

HOUSE BILL 43

By Johnson G

AN ACT to amend Tennessee Code Annotated, Title 59 and Title 69, Chapter 3, Part 1, relative to water quality regulation relating to mining activities.

WHEREAS, two thousand feet (2,000') is a significant elevation in determining divisions of ecological subregions according to the most current edition of the United States Forest Service's publication, Ecological Subregions of the United States; now, therefore,

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

SECTION 1. This act shall be known and may be cited as the "Tennessee Scenic Vistas Protection Act".

SECTION 2. Tennessee Code Annotated, Section 69-3-108, is amended by adding the following language as a new, appropriately designated subsection:

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(1) For purposes of this subsection, "ridgeline" means the elongated crest or a series of crests at the uppermost intersection between two (2) or more opposite slopes or sides of a mountain and includes all surface land within one hundred feet (100') below the elevation of any such line or surface of intersection along the crest; and

(2) Except as provided in subdivision (3) of this subsection, under no circumstances shall the commissioner issue or renew a permit, certification, or variance that would allow surface coal mining operations to alter or disturb any ridgeline that is above two thousand feet (2,000') elevation above sea level.

(3)

(A) A permit, certificate, or variance issued or granted prior to the effective date of this act, which allows surface coal mining operations to

alter or disturb any ridgeline that is above two thousand feet (2,000') elevation above sea level, may be renewed only under the following circumstances:

(i) The applicant for renewal of the permit, certificate, or variance is the person who was the holder of the permit, certificate, or variance on the effective date of this act;

(ii) The renewal shall not increase or change the surface area that is covered by the permit, certificate, or variance;

(iii) The renewal shall not expand the activities allowed by the permit, certificate, or variance that are otherwise prohibited by subdivision (2) of this subsection; and

(iv) The renewal is not otherwise prohibited by law.

(B) The privileges extended by the renewal of a permit, certificate, or variance issued pursuant to subdivision (3)(A) of this subsection are not transferable to another person. For purposes of this subdivision (3), a transfer of a majority interest in a business association, including a corporation, partnership, trust, joint venture, limited liability company and any other business association, shall be deemed a transfer of the permit, certification, or variance held by such business association. Any change in ownership of a business association shall be reported to the commissioner under rules prescribed by the commissioner.

(C) This subsection shall not prohibit the commissioner from issuing or renewing a permit, certification, or variance that would authorize the construction or maintenance of ridgeline crossings including utility, rail or pipeline crossings or road crossings necessary to obtain access to underground or surface mining activities or to obtain access to reclamation activities that are permissible pursuant to federal and state law; provided, however that the applicant would otherwise be eligible for

such permit, certification or variance under any other applicable state or federal law, including, but not limited to, water quality criteria.

(D) The requirements of this subsection do not apply to surface coal mining activities that are only incidental to underground mining if the commissioner determines that surface disturbance and effect is limited to that required to conduct underground mining that is otherwise permissible pursuant to federal and state law.

(E)

(i) This subsection shall not apply to land that is eligible for federal funding under the Surface Mining Control and Reclamation Act, compiled in 30 U.S.C. § 1201, et seq.

(ii) If there is a change in the Surface Mining Control and Reclamation Act, compiled in 30 U.S.C. § 1201, et seq., or the rules and regulations promulgated pursuant thereto, which would cause land located in Tennessee that is ineligible for federal funding under the Surface Mining Control and Reclamation Act on the effective date of this bill to become eligible for federal funding under the Act, the commissioner of environment and conservation shall report such change to the house conservation and environment committee and the senate energy and environment committee as soon as practicable.

(4) This subsection () does not:

(A) Prohibit any otherwise allowable surface coal mining above two thousand feet (2,000') elevation above sea level that does not alter or disturb a ridgeline; or

(B) Limit any privilege secured by any valid permit, certification, or variance issued by the state in effect upon the effective date of this act.

SECTION 3. The provisions of this act are declared to be remedial in nature and the provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity or affect 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 5. This act shall take effect upon becoming law, the public welfare requiring it.