



Ohio Legislative Service Commission

Bill Analysis

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Sub S.B. 181*

128th General Assembly

(As Reported by S. Environment and Natural Resources)

Sens. Stewart, Goodman, Schaffer, Seitz

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 a reclamation project sponsor or by a third party that arises out of or occurs as a result of an act or omission of a reclamation project sponsor or as a result of the reclamation project, (2) any pollution resulting from a reclamation project, or (3) generally the operation, maintenance, or repair of an acid mine drainage abatement facility constructed or installed during a reclamation project.
- Requires an eligible landowner to notify a reclamation project sponsor 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 so notify a project sponsor.
- Provides that the immunity does not apply to an eligible landowner or nonprofit organization if an eligible landowner or nonprofit organization engages in unlawful acts 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.
- States that nothing in the bill eliminates the responsibilities of a reclamation project sponsor pertaining to water quality protection established in specified provisions of the Coal Surface Mining Law.

* This analysis was prepared before the report of the Senate Environment and Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Authorizes the Chief of the Division of Parks and Recreation in the Department of Natural Resources to make leases to remove coal by underground mining methods at Burr Oak State Park in Athens and Morgan Counties pursuant to lease agreements and real estate transactions that have been entered into not later than January 1, 2011.
- 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.

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 "reclamation project sponsor" 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 reclamation project sponsor during the implementation of the "reclamation project";

(3) For any injury to or damage suffered by a third party that arises out of or occurs as a result of the reclamation project;

(4) For any pollution (see **COMMENT 1**) resulting from a reclamation project;

(5) For the operation, maintenance, or repair of an 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 reclamation project sponsor who 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 a project sponsor 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 project sponsor 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 with regard to either of the following (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)).

Water quality protection responsibilities

The bill states that nothing in it eliminates the responsibilities of a "reclamation project sponsor" pertaining to water quality protection that are established in specified provisions of the Coal Surface Mining Law concerning reclamation of land or water resources adversely impacted by past coal mining practices (R.C. 1513.372(F)).

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 that were previously degraded by adverse effects of 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.

(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 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 water pollution existing or emanating from 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 service for a reclamation project.

"Reclamation project" means reclamation or 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 sponsor" means a person that provides funding or equipment, materials, or services at no cost or at cost for a reclamation project. "Reclamation project sponsor" does not include a person that is responsible under state or federal law to reclaim the land or address water pollution existing or emanating from abandoned mine land.

"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.

Coal mining leases at Burr Oak State Park

Under current law, the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, the Attorney General, and the Governor, may make leases to parties to take and remove halite from beneath the surface of Headlands State Park in Lake County and coal by underground mining methods from beneath the surface of Jefferson State Park in Jefferson County. The Chief may make the leases if the Chief finds that the taking and removal will in no way affect the surface of the land or the use of the land as a public park. The bill authorizes the Chief to make leases to remove coal from beneath the surface of Burr Oak State Park in Athens and Morgan Counties pursuant to lease agreements and real estate transactions that have been entered into not later than January 1, 2011. (R.C. 1541.083.)

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)).

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) (Coal Surface Mining Law), 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	---

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