

SENATE BILL 1288

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 59, Chapter 8, Part 2 and Title 69, Chapter 3, Part 1, relative to surface mining.

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

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 – 69-3-149 of this act shall be known and may be cited as the "Tennessee Rock Harvesting Act."

69-3-144.

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

(1) As used for permitting purposes only, "mineral" means dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade, marble, and chert, but does not include "mineral" as defined in § 59-8-202. Nothing in this section shall be construed to adjudicate property rights disputes.

(2) "Operator" means any person engaged in rock harvesting who disturbs or intends to disturb one (1) acre or more of land. 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 from the land by an operator with or without machinery.

69-3-145.

(a) Except as provided in § 69-3-148, no operator shall engage in rock harvesting without having first obtained from the commissioner a permit therefore as required in this part. This permit shall authorize the operator to engage in rock harvesting upon the area of land described in the operator's application for a period not to exceed five (5) years from the date of its issuance. A permit shall be granted by the commissioner only if the requirements and criteria set forth in this part and any rules and regulations pertaining to those requirements are satisfied, and only upon the submission by the operator and approval by the commissioner pursuant to this part.

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

(1)

(A) Identification of the source of the operator's legal right to enter and harvest the minerals on the land affected by the permit and whether that right is the subject of pending court litigation; and

(B) Evidence of the operator's legal right to harvest the minerals on the land affected by the permit. If the surface estate

has been severed from the mineral estate, evidence of which may be provided by either:

(i) A deed, lease, or other document which severs the mineral rights and expressly permits the removal of minerals or a certified extract of the appropriate provisions of such documents; or

(ii) A deed, lease or conveyance which severs the mineral rights without specific provisions for rock harvesting and an accompanying affidavit by the current surface estate owner agreeing to the removal of such minerals, or

(2) In cases where the private mineral estate has been severed from the private surface estate:

(A) The written consent of the surface owner to the extraction of minerals; or

(B) A conveyance that expressly grants or reserves the right to extract the minerals. If the conveyance does not expressly grant the right to extract minerals and the parties cannot agree to the language in the conveyance, then the surface-subsurface legal relationship shall be determined by law. Nothing in this section shall be construed to authorize the commissioner to adjudicate property rights disputes.

(3) Submission of proof of general liability and, if applicable, workers compensation insurance coverage. The general liability policy shall cover damage claims arising out of the mining activity and shall be

in an amount of no less than one million dollars (\$1,000,000). Proof of coverage shall be provided to the department no later than ten (10) days after the issuance of the permit. Failure to comply with this requirement shall result in the issuance of a stop work order pursuant to § 69-3-146 and a suspension of all operations until the requirement is met.

(4) The operator or subcontractors shall be registered with the department of revenue.

(c) Nothing in this section shall require a deed, lease, conveyance or other document required under this part to specifically list any or all of those elements defined as a mineral under § 69-3-144 if such deed, lease, conveyance or other document severs the mineral and surface estates.

69-3-146.

(a) The commissioner is authorized to issue stop work orders for rock harvesting operations in accordance with subsections (b) and (c) of this section as well as § 69-3-145.

(b) When rock harvesting activities have polluted waters of the state as a result of an operator's failure or refusal to comply with permit conditions, 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. The stop work order shall remain in effect until the department determines that the operator has installed or repaired all necessary measures to comply with the permit so that further pollution associated with the rock harvesting activities 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, at the commissioner's option, the deputy or assistant commissioner, 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.

(d) Failure of an operator to comply with a stop work order issued pursuant to this section shall subject the operator to the penalties prescribed in § 69-3-115.

69-3-147.

All administration, enforcement and compliance provisions relating to rock harvesting shall be as prescribed in §§ 69-3-104 – 69-3-121.

69-3-148.

A mineral owner or operator may enter into a written agreement with a surface owner to remove minerals by the use of non-motorized equipment or explosives without being subject to the requirements of § 69-3-145(a).

69-3-149.

(a) An operator shall file a notice of intent in compliance with department requirements, and such notice shall expressly state that the activity shall be exploratory in nature.

(1) An operator, upon submission of the notice of intent, shall have no less than ninety (90) days nor more than one hundred twenty (120) days to explore site harvesting feasibility, apply for a general permit or to withdraw from the area.

(2) If a prospective operator is, at the time of application, already permitted with the department, the operator must be in good standing at the time of application or the permit shall not be considered for approval. The operator shall, at the operator's own expense, engage and at all times utilize a licensed site engineer to assist with erosion control, if deemed necessary, to ensure compliance with all guidelines for general National Pollution Discharge Elimination System (NPDES) permit for discharges of storm water, and provide written verification of monthly site visits within ten (10) days of the expiration of the ninety (90) day exploratory period.

(b) The rock harvesting operator shall:

(1) File a notice of intent in compliance with department requirements;

(2) Follow industry associated BMP's described in "The Tennessee Erosion and Sediment Control Handbook" and guidelines for general NPDES permit for discharges of storm water with construction activities;

(3) Engage a licensed site engineer for yearly inspections of sites and erosion control;

(4) Implement and execute re-vegetation and reclamation plans;
and

(5) Provide proof of the following additional requirements, in a manner to be determined by the department, for obtaining a rock harvesting general permit:

(i) The operator is currently or previously permitted with the department and is in good standing;

(ii) Fieldstone and rock from quarries is being taken off in a natural state as defined rock harvesting with no processing on site;

(iii) The operator is in compliance with § 69-3-145 (b)(2)(A); and

(iv) The operator is in compliance with § 69-3-145(b)(3).

(c) Upon a severance by the private mineral estate owner that expressly grants or reserves the right to extract minerals to the rock harvesting operator:

(1) The operator shall file a notice of intent in compliance with department requirements;

(2) The operator shall apply for a general NPDES permit for discharges of storm water with construction activities permit;

(3) The operator shall follow industry associated BMP's described in "The Tennessee Erosion and Sediment Control Handbook;

(4) The private mineral estate owner shall notify the surface owner of the mineral estate owner's intention to engage in mineral extraction. The notification shall be by certified mail, not less than thirty (30) days prior to the visible commencement of the extraction. The required notice to the surface owner shall be on a form, to be developed by and filed with

the department, that indicates whether the removal of minerals from the property will or will not:

- (i) Include blasting;
- (ii) The operation of bulldozers;
- (iii) The operation of trucks larger than pickup trucks;
- (iv) The operation of front-end loaders;
- (v) The removal of rock on the surface of the land; and
- (vi) Include cuts or excavation beneath the ground.

(5) The form required pursuant to subdivision (d)(4) shall also require the private mineral estate owner to provide notice to the surface owner that::

(i) A reclamation plan including backfilling, grading, growth media redistribution, and re-vegetation, will be conducted as operations proceed with the overburden and waste materials from the succeeding cuts being utilized in the reclamation of the proceeding cuts. The overburden and waste materials from the first cut may be utilized for access road construction with any excess material being shifted within the pit, as needed, to conduct recovery operations; and

(ii) A re-vegetation plan stating that grass seeding will be sown uniformly over disturbed areas, excluding road surfaces which contain sufficient soil materials for the establishment of a vegetative cover. The seeded areas will be mulched with either wheat straw or hay at a rate of eighty (80) bales per acre, with such mulching to begin as soon as possible, but no later than

ninety (90) days after completion of operation within the vicinity of the disturbance or upon completion of construction, as applicable.

(6) The operator shall provide proof, in a manner to be determined by the department, that:

(A) The operator already has a permit with the department and is in good standing;

(B) Fieldstone or rock from quarries is being taken off in a natural state as defined rock harvesting with no processing on site;

(C) The operator is in compliance with § 69-3-145(b)(2)(B); and

(D) The operator is in compliance with § 69-3-145(b)(3).

SECTION 4. All costs associated with the administration of this act shall be borne from permit fees, fines and penalties as provided for in title 68, chapter 203, part 1.

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.