by the department. In addition to facilitating interagency
8 coordination and predictive analysis to protect water quality, such
9 system shall provide state agency information to the public through a
10 website, within reasonable limitations to ensure confidentiality and
11 security.

12 § 3. Section 206 of the public health law is amended by adding a new
13 subdivision 31 to read as follows:

14 31. The commissioner is authorized and directed to promulgate rules
15 and regulations to establish standards for the testing of drinking water
16 from privately owned wells. Such standards shall apply to any water
17 wells subject to subdivision eighteen of this section, as added by chap-
18 ter three hundred ninety-five of the laws of nineteen hundred ninety-
19 nine. Such testing shall be to determine the quality, safety and exist-
20 ing level of contamination of drinking water from privately owned wells.

21 § 4. Subdivision 1 of section 1100 of the public health law, as
22 amended by chapter 655 of the laws of 1978, is amended to read as
23 follows:

24 1. The department may make rules and regulations for the protection
25 from contamination of any or all public or private supplies of potable
26 waters and water supplies of the state or United States, institutions,
27 parks, reservations or posts and their sources within the state, and the
28 commissioner of environmental protection of the city of New York and the
29 board of water supply of the city of New York may make such rules and
30 regulations subject to the approval of the department for the protection
31 from contamination of any or all public or private supplies of potable
32 waters and their sources within the state where the same constitute a
33 part of the source of the public or private water supply of said city.

34 § 5. The public health law is amended by adding a new section 1111 to
35 read as follows:

36 § 1111. Private well testing. 1. (a) The department shall promulgate
37 regulations providing for the testing of drinking water from private
38 wells located on real property subject to this section.

39 (b) Any contract for the sale of real property, including a multiple
40 family dwelling as defined in section eight hundred two of the executive
41 law, which is served by a private well that is the potable water supply
42 for such property shall include a provision requiring as a condition of
43 sale, the testing of such water supply for at least the standards
44 prescribed pursuant to this section. Provisions of this section shall
45 not apply to property where the potable water supply has five or more
46 service connections or that regularly serves an average of twenty-five
47 or more individuals daily for at least sixty days out of the year.

48 (c) Water sampling shall be done, preferably by a laboratory certified
49 by the department, in the following manner:

50 (i) if there is no water treatment system in use on the water well
51 being tested, samples shall be collected from a primary cold water,
52 non-aerated spigot or tap that draws from or feeds water to the potable
53 water system from such water;

54 (ii) where a water treatment system is in use on the water supply
55 system, the sample shall be collected as follows:

1 (A) the water treatment system shall be disconnected or otherwise
2 disabled prior to the collection of the water sample; or

3 (B) the sample shall be collected at a location prior to the water
4 treatment system; or

5 (iii) in the case of a new well construction and installation where
6 there is no spigot or tap on the subject property, the sample may be
7 collected directly at the wellhead, utilizing a raw water sample.

8 2. Every water test conducted in accordance with this section shall be
9 conducted by a laboratory certified by the department pursuant to
10 section five hundred two of this chapter to test for drinking water
11 constituents and shall include but not be limited to a test for at least
12 the following constituents: bacteria (total coliform); sodium; nitrites;
13 nitrates; iron; manganese; iron plus manganese; pH; copper; chloride;
14 all volatile organic compounds for which maximum constituent levels have
15 been established pursuant to public health regulations; and lead.

16 3. (a) The department, in consultation with the department of environ-
17 mental conservation, and local health organizations established pursuant
18 to article three of this chapter may require additional testing for
19 constituents that appear on a county or regional basis including but not
20 limited to arsenic, barium, fluoride, mercury, methane, radium, and
21 radon.

22 (b) The department may, by rule or regulation, exclude or limit by
23 geographic area or geologic formation, or based upon well recorded
24 information, any constituent listed in this section deemed by the
25 department as not significant in a county or in any specific area within
26 a county and such area or formation need not be tested as part of any
27 water test conducted in accordance with this section.

28 (c) For each constituent to be tested for in accordance with this
29 section, the department shall establish, by regulation a maximum time
30 period for which a test result shall remain valid for the purposes of
31 this section without necessitating retesting for such constituent;
32 provided, however, such time period shall not exceed twelve months. A
33 retest of the water supply shall not be required pursuant to this
34 section if the contract of sale is entered into within the period of
35 test validity established pursuant to this paragraph. Notwithstanding
36 any provision of this paragraph to the contrary, a buyer and seller
37 subject to the provisions of this section may mutually agree to retest
38 for a constituent even though the maximum time period for test validity
39 for the constituent established pursuant to this section has not
40 expired.

41 4. (a) Any water test results provided by a laboratory to the person
42 or persons requesting the test shall include the maximum constituent
43 levels or other established water quality standards, if any, prescribed
44 by the department for each constituent tested and shall be transmitted
45 on a standardized private well water test reporting form prescribed by
46 the department. The form shall refer the buyer and seller of the real
47 property in question to the appropriate office or person within the
48 department, or the department's website for information regarding reme-
49 diation alternatives.

50 (b) Within ten business days after completion of the water test, a
51 laboratory shall submit the water test results to the department with
52 the following information:

53 (i) a statement that the testing is for the purpose of complying with
54 the "private well testing act";

55 (ii) the location of the real property, described by block and lot
56 number, street address, municipality, and county;

1 (iii) the name and mailing address of the person or persons making the
2 request for the test;

3 (iv) an affidavit stating the date and time that the water sample was
4 collected and the specific point of collection and the legal name and
5 mailing address of the person or persons collecting the raw water
6 samples;

7 (v) the date and time the sample was analyzed by the laboratory; and
8 (vi) such other information as may be required by the department, in
9 consultation with the department of environmental conservation and
10 appropriate local health organizations established pursuant to article
11 three of this chapter.

12 (c) The department may require laboratories to submit electronically
13 the information required pursuant to paragraph (b) of this subdivision.

14 (d) A laboratory shall not release water test results to any person
15 except the buyer or seller of the real property at issue as provided in
16 subdivision one of this section, the lessor of the real property as
17 provided in subdivision six of this section, any person authorized by
18 the buyer, seller, or lessor, as the case may be, the department, or any
19 person designated by court order.

20 (e) The department shall make the data accumulated from the water test
21 results submitted by laboratories pursuant to this section available to
22 counties, municipalities, or other governmental entities for the
23 purposes of studying groundwater supplies or contamination in the state;
24 provided, however, that identifying information is removed.

25 (f) The results of water well tests shall be provided to the depart-
26 ment of environmental conservation for inclusion in the statewide
27 groundwater remediation strategy developed in accordance with section
28 15-3109 of the environmental conservation law and the geographic infor-
29 mation system developed in accordance with section 3-0315 of the envi-
30 ronmental conservation law.

31 5. The department, within ten business days after receiving any report
32 of a water test failure in accordance with this section, shall provide
33 notice of such water test failure to the appropriate local health organ-
34 izations established pursuant to article three of this chapter. The
35 appropriate local health organizations established pursuant to article
36 three of this chapter shall issue a general notice to owners of real
37 property served by private wells or a public water system located in the
38 vicinity of the real property experiencing the water test failure
39 suggesting or recommending that those property owners may wish to have
40 their private wells tested for at least the constituents at issue. The
41 specific address or location of the private well that failed a water
42 test shall not be identified in the notice or by any other means or in
43 any other manner. The department shall establish criteria for notifica-
44 tion which may include, but shall not be limited to, the maximum
45 constituent level, the level of exceedance reported, and the distance or
46 location of the properties or public water supply in the vicinity of the
47 contaminated well for which testing is recommended.

48 6. Within two years after the effective date of this section, and at
49 least once every five years thereafter, the lessor of any real property
50 the potable water supply for which is a private well shall test that
51 water supply in the manner established pursuant to this section for at
52 least the constituents required pursuant to subdivisions two and three
53 of this section. Within thirty days after the receipt of the test
54 results, the lessor shall also provide a written copy thereof to each
55 lessee of a rental unit on the property. The lessor shall also provide a

1 written copy of the most recent test results to a prospective tenant
2 prior to the signing of a lease of a rental unit on the property.

3 7. (a) The department, in consultation with the department of environ-
4 mental conservation, and local health organizations established pursuant
5 to article three of this chapter shall establish a public information
6 and education program to inform the public and appropriate professional
7 disciplines of the enactment of this section and the substance of its
8 provisions and requirements, the potential health effects of consuming
9 water from a private well that does not meet maximum constituent levels
10 and other established water quality standards, the potential presence of
11 radium in at least some potable groundwater supplies in the state, the
12 geographic areas in the state subject to an actual or potential threat
13 of danger from contaminated groundwater, the importance of testing
14 private wells regularly for constituents, and suggested water treatment
15 techniques, equipment strategies and public funding sources available
16 for treating water from private wells that have failed a water test
17 conducted in accordance with this section.

18 (b) The department shall make available to the public a general compi-
19 lation of water test results data arranged or identified by county and
20 municipality or appropriate geographic area therein, but which does not
21 include specific address or location information.

22 8. Within three years of the effective date of this section, the
23 department shall prepare and transmit to the governor and legislature a
24 report on the implementation and operation of this section. Such report
25 shall also describe the benefits and deficiencies realized as a result
26 of this section and include recommendations for any appropriate legisla-
27 tive action. The report shall also be made available to the public and
28 be posted on the department's website.

29 § 6. The real property law is amended by adding a new section 468 to
30 read as follows:

31 § 468. Private well testing requirements. 1. Every contract for the
32 sale of real property, including a multiple family dwelling as defined
33 in section eight hundred two of the executive law, which is served by a
34 private well that is the potable water supply for such property shall
35 include a provision requiring as a condition of sale, the testing of
36 such water supply for at least the standards prescribed pursuant to
37 section eleven hundred eleven of the public health law. Provisions of
38 this section shall not apply to property where the potable water supply
39 has five or more service connections or that regularly serves an average
40 of twenty-five or more individuals daily for at least sixty days out of
41 the year.

42 2. Closing of title on the sale of such real property shall not occur
43 unless both the buyer and the seller have received and reviewed a copy
44 of the water test results. At closing, the buyer and seller both shall
45 certify in writing that they have received and reviewed the water test
46 results.

47 3. The requirements of this section may not be waived.

48 § 7. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law. Effective immediately, the addition, amend-
50 ment and/or repeal of any rule or regulation necessary for the implemen-
51 tation of this act on its effective date are authorized and directed to
52 be made and completed on or before such effective date.