

By: Representative Reeves

To: Oil, Gas and Other  
Minerals; Conservation and  
Water Resources

HOUSE BILL NO. 272

1 AN ACT TO AMEND SECTION 49-2-7, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE OFFICE OF GEOLOGY WITHIN THE DEPARTMENT OF  
3 ENVIRONMENTAL QUALITY SHALL BE TRANSFERRED TO THE MISSISSIPPI  
4 DEVELOPMENT AUTHORITY; TO AMEND SECTIONS 29-7-3, 49-2-9, 49-17-28,  
5 53-7-5 AND 53-9-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO  
6 BRING FORWARD SECTION 49-2-16, MISSISSIPPI CODE OF 1972, WHICH  
7 PROVIDES FOR THE QUALIFICATIONS OF THE HEAD OF THE OFFICE OF  
8 GEOLOGY AND ENERGY RESOURCES, FOR PURPOSES OF AMENDMENT; TO BRING  
9 FORWARD SECTION 53-7-41, MISSISSIPPI CODE OF 1972, WHICH PROVIDES  
10 FOR THE AUTHORITY OF THE PERMIT BOARD FOR THE SURFACE MINING AND  
11 RECLAMATION OF LAND; TO BRING FORWARD SECTION 53-9-7, MISSISSIPPI  
12 CODE OF 1972, WHICH IS THE DEFINITION SECTION OF THE MISSISSIPPI  
13 SURFACE COAL MINING AND RECLAMATION LAW; AND FOR RELATED PURPOSES.

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

15 SECTION 1. Section 49-2-7, Mississippi Code of 1972, is  
16 amended as follows:

17 49-2-7. (1) The Department of Environmental Quality shall  
18 be the Mississippi Department of Natural Resources with the  
19 exception of the Office of Parks and Recreation, and shall retain  
20 all powers and duties granted by law to the Mississippi Department  
21 of Natural Resources with the exception of the Office of Parks and  
22 Recreation, and wherever the term "Mississippi Department of  
23 Natural Resources" appears in any law the same shall mean the  
24 Department of Environmental Quality. The Executive Director of  
25 the Department of Environmental Quality may assign to the  
26 appropriate offices any powers and duties deemed appropriate to  
27 carry out the lawful duties of the department.

28 The department shall be composed of the following offices:

29 \* \* \*

30 (a) Office of Land and Water Resources; and

31 (b) Office of Pollution Control.

32           (2) The Office of Geology and Energy Resources shall be  
33 transferred to the Mississippi Development Authority.

34           (3) Each office shall be composed of the administrative  
35 units set forth in the consolidation plan adopted by the  
36 commission, subject to changes by the executive director, with  
37 approval of the commission, as hereinafter set forth.

38           (4) The department is designated as the single state  
39 department to receive and expend any federal funds being received  
40 or expended by any agency transferred to the department by Chapter  
41 484, Laws of 1978, and to receive and expend any federal funds  
42 made available for matters within the jurisdiction of the  
43 department.

44           (5) The department shall be responsible for conserving,  
45 managing, developing and protecting the natural resources of the  
46 State of Mississippi within the jurisdiction of the department,  
47 with the exception of functions of the Office of Recreation and  
48 Parks. The department shall coordinate all functions of state  
49 government related to natural resources within the jurisdiction of  
50 the department. The department shall not exercise any of its  
51 authority or powers granted under the provisions of this section  
52 in a manner which would be inconsistent with the provisions of  
53 Section 29-1-1.

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

56           29-7-3. There shall be no development or extraction of oil,  
57 gas, or other minerals from state-owned lands by any private party  
58 without first obtaining a mineral lease therefor from the  
59 commission. The commission is hereby authorized and empowered,  
60 for and on behalf of the state, to lease any and all of the state  
61 land now owned (including that submerged or whereover the tide may  
62 ebb and flow) or hereafter acquired, to some reputable person,  
63 association, or company for oil and/or gas and/or other minerals  
64 in and under and which may be produced therefrom, excepting,

65 however, sixteenth section school land, lieu lands, and such  
66 forfeited tax land and property the title to which is subject to  
67 any lawful redemption, for such consideration and upon such terms  
68 and conditions as the commission deems just and proper. No  
69 mineral lease of offshore lands shall allow offshore drilling  
70 operations north of the coastal barrier islands, except in Blocks  
71 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,  
72 surface offshore drilling operations will not be allowed within  
73 one (1) mile of Cat Island. The commission may only offer for  
74 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and  
75 66 through 98, inclusive, as shown on the Mississippi Department  
76 of Environmental Quality Bureau of Geology Plat of Lease Blocks  
77 (Open File Report 151) on terms and conditions and for a length of  
78 time as determined by the commission. The commission may not  
79 lease any lands or submerged lands off the Mississippi Gulf Coast  
80 that have been leased by the Department on Marine Resources before  
81 January 1, 2004, for any public or private oyster reef lease or  
82 any lands or submerged lands within one (1) mile of that lease for  
83 the purposes of drilling offshore for oil, gas and other minerals.

84 Consistent with the conservation policies of this state under  
85 Section 53-1-1 et seq., the commission may offer for public bid  
86 any tracts or blocks of state-owned lands not currently under  
87 lease, which have been identified to the commission as having  
88 development potential for oil or natural gas, not less than once a  
89 year. Upon consultation with the Office of Geology in the  
90 Mississippi Development Authority, the Secretary of State and any  
91 other state agency as the commission deems appropriate, the  
92 commission shall promulgate rules and regulations consistent with  
93 this chapter governing all aspects of the process of leasing state  
94 lands within its jurisdiction for mineral development, including  
95 the setting of all terms of the lease form to be used for leasing  
96 state-owned lands, any necessary fees, public bidding process,  
97 delay rental payments, shut-in royalty payments, and such other

98 provisions as may be required. The Attorney General shall review  
99 the lease form adopted by the commission for legal sufficiency.

100 There shall not be conducted any seismographic or other  
101 mineral exploration or testing activities on any state-owned lands  
102 within the mineral leasing jurisdiction of the commission without  
103 first obtaining a permit therefor from the commission. Upon  
104 consultation with the Office of Geology in the Mississippi  
105 Development Authority, the Secretary of State and any other state  
106 agency as the commission deems appropriate, the commission shall  
107 promulgate rules and regulations governing all aspects of  
108 seismographic or other mineral exploration activity on state lands  
109 within its jurisdiction, including the establishing of fees and  
110 issuance of permits for the conduct of such mineral exploration  
111 activities. The Attorney General shall review the permit form  
112 adopted by the commission for legal sufficiency. Provided,  
113 however, that persons obtaining permits from the commission for  
114 seismographic or other mineral exploration or testing activities  
115 on state-owned wildlife management areas, lakes and fish  
116 hatcheries, shall be subject to rules and regulations promulgated  
117 therefor by the Mississippi Commission on Wildlife, Fisheries and  
118 Parks which shall also receive all permit fees for such testing on  
119 said lands. In addition, persons obtaining permits from the  
120 commission for seismographic or other mineral exploration or  
121 testing activities on state-owned marine waters shall be subject  
122 to rules and regulations promulgated therefor by the Mississippi  
123 Department on Marine Resources which shall also receive all permit  
124 fees for such testing on those waters.

125 Further, provided that each permit within the Mississippi  
126 Sound or tidelands shall be reviewed by the Mississippi Commission  
127 on Marine Resources and such special conditions as it may specify  
128 will be included in the permit. Information or data obtained in  
129 any mineral exploration activity on any and all state lands shall  
130 be disclosed to the state through the commission, upon demand.

131 Such information or data shall be treated as confidential for a  
132 period of ten (10) years from the date of receipt thereof and  
133 shall not be disclosed to the public or to any firm, individual or  
134 agency other than officials or authorized employees of this state.  
135 Any person who makes unauthorized disclosure of such confidential  
136 information or data shall be guilty of a misdemeanor, and upon  
137 conviction thereof, be fined not more than Five Thousand Dollars  
138 (\$5,000.00) or imprisoned in the county jail not more than one (1)  
139 year, or both.

140 Whenever any such land or property is leased for oil and gas  
141 and/or other minerals, such lease contract shall provide for a  
142 lease royalty to the state of at least three-sixteenths (3/16) of  
143 such oil and gas or other minerals, same to be paid in the manner  
144 prescribed by the commission. Of the monies received in  
145 connection with the execution of such leases, five-tenths of one  
146 percent (5/10 of 1%) shall be retained in a special fund to be  
147 appropriated by the Legislature, One Hundred Thousand Dollars  
148 (\$100,000.00) of which amount to be used by the commission for the  
149 administration of the leasing and permitting under this section,  
150 and the remainder of such amount shall be deposited into the  
151 Education Trust Fund, created in Section 206A, Mississippi  
152 Constitution of 1890; and two percent (2%) shall be paid into a  
153 special fund to be designated as the "Gulf and Wildlife Protection  
154 Fund," to be appropriated by the Legislature, one-half (1/2)  
155 thereof to be apportioned as follows: an amount which shall not  
156 exceed One Million Dollars (\$1,000,000.00) shall be used by the  
157 Mississippi Department of Wildlife, Fisheries and Parks and the  
158 Mississippi Department on Marine Resources solely for the purpose  
159 of cleanup, remedial or abatement actions involving pollution as a  
160 result of the exploration or production of oil or gas, and any  
161 amount in excess of such One Million Dollars (\$1,000,000.00) shall  
162 be deposited into the Education Trust Fund, created in Section  
163 206A, Mississippi Constitution of 1890. The remaining one-half

164 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned  
165 as follows: an amount which shall not exceed One Million Dollars  
166 (\$1,000,000.00) shall be used by the Mississippi Commission on  
167 Wildlife, Fisheries and Parks and the Mississippi Department on  
168 Marine Resources for use first in the prudent management,  
169 preservation, protection and conservation of existing waters,  
170 lands and wildlife of this state and then, provided such purposes  
171 are accomplished, for the acquisition of additional waters and  
172 lands and any amount in excess of such One Million Dollars  
173 (\$1,000,000.00) shall be deposited into the Education Trust Fund,  
174 created in Section 206A, Mississippi Constitution of 1890.  
175 However, in the event that the Legislature is not in session to  
176 appropriate funds from the Gulf and Wildlife Protection Fund for  
177 the purpose of cleanup, remedial or abatement actions involving  
178 pollution as a result of the exploration or production of oil or  
179 gas, then the Mississippi Department of Wildlife, Fisheries and  
180 Parks and the Mississippi Department on Marine Resources may make  
181 expenditures from this special fund account solely for said  
182 purpose. The commission may lease the submerged beds for sand and  
183 gravel on such a basis as it may deem proper, but where the waters  
184 lie between this state and an adjoining state, there must be a  
185 cash realization to this state, including taxes paid for such sand  
186 and gravel, equal to that being had by such adjoining state, in  
187 all cases the requisite consents therefor being lawfully obtained  
188 from the United States.

189 The Department of Environmental Quality is authorized to  
190 employ competent engineering personnel to survey the territorial  
191 waters of this state in the Mississippi Sound and the Gulf of  
192 Mexico and to prepare a map or plat of such territorial waters,  
193 divided into blocks of not more than six thousand (6,000) acres  
194 each with coordinates and reference points based upon longitude  
195 and latitude surveys. The commission is authorized to adopt such  
196 survey, plat or map for leasing of such submerged lands for

197 mineral development; and such leases may, after the adoption of  
198 such plat or map, be made by reference to the map or plat, which  
199 shall be on permanent file with the commission and a copy thereof  
200 on file in the Office of the State Oil and Gas Board.

201       **SECTION 3.** Section 49-2-9, Mississippi Code of 1972, is  
202 amended as follows:

203       49-2-9. (1) Effective July 1, 1979, the commission shall  
204 have the following powers and duties:

205           (a) To formulate the policy of the department regarding  
206 natural resources within the jurisdiction of the department;

207           (b) To adopt, modify, repeal, and promulgate, after due  
208 notice and hearing, and where not otherwise prohibited by federal  
209 or state law, to make exceptions to and grant exemptions and  
210 variances from, and to enforce rules and regulations implementing  
211 or effectuating the powers and duties of the commission under any  
212 and all statutes within the commission's jurisdiction, and as the  
213 commission may deem necessary to prevent, control and abate  
214 existing or potential pollution;

215           (c) To apply for, receive and expend any federal or  
216 state funds or contributions, gifts, devises, bequests or funds  
217 from any other source;

218           (d) To commission or conduct studies designed to  
219 determine alternative methods of managing or using the natural  
220 resources of this state, in a manner to insure efficiency and  
221 maximum productivity;

222           (e) To enter into, and to authorize the executive  
223 director to execute with the approval of the commission,  
224 contracts, grants and cooperative agreements with any federal or  
225 state agency or subdivision thereof, or any public or private  
226 institution located inside or outside the State of Mississippi, or  
227 any person, corporation or association in connection with carrying  
228 out the provisions of this chapter; but this authority under this  
229 chapter and under any and all statutes within the commission's

230 jurisdiction, except those statutes relating to the Bureau of  
231 Recreation and Parks, shall not include contracts, grants or  
232 cooperative agreements which do not develop data or information  
233 usable by the commission, or which provide goods, services or  
234 facilities to the commission or any of its bureaus, and shall  
235 exclude any monies for special interest groups for purposes of  
236 lobbying or otherwise promoting their special interests; and

237 (f) To discharge such other duties, responsibilities  
238 and powers as are necessary to implement the provisions of this  
239 chapter.

240 (2) The Mississippi Development Authority, Office of Geology  
241 and Energy Resources shall be responsible for program management,  
242 procurement, development and maintenance of the Mississippi  
243 Digital Earth Model, which should include the following seven (7)  
244 core data layers of a digital land base computer model of the  
245 State of Mississippi:

246 (a) Geodetic control;

247 (b) Elevation and bathymetry;

248 (c) Orthoimagery;

249 (d) Hydrography;

250 (e) Transportation;

251 (f) Government boundaries; and

252 (g) Cadastral. With respect to the cadastral layer,  
253 the authority and responsibility of the Mississippi Department of  
254 Environmental Quality, Office of Geology and Energy Resources  
255 shall be limited to compiling information submitted by counties.

256 For all seven (7) framework layers, the Mississippi  
257 Department of Environmental Quality, Office of Geology and Energy  
258 Resources shall be the integrator of data from all sources and the  
259 guarantor of data completeness and consistency and shall  
260 administer the council's policies and standards for the  
261 procurement of remote sensing and geographic information system  
262 data by state and local governmental entities.

263           **SECTION 4.** Section 49-17-28, Mississippi Code of 1972, is  
264 amended as follows:

265           49-17-28. (1) There is created a Permit Board for the  
266 purpose of issuing, reissuing, modifying, revoking or denying,  
267 under the conditions, limitations and exemptions prescribed in  
268 Section 49-17-29: (a) permits to control or prevent the discharge  
269 of contaminants and wastes into the air and waters of the state;  
270 (b) permits required under the Solid Wastes Disposal Law of 1974  
271 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1  
272 through 51-3-55; (d) water quality certifications required by  
273 Section 401 of the federal Clean Water Act; and (e) all other  
274 permits within the jurisdiction of the Permit Board. The  
275 membership of the Permit Board shall be composed of the Chief of  
276 the Bureau of Environmental Health of the State Board of Health,  
277 or his designee; the Executive Director of the Department of  
278 Wildlife, Fisheries and Parks, or his designee; the Head of the  
279 Office of Land and Water Resources of the Department of  
280 Environmental Quality, or his designee; the Supervisor of the  
281 State Oil and Gas Board, or his designee; the Executive Director  
282 of the Department of Marine Resources, or his designee; the Head  
283 of the Office of Geology and Energy Resources of the Mississippi  
284 Development Authority, or his designee; the Commissioner of  
285 Agriculture and Commerce, or his designee; a retired professional  
286 engineer knowledgeable in the engineering of water wells and water  
287 supply systems, to be appointed by the Governor for a term  
288 concurrent with that of the Governor and until his successor is  
289 appointed and qualified; and a retired water well contractor, to  
290 be appointed by the Governor for a term concurrent with that of  
291 the Governor and until his successor is appointed and qualified.  
292 The retired professional engineer and the retired water well  
293 contractor shall only vote on matters pertaining to the Office of  
294 Land and Water Resources.

295 (2) Members of the Permit Board who are officers and  
296 employees of the state shall receive no compensation for their  
297 services on the board, but other board members shall receive per  
298 diem compensation as provided in Section 25-3-69. All board  
299 members shall be reimbursed for actual and necessary expenses,  
300 including mileage, incurred in the performance of their official  
301 duties as provided in Section 25-3-41.

302 (3) In implementing the authority granted under this section  
303 for the Permit Board to act on water quality certifications  
304 required by Section 401 of the federal Clean Water Act, the Permit  
305 Board shall authorize the Executive Director of the Department of  
306 Environmental Quality to make decisions on issuance, reissuance,  
307 denial, modification and revocation of water quality  
308 certifications on projects which the department has received no  
309 written adverse comments. The Permit Board may authorize the  
310 executive director to make decisions on water quality  
311 certifications for other projects. A decision of the executive  
312 director made under this authority shall be a decision of the  
313 Permit Board and shall be subject to a formal hearing and an  
314 appeal as provided in Section 49-17-29.

315 **SECTION 5.** Section 53-7-5, Mississippi Code of 1972, is  
316 amended as follows:

317 53-7-5. For the purposes of this chapter, the following  
318 terms shall have the meanings ascribed in this section, except  
319 where the context otherwise requires:

320 (a) "Affected area" means any area from which any  
321 materials are removed or are to be removed in a surface mining  
322 operation and upon which any materials are to be deposited. The  
323 affected area includes all areas affected by the construction of  
324 new roads, or the improvement or use of existing roads other than  
325 public roads to gain access and to haul materials.

326 (b) "Appeal" means an appeal to an appropriate court of  
327 the state taken from a final decision of the Permit Board or  
328 commission made after a formal hearing before that body.

329 (c) "As recorded in the minutes of the Permit Board"  
330 means the date of the Permit Board meeting at which the action  
331 concerned is taken by the Permit Board.

332 (d) "Commission" means the Mississippi Commission on  
333 Environmental Quality.

334 (e) "Department" means the Mississippi Development  
335 Authority, acting through the Office of Geology and Energy  
336 Resources or a successor office.

337 (f) "Executive director" means the Executive Director  
338 of the Mississippi Department of Environmental Quality.

339 (g) "Exploration activity" means the disturbance of the  
340 surface or subsurface for the purpose of determining the location,  
341 quantity or quality of a deposit of any material, except the  
342 drilling of test holes or core holes of twelve (12) inches or less  
343 in diameter.

344 (h) "Formal hearing" means a hearing on the record, as  
345 recorded and transcribed by a court reporter, before the  
346 commission or Permit Board where all parties to the hearing are  
347 allowed to present witnesses, cross-examine witnesses and present  
348 evidence for inclusion into the record, as appropriate under rules  
349 promulgated by the commission or Permit Board.

350 (i) "Fund" means the Surface Mining and Reclamation  
351 Fund created by Section 53-7-69.

352 (j) "General permit" means general permit as defined in  
353 Section 49-17-5.

354 (k) "Highwall" means a wall created by mining having a  
355 slope steeper than two (2) to one (1).

356 (l) "Interested party" means interested party as  
357 provided under Section 49-17-29.

358           (m) "Material" means bentonite, metallic ore, mineral  
359 clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay,  
360 clay gravel, stone, chalk, and any other materials designated by  
361 the commission.

362           (n) "Nearest approximate original contour" means that  
363 surface configuration achieved by backfilling and grading of the  
364 surface-mined area so that it substantially resembles the surface  
365 configuration of the land before mining and blends into and  
366 complements the drainage pattern of the surrounding terrain, with  
367 all highwalls, spoil piles and water-collecting depressions  
368 eliminated, to the extent practicable, unless contained in an  
369 approved reclamation plan.

370           (o) "Operator" means the person that is to engage or  
371 that is engaged in a surface mining operation, whether on a  
372 permanent, continuous basis, or for a limited period of time and  
373 for a specific or ancillary purpose, including any person whose  
374 permit or coverage under a general permit has expired or been  
375 suspended or revoked.

376           (p) "Overburden" means all materials which are removed  
377 to gain access to other materials in the process of surface  
378 mining, including the material before or after its removal by  
379 surface mining.

380           (q) "Permit" means a permit to conduct surface mining  
381 and reclamation operations under this chapter.

382           (r) "Permit area" means all the area designated in the  
383 permit application or application for coverage under a general  
384 permit and shall include all land affected by the surface mining  
385 operations during the term of the permit and may include any  
386 contiguous area which the operator proposes to surface mine  
387 thereafter.

388           (s) "Permit Board" means the Permit Board created by  
389 Section 49-17-28.

390           (t) "Person" means any individual, trust, firm,  
391 joint-stock company, public or private corporation, joint venture,  
392 partnership, association, cooperative, state, or any agency or  
393 institution thereof, municipality, commission, political  
394 subdivision of a state or any interstate body, and includes any  
395 officer or governing or managing body of any municipality,  
396 political subdivision, or the United States or any officer or  
397 employee of the United States.

398           (u) "Public hearing" means a public forum organized by  
399 the commission, department or Permit Board for the purpose of  
400 providing information to the public regarding a surface mining and  
401 reclamation operation and at which members of the public are  
402 allowed to make comments or ask questions or both of the  
403 commission, department or the Permit Board regarding a proposed  
404 operation or permit.

405           (v) "Reclamation" means work necessary to restore an  
406 area of land affected by surface mining to a useful, productive  
407 and beneficial purpose, the entire process being designed to  
408 restore the land to a useful, productive and beneficial purpose,  
409 suitable and amenable to surrounding land and consistent with  
410 local environmental conditions in accordance with the standards  
411 set forth in this chapter.

412           (w) "State" means the State of Mississippi.

413           (x) "Spoil pile" means the overburden and other mined  
414 waste material as it is piled or deposited in the process of  
415 surface mining.

416           (y) "Surface mining" or "mining" means the extraction  
417 of materials from the ground or water or from waste or stock piles  
418 or from pits or banks or natural occurrences by methods including,  
419 but not limited to, strip drift, open pit, contour or auger  
420 mining, dredging, placering, quarrying and leaching, and  
421 activities related thereto, which will alter the surface.

422           (z) "Surface mining operation" or "operation" means the  
423 activities conducted at a mining site, including extraction,  
424 storage, processing and shipping of materials and reclamation of  
425 the affected area. This term does not include the following: the  
426 dredging and removal of oyster shells from navigable bodies of  
427 water; the dredging and removal of any materials from the bed of  
428 navigable streams, when the activity is regulated and permitted  
429 under an individual permit by the United States Corps of  
430 Engineers; the extraction of hydrocarbons in a liquid or gaseous  
431 state by means of wells, pipe, or other on-site methods; the  
432 off-site transportation of materials; exploration activities;  
433 construction activities at a construction site; or any other  
434 exception adopted by the commission in its regulations.

435           (aa) "Topsoil" means the organic or inorganic matter  
436 naturally present on the surface of the earth which has been  
437 subjected to and influenced by genetic and environmental factors  
438 of parent material, climate, macroorganisms and microorganisms,  
439 and topography, all acting over a period of time, and that is  
440 necessary for the growth and regeneration of vegetation on the  
441 surface of the earth.

442           (bb) "Toxic material" means any substance present in  
443 sufficient concentration or amount to cause significant injury or  
444 illness to plant, animal, aquatic or human life.

445           **SECTION 6.** Section 53-9-105, Mississippi Code of 1972, is  
446 amended as follows:

447           53-9-105. (1) The Mississippi Development Authority,  
448 through the Office of Geology, shall establish and maintain a  
449 state reclamation program for abandoned mines which complies with  
450 Subchapter IV of the federal Surface Mining Control and  
451 Reclamation Act of 1977, 30 USCS 1231 through 1243.

452           (2) For any year in which the department intends to conduct  
453 abandoned mine lands reclamation with amounts held in the  
454 Abandoned Mine Lands Reclamation Account, the executive director

455 shall submit to the secretary an application for the support of  
456 the state program and implementation of specific reclamation  
457 projects. Such requests shall include information required by the  
458 secretary. This may include, but is not limited to:

459 (a) A general description of each proposed project;

460 (b) A priority evaluation of each proposed project;

461 (c) A statement of the estimated benefits in such terms  
462 as: number of acres restored, miles of stream improved, acres of  
463 surface lands protected from subsidence, population protected from  
464 subsidence, air pollution, hazards of mine and coal refuse  
465 disposal area fires;

466 (d) An estimate of the cost for each proposed project;

467 (e) In the case of proposed research and demonstration  
468 projects, a description of the specific techniques to be evaluated  
469 or objective to be attained;

470 (f) An identification of lands or interest therein to  
471 be acquired and the estimated cost; and

472 (g) In each year after the first in which a plan is  
473 filed, an inventory of each project funded under the previous  
474 year's grant. This inventory shall include details of financial  
475 expenditures on each project together with a brief description of  
476 each project, including project locations, the landowner's name,  
477 acreage, and the type of reclamation or abatement performed.

478 (3) The reported costs for each proposed project shall  
479 include: actual construction costs, actual operation and  
480 maintenance costs of permanent facilities, planning and  
481 engineering costs, construction inspection costs, and other  
482 necessary administrative expenses.

483 (4) The executive director shall make reports on operations  
484 of the reclamation program as required by the secretary or by  
485 Congress.

486 (5) The executive director shall at all times accept and  
487 consider comments regarding annual grant applications and the

488 eligibility, priority ranking and selection of lands for  
489 reclamation. At least thirty (30) days prior to the submission of  
490 each annual grant application to the secretary, the executive  
491 director shall provide for a public hearing and shall publish a  
492 notice regarding the proposed grant application and the public  
493 hearing in a newspaper of general circulation in the state. The  
494 public notice shall state that a hearing will be held, generally  
495 outline the grant application, and solicit comments regarding the  
496 application. A listing and identification of all projects  
497 included in the grant application shall be mailed to all persons  
498 who have requested written notification of the annual grant  
499 application and shall be available to any person upon request. At  
500 the public hearing for review of an annual grant application, any  
501 person may appear before the executive director or his or her  
502 designee and be heard on the record. The executive director may  
503 receive documentary or other evidence for inclusion in the record.  
504 The executive director shall fix a time for the closing of the  
505 record and may, in his discretion, receive other comments or  
506 evidence that he deems appropriate after the public hearing and  
507 before the closing of the record. A copy of the record shall be  
508 included with the grant application to the secretary.

509 (6) The state shall not be liable under any provision of  
510 federal law for any costs or damages as a result of action taken  
511 or omitted in the course of carrying out the state reclamation  
512 program approved by the secretary. This subsection shall not  
513 preclude liability for costs or damages as a result of gross  
514 negligence or intentional misconduct by the state. Reckless,  
515 willful or wanton misconduct shall constitute gross negligence.  
516 However, nothing in this subsection shall be deemed to waive any  
517 immunity provided by Mississippi law to the state or its  
518 employees, or to waive the protection afforded the state by the  
519 Eleventh Amendment to the United States Constitution.

520           **SECTION 7.** Section 49-2-16, Mississippi Code of 1972, is  
521 amended as follows:

522           49-2-16. (1) The head of the Office of Geology and Energy  
523 Resources shall be a geologist, petroleum engineer or energy  
524 engineer of established reputation with a minimum of a bachelor's  
525 degree in geology, petroleum engineering or energy engineering or  
526 a field related thereto.

527           (2) The head of the Office of Land and Water Resources shall  
528 possess a minimum of six (6) years' experience in a field related  
529 to the bureau's function.

530           (3) The head of the Division of State Land and Water  
531 Resources of the Office of Land and Water Resources shall have six  
532 (6) years' experience in hydraulics and hydrology.

533           (4) The head of the Division of Regional Water Resources of  
534 the Office of Land and Water Resources shall have a minimum of six  
535 (6) years' experience in a field related to the division's  
536 function.

537           (5) The head of the Office of Pollution Control shall have a  
538 minimum of six (6) years' experience in a field related to  
539 pollution control.

540           **SECTION 8.** Section 53-7-41, Mississippi Code of 1972, is  
541 amended as follows:

542           53-7-41. (1) The Permit Board, based upon the provisions of  
543 this chapter, may issue, reissue, deny, modify, revoke, cancel,  
544 rescind, suspend or transfer a permit for a surface mining  
545 operation. The head of the Office of Geology and Energy Resources  
546 shall abstain in any action taken by the Permit Board under this  
547 chapter.

548           (2) The Permit Board shall issue a permit if the Permit  
549 Board determines that the applicant and completed application  
550 comply with the requirements of this chapter.

551           (3) The Permit Board may deny a permit if:

552           (a) The Permit Board finds that the reclamation as  
553 required by this chapter cannot be accomplished by means of the  
554 proposed reclamation plan;

555           (b) Any part of the proposed operation lies within an  
556 area designated as unsuitable for surface mining as designated by  
557 Section 53-7-49 or 53-7-51;

558           (c) The Permit Board finds that the proposed mining  
559 operation will cause pollution of any water of the state or of the  
560 ambient air of the state in violation of applicable state and  
561 federal laws and regulations;

562           (d) The applicant has had any other permit issued under  
563 this chapter revoked, or any bond or deposit posted to comply with  
564 this chapter forfeited, and the conditions causing the permit to  
565 be revoked or the bond or deposit to be forfeited have not been  
566 corrected to the satisfaction of the Permit Board;

567           (e) The Permit Board determines that the proposed  
568 operation will endanger the health and safety of the public or  
569 will create imminent environmental harm;

570           (f) The operation will likely adversely affect any  
571 public highway or road unless the operation is intended to  
572 stabilize or repair the public road or highway; or

573           (g) The applicant is unable to meet the public  
574 liability insurance or performance bonding requirements of this  
575 chapter.

576           (4) The Permit Board shall deny a permit if the Permit Board  
577 finds by clear and convincing evidence on the basis of the  
578 information contained in the permit application or obtained by  
579 on-site inspection that the proposed operation cannot comply with  
580 this chapter or rules and regulations adopted under this chapter  
581 or that the proposed method of operation, road system  
582 construction, shaping or revegetation of the affected area cannot  
583 be carried out in a manner consistent with this chapter and  
584 applicable state and federal laws, rules and regulations.

585 (5) The Permit Board may hold a public hearing to obtain  
586 comments from the public on its proposed action. If the Permit  
587 Board holds a public hearing, the Permit Board shall publish  
588 notice and conduct the hearing as provided in Section 49-17-29.

589 (6) The Permit Board may authorize the executive director,  
590 under any conditions the Permit Board may prescribe, to make  
591 decisions on permit issuance, reissuance, modification, rescission  
592 or cancellation under this chapter. A decision by the executive  
593 director is a decision of the Permit Board and shall be subject to  
594 formal hearing and appeal as provided in Section 49-17-29. The  
595 executive director shall report all permit decisions to the Permit  
596 Board at its next regularly scheduled meeting and those decisions  
597 shall be deemed as recorded in the minutes of the Permit Board at  
598 that time.

599 (7) The Permit Board may cancel a permit at the request of  
600 the operator, if the operator does not commence operations under  
601 the permit by stripping, grubbing or mining any part of the permit  
602 area. The Permit Board may rescind a permit, if, because of a  
603 change in post-mining use of the land by the landowner, the  
604 completion of the approved reclamation plan by the operator is no  
605 longer feasible. If a permit is canceled or rescinded, the  
606 remaining portion of the bond or deposit required under Section  
607 53-7-37 shall be returned to the operator as soon as possible.

608 **SECTION 9.** Section 53-9-7, Mississippi Code of 1972, is  
609 amended as follows:

610 53-9-7. For the purposes of this chapter, the following  
611 terms shall have the meaning ascribed in this section unless the  
612 context requires otherwise:

613 (a) "Abandoned mine lands" means lands and waters  
614 affected by the mining or processing of coal before August 3,  
615 1977, or affected by the mining or processing of noncoal minerals,  
616 including, but not limited to, sand, gravel, clay and soil, before  
617 August 3, 1977, and abandoned or left in either an unreclaimed or

618 inadequately reclaimed condition, and for which there is no  
619 continuing reclamation responsibility required under state or  
620 federal law, and which continue in the present condition  
621 substantially to degrade the quality of the environment, to  
622 prevent or damage the beneficial use of land or water resources,  
623 or to endanger the health or safety of the public. Abandoned mine  
624 lands also means those lands and waters described by 30 USCS  
625 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.

626 (b) "Appeal" means an appeal to an appropriate court of  
627 the state taken from a final decision of the Permit Board or  
628 commission made after a formal hearing before that body.

629 (c) "Approximate original contour" means that surface  
630 configuration achieved by backfilling and grading of the mined  
631 area so that the reclaimed area, including any terracing or access  
632 roads, closely resembles the general surface configuration of the  
633 land before mining and blends into and complements the drainage  
634 pattern of the surrounding terrain, with all highwalls and spoil  
635 piles eliminated. Water impoundments may be allowed if the Permit  
636 Board determines that the impoundments are in compliance with  
637 Section 53-9-45(2)(g).

638 (d) "As recorded in the minutes of the Permit Board"  
639 means the date of the Permit Board meeting at which the action  
640 concerned is taken by the Permit Board.

641 (e) "Coal" means combustible carbonaceous rock,  
642 classified as anthracite, bituminous, subbituminous, or lignite by  
643 the American Society of Testing and Materials.

644 (f) "Commission" means the Mississippi Commission on  
645 Environmental Quality.

646 (g) "Department" means the Mississippi Department of  
647 Environmental Quality.

648 (h) "Executive director" means the executive director  
649 of the department.

650           (i) "Exploration operations" means the disturbance of  
651 the surface or subsurface before surface coal mining and  
652 reclamation operations begin for the purpose of determining the  
653 location, quantity or quality of a coal deposit, and the gathering  
654 of environmental data to establish the conditions of the area  
655 before the beginning of surface coal mining and reclamation  
656 operations.

657           (j) "Federal act" means the Surface Mining Control and  
658 Reclamation Act of 1977, as amended, which is codified as Section  
659 1201 et seq. of Title 30 of the United States Code.

660           (k) "Formal hearing" means a hearing on the record, as  
661 recorded and transcribed by a court reporter, before the  
662 commission or Permit Board where all parties to the hearing are  
663 allowed to present witnesses, cross-examine witnesses and present  
664 evidence for inclusion into the record, as appropriate under rules  
665 promulgated by the commission or Permit Board.

666           (l) "Imminent danger to health and safety of the  
667 public" means the existence of any condition or practice, or any  
668 violation of a permit or other requirement of this chapter, in a  
669 surface coal mining and reclamation operation, which could  
670 reasonably be expected to cause substantial physical harm to  
671 persons outside the permit area before that condition, practice or  
672 violation can be abated. A reasonable expectation of death or  
673 serious injury before abatement exists if a rational person  
674 subjected to the same conditions or practices giving rise to the  
675 peril would not expose himself or herself to the danger during the  
676 time necessary for abatement.

677           (m) "Interested party" means any person claiming an  
678 interest relating to the surface coal mining operation and who is  
679 so situated that the person may be affected by that operation, or  
680 in the matter of regulations promulgated by the commission, any  
681 person who is so situated that the person may be affected by the  
682 action.

683           (n) "Lignite" means consolidated lignite coal having  
684 less than eight thousand three hundred (8,300) British thermal  
685 units per pound, moist and mineral matter free.

686           (o) "Operator" means any person engaged in coal mining  
687 who removes or intends to remove more than two hundred fifty (250)  
688 tons of coal from the earth by coal mining within twelve (12)  
689 consecutive calendar months in any one (1) location.

690           (p) "Permit" means a permit to conduct surface coal  
691 mining and reclamation operations issued under this chapter.

692           (q) "Permit area" means the area of land indicated on  
693 the approved map submitted by the operator with the permit  
694 application which area of land shall be covered by the operator's  
695 performance bond.

696           (r) "Permit Board" means the Permit Board created under  
697 Section 49-17-28.

698           (s) "Person" means an individual, partnership,  
699 association, society, joint venture, joint-stock company, firm,  
700 company, corporation, cooperative or other business organization  
701 and any agency, unit or instrumentality of federal, state or local  
702 government, including any publicly owned utility or publicly owned  
703 corporation.

704           (t) "Prime farmland" means that farmland as defined by  
705 the United States Secretary of Agriculture on the basis of factors  
706 such as moisture availability, temperature regime, chemical  
707 balance, permeability, surface layer composition, susceptibility  
708 to flooding and erosion characteristics, and which historically  
709 have been used for intensive agricultural purposes, and as  
710 published in the federal register.

711           (u) "Public hearing," "informal hearing" or "public  
712 meeting" means a public forum organized by the commission,  
713 department or Permit Board for the purpose of providing  
714 information to the public regarding a surface coal mining and  
715 reclamation operation or regulations proposed by the commission

716 and at which members of the public are allowed to make comments or  
717 ask questions or both of the commission, department or the Permit  
718 Board.

719 (v) "Reclamation plan" means a plan submitted by an  
720 applicant for a permit which sets forth a plan for reclamation of  
721 the proposed surface coal mining operations under this chapter.

722 (w) "Revision" means any change to the permit or  
723 reclamation plan that does not significantly change the effect of  
724 the mining operation on either those persons impacted by the  
725 permitted operations or on the environment, including, but not  
726 limited to, incidental boundary changes to the permit area or a  
727 departure from or change within the permit area, incidental  
728 changes in the mining method or incidental changes in the  
729 reclamation plan.

730 (x) "Secretary" means the Secretary of the United  
731 States Department of Interior.

732 (y) "State" means the State of Mississippi.

733 (z) "State geologist" means the head of the Office of  
734 Geology and Energy Resources of the department or a successor  
735 office.

736 (aa) "State reclamation program" means the Mississippi  
737 program for abandoned mine reclamation provided for in this  
738 chapter.

739 (bb) "Surface coal mining and reclamation operations"  
740 means surface coal mining operations and all activities necessary  
741 and incident to the reclamation of those operations.

742 (cc) "Surface coal mining operations" means:

743 (i) Activities conducted on the surface and  
744 immediate subsurface of lands in connection with a surface coal  
745 mine, surface operations and surface impacts incident to an  
746 underground coal mine, the products of which enter commerce or the  
747 operations of which directly or indirectly affect commerce. These  
748 activities include, but are not limited to:

749 (A) Excavation for the purpose of obtaining  
750 coal including common methods such as contour, strip, auger,  
751 mountaintop removal, boxcut, open pit and area mining;

752 (B) The use of explosives and blasting, in  
753 situ distillation or retorting, leaching or other chemical or  
754 physical processing; and

755 (C) The cleaning, concentrating or other  
756 processing or preparation, and the loading of coal for commerce at  
757 or near the mine site.

758 These activities do not include exploration operations  
759 subject to Section 53-9-41.

760 (ii) Areas upon which the activities occur or  
761 where the activities disturb the natural land surface. These  
762 areas shall also include, but are not limited to:

763 (A) Any adjacent land the use of which is  
764 incidental to any activities;

765 (B) All lands affected by the construction of  
766 new roads or the improvement or use of existing roads to gain  
767 access to the site of any activities and for haulage;

768 (C) All lands affected by excavations,  
769 workings, impoundments, dams, ventilation shafts, entryways,  
770 refuse banks, dumps, stockpiles, overburden piles, spoil banks,  
771 culm banks, tailings, holes or depressions, repair areas, storage  
772 areas, processing areas, shipping areas and other areas upon which  
773 are sited structures, facilities or other property or materials on  
774 the surface resulting from or incident to the activities.

775 (dd) "Unwarranted failure to comply" means the failure  
776 of a permittee to prevent or abate the occurrence of any violation  
777 of a permit, this chapter or any regulation promulgated under this  
778 chapter due to indifference, lack of diligence or lack of  
779 reasonable care.

780 **SECTION 10.** This act shall take effect and be in force from  
781 and after July 1, 2006.