

SENATE BILL 606

By Woodson

AN ACT to amend Tennessee Code Annotated, Title 68 and Title 69, relative to water quality.

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

SECTION 1. Tennessee Code Annotated, Title 69, Chapter 3, is amended by adding Sections 2 through 9 of this act as a new part thereto.

SECTION 2. This act provides a system for protecting Tennessee's waters as a public trust as required by Section 69-3-102 and removing the burden on taxpayers by funding the enforcement of the Water Quality Control Act with fees and fines deposited pursuant to Section 69-3-119. Fines assessed and collected under this Section will be paid in to the special fund and allocated to funding the salaries, benefits and training of additional qualified personnel dedicated to enforcement. Collected fines will not be allocated to other priorities until each field office has no less than one (1) dedicated enforcement officer per one hundred (100) active sites under individual permits or general permit coverage.

SECTION 3.

(a) In an effort to reduce the burden on taxpayers and to deter future violations, certain civil penalties shall be mandatory, including:

(1) The amount calculated with the environmental protection agency benefit (BEN) model to recover the violator's economic benefits of noncompliance from delaying or avoiding pollution control expenditures; and

(2) Reimbursement of department employees' time for investigating complaints, travel, site visits, testing, writing notices of violation, preparing for and attending compliance meetings or other enforcement-related meetings, and

preparation and other reasonable expenses incurred to document and seek correction of the violation(s).

(b) An escalating percentage of the maximum civil penalties shall be imposed, with the percentage depending on the number of enforcement actions initiated in the past three hundred sixty-five (365) days, as follows:

(1) First enforcement – at least fifty percent (50%) of the maximum penalty for at least one (1) day of the violation for each violation;

(2) Second enforcement -- at least seventy-five percent (75%) of the maximum penalty for at least one (1) day of the violation for each violation; and

(3) Third or more enforcement actions – one hundred percent (100%) of the maximum penalty for at least one (1) day of the violation for each violation.

(4) For violations on 303(d) listed streams or their tributaries that have continued unabated for more than thirty (30) days, the mandatory fine must be at least twenty-five thousand dollars (\$25,000).

(c) A plea by the violator of financial inability to prevent, abate, or control pollution shall not be a valid defense under the provisions of this part.

(d) Documentation of the same violation at the same location on two (2) separate dates creates a rebuttable presumption that the violation continued each day between those dates, and each day thereafter until compliance is achieved and documented. Fines may reflect the maximum penalty for each day in that range. The violator may rebut this presumption with evidence of supplies, receipts for labor costs, and photographic evidence, including proof of the date the photos were taken.

SECTION 4.

(a) The board shall adopt regulations that estimate the expense of water quality testing, site visits, compliance review meetings, appeals, and all other environmental

services and administrative expenses related to monitoring, enforcement, settlement, or other compliance activities related to permit processing or enforcement for the purposes of creating a cost list for maintenance fees and other environmental services provided in response to permit applications and violations.

(b) The department shall use this cost list throughout the state to efficiently, consistently and fairly shift the cost of monitoring and compelling compliance to permit holders and other actors that violate clean water laws. The list will also provide a foundation for assessing fees for permit applicants based on the estimated resources that will be expended by the department.

SECTION 5. The commissioner must proceed to either a director's or commissioner's order enforcement action if, after two (2) notices of violation for the same or similar violation on a site, the condition persists. This section in no way limits the initiation of enforcement actions prior to this condition.

SECTION 6. Following the second enforcement action initiated within a three hundred sixty-five (365) day period for any responsible party, the party will be required to obtain individual permits for a three-year period. This period will be extended one (1) year for each enforcement action initiated during the three-year period or subsequent extension years.

SECTION 7. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following new items thereto:

() "Responsible party" means:

(A) Any individual who is an applicant, an officer or director of a corporation, partnership, or business association that is an applicant, or person with overall responsibility for operations of the site required to have a construction stormwater or other permit; or

(B) Any official or management committee member of the state or political subdivision thereof that is an applicant; and

() "Enforcement action" means commissioner's orders, director's orders, and expedited director's orders for Water Quality Control Act violations for permitted activities or for failing to have a permit when necessary.

SECTION 8. In litigation or an enforcement action, original and subsequent permit holders relative to a project shall be considered jointly and severably liable for any penalties or remediation required as a result of violations of the permit or Water Quality Control Act violations on the site.

SECTION 9. In the event of an appeal of any enforcement order, the board shall impose a civil penalty upon any frivolous appeals in amount of five hundred dollars (\$500) plus an amount equal to the staff and board resources expended to prepare for, hear, and finalize the enforcement action. An appeal undertaken to delay, induce the state to settle or avoid payment of a judgment without a legal basis shall be presumed frivolous.

SECTION 10. 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 11. This act shall take effect July 1, 2007, the public welfare requiring it.