

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1364

1 AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSION ON
 2 ENVIRONMENTAL QUALITY TO ESTABLISH FEES NECESSARY TO SUPPLEMENT
 3 THE COSTS OF SPECIFIC PERMITS, PROGRAMS AND ACTIVITIES
 4 ADMINISTERED BY THE COMMISSION, THE MISSISSIPPI ENVIRONMENTAL
 5 QUALITY PERMIT BOARD AND THE MISSISSIPPI DEPARTMENT OF
 6 ENVIRONMENTAL QUALITY; TO AMEND SECTIONS 49-2-9, 49-31-25,
 7 51-3-31, 51-5-1, 53-7-21, 53-7-25, 53-7-43 AND 53-7-69,
 8 MISSISSIPPI CODE OF 1972, TO ALLOW THE COMMISSION TO SET PROGRAM
 9 FEES AND TO DEPOSIT SUCH FEES IN THE SPECIAL FUND CREATED IN THIS
 10 ACT AND DESIGNATED AS THE "DEPARTMENT OF ENVIRONMENTAL QUALITY
 11 PROGRAM FUND"; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) (a) The commission may establish and
 14 collect reasonable fees in amounts sufficient to supplement the
 15 actual direct and indirect costs associated with the development
 16 and administration of all programs and activities within the
 17 jurisdiction of the commission, the Mississippi Department of
 18 Environmental Quality or the Mississippi Environmental Quality
 19 Permit Board created by Section 49-17-28. The fees shall be set
 20 by the commission at a moderate amount designed to supplement, at
 21 a maximum, the expenses borne by the state, exclusive of federal
 22 funding, in carrying out the duties of the commission, department
 23 and permit board. The amount sufficient to supplement the costs
 24 associated with a permit, program or activity shall be that amount
 25 in excess of the portion of funds appropriated by the Legislature,
 26 for the fiscal year in which the fees are to apply, that is
 27 designated for such specific permit, program or activity. Funds
 28 generated by fees collected by the commission pursuant to this
 29 section may be expended only to defray the costs associated with
 30 the specific permits, programs or activities for which the fees
 31 have been collected. The commission may assess fees either as an



32 annual amount to be paid by a facility or person or as an annual
33 amount reflecting the supplement to the costs of certain
34 activities, including, but not limited to, permit application
35 review and processing. The commission shall review and revise its
36 fees at least once each year, after the final passage of the
37 legislative appropriation for the commission, department or permit
38 board, as the case may be, for the fiscal year in which the fees
39 will be assessed to supplement the costs of specific permits,
40 programs or activities. Commission fees may be set by order of
41 the commission or by regulation adopted by the commission. In
42 setting fees by order or by adopting a regulation, the commission
43 shall consider, at a minimum, the following factors:

44 (i) The fees charged by adjoining states for
45 similar permits, programs or activities;

46 (ii) The actual cost to the commission, the
47 department or the permit board of the activity for which a fee is
48 to be charged;

49 (iii) The amount appropriated by the Legislature,
50 for the fiscal year in which the fees will be assessed, that is
51 designated for issuing the permits or conducting the programs or
52 activities; and

53 (iv) The amount of fees remaining in the
54 Department of Environmental Quality Program Fund at the end of
55 each fiscal year that are available to be credited against the
56 costs borne by the commission, the department or the permit board
57 in conducting activities for which fees are charged.

58 (b) The commission shall file a report by July 31 of
59 each year with the Governor, the Lieutenant Governor and the
60 Speaker of the House describing the type and amount of fees
61 collected by the commission for the preceding fiscal year.

62 (c) It is the intent of the Legislature that fees
63 collected pursuant to this section shall supplement the costs
64 associated with certain permits, programs and activities, but



65 shall not supplant or reduce in any way the General Fund
66 appropriation to the Department of Environmental Quality.

67 (2) There is created in the State Treasury a special fund to
68 be known as the "Department of Environmental Quality Program
69 Fund," hereinafter referred to in this section as the "fund."
70 Unexpended amounts remaining in the fund at the end of a fiscal
71 year shall not lapse into the State General Fund, and any interest
72 earned on amounts in the fund shall be deposited to the credit of
73 the fund. The fund may receive monies from any available public
74 or private source, including, but not limited to, collection of
75 fees, interest, grants, public and private donations, and judicial
76 actions.

77 (3) All fees collected under this section shall be deposited
78 into the fund. Monies in the fund may be expended only upon
79 appropriation of the Legislature, and only for the limited
80 purposes related to supplementing the costs associated with the
81 specific permits, programs or activities, for which the fees
82 deposited in the fund have been collected.

83 (4) The commission may take any administrative or legal
84 action necessary to collect any fees assessed under this section
85 owed to the commission and to collect attorney's fees and costs
86 related to the collection of any fee. The commission may impose,
87 by regulation or order, a late fee for any fee not paid to the
88 commission in a timely fashion and may issue an order directing
89 the holder of a permit who has not paid its fees within ninety
90 (90) days of the fee due date to cease and desist its operations
91 under the permit. The commission may adopt regulations allowing
92 the Mississippi Environmental Quality Permit Board to revoke any
93 permit for which fees due under commission regulations have not
94 been paid within ninety (90) days of the due date.

95 **SECTION 2.** Section 49-2-9, Mississippi Code of 1972, is
96 amended as follows:



97 49-2-9. * * * The commission shall have the following powers
98 and duties:

99 (a) To formulate the policy of the department regarding
100 natural resources within the jurisdiction of the department;

101 (b) To adopt, modify, repeal, and promulgate, after due
102 notice and hearing, and where not otherwise prohibited by federal
103 or state law, to make exceptions to and grant exemptions and
104 variances from, and to enforce rules and regulations implementing
105 or effectuating the powers and duties of the commission under any
106 and all statutes within the commission's jurisdiction, and as the
107 commission may deem necessary to prevent, control and abate
108 existing or potential pollution;

109 (c) To apply for, receive and expend any federal or
110 state funds or contributions, gifts, devises, bequests or funds
111 from any other source;

112 (d) To commission or conduct studies designed to
113 determine alternative methods of managing or using the natural
114 resources of this state, in a manner to insure efficiency and
115 maximum productivity;

116 (e) To enter into, and to authorize the executive
117 director to execute with the approval of the commission,
118 contracts, grants and cooperative agreements with any federal or
119 state agency or subdivision thereof, or any public or private
120 institution located inside or outside the State of Mississippi, or
121 any person, corporation or association in connection with carrying
122 out the provisions of this chapter; but this authority under this
123 chapter and under any and all statutes within the commission's
124 jurisdiction, except those statutes relating to the Bureau of
125 Recreation and Parks, shall not include contracts, grants or
126 cooperative agreements which do not develop data or information
127 usable by the commission, or which provide goods, services or
128 facilities to the commission or any of its bureaus, and shall



129 exclude any monies for special interest groups for purposes of
130 lobbying or otherwise promoting their special interests; * * *

131 (f) To establish and collect fees pursuant to Section 1
132 of this act; and

133 (g) To discharge such other duties, responsibilities
134 and powers as are necessary to implement the provisions of this
135 chapter or any other law within the jurisdiction of the
136 commission.

137 **SECTION 3.** Section 49-31-25, Mississippi Code of 1972, is
138 amended as follows:

139 49-31-25. (1) There is imposed upon each large quantity
140 generator and each small quantity generator that is regulated
141 under the Mississippi hazardous waste management regulations and
142 each facility operator, a pollution prevention fee. The fee upon
143 each large quantity generator and each small quantity generator
144 shall be measured by the quantity of hazardous waste which that
145 generator generates annually. The fee upon each facility operator
146 shall be measured by the quantity of chemicals which each facility
147 releases annually and reports pursuant to Section 313 of EPCRA.
148 For a fee payer that is both a large quantity hazardous waste
149 generator and a facility operator, the fee shall be measured by
150 adding the quantity of fugitive and stack air emissions reported
151 under Section 313 of EPCRA plus the quantity of hazardous waste
152 generated annually. For a fee payer that is both a small quantity
153 hazardous waste generator and a facility operator, the fee shall
154 be measured by the quantity of chemicals released as reported
155 pursuant to Section 313 of EPCRA. The fee shall be assessed in an
156 amount pursuant to the provisions of Section 1 of this act.

157 * * *

158 The fee shall be due and payable to the department not later
159 than September 1 of each year, or not later than a date specified
160 by the department in the invoice which shall be no less than
161 thirty (30) days following receipt of an invoice from the



162 department, whichever is later. The fee shall be based on the
163 quantity of hazardous waste generated and/or chemicals released
164 during the preceding calendar year. The department shall annually
165 prepare an invoice for the amount of the pollution prevention fee
166 due from each generator or facility operator and furnish it to
167 each generator or facility operator. * * *

168 (2) From and after July 1, 1995, the department shall
169 exclude from the calculation of the pollution prevention fee any
170 hazardous waste recycled on-site or shipped off-site for recycling
171 as reported on the Mississippi Annual Hazardous Waste Report or
172 its equivalent and any chemicals recycled on-site or shipped
173 off-site for recycling as reported under Section 313 of EPCRA.
174 The hazardous waste generator or the facility operator shall
175 submit any information the department deems necessary to
176 substantiate that the hazardous waste or chemicals were recycled.

177 (3) At the discretion of the commission, a generator or
178 facility operator shall be liable for a penalty not to exceed
179 three (3) times the amount of the fee due and payable for failure
180 to pay the fee on or before the due date, plus the amount
181 necessary to reimburse the cost of collection.

182 (4) From and after July 1, 1995, the department shall
183 exclude from any calculation of pollution prevention fee any
184 hazardous waste or chemical for which a Title V permit fee is
185 assessed to the same generator or facility operator.

186 **SECTION 4.** Section 51-3-31, Mississippi Code of 1972, is
187 amended as follows:

188 51-3-31. Any person desiring to use water for a beneficial
189 purpose shall apply to the board for a permit for such use on a
190 form prescribed by the board for such purpose. * * * The
191 application shall provide such information as deemed appropriate
192 by the board to its decision to issue such permit.

193 * * *



194 **SECTION 5.** Section 51-5-1, Mississippi Code of 1972, is
195 amended as follows:

196 51-5-1. (1) Every person, firm and corporation desiring to
197 engage in the business of drilling wells for underground water in
198 the State of Mississippi shall file an application with the State
199 Board of Water Commissioners for a drilling license, using forms
200 prepared by the board, setting out qualifications therefor and
201 such other information, including any examination, oral or
202 written, as may be required by the board. * * *

203 (2) All licenses shall expire on June 30 of each year and
204 shall not be transferable and shall be renewable annually, without
205 qualifying examination, upon payment of the required fee. * * *

206 (3) Nothing in this chapter shall prevent a person who has
207 not obtained a license pursuant thereto from constructing a water
208 well on his own or leased property intended for use only in a
209 single family house which is his permanent residence, or intended
210 for use only for watering livestock on his farm, and where the
211 waters to be produced are not intended for use by the public or
212 any residence other than his own. However, such person shall
213 comply with all rules and regulations as to the construction of
214 wells as set out by the provisions of this chapter.

215 (4) This section shall not apply to any person who performs
216 labor or services at the direction and under the personal
217 supervision of a licensed well contractor.

218 (5) A license may be renewed and shall be renewable without
219 examination for the ensuing year by making an application not
220 later than the expiration date and paying the applicable fee.
221 Such application shall have the effect of extending the validity
222 of the current license until the new license is received or the
223 applicant is notified by the board that it has refused his
224 license. On application made after June 30 of each year, the
225 license will be renewed only upon payment of the applicable fee,
226 plus a penalty of Ten Dollars (\$10.00) for each month or fraction



227 thereof the application is delinquent. Delinquency in excess of
228 one (1) year may, in the discretion of the State Board of Water
229 Commissioners, be deemed as a waiver of the driller's right for
230 renewal; and if he should apply thereafter, the board may require
231 that he be considered as a new applicant, including the
232 requirement for examination.

233 (6) Any person whose license has been revoked may, upon
234 application for a new license, be required, in the discretion of
235 the board, to take the examination and in all other ways be
236 considered as a new applicant.

237 **SECTION 6.** Section 53-7-21, Mississippi Code of 1972, is
238 amended as follows:

239 53-7-21. (1) From and after April 15, 1978, no operator
240 shall engage in surface mining without having first submitted a
241 notice of intent or having obtained from the commission a permit
242 for each operation. The approved permit shall authorize the
243 operator to engage in surface mining upon the area of land
244 described in his application for a period of five (5) years from
245 the date of its issuance.

246 In addition to the permit, each operator holding a permit
247 shall annually, on the anniversary date of the permit, file with
248 the commission a certificate of compliance in which the operator,
249 under oath, shall declare that he is following his approved mining
250 and reclamation plan and is abiding by the provisions of this
251 chapter and the rules and regulations of the commission. The
252 commission may establish a fee for filing the certificate of
253 compliance.

254 (2) Before a Class I permit may be issued, a public hearing
255 shall be conducted, and all such applicants shall publish notice
256 pursuant to Section 53-7-45.

257 **SECTION 7.** Section 53-7-25, Mississippi Code of 1972, is
258 amended as follows:



259 53-7-25. Each application for a surface mining permit and
260 each notice of intent shall be accompanied by an initial
261 application fee established by the commission * * *. The
262 commission, in considering regulations pertaining to the
263 application fee * * *, may recognize the differences in the
264 various materials set out herein, taking into consideration the
265 commercial value of the material and the nature and size of
266 operation necessary to extract it. * * *

267 **SECTION 8.** Section 53-7-43, Mississippi Code of 1972, is
268 amended as follows:

269 53-7-43. (1) Amendments to the surface mining plan or
270 reclamation plan may be made in accordance with the regulations of
271 the commission. The commission shall conduct a hearing on the
272 proposed amendments to Class I permits, and may order a hearing on
273 the proposed amendments to Class II permits. Notice shall be
274 published by the Class I operator as provided in Section 53-7-45,
275 and the hearing shall be conducted in accordance with the
276 provisions of Section 53-7-45.

277 (2) In the event the operator seeks to renew his permit for
278 another term, he shall notify the commission of such intent no
279 later than six (6) months prior to the permit's expiration date on
280 a form prescribed by the commission. Upon the submission of such
281 notification to the commission, the commission may, in its
282 discretion, order a public hearing to be held in accordance with
283 the provisions of Section 53-7-45 prior to the expiration of the
284 permit.

285 (3) Permits may be transferred, in the discretion of the
286 commission, pursuant to rules and regulations adopted by the
287 commission which rules and regulations shall be based upon the
288 criteria of the approval of permit applications and the issuance
289 of permits.

290 * * *



291 **SECTION 9.** Section 53-7-69, Mississippi Code of 1972, is
292 amended as follows:

293 53-7-69. (1) All sums received through the payment of * * *
294 loans, grants, penalties and bond damages, less attorney's fees,
295 shall be deposited in the State Treasury to the credit of a
296 special fund to be designated the Land Reclamation Fund which is
297 hereby created in the State Treasury. When appropriated in
298 accordance with Section 27-103-29, Mississippi Code of 1972, this
299 fund shall be available to the commission and may be expended for
300 the administration and enforcement of this chapter and for the
301 reclamation of lands affected by operations. All fees collected
302 shall be deposited in the Department of Environmental Quality
303 Program Fund.

304 (2) Proceeds from the suits on bonds, collateral or deposits
305 and penalties recovered shall be available to be expended to
306 reclaim, in accordance with the provisions of this chapter, lands
307 with respect to which the bonds, collateral or deposits were
308 provided and penalties assessed. Any unused funds may be used to
309 reclaim other unreclaimed lands.

310 **SECTION 10.** The provisions of Section 1 of this act shall be
311 codified in Chapter 2, Title 49, Mississippi Code of 1972.

312 **SECTION 11.** This act shall take effect and be in force from
313 and after July 1, 2002.

