

By: Representative Cameron

To: Conservation and
Water Resources

HOUSE BILL NO. 890

1 AN ACT TO RESTRICT THE MISSISSIPPI COMMISSION ON
2 ENVIRONMENTAL QUALITY FROM PROPOSING OR IMPLEMENTING ANY RULE
3 RELATED TO GREENHOUSE GAS EMISSIONS AS DEFINED BY THE KYOTO
4 PROTOCOL; TO AMEND SECTIONS 49-2-9 AND 49-2-13, MISSISSIPPI CODE
5 OF 1972, IN CONFORMITY TO THIS ACT; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. For the purposes of this act, the following words
8 shall have the definitions ascribed in this section:

9 (a) "FCCC" means the 1992 United Nations Framework
10 Convention on Global Climate Change.

11 (b) "Kyoto Protocol" means the protocol to expand the
12 scope of the FCCC that was negotiated in December 1997 in Kyoto,
13 Japan.

14 SECTION 2. (1) The Mississippi State Legislature hereby
15 finds that:

16 (a) The United States is a signatory to the 1992 United
17 Nations Framework Convention on Global Climate Change.

18 (b) A protocol to expand the scope of the FCCC was
19 negotiated in December 1997, in Kyoto, Japan, requiring the United
20 States to reduce emissions of greenhouse gases such as carbon
21 dioxide and methane by seven percent (7%) from 1990 emission
22 levels during the period 2008 to 2012, with similar reduction
23 obligations for other major industrial nations. It is known as
24 the Kyoto Protocol.

25 (c) Certain developing nations, including China, India,
26 Mexico, Indonesia, and Brazil, are exempt from greenhouse gas
27 emission limitation requirements in the FCCC.

28 (d) Certain developing nations refused in the Kyoto
29 negotiations to accept any new commitments for greenhouse gas
30 emission limitations through the Kyoto Protocol or other
31 agreements.

32 (e) With respect to new commitments under the FCCC,
33 President Clinton pledged on October 22, 1997, that "The United
34 States will not assume binding obligations unless key developing
35 nations meaningfully participate in this effort."

36 (f) On July 25, 1997, the United States Senate adopted
37 Senate Resolution No. 98 by a vote of 95-0, expressing the sense
38 of the Senate that, inter alia, ". . . the United States should
39 not be a signatory to any protocol to or other agreement
40 regarding, the Framework Convention on Climate Change . . . which
41 would require the advice and consent of the Senate to
42 ratification, and which would mandate new commitments to mitigate
43 greenhouse gas emissions for the Developed Country Parties, unless
44 the protocol or other agreement also mandates specific scheduled
45 commitments within the same compliance period to mitigate
46 greenhouse gas emissions for Developing Country Parties."

47 (g) The Kyoto Protocol fails to meet the tests
48 established for acceptance of new climate change commitments by
49 President Clinton and by United States Senate Resolution No. 98.

50 (h) On November 12, 1998, the Clinton administration
51 confirmed its commitment to Kyoto Protocol as the treaty was
52 signed by Acting United States Ambassador Peter Burleigh at the
53 United Nations.

54 (i) Achieving the emission reductions proposed by the
55 Kyoto Protocol would require more than a thirty-five percent (35%)
56 reduction in projected United States carbon dioxide and other
57 greenhouse gas emissions during the period 2008 to 2012.

58 (j) Developing countries exempt from emission
59 limitations under the Kyoto Protocol are expected to increase
60 their rates of fossil fuel use over the next two (2) decades and

61 to surpass the United States and other industrialized countries in
62 total emissions of greenhouse gases.

63 (k) Increased emissions of greenhouse gases by
64 developing countries would offset any potential environmental
65 benefits associated with reductions in emissions achieved by the
66 United States and by other industrial nations.

67 (l) Economic impact studies by the United States
68 Government estimate that legally binding requirements for the
69 reduction of United States greenhouse gases to 1990 emission
70 levels would result in the loss of more than nine hundred thousand
71 (900,000) jobs in the United States, sharply increase energy
72 prices, reduced family incomes and wages, and severe losses of
73 output in energy-intensive industries such as aluminum, steel,
74 rubber, chemicals and utilities.

75 (m) An economic impact study by Wharton Econometrics
76 Forecasting Associates estimates that Mississippi under the same
77 reduction requirements would lose Four Hundred Twenty-three
78 Million Dollars (\$423,000,000.00) in tax revenues, and
79 twenty-eight thousand six hundred (28,600) jobs, including
80 fourteen thousand six hundred (14,600) manufacturing jobs.

81 (n) The failure to provide for commitments by
82 developing countries in the Kyoto Protocol creates an unfair
83 competitive imbalance between industrial and developing nations,
84 potentially leading to the transfer of jobs and industrial
85 development from the United States to developing countries.

86 (o) Federal implementation of the Kyoto Protocol, if
87 ratified by the United States Senate, would entail new
88 congressional legislation in a form and containing requirements
89 that cannot be predicted at this time, but that could include
90 national energy taxes or emission control allocation and trading
91 schemes that would preempt state-specific programs intended to
92 reduce emissions of greenhouse gases.

93 (p) Piecemeal or other uncoordinated state regulatory

94 initiatives intended to reduce emissions of greenhouse gases may
95 be inconsistent with subsequent congressional determinations
96 concerning the Kyoto Protocol and with related federal legislation
97 implementing the Kyoto Protocol.

98 (q) Individual state responses to the Kyoto Protocol,
99 including development of new regulatory programs intended to
100 reduce greenhouse gas emissions, are premature before Senate
101 ratification of the protocol in its current or amended form and
102 congressional enactment of related implementing legislation.

103 (r) There is neither federal nor state statutory
104 authority for new regulatory programs or other efforts intended to
105 reduce greenhouse gas emissions for purposes of complying with or
106 facilitating compliance with the provisions of the Kyoto Protocol.

107 SECTION 3. (1) The Mississippi Commission on Environmental
108 Quality shall not propose or adopt any new rule for the intended
109 purpose of addressing the adverse effects of climate change that
110 in whole or in part reduces emissions of greenhouse gases, as
111 those gases are defined by the Kyoto Protocol, from the
112 residential, commercial, industrial, electric utility or
113 transportation sectors. In the absence of an act of the
114 Mississippi Legislature approving such rules, the Executive
115 Director of the Mississippi Department of Environmental Quality
116 shall not submit to the United States Environmental Protection
117 Agency, or to any other agency of the federal government, any
118 legally enforceable commitments related to the reduction of
119 greenhouse gases, as those gases are defined by the Kyoto
120 Protocol.

121 (2) Nothing in this section shall be construed to limit or
122 to impede private participation in any on-going voluntary
123 initiatives to reduce emissions of greenhouse gases, including,
124 but not limited to, the United States Environmental Protection
125 Agency's Green Lights program, the United States Department of
126 Energy's Climate Challenge program, and similar state and federal

127 initiatives relying on voluntary participation, provided that such
128 participation does not involve any allocation or other
129 distribution of greenhouse gas emission entitlements pursuant to
130 or under color of the Kyoto Protocol.

131 SECTION 4. Section 49-2-9, Mississippi Code of 1972, is
132 amended as follows:

133 49-2-9. (1) Effective July 1, 1979, the commission shall
134 have the following powers and duties:

135 (a) To formulate the policy of the department regarding
136 natural resources within the jurisdiction of the department;

137 (b) To adopt, modify, repeal, and promulgate, after due
138 notice and hearing, and where not otherwise prohibited by federal
139 or state law, to make exceptions to and grant exemptions and
140 variances from, and to enforce rules and regulations implementing
141 or effectuating the powers and duties of the commission under any
142 and all statutes within the commission's jurisdiction, and as the
143 commission may deem necessary to prevent, control and abate
144 existing or potential pollution;

145 (c) To apply for, receive and expend any federal or
146 state funds or contributions, gifts, devises, bequests or funds
147 from any other source;

148 (d) To commission or conduct studies designed to
149 determine alternative methods of managing or using the natural
150 resources of this state, in a manner to insure efficiency and
151 maximum productivity;

152 (e) To enter into, and to authorize the executive
153 director to execute with the approval of the commission,
154 contracts, grants and cooperative agreements with any federal or
155 state agency or subdivision thereof, or any public or private
156 institution located inside or outside the State of Mississippi, or
157 any person, corporation or association in connection with carrying
158 out the provisions of this chapter; but this authority under this
159 chapter and under any and all statutes within the commission's

160 jurisdiction, except those statutes relating to the Bureau of
161 Recreation and Parks, shall not include contracts, grants or
162 cooperative agreements which do not develop data or information
163 usable by the commission, or which provide goods, services or
164 facilities to the commission or any of its bureaus, and shall
165 exclude any monies for special interest groups for purposes of
166 lobbying or otherwise promoting their special interests; and

167 (f) To discharge such other duties, responsibilities
168 and powers as are necessary to implement the provisions of this
169 chapter.

170 (2) The powers and authority of the commission to adopt
171 rules shall be limited as provided in Section 3 of this act. The
172 provisions of this subsection shall be repealed upon ratification
173 of the Kyoto Protocol, as defined in Section 2 of this act, by the
174 United States Senate, or upon action by the United States Congress
175 authorizing reduction of emissions of greenhouse gases, as those
176 gases are defined by the Kyoto Protocol, for the purpose of
177 addressing the adverse effects of climate change.

178 SECTION 5. Section 49-2-13, Mississippi Code of 1972, is
179 amended as follows:

180 49-2-13. (1) The executive director shall have the
181 following powers and duties:

182 (a) To administer the policies of the commission within
183 the authority granted by the commission;

184 (b) To supervise and direct all administrative and
185 technical activities of the department;

186 (c) To organize the administrative units of the
187 department in accordance with the plan adopted by the commission
188 and, with commission approval, alter such organizational plan and
189 reassign responsibilities as he may deem necessary to carry out
190 the policies of the commission;

191 (d) To coordinate the activities of the various offices
192 of the department;

193 (e) To employ, subject to the approval of the
194 commission, qualified professional personnel in the subject matter
195 or fields of each office, and such other technical and clerical
196 staff as may be required for the operation of the department;

197 (f) To recommend to the commission such studies and
198 investigations as he may deem appropriate, and to carry out the
199 approved recommendations in conjunction with the various offices;

200 (g) To merge and coordinate functions and duties where
201 possible to eliminate the possibility of two (2) separate
202 organizational entities performing the same or similar functions,
203 including, but not limited to, functions of audit, inspection,
204 collection, personnel, motor vehicles, accounting, data
205 processing, payroll and any other such administrative, procedural
206 or enforcement function;

207 (h) To coordinate all studies in the State of
208 Mississippi concerned with the supply, development, use and
209 conservation of natural resources within the jurisdiction of the
210 department;

211 (i) To prepare and deliver to the Legislature and the
212 Governor on or before January 1 of each year, and at such other
213 times as may be required by the Legislature or Governor, a full
214 report of the work of the department and the offices thereof,
215 including a detailed statement of expenditures of the department
216 and any recommendations the commission may have;

217 (j) To issue, modify or revoke any and all orders under
218 authority granted by the commission which include, but are not
219 limited to those which (i) prohibit, control or abate discharges
220 of contaminants and wastes into the air and waters of the state;

221 (ii) require the construction of new disposal systems or
222 air-cleaning devices or any parts thereof, or the modification,
223 extension or alteration of existing disposal systems or
224 air-cleaning devices or any parts thereof, or the adoption of
225 other remedial measures to prevent, control or abate air and water

226 pollution or to cause the proper management of solid wastes; (iii)
227 impose penalties pursuant to Section 17-17-29 and Section 49-17-43
228 which have been agreed upon with alleged violators; and (iv)
229 require compliance with the conditions of any permit issued by the
230 Permit Board created in Section 49-17-28 and all regulations of
231 the commission; and

232 (k) With the approval of the commission, to enter into
233 contracts, grants and cooperative agreements with any federal or
234 state agency or subdivision thereof, or any public or private
235 institution located inside or outside the State of Mississippi, or
236 any person, corporation or association in connection with carrying
237 out the provisions of this chapter, provided the agreements do not
238 have a financial cost in excess of the amounts appropriated for
239 such purposes by the Legislature.

240 (2) Any power or authority of the executive director to
241 enter into commitments on behalf of the state shall be limited as
242 provided in Section 3 of this act. The provisions of this
243 subsection shall be repealed upon ratification of the Kyoto
244 Protocol, as defined in Section 2 of this act, by the United
245 States Senate, or upon action by the United States Congress
246 authorizing reduction of emissions of greenhouse gases, as those
247 gases are defined by the Kyoto Protocol, for the purpose of
248 addressing the adverse effects of climate change.

249 SECTION 6. This act shall take effect and be in force from
250 and after July 1, 1999, and Sections 1, 2, and 3 shall be repealed
251 upon ratification of the Kyoto Protocol, as defined in Section 2
252 of this act, by the United States Senate, or upon action by the
253 United States Congress authorizing reduction of emissions of
254 greenhouse gases, as those gases are defined by the Kyoto
255 Protocol, for the purpose of addressing the adverse effects of
256 climate change.