

**\*\*\*Pending\*\*\*  
AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2762**

**By Representative(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

8           **SECTION 1.** Section 49-17-29, Mississippi Code of 1972, is  
9 amended as follows:  
10           49-17-29. (1) (a) Except as in compliance with paragraph  
11 (b) of this subsection, it is unlawful for any person to cause  
12 pollution of the air in the state or to place or cause to be  
13 placed any wastes or other products or substances in a location  
14 where they are likely to cause pollution of the air. It is also  
15 unlawful to discharge any wastes, products or substances into the  
16 air of the state which exceed standards of performance, hazardous  
17 air pollutant standards, other emission standards set by the  
18 commission, or which reduce the quality of the air below the air  
19 quality standards or increments established by the commission or  
20 prevent attainment or maintenance of those air quality standards.  
21 Any such action is hereby declared to be a public nuisance.  
22           (b) It is unlawful for any person to build, erect,  
23 alter, replace, use or operate any equipment which will cause the  
24 issuance of air contaminants unless that person holds a permit  
25 from the Permit Board (except repairs or maintenance of equipment  
26 for which a permit has been previously issued), or unless that  
27 person is exempted from holding a permit by a regulation

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

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

46 (b) It is unlawful for any person to carry on any of  
47 the following activities, unless that person holds a current  
48 permit for that activity from the Permit Board as may be required  
49 for the disposal of all wastes which are or may be discharged into  
50 the waters of the state, or unless that person is exempted from  
51 holding a permit by a regulation promulgated by the commission:  
52 (i) the construction, installation, modification or operation of  
53 any disposal system or part thereof or any extension or addition  
54 thereto, including, but not limited to, systems serving  
55 agricultural operations; (ii) the increase in volume or strength  
56 of any wastes in excess of the permissive discharges specified  
57 under any existing permit; (iii) the construction, installation or  
58 operation of any industrial, commercial or other establishment,  
59 including irrigation projects or any extension or modification  
60 thereof or addition thereto, the operation of which would cause an  
61 increase in the discharge of wastes into the waters of the state  
62 or would otherwise alter the physical, chemical or biological

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

71 (3) (a) Except as otherwise provided in this section, the  
72 Permit Board created by Section 49-17-28 shall be the exclusive  
73 administrative body to make decisions on permit issuance,  
74 reissuance, denial, modification or revocation of air pollution  
75 control and water pollution control permits and permits required  
76 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter  
77 17), and all other permits within the jurisdiction of the Permit  
78 Board. After consideration of alternative waste treatment  
79 technologies available to control air and water pollution and  
80 odor, including appropriate siting criteria, the commission may  
81 promulgate regulations establishing conditions, limitations and  
82 exemptions under which the Permit Board shall make these  
83 decisions. Regulations promulgated by the commission which  
84 establish exemptions as authorized under Senate Bill No. 2895,  
85 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any  
86 applicable facility in operation on the effective date of that  
87 regulation and to any applicable facility constructed or operated  
88 after the effective date of that regulation. The Permit Board may  
89 issue multiple permits for the same facility or operation  
90 simultaneously or in the sequence that it deems appropriate  
91 consistent with the commission's regulations. Except as otherwise  
92 provided in this paragraph, the Permit Board, under any conditions  
93 that the board may prescribe, may authorize the Executive Director  
94 of the Department of Environmental Quality to make decisions on  
95 permit issuance, reissuance, denial, modification or revocation.  
96 The executive director shall not be authorized to make decisions  
97 on permit issuance, reissuance, denial, modification or revocation

98 for a commercial hazardous waste management facility or a  
99 municipal solid waste landfill or incinerator. A decision by the  
100 executive director shall be a decision of the Permit Board and  
101 shall be subject to \* \* \* hearing and appeal as provided in this  
102 section. The executive director shall report all permit decisions  
103 to the Permit Board at its next regularly scheduled meeting and  
104 those decisions shall be recorded in the minutes of the Permit  
105 Board. The decisions of the Permit Board shall be recorded in  
106 minutes of the Permit Board and shall be kept separate and apart  
107 from the minutes of the commission. The decision of the Permit  
108 Board or the executive director to issue, reissue, deny, modify or  
109 revoke permits shall not be construed to be an order or other  
110 action of the commission.

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

117 (c) All persons required to obtain an air pollution  
118 control or water pollution control permit, a permit under the  
119 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any  
120 other permit within the jurisdiction of the Permit Board shall  
121 make application for that permit with the Permit Board. The  
122 Permit Board, under any regulations as the commission may  
123 prescribe, may require the submission of those plans,  
124 specifications and other information as it deems necessary to  
125 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter  
126 17, or to carry out the commission's regulations adopted under  
127 those sections. The Permit Board, based upon any information as  
128 it deems relevant, shall issue, reissue, deny, modify or revoke  
129 air pollution control or water pollution control permit or permits  
130 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
131 Chapter 17) or any other permit within the jurisdiction of the  
132 Permit Board under any conditions as it deems necessary that are

133 consistent with the commission's regulations. The Permit Board's  
134 action of issuance, reissuance, denial, modification or revocation  
135 of a permit as recorded in its minutes shall constitute a complete  
136 decision of the board. All permits issued by the Permit Board  
137 shall remain in full force and effect until the board makes a  
138 final determination regarding any reissuance, modification, or  
139 revocation thereof. The Permit Board shall take action upon an  
140 application within one hundred eighty (180) days following its  
141 receipt in the board's principal office. No action which affects  
142 revocation of an existing permit shall take effect until the sixty  
143 (60) days mentioned in paragraph (4)(b) of this section has  
144 expired or until a \* \* \* hearing as prescribed in that paragraph  
145 is held, whichever is later.

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

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

158 (f) The Permit Board shall not issue any permit for a  
159 new swine concentrated animal feeding operation or the expansion  
160 of an existing swine concentrated animal feeding operation before  
161 January 1, 2000, unless the department received the application  
162 for that operation's new or modified permit before February 28,  
163 1998, or except as provided in this paragraph (f). In issuing or  
164 modifying any permit for which the department received an  
165 application before February 28, 1998, the Permit Board shall apply  
166 those siting criteria adopted or used by the commission before  
167 February 28, 1998, unless federal law or regulations require more

168 stringent criteria. The moratorium established in this paragraph  
169 shall not apply to the issuance of any permit for a new swine  
170 concentrated animal feeding operation or the expansion of an  
171 existing swine concentrated animal feeding operation that uses an  
172 animal waste management system which the applicant demonstrates to  
173 the Permit Board is innovative in significantly reducing the  
174 effects of the operation on the public health, welfare or the  
175 environment and which is approved by the Permit Board. The Permit  
176 Board shall not issue or modify more than five (5) permits under  
177 this innovative animal waste management system technology  
178 exemption to the moratorium.

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

195 (b) Within sixty (60) days after the date the Permit  
196 Board takes action upon permit issuance, reissuance, denial,  
197 modification or revocation, as recorded in the minutes of the  
198 Permit Board, any interested party aggrieved by that action may  
199 file a petition for a \* \* \* hearing de novo before the chancery  
200 court of the county of the situs in whole or in part of the  
201 subject matter. The chancery court shall always be deemed open  
202 for hearing under this subsection and the chancellor may hear the

203 same in termtime or in vacation at any place in the chancellor's  
204 district, and the appeal shall have precedence over all civil  
205 cases, except election contests. The appellant shall give a cost  
206 bond with sufficient sureties, payable to the state in the sum of  
207 not less than One Hundred Dollars (\$100.00) nor more than Five  
208 Hundred Dollars (\$500.00), to be fixed by the chancellor. An  
209 appeal to the chancery court as provided in this section shall not  
210 stay the decision of the Permit Board. An interested party is any  
211 person claiming an interest relating to the property or project  
212 which is the subject of the permit action, and who is so situated  
213 that the person may be affected by the disposition of that action.

214 The hearing de novo shall be conducted in accordance with the  
215 Mississippi Rules on Civil Procedure.

216 Upon conclusion of the \* \* \* hearing, the court shall enter  
217 its decision affirming, modifying or reversing the decision of the  
218 Permit Board to issue, reissue, deny, modify or revoke a permit,  
219 specifying the findings of fact and conclusions of law supporting  
220 its decision. That decision \* \* \* shall be final unless an  
221 appeal, as provided in this section, is taken to the Supreme Court  
222 within sixty (60) days following the date the decision is  
223 entered \* \* \*.

224 (c) Within sixty (60) days after the entry of the  
225 decision of the chancery court under this subsection \* \* \*, any  
226 person aggrieved of that action may appeal the action as provided  
227 in subsection (5) of this section.

228 (5) (a) Appeals from any decision \* \* \* of the chancery  
229 court shall be \* \* \* to the Supreme Court as provided in this  
230 subsection.

231 (b) Any person who is aggrieved by any decision of the  
232 chancery court issuing, reissuing, denying, revoking or modifying  
233 a permit after a \* \* \* hearing de novo may appeal that decision  
234 within the period specified in subsection (4)(c) of this section  
235 to the Supreme Court. The appellant shall give a cost bond with  
236 sufficient sureties, payable to the state in the sum of not less  
237 than One Hundred Dollars (\$100.00) nor more than Five Hundred

238 Dollars (\$500.00), to be fixed by the chancellor and to be filed  
239 with and approved by the chancery clerk, who shall forthwith  
240 certify the filing of the bond together with a certified copy of  
241 the record \* \* \* in the matter to the Supreme Court, which shall  
242 thereupon become the record of the cause. \* \* \* Appeal to the  
243 Supreme Court as provided in this section shall not stay the  
244 chancellor's decision \* \* \*. The aggrieved party may, within  
245 sixty (60) days following the entry of the chancellor's  
246 decision \* \* \*, petition the Supreme Court for an appeal with  
247 supersedeas and the court shall grant a hearing on that petition.  
248 Upon good cause shown, the court may grant that appeal with  
249 supersedeas. If granted, the appellant shall be required to post  
250 a bond with sufficient sureties according to law in an amount to  
251 be determined by the court. Appeals shall be considered only upon  
252 the record as made in the court below. \* \* \* The Supreme Court  
253 shall review all questions of law and of fact. If no prejudicial  
254 error is found, the matter shall be affirmed. If prejudicial  
255 error is found the decision of the chancellor shall be reversed  
256 and the Supreme Court shall remand the matter to the Permit Board  
257 for appropriate action as may be indicated or necessary under the  
258 circumstances. Appeals may be taken from the chancery court to  
259 the Supreme Court in the manner as now required by law, except  
260 that if a supersedeas is desired by the party appealing \* \* \*,  
261 that party may apply for a supersedeas \* \* \* without additional  
262 bond, if in the court's judgment material damage is not likely to  
263 result thereby; but otherwise, the court shall require a  
264 supersedeas bond as the court deems proper, which shall be liable  
265 to the state for any damage.

266 **SECTION 2.** Section 49-17-41, Mississippi Code of 1972, is  
267 amended as follows:

268 49-17-41. In addition to any other remedies that might now  
269 be available, any person or interested party aggrieved by any  
270 order of the commission or the executive director shall have a  
271 right to file a sworn petition with the chancery court of the  
272 county of the situs in whole or in part of the subject matter



273 within sixty (60) days after the order was issued setting forth  
274 the grounds and reasons for his complaint and asking for a hearing  
275 of the matter involved. The chancery court shall always be deemed  
276 open for hearing under this subsection and the chancellor may hear  
277 the same in termtime or in vacation at any place in the  
278 chancellor's district, and the appeal shall have precedence over  
279 all civil cases, except election contests. The appellant shall  
280 give a cost bond with sufficient sureties, payable to the state in  
281 the sum of not less than One Hundred Dollars (\$100.00) nor more  
282 than Five Hundred Dollars (\$500.00), to be fixed by the  
283 chancellor.

284 The hearing de novo shall be conducted in accordance with the  
285 Mississippi Rules on Civil Procedure.

286 Following such hearing, the final order of determination of  
287 the chancellor upon such matters shall be conclusive, unless the  
288 petitioner, or such other interested party appearing at the  
289 hearing, shall, within fifteen (15) days after the entry of the  
290 final order \* \* \*, appeal to the Supreme Court by giving a cost  
291 bond with sufficient sureties, payable to the state in the sum of  
292 not less than One Hundred Dollars (\$100.00) nor more than Five  
293 Hundred Dollars (\$500.00), to be fixed in the order appealed from,  
294 to be filed with the chancery clerk, who shall forthwith certify  
295 the same together with a certified copy of the record \* \* \* in the  
296 matter to the Supreme Court, which shall thereupon become the  
297 record of the cause. An appeal to the Supreme Court as provided  
298 herein shall not stay the execution of an order \* \* \*. Any party  
299 aggrieved by the decision of the chancery court may petition the  
300 Supreme Court for an appeal with supersedeas, and the court shall  
301 grant a hearing on said petition and upon good cause shown may  
302 grant said appeal with supersedeas; the appellant shall be  
303 required to post a bond with sufficient sureties according to law  
304 in an amount to be determined by the court. Appeals shall be  
305 considered only upon the record as made before the court below.  
306 The Supreme Court shall review all questions of law and of fact.  
307 If no prejudicial error be found, the matter shall be affirmed and

308 remanded to the commission for enforcement. If prejudicial error  
309 be found, the same shall be reversed and the \* \* \* court shall  
310 remand the matter to the commission for appropriate action as may  
311 be indicated or necessary under the circumstances. Appeals may be  
312 taken from the chancery court to the Supreme Court in the manner  
313 as now required by law, except that if a supersedeas is desired by  
314 the party appealing, that party may apply for a supersedeas,  
315 without additional bond, if in the court's judgment material  
316 damage is not likely to result thereby, but otherwise the court  
317 shall require such supersedeas bond as the court deems proper,  
318 which shall be liable to the state for such damage.

319 **SECTION 3.** This act shall take effect and be in force from  
320 and after July 1, 2002.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,  
2 TO REVISE APPELLATE REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS OF  
3 THE PERMIT BOARD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; TO  
4 AMEND SECTION 49-17-41, MISSISSIPPI CODE OF 1972, TO REVISE  
5 APPELLATE REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS OF THE  
6 COMMISSION ON ENVIRONMENTAL QUALITY; AND FOR RELATED PURPOSES.