



State of Tennessee

PUBLIC CHAPTER NO. 437

SENATE BILL NO. 670

By Taylor, Hensley

Substituted for: House Bill No. 541

By Vaughan, Faison, Howell, Bricken, Reedy

AN ACT to amend Tennessee Code Annotated, Title 4; Title 11, Chapter 14, Part 4; Title 66; Title 67, Chapter 4, Part 4 and Title 69, relative to wetlands.

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

SECTION 1. Tennessee Code Annotated, Section 69-3-108(g), is amended by adding the following as a new subdivision:

(6) On or before August 1, 2026, and on or before August 1 of each year thereafter, the division of water resources in the department, in collaboration with United States army corps of engineers, as necessary, shall report the following information to the governor, the comptroller of the treasury, the chair of the committee of the house of representatives having jurisdiction over subject matters pertaining to commerce, and the chair of the commerce and labor committee of the senate the following information for the preceding fiscal year:

(A) The number of applications for permits filed pursuant to this section; and

(B) For permits required to have a provision for adequate compensatory mitigation pursuant to subdivision (g)(4)(E), the mechanism of compensatory mitigation provided for in the permit, including mitigation banking, permittee responsible mitigation, or in-lieu fee payments as approved by the department. If the mechanism of compensatory mitigation is:

(i) An in-lieu fee program, then the report must include the in-lieu fee instrument sponsor, the number of mitigation credits sold for the permitted project, and the amount of money received by the sponsor for such credits; and

(ii) Mitigation banking, then the report must include the mitigation bank sponsor, the number of mitigation credits sold for the permitted project, and the amount of money received by the sponsor for such credits.

SECTION 2. Tennessee Code Annotated, Section 69-3-108(r) is amended by designating the existing language as subdivision (1) and designating the following as a new subdivision (2):

(2)(A) A person desiring to develop real property may request a determination from the commissioner regarding the presence, extent, and category of wetlands by submitting a wetland resource inventory report prepared by a third-party wetland professional, including a delineation and, if applicable, documentation that the wetland is isolated. The report must also include a determination of the quality of the wetland. The wetland delineation portion of the report must be prepared in accordance with the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and applicable regional supplements or other such methodology contained in rules promulgated by the board.

(B) If the wetland resource inventory report contains all required information, is prepared in accordance with department procedures and guidance, and is certified by a third-party wetland professional to be true, accurate and complete, then the determinations made in the wetland resource inventory report are presumed to be

correct unless the commissioner notifies the person, in writing, within thirty (30) days of submittal of the report containing ten (10) or fewer wetlands, or within sixty (60) days of submittal of the report containing more than ten (10) wetlands, that the commissioner has affirmatively determined there is a significant question about the presence, extent, status as isolated, or quality of a wetland and states the reasons for that determination. If such a determination is made, then the commissioner must, within thirty (30) days following the initial notification, determine the presence, extent, status as isolated, and quality of wetlands, and notify the person in writing of that decision and the reasons for the determination.

(C) The person on whose behalf a wetland resource inventory report was submitted may appeal a determination by the commissioner by filing a petition stating the basis for the appeal with the board within thirty (30) days of receiving the commissioner's decision.

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

(a) As used in this section:

(1) "Artificial isolated wetland":

(A) Means:

(i) A wetland formed in an area that would otherwise be upland as a result of prior human alterations such as drainage, fill, cropping, ditching, tile drainage, excavation, tire ruts, silviculture, or impoundment for which sufficient proof exists providing evidence that a wetland did not exist five (5) years prior to the submission of a wetland resource inventory report; or

(ii) A wetland that was intentionally constructed in an upland area for the purpose of wastewater treatment, stormwater management, or other engineered use, or was inadvertently created due to changes in surface hydrology from site development, and grading or as a result of a beaver dam within the five (5) years prior to the submission of a wetland resource inventory report; and

(B) Does not include wetlands that serve as fish spawning areas or wetlands created as a result of mitigation requirements;

(2) "High-quality isolated wetland" means an isolated wetland that provides a high degree of ecologic, hydrologic, and biogeochemical functions, as measured by the department's wetland resource assessment tool;

(3) "Isolated wetland" means a wetland that does not have a continuous surface connection to a relatively permanent body of water that is connected to a traditional interstate navigable water and, as such, is distinguishable from that body of water;

(4) "Low-quality isolated wetland" means an isolated wetland that provides only minimal ecologic, hydrologic, and biogeochemical functions, as measured by the department's wetland resource assessment tool; and

(5) "Moderate-quality isolated wetland" means an isolated wetland that provides only modest ecologic, hydrologic, and biogeochemical functions as measured by the department's wetland resource assessment tool.

(b) Notwithstanding another law or rule to the contrary:

(1) The alteration of a low-quality isolated wetland up to one (1) acre in size, a moderate-quality isolated wetland up to one-quarter (1/4) acre in size, or an artificial isolated wetland of any size is permitted by this subdivision (b)(1), and notice, approval, or compensatory mitigation is not required for such alteration if the alteration is done in accordance with the following conditions:

(A) The activity must not result in the discharge of toxic pollutants;

(B) Sediment must be prevented from entering a stream or other surface waters; and

(C) Appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. In the event of a spill, measures must be taken immediately to prevent pollution of waters of the state, including groundwater;

(2) The alteration of a low-quality isolated wetland that is greater than one (1) acre up to two (2) acres in size, or a moderate-quality isolated wetland that is greater than one-quarter (1/4) acre up to two (2) acres in size, must be regulated by a general permit for aquatic alterations pursuant to § 69-3-108(l). The general permit required by this subdivision (b)(2) must not impose any requirements related to riparian buffer, cumulative impact analysis, or antidegradation, within the scope of this part;

(3) Compensatory mitigation is not required for alteration of a wetland subject to subdivision (b)(1) or (b)(2), except that mitigation may be required for:

(A) Alteration of a moderate-quality isolated wetland:

(i) For the acreage greater than one-quarter (1/4) acre up to one (1) acre in size at a ratio not to exceed 1:1; and

(ii) For the acreage greater than one (1) acre up to two (2) acres in size at a ratio not to exceed 2:1; and

(B) Alteration of a low-quality isolated wetland for the acreage greater than one (1) acre up to two (2) acres in size at a ratio not to exceed 1:1;

(4) Unless required by federal law and except as authorized by subdivision (b)(3), additional permits, authorization, conditions, or requirements related to cumulative impact analysis, antidegradation, or mitigation are not required for activity within a wetland subject to subdivision (b)(1) or (b)(2). Notwithstanding any requirement for reducing pollutants to the maximum extent practicable, riparian buffers are not required for wetlands subject to subdivision (b)(1) or (b)(2);

(5) An individual aquatic resource alteration permit is required for alteration of a low-quality isolated wetland or moderate-quality isolated wetland greater than two (2) acres and a high-quality isolated wetland of any size; and

(6) The acreage requirements in this subsection (b) must be considered minimum acreage limits. The commissioner is authorized to increase the acreage of low-quality isolated wetlands and moderate-quality isolated wetlands permitted by subdivision (b)(1) and the acreage of low-quality isolated wetlands and moderate-quality isolated wetlands subject to subdivision (b)(2) as the commissioner deems appropriate.

(c) Existing onsite permanent stormwater control measures must be accounted for when determining the amount of mitigation required for alteration to any isolated wetland where mitigation is required.

(d) Isolated wetlands and artificial isolated wetlands must not be considered when determining the cumulative impact of a project for purposes of a permit even if the project contains other wetlands that are deemed jurisdictional by the United States army corps of engineers (USACE). A water quality certification under § 401 of the federal Clean Water Act (33 U.S.C. § 1341) must not consider isolated or artificial isolated wetlands when determining cumulative impact or common plan of development.

(e) The board has authority to develop criteria for the three (3) classifications of isolated wetlands as duly promulgated rules.

(f) The wetland resource assessment tool established and utilized by the department to measure the presence or quality of a wetland is subject to a public notice and comment period of no less than thirty (30) days. The wetland resource assessment tool must be approved by the board following the public notice and comment period.

SECTION 4. This act takes effect July 1, 2025, the public welfare requiring it.

SENATE BILL NO. 670

PASSED: April 21, 2025

Randy McNally
RANDY McNALLY
SPEAKER OF THE SENATE

C. J. Sexton
CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of May 2025

Bill Lee
BILL LEE, GOVERNOR