

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 464

SENATE BILL NO. 632

By Southerland

Substituted for: House Bill No. 1615

By McCord, Litz, Tidwell, Ferguson, Faulkner, Niceley

AN ACT to amend Tennessee Code Annotated, Title 69, Chapter 3, Part 1, relative to the jurisdiction of waters of the state and hydrologic determinations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following language as new, appropriately designated subsections:

() "Wet weather conveyance" means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(1) That flow only in direct response to precipitation runoff in their immediate locality;

(2) Whose channels are at all times above the groundwater table;

(3) That are not suitable for drinking water supplies; and

(4) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months;

() "Obligate lotic aquatic organisms" means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles;

() "Stream" means a surface water that is not a wet weather conveyance;

() "Watercourse" means a man-made or natural hydrologic feature with a defined linear channel which discretely conveys flowing water, as opposed to sheet-flow;

SECTION 2. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following as new, appropriately designated subsections:

() The alteration of a wet weather conveyance, as defined in § 69-3-103, by any activity is permitted by this subsection and shall require no notice or approval, provided it is done in accordance with all of the following conditions:

(1) The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;

(2) Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area;

(3) Sediment shall be prevented from entering other waters of the state.

(A) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices.

(B) Erosion and sediment control measures shall be in place and functional before earth moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day.

(C) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size, depending on the application. Clean rock shall not contain fines, soils or other wastes or contaminants; and

(4) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the division. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including groundwater.

() There shall be no additional conditions upon a person's activity within a wet weather conveyance. This provision does not apply to National Pollutant Discharge Elimination System Permits.

SECTION 3. Tennessee Code Annotated, Section 69-3-105, is amended by adding the following as a new, appropriately designated subsection:

() Within ninety (90) days of the effective date of this act, the commissioner shall develop and submit to the board proposed rules necessary for accurate and consistent wet weather conveyance determinations. These rules shall include at a minimum:

(1) Standard procedures for making stream and wet weather conveyance determinations that take into consideration biology, geology, geomorphology, precipitation, hydrology, and other scientifically based principles; and

(2) A certification program for department staff and other persons who wish to become certified hydrologic professionals.

SECTION 4. Tennessee Code Annotated, Section 69-3-107, is amended by adding the following as a new, appropriately designated subsection:

() Within ninety (90) days of the effective date of this act, the commissioner shall develop and submit the following to the board for comment:

(1) Proposed guidance that provides instructions, examples and definitions based upon scientifically based principles for consistently and accurately making hydrologic determinations; and

(2) Proposed guidance that provides minimum qualifications for staff who are responsible for making or reviewing wet weather conveyance determinations.

SECTION 5. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following as a new, appropriately designated subsection:

() A person desiring to alter a specific water of the state may request a determination from the commissioner that it is a wet weather conveyance and submit a report from a qualified hydrologic professional in support of the request. If such report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and guidance, and is certified by a qualified hydrologic professional to be true, accurate and complete and, if submitted after promulgation of the rules required by Section 3 of this act, contains all information that is required in those rules, then the determination made in the report shall be presumed to be correct, unless the commissioner notifies such person, in writing, within thirty (30) days of submittal of the report, that the commissioner has affirmatively determined that there is a significant question about whether the water of the state in question is a stream or a wet weather conveyance and states the reasons for that determination. In that event, the commissioner must, within thirty (30) days following the initial notification, determine whether the water of the state in question is a stream or a wet weather conveyance and notify such person in writing of that decision and the reasons for that determination. Such person may appeal a determination by the commissioner that the specific water is a stream by filing a petition for appeal with the board within thirty (30) days of receiving the commissioner's decision. For purposes of this subsection, a qualified hydrologic professional is a person holding a bachelor's degree in biology, geology, ecology, engineering or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations, and who has been certified as a hydrologic professional pursuant to rules promulgated by the board.

SECTION 6. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: June 1, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of June 2009



PHIL BREDESEN, GOVERNOR