

PUBLIC CHAPTER NO. 362**SENATE BILL NO. 2257****By Kyle, Haynes****Substituted for: House Bill No. 2310****By Odom**

AN ACT relative to the environmental regulatory programs and to amend Tennessee Code Annotated, Title 60, Chapter 1; Title 68, Chapters 203, 212 and 215; Title 69, Chapters 3, 10 and 11.

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

SECTION 1. Tennessee Code Annotated, Section 60-1-103, is amended in subdivision (a)(4) by deleting the first sentence.

SECTION 2. Tennessee Code Annotated, Section 60-1-103, is amended by deleting subdivision (a)(5) and substituting instead:

A permit processing fee shall be submitted with the application in an amount to be set in rules promulgated by the Oil and Gas Board not to exceed the amount stated in § 68-203-103(h) for an oil and gas permit fee.

SECTION 3. Tennessee Code Annotated, Section 60-1-103, is amended by deleting subsection (b) and substituting instead:

All funds received by the Commissioner under this chapter, except those under parts 3 and 4, together with any interest earned thereon shall be deposited into a separate account in the Environmental Protection Fund created by § 68-203-101.

SECTION 4. Tennessee Code Annotated, Section 60-1-202, is amended by deleting all language in the first sentence of subdivision (a)(4)(R) after the language, "July 1, 1987," and substituting instead:

post a bond or bonds to secure compliance with the requirements of this chapter and the rules promulgated hereunder both for plugging of the wells and reclamation of the surface in an amount not to exceed fifteen thousand dollars (\$15,000) per single well site. At sites with more than one well, the portion of the bond or bonds to secure compliance with plugging requirements shall not exceed ten thousand dollars (\$10,000) per well.

SECTION 5. Tennessee Code Annotated, Subdivision 60-1-202(a)(4)(R)(i), is amended by deleting the language, "in an amount not less than one thousand five hundred dollars (\$1,500) per well site" and substituting instead, "to be placed in a separate departmental account that shall not revert to the general fund".

SECTION 6. Tennessee Code Annotated, Subdivision 60-1-202(a)(4)(R)(ii), is amended by deleting the language, "in an amount not less than one thousand five hundred dollars (\$1,500) per well site".

SECTION 7. Tennessee Code Annotated, Subdivision 60-1-202(a)(4)(R)(iii), is amended by adding at the end of the sentence the language, "to be placed in a separate departmental account that shall not revert to the general fund".

SECTION 8. Tennessee Code Annotated, Subsection 60-1-401(i), is amended by deleting it in its entirety.

SECTION 9. Tennessee Code Annotated, Subsection 60-1-404(d), is amended by inserting the language, "together with any interest earned thereon" after the words, "fiscal year".

SECTION 10. Tennessee Code Annotated, Subsection 60-1-504(a), is amended by deleting the language, "of the provisions of this part shall be the state geologist acting under the direction of the commissioner of environment and conservation, and the commissioner's duly authorized agents, and".

SECTION 11. Tennessee Code Annotated, Subsection 60-1-505(a), is amended by deleting the second sentence and substituting instead:

A fee shall be submitted with the application in an amount to be set in rules to be promulgated by the Supervisor not to exceed the amount stated in § 68-203-103(h) for a mineral test hole permit fee.

SECTION 12. Tennessee Code Annotated, Subsection 60-1-505(d), is amended by deleting it in its entirety.

SECTION 13. Tennessee Code Annotated, Subsection 60-1-509(a), is amended by deleting the second sentence and substituting instead:

Such penalties shall be assessed and subject to appeal in accordance with the provisions specified in § 60-1-401.

SECTION 14. Tennessee Code Annotated, Section 68-203-101, is amended in subdivision (b)(1) by adding the following new subdivision, appropriately designated, redesignating existing subdivisions accordingly and updating the existing cross-references to other code sections in existing subdivisions (K) and (L):

() Production of Oil and Gas, Title 60, Chapter 1, Parts 1, 2, and 5;

SECTION 15. Tennessee Code Annotated, Subdivision 68-203-103(e)(1), is amended by adding the following sentence at the end:

However, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee.

SECTION 16. Tennessee Code Annotated, Section 68-203-103, is amended by deleting subsection (h) and by substituting instead the following:

(h) For the following categories, the fees shall not exceed the following maximum amounts; however, the promulgating authorities are encouraged to use graduated fees to reflect the volume of waste, population served, or other factors determined necessary to fairly apportion the fees:

(1) Filing/processing fee for state water quality permit: Two thousand five hundred dollars (\$2,500);

(2) Annual maintenance fee for NPDES permit or state water quality permit: Seven thousand five hundred dollars (\$7,500);

(3) Inspection fee for a major public water or wastewater treatment system: Two thousand five hundred dollars (\$2,500);

(4) Engineering plans review for water or wastewater systems: One thousand five hundred dollars (\$1,500);

(5) Filing/processing fee for construction permit for a new air emission source or the increased emissions to a source: Seven thousand five hundred dollars (\$7,500);

(6) Filing/processing fee for permit modification for an air emission source: Seven hundred fifty dollars (\$750);

(7) Air contaminant emissions fee: Eighteen dollars and seventy-five cents (\$18.75) per ton per year, based upon the air contaminant sources allowable emissions level; provided, that emissions subject to this fee are capped at four thousand (4,000) tons per pollutant (TSP, VOC, SO₂, NO_x, and other pollutants, excluding CO) per facility;

(8) Filing/processing fee for solid waste processing facility: Two thousand five hundred dollars (\$2,500);

(9) Filing/processing fee for solid waste landfill permit: Ten thousand dollars (\$10,000);

(10) Annual maintenance fee for a solid waste processing facility: Five thousand dollars (\$5,000);

(11) Annual maintenance fee for a solid waste landfill: Fifteen thousand dollars (\$15,000);

(12) Filing/processing fee for a commercial hazardous waste storage or treatment facility: Thirty-seven thousand five hundred dollars (\$37,500);

(13) Filing/processing fee for a commercial hazardous waste disposal facility or landfill site: Seventy-five thousand dollars (\$75,000);

(14) Annual maintenance fee for a commercial hazardous waste storage or treatment facility: Thirty-seven thousand five hundred dollars (\$37,500);

(15) Annual maintenance fee for a commercial hazardous waste disposal facility or landfill site: Seventy-five thousand dollars (\$75,000);

(16) Filing/processing fee for an on-site hazardous waste storage or treatment facility: Fifteen thousand dollars (\$15,000);

(17) Filing/processing fee for an on-site hazardous waste disposal facility or landfill site: Thirty thousand dollars (\$30,000);

(18) Annual maintenance fee for an on-site hazardous waste storage or treatment facility: Eighteen thousand seven hundred fifty dollars (\$18,750);

(19) Annual maintenance fee for an on-site hazardous waste disposal facility or landfill site: Twenty-two thousand five hundred dollars (\$22,500);

(20) (A) Class I. Dental radiation machines: All diagnostic equipment used exclusively for dental diagnostic procedures: Ninety-eight dollars (\$98);

(B) Class II. Priority two medical radiation machines: All diagnostic equipment, not in Class III, used exclusively for medical and veterinary diagnostic procedures: Two hundred twenty-five dollars (\$225);

(C) Class III. Priority one medical radiation machines: All diagnostic x-ray equipment used in radiologists' offices, orthopedic surgeons' offices or hospitals exclusively for medical diagnostic procedures: Three hundred dollars (\$300); and

(D) Class IV. Therapy medical radiation machines: All x-ray equipment with energies less than 0.9 MeV used for the purpose of medical and veterinary radiation therapy: Four hundred fifty dollars (\$450).

(21) Well driller annual license fee: Two hundred fifty dollars (\$250);

(22) Well pump and treatment device installer annual license fees: One hundred fifty dollars (\$150);

(23) Safe dams plans review fee: Five Thousand Dollars (\$5,000);

(24) Safe dams safety inspection fee: One Thousand Dollars (\$1,000);

(25) Permit application fee for oil or gas well: One thousand two hundred dollars (\$1,200); and

(26) Mineral test hole permit application fee: One hundred dollars (\$100).

SECTION 17. Tennessee Code Annotated, Subsection 68-212-110(e), is amended by adding the following language to the end of the second sentence:

; however, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee.

SECTION 18. Tennessee Code Annotated, Section 68-212-203, is amended by deleting subsection (a) and by substituting instead the following:

(a) In addition to any other fees assessed by law, there is hereby levied a remedial action fee on the generation and management of hazardous waste. The amounts of such fees are to be set for different categories of activities in a rule promulgated by the Solid Waste Disposal Control Board; however none of the fees may exceed the following maximum amounts:

(1) Annual fees on the generation of hazardous waste: Thirty-three thousand dollars (\$33,000);

(2) Additional fees on the off-site shipment of hazardous waste, including the shipment of such waste to Tennessee facilities from out of state: Seventy-five thousand dollars (\$75,000).

SECTION 19. Tennessee Code Annotated, Subdivision 69-3-115(a)(1)(C), is amended by adding the language "or causes false information to be filed with the department" after the word "requirement".

SECTION 20. Tennessee Code Annotated, Subdivision 68-212-207(b)(3), is amended by deleting the words "attorney general and reporter" and substituting instead the word "commissioner".

SECTION 21. Tennessee Code Annotated, Subsection 68-212-207(c), is amended by deleting the words "attorney general and reporter" and substituting instead the word "commissioner".

SECTION 22. Tennessee Code Annotated, Subdivision 68-212-209(b)(2)(B), is amended by deleting the words "on the date of the filing of the notice provided for in subsection (a)".

SECTION 23. Tennessee Code Annotated, Section 68-212-213, is amended by deleting the existing subdivision (4) and substituting instead the following:

(4) Fails, neglects, or refuses to comply with any provision of this part, a regulation promulgated hereunder or an order issued pursuant to this part;

SECTION 24. Tennessee Code Annotated, Section 68-212-213, is further amended by deleting the “or” at the end of existing subdivision (5), adding the following as a new subdivision (5) and redesignating the remaining subdivision accordingly:

(5) Fails to provide information requested by the commissioner in the administration of this part; or

SECTION 25. Tennessee Code Annotated, Section 68-212-213, is further amended by designating the existing subsections as subsection (a) and adding the following language as subsection (b):

(b) In assessing a civil penalty, the following factors may be considered:

- (1) The harm done to the public health or the environment;
- (2) The economic benefit gained by the violators;
- (3) The amount of effort put forth by the violator to obtain compliance; and
- (4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

SECTION 26. Tennessee Code Annotated, Subsection 68-212-215(b), is amended by deleting the language “, in addition to other” and inserting in their place the words “in administering this part, to utilize”.

SECTION 27. Tennessee Code Annotated, Subsection 68-212-215(c), is amended by adding the following sentence at the end of the subsection:

Additionally, an order requiring the filing of land use restrictions, issued pursuant to Section 68-212-225, may be constructively served upon unidentified or unknown owners by publication of a notice of the order in a newspaper in general circulation in the county in which the property subject to such order is located.

SECTION 28. Tennessee Code Annotated, Section 68-212-225, is amended by adding the following new, appropriately designated subsection:

() In addition to any other law concerning the establishment of conservation easements, upon approval by the commissioner a property owner may voluntarily establish land use restrictions for the protection of streams and wetlands, or for other environmental conservation purposes by filing a “Notice of Land Use Restriction” pursuant to this section. Any such notice shall include the applicable portions of subsection (b), shall be filed as provided in subsection (d) and shall be enforceable as provided in subsection (f).

SECTION 29. Tennessee Code Annotated, Title 68, Chapter 212, Part 2, is amended by adding the following new, appropriately designated section:

Section (). In addition to the penalties provided elsewhere in this part, the commissioner may cause the enforcement of any orders, rules or regulations issued by the commissioner or the board to carry out the provisions of this part by instituting legal proceedings to enjoin the actual or threatened violations of the provisions of this part, and the orders, rules or regulations of the commissioner or orders of the board in the chancery court of Davidson County or in the chancery court of the county wherein all or a part of the actual or threatened violations has or is about to occur, in the name of the department. In such suits, the court may grant temporary or permanent injunctions or restraining orders. Such proceedings shall not be tried by jury.

SECTION 30. Tennessee Code Annotated, Subsection 68-212-302(e), is amended by deleting the second sentence.

SECTION 31. Tennessee Code Annotated, Section 68-212-304, is amended by deleting subsection (a) including subdivisions (1) and (2) and substituting instead the following:

(a) All large and small quantity generators shall complete a hazardous waste reduction plan in accordance with the requirements of § 68-212-305. After completion of a plan, the generator shall maintain a current copy of the plan at the generating facility. The plan and the annual progress reports under § 68-212-306 shall be made available, upon request, to a representative of the department at any reasonable time. The department may make use of such information as it deems necessary to carry out its duties under this chapter.

SECTION 32. Tennessee Code Annotated, Section 68-212-306, is amended by deleting subsection (c) in its entirety.

SECTION 33. Tennessee Code Annotated, Subsection 68-212-308(a), is amended by deleting the language, "each generator shall submit" and substitute instead, "the commissioner may require certain generators to submit".

SECTION 34. Tennessee Code Annotated, Section 68-212-309, is amended by adding after the words, "Fails to file", the language, "or make available to the department".

SECTION 35. Tennessee Code Annotated, Subsection 68-215-109(e), is amended by adding the following language to the end of the second sentence:

; however, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee.

SECTION 36. Tennessee Code Annotated, Subsection 69-3-105(f)(1)(A), is amended by inserting the language, "issuances, denials," after the words, "or permit".

SECTION 37. Tennessee Code Annotated, Subsection 69-3-110(c), is amended by deleting the language, "record of the hearing, together with".

SECTION 38. Tennessee Code Annotated, Subsection 69-10-102(b), is amended by deleting the second sentence and substituting instead:

The amount of the application fee for each annual license shall not exceed the amount stated in § 68-203-103(h) and shall be set in a rule promulgated by the Commissioner.

SECTION 39. Tennessee Code Annotated, Subsection 69-10-102(f), is amended by deleting the second sentence and substituting instead:

The amount of the application fee for each of these annual licenses shall not exceed the amount stated in § 68-203-103(h) and shall be set in a rule promulgated by the Commissioner.

SECTION 40. Tennessee Code Annotated, Section 69-10-109, is amended by deleting it and substituting instead:

All funds received by the Commissioner under this chapter together with any interest earned thereon shall be deposited into a separate account in the Environmental Protection Fund created by § 68-203-101.

SECTION 41. Tennessee Code Annotated, Section 69-11-116, is amended by deleting in subdivision (a)(1)(A) the language "five thousand dollars (\$5,000)" and substituting instead, "the amount stated in § 68-203-103(h)"; and by deleting in subdivision (a)(1)(B) the language, "five hundred dollars (\$500)" and substituting instead, "the amount stated in § 68-203-103(h)".

SECTION 42. Tennessee Code Annotated, Subsection 69-11-116(b), is amended by deleting it and substituting instead:

(b) All fees collected under the provisions of this chapter shall be placed in a special account in the Environmental Protection Fund created by § 68-203-101 and earmarked, allocated, and appropriated to the division of supply of the Department of Environment and Conservation for the purpose of complying with the provisions of this chapter. Any unexpended balance of such special account together with any interest earned thereon in any fiscal year shall not revert to the general fund, but shall remain in such special account and continue to be available for the activities of the division under this chapter.

SECTION 43. Tennessee Code Annotated, Section 69-11-126, is amended by deleting it in its entirety.

SECTION 44. Tennessee Code Annotated, Section 68-203-103, is amended by adding the following language at the end of subdivision (a)(3):

Prior to promulgating any fee increase, the authorities listed in subsection (b) of this section shall review the basis for such a fee increase and make a determination that it is warranted. The factors in such determinations shall include, if relevant: staffing needs, ability to attract and retain quality staff, feasible cost containment measures, comparisons with salaries paid by other governments and the private sector, levels of federal grants and state appropriations, and the ability of the program to maintain or improve its performance in carrying out its duties.

SECTION 45. Except for Sections 2, 4, 5, 6, 11, 18, 38, and 39, which shall all take effect only for purposes of rulemaking upon this bill becoming a law, and which shall each take effect for all purposes upon the date the rule applicable to each section is effective, this act shall take effect on July 1, 2007, the public welfare requiring it.

PASSED: May 24, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6th day of June 2007



PHIL BREDESEN, GOVERNOR