

By: Representative Reeves

To: Oil, Gas and Other
Minerals; Judiciary A

HOUSE BILL NO. 1634
(As Passed the House)

1 AN ACT TO AMEND SECTION 29-7-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE COMPOSITION OF THE MINERAL LEASE COMMISSION; TO AMEND
3 SECTION 29-7-3, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY
4 OF THE COMMISSION TO LEASE STATE-OWNED LANDS THAT HAVE DEVELOPMENT
5 POTENTIAL FOR OIL OR NATURAL GAS; TO PROVIDE CERTAIN RESTRICTIONS
6 FOR DRILLING FOR OIL OR NATURAL GAS IN OFFSHORE WATERS; TO AMEND
7 SECTION 29-7-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
8 PROVISIONS OF THIS ACT; TO CREATE A NEW SECTION TO BE CODIFIED AS
9 SECTION 29-7-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR HEARINGS
10 TO BE HEARD BY THE COMMISSION; TO CREATE A NEW SECTION TO BE
11 CODIFIED AS SECTION 29-7-21, MISSISSIPPI CODE OF 1972, TO PROVIDE
12 FOR AN APPEALS PROCESS FOR DECISIONS MADE BY THE COMMISSION; AND
13 FOR RELATED 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 mineral lease commission shall be composed
18 of the Governor, the State Auditor, the Secretary of State, the
19 Attorney General and the State Treasurer, and shall exercise the
20 duties and responsibilities of the mineral lease commission * * *
21 under the provisions of Sections 29-7-1 et seq.

22 (2) The words "mineral lease commission," whenever they may
23 appear in the laws of the State of Mississippi, shall be construed
24 to mean the Governor, the State Auditor, the Secretary of State,
25 the Attorney General and the State Treasurer.

26 (3) The term "commission" means the Governor, the State
27 Auditor, the Secretary of State, the Attorney General and the
28 State Treasurer.

29 (4) The Mississippi Development Authority shall market and
30 promote the leasing of any state-owned lands, on behalf of the
31 mineral lease commission.

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

34 29-7-3. There shall be no development or extraction of oil,
35 gas, or other minerals from state-owned lands by any private party
36 without first obtaining a mineral lease therefor from the
37 commission. The commission is hereby authorized and empowered,
38 for and on behalf of the state, to lease any and all of the state
39 land now owned (including that submerged or wherever the tide may
40 ebb and flow) or hereafter acquired, to some reputable person,
41 association, or company for oil and/or gas and/or other minerals
42 in and under and which may be produced therefrom, excepting,
43 however, sixteenth section school land, lieu lands, and such
44 forfeited tax land and property the title to which is subject to
45 any lawful redemption, for such consideration and upon such terms
46 and conditions as the commission deems just and proper. In
47 offshore waters, drilling will not be permitted within one (1)
48 mile of Cat Island. Until July 1, 2008, the commission may only
49 offer for lease the state-owned offshore lands in Blocks 7, 40,
50 41, 42, 43, 63, 64 and 66 through 98 as shown on the Mississippi
51 Department of Environmental Quality Bureau of Geology Plat of
52 Lease Blocks (Open File Report 151) on terms and conditions and
53 for a length of time as determined by the commission. The
54 commission may not lease any land or submerged land off the
55 Mississippi Gulf Coast for the purposes of drilling offshore for
56 oil, gas or other minerals that has been leased by the Department
57 of Marine Resources before July 1, 2004, for any public or private
58 oyster reef lease or any land or submerged land within one (1)
59 mile of that lease.

60 The commission shall promulgate rules and regulations
61 consistent with this chapter governing * * * the * * * leasing of
62 state lands within its jurisdiction for mineral development. In
63 all matters pertaining to the conservation, development and
64 leasing of oil, gas and other minerals on state-owned lands the

65 Office of Geology and the Department of Environmental Quality
66 shall be subject to the direction of the commission, and it shall
67 be the responsibility of the Office of Geology and the Department
68 of Environmental Quality to advise the commission in matters set
69 forth in this chapter and to foster, encourage and promote the
70 development, production and utilization and conservation of the
71 natural resources of oil, gas and other minerals on state-owned
72 lands so as to maximize the present and future benefits to the
73 state and to protect the overall economic interest of the state.

74 There shall not be conducted any seismographic or other
75 mineral exploration or testing activities on any state-owned lands
76 within the mineral leasing jurisdiction of the commission without
77 first obtaining a permit therefor from the commission. Upon
78 consultation with the Office of Geology in the Mississippi
79 Department of Environmental Quality and any other state agency as
80 the commission deems appropriate, the commission shall * * *
81 promulgate rules and regulations governing all aspects of
82 seismographic or other mineral exploration activity on state lands
83 within its jurisdiction, including the establishing of fees and
84 issuance of permits for the conduct of such mineral exploration
85 activities. Provided, however, that persons obtaining permits
86 from the commission for seismographic or other mineral exploration
87 or testing activities on state-owned wildlife management areas,
88 lakes and fish hatcheries, shall be subject to rules and
89 regulations promulgated therefor by the Mississippi Commission on
90 Wildlife, Fisheries and Parks which shall also receive all permit
91 fees for such testing on said lands. In addition, persons
92 obtaining permits from the commission for seismographic or other
93 mineral exploration or testing activities on state-owned marine
94 waters shall be subject to rules and regulations promulgated
95 therefor by the Mississippi Department on Marine Resources which
96 shall also receive all permit fees for such testing on those
97 waters.

98 Further, provided that each permit within the Mississippi
99 Sound or tidelands shall be reviewed by the Mississippi Commission
100 on Marine Resources and such special conditions as it may specify
101 will be included in the permit. Information or data obtained in
102 any mineral exploration activity on any and all state lands shall
103 be disclosed to the state through the Mississippi Major Economic
104 Impact Authority, upon demand. Such information or data shall be
105 treated as confidential for a period of ten (10) years from the
106 date of receipt thereof and shall not be disclosed to the public
107 or to any firm, individual or agency other than officials or
108 authorized employees of this state. Any person who makes
109 unauthorized disclosure of such confidential information or data
110 shall be guilty of a misdemeanor, and upon conviction thereof, be
111 fined not more than Five Thousand Dollars (\$5,000.00) or
112 imprisoned in the county jail not more than one (1) year, or both.

113 Whenever any such land or property is leased for oil and gas
114 and/or other minerals, such lease contract shall provide for a
115 lease royalty to the state of at least three-sixteenths (3/16) of
116 such oil and gas or other minerals, same to be paid in the manner
117 prescribed by the commission. Of the monies received in
118 connection with the execution of such leases, five-tenths of one
119 percent (5/10 of 1%) shall be retained in a special fund to be
120 appropriated by the Legislature, One Hundred Thousand Dollars
121 (\$100,000.00) of which amount to be used by the department for the
122 administration of the Mississippi Major Economic Impact Authority
123 and the remainder of such amount shall be deposited into the
124 Education Trust Fund, created in Section 206A, Mississippi
125 Constitution of 1890; and two percent (2%) shall be paid into a
126 special fund to be designated as the "Gulf and Wildlife Protection
127 Fund," to be appropriated by the Legislature, one-half (1/2)
128 thereof to be apportioned as follows: an amount which shall not
129 exceed One Million Dollars (\$1,000,000.00) shall be used by the
130 Mississippi Department of Wildlife, Fisheries and Parks and the

131 Mississippi Department of Marine Resources solely for the purpose
132 of clean-up, remedial or abatement actions involving pollution as
133 a result of the exploration or production of oil or gas, and any
134 amount in excess of such One Million Dollars (\$1,000,000.00) shall
135 be deposited into the Education Trust Fund, created in Section
136 206A, Mississippi Constitution of 1890. The remaining one-half
137 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned
138 as follows: an amount which shall not exceed One Million Dollars
139 (\$1,000,000.00) shall be used by the Mississippi Commission on
140 Wildlife, Fisheries and Parks and the Mississippi Department of
141 Marine Resources for use first in the prudent management,
142 preservation, protection and conservation of existing waters,
143 lands and wildlife of this state and then, provided such purposes
144 are accomplished, for the acquisition of additional waters and
145 lands and any amount in excess of such One Million Dollars
146 (\$1,000,000.00) shall be deposited into the Education Trust Fund,
147 created in Section 206A, Mississippi Constitution of 1890.
148 However, in the event that the Legislature is not in session to
149 appropriate funds from the Gulf and Wildlife Protection Fund for
150 the purpose of clean-up, remedial or abatement actions involving
151 pollution as a result of the exploration or production of oil or
152 gas, then the Mississippi Department of Wildlife, Fisheries and
153 Parks and the Mississippi Department of Marine Resources may make
154 expenditures from this special fund account solely for said
155 purpose. The commission may lease the submerged beds for sand and
156 gravel on such a basis as it may deem proper, but where the waters
157 lie between this state and an adjoining state, there must be a
158 cash realization to this state, including taxes paid for such sand
159 and gravel, equal to that being had by such adjoining state, in
160 all cases the requisite consents therefor being lawfully obtained
161 from the United States.

162 The Mississippi Major Economic Impact Authority is authorized
163 to employ competent engineering personnel to survey the

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

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

176 29-7-17. (1) Any person found by the commission to be
177 violating any of the provisions of Section 29-7-3, or any rule or
178 regulation or written order of the commission in pursuance
179 thereof, or any condition or limitation of a permit shall be
180 subject to a civil penalty of not more than Ten Thousand Dollars
181 (\$10,000.00) for each violation, such penalty to be assessed and
182 levied by the commission after a hearing as hereinafter provided.
183 Each day upon which a violation occurs shall be deemed a separate
184 and additional violation. Appeals from the imposition of a civil
185 penalty may be taken to the appropriate chancery court in the same
186 manner as appeals from the orders of the commission. If the
187 appellant desires to stay the execution of a civil penalty
188 assessed by the commission, he shall give bond with sufficient
189 resident sureties of one or more guaranty or surety companies
190 authorized to do business in this state, payable to the State of
191 Mississippi, in an amount equal to double the amount of any civil
192 penalty assessed by the commission, as to which the stay of
193 execution is desired, on the condition that if the judgment shall
194 be affirmed the appellant shall pay all costs of the assessment
195 entered against him.

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

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

225 (4) Any person who, through misadventure, happenstance or
226 otherwise causes damage to or destruction of state-owned lands or
227 structures or other property thereon necessitating remedial or
228 clean-up action shall be liable for the cost of such remedial or

229 clean-up action and the commission may recover the cost of same by
230 a civil action brought in the circuit court of the county in which
231 venue may lie. This penalty may be recovered in lieu of or in
232 addition to the penalties provided in subsections (1), (2), (3)
233 and (5) of this section.

234 (5) It shall be unlawful for any person to conduct
235 unauthorized mineral exploration, development, or extraction
236 activity or to violate the provisions of Section 29-7-3 or the
237 rules and regulations of the commission which relate to mineral
238 exploration, development, or extraction activity and, upon
239 conviction thereof, such person shall be guilty of a misdemeanor,
240 and fined not less than Five Hundred Dollars (\$500.00) nor more
241 than Five Thousand Dollars (\$5,000.00) for each offense. Each day
242 on which such violation occurs or continues shall constitute a
243 separate offense.

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

249 (7) Proceedings before the commission on civil violations
250 prescribed hereinabove shall be conducted in the manner set forth
251 in this chapter.

252 **SECTION 4.** The following shall be codified as Section
253 29-7-19, Mississippi Code of 1972:

254 29-7-19. (1) The hearings, as provided under Section
255 29-7-21(1) may be conducted by the commission itself at a regular
256 or special meeting of the commission, or the commission may
257 designate a hearing officer, who may conduct such hearings in the
258 name of the commission at any time and place as conditions and
259 circumstances may warrant. The hearing officer shall have the
260 record prepared of any hearing that he has conducted for the
261 commission. The record shall be submitted to the commission along

262 with that hearing officer's findings of fact and recommended
263 decision. Upon receipt and review of the record of the hearing
264 and the hearing officer's findings of fact and recommended
265 decision, the commission shall render its decision in the matter.
266 The decision shall become final after it is entered on the minutes
267 and shall be considered the final administrative agency decision
268 on the matter. The decision may be appealed under Section
269 29-7-21(2).

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

275 **SECTION 5.** The following shall be codified as Section
276 29-7-21, Mississippi Code of 1972:

277 29-7-21. (1) Any person or interested party aggrieved by
278 any final rule, regulation, permit or order of the commission may
279 file a petition with the commission within thirty (30) days after
280 the final rule, regulation, permit or order is entered on the
281 minutes. The petition shall set forth the grounds and reasons for
282 the complaint and request a hearing of the matter involved.
283 However, there shall be no hearing on the same subject matter that
284 has previously been held before the commission or its designated
285 hearing officer. The commission shall fix the time and place of
286 the hearing and notify the petitioners thereof. In pending
287 matters, the commission shall have the same powers as to
288 subpoenaing witnesses, administering oaths, examining witnesses
289 under oath and conducting the hearing, as is now vested by law in
290 the Mississippi Public Service Commission, as to hearings before
291 it, with the additional power that the executive director may
292 issue all subpoenas, both at the instance of the petitioner and of
293 the commission. At the hearings the petitioner, and any other
294 interested party, may offer exhibits, present witnesses, and

295 otherwise submit evidence, as the commission deems appropriate.
296 After the hearing, the commission's decision shall be deemed the
297 final administrative agency decision on the matter.

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

325 (3) Upon the filing with the commission of a petition for
326 appeal to the Hinds County Chancery Court, it shall be the duty of
327 the commission, as promptly as possible and within sixty (60) days

328 after approval of the appeal bond, if required, to file with the
329 clerk of the chancery court to which the appeal is taken, a copy
330 of the petition for appeal and of the rule, regulation, permit or
331 order appealed from, and the original and one (1) copy of the
332 transcript of the record of proceedings in evidence before the
333 commission. After the filing of the petition, the appeal shall be
334 perfected by the filing with the clerk of the chancery court to
335 which the appeal is taken of bond in the sum of Five Hundred
336 Dollars (\$500.00) with two (2) sureties or with a surety company
337 qualified to do business in Mississippi as the surety, conditioned
338 to pay the cost of the appeal; the bond to be approved by any
339 member of the commission, or by the clerk of the court to which
340 the appeal is taken. The perfection of an appeal shall not stay
341 or suspend the operation of any rule, regulation, permit or order
342 of the board, but the judge of the chancery court to which the
343 appeal is taken may award a writ of supersedeas to any rule,
344 regulation, permit or order of the commission after five (5) days
345 notice to the commission and after hearing. Any order or judgment
346 staying the operation of any rule, regulation, permit or order of
347 the commission shall contain a specific finding, based upon
348 evidence submitted to the chancery judge and identified by
349 reference thereto, that great or irreparable damage would result
350 to the appellant if he is denied relief, and the stay shall not
351 become effective until a supersedeas bond shall have been executed
352 and filed with and approved by the clerk of the court or the
353 chancery judge, payable to the state. If the appeal is of a
354 commission order concerning the lease of state lands for minerals,
355 such appeal shall be given priority over other matters pending in
356 the chancery court. If the appeal is of a commission permit, such
357 appeal shall be given priority over other matters pending in
358 chancery court. In all other cases, the bond shall be in an
359 amount fixed by the chancery judge and conditioned as the chancery
360 judge may direct in the order granting the supersedeas.

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