Final Analysis

Eric Vendel *Legislative Service Commission*
Jill Rowland
Jeff Grim
Bill Rowland

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Sens. Niehaus, Kearney, Mumper, Padgett, Spada, Wilson, Zurz, Harris, Dann

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This final analysis is arranged in four main categories: Department of Natural Resources, coal mining, industrial minerals mining, and mercury regulation. Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation.

TABLE OF CONTENTS

DEPARTMENT OF NATURAL RESOURCES

COAL MINING

INDUSTRIAL MINERALS MINING

MERCURY REGULATION

DEPARTMENT OF NATURAL RESOURCES

General provisions

- Revises the notice publication requirements for contracts awarded by the Department of Natural Resources (DNR) for the construction, repair, or maintenance of certain projects, improvements, or buildings.

- Revises the requirements for entering into a contract without advertising for and receiving bids.

- Authorizes the Director of Natural Resources to include in contracts a clause providing for value engineering change proposals, and establishes requirements for the distribution of savings from such a proposal.

- Revises DNR's authority to require a contractor to complete work that is neglected or deficient.

- Revises the requirements related to the revisions of plans and specifications under a contract due to exigencies.

- Requires contracts administered by DNR to include language requiring wage rate determinations and updates to be obtained electronically or by other means as appropriate from the Department of Commerce, and exempts such contracts from requirements in the Wages and Hours on Public Works Law that involve attaching the schedule of wages to the specifications for the work, making the schedule part of those specifications, and printing the schedule on the bidding blanks where the work is done by contract.

- Authorizes the Director of Natural Resources to provide reimbursement in accordance with state guidelines for necessary and appropriate expenses, such as travel expenses, to volunteers who incur such expenses while implementing clean-up and beautification programs or other programs that accomplish the purposes of DNR.

Law enforcement

- Applies to the Division of Forestry, the Division of Natural Areas and Preserves, the Division of Wildlife, the Division of Parks and Recreation, and the Division of Watercraft the laws in the state Criminal Code that govern the forfeiture and disposition of certain property that is seized pursuant to a law enforcement investigation when one of those Divisions conducts an investigation that results in the ordered forfeiture of property, and requires each such law enforcement division to comply with those forfeiture laws.

- Specifically applies to those Divisions the portion of the forfeiture laws that authorizes certain proceeds from forfeited property to be distributed to the law enforcement agency that substantially conducted the investigation, creates funds in the state treasury for those Divisions and requires the proceeds from forfeited property to be deposited in the funds in accordance with the act, and requires the funds to be used for law enforcement purposes as specified in the forfeiture laws.

- Modifies requirements governing the forfeiture of vehicles, boats, guns, and other devices used and seized in the unlawful taking or transporting of wild animals to specify that a proceeding for the forfeiture of such seized property that is initiated under the act must not progress to actual forfeiture of the seized items unless so ordered by a court as part of a sentence imposed for a violation involving the unlawful taking or transporting.

Division of Recycling and Litter Prevention

- Repeals the requirement that a state recycling market development plan be prepared every two years.

- Authorizes grants to be made from the Scrap Tire Grant Fund to support market development activities for synthetic rubber from tire manufacturing processes and tire recycling processes.

- Changes the defined term "waste reduction" to "source reduction," but does not change the definition of the term.

Division of Real Estate and Land Management

- Authorizes the Division of Real Estate and Land Management, with the approval of the Director of Natural Resources, to coordinate and administer compensatory mitigation grant programs and other programs for streams and wetlands.

- Repeals the authority of the Division to administer certain provisions of the Canal Lands Law on behalf of the Director.

Division of Engineering

- Expands continuing law that requires the Chief Engineer to be a professional engineer registered under the Professional Engineers and Professional Surveyors Law to also allow the Chief Engineer to be a professional architect certified under the Architects Law.

Division of Mineral Resources Management

- Increases the limit on the rate of assessment that may be charged to oil or natural gas producers to fund an oil and natural gas marketing program by providing that the rate cannot exceed 5¢ rather than 1¢ per each gross barrel of oil and 1¢ rather than 1/10¢ per thousand cubic feet of natural gas.

- Specifies the time periods within which certain actions alleging breach of a lease or license to operate or to sink or drill an oil or gas well must be brought.

Division of Soil and Water Conservation

- Allows oral complaints, in addition to written, signed, and dated complaints as in continuing law, concerning agricultural pollution to be made to the Chief of the Division of Soil and Water Conservation or to the Chief's designee, authorizes the Chief or the Chief's designee, after receiving an oral complaint, to investigate whether agricultural pollution has occurred or is imminent, and requires the Chief or the Chief's designee to cause such an investigation to be conducted after receiving a written, signed, and dated complaint.

- Allows the supervisors of a soil and water conservation district to hold one or more credit cards on behalf of the district and to authorize any

supervisor or employee of the district to use such a credit card to pay for expenses related to the purposes of the district, and establishes requirements governing that use.

- Authorizes a board of county commissioners to charge an assessment of less than $25 per parcel for an improvement in a soil and water conservation district if the board determines that a lower amount is appropriate, provided that the lower amount includes the cost of preparing and mailing the notice of assessments required under ongoing law.

- Authorizes a board of county commissioners to charge a minimum assessment of $25 for an improvement in a soil and water conservation district on a multi-parcel basis rather than on a per-parcel basis if the multi-parcel lot has a dwelling and comprises two or more contiguous parcels of land.

Division of Natural Areas and Preserves

- Allows money in the Natural Areas and Preserves Fund to be used for routine maintenance for health and safety purposes.

- Revises the duties of the Chief of the Division of Natural Areas and Preserves in regards to surveys and inventories of certain natural areas and species, requires the information from the surveys and inventories to be stored in the Ohio natural heritage database, established pursuant to the act, and provides for the availability of the database for specified uses.

- Authorizes the Director of Natural Resources to enter into a mutual aid compact with the chief law enforcement officer of any federal agency, state agency, or political subdivision or with the Superintendent of the State Highway Patrol to enable preserve officers and the law enforcement officers of such an agency or political subdivision or the Highway Patrol to assist each other in the provision of police services within each other's jurisdiction.

- Authorizes a preserve officer to render assistance to a state or local law enforcement officer at the request of that officer or in an emergency situation.

- Specifies that preserve officers serving outside the Division of Natural Areas and Preserves or pursuant to a mutual aide compact are considered as performing services within their regular employment for purposes of compensation and benefits, retain personal immunity from civil liability as provided under continuing law, are not considered employees of a political subdivision for purposes of the law governing sovereign immunity, and do not subject political subdivisions to civil liability for the actions or omissions of the preserve officers.

Division of Water

- Authorizes the Chief of the Division of Water to use money in the Water Management Fund for the purposes of administering the water diversion and consumptive use permit programs established under continuing law and to perform watershed and water resource studies for the purposes of water management planning.

- Establishes requirements governing the submission of well sealing reports.

- Removes the term "dike" from the statutes establishing the dam safety program.

- Specifies that reconstruction of a dam or levee requires the issuance of a construction permit issued by the Chief of the Division of Water.

- Authorizes rules to be adopted that allow, upon written request, the extension of the period of time during which a dam construction permit is valid, provided that the written request includes a revised construction cost estimate, and that require the payment of an additional filing fee for the requested extension.

- Specifies that if a permittee requests an extension of the time period during which a dam construction permit is valid, the Chief must determine whether the revised construction cost estimate exceeds the original construction cost estimate by more than 25%, and authorizes the Chief, if that threshold is exceeded, to require an additional surety bond to be filed so that the total amount of the surety bond equals at least 50% of the revised construction cost estimate.

- Authorizes, rather than requires as in former law, the Chief to adopt rules governing the inspection of certain dams by registered professional engineers.

- Requires the owner of a dam or levee to notify the Chief in writing of a change in ownership of the dam or levee prior to the exchange of the property.

- Repeals provisions of law that divided the state into two grand divisions for purposes of state public works under the jurisdiction of the Division of Water.

- Requires in statute that development in 100-year floodplain areas be protected to at least the 100-year flood level and that flood water conveyance be maintained, at a minimum, in accordance with standards established under the national flood insurance program.

- Repeals the requirement in former law that the Chief adopt rules that establish certain flood damage reduction standards governing development within 100-year floodplains.

- Amends a provision that requires the Chief to adopt rules establishing technical standards for the delineation and mapping of floodplains and for the conduct of engineering studies to determine the vertical and horizontal limits of floodplains by requiring the rules also to establish technical standards for the assessment of development impacts on flood heights and flood conveyance.

- Establishes other floodplain management requirements, applies those requirements to agencies of the state and to counties and municipal corporations, and reorganizes continuing requirements.

- Defines "substantial damage" for purposes of the Division of Water Law.

- Requires the Director of Natural Resources to issue a water diversion permit to any person who lawfully diverted more than 100,000 gallons per day of any waters of the state out of the Ohio River drainage basin during the calendar year ending October 14, 1984.

- Eliminates former law that authorized the Director, not later than July 1, 1990, to transfer certain canal lands identified by the Department of Transportation or the Ohio Historical Society to those respective entities.

- Requires the Director's approval concerning certain aspects of the sale, lease, or transfer by the Chief of minerals or mineral rights on canal lands.

- Generally retains, but relocates continuing law that requires the Division of Water to have control of and responsibility for all canals and canal reservoirs owned by the state together with related waters and lands and that authorizes the Chief to adopt related rules.

- Authorizes the Director to give away or sell the spoils of a dredging operation conducted by DNR in waters under the control and management of DNR rather than in waters under the control and management of only the Division of Water as in former law.

- Adds four members to the advisory group for the Water Resources Council.

- Allows the Council to enter into contracts and agreements with federal agencies to assist in accomplishing the Council's objectives.

Division of Wildlife

- Amends the definitions of "person," "nongame bird," and "migratory game bird" for the purposes of the Division of Wildlife Law and the Hunting and Fishing Law.

- Prohibits any person from possessing or transporting a wild animal that has been unlawfully possessed outside the state.

- Eliminates the prohibition against using a rifle, at any time, in taking migratory game birds.

- Adds to the required duties of the Division of Wildlife by requiring the Division to promote, educate, and inform the citizens about conservation and the values of fishing, hunting, and trapping.

- Specifies that information contained in the wildlife diversity database may be made available to any individual or public or private agency for

research, educational, environmental, land management, or other similar purposes that are not detrimental to the conservation of a species or feature, but exempts from the Public Records Law information regarding sensitive site locations and features included in the database the release of which could be detrimental to the conservation of a species or feature.

- Repeals the requirement that the Division file its rules with the clerk of the court of common pleas of each county where the rules were effective.

- Modifies requirements governing the forfeiture of vehicles, boats, guns, and other devices used and seized in the unlawful taking or transporting of wild animals to specify that a proceeding for the forfeiture of such seized property that is initiated under the act must not progress to actual forfeiture of the seized items unless so ordered by a court as part of a sentence imposed for a violation involving the unlawful taking or transporting.

- Eliminates money from the sale of hunting and fishing licenses credited to the Wildlife Fund as one of the funding sources that the Division of Wildlife uses to pay school districts in which land that is owned by the state and administered by the Division is located, and adds money from restitution as a funding source for that purpose.

- Revises the criminal penalty for selling or offering for sale wild animals or wild animal parts to include buying them, and includes buying and selling wild animals in the restitution portion of the penalty.

- Changes the name of the wild animal collecting permit to wild animal permit, requires persons desiring to possess as well as collect wild animals for scientific study to obtain the permit, requires the permit to be renewed annually, and makes other changes pertaining to the permit.

- Requires the Chief of the Division of Wildlife to adopt rules providing for the issuance of fishing licenses, hunting licenses, fur taker permits, or wetlands habitat stamps to disabled veterans and former POWs, and deer or wild turkey permits to disabled veterans, on an annual, multi-year, or lifetime basis rather than just an annual basis as was required in former law.

- Requires that notification be given by a commercial fishing licensee to the Chief or the Chief's designee when the licensee is in transit to the licensee's trap nets and when the licensee returns with a daily catch.

- Authorizes the Chief to issue an aquaculture permit to a person that owns or leases an aquaculture production facility, as defined in the act, rather than issue such a permit to a person that had suitable equipment, of which the person was the owner or lessee, to engage in aquaculture for a given aquaculture species or group of aquaculture species as was required under former law.

- Revises the definitions of "aquaculture production facility," "class A aquaculture species," and "class B aquaculture species."

- Makes the suspension or revocation of a license or permit issued for hunting, fishing, trapping, and other activities pertaining to wild animals discretionary rather than mandatory upon the conviction of certain specified criminal offenses.

- Repeals a provision of former law that allowed hawks or owls causing damage to domestic animals or fowl to be killed by the owner of the domestic animal or fowl while the damage was occurring.

- Repeals a provision of former law that authorized the holder of a propagating license or his employees to take at any time any predatory bird or animal that was in the act of destroying propagated game birds, game quadrupeds, or fur bearing animals on land described in the holder's license.

- Revises the definition of "person" for purposes of the statutes governing ginseng collection.

- Prohibits anyone from attempting to harvest ginseng in a manner that, if harvested, would violate the provisions of continuing law prohibiting harvesting wild ginseng except during harvesting season without written authorization from the Chief of the Division of Wildlife and prohibiting willfully destroying, injuring, or harvesting ginseng without first obtaining written permission from the person entitled to the ginseng.

Division of Parks and Recreation

- Exempts certain utility vehicles used exclusively within state park boundaries by park employees or volunteers from registration and license taxes, certificate of title motor vehicle law, driver's license laws, and motor vehicle dealer law.

- Expands the list of timber, including timber that requires management to improve wildlife habitat, protect against wildfires, provide access to recreational facilities, or improve the safety, quality, or appearance of any state park area, that the Chief of the Division may dispose of by sale or other lawful means.

- Increases the term of office of members of the Ohio Parks and Recreation Council from two to three years, and applies the longer term to members appointed on and after the act's effective date.

- Replaces statutory references to "cabins" with "cottages" in regards to the rental and management of those structures by the Division.

Division of Watercraft

- Requires the Division of Watercraft, with the approval of the Director of Natural Resources, to educate and inform the citizens of Ohio about, and promote, conservation, navigation, safety practices, and the benefits of recreational boating.

- Requires the Chief of the Division of Watercraft to cancel a watercraft certificate of title if it appears that the certificate of title is no longer required.

- Requires a minor's parent or guardian to appear before a clerk of courts or notary public and sign a form prescribed by the Chief authorizing the minor to dispose of or acquire a watercraft or outboard motor.

- Prohibits a right, title, or claim to or interest in a watercraft or outboard motor from being acquired by or from a minor unless the application for a certificate of title is accompanied by the required form authorizing the transaction.

- Establishes immunity from liability for a clerk of a court of common pleas for injury or loss related to the sale, disposition, purchase, or

acquisition of a watercraft or outboard motor by a minor in violation of the act.

- Permits a registered watercraft dealer to buy a watercraft for which a physical certificate of title has not been issued, provides for the transfer of ownership of the watercraft to occur via an assignment of ownership form that must be filed with a clerk of a court of common pleas, and authorizes an electronic watercraft dealer who buys or sells a watercraft for which an electronic certificate of title has been issued to notify a clerk of a court of common pleas electronically of the assignment of ownership.

- Requires a clerk of a court of common pleas to collect from a watercraft dealer a $5 fee for each watercraft assignment, and requires the fee to be distributed in accordance with the Watercraft Certificates of Title Law.

- Requires a physical certificate of title to be obtained when a person who is not an electronic watercraft dealer sells a watercraft for which such a title has not been issued to a person who is not a registered watercraft dealer.

- Revises the requirements for issuance of a historic watercraft identification plate by eliminating the requirement that the watercraft be wooden.

- Prohibits a person from entering, operating a vessel that enters, or allowing a vessel to enter a federally declared security zone as defined in federal regulations, and establishes that whoever violates the prohibition is guilty of a first degree misdemeanor.

- Prohibits a person from allowing another person to operate a powercraft on Ohio waters unless the other person has completed an approved safe boater course or a proficiency examination concerning the information included in a safe boater course and has received a certificate evidencing successful completion of the course or examination.

- Allows a clerk of the court of common pleas to apply for designation as an authorized agent of the Chief to issue watercraft certificates of title, and requires the Division to accept the clerk's bond that is required under the Clerk of the Court of Common Pleas Law for any security that is required for such agents, provided that the bond includes a rider or other

provision specifically covering the clerk's duties as an authorized agent of the Chief.

Introduction

The act makes changes in the statutes governing many of the Divisions in the Department of Natural Resources (DNR). In some cases, those changes are fairly substantive or numerous, or both. In others, the changes are relatively minor. Because the act addresses topics that fall into many categories related to natural resources, it does not lend itself to the usual structure of an analysis, that is, a discussion of the most significant proposals first followed by the remaining changes. Instead, the analysis first discusses general provisions that are not limited to just one of DNR's Divisions. It then discusses the changes in statutes governing each of the Divisions that are included in the act. The order of that discussion generally is the order in which those statutes appear in the Ohio Revised Code.

General provisions

Contracts

Continuing law states that DNR has the following powers in addition to its other powers: to prepare, or contract to be prepared, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for, to enter into contracts for, and to supervise the performance of labor, the furnishing of materials, or the construction, repair, or maintenance of any projects, improvements, or buildings, on lands and waters under the control of DNR, as may be authorized by legislative appropriations or any other available funds (sec. 1501.011(A)).

Under law revised in part by the act, except in cases of extreme public exigency or emergency, the Director of Natural Resources must publish notice in a newspaper of general circulation in the county where the contract is to be let, at least once a week for four consecutive weeks, the last publication to be at least eight days preceding the day for the applicable action specific to the contract. The act instead requires the Director, except as provided under the act (see below), to publish notice in a newspaper of general circulation in the region where the activity for which bids are submitted is to occur and in any other newspapers that the Director determines are appropriate, at least once a week for four consecutive weeks, the last publication to be at least eight days preceding the day for the applicable action specific to the contract. (Sec. 1501.011(B).)

Law retained by the act authorizes the Director to enter into a contract without advertising for and receiving bids for the performance of labor, the furnishing of materials, or the construction, repair, or maintenance of any projects, improvements, or buildings on lands and waters under the control of DNR. Under former law, the Director could enter into such contracts if the cost was less than $10,000. The act instead specifies that with respect to the Director's entering into a contract for the performance of labor, the furnishing of materials, or the construction, repair, or maintenance of any projects, improvements, or buildings on lands and waters under the control of DNR, both of the following apply:

(1) The Director is not required to advertise for and receive bids if the total estimated cost of the contract is less than $25,000; and

(2) The Director is not required to advertise for bids, regardless of the cost of the contract, if the contract involves an exigency that concerns the public health, safety, or welfare or addresses an emergency situation in which timeliness is crucial in preventing the cost of the contract from increasing significantly. Regarding such a contract, the Director may solicit bids by sending a letter to a minimum of three contractors in the region where the contract is to be let or by any other means that the Director considers appropriate. (Sec. 1501.011(E).)

The act authorizes the Director to insert in any contract awarded under DNR's contracting authority a clause providing for value engineering change proposals, under which a contractor who has been awarded a contract may propose a change in the plans and specifications of the project that saves DNR time or money on the project without impairing any of the essential functions and characteristics of the project such as service life, reliability, economy of operation, ease of maintenance, safety, and necessary standardized features. If the Director adopts the value engineering proposal, the savings from the proposal must be divided between DNR and the contractor according to guidelines established by the Director, provided that the contractor must receive at least 50% of the savings from the proposal. The adoption of a value engineering proposal does not invalidate the award of the contract or require the Director to rebid the project. (Sec. 1501.011(F).)

Prior law provided that when in DNR's opinion the work under any contract made under any state law was neglected by the contractor or the work was not prosecuted with the diligence and force specified or intended in the contract, DNR could make requisition upon the contractor for such additional specific force or materials to be brought into the work under the contract or to remove improper materials from the grounds as in its judgment the contract and its faithful fulfillment required. Not less than five days' notice in writing of that action had to be served upon the contractor or the contractor's agent in charge of the work. If the contractor failed to comply with the requisition within 15 days, DNR could

employ upon the work the additional force, or supply the special materials or such part of either as it considered proper, and could remove improper materials from the grounds. (Sec. 1501.011(G).)

The act instead states that when in DNR's opinion the work under any contract made under any state law is neglected by the contractor, the work completed is deficient in quality or materials, or the work is not prosecuted with the diligence and force specified or intended in the contract, DNR may require the contractor to provide, at no additional expense to DNR, any additional labor and materials that are necessary to complete the improvements at the level of quality and within the time of performance specified in the contract. Procedures concerning such a requirement together with its format must be specified in the contract. If the contractor fails to comply with the requirement within the period specified in the contract, DNR may take action to complete the work through other means, up to and including termination of the contract. (Sec. 1501.011(G).)

Under law retained in part by the act, when an exigency occurs or there is immediate danger of an exigency that would materially impair the successful construction or completion of a project, improvement, or building, the Director may make necessary plan and specification change orders (sec. 1501.011(D)). The act revises that provision first by applying it also to an impairment of successful bidding and then by authorizing the Director to revise related plans and specifications as necessary to address the exigency through the issuance of an addendum prior to the opening of bids or, in accordance with procedures established in the Public Improvements Law, through the issuance of a change order after the contract has been awarded (sec. 1501.011(H)).

Finally, the Wages and Hours on Public Works Law requires every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking the construction with its own forces, to have the Director of Commerce determine the prevailing wage rates of mechanics and laborers in accordance with that Law for the class of work called for by the public improvement in the locality where the work is to be performed. The schedule of wages must be attached to and made part of the specifications for the work and must be printed on the bidding blanks where the work is done by contract. A copy of the bidding blank must be filed with the Director before the contract is awarded. The act provides that in the case of contracts that are administered by DNR, the Director of Natural Resources or the Director's designee must include language in the contracts requiring wage rate determinations and updates to be obtained directly from the Department of Commerce through electronic or other means as appropriate. Contracts that include that requirement are exempt from the requirements in the Wages and Hours on Public Works Law that involve attaching the schedule of wages to the specifications for the work,

making the schedule part of those specifications, and printing the schedule on the bidding blanks where the work is done by contract. (Sec. 4115.04(A)(1) and (2).)

Reimbursement of volunteers' expenses

Continuing law authorizes DNR to utilize the services of volunteers to implement clean-up and beautification programs or other programs that accomplish any of DNR's purposes. The Director must approve all volunteer programs and may recruit, train, and supervise the services of community volunteers or volunteer groups for volunteer programs. The act authorizes the Director, in accordance with state guidelines, to reimburse volunteers for necessary and appropriate expenses, such as travel expenses, that they incur in the course of their volunteer service to DNR. (Sec. 1501.23.)

Law enforcement

Forfeiture laws

The act specifies that except as otherwise provided below and notwithstanding any provision in the Revised Code that is not in Title 15 of the Revised Code[1] to the contrary, the forfeiture laws (see below) apply to a law enforcement division (see below) that substantially conducts an investigation that results in the ordered forfeiture of property and also apply to the involved forfeiture of property (sec. 1501.45(B)). It defines "forfeiture laws" as provisions that are established in Title 29 of the Revised Code[2] and that govern the forfeiture and disposition of certain property that is seized pursuant to a law enforcement investigation. In addition, "law enforcement division" means the Division of Forestry, the Division of Natural Areas and Preserves, the Division of Wildlife, the Division of Parks and Recreation, or the Division of Watercraft in the Department of Natural Resources. (Sec. 1501.45(A)(1) and (2).)

The act requires a law enforcement division to comply with the forfeiture laws. It then specifies that the portion of the forfeiture laws that authorizes certain proceeds from forfeited property to be distributed to the law enforcement agency that substantially conducted the investigation that resulted in the seizure of the subsequently forfeited property apply to the law enforcement divisions. If a law enforcement division is eligible to receive such proceeds, they must be deposited into the state treasury to the credit of the applicable law enforcement fund. (Sec.

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[1] *Title 15 of the Revised Code governs the Department of Natural Resources.*

[2] *Title 29 of the Revised Code, also known as the Criminal Code, governs crimes and related procedures.*

1501.45(B).) The act defines "law enforcement fund" as a fund created under the act's forfeiture provisions (see below) (sec. 1501.45(A)(3)).

The act creates in the state treasury all of the following funds: the Division of Forestry Law Enforcement Fund, the Division of Natural Areas and Preserves Law Enforcement Fund, the Division of Wildlife Law Enforcement Fund, the Division of Parks and Recreation Law Enforcement Fund, and the Division of Watercraft Law Enforcement Fund. The funds consist of proceeds from forfeited property that are deposited in accordance with the above provisions. The applicable law enforcement division must use the funds for law enforcement purposes specified in the forfeiture laws. However, a law enforcement division cannot use the funds to pay the salaries of its employees or to provide for any other remuneration of personnel. (Sec. 1501.45(C).)

Finally, the act states that if the forfeiture laws conflict with any provisions that govern forfeitures and that are established in another section of Title 15 of the Revised Code, the provisions established in the other section of Title 15 apply (sec. 1501.45(D)).

Proceedings for forfeiture of seized vehicles, boats, and other devices used in unlawful taking or transporting of wild animals

Law unchanged by the act specifies that any motor vehicle, all-terrain vehicle, or boat used in the unlawful taking or transporting of wild animals, and any net, seine, trap, ferret, gun, or other device used in the unlawful taking of wild animals, is a public nuisance. Under law largely retained by the act, each wildlife officer or other officer with like authority must seize and safely keep such property and the illegal results of its use and, unless otherwise ordered by the Chief of the Division of Wildlife, must institute, within five days, proceedings in a proper court of the county for its forfeiture. The act requires the proceedings to be initiated, rather than instituted, within 30 days rather than within five days and replaces other references to the institution or commencement of the proceedings with references to the initiation of proceedings. (Sec. 1531.20.)

Former law specified that if the owner or person unlawfully using the property at the time of its seizure was arrested, pled guilty, and confessed that the property at the time of its seizure was being used by the owner or user in violation of law or Division rule, no proceeding of forfeiture could be instituted, but the court in imposing sentence had to order the property so seized forfeited to the state, to be disposed of thereafter as the Chief directed. The act instead specifies that a proceeding for the forfeiture of seized property that is initiated under the act must not progress to actual forfeiture of the seized property unless so ordered by the court. The act authorizes the court to order the actual forfeiture of the seized property as part of the sentence that it imposes if the owner or person unlawfully

using the property at the time of its seizure is convicted, pleads guilty, or confesses that the property at the time of its seizure was being used by the owner or user in violation of law or Division rule. The act retains law specifying that forfeited property is the property of the state to be disposed of as the Chief directs. However, it eliminates prior law that stated that notwithstanding any other provision to the contrary, a proceeding of forfeiture could not be initiated unless the owner of the property or the person unlawfully using the property was convicted of a violation of law or Division rule. (Sec. 1531.20.)

Division of Recycling and Litter Prevention

Recycling market development plan

Under prior law, the Chief of the Division of Recycling and Litter Prevention had to prepare, with the assistance of the Recycling and Litter Prevention Advisory Council, and the Director of Natural Resources had to approve, a revised state recycling market development plan not later than December 31 every two years. The plan had to do all of the following:

(1) Identify the types of recyclables, the recycling of which would have received assistance under the plan;

(2) Assess the need for and recommend specific types of direct financial assistance to be provided by the state, including grants, low-interest loans, bonds, and rebates and guarantees for projects such as retooling costs for manufacturers and industrial plants to use recycled materials, capitalization business incubators, new product research and development, demonstration projects, and the application and uses of recycled materials;

(3) Assess the need for and recommend specific types of other assistance to be provided by the state, including the creation of enterprise zones and other tax incentives and exemptions, job training and managerial assistance, facilitation of technology transfers, provision of technical information to industries and to counties, townships, municipal corporations, and solid waste management districts, provision of consumer information, and establishment of a computer information network;

(4) Designate a specific state agency to administer each component of the plan required in items (2) and (3), above;

(5) Determine the funding level needed for each of those components of the plan, and establish biennial budget estimates for the main operating biennial budget needed by the state agency designated to administer the component; and

(6) Recommend necessary statutory changes, provided that the changes were endorsed by a two-thirds vote of the Recycling and Litter Prevention Advisory Council.

Additionally, each revised plan had to do both of the following:

(1) Review the relevant activities of each state agency designated to administer a component of the previous plan; and

(2) Recommend any needed changes in the components of the previous plan, including the addition or deletion of any components.

Each state agency that was designated under the plan to administer a component of the plan had to administer that component as provided in the plan and include in its biennial budget estimates for the main operating biennial budget the budget estimates established under the plan. A copy of each plan had to be submitted upon completion to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The act repeals the requirement that a biennial recycling market development plan be prepared and the provisions governing the plan. (Sec. 1502.11, repealed.)

Market development for synthetic rubber

Under ongoing law, the Chief, with the approval of the Director, may make grants from the Scrap Tire Grant Fund, which consists of money transferred to it from the Scrap Tire Management Fund, for the purpose of supporting market development activities for scrap tires. The act adds that the grants also may be used to support market development activities for synthetic rubber from tire manufacturing processes and tire recycling processes. (Sec. 1502.12(A).) Under the act, "synthetic rubber" means produced or extended rubber and products made from a synthetic rubber base material originating from petrochemical feedstocks, including scrap tires, tire molds, automobile engine belts, brake pads and hoses, weather stripping, fittings, electrical insulation, and other molded objects and parts (sec. 1502.01(J)).

Change of term "waste reduction" to "source reduction" in Recycling, Waste Reduction, and Litter Prevention Law

A provision of the Recycling, Waste Reduction, and Litter Prevention Law, retained in part by the act, defines "waste reduction" as activities that decrease the initial production of waste materials at their point of origin. The act changes the defined term from "waste reduction" to "source reduction," but does not change

the definition. (Sec. 1502.01(D).) In addition, the act makes conforming changes to reflect the new term (secs. 1502.01(F) and 1502.03).

Division of Real Estate and Land Management

The act authorizes the Division of Real Estate and Land Management, with the approval of the Director of Natural Resources, to coordinate and administer compensatory mitigation grant programs and other programs for streams and wetlands as approved in accordance with certifications and permits issued under Sections 401 and 404 of the Federal Water Pollution Control Act by the Environmental Protection Agency and the United States Army Corps of Engineers (sec. 1504.02(B)(2)).

Prior law also authorized the Division, on behalf of the Director, to administer the Canal Lands Law except for certain provisions regarding leases and the disposition of canal lands, the operation of canals and canal reservoirs, and the administration of the Canal Lands Fund. The act eliminates the authority of the Division to administer any provisions of the Canal Lands Law. (Sec. 1504.02(B)(2).)

Division of Engineering

Continuing law requires DNR's Chief Engineer, who administers the Division of Engineering, to be a professional engineer registered under the Professional Engineers and Professional Surveyors Law. The act also allows the Chief Engineer to be a professional architect certified under the Architects Law. (Sec. 1507.01.)

Division of Mineral Resources Management

Assessment for marketing program

Ongoing law establishes procedures by which independent producers of oil or natural gas may present a petition to the Division of Mineral Resources Management Technical Advisory Council to hold a referendum to establish a marketing program for oil and natural gas or to amend an existing program. At the time of the presentation of the petition, the petitioners also must present the proposed program or proposed amendment to an existing program. The presentation of the program or amended program must include, in part, the rate of assessment to be made on the production of oil and natural gas in Ohio. Under former law, the rate could not exceed 1¢ per each gross barrel of oil and 1/10¢ per thousand cubic feet of natural gas. The act increases the limit on the rate of assessment by providing that it cannot exceed 5¢ per each gross barrel of oil and 1¢ per thousand cubic feet of natural gas. (Sec. 1510.04.)

Statutes of limitation applicable to actions for breach of oil or gas lease or license

The act specifies that with respect to a lease or license by which a right is granted to operate or to sink or drill wells on land in this state for natural gas or petroleum and that is recorded in accordance with continuing law, an action alleging breach of any express or implied provision of the lease or license concerning the calculation or payment of royalties must be brought within the time period that continuing law requires an action for breach of any contract for sale to be brought, which generally is four years (secs. 1302.98, not in the act, and 2305.041). Under the act, an action alleging a breach with respect to any other issue that the lease or license involves must be brought within the time period that ongoing law requires an action for breach of a contract in writing to be brought, which is 15 years (secs. 2305.041 and 2305.06, not in the act).

Division of Soil and Water Conservation

Complaints regarding agricultural pollution

Under law generally unchanged by the act, any person who owns or operates agricultural land or a concentrated animal feeding operation may develop and operate under an operation and management plan approved by the Chief of the Division of Soil and Water Conservation or by the supervisors of the local soil and water conservation district. Any person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so only by submitting a written, signed, and dated complaint to the Chief or the Chief's designee. The act adds that a person who wishes to make a complaint also may do so orally. It authorizes the Chief or the Chief's designee, after receiving an oral complaint, to cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. However, the act requires the Chief or the Chief's designee to cause such an investigation to be conducted after receiving a written, signed, and dated complaint. (Sec. 1511.021(A) and (B).)

Credit card usage by soil and water conservation district supervisors

The act allows the supervisors of a soil and water conservation district to hold one or more credit cards on behalf of the district and to authorize any supervisor or employee of the district to use such a credit card to pay for expenses related to the district's purposes. The supervisors must pay the debt incurred as a result of the use of such a credit card from donations, gifts, grants, and contributions of money accepted by the supervisors as authorized under ongoing law or from the special fund established for the district under ongoing law (see below).

The act specifies that the misuse of a credit card held on behalf of a soil and water conservation district is a violation of the misuse of credit card statute in the Theft and Fraud Law. In addition, a supervisor or employee of a district who makes unauthorized use of such a credit card may be held personally liable to the district for the unauthorized use. The act states that those provisions do not limit any other liability of a supervisor or employee of a district for the unauthorized use of such a credit card.

The act requires a supervisor or employee of a soil and water conservation district who is authorized to use a credit card that is held on behalf of the district and who suspects the loss, theft, or possibility of another person's unauthorized use of the credit card to immediately notify the supervisors in writing of the suspected loss, theft, or possible unauthorized use. (Sec. 1515.093.)

Continuing law authorizes the board of county commissioners of each county in which there is a soil and water conservation district to levy a tax within the ten-mill limitation and to appropriate money from the proceeds of the levy or from the general fund of the county. The money must be held in a special fund for the credit of the district, to be expended for the purposes prescribed in the Soil and Water Conservation Commission Law, for construction and maintenance of improvements by the district, and for other expenses incurred in carrying out the program of the district upon the written order of the fiscal agent for the district after authorization by a majority of the supervisors of the district. The act adds that the money in the special fund may be used to pay district credit card expenses. (Sec. 1515.10.)

Soil and water conservation district assessments

Ongoing law establishes procedures for the levying of assessments to pay for an improvement in a soil and water conservation district. Under former law, the minimum assessment that could be assessed on a particular parcel of property was $25. The act authorizes a board of county commissioners to charge an assessment of less than $25 if the board determines that a lower amount is appropriate, provided that the lower amount includes the cost of preparing and mailing the notice of assessments required under continuing law. In addition, the act authorizes a board to charge a minimum of $25 with respect to all of the parcels comprising a multi-parcel lot. The act defines "multi-parcel lot" to mean a site on which a dwelling is located and that comprises two or more contiguous parcels of land. (Sec. 1515.211.)

Division of Natural Areas and Preserves

Use of Natural Areas and Preserves Fund

Under law retained by the act, money in the Natural Areas and Preserves Fund must be used for certain purposes such as the acquisition of new or expanded natural areas, nature preserves, and wild, scenic, and recreational river areas. The act adds that money in the Fund may be used for routine maintenance for health and safety purposes. (Sec. 1517.11(D).)

Ohio natural heritage database

Continuing law requires the Chief of the Division of Natural Areas and Preserves to perform certain duties. One of those duties is to prepare and maintain surveys and inventories of natural areas and habitats of rare and endangered species of plants and animals. The act retains this provision, but with changes. Instead of requiring the Chief to prepare and maintain surveys and inventories of habitats of rare and endangered species of plants and animals, the act requires the Chief to prepare and maintain surveys and inventories of rare and endangered species of plants and animals. The act also requires the Chief to prepare and maintain surveys and inventories of other unique natural features.

In addition, the act requires the information from the surveys and inventories to be stored in the Ohio natural heritage database, which is established pursuant to the act, and authorizes the information to be made available to any individual or private or public agency for research, educational, environmental, land management, or other similar purposes that are not detrimental to the conservation of a species or feature. Information regarding sensitive site locations of species of plants that the Chief has listed under ongoing law as being endangered or threatened with extirpation from Ohio and of unique natural features that are included in the Ohio natural heritage database is not subject to the Public Records Law if the Chief determines that the release of the information could be detrimental to the conservation of a species or unique natural feature. (Sec. 1517.02(D).)

Authority of preserve officers to assist other law enforcement personnel

Law unchanged by the act authorizes the Director of Natural Resources to enter into a mutual aid compact with the chief law enforcement officer of any federal agency, state agency, or political subdivision or with the Superintendent of the State Highway Patrol to enable forest officers, park officers, and state watercraft officers and the law enforcement officers of such an agency or political subdivision or the Highway Patrol to assist each other in the provision of police services within each other's jurisdiction. The act also authorizes the Director to

enter into such a mutual aid agreement with respect to preserve officers. (Sec. 1501.02.)

In addition, the act authorizes a preserve officer to render assistance to a state or local law enforcement officer at the request of the officer or in the event of an emergency. Preserve officers serving outside the Division of Natural Areas and Preserves under the act or under a mutual aide compact are considered as performing services within their regular employment for purposes of compensation, pension or indemnity fund rights, workers' compensation, and other rights or benefits to which they may be entitled as incidents of their regular employment. Additionally, preserve officers so serving retain personal immunity from civil liability as provided under continuing law, are not considered employees of a political subdivision for purposes of the law governing sovereign immunity, and do not subject political subdivisions to civil liability for the actions or omissions of the preserve officers. (Sec. 1517.10(B).)

Division of Water

Use of Water Management Fund

Continuing law establishes the Water Management Fund and establishes the purposes for which money in the Fund may be used. Those purposes include the making of loans and grants by the Chief of the Division of Water to governmental agencies for water management and water supply improvements. In addition, money in the Fund may be used by the Chief to acquire, construct, reconstruct, improve, equip, maintain, operate, and dispose of water management improvements. The act adds to the purposes for which money in the Fund may be used by authorizing the Chief to use money in the Fund for the purposes of administering the water diversion and consumptive use permit programs established in continuing law and to perform watershed and water resource studies for the purposes of water management planning. (Sec. 1521.04.)

Well construction logs and sealing reports

Continuing law requires any person that constructs a well to keep a careful and accurate log of the construction of the well. Continuing law specifies what the log must show, including the name of the owner of the well and the address of the location where the well was constructed. Former law also required the log to include a description of the location of the property where the well was constructed. The act instead requires that that portion of the log show either the state plane coordinates or the latitude and longitude of the well. (Sec. 1521.05(B)(7).)

Former law required the Chief to adopt rules requiring any person that sealed an abandoned well to submit a well sealing report. The act eliminates the requirement that rules be adopted and instead establishes well sealing report requirements in statute. Under the act, any person that seals a well must keep a careful and accurate report of the sealing of the well. The sealing report must show all of the following:

(1) The name of the owner of the well, the address of the location where the well was constructed, and either the state plane coordinates or the latitude and longitude of the well;

(2) The depth of the well, the size and length of its casing, and the static water level of the well;

(3) The sealing procedures, including the volume and type of sealing material or materials and the method and depth of placement of each material;

(4) The date on which the sealing was performed;

(5) The signature of the individual who sealed the well and filed the sealing report; and

(6) Any other information required by the Chief in rules. (Sec. 1521.05(C) and (D).)

The sealing report must be furnished to the Division of Water within 30 days after the completion of the sealing of the well on forms prescribed and prepared by the Division. The act prohibits any person from failing to keep and submit a sealing report and provides that any person committing such a violation is guilty of a misdemeanor of the fourth degree. For purposes of the prosecution of such a violation, the act provides that a prima-facie case is established when the Division obtains either a certified copy of the invoice or a canceled check from the owner of a well indicating the sealing services performed or a certified copy of any permit issued under the Solid, Infectious, and Hazardous Waste Law or the Water Pollution Control Law or plan approval under the Safe Drinking Water Law for any activity that includes the sealing of a well as applicable. The act also prohibits anyone from making a false statement in a sealing report. Violation is falsification under the state's general falsification statute. (Secs. 1521.05(E) and (F) and 1521.99.)

Dam safety

Law largely retained by the act establishes requirements and procedures related to the construction and safety of dams, dikes, and levees and provides that no dam, dike, or levee may be constructed for the purpose of diverting or retaining

flood water unless the person or governmental agency desiring the construction has a construction permit for the dam, dike, or levee issued by the Chief of the Division of Water. The requirements and procedures include provisions related to payment of certain filing fees, the provision of a surety bond by applicants for construction permits, and time frames for the issuance or denial of a construction permit.

Law largely retained by the act also declares that a construction permit is not required in certain circumstances. One such circumstance is the repair, maintenance, improvement, alteration, or removal of a dam, dike, or levee that is subject to inspection under the dam safety statutes unless the construction constitutes an enlargement of the structure as determined by the Chief. The act adds that construction of a dam or levee that constitutes reconstruction of the structure as determined by the Chief requires the issuance of a construction permit. (Sec 1521.06(A).) In addition, the act refers only to the reconstruction of dams or levees because it removes all references to "dike" in the dam safety statutes (secs. 1521.06, 1521.061, 1521.062, and 1521.064).

Continuing law authorizes the Chief to adopt rules governing the design and construction of dams and levees for which a construction permit is required and establishing certain procedures governing the issuance of construction permits. Additionally, the Chief is authorized, by rule, to limit the period during which a construction permit is valid. The act adds that the rules adopted by the Chief may allow for the extension of the period during which a construction permit is valid upon written request, provided that the written request includes a revised construction cost estimate, and may require the payment of an additional filing fee with respect to the extension beyond the filing fee that is required to be paid under continuing law. (Sec. 1521.06(H).)

As noted above, continuing law establishes requirements governing the submission of a surety bond by applicants for construction permits. Specifically, continuing law prohibits the issuance of a construction permit unless the person or governmental agency applying for the permit executes and files a surety bond conditioned on the completion of the dam or levee in accordance with the terms of the permit and the plans and specifications approved by the Chief. The surety bond must be in an amount equal to 50% of the estimated cost of the project. The act adds that if a permittee requests an extension of the time period during which a construction permit is valid in accordance with rules adopted by the Chief, the Chief must determine if the revised construction cost estimate provided with the request (see above) exceeds the original construction cost estimate that was filed with the Chief by more than 25%. If the revised construction cost estimate exceeds the original construction cost estimate by more than 25%, the Chief may require an additional surety bond to be filed so that the total amount of the surety

bonds equals at least 50% of the revised construction cost estimate. (Sec. 1521.061.)

Former law required the Chief to adopt rules governing the inspection of certain dams by registered professional engineers. The act makes the adoption of such rules optional rather than a requirement. (Sec. 1521.062(J).) Finally, the act requires the owner of a dam or levee to notify the Chief in writing of a change of ownership of the dam or levee prior to the exchange of the property (sec. 1521.062(K)).

Repeal of two grand divisions of public works

Former law divided the state's public works under the jurisdiction of the Division of Water into two grand divisions as follows:

(1) The Miami and Erie Canal, together with Lake St. Mary's reservoir, Indian Lake reservoir, and the Loramie reservoir, with all of their feeders and parts, and the various state channel dams that impound water for the purpose of supplying water for the Miami and Erie Canal were designated "division one."

(2) The Ohio and Erie Canal, together with the Portage Lakes and Buckeye Lake, with all of their feeders and parts, and the various state dams in the state channels that impound waters for the purpose of supplying the Ohio and Erie Canal were designated "division two." (Sec. 1521.08.)

The act repeals the provisions of law that divided the state into two grand divisions (secs. 123.04 and 1520.05 and sec. 1521.08, repealed).

Floodplain management

Continuing law establishes a floodplain management program administered by the Division. Under the program, the Chief is required to coordinate the floodplain management activities of state agencies and political subdivisions with federal floodplain management activities. In overseeing the state program, the Chief is required to execute a variety of duties, including assisting local governments and collecting and preparing technical data.

The act makes numerous changes to the statutes that govern the floodplain management program. In some instances, the act simply relocates statutes. In others, it makes minor changes to the statutes. It also makes several substantive changes in the statutes. Below is a discussion of the relevant portions of the law governing floodplain management as they existed prior to the enactment of the act followed by a discussion of the changes made by the act. The discussion of the law as it existed prior to the enactment of the act refers to all of the provisions as "former law." However, as stated above, some of those provisions are not

repealed, but are merely changed in part or relocated in statute. Thus, the referencs to "former law" in the discussion below do not necessarily indicate an outright repeal of the provisions being discussed.

Under former law, the Chief was required to adopt rules in accordance with the Administrative Procedure Act, including rules that did all of the following:

(1) Provided for the administration, implementation, and enforcement of the floodplain management program;

(2) Established technical standards for the delineation and mapping of floodplains and for the conduct of engineering studies to determine the vertical and horizontal limits of floodplains;

(3) Established flood damage reduction standards governing development within 100-year floodplains for which a demonstration of compliance was required; and

(4) Established minimum flood damage reduction standards governing development undertaken by state agencies within 100-year floodplains. (Sec. 1521.13(C).)

Former law also established requirements that were applicable to state agencies and political subdivisions regarding development and other activities in flood prone areas. Under former law, all state agencies and political subdivisions, prior to the expenditure of funds for or the construction of buildings, structures, roads, bridges, or other facilities in locations that could be subject to flooding or flood damage, were required to notify and consult with the Division of Water and required to furnish such information as the Division reasonably required in order to avoid the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities. Further, with respect to existing publicly owned facilities that suffered flood damage or that could be subject to flood damage, the Chief could conspicuously mark past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Wherever economically feasible, state agencies and political subdivisions that were responsible for existing publicly owned facilities were required to apply floodproofing measures in order to reduce potential flood damage. (Sec. 1521.14.)

State agencies also had to require applicants for funding or authorization for certain development projects to comply with certain flood damage reduction standards established in rules. Any state agencies that undertook any development that was or was to be located within a 100-year floodplain had to ensure that the development complied with the minimum flood damage reduction standards established in rules. Prior to the disbursement of any state disaster assistance

funds in connection with any incident of flooding to or within a municipal corporation or county that was not listed by the Chief as being in compliance with the National Flood Insurance Act, each state agency having the authority to disburse such funds had to require the municipal corporation or county to establish or reestablish compliance. Finally, former law authorized the Director of Natural Resources to request the Attorney General to bring a civil action for injunctive relief against any state agency that violated the floodplain management statutes or rules adopted under them or any local floodplain management ordinance or resolution. (Sec. 1521.14.)

The act requires in statute that development in 100-year floodplain areas be protected to at least the 100-year flood level and that flood water conveyance be maintained, at a minimum, in accordance with standards established under the national flood insurance program. It then states that that requirement does not preclude a state agency or political subdivision from establishing flood protection standards that are more restrictive. (Sec. 1521.13(A).)[3] Further, the act states that prior to the expenditure of money for or the construction of buildings, structures, roads, bridges, or other facilities in locations that may be subject to flooding or flood damage, all state agencies and political subdivisions must notify and consult with the Division and must furnish information that the Division reasonably requires in order to avoid the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities (sec. 1521.13(B)).

The act retains the requirement that the Chief adopt rules that provide for the administration, implementation, and enforcement of the floodplain management program, but repeals the requirement that the Chief adopt rules that establish flood damage reduction standards governing development within 100-year floodplains for which a demonstration of compliance is required and that establish minimum flood damage reduction standards governing development undertaken by state agencies within 100-year floodplains (sec. 1521.13(C)). In addition, the act amends the provision that requires the Chief to adopt rules establishing technical standards for the delineation and mapping of floodplains and for the conduct of engineering studies to determine the vertical and horizontal limits of floodplains by requiring the rules also to establish technical standards for the assessment of development impacts on flood heights and flood conveyance (sec. 1521.13(C)).

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[3] *"Development" is defined in continuing law to mean any artificial change to improved or unimproved real estate, including the construction of buildings and other structures, any substantial improvement of a structure, and mining, dredging, filling, grading, paving, excavating, and drilling operations. The act adds the storage of equipment or materials to the definition. (Sec. 1521.01(H).) Further, the act applies this definition to provisions of continuing law dealing with coastal flood hazard areas (sec. 1506.04).*

The act also requires the Chief, with respect to existing publicly owned facilities that have suffered flood damage or that may be subject to flood damage, to conspicuously mark past and probable flood heights in order to assist in creating public awareness of and knowledge about flood hazards (sec. 1521.13(C)).

Under the act, development that is funded, financed, undertaken, or preempted by state agencies must comply with the provisions of the act requiring development in 100-year floodplain areas to be protected to at least the 100-year flood level and flood water conveyances to be maintained, at a minimum, in accordance with standards established under the national flood insurance program and also must comply with rules regarding technical standards for the delineation and mapping of floodplains and assessment of development impacts (see above) (sec. 1521.13(D)(1)). The act defines "national flood insurance program" to mean the national flood insurance program established in the National Flood Insurance Act of 1968 and regulations adopted under it (sec. 1521.01(Q)).

The act requires state agencies to apply floodproofing measures in order to reduce potential additional flood damage of existing publicly owned facilities that have suffered flood damage (sec. 1521.13(D)(2)). Before awarding funding or financing or granting a license, permit, or other authorization for a development that is or is to be located within a 100-year floodplain, a state agency must require the applicant to demonstrate to the satisfaction of the agency that the development will comply with the provisions of the act requiring development in 100-year floodplain areas to be protected to at least the 100-year flood level and flood water conveyances to be maintained, at a minimum, in accordance with standards established under the national flood insurance program, with rules regarding technical standards for the delineation and mapping of floodplains and assessment of development impacts, and with any applicable local floodplain management resolution or ordinance (sec. 1521.13(D)(3)).

The act states that prior to the disbursement of any state disaster assistance money in connection with any incident of flooding to or within a county or municipal corporation that is not listed by the Chief as being in compliance with applicable standards adopted under the National Flood Insurance Act of 1968, a state agency that has authority to disburse such money must require the county or municipal corporation to establish or reestablish such compliance (sec. 1521.13(D)(4)).

Under the act, a county or a municipal corporation may do all of the following:

(1) Adopt floodplain maps that reflect the best available data and that indicate the areas to be regulated under a floodplain management resolution or ordinance, as applicable;

(2) Develop and adopt a floodplain management resolution or ordinance, as applicable; and

(3) Adopt floodplain management standards that exceed the standards that are established under the national flood insurance program. (Sec. 1521.13(E)(1).)

A county or municipal corporation must examine and apply, where economically feasible, floodproofing measures in order to reduce potential additional flood damage of existing publicly owned facilities that have suffered flood damage. A county that adopts a floodplain management resolution must do so in accordance with the procedures established in continuing law governing boards of county commissioners. The county may enforce the resolution by issuing stop work orders, seeking injunctive relief, or pursuing other civil actions that the county considers necessary to ensure compliance with the resolution. In addition, the act declares that the failure to comply with the floodplain management resolution constitutes a violation of ongoing law prohibiting the violation of a county resolution. No action challenging the validity of a floodplain management resolution adopted by a county or a floodplain management ordinance adopted by a municipal corporation, or an amendment to such a resolution or ordinance, because of a procedural error in the adoption of the resolution, ordinance, or amendment is permitted to be brought more than two years after the adoption of the resolution, ordinance, or amendment. (Secs. 307.37 and 1521.13(E)(2) to (4).)

The act replaces the provisions of former law that allowed the Director of Natural Resources only to request the Attorney General to bring an action for injunctive relief against a state agency that violated state and local floodplain management requirements with authorization for the Director to request the Attorney General to bring an action for appropriate relief in a court of competent jurisdiction against any development that is not in compliance with the standards of the national flood insurance program and that is one of the following:

(1) Located in a county or municipal corporation that is not listed by the Chief as being in compliance with the national flood insurance program; or

(2) Funded, financed, undertaken, or preempted by a state agency.

The Attorney General must bring an action if so requested. (Sec. 1521.14.)

Definition of "substantial damage"

The Division of Water Law defines "substantial improvement" to mean, in part, any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the

structure before the start of construction of the improvement. "Substantial improvement" includes repairs to structures that have incurred substantial damage regardless of the actual repair work performed. (Sec. 1521.01(N).) The act defines "substantial damage" to mean damage of any origin that is sustained by a structure if the cost of restoring the structure to its condition prior to the damage would equal or exceed 50% of the market value of the structure before the damage occurred (sec. 1521.01(P)).

Permits for pre-1984 diversions of water

Continuing law prohibits any person from diverting more that 100,000 gallons per day of any waters of the state out of the Lake Erie or Ohio River drainage basin to another basin without a permit to do so issued by the Director of Natural Resources. Continuing law also establishes application requirements, standards for approving permit applications, requirements for the notification of governors of other states and premiers of Canadian provinces, and revocation and suspension requirements. The act requires the Director to issue a water diversion permit to any person who lawfully diverted more than 100,000 gallons per day of any waters of the state out of the Ohio River drainage basin during the calendar year ending October 14, 1984. A person who is eligible for such a permit must file an application not later than 180 days after the act's effective date. No application fees are required from such an applicant. In addition, certain provisions related to the approval of water diversion permit applications and the filing of annual reports do not apply to such an application. (Sec. 1501.32.)

Canal lands

Continuing law specifies that the Director of Natural Resources has exclusive authority to administer, manage, and establish policies governing canal lands. Continuing law authorizes the Director to sell, lease, exchange, give, or grant all or part of the state's interest in any canal lands in accordance with certain statutory provisions. Former law provided an exception to that authority that stated that, not later than one year after July 1, 1989, the Director of Transportation and the Director of the Ohio Historical Society had to identify all canal lands that were or could be of use to any program operated by the Department of Transportation or the Ohio Historical Society, respectively, and had to notify the Director of Natural Resources of those lands. The exception authorized the Director of Natural Resources to transfer any canal lands so identified to the exclusive care, custody, and control of the Department of Transportation or the Ohio Historical Society, as applicable, by means of a departmental transfer not later than six months after receiving notification. The act eliminates the exception. Accordingly, the act also eliminates former law specifying that a certain statutory provision did not apply to canal lands transferred pursuant to the exception. That provision states that, notwithstanding any other

section of the Revised Code, the county auditor must transfer any canal lands conveyed by the Director of Natural Resources, and the county recorder must record the deed for those lands. (Sec. 1520.02.)

Law revised in part by the act states that with regard to canal lands, the Chief, with the approval of the Director, may sell, lease, or transfer minerals or mineral rights when the Chief and the Director determine that the sale, lease, or transfer is in the best interest of the state. The act instead specifies that the sale, lease, or transfer may occur when the Chief, with the approval of the Director, makes the determination. Continuing law requires consideration for minerals and mineral rights to be by rental or on a royalty basis as prescribed by the Chief and payable as prescribed by contract. The act requires the Chief's prescription regarding whether the consideration for minerals and mineral rights are by rental or on a royalty basis to be approved by the Director. (Sec. 1520.02.)

The act requires the Division of Water, on behalf of the Director, to have the care and control of all canals and canal reservoirs owned by the state, the water in them, and canal lands and to protect, operate, and maintain them and keep them in repair. The Chief may remove obstructions from or on them and must make any alterations or changes in or to them and construct any feeders, dikes, reservoirs, dams, locks, or other works, devices, or improvements in or on them that are necessary in the discharge of the Chief's duties. The act authorizes the Chief, in accordance with the Administrative Procedure Act, to adopt, amend, and rescind rules that are necessary for those purposes. Those provisions are substantively nearly identical to former law that is repealed elsewhere in the act. (Sec. 1520.03 and sec. 1521.08, repealed.)

Disposition of spoils of dredging operation

Law retained in part by the act authorizes the Director to give away or sell the spoils of a dredging operation conducted by DNR in waters under the control and management of the Division of Water. The act instead establishes this authorization for waters under the control and management of DNR. (Sec. 1520.07.)

Water Resources Council

Continuing law establishes the Water Resources Council to provide a public forum for policy development, collaboration and coordination among state agencies, and strategic direction with respect to state water resource programs (sec. 1521.19(A)). Continuing law also creates an advisory group to assist the Council in its functions. Prior to the enactment of the act, the advisory group was to consist of not more than 20 members, each representing an organization or entity with an interest in water resource issues. The Council appoints the

members. The act adds four members to the advisory group and establishes staggered two-year terms of office for them. As with the members appointed under continuing law, the act requires each new member to represent an organization or entity with an interest in water resource issues. (Sec. 1521.19(C).)

Continuing law authorizes the Council to enter into contracts and agreements with state agencies, political subdivisions, and private entities to assist in accomplishing its objectives. The act adds that the Council may enter into such contracts and agreements with federal agencies. (Sec. 1521.19(E).)

Former law included in the membership of the Council the Executive Director of the State and Local Government Commission of Ohio. Because the State and Local Government Commission of Ohio no longer exists, the act removes the Executive Director of that Commission from the Council and removes references to the Executive Director and the Commission in the statute governing the Council. (Sec. 1521.19(A) and (D).)

Division of Wildlife

Definitions

Continuing law includes a number of definitions for purposes of the Division of Wildlife Law and the Hunting and Fishing Law. Under former law, "person" was defined to mean an individual, company, partnership, corporation, municipal corporation, association, or any combination of individuals or any employee, agent, or officer thereof. The act instead defines "person" to mean an individual, corporation, business trust, estate, trust, partnership, association, or company (generally by reference to sec. 1.59, not in the act); an employee, agent, or officer of such a person or company; a combination of individuals; the state; a political subdivision of the state; an interstate body created by a compact; or the federal government or a department, agency, or instrumentality of it. (Sec. 1531.01(A).) Continuing law defines "nongame birds" to include all other wild birds not included and defined as game birds. The act also defines "nongame birds" as all other wild birds not included and defined as migratory game birds. (Sec. 1531.01(T).) In addition, the act adds cormorants to the definition of "migratory game bird" (sec. 1531.01(AAA)).

Unlawful possession of wild animal from outside Ohio

Continuing law prohibits any person from possessing or transporting a wild animal that has been taken unlawfully outside the state. The act also prohibits any person from possessing or transporting a wild animal that has been possessed unlawfully outside the state. (Sec. 1531.02.)

Use of rifle in taking migratory game birds

Former law prohibited any person from using a rifle, at any time, in taking migratory game birds. The act eliminates that prohibition. (Sec. 1531.02.)

Promotion of conservation, hunting, fishing, and trapping

The act expands the duties of the Division of Wildlife by requiring the Division to promote, educate, and inform the citizens of the state about conservation and the values of fishing, hunting, and trapping, with the approval of the Director of Natural Resources (sec. 1531.04(D)).

Wildlife diversity database

Continuing law requires the Chief of the Division of Wildlife to adopt rules governing the taking or possession of native wildlife that the Chief finds to be threatened with statewide extinction and authorizes the Chief to adopt other rules concerning wild animals and their management. Pursuant to that rulemaking authority, the Chief has established a wildlife diversity database. The act specifies that information contained in the wildlife diversity database may be made available to any individual or public or private agency for research, educational, environmental, land management, or other similar purposes that are not detrimental to the conservation of a species or feature. The act also provides that information regarding sensitive site locations of species and of features that are included in the wildlife diversity database is not subject to the Public Records Law if the Chief determines that the release of the information could be detrimental to the conservation of a species or feature. (Sec. 1531.06(M).)

Rules filing with clerk of court

Continuing law requires the Chief of the Division of Wildlife to adopt rules that are necessary for the administration and enforcement of the Division of Wildlife Law and the Hunting and Fishing Law. Under former law, each rule was required to be filed with the clerk of the court of common pleas of each county where the rule was effective. The act repeals the filing requirement. (Sec. 1531.10.)

Proceedings for forfeiture of seized vehicles, boats, and other devices used in unlawful taking or transporting of wild animals

Continuing law specifies that any motor vehicle, all-terrain vehicle, or boat used in the unlawful taking or transporting of wild animals, and any net, seine, trap, ferret, gun, or other device used in the unlawful taking of wild animals, is a public nuisance. Each wildlife officer or other officer with like authority must seize and safely keep such property and the illegal results of its use. Former law

required the wildlife officer or other officer to institute, within five days, proceedings in a proper court of the county for the property's forfeiture unless otherwise ordered by the Chief of the Division of Wildlife. The act requires the proceedings to be initiated, rather than instituted, within 30 days rather than within five days and replaces other references to the institution or commencement of the proceedings with references to the initiation of proceedings. (Sec. 1531.20.)

Former law specified that if the owner or person unlawfully using the property at the time of its seizure was arrested, pleaded guilty, and confessed that the property at the time of its seizure was being used by the owner or user in violation of law or Division rule, no proceeding of forfeiture could be instituted, but the court in imposing sentence had to order the property so seized forfeited to the state, to be disposed of as the Chief directed. The act instead specifies that a proceeding for the forfeiture of seized property that is initiated under the act must not progress to actual forfeiture of the seized property unless so ordered by the court. The act authorizes the court to order the actual forfeiture of the seized property as part of the sentence that it imposes if the owner or person unlawfully using the property at the time of its seizure is convicted, pleads guilty, or confesses that the property at the time of its seizure was being used by the owner or user in violation of law or Division rule. The act retains a provision specifying that forfeited property is the property of the state to be disposed of as the Chief directs. The act eliminates former law stating that notwithstanding any other provision to the contrary, a proceeding of forfeiture could not be initiated unless the owner of the property or the person unlawfully using the property was convicted of a violation of law or Division rule. (Sec. 1531.20.)

Sources of funding for payments to school districts

Under continuing law, the Chief must make payments to counties in which land that is owned by the state and administered by the Division is located. The money is required to be credited by the counties to a fund for school purposes in school districts where the land is located. The amount paid to each county is equal to 1% of the total value of the land exclusive of improvements as shown on the county auditor's records of taxable value of real property existing at the time when the state acquired the land. Under law retained in part by the act, the payments must be paid from funds accruing to the Division from the sale of hunting and fishing licenses and from fines, penalties, and forfeitures that are credited to the Wildlife Fund.

The act eliminates money that is derived from the sale of hunting and fishing licenses as one of the funding sources that the Division uses to pay school districts. However, the act adds money derived from restitution and credited to the Wildlife Fund as a new source of funding for school districts. (Sec. 1531.21.)

Buying, selling, or offering for sale wild animals

Under continuing law, any person that violates the prohibition against selling or offering for sale wild animals or wild animal parts is guilty of a fifth degree felony if the value of the wild animals or animal parts is more than $1,000. The act adds that the buying of those wild animals or wild animal parts also is a fifth degree felony and clarifies that in order for there to be a violation, the value of the wild animals or wild animal parts must be $1,000 or more. (Sec. 1531.99(D).)

Continuing law also requires a court that imposes sentence for a violation of any provision of the Division of Wildlife Law governing the holding, taking, or possession of wild animals to require the violator, in addition to any fine, term of imprisonment, seizure, and forfeiture imposed, to make restitution for the minimum value of the wild animal illegally held, taken, or possessed. The act adds violations of provisions governing the buying or selling of wild animals to the restitution requirement. (Sec. 1531.99(E).)

Wild animal permits for collecting or possessing wild animals

Law retained in part by the act requires any person desiring to collect wild animals that are protected by law or their nests or eggs for scientific study, school instruction, other educational uses, or rehabilitation to apply to the Chief for a wild animal collecting permit. An applicant, other than an applicant desiring to rehabilitate wild animals, must pay an annual $25 fee for each permit. When it appears that the application is made in good faith, the Chief must issue to the applicant a permit to take, possess, and transport the wild animals or their nests and eggs. A person engaged in collecting wild animals must carry the permit at all times and exhibit it upon demand to any wildlife officer, constable, sheriff, deputy sheriff, or police officer or to the owner or person in control of the land on which the permit holder is collecting. In addition, law generally retained by the act requires a wild animal collecting permit holder to keep a daily record of all specimens collected and their disposition and to submit an annual report to the Chief outlining the permit holder's operations under the permit and the disposition of specimens collected during the preceding calendar year. The report is due by February 15 each year. (Secs. 1533.08 and 1533.09.)

The act alters the provisions of law governing the permit by first changing the name of the permit from a wild animal collecting permit to a wild animal permit. The act then requires persons desiring to collect or possess wild animals or their nests or eggs for scientific study, school instruction, other educational uses, or rehabilitation to apply annually to the Chief for a wild animal permit. It retains the annual fee requirement. The act eliminates the requirement that the Chief issue a permit when it appeared that an application was made in good faith.

Instead, the act authorizes the Chief to issue a permit to an applicant to take, possess, and transport at any time and in a manner that is acceptable to the Chief specimens of wild animals protected by law or their nests and eggs for scientific study, school instruction, other educational uses, or rehabilitation. The requirement that a person engaged in collecting wild animals carry the permit at all times and exhibit it upon demand to any wildlife officer, constable, sheriff, deputy sheriff, or police officer is altered to require exhibition to any peace officer as defined in criminal law. Finally, the annual report that permit holders are required to submit must be submitted under the act by March 15 each year rather than February 15 each year. All other requirements governing the permit remain the same. (Secs. 1533.08 and 1533.09.)

Deer and wild turkey permits

Continuing law requires a person to obtain a deer permit to hunt deer and a wild turkey permit to hunt wild turkeys in addition to a hunting license. However, former law occasionally referred to those permits as special deer permits and special wild turkey permits. The act removes "special" wherever it appeared in statute so that the law consistently refers to the permits as deer permits and wild turkey permits. (Secs. 1533.10, 1533.11, 1533.12, 1533.131, and 1533.171.)

Disabled veterans and former POW permits and licenses

Law largely retained by the act requires the Chief to adopt rules providing for the issuance of annual fishing licenses, hunting licenses, fur taker permits, deer or wild turkey permits, or wetlands habitat stamps free of charge to permanently disabled veterans and annual fishing licenses, hunting licenses, fur taker permits, or wetlands habitat stamps free of charge to former prisoners of war. The act requires the Chief to adopt rules providing for the issuance of the applicable licenses, permits, or stamps on an annual, multi-year, or lifetime basis as determined appropriate by the Chief. (Sec. 1533.12.)

Notification by commercial fishing licensees

Continuing law establishes requirements regarding commercial fishing, including requirements that persons engaged in commercial fishing obtain a license from the Division of Wildlife and keep records of their daily catch. The act adds new notification requirements for commercial fishing licensees. Under the act, a licensee must contact the Chief of the Division or the Chief's designee when the licensee is in transit to the licensee's trap nets to lift, move, pull, remove, clean, or maintain the trap nets for any reason and also must contact the Chief or the Chief's designee when returning to land with a daily catch of fish from a trap net indicating the licensee's estimated time of arrival at a specific port and any other information required by the Chief. The act requires the licensee to contact

the Chief or the Chief's designee by using a cellular telephone, radio, or other communication device in a manner prescribed by the Chief. (Sec. 1533.42.)

Aquaculture production facilities

Under continuing law, the Chief of the Division of Wildlife, in accordance with the Administrative Procedure Act, must adopt rules for the regulation of aquaculture and may issue permits to persons wishing to engage in aquaculture for the production of aquaculture species (sec. 1533.632(B)). "Aquaculture" means a form of agriculture that involves the propagation and rearing of aquatic species in controlled environments under private control, including, but not limited to, for the purpose of sale for consumption as food (sec. 1533.632(A)(1)). "Aquaculture species" means any aquatic species that may be raised through aquaculture that is either a class A aquaculture species (see below) or a class B aquaculture species (see below) (sec. 1533.632(A)(2)).

Continuing law specifies that a permit must be in a form that the Chief prescribes and must be classified as either class A or class B. Law retained in part by the act specifies that a class A permit is required for all class A aquaculture species that are defined as such in statute or designated by rule as a class A aquaculture species. The annual fee for a class A permit is $50 unless otherwise provided by rule by the Chief. (Sec. 1533.632(B).)

A class B permit is issued on a case-by-case basis. In determining whether to issue a class B permit, the Chief must take into account the species for which the permit is requested, the location of the aquaculture production facility, and any other information determined by the Chief to be necessary to protect the wildlife and natural resources of Ohio. The annual fee for a class B permit is set by the Chief at a level between $100 and $500. In determining the fee, the Chief must take into account the additional costs to the Division of Wildlife for the inspection of aquaculture facilities that are used to raise a given class B aquaculture species. (Sec. 1533.632(B).)

The act makes several changes to the law governing aquaculture production facilities. Instead of authorizing the Chief to issue an aquaculture permit to a person that had suitable equipment, of which the person was the owner or lessee, to engage in aquaculture for a given aquaculture species or group of aquaculture species, as in former law, the act authorizes the Chief to issue a permit to a person that owns or leases an aquaculture production facility. (Sec. 1533.632(B).) Former law defined "aquaculture production facility" as a facility used for aquaculture. The act instead defines it as a facility that has suitable infrastructure and equipment, as determined by the Chief, and that is solely dedicated to the propagation and rearing of an aquaculture species. (Sec. 1533.632(A)(5).)

"Suitable infrastructure" is defined by the act to include ponds, raceways, and tanks (sec. 1533.632(A)(6)).

The act also revises the definitions of "class A aquaculture species" and "class B aquaculture species." Under former law, "class A aquaculture species" included all of the following: (1) trout and salmon, (2) walleye, (3) sauger, (4) bluegill, (5) redear sunfish, (6) green sunfish, (7) white crappie, (8) black crappie, (9) blue catfish, and (10) any other species added by rule by the Chief or listed as commercial fish in statute except white perch. The act revises the definition by eliminating statutory references to specific species of fish and instead specifying that the term includes any species designated as such by the Chief in rules. (Sec. 1533.632(A)(3).)

Under continuing law, "class B aquaculture species" includes any species, except class A aquaculture species, designated as such by the Chief. The act clarifies that the term includes any species designated as such by the Chief in rules. (Sec. 1533.632(A)(4).)

Discretionary suspension or revocation of licenses and permits

Under law largely retained by the act, if a person is convicted of a violation of any law relative to the taking, possession, protection, preservation, or propagation of wild animals, or a violation of the prohibition against shooting in the vicinity of an airport while hunting, or a violation of any rule of the Division of Wildlife, the court or magistrate that has jurisdiction, as an additional part of the penalty, must suspend or revoke each license or permit issued to the person pertaining to hunting, fishing, trapping, breeding, and sale of wild animals or the sale of their hides, skins, or pelts. The act makes such suspension or revocation discretionary rather than mandatory. (Sec. 1533.68.)

Killing of predatory birds and animals

Continuing law prohibits any person from catching, killing, injuring, pursuing, or having in the person's possession, either dead or alive, or purchasing, exposing for sale, transporting, or shipping to a point within or without the state, or receiving or delivering for transportation any bird other than a game bird. However, former law specified that hawks or owls causing damage to domestic animals or fowl could be killed by the owner of the domestic animal or fowl while the damage was occurring. The act repeals the provision authorizing the killing of hawks or owls. (Sec. 1533.07.)

Former law authorized the holder of a propagating license or his employees to take at any time any predatory bird or animal that was in the act of destroying propagated game birds, game quadrupeds, or fur bearing animals on land

described in the holder's license. The act repeals that provision. (Sec. 1533.78 (repealed).)

Ginseng collection

Continuing law establishes requirements governing the collection of ginseng and establishes certain definitions related to those requirements. Under former law, "person" was defined for those purposes to include an individual, corporation, business trust, estate, trust, partnership, and association (by reference to sec. 1.59, not in the act) and any political subdivision, instrumentality, or agency of this state, another state, or the United States. The act instead defines "person" to mean any individual, corporation, business trust, estate, trust, partnership, and association, the state, any municipal corporation, any other political subdivision of the state, any interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof (all by reference to sec. 6111.01, not in the act), or any political subdivision, instrumentality, or agency of another state. (Sec. 1533.86.)

Continuing law establishes certain prohibitions regarding the collection of ginseng. One prohibits any person from harvesting wild ginseng except during harvesting season without written authorization from the Chief of the Division of Wildlife. Another prohibits any person from willfully destroying, injuring, or harvesting ginseng without first obtaining written permission from the person entitled to the ginseng because it is the property of that person. The act establishes a new prohibition against attempting to harvest ginseng in a manner that, if harvested, would constitute a violation of either of the above prohibitions. (Sec. 1533.882.)

Division of Parks and Recreation

State park utility vehicles

Continuing law exempts certain utility vehicles from the definition of "motor vehicle" that generally applies throughout motor vehicle law (Title 45 of the Revised Code). Utility vehicles that are not "motor vehicles" are exempt from registration and license taxes (including local motor vehicle license taxes), certificate of title motor vehicle law, driver's license laws, and motor vehicle dealer law. Such vehicles generally are subject to traffic laws and financial responsibility requirements.

The utility vehicles that are exempt under continuing law include "self-propelled vehicle[s] designed with a bed, principally for the purpose of transporting material or cargo in connection with construction, agricultural, forestry, grounds maintenance, lawn and garden, materials handling, or similar

activities." The act includes within the definition of "utility vehicle" a vehicle with a maximum attainable speed of 20 miles per hour or less that is used exclusively within the boundaries of state parks by state park employees or volunteers for the operation or maintenance of state park facilities. As described above, those state park utility vehicles are exempt from registration and license taxes, certificate of title motor vehicle law, driver's license laws, and motor vehicle dealer law. (Sec. 4501.01.)

Sale of timber

Continuing law authorizes the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, to dispose of by sale or any other lawful means, in a manner that will benefit the Division of Parks and Recreation, standing timber that as a result of wind, storm, or any other natural occurrence may present a hazard to life or property or timber that has fallen on lands under the control and management of the Division. The act retains the Chief's authority and also allows him to dispose of by sale or any other lawful means, in a manner that will benefit the Division, standing timber that as a result of pestilence may present a hazard to life or property, timber that has weakened on lands under the control and management of the Division, or any timber that requires management to improve wildlife habitat, protect against wildfires, provide access to recreational facilities, or improve the safety, quality, or appearance of any state park area. (Sec. 1541.05(A)(1).)

Ohio Parks and Recreation Council

Continuing law creates the Ohio Parks and Recreation Council in the Division of Parks and Recreation. The Council consists of seven members appointed by the Governor. Under former law, the terms of office of the members were two years. The act increases the terms of office from two to three years, applies the longer term to members who are appointed on and after the act's effective date, and makes conforming changes. (Sec. 1541.40 and Section 3.)

Terminology changes

Under law largely retained by the act, the Division may adopt, amend, and rescind, in accordance with the Administrative Procedure Act, rules governing the application for and rental of, rental fees for, and the use of cabins. The act changes "cabins" to "cottages." (Sec. 1541.03(D)(4).) Law largely retained by the act also requires the Department through the Division to plan, supervise, acquire, construct, enlarge, improve, erect, equip, and furnish public service facilities, including cabins, in state parks that are reasonably necessary and useful in promoting the public use of state parks under its control. The act changes "cabins" to "cottages." (Sec. 1501.07.)

Division of Watercraft

Duties

Continuing law requires the Division of Watercraft to administer and enforce all laws relative to the identification, numbering, registration, titling, use, and operation of vessels operated on the water in this state.[4] The act adds that the Division, with the approval of the Director of Natural Resources, also must educate and inform the citizens of Ohio about, and promote, conservation, navigation, safety practices, and the benefits of recreational boating. (Sec. 1547.51.)

Watercraft certificate of title

Continuing law requires the Chief of the Division of Watercraft to adopt rules that the Chief considers necessary to ensure the uniform and orderly operation of the Watercraft Certificates of Title Law. The Chief must maintain indexes covering the state at large for information forwarded to the Chief by the clerks of the courts of common pleas who issued the certificates of title under that Law. If it appears that a certificate of title has been improperly issued, the Chief must cancel it. The act adds that the Chief also must cancel a certificate of title if it appears that the certificate of title is no longer required. (Sec. 1548.02.)

Minor's application for certificate of title

The act prohibits a minor under 18 years of age from selling or otherwise disposing of a watercraft or outboard motor or purchasing or otherwise acquiring a watercraft or outboard motor unless the application for a certificate of title is accompanied by a form prescribed by the Chief of the Division of Watercraft and signed in the presence of a clerk or deputy clerk of a court of common pleas or any notary public by one of the minor's parents, a guardian, or another person having custody of the minor authorizing the sale, disposition, purchase, or acquisition. At the time the adult signs the form, the adult must provide identification establishing that the adult is the individual whose signature appears on the form. (Sec. 1548.031(A).)

The act prohibits a right, title, or claim to or interest in a watercraft or outboard motor from being acquired by or from a minor unless the application for a certificate of title is accompanied by the required form authorizing the transaction (sec. 1548.031(B)). It establishes immunity from liability for a clerk

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[4] *Ongoing law defines "vessel" to include every description of craft, including nondisplacement craft and seaplanes, designed to be used as a means of transportation on water (sec. 1547.01(B)(1), not in the act).*

of a court of common pleas in any civil action that arises under state law for injury or loss to persons or property caused when a person has obtained a certificate of title in violation of the act unless the clerk failed to use reasonable diligence in ascertaining the age of the minor or the identity of the adult who signed the form authorizing the sale, disposition, purchase, or acquisition of the watercraft or outboard motor by the minor (sec. 1548.031(C)).

Sale of watercraft when physical certificate of title not issued

Under the act, if a person who is not an electronic watercraft dealer owns a watercraft for which a physical certificate of title has not been issued by a clerk of a court of common pleas and the person sells the watercraft to a watercraft dealer registered under the Watercraft and Waterways Law, the person is not required to obtain a physical certificate of title to the watercraft in order to transfer ownership to the dealer. The person must present the dealer, in a manner approved by the Chief, with sufficient proof of the person's identity and complete and sign a form prescribed by the Chief attesting to the person's identity and assigning the watercraft to the dealer. Except as otherwise provided in the act, the watercraft dealer must present the assignment form to any clerk of a court of common pleas together with an application for a certificate of title and payment of the fees prescribed in the Watercraft and Waterways Law. (Sec. 1548.032(A)(1).)

In a case in which an electronic certificate of title has been issued and either the buyer or seller of the watercraft is an electronic watercraft dealer, the electronic watercraft dealer instead may inform a clerk of a court of common pleas via electronic means of the sale of the watercraft and assignment of ownership of the watercraft. The clerk must enter the information relating to the assignment into the automated title processing system, and ownership of the watercraft passes to the applicant when the clerk enters this information into the system. The dealer is not required to obtain a physical certificate of title to the watercraft in the dealer's name. (Sec. 1548.032(A)(1).)

The act requires a clerk of a court of common pleas to charge and collect from a dealer a $5 fee for each watercraft assignment sent by the dealer to the clerk. The fee must be distributed in accordance with the Watercraft Certificates of Title Law. (Sec. 1548.032(A)(2).)

Under the act, if a person who is not an electronic watercraft dealer owns a watercraft for which a physical certificate of title has not been issued by a clerk of a court of common pleas and the person sells the watercraft to a person who is not a registered watercraft dealer, the person must obtain a physical certificate of title to the watercraft in order to transfer ownership of the watercraft to that person (sec. 1548.032(B)).

Historic watercraft identification plate

Law largely retained by the act allows the owner of a wooden watercraft to apply to the Chief for an historic watercraft identification plate, provided that the watercraft is more than 25 years old, is essentially as originally constructed, and is owned primarily as a collector's item and for participation in club activities, exhibitions, tours, parades, and similar uses, but is not used for general recreation. The act eliminates the requirement that the watercraft be wooden. (Sec. 1547.541.)

Prohibitions against operation of vessel in certain areas

Continuing law establishes certain prohibitions concerning the operation of a vessel in specified areas. All of the following are prohibited:

(1) Operation within or through a designated bathing area or any area that has been buoyed off designating it as an area in which vessels are prohibited;

(2) Operation, generally, at greater than idle speed or at a speed that creates a wake within 300 feet of certain specified areas such as marinas and certain harbors, during the period of sunset to sunrise on a specified portion of the Ohio River, and within any area buoyed or marked as a no wake area;

(3) Operation in any area of restricted or controlled operation in violation of the designated restriction; and

(4) Operation within 300 feet of an official diver's flag unless the person is tendering the diving operation. (Sec. 1547.08(A) to (D).)

The act retains those prohibitions and also prohibits a person from entering, operating a vessel that enters, or allowing a vessel to enter a federally declared security zone as defined in federal regulations (sec. 1547.08(F)). Whoever violates the new prohibition is guilty of a first degree misdemeanor (sec. 1547.99(B)).

Operation of powercraft without required training

Ongoing law prohibits a person born on or after January 1, 1982, from operating a powercraft powered by more than ten horsepower on Ohio waters unless the operator successfully has completed either a safe boater course approved by the National Association of State Boating Law Administrators or a proctored or nonproctored proficiency examination that tests knowledge of information included in the curriculum of such a course and has received a certificate as evidence of successful completion of the course or examination. The act also prohibits a person from allowing another person to operate powercraft on

Ohio waters unless the other person has completed such a course or examination and has received a certificate evidencing successful completion of the course or examination. (Sec. 1547.05.)

Clerk of court of common pleas as authorized agent

Continuing law authorizes the Chief or an authorized agent of the Chief to issue registration certificates for watercraft. Any person designated as an agent by the Chief must post with the Division security as may be required by the Director. The act states that a clerk of the court of common pleas may apply for designation as an authorized agent of the Chief. It then requires the Division to accept the clerk's bond that is required under the Clerk of the Court of Common Pleas Law for any security that is required for agents of the Chief, provided that the bond includes a rider or other provision specifically covering the clerk's duties as an authorized agent of the Chief. (Sec. 1547.54(H)(2).)

COAL MINING

Severance tax on coal

- Increases the general severance tax on coal from 7¢ per ton to 10¢ per ton.
- Revises the distribution of the money received from the general severance tax on coal.
- Eliminates two additional severance taxes of 1¢ per ton on coal that were used to pay the state's expenses for reclaiming mined lands that operators failed to reclaim for which their bonds were not sufficient for reclamation and for administering the coal mining and reclamation program, and levies a new additional severance tax of 14¢ per ton on coal to be paid by operators who choose to provide performance security together with reliance on the Reclamation Forfeiture Fund as authorized by the act.
- Establishes varying rates of the severance tax added by the act based on balances of the Reclamation Forfeiture Fund.
- Establishes an additional severance tax of 1.2¢ per ton of coal mined by surface mining methods, and requires revenues from the additional coal severance tax to be credited to the continuing Unreclaimed Lands Fund.
- States that the severance tax provisions take effect on April 1, 2007.

Reclamation tax credit

- Establishes a nonrefundable credit against the additional severance tax of 14¢ per ton on coal that must be paid by operators who choose to provide performance security together with reliance on the Reclamation Forfeiture Fund as authorized by the act, and establishes eligibility for the credit for any severer that completes reclamation on land or water resources that are not within the severer's permit area and that have been adversely affected by past coal mining for which the performance security was forfeited.

- Establishes procedures and requirements for the issuance of a reclamation tax credit certificate that is required in order to claim the tax credit.

- Requires the Chief of the Division of Mineral Resources Management to adopt rules in accordance with the Administrative Procedure Act to administer the act's provisions concerning applications for and issuance of reclamation tax credit certificates.

- Requires a severer claiming the credit to retain a reclamation tax credit certificate for at least four years following the date of the last tax payment against which the credit allowed under that certificate was applied.

Fund revisions

- Eliminates the transfer of money to the Reclamation Forfeiture Fund from the Unreclaimed Lands Fund, adds money to the Reclamation Forfeiture Fund from the collection of priority liens from the forfeiture of performance security, and requires certain fine money to be deposited in the Reclamation Forfeiture Fund instead of the Coal Mining Administration and Reclamation Reserve Fund as under former law.

- Authorizes the Chief to spend money in the Reclamation Forfeiture Fund to pay necessary administrative costs of the Reclamation Forfeiture Fund Advisory Board created by the act.

- Eliminates the requirement that the Director of Budget and Management, upon the certification of the Chief, transfer additional money from the Unreclaimed Lands Fund to the Reclamation Forfeiture Fund.

- Requires the Chief, if the performance security for an area of land was provided without reliance on the Reclamation Forfeiture Fund, to use the money from the forfeited performance security to complete the reclamation that the operator failed to do.

- Requires the Chief, if the performance security for an area of land was provided together with reliance on the Reclamation Forfeiture Fund, to use the money from the forfeited performance security to complete the reclamation that the operator failed to do and, if the money is not sufficient, to notify the Reclamation Forfeiture Fund Advisory Board, and authorizes the Chief to spend money credited to the Reclamation Forfeiture Fund from the severance tax on coal or transferred to the Fund from the Coal Mining Administration and Reclamation Reserve Fund to complete the reclamation.

- Prohibits the Chief from spending money from the Reclamation Forfeiture Fund in an amount that exceeds the difference between the amount of performance security provided and the estimated cost of reclamation as determined by the Chief.

- Prohibits money from the Reclamation Forfeiture Fund from being used for reclamation of land or water resources affected by material damage from subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within permitted areas of a mine if the performance security for the area of land was provided together with reliance on the Fund.

- Requires all investment earnings of the Reclamation Forfeiture Fund to be credited to the Fund.

- Eliminates the use of money transferred from the Coal Mining Administration and Reclamation Reserve Fund to the Reclamation Forfeiture Fund to complete reclamation of lands affected by surface mining.

- Authorizes the Director of Natural Resources to request the Controlling Board to transfer money from the Coal Mining Administration and Reclamation Reserve Fund to the Unreclaimed Lands Fund.

- Eliminates the requirement that at least two weeks before any meeting of the Council on Unreclaimed Strip Mined Lands at which the Chief would have submitted reclamation project proposals, a project area would have been selected, or the boundaries of a project area would have been determined to receive funding from the Unreclaimed Lands Fund, the Chief had to send notice to the board of county commissioners of the county and the board of township trustees in which the proposed project lay and the chief executive and the legislative authority of each municipal corporation within a proposed project area.

- Eliminates the authority of the Controlling Board to transfer excess funds from the Oil and Gas Well Fund to meet deficiencies in the Unreclaimed Lands Fund after recommendation by the Council on Unreclaimed Strip Mined Lands.

- Authorizes the Director of Natural Resources to request the Controlling Board to transfer money from the Unreclaimed Lands Fund to the Coal Mining Administration and Reclamation Reserve Fund.

- Establishes the Mined Land Set Aside Fund consisting of grants made by the United States Secretary of the Interior from the federal Abandoned Mine Reclamation Fund.

- Requires money in the Mined Land Set Aside Fund to be used solely for specified purposes.

Reclamation Forfeiture Fund Advisory Board

- Creates the Reclamation Forfeiture Fund Advisory Board consisting of the Directors of Natural Resources and Insurance and seven members appointed by the Governor.

- Requires the Board to do all of the following: (1) review the deposits into and expenditures from the Reclamation Forfeiture Fund, (2) retain periodically a qualified actuary to perform an actuarial study of the Fund, (3) based on an actuarial study and as determined necessary by the Board, adopt rules to adjust the rate of the additional severance tax on coal added by the act and the balance of the Fund that pertains to that rate, (4) evaluate any rules, procedures, and methods for estimating the cost of reclamation for purpose of determining the amount of performance security that is required under the act; the collection of

forfeited performance security; payments to the Fund; reclamation of sites for which operators have forfeited the performance security; and the compliance of operators with their reclamation plans, and (5) submit a report biennially to the Governor concerning the financial status of the Fund and make recommendations to the Governor on specified subjects.

Appropriation for reclamation and study

- States that it is the intent of the General Assembly to appropriate $5 million for the reclamation of land affected by the surface mining of coal, and requires not more than $50,000 of that appropriation to be used to study the management of the financial resources of the state's coal mining regulatory program.

Performance security

- Defines "performance security" to mean a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the Chief, and replaces references to "bond," "bond coverage," or "bond or deposit" in the Coal Mining Law with references to "performance security."

- Requires the Chief to determine the estimated cost of reclamation under the initial term of a coal mining and reclamation permit if the reclamation has to be performed by the Division of Mineral Resources Management in the event of forfeiture of the performance security by the applicant.

- Requires an applicant for a permit to provide performance security in an amount using one of the following: (1) the amount of the estimated cost of reclamation as determined by the Chief for the increments of land on which the operator will conduct coal mining if the applicant elects to provide performance security without reliance on the Reclamation Forfeiture Fund, or (2) an amount of $2,500 per acre of land on which the operator will conduct coal mining if the applicant elects to provide performance security together with reliance on the Reclamation

Forfeiture Fund through payment of the act's additional severance tax on coal.

- Requires an applicant to have held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of not less than five years in order to be eligible to provide performance security together with reliance on the Reclamation Forfeiture Fund.

- Requires an applicant to provide performance security in the full amount of the estimated cost of reclamation for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine.

- Authorizes the Chief to adjust the amount of the estimated cost of reclamation and the amount of a permittee's performance security that is provided without reliance on the Reclamation Forfeiture Fund as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases.

- Authorizes a permittee to request a reduction in the amount of the performance security by substantiating to the Chief that the amount of performance security provided exceeds the estimated cost of reclamation, requires the Chief to determine whether the permittee's performance security exceeds the estimated cost of reclamation, and allows the permittee to reduce the performance security in the amount determined by the Chief.

- Establishes requirements in the event that a surety, bank, savings and loan association, trust company, or other financial institution that holds performance security becomes insolvent.

- Requires a permittee to provide additional alternative financial security in an amount determined by the Chief prior to the release of the remaining portion of performance security under continuing law if the Chief determines that the permittee is responsible for mine drainage that requires water treatment or an alternative water supply after reclamation is completed.

- Stays the additional alternative financial security requirements if the Chief's determination that a permittee is responsible for mine drainage that requires water treatment or an alternative water supply is appealed.

- States that final release of the performance security in accordance with the Coal Mining Law terminates the Chief's jurisdiction over the reclaimed site of a surface coal mining and reclamation operation, except that the Chief must reassert jurisdiction over the site if the release was based on fraud, collusion, or misrepresentation of a material fact, and allows any person with an interest that is or may be adversely affected by the Chief's determination to appeal it to the Reclamation Commission.

- States that if an operator becomes insolvent, the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of the operator for the amount of any reclamation that is required as a result of the operator's mining activities.

- Requires the Chief to file a statement, which constitutes a lien on the assets of the operator, of the estimated cost to reclaim the land in the office of the county recorder of each county in which the mined land lies.

- Requires a lien to continue in force so long as any portion of the lien remains unpaid or until the Chief issues a certificate of release of the lien, establishes circumstances under which the Chief must issue a certificate of release, and requires the Chief to file a certificate of release in the office of each applicable county recorder if the Chief issues such a certificate.

- Requires all money from the collection of liens to be credited to the Reclamation Forfeiture Fund.

Elimination of permit fee

- Eliminates the fee that was to be paid with an application for a coal mining and reclamation permit or renewal of a permit, the refund of excess permit fees, and the Reclamation Fee Fund, which was used to pay such refunds.

Determination of potential of proposed mining site to create acid or other toxic mine drainage

- Establishes procedures for calculating the potential of a proposed mining site to create acid or toxic mine drainage, and generally requires a statement of that potential to be included in an application for a coal mining and reclamation permit.

Authority of Chief related to federal permit for discharge of dredged or fill material

- Specifies that if Ohio becomes covered by a state programmatic general permit issued by the United States Army Corps of Engineers for the discharge of dredged or fill material into the waters of the United States by coal mining operations, the Chief may establish programs and adopt rules and procedures to implement the permit for the purpose of enabling the state to reduce or eliminate duplicative state and federal regulation.

Miscellaneous administrative changes

- States that rules adopted by the Chief that are designed to assist Ohio coal operators with the permitting process and complying with the environmental standards of the Coal Mining Law and to ensure that reclamation is performed on operations for which the performance security has been forfeited are subject to the Administrative Procedure Act.

Council on Unreclaimed Strip Mined Lands

- Requires the Council on Unreclaimed Strip Mined Lands to hold meetings as necessary at the call of the chairperson or a majority of the members instead of at least four quarterly meetings each year as under former law.

- Requires the Council to gather information, study, and make recommendations concerning land affected by strip mining for which no cash is held in the Reclamation Forfeiture Fund instead of the Strip Mining Reclamation Fund as under former law.

Use of diesel equipment in underground coal mine

- Requires the Chief to establish programs and adopt rules and procedures governing terms, limitations, and conditions for the use of diesel equipment in an underground coal mine.

- States that continuing law concerning the use of gasoline, naptha, kerosene, fuel oil, or a gas engine in a mine cannot impede or prohibit the use of diesel equipment in an underground coal mine, provided that the Chief approves the use of the diesel equipment and it satisfies applicable requirements established in rules.

Severance tax on coal

Rate of general severance tax

Continuing law levies a tax on the severance of coal from the soil or water of this state. Under prior law, the tax was 7¢ per ton. The act increases the rate of the general severance tax on coal to 10¢ per ton. (Sec. 5749.02(A)(1).)

Distribution

The act revises the distribution of the money received from the general severance tax on coal as presented in the table below.

Table 1: Distribution of money received from general severance tax on coal

Fund	Former law	The act
Geological Mapping Fund	6.3%	4.76%
Reclamation Forfeiture Fund	14.2%	0%
Coal Mining Administration and Reclamation Reserve Fund	57.9%	80.95%
Unreclaimed Lands Fund	21.6%	14.29%

Former law required the Chief of the Division of Mineral Resources Management to certify to the Director of Budget and Management when the Chief found at any time during a fiscal year that the balance of the Coal Mining Administration and Reclamation Reserve Fund was below $2 million. Upon receipt of the Chief's certification, the Director had to direct the Tax Commissioner to instead credit to the Coal Mining Administration and Reclamation Reserve Fund the 14.2% credited to the Reclamation Forfeiture Fund during the remainder of the fiscal year for which the certification was made. The act eliminates those certification and redistribution requirements. (Sec. 5749.02(B).)

Additional severance taxes on coal

Prior law levied an additional severance tax of 1¢ per ton on coal for the purpose of paying the state's expenses for reclaiming mined lands that the operator failed to reclaim under a coal mining and reclamation permit or under a surface mining permit for which the operator's bond was not sufficient to pay the state's expense for reclamation. Money received from the tax had to be credited to the

Reclamation Forfeiture Fund. The act eliminates the additional tax and distribution of the revenue from the tax. (Sec. 5749.02(C).)

Similarly, prior law levied an additional severance tax of 1¢ per ton on coal for the purpose of paying the state's expenses for reclaiming mined lands that the operator failed to reclaim under a coal mining and reclamation permit issued after April 10, 1972, but before September 1, 1981, for which the operator's bond was not sufficient to pay the state's expense for reclamation and of paying the expenses for administering the state's coal mining and reclamation regulatory program. Money received from the tax had to be credited to the Reclamation Forfeiture Fund. The act eliminates the additional tax and distribution of the revenue from the tax. (Sec. 5749.02(D).)

The act then levies an additional severance tax of 14¢ per ton on coal produced from an area under a coal mining and reclamation permit for which the permit holder has chosen to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of the additional severance tax as authorized by the act (see "***Performance security***," below). The act states that the additional tax is levied except as otherwise provided under the act or in rules adopted by the Reclamation Forfeiture Fund Advisory Board that is created by the act (see "***Reclamation Forfeiture Fund Advisory Board***," below).

Under the act, if at the end of a fiscal biennium the balance of the Reclamation Forfeiture Fund is equal to or greater than $10 million, the rate levied must be 12¢ per ton. If at the end of a fiscal biennium the balance of the Fund is at least $5 million, but less than $10 million, the rate levied must be 14¢ per ton. If at the end of a fiscal biennium the balance of the Fund is less than $5 million, the rate levied must be 16¢ per ton. Not later than 30 days after the close of a fiscal biennium, the Chief of the Division of Mineral Resources Management must certify to the Tax Commissioner the amount of the balance of the Reclamation Forfeiture Fund as of the close of the fiscal biennium. Any necessary adjustment of the rate levied must take effect on the first day of the following January and must remain in effect during the calendar biennium that begins on that date. (Sec. 5749.02(A)(8).) The act requires all of the money from the additional severance tax to be credited to the Reclamation Forfeiture Fund (sec. 5749.02(B)).

Under law retained in part by the act, when at the close of any fiscal year the Chief finds that the balance of the Reclamation Forfeiture Fund, plus estimated transfers to it from the Coal Mining Administration and Reclamation Reserve Fund, plus the estimated revenues from the additional 1¢ per ton severance tax levied to pay the state's expenses for reclaiming unreclaimed land that was mined under a permit issued after April 10, 1972, but before September 1, 1981, as discussed above, for the remainder of the calendar year that includes the close of that fiscal year, are sufficient to complete the reclamation of those lands, the

purposes for which that tax is levied must be deemed accomplished at the end of that calendar year. The Chief, within 30 days after the close of the fiscal year, must certify those findings to the Tax Commissioner, and the tax must cease to be imposed after the last day of that calendar year. (Sec. 5749.02(D).)

The act instead applies those provisions to the new 14¢ per ton severance tax on coal with modifications. Under the act, when at the close of any fiscal year the Chief finds that the balance of the Reclamation Forfeiture Fund, plus estimated transfers to it from the Coal Mining Administration and Reclamation Reserve Fund, plus the estimated revenues from the additional 14¢ per ton severance tax on coal for the remainder of the calendar year that includes the close of that fiscal year are sufficient to complete the reclamation of lands for which performance security was provided together with reliance on the Reclamation Forfeiture Fund, the purposes for which the additional severance tax is levied must be deemed accomplished at the end of that calendar year. The Chief must certify those findings to the Tax Commissioner within 30 days after the close of the fiscal year, and the additional severance tax must cease to be imposed after the last day of that calendar year on coal produced under a coal mining and reclamation permit if the permittee has paid the additional severance tax during each of the preceding five full calendar years. Not later than 30 days after the close of a fiscal year, the Chief must certify to the Tax Commissioner the identity of any permittees who accordingly no longer are required to pay the additional severance tax levied under the act. (Sec. 5749.02(C).)

Finally, the act levies an additional severance tax of 1.2¢ per ton of coal mined by surface mining methods (sec. 5749.02(A)(9)). The act requires all of the money from the additional severance tax to be credited to the Unreclaimed Lands Fund (sec. 5749.02(B)).

Effective date

The act states that all of the above provisions concerning the severance tax on coal take effect on April 1, 2007.

Reclamation tax credit

The act establishes a nonrefundable tax credit for any severer to which a reclamation tax credit certificate is issued (see "***Issuance of reclamation tax credit certificate***," below). The credit is against the additional severance tax of 14¢ per ton on coal produced from an area under a coal mining and reclamation permit for which the permit holder has chosen to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of the additional severance tax as authorized by the act (see "***Performance security***," below). The credit must be claimed in the amount shown on the certificate. The credit must be

claimed by deducting the amount of the credit from the amount of the first tax payment due under the Severance Tax Law after the certificate is issued. (Sec. 5749.11(A).)

If the amount of the credit shown on a certificate exceeds the amount of the tax otherwise due with that first payment, the excess must be claimed against the amount of tax otherwise due on succeeding payment dates until the entire credit amount has been deducted. The total amount of credit claimed against payments cannot exceed the total amount of credit shown on the certificate. (Sec. 5749.11(A).)

Issuance of a reclamation tax credit certificate

The act establishes that, for the purpose of claiming the reclamation tax credit, an operator with a valid permit issued under the Coal Mining Law may submit an application to the Chief to perform reclamation on land or water resources that are not within the area of the applicant's permit and that have been adversely affected by past coal mining for which the performance security was forfeited. The Chief must provide the application form. The application must include all of the following:

(1) The operator's name, address, and telephone number;

(2) The valid permit number of the operator;

(3) An identification of the area or areas to be reclaimed;

(4) An identification of the owner of the land;

(5) A reclamation plan that describes the work to be done to reclaim the land or water resources and that must include a description of how the plan is consistent with local physical, environmental, and climatological conditions and the measures to be taken during the reclamation to ensure the protection of water systems;

(6) An estimate of the total cost of the reclamation;

(7) An estimate of the timetables for accomplishing the reclamation; and

(8) Any other requirements that the Chief prescribes by rule. (Sec. 1513.171(A).)

The Chief must approve, disapprove, or approve with modifications the application concerning the proposed reclamation work. If the Chief approves the application, the applicant may commence reclamation in accordance with the

timetables included in the application. Upon the completion of the reclamation to the Chief's satisfaction, the Chief must issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient. Prior to the close of the fiscal quarter in which the tax certificate is issued, the Chief must certify to the Tax Commissioner the amount of the credit and the identity of the recipient. (Sec. 1513.171(A).)

The Chief must determine the amount of the credit in accordance with the act and rules adopted under it. The amount of the credit must be equal to the cost that the Division of Mineral Resources Management would have expended from the Reclamation Forfeiture Fund to complete the reclamation. (Sec. 1513.171(B).)

Rulemaking authority concerning tax credit

The act requires the Chief to adopt rules in accordance with the Administrative Procedure Act that are necessary to administer the act's provisions concerning applications for and issuance of reclamation tax credit certificates. The rules must establish all of the following:

(1) A procedure that the Chief must use to determine the amount of the reclamation tax credit;

(2) A procedure by which the Chief may obtain consent of the owners of land or water resources to allow reclamation work for purposes of applications for and issuance of reclamation tax credit certificates; and

(3) A procedure for delivery of notice to the owners of land or water resources on which the reclamation work is to be performed. The rules must require the notice to include the date on which the reclamation work is scheduled to begin. (Sec. 1513.171(C).)

Retention of reclamation tax credit certificate

A severer claiming a credit must retain a reclamation tax credit certificate for not less than four years following the date of the last tax payment against which the credit allowed under that certificate was applied. Severers must make tax credit certificates available for inspection by the Tax Commissioner upon the Tax Commissioner's request. (Sec. 5749.11(B).)

Fund revisions

Reclamation Forfeiture Fund

Continuing law creates the Reclamation Forfeiture Fund consisting of all money that becomes the property of the state from the forfeiture of a bond that

was required to be filed by the holder of a coal mining and reclamation permit and conditioned on the permittee's faithful performance of all the requirements of the Coal Mining Law and the permit. The Fund also consists of money transferred to it from the Coal Mining and Reclamation Reserve Fund and money collected and credited to it from the severance tax. Under former law, the Fund also consisted of any money transferred to it from the Unreclaimed Lands Fund. The act revises the sources of money for the Fund by eliminating the transfer of money to the Fund from the Unreclaimed Lands Fund and adding money from the collection of priority liens from the forfeiture of performance security under the act (see "***Performance security***; ***Priority lien upon forfeiture of performance security***," below). The act also requires fines collected from civil penalties assessed by the Chief, fines collected from criminal penalties for violations of the Coal Mining Law, and fines collected for impeding a public official's lawful duties that, prior to July 1, 1996, would have been a violation of the Coal Mining Law as it existed prior to that date that were deposited in the Coal Mining Administration and Reclamation Reserve Fund under former law to be deposited in the Reclamation Forfeiture Fund instead. (Secs. 1513.02, 1513.18(B), and 1513.181.)

Continuing law requires disbursements from the Reclamation Forfeiture Fund to be made by the Chief for the purpose of reclaiming land affected by coal mining under a coal mining and reclamation permit on which an operator has defaulted. In addition, continuing law requires disbursements to be made from the Fund for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a coal mining and reclamation permit issued under the Coal Mining Law or under a surface mining permit issued under the Surface Mining Law. The act specifies that the disbursements must be made in accordance with the act (see below). Former law required the Chief's priority for management of the Fund, including the selection of projects and transfer of money, to be to ensure that sufficient money was available for the reclamation of areas affected by mining under a coal mining and reclamation permit. The act eliminates that requirement. (Sec. 1513.18(A) and (B).)

Continuing law authorizes the Chief to expend money from the Fund to pay necessary administrative costs, including engineering and design services, incurred by the Division of Mineral Resources Management in reclaiming areas. The act adds that the Chief also may expend money from the Fund to pay necessary administrative costs of the Reclamation Forfeiture Fund Advisory Board created by the act as authorized by the Board under the act (see "***Reclamation Forfeiture Fund Advisory Board***," below). The act retains continuing law under which expenditures from the Fund to pay administrative costs are not required to be made under contract. (Sec. 1513.18(B).)

Former law required the Director of Budget and Management, as money was spent from the Fund and upon the certification of the Chief, to transfer additional money from the Unreclaimed Lands Fund that the Chief requested, provided that the Director could not transfer more than $1 million from the Unreclaimed Lands Fund to the Reclamation Forfeiture Fund during any fiscal year. The act eliminates that requirement. (Sec. 1513.18(B).)

Former law stated that if the amount of money credited to the Reclamation Forfeiture Fund from the forfeiture of the bond applicable to the area of land was not sufficient to pay the cost of doing all of the reclamation work on the land that the operator should have done, but failed to do under a coal mining and reclamation permit, the Chief could expend the amount of money necessary to complete the reclamation from the money credited to the Fund from the severance taxes on coal or transferred to the Fund from the Unreclaimed Lands Fund or the Coal Mining Administration and Reclamation Reserve Fund. The act eliminates that provision and instead requires the Chief to spend money credited to the Reclamation Forfeiture Fund from the forfeiture of the performance security applicable to an area of land to pay for the cost of the reclamation of the land. (Sec. 1513.18(D)(1).)

The act then adds new requirements governing that expenditure. It states that if the performance security for the area of land was provided without reliance on the Reclamation Forfeiture Fund (see "***Performance security***," below), the Chief must use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit (sec. 1513.18(D)(2)). However, if the performance security for the area of land was provided together with reliance on the Fund through payment of the additional severance tax on coal (see above), the act requires the Chief to use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit. If the money credited to the Reclamation Forfeiture Fund from the forfeiture of the performance security is not sufficient to complete the reclamation, the Chief must notify the Reclamation Forfeiture Fund Advisory Board of the amount of the insufficiency. The Chief may spend money credited to the Reclamation Forfeiture Fund from the severance tax on coal or transferred to the Fund from the Coal Mining Administration and Reclamation Reserve Fund to complete the reclamation. The Chief cannot spend money from the Reclamation Forfeiture Fund in an amount that exceeds the difference between the amount of performance security provided and the estimated cost of reclamation as determined by the Chief. (Sec. 1513.18(D)(3).)

The act prohibits money from the Reclamation Forfeiture Fund from being used for reclamation of land or water resources affected by material damage from

subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine if performance security for the area of land was provided together with reliance on the Fund (sec. 1513.18(D)(4)).

Law generally unchanged by the act states that if any part of the money in the Reclamation Forfeiture Fund remains in the Fund after the Chief has caused the area of land to be reclaimed and has paid all the reclamation costs and expenses, the Chief may spend the money to complete other reclamation work performed on forfeiture areas affected under a coal mining and reclamation permit issued on or after September 1, 1981. The act qualifies the authority to spend the remaining money by requiring that all investment earnings of the Fund be credited to the Fund and be used only for the reclamation of land for which performance security was provided together with reliance on the Reclamation Forfeiture Fund. (Sec. 1513.18(F) and (H).)

Coal Mining Administration and Reclamation Reserve Fund

Continuing law creates the Coal Mining Administration and Reclamation Reserve Fund to be used for the administration and enforcement of the Coal Mining Law. Law retained in part authorizes the Chief to transfer not more than $1 million annually from the Fund to the Reclamation Forfeiture Fund to complete reclamation of lands affected by coal mining under a permit issued under the Coal Mining Law or by surface mining under a surface mining permit issued under the Surface Mining Law that the operator failed to reclaim and for which the operator's bond is insufficient to complete the reclamation. The act eliminates the use of the transferred money to complete reclamation of lands affected by surface mining. (Sec. 1513.181.)

As discussed above, the act eliminates the requirement that fines be deposited in the Coal Mining Administration and Reclamation Reserve Fund and instead requires the money to be deposited in the Reclamation Forfeiture Fund (secs. 1513.18(B) and 1513.181). Finally, the act adds that if the Director of Natural Resources determines it to be necessary, the Director may request the Controlling Board to transfer an amount of money from the Coal Mining Administration and Reclamation Reserve Fund to the Unreclaimed Lands Fund (sec. 1513.181).

Unreclaimed Lands Fund

Continuing law creates the Unreclaimed Lands Fund to be used by the Chief for the purpose of reclaiming public or private land affected by mining or controlling mine drainage for which no cash is held in the Reclamation Forfeiture

Fund or the Surface Mining Fund and also for the purpose of paying the expenses and compensation of the Council on Unreclaimed Strip Mined Lands. In order to direct expenditures from the Unreclaimed Lands Fund toward reclamation projects that fulfill priority needs and provide the greatest public benefits, the Chief periodically must submit project proposals to be financed from the Unreclaimed Lands Fund to the Council. For the purpose of selecting project areas and determining the boundaries of project areas, the Council must consider the feasibility, cost, and public benefits of reclaiming the areas, their potential for being mined, the availability of federal or other financial assistance for reclamation, and the geographic distribution of project areas to ensure fair distribution among affected areas. (Sec. 1513.30.)

Former law specified that at least two weeks before any meeting of the Council at which the Chief would have submitted a project proposal, a project area would have been selected, or the boundaries of a project area would have been determined, the Chief had to send notice by first class mail to the board of county commissioners of the county and the board of township trustees of the township in which the proposed project lay and to the chief executive and the legislative authority of each municipal corporation within the proposed project area. In addition, former law required the Chief to give reasonable notice to the news media in the county where the proposed project lay. The act eliminates all of those requirements. (Sec. 1513.30.)

Further, former law authorized the Controlling Board to transfer excess funds from the Oil and Gas Well Fund created in the Oil and Gas Law to meet deficiencies in the Unreclaimed Lands Fund after recommendation by the Council. The act eliminates that authorization. Finally, the act adds that if the Director of Natural Resources determines it to be necessary, the Director may request the Controlling Board to transfer money from the Unreclaimed Lands Fund to the Coal Mining Administration and Reclamation Reserve Fund. (Sec. 1513.30.)

Mined Land Set Aside Fund

The act creates the Mined Land Set Aside Fund consisting of grants made by the United States Secretary of the Interior from the federal Abandoned Mine Reclamation Fund pursuant to the Surface Mining Control and Reclamation Act of 1977. The Chief must administer the Fund. All investment earnings of the Fund must be credited to the Fund. Money in the Fund must be used solely for the following purposes:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil and water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity; and

(4) Research and demonstration projects relating to the development of coal mining reclamation and water quality control program methods and techniques. (Secs. 1513.37(B)(1) to (4) and 1513.371.)

Reclamation Forfeiture Fund Advisory Board

Organization

The act creates the Reclamation Forfeiture Fund Advisory Board consisting of the Director of Natural Resources, the Director of Insurance, and seven members appointed by the Governor with the advice and consent of the Senate. Of the Governor's appointments, one must be a certified public accountant, one must be a registered professional engineer with experience in reclamation of mined land, two must represent agriculture, agronomy, or forestry, one must be a representative of operators of coal mining operations that have valid permits issued under the Coal Mining Law and that have provided performance security without reliance on the Reclamation Forfeiture Fund, one must be a representative of operators of coal mining operations that have valid permits issued under the Coal Mining Law and that have provided performance security together with reliance on the Reclamation Forfeiture Fund (see "***Performance security***," below), and one must be a representative of the public. The act establishes staggered four-year terms for the appointed members and contains standard provisions governing appointments and the filling of vacancies. It authorizes the Governor to remove an appointed member for misfeasance, nonfeasance, or malfeasance. (Sec. 1513.182(A).)

The act prohibits the Directors of Natural Resources and Insurance from receiving compensation for serving on the Board, but requires them to be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the Board. The members appointed by the Governor must receive per diem compensation fixed in accordance with the Department of Administrative Services Law and reimbursement for the actual and necessary expenses incurred in the performance of their duties. (Sec. 1513.182(A).)

The Board annually must elect from its members a chairperson, a vice-chairperson, and a secretary to record the Board's meetings. The Board must hold meetings as often as necessary as the chairperson or a majority of the members determines. It must establish procedures for conducting meetings and for the election of its chairperson, vice-chairperson, and secretary. (Sec. 1513.182(B), (C), and (D).)

Duties

The act requires the Board to do all of the following:

(1) Review the deposits into and expenditures from the Reclamation Forfeiture Fund (see above);

(2) Retain periodically a qualified actuary to perform an actuarial study of the Reclamation Forfeiture Fund;

(3) Based on an actuarial study and as determined necessary by the Board, adopt rules in accordance with the Administrative Procedure Act to adjust the rate of the additional severance tax on coal added by the act and the balance of the Reclamation Forfeiture Fund that pertains to that rate (see above);

(4) Evaluate any rules, procedures, and methods for estimating the cost of reclamation for purposes of determining the amount of performance security that is required under the act (see "***Performance security***," below); the collection of forfeited performance security (see below); payments to the Reclamation Forfeiture Fund; reclamation of sites for which operators have forfeited the performance security; and the compliance of operators with their reclamation plans;

(5) Provide a forum for discussion of issues related to the Reclamation Forfeiture Fund and the performance security that is required under the act (see below);

(6) Submit a report biennially to the Governor that describes the financial status of the Reclamation Forfeiture Fund and the adequacy of the amount of money in the Fund and that may discuss any matter related to the performance security that is required under the act (see below);

(7) Make recommendations to the Governor, if necessary, of alternative methods of providing money for or using money in the Reclamation Forfeiture Fund and issues related to the reclamation of land or water resources that have been adversely affected by past coal mining for which the performance security was forfeited; and

(8) Adopt rules in accordance with the Administrative Procedure Act that are necessary to administer the act's provisions governing the Board. (Sec. 1513.182(E).)

Appropriation for reclamation and study

The act states that it is the intent of the General Assembly to appropriate $5 million for the reclamation of land affected by the surface mining of coal. Of the $5 million, not more than $50,000 must be used to study the management of the financial resources of the coal mining regulatory program of the Division of Mineral Resources Management. The Chief of the Division of Mineral Resources Management, in consultation with a statewide association representing the coal mining industry and a statewide association representing environmental advocacy, must develop an outline of the subjects for the study. The Chief must select an objective third party that has knowledge in the management of finances to conduct the study. Upon completion of the study, the third party must prepare a report of its findings and submit the report to the Director of Natural Resources. (Section 3.)

Performance security

Submission of and requirements governing performance security

The act makes numerous changes to the statutes that govern the financial security requirements for applicants for coal mining and reclamation permits. In some instances, the act makes minor revisions to the statutes. However, in other instances the act completely revises the financial security requirements. Below is a discussion of the requirements governing financial security as they existed prior to the enactment of the act followed by a discussion of the changes made by the act. The discussion of the requirements governing financial security as they existed prior to the enactment of the act refers to all of the provisions as "former law." However, as stated above, some of those provisions are not repealed, but are merely slightly revised. Thus, the references to "former law" in the discussion below do not necessarily indicate an outright repeal of the provisions being discussed.

Former law. Formerly, after a coal mining and reclamation permit application has been approved, but before the permit was issued, the applicant had to file with the Chief a bond for performance payable, as appropriate, to the state and conditioned on faithful performance of all the requirements of the Coal Mining Law and the permit. The bond had to be in the amount of $2,500 times the number of acres of land on which the operator stated in the application for a permit that the operator would initiate and conduct coal mining and reclamation operations within the initial term of the permit. The minimum amount of a bond

was $10,000. The bond covered areas of land affected by mining within or immediately adjacent to the permitted area so long as the total number of acres did not exceed the number of acres bonded. However, the authority for the bond to cover areas of land immediately adjacent to the permitted area did not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations were to be initiated and conducted within the permit area, the permittee had to file with the Chief an additional bond or bonds to cover the increments. In the event of forfeiture of a bond, if the bond was insufficient to complete the reclamation, the Chief had to complete the reclamation using funds from the Reclamation Forfeiture Fund. (Sec. 1513.08(A).)

Liability under the bond was for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements under the Coal Mining Law. The bond had to be executed by the operator and a corporate surety licensed to do business in Ohio, except that the operator could elect to deposit cash, negotiable bonds of the United States or this state, or negotiable certificates of deposit of any bank or savings and loan association organized or transacting business in the United States. The cash deposit or market value of the securities had to be equal to or greater than the amount of the bond required for the bonded area. (Sec. 1513.08(B).)

The Chief was authorized to accept the bond of the applicant itself without separate surety when the applicant demonstrated to the satisfaction of the Chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount (sec. 1513.08(C)). Cash or securities so deposited had to be deposited on the same terms as the terms on which surety bonds could be deposited. The securities had to be security for the repayment of the negotiable certificate of deposit. (Sec. 1513.08(D).) Finally, the amount of the bond or deposit required and the terms of each acceptance of the applicant's bond had to be adjusted by the Chief from time to time as affected land acreages were increased or decreased (sec. 1513.08(E)).

The act. As noted above, the act substantially revises the statutes governing performance bonds. First, it defines "performance security" to mean a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the Chief (sec. 1513.01(W)). It then replaces references in the Coal Mining Law to "bond,"

"bond coverage," or "bond or deposit" with references to "performance security" (secs. 1513.02, 1513.07, 1513.071, 1513.08, 1513.13, 1513.16, 1513.17, 1513.18, 1513.181, and 1513.371).

The act states that after a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant must file with the Chief the required performance security (sec. 1513.08(A)). It requires the Chief, using the information contained in the permit application, the requirements contained in the approved permit and reclamation plan, and, after considering the topography, geology, hydrology, and revegetation potential of the area of the approved permit, the probable difficulty of reclamation, to determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the Division of Mineral Resources Management in the event of forfeiture of the performance security by the applicant. The Chief must send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant must send written notice to the Chief indicating the method by which the applicant will provide the performance security as discussed below. (Sec. 1513.08(B).)

The act requires the applicant to provide performance security in an amount using one of the following:

(1) If the applicant elects to provide performance security without reliance on the Reclamation Forfeiture Fund, the amount of the estimated cost of reclamation as determined by the Chief for the increments of land on which the operator will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application; or

(2) If the applicant elects to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of the act's additional severance tax on coal (see above), an amount of $2,500 per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. However, in order to be eligible to provide such performance security, an applicant must have held a permit issued under the Coal Mining Law for any coal mining and reclamation operation for a period of not less than five years. In the event of forfeiture of performance security that was provided in accordance with those requirements, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the Chief must be obtained from money in the Reclamation Forfeiture Fund as needed to complete the reclamation. (Sec. 1513.08(C).)

The act states that the performance security provided in accordance with either item (1) or (2), above, for the entire area to be mined under one permit cannot be less than $10,000 (sec. 1513.08(C)).

As under former law (see above), the performance security must cover areas of land affected by mining within or immediately adjacent to the permitted area so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee must file with the Chief additional performance security to cover the succeeding increments. The act adds that if a permittee intends to mine areas outside the approved permit area, the permittee must provide additional performance security to cover the areas to be mined. (Sec. 1513.08(C).)

An applicant must provide performance security in accordance with item (1), above, in the full amount of the estimated cost of reclamation as determined by the Chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine. A permittee must provide the performance security not later than one year after the act's effective date for a permitted coal preparation plant or coal refuse disposal area that is in existence on the act's effective date and that is not located within a permitted area of a mine. (Sec. 1513.08(C).)

A permittee's liability under the performance security is limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security must be for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements under the Coal Mining Law. (Sec. 1513.08(D).)

Adjustments

The act states that the amount of the estimated cost of reclamation and the amount of a permittee's performance security provided without reliance on the Reclamation Forfeiture Fund may be adjusted by the Chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If the performance security was provided together with reliance on the Reclamation Forfeiture Fund and the Chief has issued a cessation order under the Coal Mining Law for failure to abate a violation of the contemporaneous reclamation requirement established in that Law, the Chief may require the

permittee to increase the amount of the performance security from $2,500 per acre of land to $5,000 per acre of land. (Sec. 1513.08(E).)

The Chief must notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the Chief concerning the proposed adjustment, and the Chief must provide such an informal conference. If the Chief increases the amount of performance security, the permittee must provide additional performance security in an amount determined by the Chief. If the Chief decreases the amount of performance security, the Chief must determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the Chief. (Sec. 1513.08(E).)

The act authorizes a permittee to request a reduction in the amount of the performance security by submitting to the Chief documentation proving that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the Division in the event of forfeiture of the performance security. The Chief must examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the Chief determines that the performance security exceeds the estimated cost, the Chief must determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the Chief. Adjustments in the amount of performance security cannot be considered release of performance security and are not subject to the release requirements in the Coal Mining Law. (Sec. 1513.08(F).)

The act incorporates continuing law into the requirements governing performance security by stating that if the performance security is a bond, it must be executed by the operator and a corporate surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association must be licensed and operating in this state rather than organized or transacting business in the United States as in former law. Generally as in continuing law, the cash deposit or market value of the securities must be equal to or greater than the amount of the performance security required. The act adds that the Chief must review any documents pertaining to the performance security, approve or disapprove them, and notify the applicant of the Chief's determination. (Sec. 1513.08(G).)

The act retains continuing law authorizing the Chief to accept the bond of the applicant itself without separate surety when the applicant complies with specified requirements, but applies it to circumstances when the performance security is a bond (sec. 1513.08(H)). The act removes language that was superfluous due to the inclusive definition of "performance security" (sec. 1513.08, former (D)).

The act specifies that performance security may be held in trust, provided that the state is the conditional beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The Chief must review the trust document, approve or disapprove it, and notify the applicant of the Chief's determination. (Secs. 1513.08(I) and 1513.18(C).)

Under the act, if a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security becomes insolvent, the permittee must notify the Chief of the insolvency, and the Chief must order the permittee to submit a plan for replacement performance security within 30 days after receipt of notice from the Chief. If the permittee provided performance security without reliance on the Reclamation Forfeiture Fund, the permittee must provide the replacement performance security within 90 days after receipt of notice from the Chief. If the permittee provided performance security together with reliance on the Reclamation Forfeiture Fund, the permittee must provide the replacement performance security within one year after the permittee's receipt of notice from the Chief, and, for a period of one year after the permittee's receipt of notice from the Chief or until the permittee provides the replacement performance security, whichever occurs first, money in the Reclamation Forfeiture Fund must be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the Chief. (Sec. 1513.08(J).)

The act states that a permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence may be satisfied by liability insurance required under the Coal Mining Law in lieu of the permittee's performance security if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence (sec. 1513.08(K)).

If the performance security provided in accordance with the act exceeds the estimated cost of reclamation, the Chief may authorize the amount of the performance security that exceeds the estimated cost of reclamation together with any interest or other earnings on the performance security to be paid to the permittee (sec. 1513.08(L).)

Additional performance security for mine drainage

The act states that, except as discussed below, if the Chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee must provide alternative financial security in an amount determined by the Chief prior to the release of the remaining portion of performance security under continuing law. The alternative financial security must be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security must include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both. The act requires the Chief to adopt rules in accordance with the Administrative Procedure Act that are necessary for the administration of the additional alternative financial security requirements. (Sec. 1513.16(F)(8)(a) and (b).)

However, the additional alternative financial security requirements do not apply while the Chief's determination of a permittee's responsibility is the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there is an enforceable administrative or judicial decision affirming or modifying the Chief's determination, the permittee must provide the alternative financial security in an amount established in the administrative or judicial decision. (Sec. 1513.16(F)(8)(c).)

Termination of Chief's jurisdiction

The act states that final release of the performance security in accordance with the Coal Mining Law terminates the Chief's jurisdiction under that Law over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. However, the Chief must reassert jurisdiction over such a site if the release was based on fraud, collusion, or misrepresentation of a material fact and the Chief, in writing, demonstrates evidence of the fraud, collusion, or misrepresentation. Any person with an interest that is or may be adversely affected by the Chief's determination may appeal the determination to the Reclamation Commission in accordance with the Coal Mining Law. (Sec. 1513.16(F)(9).)

Priority lien upon forfeiture of performance security

The act adds that if an operator becomes insolvent, the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of that operator for the amount of any reclamation that is required as a result of the operator's mining activities. The Chief must file a statement in the office of the county recorder of each county in which the mined land lies of the estimated cost to reclaim the land. The estimated cost must include the direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement constitutes a lien on the assets of the operator as of the date of filing. The lien continues in force so long as any portion of the lien remains unpaid or until the Chief issues a certificate of release of the lien. If the Chief issues a certificate of release, the Chief must file it in the office of each applicable county recorder. (Sec. 1513.081(A).)

The Chief promptly must issue a certificate of release under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the operation for which reclamation was not completed to a different operator; or

(3) Any other circumstance that the Chief determines to be in the best interests of the state (sec. 1513.081(B)).

The act authorizes the Chief to modify the amount of a lien. If the Chief modifies a lien, the Chief must file a statement in the office of the county recorder of each applicable county of the new amount of the lien. (Sec. 1513.081(C).)

The Chief may authorize an agent to hold a certificate of release in escrow for a period not to exceed 180 days for the purpose of facilitating the transfer of unreclaimed mine land (sec. 1513.081(D)). The act requires all money from the collection of liens to be credited to the Reclamation Forfeiture Fund (sec. 1513.081(E)).

Elimination of permit fee

Former law required each application for a coal mining and reclamation permit or renewal of a permit to be accompanied by a permit or renewal fee in an amount equal to the product of $75 multiplied by the number of acres, estimated in the application, that would have comprised the area of land to be affected within the permit or renewal period by the coal mining operation for which the permit or

renewal was requested. The act eliminates that requirement. (Sec. 1513.07(B)(1).)

Thus, the act also eliminates language under which an operator was entitled to a refund of the excess permit fee that would have resulted if, at the end of a permit or renewal period, the number of acres of land affected by the coal mining operation proved to be smaller than the number of acres of land for which the operator paid a permit fee. Also eliminated is the Reclamation Fee Fund, which was used to pay such refunds, as well as language providing that a balance of $40,000 from permit fees was to be kept in the Fund at all times and that money remaining from permit fees was to be credited to the Coal Mining Administration and Reclamation Reserve Fund. (Sec. 1513.10, repealed.)

Determination of potential of proposed mining site to create acid or other toxic mine drainage

Continuing law requires an application for a coal mining and reclamation permit to contain specified information. That information generally must include a statement of the results of test borings or core samplings from the proposed permit area, including logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of the coal, the sulfur content of any coal seam, chemical analysis of potentially acid or toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal to be mined. However, the informational requirements regarding test borings or core samplings may be waived by the Chief with respect to the specific application by a written determination that the requirements are unnecessary. The act adds that if the test borings or core samplings from the permit area indicate the existence of potentially acid forming or toxic forming quantities of sulfur in the coal or overburden to be disturbed by mining, the application also must include a statement of the acid generating potential and the acid neutralizing potential of the rock strata to be disturbed as calculated in accordance with the act (see below) or with another calculation method. (Sec. 1513.07(B)(1)(o).)

The act defines "potential acidity" as a laboratory measurement of the amount of acidity that could be produced by material in a rock strata proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that acidity that would be present in 1,000 tons of disturbed overburden. Under the act, "neutralization potential" means a laboratory measurement of the alkalinity of a rock strata expressed as the amount of acidity that would be neutralized by material proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that alkalinity that would be present in 1,000 tons of disturbed overburden. (Sec. 1513.075(A).)

Continuing law establishes criteria that the Chief must consider when deciding whether to approve an application for a permit for a coal mining operation. One such issue that the Chief must consider involves the minimization of negative hydrologic impacts of coal mining through the avoidance of acid or other toxic mine drainage (secs. 1513.07(E)(2)(a) and (c) and 1513.16(A)(10)). The act specifies that for purposes of the Chief's determination regarding a permit application, the potential acidity and the neutralization potential of the rock strata that would be disturbed under the permit may be calculated in accordance with the act (sec. 1513.075(B)).

Under the act, the measurement of potential acidity may be based on laboratory analyses of the sulfur content of the coal and overburden to be disturbed by mining. The act states that if the results of test borings or core samplings that must be stated on the permit application include laboratory analyses of the pyritic form of sulfur, the applicant may base the calculation of the potential acidity for the area on the pyritic sulfur content of the coal and overburden to be disturbed by mining rather than on the total sulfur content. (Sec. 1513.075(C).)

The act allows the tons of rock in the area represented by each core hole resulting from test boring or core sampling to be estimated and used to calculate the tons of potential acidity and tons of neutralization potential for each rock stratum. The sum of those values across the proposed permit area may be used to calculate the site's overall neutralization potential and potential acidity. (Sec. 1513.075(D).)

The act specifies that the proposed permit area may not be considered to have the potential to create acid or other toxic mine drainage if either of the following applies:

(1) The numeral that indicates the site's overall neutralization potential divided by the numeral that indicates the site's overall potential acidity results in a quotient that is equal to or greater than two; or

(2) The numeral that indicates the neutralization potential subtracted from the numeral that indicates the potential acidity results in a remainder that is equal to or less than negative five in the case that the total sulfur content of rock strata is used to calculate potential acidity or negative ten in the case that the pyritic sulfur content of rock strata is used to calculate potential acidity (sec. 1513.075(E)).

In the case of the issuance of a permit that involves a conflict of results obtained between various methods of calculating potential acidity and neutralization potential for purposes of assessing the potential for acid mine drainage to occur at a mine site, the act requires the permit to include provisions

for monitoring and record keeping to identify the creation of unanticipated acid water at the mine site. If the monitoring detects the creation of acid water at the site, the permit must impose on the permittee additional requirements regarding mining practices and site reclamation to prevent the discharge of acid mine drainage from the mine site. (Sec. 1513.07(E)(8).)

Authority of Chief related to federal permit for discharge of dredged or fill material

The act states that if Ohio becomes covered by a state programmatic general permit issued by the United States Army Corps of Engineers for the discharge of dredged or fill material into the waters of the United States by operations that conduct surface and underground coal mining and reclamation operations and the restoration of abandoned mine lands, the Chief may establish programs and adopt rules and procedures designed to implement the terms, limitations, and conditions of the permit. The purpose of the programs, rules, and procedures must be to enable the state to reduce or eliminate duplicative state and federal project evaluation, simplify the regulatory approval process, provide environmental protection for aquatic resources that is equivalent to federal protection, and satisfy the requirements of the United States Army Corps of Engineers regulatory program under which the permit is issued and that is established under federal law. (Sec. 1513.02(J).) Any rules must be adopted in accordance with the Administrative Procedure Act (sec. 1513.02(C)(1)).

Miscellaneous administrative changes

Law unchanged by the act states that rules adopted by the Chief to administer and enforce the Coal Mining Law, implement that Law's requirements for the reclamation of lands affected by coal mining, and meet the requirements of the federal Surface Mining Control and Reclamation Act of 1977 are subject to the Administrative Procedure Act. The act adds that rules adopted by the Chief that are designed to assist Ohio coal operators with the permitting process and complying with the environmental standards of the Coal Mining Law and to ensure that reclamation is performed on operations for which the performance security has been forfeited (see above) also are subject to the Administrative Procedure Act. (Sec. 1513.02(C)(1).)

Law largely unchanged by the act authorizes any person having an interest that is or may be adversely affected by a notice of violation, order, or decision of the Chief to appeal the notice, order, or decision to the Reclamation Commission. It establishes procedures governing those appeals, including procedures for the awarding of costs and expenses, including attorney's fees, when an enforcement order or permit decision is appealed. Under those procedures, a party, other than a permittee or the Division, must file a petition, if any, for an award of costs and

expenses with the Chief. If the Chief makes specified findings, the Chief may award to that party the party's costs and expenses, including attorney's fees that were necessary and reasonably incurred by the party for, or in connection with, participation in the proceeding before the Commission. The act clarifies that the attorney's fees are those that were necessary and reasonably incurred by the petitioning party. (Sec. 1513.13(E)(1)(a).)

Council on Unreclaimed Strip Mined Lands

Continuing law creates the Council on Unreclaimed Strip Mined Lands consisting of the Chief of the Division of Mineral Resources Management, four persons appointed by the Director of Natural Resources, three members of the House of Representatives, and three members of the Senate. Former law required the Council to hold at least four regular quarterly meetings each year. In addition, special meetings had to be held at the call of the chairperson or a majority of the members. The act instead requires the Council to hold meetings as necessary at the call of the chairperson or a majority of the members. (Sec. 1513.29.)

Law largely unchanged by the act, the Council must gather information, study, and make recommendations concerning the number of acres, location, ownership, condition, environmental damage resulting from the condition, cost of acquiring, reclaiming, and possible future uses and value of eroded lands in the state, including land affected by strip mining for which no cash is held in the Strip Mining Reclamation Fund. The act replaces the Strip Mining Reclamation Fund with the Reclamation Forfeiture Fund. (Sec. 1513.29.)

Use of diesel equipment in underground coal mine

Continuing law generally prohibits the use of gasoline, naptha, kerosene, fuel oil, or a gas engine in a mine, except for operating pumping machinery where electric, compressed air, or steam power is not available or cannot be transmitted to the pump. In such a case where electric, compressed air, or steam power is not available or cannot be transmitted to the pump, certain requirements must be followed. The act retains the requirements and states that neither the prohibition nor the requirements can be construed to prohibit or impede the use of diesel equipment in an underground coal mine, provided that the Chief approves the use of the equipment in underground mines and the equipment satisfies requirements established in rules adopted by the Chief governing the use of diesel equipment in underground mines. (Sec. 1567.35.) The act accordingly requires the Chief to adopt such rules, to adopt procedures, and to establish programs governing terms, limitations, and conditions for the use of diesel equipment in an underground coal mine (sec. 1513.02(A)(8)). The rules must be adopted in accordance with the Administrative Procedure Act (sec. 1513.02(C)(1)).

INDUSTRIAL MINERALS MINING

Mine safety standards

- Exempts industrial minerals mining operations from the state mine safety laws, and instead requires the incorporation of the federal mine safety standards by rule for those operations.

- Requires the Chief of the Division of Mineral Resources Management in the Department of Natural Resources, in consultation with a statewide association that represents the surface mining industry, to adopt rules incorporating the federal mine safety standards and establishing other safety-related requirements and procedures regarding the mining of industrial minerals.

- Requires the Chief to conduct inspections of surface mining operations under specified circumstances, including lost-time accidents in an amount greater than the national average, a fatality, or a life-threatening injury at a surface mining operation.

- Requires the Chief to conduct safety audits at a surface mining operation if the operator has requested the Division of Mineral Resources Management to conduct mine safety training, and requires the Chief to prepare a report of the Chief's findings and provide it to the operator.

- Requires the Chief to issue orders to safeguard employees of a surface mining operation if during an inspection or safety audit the Chief finds a condition or practice that could reasonably be expected to cause the death of or imminent serious physical harm to an employee, and requires the Chief to prepare a report that describes the condition or practice and the action taken to eliminate it.

- Requires the Chief to enforce the safety standards established in rules adopted under the act when conducting inspections of a surface mining operation.

- Requires the Chief to conduct mine safety training for employees of an operator who requests the training, and allows the Chief to charge a fee for such training to persons who seek the training, but are not employed by a holder of a surface mining permit.

- Requires the Chief annually to conduct a safety performance evaluation of all surface mining operations in the state in accordance with rules adopted under the act.

- Requires the operator of a surface mining operation to employ a certified mine foreperson or a person who is qualified to conduct examinations of surface mining operations for purposes of specified federal mine safety standards, and establishes requirements concerning certified mine forepersons and persons qualified in lieu of a certified mine foreperson.

- Requires the Chief, not later than five years after the act's effective date, to submit a report to the Governor summarizing the activities of the Division under the act's provisions regarding mine safety at surface mining operations and matters related to miner accident rates and life-threatening accidents and fatalities.

Right of entry on land for inspections and performing reclamation

- Authorizes the Chief or an authorized employee of the Division to enter on lands to make inspections under the law governing industrial minerals mining when necessary in the discharge of the duties specified in that law, authorizes the Chief to enter on land and perform reclamation under certain circumstances and to enter on adjoining land when necessary for access to the land on which reclamation is to be performed, and requires the Chief to return to the same or an improved condition land that was used to access land to perform reclamation.

Reclamation and bond release

- Revises the reclamation and bond release procedures for surface mining operations by eliminating phased reclamation.

- Establishes that the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of an operator or partner or officer of the operator that forfeits a performance bond for the amount that is needed to perform any required reclamation, and establishes filing requirements for such a lien and requirements governing certificates of release for such a lien.

- Revises the amount of the surety bond that must be filed by a permit applicant and the per-acre amount used to calculate the performance bond that must be filed with an annual report or final report by an operator.

County and township zoning; roads

- Authorizes a county or township board of zoning appeals to require as a condition of the approval of a conditional zoning certificate for industrial minerals mining or activities that are related to making finished aggregate products any specified measure, including measures described by the act such as identification of specific roads to be used as the primary means of ingress to and egress from a proposed activity.

- Establishes procedures that a county engineer and a board of county commissioners must follow for the designation of specific roads as a required condition of the approval of a conditional zoning certificate for the above activities, and establishes procedures for appeals of that designation.

- Requires the owner or operator of an industrial minerals mining operation that is subject to the use of specific roads for ingress to and egress from the operation to post a sign to inform truck drivers entering and leaving the operation of the roads to be used, and establishes penalties for violations of that requirement.

- With certain exceptions, requires vehicles entering or leaving an industrial minerals mining operation that have a gross vehicle weight in excess of 66,000 pounds to use the specific roads designated as described above, and establishes penalties for violations of that requirement.

Mine safety standards

Law retained in part by the act establishes safety standards for the mining of coal and industrial minerals. The safety standards include the provision of rescue stations, inspections of mines and equipment, emergency training requirements, ventilation requirements, requirements governing the use of electricity, requirements governing the use of explosives, and other safety-related requirements (R.C. Chapters 1561., 1563., 1565., 1567., and 1571., not in the act). The act retains those safety standards for the mining of coal, but, except for the provisions concerning mining operations near public roads, exempts the mining of

industrial minerals from them and instead requires the incorporation of federal mine safety standards by rule as discussed below (secs. 1514.40, 1561.011, 1563.01, 1565.01, 1567.01, and 1571.011).

Rules

For purposes of the mining of industrial minerals, the act requires the Chief of the Division of Mineral Resources Management, in consultation with a statewide association that represents the surface mining industry, to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) For the purpose of establishing safety standards governing surface mining operations, incorporate by reference the federal mine safety standards (specifically, 30 C.F.R. parts 46, 47, 50, 56, 58, and 62, as amended) (sec. 1514.40(A));

(2) Establish criteria, standards, and procedures governing safety performance evaluations conducted under the act, including requirements for the notification of operators and the identification of authorized representatives of miners at surface mining operations for purposes of inspections conducted under the act (sec. 1514.40(B));

(3) Establish requirements governing the reporting and investigation of accidents at surface mining operations. In adopting the rules, the Chief must establish requirements that minimize duplication with any reporting and investigations of accidents that are conducted by the Mine Safety and Health Administration in the United States Department of Labor. (Sec. 1514.40(C).)

(4) Establish the time, place, and frequency of and a fee, if any, for mine safety training conducted by the Chief as provided under the act (see "***Safety training***," below). The amount of the fee cannot exceed the costs of conducting the training. (Sec. 1514.40(D).)

(5) Establish the minimum qualifications necessary to take the examination that is required for certification of certified mine forepersons under the act and requirements, fees, and procedures governing the taking of the examination (see "***Certified mine foreperson***," below) (sec. 1514.40(E)). The act defines "certified mine foreperson" to mean the person whom the operator of a surface mining operation places in charge of the conditions and practices at the mine, who is responsible for conducting workplace examinations for purposes of the federal mine safety standards, and who has passed an examination for the position administered by the Division of Mineral Resources Management (sec. 1514.01(P)).

(6) Establish requirements and fees governing the renewal of certificates of certified mine forepersons (sec. 1514.40(F)); and

(7) Establish requirements and procedures for the approval of training plans that are submitted under the act for the use of qualified persons to conduct examinations of surface mining operations in lieu of certified mine forepersons and minimum qualifications of those persons. The rules must include requirements governing training frequency and curriculum that must be provided for qualified persons under such plans and must establish related reporting and record keeping requirements. (Sec. 1514.40(G).)

The act specifies that for purposes of the act's provisions regarding mine safety, "rule" means a rule adopted under the act unless the context indicates otherwise (sec. 1514.40).

Inspections

The act specifies that if a surface mining operation is not inspected by the Mine Safety and Health Administration in the United States Department of Labor, the Chief annually must conduct a minimum of two inspections of the operation. If a surface mining operation is identified through a safety performance evaluation conducted under the act and rules as having lost-time accidents in an amount greater than the national average, the Chief must conduct a minimum of two inspections of the operation for one year following the identification. The act also specifies that if a fatality of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the Chief must conduct a minimum of one inspection every three months at the operation for two years following the fatality. Furthermore, the act specifies that if a life-threatening injury of a miner occurs at a surface mining operation as a result of an unsafe condition or a practice at the operation, the Chief must conduct a minimum of one inspection every three months at the operation for one year following the injury. (Sec. 1514.41.)

Safety audits

The act requires the Chief to conduct a safety audit at a surface mining operation if the operator has requested the Division to conduct mine safety training. The Chief must conduct additional safety audits at any surface mining operation if requested by the operator. If the Chief conducts a safety audit, the operator must ensure that the Chief has a copy of the training plan that is required by specified federal safety standards at the time of the audit.

After completion of an audit, the Chief must prepare a report that describes the general conditions of the surface mining operation, lists any hazardous

conditions at the operation, lists any violations of the safety standards established in rules, and describes the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation. The Chief must provide two copies of the report to the operator who must post one copy of the report at the operation for review by the operation's employees. (Sec. 1514.42.)

Emergency orders to safeguard employees

If during an inspection or a safety audit, the Chief finds a condition or practice at a surface mining operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the act requires the Chief immediately to issue orders to safeguard the employees, notify the operator of the condition or practice, and require the operator to abate the condition or practice within a reasonable period of time. In all such situations, the Chief may require the operation to cease in the area in which the condition or practice is occurring or may require the entire operation to cease, if necessary, until the condition or practice that could reasonably be expected to cause death or serious physical harm is eliminated.

The Chief must complete a report that describes the condition or practice and the action taken to eliminate it and provide two copies of the report to the operator. The operator must post one copy of the report at the operation for review by the employees. (Sec. 1514.44.)

Enforcement

The act requires the Chief to enforce the safety standards established in rules adopted under the act when conducting inspections of an operation (see above) (sec. 1514.43(A)). Except for a situation in which the Chief issues emergency orders to safeguard employees or pursuant to a safety audit (see above), if during an inspection the Chief finds a violation of a safety standard, the Chief must require the operator to comply with the standard that is being violated within a reasonable period of time. If the Chief finds a violation of a safety standard, the Chief must return to the surface mining operation after a reasonable period of time to determine if the operator has complied with the standard that was being violated. If the operator has failed to comply with the standard, the Chief must take appropriate action to obtain compliance if necessary. (Sec. 1514.43(B).)

Furthermore, except for a situation in which the Chief issues emergency orders to safeguard employees or pursuant to a safety audit (see above), after completion of an inspection of an operation, the Chief must prepare a report that describes the general conditions of the operation, lists any hazardous conditions at the operation, lists any violations of the safety standards established in rules, and

describes the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation. The Chief must provide two copies of the report to the operator. The operator must post one copy of the report at the operation for review by the employees. (Sec. 1514.43(C).)

Except pursuant to a safety audit (see above), the operator, not later than ten days after receipt of a report, may submit a written request to the Chief for a meeting with the Chief to review the findings contained in the report. Upon receipt of a request, the Chief must review the report and schedule a meeting with the operator. Within a reasonable period of time after the meeting, the Chief must make a written determination concerning the findings contained in the report and provide one copy of the determination to the operator and one copy to an authorized representative of the miners at the operation. If the Chief makes a determination that affirms the findings contained in the report, the Chief's determination constitutes an order for purposes of the law governing industrial minerals mining and rules adopted under it. (Sec. 1514.43(D).)

Under the act, an operator cannot appeal the contents of a report. However, an operator may appeal the Chief's determination. (Sec. 1514.43(E).) The act prohibits an operator from violating or failing to comply with an order issued under the above provisions (sec. 1514.43(F)).

Time period for appeals of Chief's determination to Reclamation Commission

Continuing law establishes the Reclamation Commission for the purpose of hearing appeals under the laws governing coal mining and industrial minerals mining. Law largely retained by the act establishes time periods within which the appeals must be made and heard. The act retains those time periods with one exception. Under the act, a surface mining operator may appeal the determination of the Chief that is made in the enforcement of the industrial minerals safety standards (see above) within ten days after the operator receives a copy of the determination. (Sec. 1514.09.) Otherwise, continuing law generally provides for appeals to be made within 30 days (sec. 1513.13).

Safety training

The act requires the Chief, if the operator of a surface mining operation requests the Division to conduct mine safety training, to conduct mine safety training for the employees of that operator. For persons who are not employed by a holder of a surface mining permit and who seek the training, the Chief may charge a fee in an amount established in rules for conducting it. The training must be conducted in accordance with rules and must emphasize the standards adopted

in rules and include any other content that the Chief determines is beneficial. Any fees collected must be credited to the Surface Mining Fund created in continuing law. (Sec. 1514.46.)

Annual safety performance evaluation; notification of legal identity

The act requires the Chief to conduct annually a safety performance evaluation of all surface mining operations in the state in accordance with rules adopted under the act. In addition, the operator of a surface mining operation must provide to the Chief a copy of the notification of legal identity required under specified federal regulations at the same time that the notice is filed with the Mine Safety and Health Administration in the United States Department of Labor. (Sec. 1514.45.)

Certified mine foreperson

The act requires the operator of a surface mining operation to employ a certified mine foreperson, or a person who is qualified in accordance with the act and rules adopted under it (see below), to conduct examinations of surface mining operations for purposes of specified federal mine safety standards (sec. 1514.47(A)). The Chief must conduct examinations for the position of certified mine foreperson in accordance with rules adopted under the act. In order to be eligible for examination as a certified mine foreperson, an applicant must file with the Chief an affidavit establishing the applicant's qualifications to take the examination. The Chief must grade examinations and issue certificates. (Sec. 1514.47(B).)

A certificate issued under the act expires five years after the date of issuance. A certificate may be renewed, provided that the applicant verifies that all required training pursuant to specified federal mine safety standards has been completed and any other requirements for renewal have been satisfied. (Sec. 1514.47(C).)

If a certificate is suspended, it cannot be renewed until the suspension period expires and the person whose certificate is suspended successfully completes all action required by the Chief. If an applicant's license, certificate, or similar authority that is issued by another state to perform specified mining duties is suspended or revoked by that state, the applicant is ineligible for examination for or renewal of a certificate in Ohio during that period of suspension or revocation. A certificate that has been revoked cannot be renewed. If a person who has been certified by the Chief under the act purposely violates the law governing industrial minerals mining, the Chief may suspend or revoke the certificate after an investigation and hearing conducted in accordance with the Administrative Procedure Act are completed (sec. 1514.47(D)).

Persons qualified in lieu of certified mine foreperson. In lieu of employing a certified mine foreperson, the operator of a surface mining operation may submit to the Chief a detailed training plan under which persons who qualify under the plan may conduct and document examinations at the surface mining operation for purposes of specified federal mine safety standards. The Chief must review the plan and determine if it complies with the requirements established in rules adopted under the act. The Chief must approve or deny the plan and notify in writing the operator of the Chief's decision. (Sec. 1514.47(E).)

Report summarizing safety-related matters

Not later than five years after the act's effective date, the Chief must submit a report to the Governor summarizing the activities of the Division under the act's provisions regarding mine safety at surface mining operations, trends in miner accident rates, and the number and causes of life-threatening accidents and fatalities since the act's effective date. In addition, the report must compare those trends and accident rates with the trends and accident rates that occurred ten years prior to the act's effective date and, if necessary, recommend changes to the act's provisions in order to improve miner health or safety. (Section 4.)

Right of entry on land for inspections and performing reclamation

The act authorizes the Chief or an authorized employee of the Division to enter on lands to make inspections in accordance with the law governing industrial minerals mining and rules adopted under it when necessary in the discharge of the duties specified in that law and the rules. It prohibits anyone from preventing or hindering the Chief or an authorized employee of the Division in the performance of those duties. (Sec. 1514.50(A).)

Under the act, for purposes of performing reclamation of land affected by surface mining operations on which the holder of a permit issued under the law governing industrial minerals mining has defaulted or otherwise failed to timely conduct the reclamation required by that law, the Chief may enter on the land and perform reclamation that the Chief determines is necessary to protect public health or safety or the environment. In order to perform the reclamation, the Chief may enter on adjoining land or other land that is necessary to access the land on which the surface mining occurred and on which the reclamation is to be performed. The Chief must provide reasonable advance notice to the owner of any land to be entered for the purpose of access for reclamation. The Division must return the land that was used to access the former surface mining operation to the same or an improved grade, topography, and condition that existed prior to its use by the Division. (Sec. 1514.50(B).)

When conducting investigations concerning a projected cone of depression and dewatering under the law governing industrial minerals mining, the Chief or an authorized employee of the Division may enter on lands to conduct water supply surveys, measure ground water levels and collect data when necessary to define the cone of depression, or perform other duties related to the cone of depression and dewatering (sec. 1514.50(C)).

Authority of Division

The act states that the Division of Mineral Resources Management has authority over all surface mining operations located in Ohio and requires the Division to exercise that authority as provided in the law governing industrial minerals mining (sec. 1514.011).

Reclamation and bond release

Prior law: phased reclamation

Under former law, at any time within the period allowed an operator under the requirements of a surface or in-stream mining permit to reclaim an area of land affected by the mining, the operator was authorized to file a request, on a form provided by the Chief, for inspection of the area of land on which a phase of reclamation was completed. For purposes of inspections and subsequent releases of performance bonds or cash, irrevocable letters of credit, or certificates of deposit deposited in lieu of bonds, reclamation was required to be considered to occur in two phases. The first phase involved grading, contouring, terracing, resoiling, and initial planting. The second phase involved the establishment of vegetative cover together with the maintenance and the completion of all reclamation required under the law governing industrial minerals mining and rules adopted under it. (Sec. 1514.05(A).)

A request for inspection at the completion of a phase of reclamation was required to include all of the following:

(1) The location of the area and number of acres;

(2) The permit number;

(3) The amount of performance bond on deposit at the time of the request to ensure reclamation of the area; and

(4) A prepared and certified map showing the location of the acres reclaimed. In the case of an in-stream mining operation, the map also was required to include a hydraulic evaluation of the watercourse prepared by a registered professional engineer.

In addition to the above requirements, a request for inspection of the second phase of reclamation was required to include a description of the type and date of any required planting and a statement regarding the degree of success of the growth. (Sec. 1514.05(A).)

The Chief was required to make an inspection and evaluation of the reclamation of the area for which a request was submitted within 90 days after receipt of the request or, if the operator failed to complete the reclamation or file the request as required, as soon as the Chief learned of the default. If the Chief approved the first phase of reclamation as meeting the requirements of the law governing industrial minerals mining, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclamation, the Chief was required to issue an order to the operator and the operator's surety releasing them from liability for the applicable percentage of their surety bond on deposit to ensure reclamation for the area on which reclamation was completed (see below). If the Chief likewise approved the second phase of reclamation, the Chief was required to order release of the remaining performance bond, after completing the inspection and evaluation, in the same manner as in the case of approval of the first phase of reclamation, and the Treasurer of State was required to proceed as in that case. (Sec. 1514.05(B).)

On approval of the first phase of reclamation, the Chief was required to release 75% of the amount of the surety bond on deposit. On approval of the second phase, the Chief was required to release the remaining amount of the surety bond that originally was on deposit. If the operator had deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief was required to issue an order to the operator releasing the amount so held in the same manner and in the same percentages that applied to the release of a surety bond as discussed above and was required to promptly transmit a certified copy of the order to the Treasurer of State. Upon presentation of the order to the Treasurer by the operator to whom it was issued, or by the operator's authorized agent, the Treasurer was required to deliver to the operator or the operator's authorized agent the cash, irrevocable letter of credit, or certificates of deposit designated in the order. (Sec. 1514.05(B).)

If the Chief did not approve a phase of the reclamation, the Chief was required to notify the operator by certified mail. Upon issuing an order declaring that an operator failed to reclaim, the Chief was required to retain all or part of the performance bond on deposit for reclamation of the affected surface or in-stream mine site. (Sec. 1514.05(C) and (D).)

The act: reclamation

The phased reclamation discussed above was enacted in 2002. The act eliminates phased reclamation and generally restores the provisions governing reclamation that were in existence prior to that time. Under the act, reclamation is to occur as discussed below.

At any time within the period allowed an operator under the requirements of a surface or in-stream mining permit to reclaim an area affected by surface or in-stream mining, the operator may file a request, on a form provided by the Chief, for inspection of the area of land on which the reclamation, other than any required planting, is completed. The request must include all of the following:

(1) The location of the area and the number of acres;

(2) The permit number; and

(3) A prepared and certified map showing the location of the acres reclaimed. In the case of an in-stream mining operation, the map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer. (Sec. 1514.05(A).)

Under the act, an operator also may file a request for inspection of the area of land on which all reclamation, including the successful establishment of any required planting, is completed. The request must be filed in the manner discussed above and must include all of the following:

(1) The location of the area and the number of acres;

(2) The permit number;

(3) The type and date of any required planting of vegetative cover and the degree of success of growth; and

(4) A prepared and certified map showing the location of the acres reclaimed. In the case of an in-stream mining operation, the map also must include a hydraulic evaluation of the watercourse prepared by a registered professional engineer. (Sec. 1514.05(B).)

The Chief must make an inspection and evaluation of the reclamation of the area of land for which either type of request was submitted within 90 days after receipt of the request or, if the operator failed to complete the reclamation or file the request as required, as soon as the Chief learns of the default. If the Chief approves the reclamation as meeting or, in the case of completed reclamation, finds that the reclamation meets the requirements of the law governing industrial

minerals mining, rules adopted under it, any orders issued during the mining or reclamation, and the specifications of the plan for mining and reclaiming, the Chief must issue an order to the operator and the operator's surety releasing them from liability for one-half of the total amount of their surety bond on deposit to ensure reclamation for the area on which reclamation was completed, or, in the case of reclamation that included the successful establishment of any required planting, if the Chief decides to release any remaining performance bond on deposit, within ten days of completing the inspection and evaluation, the Chief must order the release of the remaining performance bond. If the operator has deposited cash, an irrevocable letter of credit, or certificates of deposit in lieu of a surety bond to ensure reclamation, the Chief must issue an order to the operator releasing one-half of the total amount or the remaining amount so held, as applicable, and promptly transmit a certified copy of the order to the Treasurer of State.

However, if the Chief does not approve the reclamation, the Chief must notify the operator by certified mail. In the case of a request that was filed regarding an area of land on which all reclamation is completed, the Chief must do so within 90 days of the filing of the application for inspection or of the date when the Chief learns of the default. The notice must be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. If the operator does not comply with the order within the time limit specified, the Chief may order an extension of time for compliance after determining that the operator's noncompliance is for good cause, resulting from developments partially or wholly beyond the operator's control. If the operator complies within the time limit or the extension of time granted for compliance, the Chief must order release of the performance bond in the same manner as in the case of approval of reclamation as discussed above. If the operator does not comply within the time limit and the Chief does not order an extension, or if the Chief orders an extension of time and the operator does not comply within the extension, the Chief must issue another order declaring that the operator has failed to reclaim and, if the operator's permit has not already expired or been revoked, revoking the operator's permit. (Sec. 1514.05(A) and (B).)

Upon issuing an order declaring that the operator has failed to reclaim, the Chief must make a finding of the number and location of the acres of land that the operator has failed to reclaim in the manner required by the law governing industrial minerals mining. The Chief must order the release of the performance bond in the amount of $500 per acre for those acres that the Chief finds to have been reclaimed in that manner. The release must be ordered in the same manner as in the case of other approval of reclamation as discussed above, and the Treasurer of State must proceed as in that case. If the operator has on deposit cash, an irrevocable letter of credit, or certificates of deposit to ensure reclamation

of the area of land affected, the Chief at the same time must issue an order declaring that the remaining cash, irrevocable letter of credit, or certificates of deposit are the property of the state and are available for use by the Chief in performing reclamation of the area. (Sec. 1514.05(C).)

Priority lien upon forfeiture of performance bond

The act adds that if an operator or a partner or officer of the operator forfeits a performance bond, the Division of Mineral Resources Management has a priority lien in front of all other interested creditors against the assets of that operator for the amount that is needed to perform any reclamation that is required as a result of the operator's mining activities. The Chief must file a statement in the office of the county recorder of each county in which the mined land lies of the estimated costs to reclaim the land. The estimated costs must include direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement constitutes a lien on the assets of the operator as of the date of the filing. The lien continues in force so long as any portion of the lien remains unpaid or until the Chief issues a certificate of release of the lien. If the Chief issues a certificate of release, the Chief must file a certificate of release in the office of each applicable county recorder. (Sec. 1514.051(A).)

The Chief promptly must issue a certificate of release under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the surface mine for which reclamation was not completed from the operator that forfeited the performance bond to a new operator; or

(3) Any other circumstance that the Chief determines to be in the best interests of the state. (Sec. 1514.051(B).)

The act authorizes the Chief to modify the amount of a lien. If the Chief modifies a lien, the Chief must file a statement in the office of the county recorder of each applicable county of the new amount of the lien. (Sec. 1514.051(C).)

The Chief may authorize a closing agent to hold a certificate of release in escrow for a period not to exceed 180 days for the purpose of facilitating the transfer of unreclaimed mine land (sec. 1514.051(D)).

The act requires all money from the collection of liens to be credited to the Surface Mining Fund created in continuing law (see "***Surface Mining Fund***," below) (sec. 1514.051(E)).

Amount of surety bond

Under law retained in part by the act, when an applicant for a permit is notified by the Chief that the Chief intends to issue the permit, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount, unless otherwise provided by rule, of $10,000 plus $1,000 per acre of land to be affected. The act retains the initial $10,000, but revises the per-acre fee by stating that if the amount of land to be affected is more than 20 acres, the applicant must file a surety bond, cash, an irrevocable letter of credit, or certificates of deposit in the amount of $500 per acre of land to be affected that exceeds 20 acres. (Sec. 1514.04.)

Performance bond with annual report

Law largely retained by the act requires an operator to file with the Chief an annual or final report, as applicable, that states the amount of and identifies the types of minerals produced and that states the number of acres affected and the number of acres estimated to be affected during the next year of operation. With each annual report the operator must file a performance bond in the amount, unless otherwise provided by rule, specified in statute per acre of land to be affected during the next year of operation for which no performance bond previously was filed. The bond must be adjusted by subtracting a credit of the statutorily established amount per excess acre for which the bond was filed for the preceding year if the acreage for which the bond was filed exceeds the acreage actually affected or by adding that amount per excess acre affected if the acreage actually affected exceeds the acreage for which the bond was filed for the preceding year. Under former law, the per-acre amount established for all of those purposes was $1,000. The act retains the annual and final report requirements, but reduces to $500 per acre of land affected the amount used to calculate and adjust the performance bond. (Sec. 1514.03.)

Penalties

The act adds that whoever violates an order of the Chief of the Division of Mineral Resources Management issued under the law governing industrial minerals mining is guilty of a minor misdemeanor (sec. 1514.99(E)).

County and township zoning; roads

Continuing law authorizes a board of county commissioners and a board of township trustees to regulate by resolution in the unincorporated territory of the county or township, as applicable, the size and location of buildings and other structures. For those purposes, the board may divide all or any part of the unincorporated territory of the county or township, as applicable, into districts or zones. In addition, continuing law states that for any activities permitted and regulated under the Coal Surface Mining Law or the law governing industrial minerals mining and any related processing activities, the board of county commissioners or township trustees, as applicable, may regulate only in the interest of public health or safety. (Secs. 303.02 and 519.02, not in the act.)

Board of zoning appeals

Continuing law authorizes a county board of zoning appeals and a township board of zoning appeals, as applicable, to grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution. The act adds that if the board considers conditional zoning certificates for activities that are permitted and regulated under the law governing industrial minerals mining or activities that are related to making finished aggregate products, the board cannot consider or base its determination on matters that are regulated by any federal, state, or local agency. However, the board may require as a condition of the approval of a conditional zoning certificate for such an activity compliance with any general standards contained in the zoning resolution that apply to all conditional uses that are provided for in the zoning resolution and, except as discussed below, may require any specified measure, including, but not limited to, one or more of the following:

(1) Inspections of nearby structures and water wells to determine structural integrity and water levels;

(2) Compliance with applicable federal, state, and local laws and regulations;

(3) Identification of specific roads in accordance with the act (see below) to be used as the primary means of ingress to and egress from the proposed activity;

(4) Compliance with reasonable noise abatement measures;

(5) Compliance with reasonable dust abatement measures;

(6) Establishment of setbacks, berms, and buffers for the proposed activity;

(7) Establishment of a complaint procedure; and

(8) Any other measure reasonably related to public health and safety. (Secs. 303.14(C), 303.141(A), 519.14(C), and 519.141(A).)

The act states that when granting a conditional zoning certificate, a county or township board of zoning appeals, as applicable, cannot require the identification of specific roads, as otherwise authorized under the act, and the identification of specific roads in accordance with the act cannot apply, for any of the following:

(1) The transfer of unfinished aggregate material between facilities that are under the control of the same owner or operator;

(2) The loading or unloading of finished aggregate product within a ten-mile radius of a surface mining operation;[5] and

(3) The expansion of an existing surface mining operation when the specific road that is used as the primary means of ingress to and egress from the operation will be the same road that is used for that purpose after the expansion of the facility (secs. 303.141(C) and 519.141(C)).

Identification of specific roads as primary means of ingress and egress

The act requires an applicant, prior to the submission of an application for a conditional zoning certificate, to send written notice to the county engineer of the applicant's intent to apply for a conditional zoning certificate. Not later than 14 days after receipt of the written notice, the county engineer must establish the time, date, and location of a meeting with the applicant and send written notice containing that information to the applicant and to the fiscal officer of each township in which the proposed activity is to be located or expanded. At the meeting, the applicant must explain the proposed location of the activity or expansion of an existing activity, the anticipated amount of aggregate material to be shipped by truck from the activity, and the anticipated primary market areas for the finished aggregate products leaving the activity.

Not later than 30 days after the meeting with the applicant, the county engineer must submit a written recommendation of specific roads to be used as the primary means of ingress to and egress from the proposed activity to the board of

[5] *The act specifies that for purposes of its zoning provisions, "surface mining operation" has the same meaning as in the law governing industrial minerals mining (secs. 303.141(E) and 519.141(E)).*

county commissioners. In making the recommendation, the county engineer must consider all of the following:

(1) The ability of each road to handle the anticipated recurring loads resulting from trucks entering and leaving the proposed activity;

(2) The present condition of each road;

(3) The amount of residential development that exists along each road; and

(4) The most direct route from the proposed activity to a state highway unless another route is more capable of accommodating the anticipated recurring loads and will result in fewer conflicts with existing residential development. (Secs. 303.141(B)(1) and 519.141(B)(1).)

At the next regularly scheduled meeting of the board of county commissioners after receipt of a written recommendation from the county engineer, the board must adopt the recommendation or adopt the recommendation with modifications. If the board adopts the recommendation with modifications, the board must base the modifications only on the above criteria. The board may adopt the recommendation with modifications only by a unanimous vote. The board must send written notice of the adoption of the recommendation or the recommendation with modifications to the county board of zoning appeals. (Secs. 303.141(B)(2) and 519.141(B)(1).) The act states that the identification of specific roads becomes effective only upon the granting of a conditional zoning certificate (secs. 303.141(D) and 519.141(D)).

Appeals

For purposes of the issuance of conditional zoning certificates by a board of county zoning appeals or township zoning appeals, a decision of a board of county commissioners identifying specific roads to be used as the primary means of ingress to and egress from the proposed activity is final ten days after the board adopts the recommendation or the recommendation with modifications unless the applicant or an affected board of township trustees submits written notice of appeal within ten days after the board's action. If the board of county commissioners receives a timely written notice of appeal, the board must conduct an appeal hearing concerning its decision not later than 14 days after receipt of the notice. If the board of county commissioners receives more than one timely written notice of appeal, the board may conduct one appeal hearing concerning all of the notices of appeal.

For purposes of an appeal hearing, the applicant or a board of township trustees that submitted written notice of appeal may present testimony for the

board of county commissioners to consider concerning its decision. At the hearing, the applicant or the board of township trustees may be represented by an attorney. A witness at the hearing must testify under oath or affirmation, which any member of the board of county commissioners may administer, and must be subject to cross-examination.

Not later than 14 days after the hearing, the board of county commissioners must affirm its decision or, based on the testimony at the hearing, modify its decision. The board must send written notice of its decision to the applicant, any board of township trustees that submitted written notice of appeal, and the county board of zoning appeals. The decision of the board of county commissioners is final unless vacated or modified upon judicial review. (Secs. 303.141(B)(3) and 519.141(B)(1).)

An applicant or a board of township trustees that submitted written notice of appeal may appeal the decision of the board of county commissioners to the court of common pleas of the county in which the activity is proposed to be located or expanded pursuant to the Appeals of Administrative Officers and Agencies Law (secs. 303.141(B)(4) and 519.141(B)(2)).

Signs

The act requires the owner or operator of a permitted surface mining operation that is subject to the use of specific roads as the primary means of ingress to and egress from the operation as discussed above to post a sign in a conspicuous location to inform the drivers of trucks entering and leaving the operation of the roads to use as the primary means of ingress to and egress from the operation (sec. 5577.081(B)). The penalty for violating that requirement is the same penalty that is established by the act for failure to use designated roads (see below).

Required use of roads by certain vehicles

The act requires all vehicles entering or leaving a surface mining operation that have a gross vehicle weight in excess of 66,000 pounds to use the specific roads designated as described above except when transferring unfinished aggregate material between facilities that are under the control of the same owner or operator of a surface mining operation or when unloading or loading finished aggregate product within a ten-mile radius of a surface mining operation. Under the act, "gross vehicle weight" has the same meaning as in the Motor Vehicle Law. (Secs. 5577.081(A) and 4501.01(JJ), not in the act.)

Anyone who violates the above requirement or the requirement regarding signs (see above) must receive a written warning in such a manner that it becomes

a part of the person's permanent record that is maintained by the Bureau of Motor Vehicles and assists in monitoring violations of that requirement. A person who commits a second offense within one year after committing the first offense is guilty of a minor misdemeanor. A person who commits a third or subsequent offense within one year after committing the first offense is guilty of a misdemeanor of the fourth degree. (Sec. 5577.081(C).) The fine money that is collected for such violations must be deposited in the state treasury to the credit of the Surface Mining Fund created in continuing law (sec. 5577.081(D)).

Surface Mining Fund

Continuing law creates the Surface Mining Fund and specifies that it consists of money from the forfeiture of performance bonds for surface or in-stream mining operations (sec. 1514.06(A)). In addition, continuing law specifies that the Fund consists of money collected from permit fees, one-half of the money collected from the severance tax levied on limestone or dolomite and sand and gravel, all of the money collected from the severance tax on clay, sandstone or conglomerate, shale, gypsum, or quartzite, and all fines imposed under the law governing industrial minerals mining (sec. 1514.11). Continuing law also specifies that the Fund consists of money from civil penalties assessed for noncompliance with orders of the Chief (sec. 1514.071, not in the act). The act adds that the Fund consists of money that becomes the property of the state from the collection of liens (see above) and specifies that all investment earnings of the Fund must be credited to the Fund. The act also makes technical changes that reflect all of the Fund's sources of money. (Sec. 1514.06(A).)

Law largely retained by the act requires the Chief to make expenditures from the Fund for the purpose of reclaiming areas of land affected by surface or in-stream mining operations on which an operator has defaulted. The act requires the Chief to expend money from the Fund to reclaim land affected by surface or in-stream mining under a permit that the operator has failed to reclaim rather than on which the operator has defaulted and makes conforming changes (Sec. 1514.06.)

Under continuing law, the Chief may use moneys in the Fund for certain purposes. Law retained in part by the act specifies that the portion of the Fund that consists of money from the severance tax is authorized to be used for specified mine safety and first aid classes. The act authorizes that portion of the Fund to be used more broadly for mine safety and first aid training rather than merely for the specified classes. (Sec. 1514.11.)

Finally, the act adds that the Chief must prepare an annual report that summarizes the money credited to the Fund and expenditures made from the Fund and post the report on the Division's web site (sec. 1514.06(H)).

MERCURY REGULATION

- Prohibits a school district or educational service center, community school, or nonpublic school for which the State Board of Education prescribes standards and an employee of such a district, center, or school from purchasing mercury or a mercury-added measuring device for classroom use.

- Generally prohibits a manufacturer from offering a mercury-containing thermometer for sale or distribution in Ohio, but creates an exception for the purchase of such a thermometer pursuant to a prescription.

- Prohibits the sale or distribution of mercury-added novelties.

- Prohibits the sale or installation of mercury-containing thermostats in Ohio unless the mercury-containing thermostat is installed in the residence of a visually impaired person or the thermostat is used to sense and control temperatures as a part of a manufacturing process.

- Establishes penalties for violation of the act's mercury provisions.

- Requires the Environmental Protection Agency to administer laws pertaining to products containing mercury, and grants the Director of Environmental Protection the authority to field written complaints from aggrieved or adversely affected persons or from state or local officers regarding alleged violations of the act's mercury provisions.

Introduction

The act establishes new statutory requirements regarding certain mercury-containing devices and products. Specifically, the act establishes provisions governing mercury and mercury-added measuring devices in schools, mercury-containing thermometers, mercury-added novelties, and mercury-containing thermostats. In addition, the act establishes penalties for violations of its provisions. Finally, the act requires the Environmental Protection Agency to implement, oversee, and enforce the new statutory requirements.

Prohibition against mercury and mercury-added measuring devices in schools

On and after the act's effective date, no school district or educational service center, community school, or nonpublic school for which the State Board of Education prescribes standards and no employee of such a school district, educational service center, community school, or nonpublic school (school employee) is permitted to purchase mercury or a mercury-added measuring device for classroom use (sec. 3734.62). Under the act, "mercury" is defined to mean elemental mercury and mercury compounds, and "mercury-added measuring device" is defined to mean an instrument containing mercury that is designed to measure an amount or quantity of humidity, pressure, temperature, or vacuum or the force of wind, including, but not limited to, anemometers, barometers, flow meters, hydrometers, hygrometers, manometers, sphygmomanometers, and thermometers (sec. 3734.61(B) and (C)).

If a school district, educational service center, community school, or nonpublic school or a school employee purchases mercury or a mercury-added measuring device for classroom use on or after the act's effective date in violation of the act, but properly recycles or disposes of the mercury or mercury-added measuring device upon learning of or being informed of the violation and creates and implements a mercury reduction plan, the Director of Environmental Protection must consider the recycling or disposal of the mercury or mercury-added measuring device and the implementation of and compliance with the mercury reduction plan as mitigating circumstances for purposes of enforcement of the violation (sec. 3734.62).

Mercury-containing thermometers

Beginning six months after the act's effective date, no manufacturer may offer a mercury-containing thermometer for sale or distribute a mercury-containing thermometer for promotional purposes in Ohio unless the sale or distribution of a mercury-containing thermometer is required in order to comply with federal law, a person demonstrates to the Director that a mercury-containing thermometer is the only temperature measuring device that is feasible for a research, quality control, or manufacturing application, or the only component of the thermometer that contains mercury is a button cell battery. The act specifies, however, that the prohibition does not apply to the sale of a mercury-containing thermometer to a person who purchases a mercury-containing thermometer pursuant to a valid prescription. (Sec. 3734.63(A).)

The act also requires that beginning six months after the act's effective date, a manufacturer of a mercury-containing thermometer that lawfully offers for sale or distributes such a thermometer in Ohio do both of the following:

(1) Provide notice in a conspicuous manner on the packaging of the thermometer that the thermometer contains mercury; and

(2) Provide clear instructions with the thermometer regarding careful handling of the thermometer to avoid breakage, proper cleanup of mercury if the thermometer breaks, and proper management and disposal of the thermometer (sec. 3734.63(B)).

The act defines "manufacturer" to mean any person that produces a mercury-containing thermometer or serves as an importer or domestic distributor of a mercury-containing thermometer that is produced outside the United States. In the case of a multicomponent mercury-containing thermometer, "manufacturer" means the last manufacturer to produce or assemble the thermometer unless the multicomponent mercury-containing thermometer is produced outside the United States, in which case "manufacturer" means the importer or domestic distributor. (Sec. 3734.61(A).)

Mercury-added novelties

Beginning six months after the act's effective date, the act prohibits any person from offering a mercury-added novelty for sale or distributing such a novelty for promotional purposes in Ohio unless the only mercury in the mercury-added novelty is a removable button cell battery. However, beginning January 1, 2011, the act prohibits the offering for sale or distribution of any mercury-added novelty for promotional purposes in Ohio, including novelty products in which the only mercury is a removable button cell battery. (Sec. 3734.64.) The act defines "mercury-added novelty" to mean a product in which mercury is present and that is intended mainly for personal or household enjoyment or adornment, including, but not limited to, products intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, footwear, other items of apparel, or similar products. "Mercury-added novelty" does not include a product that solely includes a fluorescent light bulb. (Sec. 3734.61(D).)

Mercury-containing thermostats

Beginning one year after the effective date of the act, no person may offer a mercury-containing thermostat for sale in Ohio or install a mercury-containing thermostat in Ohio unless the mercury-containing thermostat is installed in the residence of a visually impaired person or the thermostat is used to sense and control temperatures as a part of a manufacturing process (sec. 3734.65.)

Penalties

Continuing law authorizes the Director of Environmental Protection to request the Attorney General to bring a civil action against any person violating the Solid, Infectious, and Hazardous Waste Law and establishes civil penalties for those violations. Because the act's provisions that are discussed above are located in that Law, the statute authorizing such civil actions applies to the act's prohibitions. The act establishes specific civil penalties that may be imposed for the violation of those prohibitions. Under the act, a court may impose a civil penalty of not more than $100 for each violation of the act's provisions regarding the use of mercury and mercury-added measuring devices in schools. For violation of the act's provisions regarding mercury-containing thermometers, mercury-added novelties, and mercury-containing thermostats, the act authorizes a court to impose a civil penalty of not more than $5,000 for each day of each violation, but the total amount of a civil penalty imposed on a person for such a violation cannot exceed $25,000. (Sec. 3734.13.)

In addition, under the Solid, Infectious, and Hazardous Waste Law, anyone who recklessly violates a provision of that Law, except specified statutes, is guilty of a felony and must be fined at least $10,000, but not more than $25,000, imprisoned for at least two, but not more than four years, or both. Upon a second or subsequent conviction, the offender is guilty of a felony and must be fined at least $20,000, but not more than $50,000, imprisoned for at least two, but not more than four years, or both. (Sec. 3734.99, not in the act.) Because the act's provisions are located in that Law, those criminal penalties apply to violators of the act's prohibitions.

Authority of Environmental Protection Agency

Continuing law grants the Environmental Protection Agency, under the supervision of the Director, the authority to administer certain laws related to the protection of the environment. The act adds that the Agency must administer laws pertaining to products containing mercury as defined in the act (see above). (Sec. 3745.01.) The act also gives the Director the authority to field written complaints from aggrieved or adversely affected persons or from officers of the state or political subdivisions regarding alleged violations of the act (sec. 3745.08).

HISTORY

ACTION	DATE
Introduced	12-08-05
Reported, H. Agriculture & Natural Resources	12-07-06
Passed House (76-18)	12-13-06
Reported, S. Environment & Natural Resources	12-19-06
Passed Senate (27-6)	12-19-06
House concurred in Senate amendments (73-14)	12-20-06

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