

SENATE BILL 1118

By Bell

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 68 and Title 69, relative to stream mitigation.

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

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

69-3-1__.

(a) As used in this section, unless the context otherwise requires:

(1) "Restoration" means restoring an altered, unstable, or converted wetland or stream to a stable condition that improves its geomorphic, biological, and chemical integrity, reduces sedimentation, provides and enhances habitat, improves health of the aquatic community and restores wetland or stream functions and values;

(2) "Section 404 permit" means a permit issued by the United States army corps of engineers under 33 U.S.C. §§ 1344 et seq. and "Section 401 certification" means a water quality certification issued under 33 U.S.C. § 1341;

(3) "Stream mitigation review team" (SMRT) means the interagency committee established pursuant to agreement with the USACE pursuant to § 404 of the Clean Water Act to approve proposed projects for design and construction with TSMP funds within the county in which they occur; and perform annual reviews of ongoing and completed projects;

(4) "Stream restoration and mitigation" means restoration of wetlands, streams, or other waterbodies, and mitigation of adverse effects on waterbodies, in a manner consistent with §§ 401 and 404 of the Clean Water Act;

(5) "Tennessee stream mitigation program" (TSMP) means an organization that is approved by the USACE as a mitigation bank or to manage or perform third-party compensatory mitigation under the § 404 permit program, and is approved for such purposes under the Section 401 certification program; and

(6) "USACE" means the United States army corps of engineers.

(b) The general assembly recognizes that:

(1) Conservation and protection of the water resources of the state, including streams, rivers, wetlands, and riparian habitats, may involve, in addition to restoration and enhancement of aquatic and riparian habitat, proper management of wastewater and storm water, and abatement of preexisting sources of pollution; and

(2) The TSMP has been qualified by the United States Army of Engineers to manage compensatory mitigation arrangement that is approved after the effective date of this act under Section 404, and to the extent that the United States army corps of engineers and the Tennessee stream mitigation program has approved the use of such funds for elimination of preexisting sources of pollution, the Tennessee stream mitigation program may expend a portion of the funds for those purposes; provided, that the:

(A) Funds spent on water quality improvements are a component of a stream or wetland restoration plan for replacement of aquatic resource functions and values; and

(B) Project has been reviewed and approved by the USACE and the division of water as being consistent with §§ 404 and 401 of the Clean Water Act.

(c) All funds contributed by a permittee under a § 404 permit into the Tennessee stream mitigation program for a project designed for stream restoration and mitigation shall be utilized within the county where the adverse effects occur.

SECTION 2. 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 3. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. For the purpose of promulgating rules and regulations this act shall take effect upon becoming a law, and for all other purpose this act shall take effect October 1, 2011, the public welfare requiring it.