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Final Analysis
Legislative Service Commission

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123rd General Assembly
(As Passed by the General Assembly)

Reps. Vesper, Amstutz, Gardner, Terwilleger, Willamowski, Corbin, Hollister, R. Miller

Sens. Gardner, Carnes, White, Watts, Wachtmann

Effective date: *

ACT SUMMARY

- Creates the Division of Mineral Resources Management in the Department of Natural Resources by combining the Division of Mines and Reclamation with the Division of Oil and Gas.
- Makes fiscal changes such as creating new funds by combining certain funds that under prior law were administered by the Chief of the Division of Mines and Reclamation.
- Makes other miscellaneous substantive and technical changes necessary to effectuate the creation of the new Division.
- Transfers all functions, powers, duties, and obligations concerning coastal erosion along Lake Erie from the Chief Engineer in the Department to the Chief of the Division of Water in the Department and makes several revisions in those provisions.
- Declares an emergency.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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CONTENT AND OPERATION

Creation of the Division of Mineral Resources Management

The act combines the Division of Mines and Reclamation and the Division of Oil and Gas, both of which were in the Department of Natural Resources, to create the Division of Mineral Resources Management in the Department. The act replaces all prior law references to the Division of Oil and Gas or the Division of Mines and Reclamation with references to the Division of Mineral Resources Management. In addition, the act replaces all prior law references to the Chief of the Division of Oil and Gas or the Chief of the Division of Mines and Reclamation with references to the Chief of the Division of Mineral Resources Management. (Secs. 121.04, 124.24, 127.16, 1501.022, 1505.10, 1510.01, 1510.08, and 6111.044; Chapters 1509., 1513., 1514., 1561., 1563., 1565., 1567., and 1571.)

The act also, in certain instances, renames inspectors employed by the Division of Mineral Resources Management as "mineral resources inspectors." For example, former law authorized the Chief of the Division of Mines and Reclamation to designate certain employees of the Division as inspection officers of coal and surface mining operations for the purpose of enforcing the coal surface mining laws and the minerals surface mining laws. The act renames these inspectors as "mineral resources inspectors." Under prior law largely retained by



the act, before a person other than a person who was an inspector of coal or surface mining operations on April 10, 1972, was eligible for appointment as an inspection officer, the person must have passed an examination and served a one-year probationary period. Further, former law provided that the status of any person employed as an inspector of coal or surface mining operations prior to April 10, 1972, was not affected by the examination and probation requirements if the person was a certified employee in the classified service of the state. The act changes those dates to July 1, 1999. In addition, it adds current inspectors of oil and gas operations to these provisions and, as discussed above, renames all of the inspectors "mineral resources inspectors." The act also decreases the probationary period from one year to six months. (Sec. 1513.03.)

However, with respect to the Revised Code chapters that govern underground mine construction, maintenance, and abandonment; mine employees; mine equipment and safety provisions; and the underground storage of gas and that formerly were administered by the Division of Mines and Reclamation, the act does not rename inspectors such as deputy mine inspectors as mineral resources inspectors (Chapters 1561., 1563., 1565., 1567., and 1571.).

The act also makes all other changes to continuing law that are necessary to conform it to the creation of the Division of Mineral Resources Management. For example, former law contained two separate provisions that required both the Division of Oil and Gas and the Division of Mines and Reclamation to keep maps filed with them confidential and in a safe place (secs. 1571.02(F) and 1571.09(B)). The act consolidates these two provisions into one provision requiring the Division of Mineral Resources Management to keep maps filed with it confidential and in a safe place (sec. 1571.09(B)).

Changes related to coal bearing townships

Under former law, administration and enforcement of the law regulating oil and gas wells in coal bearing townships was shared in some instances by the Chief of the Division of Oil and Gas and the Chief of the Division of Mines and Reclamation. The act generally eliminates the distinctions regarding coal bearing townships when they apply solely to shared administration and enforcement since the law governing oil and gas wells and coal and other mining is administered by one Chief of the Division of Mineral Resources Management under the act. (Secs. 1509.04, 1509.08, 1509.09, 1509.10, 1509.13, and 1509.15.)

For example, prior law authorized the Chief of the Division of Oil and Gas to order the immediate suspension of the drilling or reopening of an oil or gas well after being so requested by the Chief of the Division of Mines and Reclamation (sec. 1509.06). Former law also authorized the Chief of the Division of Mines and



Reclamation, when that Chief had been unable to contact the Chief of the Division of Oil and Gas to request a suspension order, to suspend the drilling or reopening of an oil or gas well in a coal bearing township after determining that the drilling or reopening activities presented an imminent and substantial threat to public health or safety or to miners' health or safety (sec. 1509.08). The act instead authorizes the Chief of the Division of Mineral Resources Management to order the immediate suspension of the drilling or reopening of an oil or gas well in a coal bearing township after determining that the drilling or reopening activities present an imminent and substantial threat to public health or safety or to miners' health or safety (sec. 1509.06). The act continues to allow suspension orders issued for an activity taking place in a coal bearing township to be appealed to the Mine Examining Board (secs. 1509.06 and 1561.53).

Prior law required oil and gas well inspectors to be present while certain activities were being conducted and to conduct certain activities themselves. When such activities were conducted in a coal bearing township, gas storage well inspectors or deputy mine inspectors could act in the place of the oil and gas well inspectors. The act instead requires mineral resources inspectors to be present at or to conduct the activities that former law required oil and gas well inspectors to be present at or conduct. However, under the act, when such activities are conducted in a coal bearing township, both a deputy mine inspector and a mineral resources inspector must be present at or conduct the activities. (Secs. 1509.09, 1509.13, and 1509.14.)

For example, under prior law, a person who wished to plug and abandon a gas well had to file an application for a permit to do so with the Chief of the Division of Oil and Gas as many days in advance as would be necessary for an oil and gas well inspector or, if the well was located in a coal bearing township, the gas storage well inspector or a deputy mine inspector to be present at the plugging. The act instead requires the permit application to be filed as many days in advance as will be necessary for a mineral resources inspector to be present at the plugging or, if the well is located in a coal bearing township, both a deputy mine inspector and a mineral resources inspector to be present at the plugging. (Sec. 1509.13.)

Changes regarding funds and fiscal matters

Reclamation Forfeiture Fund

To facilitate fiscal administration, the act consolidates several funds created under prior law and thus establishes new funds that are to be administered by the Division of Mineral Resources Management under the act. The act combines the former Reclamation Forfeiture Fund with the former Reclamation Supplemental Forfeiture Fund to create a new Reclamation Forfeiture Fund. The former



Reclamation Forfeiture Fund consisted of cash received as the result of forfeitures of performance bonds that had to be filed for coal surface mining operations. Moneys in the fund were required to be used to reclaim areas of land affected by coal surface mining under a coal surface mining and reclamation permit on which an operator had defaulted. (Sec. 1513.18(A).)¹

The former Reclamation Supplemental Forfeiture Fund consisted of any moneys that the Chief transferred to it from the continuing Unreclaimed Lands Fund or the continuing Coal Mining Administration and Reclamation Reserve Fund for the purposes of completing reclamation together with a percentage of moneys collected under the coal severance tax.² Moneys in the fund were required to be used to reclaim areas that an operator had affected by mining and failed to reclaim under a coal surface mining and reclamation permit or a minerals surface mining permit, with the reclamation of areas affected by mining under a coal surface mining and reclamation permit having first priority. (Sec. 1513.18(B).)³

The new Reclamation Forfeiture Fund created by the act consists of all moneys that were deposited into the former Reclamation Forfeiture Fund and the former Reclamation Supplemental Forfeiture Fund under prior law. Moneys in the new fund may be used for any of the purposes for which moneys in either of the prior funds could be used under former law. (Sec. 1513.18(A) and (B).) The act

¹ *The Revised Code refers to a "coal mining operation" and to a "coal mining and reclamation permit," but the word "surface" has been added in the analysis to clarify that the operation and the permit do not involve underground coal mining.*

² *Former law also specified that cash received as the result of forfeitures of performance bonds required to be filed for coal surface mining operations operating under a permit issued after April 10, 1972, but before September 1, 1981, were to be deposited into the Reclamation Supplemental Forfeiture Fund. However, since no operations operated under a permit issued during that time period prior to the act's consideration and enactment, cash no longer was being deposited into the former Reclamation Supplemental Forfeiture Fund under that provision. Therefore, references to this cash are eliminated in the act's language specifying the moneys that must be deposited into the new Reclamation Forfeiture Fund.*

³ *The Revised Code refers to a "surface mining operation" and to a "surface mining permit," but the word "minerals" has been added in the analysis to clarify that the operation and the permit do not involve coal surface mining. Under Revised Code section 1514.01(B), "minerals" means sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or other material or substance of commercial value excavated in a solid state from natural deposits on or in the earth, but does not include coal or peat.*

requires balances in either of the former funds to be transferred to the new fund on July 1, 2000, or as soon thereafter as possible (Section 5).

Surface Mining Fund

The act combines the former Surface Mining Reclamation Fund and the former Surface Mining Administration Fund to create the Surface Mining Fund. Under prior law, the Surface Mining Reclamation Fund consisted of cash received as the result of forfeitures of performance bonds required to be filed for minerals surface mining operations. Expenditures from the fund could be made only for the purpose of reclaiming areas of land affected by minerals surface mining operations on which an operator had defaulted. (Sec. 1514.06(A).)

Under former law, the Surface Mining Administration Fund consisted of fees related to the issuance of permits for a minerals surface mining operation and to annual reports required to be filed in connection with those permits; one-half of the moneys collected under the limestone or dolomite severance tax and the sand and gravel severance tax; all of the moneys collected under the severance tax for clay, sandstone or conglomerate, shale, gypsum, or quartzite; and fines collected for violations of the law governing minerals surface mining. Moneys in the fund were to be used for the administration and enforcement of the law governing minerals surface mining, for the reclamation of land affected by minerals surface mining under a minerals surface mining permit that the operator failed to reclaim and for which a performance bond filed by the operator was insufficient to complete the reclamation, and for the reclamation of land affected by minerals surface mining that was abandoned and left unreclaimed and for which no permit was issued or bond filed. (Sec. 1514.11.)

The Surface Mining Fund created by the act consists of all moneys that were deposited into the former Surface Mining Reclamation Fund and the former Surface Mining Administration Fund under prior law. Moneys in the new fund may be used for any of the purposes for which moneys in either of the former funds could be used under prior law. (Secs. 1514.06 and 1514.11.) The act requires the balances of the former funds to be transferred to the new fund on July 1, 2000, or as soon thereafter as possible (Section 5).

Under former law, the Chief of the Division of Mines and Reclamation was prohibited from expending more than \$500,000 from the Surface Mining Administration Fund during any fiscal year for the reclamation of abandoned minerals surface mines. The act eliminates the \$500,000 expenditure cap. (Sec. 1514.11.)



Elimination of excess acreage fee refund and of the Surface Mining Reclamation Fee Fund

Under continuing law, an operator of a minerals surface mining operation must pay an annual fee based on the number of acres estimated to be affected by the operation during the next year of operation under the minerals surface mining permit. Within 30 days after the expiration of the minerals surface mining permit or completion or abandonment of the operation, the operator must submit a final report to the Chief of the Division of Mineral Resources Management (Mines and Reclamation under former law). Previously, if the final report and accompanying certified map showed that the number of acres affected under the permit was smaller than the number of acres for which the operator had paid an acreage fee, the Chief was required to release the excess acreage fee. The release of the excess acreage fee had to be in an amount equal to \$30 multiplied by the difference between the number of acres affected under the permit and the number of acres for which the operator had paid an acreage fee. (Sec. 1514.03.)

Under prior law, refunds of excess acreage fees were required to be paid by the Treasurer of State out of the Surface Mining Reclamation Fee Fund. The Treasurer of State was required to place \$20,000 from the fees collected in relation to minerals surface mining permits into the Fund and, as required by the depletion of the Fund, place to the credit of the Fund an amount sufficient to make the total in the Fund at the time of each such credit \$20,000. (Sec. 1514.03.)

The act eliminates the language requiring the release of excess acreage fees and also eliminates the Surface Mining Reclamation Fee Fund (sec. 1514.03). The Director of Budget and Management must transfer the cash balances of the Surface Mining Reclamation Fee Fund to the continuing Coal Mining Administration and Reclamation Reserve Fund on July 1, 2000, or as soon thereafter as possible (Section 5).

Prior law prohibited any acreage fee from exceeding \$1,000 per year. The act eliminates this fee cap. (Sec. 1514.03.)

Timing of transfer of money to the Coal Mining Administration and Reclamation Reserve Fund

Under continuing law, 57.9% of moneys received from the coal severance tax must be credited to the Coal Mining Administration and Reclamation Reserve Fund, which is used for the administration and enforcement of the law governing coal surface mining. When the Chief of the Division of Mineral Resources Management (Mines and Reclamation under former law) finds that the balance of the Coal Mining Administration and Reclamation Reserve Fund is below \$2 million, the Chief must certify that fact to the Director of Budget and



Management. Upon receipt of the Chief's certification, the Director must direct the Treasurer of State to credit to the Coal Mining Administration and Reclamation Reserve Fund during the fiscal year for which the certification is made the 14.2% of the moneys collected from the coal severance tax that otherwise must be credited to the Reclamation Forfeiture Fund (Reclamation Supplemental Forfeiture Fund under former law). (Sec. 5749.02(B).)

Prior law required the Chief to make the finding regarding the balance in the Fund within ten days before or after the beginning of a fiscal year. Instead, the act requires the Chief to make that finding at *any time during the fiscal year*. In addition, continuing law retained in part by the act specifies that upon receipt of the Chief's certification of the balance, the Director must direct the Treasurer to divert the moneys from the coal severance tax that normally would go to the Reclamation Forfeiture Fund (Reclamation Supplemental Forfeiture Fund under former law) to the Coal Mining Administration and Reclamation Reserve Fund during the fiscal year. The act clarifies that upon receipt of the certification, the moneys must be diverted from the Reclamation Forfeiture Fund during the *remainder* of the fiscal year. (Sec. 5749.02(B).)

Continuing law allows the Chief to transfer not more than \$1 million annually from the Coal Mining Administration and Reclamation Reserve Fund to the Reclamation Forfeiture Fund (Reclamation Supplemental Forfeiture Fund under former law) to complete the reclamation of lands affected by mining under a coal surface mining permit or a minerals surface mining permit that the operator failed to reclaim and for which the operator's bond is insufficient to complete the reclamation. Under prior law, within ten days before or after the beginning of each calendar quarter, the Chief was required to certify to the Director of Budget and Management the amount of money needed to perform such reclamation during the quarter for transfer between the funds. The act allows, rather than requires, the Chief to certify the amount of money needed to perform such reclamation during the quarter for transfer from the Coal Mining Administration and Reclamation Reserve Fund to the Reclamation Forfeiture Fund. (Sec. 1513.181.)

Other mining provisions

Elimination of authority to appoint advisory committee

Former law governing coal surface mining authorized the Chief of the Division of Mines and Reclamation to appoint an advisory committee of experts in the fields of hydrology, soil conservation, historic preservation, and related fields to provide advice on coal mining and reclamation practices, the environmental impact of coal mining, the adoption of rules, the approval of plans, and the

issuance of coal surface mining and reclamation permits. The act eliminates the authority to appoint such an advisory committee. (Sec. 1513.02(E).)

Elimination of sunset date on provision regarding past compliance of applicant for coal surface mining and reclamation permit

Under law largely retained by the act, an applicant for a coal surface mining and reclamation permit must provide the Chief with information concerning the applicant's past compliance with environmental laws; the Chief is prohibited from issuing a permit to the applicant if the information demonstrates certain patterns of past noncompliance by the applicant (sec. 1513.07(E)(3)(a)). However, former law provided that until October 1, 2004, any violation resulting from an unanticipated event or condition at a coal surface mining operation on lands eligible for remining under a permit held by the applicant did not prevent issuance of the permit for which the applicant was applying. Under continuing law, "unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable coal surface mining and reclamation permit. The act retains most of these provisions, but eliminates the reference to October 1, 2004, thus indefinitely extending the effective period of the language stating that a past violation resulting from an unanticipated event or condition does not prevent issuance of a permit. (Sec. 1513.07(E)(3)(b).)

Elimination of outdated provisions

The act eliminates certain former law provisions that contained expired dates that rendered the provisions no longer effective (secs. 1513.07(A)(1), 1513.16(H), 1571.02(E), and 1571.04(G)). For example, prior law established special time frames for reclamation and procedures for bond release that applied only to coal mining and reclamation permits issued after April 10, 1972, but before September 1, 1981. The act eliminates these outdated special time frames and procedures. (Sec. 1513.16(H).)

The act updates citations to certain banking law provisions contained in law governing the filing of surety bonds related to the transportation of brine by vehicle. The updates were necessary to reflect changes in those laws. (Sec. 1509.225(A).)

Transfer of authority concerning coastal erosion

Under prior law, the Chief Engineer of the Department of Natural Resources was the erosion agent of Ohio for the purpose of cooperating with the United States Army Corps of Engineers. As the state's erosion agent, the Chief was authorized to conduct studies and investigations to devise and perfect



economical and effective methods for preventing, correcting, and arresting shore erosion along the shore of Lake Erie and its bays, associated waterways, and islands. (Sec. 1507.02.) In the discharge of those duties, the Chief was responsible for the issuance of permits for erosion control projects; entering into agreements with counties, townships, municipal corporations, and other political subdivisions for the construction and maintenance of erosion control projects associated with Lake Erie and the approval and supervision over any erosion control project; and the preparation of a plan for the prevention of erosion along Lake Erie (secs. 1507.04, 1507.06, and 1507.10).

The act largely retains the requirements, duties, and procedures concerning coastal erosion along the shores of Lake Erie, but transfers the authority to administer them from the Chief Engineer to the Chief of the Division of Water in the Department and requires the latter to act as the erosion agent of the state (secs. 1521.20 to 1521.30). In addition to the transfer of authority, the act makes several changes concerning coastal erosion as follows.

The act adds a requirement that the Chief provide engineering support for the coastal management program established under the Coastal Management Law (sec. 1521.03(I)).

Former law referred to construction and maintenance of projects to prevent, correct, and arrest shore erosion. The act replaces prevention, correction, and arrest of shore erosion with control of shore erosion. (Secs. 1521.20, 1521.23, and 1521.24.)

Under prior law, the Chief Engineer was authorized to request temporary assistance from any engineers or other employees in any state department, or in The Ohio State University or other educational institutions financed wholly or in part by the state, for the purpose of devising the most effective and economical methods of arresting and preventing erosion and inundation along the shorelines of Lake Erie and its connecting bays. The act instead authorizes the Chief of the Division of Water to request such temporary assistance for the purpose of devising the most effective and economical methods of controlling shore erosion and damage from it and controlling inundation of improved property by the waters of Lake Erie and its bays and associated inlets. (Sec. 1521.21.)

Former law prohibited a person from constructing a beach, groin, or other structure to arrest or control erosion along or near the Ohio shoreline of Lake Erie without first submitting an application for a construction permit to the Chief Engineer. The act instead prohibits a person from constructing those structures for control of erosion without first obtaining a shore structure permit from the Chief of the Division of Water. (Sec. 1521.22.) For purposes of coastal erosion, the act



defines "shore structure" to include at least all of the following: beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the Chief of the Division of Water; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill or debris used as part of the construction of shore structures that may affect shore erosion, wave action, or inundation; and fill or debris placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes (sec. 1521.01(O)).

Prior law provided that the Chief Engineer, whenever possible, had to consider an application for a permit from the United States Army Corps of Engineers to be adequate as an application for a construction permit. The act eliminates that provision. In addition, the act adds that a temporary shore structure permit may be issued by the Chief of the Division of Water or an authorized representative if it is determined necessary to safeguard life, health, or property. Under continuing law largely retained by the act, each application or reapplication for a permit must include a non-refundable fee that the Chief prescribes by rule, which cannot exceed \$500. The act requires the inclusion of a non-refundable fee, but eliminates the cap of \$500. (Sec. 1521.22.)

Former law required the Chief Engineer, in cooperation with the Division of Geological Survey, to prepare a plan for the prevention of shore erosion in the state along Lake Erie, revise the plan whenever it could be made more effective, and make the plan available for public inspection. In preparation of the plan, the Chief was required to employ any existing plans that were available. In addition, the Chief was required to establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships, conservancy districts, park boards, and shoreline property owners.

Instead, the act authorizes, rather than requires, the Chief of the Division of Water, in cooperation with the Division of Geological Survey, to prepare a plan for management of shore erosion in the state along Lake Erie, its bays, and associated inlets, revise the plan whenever it can be made more effective, and make the plan available for public inspection. In preparation of the plan, the Chief may employ any existing plans that are available. In addition, the Chief may establish a technical assistance program as described above. (Sec. 1521.29.)

The act adds a definition of "erosion control structure" as anything that is designed primarily to reduce or control erosion of the shore along or near Lake Erie, including, but not limited to, revetments, seawalls, bulkheads, certain breakwaters designated by the Chief, and similar structures. The term does not include wharves, piers, docks, marinas, boat ramps, and other similar structures. (Sec. 1521.01(R).)



Under former law, anyone who failed to obtain a construction permit (see above) was to be fined not less than \$100 nor more than \$500 for each offense, with each day of violation constituting a separate offense. The act instead requires that violators of any of the coastal erosion provisions be fined not less than \$100 nor more than \$1,000 for each offense, with each day of violation constituting a separate offense. (Sec. 1521.99(C).)

The act contains standard provisions for the transfer of all functions, powers, duties, and obligations concerning coastal erosion along Lake Erie from the Chief Engineer to the Chief of the Division of Water. Further, the act makes necessary technical changes to facilitate the transfer. (Section 6, and various Revised Code sections.)

Miscellaneous

Authority to enter into contracts

Continuing law provides that with certain exceptions, the Director of Natural Resources must formulate and institute all the policies and programs of the Department of Natural Resources. Under continuing law, the chief of any division of the Department is prohibited from entering into any contract, agreement, or understanding unless it is approved by the Director. The act also prohibits any appointee or employee of the Director, other than the Assistant Director, from binding the Director in a contract except when given general or special authority to do so by the Director. (Sec. 1501.01.)

Emergency clause

The act is declared to be an emergency measure that will go into immediate effect because it is necessary for the immediate preservation of the public peace, health, and safety. The act specifies that the reason for such necessity is that the merger of the Division of Oil and Gas with the Division of Mines and Reclamation is needed during the current fiscal year in order to facilitate efficiency in the operation of the Department of Natural Resources. (Section 9.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-09-00	pp. 1639-1640
Reported, H. Agriculture & Natural Resources	03-29-00	p. 1741
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Reported, S. Energy, Natural Resources & Environment	05-10-00	p.	1681
Passed Senate (33-0)	05-10-00	pp.	1683-1684
House concurred in Senate amendments (96-0)	05-16-00	pp.	1951-1953

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