

# STATE OF NEW YORK

5979

2023-2024 Regular Sessions

## IN ASSEMBLY

March 24, 2023

Introduced by M. of A. BURDICK -- 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 § 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  
20 article twenty-seven of this chapter, and any other existing data  
21 regarding soil and groundwater contamination currently gathered by the  
22 department, as well as data on contamination that is readily available  
23 from the United States geological survey and other sources determined  
24 appropriate by the department. In addition to facilitating interagency

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

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1 coordination and predictive analysis to protect water quality, such  
2 system shall provide state agency information to the public through a  
3 website, within reasonable limitations to ensure confidentiality and  
4 security.

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

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

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

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

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

29 § 1111. Private well testing. 1. (a) Within ninety days after the  
30 effective date of this section, the department shall promulgate regu-  
31 lations providing for the testing of drinking water from private wells  
32 located on real property subject to this section. The regulations shall  
33 provide for the full reimbursement of costs associated with the water  
34 testing required under this section or any regulations promulgated ther-  
35 eto, as well as the implementation of any treatment deemed necessary by  
36 the department to protect human health, from funds appropriated through  
37 the department of environmental conservation for clean water infrastruc-  
38 ture projects.

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

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

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

54 4. (a) Any water test results provided by a laboratory to the person  
55 or persons requesting the test shall include the maximum contaminant  
56 levels or other established water quality standards, if any, prescribed

1 by the department for each contaminant tested and shall be transmitted  
2 on a standardized private well water test reporting form prescribed by  
3 the department. The form shall also include, but not be limited to, the  
4 potential health effects of exposure to the contaminants, the contact  
5 information of the relevant local health organizations established  
6 pursuant to article three of this chapter, the contact information of  
7 the appropriate office or person within the department or the depart-  
8 ment's website regarding appropriate treatment technologies, and avail-  
9 able funding to assist with the installation of treatment technology.

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

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

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

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

19 (iv) an affidavit stating the date and time that the water sample was  
20 collected and the specific point of collection and the legal name and  
21 mailing address of the person or persons collecting the raw water  
22 samples;

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

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

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

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

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

41 (f) The results of water well tests shall be provided to the depart-  
42 ment of environmental conservation for inclusion in the statewide  
43 groundwater remediation strategy developed in accordance with section  
44 15-3109 of the environmental conservation law and the geographic infor-  
45 mation system developed in accordance with section 3-0315 of the envi-  
46 ronmental conservation law.

47 5. The department, within ten business days after receiving any report  
48 of a water test failure in accordance with this section, shall provide  
49 notice of such water test failure to the appropriate local health organ-  
50 izations established pursuant to article three of this chapter. Within  
51 ten business days of being notified by the department of a water test  
52 failure, the appropriate local health organizations established pursuant  
53 to article three of this chapter shall issue a general notice to owners  
54 of real property served by private wells and any public water systems  
55 located in the vicinity of the real property experiencing the water test  
56 failure recommending that those property owners or water systems test

1 for at least the contaminants at issue. The specific address or location  
2 of the private well that failed a water test shall not be identified in  
3 the notice or by any other means or in any other manner. The department  
4 shall establish criteria for notification which may include, but shall  
5 not be limited to, the maximum contaminant level, the level of excee-  
6 dance reported, and the distance or location of the properties or public  
7 water supply in the vicinity of the contaminated well for which testing  
8 is recommended.

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

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

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

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

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

54 § 468. Private well testing requirements. 1. Every contract for the  
55 sale of real property, including a multiple family dwelling as defined  
56 in section eight hundred two of the executive law, which is served by a

1 private well that is the potable water supply for such property shall  
2 include a provision requiring as a condition of sale, the testing of  
3 such water supply for at least the standards prescribed pursuant to  
4 section eleven hundred eleven of the public health law. Provisions of  
5 this section shall not apply to property where the potable water supply  
6 has five or more service connections or that regularly serves an average  
7 of twenty-five or more individuals daily for at least sixty days out of  
8 the year.

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

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

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