

4557

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. JAFFEE, SWEENEY, FIELDS, CALHOUN, COOK, KOON,
SCHIMEL, JEFFRIES, ROSENTHAL -- Multi-Sponsored by -- M. of A.
BOYLAND, CLARK, DINOWITZ, McDONOUGH, MOLINARO, PEOPLES-STOKES, PHEFFER
-- read once and referred to the Committee on Environmental Conserva-
tion

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 ASSEM-
BLY, 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 S 2. Subdivision 1 of section 3-0315 of the environmental conservation
4 law, as added by section 1 of part C of chapter 1 of the laws of 2003,
5 is amended to read as follows:
6 1. The department shall create or modify an existing geographic infor-
7 mation system, and maintain such system for purposes including, but not
8 limited to, incorporating information from remedial programs under its
9 jurisdiction, and shall also incorporate information from the source
10 water assessment program collected by the department of health, INFORMA-
11 TION COLLECTED PURSUANT TO SECTION ELEVEN HUNDRED TEN OF THE PUBLIC
12 HEALTH LAW, data from annual water supply statements prepared pursuant
13 to section eleven hundred fifty-one of the public health law, informa-
14 tion from the database pursuant to title fourteen of article twenty-sev-
15 en of this chapter, and any other existing data regarding soil and
16 groundwater contamination currently gathered by the department, as well
17 as data on contamination that is readily available from the United
18 States geological survey and other sources determined appropriate by the
19 department.
20 S 3. Section 206 of the public health law is amended by adding a new
21 subdivision 26 to read as follows:

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

26. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE RULES AND REGULATIONS TO ESTABLISH STANDARDS FOR THE TESTING OF DRINKING WATER FROM PRIVATELY OWNED WELLS. SUCH STANDARDS SHALL APPLY TO ANY WATER WELLS SUBJECT TO SUBDIVISION EIGHTEEN OF THIS SECTION, AS ADDED BY CHAPTER THREE HUNDRED NINETY-FIVE OF THE LAWS OF NINETEEN HUNDRED NINETY-NINE. SUCH TESTING SHALL BE TO DETERMINE THE QUALITY, SAFETY AND EXISTING LEVEL OF CONTAMINATION OF DRINKING WATER FROM PRIVATELY OWNED WELLS.

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

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

S 5. The public health law is amended by adding a new section 1110 to read as follows:

S 1110. PRIVATE WELL TESTING. 1. (A) THE DEPARTMENT SHALL PROMULGATE REGULATIONS WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION PROVIDING FOR THE TESTING OF DRINKING WATER FROM PRIVATE WELLS LOCATED ON REAL PROPERTY SUBJECT TO THIS SECTION.

(B) ANY CONTRACT FOR THE SALE OF REAL PROPERTY WHICH IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY SHALL INCLUDE A PROVISION REQUIRING AS A CONDITION OF SALE, THE TESTING OF SUCH WATER SUPPLY FOR AT LEAST THE STANDARDS PRESCRIBED PURSUANT TO THIS SECTION. PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROPERTY WHERE THE POTABLE WATER SUPPLY HAS FIVE OR MORE SERVICE CONNECTIONS OR THAT REGULARLY SERVES AN AVERAGE OF TWENTY-FIVE OR MORE INDIVIDUALS DAILY FOR AT LEAST SIXTY DAYS OUT OF THE YEAR.

(C) WATER SAMPLING LOCATIONS SHALL BE DONE IN THE FOLLOWING MANNER:

(I) IF THERE IS NO WATER TREATMENT SYSTEM IN USE ON THE WATER WELL BEING TESTED, SAMPLES SHALL BE COLLECTED FROM A PRIMARY COLD WATER, NON-AERATED SPIGOT OR TAP THAT DRAWS FROM OR FEEDS WATER TO THE POTABLE WATER SYSTEM FROM SUCH WATER;

(II) WHERE A WATER TREATMENT SYSTEM IS IN USE ON THE WATER SUPPLY SYSTEM, THE SAMPLE SHALL BE COLLECTED AS FOLLOWS:

(A) THE WATER TREATMENT SYSTEM SHALL BE DISCONNECTED OR OTHERWISE DISABLED PRIOR TO THE COLLECTION OF THE WATER SAMPLE; OR

(B) THE SAMPLE SHALL BE COLLECTED AT A LOCATION PRIOR TO THE WATER TREATMENT SYSTEM; OR

(III) IN THE CASE OF A NEW WELL CONSTRUCTION AND INSTALLATION WHERE THERE IS NO SPIGOT OR TAP ON THE SUBJECT PROPERTY, THE SAMPLE MAY BE COLLECTED DIRECTLY AT THE WELLHEAD, UTILIZING A RAW WATER SAMPLE.

2. (A) EVERY WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION SHALL INCLUDE A TEST FOR AT LEAST THE FOLLOWING PARAMETERS: BACTERIA (TOTAL COLIFORM); NITRATES; IRON; MANGANESE; PH; ALL VOLATILE ORGANIC COMPOUNDS FOR WHICH MAXIMUM CONTAMINANT LEVELS HAVE BEEN ESTABLISHED PURSUANT TO PUBLIC HEALTH REGULATIONS; AND LEAD.

(B) IN ADDITION, THE WATER TEST SHALL INCLUDE A FORTY-EIGHT HOUR GROSS ALPHA TEST FOR THE PRESENCE OF RADIUM, PROVIDED THAT THE DEPARTMENT HAS

MADE A FINDING PURSUANT TO THIS SECTION THAT THERE ARE A SUFFICIENT NUMBER OF LABORATORIES CERTIFIED TO PERFORM THE TEST.

(I) THE DEPARTMENT SHALL CONDUCT AN ANNUAL REVIEW TO DETERMINE IF THERE ARE SUFFICIENT LABORATORIES CERTIFIED TO PERFORM THE SHORT-TERM FORTY-EIGHT HOUR GROSS ALPHA TEST TO SCREEN FOR THE PRESENCE OF RADIUM THAT ARE ABLE TO PROVIDE RESULTS AT A REASONABLE COST WITHIN TEN DAYS OF A REQUEST FOR TESTING. SUCH REVIEW SHALL BE BASED UPON THE PROJECTED NUMBER OF TRANSACTIONS FOR WHICH THE TEST IS REQUIRED. THE DEPARTMENT SHALL PUBLISH ITS FINDINGS IN THE NEW YORK STATE REGISTER AND THE ENVIRONMENTAL NOTICE BULLETIN.

(II) FOR THE PURPOSES OF THIS SECTION, IF THE DEPARTMENT DETERMINES THAT THERE ARE A SUFFICIENT NUMBER OF LABORATORIES TO CONDUCT THE SHORT-TERM FORTY-EIGHT HOUR GROSS ALPHA TEST TO SCREEN FOR THE PRESENCE OF RADIUM ONLY WITHIN A LIMITED AREA OF THE STATE, AS DETERMINED BY THE DEPARTMENT, AND SUCH LABORATORIES ARE ABLE TO PROVIDE RESULTS AT A REASONABLE COST WITHIN TEN DAYS OF A REQUEST FOR TESTING, THEN THE TEST SHALL BE REQUIRED ONLY WITHIN THAT LIMITED AREA UNTIL SUCH TIME AS THE DEPARTMENT FINDS THAT THERE ARE A NUMBER OF LABORATORIES TO PROVIDE SERVICE ELSEWHERE IN THE STATE.

(III) THE DEPARTMENT SHALL ESTABLISH, BY RULE OR REGULATION PROTOCOL FOR PROPER CONDUCTING OF THE SHORT-TERM FORTY-EIGHT HOUR GROSS ALPHA TEST TO SCREEN FOR THE PRESENCE OF RADIUM.

3. (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL DEVELOP A LIST OF ADDITIONAL PARAMETERS THAT THE DEPARTMENT DEEMS SIGNIFICANT IN EACH COUNTY OR IN ANY OTHER SPECIFIC AREA WITHIN A COUNTY THAT SHALL BE TESTED FOR AS PART OF ANY WATER TEST TO BE CONDUCTED IN ACCORDANCE WITH THIS SECTION. SUCH ADDITIONAL PARAMETERS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, TESTING FOR ARSENIC AND MERCURY.

(B) THE DEPARTMENT MAY, BY RULE OR REGULATION, EXCLUDE OR LIMIT BY GEOGRAPHIC AREA OR GEOLOGIC FORMATION, OR BASED UPON WELL RECORDED INFORMATION, ANY PARAMETER LISTED IN THIS SECTION DEEMED BY THE DEPARTMENT AS NOT SIGNIFICANT IN A COUNTY OR IN ANY SPECIFIC AREA WITHIN A COUNTY AND SUCH AREA OF FORMATION NEED NOT BE TESTED AS PART OF ANY WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION.

(C) FOR EACH PARAMETER TO BE TESTED FOR IN ACCORDANCE WITH THIS SECTION, THE DEPARTMENT SHALL ESTABLISH, BY REGULATION A MAXIMUM TIME PERIOD FOR WHICH A TEST RESULT SHALL REMAIN VALID FOR THE PURPOSES OF THIS SECTION WITHOUT NECESSITATING RETESTING FOR SUCH PARAMETER; PROVIDED, HOWEVER, SUCH TIME PERIOD SHALL NOT EXCEED TWELVE MONTHS. A RETEST OF THE WATER SUPPLY SHALL NOT BE REQUIRED PURSUANT TO THIS SECTION IF THE CONTRACT OF SALE IS ENTERED INTO WITHIN THE PERIOD OF TEST VALIDITY ESTABLISHED PURSUANT TO THIS PARAGRAPH. NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH TO THE CONTRARY, A BUYER AND SELLER SUBJECT TO THE PROVISIONS OF THIS SECTION MAY MUTUALLY AGREE TO RETEST FOR A PARAMETER EVEN THOUGH THE MAXIMUM TIME PERIOD FOR TEST VALIDITY FOR THE PARAMETER ESTABLISHED PURSUANT TO THIS SECTION HAS NOT EXPIRED.

4. (A) ANY WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION SHALL BE CONDUCTED BY A LABORATORY CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION FIVE HUNDRED TWO OF THIS CHAPTER TO TEST FOR DRINKING WATER CONTAMINANTS.

(B) ANY WATER TEST RESULTS PROVIDED BY A LABORATORY TO THE PERSON OR PERSONS REQUESTING THE TEST SHALL INCLUDE THE MAXIMUM CONTAMINANT LEVELS OR OTHER ESTABLISHED WATER QUALITY STANDARDS, IF ANY, PRESCRIBED BY THE DEPARTMENT FOR EACH PARAMETER TESTED AND SHALL BE TRANSMITTED ON A STANDARDIZED PRIVATE WELL WATER TEST REPORTING FORM PRESCRIBED BY THE

DEPARTMENT. THE FORM SHALL PROVIDE INFORMATION REGARDING REMEDIATION ALTERNATIVES AVAILABLE, AND SHALL REFER THE BUYER AND SELLER OF THE REAL PROPERTY IN QUESTION TO THE APPROPRIATE OFFICE OR PERSON WITHIN THE DEPARTMENT, OR THE DEPARTMENT'S WEBSITE FOR FURTHER INFORMATION REGARDING SUCH ALTERNATIVES.

(C) WITHIN FIVE BUSINESS DAYS AFTER COMPLETION OF THE WATER TEST, A LABORATORY SHALL SUBMIT THE WATER TEST RESULTS TO THE DEPARTMENT WITH THE FOLLOWING INFORMATION:

(I) A STATEMENT THAT THE TESTING IS FOR THE PURPOSE OF COMPLYING WITH THE "PRIVATE WELL TESTING ACT";

(II) THE LOCATION OF THE REAL PROPERTY, DESCRIBED BY BLOCK AND LOT NUMBER, STREET ADDRESS, MUNICIPALITY, AND COUNTY;

(III) THE NAME AND MAILING ADDRESS OF THE PERSON OR PERSONS MAKING THE REQUEST FOR THE TEST;

(IV) THE DATE AND TIME THAT THE WATER SAMPLE WAS COLLECTED AND THE SPECIFIC POINT OF COLLECTION;

(V) THE DATE AND TIME THE SAMPLE WAS ANALYZED BY THE LABORATORY; AND

(VI) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE DEPARTMENT, IN CONSULTATION, IF DEEMED NECESSARY BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, COUNTY HEALTH DEPARTMENT, HEALTH AGENCY, OR DESIGNATED HEALTH OFFICER, AS APPROPRIATE TO EACH COUNTY.

(D) THE DEPARTMENT MAY REQUIRE LABORATORIES TO SUBMIT ELECTRONICALLY THE INFORMATION REQUIRED PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION.

(E) A LABORATORY SHALL NOT RELEASE WATER TEST RESULTS TO ANY PERSON EXCEPT THE BUYER AND SELLER OF THE REAL PROPERTY AT ISSUE AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION, THE LESSOR OF THE REAL PROPERTY AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, ANY PERSON AUTHORIZED BY THE BUYER, SELLER, OR LESSOR, AS THE CASE MAY BE, THE DEPARTMENT, OR ANY PERSON DESIGNATED BY COURT ORDER.

(F) THE DEPARTMENT SHALL COMPILE THE DATA ACCUMULATED FROM THE WATER TEST RESULTS SUBMITTED BY LABORATORIES PURSUANT TO THIS SECTION IN A MANNER THAT SHALL BE USEFUL TO THE DEPARTMENT, COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES FOR THE PURPOSES OF STUDYING GROUNDWATER SUPPLIES OR CONTAMINATION IN THE STATE.

(G) THE RESULTS OF WATER WELL TESTS SHALL BE PROVIDED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR INCLUSION IN THE STATEWIDE GROUNDWATER REMEDIATION STRATEGY DEVELOPED IN ACCORDANCE WITH SECTION 15-3109 OF THE ENVIRONMENTAL CONSERVATION LAW AND THE GEOGRAPHIC INFORMATION SYSTEM DEVELOPED IN ACCORDANCE WITH SECTION 3-0315 OF THE ENVIRONMENTAL CONSERVATION LAW.

5. THE DEPARTMENT, WITHIN FIVE BUSINESS DAYS AFTER RECEIVING ANY REPORT OF A WATER TEST FAILURE IN ACCORDANCE WITH THIS SECTION, SHALL PROVIDE NOTICE OF SUCH WATER TEST FAILURE TO THE COUNTY HEALTH DEPARTMENT THE FAILING PRIVATE WELL IS LOCATED WITHIN. THE COUNTY DEPARTMENT OF HEALTH SHALL ISSUE A GENERAL NOTICE TO OWNERS OF REAL PROPERTY SERVED BY PRIVATE WELLS LOCATED IN THE VICINITY OF THE REAL PROPERTY EXPERIENCING THE WATER TEST FAILURE SUGGESTING OR RECOMMENDING THAT THOSE PROPERTY OWNERS MAY WISH TO HAVE THEIR PRIVATE WELLS TESTED FOR AT LEAST THE PARAMETERS AT ISSUE. THE SPECIFIC ADDRESS OR LOCATION OF THE PRIVATE WELL THAT FAILED A WATER TEST SHALL NOT BE IDENTIFIED IN THE NOTICE OR BY ANY OTHER MEANS OR IN ANY OTHER MANNER. THE DEPARTMENT SHALL ESTABLISH CRITERIA FOR NOTIFICATION WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE MAXIMUM CONTAMINANT LEVEL, THE LEVEL OF EXCEEDANCE REPORTED, AND THE DISTANCE OR LOCATION OF THE PROPERTIES IN THE VICINITY OF THE CONTAMINATED WELL FOR WHICH TESTING IS RECOMMENDED.

6. WITHIN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND AT LEAST ONCE EVERY FIVE YEARS THEREAFTER, THE LESSOR OF ANY REAL PROPERTY THE POTABLE WATER SUPPLY FOR WHICH IS A PRIVATE WELL SHALL TEST THAT WATER SUPPLY IN THE MANNER ESTABLISHED PURSUANT TO THIS SECTION FOR AT LEAST THE PARAMETERS REQUIRED PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION. WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE TEST RESULTS, THE LESSOR SHALL ALSO PROVIDE A WRITTEN COPY THEREOF TO EACH LESSEE OF A RENTAL UNIT ON THE PROPERTY. THE LESSOR SHALL ALSO PROVIDE A WRITTEN COPY OF THE MOST RECENT TEST RESULTS TO A NEW LESSEE OF A RENTAL UNIT ON THE PROPERTY.

7. (A) THE DEPARTMENT, IN CONSULTATION WITH COUNTY HEALTH DEPARTMENTS, AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, SHALL ESTABLISH A PUBLIC INFORMATION AND EDUCATION PROGRAM TO INFORM THE PUBLIC AND APPROPRIATE PROFESSIONAL DISCIPLINES OF THE ENACTMENT OF THIS SECTION AND THE SUBSTANCE OF ITS PROVISIONS AND REQUIREMENTS, THE POTENTIAL HEALTH EFFECTS OF CONSUMING WATER FROM A PRIVATE WELL THAT DOES NOT MEET MAXIMUM CONTAMINANT LEVELS AND OTHER ESTABLISHED WATER QUALITY STANDARDS, THE POTENTIAL PRESENCE OF RADIUM IN AT LEAST SOME POTABLE GROUNDWATER SUPPLIES IN THE STATE, THE GEOGRAPHIC AREAS IN THE STATE SUBJECT TO AN ACTUAL OR POTENTIAL THREAT OF DANGER FROM CONTAMINATED GROUNDWATER, THE IMPORTANCE OF TESTING PRIVATE WELLS REGULARLY FOR CONTAMINANTS, AND SUGGESTED WATER TREATMENT TECHNIQUES, EQUIPMENT STRATEGIES AND PUBLIC FUNDING SOURCES AVAILABLE FOR TREATING WATER FROM PRIVATE WELLS THAT HAVE FAILED A WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION.

(B) THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC A GENERAL COMPILATION OF WATER TEST RESULTS DATA ARRANGED OR IDENTIFIED BY COUNTY AND MUNICIPALITY OR APPROPRIATE GEOGRAPHIC AREA THEREIN, BUT WHICH DOES NOT INCLUDE SPECIFIC ADDRESS OR LOCATION INFORMATION.

8. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR PREEMPT THE AUTHORITY OF A COUNTY, COUNTY HEALTH DEPARTMENT, OR DESIGNATED HEALTH OFFICER FROM MAKING OR CAUSING TO BE MADE SUCH INSPECTION AND TESTING OF A WATER SUPPLY AS MAY BE NECESSARY TO ENSURE THE HEALTH AND SAFETY OF THE RESIDENTS OF THE STATE.

9. WITHIN THREE YEARS OF THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT SHALL PREPARE AND TRANSMIT TO THE GOVERNOR AND LEGISLATURE A REPORT ON THE IMPLEMENTATION AND OPERATION OF THIS SECTION. SUCH REPORT SHALL ALSO DESCRIBE THE BENEFITS AND DEFICIENCIES REALIZED AS A RESULT OF THIS SECTION AND INCLUDE RECOMMENDATIONS FOR ANY APPROPRIATE LEGISLATIVE ACTION. THE REPORT SHALL ALSO BE MADE AVAILABLE TO THE PUBLIC AND BE POSTED ON THE DEPARTMENT'S WEBSITE.

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

S 468. PRIVATE WELL TESTING REQUIREMENTS. 1. EVERY CONTRACT FOR THE SALE OF REAL PROPERTY WHICH IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY SHALL INCLUDE A PROVISION REQUIRING AS A CONDITION OF SALE, THE TESTING OF SUCH WATER SUPPLY FOR AT LEAST THE STANDARDS PRESCRIBED PURSUANT TO SECTION ELEVEN HUNDRED TEN OF THE PUBLIC HEALTH LAW. PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROPERTY WHERE THE POTABLE WATER SUPPLY HAS FIVE OR MORE SERVICE CONNECTIONS OR THAT REGULARLY SERVES AN AVERAGE OF TWENTY-FIVE OR MORE INDIVIDUALS DAILY FOR AT LEAST SIXTY DAYS OUT OF THE YEAR.

2. CLOSING OF TITLE ON THE SALE OF SUCH REAL PROPERTY SHALL NOT OCCUR UNLESS BOTH THE BUYER AND THE SELLER HAVE RECEIVED AND REVIEWED A COPY OF THE WATER TEST RESULTS. AT CLOSING, THE BUYER AND SELLER BOTH SHALL CERTIFY IN WRITING THAT THEY HAVE RECEIVED AND REVIEWED THE WATER TEST RESULTS.

1 3. THE REQUIREMENTS OF THIS SECTION MAY NOT BE WAIVED.

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