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Bill Analysis

Legislative Service Commission

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BILL SUMMARY

Severance tax on certain industrial minerals

- Revises the distribution of revenues from the severance tax on salt, limestone or dolomite, and sand and gravel.
- Requires a Surface Mining Operations Infrastructure Improvements Fund to be created in the county treasury of each county where surface mining operations are located for the purpose of receiving money from the severance tax, and requires money in the Fund to be appropriated solely for infrastructure improvements in the county.

Mine safety standards

- Exempts industrial minerals mining operations from the state mine safety laws, and instead requires the incorporation of the federal mine safety standards by rule for those operations.
- Requires the Chief of the Division of Mineral Resources Management in the Department of Natural Resources, in consultation with a statewide association that represents the surface mining industry, to adopt rules incorporating the federal mine safety standards and establishing other safety-related requirements and procedures regarding the mining of industrial minerals.
- Requires the Chief to conduct inspections of surface mining operations under specified circumstances, including a fatality or life-threatening injury at a surface mining operation.
- Authorizes the Chief to conduct safety audits at surface mining operations if the operator has requested the Division of Mineral

Resources Management to conduct safety training, and requires the Chief to prepare a report of the Chief's findings and provide it to the operator.

- Requires the Chief to issue orders to safeguard employees of a surface mining operation if during an inspection or safety audit the Chief finds a condition or practice that could reasonably be expected to cause the death of or imminent serious physical harm to an employee, and requires the Chief to prepare a report that describes the condition or practice and the action taken to eliminate it.
- Requires the Chief to enforce the safety standards established in rules adopted under the bill when conducting inspections of a surface mining operation.
- Requires the Chief annually to conduct a safety performance evaluation of all surface mining operations in the state in accordance with rules adopted under the bill.
- Requires the Chief, as resources allow, to conduct safety training for miners at surface mining operations, and allows the Chief to charge a fee for such training.
- Requires the operator of a surface mining operation to employ a certified mine foreperson or a person who is qualified to conduct examinations of surface mining operations for purposes of specified federal mine safety standards, and establishes requirements concerning certified mine forepersons and persons qualified in lieu of a certified mine foreperson.
- Requires the Chief, not later than five years after the bill's effective date, to submit a report to the Governor summarizing the activities of the Division under the bill's provisions regarding mine safety at surface mining operations and matters related to miner accident rates and life-threatening accidents and fatalities.

Right of entry on land for inspections and performing reclamation

- Authorizes the Chief or an authorized employee of the Division to enter on lands to make inspections under the law governing industrial minerals mining when necessary in the discharge of the duties specified in that law, authorizes the Chief to enter on land and perform reclamation under certain circumstances and to enter on adjoining land when necessary for

access to the land on which reclamation is to be performed, and requires the Chief to return to the same or an improved condition land that was used to access land to perform reclamation.

Reclamation and bond release

- Revises the reclamation and bond release procedures for surface mining operations by eliminating phased reclamation.
- Establishes that the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of an operator or partner or officer of the operator that forfeits a performance bond for the amount that is needed to perform any required reclamation, and establishes filing requirements for such a lien and requirements governing certificates of release for such a lien.
- Revises the amount of the surety bond that must be filed by a permit applicant.

Surface Mining Fund and Industrial Minerals Bond Forfeiture Fund

- Divides the funding sources for and uses of the existing Surface Mining Fund between that Fund and a new Industrial Minerals Bond Forfeiture Fund, and revises the uses.

County and township zoning

- Revises the zoning laws concerning industrial minerals mining.

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CONTENT AND OPERATION

Severance tax on certain industrial minerals

Current law levies an excise tax (the mineral severance tax) on severers for the privilege of engaging in the severance of natural resources from the soil and waters of this state. With regard to certain of those natural resources, the severance tax is 4¢ per ton of salt, 2¢ per ton of limestone or dolomite, and 2¢ per ton of sand and gravel. (Sec. 5749.02(A).) The bill retains those severance taxes, but revises the distribution of the revenue from them as follows:

Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
Salt	15% - Geological Mapping Fund 85% - Unreclaimed Lands Fund	100% - Geological Mapping Fund
Limestone or dolomite and sand and gravel	7.5% - Geological Mapping Fund 42.5% - Unreclaimed Lands Fund 50% - Surface Mining Fund	<i>1st, 2nd, and 3rd fiscal years following bill's effective date:</i> 7.5% - Geological Mapping Fund 50% - Surface Mining Fund 42.5% - as follows:

Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		<ul style="list-style-type: none"> • 17% - Surface Mining Fund • 41.5% - Industrial Minerals Bond Forfeiture Fund (see "<u>Surface Mining Fund and Industrial Minerals Bond Forfeiture Fund</u>," below) • 41.5% - Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred (see "<u>Surface Mining Operations Infrastructure Improvements Funds</u>," below) <p>If the amount of the 17% credited to the Surface Mining Fund exceeds \$200,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the amount of the 41.5% credited to the Industrial Minerals Bond Forfeiture Fund exceeds \$500,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure</p>



Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		Improvements Fund of the county where severance of the minerals occurred.
		<p><i>4th and 5th fiscal years following bill's effective date:</i></p> <p>7.5% - Geological Mapping Fund</p> <p>50% - Surface Mining Fund</p> <p>42.5% - as follows:</p> <ul style="list-style-type: none"> • 17% - Surface Mining Fund • 24.9% - Industrial Minerals Bond Forfeiture Fund • 58.1% - Surface Mining Operations Infrastructure Improvements Fund of the county where severance of minerals occurred <p>If the amount of the 17% credited to the Surface Mining Fund exceeds \$200,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the amount of the 24.9% credited to the Industrial Minerals Bond Forfeiture Fund exceeds \$300,000 per fiscal year, the money in excess of that amount instead goes to the Surface</p>



Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.
		<p><i>6th fiscal year following bill's effective date:</i></p> <p>7.5% - Geological Mapping Fund</p> <p>50% - Surface Mining Fund</p> <p>42.5% - as follows:</p> <ul style="list-style-type: none"> • 17% - Surface Mining Fund • 16.6% - Industrial Minerals Bond Forfeiture Fund • 66.4% - Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred <p>If the amount of the 17% credited to the Surface Mining Fund exceeds \$200,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the amount of the 16.6% credited to the Industrial Minerals Bond Forfeiture Fund exceeds \$200,000 per fiscal year, the money in excess of that amount</p>



Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		<p>instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p>
		<p><i>7th and 8th fiscal years following bill's effective date:</i></p> <p>7.5% - Geological Mapping Fund</p> <p>50% - Surface Mining Fund</p> <p>42.5% - as follows:</p> <ul style="list-style-type: none"> • 17% - Surface Mining Fund • 8.3% - Industrial Minerals Bond Forfeiture Fund • 74.7% - Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred <p>If the amount of the 17% credited to the Surface Mining Fund exceeds \$200,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the amount of the 8.3% credited to the Industrial Minerals Bond Forfeiture Fund exceeds \$100,000 per</p>



Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		<p>fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p>
		<p><i>Every fiscal year after 8th fiscal year following bill's effective date:</i></p> <p>7.5% - Geological Mapping Fund</p> <p>50% - Surface Mining Fund</p> <p>42.5% - as follows:</p> <ul style="list-style-type: none"> • 17% - Surface Mining Fund • 6.2% - Industrial Minerals Bond Forfeiture Fund • 76.8% - Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred <p>If the amount of the 17% credited to the Surface Mining Fund exceeds \$200,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the amount of the 6.2% credited to the Industrial</p>



Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
		<p>Minerals Bond Forfeiture Fund exceeds \$75,000 per fiscal year, the money in excess of that amount instead goes to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred.</p> <p>If the balance of the Industrial Minerals Bond Forfeiture Fund exceeds \$500,000 at any time during a fiscal year, 6.2% must be credited to the Surface Mining Operations Infrastructure Improvements Fund of the county where severance of the minerals occurred rather than to the Industrial Minerals Bond Forfeiture Fund. However, if the balance of the Industrial Minerals Bond Forfeiture Fund is less than \$500,000, 6.2% must continue to be credited to the Industrial Minerals Bond Forfeiture Fund, but the amount so credited cannot exceed \$75,000 per fiscal year.</p>

In addition, the bill specifies that in order to ensure that moneys received from the tax levied on the severance of limestone or dolomite and sand and gravel are credited to the appropriate funds as indicated in the above table, the Chief of the Division of Mineral Resources Management in the Department of Natural Resources must certify amounts received and fund balances as necessary to the Director of Budget and Management. Upon receipt of a certification from the Chief, the Director must direct the Tax Commissioner to credit moneys from the

tax to the appropriate funds as necessary in accordance with the bill. (Sec. 5749.02(B).)

Surface Mining Operations Infrastructure Improvements Funds

The bill requires a county auditor to deposit money received from the severance tax as discussed above in the county treasury to the credit of a Surface Mining Operations Infrastructure Improvements Fund, which must be created under the bill. The county engineer, in consultation with the boards of township trustees of the unincorporated areas within the county where surface mining operations and related processing activities are located, must allocate the money in the Fund to infrastructure improvements within the county and the applicable townships. Money in the Fund must be appropriated solely for infrastructure improvements. The bill defines "infrastructure improvement" as the construction, installation, repair, or maintenance of infrastructure. "Infrastructure" means the streets, roads, and highways that are used for ingress to and egress from a surface mining operation and that are under the jurisdiction of the county engineer or a board of township trustees. (Sec. 315.09.)

Mine safety standards

Current law establishes safety standards for the mining of coal and industrial minerals. The safety standards include the provision of rescue stations, inspections of mines and equipment, emergency training requirements, ventilation requirements, requirements governing the use of electricity, requirements governing the use of explosives, and other safety-related requirements (R.C. Chapters 1561., 1563., 1565., 1567., and 1571., not in the bill). The bill retains those safety standards for the mining of coal, but exempts the mining of industrial minerals from them and instead requires the incorporation of federal mine safety standards by rule as discussed below (secs. 1514.40, 1561.011, 1563.01, 1565.01, 1567.01, and 1571.011).

Rules

For purposes of the mining of industrial minerals, the bill requires the Chief of the Division of Mineral Resources Management, in consultation with a statewide association that represents the surface mining industry, to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) For the purpose of establishing safety standards governing surface mining operations, incorporate by reference the federal mine safety standards (specifically, 30 C.F.R. parts 46, 47, 50, 56, 58, and 62, as amended) (sec. 1514.40(A));



(2) Establish criteria, standards, and procedures governing safety performance evaluations conducted under the bill (see "Annual safety performance evaluation," below), including requirements for the notification of operators and the identification of authorized representatives of miners at surface mining operations for purposes of inspections conducted under the bill (sec. 1514.40(B));

(3) Establish requirements governing the reporting and investigation of accidents at surface mining operations. In adopting the rules, the Chief must establish requirements that minimize duplication with any reporting and investigations of accidents that are conducted by the Mine Safety and Health Administration in the United States Department of Labor. (Sec. 1514.40(C).)

(4) Establish a fee, if any, for the purpose of safety training conducted by the Chief as provided under the bill (see "Safety training," below). The amount of the fee must be equal to the costs of conducting the training. (Sec. 1514.40(D).)

(5) Establish the minimum qualifications necessary to take the examination that is required for certification of certified mine forepersons under the bill and requirements and procedures governing the taking of the examination (see "Certified mine foreperson," below) (sec. 1514.40(E)). The bill defines "certified mine foreperson" to mean the person whom the operator of a surface mining operation places in charge of the conditions and practices at the mine, who is responsible for conducting workplace examinations for purposes of the federal mine safety standards, and who has passed an examination for the position administered by the Division of Mineral Resources Management (sec. 1514.01(P)).

(6) Establish requirements governing the renewal of certificates of certified mine forepersons (sec. 1514.40 (F));

(7) Establish requirements and procedures for the approval of training plans that are submitted under the bill for the use of qualified persons to conduct examinations of surface mining operations in lieu of certified mine forepersons and minimum qualifications of those persons. The rules must include requirements governing training frequency and curriculum that must be provided for qualified persons under such plans and must establish related reporting and record keeping requirements. (Sec. 1514.40(G).)

The bill specifies that for purposes of the bill's provisions regarding mine safety, "rule" means a rule adopted under the bill unless the context indicates otherwise (sec. 1514.40).

Inspections

The bill requires the Chief to conduct inspections of surface mining operations in accordance with all of the following:

(1) If a surface mining operation is not inspected by the Mine Safety and Health Administration in the United States Department of Labor, the Chief annually must conduct a minimum of two inspections of the operation;

(2) If a surface mining operation is identified through a safety performance evaluation conducted under the bill and rules adopted under it as having lost-time accidents in an amount greater than the national average, the Chief must conduct a minimum of two inspections of the operation for one year following the identification;

(3) If a fatality of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the Chief must conduct a minimum of one inspection every three months at the operation for two years following the fatality; and

(4) If a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the Chief must conduct a minimum of one inspection every three months at the operation for one year following the injury (sec. 1514.41).

Safety audits

The bill authorizes the Chief to conduct a safety audit at a surface mining operation if the operator has requested the Division to conduct safety training. The Chief may conduct additional safety audits at any surface mining operation if requested by the operator. If the Chief conducts a safety audit, the operator must ensure that the Chief has a copy of the training plan that is required by specified federal safety standards at the time of the audit.

After completion of an audit, the Chief must prepare a report that describes the general conditions of the surface mining operation, lists any hazardous conditions at the operation, lists any violations of the safety standards established in rules, and describes the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation. The Chief must provide two copies of the report to the operator who must post one copy of the report at the operation for review by the operation's employees. (Sec. 1514.42.)

Emergency orders to safeguard employees

If during an inspection or a safety audit, the Chief finds a condition or practice at a surface mining operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the bill requires the Chief immediately to issue orders to safeguard the employees, notify the operator of the condition or practice, and require the operator to abate the condition or practice within a reasonable period of time. In all such situations, the Chief may require the operation to cease in the area in which the condition or practice is occurring or may require the entire operation to cease, if necessary, until the condition or practice that could reasonably be expected to cause death or serious physical harm is eliminated.

The Chief must complete a report that describes the condition or practice and the action taken to eliminate it and provide two copies of the report to the operator. The operator must post one copy of the report at the operation for review by the employees. (Sec. 1514.44.)

Enforcement

The bill requires the Chief to enforce the safety standards established in rules adopted under the bill when conducting inspections of an operation (see above) (sec. 1514.43(A)). Except for a situation in which the Chief issues emergency orders to safeguard employees or pursuant to a safety audit (see above), if during an inspection the Chief finds a violation of a safety standard, the Chief must require the operator to comply with the standard that is being violated within a reasonable period of time. If the Chief finds a violation of a safety standard, the Chief must return to the surface mining operation after a reasonable period of time to determine if the operator has complied with the standard that was being violated. If the operator has failed to comply with the standard, the Chief must take appropriate action to obtain compliance if necessary. (Sec. 1514.43(B).)

Furthermore, except for a situation in which the Chief issues emergency orders to safeguard employees or pursuant to a safety audit (see above), after completion of an inspection of an operation, the Chief or the Chief's designated representative must prepare a report that describes the general conditions of the operation, lists any hazardous conditions at the operation, lists any violations of the safety standards established in rules, and describes the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation. The Chief must provide two copies of the report to the operator. The operator must post one copy of the report at the operation for review by the employees. (Sec. 1514.43(C).)

Except pursuant to a safety audit (see above), the operator, not later than ten days after receipt of a report, may submit a written request to the Chief for a meeting with the Chief to review the findings contained in the report. Upon receipt of a request, the Chief must review the report and schedule a meeting with the operator. Within a reasonable period of time after the meeting, the Chief must make a written determination concerning the findings contained in the report and provide one copy of the determination to an authorized representative of the miners at the operation. If the Chief makes a determination that affirms the findings contained in the report, the Chief's determination constitutes an order for purposes of the law governing industrial minerals mining and rules adopted under it. (Sec. 1514.43(D).) The bill prohibits an operator from violating or failing to comply with such an order (sec. 1514.43(E)).

Time period for appeals of Chief's determination to Reclamation Commission

Current law establishes the Reclamation Commission for the purpose of hearing appeals under the laws governing coal mining and industrial minerals mining. It also establishes time periods within which appeals must be made and heard. The bill retains those time periods with one exception. Under the bill, a surface mining operator may appeal the determination of the Chief that is made in the enforcement of the industrial minerals safety standards (see above) within ten days after the operator receives a copy of the determination. (Sec. 1514.09.) Existing law generally provides for appeals to be made within 30 days (sec. 1513.13, not in the bill).

Annual safety performance evaluation

The bill requires the Chief annually to conduct a safety performance evaluation of all surface mining operations in the state in accordance with rules adopted under the bill. The operator of a surface mining operation must provide to the Chief a copy of the notification of legal identity required under specified federal regulations at the same time that the notice is filed with the Mine Safety and Health Administration in the United States Department of Labor. (Sec. 1514.45.)

Safety training

As resources allow, the Chief must conduct safety training for miners at surface mining operations. The training must emphasize the standards adopted in rules and include any other content that the Chief determines is beneficial. The Chief may charge a fee in an amount that is established in rules. Any fees collected must be credited to the Surface Mining Fund created in current law. (Sec. 1514.46.)

Certified mine foreperson

The bill requires the operator of a surface mining operation to employ a certified mine foreperson, or a person who is qualified in accordance with the bill and rules adopted under it (see below), to conduct examinations of surface mining operations for purposes of specified federal mine safety standards (sec. 1514.47(A)). The Chief must conduct examinations for the position of certified mine foreperson in accordance with rules adopted under the bill. In order to be eligible for the examination as a certified mine foreperson, an applicant must file with the Chief an affidavit establishing the applicant's qualifications to take the examination. The Chief must grade examinations and issue certificates. (Sec. 1514.47(B).)

A certificate issued under the bill expires five years after the date of issuance. A certificate may be renewed, provided that the applicant verifies that all required training pursuant to specified federal mine safety standards has been completed and any other requirements for renewal have been satisfied. (Sec. 1514.47(C).)

If a certificate is suspended, it cannot be renewed until the suspension period expires and the person whose certificate is suspended successfully completes all action required by the Chief. If an applicant's license, certificate, or similar authority that is issued by another state to perform specified mining duties is suspended or revoked by that state, the applicant is ineligible for examination for or renewal of a certificate in Ohio during that period of suspension or revocation. A certificate that has been revoked cannot be renewed. If a person who has been certified by the Chief under the bill purposely violates the law governing industrial minerals mining, the Chief may suspend or revoke the certificate after an investigation and hearing conducted in accordance with the Administrative Procedure Act are completed (sec. 1514.47(D)).

Persons qualified in lieu of certified mine foreperson. In lieu of employing a certified mine foreperson, the operator of a surface mining operation may submit to the Chief a detailed training plan under which persons who qualify under the plan may conduct and document examinations at the surface mining operation for purposes of specified federal mine safety standards. The Chief must review the plan and determine if it complies with the requirements established in rules adopted under the bill. The Chief must approve or deny the plan and notify in writing the operator of the Chief's decision. (Sec. 1514.47(E).)

Report summarizing safety-related matters

Not later than five years after the bill's effective date, the Chief must submit a report to the Governor summarizing the activities of the Division under the bill's

provisions regarding mine safety at surface mining operations, trends in miner accident rates, and the number and causes of life-threatening accidents and fatalities since the bill's effective date. In addition, the report must compare those trends and accident rates with the trends and accident rates that occurred ten years prior to the bill's effective date and, if necessary, recommend changes to the bill's provisions in order to improve miner health or safety. (Section 3.)

Right of entry on land for inspections and performing reclamation

The bill authorizes the Chief or an authorized employee of the Division to enter on lands to make inspections in accordance with the law governing industrial minerals mining and rules adopted under it when necessary in the discharge of the duties specified in that law and the rules. It prohibits anyone from preventing or hindering the Chief or an authorized employee of the Division in the performance of those duties. (Sec. 1514.50(A).)

Under the bill, for purposes of performing reclamation of land affected by surface mining operations on which the holder of a permit issued under the law governing industrial minerals mining has defaulted or otherwise failed to timely conduct the reclamation required by that law, the Chief may enter on the land and perform reclamation that the Chief determines is necessary to protect public health or safety or the environment. In order to perform the reclamation, the Chief may enter an adjoining land or other land that is necessary to access the land on which the surface mining occurred and on which the reclamation is to be performed. The Chief must provide reasonable advance notice to the owner of any land to be entered for the purpose of access for reclamation. The Division must return the land that was used to access the former surface mining operation to the same or an improved grade, topography, and condition that existed prior to its use by the Division. (Sec. 1514.50(B).)

When conducting investigations concerning a projected cone of depression and dewatering under the law governing industrial minerals mining, the Chief or an authorized employee of the Division may enter on lands to conduct water supply surveys, measure ground water levels and collect data when necessary to define the cone of depression, or perform other duties related to the cone of depression and dewatering (sec. 1514.50(C)).

Authority of Division

The bill states that the Division of Mineral Resources Management has authority over all surface mining operations located in Ohio and then requires the Division to exercise that authority as provided in the law governing industrial minerals mining (sec. 1514.011).

Reclamation and bond release

Current law

At any time within the period allowed an operator under the requirements of a surface or in-stream mining permit to reclaim an area of land affected by the mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which a phase of reclamation is completed. For purposes of inspections and subsequent releases of performance bonds or cash, irrevocable letters of credit, or certificates of deposit deposited in lieu of bonds, reclamation must be considered to occur in two phases. The first phase involves grading, contouring, terracing, resoiling, and initial planting. The second phase involves the establishment of vegetative cover together with the maintenance and the completion of all reclamation required under the law governing industrial minerals mining and rules adopted under it. (Sec. 1514.05(A).)

A request for inspection at the completion of a phase of reclamation must include all of the following:

- (1) The location of the area and number of acres;
- (2) The permit number;
- (3) The amount of performance bond on deposit at the time of the request to ensure reclamation of the area; and
- (4) A prepared and certified map showing the location of the acres reclaimed. In the case of an in-stream mining operation, the map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer.

In addition to the above requirements, a request for inspection of the second phase of reclamation must include a description of the type and date of any required planting and a statement regarding the degree of success of the growth. (Sec. 1514.05(A).)

The Chief must make an inspection and evaluation of the reclamation of the area for which a request was submitted within 90 days after receipt of the request or, if the operator fails to complete the reclamation or file the request as required, as soon as the Chief learns of the default. If the Chief approves the first phase of reclamation as meeting the requirements of the law governing industrial minerals mining, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclamation, the Chief must issue an order to the operator and the operator's surety releasing them from liability for the applicable percentage of their surety bond on deposit to ensure reclamation for

the area on which reclamation is completed (see below). If the Chief likewise approves the second phase of reclamation, the Chief must order release of the remaining performance bond, after completing the inspection and evaluation, in the same manner as in the case of approval of the first phase of reclamation, and the Treasurer of State must proceed as in that case. (Sec. 1514.05(B).)

On approval of the first phase of reclamation, the Chief must release 75% of the amount of the surety bond on deposit. On approval of the second phase, the Chief must release the remaining amount of the surety bond that originally was on deposit. If the operator has deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief must issue an order to the operator releasing the amount so held in the same manner and in the same percentages that apply to the release of a surety bond as discussed above and must promptly transmit a certified copy of the order to the Treasurer of State. Upon presentation of the order to the Treasurer by the operator to whom it was issued, or by the operator's authorized agent, the Treasurer must deliver to the operator or the operator's authorized agent the cash, irrevocable letter of credit, or certificates of deposit designated in the order. (Sec. 1514.05(B).)

If the Chief does not approve a phase of the reclamation, the Chief must notify the operator by certified mail. Upon issuing an order declaring that an operator has failed to reclaim, the Chief must retain all or part of the performance bond on deposit for reclamation of the affected surface or in-stream mine site. (Sec. 1514.05(C) and (D).)

The bill

The phased reclamation discussed above was enacted in 2002. The bill eliminates phased reclamation and generally restores the provisions governing reclamation that were in existence prior to that time. Under the bill, reclamation is to occur as discussed below.

At any time within the period allowed an operator under the requirements of a surface or in-stream mining permit to reclaim an area affected by surface or in-stream mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which the reclamation, other than any required planting, is completed. A request must include all of the following:

- (1) The location of the area and the number of acres;
- (2) The permit number;



(3) The amount of performance bond on deposit at the time of the request to ensure reclamation of the area; and

(4) A prepared and certified map showing the location of the acres reclaimed. In the case of an in-stream mining operation, the map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer. (Sec. 1514.05(A).)

Under the bill, an operator also may file a request for inspection of the area of land on which all reclamation, including the successful establishment of any required planting, is completed. The request must be filed in the manner discussed above and must include all of the following:

(1) The location of the area and the number of acres;

(2) The permit number;

(3) The remaining amount of performance bond on deposit to ensure reclamation of the area;

(4) The type and date of any required planting of vegetative cover and the degree of success of growth; and

(5) A prepared and certified map showing the location of the acres reclaimed.¹ (Sec. 1514.05(B).)

The Chief must make an inspection and evaluation of the reclamation of the area of land for which either type of request was submitted within 90 days after receipt of the request or, if the operator failed to complete the reclamation or file the request as required, as soon as the Chief learns of the default. If the Chief approves the reclamation as meeting or, in the case of completed reclamation, finds that the reclamation meets the requirements of the law governing industrial minerals mining, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclaiming, the Chief must issue an order to the operator and the operator's surety releasing them from liability for one-half of the total amount of their surety bond on deposit to ensure reclamation for the area on which reclamation was completed or, in the case of reclamation that included the successful establishment of any required planting, if the Chief decides to release any remaining performance bond on deposit, within ten days of completing the inspection and evaluation, the Chief must order the release of the remaining performance bond. If the operator has

¹ *Inclusion of a hydraulic evaluation of a watercourse in the case of an in-stream mining operation apparently was inadvertently omitted from the bill.*

deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief must issue an order to the operator releasing one-half of the total amount or the remaining amount so held, as applicable, and promptly transmit a certified copy of the order to the Treasurer of State.

However, if the Chief does not approve the reclamation, the Chief must notify the operator by certified mail. The notice must be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. If the operator does not comply with the order within the time limit specified, the Chief may order an extension of time for compliance after determining that the operator's noncompliance is for good cause, resulting from developments partially or wholly beyond the operator's control. If the operator complies within the time limit or the extension of time granted for compliance, the Chief must order release of the performance bond in the same manner as in the case of approval of reclamation as discussed above. If the operator does not comply within the time limit and the Chief does not order an extension, or if the Chief orders an extension of time and the operator does not comply within the extension, the Chief must issue another order declaring that the operator has failed to reclaim and, if the operator's permit has not already expired or been revoked, revoking the operator's permit. (Sec. 1514.05(A) and (B).)

Upon issuing an order declaring that the operator has failed to reclaim, the Chief must make a finding of the number and location of the acres of land that the operator has failed to reclaim. The Chief must order the release of the performance bond in the amount of \$500 per acre for those acres that the Chief finds to have been reclaimed. The release must be ordered in the same manner as in the case of other approval of reclamation as discussed above, and the Treasurer of State must proceed as in that case. If the operator has on deposit cash, an irrevocable letter of credit, or certificates of deposit to ensure reclamation of the area of land affected, the Chief at the same time must issue an order declaring that the remaining cash, irrevocable letter of credit, or certificates of deposit are the property of the state and are available for use by the Chief in performing reclamation of the area. (Sec. 1514.05(C).)

Priority lien upon forfeiture of performance bond

The bill adds that if an operator or a partner or officer of the operator forfeits a performance bond, the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of that operator for the amount that is needed to perform any reclamation that is required as a result of the operator's mining activities. The Chief must file a statement in the office of the county recorder of each county in which the mined land lies of the estimated costs to reclaim the land. The estimated costs must include direct and

indirect costs of the development, design, construction, management, and administration of the reclamation. The statement constitutes a lien on the assets of the operator as of the date of the filing. The lien continues in force so long as any portion of the lien remains unpaid or until the Chief issues a certificate of release of the lien. If the Chief issues a certificate of release, the Chief must file a certificate of release in the office of each applicable county recorder. (Sec. 1514.051(A).)

The Chief promptly must issue a certificate of release under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the issuance of a new permit to the operator of a surface mine that forfeited the performance bond;

(3) Upon the transfer of an existing permit that includes the areas of the surface mine for which reclamation was not completed from the operator that forfeited the performance bond to a new operator; or

(4) Any other circumstance that the Chief determines to be in the best interests of the state. (Sec. 1514.051(B).)

The bill authorizes the Chief to modify the amount of a lien. If the Chief modifies a lien, the Chief must file a statement in the office of the county recorder of each applicable county of the new amount of the lien. However, the Chief cannot extinguish a lien until the required reclamation is completed and the Chief issues a certificate approving the reclamation. (Sec. 1514.051(C).)

The Chief may authorize a closing agent to hold a certificate of release in escrow for a period not to exceed 180 days for the purpose of facilitating the transfer of unreclaimed mine land (sec. 1514.051(D)).

The bill requires all money from the collection of liens to be credited to the Industrial Minerals Bond Forfeiture Fund created by the bill (see "*Surface Mining Fund and Industrial Minerals Bond Forfeiture Fund*," below) (sec. 1514.051(E)).

Amount of surety bond

Under existing law, when an applicant for a permit is notified by the Chief that the Chief intends to issue the permit, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount, unless otherwise provided by rule, of \$10,000 plus \$1,000 per acre of land to be affected.

The bill retains the initial \$10,000, but revises the per-acre fee by stating that if the amount of land to be affected is more than 20 acres, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of \$500 per acre of land to be affected that exceeds 20 acres. (Sec. 1514.04.)

Surface Mining Fund and Industrial Minerals Bond Forfeiture Fund

Current law

Current law creates the Surface Mining Fund consisting of money from the forfeiture of performance bonds for surface or in-stream mining operations (sec. 1514.06(A)). In addition, the Fund consists of money collected from permit fees, one-half of the money collected from the severance tax levied on limestone or dolomite and sand and gravel (see above), all of the money collected from the severance tax levied on clay, sandstone or conglomerate, shale, gypsum, or quartzite, and all fines imposed under the law governing industrial minerals mining (sec. 1514.11). The Chief must make expenditures from the Fund for the purpose of reclaiming areas of land affected by surface or in-stream mining operations on which an operator has defaulted (sec. 1514.06(A)). The Chief may use moneys in the Fund for the administration and enforcement of the law governing industrial minerals mining, for the reclamation of land affected by surface or in-stream mining under a permit that the operator failed to reclaim and for which the performance bond filed by the operator is insufficient to complete the reclamation, and for the reclamation of land affected by surface or in-stream mining that was abandoned and unreclaimed and for which no permit was issued or bond filed. Also, the Chief may use the portion of the fund that consists of money from the severance tax for mine safety and first aid classes. (Sec. 1514.11.) Current law establishes procedures and requirements governing the use of money in the Fund (secs. 1514.06 and 1514.11).

The bill

The bill divides the funding sources for and uses of the Surface Mining Fund between that Fund and a new Industrial Minerals Bond Forfeiture Fund created by the bill. It also revises the uses.

Under the bill, the Surface Mining Fund consists of money collected from permit fees, the portion of the money collected from the severance tax levied on limestone or dolomite and sand and gravel that is specified in the bill (see above), all of the money collected from the severance tax levied on clay, sandstone or conglomerate, shale, gypsum, or quartzite, and all fines imposed under the law governing industrial minerals mining. The Chief may use money in the Fund for the administration and enforcement of that law and for the reclamation of land

affected by surface or in-stream mining under a permit issued under that law that the operator failed to reclaim and for which the performance bond filed by the operator is insufficient to complete the reclamation. The bill eliminates the use of the Fund for the reclamation of land affected by surface or in-stream mining that was abandoned and unreclaimed and for which no permit was issued or bond filed. In addition, the bill authorizes the Chief to use the portion of the Fund that consists of money from the severance tax for mine safety and first aid training. (Sec. 1514.11.) The bill retains the current procedures and requirements governing the use of money in the Fund (secs. 1514.06 and 1514.11).

Under the bill, the new Industrial Minerals Bond Forfeiture Fund consists of all money that becomes the property of the state from the collection of liens (see above) and money credited to the Fund under the bill from the severance tax on limestone or dolomite and sand and gravel (see above). The bill requires the Chief to expend money from the Fund only to reclaim land affected by surface or in-stream mining under a permit that the operator has failed to reclaim and for which the performance bond filed by the operator is insufficient to complete the reclamation rather than on which the operator has defaulted. The bill applies the procedures and requirements established in existing law governing the use of money in the Surface Mining Fund to the use of money in the new Fund. (Sec. 1541.06.)

Unreclaimed Lands Fund

The Coal Surface Mining Law creates the Unreclaimed Lands Fund to be used for reclaiming public or private land affected by mining or controlling mine drainage for which no cash is held in the Reclamation Forfeiture Fund also created by the Law or in the Surface Mining Law. The bill removes the inclusion of the Surface Mining Law in those provisions. (Sec. 1513.30.)

Penalties

The bill adds that whoever violates an order of the Chief of the Division of Mineral Resources Management issued under the law governing industrial minerals mining is guilty of a minor misdemeanor (sec. 1514.99(E)).

County and township zoning

Current law authorizes a board of county commissioners and a board of township trustees to regulate by resolution in the unincorporated territory of the county or township, as applicable, the size and location of buildings and other structures. For those purposes, the board may divide all or any part of the unincorporated territory of the county or township, as applicable, into districts or zones. In addition, current law states that for any activities permitted and



regulated under the Coal Surface Mining Law or the law governing industrial minerals mining and any related processing activities, the board of county commissioners or township trustees, as applicable, may regulate only in the interest of public health or safety. (Secs. 303.02 and 519.02.)

The bill retains the above provisions and adds that notwithstanding any other provision in state law to the contrary and except as otherwise discussed above, a zoning resolution must allow the activities that are permitted and regulated under the law governing industrial minerals mining and any related processing activities and must designate those activities as either a permitted use or a conditional use in any district or zone in which aggregate minerals are located. The bill also adds that nothing in the county and township zoning laws requires a board of county commissioners or township trustees, as applicable, to designate activities that are permitted under that law and related processing activities as a conditional use in a zoning resolution when the proposed location of the activities is adjacent to an area that is platted under the Plats Law or an area that is comprised of 20 or more contiguous lots or of 20 or more lots some of which are contiguous to one another and adjacent to a public road and the remainder of which are contiguous to one another and adjacent to the opposite side of that public road unless a majority of the owners of the lots provide written consent to the designation of the activities as a conditional use in the zoning resolution. (Secs. 303.02 and 519.02.)

Board of zoning appeals

Current law authorizes a county board of zoning appeals and a township board of zoning appeals, as applicable, to grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution. The bill adds that if the board considers conditional zoning certificates for activities that are permitted and regulated under the law governing industrial minerals mining or any related processing activities, the board cannot consider or base its determination on matters that are regulated by any federal, state, or local agency. However, the board may require as a condition of the approval of a conditional zoning certificate for such an activity one or more of the following:

(1) Inspections of nearby structures and water wells to determine structural integrity and water levels;

(2) Compliance with applicable federal, state, and local laws and regulations;

(3) Identification of specific roads as the primary means of ingress to and egress from the proposed activity;



- (4) Compliance with reasonable noise abatement measures;
- (5) Compliance with reasonable dust abatement measures;
- (6) Establishment of berms and buffers for the proposed activity;
- (7) Establishment of a complaint procedure; and
- (8) Any other measure reasonably related to public health and safety.

In addition, if the applicant for a conditional zoning certificate for such an activity agrees in writing, the board may impose reasonable hours of operation as a condition to the issuance of the certificate. (Secs. 303.14(C) and 519.14(C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-29-05	p. 1460

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