Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 73 of the 128th G.A. **Date**: March 31, 2009

Status: As Introduced **Sponsor**: Sens. Niehaus and Wilson

Local Impact Statement Procedure Required: No — No local cost

Contents: Makes changes to performance security requirements for coal mining and reclamation operations

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
General Revenue Fund	
Revenues	- 0 -
Expenditures	Potential minimal increase for estimating permittee reclamation costs
Bond Refunds Fund (Fund R017)	
Revenues	Potential gain from additional performance security payments
Expenditures	Potential increase for refunding additional performance security
Reclamation Forfeiture Fund (Fund 5310)	
Revenues	Potential gain from supplemental severance tax and additional forfeited performance security for subsidence damage
Expenditures	Potential increase for subsidence damage costs, potentially offset by decrease in surface mining reclamation costs

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The Division of Mineral Resources Management in the Department of Natural Resources (DNR) may incur minimal increases in administrative costs from the GRF for estimating reclamation costs for coal mining permit applicants.
- The Bond Refunds Fund (Fund R017) may gain revenue from additional performance security payments by coal mining operations for subsidence damage, which would either be refunded to an operator or forfeited to the Reclamation Forfeiture Fund (Fund 5310), depending on an operator's reclamation activities.
- The Reclamation Forfeiture Fund (Fund 5310) may gain revenue from a change in the collection of the supplemental coal severance tax and from forfeitures of additional performance security for subsidence damage. Forfeiture revenue would be expended for reclamation costs associated with such damage. These expenditures may be offset by a decrease in costs due to the bill's removal of certain surface mining reclamation requirements.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Background

Under current law, an applicant for a coal mining and reclamation permit must provide financial security to the Department of Natural Resources (DNR) conditioned on the applicant's faithful execution of operations pursuant to Ohio's Coal Mining Law. An applicant may provide one of two types of performance security to the Department: (1) full performance security in an amount determined by the Division of Mineral Resources Management for the full cost of reclamation of the land mined by a coal mining operation; or (2) partial performance security in an amount of $2,500 per acre of land to be reclaimed, along with reliance on the Reclamation Forfeiture Fund (Fund 5310) to cover additional reclamation costs in the event of forfeiture of the performance security, plus the operator's payment of a supplemental coal severance tax of between 12 and 16 cents per ton that is deposited into the Reclamation Forfeiture Fund (Fund 5310), depending on the balance in the fund. Current law allows a mining operation to choose option (2) only if it has held a permit for at least five years. Current law also requires an applicant for a permitted coal preparation plant or coal refuse disposal area that is located outside a permitted mine area to provide full performance security under option (1).

Changes to supplemental coal severance tax collections

Under current law, if at the end of a fiscal year the balance of the Reclamation Forfeiture Fund (Fund 5310) is sufficient to cover the reclamation of lands for which a performance security has been provided, and a permittee choosing option (2) above has paid the additional severance tax for each of the preceding five full calendar years, the supplemental severance tax must cease to be imposed on that permittee. Under current law, once a permittee is no longer required to pay the additional severance tax, it could continue not to pay it even in years in which the Reclamation Forfeiture Fund balance is insufficient to cover reclamation costs.

The bill requires that the supplemental severance tax on such a permittee would cease to be imposed only for the subsequent calendar year. Thus, under the bill, if at the end of a calendar year for which a permittee is not required to pay the additional severance tax, the balance in the Reclamation Forfeiture Fund is not sufficient to cover reclamation costs, the permittee would be required to pay the tax again beginning with the next calendar year. The bill would potentially increase revenues to the fund from permittees that otherwise might have ceased paying the additional tax altogether under current law.

Coal preparation plants/coal refuse disposal areas

The bill requires an applicant for a coal preparation plant or coal refuse disposal area that is located outside a permitted mine area to provide full performance security only if the applicant has not held a coal mining or reclamation permit for at least five years. The bill adds that if such an applicant has held a permit for five years or more, that applicant may provide a partial performance security under option (2), potentially increasing the liability to the Reclamation Forfeiture Fund for reclamation costs in the event of forfeiture.

Performance security adjustments

The bill amends current law to require, rather than allow, the Chief of the Division of Mineral Resources Management to increase or decrease the amount of a mining operation's performance security depending on changes in the estimated cost of reclamation. The bill also requires that a permittee who provided full performance security must assume responsibility for material damage and water supply replacement resulting from subsidence by either purchasing a liability insurance policy or by providing additional performance security in the amount of the estimated cost to the Division to repair any subsidence damage.

If a permittee chooses to provide the additional performance security, DNR would collect these additional payments in the Bond Refunds Fund (Fund R017), which is a holding account for performance security posted by mining companies. Companies that satisfactorily complete reclamation activities receive refunds of their performance security from the fund, while performance security that is forfeited by companies that do not satisfactorily complete reclamation is deposited into the Reclamation Forfeiture Fund and used to cover the Division's costs of any subsidence repair or water supply replacement. The additional performance security provided for in the bill for subsidence repair would be held by Fund R017 and refunded or forfeited into Fund 5310, depending on a particular mining company's reclamation performance.

Reclamation Forfeiture Fund changes

Current law requires DNR to use the Reclamation Forfeiture Fund to pay for reclaiming areas outside a surface mining area that a surface mine operator has affected by its operations and has failed to reclaim under its surface mining permit. The bill removes this requirement, effectively allowing for a reduction in expenditures from the Reclamation Forfeiture Fund by any amounts that would have been used to reclaim such affected land. The bill also adds a provision allowing the Fund to be used for reclamation of land or water resources affected by material damage from subsidence, which could potentially increase expenditures depending on the amount of subsidence damage that would have to be reclaimed.

Reclamation plans

Under current law, a coal mining and reclamation permit application must include a reclamation plan, including an estimate of the per-acre cost of reclamation.

The bill removes the requirement for this estimate and instead requires that an application contain the level of detail necessary for the Division of Mineral Resources Management to estimate the cost of reclamation in the event that an operator forfeits its performance security and the Division is required to conduct the reclamation. This requirement for the Division to conduct cost estimates may increase the administrative costs to the Division by a minimal amount, which would most likely be borne by the Division's GRF operating expenses.

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