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Bill Analysis

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Primary Sponsor: Sen. Wilkin

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SUMMARY

Underground minerals mining program

- Creates a new regulatory program for underground limestone and dolomite (“underground minerals”) mining operations.
- Accordingly, establishes application and permitting processes and timelines for the issuance of underground minerals mining operation permits by the Ohio Department of Natural Resources (ODNR) Chief of the Division of Mineral Resources Management.
- Requires the Chief to issue, upon request and without application, an order granting an underground minerals mining permit (or an amendment to a surface mining permit) for any underground minerals mining operation in existence prior to the bill’s effective date.
- Requires the Chief to adopt rules governing underground minerals mining operations.
- Specifies that an underground minerals mining permit does not expire, but allows the Chief to suspend or revoke an underground minerals mining permit for a violation of applicable provisions of the program, a term or condition of an issued permit, or an order of the Chief.
- Establishes prohibitions and penalties related to the operation of underground minerals mining, such as prohibiting a person from failing to perform any measure set forth in an approved plan of mining that is necessary to prevent damage to adjoining property or achieve a performance standard required in adopted rules.
- Establishes duties for an underground minerals mining operator, such as complying with established law governing mining near public roads and ensuring that the use of explosives for the production of underground minerals complies with the requirements of the law governing surface mining and underground minerals mining operations.

- Requires an underground minerals mining operator, within 30 days after each anniversary date of issuance of an underground minerals mining permit, to file with the Chief an annual report that contains information that the Chief requires and that pertains to the one-year period preceding the anniversary date.
- Requires an operator to carry out on a continuing basis a program to improve the roof control system of each underground minerals mine and the means and measures to accomplish the system.
- Establishes procedures that an underground minerals mining operator and the Chief must follow in the event of a subsidence complaint.
- Imposes the same rulemaking directives on the Chief for mine safety standards for underground minerals mining operations that apply to the Chief's rulemaking regarding surface and in-stream mining operations.
- Requires an underground minerals mining permit holder who desires to transfer the rights granted under the permit to another to file with the Chief an application for the transfer of the permit.
- Requires, at least 12 months prior to the completion of an underground minerals mining operation, the operator to notify the Chief that the operator intends to cease mining and notify the Chief as to the steps the operator intends to take to ensure the protection of public safety upon closure.

Appeals process

- Specifies that the existing Reclamation Commission is responsible for appeals concerning underground minerals mining operation actions.
- Establishes a comprehensive and specialized appeals process for those appealing actions regarding surface, in-stream, or underground minerals mining operations.

Zoning

- Prohibits county and township zoning authorities from requiring a mine operator to obtain a surface, in-stream, or underground minerals mining permit prior to applying for zoning approval.
- Prohibits county and township zoning authorities from regulating underground minerals mining activity on any land permitted for surface mining under certain circumstances.

Location study for safety training

- Requires the Division of Mineral Resources Management to conduct a study to determine a centralized location for conducting safety education and regulated activities regarding training.

Surface and in-stream mining permit changes

- Makes various changes to the existing surface and in-stream mining permit program, including eliminating the expiration of surface and in-stream mining permits and, accordingly, all renewal requirements.
- Replaces the current \$1,000 permit renewal fee for surface mining operations and the \$500 permit renewal fee for in-stream mining operations with a new annual fee for permit holders that mine certain minerals and aggregates.

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DETAILED ANALYSIS

Underground minerals mining program

Overview and rulemaking authority

Under current law, the Ohio Department of Natural Resources (ODNR) Division of Mineral Resources Management regulates surface and in-stream mining operations for certain

aggregates, but it does not regulate the underground mining of these minerals. Underground mining regulation is limited to coal extraction operations.¹

The bill creates a new regulatory program for underground **limestone and dolomite** mining (hereinafter “underground minerals mining”).² Under the new underground minerals mining program, an operator that seeks to engage in underground minerals mining operations must apply for and receive a permit to do so from the ODNR Chief of the Division of Mineral Resources Management. Accordingly, the bill prohibits a person from engaging in underground minerals mining without an underground minerals mining permit or amendment to a surface mining permit to conduct underground minerals mining activities.³ Whoever violates that prohibition may be fined between \$1,000 and \$5,000 per acre of land affected and is responsible for conducting reclamation of the impacted land.⁴

A permit issued by the Chief in accordance with the bill does not expire. Additionally, the Chief cannot require an underground minerals mining permit holder to obtain a surface mining permit.⁵

To further develop the program, the bill requires the Chief to adopt rules governing underground minerals mining operations that establish all of the following:

1. The permit application process, which must comply with the bill’s requirements;
2. Any application fees or other fees associated with the permitting and operation of an underground minerals mine, to be deposited in the existing Mining Regulation and Safety Fund;
3. Performance standards for underground minerals mining, including a periodic compliance review. (The bill also imposes enforcement measures that currently apply to surface and in-stream mining performance standards enforcement.)⁶
4. Standards and requirements governing the detonation of explosives that ensure that explosives are used in such a manner so as to prevent damage to adjoining property and injury to persons, including special standards and requirements for the development of the mine opening, taking into consideration the practicalities of that activity;
5. Information to be included in an annual or final report, which is required under the bill;
6. Procedures for investigating complaints regarding dewatering and any procedures, standards, and requirements governing water replacement; and

¹ R.C. Chapter 1513.

² R.C. 1514.60(H).

³ R.C. 1514.64(A).

⁴ R.C. 1514.99(A).

⁵ R.C. 1514.04(E).

⁶ R.C. 1514.07(B).

7. Any other requirements that the Chief determines is necessary for administration of the program for the regulation of underground minerals mining consistent with the bill's requirements.

When adopting these rules, the bill exempts the Chief from the current law requirement that for every new regulation adopted, the rulemaking authority must repeal two regulations.⁷

Permit application

In accordance with the program's adopted rules, the Chief must prescribe an application for an operator to obtain an underground minerals mining permit or an amendment to a surface mining permit to conduct underground minerals mining activities under that permit.⁸ The Chief must require applicants to include all of the following information on the application form:

1. The name and address of the proposed underground minerals mine operator;
2. The name and address of the owner or lessor of the mineral interest in the land upon which the applicant proposes to engage in underground minerals mining, if different from the operator;
3. The method and design of the underground mining operation that is to be employed by the mine operator to extract underground minerals;
4. The depth of the deposit to be mined;
5. A certificate of public liability insurance issued by an authorized insurance company covering all underground minerals mining operations of the applicant in Ohio and affording bodily injury and property damage protection in amounts of at least \$1 million;
6. A statement that the applicant has corresponded with the appropriate county engineer regarding any streets and roads under the county engineer's jurisdiction where the mining will take place;
7. A complete plan for underground minerals mining, which must show the approximate sequence in which mining measures are to occur and the measures the operator will perform to prevent damage to adjoining property and to achieve the performance standards for mining established in rules by the Chief. The plan also must be consistent with any federal standard governing underground minerals mining; and
8. Any other information that the Chief determines is necessary and appropriate.⁹

⁷ R.C. 1514.61.

⁸ See R.C. 1514.02(C)(2)(f), which, under the bill, allows a surface mining permit holder to conduct underground minerals mining activity if approved by the Chief in an amendment to the surface mining permit.

⁹ R.C. 1514.62.

The bill prohibits a person from purposely misrepresenting or omitting any material fact in an application for an underground minerals mining permit or amendment to a permit.¹⁰ A person who violates this prohibition may be fined between \$100 and \$1,000, imprisoned up to six months, or both.¹¹ It also prohibits a person from failing to perform any measure set forth in an approved plan of mining that is necessary to prevent damage to adjoining property or to achieve a performance standard required in adopted rules.¹² A person who violates that prohibition may be fined between \$100 and \$1,000 on a first offense and fined between \$200 and \$5,000, imprisoned up to six months, or both on any subsequent offense.¹³

Issuing a permit for underground minerals mining operations

After the Chief approves a permit application and the applicant pays all the required fees, the Chief must issue an order, in accordance with adopted rules, granting an underground minerals mining permit. However, the bill prohibits the Chief from issuing a permit if either of the following apply:

1. The Chief determines that the measures set forth in the mining plan are likely to be inadequate to prevent damage to adjoining property or to achieve one or more of the applicable performance standards required by the Chief; or
2. The land on or under which the underground minerals mining is to take place is closer than 50 feet of horizontal distance to any adjacent lands in which the operator making application does not own, lease, or control the mineral interest, unless the landowner consents in writing that the underground minerals mining may occur closer than 50 feet of the horizontal distance. The consent, or a certified copy of it, must be attached to the application as part of the permanent record of the application for an underground minerals mining permit and runs with the land. Adjacent lands does not include any easements and any railroad, utility, street, and highway right-of-way.¹⁴

Permit issuance for existing operators

The Chief must issue, upon request and without application, an order granting an underground minerals mining permit or an amendment to a surface mining permit, as applicable, to any underground minerals mining operation operator in existence prior to the bill's effective date and to any person who has begun to undertake development of an underground minerals mining operation prior to the bill's effective date.

The underground minerals mining permit or amendment to a surface mining permit so granted must include all mine property at the time of the application. Mine property includes the land owned or leased by the underground minerals mining operator and the mineral interest

¹⁰ R.C. 1514.64(C).

¹¹ R.C. 1514.99(C).

¹² R.C. 1514.64(D).

¹³ R.C. 1514.99(D).

¹⁴ R.C. 1561.63(A).

owned by, leased by, or otherwise under the control of the operator.¹⁵ An operator or any such person has 24 months after the bill's effective date to request an order granting an underground minerals mining permit or an amendment to a surface mining permit to conduct underground minerals mining from the Chief. An order granting a permit or such an amendment is not appealable by any person other than the operator or the person undertaking development of an underground minerals mining operation.¹⁶

Additional prohibitions and suspending or revoking a permit

The bill prohibits a person from exceeding the limits of an underground minerals mining permit or amendment to a permit by mining land that is not authorized under the permit.¹⁷ Whoever violates that prohibition may be fined up to \$1,000 per acre of land affected that is not addressed in a permit, and the violator is responsible for conducting reclamation of the impacted land.¹⁸ The bill also prohibits a person from violating any applicable requirement of the bill's underground minerals mining program, a rule adopted under it, a term or condition of a permit or amendment to a permit, or an order of the Chief.¹⁹ A person in violation of that prohibition may be fined between \$100 and \$1,000 on a first offense and fined between \$200 and \$5,000, imprisoned up to six months, or both on any subsequent offense.²⁰

The Chief may suspend or revoke an underground minerals mining permit for a violation of applicable provisions of the program, a term or condition of an issued permit, or an order of the Chief. Prior to a suspension or revocation, the Chief must conduct an investigation and hearing in accordance with the law governing administrative procedure.²¹

The bill prohibits a person from purposely misrepresenting or omitting any material fact regarding any hearing or investigation conducted by the Chief or the Reclamation Commission.²² A person who violates this prohibition may be fined between \$100 and \$1,000, imprisoned up to six months, or both.²³

Duties of an underground minerals mining operator

Under the bill, an underground minerals mining operator must do all of the following:

¹⁵ R.C. 1514.60(D).

¹⁶ R.C. 1514.63(C).

¹⁷ R.C. 1514.64(B).

¹⁸ R.C. 1514.99(B).

¹⁹ R.C. 1514.64(E).

²⁰ R.C. 1514.99(D).

²¹ R.C. 1514.63(B).

²² R.C. 1514.64(C).

²³ R.C. 1514.99(C).

1. Prior to mining under a public street, road, or highway, comply with established law governing mining near public roads;²⁴
2. Ensure that the use of explosives for the production of underground minerals complies with the requirements of the law governing surface mining and underground minerals mining operations;
3. Ensure that the detonation of explosives is conducted in such a manner so as to prevent damage to adjoining property and injury to persons and complies with adopted rules; and
4. Provide and maintain the required financial assurance for the performance and closure of an underground minerals mining operation of at least \$1 million.²⁵

At the time of the completion of the mine entry (which is the opening in the ground surface, mine floor, or highwall face for developing an underground mine),²⁶ the operator must cause a map to be made of the underground workings of the mine and provide it to the Chief. The map must be consistent with federal requirements governing underground minerals mining. Additionally, the operator must have a survey made whenever the workings of the mine have extended 400 feet in any direction from the point shown on the map by the last survey of the mine, but not more often than once every 12 months or whenever the mine is to be shut down. The survey must be accurately plotted on the original map of the mine. The operator must ensure that a copy of the current map with up-to-date survey plots is kept at the mine property and filed with the Chief.²⁷

Annual and final report

Within 30 days after each anniversary date of the issuance of an underground minerals mining permit, the operator must file with the Chief an annual report. The Chief must prescribe the form of the report and furnish it to the operator. The report must include all of the information that the Chief so requires that pertains to the one-year period preceding the anniversary date.

The Chief may require each annual report to be accompanied by a filing fee in the amount prescribed by rules. Within 30 days after the completion of the underground minerals mining operation, the operator must submit a final report containing the same information required in an annual report, but covering the time from the last annual report.²⁸

²⁴ See R.C. 1563.11.

²⁵ R.C. 1514.65.

²⁶ R.C. 1514.60(C).

²⁷ R.C. 1514.67.

²⁸ R.C. 1514.68.

The bill prohibits a person from purposely misrepresenting or omitting any material fact in an annual or final report.²⁹ A person who violates this prohibition may be fined between \$100 and \$1,000, imprisoned up to six months, or both.³⁰

Roof control system

Under the bill, each operator must carry out on a continuing basis a program to improve the roof control system of each underground minerals mine and the means and measures to accomplish the system. A roof control system is a series of engineered supports and procedures designed to ensure the stability of the mine roof and prevent collapses. The bill requires the roof and ribs of all active underground roadways, travelways, and working places to be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs.

Each operator must adopt a roof control plan suitable to the roof conditions and mining system of each underground minerals mine in a manner determined by the Chief. The plan and any revisions to the plan is subject to the Chief's approval. The plan also must show the type of support and spacing approved by the Chief.

The Chief must review the plan periodically, at least every six months, taking into consideration any falls of the roof or ribs or inadequacy of support.

The bill prohibits a person from proceeding beyond the last permanent support unless adequate temporary support is provided or unless temporary support is not required under the approved roof control plan and the absence of support will not pose a hazard to miners. The operator must furnish a copy of the plan to the Chief or the Chief's authorized representative, and it must be made available to miners and their representatives. The bill prohibits a person from refusing or neglecting to comply with the bill's provisions governing the roof control plan and the plan's requirements. A person who violates these prohibitions may be fined between \$100 and \$1,000 on a first offense and fined between \$200 and \$5,000, imprisoned up to six months, or both on any subsequent offense.³¹

Subsidence

The bill establishes procedures that an underground minerals mining operator and the Chief must follow in the event of a subsidence complaint. Subsidence is the surface caving or sinking of a part of the earth's crust due to underground mining excavations that directly damages land or any structures. It does not include lateral or vertical ground movement caused by an earthquake, landslide, soil conditions, soil erosion, soil freezing and thawing, improperly compacted soil, construction defects, roots of trees and shrubs, or collapse of storm and sewer drains.³²

²⁹ R.C. 1514.64(C).

³⁰ R.C. 1514.99(C).

³¹ R.C. 1514.70 and 1514.99(D).

³² R.C. 1514.60(G).

In the event of a complaint of subsidence, the operator must immediately investigate the complaint and provide the Chief with the results of the investigation. If the Chief receives a subsidence complaint regarding an underground minerals mining operation, the Chief must notify the operator. The operator must then immediately conduct an investigation and provide the Chief with the results of the investigation.³³

However, if the Chief issues an order to an underground minerals mining operator to address subsidence, the order cannot require the operator to address, abate, repair, restore, mitigate, or remediate the subsidence on mine property unless the subsidence presents a danger to the general public or to property described in a utility easement. For subsidence occurring off of mine property, in no event can an order require the repair, restoration, mitigation, or remediation of any buildings or structures, fixtures, or personal property. Furthermore, the Chief is prohibited from issuing an order to an underground minerals mining operator to provide compensation to any property owner for damages allegedly caused by the underground mining operation.³⁴

Mine safety and inspections

The bill imposes the same rulemaking directives for mine safety standards for underground minerals mining operations that apply to the Chief's rulemaking directives regarding surface and in-stream mining operations. Those directives include:

- Incorporating federal mine safety standards by reference;
- Establishing criteria, standards, and procedures governing safety performance evaluations;
- Establishing requirements governing the reporting and investigation of accidents at underground minerals mining operations;
- Establishing the time, place, and frequency of mine safety training and a fee for the training; and
- Establishing requirements and procedures for the approval of training plans for the use of qualified persons to conduct examinations of underground minerals mining operations in lieu of certified mine forepersons.

When adopting the rules, the bill exempts the Chief from the current law requirement that for every new regulation adopted, the rulemaking authority must repeal two regulations.³⁵

The bill also imposes many of the same inspection requirements that apply to a surface mining operation to an underground minerals mining operation, as follows:

³³ R.C. 1514.66.

³⁴ R.C. 1514.07(C).

³⁵ R.C. 1514.40.

1. If an underground minerals mining operation is identified through a safety performance evaluation as having three or more violations per day during an inspection conducted by the U.S. Department of Labor's Mine Safety and Health Administration, the Chief must conduct a minimum of two inspections of the operation for one year following the identification;
2. If a fatality of a miner occurs at an underground minerals mining operation because of an unsafe condition or 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; and
3. If a life-threatening injury of a miner occurs at an underground minerals mining operation because of an unsafe condition or 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.³⁶

If after an inspection the Chief finds a violation of a safety standard, the Chief must return to the underground minerals mining operation after a reasonable time period to determine if the operator has complied with the standard that was being violated and take appropriate action accordingly. After completion of an inspection, the Chief must prepare a report that describes the general conditions of the underground minerals mining operation and include all of the following in the report:

- A list of any hazardous conditions at the operation;
- A list of any violations of the safety standards established in rules; and
- A description of the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation.³⁷

If during an inspection the Chief finds a condition or practice at an underground minerals mining operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the Chief must immediately 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.³⁸

If an underground minerals mining operator requests the Division to conduct mine safety training, the Chief must do so for the employees of that operator. For persons who are not employed by a permit holder, the Chief may charge a fee for the training.³⁹

The Chief must annually conduct a safety performance evaluation of all underground minerals mining operations in Ohio in accordance with adopted rules.⁴⁰ In addition, the Chief may

³⁶ R.C. 1514.41.

³⁷ R.C. 1514.43.

³⁸ R.C. 1514.44.

³⁹ R.C. 1514.46.

⁴⁰ R.C. 1514.45.

conduct one safety audit at an underground minerals mining operation annually if the operator has requested the Division to conduct mine safety training for that year.⁴¹

Akin to the authorization given under current law for surface mining operations, the bill allows the Chief or an authorized Division employee to enter on lands to make inspections, conduct water supply surveys, measure ground water levels, collect data when necessary during an inspection, and, if necessary, perform reclamation to protect public health or safety or the environment at an underground minerals mining operation.⁴²

The bill establishes immunity for certain individuals who provide rescue services at an underground minerals mine. Specifically, a member of a mine rescue team who is acting pursuant to federal law and provides rescue services at an underground minerals mine is an agent of the state and is immune from any liability associated with the mine rescue.⁴³

Transferring an underground minerals mining permit

Under the bill, an underground minerals mining permit holder who desires to transfer the rights granted under the permit must file with the Chief an application for the transfer of the permit. The Chief must issue an order approving or disapproving the transfer of the permit in accordance with criteria and procedures established by rule.⁴⁴

Completing an operation and terminating a permit

The bill requires an underground minerals mine operator, at least 12 months prior to the completion of an underground minerals mining operation, to notify the Chief that the operator intends to cease mining. The operator also must notify the Chief as to the steps the operator intends to take to ensure the protection of public safety upon closure.⁴⁵

While an underground minerals mining permit does not have an expiration, the Chief must terminate an underground minerals mining permit upon the application of the operator if all of the following occur:

1. The operator submits a final map and report, and the Chief determines that the final map and report are accurate;
2. All surface areas have been reclaimed; and
3. The Chief determines that measures in the closure plan have been completed.

Upon termination, the Chief must release any requirement for financial assurance.⁴⁶ The bill does not impose surface and in-stream minerals mining reclamation requirements on

⁴¹ R.C. 1514.42.

⁴² R.C. 1514.50.

⁴³ R.C. 1514.48.

⁴⁴ R.C. 1514.02(E).

⁴⁵ R.C. 1514.69.

⁴⁶ R.C. 1514.71.

underground minerals mining permit holders. However, if the land surface is affected during the underground minerals mining operation, the Chief must require the area of the land affected to be reclaimed, and the permittee must adhere to current law's bonding requirements pertaining to surface and in-stream mining operations.⁴⁷

Appeals

The bill specifies that the established Reclamation Commission is the judicial body for appeals concerning underground minerals mining operation actions. When an appeal is brought before the Commission that pertains to underground minerals mining, the Commission member representing coal strip mine operators is replaced by a person who represents underground minerals mine operators.⁴⁸

The bill also establishes a comprehensive and specialized appeals process for those appealing actions regarding surface, in-stream, or underground minerals mining operations.

Under the bill, any person having an interest that is or may be adversely affected by an action may initiate an appeal of the action by filing a notice of appeal with the Reclamation Commission within 30 days after the action is served upon the person.⁴⁹ A notice of appeal must contain a copy of the action complained of and the grounds upon which the appeal is based. An "action" includes any order or any other decision, including any modification, vacation, or termination of such an order or decision taken by the Chief concerning a surface, in-stream, or underground minerals mining operation.

The person must file a copy of the notice of appeal with the Chief within three days after filing the notice of appeal with the Commission. Additionally, if the permit holder is not the appellant, the person must serve a copy of the notice of appeal on the permit holder within three days after filing the notice of appeal with the Commission.

The permit holder is entitled to intervene in the appeal upon filing notice of intervention with the Commission within 30 days of receiving the notice and, upon filing of the notice, is a party to the action. The Commission has exclusive original jurisdiction to hear and decide appeals. However, the filing of a notice of appeal does not operate as a stay of any action of the Chief.

The Commission must conduct an adjudication hearing regarding each appeal, give the applicable permittee, the Chief, and any other interested persons written notice of the time and place of the hearing at least five days prior to the hearing, and conduct hearings and render decisions in a timely fashion.

Any person authorized to appeal to the Commission may request an informal review by the Chief or the Chief's designee by filing a written request with the Chief within 30 days after an action is served upon the person. Filing of the written request tolls the time for appeal before the Commission but does not operate as a stay of any action of the Chief.

⁴⁷ R.C. 1514.04(E) and 1514.11.

⁴⁸ R.C. 1514.09; see also R.C. 1513.05, not in the bill.

⁴⁹ Conforming change in R.C. 1514.071.

The Commission must affirm the Chief's action unless the Commission determines that it is arbitrary, capricious, or otherwise inconsistent with law. If the Commission makes such a determination, the Commission may modify the action or vacate and remand it to the Chief for further proceedings that the Commission may direct. The Commission's chairperson may grant any temporary relief that the chairperson considers appropriate pending final determination of an appeal if all of the following conditions are met:

1. All parties to the appeal have been notified and given an opportunity for a hearing on the request for temporary relief and an opportunity to be heard at the hearing regarding the request;
2. The person requesting temporary relief shows that there is a substantial likelihood that the person will prevail on the merits; and
3. The relief will not adversely affect public health or safety or cause significant imminent environmental harm to land, air, or water resources.

The chairperson must issue a decision regarding temporary relief expeditiously. Any party to an appeal filed with the Commission who is aggrieved or adversely affected by a decision of the chairperson to grant or deny temporary relief may appeal that decision to the full Commission. The Commission may confine its review to the record developed at the hearing before the chairperson. The party must file the appeal with the Commission within 30 days after the chairperson issues the decision on the request for temporary relief, and the Commission must issue a decision as expeditiously as possible. The Commission must affirm the decision of the chairperson granting or denying temporary relief unless it determines that the decision is arbitrary, capricious, or otherwise inconsistent with law.⁵⁰

Further appeal to the court

Under continuing law, any party aggrieved or adversely affected by a decision of the Commission may appeal to the court of appeals of the county in which the operation that is the subject of the appeal is located, or to the court of appeals of Franklin County.⁵¹ The bill then establishes specific requirements and timelines regarding this appeal.

Under the bill, the court in which the appeal is made has exclusive jurisdiction over the appeal. The party must file the appeal within 30 days of issuance of the decision of the Commission. The court must confine its review to the record certified by the Commission. The court may, upon motion, grant temporary relief as it considers appropriate pending final disposition of the appeal if all of the following apply:

1. All parties to the appeal have been notified and given an opportunity to be heard on a request for temporary relief;

⁵⁰ R.C. 1514.091.

⁵¹ R.C. 1514.09 and 1514.092(A).

2. The person requesting the relief shows that there is a substantial likelihood that the person will prevail on the merits; and
3. The relief will not adversely affect public health or safety or the health or safety of miners or cause significant imminent environmental harm to land, air, or water resources.

The court must affirm the decision of the Commission unless the court determines that it is arbitrary, capricious, or otherwise inconsistent with law. In that case, the court must vacate the decision and remand to the Commission for further proceedings as it may direct.

Judicial review of orders

Any order of the Chief to adopt a rule is subject to judicial review in the Franklin County Court of Appeals, which has exclusive original jurisdiction to review the order. A petition for review of the order must be filed within 30 days from the date of the order. The petition may be made by any person who participated in the rulemaking proceedings and who is aggrieved by the order. The court must confine its review to the record of the rulemaking proceedings. The order must be affirmed unless the court concludes that the rulemaking order is arbitrary, capricious, or otherwise inconsistent with law, in which case the court must vacate the order or a portion of the order and remand to the Chief for further proceedings as it may direct.⁵²

Public adjudicatory hearing

The bill allows the Reclamation Commission or the Chief, when conducting any public adjudicatory hearing regarding surface, in-stream, or underground minerals mining operations, to do both of the following:

1. Require the attendance of witnesses and the production of books, records, and papers;
2. At the request of any party, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, papers, or other material relevant to the inquiry, directed to the sheriff of the counties where the witnesses or materials are found. The subpoenas must be served and returned in the same manner as subpoenas issued by courts of common pleas are served and returned. The fees of sheriffs must be the same as those allowed by the court of common pleas in criminal cases.

Witnesses must be paid the fees and mileage provided for under the law governing administrative procedure.

In cases of disobedience or neglect of a subpoena or the refusal of any witness to testify, the court of common pleas, on application of the Chief or a Commission member, must compel obedience by attachment procedures for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify.

A witness at any hearing must testify under oath or affirmation, which the Chief or any Commission member may administer. A hearing officer may, in accordance with instructions

⁵² R.C. 1514.092.

from the Commission, preside over all pre-hearing matters, including hearing and deciding all pre-trial motions.

A party may, within 14 days after receipt of the decision of a pre-trial motion, serve and file written objections to the hearing officer's decision with the Commission secretary. Objections must be specific and state with particularity the grounds for the objection. Upon consideration of the objections, the Commission may adopt, reject, or modify the decision. When the Commission hears an appeal, the hearing officer acts as the legal advisor to the Commission and, at the direction of the Commission, drafts the Commission's decision. The hearing officer must, at the direction of the Commission, assume the duties and responsibilities of the Commission's secretary.

Upon the unanimous consent of all parties to the appeal, a hearing officer may hear an appeal. The hearing officer has the same powers and authority in conducting the hearing as granted to the Commission. Whenever a hearing officer conducts a hearing, the officer must prepare a report setting forth the hearing officer's findings of fact and conclusions of law and a recommendation of the action to be taken by the Commission. The hearing officer must file the report with the Commission secretary and mail certified copies to the parties. A party may, within 14 days after receipt of the report, serve and file written objections to the hearing officer's report with the Commission secretary. Objections must be specific and state with particularity the grounds for the objection. Upon consideration of the objections, the Commission may adopt, reject, or modify the report. The Commission also may hear additional evidence, return the report to the hearing officer with instructions, or hear the matter itself.⁵³

Zoning

The bill prohibits county and township zoning authorities from requiring a mine operator to obtain a surface, in-stream, or underground minerals mining permit prior to applying for zoning approval. This provision does not authorize a mine operator to begin operations without obtaining zoning approval. However, it does allow a mine operator to seek zoning approval while their surface, in-stream, or underground minerals mining permit application is pending or prior to submitting a permit application. Thus, this provision allows the mine operator to engage in the zoning process and receive exact zoning authority first, which may result in a more accurate permit application and less need for subsequent amendments to the permit.

The bill also prohibits county and township zoning authorities from regulating underground minerals mining activity on any portion of land permitted for surface mining if one of the following applies:

1. The portion has been zoned to allow for surface mining activities;
2. A conditional use certificate or a variance allows surface mining activities on that portion of land; or

⁵³ R.C. 1514.093.

3. Surface mining activities are allowed on the portion of land as a nonconforming use.⁵⁴

The bill also explicitly specifies that adding land to a permit does not prevent any county, township, or municipal corporation from enacting, adopting, or enforcing zoning regulations or ordinances to regulate mining activities on the added land.⁵⁵

Location study for safety training

The bill requires the Division of Mineral Resources Management to conduct a study to determine a centralized location for conducting safety education and regulated activities regarding training. Within one year after the bill's effective date, the Division must send a report of its findings to the Governor, the Senate President, and the Speaker of the House.⁵⁶

Surface and in-stream mining permit changes

The bill makes various changes to the existing surface and in-stream mining permit program. Notably, it removes the expiration of a surface and in-stream mining permit and, accordingly, removes all renewal requirements. Under current law, a surface mining permit generally expires after 15 years, and an in-stream mining permit generally expires after five years. However, the bill does require the Chief to conduct a review of the permit holder's operations at least once every five years.⁵⁷ Additionally, the bill replaces the current \$1,000 permit renewal fee for surface mining operations and the \$500 permit renewal fee for in-stream mining operations with a new annual fee for certain permit holders as follows:

1. \$1,000 if the permit holder engages in limestone or dolomite mining; and
2. \$500 if the permit holder engages in sand and gravel or clay, sandstone or conglomerate, shale, gypsum, or quartzite mining.

The bill requires proceeds from those fees to be deposited in the existing Mining Regulation and Safety Fund.⁵⁸

It also makes additional changes as follows:

- Removes the requirement that a surface mining operation operating under one permit must be located upon a single tract of land or upon two or more contiguous tracts of land;⁵⁹

⁵⁴ R.C. 1514.023(B).

⁵⁵ R.C. 1514.02(C)(2)(e).

⁵⁶ Section 3.

⁵⁷ R.C. 1514.02(C), 1514.021, and 1514.08; conforming changes in R.C. 1514.02(A)(15), 1514.022, 1514.03, and 1514.05.

⁵⁸ R.C. 1514.021 and 1514.11.

⁵⁹ R.C. 1514.01(F).

- Specifies that a surface mining or in-stream mining operation permit application must contain an explanation of how the applicant intends to comply with any zoning resolution or ordinance instead of *provisions of* a zoning resolution or ordinance;⁶⁰
- Removes antiquated provisions that applied to surface or in-stream mining permits prior to March 2002;⁶¹
- Eliminates a requirement that a surface or in-stream mining permit applicant include in the reclamation plan to be submitted with the application a provision addressing how the applicant will remove or bury any metal, lumber, equipment, or other refuse resulting from mining, and remove or bury any unwanted or useless structures;⁶²
- Eliminates the requirement that a surface mining permit applicant, who intends to extract 10,000 tons of minerals per year or more submit three copies of a current tax map and instead requires only one tax map, and eliminates the requirements that the applicant submit a mining map in triplicate and instead requires the submission of only one map;⁶³
- In alignment with the new underground minerals mining program, requires an applicant for a surface or in-stream mining permit to submit a certificate of public liability insurance issued by an authorized insurance company covering all underground minerals mining operations in Ohio and affording bodily injury and property damage protection of at least \$1 million;⁶⁴
- Specifies that any consent by a landowner to allow surface or in-stream mining on land that is closer than 50 feet of horizontal distance to any adjacent land or waters runs with the land;⁶⁵
- Allows a local authority to enter into an agreement for the improvement of roads under the jurisdiction of that local authority that may be affected by a mining operation or for other improvements within the jurisdiction with an operator of an existing or proposed facility conducting activities related to making finished aggregate products (which includes the processing, loading, crushing, conveying, screening, storing, washing, batching, mixing, heating, bagging, or drying necessary to make a product comprised of at least 75% of an extracted industrial mineral);⁶⁶
- Allows the Chief of the Division of Mineral Resources Management to require a cone of depression to be established and incorporated into an existing surface or in-stream

⁶⁰ R.C. 1514.02(A)(3).

⁶¹ R.C. 1514.02(A)(10)(b).

⁶² R.C. 1514.02(A)(10)(f).

⁶³ R.C. 1514.02(A)(11) and (12).

⁶⁴ R.C. 1514.02(A)(14).

⁶⁵ R.C. 1514.02(B).

⁶⁶ R.C. 1514.024 and 1514.01(R).

mining permit if a complaint investigation determines that dewatering may be occurring;⁶⁷

- Requires the Chief of the Division of Mineral Resources Management to consult with the Chief of the Division of Geological Survey, instead of the Chief of the Division of Water Resources as in current law, when projecting a cone of depression;⁶⁸ and
- Modifies procedures related to amending a permit, including what constitutes a significant amendment, to include:
 - Allowing adding land when the land is contiguous or when the land is located in whole or in part of the same township or municipal corporation identified in the permit;
 - Adding the authorization for a surface mining permit holder to conduct underground minerals mining activities;
 - Requires the permit to be modified, which may include changing the plan of mining and reclamation instead of applying to amend the plan and not the permit itself; and

Removes duplicative language governing the Chief's decision-making regarding whether to approve an amendment to a permit.⁶⁹

HISTORY

Action	Date
Introduced	04-23-25
Reported, S. Agriculture & Natural Resources	04-14-26
Passed Senate (29-2)	05-13-26

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⁶⁷ R.C. 1514.13(A).

⁶⁸ R.C. 1514.13(A).

⁶⁹ R.C. 1514.02(C).