HOUSE BILL NO. 1395

AN ACT TO AMEND SECTION 53-9-71, MISSISSIPPI CODE OF 1972, TO CONFORM VALID EXISTING COAL MINING RIGHTS TO CERTAIN PUBLIC LANDS TO FEDERAL LAW; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 53-9-71, Mississippi Code of 1972, is amended as follows:

53-9-71. (1) (a) The commission shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations under the standards set forth in paragraphs (b) and (c) of this subsection. Surface coal mining and reclamation permits may be issued before completion of the planning process. That designation shall not prevent the mineral exploration under this chapter of any area designated as unsuitable.

(b) Upon petition under subsection (2) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.

(c) Upon petition under subsection (2) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if the operations will:

(i) Be incompatible with existing state or local land-use plans or programs;
(ii) Affect fragile or historic lands in which those operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems;

(iii) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply from surface or subsurface sources or of food or fiber products. These lands shall include, but not be limited to, aquifers and aquifer recharge areas; or

(iv) Affect natural hazard lands in which the operations could substantially endanger life and property, including, but not limited to, areas subject to frequent flooding and areas of unstable geology.

(d) The state geologist shall be responsible for surface coal mining lands review and shall assist the commission and, as practicable, regional and local governmental units in developing:

(i) A data base and inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and allow reclamation of surface coal mining operations;

(ii) A method or methods for implementing land-use planning decisions concerning surface coal mining operations; and

(iii) Proper notices and opportunities for public participation, including, but not limited to, a public hearing before making any designation or redesignation, under this section.

(e) Determinations of the unsuitability of land for surface coal mining, under this section shall be integrated as closely as possible with present and future land-use planning and regulation processes at the federal, state and local governmental levels.
(f) This section shall not apply to lands on which surface coal mining operations are being conducted under a permit issued under this chapter.

(2) (a) Any interested party may petition the commission to have an area designated as unsuitable for surface coal mining operations, or to have a designation terminated. A petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within six (6) months after receipt of the petition, the commission shall hold a public hearing in the county in which the affected area is located. The commission shall provide appropriate notices and publications of the date, time and location of that hearing. After an interested party has filed a petition, but before the hearing required by this subsection is held, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after the public hearing, the commission shall issue and furnish to the petitioner and any other party participating in the hearing a written decision regarding the petition, and the reasons for its decision. If all the petitioners stipulate agreement before the requested hearing and withdraw their request, the commission may cancel the public hearing. Any interested party aggrieved by a decision of the commission under this section may request a formal hearing as provided in Section 49-17-41. Any person who participated as a party in the formal hearing may appeal the final decision of the commission as provided in Section 49-17-41.

(b) The commission shall promulgate regulations not less stringent than federal regulations regarding procedures for designating lands unsuitable for surface coal mining, including procedures for the content and submission of petitions and notice and public hearing requirements.
(3) Before designating any land areas as unsuitable for surface coal mining operations, the state geologist shall prepare a detailed statement on:

(a) The potential coal resources of the areas;
(b) The demand for coal resources; and
(c) The impact of the designation on the environment, the economy of the state and the supply of coal.

(4) After July 1, 1979, and subject to valid rights *, * *, no surface coal mining operations shall be permitted:

(a) On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 1276(a) of Title 16 of the United States Code, and National Recreation Areas designated by Act of Congress;
(b) On any lands within the boundaries of any state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark, or city or county park, forest or historical area. The commission may, for good cause shown and after a public hearing, make exceptions to this paragraph;
(c) On any federal lands within the boundaries of any national forest, unless the United States Secretary of Agriculture or the secretary's designee finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface coal mining operations or the surface operations and impacts incident to an underground coal mine;
(d) Which will adversely affect any publicly owned park or places included in the national register of historic sites unless approved jointly by the commission and any federal, state or local agency with jurisdiction over the park or the historic site;
(e) Within one hundred (100) feet of the outside right-of-way line of any public road except where mine access roads or haulage roads join the right-of-way line, unless the commission authorizes those roads to be relocated or the area affected to lie within one hundred (100) feet of the road and if, after public notice and opportunity for public hearing in the county in which the surface coal mining and reclamation operations are located, the commission makes a written finding that the interests of the public and the landowners affected thereby will be protected; or

(f) Within three hundred (300) feet of any occupied dwelling, unless waived by the owner of that dwelling, or any public building, school, church, community or institutional building, public park, or within one hundred (100) feet of a cemetery.

(5) Those lands designated prior to July 1, 1979, as unsuitable for surface mining under the Mississippi Surface Mining and Reclamation Law, and all applicable rules and regulations promulgated under that law are unsuitable for surface coal mining under this section.

SECTION 2. This act shall take effect and be in force from and after July 1, 2002.