

By: Senator(s) Dawkins

To: Environment Prot, Cons  
and Water Res

SENATE BILL NO. 2864

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,  
2 TO REINSTATE THE MORATORIUM ON PERMITS FOR NEW SWINE CONCENTRATED  
3 ANIMAL FEEDING OPERATIONS AND FOR EXPANSION OF EXISTING SWINE  
4 CONCENTRATED ANIMAL FEEDING OPERATIONS; TO REQUIRE THE DEPARTMENT  
5 OF ENVIRONMENTAL QUALITY TO COMPLY WITH THE RECOMMENDATIONS OF TO  
6 THE STATE DEPARTMENT OF HEALTH REGARDING SWINE FARMS; TO PROVIDE  
7 THAT THE MORATORIUM SHALL END UPON COMPLIANCE WITH THE  
8 RECOMMENDATIONS; AND FOR RELATED PURPOSES.

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

10 SECTION 1. Section 49-17-29, Mississippi Code of 1972, is  
11 amended as follows:

12 49-17-29. (1) (a) Except as in compliance with paragraph  
13 (b) of this subsection, it is unlawful for any person to cause  
14 pollution of the air in the state or to place or cause to be  
15 placed any wastes or other products or substances in a location  
16 where they are likely to cause pollution of the air. It is also  
17 unlawful to discharge any wastes, products or substances into the  
18 air of the state which exceed standards of performance, hazardous  
19 air pollutant standards, other emission standards set by the  
20 commission, or which reduce the quality of the air below the air  
21 quality standards or increments that shall be established by the  
22 commission or prevent attainment or maintenance of those air  
23 quality standards. Any such action is hereby declared to be a  
24 public nuisance.

25 (b) It is unlawful for any person to build, erect,  
26 alter, replace, use or operate any equipment which will cause the  
27 issuance of air contaminants unless that person holds a permit  
28 from the Permit Board (except repairs or maintenance of equipment  
29 for which a permit has been previously issued), or unless that

30 person is exempted from holding a permit by a regulation  
31 promulgated by the commission. Concentrated animal feeding  
32 operations may be a source or a category of sources exempted under  
33 this paragraph. However, no new or existing applications relating  
34 to swine concentrated animal feeding operations within a county  
35 shall be exempted from regulations and ordinances which have been  
36 duly passed by the county's board of supervisors and which are in  
37 force on June 1, 1998.

38 (2) (a) Except as in compliance with paragraph (b) of this  
39 subsection, it is unlawful for any person to cause pollution of  
40 any waters of the state or to place or cause to be placed any  
41 wastes in a location where they are likely to cause pollution of  
42 any waters of the state. It is also unlawful to discharge any  
43 wastes into any waters of the state which reduce the quality of  
44 those waters below the water quality standards established by the  
45 commission; or to violate any applicable pretreatment standards or  
46 limitations, technology-based effluent limitations, toxic  
47 standards or any other limitations established by the commission.  
48 Any such action is declared to be a public nuisance.

49 (b) It is unlawful for any person to carry on any of  
50 the following activities, unless that person holds a current  
51 permit for that activity from the Permit Board as may be required  
52 for the disposal of all wastes which are or may be discharged into  
53 the waters of the state, or unless that person is exempted from  
54 holding a permit by a regulation promulgated by the commission:

55 (i) the construction, installation, modification or operation of  
56 any disposal system or part thereof or any extension or addition  
57 thereto, including, but not limited to, systems serving  
58 agricultural operations; (ii) the increase in volume or strength  
59 of any wastes in excess of the permissive discharges specified  
60 under any existing permit; (iii) the construction, installation or  
61 operation of any industrial, commercial or other establishment,  
62 including irrigation projects or any extension or modification

63 thereof or addition thereto, the operation of which would cause an  
64 increase in the discharge of wastes into the waters of the state  
65 or would otherwise alter the physical, chemical or biological  
66 properties of any waters of the state in any manner not already  
67 lawfully authorized; (iv) the construction or use of any new  
68 outlet for the discharge of any wastes into the waters of the  
69 state. However, no new or existing applications relating to swine  
70 concentrated animal feeding operations within a county shall be  
71 exempted from regulations and ordinances which have been duly  
72 passed by the county's board of supervisors and which are in force  
73 on June 1, 1998.

74 (3) (a) Except as otherwise provided in this section, the  
75 Permit Board created by Section 49-17-28 shall be the exclusive  
76 administrative body to make decisions on permit issuance,  
77 reissuance, denial, modification or revocation of air pollution  
78 control and water pollution control permits and permits required  
79 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter  
80 17), and all other permits within the jurisdiction of the Permit  
81 Board. After consideration of alternative waste treatment  
82 technologies available to control air and water pollution and  
83 odor, including appropriate siting criteria, the commission may  
84 promulgate regulations establishing conditions, limitations and  
85 exemptions under which the Permit Board shall make these  
86 decisions. Regulations promulgated by the commission which  
87 establish exemptions as authorized under Senate Bill No. 2895,  
88 1998 Regular Session [Laws, 1998, ch. 537], shall apply to any  
89 applicable facility in operation on the effective date of that  
90 regulation and to any applicable facility constructed or operated  
91 after the effective date of that regulation. The Permit Board may  
92 issue multiple permits for the same facility or operation  
93 simultaneously or in the sequence that it deems appropriate  
94 consistent with the commission's regulations. Except as otherwise  
95 provided in this paragraph, the Permit Board, under any conditions

96 that the board may prescribe, may authorize the Executive Director  
97 of the Department of Environmental Quality to make decisions on  
98 permit issuance, reissuance, denial, modification or revocation.  
99 The executive director shall not be authorized to make decisions  
100 on permit issuance, reissuance, denial, modification or revocation  
101 for a commercial hazardous waste management facility or a  
102 municipal solid waste landfill or incinerator. A decision by the  
103 executive director shall be a decision of the Permit Board and  
104 shall be subject to formal hearing and appeal as provided in this  
105 section. The executive director shall report all permit decisions  
106 to the Permit Board at its next regularly scheduled meeting and  
107 those decisions shall be recorded in the minutes of the Permit  
108 Board. The decisions of the Permit Board shall be recorded in  
109 minutes of the Permit Board and shall be kept separate and apart  
110 from the minutes of the commission. The decision of the Permit  
111 Board or the executive director to issue, reissue, deny, modify or  
112 revoke permits shall not be construed to be an order or other  
113 action of the commission.

114 (b) The Executive Director of the Department of  
115 Environmental Quality shall also be the Executive Director of the  
116 Permit Board and shall have available to him, as Executive  
117 Director of the Permit Board, all resources and personnel  
118 otherwise available to him as executive director of the  
119 department.

120 (c) All persons required to obtain an air pollution  
121 control or water pollution control permit, a permit under the  
122 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any  
123 other permit within the jurisdiction of the Permit Board shall  
124 make application for that permit with the Permit Board. The  
125 Permit Board, under any regulations as the commission may  
126 prescribe, may require the submission of those plans,  
127 specifications and other information as it deems necessary to  
128 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter

129 17, or to carry out the commission's regulations adopted under  
130 those sections. The Permit Board, based upon any information as  
131 it deems relevant, shall issue, reissue, deny, modify or revoke  
132 air pollution control or water pollution control permit or permits  
133 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
134 Chapter 17) or any other permit within the jurisdiction of the  
135 Permit Board under any conditions as it deems necessary that are  
136 consistent with the commission's regulations. The Permit Board's  
137 action of issuance, reissuance, denial, modification or revocation  
138 of a permit as recorded in its minutes shall constitute a complete  
139 decision of the board. All permits issued by the Permit Board  
140 shall remain in full force and effect until the board makes a  
141 final determination regarding any reissuance, modification, or  
142 revocation thereof. The Permit Board shall take action upon an  
143 application within one hundred eighty (180) days following its  
144 receipt in the board's principal office. No action which affects  
145 revocation of an existing permit shall take effect until the  
146 thirty (30) days mentioned in paragraph (4)(b) of this section has  
147 expired or until a formal hearing as prescribed in that paragraph  
148 is held, whichever is later.

149 (d) The Permit Board may adopt rules of practice and  
150 procedure governing its proceedings that are consistent with the  
151 commission's regulations. All hearings in connection with permits  
152 issued, reissued, denied, modified or revoked and all appeals from  
153 decisions of the Permit Board shall be as provided in this  
154 section.

155 (e) Upon any conditions that are consistent with the  
156 commission's regulations and subject to those procedures for  
157 public notice and hearings as provided by law, not inconsistent  
158 with federal law and regulations, the Permit Board may issue  
159 general permits and, where appropriate, may consolidate multiple  
160 permits for the same facility or operation into a single permit.

161           (f) To insure the protection of the public health,  
162 safety, and welfare of the people of Mississippi; to enable the  
163 state to evaluate information from recent investigations  
164 suggesting potential health risks from swine concentrated animal  
165 feeding operations; and to enable the department to implement the  
166 air and water monitoring systems and standards recommended by the  
167 State Department of Health, there is hereby imposed a moratorium  
168 on the issuance of permits for new or expanded swine concentrated  
169 animal feeding operations. The Permit Board shall not issue any  
170 permit for a new swine concentrated animal feeding operation or  
171 the expansion of an existing swine concentrated animal feeding  
172 operation until the department complies with the State Department  
173 of Health recommendations addressing health concerns in the  
174 Department of Health review: "Summary of Available Information  
175 and Recommendations Regarding Health Concerns Related to  
176 Concentrated Swine Farms." \* \* \*

177           (4) (a) Except as required by this section, before the  
178 issuance, reissuance, denial, modification or revocation of any  
179 air pollution control or water pollution control permit, permit  
180 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
181 Chapter 17) or any other permit within its jurisdiction, the  
182 Permit Board, in its discretion, may hold a public hearing or  
183 meeting to obtain comments from the public on its proposed action.  
184 Before the issuance, reissuance, denial, modification pertaining  
185 to the expansion of a facility, transfer or revocation of a permit  
186 for a commercial hazardous waste management facility or a  
187 commercial municipal solid waste landfill or incinerator, the  
188 Permit Board shall conduct a public hearing or meeting to obtain  
189 comments from the public on the proposed action. That hearing or  
190 meeting shall be informal in nature and conducted under those  
191 procedures as the Permit Board may deem appropriate consistent  
192 with the commission's regulations.

193           (b) Within thirty (30) days after the date the Permit  
194 Board takes action upon permit issuance, reissuance, denial,  
195 modification or revocation, as recorded in the minutes of the  
196 Permit Board, any interested party aggrieved by that action may  
197 file a written request for a formal hearing before the Permit  
198 Board. An interested party is any person claiming an interest  
199 relating to the property or project which is the subject of the  
200 permit action, and who is so situated that the person may be  
201 affected by the disposition of that action.

202           The Permit Board shall fix the time and place of the formal  
203 hearing and shall notify the permittee of that time and place.

204           In conducting the formal hearing, the Permit Board shall have  
205 the same full powers as to subpoenaing witnesses, administering  
206 oaths, examining witnesses under oath and conducting the hearing,  
207 as is now vested by law in the Mississippi Public Service  
208 Commission, as to the hearings before it, with the additional  
209 power that the Executive Director of the Permit Board may issue  
210 all subpoenas at the instance of the Permit Board or at the  
211 instance of any interested party. Any subpoenas shall be served  
212 by any lawful officer in any county to whom the subpoena is  
213 directed and return made thereon as provided by law, with the cost  
214 of service being paid by the party on whose behalf the subpoena  
215 was issued. Witnesses summoned to appear at the hearing shall be  
216 entitled to the same per diem and mileage as witnesses attending  
217 the circuit court and shall be paid by the person on whose behalf  
218 the witness was called. Sufficient sureties for the cost of  
219 service of the subpoena and witness fees shall be filed with the  
220 Executive Director of the Permit Board at the time that issuance  
221 of the subpoena is requested. At a hearing, any interested party  
222 may present witnesses and submit evidence and cross-examine  
223 witnesses.

224           The Permit Board may designate a hearing officer to conduct  
225 the formal hearing on all or any part of the issues on behalf of

226 the Permit Board. The hearing officer shall prepare the record of  
227 the formal hearing conducted by that officer for the Permit Board  
228 and shall submit the record to the Permit Board.

229       Upon conclusion of the formal hearing, the Permit Board shall  
230 enter in its minutes the board's decision affirming, modifying or  
231 reversing its prior decision to issue, reissue, deny, modify or  
232 revoke a permit. The Permit Board shall prepare and record in its  
233 minutes findings of fact and conclusions of law supporting its  
234 decision. That decision, as recorded in its minutes with its  
235 findings of fact and conclusions of law, shall be final unless an  
236 appeal, as provided in this section, is taken to chancery court  
237 within twenty (20) days following the date the decision is entered  
238 in the board's minutes.

239       (c) Within twenty (20) days after the date the Permit  
240 Board takes action upon permit issuance, reissuance, denial,  
241 modification or revocation after a formal hearing under this  
242 subsection as recorded in the minutes of the Permit Board, any  
243 person aggrieved of that action may appeal the action as provided  
244 in subsection (5) of this section.

245       (5) (a) Appeals from any decision or action of the Permit  
246 Board shall be only to chancery court as provided in this  
247 subsection.

248       (b) Any person who is aggrieved by any decision of the  
249 Permit Board issuing, reissuing, denying, revoking or modifying a  
250 permit after a formal hearing may appeal that decision within the  
251 period specified in subsection (4)(c) of this section to the  
252 chancery court of the county of the situs in whole or in part of  
253 the subject matter. The appellant shall give a cost bond with  
254 sufficient sureties, payable to the state in the sum of not less  
255 than One Hundred Dollars (\$100.00) nor more than Five Hundred  
256 Dollars (\$500.00), to be fixed by the Permit Board and to be filed  
257 with and approved by the Executive Director of the Permit Board,  
258 who shall forthwith certify the filing of the bond together with a



259 certified copy of the record of the Permit Board in the matter to  
260 the chancery court to which the appeal is taken, which shall  
261 thereupon become the record of the cause. An appeal to the  
262 chancery court as provided in this section shall not stay the  
263 decision of the Permit Board. The aggrieved party may, within  
264 twenty (20) days following the date the board's decision after a  
265 formal hearing is entered on the board's minutes, petition the  
266 chancery court for an appeal with supersedeas and the chancellor  
267 shall grant a hearing on that petition. Upon good cause shown,  
268 the chancellor may grant that appeal with supersedeas. If  
269 granted, the appellant shall be required to post a bond with  
270 sufficient sureties according to law in an amount to be determined  
271 by the chancellor. Appeals shall be considered only upon the  
272 record as made before the Permit Board. The chancery court shall  
273 always be deemed open for hearing of an appeal and the chancellor  
274 may hear the same in termtime or in vacation at any place in the  
275 chancellor's district, and the appeal shall have precedence over  
276 all civil cases, except election contests. The chancery court  
277 shall review all questions of law and of fact. If no prejudicial  
278 error is found, the matter shall be affirmed. If prejudicial  
279 error is found the decision of the board shall be reversed and the  
280 chancery court shall remand the matter to the Permit Board for  
281 appropriate action as may be indicated or necessary under the  
282 circumstances. Appeals may be taken from the chancery court to  
283 the Supreme Court in the manner as now required by law, except  
284 that if a supersedeas is desired by the party appealing to the  
285 chancery court, that party may apply for a supersedeas to the  
286 chancellor of that court, who shall award a writ of supersedeas,  
287 without additional bond, if in the chancellor's judgment material  
288 damage is not likely to result thereby; but otherwise, the  
289 chancellor shall require a supersedeas bond as the chancellor  
290 deems proper, which shall be liable to the state for any damage.

291 SECTION 2. This act shall take effect and be in force from  
292 and after its passage.