

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. JAFFEE, SWEENEY, CALHOUN, COOK, 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 Conservation

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 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 28 to read as follows:

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

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1 28. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE RULES  
2 AND REGULATIONS TO ESTABLISH STANDARDS FOR THE TESTING OF DRINKING WATER  
3 FROM PRIVATELY OWNED WELLS. SUCH STANDARDS SHALL APPLY TO ANY WATER  
4 WELLS SUBJECT TO SUBDIVISION EIGHTEEN OF THIS SECTION, AS ADDED BY CHAP-  
5 TER THREE HUNDRED NINETY-FIVE OF THE LAWS OF NINETEEN HUNDRED  
6 NINETY-NINE. SUCH TESTING SHALL BE TO DETERMINE THE QUALITY, SAFETY AND  
7 EXISTING LEVEL OF CONTAMINATION OF DRINKING WATER FROM PRIVATELY OWNED  
8 WELLS.

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

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

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

24 S 1110. PRIVATE WELL TESTING. 1. (A) THE DEPARTMENT SHALL PROMULGATE  
25 REGULATIONS PROVIDING FOR THE TESTING OF DRINKING WATER FROM PRIVATE  
26 WELLS LOCATED ON REAL PROPERTY SUBJECT TO THIS SECTION.

27 (B) ANY CONTRACT FOR THE SALE OF REAL PROPERTY, INCLUDING A MULTIPLE  
28 FAMILY DWELLING AS DEFINED IN SECTION EIGHT HUNDRED TWO OF THE EXECUTIVE  
29 LAW, WHICH IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY  
30 FOR SUCH PROPERTY SHALL INCLUDE A PROVISION REQUIRING AS A CONDITION OF  
31 SALE, THE TESTING OF SUCH WATER SUPPLY FOR AT LEAST THE STANDARDS  
32 PRESCRIBED PURSUANT TO THIS SECTION. PROVISIONS OF THIS SECTION SHALL  
33 NOT APPLY TO PROPERTY WHERE THE POTABLE WATER SUPPLY HAS FIVE OR MORE  
34 SERVICE CONNECTIONS OR THAT REGULARLY SERVES AN AVERAGE OF TWENTY-FIVE  
35 OR MORE INDIVIDUALS DAILY FOR AT LEAST SIXTY DAYS OUT OF THE YEAR.

36 (C) WATER SAMPLING LOCATIONS SHALL BE DONE, PREFERABLY BY A LABORATORY  
37 CERTIFIED BY THE DEPARTMENT, IN THE FOLLOWING MANNER:

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

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

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

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

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

51 2. EVERY WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION SHALL BE  
52 CONDUCTED BY A LABORATORY CERTIFIED BY THE DEPARTMENT PURSUANT TO  
53 SECTION FIVE HUNDRED TWO OF THIS CHAPTER TO TEST FOR DRINKING WATER  
54 CONSTITUENTS AND SHALL INCLUDE BUT NOT BE LIMITED TO A TEST FOR AT LEAST  
55 THE FOLLOWING CONSTITUENTS: BACTERIA (TOTAL COLIFORM); SODIUM; NITRITES;  
56 NITRATES; IRON; MANGANESE; IRON PLUS MANGANESE; PH; ALL VOLATILE ORGANIC

1 COMPOUNDS FOR WHICH MAXIMUM CONSTITUENT LEVELS HAVE BEEN ESTABLISHED  
2 PURSUANT TO PUBLIC HEALTH REGULATIONS; AND LEAD.

3 3. (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 MAY RECOMMEND ADDITIONAL TESTING FOR  
6 CONSTITUENTS THAT APPEAR ON A COUNTY OR REGIONAL BASIS INCLUDING BUT NOT  
7 LIMITED TO ARSENIC, BARIUM, FLUORIDE, MERCURY, METHANE, RADIUM, AND  
8 RADON.

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

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

28 4. (A) ANY WATER TEST RESULTS PROVIDED BY A LABORATORY TO THE PERSON  
29 OR PERSONS REQUESTING THE TEST SHALL INCLUDE THE MAXIMUM CONSTITUENT  
30 LEVELS OR OTHER ESTABLISHED WATER QUALITY STANDARDS, IF ANY, PRESCRIBED  
31 BY THE DEPARTMENT FOR EACH CONSTITUENT TESTED AND SHALL BE TRANSMITTED  
32 ON A STANDARDIZED PRIVATE WELL WATER TEST REPORTING FORM PRESCRIBED BY  
33 THE DEPARTMENT. THE FORM SHALL REFER THE BUYER AND SELLER OF THE REAL  
34 PROPERTY IN QUESTION TO THE APPROPRIATE OFFICE OR PERSON WITHIN THE  
35 DEPARTMENT, OR THE DEPARTMENT'S WEBSITE FOR INFORMATION REGARDING REME-  
36 DIATION ALTERNATIVES.

37 (B) WITHIN TEN BUSINESS DAYS AFTER COMPLETION OF THE WATER TEST, A  
38 LABORATORY SHALL SUBMIT THE WATER TEST RESULTS TO THE DEPARTMENT WITH  
39 THE FOLLOWING INFORMATION:

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

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

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

46 (IV) AN AFFIDAVIT STATING THE DATE AND TIME THAT THE WATER SAMPLE WAS  
47 COLLECTED AND THE SPECIFIC POINT OF COLLECTION AND THE LEGAL NAME AND  
48 MAILING ADDRESS OF THE PERSON OR PERSONS COLLECTING THE RAW WATER  
49 SAMPLES;

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

51 (VI) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE DEPARTMENT, IN  
52 CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND  
53 APPROPRIATE LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE  
54 THREE OF THIS CHAPTER.

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

1 (D) A LABORATORY SHALL NOT RELEASE WATER TEST RESULTS TO ANY PERSON  
2 EXCEPT THE BUYER OR SELLER OF THE REAL PROPERTY AT ISSUE AS PROVIDED IN  
3 SUBDIVISION ONE OF THIS SECTION, THE LESSOR OF THE REAL PROPERTY AS  
4 PROVIDED IN SUBDIVISION SIX OF THIS SECTION, ANY PERSON AUTHORIZED BY  
5 THE BUYER, SELLER, OR LESSOR, AS THE CASE MAY BE, THE DEPARTMENT, OR ANY  
6 PERSON DESIGNATED BY COURT ORDER.

7 (E) THE DEPARTMENT SHALL MAKE THE DATA ACCUMULATED FROM THE WATER TEST  
8 RESULTS SUBMITTED BY LABORATORIES PURSUANT TO THIS SECTION AVAILABLE TO  
9 COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES FOR THE  
10 PURPOSES OF STUDYING GROUNDWATER SUPPLIES OR CONTAMINATION IN THE STATE;  
11 PROVIDED, HOWEVER, THAT IDENTIFYING INFORMATION IS REMOVED.

12 (F) THE RESULTS OF WATER WELL TESTS SHALL BE PROVIDED TO THE DEPART-  
13 MENT OF ENVIRONMENTAL CONSERVATION FOR INCLUSION IN THE STATEWIDE  
14 GROUNDWATER REMEDIATION STRATEGY DEVELOPED IN ACCORDANCE WITH SECTION  
15 15-3109 OF THE ENVIRONMENTAL CONSERVATION LAW AND THE GEOGRAPHIC INFOR-  
16 MATION SYSTEM DEVELOPED IN ACCORDANCE WITH SECTION 3-0315 OF THE ENVI-  
17 RONMENTAL CONSERVATION LAW.

18 5. THE DEPARTMENT, WITHIN TEN BUSINESS DAYS AFTER RECEIVING ANY REPORT  
19 OF A WATER TEST FAILURE IN ACCORDANCE WITH THIS SECTION, SHALL PROVIDE  
20 NOTICE OF SUCH WATER TEST FAILURE TO THE APPROPRIATE LOCAL HEALTH ORGAN-  
21 IZATIONS ESTABLISHED PURSUANT TO ARTICLE THREE OF THIS CHAPTER. THE  
22 APPROPRIATE LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE  
23 THREE OF THIS CHAPTER SHALL ISSUE A GENERAL NOTICE TO OWNERS OF REAL  
24 PROPERTY SERVED BY PRIVATE WELLS LOCATED IN THE VICINITY OF THE REAL  
25 PROPERTY EXPERIENCING THE WATER TEST FAILURE SUGGESTING OR RECOMMENDING  
26 THAT THOSE PROPERTY OWNERS MAY WISH TO HAVE THEIR PRIVATE WELLS TESTED  
27 FOR AT LEAST THE CONSTITUENTS AT ISSUE. THE SPECIFIC ADDRESS OR LOCATION  
28 OF THE PRIVATE WELL THAT FAILED A WATER TEST SHALL NOT BE IDENTIFIED IN  
29 THE NOTICE OR BY ANY OTHER MEANS OR IN ANY OTHER MANNER. THE DEPARTMENT  
30 SHALL ESTABLISH CRITERIA FOR NOTIFICATION WHICH MAY INCLUDE, BUT SHALL  
31 NOT BE LIMITED TO, THE MAXIMUM CONSTITUENT LEVEL, THE LEVEL OF EXCEE-  
32 DANCE REPORTED, AND THE DISTANCE OR LOCATION OF THE PROPERTIES IN THE  
33 VICINITY OF THE CONTAMINATED WELL FOR WHICH TESTING IS RECOMMENDED.

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

44 7. (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRON-  
45 MENTAL CONSERVATION, AND LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT  
46 TO ARTICLE THREE OF THIS CHAPTER SHALL ESTABLISH A PUBLIC INFORMATION  
47 AND EDUCATION PROGRAM TO INFORM THE PUBLIC AND APPROPRIATE PROFESSIONAL  
48 DISCIPLINES OF THE ENACTMENT OF THIS SECTION AND THE SUBSTANCE OF ITS  
49 PROVISIONS AND REQUIREMENTS, THE POTENTIAL HEALTH EFFECTS OF CONSUMING  
50 WATER FROM A PRIVATE WELL THAT DOES NOT MEET MAXIMUM CONSTITUENT LEVELS  
51 AND OTHER ESTABLISHED WATER QUALITY STANDARDS, THE POTENTIAL PRESENCE OF  
52 RADIUM IN AT LEAST SOME POTABLE GROUNDWATER SUPPLIES IN THE STATE, THE  
53 GEOGRAPHIC AREAS IN THE STATE SUBJECT TO AN ACTUAL OR POTENTIAL THREAT  
54 OF DANGER FROM CONTAMINATED GROUNDWATER, THE IMPORTANCE OF TESTING  
55 PRIVATE WELLS REGULARLY FOR CONSTITUENTS, AND SUGGESTED WATER TREATMENT  
56 TECHNIQUES, EQUIPMENT STRATEGIES AND PUBLIC FUNDING SOURCES AVAILABLE

1 FOR TREATING WATER FROM PRIVATE WELLS THAT HAVE FAILED A WATER TEST  
2 CONDUCTED IN ACCORDANCE WITH THIS SECTION.

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

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

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

16 S 468. PRIVATE WELL TESTING REQUIREMENTS. 1. EVERY CONTRACT FOR THE  
17 SALE OF REAL PROPERTY, INCLUDING A MULTIPLE FAMILY DWELLING AS DEFINED  
18 IN SECTION EIGHT HUNDRED TWO OF THE EXECUTIVE LAW, WHICH IS SERVED BY A  
19 PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY SHALL  
20 INCLUDE A PROVISION REQUIRING AS A CONDITION OF SALE, THE TESTING OF  
21 SUCH WATER SUPPLY FOR AT LEAST THE STANDARDS PRESCRIBED PURSUANT TO  
22 SECTION ELEVEN HUNDRED TEN OF THE PUBLIC HEALTH LAW. PROVISIONS OF THIS  
23 SECTION SHALL NOT APPLY TO PROPERTY WHERE THE POTABLE WATER SUPPLY HAS  
24 FIVE OR MORE SERVICE CONNECTIONS OR THAT REGULARLY SERVES AN AVERAGE OF  
25 TWENTY-FIVE OR MORE INDIVIDUALS DAILY FOR AT LEAST SIXTY DAYS OUT OF THE  
26 YEAR.

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

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

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