

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)

To: Oil, Gas and Other Minerals

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 whereover 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 clean-up, 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 clean-up, 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 clean-up action shall be liable for the cost of such remedial or
201 clean-up 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 twenty (20) 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 requests 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.