

BILL: **Am. H.B. 384**

DATE: **June 30, 1999**

STATUS: **As Enacted – Effective November 24, 1999
(Certain provisions effective January 1,
2002)**

SPONSOR: **Rep. Householder**

LOCAL IMPACT STATEMENT REQUIRED: **No LGF and LGRAF losses to local governments
resulted after the as introduced bill**

CONTENTS: **Changes to the Mine Examining Board, requirements for onsite first aid providers at
surface mines, and repeals certain provisions of the Revised Code involving weighing and
measuring and explosions at coal mines. Increases the coal usage tax credit from \$1 per
ton to \$3 per ton, and allows some additional usage to qualify for the credit.**

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	Potential minimal gain	Loss of \$11.7 million	Loss of \$58.4 million in FY 2002. Loss of \$35.1 million in FY 2003 – 2005.
Expenditures	Potential increase	Potential increase	Potential increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- The Mine Examining Board must provide 24 hours of continuing education every three years and an annual refresher training for each of the Board members. Not only must the Mine Examining Board pay for tuition if applicable, but travel and lodging as well.
- The Mine Examining Board must provide written notification of the time and place that hearings will be held. After conducting the hearing, the Mine Examining Board must prepare a report including the findings and conclusions, and the report must be sent by certified mail to all parties.
- 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.
- The expansion of the coal credit will reduce state revenues by \$12.3 million in FY 2001, \$61.4 million in FY 2002 (almost a double impact; see below for explanation), and \$36.8 million in FY 2003 through FY 2005. The coal credit is scheduled to sunset after tax year 2005. The GRF share of the revenue loss will be \$11.7 million in FY 2001, \$58.4 million in FY 2002, and \$35.1 million in FY 2003 through FY 2005.

Local Fiscal Highlights



LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	Minimal increase	Minimal increase	Minimal increase
Expenditures	Minimal increase	Minimal increase	Minimal increase
LGF + LGRAF (Counties, Municipalities, Townships, Special Districts)			
Revenues	-0-	-0-	Loss of \$0.6 million in FY 2001; Loss of \$3.0 million in FY 2002; Loss of \$1.8 million in FY 2003 through FY 2005
Expenditures	-0-	-0-	-0-

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

- 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.
- The reductions in the public utility excise tax and in the corporate franchise tax caused by the expansion of the coal tax credit result in a revenue loss to local governments. The state Local Government Fund (LGF) and the state Local Government Revenue Assistance Fund (LGRAF) receive 4.2% and 0.6%, respectively, of both public utility excise tax and corporate franchise tax collections. The combined LGF and LGRAF revenue losses are estimated to be \$0.6 million in FY 2001, \$3.0 million in FY 2002, and \$1.8 million in FY 2003 through FY 2005.

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.

Coal Usage Tax Credit – Gross Receipts Tax and Corporate Franchise Tax

For tax year 1998, which covered the May 1997 through April 1998 period, the existing \$1 per ton coal credit for Ohio-mined coal against the public utility excise tax (gross receipts tax) resulted in a revenue loss of \$16.2 million. That coal credit is continued in S.B. 3, the recently-passed electricity deregulation bill. This bill proposes to make four significant changes to the coal credit, starting with coal used in electricity generation on or after January 1, 2000, which is the starting date for the tougher emissions standards under Phase II of the federal Clean Air Act amendments of 1990.

1. Increase the credit from \$1 per ton to \$3 per ton;
2. Eliminate the requirement that 80% or 90% of the coal used at the facility be Ohio-mined coal;
3. Eliminate the cap on the cumulative credit, which is currently 20% of pollution-control device cost.
4. Eliminate the requirement that the credit be passed along to consumers in the form of rate reductions.

The expanded credit would be available for five fiscal years (FY 2001 – 2005) after which it would sunset (although the carryforward means that the credit could be claimed through FY 2008; see below).

Current law specifies that the credit is allowed only for electric companies that have installed qualified pollution control devices. These qualified pollution control devices do not have to be scrubbers. The bill provides the expanded credit only for units with such qualified pollution control devices.

LBO has estimated the cost of the proposal assuming that qualifying facilities include out-of-state units owned by Ohio electric companies, or owned by non-Ohio electric companies but with customers in Ohio.

Table 1, below, shows the revenue loss from the coal credit under the gross receipts tax, for tax years 1996 – 1998 (tax year 1996 was the first year that the credit was claimed).

	Tax Year 1996	Tax Year 1997	Tax Year 1998	Average
Pre-Credit Liability	\$445,822,881	\$452,303,905	\$448,811,509	\$448,979,432
Coal Usage Credit	\$15,358,035	\$16,862,165	\$16,219,082	\$16,146,427
Post-Credit Liability	\$430,464,846	\$435,441,740	\$432,592,427	\$432,833,004

The average amount of the coal credit, per year, has been \$16.1 million. Apparently, if the credit were simply increased to \$3/ton without removing the 20% cap on credit amount claimed, AEP might quickly run into a situation where it could not claim the entire credit.

Based on the data that LBO has access to, this increase in the coal credit would reduce tax revenues by at least \$12.3 million in FY 2001, \$61.4 million in FY 2002, and \$36.8 million in FY 2003. This estimate is based on the figures in Table 2, below. Table 2 includes figures for individual plants where the plant coal usage is known.

LBO thus assumes that the annual cost of the coal credit changes, cash flow considerations aside, will be at least \$36.8 million. This assumes that no new generation facilities are constructed that take advantage of the expanded credit, which is likely to be the case at least for as long as the credit is scheduled to last.

The bill eliminates the provision that requires electric companies to reduce the rates they charge in order to pass along the savings to consumers. Of course, under S.B. 3, electricity generation is moving away from rate regulation to market pricing. Under a market pricing regime, electricity generators will charge a price that the market will bear. In a perfectly competitive market where the price of a KWH equals its marginal cost, the coal credit will be reflected in a lower marginal cost and thus in a lower market price. If the market structure is more that of an oligopoly, or if it exhibits monopolistic competition, there could be some opportunity for the electric company to capture some of the credit in its profits.

LBO has done some very rough simulations of the penalty per ton in burning Ohio coal under Phase II of the federal Clean Air Act amendments. The estimates are based on publicly available data from the FERC and from the Energy Information Administration. These estimates are based only on sulfur dioxide emissions, not other pollutants. Based on industry estimates that the costs of reducing sulfur dioxide emissions through scrubbing or other technologies is \$150 to \$200 per ton (emissions credits currently cost \$200 or more per ton), the penalty from burning Ohio coal works out to \$3 to \$4 per ton. Thus a \$3 per ton coal credit roughly compensates electric companies for the additional sulfur dioxide emissions reduction cost. This analysis does not take into account emission of nitrogen oxides or other pollutants.

Table 2 - Electric Generating Units With Emissions-Reducing Compliance Facilities,
Owned by Ohio Utilities or Utilities with Ohio Customers

Utility	Station	State Located	Meets the 80% or 90% Ohio Coal Criterion?	Tons of Coal	Current Credit @\$1/Ton	Proposed Credit @\$3/Ton	Additional Cost
AEP	Gavin Conesville	Ohio	Yes	7,000,090			
AEP	(Units 5 & 6)	Ohio	Yes	2,063,000			
Cinergy Corp.	Zimmer	Ohio	Yes	<u>3,421,600</u>			
Ohio Coal, Sold to Facilities With Scrubbers That Meet Current 90% Criterion				12,484,690	\$12,484,690	\$37,454,070	\$24,969,380
Other Ohio Coal That Qualified in Tax Year 1998, Sold to Non-Scrubbed Facilities				<u>3,734,392</u>	<u>\$3,734,392</u>	<u>\$11,203,176</u>	<u>\$7,468,784</u>
Total Ohio Coal Currently Qualifying for Credit				16,219,082	\$16,219,082	\$48,657,246	\$32,438,164
Additional Utilities With Compliance Facilities That Would Qualify Under HB 384							
Allegheny Power	Pleasants	West Virginia	Yes	1,141,734			
Cinergy Corp.	East Bend	Kentucky	No	83,100			
First Energy Corp	Mansfield	Pennsylvania	No	<u>235,000</u>			
Additional Tons Eligible for Credit				1,459,834	\$0	\$4,379,502	\$4,379,502
Total, All Coal Eligible in HB 384				17,678,916	\$16,219,082	\$53,036,748	\$36,817,666

Cash Flow of Revenue Loss

The actual cash flow impacts of the increase in the coal credit are complicated by the passage of S.B. 3, the electricity restructuring bill, and the tax restructuring that occurs with it. The proposed start date of the expanded credit is January 1, 2000. Since tax year 2000 for the gross receipts tax is based on a May 1999 through April 2000 payment year, the expanded credit would thus be available for four months of use, or 1/3 of the tax year. LBO therefore assumes that the revenue impact will be a loss of at least \$12.3 million from the gross receipts tax for tax year 2000 (\$36.8 million x 1/3).

When electric companies make their estimated payments for the tax year 2000 gross receipts tax, they do so without taking account of the credit. The credit amount would thus be claimed during the tax reconciliation period in November of 2000, which is in FY 2001. So the FY 2001 loss is at least \$12.3 million.

In FY 2002, due to S.B. 3, there is a double impact. First, there is a full year's loss from the tax year 2001 gross receipts tax. This is based on usage from May 2000 through April 2001. This loss will be at least \$36.8 million, realized in November of 2001 (FY 2002). S.B. 3 also requires that that electricity providers begin paying the corporate franchise tax based on a short taxable year that runs from May 1, 2001 to December 31, 2001. The estimated corporate franchise tax coal credit for the 2/3 taxable year 2001 would be at least \$24.5 million. This loss would be felt in the three franchise tax payments in January, March, and May of 2002 (FY 2002). So, in total, the FY 2002 loss would be at least \$61.4 million.

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Gross Receipts Tax	\$12.3	\$36.8	\$0.0	\$0.0	\$0.0
Corporate Franchise Tax	\$0.0	\$24.5	\$36.8	\$36.8	\$36.8
Total Revenue Loss	\$12.3	\$61.4	\$36.8	\$36.8	\$36.8
GRF	\$11.7	\$58.4	\$35.1	\$35.1	\$35.1
LGF	\$0.52	\$2.58	\$1.55	\$1.55	\$1.55
LGRAF	\$0.07	\$0.37	\$0.22	\$0.22	\$0.22

Note: revenue loss could be greater due to switching type of coal used between facilities.

In FY 2003 through FY 2005, the revenue loss would be at least \$36.8 million. This entire loss would be felt through the corporate franchise tax. Although the credit is not refundable, there is a three-year carryforward provision. This makes it more likely that electricity generators will be able to use the entire credit. Use of the credit may extend out through FY 2008 as a result of the carryforward. The tax revenue losses, by year and by fund, are summarized in Table 3, above.

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