



Bethany Boyd

Final Analysis
Legislative Service Commission

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

Reps. Householder, Haines, Willamowski, Buchy, Harris, Ogg, Sulzer, Core, Carey, Padgett, Tiberi, Mead, Trakas, Jones, Cates, Callender, Hollister

Sens. Blessing, Johnson, Drake, Mumper, McLin, Watts, Shoemaker, DiDonato, Ray, Latell, Hottinger, Latta, Schafrath, Nein, Gardner, Oelslager, Armbruster, Spada, Hagan, Cupp, White, Wachtmann, Kearns, Espy

Effective date: *

ACT SUMMARY

- Adds two members to the Mine Examining Board.
- Revises qualifications for membership on the Board and requires Board members to complete continuing education.
- Clarifies which decisions of the Chief of the Division of Mines and Reclamation in the Department of Natural Resources may be appealed to the Mine Examining Board and which decisions may be appealed to the Reclamation Commission.
- Establishes procedures that the Mine Examining Board must follow when hearing an appeal and provides that decisions of the Board may be appealed to a court of appeals.
- Requires first aid providers, rather than emergency medical technicians, to be on duty at a surface coal mine whenever employees actively are engaged in the extraction, production, or preparation of coal, and establishes training requirements for first aid providers.

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

- Requires all surface coal miners to receive first aid training and each operator of a surface coal mine to establish and keep current an emergency medical plan.
- Eliminates certain provisions involving weighing and measuring coal and explosions at coal mines.
- For electric companies burning Ohio coal on or after January 1, 2000, and on or before April 30, 2001, increases the Ohio coal tax credit against public utility gross receipts tax liability, from \$1 per ton of coal to \$3 per ton.
- For electric companies burning Ohio coal after April 30, 2001, but before January 1, 2005, increases the Ohio coal tax credit against corporation franchise tax liability, from \$1 per ton of coal to \$3 per ton, and permits the credit to be carried forward for three years.
- Eliminates certain conditions on companies claiming the tax credit.
- Terminates the Ohio coal tax credit for Ohio coal burned after December 31, 2004.

TABLE OF CONTENTS

Membership of the Mine Examining Board	3
Introduction	3
Effect of changes on Board members.....	5
Continuing education requirements.....	5
Clarification of provisions governing appeals of decisions of the Chief of the Division of Mines and Reclamation	5
Appeals heard by the Mine Examining Board.....	5
Appeals heard by the Reclamation Commission	7
Exception	7
Mine Examining Board's procedures for hearing appeals.....	8
Temporary relief.....	8
Subpoena authority.....	9
Appeal of Board's decision to court of appeals	9
First aid providers at surface mines	10
Former law: EMTs	10
The act: first aid providers.....	10
Provision of equipment for first aid providers.....	10

Availability of services of an emergency medical service organization.....	11
Training requirements	11
Provision of training at operator's expense.....	12
Emergency medical plan for surface mines	12
Elimination of provisions involving weighing and measuring coal and explosions at coal mines	12
Ohio coal tax credit.....	14
Overview.....	14
Applied to public utility excise tax liability	15
Applied to corporation franchise tax liability.....	15
The Ohio coal tax credit and customer rates.....	16

CONTENT AND OPERATION

Membership of the Mine Examining Board

Introduction

The Mine Examining Board is in the Division of Mines and Reclamation in the Department of Natural Resources and under former law consisted of three members appointed by the Governor with the consent of the Senate. Not more than one of the appointees was a person who, because of previous vocation, employment, or affiliation, could be classed as a representative of the owner, operator, or lessee of a mine, and not more than one member was a person who, for these same reasons, could be classed as a representative of mining employees.

Under continuing law, the Governor may remove a Board member for misconduct, incompetency, neglect of duty, or any other sufficient cause. Terms of office are three years (sec. 1561.10(A)). Board members receive a salary in addition to reimbursement for actual and necessary travel and incidental expenses incurred in carrying out official duties (sec. 1561.10(C)). The main duties of the Board include conducting examinations of applicants for certification in certain mining positions, issuing certificates to applicants who pass their examinations, and hearing appeals of certain decisions of the Chief of the Division (secs. 1509.08, 1561.13 (not in the act), 1561.23 (not in the act), 1561.35, 1561.51, 1563.13, and 6111.044).

Additional members. The act increases the membership of the Board from three to five members, and requires that there be one appointee to represent each of the following four groups: coal mine owners, operators, or lessees; aggregate mine owners, operators, or lessees; coal mine employees; and aggregate mine employees. Classification of a person as representing one of these groups is based on that person's prior vocation, employment, or affiliation.

Employer representatives. Prior to making the appointments to represent the coal mine or aggregate mine owners, operators, or lessees, the act requires the Governor to request the major trade association representing each of those two groups, respectively, to submit to the Governor the names and qualifications of three nominees. The Governor must appoint one of the three nominees submitted by each of the trade associations.

With certain exceptions described below under "**Exception to experience requirements,**" the act requires that the nominees have not less than five years of practical experience in the coal mining industry or aggregates mining industry, respectively, in positions in which they developed competence in the topics of mine health and safety. The major trade association for the coal mine representative, and the association for the aggregates mine representative, must represent a membership that produced a larger quantity of coal mined, or aggregates mined, in Ohio than the membership of any other trade association in the year prior to the year in which the appointment is made. (Sec. 1561.10(A).)

Employee representatives. Prior to making the appointments to represent the coal mine employees and the aggregate mine employees, the act requires the Governor to request the highest ranking officer in the major employee organization representing coal miners and aggregate miners, respectively, to submit to the Governor the names and qualifications of three nominees. The Governor must appoint one of the three nominees submitted by each of the organizations.

With certain exceptions described below under "**Exception to experience requirements,**" all nominees must have not less than five years of practical experience in dealing with mine health and safety issues and at the time of the nomination must be employed in positions that involve the protection of the health and safety of miners. The major employee organization representing coal miners or aggregates miners must represent a membership consisting of the largest number of coal miners or aggregates miners, respectively, in Ohio compared to other employee organizations in the year prior to the year in which the appointment is made. (Sec. 1561.10(A).)

Public representative. Under prior law, not more than one appointee could be considered to be a representative of the owner, operator, or lessee of a mine or of employees engaged in mining operations. The act specifies that the remaining appointee must be a person who can be classed as a representative of the public. With certain exceptions described below under "**Exception to experience requirements,**" the appointee must have not less than five years of technical, practical experience in either the field of mine health and safety or occupational health and safety, or both. For a period of three years prior to the appointment, the appointee cannot have been employed in the mining industry. (Sec. 1561.10(A).)

Exception to experience requirements. Under the act, an appointee who has received a bachelor's degree in mining engineering or technology need not have at least five years of practical experience as otherwise required by the act, but must have a total of not less than three years of practical experience in the mining industry in a position that provided the person with practical knowledge of mine health and safety. (Sec. 1561.10(A).)

Effect of changes on Board members

The act specifies that its changes to the qualifications of members of the Board are not intended to require the replacement of members of the Board on the act's effective date, but to establish requirements for filling vacancies occurring in the Board's membership on and after the act's effective date (Section 3).

The law regarding a quorum and party affiliation of the Board is changed to reflect the act's addition of two Board members. Not more than three members of the Board may belong to the same political party, and three Board members are needed to obtain a quorum to conduct the Board's business. (Sec. 1561.10(A) and (D).)

Continuing education requirements

The act requires each Board member to complete annual refresher training required for miners under federal regulations. In addition to the this training, each member must complete during the member's three-year term of office 24 hours of continuing education on the topics of mining technology and laws governing mining health and safety. (Sec. 1561.10(E).)

Clarification of provisions governing appeals of decisions of the Chief of the Division of Mines and Reclamation

Under prior law, both the Mine Examining Board and the Reclamation Commission could hear appeals of decisions of the Chief of the Division of Mines and Reclamation, but the law was somewhat unclear with respect to which appeals were to be heard by the Board and which appeals were to be heard by the Commission. The act clarifies this ambiguity.

Appeals heard by the Mine Examining Board

The act specifies that, except during the time period described below under "**Exception**," the Mine Examining Board has exclusive original jurisdiction to hear and decide appeals made to the Board regarding any of the following (sec. 1561.53(A) and (B)(1)):

(1) A decision, disapproval of an application to drill a gas or liquid mineral well, terms and conditions of a permit, or a suspension order issued by the Chief under law governing wells located in a coal bearing township (sec. 1509.08);

(2) A finding of the Chief made under continuing law with respect to a deputy mine inspector's report stating that any matter, thing, or practice connected with any mine and not prohibited specifically by law is dangerous or hazardous, or that from a rigid enforcement of the mining laws, the matter, thing, or practice would become dangerous and hazardous so as to tend to the bodily injury of any person (sec. 1561.35);

(3) A finding of the Chief made under continuing law with respect to a deputy mine inspector's report stating that the ways and means of egress in an underground mine from the interior working places to the surface are inadequate as a safe and ready means of escape in case of emergency, from danger of fire at any point, or any other cause that may result in the entombment of persons working in the mine (sec. 1563.13);

(4) A report of an investigation made by the Chief under continuing law regarding charges accusing a deputy mine inspector of neglect of duty, incompetency, or malfeasance in office (sec. 1561.51);

(5) Disapproval by the Chief under continuing law of an application for a permit, renewal permit, or modification to drill or convert a well or to inject wastes into a well that is or is to be located within 5,000 feet of the underground excavations and workings of a mine or within 500 feet of the surface excavations and workings of a mine (sec. 6111.044);

(6) A determination made by the Chief under a provision established by the act regarding a deputy mine inspector's finding that a violation of the mining laws has been committed that involves mining safety (sec. 1561.351).

Under the provision described in (6), above, a deputy mine inspector who makes a finding concerning a violation of the laws governing mining, or of related laws governing oil and gas, that involves mining safety must notify the Chief of the finding. The Chief must review the inspector's finding, make a written determination regarding it, and provide a copy of the written determination to the owner, operator, lessee, or agent of the mine involved, or to any other interested party upon request. Subsequently, a person, such as an owner, operator, lessee, or agent of the mine or the authorized representative of the workers of the mine, who has an interest that is or may be adversely affected by the Chief's determination may appeal it, not later than ten days after receiving notice of the determination, to the Board by filing a copy of the determination with the Board. The Board must hear the appeal in accordance with the act's provisions. (Sec. 1561.351.)

For the purposes of the provision governing appeals to the Board, the act defines "decision of the Chief" to include any of the actions listed above in (1) through (6). An appeal made under any of those provisions does not operate as a stay of any decision of the Chief. (Sec. 1561.53(A) and (B)(1).)

Appeals heard by the Reclamation Commission

Under the act, any person having an interest other than those listed in (1) through (6), above, that may be adversely affected by a notice of violation, order, or decision of the Chief, other than a show cause order or an order that adopts a rule, or by any modification, vacation, or termination of such a notice, order, or decision, may appeal by filing a notice of appeal with the Reclamation Commission within 30 days after the notice, order, or decision is served on the person or within 30 days after its modification, vacation, or termination, and by filing a copy of the notice of appeal with the Chief within three days after filing the notice of appeal with the Commission (sec. 1513.13(A)(1)).

Exception

The act provides an exception to its provisions regarding which appeals are to be heard by the Mine Examining Board or by the Reclamation Commission during the time period that begins on the act's effective date and ends on the date on which all members of the Board have been appointed in accordance with qualifications established in the act (see "**Membership of the Mine Examining Board**," above). Notwithstanding any other provision of law to the contrary, during that time period a person, such as an owner, operator, lessee, or agent of a mine or the authorized representative of the workers of a mine, who has an interest that is or may be adversely affected by a decision of the Chief that involves mine health and safety may appeal it, not later than ten days after receiving notice of the decision, to the Reclamation Commission by filing a copy of the Chief's written decision with the Commission.

An owner, operator, lessee, or agent of a mine who accordingly appeals to the Reclamation Commission a decision of the Chief that involves mine health and safety, upon filing the appeal, must provide written notification of the appeal to the authorized representative of the affected workers of the mine involved. The authorized representative may intervene and participate as a party to the appeal by filing a written notice of intervention with the Commission not later than ten days following receipt of notification of the appeal. (Sec. 1561.53(B)(2).)

Mine Examining Board's procedures for hearing appeals

The act requires the Mine Examining Board to provide written notice of the time and place of a hearing not less than five days prior to the hearing. The hearing must be of record. (Sec. 1561.53(C).)

The Board must conduct hearings and render decisions in a timely fashion and, if applicable, must hear expedited appeals as required in continuing law governing decisions of the Chief regarding wells located in a coal bearing township. Whenever the Board conducts a hearing, it must prepare a report setting forth its findings of fact and conclusions of law and must mail a copy of the report by certified mail to the parties. A party, not later than 14 days after receipt of the report, may serve and file written objections to the Board's report with the secretary of the Board. Objections must be specific and state with particularity the grounds for them. Upon consideration of the objections, the Board may adopt, reject, or modify the report or hear additional evidence. (Sec. 1561.53(D).)

The act requires the Board to affirm a decision of the Chief unless the Board determines that it is arbitrary, capricious, or otherwise inconsistent with law. In that case, the Board must vacate the decision of the Chief and may remand it to the Chief for further proceedings that the Board may direct. (Sec. 1561.53(E).)

Temporary relief

The act establishes provisions for granting temporary relief pending final determination by the Mine Examining Board of an appeal. The chairperson of the Board, under conditions that the chairperson prescribes, may grant temporary relief that the chairperson considers appropriate pending final determination of an appeal if all of the following conditions are met: (1) all parties to the appeal have been notified and given an opportunity for a hearing to be held on the request for temporary relief, (2) the person requesting relief shows that there is a substantial likelihood that the person will prevail on the merits, and (3) the relief will not adversely affect the health or safety of miners. The act requires the chairperson to issue a decision to grant or deny temporary relief expeditiously and promptly provide written notification of the decision to all parties to the appeal.

Under the act, any party to an appeal filed with the Board who is aggrieved or adversely affected by a decision of the chairperson to grant or deny temporary relief may appeal that decision to the Board. The Board may confine its review to the record developed at the hearing before the chairperson. The appeal must be filed with the Board not later than 30 days after the chairperson issues the decision on the request for temporary relief. The Board must issue a decision as expeditiously as possible and must affirm the decision of the chairperson unless it

determines that the decision is arbitrary, capricious, or otherwise inconsistent with law. (Sec. 1561.53(F).)

Subpoena authority

The act provides that, for the purpose of participation in an adjudicatory hearing conducted by the Mine Examining Board, the Chief of the Division of Mines and Reclamation or the Board may require the attendance of witnesses and the production of books, records, and papers and may, and at the request of any party must, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, papers, or other material relevant to the inquiry, directed to the sheriff of each county where the witnesses or materials are found. The subpoenas must be served and returned in the same manner that subpoenas issued by courts of common pleas are served and returned. The fees and mileage of sheriffs and witnesses are to be the same as those allowed by the court of common pleas in criminal cases.

In cases of disobedience or neglect of a subpoena served on a person or the refusal of a witness to testify on any matter regarding which the witness lawfully may be interrogated, the act requires the court of common pleas of the county in which the disobedience, neglect, or refusal occurs, or any judge of that court, on application of the Chief, the Board, or any Board member, to compel obedience by attachment procedures for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. Under the act, a witness at any hearing must testify under oath or affirmation, which the Chief or any Board member must administer. (Sec. 1561.54.)

Appeal of Board's decision to court of appeals

Under the act, any party aggrieved or adversely affected by a decision of the Board may appeal to the Court of Appeals of Franklin County or the court of appeals of the county in which the activity addressed by the decision of the Board occurred, is occurring, or will occur. The appeal must be filed not later than 30 days after issuance of the Board's decision. The court, upon motion, may grant any temporary relief that it considers appropriate pending final disposition of the appeal if all of the following conditions are met: (1) all parties to the appeal have been notified and given an opportunity to be heard on the request for temporary relief, (2) the person requesting the relief shows that there is substantial likelihood that the person will prevail on the merits, and (3) the relief will not adversely affect the health or safety of miners. The act requires the court to affirm the Board's decision unless the court determines that it is arbitrary, capricious, or otherwise inconsistent with law, in which case the court must vacate the decision

and remand it to the Board for any further proceedings that it directs. (Sec. 1561.55.)

First aid providers at surface mines

Former law: EMTs

Under prior law, the operator of a surface mine where 25 or more persons were employed on a shift, including all persons working at different locations of the mine within a ten-mile radius, had to provide at least one EMT-basic or EMT-I on duty at the mine whenever employees at the mine actively were engaged in the extraction, production, or preparation of coal or minerals. (Sec. 1565.15(C).) Under continuing law, "EMT-basic" means an individual who holds a valid, current certificate to practice as an emergency medical technician-basic, and "EMT-I" means an individual who holds a current, valid certificate to practice as an emergency medical technician-intermediate. (Sec. 1565.15(A)(1).)

The act: first aid providers

The act eliminates this EMT-basic or EMT-I on-duty requirement. Instead, the act requires the operator of a surface coal mine to provide at least one first aid provider on duty at the mine whenever employees at the mine actively are engaged in the extraction, production, or preparation of coal regardless of the number of persons employed on a shift. (Sec. 1565.15(C).) The act defines "first aid provider" to include an EMT-basic, an EMT-I, a paramedic, or a supervisory employee at a coal surface mine who has satisfied the training requirements established by the act for first aid providers (sec. 1565.15(A)(2)).

The act leaves intact many of the requirements involving EMTs-basic and EMTs-I at surface coal mines, except that the terms "EMT-basic" and "EMT-I" are replaced with "first aid provider." For example, the act requires the operator of the surface coal mine to provide first aid providers on duty at the mine at times and in numbers sufficient to ensure that no miner works in a mine location that cannot be reached within a reasonable time by a first aid provider. First aid providers must be employed on their regular coal mining duties at locations convenient for quick response to emergencies in order to provide emergency medical services and transportation of injured or sick employees to the entrance of the surface coal mine. These requirements exist under ongoing law, but apply to EMTs-basic or EMTs-I rather than first aid providers. (Sec. 1565.15(C).)

Provision of equipment for first aid providers

The act requires the operator of a surface coal mine to make available to first aid providers all of the equipment for first aid and emergency medical

services that is necessary for those personnel to function and to comply with the regulations pertaining to first aid and emergency medical services that are adopted under the Federal Mine Safety and Health Act, including, without limitation, a portable oxygen cylinder with a medical regulator and oxygen delivery system (sec. 1565.15(C)).

Availability of services of an emergency medical service organization

Prior law required the operator of a strip mine where fewer than 25 persons were employed on a shift, including all persons working at different locations of the mine within a ten-mile radius, or where 25 or more persons were employed on a shift at different locations of the mine that were dispersed by distances greater than ten miles, to provide for emergency medical service organizations to be available on call to reach the mine within 30 minutes where any employees were working, to provide emergency medical services and transportation to a hospital. The Chief of the Division of Mines and Reclamation could grant a variance from this requirement if, upon application, the operator showed that emergency medical service organizations were not available and that the operator provided for the services of three EMTs-basic, EMTs-I, or paramedics who were located, when on call, within ten miles of the locations where employees were mining or such other reasonable distance as the Chief approved. The act eliminates this law. (Sec. 1565.15(D).)

Former law is superseded by the act's requirements concerning first aid providers, which apply to all surface coal mines regardless of the number of persons employed on a shift. In addition, continuing law that the act makes applicable to all surface coal mines, regardless of the number of persons employed on a shift, requires the operator to provide for the services of at least one emergency medical service organization to be available on call to reach the entrance of the surface coal mine within 30 minutes at any time employees are engaged in the extraction, production, or preparation of coal, in order to provide emergency medical services and transportation to a hospital. (Sec. 1565.15(C).)

Training requirements

The act provides that a supervisory employee at a surface coal mine is considered to be a first aid provider if the employee has received from an instructor approved by the Chief ten hours of initial first aid training as a selected supervisory employee under federal regulations, and receives five hours of refresher first aid training as a selected supervisory employee under federal regulations in each subsequent calendar year (sec. 1565.15(D)(1)). Each miner employed at a surface coal mine who is not a first aid provider must receive from an instructor approved by the Chief three hours of initial first aid training and two

hours of refresher first aid training as a selected supervisory employee in each subsequent calendar year (sec. 1565.15(D)(2)).

The training that first aid providers and miners must receive must consist of a course of instruction established in the manual issued by the Mine Safety and Health Administration in the United States Department of Labor entitled "First Aid, A Bureau of Mines Instruction Manual" or its successor, or any other curriculum approved by the Chief. The training must be included in the hours of instruction provided to miners in accordance with training requirements established under federal regulations. (Sec. 1565.15(D)(3).)

Provision of training at operator's expense

Prior law required each operator of an underground mine or surface mine to provide or contract to obtain at the operator's expense emergency medical services training that was sufficient to train and maintain the certification of the number of employees necessary to comply with first aid provider requirements. The act requires each operator of an underground coal mine or surface coal mine to provide or contract to obtain emergency medical services training or first aid training, as applicable, at the operator's expense, that is sufficient to train and maintain the certification of the number of employees necessary to comply with ongoing law governing underground mines and that is sufficient to train employees in accordance with the act's requirements involving first aid providers. (Sec. 1565.15(F).)

Emergency medical plan for surface mines

The act requires each operator of a surface coal mine to establish, keep current, and make available for inspection an emergency medical plan that includes the telephone numbers of the Division of Mines and Reclamation and of an emergency medical services organization the services of which are required to be retained under the act. The Chief must adopt rules in accordance with the Administrative Procedure Act that establish any additional information required to be included in an emergency medical plan. (Sec. 1565.15(E).)

Elimination of provisions involving weighing and measuring coal and explosions at coal mines

The act eliminates certain statutes in the law involving the weighing and measuring of coal and explosions at coal mines. These statutes did the following:

(1) Gave deputy mine inspectors the same power and authority as county auditors as sealers of weights and measures, but allowed deputy mine inspectors to

exercise that authority only in connection with weights and measures at mines (sec. 1561.41);

(2) Required the Chief of the Division of Mines and Reclamation to ascertain the percentage of slate, sulphur, rock, dirt, or other impurity unavoidable in the proper mining or loading of the contents of mine cars or coal in the operating mines (sec. 1561.42);

(3) Required a miner or loader of coal who was paid on the basis of the weight of coal mined or loaded and the employer to agree upon and fix, for stipulated periods, the percentage of fine coal allowable in the output of the mine (sec. 1561.43);

(4) Authorized the Chief to change, upon investigation, any percentage ascertained or fixed under (2) or (3), above (sec. 1561.44);

(5) Required a person employed to weigh coal at a mine at which ten or more miners whose earnings depended on the weight of coal mined were employed to give bond in an amount of \$300 and to take and subscribe an oath that the person would weigh correctly all coal taken from the mine (sec. 1565.17);

(6) Allowed miners whose earnings depended on the weight of coal mined to appoint a check weighman at their own cost (sec. 1565.18);

(7) Allowed a landowner or a person interested in the rental or royalty at a mine to appoint a check weighman at the landowner's or other person's own cost (sec. 1565.19);

(8) Allowed miners whose earnings depended on measurements to employ, at their own cost, a check measurer (sec. 1565.20);

(9) Required every miner or loader of coal whose earnings depended on the weight of coal mined to be paid for the mining or loading according to the total weight of all the coal contained in the mine car in which the coal was removed, unless otherwise agreed between the employer and the miner or loader (sec. 1565.21);

(10) Prohibited an employer of a miner or loader of the contents of any coal car from passing any part of the contents over a screen or device, whereby the total weight of the contents was reduced or diminished, to ascertain or calculate the amount to be paid to the miner or loader (sec. 1565.22);

(11) Prohibited a miner or loader of a mine car from loading a mine car with contents containing a greater percentage of slate, sulphur, rock, dirt, or other impurity than the percentage ascertained by the Chief (sec. 1565.23);

(12) Required a miner to properly post the roof of the mine before shooting coal or before the shot firer shoots the coal (sec. 1567.28);

(13) Prohibited a miner from firing a blast in any working place that was likely to generate sudden volumes of firedamp or where locked safety lamps were required, except with the consent of the mine foreman or other certified person designated by the foreman for that purpose (sec. 1567.29);

(14) Prohibited a person from taking calcium carbide into any mine or portion of a mine where gas could be detected by a flame safety lamp and from taking into a nongaseous mine more than a reasonable supply of calcium carbide, and requiring calcium carbide to be carried in a proper container (sec. 1567.37);

(15) Required the operator of a mine at which the earnings of ten or more persons depended on the weight of coal mined to provide and keep accessible properly sealed standard test weights for the purpose of testing the weight scales (sec. 1567.56);

(16) Prohibited a person from erasing or changing a mark of reference or monument made in connection with measurements, changing the checks on cars, wrongfully checking a car, or doing any act with the intent to defraud (sec. 1567.64).

Ohio coal tax credit

Overview

Until January 1, 2002, the law allows an electric company to claim a tax credit against the public utility excise tax on gross receipts for using Ohio coal. The credit is \$1 per ton of Ohio coal burned in a coal-fired electric generating unit during the taxable year under the conditions that (1) the unit is owned by the company claiming the credit or leased under a sales and leaseback transaction, (2) a compliance facility, which basically controls emissions of sulfur or disposes of byproducts, is attached to, incorporated in, or used in conjunction with the unit, and (3) either at least 80% of the heat input during the 12-month period used in determining gross receipts is from Ohio coal, in the case of a coal-fired electric generating unit that burns coal in combination with another fuel for the purpose of complying with federal acid rain control requirements, or at least 90% of the heat input during the period is from Ohio coal, in the case of any other coal-fired

electric generating unit. The tax credit may be carried forward until the full amount of the credit is granted. (Sec. 5727.391.)

Am. Sub. S.B. 3 of the 123rd General Assembly (the electric deregulation act) eliminates the credit in the public utility excise tax law, effective January 1, 2002, and reestablishes it, with certain changes, in the corporation franchise tax law, beginning in tax year 2002 for Ohio coal used in coal-fired units after April 30, 2001. The Ohio coal tax credit that was granted under the public utility excise tax law applies only through the last excise tax assessment issued by the Tax Commissioner on or before the first Monday in November, 2001.

Applied to public utility excise tax liability

Under this act, the Ohio coal tax credit is increased in the public utility excise tax law from \$1 per ton to \$3 per ton and applies to Ohio coal burned on or after January 1, 2000, and on or before April 30, 2001. The credit claimed for the 12-month period ending April 30, 2000, must be adjusted so that the credit equals \$1 per ton for Ohio coal burned on or before December 31, 1999, of that 12-month period, and \$3 per ton for Ohio coal burned on or after January 1, 2000. (Sec. 5727.391(B); Section 4.)

The act eliminates the Ohio coal heat input thresholds described above as conditions for claiming the credit, and removes a provision in the public utility excise tax law that limits the sum of the credits allowed for coal burned in each coal-fired electric generating unit to 20% of the cost of the compliance facility used with the unit. (Sec. 5727.391(B) and (C).)

Applied to corporation franchise tax liability

Like the coal credit under the public utility excise tax law, the act increases the Ohio coal tax credit in the corporation franchise tax law from \$1 per ton to \$3 per ton, but the act specifies that the credit is allowed only for Ohio coal used after April 30, 2001, and before January 1, 2005. This credit supersedes the credit granted in S.B. 3 and takes effect January 1, 2002, notwithstanding S.B. 3. The credit is allowed only if the coal-fired electric generating unit is owned and used by the company claiming the credit, or leased and used by that company under a sale and leaseback transaction, and a compliance facility is attached to, incorporated in, or used in conjunction with the unit. (Sec. 5733.39(B) and (C); Section 5.)

The credit is nonrefundable and must be claimed in a particular order under the corporation franchise tax law, after certain other tax credits are claimed. The taxpayer may carry forward any credit amount in excess of its tax due (after

allowing for any other credits that precede the Ohio coal tax credit) for three years following the tax year for which it is claimed. (Sec. 5733.39(C).)

The act reestablishes in the corporation franchise tax law a provision that in the public utility excise tax law required the Director of Environmental Protection to certify whether a facility is a compliance facility for purposes of the tax credit. (Sec. 5733.39(D).)

The Ohio coal tax credit and customer rates

Under continuing public utility law, the amount of the Ohio coal tax credits granted to an electric light company against its public utility excise tax liability cannot be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company, and the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits must be returned to customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the Public Utilities Commission and as set forth in schedules filed by the electric light company.

Under the act, these provisions concerning the retention and return to customers of the tax credit amount apply only to Ohio coal burned prior to January 1, 2000. These provisions are contingent on S.B. 3 becoming law (which was signed by the Governor July 6, 1999). (Sec. 4909.15; Section 6.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-10-99	p. 828
Reported, H. Agriculture & Natural Resources	06-23-99	pp. 919-920
Passed House (96-0)	06-28-99	pp. 1068-1079
Reported, S. Ways & Means	06-30-99	pp. 848-849
Passed Senate (32-0)	06-30-99	pp. 859-860

99-HB384.123/bc

