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Bill Analysis
Legislative Service Commission

Sub. H.B. 601*
123rd General Assembly
(As Reported by S. Energy, Natural Resources & Environment)

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

BILL 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 existing funds that currently are administered by the Chief of the Division of Mines and Reclamation.
- Makes other miscellaneous substantive and technical changes.
- 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.

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

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CONTENT AND OPERATION

Creation of the Division of Mineral Resources Management

The bill combines the Division of Mines and Reclamation and the Division of Oil and Gas, both of which are in the Department of Natural Resources, to create the Division of Mineral Resources Management in the Department. The bill replaces all current 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 bill replaces all current 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 bill also, in certain instances, renames inspectors employed by the Division of Mineral Resources Management as "mineral resources inspectors." For example, current law authorizes 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 bill renames these inspectors as "mineral resources inspectors." Under current law, before a person other than a person who was an inspector of coal or surface mining operations on April 10, 1972, is eligible for appointment as an inspection officer, the person must pass an examination and serve a one-year probationary period. Further, current law provides that the status of any person employed as an inspector of coal or surface mining operations prior to April 10, 1972, is not affected by the examination and probation requirements if the person is a certified employee in the



classified service of the state. The bill 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 bill 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 currently are administered by the Division of Mines and Reclamation, the bill does not rename inspectors such as deputy mine inspectors as mineral resources inspectors (Chapters 1561., 1563., 1565., 1567., and 1571.).

The bill also makes all other changes to current law that are necessary to conform it to the creation of the Division of Mineral Resources Management. For example, current law contains two separate provisions requiring 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 bill 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 current law, administration and enforcement of the law regulating oil and gas wells in coal bearing townships is 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 bill 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 bill. (Secs. 1509.04, 1509.08, 1509.09, 1509.10, 1509.13, and 1509.15.)

For example, current law authorizes 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). Current law also authorizes the Chief of the Division of Mines and Reclamation, when that Chief has 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 present an imminent and substantial threat to public health or safety or to miners' health or safety (sec. 1509.08). The bill 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 bill 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).

Current law requires oil and gas well inspectors to be present while certain activities are being conducted and to conduct certain activities themselves. When such activities are conducted in a coal bearing township, gas storage well inspectors or deputy mine inspectors may act in the place of the oil and gas well inspectors. The bill instead requires mineral resources inspectors to be present at or to conduct the activities that current law requires oil and gas well inspectors to be present at or conduct. However, under the bill, 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 current law a person who wishes to plug and abandon a gas well must 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 will be necessary for an oil and gas well inspector, or, if the well is located in a coal bearing township, the gas storage well inspector or a deputy mine inspector to be present at the plugging. The bill 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 bill consolidates some of the funds created under existing law that are to be administered by the Division of Mineral Resources Management under the bill. The bill combines the Reclamation Forfeiture Fund with the Reclamation Supplemental Forfeiture Fund to create a new Reclamation Forfeiture Fund. The existing Reclamation Forfeiture Fund consists of cash received as the result of forfeitures of performance bonds that must be filed for coal surface mining operations. Moneys in the fund must be used to reclaim areas of land affected by coal surface mining under a coal surface



mining and reclamation permit on which an operator has defaulted. (Sec. 1513.18(A).)¹

The existing Reclamation Supplemental Forfeiture Fund consists of any moneys that the Chief transfers to it from the Unreclaimed Lands Fund or the 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 must be used to reclaim areas that an operator has 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 bill consists of all moneys that are deposited into the Reclamation Forfeiture Fund and the Reclamation Supplemental Forfeiture Fund under current law. Moneys in the new fund may be used for any of the purposes for which moneys in either of the existing funds may be used under current law. (Sec. 1513.18(A) and (B).) The bill requires balances in either of the existing funds to be transferred to the new fund on July 1, 2000, or as soon thereafter as possible (Section 5).

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 *Current law also specifies 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, must be deposited into the Reclamation Supplemental Forfeiture Fund. However, since no operations currently operate under a permit issued during that time period, cash no longer is deposited into the Reclamation Supplemental Forfeiture Fund under that provision. Therefore, references to this cash are eliminated in the 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.*



Surface Mining Fund

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

Currently, the Surface Mining Administration Fund consists of fees related to the issuance of permits for a minerals surface mining operation and to annual reports that must 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 are 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 is 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 bill consists of all moneys that are deposited into the Surface Mining Reclamation Fund and the Surface Mining Administration Fund under current law. Moneys in the new fund may be used for any of the purposes for which moneys in either of the existing funds may be used under current law. (Secs. 1514.06 and 1514.11.) The bill requires the balances of the existing funds to be transferred to the new fund on July 1, 2000, or as soon thereafter as possible (Section 5).

Under current law, the Chief of the Division of Mines and Reclamation is 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 bill eliminates the \$500,000 expenditure cap. (Sec. 1514.11.)

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

Under current 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 Mines and Reclamation. If the final report and accompanying certified map show that the number of acres affected under the permit is smaller than the number of acres for which the operator has paid an acreage fee, the Chief must release the excess acreage fee. The release of the excess acreage fee must 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 has paid an acreage fee. (Sec. 1514.03.)

Under current law, refunds of excess acreage fees must be paid by the Treasurer of State out of the Surface Mining Reclamation Fee Fund. The Treasurer of State must 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 bill 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 Coal Mining Administration and Reclamation Reserve Fund on July 1, 2000, or as soon thereafter as possible (Section 5).

Current law prohibits any acreage fee from exceeding \$1,000 per year. The bill eliminates this fee cap. (Sec. 1514.03.)

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

Under current 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, within ten days before or after the beginning of a fiscal year, the Chief of the Division of Mines and Reclamation 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 Supplemental Forfeiture Fund. (Sec. 5749.02(B).)

Instead of requiring the Chief to find that the balance of the Coal Mining Administration and Reclamation Reserve Fund is below \$2 million *within ten days before or after the beginning of a fiscal year* and certifying that fact to the Director of Budget and Management, the bill authorizes the Chief of the Division of Mineral Resources Management to make that finding at *any time during the fiscal year*. In addition, current law specifies that upon receipt of the Chief's certification, the Director must direct the Treasurer to divert the moneys from the coal severance tax that normally would go to the Reclamation Supplemental Forfeiture Fund to the Coal Mining Administration and Reclamation Reserve Fund during the fiscal year. The bill 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).)

Current law allows the Chief of the Division of Mines and Reclamation to transfer not more than \$1 million annually from the Coal Mining Administration and Reclamation Reserve Fund to the Reclamation Supplemental Forfeiture Fund 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. Within ten days before or after the beginning of each calendar quarter, the Chief must certify to the Director of Budget and Management 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 Supplemental Forfeiture Fund. The bill allows, rather than requires, the Chief of the Division of Mineral Resources Management 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

Current law governing coal surface mining authorizes 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 bill 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 current law, an applicant for a coal surface mining and reclamation permit must provide the Chief of the Division of Mines and Reclamation 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, 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 does not prevent issuance of the permit for which the applicant is applying. "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 bill 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 bill eliminates certain current law provisions that contain expired dates that render the provisions no longer effective (secs. 1513.07(A)(1), 1513.16(H), 1571.02(E), and 1571.04(G)). For example, current law establishes special time frames for reclamation and procedures for bond release that apply only to coal mining and reclamation permits issued after April 10, 1972, but before September 1, 1981. The bill eliminates these outdated special time frames and procedures. (Sec. 1513.16(H).)

The bill 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 current law, the Chief Engineer of the Department of Natural Resources is 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 may 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 is 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 bill 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 bill makes several changes concerning coastal erosion as follows.

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

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

Currently, the Chief Engineer may 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 bill 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.)

Existing law prohibits 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 bill 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 bill 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)).

Current law provides that the Chief Engineer, whenever possible, must 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 bill eliminates that provision. In addition, the bill 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 existing law, each application or reapplication for a permit must include a non-refundable fee that the Chief prescribes by rule, which cannot exceed \$500. The bill eliminates the cap of \$500. (Sec. 1521.22.)

Current law requires 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 can be made more effective, and make the plan available for public inspection. In preparation of the plan, the Chief must employ any existing plans that are available. In addition, the Chief must 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 bill 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 bill 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 existing law, anyone who fails to obtain a construction permit (see above) must be fined not less than \$100 nor more than \$500 for each offense, with each day of violation constituting a separate offense. The bill 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 bill 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 bill makes necessary technical changes to facilitate the transfer. (Section 6, and various Revised Code sections.)

Miscellaneous

Authority to enter into contracts

Current 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 current 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 bill 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 bill 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 bill 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	---	---



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