S T A T E O F N E W Y O R K

1040

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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:

Section 1. Short title. This act shall be known and may be cited as the "private well testing act".

S 2. Subdivision 1 of section 3-0315 of the environmental conservation law, as added by section 1 of part C of chapter 1 of the laws of 2003, is amended to read as follows:

1. The department shall create or modify an existing geographic information system, and maintain such system for purposes including, but not limited to, incorporating information from remedial programs under its jurisdiction, and shall also incorporate information from the source water assessment program collected by the department of health, INFORMATION COLLECTED PURSUANT TO SECTION ELEVEN HUNDRED TEN OF THE PUBLIC HEALTH LAW, data from annual water supply statements prepared pursuant to section eleven hundred fifty-one of the public health law, information from the database pursuant to title fourteen of article twenty-seven of this chapter, and any other existing data regarding soil and groundwater contamination currently gathered by the department, as well as data on contamination that is readily available from the United States geological survey and other sources determined appropriate by the department.

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

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

29. 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 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, INCLUDING A MULTIPLE FAMILY DWELLING AS DEFINED IN SECTION EIGHT HUNDRED TWO OF THE EXECUTIVE LAW, 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, PREFERABLY BY A LABORATORY CERTIFIED BY THE DEPARTMENT, 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. EVERY 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 CONSTITUENTS AND SHALL INCLUDE BUT NOT BE LIMITED TO A TEST FOR AT LEAST

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

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

(B) THE DEPARTMENT MAY, BY RULE OR REGULATION, EXCLUDE OR LIMIT BY GEOGRAPHIC AREA OR GEOLOGIC FORMATION, OR BASED UPON WELL RECORDED INFORMATION, ANY CONSTITUENT 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 CONSTITUENT 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 CONSTITUENT; 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 CONSTITUENT EVEN THOUGH THE MAXIMUM TIME PERIOD FOR TEST VALIDITY FOR THE CONSTITUENT ESTABLISHED PURSUANT TO THIS SECTION HAS NOT EXPIRED.

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

(B) WITHIN TEN 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) AN AFFIDAVIT STATING THE DATE AND TIME THAT THE WATER SAMPLE WAS COLLECTED AND THE SPECIFIC POINT OF COLLECTION AND THE LEGAL NAME AND MAILING ADDRESS OF THE PERSON OR PERSONS COLLECTING THE RAW WATER SAMPLES;

(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 WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND APPROPRIATE LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE THREE OF THIS CHAPTER.

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

(D) A LABORATORY SHALL NOT RELEASE WATER TEST RESULTS TO ANY PERSON EXCEPT THE BUYER OR 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 SIX 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.

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

(F) 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 TEN 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 APPROPRIATE LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE THREE OF THIS CHAPTER. THE APPROPRIATE LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE THREE OF THIS CHAPTER 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 CONSTITUENTS 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 CONSTITUENT 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 CONSTITUENTS 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 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND LOCAL HEALTH ORGANIZATIONS ESTABLISHED PURSUANT TO ARTICLE THREE OF THIS CHAPTER 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 CONSTITUENT 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 CONSTITUENTS, 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. 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, INCLUDING A MULTIPLE FAMILY DWELLING AS DEFINED IN SECTION EIGHT HUNDRED TWO OF THE EXECUTIVE LAW, 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.

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

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.