

- County sheriffs will serve subpoenas for participation in adjudicatory hearings for the Mine Examining Board. Fees and mileage for sheriffs and witnesses will be \$1 each plus \$0.50 for the first mile and \$0.20 for each additional mile. Fees and mileage will be paid by the county's general fund. The Mine Examining Board will pay the sheriff through the treasurer's office, which reimburses the county's general fund. The Mine Examining Board will be reimbursed by assessing costs on the judgement debtor, which could be the Division of Mines and Reclamation.
- In cases of contempt of the subpoena, or refusal to testify, the court of common pleas shall compel obedience by attachment procedures for contempt. The county sheriff is paid \$3 for each person named in the writ.
- Appeals of decisions made by the Mine Examining Board will be made to the Franklin County Court of Appeals, or to the court of appeals of the county in which the activity has occurred, is occurring or will occur.

Detailed Fiscal Analysis

Mine Examining Board

Membership and Training Requirements

This bill sets up a codified procedure that guides the selection of the three Board members, including certain experience requirements. In addition, each Board member must complete an annual refresher training and 24 hours of continuing education during each member's three-year term of office on the topics of mining technology and laws governing mining health and safety. The annual refresher training is offered free of charge from the Division of Mines and Reclamation, so this will not impose costs to the Board. However the continuing education must take place in Morgantown or Beckley, West Virginia, and the Board must provide travel, lodging and tuition for the members to complete the continuing education requirements.

Ambiguity in Current Law

When the Division of Reclamation at Industrial Relations merged with the Division of Mines at ODNR in October 1995, the Reclamation Commission (formerly the Reclamation Board of Review) and the Mine Examining Board were retained as separate appellate entities within the new Division of Mines and Reclamation at ODNR. The two entities essentially retained the jurisdiction that they possessed prior to the merger. Under current law, the Mine Examining Board conducts examinations and provides safety training for mine employees, hears appeals of recommendations of matters that are not specifically prohibited by law, and hears appeals pertaining to neglect of duty, incompetency or malfeasance in office against deputy mine inspectors. The Reclamation Commission hears appeals that are related to final decisions made by the Chief of the Division. There is no language limiting the types of Chief's decisions that are subject to the Reclamation Commission's review. Because safety issues were not excluded from the types of Chief's decisions, and because the Mine Examining Board had historically handled safety-related appeals, ambiguity was created in terms of which entity has jurisdiction for these safety-related appeals.

This question came up when the Southern Ohio Coal Company filed an administrative appeal in January 1996 for a Notice of Violation (NOV) citation. The NOV that was issued in December 1995 asserted that the examinations of the mine's intake and return air courses must be conducted at least once every three days, while the Southern Ohio Coal Company argued that such inspections are only required once every seven days. The appeal was filed with both the Mine Examining Board and the Reclamation Commission, but it was unclear which entity had jurisdiction. The Division of Mines and Reclamation filed a Motion to Dismiss this appeal with the Reclamation Commission because the Division argued that the Reclamation Commission lacks jurisdiction to hear this appeal, and that jurisdiction should lie with the Mine Examining Board. But the Franklin County Court of Appeals found that regardless of the subject matter, the case involved a NOV, issued pursuant to ORC 1563.24 which means that the matter falls within

the jurisdiction of the Reclamation Commission, as jurisdiction is defined under ORC 1513.13 (A)(1).

New Jurisdiction

This bill clearly specifies which appeals will fall under the jurisdiction of the Mine Examining Board. This includes any appeal regarding a determination made by the Chief regarding a violation of a mining law that was committed involving mining safety. All other appeals that do not fall within the jurisdiction of the Mine Examining Board will be heard in the Reclamation Commission. According to a spokesperson for the Reclamation Commission, the Southern Ohio Coal Company case is the only case that the Reclamation Commission has ever seen that would fall under the Mine Examining Board's authority under the requirements of this bill. This provision is not expected to impact the workload for either the Mine Examining Board or the Reclamation Commission, with the exception of maybe one case every couple of years or so; therefore, it will not have a fiscal impact on either of these two entities.

Hearing Procedures

This bill sets up procedures for conducting hearings in the Mine Examining Board that mirror the procedures used by the Reclamation Commission. The Mine Examining Board must provide notice of the time and place of the scheduled hearings at least five days prior, and hearings are to be recorded. The Mine Examining Board must prepare a report that includes the findings and conclusions of the hearing, and copies of the report must be sent by certified mail to all parties. Finally a party has 14 days to file written objections of the Board's report, and the Board may adopt, reject, modify the report or hear additional evidence. Exact costs of these procedures are indeterminable and will vary with each case.

Court of Appeals

Under this bill, any party aggrieved or adversely affected by a decision of the Board may appeal to the Franklin County Court of Appeals or to the court of appeals of the county in which the activity addressed by the decision of the Board occurred, is occurring or will occur. If the Board is found to be arbitrary, capricious, or otherwise inconsistent with law, the court must vacate the Board's decision and remand it to the board for any further proceedings that it directs.

Court of Common Pleas

In cases of contempt of the subpoena, or refusal to testify, the court of common pleas in the county in which the disobedience, neglect or refusal occurs shall compel obedience by attachment procedures for contempt upon application of the Chief or any Board member. The county sheriff is paid \$3 for each person named in the writ.

Subpoena Authority

For the purposes of participation in an adjudicatory hearing conducted by the Mine Examining Board, the Chief of the Division of Mines and Reclamation or the Board may require the attendance of witnesses and the production of books, records, and papers, and at the request of any party. The sheriff of each county where the witnesses or materials are found will serve the

subpoenas, which are served and returned in the same manner that subpoenas issued by courts of common pleas are served and returned. Fees and mileage for sheriffs and witnesses will be \$1 each plus \$0.50 for the first mile and \$0.20 for each additional mile. Fees and mileage will be paid by the county's general fund. The Mine Examining Board will pay the sheriff through the treasurer's office, which reimburses the county's general fund. The Mine Examining Board will be reimbursed by assessing costs on the judgement debtor, which could be the State.

First Aid

This bill eliminates the requirement for at least one EMT-basic or EMT-I at each surface mine where at least 25 or more persons are employed, and instead requires that all operators of surface mines provide at least one first aid provider at a surface mine. A first aid provider includes an EMT-basic, an EMT-I, a paramedic, or a supervisory employee at a surface mine that has satisfied the training requirements under this bill. The operator of the mine must provide the emergency medical services training or first aid training at his or her expense to comply with the requirements under this bill. No additional costs will be imposed on the Division of Mines and Reclamation.

The bill requires each operator of a surface mine to establish, keep current, and make available for inspection an emergency medical plan. The Division of Mines and Reclamation conducts safety inspections of mines approximately four times a year, at which time the verification of emergency medical plans could be included. Thus, this would not impose additional costs on the Division.

Repeal of Weights and Measures and Explosion Provisions

This bill repeals several sections of the Revised Code that involve provisions for weights and measures in mining, and certain explosion provisions. At one time, coal miners were paid based on the amount of coal that they extracted, and these provisions contained certain guidelines that employers and employees had to follow under the direction of the Chief of the Division of Mines and Reclamation. This is no longer applicable as coal miners are now compensated through a wage and salary schedule. Also, the provisions concerning explosives in coal mines are no longer applicable because coal mines now use a "continuous miner," or an automated machine that mechanically breaks up coal without the need of explosives. Finally the provision that prohibits calcium carbide within underground mines is repealed under this bill because calcium carbide is no longer used since battery operated lights are used instead. The repeal of these sections will not have a fiscal effect.

□ LBO staff: Erica Thomas, Budget/Policy Analyst

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