

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE DRS55265-LH-127B (03/18)

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

(Public)

Sponsors: Senators Rouzer, Jackson, and East (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY
3 AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.

4 The General Assembly of North Carolina enacts:

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

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

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

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

23 **SECTION 3.** G.S. 143-355.2(a)(4) is repealed.

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

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

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

33 "(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this
34 Article, the Governor declares the existence of a water shortage emergency within a particular
35 area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2),



1 and (3) of this subsection. These powers may only be exercised within the designated water
2 shortage emergency area, after the Secretary has consulted with the affected water systems and
3 determined that the water shortage emergency cannot be effectively managed in the absence of
4 exercising these powers, and only for the period of the water shortage emergency. Under these
5 circumstances, the Secretary has the power and duty to:

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

33 **SECTION 6.** G.S. 153A-284 reads as rewritten:

34 "**§ 153A-284. Power to require connections.**

35 (a) A county ~~may~~ shall not require the owner of developed property on which there are
36 situated one or more residential dwelling units or commercial establishments located so as to be
37 served by a water line ~~or sewer collection line~~ owned, leased as lessee, or operated by the
38 county or on behalf of the county to connect the owner's premises with the water ~~or sewer line~~
39 ~~and line~~. A county may require the owner of developed property on which there are situated
40 one or more residential dwelling units or commercial establishments located so as to be served
41 by a sewer collection line owned, leased as lessee, or operated by the county or on behalf of the
42 county to connect the owner's premises to a sewer collection line if there is proof provided by
43 the county that the property's septic system is a threat to public health. If an owner decides to
44 connect with the water or sewer collection line, the county may fix charges for these
45 connections. In the case of improved property that would qualify for the issuance of a building
46 permit for the construction of one or more residential dwelling units or commercial
47 establishments and where the county has installed water or sewer lines or a combination thereof
48 directly available to the property, the county may require payment of a periodic availability
49 charge, not to exceed the minimum periodic service charge for properties that are connected.

50 (b) When a county has installed a water line to serve developed property and the owner
51 has connected to the water line, the owner of the property may continue to use his or her private

1 well for nonpotable purposes. The county shall not require the owner of the well to abandon,
2 cap, or otherwise compromise the integrity of the well."

3 **SECTION 7.** G.S. 160A-317 reads as rewritten:

4 "**§ 160A-317. Power to require connections to water or sewer service and the use of solid**
5 **waste collection services.**

6 (a) Connections. – A city ~~may~~ shall not require an owner of developed property on
7 which there are situated one or more residential dwelling units or commercial establishments
8 located within the city limits and within a reasonable distance of any water line ~~or sewer~~
9 ~~collection line~~ owned, leased as lessee, or operated by the city or on behalf of the city to
10 connect the owner's premises with the water ~~or sewer line or both,~~ and line. A city may require
11 an owner of developed property on which there are situated one or more residential dwelling
12 units or commercial establishments located within the city limits and within a reasonable
13 distance of any sewer collection line owned, leased as lessee, or operated by the city or on
14 behalf of the city to connect the owner's premises to a sewer collection line if there is proof
15 provided by the city that the property's septic system is a threat to public health. If the owner
16 connects to the water or sewer collection line, then the city may fix charges for the connections.
17 In lieu of requiring connection under this subsection and in order to avoid hardship, the city
18 may require payment of a periodic availability charge, not to exceed the minimum periodic
19 service charge for properties that are connected.

20 (a1) When a city has installed a water line to serve developed property and the owner has
21 connected to the water line, the owner of the property may continue to use his or her private
22 well for nonpotable purposes. The city shall not require the owner of the well to abandon, cap,
23 or otherwise compromise the integrity of the well.

24 (b) Solid Waste. – A city may require an owner of improved property to do any of the
25 following:

- 26 (1) Place solid waste in specified places or receptacles for the convenience of
27 city collection and disposal.
- 28 (2) Separate materials before the solid waste is collected.
- 29 (3) Participate in a recycling program by requiring separation of designated
30 materials by the owner or occupant of the property prior to disposal. An
31 owner of recovered materials as defined by G.S. 130A-290(a)(24) retains
32 ownership of the recovered materials until the owner conveys, sells, donates,
33 or otherwise transfers the recovered materials to a person, firm, company,
34 corporation, or unit of local government. A city may not require an owner to
35 convey, sell, donate, or otherwise transfer recovered materials to the city or
36 its designee. If an owner places recovered materials in receptacles or delivers
37 recovered materials to specific locations, receptacles, and facilities that are
38 owned or operated by the city or its designee, then ownership of these
39 materials is transferred to the city or its designee.
- 40 (4) Participate in any solid waste collection service provided by the city or by a
41 person who has a contract with the city if the owner or occupant of the
42 property has not otherwise contracted for the collection of solid waste from
43 the property.

44 (c) A city may impose a fee for the solid waste collection service provided under
45 subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of
46 collection."

47 **SECTION 8.** This act is effective when it becomes law.