

# STATE OF NEW YORK

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265--A

2017-2018 Regular Sessions

## IN ASSEMBLY

January 5, 2017

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Introduced by M. of A. JAFFEE, COOK, MOSLEY, STECK, ARROYO, ABINANTI, FAHY, L. ROSENTHAL, OTIS, TITONE, BLAKE, GALEF, JENNE, JEAN-PIERRE, D'URSO -- Multi-Sponsored by -- M. of A. DINOWITZ, ENGLEBRIGHT, GLICK, PERRY, RIVERA, SIMON, WALKER -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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.

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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; all volatile organic  
14 compounds for which maximum constituent levels have been established  
15 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 recommend 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 of 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 located in the vicinity of the real  
38 property experiencing the water test failure suggesting or recommending  
39 that those property owners may wish to have their private wells tested  
40 for at least the constituents at issue. The specific address or location  
41 of the private well that failed a water test shall not be identified in  
42 the notice or by any other means or in any other manner. The department  
43 shall establish criteria for notification which may include, but shall  
44 not be limited to, the maximum constituent level, the level of excee-  
45 dance reported, and the distance or location of the properties in the  
46 vicinity of the contaminated well for which testing is recommended.

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

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

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

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

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

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

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

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

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