

1 S.183

2 Introduced by Senator Lyons

3 Referred to Committee on Natural Resources and Energy

4 Date: January 3, 2012

5 Subject: Conservation; potable water supply; testing

6 Statement of purpose: This bill proposes to require a person who owns or
7 controls a potable water supply to test, if testing of the groundwater source is
8 not otherwise required by law, the groundwater source for arsenic; lead;
9 uranium; gross alpha radiation; total coliform bacteria; total nitrate and nitrite;
10 fluoride; and manganese.

11 An act relating to the testing of potable water supplies

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. FINDINGS~~

14 ~~The general assembly finds and declares that:~~

15 ~~(1) The U.S. Environmental Protection Agency and the Vermont~~
16 ~~department of health estimate that 40 percent of Vermont residents obtain~~
17 ~~drinking water from groundwater sources.~~

18 ~~(2) Property owners currently are not required to test groundwater~~
19 ~~sources that are a potable water supply serving one single-family residence~~

1 ~~(3) In adults and especially in children, consumption of contaminated~~
2 ~~groundwater can cause serious health effects, such as digestive problems,~~
3 ~~kidney problems, blue baby syndrome, and brain damage.~~

4 ~~(4) The state lacks a comprehensive database or map identifying where~~
5 ~~groundwater contamination is prevalent in the state.~~

6 ~~(5) To help mitigate the potential health effects of consumption of~~
7 ~~contaminated groundwater, the state should require testing of all newly~~
8 ~~developed groundwater sources and should conduct education and outreach~~
9 ~~regarding the need for property owners to test the water quality of groundwater~~
10 ~~used in potable water supplies.~~

11 ~~(6) The state should utilize tests of groundwater sources to construct a~~
12 ~~database and map of groundwater contamination in the state so that the~~
13 ~~department of health can recommend treatment options to property owners in~~
14 ~~certain parts of the state.~~

15 Sec. 2. 10 V.S.A. § 1981 is added to read:

16 § 1981. TESTING OF NEW GROUNDWATER SOURCES

17 (a) As used in this section, “groundwater source” means that portion of a
18 potable water supply that draws water from the ground, including a drilled
19 well, shallow well, driven well point, or spring.

20 (b) Prior to use of a new groundwater source as a potable water supply,
21 where testing is not otherwise required, the person who owns or controls the

1 ~~groundwater source shall test the groundwater source for the parameters set~~
2 ~~forth in subsection (c) of this section.~~

3 ~~(c) A water sample collected under this section shall be analyzed for, at a~~
4 ~~minimum: arsenic; lead; uranium; gross alpha radiation; total coliform~~
5 ~~bacteria; total nitrate and nitrite; fluoride; manganese, and any other~~
6 ~~parameters required by the agency by rule.~~

7 ~~(d) The secretary, after consultation with the department of health, the~~
8 ~~wastewater and potable water supply technical advisory committee, the~~
9 ~~Vermont association of realtors, the Vermont home inspectors' association,~~
10 ~~private laboratories, and other interested parties, shall adopt by rule~~
11 ~~requirements regarding:~~

12 ~~(1) when, prior to use of a new groundwater source, the test required~~
13 ~~under subsection (b) of this section shall be conducted;~~

14 ~~(2) who shall be authorized to sample the source for the test required~~
15 ~~under subsection (b) of this section, provided that the rule shall include the~~
16 ~~person who owns or controls the groundwater source and licensed well drillers~~
17 ~~among those authorized to conduct the test;~~

18 ~~(3) how a water sample shall be collected in order to comply with the~~
19 ~~requirements of the analyses to be performed; and~~

20 ~~(4) any other requirements necessary to implement this section.~~

1 ~~Sec. 3. 18 V.S.A. § 501b is amended to read:~~

2 § 501b. CERTIFICATION OF LABORATORIES

3 (a) The commissioner may certify a laboratory to perform the testing and
4 monitoring required under 10 V.S.A. chapter 56, 10 V.S.A. § 1981, and the
5 federal Safe Drinking Water Act if such laboratory meets the standards
6 currently in effect of the National Environmental Laboratory Accreditation
7 Conference and is accredited by an approved National Environmental
8 Laboratory Accreditation Program accrediting authority or its equivalent.

9 (b)(1) The commissioner may by order suspend or revoke a certificate
10 granted under this section, after notice and opportunity to be heard, if the
11 commissioner finds that the certificate holder has:

12 (A) submitted materially false or materially inaccurate
13 information; or

14 (B) violated any material requirement, restriction or condition of the
15 certificate; or

16 (C) violated any statute, rule or order relating to this title.

17 (2) The order shall set forth what steps, if any, may be taken by the
18 certificate holder to relieve the holder of the suspension or enable the
19 certificate holder to reapply for certification if a previous certificate has been
20 revoked.

1 ~~(c) A person may appeal the suspension or revocation of the certificate to~~
2 ~~the board under section 128 of this title.~~

3 * * *

4 (f) In accrediting a laboratory to conduct testing under 10 V.S.A. § 1981,
5 the commissioner shall require a laboratory accredited under this section to
6 submit in an electronic format the results of groundwater analyses conducted
7 pursuant to 10 V.S.A. § 1981 to the department of health and the agency of
8 natural resources.

9 Sec. 4. 27 V.S.A. § 616 is added to read:

10 § 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF
11 EDUCATIONAL MATERIAL

12 (a) For purchase and sales agreements executed on or after January 1, 2013,
13 the seller shall provide the buyer, within 72 hours of the execution of a
14 purchase and sales agreement for a property with a potable water supply, as
15 that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water
16 system, as that term is defined in 10 V.S.A. § 1671(5), with informational
17 materials developed by the department of health regarding:

18 (1) the potential health effects of the consumption of untreated
19 groundwater; and

20 (2) the buyer's opportunity under the agreement to test the potable water
21 supply.

1 ~~(b) Noncompliance with the requirements of subsection (a) of this section~~
2 ~~shall not affect the marketability of title.~~

3 Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH
4 ON SAFE DRINKING WATER

5 ~~The department of health, after consultation with the agency of natural~~
6 ~~resources, shall revise and update its education and outreach materials~~
7 ~~regarding the potential health effects of contaminants in groundwater sources~~
8 ~~of drinking water in order to improve citizen access to such materials and to~~
9 ~~increase awareness of the need to conduct testing of groundwater sources. In~~
10 ~~revising and updating its education and outreach materials, the department~~
11 ~~shall update the online safe water resource guide by incorporating the most~~
12 ~~current information on the health effects of contaminants, treatment of~~
13 ~~contaminants, and causes of contamination and by directly linking users to the~~
14 ~~department of health contaminant fact sheets.~~

15 Sec. 6. EFFECTIVE DATES

16 ~~(a) This section and Secs. 1 (findings), 3 (certification of laboratories), and~~
17 ~~5 (department of health; education and outreach) of this act shall take effect~~
18 ~~upon passage.~~

19 ~~(b) Sec. 2 (testing of new groundwater sources) of this act shall take effect~~
20 ~~upon passage, except that 10 V.S.A. § 1981(b) (the requirement to test new~~
21 ~~groundwater sources) shall take effect on January 1, 2014.~~

1 ~~(c) Sec. 4 (disclosure of educational material) of this act shall take effect on~~
2 ~~January 1, 2013.~~

~~Sec. 1. FINDINGS~~

~~The general assembly finds and declares that:~~

~~(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.~~

~~(2) Property owners currently are not required to test groundwater sources that are a potable water supply serving one single-family residence.~~

~~(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.~~

~~(4) The state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.~~

~~(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should conduct education and outreach regarding the need for property owners to test the water quality of groundwater used as a potable water supply.~~

~~(6) The state should utilize tests of groundwater sources to identify groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.~~

~~Sec. 2. 10 V.S.A. 1396 is amended to read:~~

~~§ 1396. RECORDS AND REPORTS~~

~~(a) Each licensee shall keep accurate records and file a report with the department and well owner on each water well constructed or serviced, including but not limited to the name of the owner, location, depth, character of rocks or earth formations and fluids encountered, and other reasonable and appropriate information the department may, by rule, require.~~

~~(b) The reports required to be filed under subsection (a) of this section shall be on forms provided by the department as follows:~~

~~(1) Each licensee classified as a water well driller shall submit a well completion report within 90 days after completing the construction of a water well.~~

~~(2) Each licensee classified as a monitoring well driller shall submit a monitoring well completion or closure report or approved equivalent within~~

~~90 days after completing the construction or closure of a monitoring well. Reporting on the construction of a monitoring well shall be limited to information obtained at the time of construction and need not include the work products of others. The filing of a monitoring well completion or closure report shall be delayed for one or more six-month periods from the date of construction upon the filing of a request form provided by the department which is signed by both the licensee and well owner.~~

~~(3), (4) [Repealed.]~~

~~(c) No report shall be required to be filed with the department if the well is hand driven or is dug by use of a hand auger or other manual means.~~

~~(d) On or after January 1, 2013, a licensee drilling or developing a new water well for use as a potable water supply, as that term is defined in subdivision 1972(6) of this title, shall provide the owner of the property to be served by the groundwater source informational materials developed by the department of health regarding:~~

~~(1) the potential health effects of the consumption of contaminated groundwater; and~~

~~(2) recommended tests for specific contaminants.~~

~~Sec. 3. 18 V.S.A. § 501b is amended to read:~~

~~§ 501b. CERTIFICATION OF LABORATORIES~~

~~(a) The commissioner may certify a laboratory to perform the testing and monitoring required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act, and of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent.~~

~~(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:~~

~~(A) submitted materially false or materially inaccurate information; or~~

~~(B) violated any material requirement, restriction or condition of the certificate; or~~

~~(C) violated any statute, rule or order relating to this title.~~

~~(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the~~

~~certificate holder to reapply for certification if a previous certificate has been revoked.~~

~~(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.~~

~~* * *~~

~~(f) A laboratory accredited to conduct testing of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the department of health and the agency of natural resources in a format required by the department of health.~~

~~Sec. 4. 27 V.S.A. § 616 is added to read:~~

~~§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL~~

~~(a) Disclosure of potable water supply. Prior to the time of a purchase and sale agreement for residential housing property executed on or after January 1, 2013, the seller shall provide the buyer with a disclosure form provided by the department of health indicating whether the property has a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is used as the primary drinking water source for the residential housing on the property.~~

~~(b) Disclosure of health effects. The disclosure form required by subsection (a) of this section shall include informational materials regarding the potential health effects of the consumption of contaminated groundwater.~~

~~(c) Disclosure of opportunity to test. The disclosure form required by subsection (a) of this section shall include a statement regarding the buyer's opportunity under the purchase and sale agreement to test the potable water supply. The disclosure form shall also indicate that the buyer may obtain test kits from the department of the health.~~

~~(d) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.~~

~~Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER~~

~~(a) The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of~~

~~contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.~~

~~(b) The department of health shall prepare education and outreach materials for the Vermont bar association, real estate attorneys, and realtors regarding the requirement under 27 V.S.A. § 616 that a seller of property with a potable water supply provide the buyer with informational materials regarding the health effects of untreated groundwater and the buyer's opportunity to test the potable water supply. The department of health shall post the educational materials required by this subsection on the department website.~~

~~Sec. 6. EFFECTIVE DATES~~

~~This act shall take effect on January 1, 2013.~~

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

(2) Owners of certain properties in the state with potable water supplies from groundwater currently are not required to test the groundwater source.

(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) The state lacks comprehensive groundwater quality data that could be used to develop mapping and a clearinghouse identifying groundwater contamination locations.

(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should conduct education and outreach regarding the need for property owners to test the quality of groundwater used as potable water.

(6) The state should utilize tests of groundwater sources to identify groundwater contamination in the state so that the department of health can recommend potential treatment options.

Sec. 2. 10 V.S.A. § 1396 is amended to read:

§ 1396. RECORDS AND REPORTS

(a) Each licensee shall keep accurate records and file a report with the department and well owner on each water well constructed or serviced,

including but not limited to the name of the owner, location, depth, character of rocks or earth formations and fluids encountered, and other reasonable and appropriate information the department may, by rule, require.

(b) The reports required to be filed under subsection (a) of this section shall be on forms provided by the department as follows:

(1) Each licensee classified as a water well driller shall submit a well completion report within 90 days after completing the construction of a water well.

(2) Each licensee classified as a monitoring well driller shall submit a monitoring well completion or closure report or approved equivalent within 90 days after completing the construction or closure of a monitoring well. Reporting on the construction of a monitoring well shall be limited to information obtained at the time of construction and need not include the work products of others. The filing of a monitoring well completion or closure report shall be delayed for one or more six-month periods from the date of construction upon the filing of a request form provided by the department which is signed by both the licensee and well owner.

(3), (4) [Repealed.]

(c) No report shall be required to be filed with the department if the well is hand driven or is dug by use of a hand auger or other manual means.

(d) On or after January 1, 2013, a licensee drilling or developing a new water well for use as a potable water supply, as that term is defined in subdivision 1972(6) of this title, shall provide the owner of the property to be served by the groundwater source informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of contaminated groundwater; and

(2) recommended tests to detect specific contaminants, such as arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate or nitrite, fluoride, and manganese.

Sec. 3. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

~~(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent; and~~

~~(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).~~

~~(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:~~

~~(A) submitted materially false or materially inaccurate information; or~~

~~(B) violated any material requirement, restriction or condition of the certificate; or~~

~~(C) violated any statute, rule or order relating to this title.~~

~~(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.~~

~~(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.~~

* * *

~~(f) A laboratory certified to conduct testing of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the department of health and the agency of natural resources in a format required by the department of health.~~

Sec. 4. 27 V.S.A. § 616 is added to read:

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF INFORMATIONAL MATERIAL

(a) Disclosure of potable water supply informational material. For a contract for the conveyance of real property with a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water system, as that term is defined in 10 V.S.A. § 1671(5), executed on or after January 1, 2013, the seller shall, within 72 hours of the execution provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of contaminated groundwater; and

(2) the availability of test kits provided by the department of health.

(b) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(c) Penalty; liability. Liability for failure to provide the informational materials required by this section shall be limited to a civil penalty, imposed by the department of health under 18 V.S.A., Chapter 3, of no less than \$25.00 and no more than \$250.00 for each violation.

Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

(a) The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

(b) The department of health, after consultation with representatives of licensed real estate brokers, as that term is defined in 26 V.S.A. § 2211, shall propose language to be added to a seller's property information report regarding the requirement under 27 V.S.A. § 616 that a seller of real property with a potable water supply that is not served by a public water system provide the buyer informational material regarding the potential health effects of the consumption of contaminated groundwater and the availability of test kits provided by the department of health.

Sec. 6. EFFECTIVE DATE

This act shall take effect on January 1, 2013.