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SESSION 2013

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SENATE DRS85045-RIz-5A* (11/15)

Short Title: Bernard Allen Fund Modifications.

(Public)

Sponsors: Senator Jackson (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BERNARD ALLEN MEMORIAL EMERGENCY DRINKING
3 WATER FUND TO ALLOW GREATER FLEXIBILITY FOR USE OF MONIES IN THE
4 FUND, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 87-98 reads as rewritten:

7 "§ 87-98. **Bernard Allen Memorial Emergency Drinking Water Fund.**

8 (a) The Bernard Allen Memorial Emergency Drinking Water Fund is established under
9 the control and direction of the Department. The Fund shall be a nonreverting, interest-bearing
10 fund consisting of monies appropriated by the General Assembly or made available to the Fund
11 from any other source and investment interest credited to the Fund.

12 (b) The Fund may be used to pay ~~for notification, for:~~

13 (1) Notification, to the extent practicable, of persons aged 18 and older who
14 reside in any dwelling unit, and the senior official in charge of any business,
15 at which drinking water is supplied from a private drinking water well or
16 improved spring that is located within 1,500 feet of, and at risk from, known
17 groundwater contamination. The senior official in charge of the business
18 shall take reasonable measures to notify all employees of the business of the
19 groundwater contamination, including posting a notice of the contamination
20 in a form and at a location that is readily accessible to the employees of the
21 business. ~~The Fund may also be used by the Department to pay the~~

22 (2) The costs of testing of private drinking water wells and improved springs for
23 suspected contamination up to once every three years upon request by a
24 person who uses the well and for the well, or more frequent testing if the
25 concentration of one or more contaminants in a private drinking water well
26 is increasing over time and there is a significant risk that the concentration of
27 a contaminant will exceed the drinking water action levels set forth in
28 subsection (c) of this section within a three-year period.

29 (3) Additional testing to confirm the results of a previous test.

30 (4) The temporary or permanent provision of alternative drinking water supplies
31 to persons whose drinking water well or improved spring is contaminated.
32 Under this subsection, section, an alternative drinking water supply includes
33 the repair, such as use of a filtration system, or replacement of a
34 contaminated well or the connection to a public water supply.



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1 (5) Monitoring of filtration systems used in connection with temporary or
2 permanent alternative drinking water supplies provided pursuant to this
3 section.

4 (c) The Department shall disburse monies from the Fund based on financial need and
5 on the risk to public health posed by groundwater contamination and shall give priority to the
6 provision of services under this section to instances when an alternative source of funds is not
7 available. The Fund shall not be used to provide alternative water supply to households with
8 incomes greater than three hundred percent (300%) of the current federal poverty level. The
9 Fund may be used to provide alternative drinking water supplies if the Department determines
10 that the concentration of one or more contaminants in the private drinking water well or
11 improved spring exceeds the federal maximum contaminant level, or the federal drinking water
12 action level as defined in 40 Code of Federal Regulations § 141.1 through § 141.571 (1 July
13 2007) and 40 Code of Federal Regulations § 143.3 (1 July 2007). For a contaminant for which
14 a federal maximum contaminant level or drinking water action level has not been established,
15 the State groundwater standard established by the Environmental Management Commission for
16 the concentration of that contaminant shall be used to determine whether the Fund may be used
17 to provide alternative drinking water supplies. The Fund may also be used to provide
18 alternative drinking water supplies as provided in this section if the Department determines that
19 the concentration of one or more contaminants in a private drinking water well is increasing
20 over time and that there is a significant risk that the concentration of a contaminant will exceed
21 the federal maximum contaminant level or drinking water action level, or the State groundwater
22 standard. A determination of the concentration of a contaminant shall be based on a sample of
23 water collected from the private drinking water well within the past 12 months.

24 (c1) In disbursing monies from the Fund, the Department shall give preference to
25 provision of permanent replacement water supplies by connection to public water supplies and
26 repair or replacement of contaminated wells over the provision of temporary water supplies. In
27 providing alternative drinking water supplies, the Department shall give preference to
28 connection to a public water supply system or to construction of a new private drinking water
29 well over the use of a filtration system if the Department determines that the costs of periodic
30 required maintenance of the filtration system would be cost-prohibitive for users of the
31 alternative drinking water supply.

32 (c2) If the Department provides an alternative drinking water supply by extension of a
33 waterline, the Department may disburse from the Fund no more than ~~ten~~fifty thousand dollars
34 (~~\$10,000~~)(\$50,000) per household or other service connection. For projects where more than 10
35 residences are eligible for alternative water supplies under this section, no~~No~~more than
36 one-third of the total cost of the project may be paid from the Fund. The Department may
37 combine monies from the Fund with monies from other sources in order to pay the total cost of
38 the project.

39 (c3) The Fund shall be used to provide alternative drinking water supplies only if the
40 Department determines that the person or persons who are responsible for the contamination of
41 the private drinking water well is or are not financially viable or cannot be identified or located
42 and if the Department determines that one of the following applies:

- 43 (1) The contamination of the private drinking water well is naturally occurring.
- 44 (2) The owner of the property on which the private drinking water well is
45 located did not cause or contribute to the contamination or control the source
46 of the contamination.
- 47 (3) The source of the contamination is the application or disposal of a hazardous
48 substance or pesticide that occurred without the consent of the owner of the
49 property on which the private drinking water well is located.

1 (c4) The Department may use up to one hundred thousand dollars (\$100,000) annually of
2 the monies in the Fund to pay the personnel and other direct costs associated with the
3 implementation of this section.

4 (c5) The Fund shall not be used for remediation of groundwater contamination.

5 (c6) Nothing in this section expands, contracts, or modifies the obligation of responsible
6 parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article
7 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or
8 soil contamination.

9 (c7) In disbursing monies from the Fund for replacement water supplies, the Department
10 shall give priority to circumstances in which a well is contaminated as the result of
11 nonnaturally occurring groundwater contamination in the area over circumstances in which a
12 well has naturally occurring contamination.

13 (d) The Department shall establish criteria by which the Department is to evaluate
14 applications and disburse monies from this Fund and may adopt any rules necessary to
15 implement this section.

16 (e) The Department, in consultation with the Commission for Public Health and local
17 health departments, shall report no later than ~~1~~October 1 of each year to the
18 Environmental Review Commission, the House of Representatives and Senate Appropriations
19 Subcommittees on Natural and Economic Resources, and the Fiscal Research Division of the
20 General Assembly on the implementation of this section. The report shall include the purpose
21 and amount of all expenditures from the Fund during the prior fiscal year, a discussion of the
22 benefits and deficiencies realized as a result of the section, and may also include
23 recommendations for any legislative action."

24 **SECTION 2.** This act is effective when it becomes law.