



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 181*

128th General Assembly

(As Re-referred to H. Finance and Appropriations)

Sens. Stewart, Goodman, Schaffer, Seitz, Niehaus, Faber, Gibbs, Gillmor, Harris, Hughes, Patton, Wagoner, Wilson, Carey

BILL SUMMARY

- Grants an eligible landowner or nonprofit organization qualified immunity from liability for: (1) injury or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management in the Department of Natural Resources while the person is within a reclamation project work area or by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the reclamation project, (2) any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division, or (3) generally the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project.
- Requires an eligible landowner to notify the Division of a known, latent, dangerous condition at a reclamation project work area that is not the subject of the reclamation project, and provides that the immunity does not apply to an eligible landowner if the landowner fails to notify the Division.
- Provides that the immunity does not apply to an eligible landowner or nonprofit organization if an eligible landowner or nonprofit organization engages in unlawful activities with respect to a reclamation project or an injury to a person within the reclamation work area results from an eligible landowner's or nonprofit organization's reckless acts or omissions, gross negligence, or willful or wanton misconduct.

* This analysis was prepared before the report of Sub. S.B. 181's re-referral to the House Finance and Appropriations Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Designates that methane gas emitted from an abandoned coal mine constitutes a renewable energy resource rather than an advanced energy resource for purposes of the law governing the promotion of renewable energy usage.
- Reestablishes the Ohio Natural Areas Council, and specifies its duties.
- Authorizes the transfer of money from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012.
- Authorizes the transfer of money from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund through June 30, 2011, for the purposes of administering and enforcing the Coal Mining Law.
- Expands the uses for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund and money in the Water Pollution Control Loan Fund may be used.

CONTENT AND OPERATION

Immunity from liability of eligible landowner in relation to reclamation project

The bill provides that, with certain exceptions described below, an "eligible landowner" or "nonprofit organization" is immune from liability as follows (terms in quotation marks are defined in "**Definitions**," below) (R.C. 1513.372(B)):

(1) For any injury to or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management while the person is within the "reclamation project work area";

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the Division of Mineral Resources Management during the construction, operation, and maintenance of the "reclamation project";

(3) For any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division;

(4) For the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement facility or denies access to the Division of Mineral Resources Management that is

responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

Notification of dangerous condition; exceptions to immunity

The bill requires the eligible landowner to notify the Division of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity of an eligible landowner provided by the bill does not apply to any injury, damage, or pollution (see **COMMENT 1**) resulting from the landowner's failure to notify the Division of such a known, latent, dangerous condition. (R.C. 1513.372(C).)

The immunity additionally does not apply to an eligible landowner or nonprofit organization in both of the following circumstances (R.C. 1513.372(D)):

(1) An injury to a person within the reclamation project work area that results from an eligible landowner's or nonprofit organization's acts or omissions that are reckless or constitute gross negligence or willful or wanton misconduct;

(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.

Rules

The bill requires the Chief of the Division of Mineral Resources Management to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the bill's provisions (R.C. 1513.372(E)).

Definitions

The bill defines the following terms for purposes of the bill's immunity provisions (R.C. 1513.372(A)):

"Abandoned mine land" means land or water resources adversely affected by coal mining practices to which one of the following applies:

(1) The coal mining practices occurred prior to August 3, 1977, and there is no continuing reclamation responsibility under state or federal law;

(2) The coal mining practices occurred prior to April 10, 1972; or

(3) The coal mining practices were conducted pursuant to a license that was issued prior to April 10, 1972.

"Eligible landowner" means a landowner who provides access without charge or other consideration to abandoned mine land that is located on the landowner's property for the purpose of allowing the implementation of a reclamation project on the abandoned mine land. "Eligible landowner" does not include a person that is responsible under state or federal law to reclaim the land or address acid mine drainage existing or emanating from the abandoned mine land. (See **COMMENT 2**.)

"Landowner" means a person who holds a fee interest in real property.

"Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, that provides funding or services at no cost or at cost for a reclamation project.

"Reclamation project" means an acid mine drainage abatement project that is conducted in compliance with the Coal Surface Mining Law and rules adopted under it on abandoned mine land that is located on property owned by an eligible landowner.

"Reclamation project work area" means the portion of a parcel of real property on which a reclamation project is conducted and the roads providing ingress to and egress from the reclamation project.

Designation of methane gas as a renewable energy source

For purposes of the law governing the promotion of renewable energy usage, electricity supplies from renewable energy sources, and renewable energy credits, current law defines "advanced energy resource" to include methane gas emitted from an operating or abandoned coal mine (R.C. 4928.01(A)(34)(h)). The bill removes methane gas emitted from an operating or abandoned coal mine from the definition of "advanced energy resource" and includes methane gas emitted from an abandoned coal mine in the definition of "renewable energy resource" (R.C. 4928.01(A)(34)(h) and (35)).

Natural Areas and Preserves

Ohio Natural Areas Council

The bill recreates the Ohio Natural Areas Council, which was abolished in 2004. The Council is to advise the Chief of the Division of Natural Areas and Preserves in the Department of Natural Resources on the administration of nature preserves and the preservation of natural areas.

The Council must have no fewer than five members as determined by the Director of Natural Resources, and the members must be appointed by the Director. Not more than 30 days after the effective date of the bill, the Director must make initial

appointments to the Council. The Director also must establish the members' terms of office.

The Council annually must select from among its members a chairperson and a secretary. Under the bill, members must receive no compensation and cannot be reimbursed for expenses incurred as members of the Council.

The Council must hold at least one regular meeting in each calendar year. Special meetings may be called by the chairperson and must be called by the chairperson upon written request by two or more members of the Council. A written notice of the time and place of each meeting must be sent to each member and to the Director. A majority of the members constitutes a quorum. The Council must keep a record of its proceedings at each meeting and must send a copy of the record to the Director. Additionally, the record must be open to the public for inspection. (R.C. 1517.03.)

The bill requires the Council to do all of the following:

(1) Review and make recommendations regarding criteria used by the Department for acquisition and dedication of nature preserves;

(2) Review and make recommendations regarding inventories and registries of natural areas and preserves;

(3) Review and make recommendations regarding departmental plans for the selection of particular natural areas for state acquisition;

(4) Advise the Chief on policies and rules governing the management, protection, and use of nature preserves;

(5) Recommend the extent and type of visitation and use to be permitted within each nature preserve;

(6) Advise and consult with the Chief and with employees of the Division on preservation matters; and

(7) Advise the Chief on the program to identify and protect the state's cave resources that is established under existing law (R.C. 1517.04 and 1517.23).

Finally, the bill requires the Council's chairperson to serve on the existing Recreation and Resources Commission (R.C. 1501.04).

Transfer of money to Departmental Projects Fund

Under the bill, beginning July 1, 2010, and ending January 1, 2012, the Director of Budget and Management, upon the request of the Director of Natural Resources, must transfer an amount not to exceed \$1.2 million from the Natural Areas and Preserves Fund created in current law to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012. If such an amount is so transferred, the Director of Natural Resources, not later than March 1, 2011, must submit to the Speaker of the House of Representatives and the President of the Senate a detailed report of expenditures from the Departmental Projects Fund for payment of salaries of permanent employees of that Division.

The bill then states that if an amount is transferred as discussed above and if the main operating appropriations act of the 129th General Assembly does not contain an appropriation for the Division of Natural Areas and Preserves, it is the intent of the 128th General Assembly that a portion of the amount so transferred may be used by the Department of Natural Resources to pay unemployment compensation costs of former permanent employees of the Division of Natural Areas and Preserves. (Section 3.)

Transfer of money from Coal-Workers Pneumoconiosis Fund to Strip Mining Administration Fund

Under the bill, beginning July 1, 2010, and ending June 30, 2011, the Administrator of the Bureau of Workers' Compensation may transfer a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund created in current law in an amount not to exceed \$2.28 million to the Strip Mining Administration Fund for the purposes of administering and enforcing the Coal Mining Law. The bill states that no transfer from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund can be made after June 30, 2011. (Section 4.)

Additional purposes for expenditures from Water Supply Revolving Loan Account in Drinking Water Assistance Fund and from Water Pollution Control Loan Fund

Current law specifies the purposes for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund, created in the Safe Drinking Water Law, may be used. One of the specified uses is to provide assistance authorized by the federal Safe Drinking Water Act. The bill adds that expenditures may be made to provide any other assistance authorized by any other federal law related to the use of federal funds administered under that Act. (R.C. 6109.22(I)(7).)

Current law specifies the purposes for which money in the Water Pollution Control Loan Fund, created in the Water Pollution Control Law, may be used. The bill adds that money in the Fund may be used to provide assistance in any manner or for any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of that Act. (R.C. 6111.036(H)(8).)

COMMENT

1. R.C. 1513.01(N) (Coal Surface Mining Law), not in the bill, defines "pollution" as placing any sediments, solids, or waterborne mining related wastes, including, but not limited to, acids, metallic cations, or their salts, in excess of amounts prescribed by the Chief of the Division of Mineral Resources Management into any waters of the state or affecting the properties of any waters of the state in a manner that renders those waters harmful or inimical to the public health, or to animal or aquatic life, or to the use of the waters for domestic water supply, industrial or agricultural purposes, or recreation.

2. R.C. 1513.01(P), not in the bill, defines "reclamation" as backfilling, grading, resoiling, planting, and other work that has the effect of restoring an area of land affected by coal mining so that it may be used for forest growth, grazing, agricultural, recreational, and wildlife purpose, or some other useful purpose of equal or greater value than existed prior to any mining.

HISTORY

ACTION	DATE
Introduced	10-06-09
Referred, S. Judiciary - Civil Justice	10-20-09
Re-referred, S. Environment & Natural Resources	11-18-09
Reported, S. Environment & Natural Resources	12-15-09
Passed Senate (33-0)	01-12-10
Reported, H. Agriculture & Natural Resources	05-17-10
Re-referred, H. Finance & Appropriations	---

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