



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 208**

**SENATE BILL NO. 1049**

**By Southerland**

Substituted for: House Bill No. 227

By Vaughan, Reedy

AN ACT to amend Tennessee Code Annotated, Title 69, Chapter 3, Part 1, relative to water quality.

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

SECTION 1. Tennessee Code Annotated, Section 69-3-108(g)(4), is amended by adding the following as a new subdivision (E):

(E) In the case of permits authorizing permanent impacts to waters of the state, provision for adequate compensatory mitigation to not result in a condition of pollution, by mitigation banking, permittee-responsible mitigation, or in-lieu fee payments as approved by the department:

(i) No sponsor of an in-lieu fee instrument may accept in-lieu fee payments for a project in this state unless the sponsor's in-lieu fee instrument requires the sponsor, as to both new and previously sold in-lieu fee credits, to agree that the department may bring an enforcement action pursuant to subdivision (g)(4)(E)(ii) if the sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project;

(ii) If an in-lieu fee sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project, and the sponsor's instrument complies with subdivision (g)(4)(E)(i), then the department may bring an enforcement action in the chancery court of Davidson County to require the in-lieu fee sponsor to solicit proposals to procure appropriate mitigation credits from qualified third parties to provide for equivalent compensatory mitigation;

(iii) For purposes of this subdivision (g)(4)(E), "equivalent compensatory mitigation" means mitigation equivalent, to the extent practicable as determined by the department, to the amount and nature of mitigation purchased by the original in-lieu fee payment; and

(iv) Proposals received by the in-lieu fee sponsor pursuant to an action brought by the department pursuant to subdivision (g)(4)(E)(ii) must be submitted for approval by the in-lieu fee sponsor to the department. To the extent permitted by federal law, upon approval by the department and the purchase of such mitigation credits by the in-lieu fee sponsor, the in-lieu fee sponsor is considered to have performed the original required mitigation.

SECTION 2. Tennessee Code Annotated, Section 69-3-116(a), is amended by deleting the subsection and substituting the following:

(a) The commissioner may assess the liability of any polluter or violator for damages to the state resulting from any person's pollution or violation, failure, or neglect in complying

with any rules, regulations, or standards of water quality promulgated by the board or permits, including failure by an in-lieu fee sponsor to timely complete land acquisition and initial physical and biological improvements, or orders issued pursuant to this part.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1049

PASSED: April 5, 2021

  
RANDY McNALLY  
SPEAKER OF THE SENATE

  
CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 22<sup>nd</sup> day of April 2021

  
BILL LEE, GOVERNOR