Jill Rowland *Legislative Service Commission*

Am. H.B. 384*

123rd General Assembly
(As Reported by H. Agriculture and Natural Resources)

Rep. Householder

BILL SUMMARY

- Revises qualifications for membership on the Mine Examining 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 mine whenever employees actively are engaged in the extraction, production, or preparation of coal or minerals, and establishes training requirements for first aid providers.
- Requires all surface miners to receive first aid training, and requires each operator of a surface mine to establish and keep current an emergency medical plan.
- Eliminates certain provisions involving weighing and measuring and explosions at coal mines.

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

TABLE OF CONTENTS

Membership of Mine Examining Board 2
Introduction 2
Appointment.....3
Current Board members 4
Continuing education requirements 4
Clarification of provisions governing appeals of decisions of Chief of Division of Mines and Reclamation.....4
Appeals heard by Mine Examining Board 4
Appeals heard by Reclamation Commission.....6
Exception.....6
Mine Examining Board's procedures for hearing appeals 7
Temporary relief.....7
Subpoena authority.....8
Appeal of Board's decision to court 8
First aid providers at surface mines 9
Current law: EMTs.....9
The bill: first aid providers.....9
Provision of equipment for first aid providers 10
Availability of services of emergency medical service organization.....10
Training requirements 11
Provision of training at operator's expense 11
Emergency medical plan for surface mines 11
Repeal of provisions involving weighing and measuring and explosions at coal mines.....12

CONTENT AND OPERATION

Membership of Mine Examining Board

Introduction

The Mine Examining Board is created under current law in the Division of Mines and Reclamation in the Department of Natural Resources and consists of three members appointed by the Governor with the consent of the Senate. 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 bill), 1561.23 (not in bill), 1561.35, 1561.51, 1563.13, and 6111.044).

Appointment

Employer representative. Under current law, one of the appointees to the Board must be a person who, because of previous vocation, employment, or affiliation, can be classed as a representative of the owner, operator, or lessee of a mine. The bill retains that provision, but adds that prior to making the appointment, the Governor must request the major trade association in Ohio that represents owners, operators, or lessees of coal mines to submit to the Governor the names and qualifications of three nominees. The Governor must appoint one of the nominees to the Board. With certain exceptions described below under "***Exception to experience requirements***," the nominees must have not less than five years of practical experience in the mining industry in positions in which they developed competence in the topics of mine health and safety. The major trade association must represent a membership that produced a larger quantity of coal 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 representative. Under current law, one of the appointees must be a person who, because of previous vocation, employment, or affiliation, can be classed as a representative of employees currently engaged in mining operations. The bill retains that provision, but adds that prior to making the appointment, the Governor must request the highest ranking officer in the major employee organization representing coal miners in Ohio to submit to the Governor the names and qualifications of three nominees. The Governor must appoint one of the nominees to the Board. With certain exceptions described below under "***Exception to experience requirements***," the 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 must represent a membership consisting of the largest number of coal miners 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 existing law, the remaining appointee cannot be considered to be a representative of the owner, operator, or lessee of a mine or of employees currently engaged in mining operations, and not more than two of the Board members may belong to the same political party. The bill retains the latter provision and 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 bill, 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 bill, 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).)

Current Board members

The bill 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 bill's effective date, but to establish requirements for filling vacancies occurring in the Board's membership on and after the bill's effective date (Section 3).

Continuing education requirements

The bill requires each Board member to complete annual refresher training required for miners under federal regulations. In addition to the annual refresher training, each member must complete 24 hours of continuing education during each member's three-year term of office 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 Chief of Division of Mines and Reclamation

Under current law, both the Mine Examining Board and the Reclamation Commission may hear appeals of decisions of the Chief of the Division of Mines and Reclamation. However, current law is somewhat unclear with respect to which appeals are to be heard by the Board and which appeals are to be heard by the Commission. The bill clarifies this ambiguity.

Appeals heard by Mine Examining Board

The bill 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 current law governing wells located in a coal bearing township (sec. 1509.08);

(2) A finding of the Chief made under current 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 current 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 current 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 current 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); and

(6) A determination made by the Chief under a provision established by the bill 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 that involves mining safety or of related provisions in the 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. The Chief must provide a copy of the written determination 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 the determination, not later than ten days after receiving notice of the determination, to the Board by filing a copy of the Chief's written determination with the Board. The Board must hear the appeal in accordance with the bill's provisions. (Sec. 1561.351.)

For the purposes of the bill's provisions governing appeals to the Board, the bill 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 Reclamation Commission

Any person having an interest other than the ones listed above 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 bill provides an exception to its provisions regarding which appeals are to be heard by the Mine Examining Board and which appeals are to be heard by the Reclamation Commission during the time period that begins on the bill's effective date and ends on the date on which all members of the Mine Examining Board have been appointed in accordance with qualifications established in the bill (see "***Membership of 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 a decision of the Chief that involves mine health and safety to the Reclamation Commission, 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).)

Mine Examining Board's procedures for hearing appeals

The bill 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 current 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 bill 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 bill establishes provisions for granting temporary relief pending final determination by the 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 bill 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 bill, 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 bill 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 bill 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 or 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 it. Under the bill, 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

Under the bill, 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 bill 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

Current law: EMTs

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

The bill: first aid providers

The bill eliminates the requirement that at least one EMT-basic or EMT-I be on duty at a surface mine where 25 or more persons are employed on a shift in the active extraction, production, or preparation of coal or minerals. Instead, the bill requires the operator of a surface 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 or minerals regardless of the number of persons employed on a shift. (Sec. 1565.15(C).) The bill defines "first aid provider" to include an EMT-basic, an EMT-I, a paramedic, or a supervisory employee at a surface mine who has satisfied the training requirements established for first aid providers by the bill (sec. 1565.15(A)(2)).

The bill leaves intact many of the current law requirements involving EMTs-basic and EMTs-I at surface mines, except that the terms "EMT-basic" and "EMT-I" are replaced with "first aid provider." For example, the bill requires the operator of the surface 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 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 mine. These requirements exist under current 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 bill requires the operator of a surface 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 federal law, including, without limitation, a portable oxygen cylinder with a medical regulator and oxygen delivery system (sec. 1565.15(C)).

Availability of services of emergency medical service organization

Current law requires the operator of a surface mine where fewer than 25 persons are 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 are employed on a shift at different locations of the mine that are dispersed by distances greater than ten miles, to provide for the services of emergency medical service organizations to be available on call to reach the mine where any employees are working within 30 minutes to provide emergency medical services and transportation to a hospital. The Chief of the Division of Mines and Reclamation may grant a variance from this requirement if, upon application, the operator shows that emergency medical service organizations are not available and that the operator provides for the services of three EMTs-basic, EMTs-I, or paramedics who are located, when on call, within ten miles of the locations where employees are mining or such other reasonable distance as the Chief may approve. The bill eliminates all of these provisions. (Sec. 1565.15(D).)

These current law provisions are superseded by the bill's requirements concerning first aid providers, which apply to all surface mines regardless of the number of persons employed on a shift. In addition, continuing law that the bill makes applicable to all surface 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 mine within 30 minutes at any time that 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 bill provides that a supervisory employee at a surface 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 as provided under federal regulations and receives five hours of refresher first aid training as a selected supervisory employee as provided

under federal regulations in each subsequent calendar year (sec. 1565.15(D)(1)). Each miner employed at a surface 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 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

Current law requires each operator of an underground mine or surface mine to provide or contract to obtain emergency medical services training at the operator's expense that is sufficient to train and maintain the certification of the number of employees necessary to comply with requirements in current law. The bill requires each operator of an underground mine or surface 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 current law governing underground mines and that is sufficient to train employees in accordance with the bill's requirements involving first aid providers. (Sec. 1565.15(F).)

Emergency medical plan for surface mines

The bill requires each operator of a surface 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 service organization the services of which are required to be retained under the bill. 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).)

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

The bill eliminates certain provisions in current law involving weighing and measuring and explosions at coal mines. The repealed statutes contain provisions doing the following:

(1) Giving deputy mine inspectors the same power and authority as county auditors as sealers of weights and measures, but allowing deputy mine inspectors to exercise that authority only in connection with weights and measures at mines (sec. 1561.41);

(2) Requiring 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) Requiring a miner or loader of coal who is paid on the basis of the weight of coal mined or loaded and his 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) Authorizing the Chief to change, upon investigation, any percentage ascertained or fixed under (2) or (3), above (sec. 1561.44);

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

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

(7) Allowing 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) Allowing miners whose earnings depend on measurements to employ, at their own cost, a check measurer (sec. 1565.20);

(9) Requiring every miner or loader of coal whose earnings depend 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) Prohibiting 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 is reduced or diminished, in order to ascertain or calculate the amount to be paid to the miner or loader (sec. 1565.22);

(11) Prohibiting 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) Requiring a miner to properly post the roof of his working place before shooting coal or before the shot firer shoots the coal (sec. 1567.28);

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

(14) Prohibiting a person from taking calcium carbide into any mine or portion of a mine where gas can 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) Requiring the operator of a mine at which the earnings of ten or more persons depend 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); and

(16) Prohibiting 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).

HISTORY

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