

By: Representative Franks

To: Oil, Gas and Other
Minerals

HOUSE BILL NO. 1535

1 AN ACT TO AMEND SECTION 29-7-3, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE AUTHORITY OF THE MISSISSIPPI MAJOR ECONOMIC IMPACT
3 AUTHORITY IN REGARDS TO MINERAL LEASING ON STATE-OWNED LANDS; TO
4 BRING FORWARD SECTIONS 29-7-1, 29-7-17, 29-7-19 AND 29-7-21,
5 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 29-7-3, Mississippi Code of 1972, is
9 amended as follows:

10 29-7-3. (1) There shall be no development or extraction of
11 oil, gas, or other minerals from state-owned lands by any private
12 party without first obtaining a mineral lease therefor from the
13 commission. The commission is hereby authorized and empowered,
14 for and on behalf of the state, to lease any and all of the state
15 land now owned (including that submerged or whereover the tide may
16 ebb and flow) or hereafter acquired, to some reputable person,
17 association, or company for oil and/or gas and/or other minerals
18 in and under and which may be produced therefrom, excepting,
19 however, sixteenth section school land, lieu lands, and such
20 forfeited tax land and property the title to which is subject to
21 any lawful redemption, for * * * consideration to the highest
22 bidder. However, if consideration is not taken from the highest
23 bidder, the commission shall adopt a resolution and enter upon its
24 minutes the reasons and justification for its actions.

25 No mineral lease of offshore lands shall allow offshore
26 drilling operations north of the coastal barrier islands, except
27 in Blocks 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive.
28 Further, surface offshore drilling operations will not be allowed
29 within one (1) mile of Cat Island. The commission may only offer

30 for lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64
31 and 66 through 98, inclusive, as shown on the Mississippi
32 Department of Environmental Quality Bureau of Geology Plat of
33 Lease Blocks (Open File Report 151). If the commission offers
34 such state-owned lands for lease, the lease shall be awarded to
35 the highest bidder. However, if the lease is not awarded to the
36 highest bidder, the commission shall adopt a resolution and enter
37 upon its minutes the reasons and justification for its actions.
38 The commission may not lease any lands or submerged lands off the
39 Mississippi Gulf Coast that have been leased by the Department on
40 Marine Resources before January 1, 2004, for any public or private
41 oyster reef lease or any lands or submerged lands within one (1)
42 mile of that lease for the purposes of drilling offshore for oil,
43 gas and other minerals.

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

63 required. However, no such rules or regulations promulgated by
64 the commission shall authorize any person to waive such rules and
65 regulations or any part thereof. The Attorney General shall
66 review the lease form adopted by the commission for legal
67 sufficiency.

68 There shall not be conducted any seismographic or other
69 mineral exploration or testing activities on any state-owned lands
70 within the mineral leasing jurisdiction of the commission without
71 first obtaining a permit therefor from the commission. Upon
72 consultation with the Office of Geology in the Mississippi
73 Department of Environmental Quality, the Secretary of State and
74 any other state agency as the commission deems appropriate, the
75 commission shall promulgate rules and regulations governing all
76 aspects of seismographic or other mineral exploration activity on
77 state lands within its jurisdiction, including the establishing of
78 fees and issuance of permits for the conduct of such mineral
79 exploration activities. However, no such rules or regulations
80 promulgated by the commission shall authorize any person to waive
81 such rules and regulations or any part thereof. The Attorney
82 General shall review the permit form adopted by the commission for
83 legal sufficiency. Provided, however, that persons obtaining
84 permits from the commission for seismographic or other mineral
85 exploration or testing activities on state-owned wildlife
86 management areas, lakes and fish hatcheries, shall be subject to
87 rules and regulations promulgated therefor by the Mississippi
88 Commission on Wildlife, Fisheries and Parks which shall also
89 receive all permit fees for such testing on said lands. In
90 addition, persons obtaining permits from the commission for
91 seismographic or other mineral exploration or testing activities
92 on state-owned marine waters shall be subject to rules and
93 regulations promulgated therefor by the Mississippi Department on
94 Marine Resources which shall also receive all permit fees for such
95 testing on those waters.

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

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

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

160 The Department of Environmental Quality is authorized to
161 employ competent engineering personnel to survey the territorial

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

172 (2) The commission shall file an annual report containing
173 the terms of any leases, exploration, fees, public bidding, delay
174 rental payment, and shut-in royalty payments regarding leasing and
175 permitting as authorized by this section, to the following:

176 (a) Speaker of the Mississippi House of Representatives
177 and Lieutenant Governor;

178 (b) The House Conservation and Water Resources
179 Committee and Senate Environmental Protection and Conservation and
180 Water Resources Committees;

181 (c) The House and Senate Oil, Gas and other Minerals
182 Committees;

183 (d) The House and Senate Public Property Committees;
184 and

185 (e) The House and Senate Wildlife, Fisheries and Parks
186 Committees.

187 **SECTION 2.** Section 29-7-1, Mississippi Code of 1972, is
188 brought forward as follows:

189 29-7-1. (1) The Mississippi Major Economic Impact Authority
190 shall be the mineral lease commission, and shall exercise the
191 duties and responsibilities of the mineral lease commission under
192 the provisions of Section 29-7-1 et seq.

193 (2) The words "mineral lease commission," whenever they may
194 appear in the laws of the State of Mississippi, shall be construed
195 to mean the Mississippi Major Economic Impact Authority.

196 (3) The term "commission" means the Mississippi Major
197 Economic Impact Authority.

198 **SECTION 3.** Section 29-7-17, Mississippi Code of 1972, is
199 brought forward as follows:

200 29-7-17. (1) Any person found by the commission to be
201 violating any of the provisions of Section 29-7-3, or any rule or
202 regulation or written order of the commission in pursuance
203 thereof, or any condition or limitation of a permit shall be
204 subject to a civil penalty of not more than Ten Thousand Dollars
205 (\$10,000.00) for each violation, such penalty to be assessed and
206 levied by the commission after a hearing as hereinafter provided.
207 Each day upon which a violation occurs shall be deemed a separate
208 and additional violation. Appeals from the imposition of a civil
209 penalty may be taken to the appropriate chancery court in the same
210 manner as appeals from the orders of the commission. If the
211 appellant desires to stay the execution of a civil penalty
212 assessed by the commission, he shall give bond with sufficient
213 resident sureties of one or more guaranty or surety companies
214 authorized to do business in this state, payable to the State of
215 Mississippi, in an amount equal to double the amount of any civil
216 penalty assessed by the commission, as to which the stay of
217 execution is desired, on the condition that if the judgment shall
218 be affirmed the appellant shall pay all costs of the assessment
219 entered against him.

220 (2) In lieu of, or in addition to, the penalty provided in
221 subsection (1) of this section, the commission shall have power to
222 institute and maintain in the name of the state any and all
223 proceedings necessary or appropriate to enforce the provisions of
224 Section 29-7-3, rules and regulations promulgated, and orders and
225 permits made and issued thereunder, in the appropriate circuit,

226 chancery, county or justice court of the county in which venue may
227 lie. The commission may obtain mandatory or prohibitory
228 injunctive relief, either temporary or permanent, and it shall not
229 be necessary in such cases that the state plead or prove: (i)
230 that irreparable damage would result if the injunction did not
231 issue; (ii) that there is no adequate remedy at law; or (iii) that
232 a written complaint or commission order has first been issued for
233 the alleged violation.

234 (3) Any person who violates any of the provisions of, or
235 fails to perform any duty imposed by, Section 29-7-3 or any rule
236 or regulation issued hereunder, or who violates any order or
237 determination of the commission promulgated pursuant to such
238 section, and causes the death of fish, shellfish, or other
239 wildlife shall be liable, in addition to the penalties provided in
240 subsections (1), (2), (4) and (5) of this section, to pay to the
241 state an additional amount equal to the sum of money reasonably
242 necessary to restock such waters or replenish such wildlife as
243 determined by the commission after consultation with the
244 Mississippi Commission on Wildlife, Fisheries and Parks and the
245 Mississippi Department on Marine Resources. Such amount may be
246 recovered by the commission on behalf of the state in a civil
247 action brought in the appropriate county or circuit court of the
248 county in which venue may lie.

249 (4) Any person who, through misadventure, happenstance or
250 otherwise causes damage to or destruction of state-owned lands or
251 structures or other property thereon necessitating remedial or
252 cleanup action shall be liable for the cost of such remedial or
253 cleanup action and the commission may recover the cost of same by
254 a civil action brought in the circuit court of the county in which
255 venue may lie. This penalty may be recovered in lieu of or in
256 addition to the penalties provided in subsections (1), (2), (3)
257 and (5) of this section.

258 (5) It shall be unlawful for any person to conduct
259 unauthorized mineral exploration, development, or extraction
260 activity or to violate the provisions of Section 29-7-3 or the
261 rules and regulations of the commission which relate to mineral
262 exploration, development, or extraction activity and, upon
263 conviction thereof, such person shall be guilty of a misdemeanor,
264 and fined not less than Five Hundred Dollars (\$500.00) nor more
265 than Five Thousand Dollars (\$5,000.00) for each offense. Each day
266 on which such violation occurs or continues shall constitute a
267 separate offense.

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

273 (7) Proceedings before the commission on civil violations
274 prescribed hereinabove shall be conducted in the manner set forth
275 in this chapter.

276 **SECTION 4.** Section 29-7-19, Mississippi Code of 1972, is
277 brought forward as follows:

278 29-7-19. (1) The hearings, as provided under Section
279 29-7-21(1), may be conducted by the commission itself at a regular
280 or special meeting of the commission, or the commission may
281 designate a hearing officer, who may conduct such hearings in the
282 name of the commission at any time and place as conditions and
283 circumstances may warrant. The hearing officer shall have the
284 record prepared of any hearing that he has conducted for the
285 commission. The record shall be submitted to the commission along
286 with that hearing officer's findings of fact and recommended
287 decision. Upon receipt and review of the record of the hearing
288 and the hearing officer's findings of fact and recommended
289 decision, the commission shall render its decision in the matter.
290 The decision shall become final after it is entered on the minutes

291 and shall be considered the final administrative agency decision
292 on the matter. The decision may be appealed under Section
293 29-7-21(2).

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

299 **SECTION 5.** Section 29-7-21, Mississippi Code of 1972, is
300 brought forward as follows:

301 29-7-21. (1) Any person or interested party aggrieved by
302 any final rule, regulation, permit or order of the commission may
303 file a petition with the commission within thirty (30) days after
304 the final rule, regulation, permit or order is entered on the
305 minutes. The petition shall set forth the grounds and reasons for
306 the complaint and request a hearing of the matter involved.
307 However, there shall be no hearing on the same subject matter that
308 has previously been held before the commission or its designated
309 hearing officer. The commission shall fix the time and place of
310 the hearing and notify the petitioners thereof. In pending
311 matters, the commission shall have the same powers as to
312 subpoenaing witnesses, administering oaths, examining witnesses
313 under oath and conducting the hearing, as is now vested by law in
314 the Mississippi Public Service Commission, as to hearings before
315 it, with the additional power that the executive director may
316 issue all subpoenas, both at the instance of the petitioner and of
317 the commission. At the hearings the petitioner, and any other
318 interested party, may offer exhibits, present witnesses, and
319 otherwise submit evidence, as the commission deems appropriate.
320 After the hearing, the commission's decision shall be deemed the
321 final administrative agency decision on the matter.

322 (2) Any interested person aggrieved by any final rule,
323 regulation, permit or order of the commission issued under this

324 section, regardless of the amount involved, may appeal to the
325 Chancery Court of the First Judicial District of Hinds County,
326 Mississippi, which shall be taken and perfected as hereinafter
327 provided, within thirty (30) days from the date that the final
328 rule, regulation or order is filed for record in the office of the
329 commission. The chancery court may affirm the rule, regulation,
330 permit, or order, or reverse the same for further proceedings as
331 the court may require. All appeals shall be on the record, taken
332 and perfected, heard and determined either in termtime or in
333 vacation, including a transcript of pleadings and testimony, both
334 oral and documentary, filed and heard before the commission, and
335 the appeal shall be heard and disposed of promptly by the court as
336 a preference cause. In perfecting any appeal provided by this
337 section, the provisions of law respecting notice to the reporter
338 and the allowance of bills of exception, now or hereafter in force
339 respecting appeals from the chancery court to the Supreme Court,
340 shall be applicable. However, the reporter shall transcribe his
341 notes and file the transcript of the record with the board within
342 thirty (30) days after approval of the appeal bond.

343 (3) Upon the filing with the commission of a petition for
344 appeal to the Hinds County Chancery Court, it shall be the duty of
345 the commission, as promptly as possible and within sixty (60) days
346 after approval of the appeal bond, if required, to file with the
347 clerk of the chancery court to which the appeal is taken, a copy
348 of the petition for appeal and of the rule, regulation, permit or
349 order appealed from, and the original and one (1) copy of the
350 transcript of the record of proceedings in evidence before the
351 commission. After the filing of the petition, the appeal shall be
352 perfected by the filing with the clerk of the chancery court to
353 which the appeal is taken of bond in the sum of Five Hundred
354 Dollars (\$500.00) with two (2) sureties or with a surety company
355 qualified to do business in Mississippi as the surety, conditioned
356 to pay the cost of the appeal; the bond to be approved by any

357 member of the commission, or by the clerk of the court to which
358 the appeal is taken. The perfection of an appeal shall not stay
359 or suspend the operation of any rule, regulation, permit or order
360 of the board, but the judge of the chancery court to which the
361 appeal is taken may award a writ of supersedeas to any rule,
362 regulation, permit or order of the commission after five (5) days'
363 notice to the commission and after hearing. Any order or judgment
364 staying the operation of any rule, regulation, permit or order of
365 the commission shall contain a specific finding, based upon
366 evidence submitted to the chancery judge and identified by
367 reference thereto, that great or irreparable damage would result
368 to the appellant if he is denied relief, and the stay shall not
369 become effective until a supersedeas bond shall have been executed
370 and filed with and approved by the clerk of the court or the
371 chancery judge, payable to the state. The supersedeas bond shall
372 be in an amount fixed by the chancery judge to protect the lessee
373 or permittee from loss or damage from the stay and conditioned as
374 the chancery judge may direct in the order granting the
375 supersedeas. If the appeal is of a commission order concerning
376 the lease of state lands for minerals, that appeal shall be given
377 priority over other matters pending in the chancery court. If the
378 appeal is of a commission permit, that appeal shall be given
379 priority over other matters pending in chancery court.

380 **SECTION 6.** This act shall take effect and be in force from
381 and after July 1, 2007.