

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **S.B. 386** DATE: **December 12, 2008**

STATUS: **As Passed by the Senate** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Transfers certain environmental permitting programs concerning coal mining and reclamation operations from the Environmental Protection Agency to the Department of Natural Resources and makes other changes**

## State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
<b>Surface Water Protection Fund (Fund 4K40) – Environmental Protection Agency</b>	
Revenues	Loss in surface water permit fee revenue
Expenditures	Decrease in administrative costs
<b>Coal Mining Administration and Reclamation Reserve Fund (Fund 5260) – Dept. of Natural Resources</b>	
Revenues	Gain from surface water permit fees; potential gain from civil penalties; potential gain from increase in coal severance tax
Expenditures	Potential increase for administration and enforcement activities
<b>General Revenue Fund – Department of Natural Resources</b>	
Revenues	- 0 -
Expenditures	Increase in administrative costs related to permit programs
<b>General Revenue Fund – Attorney General</b>	
Revenues	Potential negligible gain
Expenditures	- 0 -
<b>Victims of Crime/Reparations Fund (Fund 4020) – Attorney General</b>	
Revenues	Potential negligible gain
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Surface Water Protection Fund.** The Surface Water Protection Fund (Fund 4K40) in the Environmental Protection Agency (EPA) is likely to experience a loss in revenue from surface water permit fees related to coal mining and reclamation activities, which are transferred to the Department of Natural Resources (DNR) under the bill. The loss in revenue is likely to be offset by a decrease in administrative costs related to the aspects of the permit programs transferred to DNR.
- **Permit fees.** The bill requires fees collected by DNR's Division of Mineral Resources Management for the permit programs transferred under the bill to be deposited in the Coal Mining Administration and Reclamation Reserve Fund (Fund 5260). The fund would experience a resulting gain in revenues, potentially offset by any administrative costs paid for out of the fund to administer and enforce coal mining and reclamation programs.



- **Division of Mineral Resources Management.** The Division of Mineral Resources Management is likely to incur increased administrative costs of up to \$1.6 million from (1) GRF line item 744321, Division of Mineral Resources Management, and (2) the Coal Mining Administration and Reclamation Reserve Fund to administer the three permit programs being transferred under the bill for coal mining and reclamation activities.
- **Civil penalties.** The bill requires the Chief of the Division of Mineral Resources Management to set civil penalties for violations of the certifications and permits in the bill, which are to be deposited into the Coal Mining Administration and Reclamation Reserve Fund.
- **Coal severance tax.** The bill requires that any additional full-time staff hired by the Division of Mineral Resources Management to perform technical reviews of coal mining and reclamation operation permits in order to meet mandatory deadlines must be paid out of the Coal Mining Administration and Reclamation Reserve Fund. The bill allows the Chief of the Division to request an increase in the coal severance tax of up to 4 cents per ton in order to pay for additional technical review staff if deemed necessary to meet the mandatory deadlines.
- **Criminal penalties.** The GRF and the Victims of Crime/Reparations Fund (Fund 4020) under the Attorney General's Office may experience negligible gains from the portion of local court costs remitted to the state from criminal cases resulting from violations under the bill.

### *Local Fiscal Highlights*

<b>LOCAL GOVERNMENT</b>	<b>FY 2009 – FUTURE YEARS</b>
<b>Counties</b>	
Revenues	Potential minimal gain from criminal fines
Expenditures	Potential minimal increase in criminal justice costs
<b>Municipalities</b>	
Revenues	Potential minimal gain from criminal fines
Expenditures	Potential minimal increase in criminal justice costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Counties and municipalities may experience minimal gains in revenue from criminal fines resulting from certain permit violations under the bill. Additional criminal justice costs may result, but may also be offset by fine revenue.

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## *Detailed Fiscal Analysis*

The bill transfers authority to administer three surface water permit programs with respect to coal mining and reclamation operations from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Natural Resources (DNR). Currently, EPA's Division of Surface Water administers all aspects of these programs, including jurisdiction over permits for coal mines and reclamation activities. Under the bill, the mining and reclamation aspects of the programs would be housed within DNR's Division of Mineral Resources Management. The three permits to be transferred are section 401 water quality certifications, permits to install disposal systems (permits to install), and National Pollutant Discharge Elimination System (NPDES) permits.

In addition, the bill provides for criminal penalties for violations of these permits; makes changes to certain requirements and procedures for the issuance of coal mining and reclamation operation permits, which are currently overseen by the Division of Mineral Resources Management; authorizes the hiring of independent contractors for certain permit review procedures; and authorizes the Chief of Mineral Resources Management to request an increase in the coal severance tax to offset the costs of hiring technical permit reviewers if necessary.

### **Transfer of authority to issue permits and certifications**

Currently, EPA's Division of Surface Water administers the three water quality permit programs affected by the bill, which are as follows:

- ***Section 401 certifications:*** These certifications are required by section 401 of the Federal Water Pollution Control Act for persons engaging in dredging or filling operations. The Act requires such persons to acquire a water quality certification from the state in which the operations are taking place. Section 401 certifications certify to the U.S. Army Corps of Engineers that the dredging or filling will not violate certain water quality standards.
- ***Permits to install:*** These permits are required to install or modify wastewater disposal systems, including wastewater treatment plants, sewer extensions, pump stations, and storage tanks.
- ***NPDES permits:*** The National Pollutant Discharge Elimination System requires permits for the discharge of sewage, industrial waste, or other wastes into state waters. Permits are required for each "point source" of wastewater discharged from a facility, such as any individual pipe, ditch, conduit, tunnel, well, or other means of discharging wastewater. General permits, rather than individual permits, may also be issued for storm water disposal systems.

EPA's primary sources of funding for these programs are currently surface water permit fees paid by applicants and solid waste tipping fees. Section 401 certifications and the NPDES program are also supported by federal funds, and section 401 certifications also receive some funding from isolated wetland permit fees. EPA received total FY 2009 appropriations of \$1.8 million for the section 401 program, \$5.3 million for the permit to install program,

\$2.0 million for NPDES storm water permits, and \$10.1 million for other NPDES permits. These funding levels encompass all aspects of these programs and are not limited to the coal mining and reclamation activities that would be regulated by DNR under the bill.

### **Collection of permit fees**

Under the bill, the Chief of the Division of Mineral Resources Management is required to adopt rules that set fees for each of the three permit programs transferred to the Division's authority. Currently, surface water permit fees collected by EPA are deposited into the Surface Water Protection Fund (Fund 4K40) and are used in part to cover administrative costs of the programs. However, under the bill, fees collected for these permits by DNR from coal mining and reclamation operations would be deposited into the Coal Mining Administration and Reclamation Reserve Fund (Fund 5260). This fund is currently used for the administration and enforcement of the Coal Mining and Reclamation Law.

As a result of the bill, the Surface Water Protection Fund would lose fee revenue from coal mining and reclamation operations. The amount of fee revenue foregone by the Surface Water Protection Fund and the amount gained by the Coal Mining Administration and Reclamation Reserve Fund is dependent on the number of coal mining and reclamation entities that would be subject to the permits issued under the bill, as well as the respective fee amounts set by EPA and DNR. It is likely that the reduction in fee revenue paid to EPA would be offset by the reduced operating costs resulting from not having to administer the coal-related portion of the programs under the bill, and that the increased revenue to DNR would defray its own increased administrative costs.

According to DNR's recently released Mineral Industries Report for calendar year 2007, there are a total of 29 companies operating 86 coal mines in 16 counties that may be subject to these water quality permits and which would be required to pay fees upon renewal of permits. However, as fees would only be paid by mines seeking new permits or renewing existing permits, revenues for any given fiscal year would not necessarily encompass all Ohio coal mines that are subject to permitting.

### **Administrative costs**

As the bill requires the Division of Mineral Resources Management to assume responsibility for the coal mining and reclamation aspects of the three permit programs, the costs of administering those programs will be borne by the Division. Currently, DNR estimates the additional cost of assuming responsibility for the programs to be approximately \$1.6 million annually, though it is not yet clear how those costs would be split across various funding sources. At least some of these costs will likely be paid out of the Division's main GRF operating line, 744321, Division of Mineral Resources Management. That line item is currently funded at a level of \$3.1 million in FY 2009. In addition, the Coal Mining Administration and Reclamation Reserve Fund could also be a source of operating support for the programs from the fees generated by the transferred permit programs. This fund is currently capitalized by strip mining administration fees and received an appropriation of \$1.9 million in FY 2009.

Any increase in administrative costs would depend on several factors. According to DNR, the Division of Mineral Resources Management would require an estimated 10 to 15 additional staff for permit review, site review, and federal water law expertise. It is possible that some permitting staff may be transferable from EPA. However, DNR anticipates that it would require its own expertise specific to the coal mining sector as well as areas such as water law that would require more specialized personnel. In addition, DNR indicates that it would likely require additional equipment purchases, including vehicles, information technology, and possibly office space.

Correspondingly, the EPA's Division of Surface Water would see a decrease in its administrative costs associated with the three programs. According to EPA, its current total costs for operating the coal mining related aspects of these programs are approximately \$1.4 million. In addition, there are 11.5 full-time equivalent (FTE) staff assigned to the coal related portions of these programs. Three of these staff are dedicated exclusively to coal projects under the section 401 program, while others work on permits across various other sectors in addition to coal mining. Any decrease in costs to EPA would depend on how many staff could be transferred from EPA to DNR and any additional program costs that may be reduced with respect to permits for coal mining and reclamation operations.

### **Civil and criminal penalties**

The bill requires the Chief of the Division of Mineral Resources Management to set civil penalties for violations of the provisions of each of the permit programs transferred under the bill and requires those penalties to be deposited into the Coal Mining Administration and Reclamation Reserve Fund.

The bill also establishes criminal penalties for violations of the permit to install and NPDES programs. Under the bill, a person who modifies or constructs a new disposal system at a coal mining and reclamation site without a permit to install is guilty of a third-degree misdemeanor (M3) on a first offense, a second-degree misdemeanor (M2) on a second offense, and a first-degree misdemeanor (M1) on the third and each subsequent offense. Each ten-day period that an offense continues constitutes a separate offense. An M3 offense is punishable by a fine of up to \$500 and up to 60 days in jail, an M2 offense by a fine of up to \$750 and up to 90 days in jail, and an M1 offense by a fine of up to \$1,000 and up to 180 days in jail.

In addition, a person who violates the terms or conditions of a permit to install or an NPDES permit, or who makes a false statement, representation, or certification in applying for an NPDES permit, is subject to a fine of up to \$25,000.

The counties and municipalities likely to be affected most by the bill are those that have a significant coal mining presence, concentrated in 16 counties in eastern and southeastern Ohio. These provisions may impose additional criminal justice costs on such counties and municipalities, though they are not likely to be more than minimal. Local entities may experience gains in court cost and fine revenue from any convictions that may result, thus offsetting the costs of prosecuting such cases. The state may also gain a negligible amount of state court cost revenue that is deposited into the GRF and the Victims of Crime/Reparations Fund (Fund 4020).

### *Coal mining and reclamation operation permits*

The bill makes various changes to the requirements and procedures for issuing and denying coal mining and reclamation operation permits. Most significantly, the bill requires the Chief of the Division of Mineral Resources Management to approve staff overtime and enter into outside contracts if deemed necessary to meet the mandatory deadlines for granting or denying a permit application. These provisions may cause the Division to incur minimal administrative cost increases from its GRF operating line item.

The bill requires that money in the Coal Mining Administration and Reclamation Reserve Fund be used to hire additional full-time technical review staff for the purpose of meeting mandatory deadlines for granting or denying coal mining and reclamation operation permits. If additional funding is necessary, the bill permits the Chief of the Division of Mineral Resources Management to request an increase in the coal severance tax of up to 4 cents per ton to pay for such staff. Any funds resulting from the increase must only be used to pay for the technical review staff.

Currently, a rate of 8.095 cents per ton is used for contributions to DNR's coal mine regulatory operations. Using figures from tax year 2007, 22.3 million tons of coal were subject to the severance tax, resulting in just over \$1.8 million in revenue for mining regulation purposes. An additional 4 cents per ton imposed on this amount for the purpose of hiring additional technical review staff would result in an additional \$892,000, for a total of approximately \$2.7 million.

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