

Amendment No. 1 to HB1473

Hawk
Signature of Sponsor

AMEND Senate Bill No. 1288

House Bill No. 1473*

by deleting all language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 59-8-202(3), is amended by deleting the language "board of reclamation review as created by the Tennessee Coal Surface Mining Law of 1980, compiled in part 3 of this chapter" and by substituting instead the language "Tennessee water quality control board established by § 69-3-104."

SECTION 2. Tennessee Code Annotated, Section 59-8-202(5), is amended by deleting the language "division of surface mining and reclamation" and by substituting instead the language "division of water pollution control."

SECTION 3. Tennessee Code Annotated, Title 69, Chapter 3, Part 1, is amended by adding the following as new sections thereto:

69-3-143. Sections 69-3-143 – 69-3-147 shall govern rock harvesting operations as defined in § 69-3-144 (3).

69-3-144.

As used in this act, unless the context otherwise requires:

(1) As used for the purposes of rock harvesting under this act only, "mineral" means dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade and marble, but does not include any other "mineral" as defined in § 59-8-202.

(2) "Operator" means any person engaged in rock harvesting who disturbs or intends to disturb one (1) acre or more of land or removes or intends to remove more than 100 tons of minerals as defined in § 69-3-144(1). Any operator who has obtained a permit and otherwise complied with the provisions of this part may subcontract any part or all of the rock

harvesting area covered by the permit to the extent that such subcontractors meet all the qualifications and requirements of this part; and

(3) "Rock harvesting" means the removal of minerals, as defined in § 69-3-144 (1), by an operator with or without machinery.

69-3-145.

(a) No operator shall engage in rock harvesting without having first obtained from the commissioner a permit or notice of coverage under a general permit as required in § 69-3-108 and the regulations promulgated pursuant thereto. At least thirty (30) days prior to engaging in rock harvesting on any land in which the right to engage in rock harvesting has been severed from the ownership of the land surface, the operator shall send the owner of the surface, by certified mail, return receipt required, a copy of the permit or notice of coverage from the department. The operator shall forward copies of all records relating to the certified mailing to the department. All costs associated with the certified mailing and transmission of records to the department shall be borne by the operator.

(b) The granting of a permit shall be subject to payment by the operator of the fee prescribed in title 68, chapter 203, part 1, and upon submission to the department of the following information:

(1) Evidence of the operator's legal right to harvest the minerals on the land affected by the permit;

(2) Proof of general liability and, if applicable, workers compensation insurance coverage. The general liability policy shall be in an amount of no less than one million dollars (\$1,000,000). Proof of coverage shall be provided to the department prior to issuance of the permit;

(3) Proof of the registration with the department of revenue of the operator and any subcontractors;

(4) All application forms, maps, calculations and narratives required to satisfy § 69-3-108 and the regulations issued pursuant thereto; and

(5) A reclamation / stabilization plan which addresses backfilling, grading and revegetation of the site. The reclamation plan will be followed as operations proceed with the overburden and waste materials from succeeding cuts being utilized in the reclamation of preceding cuts. The overburden and waste material from the first cut may be utilized for access road construction. The plan shall provide for returning the affected area as close as is reasonable in the circumstances to its pre-harvesting state, considering the available overburden and other factors.

(c) Nothing in this section shall be construed to authorize the commissioner to adjudicate property rights disputes.

69-3-146.

(a) The commissioner is authorized to issue stop work orders for rock harvesting operations in accordance with this section.

(b) When rock harvesting activities have polluted waters of the state as a result of an operator's knowing violation of permit conditions or an operator has failed or refused to obtain permit coverage as required in § 69-3-145, the commissioner may issue a stop work order to the operator. The stop work order shall specify those parts of the rock harvesting activities on site that are contributing to the pollution or require ceasing work until permit coverage is obtained. The stop work order shall remain in effect until the department determines that the operator has obtained permit coverage and/or has taken all necessary measures to comply with the permit so that further pollution associated with the rock harvesting operations will not occur.

(c) A written request for a hearing before the water quality control board on the stop work order shall be filed by the operator with the commissioner within thirty (30) days of the receipt of notice. If the operator files the request and also makes a specific request for an informal meeting with the commissioner to show cause why the stop work order should not have been issued, the commissioner or the commissioner's designee, shall meet with the operator within three (3) working days after the hearing request is filed. Any modification or revocation of the stop work order shall be in writing. If the commissioner or the commissioner's designee upholds the stop work order, it shall remain in effect until resolution of the appeal or until the operator comes into compliance. If no request for a hearing is made within thirty (30) days of the receipt of notice, the stop work order shall be final and shall not be subject to review. In such case, the operator shall stabilize the site within sixty (60) days of the receipt of notice.

(d) Failure of an operator to comply with a stop work order issued pursuant to this section shall subject the operator to another violation of this part in addition to any other violations the operator has committed that is subject to the penalties prescribed in § 69-3-115. The commissioner may also institute proceedings for the confiscation and forfeiture of equipment used in any rock harvesting operation to which a stop work order has been issued. Such proceedings may be instituted in the chancery court of Davidson County, or in the chancery court of the county in which all or part of the rock harvesting operation is located.

69-3-147.

Except where a specific provision of §§ 69-3-143 through 69-3-147 is applicable, rock harvesting is subject to and shall be governed by this part.

SECTION 4. Notwithstanding any law to the contrary, where an owner of surface and mineral rights to real property enters into a contract for the conveyance of mineral rights in such property resulting in a severance of such interests, the parties to such conveyance shall identify

the specific mineral interests to be conveyed to the purchaser of the mineral rights. The purchaser of the mineral interests shall identify such interests purchased by providing a deed reference number in accordance with § 67-5-804(c) for the mineral interest with the property assessor in the county in which the interests are located, as prescribed in this section. For the purposes of this section, "specific mineral interests" means only those minerals listed in the deed, as contemplated by the parties. All rights to minerals not described in the deed shall remain with the surface owner. The provisions of this section shall apply to all contracts entered into on or after July 1, 2011 and shall not impair the obligation of any existing contract, or be construed to direct courts in determining the intent of the parties who entered into a contract prior to such date.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect July 1, 2011, the public welfare requiring it.