

By: Senator(s) DeLano, Jackson (11th),
Jordan

To: Environment Prot, Cons
and Water Res; Finance

SENATE BILL NO. 2728

1 AN ACT TO AMEND SECTIONS 49-17-14, 49-17-16, 49-17-30 AND
2 49-17-32, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR MORE EFFICIENT
3 MANAGEMENT OF THE AIR OPERATING PERMIT PROGRAM FEE TRUST FUND; TO
4 PROVIDE FOR CHANGES TO THE TITLE V FEE SYSTEM SUCH THAT SUFFICIENT
5 FUNDS ARE COLLECTED THROUGH AN EQUITABLE FEE SYSTEM FOR THE TITLE
6 V PROGRAM; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 49-17-14, Mississippi Code of 1972, is
9 amended as follows:

10 49-17-14. (1) "Title V program" means, as used in Sections
11 49-17-1 through 49-17-45, the air operating permit program
12 mandated in Title V of the 1990 amendments to the federal Clean
13 Air Act, codified in 42 USCS Section 7661 * * * et seq.

14 (2) There is created in the State Treasury a fund to be
15 designated as the "Air Operating Permit Program Fee Trust Fund,"
16 referred to hereinafter as the "fund."

17 (3) The fund shall be treated as a special trust fund.
18 Interest earned on the principal therein shall be credited by the
19 Treasurer to the fund.



20 (4) The fund may receive monies from any available public or
21 private source including, but not limited to, collection of fees,
22 interest, grants, taxes, public and private donations and judicial
23 actions.

24 (5) To facilitate the proper administration of the fund, the
25 commission is authorized to promulgate rules and regulations for
26 the administration of the fund.

27 (6) The commission shall expend or utilize monies in the
28 fund by an annual appropriation approved by the Legislature to pay
29 all reasonable direct and indirect costs associated with the
30 development and administration of the Title V program including,
31 but not limited to, the reasonable costs of the following
32 activities as they relate to the Title V program:

33 (a) Preparing generally applicable regulations or
34 guidance regarding the permit program or its implementation or
35 enforcement;

36 (b) Reviewing and acting on any application for a
37 permit, permit modification or permit renewal, including the
38 development of an applicable requirement as part of the processing
39 of a permit, or permit modification or renewal;

40 (c) Administering the permit program, including the
41 supporting and tracking of permit applications, compliance
42 certification, and related data entry;

43 (d) Implementing and enforcing the terms of any Title V
44 permit (not including any court costs or other costs associated



45 with an enforcement action), including adequate resources to
46 determine which sources are subject to the program;

47 (e) Emissions and ambient monitoring;

48 (f) Modeling, analyses, or demonstrations;

49 (g) Preparing inventories and tracking emissions;

50 (h) Providing direct and indirect support to sources
51 under the Small Business Stationary Source Technical and
52 Environmental Compliance Assistance Program under Section 507 of
53 the federal Clean Air Act in determining and meeting their
54 obligations under this section; and

55 (i) Providing funding to the Advisory Council created
56 in Section 49-17-16 in an amount reasonably sufficient to meet the
57 Advisory Council's obligations under Sections 49-17-1 through
58 49-17-45.

59 (7) Monies in the fund at the end of the fiscal year shall
60 be retained in the fund for use in the next succeeding fiscal
61 year. * * * If the fund balance at the end of the fiscal year
62 exceeds thirty-three percent (33%) of the projected annual costs
63 of administering the program, the assessment rates may be adjusted
64 to reduce the future projected fund balance. If necessary, the
65 assessment rates shall be adjusted during the setting of the next
66 fee schedule.

67 (8) At no time shall a fee be assessed that results in a
68 projected ending fund balance of more than the current annual cost
69 of administering the Title V program.



70 (* * *9) No such fees shall be utilized by the Department
71 of Environmental Quality or any other person for any purpose or
72 purposes other than those purposes required by Sections 49-17-1
73 through 49-17-45, as they related to the Title V program.

74 **SECTION 2.** Section 49-17-16, Mississippi Code of 1972, is
75 amended as follows:

76 49-17-16. (1) (a) An Advisory Council, hereinafter
77 referred to as "Advisory Council," is created to conduct an
78 independent study of the costs for the development and
79 administration of the Title V program within the Department of
80 Environmental Quality and to conduct an annual review of the costs
81 of administering such programs.

82 (b) The costs to be included within the study for the
83 Title V program shall be those costs set forth in Section
84 49-17-14. * * * After completing a study of the program needs and
85 costs, the Advisory Council shall recommend an equitable fee
86 system for the Title V program. The annual review of the Title V
87 program shall determine if the fee system is collecting sufficient
88 funds to meet the program needs. The Advisory Council shall
89 recommend an appropriate fee schedule for the upcoming fee year
90 and, if necessary, recommend changes to the existing fee system so
91 that sufficient funds are collected through an equitable fee
92 system. Each annual review report shall be due January 1 of
93 each * * * year to the commission and the Executive Director of
94 the Department of Environmental Quality.



95 (2) * * * The Department of Environmental Quality shall
96 assist the Advisory Council by providing any information the
97 Advisory Council may require to perform its duties under Sections
98 49-17-1 through 49-17-45.

99 (3) The Advisory Council shall be composed of the following
100 seven (7) persons appointed as follows: three (3) representatives
101 of * * * industries that qualify for inclusion under the Title V
102 program, that are required to pay the * * * program fee * * *,
103 with one (1) such representative to be appointed by the Governor,
104 one (1) by the Lieutenant Governor and one (1) by the Speaker of
105 the House of Representatives; the Executive Director of the * * *
106 Mississippi Development Authority; the President of the
107 Mississippi Manufacturers Association; the President of the
108 Mississippi Farm Bureau Federation; and the Chairman of the
109 Mississippi Small Business Compliance Advisory Panel.
110 Nonappointed members of the Advisory Council may designate an
111 alternate member to act in their stead in performing any function
112 of the Advisory Council. The length of the term for each member
113 of the Advisory Council shall be four (4) years. Members of the
114 Advisory Council may serve successive and multiple terms.

115 * * *

116 (4) * * * Vacancies on the Advisory Council shall be filled
117 by appointment in the same manner as the original
118 appointments. * * *



119 (5) The Advisory Council shall select from their membership
120 a chairperson to preside over meetings and a vice chairperson to
121 preside in the absence of the chairperson or when the chairperson
122 shall be excused. The Advisory Council shall adopt procedures
123 governing the manner of conducting its business. A majority of
124 the members shall constitute a quorum to do business.

125 (6) Members of the Advisory Council shall serve without
126 salary. The members of the Advisory Council shall be entitled to
127 receive reimbursement of their actual travel and hotel expenses as
128 provided in Section 25-3-41, incurred while in the performance of
129 their duties as members of the Advisory Council to be paid on an
130 itemized statement approved by the State Fiscal Officer. Expenses
131 shall be paid from fees collected in accordance with Section
132 49-17-30.

133 (7) The Executive Director of the Department of
134 Environmental Quality shall provide technical, clerical and other
135 support services, including services by contract, as the Advisory
136 Council determines that it requires in the performance of its
137 functions.

138 **SECTION 3.** Section 49-17-30, Mississippi Code of 1972, is
139 amended as follows:

140 49-17-30. (1) As a condition of * * * Title V of the
141 federal Clean Air Act, the owner or operator of any stationary
142 source required to obtain an air operating permit under the Title
143 V program, hereinafter referred to as a "Title V permit," shall



144 pay to the Department of Environmental Quality an annual permit
145 fee. * * *

146 (2) To facilitate the proper administration of the Title V
147 program, the commission is authorized to assess and collect fees
148 from * * * any stationary source subject to the Title V program.
149 The commission shall establish the amount of each fee to cover the
150 costs of the Title V program as provided in Section 49-17-14. The
151 commission is further authorized to promulgate such rules and
152 regulations as are necessary for the development and
153 administration of the Title V program and the assessment and
154 collection of Title V program fees.

155 * * *

156 (3) (a) * * * The fee schedule for Title V program fees
157 shall be set annually by order of the commission in an amount
158 sufficient to cover the reasonable costs of development and
159 administration of the Title V program. The commission's order
160 shall follow:

161 (i) Receipt of the report and recommendations of
162 the Advisory Council, if timely received; and

163 (ii) A public hearing to be held not earlier than
164 thirty (30) days following receipt by the commission of the report
165 and recommendations of the Advisory Council.

166 (b) * * * The commission may proceed with entry of the
167 order on fees if the Advisory Council fails to submit its report
168 in a timely manner.



169 (c) The order of the commission may be appealed in the
170 manner set forth in Section 49-17-41.

171 (d) The determination of the fee set by order of the
172 commission shall not be considered the promulgation of a
173 regulation by the commission.

174 (e) The record of the public hearing shall be included
175 in the record upon which the order is based and shall become a
176 part of the appellate records for all appeals taken from the order
177 of the commission establishing or modifying Title V program fees.
178 Any undisputed amount due from an appellant must be paid according
179 to the appellant's payment schedule during the pendency of the
180 appeal.

181 (4) Any person required to pay the Title V * * * program fee
182 set forth under this chapter who disagrees with the calculation or
183 applicability of the person's fee may petition the commission in
184 writing for a hearing in accordance with Section 49-17-35. Such
185 hearing shall be in accordance with Section 49-17-33. Any
186 disputed portion of the fee for which a hearing has been requested
187 will not incur any penalty or interest from and after the receipt
188 by the commission of the hearing petition. The decision of the
189 commission may be appealed in the manner set forth in Section
190 49-17-41.

191 (5) All fees collected pursuant to this section shall be
192 deposited into the "Air Operating Permit Program Fee Trust Fund"
193 established in Section 49-17-14.



194 **SECTION 4.** Section 49-17-32, Mississippi Code of 1972, is
195 amended as follows:

196 49-17-32. (1) The commission may delegate to the Department
197 of Environmental Quality the responsibility for the collection of
198 the Title V program fees.

199 (2) * * * The * * * owner or operator shall notify the
200 Department of Environmental Quality that the quarterly payment
201 method will be used by September 1.

202 (3) If any part of the * * * Title V program fee imposed is
203 not paid within thirty (30) days after the due date, a penalty of
204 ten percent (10%) of the amount due shall at once accrue and be
205 added thereto, unless the permittee demonstrates to the commission
206 that the failure to make timely payment was unavoidable due to
207 financial hardship or otherwise beyond the permittee's control.
208 If the fee is not paid in full, including any penalty within sixty
209 (60) days of the due date, the Environmental Quality Permit Board
210 may revoke the permit upon proper notice and hearing as required
211 by law. Any penalty collected under this section shall be
212 deposited into the "Air Operating Permit Program Fee Trust Fund."

213 (4) Any owner or operator that fails to properly identify
214 themselves subject to the Title V program may be subject to fees
215 and penalties as determined by the commission.

216 (* * * 5) It is the intent of the Legislature that fees
217 collected pursuant to Sections 49-17-1 through 49-17-45 shall not



218 supplant or reduce in any way the General Fund appropriation to
219 the Department of Environmental Quality.

220 **SECTION 5.** This act shall take effect and be in force from
221 and after July 1, 2020.

