Ohio Legislative Service Commission

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Sub. S.B. 181*

128th General Assembly
(As Reported by 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 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.

- Provides that transfers of money from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund are prohibited after December 31, 2010, 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.

- Authorizes the Tax Commissioner to refund commercial activity tax paid by a business that doesn't owe any tax (without a CAT liability) regardless of the business's registration status.

- Authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year CAT assessment and refund statute of limitations.

- Modifies the tax exemption applicable to property owned by or leased to a board of education.

- Provides a property tax exemption for a new convention center located in a county with a population exceeding 1.2 million.

- Exempts construction materials incorporated into such a convention center from sales and use taxation until one year after construction of the convention center is completed.

- Alters the Treasurer of State's authority to invest interim funds of the state in single-issuer debt.

- Extends the time from October 15, 2010, to October 15, 2011, during which local governments may enter enterprise zone agreements.

- Adds new sporting events to the list of qualifying events for which local governments can receive state grants for hosting.

- Applies agricultural commodity testing requirements and procedures under the Agricultural Commodity Handlers Law to a depositor or depositor's agent rather than to a producer or producer's agent.

- Authorizes a regional water and sewer district to offer up to two additional deferred compensation programs for employees.

- Makes appropriations for the Job Ready Site and Clean Ohio programs.

- Requires the performance rating of a school district or building to be lowered one level if it fails to make adequate yearly progress (AYP) for three consecutive years, and to be lowered two levels if it fails to make AYP for four or more consecutive years.

- Repeals the prohibition against lowering a district's or building's performance rating from the previous year based solely on one subgroup not making AYP.

- Makes changes to appropriations for primary and secondary education to ensure compliance with the federal American Recovery and Reinvestment Act.

TABLE OF CONTENTS

CONTENT AND OPERATION

Immunity from liability of eligible landowner in relation to reclamation project

(R.C. 1513.372)

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):

(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.

The immunity additionally does not apply to an eligible landowner or nonprofit organization in both of the following circumstances:

(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.

Definitions

The bill defines the following terms for purposes of the bill's immunity provisions:

"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

(R.C. 4928.01)

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. 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."

Natural Areas and Preserves

Ohio Natural Areas Council

(R.C. 1501.04, 1517.03, 1517.04, and 1517.23)

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.

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.

Finally, the bill requires the Council's chairperson to serve on the existing Recreation and Resources Commission.

Transfer of money to Departmental Projects Fund

(Section 3)

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.

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

(Section 4)

Under the bill, beginning July 1, 2010, and ending December 31, 2010, the Administrator of the Bureau of Workers' Compensation must 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 transfers from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund are prohibited after December 31, 2010.

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

(R.C. 6109.22 and 6111.036)

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.

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.

Commercial activity tax (CAT)

Refunds

(R.C. 5751.08(E); Section 6)

The bill enables a business that paid the $150 minimum CAT unnecessarily to receive a refund even if it failed to cancel its CAT registration on time. The bill authorizes refunds for such businesses for tax unnecessarily paid for 2007, 2008, and 2009. Under current law, if a business does not cancel its registration by May 10, the date the return is due, the Tax Commissioner is not authorized to issue a refund. Businesses with annual gross receipts of less than $150,000 are not required to register for or pay commercial activity tax. Businesses with gross receipts between $150,000 and $1 million must pay the minimum tax of $150.

Statute of limitations

(R.C. 5751.08(A) and 5751.09(F))

There is currently a four-year statute of limitations within which the Tax Commissioner must issue assessments or refunds for the CAT. (The limit does not apply if no return is filed or if a return is fraudulent.)

The bill expressly authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year limitation period. Such agreements currently are authorized under other taxes such as the personal income, sales and use, and corporation franchise taxes.

Tax exemption for school property

(R.C. 3313.44; Section 5)

Current law exempts from taxation all real or personal property vested in any board of education. The property is also exempt from sale on execution or other writ or order in the nature of an execution.

The bill provides that any real or personal property owned by or leased to a board of education, where the lease term is at least 50 years, is exempt from taxation. The bill also provides that the bill's amendments to this provision are remedial in nature and apply to tax years and property at issue in any application for exemption from taxation pending before the Tax Commissioner, Ohio Board of Tax Appeals, any Court of Appeals, or the Ohio Supreme Court on the bill's effective date.

Convention center property tax exemption

(R.C. 5709.084)

Existing law allows the board of county commissioners in a county with a population exceeding 1.2 million to purchase, lease, or construct a convention center. Alternatively, the board may enter into an agreement with a county convention and visitors' bureau under which the bureau agrees to construct a convention center with revenue from a lodging tax that the board levies for that purpose. (R.C. 307.695(B) and (F), not in the bill.)

The bill authorizes a real and personal property tax exemption for a convention center located in a county with a population exceeding 1.2 million if:

(1) The convention center is constructed, or personal property comprising the convention center is acquired, after January 1, 2010; and

(2) The convention center, or the land upon which the convention center is located, is owned or leased by the county.

The population of a county is determined for purposes of the exemption by reference to the most recent federal decennial census at the time construction of the convention center commences. The bill defines commencement of construction as the earlier of (1) the issuance of debt to finance the convention center, (2) the demolition of existing structures on the site, or (3) grading of the site in preparation for construction.[1]

Sales tax exemption

(R.C. 5739.02(B)(13))

Under current law, sales and use taxes apply to contractor purchases of building materials, unless the materials are purchased for incorporation into a structure or improvement under a construction contract with a government entity or are for incorporation into certain kinds of real property, including government-owned property, agricultural property, property owned by a church or charitable organization, certain sports facilities, and property in a different state if the materials would be exempt from sales tax in that state.

The bill exempts construction materials and services sold to a contractor for incorporation into a convention center described above from sales and use taxation.

[1] According to the 2000 census, Cuyahoga County is the only Ohio county that satisfies the population threshold.

This exemption expires one year after construction of the convention center is completed.

State investments in single-issue foreign debt

(R.C. 135.143)

Under current law, the Treasurer of State may invest or execute transactions for interim funds of the state in a variety of obligations, including U.S. treasury bills, bonds, certificates of deposit, various qualified forms of commercial paper issued by corporations that are incorporated under United States or state law, and qualified debt interests other than the foregoing commercial paper. Regarding investment in qualified debt interests, current law places limitations on the aggregate amount the Treasurer may invest. The total investment must not exceed 25% of the state's total average portfolio (as determined by the Treasurer). Also, the investments in those debt interests issued by foreign nations must not exceed 1% of the state's total average portfolio and the interests must be backed by the full faith and credit of that nation. Finally, the investments in debt interests of a single issuer must not exceed one-half of 1% of the state's total average portfolio.

The bill provides that in the case of an investment in debt interests of a single issuer that is a foreign nation, the amount of investment must not exceed, in the aggregate, 1% of the state's total average portfolio instead of one-half of 1%.

Enterprise zone agreements

(R.C. 5709.62, 5709.63, and 5709.632)

Counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Current law authorizes local governments to enter into enterprise zone agreements through October 15, 2010. The bill extends the time during which local governments may enter these agreements to October 15, 2011.

State subsidy for hosting sports events

(R.C. 122.12)

Current law authorizes the Director of Development to make grants of General Revenue Fund money to counties or municipal corporations hosting major sporting events (specified below), beginning July 1, 2011. The grant amount is to be "based on" the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million.

The games that qualify for grants are the following: National Football League "Super Bowl," World Cup soccer matches, NCAA championship game, NCAA football Bowl Championship Series games, all-star games of the National Basketball Association, National Hockey League, or Major League Baseball, the National Senior Games, and the Olympic Games.

The bill adds the following to the list of qualifying events:

(1) National Association for Stock Car Auto Racing (NASCAR) races;

(2) The Air New Zealand Golden Oldies World Rugby Festival;

(3) The Golden Gloves of America, Inc., National Golden Gloves Tournament;

(4) The USA Boxing Association National Championships;

(5) The International Boxing Association World Cup or World Championships.

Under current law, a county or municipal corporation enters into an agreement with a site selection organization when seeking a grant under the state program. Current law lists organizations that correspond to the qualifying games or matches in the definition of "site selection organization." The bill adds NASCAR, the Air New Zealand Golden Oldies World Rugby Secretariat, the Golden Gloves of America, Inc., the USA Boxing Association, and the International Boxing Association to the list of site selection organizations.

Finally, the bill clarifies that in addition to a National Collegiate Athletic Association championship game, a championship *match* also qualifies for the grant program.

Agricultural commodity testing

(R.C. 926.01, not in the bill, and 926.31)

The Agricultural Commodity Handlers Law defines all of the following terms:

"Producer" means any person who grows an agricultural commodity on land that the person owns or leases.

"Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling, that is, a person who does any of the following:

(1) Engages in or participates in the business of purchasing from producers agricultural commodities for any use in excess of 30,000 bushels annually;

(2) Operates a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receives into a warehouse an agricultural commodity purchased under a delayed price agreement; or

(4) Provides marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer.

"Depositor" means:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity; or

(3) Any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler.

"Agricultural commodity" means barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that is designated by the Director of Agriculture by rule.

That Law establishes requirements and procedures governing the licensing of handlers, the operation of grain warehouses, and the deposit and storage of agricultural commodities at them. Included are requirements and procedures for agricultural commodity testing. Under those requirements and procedures, when a licensed handler receives a shipment of an agricultural commodity from a producer or a producer's agent, either for sale or for storage under a bailment agreement, the handler must have a representative sample drawn for testing by an agricultural commodity tester to determine the commodity's quality. At the request of the producer or the producer's agent, the tester must immediately test the sample and notify the producer or agent of the test results and of any price discount, premium, or conditioning charge that is applicable to the commodity's value. If, prior to or during the unloading of the shipment, the handler believes that the original sample is not representative or if the producer or the producer's agent requests a second sample to be drawn, the handler must have a second sample drawn to be used for the testing.

Upon notification of the test results and value adjustment to be applied, the producer or agent must: (1) refuse to sell or store the commodity unless it has been unloaded prior to testing, (2) agree to sell or store the commodity and accept the test results and the applicable value adjustment, or (3) agree to sell or store the commodity, but reject the test results and order the handler to forward the sample to a federally licensed grain inspector for a final testing. If option (3) is selected, the producer, agent, or handler may specify which factor or factors are to be tested by the federal inspector. The federal inspector's determination is binding on both the handler and the producer or agent as the basis for determining the premium or discount and settlement price or the conditioning charge, as applicable. Additionally, if the test does not change or lowers the value of the commodity, the producer is responsible for the cost of forwarding the sample and the cost of the federal inspection; if the test increases the commodity's value, the handler is responsible for those costs.

Current law also specifies that a licensed handler and any producer or the producer's agent may agree to combine representative samples of each of several shipments of the same commodity that the handler receives during any one business day to obtain a single test result. Finally, the requirements and procedures discussed above do not relieve any contractual obligations in effect between the licensed handler or producer.

The bill applies all of the agricultural commodity testing requirements and procedures discussed above to a depositor or depositor's agent rather than to a producer or producer's agent.

Regional water and sewer district deferred compensation programs

(R.C. 148.06)

Public employees in Ohio are eligible to participate in a deferred compensation program administered by the Ohio Public Employees Deferred Compensation Board. In addition to this program, certain governmental entities, such as counties and park districts, may offer up to two additional deferred compensation programs. The bill adds regional water and sewer districts to the list of governmental entities who may offer additional deferred compensation programs.

Job Ready Site appropriations

(Sections 7 and 8)

Under current law, the Department of Development administers the Job Ready Site program to provide grants to pay for construction and other costs for sites and facilities primarily intended for commercial, industrial, or manufacturing use on behalf of eligible applicants, such as political subdivisions (R.C. 122.085 to 122.0820, not in the bill). The bill appropriates $30 million for fiscal years 2011 and 2012 to the Job Ready Site program. To fund this capital appropriation, the bill authorizes the Ohio Public Facilities Commission to issue and sell original obligations of the state in the aggregate amount not to exceed $30 million, as previously authorized under Section 2p of Article VIII, Ohio Constitution.

Clean Ohio appropriations

(Sections 9 and 10)

Under current law, the Clean Ohio program funds, among other things, projects aimed at brownfield revitalization (R.C. 122.65 to 122.659, not in the bill). The bill appropriates $80 million for fiscal years 2011 and 2012 for Clean Ohio Revitalization and $20 million for fiscal years 2011 and 2012 for Clean Ohio Assistance. To fund this capital appropriation, the bill authorizes the Treasurer of State to issue and sell original obligations of the state in the aggregate amount of $100 million, as previously authorized under Sections 2o and 2q of Article VIII, Ohio Constitution.

The bill also authorizes the Director of Development to reallocate moneys for the purpose of funding certain revitalization grants or loans if the Department of Development realizes Clean Ohio Fund project savings attributable to any of the following instances:

(1) The completion of any project for less than the amount of grant funds awarded, subject to the local matching funds participation requirement;

(2) The cancellation of grant awards in which Clean Ohio Fund moneys have been encumbered for a project but not disbursed;

(3) Any recapture of Clean Ohio Fund moneys due to a grantee's default or failure to perform the conditions of the grant agreement.

School district and building performance ratings

(R.C. 3302.03)

The bill makes several changes to Ohio's method of rating school district and school building academic performance. First, under the bill, if a district or building fails to make the federal standard of adequate yearly progress (AYP) for three consecutive years, its rating is lowered one level. If the district or building fails to make AYP for four or more consecutive years, its rating is lowered two levels (except that an academic watch district or building is lowered only one level to the lowest possible rating of academic emergency). Due to this change, once a district or building has failed to make AYP for four or more consecutive years, it appears that AYP becomes the only factor in its performance rating. At that point, a district or building apparently cannot improve its rating until it makes AYP, no matter how well it performs on the other criteria used to determine the ratings.

It is not clear whether a district or building could be rated higher than otherwise prescribed under the bill because of meeting the requisite growth indicator under the "value-added progress dimension" under R.C. 3302.021, not in the bill (see "**Background**" below).

Second, the bill takes into account how long a district or building that is otherwise in continuous improvement or academic watch has not made AYP and requires the district's or building's rating to be lowered after missing AYP for three or more straight years.

Finally, the bill repeals a provision prohibiting the Department of Education from lowering a district's or building's rating from the previous year based solely on one subgroup not making AYP.

The following examples show how these changes would affect districts and buildings.

Currently, if a district or building fails to make AYP for three or more consecutive years, the highest rating it may receive is continuous improvement. But in the case of an otherwise excellent district or building that fails to make AYP for three consecutive years, under the bill, its rating would be lowered only one level, to effective, instead of two levels, to continuous improvement. But if it missed AYP again in the next year, its rating then would drop to continuous improvement, one year later than under existing law.

As in current law, a district or building that otherwise achieves an effective rating would still be reduced one level, to continuous improvement, for failing to make AYP for three consecutive years. However, the bill would drop the district or building to academic watch for a fourth year of missing AYP. While current law designates continuous improvement as the lowest possible rating for an otherwise effective district or building that misses AYP for three or more consecutive years, the bill makes academic watch the best possible rating for the district or building once it misses AYP for at least four years.

Under current law, a district or building must be rated continuous improvement or lower if it misses AYP, but it is not penalized for repeatedly missing AYP over a period of several years. In other words, the district or building could retain the same rating, regardless of whether it has missed AYP for two years or six years. But since the bill requires a district's or building's rating to be lowered if it misses AYP for three or more consecutive years, an otherwise continuous improvement district or building would have its rating lowered to academic watch after three years of missing AYP and to academic emergency after four years of missing AYP. Similarly, the rating of an otherwise academic watch district or building would be lowered to academic emergency after three years of failing to make AYP and would remain at that level as long as the district or building continues to miss AYP.

Background

State law provides for the annual rating of school districts and individual school buildings based on their academic performance.[2] The five classes of performance under the rating system are "excellent," "effective," "continuous improvement," "academic watch," and "academic emergency." The ratings are determined by:

(1) Meeting or not meeting specified performance indicators (75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate);

[2] R.C. 3302.03(B).

(2) Attaining a specified performance index score;[3] and

(3) Making or not making AYP on state achievement assessments among specified subgroups of test takers.[4]

The following table shows how the performance ratings currently are determined using these criteria.

Rating	**Percentage of performance indicators met**		**Performance index score**		***Makes AYP***
Excellent	94%-100%	*or*	100 to 120	*and*	Yes
	94%-100%	*or*	100 to 120	*and*	No*
Effective	75%-93%	*or*	90 to 99	*and*	Yes
	75%-93%	*or*	90 to 99	*and*	No*
Continuous improvement	0%-74%	*and*	0 to 89	*and*	Yes
	50%-74%	*or*	80 to 89	*and*	No
Academic watch	31%-49%	*or*	70 to 79	*and*	No
Academic emergency	0%-30%	*and*	0 to 69	*and*	No

* A district or school can be rated no higher than continuous improvement if it misses AYP for more than two consecutive years. However, no district or school currently can be rated lower than the prior year solely because one subgroup did not make AYP.

Beginning with the 2007-2008 school year, the performance ratings incorporated a fourth component known as the "value-added progress dimension," which tracks the amount of a student's academic growth attributable to a particular district or building.[5] With this component, if a district or building demonstrates more than a standard year of academic growth in reading and math for two consecutive years, its rating is raised one level. If a district or building shows less than a standard year of academic growth in those subjects for three straight years, its rating is lowered one level.

[3] The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels.

[4] The subgroups are each of the federally recognized ethnic classifications (African-American, American Indian or Native Alaskan, Asian or Pacific Islander, Hispanic, multi-racial, and white); disabled students; economically disadvantaged students; and limited-English proficient students.

[5] R.C. 3302.021, not in the bill.

AYP

AYP is a measure of performance used to determine whether a particular school district or building is meeting the goals of the federal No Child Left Behind Act. Under that act, certain graduated sanctions (ranging from curricular changes and offering tutoring opportunities to reconstitution of administrative and instructional staff) must be imposed if a district or building repeatedly fails to make AYP.[6] Generally, no district or building may make AYP unless (1) 95% of the students in each subgroup required to take a test actually take the test and (2) a specified percentage of each subgroup of test takers attains scores set by the state Department of Education.[7] The expected scoring performance on the state assessments for purposes of AYP varies from district-to-district and building-to-building. It is generally different from (and often lower than) the 75% proficiency rate required under the state performance indicators.

While the state must have in place a system to measure AYP and to impose sanctions for districts or buildings that persistently do not make AYP, the use of that measure in the state rating system is not required under federal law.

Education appropriations

(Sections 11 through 17)

To ensure compliance with provisions of the federal American Recovery and Reinvestment Act (ARRA; the federal stimulus act), the bill makes changes to appropriations for primary and secondary education. The bill creates the ARRA Compliance Fund, from which funds will be paid out to school districts and other schools to fulfill the state's obligations under ARRA. The bill also appropriates money in fiscal year 2010 for chartered nonpublic schools.

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.

[6] 20 United States Code (U.S.C.) 6316.

[7] 20 U.S.C. 6311(b)(2)(E) to (J).

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	05-25-10
Reported, H. Finance & Appropriations	---

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