

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 2043

Short Title: Protect Private Drinking Water Resources. (Public)

Sponsors: Representatives Harrison, Coleman, Blue, Justice (Primary Sponsors);  
Faison, Glazier, Insko, and Wray.

Referred to: Environment and Natural Resources.

May 10, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND WATER QUALITY FOR  
RESIDENTS OF THE STATE WHO RECEIVE DRINKING WATER FROM  
PRIVATE WELLS OR IMPROVED SPRINGS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 87-98 reads as rewritten:

"§ 87-98. **Bernard Allen Memorial Emergency Drinking Water Fund.**

(a) The Bernard Allen Memorial Emergency Drinking Water Fund is established within under the control and direction of the Department. The Fund shall be a nonreverting, interest-bearing fund consisting of monies appropriated by the General Assembly or made available to the Fund from any other source and investment interest credited to the Fund.

(b) The Fund may be used to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well or improved spring that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. ~~The funds~~ Fund may also be used to ~~cover~~ pay the costs of testing by the Department of private drinking water wells and improved springs for suspected contamination up to once every three years upon request by a person who uses the well for ~~contamination~~ and for the provision of alternative drinking water supplies to persons whose drinking water well or improved spring is contaminated.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative

1 source of funds is not available. The ~~funds~~ Fund shall not be used for remediation of  
2 groundwater contamination. Nothing in this section expands, contracts, or modifies the  
3 obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General  
4 Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify  
5 receptors, or remediate groundwater or soil contamination. The Fund shall not be used  
6 to provide alternative water supply to households with incomes greater than two  
7 hundred percent (200%) of the current poverty level. The Fund shall not be used to  
8 provide alternative drinking water supplies unless the concentration of one or more  
9 contaminants in the private drinking water well or improved spring exceeds the  
10 Maximum Contaminant Level, or the federal drinking water action level as defined in  
11 40 Code of Federal Regulations § 141.1 through § 141.571 (1 July 2006) and 40 Code  
12 of Federal Regulations § 143.3 (1 July 2006). The Fund shall not be used to provide  
13 temporary water supplies in any calendar quarter until all needs for permanent  
14 replacement water supplies that have been identified in that calendar quarter have been  
15 met through hookups to public water supplies, repair, or replacement of contaminated  
16 wells. In disbursing monies from the Fund, preference shall be given to providing  
17 permanent replacement water supplies by connection to public water supplies and repair  
18 or replacement of contaminated wells over the provision of temporary water supplies.

19 (d) The Department shall establish criteria by which the Department is to  
20 evaluate applications and disburse ~~funds~~ monies from this Fund and may adopt any  
21 rules necessary to implement this section.

22 (e) The Department, in consultation with the Commission for Health Services  
23 and local health departments, shall report no later than 1 October of each year to the  
24 Environmental Review Commission, the House of Representatives and Senate  
25 Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal  
26 Research Division of the General Assembly on the implementation of this section. The  
27 report shall include the purpose and amount of all expenditures from the Fund during  
28 the prior fiscal year, a discussion of benefits and deficiencies realized as a result of the  
29 implementation of this section, and may also include recommendations for any  
30 legislative action."

31 **SECTION 2.** The first report required by G.S. 87-98(e), as enacted by  
32 Section 1 of this act, shall be submitted on or before 1 October 2008.

33 **SECTION 3.** There is appropriated from the General Fund to the Bernard  
34 Allen Memorial Emergency Drinking Water Fund the sum of two million dollars  
35 (\$2,000,000) for the 2007-2008 fiscal year and the sum of two million dollars  
36 (\$2,000,000) for the 2008-2009 fiscal year. It is the intention of the General Assembly  
37 that this appropriation be a recurring appropriation.

38 **SECTION 4.** Chapter 130A of the General Statutes is amended by adding a  
39 new Article to read:

40 "Article 10A.

41 "Protection of Private Drinking Water Wells and Improved Springs.

42 "**§ 130A-330.1. Purpose.**

43 The purpose of this Article is to ensure the safety and quality of potable water from  
44 private drinking water wells and improved springs in the State.

**"§ 130A-330.2. Definitions.**As used in this Article:

- (1) 'Certified laboratory' has the same meaning as in G.S. 130A-313.
- (2) 'Contaminant' has the same meaning as in G.S. 130A-313.
- (3) 'Department' means the Department of Environment and Natural Resources.
- (4) 'Drinking water rules' has the same meaning as in G.S. 130A-313.
- (5) 'Fund' means the Bernard Allen Memorial Emergency Drinking Water Fund established by G.S. 87-98.
- (6) 'Groundwater standards' means water quality standards for groundwater adopted by the Environmental Management Commission pursuant to G.S. 143-214.1.
- (7) 'Improved spring' means a natural release of groundwater to the surface without the assistance of a pump, that has been protected by casing, grouting, and sealing as required by Article 7 of Chapter 87 of the General Statutes.
- (8) 'Owner' means each person who has a recorded present or future interest in real estate and each person who is named in a real estate contract except that 'owner' does not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.
- (9) 'Private drinking water well' has the same meaning as in G.S. 87-85.
- (10) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser' in a real estate contract.
- (11) 'Real estate contract' means a contract for the transfer of ownership of real property.
- (12) 'Real property' means a lot, tract, or parcel of land, and any business dwelling unit located thereon that is described in a real estate contract.
- (13) 'Transfer' means the transfer, sale, exchange, installment land sales contract, option, or lease with option to purchase of real estate property.
- (14) 'Water test' means a test of drinking water conducted in accordance with G.S. 130A-330.4 and rules adopted by the Commission pursuant to this Article.
- (15) 'Well user' means a person or group of persons residing in the same dwelling unit or working at the same business at which drinking water is supplied from a private drinking water well.

**"§ 130A-330.3. Scope of the Article.**

The provisions of this Article shall apply to all transfers of real property in the State unless the transfer occurs under one of the following conditions:

- (1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of

1 execution, transfers by foreclosure sale, transfers by a trustee in  
2 bankruptcy, transfers by eminent domain, and transfers resulting from  
3 a decree for specific performance.

4 (2) Transfers to a beneficiary from the grantor or his successor in interest  
5 in a deed of trust, or to a mortgagee from the mortgagor or his  
6 successor in interest in a mortgage, if the indebtedness is in default;  
7 transfers by a trustee under a deed of trust or a mortgagee under a  
8 mortgage, if the indebtedness is in default; transfers by a trustee under  
9 a deed of trust or a mortgagee under a mortgage pursuant to a  
10 foreclosure sale, or transfers by a beneficiary under a deed of trust who  
11 has acquired the real property at a sale conducted pursuant to a  
12 foreclosure sale under a deed of trust.

13 (3) Transfers by a fiduciary in the course of the administration of a  
14 decedent's estate, guardianship, conservatorship, or trust.

15 (4) Transfers from one or more co-owners solely to one or more other  
16 co-owners.

17 (5) Transfers made solely to a spouse or a person or persons in the lineal  
18 line of consanguinity of one or more transferors.

19 (6) Transfers between spouses resulting from a decree of divorce or a  
20 distribution pursuant to Chapter 50 of the General Statutes or  
21 comparable provision of another state.

22 (7) Transfers made by virtue of the record owner's failure to pay any  
23 federal, State, or local taxes.

24 (8) Transfers to or from the State or any political subdivision of the State.

25 **§ 130A-330.4. Water testing criteria and procedures.**

26 (a) The Commission shall establish criteria and procedures to test water provided  
27 from private drinking water wells and improved springs to determine whether the water  
28 complies with drinking water rules. The criteria and procedures shall include an analysis  
29 for at least the following contaminants:

30 (1) Bacteria (total coliform).

31 (2) Nitrates.

32 (3) Heavy metals.

33 (4) Volatile organic compounds where potential sources of these  
34 contaminants are present.

35 (5) Radon.

36 (6) Radium-222 and Radium-226.

37 (b) The Commission may require testing for contaminants not listed in subsection  
38 (a) of this section in any area of the State where additional contaminants may pose a  
39 threat to public health.

40 (c) A water test conducted pursuant to this Article shall be completed by a  
41 certified laboratory.

42 (d) The Commission shall develop a standard report form that certified  
43 laboratories shall use to report the results of a water test conducted pursuant to this  
44 Article.

1 (e) A certified laboratory shall submit results of the water test to the owner no  
2 later than 15 days after completion of any analysis required by transfer, sale, or lease of  
3 property or as required to obtain a well permit under a local well program. A certified  
4 laboratory shall electronically submit the results of a water test conducted pursuant to  
5 this Article to the Department and to the State Health Director no later than 15 days  
6 after completion of the analysis.

7 **"§ 130A-330.5. Water test required before transfer of real property; rental or**  
8 **leased properties.**

9 (a) No person shall transfer real property to which water is supplied from a  
10 private drinking water well or improved spring for human consumption unless a water  
11 test has been conducted on the well in accordance with this Article within six months  
12 prior to the transfer.

13 (b) Closing on a transfer of real property to which water is supplied from a  
14 private drinking water well or improved spring for human consumption shall not occur  
15 unless both the owner and the purchaser have received and reviewed a copy of the  
16 results of the most recent water test. At closing, both the owner and purchaser shall  
17 certify in writing that they have received and reviewed the results of the most recent  
18 water test.

19 (c) The lessor of any rental or leased property to which water is supplied from a  
20 private drinking water well or improved spring for human consumption shall conduct a  
21 water test pursuant to this Article at least once every three years. The lessor shall  
22 provide a copy of the results of the most recent water test to the tenants of each rental or  
23 leased property no later than 30 days after receipt of the test results. The lessor shall  
24 also provide a copy of the results of the most recent water test to a new lessee prior to  
25 the signing of a rental or lease agreement."

26 **SECTION 5.** Article 21 of Chapter 143 of the General Statutes is amended  
27 by adding a new Part to read:

28 "Part 11. Groundwater Quality Database.

29 **"§ 143-215.74J. Definitions; Groundwater Quality Database established.**

30 (a) The definitions in G.S. 130A-330.2 apply to this Part.

31 (b) The Department shall establish a Groundwater Quality Database as a resource  
32 center and repository for the results of groundwater quality monitoring conducted and  
33 submitted pursuant to programs administered by the Department under Articles 9, 10,  
34 and 10A of Chapter 130A and Articles 21 and 21A of Chapter 143 of the General  
35 Statutes. The Department shall:

36 (1) Collect, maintain, and make available the information contained in the  
37 Database in a manner that is accessible to State agencies, local  
38 governments, and the general public.

39 (2) Assess the quality and reliability of the data and organize the Database  
40 in a usable format. The Database shall include geographic information  
41 sufficient to map the groundwater resources of the State and to map  
42 areas in which groundwater contamination exceeds groundwater  
43 standards.

- 1           (3) Prescribe the format for submission of information and ensure quality  
2           control for all data collected or submitted.

3 **"§ 143-215.74K. Public notification.**

4           (a) If the results of a water test indicate an exceedance of groundwater or  
5 drinking water standards, the Department shall provide notice of the exceedance to all  
6 of the following within 15 business days of receipt of the water test results:

7           (1) The local health department that serves the county in which the well or  
8 improved spring is located.

9           (2) Owners of real property served by any other private drinking water  
10 well or improved spring that is located within a 1,500-foot radius of  
11 the well or improved spring.

12           (3) Well users who occupy a dwelling or work at a business within a  
13 1,500-foot radius of the well or improved spring.

14           (b) The Commission, in consultation with the State Health Director, shall  
15 establish criteria and procedures for notification required by this section. The  
16 notification shall be issued in both English and Spanish and shall include all of the  
17 following information:

18           (1) The location of the well from which the sample was collected.

19           (2) The name of each contaminant, the groundwater water standard, and  
20 the level of exceedance of each contaminant that exceeds a  
21 groundwater or drinking water standard.

22           (3) The potential health effects that may result from exposure to each  
23 contaminant that exceeds a groundwater or drinking water standard.

24           (4) Contact information for the local health department and the  
25 appropriate regional office of the Department.

26           (5) Any other information required by the rules of the Commission.

27 **"§ 143-215.74L. Annual report.**

28           The Department shall report no later than 1 October of each year to the  
29 Environmental Review Commission on the status of groundwater quality in the State.  
30 The report shall include information on the status of the Groundwater Quality Database,  
31 public notification efforts, groundwater monitoring efforts conducted by the  
32 Department, and trends in groundwater quality. The report may also include an analysis  
33 of issues related to groundwater quality, identification of deficiencies in groundwater  
34 quality information, and recommendations to improve the quality of groundwater  
35 resources in the State."

36           **SECTION 6.** The first report required pursuant to G.S. 143-215.74L, as  
37 enacted by Section 5 of this act, is due on or before 1 October 2008.

38           **SECTION 7.** There is appropriated from the General Fund to the  
39 Department of Environment and Natural Resources the sum of four hundred thousand  
40 dollars (\$400,000) for the 2007-2008 fiscal year and the sum of four hundred thousand  
41 dollars (\$400,000) for the 2008-2009 fiscal year to implement the provisions of Section  
42 5 of this act. It is the intention of the General Assembly that this appropriation be a  
43 recurring appropriation. Funds appropriated by this section shall be used to hire one  
44 additional staff member in each of the seven regional offices of the Department for

1 investigation and notification functions and up to three staff members in the central  
2 office of the Department to establish and maintain the Groundwater Quality Database.

3         **SECTION 8.** Nothing in this act shall be construed to limit or preempt the  
4 authority of a local health department or local board of health to make or cause to be  
5 made an inspection or test of a private well as may be necessary to ensure the health and  
6 safety of the residents of the State.

7         **SECTION 9.** Nothing in this act shall be construed to modify the liability of  
8 any person who is responsible for an exceedance of groundwater or drinking water  
9 standards to the State or to third parties.

10         **SECTION 10.** Sections 3, 5, and 7 of this act become effective 1 July 2007.  
11 G.S. 130A-330.5, as enacted by Section 4 of this act, becomes effective 1 January 2008.  
12 The remainder of Article 10A of Chapter 130A of the General Statutes, as enacted by  
13 Section 4 of this act, and Sections 1, 2, 6, 8, 9, and 10 of this act are effective when this  
14 act becomes law.