

STATE OF NEW YORK

48--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. HOYLMAN, BROOKS, COMRIE, KAMINSKY, KRUEGER, RIVERA, SEPULVEDA, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- 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
18 prepared pursuant to section eleven hundred fifty-one of the public
19 health law, information from the database pursuant to title fourteen of

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

LBD03140-04-2

1 article twenty-seven of this chapter, and any other existing data
2 regarding soil and groundwater contamination currently gathered by the
3 department, as well as data on contamination that is readily available
4 from the United States geological survey and other sources determined
5 appropriate by the department. In addition to facilitating interagency
6 coordination and predictive analysis to protect water quality, such
7 system shall provide state agency information to the public through a
8 website, within reasonable limitations to ensure confidentiality and
9 security.

10 § 3. Section 206 of the public health law is amended by adding a new
11 subdivision 32 to read as follows:

12 32. The commissioner is authorized and directed to promulgate rules
13 and regulations to establish standards for the testing of drinking water
14 from privately owned wells. Such standards shall apply to any water
15 wells subject to subdivision eighteen of this section, as added by chap-
16 ter three hundred ninety-five of the laws of nineteen hundred ninety-
17 nine. Such testing shall be to determine the quality, safety and exist-
18 ing level of contamination of drinking water from privately owned wells.

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

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

32 § 5. The public health law is amended by adding a new section 1111 to
33 read as follows:

34 § 1111. Private well testing. 1. (a) Within ninety days after the
35 effective date of this section, the department shall promulgate regu-
36 lations providing for the testing of drinking water from private wells
37 located on real property subject to this section. The regulations shall
38 provide for the full reimbursement of costs associated with the water
39 testing required under this section or any regulations promulgated ther-
40 eto, as well as the implementation of any treatment deemed necessary by
41 the department to protect human health, from funds appropriated through
42 the department of environmental conservation for clean water infrastruc-
43 ture projects.

44 (b) Any contract for the sale of real property, including a multiple
45 family dwelling as defined in section eight hundred two of the executive
46 law, which is served by a private well that is the potable water supply
47 for such property shall include a provision requiring as a condition of
48 sale, the testing of such water supply for at least the contaminants
49 prescribed pursuant to this section. Provisions of this section shall
50 not apply to property where the potable water supply has five or more
51 service connections or that regularly serves an average of twenty-five
52 or more individuals daily for at least sixty days out of the year.

53 (c) Water sampling shall be done, preferably by a laboratory certified
54 by the department, in the following manner:

55 (i) if there is no water treatment system in use on the water well
56 being tested, samples shall be collected from a primary cold water,

1 non-aerated spigot or tap that draws from or feeds water to the potable
2 water system from such water;

3 (ii) where a water treatment system is in use on the water supply
4 system, the sample shall be collected as follows:

5 (A) the water treatment system shall be disconnected or otherwise
6 disabled prior to the collection of the water sample; or

7 (B) the sample shall be collected at a location prior to the water
8 treatment system; or

9 (iii) in the case of a new well construction and installation where
10 there is no spigot or tap on the subject property, the sample may be
11 collected directly at the wellhead, utilizing a raw water sample.

12 2. Every water test conducted in accordance with this section shall be
13 conducted by a laboratory certified by the department pursuant to
14 section five hundred two of this chapter to test for drinking water
15 contaminants and shall include but not be limited to a test for at least
16 the following contaminants: bacteria (total coliform); sodium; nitrites;
17 nitrates; iron; manganese; iron plus manganese; pH; copper; chloride;
18 all specific organic chemicals for which maximum contaminant levels have
19 been established pursuant to public health regulations; lead; arsenic;
20 barium; fluoride; mercury; methane; radium; radon; gross alpha parti-
21 cles; uranium; perfluorononanoic acid (PFNA); perfluorohexanesulfonic
22 acid (PFHxS); perfluoroheptanoic acid (PFHpA); perfluorobutanesulfonic
23 acid (PFBS); hexafluoropropylene oxide dimer acid (HFPO-DA); N-ethyl
24 perfluorooctanesulfonamidoacetic acid (NEtFOSAA); N-methyl
25 perfluorooctanesulfonamidoacetic acid (NMeFOSAA); perfluorodecanoic acid
26 (PFDA); perfluorododecanoic acid (PFDoA); perfluorohexanoic acid
27 (PFHxA); perfluorotetradecanoic acid (PFTA); perfluorotridecanoic acid
28 (PFTrDA); perfluoroundecanoic acid (PFUnA); 11-chloroeicosafluoro-3-ox-
29 aundecane-1-sulfonic acid (11Cl-PF3OUdS); 9-chlorohexadecafluoro-3-oxa-
30 nonane-1-sulfonic acid (9Cl-PF3ONS); 4,8-dioxa-3H-perfluorononanoic acid
31 (ADONA); nonafluoro-3,6-dioxaheptanoic acid (NFDHA); perfluorobutanoic
32 acid (PFBA); 1H, 1H, 2H, 2H-perfluorodecane sulfonic acid (8:2FTS);
33 perfluoro(2-ethoxyethane)sulfonic acid (PFEEESA); perfluoroheptanesulfon-
34 ic acid (PFHpS); 1H,1H, 2H, 2H-perfluorohexane sulfonic acid (4:2FTS);
35 perfluoro-3-methoxypropanoic acid (PFMPA); perfluoro-4-methoxybutanoic
36 acid (PFMBA); 1H,1H, 2H, 2H-perfluorooctane sulfonic acid (6:2FTS);
37 perfluoropentanoic acid (PFPeA); and perfluoropentanesulfonic acid
38 (PFPeS).

39 3. (a) The department may, by rule or regulation, exclude or limit by
40 geographic area or geologic formation, or based upon well recorded
41 information, any contaminant listed in this section deemed by the
42 department as not significant in a county or in any specific area within
43 a county and such area or formation need not be tested as part of any
44 water test conducted in accordance with this section.

45 (b) For each contaminant to be tested for in accordance with this
46 section, the department shall establish, by regulation a maximum time
47 period for which a test result shall remain valid for the purposes of
48 this section without necessitating retesting for such contaminant;
49 provided, however, such time period shall not exceed twelve months. A
50 retest of the water supply shall not be required pursuant to this
51 section if the contract of sale is entered into within the period of
52 test validity established pursuant to this paragraph. Notwithstanding
53 any provision of this paragraph to the contrary, a buyer and seller
54 subject to the provisions of this section may mutually agree to retest
55 for a contaminant even though the maximum time period for test validity

1 for the contaminant established pursuant to this section has not
2 expired.

3 4. (a) Any water test results provided by a laboratory to the person
4 or persons requesting the test shall include the maximum contaminant
5 levels or other established water quality standards, if any, prescribed
6 by the department for each contaminant tested and shall be transmitted
7 on a standardized private well water test reporting form prescribed by
8 the department. The form shall also include, but not be limited to, the
9 potential health effects of exposure to the contaminants, the contact
10 information of the relevant local health organizations established
11 pursuant to article three of this chapter, the contact information of
12 the appropriate office or person within the department or the depart-
13 ment's website regarding appropriate treatment technologies, and avail-
14 able funding to assist with the installation of treatment technology.

15 (b) Within ten business days after completion of the water test, a
16 laboratory shall submit the water test results to the department with
17 the following information:

18 (i) a statement that the testing is for the purpose of complying with
19 the "private well testing act";

20 (ii) the location of the real property, described by block and lot
21 number, street address, municipality, and county;

22 (iii) the name and mailing address of the person or persons making the
23 request for the test;

24 (iv) an affidavit stating the date and time that the water sample was
25 collected and the specific point of collection and the legal name and
26 mailing address of the person or persons collecting the raw water
27 samples;

28 (v) the date and time the sample was analyzed by the laboratory; and

29 (vi) such other information as may be required by the department, in
30 consultation with the department of environmental conservation and
31 appropriate local health organizations established pursuant to article
32 three of this chapter.

33 (c) The department shall require laboratories to submit electronically
34 the information required pursuant to paragraph (b) of this subdivision.

35 (d) A laboratory shall not release water test results to any person
36 except the buyer or seller of the real property at issue as provided in
37 subdivision one of this section, the lessor or lessees of the real prop-
38 erty as provided in subdivision six of this section, any person author-
39 ized by the buyer, seller, or lessor, as the case may be, the depart-
40 ment, or any person designated by court order.

41 (e) The department shall make the data accumulated from the water test
42 results submitted by laboratories pursuant to this section available to
43 counties, municipalities, or other governmental entities for the
44 purposes of studying groundwater supplies or contamination in the state;
45 provided, however, that identifying information is removed.

46 (f) The results of water well tests shall be provided to the depart-
47 ment of environmental conservation for inclusion in the statewide
48 groundwater remediation strategy developed in accordance with section
49 15-3109 of the environmental conservation law and the geographic infor-
50 mation system developed in accordance with section 3-0315 of the envi-
51 ronmental conservation law.

52 5. The department, within ten business days after receiving any report
53 of a water test failure in accordance with this section, shall provide
54 notice of such water test failure to the appropriate local health organ-
55 izations established pursuant to article three of this chapter. Within
56 ten business days of being notified by the department of a water test

1 failure, the appropriate local health organizations established pursuant
2 to article three of this chapter shall issue a general notice to owners
3 of real property served by private wells and any public water systems
4 located in the vicinity of the real property experiencing the water test
5 failure recommending that those property owners or water systems test
6 for at least the contaminants at issue. The specific address or location
7 of the private well that failed a water test shall not be identified in
8 the notice or by any other means or in any other manner. The department
9 shall establish criteria for notification which may include, but shall
10 not be limited to, the maximum contaminant level, the level of excee-
11 dance reported, and the distance or location of the properties or public
12 water supply in the vicinity of the contaminated well for which testing
13 is recommended.

14 6. Within two years after the effective date of this section, and at
15 least once every five years thereafter, the lessor of any real property
16 the potable water supply for which is a private well shall test that
17 water supply in the manner established pursuant to this section for at
18 least the contaminant required pursuant to subdivisions two and three of
19 this section. Within ten business days after the receipt of the private
20 well water testing reporting form established pursuant to subdivision
21 four of this section, the lessor shall also provide a written copy of
22 the private well water testing reporting form to each lessee of a rental
23 unit on the property. The lessor shall also provide a written copy of
24 the most recent private well water testing reporting form to a prospec-
25 tive tenant prior to the signing of a lease of a rental unit on the
26 property.

27 7. (a) The department, in consultation with the department of environ-
28 mental conservation, and local health organizations established pursuant
29 to article three of this chapter shall establish a public information
30 and education program to inform the public and appropriate professional
31 disciplines of the enactment of this section and the substance of its
32 provisions and requirements, the potential health effects of consuming
33 water from a private well that does not meet maximum contaminant levels
34 and other established water quality standards, the potential presence of
35 radium in at least some potable groundwater supplies in the state, the
36 geographic areas in the state subject to an actual or potential threat
37 of danger from contaminated groundwater, the importance of testing
38 private wells regularly for contaminants, and suggested water treatment
39 technology, equipment strategies and public funding sources available
40 for treating water from private wells that have failed a water test
41 conducted in accordance with this section.

42 (b) Within one year of the effective date of this section, the depart-
43 ment shall make available to the public on the department's website a
44 general compilation of water test results for all contaminants identi-
45 fied in subdivision two of this section. The results shall be arranged
46 or identified by county and municipality or appropriate geographic area
47 therein, but which does not include specific address or location infor-
48 mation. The department shall update its website and add new water test
49 results at least annually.

50 8. Within three years of the effective date of this section, the
51 department shall prepare and transmit to the governor and legislature a
52 report on the implementation and operation of this section. Such report
53 shall also describe the benefits and deficiencies realized as a result
54 of this section and include recommendations for any appropriate legisla-
55 tive action. The report shall also be made available to the public and
56 be posted on the department's website.

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

3 § 468. Private well testing requirements. 1. Every contract for the
4 sale of real property, including a multiple family dwelling as defined
5 in section eight hundred two of the executive law, which is served by a
6 private well that is the potable water supply for such property shall
7 include a provision requiring as a condition of sale, the testing of
8 such water supply for at least the standards prescribed pursuant to
9 section eleven hundred eleven of the public health law. Provisions of
10 this section shall not apply to property where the potable water supply
11 has five or more service connections or that regularly serves an average
12 of twenty-five or more individuals daily for at least sixty days out of
13 the year.

14 2. Closing of title on the sale of such real property shall not occur
15 unless both the buyer and the seller have received and reviewed a copy
16 of the private well water testing reporting form established pursuant to
17 subdivision four of section eleven hundred eleven of the public health
18 law. At closing, the buyer and seller both shall certify in writing
19 that they have received and reviewed the water test results.

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

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