

NORTH CAROLINA GENERAL ASSEMBLY  
1979 SESSION

CHAPTER 788  
SENATE BILL 289

AN ACT TO ENACT THE NORTH CAROLINA DRINKING WATER ACT.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 130 of the General Statutes is hereby amended by adding a new Article to read as follows:

"Article 13D.

"North Carolina Drinking Water Act.

"§ 130-166.39. **Short title.** — This Article shall be known and may be cited as the North Carolina Drinking Water Act.

"§ 130-166.40. **Purpose.** — The purpose of this act is to regulate water systems within the State which supply drinking water to the public insofar as the water furnished may affect the public health.

"§ 130-166.41. **Definitions.** — As used in this Article, the term:

- (a) 'Administrator' shall mean the Administrator of the United States Environmental Protection Agency or his authorized representative.
- (b) 'Certified Laboratory' shall mean any facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the Division of Health Services Laboratory Section certification program.
- (c) 'Commission' shall mean the Commission for Health Services as created by G.S. 143B-142.
- (d) 'Contaminant' shall mean any physical, chemical, biological or radiological substance or matter in water.
- (e) 'Department' shall mean the Department of Human Resources as created by G.S. 143B-136.
- (f) 'Drinking Water Regulations' shall mean regulations promulgated pursuant to this Article.
- (g) 'Federal Act' shall mean the Safe Drinking Water Act of 1974, P.L. 93-523, as amended.
- (h) 'Federal Agency' shall mean any department, agency or instrumentality of the United States.
- (i) 'Maximum Contaminant Level' shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
- (j) 'National Primary Drinking Water Regulations' shall mean primary drinking water regulations promulgated by the Administrator pursuant to the federal act.
- (k) 'Person' shall mean an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity.
- (l) 'Public Water System' shall mean a system for the provision to the public of piped water for human consumption if such system serves 15 or more

service connections or which regularly serves 25 or more individuals. Such term includes:

- (1) any collection, treatment, storage, or distribution facility under control of the operator of such system and used primarily in connection with such system, and
- (2) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.

A public water system, as defined above, is either a 'community water system' or a 'noncommunity water system':

- (1) 'Community Water System' shall mean a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
  - (2) 'Noncommunity Water System' shall mean a public water system which is not a community water system.
- (m) 'Secretary' shall mean the Secretary of the Department of Human Resources.
- (n) 'Supplier of Water' shall mean any person who owns, operates, or controls a public water system.
- (o) 'Treatment Technique Requirement' shall mean a requirement of the Drinking Water Regulations which specifies for a contaminant a specific treatment technique which leads to reduction in the level of such contaminant sufficient to comply with the Drinking Water Regulations.
- (p) 'Unit of Local Government' shall mean a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government.

**"§ 130-166.42. Scope.** — (a) The provisions of this Article shall apply to each public water system in the State, unless the public water system meets all of the following conditions:

- (1) consists only of distribution and storage facilities and does not have any collection and treatment facilities;
- (2) obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
- (3) does not sell water to any person; and
- (4) is not a carrier which conveys passengers in interstate commerce.

(b) Any provision of any charter granted to a public water system in conflict with the provisions of this Article is hereby repealed.

**"§ 130-166.43. Drinking Water Regulations.** — (a) The Commission shall promulgate and the Secretary shall enforce Drinking Water Regulations to regulate water systems within the State which supply drinking water to the public insofar as the water furnished may affect the public health.

(b) Such regulations shall:

- (1) specify contaminants which may, in the Commission's judgment, have an adverse effect on the public health;
- (2) specify for each contaminant either:
  - a. a maximum contaminant level which is acceptable in water for human consumption, if it is feasible to establish the level of such contaminant in water in public water systems; or
  - b. one or more treatment techniques which lead to a reduction in the level of such contaminants sufficient to protect the public health, if it is not feasible to establish the level of such contaminants in water in a public water system; and
- (3) establish criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels and treatment

techniques as determined in paragraph (2). Such regulations may provide for:

- a. the minimum quality of raw water which may be taken into a public water system;
- b. a program of laboratory certification;
- c. monitoring and analysis;
- d. record-keeping and reporting;
- e. notice of noncompliance, failure to perform monitoring, variances and exemptions;
- f. inspection of public water systems; inspection of records required to be kept and the taking of samples;
- g. criteria for design and construction of new or modified public water systems;
- h. review and approval of design and construction of new or modified public water systems;
- i. siting of new public water system facilities;
- j. variances and exemptions from the Drinking Water Regulations; and
- k. such additional criteria and procedures as may be required to carry out the purposes of this Article.

(c) The Drinking Water Regulations may be amended from time to time as necessary to be in accordance with required federal regulations.

**"§ 130-166.44. Department of Human Resources to control and examine waters.** — The Department shall cause to be made examination of all waters and their sources and surroundings which are used as, or proposed to be used as, sources of public water supply, and the Department shall ascertain whether the same are suitable for use as public water supply sources.

**"§ 130-166.45. Submission and approval of public water system plans; Department to provide advice.** — (a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter, or operate a public water system of the most appropriate source of water supply and the best practical method of purifying such water, having regard to the present and prospective needs and interests of other persons and units of local government which may be affected thereby. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration, and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice thereof and submit plans, specifications, and other information therefor to the Department. The Commission shall promulgate rules and regulations providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications, and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications, and other information. The Department shall review the plans, specifications, and other information and notify the person, Utilities Commission, and unit of local government of compliance or lack thereof with applicable law and rules and regulations of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration unless

- (1) the plans for such construction or alteration have been prepared by an engineer licensed by the State of North Carolina;
- (2) the Department has determined that such system, as constructed or altered, will be capable of compliance with the Drinking Water Regulations;

- (3) the Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;
- (4) the Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system; and
- (5) the Department has approved the plan.

**"§130-166.46. Disinfection by public water systems.** — (a) The Department is hereby authorized to require disinfection by

- (1) public water systems introduced on or after January 1, 1972, and
- (2) all public water systems, regardless of the date introduced, whenever
  - a. the maximum microbiological contaminant level is exceeded, or
  - b. conditions exist which make continued use of the water potentially hazardous to health.

(b) Public water systems shall employ disinfection methods and procedures approved by the Department.

**"§ 130-166.47. Condemnation of lands for public water systems.** — All units of local government operating public water systems and all water companies operating under franchise from the State or units of local government, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their systems. Condemnation proceedings under this section shall be the same as prescribed by law under Chapter 40 of the General Statutes of North Carolina.

**"§ 130-166.48. Sanitation of watersheds; rules.** — (a) The Commission shall promulgate rules and regulations governing the sanitation of watersheds from which public drinking water supplies are obtained. In promulgating such regulations the Commission is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population and need for frequency of sampling of raw water. The regulations shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

(b) Any person operating a public water system and furnishing water from unfiltered surface supplies shall have inspections made of the watershed area at least quarterly, and more often when, in the opinion of the Department, such inspections are necessary.

**"§ 130-166.49. Variances and exemptions.** — (a) The Secretary may authorize variances from the Drinking Water Regulations.

- (1) The Secretary may grant one or more variances to any public water system within the State from any requirement respecting a maximum contaminant level of an applicable Drinking Water Regulation upon a finding that:
  - a. because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the Drinking Water Regulations despite application of the best technology, treatment techniques, or other means, which the Secretary finds are generally available (taking costs into consideration); and
  - b. the granting of a variance will not result in an unreasonable risk to health when considering the population exposed, the projected duration of the requested variance, and the degree to which the maximum contaminant level is being or will be exceeded.
- (2) The Secretary may grant one or more variances to any public water system within the State from any requirement of a specified treatment technique of

- an applicable Drinking Water Regulation upon a finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.
- (3) In consideration of whether the public water system is unable to comply with a contaminant level required by the Drinking Water Regulations because of the nature of the raw water sources, the Secretary shall consider such factors as the following:
- a. the availability and effectiveness of treatment methods for the contaminant for which the variance is requested;
  - b. costs of implementing the best treatment(s) improving the quality of the raw water by the best means, or using an alternate source.
- (4) In consideration of whether a public water system should be granted a variance from a required treatment technique because such treatment is unnecessary to protect the public health, the Secretary shall consider such factors as the following:
- a. quality of the water source including water quality data and pertinent sources of pollution;
  - b. source protection measures employed by the public water system.
- (b) The Secretary may authorize exemptions from the Drinking Water Regulations.
- (1) The Secretary may exempt any public water system within the State from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable Drinking Water Regulation upon a finding that:
- a. due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;
  - b. the public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and
  - c. the granting of the exemption will not result in an unreasonable risk to health when considering the population exposed, the projected duration of the requested exemption, and the degree to which the maximum contaminant level is being or will be exceeded.
- (2) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider such factors as the following:
- a. construction, installation, or modification of treatment equipment or systems;
  - b. the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance;
  - c. economic feasibility of immediate compliance.
- (c) As a condition of issuance of either a variance or an exemption, the Secretary shall require that the public water system adhere to a schedule of compliance, including increments of progress, with each Drinking Water Regulation for which the variance or exemption was issued. As a further condition of the variance or exemption, the Secretary shall require implementation by the public water system of such control measures as the Secretary deems necessary, during the period ending on the date of compliance with such requirement. The schedules of compliance must be prescribed within one year of the date the variance or exemption has been granted. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than January 1, 1981, for the initial drinking water regulations, and no later than seven years after the date of revised Drinking

Water Regulations setting new maximum contaminant levels or treatment techniques. Compliance dates can be extended two years if the public water supply has entered into an enforceable agreement to become part of a regional water system.

(d) The Secretary shall provide notice and opportunity for public hearing on proposed variances and proposed variance and exemption schedules.

**"§ 130-166.50. Imminent hazard, power of the Secretary.** — (a) An imminent hazard shall exist when in the judgment of the Secretary there exists a present or potential condition in a public water system which poses a serious, immediate risk to public health.

(b) In order to eliminate an imminent hazard, the Secretary may, without notice or hearing, issue an order requiring the person or persons involved to immediately take action necessary to protect the public health. A copy of the order shall be delivered by certified mail or personal service. Such order shall become effective immediately and shall remain in effect until modified or rescinded by the Secretary or by a court of competent jurisdiction.

**"§ 130-166.51. Emergency plan for drinking water.** — (a) The Secretary shall promulgate an adequate plan for the provision of drinking water under emergency circumstances. When in the judgment of the Secretary emergency circumstances exist in the State with respect to a need for drinking water, the Secretary may take such actions in accordance with the plan as the Secretary may deem necessary in order to provide drinking water.

(b) Emergency circumstances shall exist whenever the available supply of drinking water is inadequate.

**"§ 130-166.52. Notice of noncompliance, failure to perform monitoring, variances and exemptions.** — Whenever a public water system

- (1) is not in compliance with the Drinking Water Regulations,
- (2) fails to perform an applicable testing procedure or monitoring required by the Drinking Water Regulations,
- (3) is subject to a variance granted for inability to meet a maximum contaminant level requirement,
- (4) is subject to an exemption, or
- (5) fails to comply with the requirements prescribed by a variance or exemption, the supplier shall as soon as possible but not later than 48 hours after discovery notify the Department and give such public notification as may be prescribed by regulation.

**"§ 130-166.53. Prohibited acts.** — The following acts are prohibited:

- (1) failure by a supplier of water to comply with this Article, any order issued hereunder, or the Drinking Water Regulations;
- (2) failure by a supplier of water to comply with the requirements of G.S. 130-166.52 or the dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the Drinking Water Regulations;
- (3) refusal by a supplier of water to allow an authorized representative of the Department or any local health department to inspect any public water system as provided for in G.S. 130-204;
- (4) the willful defiling by any person of any water supply of a public water system or the willful damaging of any pipe or other part of a public water system;
- (5) the discharge by any person of sewage or other waste above the intake of a public water system, unless the sewage or waste shall have been passed through a system of purification approved by the Department and the Department of Natural Resources and Community Development; and

- (6) the failure by any person to maintain a system approved by the Department for collecting and disposing of all accumulations of human excrement located on the watershed of any public water system.

"§ 130-166.54. **Penalties; remedies; contested cases.** — (a) The Department may impose an administrative, civil penalty in accordance with the Drinking Water Regulations, on any person who violates G.S. 130-166.52. Each day of a continued violation shall constitute a separate violation. Such penalty shall not exceed five thousand dollars (\$5,000) for each day such violation continues.

(b) Any person wishing to contest a penalty or other order issued under this Article shall be entitled to an administrative hearing and judicial review conducted according to the procedures outlined in G.S. 150A-23 through 150A-52.

(c) The Secretary may bring a civil action in the Superior Court of the county in which the violation is alleged to have occurred to recover the amount of the administrative penalty whenever a supplier of water

- (1) who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36.

(d) In addition to any other remedies provided for in this section, the Secretary may institute a civil action in the Superior Court of the county in which the defendant in said civil action resides to prevent a threatened or continuing violation of any provision of this Article or any order or regulation issued pursuant to this Article.

"§ 130-166.55. **Powers of the Secretary** — To carry out the provisions and purposes of this Article, the Secretary is authorized and empowered to:

- (1) administer and enforce the provisions of this Article and all rules, regulations and orders promulgated hereunder;
- (2) enter into agreements, or cooperative arrangements with, or participate in related programs of other states, other state agencies, federal or interstate agencies, units of local government, educational institutions, local health departments or other organizations or individuals;
- (3) receive financial and technical assistance from the federal government and other public or private agencies;
- (4) delegate those responsibilities and duties and designate agents as deemed appropriate for the purpose of administering the requirements of this Article;
- (5) require public water systems to take such actions or make such modifications as are necessary to comply with the requirements of this Article or the regulations promulgated hereunder;
- (6) prescribe such policies and procedures as are necessary or appropriate to carry out the Secretary's function under this Article; and
- (7) collect fees to recover the costs of laboratory analysis as follows:

<u>Type of Analysis</u>	<u>Fee per Analysis</u>
Coliform Bacteria	\$ 5.00
Nitrate	7.00
Inorganic Chemical	100.00
Organic Chemical	120.00
Radiological	
1) surface or ground source serving less than 100,000 in population	50.00
2) surface source serving more than 100,000 in population	120.00

- 3) any community water system using water contaminated by manmade radioactivity 200.00

"§ 130-166.56. **Construction.** — This Article shall be interpreted as giving the State the authority needed to assume primary enforcement responsibility under the federal act."

**Sec. 2.** Article 13 of Chapter 130 of the General Statutes is rewritten to read as follows:

"Article 13.

"Sanitary Sewage Disposal.

"§ 130-160. **Sanitary sewage disposal; rules.** — (a) Any person owning or controlling any single or multiple family residence, place of business or place of public assembly shall provide a sanitary system of sewage disposal consisting of an approved privy, an approved septic tank system, or a connection to a public or community sewerage system. Any such sanitary sewage disposal system with 3,000 gallons or less design capacity serving a single or multiple family residence, place of business, or place of public assembly, the effluent from which is not discharged to the surface waters, shall be approved under rules and regulations promulgated by the Commission for Health Services. All other such sanitary sewage disposal systems with more than 3,000 gallons design capacity shall be approved under rules and regulations promulgated by the Environmental Management Commission pursuant to the applicable provisions of Article 21 of Chapter 143.

(b) Notwithstanding the provisions of subsection (a) of this section and the provisions of G.S. 130-17(b), any sanitary sewage disposal system subject to approval under rules and regulations of the Commission for Health Services shall be reviewed and approved under rules and regulations of a local board of health in the following circumstances:

- (1) the local board of health, on its own motion, has requested the Commission for Health Services to review its proposed regulations concerning sanitary sewage disposal systems;
- (2) the Commission for Health Services has found that the regulations of the local board of health concerning sanitary sewage disposal systems are substantially equivalent to the Commission's regulations, and are sufficient to safeguard the public health.

(c) The Commission for Health Services from time to time, upon its own motion or upon the request of a citizen of an affected county, may review its findings under subsection (b) of this section. Subject to such review, the Commission's findings that local regulations meet the requirements of subsection (b) of this section shall be binding and conclusive.

(d) The relationship between State and local regulations concerning sanitary sewage disposal systems shall continue to be governed by G.S. 130-17(b) except in those cases where local regulations have been reviewed and approved pursuant to subsection (b) of this section."

**Sec. 3.** Article 6 of Chapter 130 is rewritten to read as follows:

"Article 6.

"State Laboratory of Public Health.

"§ 130-30. **Laboratory established** — For the better protection of the public health there is established under the control of the Department of Human Resources a State Laboratory of Public Health.

"§ 130-31. **To make examinations.** — The Department of Human Resources is authorized to make in its laboratory such examinations as the public health may require.

"§ 130-32. **Fees.** — All fees incurred under Article 6 prior to the effective date of this act shall remain due and payable."

**Sec. 4.** G.S. 130-157 is amended by deleting the word "Article" and substituting the word "Chapter", and further is recodified as G.S. 130-9.6.

**Sec. 5.** G.S. 130-205 is rewritten to read as follows:

"If any person shall violate the provisions of this Chapter or any rules and regulations adopted pursuant thereto, or if any person shall hinder or interfere with the proper performance of duty of the Secretary of Human Resources or his representative or any local health director or his representative, the Secretary of Human Resources or any local health director may institute an action in the superior court of the county in which such violation, hindrance or interference occurred for injunctive relief against such continued violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of Article 37 of Chapter 1 of the General Statutes, and Rule 65 of the Rules of Civil Procedure."

**Sec. 6.** Nothing herein contained shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

**Sec. 7.** This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 5th day of June, 1979.