

By: Representative Reeves

To: Oil, Gas and Other
Minerals; Judiciary ACOMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1634

1 AN ACT TO AMEND SECTION 29-7-1, MISSISSIPPI CODE OF 1972, TO
2 TRANSFER THE AUTHORITY OF THE MINERAL LEASE COMMISSION TO THE
3 MISSISSIPPI MAJOR ECONOMIC IMPACT AUTHORITY; TO AMEND SECTION
4 29-7-3, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE
5 COMMISSION TO LEASE STATE-OWNED LANDS THAT HAVE DEVELOPMENT
6 POTENTIAL FOR OIL OR NATURAL GAS; TO AMEND SECTION 29-7-17,
7 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
8 ACT; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION 29-7-19,
9 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR HEARINGS TO BE HEARD BY
10 THE COMMISSION; TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
11 29-7-21, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AN APPEALS
12 PROCESS FOR DECISIONS MADE BY THE COMMISSION; AND FOR RELATED
13 PURPOSES.

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

15 **SECTION 1.** Section 29-7-1, Mississippi Code of 1972, is
16 amended as follows:

17 29-7-1. (1) The Mississippi Major Economic Impact Authority
18 shall be the mineral lease commission, and shall exercise the
19 duties and responsibilities of the mineral lease commission * * *
20 under the provisions of Sections 29-7-1 et seq.

21 (2) The words "mineral lease commission," whenever they may
22 appear in the laws of the State of Mississippi, shall be construed
23 to mean the Mississippi Major Economic Impact Authority.

24 (3) The term "commission" means the Mississippi Major
25 Economic Impact Authority.

26 **SECTION 2.** Section 29-7-3, Mississippi Code of 1972, is
27 amended as follows:

28 29-7-3. There shall be no development or extraction of oil,
29 gas, or other minerals from state-owned lands by any private party
30 without first obtaining a mineral lease therefor from the
31 commission. The commission is hereby authorized and empowered,
32 for and on behalf of the state, to lease any and all of the state

land now owned (including that submerged or whereover the tide may ebb and flow) or hereafter acquired, to some reputable person, association, or company for oil and/or gas and/or other minerals in and under and which may be produced therefrom, excepting, however, sixteenth section school land, lieu lands, and such forfeited tax land and property the title to which is subject to any lawful redemption, for such consideration and upon such terms and conditions as the commission deems just and proper.

Consistent with the conservation policies of this state under Sections 53-1-1 et seq., the commission may offer for public bid any tracts or blocks of state-owned lands not currently under lease, which have been identified to the commission as having development potential for oil or natural gas, not less than once a year. Upon consultation with the Office of Geology in the Mississippi Department of Environmental Quality and any other state agency as the commission deems appropriate, the commission shall promulgate rules and regulations consistent with this chapter governing all aspects of the process of leasing state lands within its jurisdiction for mineral development, including the setting of all terms of the lease form to be used for leasing state-owned lands, any necessary fees, public bidding process, delay rental payments, shut-in royalty payments, and such other provisions as may be required.

There shall not be conducted any seismographic or other mineral exploration or testing activities on any state-owned lands within the mineral leasing jurisdiction of the commission without first obtaining a permit therefor from the commission. Upon consultation with the Office of Geology in the Mississippi Department of Environmental Quality and any other state agency as the commission deems appropriate, the commission shall * * * promulgate rules and regulations governing all aspects of seismographic or other mineral exploration activity on state lands within its jurisdiction, including the establishing of fees and

66 issuance of permits for the conduct of such mineral exploration
67 activities. Provided, however, that persons obtaining permits
68 from the commission for seismographic or other mineral exploration
69 or testing activities on state-owned wildlife management areas,
70 lakes and fish hatcheries, shall be subject to rules and
71 regulations promulgated therefor by the Mississippi Commission on
72 Wildlife, Fisheries and Parks which shall also receive all permit
73 fees for such testing on said lands.

74 Further, provided that each permit within the Mississippi
75 Sound or tidelands shall be reviewed by the Mississippi Commission
76 on Marine Resources and such special conditions as it may specify
77 will be included in the permit. Information or data obtained in
78 any mineral exploration activity on any and all state lands shall
79 be disclosed to the state through the Department of Environmental
80 Quality, upon demand. Such information or data shall be treated
81 as confidential for a period of ten (10) years from the date of
82 receipt thereof and shall not be disclosed to the public or to any
83 firm, individual or agency other than officials or authorized
84 employees of this state. Any person who makes unauthorized
85 disclosure of such confidential information or data shall be
86 guilty of a misdemeanor, and upon conviction thereof, be fined not
87 more than Five Thousand Dollars (\$5,000.00) or imprisoned in the
88 county jail not more than one (1) year, or both.

89 Whenever any such land or property is leased for oil and gas
90 and/or other minerals, such lease contract shall provide for a
91 lease royalty to the state of at least three-sixteenths (3/16) of
92 such oil and gas or other minerals, same to be paid in the manner
93 prescribed by the commission. Of the monies received in
94 connection with the execution of such leases, five-tenths of one
95 percent (5/10 of 1%) shall be retained in a special fund to be
96 appropriated by the Legislature, One Hundred Thousand Dollars
97 (\$100,000.00) of which amount to be used by the department for the
98 administration of the Mineral Lease Division of the Department of

99 Environmental Quality and the remainder of such amount shall be
100 deposited into the Education Trust Fund, created in Section 206A,
101 Mississippi Constitution of 1890; and two percent (2%) shall be
102 paid into a special fund to be designated as the "Gulf and
103 Wildlife Protection Fund," to be appropriated by the Legislature,
104 one-half (1/2) thereof to be apportioned as follows: an amount
105 which shall not exceed One Million Dollars (\$1,000,000.00) shall
106 be used by the Mississippi Department of Wildlife, Fisheries and
107 Parks solely for the purpose of clean-up, remedial or abatement
108 actions involving pollution as a result of the exploration or
109 production of oil or gas, and any amount in excess of such One
110 Million Dollars (\$1,000,000.00) shall be deposited into the
111 Education Trust Fund, created in Section 206A, Mississippi
112 Constitution of 1890. The remaining one-half (1/2) of such Gulf
113 and Wildlife Protection Fund to be apportioned as follows: an
114 amount which shall not exceed One Million Dollars (\$1,000,000.00)
115 shall be used by the Mississippi Commission on Wildlife, Fisheries
116 and Parks for use first in the prudent management, preservation,
117 protection and conservation of existing waters, lands and wildlife
118 of this state and then, provided such purposes are accomplished,
119 for the acquisition of additional waters and lands and any amount
120 in excess of such One Million Dollars (\$1,000,000.00) shall be
121 deposited into the Education Trust Fund, created in Section 206A,
122 Mississippi Constitution of 1890. However, in the event that the
123 Legislature is not in session to appropriate funds from the Gulf
124 and Wildlife Protection Fund for the purpose of clean-up, remedial
125 or abatement actions involving pollution as a result of the
126 exploration or production of oil or gas, then the Mississippi
127 Department of Wildlife, Fisheries and Parks may make expenditures
128 from this special fund account solely for said purpose. The
129 commission may lease the submerged beds for sand and gravel on
130 such a basis as it may deem proper, but where the waters lie
131 between this state and an adjoining state, there must be a cash

realization to this state, including taxes paid for such sand and gravel, equal to that being had by such adjoining state, in all cases the requisite consents therefor being lawfully obtained from the United States.

The Department of Environmental Quality is authorized to employ competent engineering personnel to survey the territorial waters of this state in the Mississippi Sound and the Gulf of Mexico and to prepare a map or plat of such territorial waters, divided into blocks of not more than six thousand (6,000) acres each with coordinates and reference points based upon longitude and latitude surveys. The commission is authorized to adopt such survey, plat or map for leasing of such submerged lands for mineral development; and such leases may, after the adoption of such plat or map, be made by reference to the map or plat, which shall be on permanent file with the commission and a copy thereof on file in the Office of the State Oil and Gas Board.

SECTION 3. Section 29-7-17, Mississippi Code of 1972, is amended as follows:

29-7-17. (1) Any person found by the commission to be violating any of the provisions of Section 29-7-3, or any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit shall be subject to a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation, such penalty to be assessed and levied by the commission after a hearing as hereinafter provided. Each day upon which a violation occurs shall be deemed a separate and additional violation. Appeals from the imposition of a civil penalty may be taken to the appropriate chancery court in the same manner as appeals from the orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of

Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, on the condition that if the judgment shall be affirmed the appellant shall pay all costs of the assessment entered against him.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Section 29-7-3, rules and regulations promulgated, and orders and permits made and issued thereunder, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and it shall not be necessary in such cases that the state plead or prove: (i) that irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy at law; or (iii) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Section 29-7-3 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such section, and causes the death of fish, shellfish, or other wildlife shall be liable, in addition to the penalties provided in subsections (1), (2), (4) and (5) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the appropriate county or circuit court of the county in which venue may lie.

198 (4) Any person who, through misadventure, happenstance or
199 otherwise causes damage to or destruction of state-owned lands or
200 structures or other property thereon necessitating remedial or
201 clean-up action shall be liable for the cost of such remedial or
202 clean-up action and the commission may recover the cost of same by
203 a civil action brought in the circuit court of the county in which
204 venue may lie. This penalty may be recovered in lieu of or in
205 addition to the penalties provided in subsections (1), (2), (3)
206 and (5) of this section.

207 (5) It shall be unlawful for any person to conduct
208 unauthorized mineral exploration, development, or extraction
209 activity or to violate the provisions of Section 29-7-3 or the
210 rules and regulations of the commission which relate to mineral
211 exploration, development, or extraction activity and, upon
212 conviction thereof, such person shall be guilty of a misdemeanor,
213 and fined not less than Five Hundred Dollars (\$500.00) nor more
214 than Five Thousand Dollars (\$5,000.00) for each offense. Each day
215 on which such violation occurs or continues shall constitute a
216 separate offense.

217 (6) In lieu of or in addition to the penalties prescribed
218 hereinabove, any person convicted by a court of law or found
219 guilty by the commission of unlawful mineral extraction activity
220 on state-owned lands shall repay to the state the fair market
221 value of the minerals unlawfully extracted.

222 (7) Proceedings before the commission on civil violations
223 prescribed hereinabove shall be conducted in the manner set forth
224 in this chapter.

225 **SECTION 4.** The following shall be codified as Section
226 29-7-19, Mississippi Code of 1972:

227 29-7-19. (1) The hearings, as provided under Section
228 29-7-21(1) may be conducted by the commission itself at a regular
229 or special meeting of the commission, or the commission may
230 designate a hearing officer, who may conduct such hearings in the

name of the commission at any time and place as conditions and circumstances may warrant. The hearing officer shall have the record prepared of any hearing that he has conducted for the commission. The record shall be submitted to the commission along with that hearing officer's findings of fact and recommended decision. Upon receipt and review of the record of the hearing and the hearing officer's findings of fact and recommended decision, the commission shall render its decision in the matter. The decision shall become final after it is entered on the minutes and shall be considered the final administrative agency decision on the matter. The decision may be appealed under Section 29-7-21(2).

(2) All hearings before the commission shall be recorded either by a court reporter, tape or mechanical recorders and subject to transcription upon order of the commission or any interested party, but if the request for transcription originates with an interested party, that party shall pay the cost thereof.

SECTION 5. The following shall be codified as Section 29-7-21, Mississippi Code of 1972:

29-7-21. (1) Any person or interested party aggrieved by any final rule, regulation, permit or order of the commission may file a petition with the commission within thirty (30) days after the final rule, regulation, permit or order is entered on the minutes. The petition shall set forth the grounds and reasons for the complaint and request a hearing of the matter involved. However, there shall be no hearing on the same subject matter that has previously been held before the commission or its designated hearing officer. The commission shall fix the time and place of the hearing and notify the petitioners thereof. In pending matters, the commission shall have the same powers as to subpoenaing witnesses, administering oaths, examining witnesses under oath and conducting the hearing, as is now vested by law in the Mississippi Public Service Commission, as to hearings before

it, with the additional power that the executive director may issue all subpoenas, both at the instance of the petitioner and of the commission. At the hearings the petitioner, and any other interested party, may offer exhibits, present witnesses, and otherwise submit evidence, as the commission deems appropriate. After the hearing, the commission's decision shall be deemed the final administrative agency decision on the matter.

(2) Any interested person aggrieved by any final rule, regulation, permit or order of the commission issued under this section, regardless of the amount involved, shall appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which shall be taken and perfected as hereinafter provided, within thirty (30) days from the date that the final rule, regulation or order is filed for record in the office of the commission. The chancery court may affirm the rule, regulation, permit, or order, or reverse the same for further proceedings as the court may require. All appeals shall be on the record, taken and perfected, heard and determined either in termtime or in vacation, including a transcript of pleadings and testimony, both oral and documentary, filed and heard before the commission, and the appeal shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to Supreme Court shall be applicable. However, the reporter shall transcribe his notes and file the transcript of the record with the board within thirty (30) days after approval of the appeal bond. Notwithstanding provisions of any other law to the contrary, the remedy provided herein is the exclusive remedy available for any interested person aggrieved by any final rule, regulation, permit or order of the commission, and no injunctive relief may be awarded by any other

296 court or judge to restrain any action of the commission under this
297 chapter.

298 (3) Upon the filing with the commission of a petition for
299 appeal to the Hinds County Chancery Court, it shall be the duty of
300 the commission, as promptly as possible and within sixty (60) days
301 after approval of the appeal bond, if required, to file with the
302 clerk of the chancery court to which the appeal is taken, a copy
303 of the petition for appeal and of the rule, regulation, permit or
304 order appealed from, and the original and one (1) copy of the
305 transcript of the record of proceedings in evidence before the
306 commission. After the filing of the petition, the appeal shall be
307 perfected by the filing with the clerk of the chancery court to
308 which the appeal is taken of bond in the sum of Five Hundred
309 Dollars (\$500.00) with two (2) sureties or with a surety company
310 qualified to do business in Mississippi as the surety, conditioned
311 to pay the cost of the appeal; the bond to be approved by any
312 member of the commission, or by the clerk of the court to which
313 the appeal is taken. The perfection of an appeal shall not stay
314 or suspend the operation of any rule, regulation, permit or order
315 of the board, but the judge of the chancery court to which the
316 appeal is taken may award a writ of supersedeas to any rule,
317 regulation, permit or order of the commission after five (5) days
318 notice to the commission and after hearing. Any order or judgment
319 staying the operation of any rule, regulation, permit or order of
320 the commission shall contain a specific finding, based upon
321 evidence submitted to the chancery judge and identified by
322 reference thereto, that great or irreparable damage would result
323 to the appellant if he is denied relief, and the stay shall not
324 become effective until a supersedeas bond shall have been executed
325 and filed with and approved by the clerk of the court or the
326 chancery judge, payable to the state. If the appeal is of a
327 commission order concerning the lease of state lands for minerals,
328 such appeal shall be given priority over other matters pending in

329 the chancery court. If the appeal is of a commission permit, such
330 appeal shall be given priority over other matters pending in
331 chancery court. In all other cases, the bond shall be in an
332 amount fixed by the chancery judge and conditioned as the chancery
333 judge may direct in the order granting the supersedeas.

334 **SECTION 6.** This act shall take effect and be in force from
335 and after July 1, 2004.