TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 571 – SB 686

April 13, 2017

SUMMARY OF ORIGINAL BILL: Creates a six member special joint committee (SJC) to study issues relative to this state obtaining primacy over the regulation of surface coal mining and reclamation within its territorial jurisdiction. Requires three members of the House of Representatives and three members of the Senate to be appointed to the SJC. Requires state agencies to provide assistance to the SJC. Requires the SJC to report its findings, recommendations, and any recommended legislation to the 110th General Assembly by February 1, 2018. Requires the SJC to be eliminated on February 1, 2018.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - $8,200/One-Time

SUMMARY OF AMENDMENT (007228): Deletes all language after the enacting clause. Enacts the *Primacy and Reclamation Act of Tennessee*, that implements multiple provisions related to coal mining, including but not limited to the following: a requirement for the Department of Environment and Conservation (TDEC) to serve as the state regulatory authority for surface coal mining and reclamation operations; a requirement for TDEC to adopt rules by emergency rulemaking within 90 days of the effective date of the act; designation of the Board of Water Quality, Oil and Gas as the Board of Energy and Natural Resources; addition of two citizen members appointed by the Governor to the Board, with a requirement the Board promulgates rules consistent with federal law and regulations; a requirement for the state to seek primacy after the bill as amended is enacted and the Governor to seek any federal funding available; the creation of several Class E Felony offenses for violations of certain provisions of this Act; and declaration that this Act takes effect upon becoming a law for purposes of rulemaking, and eight months after the state is granted primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries for all other purposes.

Authorizes the Commissioner of the Department of Environment and Conservation (TDEC), under Tenn. Code Ann. § § 59-8-326 to expend money from the surface mining reclamation fund created by Tenn. Code Ann. § § 59-8-326. Authorizes permittees to hear appeals consistent with Tenn. Code Ann. § 59-8-120 who are or may be adversely affected by orders, determinations, rules, permit terms, or rulings of the Commissioner that in any way affect surface coal mining and reclamation operations in this state. Requires the acreage fee shall be paid annually as prescribed in rules promulgated by the board under § 59-8-103(b)(1). Requires a coal mining permit to be $250 and a coal exploration permit to be $150. Defines "business day" as any day other than a Saturday, Sunday, or legal holiday. Requires permittees to establish and maintain appropriate records; make monthly reports to the commissioner; install, use, and maintain any necessary monitoring equipment or methods; evaluate results in accordance with the methods, locations, intervals, and manner that the board prescribes; and provide other information relative to surface coal mining and reclamation operations that the board deems reasonable and necessary under the board.

Changes various references to the Tennessee Board of water quality, oil and gas, to various acceptable references to the Tennessee Board of Energy and Natural Resources. Requires each operator to remit on or after July 1, 2017, an assessment in the following amount: $0.04 per ton for coal that is severed from the ground in underground mining operations and $0.09 per ton for coal that is severed from the ground in surface coal mining and reclamation operations to the Department of Revenue in addition to tax payable under Tenn. Code Ann. § 27-7-104. Requires the assessment to be due and payable in the same manner as the coal severance tax under Tenn. Code Ann. § 67-7-110. Requires all monies received from the assessment to be transferred to the Department of Treasury for deposit in the coal mining protection fund and to be used for the administration and enforcement of the Act.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue –
$52,000/FY17-18/Coal Mining Protection Fund
$58,500/FY18-19/Coal Mining Protection Fund
$1,596,300/FY19-20/Coal Mining Protection Fund
$1,811,300/FY20-21 and Subsequent Years/Coal Mining Protection Fund

Increase State Expenditures –
$522,800/FY17-18/General Fund
$1,270,300/FY18-19/General Fund
$2,498,800/FY19-20/General Fund
$2,158,100/FY20-21 and Subsequent Years/General Fund
$17,600/FY20-21 and Subsequent Years/Incarceration*

Increase Federal Expenditures –
$1,145,800/FY20-21
$975,500/FY21-22 and Subsequent Years

Assumptions for the bill as amended:

- According to TDEC, this bill as amended will require the Department to establish a program eligible for primacy and to regulate coal surface mining activities and the surface effects of underground mining.
- Currently, the Office of Surface Mining, Reclamation, and Enforcement (OSM) within the Department of the Interior regulates surface coal mining and reclamation activities in Tennessee.

- Federal law (30 C.F.R.731.12 and 731.15) requires a state to demonstrate the capacity to implement, administer, and enforce the Surface Mining Control and Reclamation Act (SMCRA) and federal rules implementing SMCRA including sufficient legal, technical, and administrative personnel and funding for the program.
- The proposed legislation adds two new board members to the Board of Energy and Natural Resources, resulting in a recurring increase in state expenditures of $2,240 ($280 per meeting x 4 meetings x 2 members) in FY17-18 and subsequent years; the increase in state expenditures in FY18-19 is estimated to be $1,120 ($280 per meeting x 2 meetings x 2 members).
- This bill as amended establishes the fee schedule, including a permit fee and an acreage fee, for permit applications in Section 59-8-107. Based on the OSM annual reports, it is estimated that TDEC will receive three new permit applications per year with fee revenue of $3,850 each, nine renewals with fee revenue of $500 each, eight transfer applications with fee revenue of $350 each, no exploration permit applications, 1 significant revision application with fee revenue of $2,000 each, and 104 insignificant revision applications or incidental boundary revisions with fee revenue of $750 each, resulting in total annual application fee revenue of $98,850 beginning in FY20-21 [(3 x $3,850) + (9 x $500) + (8 x $350) + (1 x $2,000) + (104 x $750)]. The Department estimates that FY19-20 revenue will be $49,425 based on the uncertainty of the actual effective date of primacy.
- TDEC reports that the average issued acreage from Federal FY08-09 through Federal FY12-13 was 20,488. The Department estimates the number of acres submitted with permits and that the acreage was not reclaimed was 4,701. Therefore, the recurring increase in fee revenue beginning in FY20-21 is estimated to be $597,800 [(20,488 acres x $20) + (4,701 acres x $40)]. The increase in fee revenue in FY19-20 is estimated to be $298,900 ($597,800 / 2).
- TDEC indicates there will be additional state revenue derived from civil penalties. The increase in state revenue in FY19-20 is estimated to be $37,200; the recurring increase in state revenue beginning in FY20-21 is estimated to be $74,400.
- Based on severance tax collections reported by the Department of Revenue and coal production data published by the U.S. Energy Information Administration, it is estimated that 1,000,000 tons of coal will be severed annually and that half of the coal will be from surface mining operations and half will be from underground operations, resulting in $65,000 in annual severance tax revenue beginning in FY17-18 [(500,000 tons x $0.09 per ton) + (500,000 tons x $0.04 per ton)]. The actual effective date of primacy is uncertain and, therefore, it is estimated that FY17-18 revenue will be $52,000; and FY18-19 revenue will be $58,500.
- According to TDEC, the department is estimated to receive a one-time increase of federal funding of $1,145,808 in FY19-20, and a recurring increase of federal funding of $975,468 beginning in FY20-21.
- Based on information provided by TDEC, all fee revenue and federal funding received by TDEC will be deposited to the Coal Mining Protection Fund (CMPF).
- The total increase in state revenue to the CMPF in FY19-20 is estimated to be $1,596,333 ($49,425 + $298,900 + $37,200 + $65,000 + $1,145,808); in FY20-21 and subsequent years is estimated to be $1,811,318 ($98,850 + $597,800 + $74,200 + $65,000 + $975,468).

- TDEC will require appropriations from the General Fund (GF) for the purpose of funding new required positions.
- TDEC reports that six new positions will be required in FY17-18, resulting in a recurring increase in state expenditures from the GF of $522,758.
- TDEC reports that an additional 21 positions will be required in the last half of FY18-19. The recurring increase in state expenditures from the GF for these positions beginning in FY19-20 is estimated to be $1,492,849; the increase in state expenditures from the GF in FY18-19 (for the half-year impact) is estimated to be $746,424 ($1,492,849 x 50% for half-year impact).
- The total increase in state expenditures for a total of 27 TDEC positions from the GF in FY18-19 is estimated to be $1,269,182 ($522,758 + $746,424); the total recurring increase in state expenditures for the 26 total TDEC positions from the GF beginning in FY19-20 is estimated to be $2,015,607 ($522,758 + $1,492,849).
- In FY19-20, based on the information received from TDEC, it is estimated that there will be a one-time increased state expenditure of $340,680 for equipment, supplies, and vehicles, for a total increase in state expenditures from the GF in FY19-20 of $2,356,287 ($2,015,607 + $340,680).

Assumptions relative to the Attorney General:

- According to the information received from the Attorney General (AG), this bill as amended would require AG's Office to review rules promulgated by TDEC and handle any litigation matters on their behalf, requiring one additional attorney; funding for such position will require an appropriation of funds from the GF; the recurring increase in state expenditures from the GF beginning in FY19-20 is estimated to be $140,300.

Assumptions relative to Class E Felonies:

- The proposed legislation creates several Class E felony offenses for a person who: knowingly violates a condition of a permit issued under this Act or fails to comply with any orders issued; willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the Board or TDEC; knowingly violates the conflict of interest provision; knowingly engages in surface coal mining and reclamation operations without a permit; or knowingly prevents or impedes an employee of this state from performing the employee's duty under this Act.
- According to the Department of Corrections (DOC), per the National Pollutant Discharge Elimination System (NPDS) compliance summary, there have been three notices of permit expiration to the Jim Justin Mines in Tennessee since 2011.
- Based on the information received from DOC, one additional Class E felony is estimated to occur every other year for persons operating in surface coal mining and reclamation operations without a permit.
- It is assumed that each offender will serve the same time as an average Class E felony (1.4 years).
- Population growth and recidivism discount factors do not apply because of the low number of admissions affected by this provision of the legislation.

- According to the DOC, the average operating cost per offender per day for calendar year 2017 is $68.75.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 0.5 offenders serving 1.4 years (511.35 days) for a total of $35,155 ($68.75 x 511.35 days). The cost for 0.5 offenders is $17,578 ($35,155 x 0.5).
- The first year for incarceration impacts is estimated to be FY20-21.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista M. Lee

Krista M. Lee, Executive Director

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