Ohio Legislative Service Commission

Bill Analysis

Michelle R. McGreevy

S.B. 73

128th General Assembly
(As Passed by the Senate)

Sens. Niehaus and Wilson, Carey, Seitz, Patton, Cafaro, Schuler, Schaffer, Gibbs, Stewart, Buehrer, Faber, Harris, Hughes

BILL SUMMARY

- Revises a provision in current law pertaining to the imposition of a portion of the severance tax on coal by stating that the balance of the Reclamation Forfeiture Fund at the close of any fiscal year must be sufficient to complete the reclamation of **all** lands for which certain performance security was provided rather than reclamation of lands for which such performance security was provided as in current law.

- Clarifies that an additional coal severance tax levied under current law must cease to be imposed for the subsequent calendar year, rather than just cease to be imposed as in current law, if the balance of the Fund is as described above and the mining permittee who is paying the additional tax has done so for each of the preceding five full calendar years.

- Requires that the performance security required under the Coal Mining Law be payable to the state and conditioned on the faithful performance of all the requirements of that Law and rules adopted under it and the terms and conditions of the permit.

- Revises the definition of "performance security" in the Coal Mining Law.

- Modifies the existing requirement that an applicant for a coal mining and reclamation permit must provide performance security in the full amount of the estimated cost of reclamation for a permitted coal preparation plant or certain coal refuse disposal areas by requiring such an applicant or permittee to do so if the applicant or permittee has not held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of five years or more.

- Authorizes an applicant for a permit for a coal preparation plant or certain coal refuse disposal areas that has held a permit issued under the Coal Mining Law for a period of five years or more to provide performance security either in the full amount of the estimated cost of reclamation or in an amount of $2,500 per acre of land together with reliance on the Reclamation Forfeiture Fund, and establishes notification procedures and procedures for the release of a portion of the performance security if such an applicant previously provided performance security in the full amount and elects to rely on the Fund.

- Requires, rather than authorizes as in current law, the Chief of the Division of Mineral Resources Management in the Department of Natural Resources to make adjustments to the estimated cost of reclamation and the amount of a permittee's performance security that is provided without reliance on the Reclamation Forfeiture Fund as the land affected by mining increases or decreases.

- Revises the financial responsibility requirements for repairing material damage and replacement of water supply resulting from subsidence for a permittee that provided performance security without reliance on the Reclamation Forfeiture Fund.

- Removes a provision in current law that requires disbursements from the Reclamation Forfeiture Fund to be made for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a surface mining permit issued under the Surface Mining Law.

- Removes a prohibition in current law against the use of money from the Reclamation Forfeiture Fund for the reclamation of land or water resources affected by material damage from subsidence, thus allowing money from the Fund to be used for those purposes.

- Requires each reclamation plan that is submitted as a part of a coal mining and reclamation permit application to be in the detail necessary for the Chief to determine the estimated cost of reclamation if the reclamation has to be performed by the Division of Mineral Resources Management in the event of a forfeiture of the performance security by the applicant, and removes the requirement that an applicant include an estimate of the cost per acre of reclamation in the reclamation plan.

- Declares an emergency.

CONTENT AND OPERATION

Imposition of a portion of the severance tax on coal

Current law levies a base tax of 10¢ per ton on the severance of coal from the soil or water of Ohio plus an additional tax on coal ranging from 12¢ per ton to 16¢ per ton depending on the balance of the Reclamation Forfeiture Fund at the end of each fiscal biennium. The additional tax is levied on all coal produced under a coal mining and reclamation permit for which a performance security has been provided. All of the money from the additional severance tax beyond the base 10¢ per-ton rate must be credited to the Reclamation Forfeiture Fund. (R.C. 5749.02(A)(1) and (B).)

Under current law, when at the close of any fiscal year the Chief of the Division of Mineral Resources Management in the Department of Natural Resources finds that the balance of the Reclamation Forfeiture Fund, plus estimated transfers to it from the Coal Mining Administration and Reclamation Reserve Fund, plus the estimated revenues from the above additional severance tax on coal for the remainder of the calendar year that includes the close of that fiscal year, are sufficient to complete the reclamation of lands for which certain performance security was provided together with reliance on the Reclamation Forfeiture Fund, the purposes for which the additional severance tax is levied must be deemed accomplished at the end of that calendar year. The bill revises the provision by stating that the balance of the Fund must be sufficient to complete the reclamation of **all** lands for which such performance security was provided rather than reclamation of lands for which such performance security was provided as in current law. (R.C. 5749.02(C).)

In addition, current law requires the Chief to certify the findings concerning the balance of the Fund to the Tax Commissioner within 30 days after the close of the fiscal year, and the additional severance tax must cease to be imposed after the last day of that calendar year on coal produced under a coal mining and reclamation permit if the permittee has paid the additional severance tax during each of the preceding five full calendar years. The bill qualifies the requirement by adding that the additional severance tax must cease to be imposed for the subsequent calendar year. Current law then stipulates that not later than 30 days after the close of a fiscal year, the Chief must certify to the Tax Commissioner the identity of any permittees who accordingly no longer are required to pay the additional severance tax. The bill qualifies that requirement by adding that the Chief must certify to the Tax Commissioner the identity of any permittees who no longer are required to pay the additional severance tax for the subsequent calendar year. (R.C. 5749.02(C).)

Performance security

Current law states that after a coal mining and reclamation permit application has been approved, the applicant must file with the Chief, on a form prescribed and furnished by the Chief, a required performance security for the reclamation of the land that is the subject of the permit. The bill adds that the required performance security must be payable to the state and conditioned on the faithful performance of all the requirements of the Coal Mining Law and rules adopted under it and the terms and conditions of the permit. (R.C. 1513.08(A).) Current law defines "performance security" to mean a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the Chief. The bill removes annuity from the definition. Further, the bill revises the definition concerning trust funds by requiring the state to be the primary beneficiary of the trust fund rather than a conditional beneficiary. (R.C. 1513.01(W).)

Current law requires an applicant for a coal mining and reclamation permit to provide a performance security in an amount using one of the following options:

(1) If the applicant elects to provide performance security without reliance on the Reclamation Forfeiture Fund, the amount of the estimated cost of reclamation as determined by the Chief for the increments of land on which the operator will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application; or

(2) If the applicant elects to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of the additional severance tax on coal (see above), an amount of $2,500 per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. However, in order to be eligible to provide such performance security, an applicant must have held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of not less than five years. In the event of forfeiture of the performance security, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the Chief must be obtained from money in the Reclamation Forfeiture Fund as needed to complete the reclamation. (R.C. 1513.08(C).)

Current law states that an applicant must provide performance security in accordance with option (1), above, in the full amount of the estimated cost of

reclamation as determined by the Chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine (R.C. 1513.08(C)). The bill qualifies the requirement by stating that if the applicant or permittee has not held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of five years or more, the applicant must then provide performance security in accordance with option (1), above, for such a plant or area. The bill also adds that if an applicant for a permit for a coal preparation plant or coal refuse disposal area or a permittee of a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine has held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of five years or more, the applicant or permittee may provide performance security for the coal preparation plant or coal refuse disposal area either in accordance with option (1), above, in the full amount of the estimated cost of reclamation as determined by the Chief or in accordance with option (2), above, in an amount of $2,500 per acre of land with reliance on the Reclamation Forfeiture Fund. If a permittee has previously provided performance security under option (1), above, for a coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine and elects to provide performance security in accordance with option (2), above, the permittee must submit written notice to the Chief indicating the election. Upon receipt of the written notice, the Chief must release to the permittee the amount of the performance security previously provided under option (1), above, that exceeds the amount of performance security that is required to be provided under option (2), above. (R.C. 1513.08(C).)

Adjustments to the performance security

Current law states that the amount of the estimated cost of reclamation and the amount of a permittee's performance security provided without reliance on the Reclamation Forfeiture Fund (see option (1), above) may be adjusted by the Chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. The bill retains the provision, but requires the Chief to make such adjustments. (R.C. 1513.08(E).)

Current law provides that a permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence may be satisfied by liability insurance required under the Coal Mining Law in lieu of the permittee's performance security if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence. The bill revises the provision by stating that if a permittee provided performance security without reliance on the Reclamation Forfeiture Fund (see option (1), above), the permittee's responsibility for repairing

material damage and replacement of water supply resulting from subsidence must be satisfied by either of the following:

(1) The purchase prior to mining of a noncancelable premium-prepaid liability insurance policy in lieu of the permittee's performance security for subsidence damage. The bill requires the insurance policy to contain terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence; or

(2) The provision of additional performance security in the amount of the estimated cost to the Division of Mineral Resources Management to repair material damage and replace water supplies resulting from subsidence until the repair or replacement is completed. However, if such repair or replacement is completed, or compensation for structures that have been damaged by subsidence is provided, by the permittee within 90 days of the occurrence of the subsidence, additional performance security is not required. In addition, the Chief may extend the 90-day period for a period not to exceed one year if the Chief determines that the permittee has demonstrated in writing that subsidence is not complete and that probable subsidence-related damage likely will occur and, as a result, the completion of repairs of subsidence-related material damage to lands or protected structures or the replacement of water supply within 90 days of the occurrence of the subsidence would be unreasonable. (R.C. 1513.08(K).)

Reclamation Forfeiture Fund revisions

Current law creates the Reclamation Forfeiture Fund consisting of all money that becomes the property of the state from the forfeiture of performance security that is required to be provided by a permittee under the Coal Mining Law. The Fund also consists of money transferred to it from the Coal Mining and Reclamation Reserve Fund, money from the collection of priority liens from the forfeiture of performance security, fines collected from civil penalties assessed by the Chief of the Division of Mineral Resources Management, fines collected from criminal penalties for violations of the Coal Mining Law, fines collected for impeding a public official's lawful duties that, prior to July 1, 1996, would have been a violation of the Coal Mining Law as it existed prior to that date, and money collected and credited to it from the coal severance tax. (R.C. 1513.18(A) and (B).)

Existing law requires the Chief to disburse money from the Reclamation Forfeiture Fund for the purpose of reclaiming land affected by coal mining under a coal mining and reclamation permit on which an operator has defaulted. In addition, the Chief must make disbursements from the Fund for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a coal mining and

reclamation permit issued under the Coal Mining Law or under a surface mining permit issued under the Surface Mining Law. The bill removes the provision that requires disbursements to be made from the Fund for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a surface mining permit issued under the Surface Mining Law. (R.C. 1513.18(B).)

Current law prohibits money from the Reclamation Forfeiture Fund from being used for reclamation of land or water resources affected by material damage from subsidence or mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit. The bill removes material damage from subsidence from the prohibition, thus allowing money from the Reclamation Forfeiture Fund to be used for reclamation of land or water resources affected by material damage from subsidence. (R.C. 1513.18(D)(4).)

Reclamation plans

Existing law requires each reclamation plan that is submitted as part of a coal mining and reclamation permit application to include, in the detail necessary to demonstrate that required reclamation can be accomplished, a statement that contains specified information regarding the proposed reclamation of the land that is the subject of the application. The bill adds that such a plan also must be in the detail necessary for the Chief to determine the estimated cost of reclamation if the reclamation has to be performed by the Division of Mineral Resources Management in the event of forfeiture of the performance security by the applicant. (R.C. 1513.07(C).) One of the specified pieces of information that is required in the reclamation plan statement is an estimate of the cost per acre of the reclamation. The bill eliminates the requirement to include such an estimate in the reclamation plan statement. (R.C. 1513.07(C)(5).)

Miscellaneous

The bill removes expired language from the statute regarding the performance security for coal preparation plants and coal refuse disposal areas (R.C. 1513.08(C)).

Emergency clause

Stating that there is a need to establish alternate financial security requirements for repairing damage to or restoration of land or water resources due to coal mining-related activities and subsidence, thus protecting the public from damage to such land or water resources by providing the necessary funding mechanism to repair or restore those resources, the bill declares an emergency (Section 3).

HISTORY

ACTION	DATE
Introduced	03-25-09
Reported, S. Environment & Natural Resources	04-23-09
Passed Senate (33-0)	04-29-09

s0073-ps-128.docx/kl