Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 163 of the 129th G.A. **Date**: June 21, 2011

Status: As Enacted **Sponsor**: Rep. Balderson

Local Impact Statement Procedure Required: No

Contents: Revises the coal mining law relative to surface disturbances, set-back distances, and alternative water treatment and supply requirements

State Fiscal Highlights

- The bill could potentially result in some minimal increase in administrative costs paid from the Coal Mining and Reclamation Reserve Fund (Fund 5260), the operating fund used by the Department of Natural Resources' Division of Mineral Resources Management to oversee coal mining regulation.
- The Reclamation Forfeiture Fund (Fund 5310) could gain new revenues from a new fee the bill imposes on permittees who provide alternative financial security for post-reclamation water treatment and alternative water supplies with reliance on the fund. Any additional expenditures for water treatment and supply activities related to mines that have forfeited their financial security would be at least partially offset by these fees.
- The bill makes other changes to alternative financial security requirements and to the allowable use of money in the currently inactive Mined Land Set Aside Fund (Fund 3CH0).

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Surface disturbances and set-back distances

The bill revises Ohio's coal mining law concerning permits for strip mining on land where the mineral rights have been severed from the surface rights. Specifically, the bill specifies that if an applicant for a permit to mine on such lands will use strip mining methods resulting in surface disturbance, the applicant must obtain either (1) the written consent of the surface owner to the surface disturbance, rather than just to the extraction of coal, as in current law, or (2) a conveyance expressly granting or reserving the applicant's right to extract coal by methods that cause surface disturbance. Additionally, the bill specifies that set-back requirements for the location of coal mining operations must be measured horizontally. (Current law does not specify the basis for measuring such distances.) This provision essentially codifies the current set-back compliance standard used by the Department of Natural Resources' Division of Mineral Resources Management. Overall, these provisions would likely have no more than a minimal effect on the Division's administrative costs to process coal mining permit applications. Such costs are paid out of the Coal Mining Administration and Reclamation Reserve Fund (Fund 5260).

Financial security for alternative water treatment or supply

Under current law, a coal mining permittee is required to provide an alternative financial security if the Chief of the Division of Mineral Resources Management determines (1) that a coal mining permittee is responsible for mine drainage that requires water treatment after reclamation is completed, or (2) that a permittee must provide an alternative water supply after reclamation is completed. The bill would allow the alternative financial security for these purposes to be funded incrementally over a period of time, not to exceed five years, with reliance on guarantees or other collateral provided by the permittee and approved by the Chief. Performance security and alternative financial security are currently paid into the Bond Refunds Fund (Fund R017), which holds performance bonds and refunds them when reclamation is successfully completed. Currently, there are 118 active permits for coal mining operations in Ohio, of which 103 are surface mines and 15 are underground mines.

Alternative financial security with reliance on the Reclamation Forfeiture Fund

Also under current law, permittees who provide performance security with reliance on the Reclamation Forfeiture Fund (Fund 5310) pay a supplemental severance tax of 14 cents per ton for that purpose. That is, permittees who pay the supplemental severance tax are not required to provide a full performance security for land reclamation, and any reclamation costs that these permittees fail to pay are paid from Fund 5310. Currently, of the 118 active coal mines in Ohio, 106 of them (operated by 35 companies) pay the additional severance tax and rely on Fund 5310. However, there are currently no active reclamation projects that are currently being supported from the fund.

The bill would allow the use of alternative financial security for water treatment and supply to be funded incrementally with reliance on Fund 5310, and would require such a permittee to pay a semiannual fee of 7.5% of the average balance of the alternative financial security during the preceding six months. For example, if the average amount of alternative financial security paid by a permittee during the months of January to June was $1,000, the fee the permittee pays in July would be $75. If the average of the amount of the financial security increases to $1,100 during July through December, the fee paid in January would be $82.50. Under the bill, revenue from these fees would be deposited into Fund 5310. Finally, the bill would expand the allowable use of money in Fund 5310 to cover long-term water treatment or long-term alternative water supplies on areas affected by mining on which a permittee has defaulted or not fully funded an alternative financial security.

Under the bill, if a coal mining company forfeits its alternative financial security or otherwise does not fully complete water treatment activities or provide an alternative water supply when required, it would fall to Fund 5310 to cover these costs. Any additional expenditures from Fund 5310 for these purposes would be at least partially offset by the fees paid into the fund by those coal mining operations that choose to pay them while incrementally funding their alternative financial security.

Mined Land Set Aside Fund

The bill changes the allowable uses of money in the Mined Land Set Aside Fund (Fund 3CH0) to generally include the same uses as those of the Abandoned Mine Reclamation Fund (Fund 3B50), with the exception of research and demonstration projects related to developing reclamation and water quality control program methods and techniques. Both funds receive federal funding for abandoned mine land reclamation under the Surface Mining Control and Reclamation Act of 1977; however, Fund 3CH0 is currently inactive and has no cash balance.

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