

By: Representative Ellington

To: Conservation and Water Resources

HOUSE BILL NO. 1395

1 AN ACT TO AMEND SECTION 53-9-71, MISSISSIPPI CODE OF 1972, TO  
2 CONFORM VALID EXISTING COAL MINING RIGHTS TO CERTAIN PUBLIC LANDS  
3 TO FEDERAL LAW; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 53-9-71, Mississippi Code of 1972, is  
6 amended as follows:

7 53-9-71. (1) (a) The commission shall establish a planning  
8 process enabling objective decisions based upon competent and  
9 scientifically sound data and information as to which, if any,  
10 land areas of the state are unsuitable for all or certain types of  
11 surface coal mining operations under the standards set forth in  
12 paragraphs (b) and (c) of this subsection. Surface coal mining  
13 and reclamation permits may be issued before completion of the  
14 planning process. That designation shall not prevent the mineral  
15 exploration under this chapter of any area designated as  
16 unsuitable.

17 (b) Upon petition under subsection (2) of this section,  
18 the commission shall designate an area as unsuitable for all or  
19 certain types of surface coal mining operations if the commission  
20 determines that reclamation under this chapter is not  
21 technologically and economically feasible.

22 (c) Upon petition under subsection (2) of this section,  
23 a surface area may be designated unsuitable for certain types of  
24 surface coal mining operations if the operations will:

25 (i) Be incompatible with existing state or local  
26 land-use plans or programs;



27                   (ii) Affect fragile or historic lands in which  
28 those operations could result in significant damage to important  
29 historic, cultural, scientific and aesthetic values and natural  
30 systems;

31                   (iii) Affect renewable resource lands in which the  
32 operations could result in a substantial loss or reduction of  
33 long-range productivity of water supply from surface or subsurface  
34 sources or of food or fiber products. These lands shall include,  
35 but not be limited to, aquifers and aquifer recharge areas; or

36                   (iv) Affect natural hazard lands in which the  
37 operations could substantially endanger life and property,  
38 including, but not limited to, areas subject to frequent flooding  
39 and areas of unstable geology.

40                   (d) The state geologist shall be responsible for  
41 surface coal mining lands review and shall assist the commission  
42 and, as practicable, regional and local governmental units in  
43 developing:

44                   (i) A data base and inventory system which will  
45 permit proper evaluation of the capacity of different land areas  
46 of the state to support and allow reclamation of surface coal  
47 mining operations;

48                   (ii) A method or methods for implementing land-use  
49 planning decisions concerning surface coal mining operations; and

50                   (iii) Proper notices and opportunities for public  
51 participation, including, but not limited to, a public hearing  
52 before making any designation or redesignation, under this  
53 section.

54                   (e) Determinations of the unsuitability of land for  
55 surface coal mining, under this section shall be integrated as  
56 closely as possible with present and future land-use planning and  
57 regulation processes at the federal, state and local governmental  
58 levels.



59           (f) This section shall not apply to lands on which  
60 surface coal mining operations are being conducted under a permit  
61 issued under this chapter.

62           (2) (a) Any interested party may petition the commission to  
63 have an area designated as unsuitable for surface coal mining  
64 operations, or to have a designation terminated. A petition shall  
65 contain allegations of facts with supporting evidence which would  
66 tend to establish the allegations. Within six (6) months after  
67 receipt of the petition, the commission shall hold a public  
68 hearing in the county in which the affected area is located. The  
69 commission shall provide appropriate notices and publications of  
70 the date, time and location of that hearing. After an interested  
71 party has filed a petition, but before the hearing required by  
72 this subsection is held, any person may intervene by filing  
73 allegations of facts with supporting evidence which would tend to  
74 establish the allegations. Within sixty (60) days after the  
75 public hearing, the commission shall issue and furnish to the  
76 petitioner and any other party participating in the hearing a  
77 written decision regarding the petition, and the reasons for its  
78 decision. If all the petitioners stipulate agreement before the  
79 requested hearing and withdraw their request, the commission may  
80 cancel the public hearing. Any interested party aggrieved by a  
81 decision of the commission under this section may request a formal  
82 hearing as provided in Section 49-17-41. Any person who  
83 participated as a party in the formal hearing may appeal the final  
84 decision of the commission as provided in Section 49-17-41.

85           (b) The commission shall promulgate regulations not  
86 less stringent than federal regulations regarding procedures for  
87 designating lands unsuitable for surface coal mining, including  
88 procedures for the content and submission of petitions and notice  
89 and public hearing requirements.



90 (3) Before designating any land areas as unsuitable for  
91 surface coal mining operations, the state geologist shall prepare  
92 a detailed statement on:

- 93 (a) The potential coal resources of the areas;
- 94 (b) The demand for coal resources; and
- 95 (c) The impact of the designation on the environment,  
96 the economy of the state and the supply of coal.

97 (4) After July 1, 1979, and subject to valid rights \* \* \*,  
98 no surface coal mining operations shall be permitted:

99 (a) On any lands within the boundaries of units of the  
100 National Park System, the National Wildlife Refuge Systems, the  
101 National System of Trails, the National Wilderness Preservation  
102 System, the Wild and Scenic Rivers System, including study rivers  
103 designated under Section 1276(a) of Title 16 of the United States  
104 Code, and National Recreation Areas designated by Act of Congress;

105 (b) On any lands within the boundaries of any state  
106 park, state wildlife refuge, state forest, recorded state  
107 historical landmark, state historic site, state archaeological  
108 landmark, or city or county park, forest or historical area. The  
109 commission may, for good cause shown and after a public hearing,  
110 make exceptions to this paragraph;

111 (c) On any federal lands within the boundaries of any  
112 national forest, unless the United States Secretary of Agriculture  
113 or the secretary's designee finds that there are no significant  
114 recreational, timber, economic or other values which may be  
115 incompatible with the surface coal mining operations or the  
116 surface operations and impacts incident to an underground coal  
117 mine;

118 (d) Which will adversely affect any publicly owned park  
119 or places included in the national register of historic sites  
120 unless approved jointly by the commission and any federal, state  
121 or local agency with jurisdiction over the park or the historic  
122 site;



123           (e) Within one hundred (100) feet of the outside  
124 right-of-way line of any public road except where mine access  
125 roads or haulage roads join the right-of-way line, unless the  
126 commission authorizes those roads to be relocated or the area  
127 affected to lie within one hundred (100) feet of the road and if,  
128 after public notice and opportunity for public hearing in the  
129 county in which the surface coal mining and reclamation operations  
130 are located, the commission makes a written finding that the  
131 interests of the public and the landowners affected thereby will  
132 be protected; or

133           (f) Within three hundred (300) feet of any occupied  
134 dwelling, unless waived by the owner of that dwelling, or any  
135 public building, school, church, community or institutional  
136 building, public park, or within one hundred (100) feet of a  
137 cemetery.

138           (5) Those lands designated prior to July 1, 1979, as  
139 unsuitable for surface mining under the Mississippi Surface Mining  
140 and Reclamation Law, and all applicable rules and regulations  
141 promulgated under that law are unsuitable for surface coal mining  
142 under this section.

143           **SECTION 2.** This act shall take effect and be in force from  
144 and after July 1, 2002.

