



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 382

128th General Assembly

(As Reported by H. Agriculture & Natural Resources)

**Reps.** Sayre, Dodd, Domenick, Balderson

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## BILL SUMMARY

- Grants an eligible landowner or nonprofit organization qualified immunity from liability for: (1) injury or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management in the Department of Natural Resources while the person is within a reclamation project work area or by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the reclamation project, (2) any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division, or (3) generally the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project.
- Requires an eligible landowner to notify the Division of a known, latent, dangerous condition at a reclamation project work area that is not the subject of the reclamation project, and provides that the immunity does not apply to an eligible landowner if the landowner fails to notify the Division.
- Provides that the immunity does not apply to an eligible landowner or nonprofit organization if an eligible landowner or nonprofit organization engages in unlawful activities with respect to a reclamation project or an injury to a person within the reclamation work area results from an eligible landowner's or nonprofit organization's reckless acts or omissions, gross negligence, or willful or wanton misconduct.
- Designates that methane gas emitted from an abandoned coal mine constitutes a renewable energy resource rather than an advanced energy resource for purposes of the law governing the promotion of renewable energy usage.

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## CONTENT AND OPERATION

### Immunity from liability of eligible landowner in relation to reclamation project

The bill provides that, with certain exceptions described below, an "eligible landowner" or "nonprofit organization" is immune from liability as follows (terms in quotation marks are defined in "**Definitions**," below) (R.C. 1513.372(B)):

(1) For any injury to or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management while the person is within the "reclamation project work area";

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the Division of Mineral Resources Management during the construction, operation, and maintenance of the "reclamation project";

(3) For any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division;

(4) For the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement facility or denies access to the Division of Mineral Resources Management that is responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

#### **Notification of dangerous condition; exceptions to immunity**

The bill requires the eligible landowner to notify the Division of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity of an eligible landowner provided by the bill does not apply to any injury, damage, or pollution (see **COMMENT 1**) resulting from the landowner's failure to notify the Division of such a known, latent, dangerous condition. (R.C. 1513.372(C).)

The immunity additionally does not apply to an eligible landowner or nonprofit organization in both of the following circumstances (R.C. 1513.372(D)):

(1) An injury to a person within the reclamation project work area that results from an eligible landowner's or nonprofit organization's acts or omissions that are reckless or constitute gross negligence or willful or wanton misconduct;

(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.

## Rules

The bill requires the Chief of the Division of Mineral Resources Management to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the bill's provisions (R.C. 1513.372(E)).

## Definitions

The bill defines the following terms for purposes of the bill's immunity provisions (R.C. 1513.372(A)):

"Abandoned mine land" means land or water resources adversely affected by coal mining practices to which one of the following applies:

(1) The coal mining practices occurred prior to August 3, 1977, and there is no continuing reclamation responsibility under state or federal law;

(2) The coal mining practices occurred prior to April 10, 1972; or

(3) The coal mining practices were conducted pursuant to a license that was issued prior to April 10, 1972.

"Eligible landowner" means a landowner who provides access without charge or other consideration to abandoned mine land that is located on the landowner's property for the purpose of allowing the implementation of a reclamation project on the abandoned mine land. "Eligible landowner" does not include a person that is responsible under state or federal law to reclaim the land or address acid mine drainage existing or emanating from the abandoned mine land. (See **COMMENT 2.**)

"Landowner" means a person who holds a fee interest in real property.

"Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, that provides funding or services at no cost or at cost for a reclamation project.

"Reclamation project" means an acid mine drainage abatement project that is conducted in compliance with the Coal Surface Mining Law and rules adopted under it on abandoned mine land that is located on property owned by an eligible landowner.

"Reclamation project work area" means the portion of a parcel of real property on which a reclamation project is conducted and the roads providing ingress to and egress from the reclamation project.

## **Designation of methane gas as a renewable energy source**

For purposes of the law governing the promotion of renewable energy usage, electricity supplies from renewable energy sources, and renewable energy credits, current law defines "advanced energy resource" to include methane gas emitted from an operating or abandoned coal mine (R.C. 4928.01(A)(34)(h)). The bill removes methane gas emitted from an operating or abandoned coal mine from the definition of "advanced energy resource" and includes methane gas emitted from an abandoned coal mine in the definition of "renewable energy resource" (R.C. 4928.01(A)(34)(h) and (35)).

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## **COMMENT**

1. R.C. 1513.01(N) (Coal Surface Mining Law), not in the bill, defines "pollution" as placing any sediments, solids, or waterborne mining related wastes, including, but not limited to, acids, metallic cations, or their salts, in excess of amounts prescribed by the Chief of the Division of Mineral Resources Management into any waters of the state or affecting the properties of any waters of the state in a manner that renders those waters harmful or inimical to the public health, or to animal or aquatic life, or to the use of the waters for domestic water supply, industrial or agricultural purposes, or recreation.

2. R.C. 1513.01(P), not in the bill, defines "reclamation" as backfilling, grading, resoiling, planting, and other work that has the effect of restoring an area of land affected by coal mining so that it may be used for forest growth, grazing, agricultural, recreational, and wildlife purpose, or some other useful purpose of equal or greater value than existed prior to any mining.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-30-09
Reported, H. Agriculture & Natural Resources	03-11-10

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