

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 676

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

Sponsors: Senators Rouzer, Jackson, and East.

Referred to: Agriculture/Environment/Natural Resources.

April 20, 2011

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23 **SECTION 3.** G.S. 143-355.2(a)(4) is repealed.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),  
36 and (3) of this subsection. These powers may only be exercised within the designated water  
37 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. 153A-284 reads as rewritten:

32 **"§ 153A-284. Power to require connections.**

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

48 (b) When a county has installed a water line to serve developed property and the owner  
49 has connected to the water line, the owner of the property may continue to use his or her private  
50 well for nonpotable purposes. The county shall not require the owner of the well to abandon,  
51 cap, or otherwise compromise the integrity of the well."

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

2   "**§ 160A-317. Power to require connections to water or sewer service and the use of solid**  
3   **waste collection services.**

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

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

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

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

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

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