

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1427

1 AN ACT TO AMEND SECTION 53-9-3, MISSISSIPPI CODE OF 1972, TO  
 2 INCLUDE A STATE PROGRAM FOR ABANDONED MINE RECLAMATION IN THE  
 3 LEGISLATIVE FINDINGS; TO AMEND SECTION 53-9-7, MISSISSIPPI CODE OF  
 4 1972, TO ADD DEFINITIONS FOR THE TERMS ABANDONED MINE LANDS,  
 5 SECRETARY AND STATE RECLAMATION PROGRAM; TO AMEND SECTION 53-9-89,  
 6 MISSISSIPPI CODE OF 1972, TO INCLUDE THE ABANDONED MINE LANDS  
 7 RECLAMATION ACCOUNT AS PART OF THE SURFACE COAL MINING AND  
 8 RECLAMATION FUND THAT IS IN THE STATE TREASURY; TO CREATE NEW CODE  
 9 SECTIONS THAT WOULD ALLOW THE STATE TO OPERATE A FEDERALLY  
 10 APPROVED ABANDONED MINE LANDS RECLAMATION PROGRAM AND TO ALLOW THE  
 11 RECEIPT OF FEDERAL ABANDONED MINE LANDS FUNDS; AND FOR RELATED  
 12 PURPOSES.

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

14 SECTION 1. Section 53-9-3, Mississippi Code of 1972, is  
 15 amended as follows:

16 53-9-3. The Legislature finds and declares that:

17 (a) The State of Mississippi, instead of the federal  
 18 government, should regulate surface coal mining in this state  
 19 because the terrain, climate, biologic, chemical and other  
 20 physical conditions of the state differ from those of other states  
 21 subject to regulation of mining operations;

22 (b) Extraction of coal from the earth can be  
 23 accomplished by various methods of mining, including surface  
 24 mining;

25 (c) Coal mining operations presently contribute  
 26 significantly to the energy requirements of the state and nation,  
 27 and surface coal mining constitutes one (1) method of extraction  
 28 of the resource;

29 (d) Many surface mining operations result in  
 30 disturbances of surface areas that burden and adversely affect  
 31 commerce and the public welfare by destroying or diminishing the

32 utility of land for commercial, industrial, residential,  
33 recreational, agricultural and forestry purposes, by causing  
34 erosion and landslides, by contributing to floods, by polluting  
35 water, by destroying fish and wildlife habitats, by impairing  
36 natural beauty, by damaging the property of citizens, by creating  
37 hazards dangerous to life and property, by degrading the quality  
38 of life in local communities, and by counteracting governmental  
39 programs and efforts to conserve soil, water and other natural  
40 resources;

41           (e) The expansion of coal mining to meet the energy  
42 needs of the state and nation makes even more urgent the  
43 establishment of appropriate standards to minimize damage to the  
44 environment and to productivity of the soil and to protect the  
45 health and safety of the public;

46           (f) Surface mining and reclamation technology are now  
47 developed so that effective and reasonable regulation of surface  
48 coal mining operations by the state in accordance with the  
49 requirements of this chapter is an appropriate and necessary means  
50 to minimize, so far as practicable, the adverse social, economic  
51 and environmental effects of those mining operations;

52           (g) Surface mining and reclamation standards are  
53 essential to insure the ability of the state to improve and  
54 maintain adequate standards on coal mining operations within its  
55 borders;

56           (h) The impacts from unreclaimed land disturbed by  
57 surface coal mining operations impose social and economic costs on  
58 residents in nearby and adjoining areas, as well as impair  
59 environmental quality;

60           (i) Surface coal mining operations contribute to the  
61 economic well-being, security and general welfare of the state and  
62 nation and should be conducted in an environmentally sound  
63 manner; \* \* \*

64           (j) This chapter is necessary to prevent or mitigate  
65 adverse environmental effects of surface coal mining operations;  
66 and

67           (k) The provisions of the 2001 amendments to this  
68 chapter are to provide for and implement a state program for  
69 abandoned mine reclamation which complies with the provisions of  
70 Subchapter IV of the federal Surface Mining Control and  
71 Reclamation Act of 1977, 30 USCS 1231 through 1243.

72           SECTION 2. Section 53-9-7, Mississippi Code of 1972, is  
73 amended as follows:

74           53-9-7. For the purposes of this chapter, the following  
75 terms shall have the meaning ascribed in this section unless the  
76 context requires otherwise:

77           (a) "Abandoned mine lands" means lands and waters  
78 affected by the mining or processing of coal before August 3,  
79 1977, or affected by the mining or processing of noncoal minerals,  
80 including, but not limited to, sand, gravel, clay and soil, before  
81 August 3, 1977, and abandoned or left in either an unreclaimed or  
82 inadequately reclaimed condition, and for which there is no  
83 continuing reclamation responsibility required under state or  
84 federal law, and which continue in the present condition  
85 substantially to degrade the quality of the environment, to  
86 prevent or damage the beneficial use of land or water resources,  
87 or to endanger the health or safety of the public. Abandoned mine  
88 lands also means those lands and waters described by 30 USCS  
89 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.

90           (b) "Appeal" means an appeal to an appropriate court of  
91 the state taken from a final decision of the Permit Board or  
92 commission made after a formal hearing before that body.

93           (c) "Approximate original contour" means that surface  
94 configuration achieved by backfilling and grading of the mined  
95 area so that the reclaimed area, including any terracing or access  
96 roads, closely resembles the general surface configuration of the

97 land before mining and blends into and complements the drainage  
98 pattern of the surrounding terrain, with all highwalls and spoil  
99 piles eliminated. Water impoundments may be allowed if the Permit  
100 Board determines that the impoundments are in compliance with  
101 Section 53-9-45(2)(g).

102 (d) "As recorded in the minutes of the Permit Board"  
103 means the date of the Permit Board meeting at which the action  
104 concerned is taken by the Permit Board.

105 (e) "Coal" means combustible carbonaceous rock,  
106 classified as anthracite, bituminous, subbituminous, or lignite by  
107 the American Society of Testing and Materials.

108 (f) "Commission" means the Mississippi Commission on  
109 Environmental Quality.

110 (g) "Department" means the Mississippi Department of  
111 Environmental Quality.

112 (h) "Executive director" means the executive director  
113 of the department.

114 (i) "Exploration operations" means the disturbance of  
115 the surface or subsurface before surface coal mining and  
116 reclamation operations begin for the purpose of determining the  
117 location, quantity or quality of a coal deposit, and the gathering  
118 of environmental data to establish the conditions of the area  
119 before the beginning of surface coal mining and reclamation  
120 operations.

121 (j) "Federal act" means the Surface Mining Control and  
122 Reclamation Act of 1977, as amended, which is codified as Section  
123 1201 et seq. of Title 30 of the United States Code.

124 (k) "Formal hearing" means a hearing on the record, as  
125 recorded and transcribed by a court reporter, before the  
126 commission or Permit Board where all parties to the hearing are  
127 allowed to present witnesses, cross-examine witnesses and present  
128 evidence for inclusion into the record, as appropriate under rules  
129 promulgated by the commission or Permit Board.

130           (l) "Imminent danger to health and safety of the  
131 public" means the existence of any condition or practice, or any  
132 violation of a permit or other requirement of this chapter, in a  
133 surface coal mining and reclamation operation, which could  
134 reasonably be expected to cause substantial physical harm to  
135 persons outside the permit area before that condition, practice or  
136 violation can be abated. A reasonable expectation of death or  
137 serious injury before abatement exists if a rational person  
138 subjected to the same conditions or practices giving rise to the  
139 peril would not expose himself or herself to the danger during the  
140 time necessary for abatement.

141           (m) "Interested party" means any person claiming an  
142 interest relating to the surface coal mining operation and who is  
143 so situated that the person may be affected by that operation, or  
144 in the matter of regulations promulgated by the commission, any  
145 person who is so situated that the person may be affected by the  
146 action.

147           (n) "Lignite" means consolidated lignite coal having  
148 less than eight thousand three hundred (8,300) British thermal  
149 units per pound, moist and mineral matter free.

150           (o) "Operator" means any person engaged in coal mining  
151 who removes or intends to remove more than two hundred fifty (250)  
152 tons of coal from the earth by coal mining within twelve (12)  
153 consecutive calendar months in any one (1) location.

154           (p) "Permit" means a permit to conduct surface coal  
155 mining and reclamation operations issued under this chapter.

156           (q) "Permit area" means the area of land indicated on  
157 the approved map submitted by the operator with the permit  
158 application which area of land shall be covered by the operator's  
159 performance bond.

160           (r) "Permit Board" means the Permit Board created under  
161 Section 49-17-28.

162           (s) "Person" means an individual, partnership,  
163 association, society, joint venture, joint stock company, firm,  
164 company, corporation, cooperative or other business organization  
165 and any agency, unit or instrumentality of federal, state or local  
166 government, including any publicly owned utility or publicly owned  
167 corporation.

168           (t) "Prime farmland" means that farmland as defined by  
169 the United States Secretary of Agriculture on the basis of factors  
170 such as moisture availability, temperature regime, chemical  
171 balance, permeability, surface layer composition, susceptibility  
172 to flooding and erosion characteristics, and which historically  
173 have been used for intensive agricultural purposes, and as  
174 published in the federal register.

175           (u) "Public hearing," "informal hearing" or "public  
176 meeting" means a public forum organized by the commission,  
177 department or Permit Board for the purpose of providing  
178 information to the public regarding a surface coal mining and  
179 reclamation operation or regulations proposed by the commission  
180 and at which members of the public are allowed to make comments or  
181 ask questions or both of the commission, department or the Permit  
182 Board.

183           (v) "Reclamation plan" means a plan submitted by an  
184 applicant for a permit which sets forth a plan for reclamation of  
185 the proposed surface coal mining operations under this chapter.

186           (w) "Revision" means any change to the permit or  
187 reclamation plan that does not significantly change the effect of  
188 the mining operation on either those persons impacted by the  
189 permitted operations or on the environment, including, but not  
190 limited to, incidental boundary changes to the permit area or a  
191 departure from or change within the permit area, incidental  
192 changes in the mining method or incidental changes in the  
193 reclamation plan.

194 (x) "Secretary" means the Secretary of the United  
195 States Department of Interior.

196 (y) "State" means the State of Mississippi.

197 (z) "State geologist" means the head of the Office of  
198 Geology and Energy Resources of the department or a successor  
199 office.

200 (aa) "State reclamation program" means the Mississippi  
201 program for abandoned mine reclamation provided for in this  
202 chapter.

203 (bb) "Surface coal mining and reclamation operations"  
204 means surface coal mining operations and all activities necessary  
205 and incident to the reclamation of those operations.

206 (cc) "Surface coal mining operations" means:

207 (i) Activities conducted on the surface and  
208 immediate subsurface of lands in connection with a surface coal  
209 mine, surface operations and surface impacts incident to an  
210 underground coal mine, the products of which enter commerce or the  
211 operations of which directly or indirectly affect commerce. These  
212 activities include, but are not limited to:

213 (A) Excavation for the purpose of obtaining  
214 coal including common methods such as contour, strip, auger,  
215 mountaintop removal, boxcut, open pit and area mining;

216 (B) The use of explosives and blasting, in  
217 situ distillation or retorting, leaching or other chemical or  
218 physical processing; and

219 (C) The cleaning, concentrating or other  
220 processing or preparation, and the loading of coal for commerce at  
221 or near the mine site.

222 These activities do not include exploration operations  
223 subject to Section 53-9-41.

224 (ii) Areas upon which the activities occur or  
225 where the activities disturb the natural land surface. These  
226 areas shall also include, but are not limited to:

227 (A) Any adjacent land the use of which is  
228 incidental to any activities;

229 (B) All lands affected by the construction of  
230 new roads or the improvement or use of existing roads to gain  
231 access to the site of any activities and for haulage;

232 (C) All lands affected by excavations,  
233 workings, impoundments, dams, ventilation shafts, entryways,  
234 refuse banks, dumps, stockpiles, overburden piles, spoil banks,  
235 culm banks, tailings, holes or depressions, repair areas, storage  
236 areas, processing areas, shipping areas and other areas upon which  
237 are sited structures, facilities or other property or materials on  
238 the surface resulting from or incident to the activities.

239 (dd) "Unwarranted failure to comply" means the failure  
240 of a permittee to prevent or abate the occurrence of any violation  
241 of a permit, this chapter or any regulation promulgated under this  
242 chapter due to indifference, lack of diligence or lack of  
243 reasonable care.

244 SECTION 3. Section 53-9-89, Mississippi Code of 1972, is  
245 amended as follows:

246 53-9-89. (1) (a) There is created in the State Treasury a  
247 fund to be designated as the "Surface Coal Mining and Reclamation  
248 Fund." The fund shall contain three (3) accounts, designated as  
249 the "Surface Coal Mining Program Operations Account," \* \* \* the  
250 "Surface Coal Mining Reclamation Account," and the "Abandoned Mine  
251 Lands Reclamation Account."

252 (b) Monies in the Surface Coal Mining Program  
253 Operations Account shall be used to pay the reasonable direct and  
254 indirect costs of administering and enforcing this chapter.

255 Monies in the Surface Coal Mining Reclamation Account shall be  
256 used to pay for the reclamation of lands for which bonds or other  
257 collateral were forfeited.

258 (c) The Abandoned Mine Lands Reclamation Account shall  
259 receive all state and federal appropriations, grants and donations



260 for the purposes of the reclamation of abandoned mine lands under  
261 this chapter, and such funds shall be made available to the  
262 commission to be used as provided in this section for the purposes  
263 of abandoned mine reclamation under this chapter and the  
264 regulations of the commission. Funds in the Abandoned Mine Land  
265 Account may be used for the following purposes:

266 (i) Reclamation and restoration of land and water  
267 resources adversely affected by past coal mining, or by past  
268 noncoal mining if approved by the secretary, including, but not  
269 limited to, reclamation and restoration of abandoned surface mine  
270 areas, abandoned mine processing areas, and abandoned mine refuse  
271 disposal areas; sealing and filling abandoned deep mine entries  
272 and voids; planting of land adversely affected by past mining to  
273 prevent erosion and sedimentation; prevention, abatement,  
274 treatment, and control of water pollution created by mine drainage  
275 including restoration of stream beds, and construction and  
276 operation of water treatment plants; prevention, abatement, and  
277 control of burning coal in situs; prevention, abatement and  
278 control of mine subsidence; prevention, abatement and control of  
279 storm water runoff from and erosion at mine sites; and the sloping  
280 and revegetation of mine pits and highwalls.

281 (ii) Acquisition of land as provided for in this  
282 chapter.

283 (iii) Grants to accomplish the purposes of this  
284 chapter.

285 (iv) Administrative expenses of the department to  
286 accomplish the purposes of this chapter.

287 (v) All other necessary expenses to accomplish the  
288 purpose of reclaiming abandoned mine lands or of protecting public  
289 health, safety and general welfare from adverse effects of mining  
290 practices at abandoned mine lands.

291 (d) Expenditures may be made from the fund upon  
292 requisition by the executive director.

293           (e) The fund shall be treated as a special trust fund.  
294 Interest earned on the principal shall be credited by the  
295 Treasurer to the appropriate account in the fund.

296           (f) The Surface Coal Mining Program Operations Account  
297 may receive monies from any available public or private source,  
298 including, but not limited to, fees, interest, grants, taxes,  
299 public and private donations, petroleum violation escrow funds or  
300 refunds, and appropriated funds, but excluding fines, penalties  
301 and the proceeds from the forfeiture of bonds or other collateral.  
302 The Surface Coal Mining Reclamation Account may receive monies  
303 from fines, penalties, the proceeds from the forfeiture of bonds  
304 or other collateral and interest.

305           (2) All funds received through the payment of fees, loans,  
306 grants, penalties, bond forfeitures and forfeitures of other  
307 collateral, less attorneys' fees, shall be deposited in the  
308 appropriate account in the Surface Coal Mining and Reclamation  
309 Fund.

310           SECTION 4. (1) Expenditures of funds from the Abandoned  
311 Mine Lands Reclamation Account on eligible lands and water shall  
312 reflect the following priorities:

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

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

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

323           (d) The protection, repair, replacement, construction,  
324 or enhancement of public facilities such as utilities, roads,

325 recreation, and conservation facilities adversely affected by coal  
326 mining practices; and

327 (e) The development of publicly owned land adversely  
328 affected by coal mining practices including land acquired as  
329 provided in this chapter for recreation and historical purposes,  
330 conservation, and reclamation purposes and open space benefits.

331 (2) After certification under 30 USCS 1240a(a) by the  
332 Governor to the United States Secretary of the Interior that all  
333 of the priorities stated in subsection (1) of this section for  
334 eligible lands and waters have been achieved, and upon concurrence  
335 by the secretary with that certification, funds in the Abandoned  
336 Mine Lands Reclamation Account may be used for reclamation at  
337 abandoned mine lands that were mined or processed for or effected  
338 by the mining or processing of noncoal minerals. Expenditure of  
339 funds for land, water and facilities referred to in this  
340 subsection shall reflect the following priorities in the order  
341 stated, in lieu of the priorities stated in subsection (1) of this  
342 section:

343 (a) The protection of public health, safety, general  
344 welfare, and property from extreme danger of adverse effects of  
345 mineral mining and processing practices;

346 (b) The protection of public health, safety, and  
347 general welfare from adverse effects of mineral mining and  
348 processing practices;

349 (c) The restoration of land and water resources and the  
350 environment previously degraded by the adverse effects of mineral  
351 mining and processing practices.

352 (3) Sites and areas designated for remedial action under the  
353 Uranium Mill Tailings Radiation Control Act of 1978, 42 USCS 7901  
354 et seq., or which have been listed for remedial action under the  
355 Comprehensive Environmental Response, Compensation, and Liability  
356 Act, 42 USCS 9601 et seq., shall not be eligible for expenditure  
357 from the Abandoned Mine Lands Reclamation Account.

358 (4) Reclamation projects involving the protection, repair,  
359 replacement, construction, or enhancement of utilities, such as  
360 those relating to water supply, roads, and such other facilities  
361 serving the public adversely affected by mineral mining and  
362 processing practices, and the construction of public facilities in  
363 communities impacted by coal or other mineral mining and  
364 processing practices, shall be deemed part of the objectives set  
365 forth, and undertaken as they relate to the priorities stated in  
366 subsection (2) of this section.

367 SECTION 5. Only abandoned mine lands are eligible for  
368 reclamation or drainage abatement expenditures from the Abandoned  
369 Mine Lands Reclamation Account.

370 SECTION 6. (1) The department, through the Office of  
371 Geology, shall establish and maintain a state reclamation program  
372 for abandoned mines which complies with Subchapter IV of the  
373 federal Surface Mining Control and Reclamation Act of 1977, 30  
374 USCS 1231 through 1243.

375 (2) For any year in which the department intends to conduct  
376 abandoned mine lands reclamation with amounts held in the  
377 Abandoned Mine Lands Reclamation Account, the executive director  
378 shall submit to the secretary an application for the support of  
379 the state program and implementation of specific reclamation  
380 projects. Such requests shall include information required by the  
381 secretary. This may include, but is not limited to:

382 (a) A general description of each proposed project;

383 (b) A priority evaluation of each proposed project;

384 (c) A statement of the estimated benefits in such terms  
385 as: number of acres restored, miles of stream improved, acres of  
386 surface lands protected from subsidence, population protected from  
387 subsidence, air pollution, hazards of mine and coal refuse  
388 disposal area fires;

389 (d) An estimate of the cost for each proposed project;

390 (e) In the case of proposed research and demonstration  
391 projects, a description of the specific techniques to be evaluated  
392 or objective to be attained;

393 (f) An identification of lands or interest therein to  
394 be acquired and the estimated cost; and

395 (g) In each year after the first in which a plan is  
396 filed, an inventory of each project funded under the previous  
397 year's grant. This inventory shall include details of financial  
398 expenditures on each project together with a brief description of  
399 each project, including project locations, the landowner's name,  
400 acreage, and the type of reclamation or abatement performed.

401 (3) The reported costs for each proposed project shall  
402 include: actual construction costs, actual operation and  
403 maintenance costs of permanent facilities, planning and  
404 engineering costs, construction inspection costs, and other  
405 necessary administrative expenses.

406 (4) The executive director shall make reports on operations  
407 of the reclamation program as required by the secretary or by  
408 Congress.

409 (5) The executive director shall at all times accept and  
410 consider comments regarding annual grant applications and the  
411 eligibility, priority ranking and selection of lands for  
412 reclamation. At least thirty (30) days prior to the submission of  
413 each annual grant application to the secretary, the executive  
414 director shall provide for a public hearing and shall publish a  
415 notice regarding the proposed grant application and the public  
416 hearing in a newspaper of general circulation in the state. The  
417 public notice shall state that a hearing will be held, generally  
418 outline the grant application, and solicit comments regarding the  
419 application. A listing and identification of all projects  
420 included in the grant application shall be mailed to all persons  
421 who have requested written notification of the annual grant  
422 application and shall be available to any person upon request. At

423 the public hearing for review of an annual grant application, any  
424 person may appear before the executive director or his or her  
425 designee and be heard on the record. The executive director may  
426 receive documentary or other evidence for inclusion in the record.  
427 The executive director shall fix a time for the closing of the  
428 record and may, in his discretion, receive other comments or  
429 evidence that he deems appropriate after the public hearing and  
430 before the closing of the record. A copy of the record shall be  
431 included with the grant application to the secretary.

432 (6) The state shall not be liable under any provision of  
433 federal law for any costs or damages as a result of action taken  
434 or omitted in the course of carrying out the state reclamation  
435 program approved by the secretary. This subsection shall not  
436 preclude liability for costs or damages as a result of gross  
437 negligence or intentional misconduct by the state. Reckless,  
438 willful or wanton misconduct shall constitute gross negligence.  
439 However, nothing in this subsection shall be deemed to waive any  
440 immunity provided by Mississippi law to the state or its  
441 employees, or to waive the protection afforded the state by the  
442 Eleventh Amendment to the United States Constitution.

443 SECTION 7. (1) If the commission issues an order making a  
444 finding in writing with supporting facts that:

445 (a) Land or water resources have been adversely  
446 affected by past coal mining practices;

447 (b) The adverse effects are at a stage where, in the  
448 public interest, action to restore, reclaim, abate, control, or  
449 prevent should be taken;

450 (c) The owners of the land or water resources where  
451 entry must be made to restore, reclaim, abate, control, or prevent  
452 the adverse effects of past coal mining practices are not known or  
453 readily available;

454 (d) The owners will not give permission for the state  
455 or its agents, employees, or contractors to enter upon their

456 property to restore, reclaim, abate, control, or prevent the  
457 adverse effects of past coal mining practices;  
458 then, thirty (30) days after giving notice by mail to the owners  
459 if known or if not known, by posting notice on the premises and  
460 advertising once in a newspaper of general circulation in the  
461 municipality or county where the land lies, the executive  
462 director, his agents, employees, or contractors shall have the  
463 right to enter upon the property adversely affected by past coal  
464 mining practices and any other property to have access to such  
465 property to do all things necessary or expedient to restore,  
466 reclaim, abate, control, or prevent the adverse effects if the  
467 landowner does not file an objection with the commission. If,  
468 within the thirty-day notice period, the landowner files an  
469 objection with the commission, the commission will schedule a  
470 hearing on the matter to be conducted under Section 49-17-41.  
471 After a hearing on the matter, the commission will issue an order  
472 including findings of facts and conclusions of law, which, if  
473 adverse to the landowner, may be appealed under Section 49-17-41.  
474 Such entry, if ordered by the commission, shall be construed as an  
475 exercise of the police power for the protection of public health,  
476 safety, and general welfare and shall not be construed as an act  
477 of condemnation of property or of trespass. The funds expended  
478 for this work and the benefits accruing to the premises entered on  
479 shall be chargeable against the land and shall mitigate or offset  
480 any claim in or any action brought by any owner of any interest in  
481 the premises for any alleged damages by virtue of such entry.  
482 This provision is not intended to create new rights of action or  
483 eliminate existing immunities.

484 (2) The commission, its agents, employees, or contractors  
485 shall have the right to enter upon any property for the purpose of  
486 conducting studies or exploratory work to determine the existence  
487 of adverse effects of past coal and noncoal mining practices and  
488 to determine the feasibility of restoration, reclamation,

489 abatement, control, or prevention of such adverse effects. Such  
490 entry shall be construed as an exercise of the police power for  
491 the protection of public health, safety, and general welfare and  
492 shall not be construed as an act of condemnation of property or  
493 trespass.

494 SECTION 8. (1) The commission, with the approval of the  
495 secretary, may acquire title in the name of the state to any land  
496 or interest in any land by purchase, donation, or condemnation if  
497 the land or interest is adversely affected by past coal mining  
498 practices and upon a determination that acquisition of this land  
499 is necessary to successful reclamation and that:

500 (a) The acquired land after restoration, reclamation,  
501 abatement, control or prevention of the adverse effects of past  
502 coal mining practices will serve recreation and historical  
503 purposes, conservation and reclamation purposes or provide open  
504 space benefits;

505 (b) Permanent facilities such as a treatment plant or a  
506 relocated stream channel will be constructed on the land for  
507 restoration, reclamation, abatement, control or prevention of the  
508 adverse effects of past coal mining practices;

509 (c) Acquisition of coal refuse disposal sites and all  
510 coal refuse at the site will serve the purpose of this chapter or  
511 that public ownership is desirable to meet emergency situations  
512 and prevent recurrences of the adverse effects of past coal mining  
513 practices.

514 (2) The commission shall only acquire land that is necessary  
515 for the reclamation work or the post reclamation use of the land  
516 and acquisition shall be limited by the scope of the project. The  
517 price paid for land acquired under this section shall reflect the  
518 fair market value of the land as adversely affected by past coal  
519 mining practices.

520 (3) In addition to the authority to acquire land under  
521 subsection (1) of this section, the commission, with the approval



522 of the secretary, is authorized to use money in the fund to  
523 acquire land by purchase, donation, or condemnation, and to  
524 reclaim and transfer acquired land to any agency of the state  
525 authorized to own and operate real property or to a political  
526 subdivision of the state, or to any person, firm, association, or  
527 corporation, if he determines that such is an integral and  
528 necessary element of an economically feasible plan for the project  
529 to construct or rehabilitate housing for persons disabled as the  
530 result of employment in the mines or work incidental thereto,  
531 persons displaced by acquisition of land pursuant to this section,  
532 or persons dislocated as the result of adverse effects of coal  
533 mining practices which constitute an emergency as provided in 30  
534 USCS 1240 or persons dislocated as the result of natural disasters  
535 or catastrophic failures from any cause. These activities shall  
536 be accomplished under the terms and conditions required for the  
537 secretary, which may include transfers of land with or without  
538 monetary consideration: to the extent that the consideration is  
539 below the fair market value of the land transferred, no portion of  
540 the difference between the fair market value and the consideration  
541 shall accrue as a profit to such persons, firm, association, or  
542 corporation. No part of the funds provided in this chapter may be  
543 used to pay the actual construction costs of housing. The  
544 commission, with approval of the secretary, and with grants  
545 received for the purposes of this subsection may make grants and  
546 commitments for grants and may advance money under the same terms  
547 and conditions as it may require of the state, or any department,  
548 agency, or instrumentality of the state, or any public body or  
549 nonprofit organization.

550 (4) Where land acquired is deemed to be suitable for  
551 industrial, commercial, residential, or recreational development,  
552 the commission, with the approval of the secretary, may sell,  
553 after appropriate public notice, the land by public sale under a  
554 system of competitive bidding, in accordance with the regulations

555 prescribed by the executive director, at not less than fair market  
556 value, and the executive director is to ensure that the lands are  
557 put to proper use consistent with local, state or federal land use  
558 plan, if any, for the area in which the land is located. The  
559 executive director, when requested and after appropriate notice,  
560 shall hold a public hearing in the county or counties or the  
561 appropriate subdivisions of the state in which lands acquired  
562 under this section are located. The hearings shall be held at a  
563 time which shall afford local citizens and governments the maximum  
564 opportunity to participate in the decision concerning the use or  
565 disposition of the lands after restoration, reclamation,  
566 abatement, control or prevention of the adverse effects of past  
567 coal mining practices.

568 (5) The commission, with the approval of the secretary, may  
569 transfer the administrative responsibility for land acquired under  
570 this section to any state, regional or local agency, department or  
571 institution, with or without cost, employing terms that will  
572 ensure the use of the land is consistent with the authorization  
573 under which the land was acquired.

574 (6) The commission may receive grants from the secretary  
575 when necessary to carry out provisions of this section.

576 SECTION 9. (1) Any landowner who has received notice of  
577 condemnation or acquisition from the commission under Section 8  
578 may, within fifteen (15) days following the notice, make written  
579 application to the commission for a formal hearing regarding the  
580 actual need or advisability for the acquisition. The commission  
581 shall hear the landowner's grievance within thirty (30) days  
582 following the written application for a hearing and shall make a  
583 determination as to the need for the acquisition. The  
584 commission's determination shall be reflected in an order, which  
585 may be appealed under Section 49-17-41. Any landowner adversely  
586 affected by any other action of the commission under Section 8 may  
587 institute proceedings to have the action reviewed in the chancery

588 court in the county where the property or a part of the property  
589 affected by the action is located, provided that the proceedings  
590 are filed within thirty (30) days following the date of the  
591 action. The court may grant any relief it deems necessary,  
592 including, but not limited to, injunctive relief pending a hearing  
593 on the matter.

594 (2) Any landowner subject to condemnation proceedings for  
595 sale under Section 8 shall retain all rights and remedies of law  
596 provided by applicable federal and state laws governing  
597 condemnation proceedings and sale at public auction. Any  
598 landowner, his heir, assignee or personal representative shall  
599 have a prior right of purchase at fair market value or the lowest  
600 bid, whichever amount is more, over any other purchaser at the  
601 public sale provided the lands are put to proper use consistent  
602 with any local, state, or federal land use plan, if any, for the  
603 area in which the land is located.

604 SECTION 10. (1) Within six (6) months after the completion  
605 of projects funded by the commission, in whole or in part, with  
606 funds from the Abandoned Mine Lands Reclamation Account to  
607 restore, reclaim, abate, control or prevent adverse effects of  
608 past mining practices on privately owned land, the executive  
609 director shall itemize the funds expended and may file a statement  
610 in the land records of the county in which the land lies together  
611 with a notarized appraisal by a qualified independent appraiser of  
612 the value of the land before the restoration, reclamation,  
613 abatement, control or prevention of adverse effects of past coal  
614 mining practices, if the funds expended shall result in a  
615 significant increase in property value. The statement shall  
616 constitute a lien upon the land. The lien shall not exceed the  
617 amount determined by the appraisal to be the increase in the  
618 market value of the land as a result of the restoration,  
619 reclamation, abatement, control or prevention of the adverse  
620 effects of past coal mining practices. No lien shall be filed

621 against the property of any person, in accordance with this  
622 section, who owned the surface prior to May 2, 1977, and who  
623 neither consented to, participated in nor exercised control over  
624 the mining operation which necessitated the reclamation performed  
625 under this act.

626 (2) Any owner of land subject to a lien imposed pursuant to  
627 this section may, within sixty (60) days of the filing of the  
628 lien, file a petition in the chancery court of the county in which  
629 the land lies to determine the increase in the market value of the  
630 land as a result of the reclamation work. The amount determined  
631 by the court to be the increase in value of the premises shall  
632 constitute the amount of the lien and shall be recorded with the  
633 statement required by this section. Any party aggrieved by the  
634 decision may appeal as provided by law.

635 (3) The lien provided in this section shall be entered in  
636 the land records in the office in the county in which the land  
637 lies. The statement shall constitute a lien upon the land as of  
638 the date of the expenditure of the moneys and shall have priority  
639 as a lien second only to the lien of real estate taxes imposed on  
640 the land. Money derived from the satisfaction of liens shall be  
641 deposited in the Abandoned Mine Reclamation Account.

642 SECTION 11. (1) The Governor may request the secretary to  
643 authorize the commission to fill voids, seal open or abandoned  
644 tunnels, shafts, and entryways, and reclaim surface impacts of  
645 underground or surface mining of minerals other than coal which  
646 the secretary determines could endanger life and property,  
647 constitute a hazard to public health and safety, or degrade the  
648 environment.

649 (2) Funds available for use in carrying out the purpose of  
650 this section shall be limited to those funds which must be  
651 allocated to the state under the provisions of 30 USCS 1232(g)(1)  
652 and (5). Projects funded under this section must meet the

653 priorities described in Section (4)(1) of this act, but references  
654 to coal shall not apply.

655 (3) In those instances where mine waste piles are being  
656 reworked for conservation purposes, the incremental costs of  
657 disposing of the wastes from such operations by filling voids and  
658 sealing tunnels may be eligible for funding providing that the  
659 disposal of these wastes meet the purpose of this section.

660 (4) The commission, with the approval of the secretary, may  
661 acquire by purchase, donation, easement or otherwise, an interest  
662 in the land it determines is necessary to carry out the provisions  
663 of this section.

664 SECTION 12. All departments, boards, commissions and  
665 agencies of this state shall cooperate with the commission by  
666 providing available technical expertise, personnel, equipment,  
667 materials and supplies as may be required to implement and  
668 administer the provisions of the state abandoned mine lands  
669 reclamation program.

670 SECTION 13. The commission, in addition to any other  
671 remedies allowed by law, may initiate in the name of the state, in  
672 any court of competent jurisdiction, an action in equity for an  
673 injunction to restrain any interference with the exercise of the  
674 right to enter or to conduct any work provided in this chapter.

675 SECTION 14. The commission shall have the power and  
676 authority to engage in any work and to do all things necessary or  
677 expedient, including promulgation of rules and regulations, to  
678 implement and administer the abandoned mine lands reclamation  
679 program in Mississippi. The commission also shall have the power  
680 and authority to engage in cooperative projects with any other  
681 agency of the United States of America or any state or federal  
682 agency to achieve the objectives of the abandoned mine lands  
683 reclamation program in Mississippi.

684 SECTION 15. The commission shall have the authority granted  
685 in Sections 7(1) and 8, as applied to land or water resources that

686 have been adversely affected by mining practices other than coal  
687 mining practices, only upon the agreement of the current  
688 landowner(s). The commission shall have this authority only after  
689 making the findings required by Sections 7(1)(a) and (b) of this  
690 act, as modified to reflect that the effects were caused by  
691 noncoal mining practices. Funds shall not be expended from the  
692 Abandoned Mine Lands Reclamation Account on lands adversely  
693 affected by mining or processing practices other than coal mining  
694 or processing practices unless and until the landowner(s) agrees  
695 to abide with all provisions of Section 10 of this act. This  
696 section does not limit the authority of the commission to perform  
697 any act authorized by the Mississippi Air and Water Pollution  
698 Control Law, Section 49-17-1 et seq., the organic act of the  
699 commission, Section 49-2-1 et seq., or the Mississippi Surface  
700 Mining and Reclamation Law, Section 53-7-1 et seq.

701 SECTION 16. Sections 4 through 15 of this act shall be  
702 codified in Chapter 9, Title 53, Mississippi Code of 1972.

703 SECTION 17. This act shall take effect and be in force from  
704 and after July 1, 2001.