

1040

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. JAFFEE, SWEENEY, COOK, SCHIMEL, ROSENTHAL, ABINANTI, WEISENBERG, STEVENSON -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, DINOWITZ, FARRELL, GALEF, O'DONNELL, PEOPLES-STOKES, PERRY -- 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.

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

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1 S 3. Section 206 of the public health law is amended by adding a new  
2 subdivision 29 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

53 2. EVERY WATER TEST CONDUCTED IN ACCORDANCE WITH THIS SECTION SHALL BE  
54 CONDUCTED BY A LABORATORY CERTIFIED BY THE DEPARTMENT PURSUANT TO  
55 SECTION FIVE HUNDRED TWO OF THIS CHAPTER TO TEST FOR DRINKING WATER  
56 CONSTITUENTS AND SHALL INCLUDE BUT NOT BE LIMITED TO A TEST FOR AT LEAST

1 THE FOLLOWING CONSTITUENTS: BACTERIA (TOTAL COLIFORM); SODIUM; NITRITES;  
2 NITRATES; IRON; MANGANESE; IRON PLUS MANGANESE; PH; ALL VOLATILE ORGANIC  
3 COMPOUNDS FOR WHICH MAXIMUM CONSTITUENT LEVELS HAVE BEEN ESTABLISHED  
4 PURSUANT TO PUBLIC HEALTH REGULATIONS; AND LEAD.

5 3. (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRON-  
6 MENTAL CONSERVATION, AND LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT  
7 TO ARTICLE THREE OF THIS CHAPTER MAY RECOMMEND ADDITIONAL TESTING FOR  
8 CONSTITUENTS THAT APPEAR ON A COUNTY OR REGIONAL BASIS INCLUDING BUT NOT  
9 LIMITED TO ARSENIC, BARIUM, FLUORIDE, MERCURY, METHANE, RADIUM, AND  
10 RADON.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 PRIVATE WELLS REGULARLY FOR CONSTITUENTS, AND SUGGESTED WATER TREATMENT  
2 TECHNIQUES, EQUIPMENT STRATEGIES AND PUBLIC FUNDING SOURCES AVAILABLE  
3 FOR TREATING WATER FROM PRIVATE WELLS THAT HAVE FAILED A WATER TEST  
4 CONDUCTED IN ACCORDANCE WITH THIS SECTION.

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

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

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

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

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

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

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