

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: H.B. 710 DATE: March 25, 1998
STATUS: As Introduced SPONSOR: Rep. Vesper
LOCAL IMPACT STATEMENT REQUIRED: Yes
CONTENTS: Surface mining

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
Surface Mining Administration Fund 527 (725-637)			
Revenues	- 0 -	Potential gain	Potential gain
Expenditures	- 0 -	Potential increase	Potential increase
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase	Potential increase
Attorney General Fund 106 (055-612)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

- Fund 527 (725-637) Surface Mining Administration may experience a gain in revenues and an increase in expenditures as a result of increased civil actions against surface mining operations. ODNR anticipates at least 10 additional civil actions each year as a result of this bill. In addition, Fund 527 will likely experience an increase in expenditures to administer the provisions in this bill, such as holding public hearings, keeping journalized records, and publishing newspaper notices for new surface mining applications.
- The General Revenue Fund, Reclamation Commission (725-412) will likely increase expenditures as a result of increased civil actions against surface mining operations.
- Fund 106 (055-612) Attorney General may experience a potential minimal increase in expenditures to represent ODNR in criminal cases against surface mining operations. Criminal penalties are expected to be extremely rare, less than one per year.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Certain Municipalities, Counties, and Townships			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase
Counties			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- The City of Springfield, Brown County Engineer, Knox County Commissioners, City of Newark, and Rich Township Quarry in Van Wert County are all permitted for surface mining operations. They will be required to comply with the new requirements under this bill when their permits are up for renewal. Each permit is valid for ten years. Expenditures will likely increase to comply with the renewal requirements every ten years. The scope of these costs could vary for each of the local governments.
- Municipalities may experience an increase in expenditures to hold public hearings and keep journalized records for new surface mining applicants.
- A court of common pleas may experience a minimal increase in revenues from criminal actions against surface mining operations. The court may also have a minimal increase in expenditures to cover the court costs. Courts of common pleas are funded primarily by counties. Criminal actions are expected to be extremely rare, less than one per year.

Detailed Fiscal Analysis

Background

In 1997, there were 15 new applicants for surface mining permits. In 1996, there were 31 new applicants. Currently, ODNR has 645 valid surface mining permits. Each permit is valid for a period of approximately ten years. An estimated 75% to 80% of the current valid permits (484 to 516) will renew their permits over the next ten years.

Each surface mining permit application costs \$250 with an additional \$30 per acre, which goes to Fund R30 (725-638) Surface Mining Reclamation Fees. The revenues into these funds are not expected to change, as the same number of applicants under current law is expected under this bill. In addition, the applicant must purchase surety bonds for the projects. Surface mining applicants must file surety bonds in the amount of \$2,000, or \$500 per acre of land to be affected, whichever is greater. The bonds shall be payable to the state and shall be conditioned upon the faithful performance by the operator of all things to be done and performed. The treasurer of the state holds the bond in trust.

Most surface mining operations are privately owned, although at least 5 surface mining permits are owned by local government entities. These include the City of Springfield, the Brown County Engineer, the Rich Township Quarry in Van Wert County, the City of Newark, and the Knox County Commissioners. These communities will likely experience an increase in expenditures in order to comply with the new requirements under this bill, at the time of renewal of their current permits.

Permit Application

This bill will require surface mining applicants to include a schedule of past violations and final resolutions in their applications. The Chief of ODNR may withhold issuance of the permit until the applicant submits proof that the violations have been corrected and that any civil penalties have been paid. Although it will probably require a little more staff time to review the additional requirements of the permits, ODNR does not anticipate the need for additional staff.

The applicant must submit a copy of a certified letter that shows that the Director of Transportation has been consulted regarding any streets and highways that will be used by vehicles entering or exiting the surface mining operation. The cost for a certified letter is approximately \$2.50 for a letter of normal size and weight.

The applicant must also participate in public hearings that will be held by the local authority. The public hearing must include documentation in a journalized record, which the applicant must submit to ODNR. The applicant must use these public hearings to consult with the local authorities about any streets or highways that will be used by vehicles entering or exiting the surface mining operation and the hours of the operations. The cost of holding a public hearing can vary, depending on the location (i.e. whether space must be rented), the supplies needed (i.e. photocopies for all participants), and the cost for the court reporter. The cost of the public hearing is to be borne by the local authority.

The applicant must also submit sworn statements that certify the applicant will abide by Ohio EPA laws and rules, as well as all requirements of any local jurisdiction including municipal corporations, counties, or townships.

Classes of Mining Industries

The ODNR Chief is authorized to establish classes of mining industries in order to develop different rules consistent for each class. This is not expected to incur additional costs for ODNR.

Mining and Reclamation Plan

Under current law, the surface mining applicant must submit a complete plan for the mining and reclamation of the area to be affected. This bill adds that the mining and reclamation plan must include provisions that establish planning, engineering, construction, and operating procedures designed to meet the new rules established under the various mining classes. The ODNR Chief may issue an order denying a permit if the Chief determines that the plan does not meet the requirements. In addition, the plan may be modified at any time to achieve the performance standards required of the plan. The Chief may propose amendments to the plan if an alternate measure, in lieu of one previously approved in the plan, will assist in complying with the requirements established in the new rules.

Rules

The ODNR Chief, in accordance with the Administrative Procedure Act, must adopt and enforce rules regarding the quality of public water systems, quality of private water systems, protection of water quantity, establishment of buffer zones, establishment of fencing, minimization of impact to prime farmland, and procedures for the use of explosives and blasting. This is not expected to incur additional costs for ODNR to develop the rules. However, ODNR anticipates an increase in civil actions against surface mining operations to enforce compliance with the new rules.

Compliance with Rules

Under current law, the Chief may issue orders to enjoin a surface mining operation if the operation is violating requirements of the law. This bill adds to this provision that if the Chief finds that an operator has failed to comply with any provision of an approved plan designed to meet the requirements and standards established in the new rules, the Chief may issue orders directing the operation to comply with these provisions.

Civil Penalties

This bill authorizes ODNR to assess civil penalties against violators of the following:

1. Conducting a surface mining operation without a valid surface mining permit.
2. Conducting a surface mining operation outside of the limits specified in the mining permit.
3. Violations of any of the environmental protection requirements of the law governing surface mining that causes environmental harm.

Civil penalties assessed under this bill must not exceed \$1,000 for each day of each violation. In determining the amount of the civil penalty, the ODNR Chief may consider the operation's history of previous violation, the seriousness of the violation, and hazard to the health or safety of the public. Under the new requirements under this bill, ODNR anticipates an increase of at least 10 civil penalties per year.

If ODNR issues a civil order, the chief has thirty days to inform the operation of the amount of the civil penalty and to provide an opportunity for an adjudicatory hearing with the Reclamation Commission pursuant to provisions in current law. The operation charged with the penalty will then have thirty days to pay the proposed penalty in full or, if the person wishes to contest the amount of the penalty or the fact of the violation, file a petition for review of the proposed assessment with the Reclamation Commission and forward the amount of the penalty to the Secretary of the Commission. The moneys are deposited into GRF (725-412) Reclamation Commission. If after the hearing, the Commission affirms or modifies the amount of the penalty, the operation charged with the penalty has thirty days to pay the amount in full or to file an appeal with the Court of Appeals in accordance with provisions in current law. At the time the petition for review of the proposed assessment is filed with the Secretary, the bill requires the person to forward the amount of the penalty to the Secretary for placement in the Reclamation Penalty Fund created in current law. This bill requires the Secretary to do either of the following:

1. If it is determined that the amount of the penalty should be reduced, within 30 days, the Secretary must remit the appropriate amount of the penalty to the operation, with interest. Any balance of the penalty, with interest, shall be forwarded to the ODNR Chief for deposit in the Surface Mining Administration Fund created under current law.
2. If the penalty was not reduced, the Secretary must forward the entire penalty, with interest, to the ODNR Chief for deposit in the Fund 527 (725-637) Surface Mining Administration Fund.

Failure to forward the money to the Secretary as required above within 30 days after the ODNR Chief informs the operation of the proposed amount of the penalty will result in a waiver of all legal rights to contest the violation or the amount of the penalty. Within 15 days after being informed of the penalty, this bill authorizes the operation charged with the penalty to request, in writing, an informal assessment conference to review the amount of the penalty. The conference will be presided over by the ODNR Chief or the Chief's designee other than the person that issued the notice of violation or order upon which the penalty is based. The bill requires the Chief to adopt rules governing procedures to be followed during informal

conferences. Time allowed for payment or appeal to the Reclamation Commission must be tolled while the penalty is being reviewed in an informal conference.

Criminal Penalties

Under current law, no person shall do any of the following:

1. Engage in surface mining without a valid permit;
2. Exceed the limits of a mining permit;
3. Falsify or omit information for the application for a permit;
4. Fail to perform mining standards.

Violators under the current law may be fined not less than \$100 or more than \$1,000 for the first offense. Each subsequent offense may be fined not less than \$200 or more than \$5,000, or imprisoned not more than six months, or both. The permit of any person convicted of a third offense may be revoked by the court at the time of conviction, and the court at that time may further order that no permit or amendment to a permit may be issued to the person under the surface mining law for a period of five years from the date of conviction. All revenues from the criminal actions will be deposited into the county court fund in which the trial was heard.

Criminal actions against surface mining operations are extremely rare, and ODNR usually resolves any problems through assistance and cooperation. ODNR anticipates less than one criminal action per year, on average.

Notice and Comment

Simultaneously with the filing of an application for a permit to engage in surface mining, this bill requires the applicant to submit to the ODNR Chief a copy of the advertisement. When the application has been determined by ODNR to be complete, the applicant is required to place the advertisement in a newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks. The cost for the advertisement will vary, depending on how many lines the advertisement will require and what the newspaper charges per line.

At the time of submission of the application, this bill also requires the applicant to notify each board of county commissioners, each board of township trustees, the legislative authority of each municipal corporation, the planning commissioners, each regional council of governments, and the board of directors of each conservancy district having jurisdiction over all or part of the area of the proposed operation of the applicant's intent to conduct a surface mining operation. In addition, the applicant must notify any private water company serving all or part of the affected area. Any local authorities may submit written comments, with respect to the effects of the proposed operation on the environment, to the ODNR Chief within 30 days. These comments must be transmitted to the applicant and made public at the same location at which the mining application is available for inspection.

Within thirty days after the last publication of the notice, any person having interest that is or may be affected by the proposed operation and any federal, state, or local government agency or authority may file written objections to the ODNR Chief, and request an informal conference on the application. The Chief must hold the conference within reasonable time in the county where the largest portion of the area to be permitted is located. The date, time, and

location must be given to the person requesting the conference, as well as advertised in a newspaper of general circulation in the locality of the proposed operation at least two weeks prior to the scheduled conference date. An electronic or stenographic record must be kept at the conference, unless waived by all parties. This record must be made maintained and be accessible for all parties. The cost for the conference and records will vary, depending on the location (i.e. whether space must be rented), the supplies needed (i.e. photocopies for participants) and cost of electronic recorder or court reporter.

Agreement for Improvement of Roads

This bill authorizes a local authority to enter into an agreement with the operator of a surface mining operation for the improvement of roads under the jurisdiction of the local authority. Under current law, if the road is a township road, then the township is responsible for maintaining and improving the road. Likewise, if the road is a county road, the county is responsible. If the road is a state road, then the state is responsible.

Grandfathering Clause

This bill specifies that its requirements apply only to applications for surface mining permits filed on or after the bill's effective date. An application for a surface mining permit that was filed prior to the effective date of this bill and has not been granted or denied by the Chief must be approved or denied based upon the requirements of the law governing surface mining as they existed prior to the effective date to this bill. In addition, existing operations will be subject to the requirements of this bill when their permit is up for renewal.

□ *LBO staff: Erica Burnett, Budget/Policy Analyst*

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