

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

SENATE BILL NO. 2853
(As Passed the Senate)

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 and
40 provided that no mineral lease shall allow offshore drilling
41 operations north of the coastal barrier islands other than blocks
42 41 and 42 situated north of Petit Bois Island.

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

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

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

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

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

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

132 such a basis as it may deem proper, but where the waters lie
133 between this state and an adjoining state, there must be a cash
134 realization to this state, including taxes paid for such sand and
135 gravel, equal to that being had by such adjoining state, in all
136 cases the requisite consents therefor being lawfully obtained from
137 the United States.

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

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

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

165 resident sureties of one or more guaranty or surety companies
166 authorized to do business in this state, payable to the State of
167 Mississippi, in an amount equal to double the amount of any civil
168 penalty assessed by the commission, as to which the stay of
169 execution is desired, on the condition that if the judgment shall
170 be affirmed the appellant shall pay all costs of the assessment
171 entered against him.

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

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

198 in a civil action brought in the appropriate county or circuit
199 court of the county in which venue may lie.

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

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

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

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

227 **SECTION 4.** The following shall be codified as Section
228 29-7-19, Mississippi Code of 1972:

229 29-7-19. (1) The hearings, as provided under Section
230 29-7-21(1), may be conducted by the commission itself at a regular

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

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

250 **SECTION 5.** The following shall be codified as Section
251 29-7-21, Mississippi Code of 1972:

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

264 under oath and conducting the hearing, as is now vested by law in
265 the Mississippi Public Service Commission, as to hearings before
266 it, with the additional power that the executive director may
267 issue all subpoenas, both at the instance of the petitioner and of
268 the commission. At the hearings the petitioner, and any other
269 interested party, may offer exhibits, present witnesses, and
270 otherwise submit evidence, as the commission deems appropriate.
271 After the hearing, the commission's decision shall be deemed the
272 final administrative agency decision on the matter.

273 (2) Any interested person aggrieved by any final rule,
274 regulation, permit or order of the commission issued under this
275 section, regardless of the amount involved, may appeal to the
276 Chancery Court of the First Judicial District of Hinds County,
277 Mississippi, which shall be taken and perfected as hereinafter
278 provided, within thirty (30) days from the date that the final
279 rule, regulation or order is filed for record in the office of the
280 commission. The chancery court may affirm the rule, regulation,
281 permit, or order, or reverse the same for further proceedings as
282 the court may require. All appeals shall be on the record, taken
283 and perfected, heard and determined either in termtime or in
284 vacation, including a transcript of pleadings and testimony, both
285 oral and documentary, filed and heard before the commission, and
286 the appeal shall be heard and disposed of promptly by the court as
287 a preference cause. In perfecting any appeal provided by this
288 section, the provisions of law respecting notice to the reporter
289 and the allowance of bills of exception, now or hereafter in force
290 respecting appeals from the chancery court to the Supreme Court,
291 shall be applicable. However, the reporter shall transcribe his
292 notes and file the transcript of the record with the board within
293 thirty (30) days after approval of the appeal bond.

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

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

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