

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

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SENATE BILL 676

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/3/11

Short Title: Clarify Water & Well Rights/Private Property.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

**AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY
AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(a) reads as rewritten:

"(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(e) reads as rewritten:

"(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells."

SECTION 3. G.S. 143-355.2(a)(4) is repealed.

SECTION 4. G.S. 143-355.2(h) reads as rewritten:

"(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section. This subsection shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. Nothing in this subsection shall be deemed to void or alter cross-jurisdictional agreements."

SECTION 5. G.S. 143-355.3(b) reads as rewritten:

"(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and



1 determined that the water shortage emergency cannot be effectively managed in the absence of
2 exercising these powers, and only for the period of the water shortage emergency. Under these
3 circumstances, the Secretary has the power and duty to:

- 4 (1) Require any water system that has water supply in excess of that required to
5 meet the essential water uses of its customers to provide water to a water
6 system experiencing a water shortage emergency. The Secretary shall give
7 preference to diversion of water from a water system within the same river
8 basin as the water system that is experiencing a water shortage emergency.
9 A diversion of water that requires a certificate under G.S. 143-215.22L shall
10 meet the requirements of that section. The amount required to be supplied
11 shall be limited to the amount necessary to supply essential water uses
12 within the receiving system. The required diversion of waters shall cease
13 upon the termination of the water shortage emergency.
- 14 (2) Adopt rules governing the conservation and use of water within the water
15 shortage emergency area as shall be necessary to maintain essential water
16 use within the water shortage emergency area. Before such rules and
17 regulations shall become effective, they shall be published in two
18 consecutive issues of a daily newspaper generally circulated in the
19 emergency area. This subdivision shall not be construed to authorize a unit
20 of local government, public water supply system, or private water supply
21 system to regulate water use from a well located outside of its jurisdiction, a
22 well not connected to its water system, or any other private well.
- 23 (3) Adopt rules governing conservation and use of water within the service area
24 of the water system from which water is being diverted as shall be necessary
25 to maintain essential water uses in the system while supplying water to the
26 water shortage emergency area. This subdivision shall not be construed to
27 authorize a unit of local government, public water supply system, or private
28 water supply system to regulate water use from a well located outside of its
29 jurisdiction, a well not connected to its water system, or any other private
30 well."

31 **SECTION 6.** G.S. 87-88(k) reads as rewritten:

32 "(k) Abandonment of Wells. –

- 33 (1) Temporary Abandonment: When any well is temporarily removed from
34 service, the top of the well shall be sealed with a water-tight cap or seal.
- 35 (2) Permanent Abandonment: Any well that is to be permanently abandoned
36 shall be filled, plugged, or sealed in such a manner as to prevent the well
37 from being a channel allowing the vertical movement of water and a source
38 of contamination of the groundwater supply.
- 39 (3) Abandonment of Water Supply Wells for Other Use: Any water supply well
40 that is removed from service as a potable water supply source may be used
41 for other purposes, including, but not limited to, irrigation, commercial use,
42 or industrial use, and such well is not subject to either subdivision (1) or (2)
43 of this subsection during its use for other purposes. For purposes of this
44 subsection only, "water supply well" includes wells constructed by an
45 individual on land which is owned or leased by the individual, appurtenant
46 to a single-family dwelling, and intended for domestic use (including
47 nonpotable household purposes, farm livestock, or gardens)."

48 **SECTION 7.** This act is effective when it becomes law.