

Amendment No. 1 to HB1054

Todd  
Signature of Sponsor

**AMEND Senate Bill No. 631\***

**House Bill No. 1054**

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

SECTION 1. Tennessee Code Annotated, Section 69-3-103, is amended by deleting subdivision (41) and substituting:

(41) "Stream" means:

(A) A surface water that is not a wet weather conveyance; and

(B) Does not include a watercourse that is a wet weather conveyance regardless of whether such watercourse is defined as "navigable waters" within the meaning of 33 U.S.C. § 1362(7) of the federal Water Pollution Control Act or is otherwise regulated under subchapter IV of the federal Water Pollution Control Act (33 U.S.C. § 1381 et seq.);

SECTION 2. Tennessee Code Annotated, Section 69-3-103, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Qualified hydrologic professional" means a person holding a bachelor's degree in biology, geology, ecology, engineering, or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations and who has been certified pursuant to rules promulgated by the board;

( ) "Third-party wetland professional" means an individual who is:

(A) Certified as a professional wetland scientist by the Society of Wetland Scientists or another wetland certifying entity acceptable to the department;

(B) Registered with the department as a third-party wetland professional, having met the qualifications required by the department; and

(C) Not employed by the department;

( ) "Wetland" means:

(A) An area inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and

(B) Includes swamps, marshes, bogs, and similar areas;

SECTION 3. Tennessee Code Annotated, subsection 69-3-108(r) is amended by deleting the subsection and substituting the following:

(1) A person desiring to alter a specific watercourse may request a determination from the commissioner that it is a wet weather conveyance and submit a hydrologic determination report from a qualified hydrologic professional in support of the request. If the report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and guidance, and is certified by a qualified hydrologic professional to be true, accurate, and complete, and contains all information that is required by rules promulgated by the board, then the determination made in the hydrologic determination report shall be presumed to be correct, except as provided in subdivision (r)(3).

(2) A person desiring to develop 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 and the quality of the wetland. The wetland delineation portion of this report must be prepared in accordance with the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and applicable regional supplements. 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 shall be presumed to be correct except as provided in subdivision (r)(3).

(3) If the commissioner determines that there is a significant question regarding whether a watercourse is a stream or a wet weather conveyance or regarding the presence, extent, status as isolated, or quality of a wetland, the commissioner must notify the person in writing, providing the reasons, as follows:

(A) If the report addresses fewer than ten (10) watercourses and no wetlands, within thirty (30) days of receipt of the wetland resource inventory report; or

(B) If the report includes wetlands, or ten (10) or more watercourses, within sixty (60) days of receipt of the wetland resource inventory report.

(4) If the commissioner notifies a person of a significant question pursuant to subdivision (r)(3), the commissioner must, within thirty (30) days following the initial notification, issue a final determination of whether the water in question is a stream or a wet weather conveyance or, as applicable, the presence, extent, status as isolated, and quality of wetlands, and notify the person in writing of that decision and the reasons for that determination.

(5) The person on whose behalf a hydrologic determination or wetland resource inventory report was submitted may appeal a final 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 4. 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) "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 or another defensible scientific method commonly used to measure wetland value, the characteristics of which may include:

(A) The wetland is located in a state, national, or federal:

(i) Park;

(ii) Recreational area;

(iii) Scenic river;

(iv) Wildlife management area; or

(v) Area that is designated as lands unsuitable for mining pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), where such designation is based in part or wholly upon impacts to water resource value under state or federal law; and

(B) The wetland provides critical habitat for endangered species identified by the United States Fish and Wildlife service under chapter 35 of the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) or otherwise provides critical habitat for non-experimental populations of federally-threatened or endangered aquatic or semi-aquatic species;

(2) "Isolated wetland" means:

(A) A wetland that does not have a continuous surface connection to a relatively permanent body of water that is connected to a stream and, as such, is distinguishable from that body of water; and

(B) A wetland that does not directly discharge into a sink hole;

(3) "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 or other

defensible recognized scientific method commonly used to measure wetland value, the characteristics of which may include:

(A) Degradation resulting from prior human alterations such as drainage, fill, cropping, ditching, tile drainage, excavation, silviculture, or impoundment that has significantly reduced or eliminated the structure and function of the feature as a wetland;

(B) The areas immediately surrounding the wetland have been heavily disturbed, or there is only a very narrow undisturbed area adjacent to the wetland;

(C) Low species diversity and abundance, and a predominance of invasive, nonnative, or disturbance-tolerant plant species;

(D) Minimal wildlife or aquatic habitat or limited accessibility of the wetland to wildlife;

(E) Alteration of soils due to historic grading, agricultural practices, erosion from high velocity flows, or other human activity such that soils have been highly disturbed and do not retain enough of the soils' original hydrologic, biogeochemical, and ecological characteristics to support a fully functioning wetland;

(F) The wetland 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 last five (5) years prior to submission of a wetland resource inventory; and

(G) The wetland does not otherwise possess characteristics that merit special consideration, are of significance at the state, regional, or

national levels, or that make the wetland an inherently valuable local resource; and

(4) "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 or other defensible recognized scientific method commonly used to measure wetland value, the characteristics of which may include:

(A) Degradation resulting from prior human alterations that has not significantly changed the overall structure and function of the feature as a wetland, such as slight ditching or draining, minimal fill, or minor excavation;

(B) The areas immediately surrounding the wetland have only been moderately disturbed by human activity, such as old fallow agricultural fields or pasture, shrub land, early successional young forest, or low-density residential development;

(C) The wetland has primarily common, widely occurring native plant species and a low percentage of invasive, nonnative, or disturbance-tolerant species;

(D) The wetland provides more than minimal wildlife or aquatic habitat;

(E) Plant communities are recovering from past alterations such as historical land clearing or previous agricultural practices;

(F) Soils have been disturbed, but still retain enough of their original characteristics that the soils' hydrologic, biogeochemical, and ecological functions within the wetland are only slightly reduced; and

(G) The wetland does not otherwise possess features or characteristics that merit special consideration, are of significance at the state, regional, or national levels.

(b)

(1) Notwithstanding another law or rule to the contrary, the alteration of a moderate-quality isolated wetland that is one (1) acre in size or less or of a low-quality isolated wetland regardless of size by any activity is permitted by this subdivision (b)(1) and no notice, approval, or compensatory mitigation is required for such alteration; provided, that it is done in accordance with the following conditions:

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

(B) Sediment shall 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 shall be taken immediately to prevent pollution of waters of the state, including groundwater; and

(2) There are no additional conditions upon a person's activity within a moderate-quality isolated wetland one (1) acre in size, or less, or a low-quality isolated wetland regardless of size. Impacts to these isolated wetlands must not be considered as part of a cumulative impact or antidegradation analysis. No riparian buffers are required for a moderate-quality isolated wetland one (1) acre in size, or less, or a low-quality isolated wetland regardless of size, but otherwise this subsection (b) does not apply to national pollutant discharge elimination system (NPDES) permits.

(c)

(1) Notwithstanding another law or rule to the contrary, an individual aquatic resource alteration permit is required for impacts to a moderate-quality isolated wetland that is more than one (1) acre in size.

(2) Mitigation requirements for impacts to a moderate-quality isolated wetland that is more than one (1) acre in size should not be more than a one-to-one (1:1) ratio for wetland restoration, a two-to-one (2:1) ratio for wetland creation and enhancement, or a five-to-one (5:1) ratio for wetland preservation.

(d) An isolated wetland must not be designated as exceptional Tennessee waters unless the isolated wetland meets the criteria for a high-quality isolated wetland.

SECTION 5. This act takes effect July 1, 2024, the public welfare requiring it.