

By: Senator(s) Dearing, Little, Posey, Michel, Morgan, Thames, King, Gordon, Huggins, Brown, Albritton, Walley, Doxey, Chaney, Kirby, Butler, Lee (35th), White, Clarke, Flowers, Jackson (15th), Pickering

To: Oil, Gas and Other Minerals

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2853

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 Section 29-7-1 et seq.

21 (2) The words "mineral lease commission," means the  
22 Mississippi Major Economic Impact Authority.

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

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

27 29-7-3. There shall be no development or extraction of oil,  
28 gas, or other minerals from state-owned lands by any private party  
29 without first obtaining a mineral lease therefor from the  
30 commission. The commission is hereby authorized and empowered,  
31 for and on behalf of the state, to lease any and all of the state  
32 land now owned (including that submerged or wherever the tide may

33 ebb and flow) or hereafter acquired, to some reputable person,  
34 association, or company for oil and/or gas and/or other minerals  
35 in and under and which may be produced therefrom, excepting,  
36 however, sixteenth section school land, lieu lands, and such  
37 forfeited tax land and property the title to which is subject to  
38 any lawful redemption, for such consideration and upon such terms  
39 and conditions as the commission deems just and proper.

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

55 There shall not be conducted any seismographic or other  
56 mineral exploration or testing activities on any state-owned lands  
57 within the mineral leasing jurisdiction of the commission without  
58 first obtaining a permit therefor from the commission. Upon  
59 consultation with the Office of Geology in the Mississippi  
60 Department of Environmental Quality and any other state agency as  
61 the commission deems appropriate, the commission shall \* \* \*  
62 promulgate rules and regulations governing all aspects of  
63 seismographic or other mineral exploration activity on state lands  
64 within its jurisdiction, including the establishing of fees and  
65 issuance of permits for the conduct of such mineral exploration

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

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

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

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

132 gravel, equal to that being had by such adjoining state, in all  
133 cases the requisite consents therefor being lawfully obtained from  
134 the United States.

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

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

149 29-7-17. (1) Any person found by the commission to be  
150 violating any of the provisions of Section 29-7-3, or any rule or  
151 regulation or written order of the commission in pursuance  
152 thereof, or any condition or limitation of a permit shall be  
153 subject to a civil penalty of not more than Ten Thousand Dollars  
154 (\$10,000.00) for each violation, such penalty to be assessed and  
155 levied by the commission after a hearing as hereinafter provided.  
156 Each day upon which a violation occurs shall be deemed a separate  
157 and additional violation. Appeals from the imposition of a civil  
158 penalty may be taken to the appropriate chancery court in the same  
159 manner as appeals from the orders of the commission. If the  
160 appellant desires to stay the execution of a civil penalty  
161 assessed by the commission, he shall give bond with sufficient  
162 resident sureties of one or more guaranty or surety companies  
163 authorized to do business in this state, payable to the State of  
164 Mississippi, in an amount equal to double the amount of any civil

165 penalty assessed by the commission, as to which the stay of  
166 execution is desired, on the condition that if the judgment shall  
167 be affirmed the appellant shall pay all costs of the assessment  
168 entered against him.

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

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

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

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

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

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

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

226           29-7-19. (1) The hearings, as provided under Section  
227 29-7-21(1), may be conducted by the commission itself at a regular  
228 or special meeting of the commission, or the commission may  
229 designate a hearing officer who may conduct such hearings in the

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

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

247 **SECTION 5.** The following shall be codified as Section  
248 29-7-21, Mississippi Code of 1972:

249 29-7-21. (1) Any person or interested party aggrieved by  
250 any final rule, regulation, permit or order of the commission may  
251 file a petition with the commission within thirty (30) days after  
252 the final rule, regulation, permit or order is entered on the  
253 minutes. The petition shall set forth the grounds and reasons for  
254 the complaint and request a hearing of the matter involved.  
255 However, there shall be no hearing on the same subject matter that  
256 has previously been held before the commission or its designated  
257 hearing officer. The commission shall fix the time and place of  
258 the hearing and notify the petitioners thereof. In pending  
259 matters, the commission shall have the same powers as to  
260 subpoenaing witnesses, administering oaths, examining witnesses  
261 under oath and conducting the hearing, as is now vested by law in  
262 the Mississippi Public Service Commission, as to hearings before



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

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

295 awarded by any other court or judge to restrain any action of the  
296 commission under this chapter.

297 (3) Upon the filing with the commission of a petition for  
298 appeal to the Hinds County Chancery Court, it shall be the duty of  
299 the commission, as promptly as possible and within sixty (60) days  
300 after approval of the appeal bond, if required, to file with the  
301 clerk of the chancery court to which the appeal is taken, a copy  
302 of the petition for appeal and of the rule, regulation, permit or  
303 order appealed from, and the original and one (1) copy of the  
304 transcript of the record of proceedings in evidence before the  
305 commission. After the filing of the petition, the appeal shall be  
306 perfected by the filing with the clerk of the chancery court to  
307 which the appeal is taken of bond in the sum of Five Hundred  
308 Dollars (\$500.00) with two (2) sureties or with a surety company  
309 qualified to do business in Mississippi as the surety, conditioned  
310 to pay the cost of the appeal; the bond to be approved by any  
311 member of the commission, or by the clerk of the court to which  
312 the appeal is taken. The perfection of an appeal shall not stay  
313 or suspend the operation of any rule, regulation, permit or order  
314 of the board, but the judge of the chancery court to which the  
315 appeal is taken may award a writ of supersedeas to any rule,  
316 regulation, permit or order of the commission after five (5) days'  
317 notice to the commission and after hearing. Any order or judgment  
318 staying the operation of any rule, regulation, permit or order of  
319 the commission shall contain a specific finding, based upon  
320 evidence submitted to the chancery judge and identified by  
321 reference thereto, that great or irreparable damage would result  
322 to the appellant if he is denied relief, and the stay shall not  
323 become effective until a supersedeas bond shall have been executed  
324 and filed with and approved by the clerk of the court or the  
325 chancery judge, payable to the state. If the appeal is of a  
326 commission order concerning the lease of state lands for minerals,  
327 then a bond amount equal to one hundred twenty-five percent (125%)

328 of the amount bid for the lease shall be posted by the appellant.  
329 If the appeal is of a commission permit then a bond amount equal  
330 to Fifty Thousand Dollars (\$50,000.00) times the number of square  
331 miles covered in the permit shall be posted by the appellant. In  
332 all other cases, the bond shall be in an amount fixed by the  
333 chancery judge and conditioned as the chancery judge may direct in  
334 the order granting the supersedeas.

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