

SENATE BILL 2401

By Watson

AN ACT to amend Tennessee Code Annotated, Title 59, Chapter 8, Part 2; Section 66-5-102 and Title 69, Chapter 3, Part 1, relative to mining.

WHEREAS, wide variations in the circumstances and conditions surrounding and arising out of the surface mining of minerals, including rock harvesting, have resulted in the need to foster certainty and uniformity in the application of the surface mining law in this state; and

WHEREAS, unregulated surface mining of minerals, including rock harvesting, can cause hardship and collateral damage to surface and mineral owners, and it is necessary to provide for the regulation and control of surface mining so as to minimize the injurious effects of surface mining; and

WHEREAS, there is a need to facilitate and require the demonstration of a clear understanding between the owners of surface and mineral estates in land concerning the owners' respective rights to use and occupy or modify the surface of the land; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 59-8-201, is amended by deleting the section in its entirety and by substituting instead the following:

This part shall be known and may be cited as the "Tennessee Non-Coal Surface Mining Act."

SECTION 2. Tennessee Code Annotated, Section 59-8-202(3), is amended by deleting the language "board of reclamation review as created by the Tennessee Coal Surface Mining Law of 1980, compiled in part 3 of this chapter" and by substituting instead the language "Tennessee water quality control board established by § 69-3-104".

SECTION 3. Tennessee Code Annotated, Section 59-8-202(5), is amended by deleting the language "division of surface mining and reclamation" and by substituting instead the language "division of water pollution control".

SECTION 4. Tennessee Code Annotated, Section 59-8-202, is amended by deleting subdivision (7) in its entirety and by substituting instead the following:

(7)(A) "Mineral" means, in any county having a population of more than six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, clay, stone, limestone, marble, chert, dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade, gravel, sand, phosphate rock, metallic ore and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include coal;

(B) "Mineral" means, in any county having a population of six hundred thousand (600,000) or less according to the 1970 federal census or any subsequent federal census, clay, stone, limestone, marble, chert, dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade, phosphate rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include coal, gravel or sand; and

(C) "Mineral" means, on any land on which the state, or any department, agency, or other unit of state government, owns the surface interest, clay, stone, gravel, sand, phosphate rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include coal.

SECTION 5. Tennessee Code Annotated, Section 59-8-202, is amended by deleting subdivision (9) in its entirety and by substituting instead the following:

(9) "Operator" means any person engaged in surface mining who disturbs or intends to disturb one (1) acre or more of land; provided, however, that operator does

not include a person who engages in rock harvesting and is the surface owner at the location where the rock or stone is removed nor a person who engages in rock harvesting with the written consent of the surface owner as provided in Section 8 of this act. Any operator who has obtained a permit, and otherwise complied with the provisions of this part may subcontract any part, or all, of the mining of the lands covered by the permit to subcontractors and such subcontractors are not considered an operator within the meaning of this part;

SECTION 6. Tennessee Code Annotated, Section 59-8-202, is amended by adding the following as a new, appropriately designated subdivision:

() "Rock harvesting" means the removal of rock or stone for commercial sale for decorative purposes including, but not limited to: dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade, limestone, marble and chert from lands not owned by the state, or any department, agency or other unit of state government, but does not include the removal of those materials exempted in subdivision (7)(B);

SECTION 7. Tennessee Code Annotated, Section 59-8-205(a)(1), is amended by redesignating subdivision (G) as subdivision "(H)", by deleting subdivision (F) in its entirety and by substituting instead the following language:

(F)

(i) Identification of the source of the operator's legal right to enter and mine the minerals on the land affected by the permit and whether that right is the subject of pending court litigation; and

(ii) Evidence of the operator's legal right to surface mine the minerals on the land affected by the permit. If the surface estate has been severed from the mineral estate, such evidence may be provided by either:

(a) A deed, lease, or other document which severs the mineral rights and expressly permits the removal of minerals by surface mining or a certified extract of the appropriate provisions of such documents; or

(b) A deed, lease or conveyance which severs the mineral rights without specific provisions for surface mining and an accompanying affidavit by the current surface estate owner agreeing to the removal of such minerals by surface mining;

(G) In cases where the private mineral estate has been severed from the private surface estate:

(i) The written consent of the surface owner to the extraction of minerals by surface mining methods; or

(ii) A conveyance that expressly grants or reserves the right to extract the minerals by surface mining methods. If the conveyance does not expressly grant the right to extract minerals by surface mining methods, then the surface-subsurface legal relationship shall be determined by law. Nothing in this section shall be construed to authorize the commissioner to adjudicate property rights disputes; and

SECTION 8. Tennessee Code Annotated, Title 59, Chapter 8, Part 2, is amended by adding the following as a new, appropriately designated section:

Section 59-8-2__.

(a) A person may engage in rock harvesting without being subject to the requirements of this part if the owner of the surface rights at the location has:

(1) Signed and notarized a form consisting of the same or substantially similar language as subsection (b) with a copy of this part attached; and

(2) Submitted a copy of such form to the department.

(b)

In consideration of the following, the parties named below do hereby enter into the following enforceable agreement.

(a) The surface owner agrees as follows:

I, _____, am the owner of the surface rights of the real property described as follows, _____.

I agree that _____ may engage in rock harvesting on my land. I understand that:

(1) This rock harvesting will / will not (circle one) include blasting;

(2) This rock harvesting will / will not (circle one) include the operation of bulldozers;

(3) This rock harvesting will / will not (circle one) include the operation of trucks larger than pickup trucks;

(4) This rock harvesting will / will not (circle one) include the operation of front-end loaders;

(5) This rock harvesting will / will not (circle one) include the removal of rock on the surface of the land;

(6) This rock harvesting will / will not (circle one) include cuts or excavation beneath the ground;

(7) (If item (6) indicates it will be included) the rock harvesting will include excavation to a depth of approximately _____ feet beneath the surface of the land.

(b) The rock harvester agrees as follows:

(1) I, _____, have a legal right to the rock to be removed;

(2) I will only engage in rock harvesting on the property subject to this agreement in accordance with the provisions stated in subsections (a) and (b) of this document; and

(3) After I have removed rock from this property, I will leave the land in the following condition:

(c) Signatures:

| | |
|-----------------------------------|-----------------------------------|
| _____ | _____ |
| Surface owner | Rock Harvester |
| _____ | _____ |
| (street address) | (street address) |
| _____ | _____ |
| (city/state) | (city/state) |
| Subscribed and sworn to before me | Subscribed and sworn to before me |
| _____ | _____ |
| Notary Public | Notary Public |
| My Commission expires: | My Commission expires: |
| _____ | _____ |

SECTION 9. Tennessee Code Annotated, Section 66-5-102, is amended by deleting the following language in its entirety:

(c) The provisions of this section shall only apply to mineral estates in coal.

SECTION 10. This act shall take effect July 1, 2010, the public welfare requiring it.