

By: Representative Reeves

To: Oil, Gas and Other
Minerals

HOUSE BILL NO. 1551

1 AN ACT TO BRING FORWARD SECTIONS 29-7-1, 29-7-3, 29-7-17,
2 29-7-19, 29-7-21 AND 27-29-35, MISSISSIPPI CODE OF 1972, WHICH
3 RELATE TO THE MINERAL LEASE COMMISSION, FOR THE PURPOSES OF
4 AMENDMENT; TO AMEND SECTION 49-2-7, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT THE OFFICE OF GEOLOGY WITHIN THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY SHALL BE TRANSFERRED TO THE MISSISSIPPI
7 DEVELOPMENT AUTHORITY; TO AMEND SECTIONS 29-7-3, 49-2-9, 49-17-28,
8 53-7-5 AND 53-9-105, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
9 BRING FORWARD SECTION 49-2-16, MISSISSIPPI CODE OF 1972, WHICH
10 PROVIDES FOR THE QUALIFICATIONS OF THE HEAD OF THE OFFICE OF
11 GEOLOGY AND ENERGY RESOURCES, FOR PURPOSES OF AMENDMENT; TO BRING
12 FORWARD SECTION 53-7-41, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
13 FOR THE AUTHORITY OF THE PERMIT BOARD FOR THE SURFACE MINING AND
14 RECLAMATION OF LAND; TO BRING FORWARD SECTION 53-9-7, MISSISSIPPI
15 CODE OF 1972, WHICH IS THE DEFINITION SECTION OF THE MISSISSIPPI
16 SURFACE COAL MINING AND RECLAMATION LAW; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 29-7-1, Mississippi Code of 1972, is
19 brought forward as follows:

20 29-7-1. (1) The Mississippi Major Economic Impact Authority
21 shall be the mineral lease commission, and shall exercise the
22 duties and responsibilities of the mineral lease commission under
23 the provisions of Section 29-7-1 et seq.

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

27 (3) The term "commission" means the Mississippi Major
28 Economic Impact Authority.

29 **SECTION 2.** Section 29-7-3, Mississippi Code of 1972, is
30 brought forward as follows:

31 29-7-3. There shall be no development or extraction of oil,
32 gas, or other minerals from state-owned lands by any private party
33 without first obtaining a mineral lease therefor from the
34 commission. The commission is hereby authorized and empowered,

35 for and on behalf of the state, to lease any and all of the state
36 land now owned (including that submerged or wherever the tide may
37 ebb and flow) or hereafter acquired, to some reputable person,
38 association, or company for oil and/or gas and/or other minerals
39 in and under and which may be produced therefrom, excepting,
40 however, sixteenth section school land, lieu lands, and such
41 forfeited tax land and property the title to which is subject to
42 any lawful redemption, for such consideration and upon such terms
43 and conditions as the commission deems just and proper. No
44 mineral lease of offshore lands shall allow offshore drilling
45 operations north of the coastal barrier islands, except in Blocks
46 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,
47 surface offshore drilling operations will not be allowed within
48 one (1) mile of Cat Island. The commission may only offer for
49 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and
50 66 through 98, inclusive, as shown on the Mississippi Department
51 of Environmental Quality Bureau of Geology Plat of Lease Blocks
52 (Open File Report 151) on terms and conditions and for a length of
53 time as determined by the commission. The commission may not
54 lease any lands or submerged lands off the Mississippi Gulf Coast
55 that have been leased by the Department on Marine Resources before
56 January 1, 2004, for any public or private oyster reef lease or
57 any lands or submerged lands within one (1) mile of that lease for
58 the purposes of drilling offshore for oil, gas and other minerals.

59 Consistent with the conservation policies of this state under
60 Section 53-1-1 et seq., the commission may offer for public bid
61 any tracts or blocks of state-owned lands not currently under
62 lease, which have been identified to the commission as having
63 development potential for oil or natural gas, not less than once a
64 year. Upon consultation with the Office of Geology in the
65 Mississippi Department of Environmental Quality, the Secretary of
66 State and any other state agency as the commission deems
67 appropriate, the commission shall promulgate rules and regulations

68 consistent with this chapter governing all aspects of the process
69 of leasing state lands within its jurisdiction for mineral
70 development, including the setting of all terms of the lease form
71 to be used for leasing state-owned lands, any necessary fees,
72 public bidding process, delay rental payments, shut-in royalty
73 payments, and such other provisions as may be required. The
74 Attorney General shall review the lease form adopted by the
75 commission for legal sufficiency.

76 There shall not be conducted any seismographic or other
77 mineral exploration or testing activities on any state-owned lands
78 within the mineral leasing jurisdiction of the commission without
79 first obtaining a permit therefor from the commission. Upon
80 consultation with the Office of Geology in the Mississippi
81 Department of Environmental Quality, the Secretary of State and
82 any other state agency as the commission deems appropriate, the
83 commission shall promulgate rules and regulations governing all
84 aspects of seismographic or other mineral exploration activity on
85 state lands within its jurisdiction, including the establishing of
86 fees and issuance of permits for the conduct of such mineral
87 exploration activities. The Attorney General shall review the
88 permit form adopted by the commission for legal sufficiency.
89 Provided, however, that persons obtaining permits from the
90 commission for seismographic or other mineral exploration or
91 testing activities on state-owned wildlife management areas, lakes
92 and fish hatcheries, shall be subject to rules and regulations
93 promulgated therefor by the Mississippi Commission on Wildlife,
94 Fisheries and Parks which shall also receive all permit fees for
95 such testing on said lands. In addition, persons obtaining
96 permits from the commission for seismographic or other mineral
97 exploration or testing activities on state-owned marine waters
98 shall be subject to rules and regulations promulgated therefor by
99 the Mississippi Department on Marine Resources which shall also
100 receive all permit fees for such testing on those waters.

101 Further, provided that each permit within the Mississippi
102 Sound or tidelands shall be reviewed by the Mississippi Commission
103 on Marine Resources and such special conditions as it may specify
104 will be included in the permit. Information or data obtained in
105 any mineral exploration activity on any and all state lands shall
106 be disclosed to the state through the commission, upon demand.
107 Such information or data shall be treated as confidential for a
108 period of ten (10) years from the date of receipt thereof and
109 shall not be disclosed to the public or to any firm, individual or
110 agency other than officials or authorized employees of this state.
111 Any person who makes unauthorized disclosure of such confidential
112 information or data shall be guilty of a misdemeanor, and upon
113 conviction thereof, be fined not more than Five Thousand Dollars
114 (\$5,000.00) or imprisoned in the county jail not more than one (1)
115 year, or both.

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

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

165 The Department of Environmental Quality is authorized to
166 employ competent engineering personnel to survey the territorial

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

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

179 29-7-17. (1) Any person found by the commission to be
180 violating any of the provisions of Section 29-7-3, or any rule or
181 regulation or written order of the commission in pursuance
182 thereof, or any condition or limitation of a permit shall be
183 subject to a civil penalty of not more than Ten Thousand Dollars
184 (\$10,000.00) for each violation, such penalty to be assessed and
185 levied by the commission after a hearing as hereinafter provided.
186 Each day upon which a violation occurs shall be deemed a separate
187 and additional violation. Appeals from the imposition of a civil
188 penalty may be taken to the appropriate chancery court in the same
189 manner as appeals from the orders of the commission. If the
190 appellant desires to stay the execution of a civil penalty
191 assessed by the commission, he shall give bond with sufficient
192 resident sureties of one or more guaranty or surety companies
193 authorized to do business in this state, payable to the State of
194 Mississippi, in an amount equal to double the amount of any civil
195 penalty assessed by the commission, as to which the stay of
196 execution is desired, on the condition that if the judgment shall
197 be affirmed the appellant shall pay all costs of the assessment
198 entered against him.

199 (2) In lieu of, or in addition to, the penalty provided in
200 subsection (1) of this section, the commission shall have power to
201 institute and maintain in the name of the state any and all
202 proceedings necessary or appropriate to enforce the provisions of
203 Section 29-7-3, rules and regulations promulgated, and orders and
204 permits made and issued thereunder, in the appropriate circuit,
205 chancery, county or justice court of the county in which venue may
206 lie. The commission may obtain mandatory or prohibitory
207 injunctive relief, either temporary or permanent, and it shall not
208 be necessary in such cases that the state plead or prove: (i)
209 that irreparable damage would result if the injunction did not
210 issue; (ii) that there is no adequate remedy at law; or (iii) that
211 a written complaint or commission order has first been issued for
212 the alleged violation.

213 (3) Any person who violates any of the provisions of, or
214 fails to perform any duty imposed by, Section 29-7-3 or any rule
215 or regulation issued hereunder, or who violates any order or
216 determination of the commission promulgated pursuant to such
217 section, and causes the death of fish, shellfish, or other
218 wildlife shall be liable, in addition to the penalties provided in
219 subsections (1), (2), (4) and (5) of this section, to pay to the
220 state an additional amount equal to the sum of money reasonably
221 necessary to restock such waters or replenish such wildlife as
222 determined by the commission after consultation with the
223 Mississippi Commission on Wildlife, Fisheries and Parks and the
224 Mississippi Department on Marine Resources. Such amount may be
225 recovered by the commission on behalf of the state in a civil
226 action brought in the appropriate county or circuit court of the
227 county in which venue may lie.

228 (4) Any person who, through misadventure, happenstance or
229 otherwise causes damage to or destruction of state-owned lands or
230 structures or other property thereon necessitating remedial or
231 cleanup action shall be liable for the cost of such remedial or

232 cleanup action and the commission may recover the cost of same by
233 a civil action brought in the circuit court of the county in which
234 venue may lie. This penalty may be recovered in lieu of or in
235 addition to the penalties provided in subsections (1), (2), (3)
236 and (5) of this section.

237 (5) It shall be unlawful for any person to conduct
238 unauthorized mineral exploration, development, or extraction
239 activity or to violate the provisions of Section 29-7-3 or the
240 rules and regulations of the commission which relate to mineral
241 exploration, development, or extraction activity and, upon
242 conviction thereof, such person shall be guilty of a misdemeanor,
243 and fined not less than Five Hundred Dollars (\$500.00) nor more
244 than Five Thousand Dollars (\$5,000.00) for each offense. Each day
245 on which such violation occurs or continues shall constitute a
246 separate offense.

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

252 (7) Proceedings before the commission on civil violations
253 prescribed hereinabove shall be conducted in the manner set forth
254 in this chapter.

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

257 29-7-19. (1) The hearings, as provided under Section
258 29-7-21(1), may be conducted by the commission itself at a regular
259 or special meeting of the commission, or the commission may
260 designate a hearing officer, who may conduct such hearings in the
261 name of the commission at any time and place as conditions and
262 circumstances may warrant. The hearing officer shall have the
263 record prepared of any hearing that he has conducted for the
264 commission. The record shall be submitted to the commission along

265 with that hearing officer's findings of fact and recommended
266 decision. Upon receipt and review of the record of the hearing
267 and the hearing officer's findings of fact and recommended
268 decision, the commission shall render its decision in the matter.
269 The decision shall become final after it is entered on the minutes
270 and shall be considered the final administrative agency decision
271 on the matter. The decision may be appealed under Section
272 29-7-21(2).

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

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

280 29-7-21. (1) Any person or interested party aggrieved by
281 any final rule, regulation, permit or order of the commission may
282 file a petition with the commission within thirty (30) days after
283 the final rule, regulation, permit or order is entered on the
284 minutes. The petition shall set forth the grounds and reasons for
285 the complaint and request a hearing of the matter involved.
286 However, there shall be no hearing on the same subject matter that
287 has previously been held before the commission or its designated
288 hearing officer. The commission shall fix the time and place of
289 the hearing and notify the petitioners thereof. In pending
290 matters, the commission shall have the same powers as to
291 subpoenaing witnesses, administering oaths, examining witnesses
292 under oath and conducting the hearing, as is now vested by law in
293 the Mississippi Public Service Commission, as to hearings before
294 it, with the additional power that the executive director may
295 issue all subpoenas, both at the instance of the petitioner and of
296 the commission. At the hearings the petitioner, and any other
297 interested party, may offer exhibits, present witnesses, and

298 otherwise submit evidence, as the commission deems appropriate.
299 After the hearing, the commission's decision shall be deemed the
300 final administrative agency decision on the matter.

301 (2) Any interested person aggrieved by any final rule,
302 regulation, permit or order of the commission issued under this
303 section, regardless of the amount involved, may appeal to the
304 Chancery Court of the First Judicial District of Hinds County,
305 Mississippi, which shall be taken and perfected as hereinafter
306 provided, within thirty (30) days from the date that the final
307 rule, regulation or order is filed for record in the office of the
308 commission. The chancery court may affirm the rule, regulation,
309 permit, or order, or reverse the same for further proceedings as
310 the court may require. All appeals shall be on the record, taken
311 and perfected, heard and determined either in termtime or in
312 vacation, including a transcript of pleadings and testimony, both
313 oral and documentary, filed and heard before the commission, and
314 the appeal shall be heard and disposed of promptly by the court as
315 a preference cause. In perfecting any appeal provided by this
316 section, the provisions of law respecting notice to the reporter
317 and the allowance of bills of exception, now or hereafter in force
318 respecting appeals from the chancery court to the Supreme Court,
319 shall be applicable. However, the reporter shall transcribe his
320 notes and file the transcript of the record with the board within
321 thirty (30) days after approval of the appeal bond.

322 (3) Upon the filing with the commission of a petition for
323 appeal to the Hinds County Chancery Court, it shall be the duty of
324 the commission, as promptly as possible and within sixty (60) days
325 after approval of the appeal bond, if required, to file with the
326 clerk of the chancery court to which the appeal is taken, a copy
327 of the petition for appeal and of the rule, regulation, permit or
328 order appealed from, and the original and one (1) copy of the
329 transcript of the record of proceedings in evidence before the
330 commission. After the filing of the petition, the appeal shall be

331 perfected by the filing with the clerk of the chancery court to
332 which the appeal is taken of bond in the sum of Five Hundred
333 Dollars (\$500.00) with two (2) sureties or with a surety company
334 qualified to do business in Mississippi as the surety, conditioned
335 to pay the cost of the appeal; the bond to be approved by any
336 member of the commission, or by the clerk of the court to which
337 the appeal is taken. The perfection of an appeal shall not stay
338 or suspend the operation of any rule, regulation, permit or order
339 of the board, but the judge of the chancery court to which the
340 appeal is taken may award a writ of supersedeas to any rule,
341 regulation, permit or order of the commission after five (5) days'
342 notice to the commission and after hearing. Any order or judgment
343 staying the operation of any rule, regulation, permit or order of
344 the commission shall contain a specific finding, based upon
345 evidence submitted to the chancery judge and identified by
346 reference thereto, that great or irreparable damage would result
347 to the appellant if he is denied relief, and the stay shall not
348 become effective until a supersedeas bond shall have been executed
349 and filed with and approved by the clerk of the court or the
350 chancery judge, payable to the state. The supersedeas bond shall
351 be in an amount fixed by the chancery judge to protect the lessee
352 or permittee from loss or damage from the stay and conditioned as
353 the chancery judge may direct in the order granting the
354 supersedeas. If the appeal is of a commission order concerning
355 the lease of state lands for minerals, that appeal shall be given
356 priority over other matters pending in the chancery court. If the
357 appeal is of a commission permit, that appeal shall be given
358 priority over other matters pending in chancery court.

359 **SECTION 6.** Section 27-29-35, Mississippi Code of 1972, is
360 brought forward as follows:

361 27-29-35. From and after July 1, 2004, the board of
362 supervisors of a county shall reduce the ad valorem taxes levied
363 by the county in an amount equal to one-half (1/2) of the county's

364 share of the revenue derived from the oil and gas severance tax
365 under Sections 27-25-505 and 27-25-705 as a result of offshore
366 drilling on the Mississippi Gulf Coast. From and after July 1,
367 2004, the governing authorities of a municipality shall reduce the
368 ad valorem taxes levied by the municipality in an amount equal to
369 one-half (1/2) of the municipality's share of the revenue derived
370 from the oil and gas severance tax under Sections 27-25-505 and
371 27-25-705 as a result of offshore drilling on the Mississippi Gulf
372 Coast.

373 **SECTION 7.** Section 49-2-7, Mississippi Code of 1972, is
374 amended as follows:

375 49-2-7. (1) The Department of Environmental Quality shall
376 be the Mississippi Department of Natural Resources with the
377 exception of the Office of Parks and Recreation, and shall retain
378 all powers and duties granted by law to the Mississippi Department
379 of Natural Resources with the exception of the Office of Parks and
380 Recreation, and wherever the term "Mississippi Department of
381 Natural Resources" appears in any law the same shall mean the
382 Department of Environmental Quality. The Executive Director of
383 the Department of Environmental Quality may assign to the
384 appropriate offices any powers and duties deemed appropriate to
385 carry out the lawful duties of the department.

386 The department shall be composed of the following offices:

387 * * *

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

389 (b) Office of Pollution Control.

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

392 (3) Each office shall be composed of the administrative
393 units set forth in the consolidation plan adopted by the
394 commission, subject to changes by the executive director, with
395 approval of the commission, as hereinafter set forth.

396 (4) The department is designated as the single state
397 department to receive and expend any federal funds being received
398 or expended by any agency transferred to the department by Chapter
399 484, Laws of 1978, and to receive and expend any federal funds
400 made available for matters within the jurisdiction of the
401 department.

402 (5) The department shall be responsible for conserving,
403 managing, developing and protecting the natural resources of the
404 State of Mississippi within the jurisdiction of the department,
405 with the exception of functions of the Office of Recreation and
406 Parks. The department shall coordinate all functions of state
407 government related to natural resources within the jurisdiction of
408 the department. The department shall not exercise any of its
409 authority or powers granted under the provisions of this section
410 in a manner which would be inconsistent with the provisions of
411 Section 29-1-1.

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

414 29-7-3. There shall be no development or extraction of oil,
415 gas, or other minerals from state-owned lands by any private party
416 without first obtaining a mineral lease therefor from the
417 commission. The commission is hereby authorized and empowered,
418 for and on behalf of the state, to lease any and all of the state
419 land now owned (including that submerged or whereover the tide may
420 ebb and flow) or hereafter acquired, to some reputable person,
421 association, or company for oil and/or gas and/or other minerals
422 in and under and which may be produced therefrom, excepting,
423 however, sixteenth section school land, lieu lands, and such
424 forfeited tax land and property the title to which is subject to
425 any lawful redemption, for such consideration and upon such terms
426 and conditions as the commission deems just and proper. No
427 mineral lease of offshore lands shall allow offshore drilling
428 operations north of the coastal barrier islands, except in Blocks

429 40, 41, 42, 43, 63, 64 and 66 through 98, inclusive. Further,
430 surface offshore drilling operations will not be allowed within
431 one (1) mile of Cat Island. The commission may only offer for
432 lease the state-owned lands in Blocks 40, 41, 42, 43, 63, 64 and
433 66 through 98, inclusive, as shown on the Mississippi Department
434 of Environmental Quality Bureau of Geology Plat of Lease Blocks
435 (Open File Report 151) on terms and conditions and for a length of
436 time as determined by the commission. The commission may not
437 lease any lands or submerged lands off the Mississippi Gulf Coast
438 that have been leased by the Department on Marine Resources before
439 January 1, 2004, for any public or private oyster reef lease or
440 any lands or submerged lands within one (1) mile of that lease for
441 the purposes of drilling offshore for oil, gas and other minerals.

442 Consistent with the conservation policies of this state under
443 Section 53-1-1 et seq., the commission may offer for public bid
444 any tracts or blocks of state-owned lands not currently under
445 lease, which have been identified to the commission as having
446 development potential for oil or natural gas, not less than once a
447 year. Upon consultation with the Office of Geology in the
448 Mississippi Development Authority, the Secretary of State and any
449 other state agency as the commission deems appropriate, the
450 commission shall promulgate rules and regulations consistent with
451 this chapter governing all aspects of the process of leasing state
452 lands within its jurisdiction for mineral development, including
453 the setting of all terms of the lease form to be used for leasing
454 state-owned lands, any necessary fees, public bidding process,
455 delay rental payments, shut-in royalty payments, and such other
456 provisions as may be required. The Attorney General shall review
457 the lease form adopted by the commission for legal sufficiency.

458 There shall not be conducted any seismographic or other
459 mineral exploration or testing activities on any state-owned lands
460 within the mineral leasing jurisdiction of the commission without
461 first obtaining a permit therefor from the commission. Upon

462 consultation with the Office of Geology in the Mississippi
463 Development Authority, the Secretary of State and any other state
464 agency as the commission deems appropriate, the commission shall
465 promulgate rules and regulations governing all aspects of
466 seismographic or other mineral exploration activity on state lands
467 within its jurisdiction, including the establishing of fees and
468 issuance of permits for the conduct of such mineral exploration
469 activities. The Attorney General shall review the permit form
470 adopted by the commission for legal sufficiency. Provided,
471 however, that persons obtaining permits from the commission for
472 seismographic or other mineral exploration or testing activities
473 on state-owned wildlife management areas, lakes and fish
474 hatcheries, shall be subject to rules and regulations promulgated
475 therefor by the Mississippi Commission on Wildlife, Fisheries and
476 Parks which shall also receive all permit fees for such testing on
477 said lands. In addition, persons obtaining permits from the
478 commission for seismographic or other mineral exploration or
479 testing activities on state-owned marine waters shall be subject
480 to rules and regulations promulgated therefor by the Mississippi
481 Department on Marine Resources which shall also receive all permit
482 fees for such testing on those waters.

483 Further, provided that each permit within the Mississippi
484 Sound or tidelands shall be reviewed by the Mississippi Commission
485 on Marine Resources and such special conditions as it may specify
486 will be included in the permit. Information or data obtained in
487 any mineral exploration activity on any and all state lands shall
488 be disclosed to the state through the commission, upon demand.
489 Such information or data shall be treated as confidential for a
490 period of ten (10) years from the date of receipt thereof and
491 shall not be disclosed to the public or to any firm, individual or
492 agency other than officials or authorized employees of this state.
493 Any person who makes unauthorized disclosure of such confidential
494 information or data shall be guilty of a misdemeanor, and upon

495 conviction thereof, be fined not more than Five Thousand Dollars
496 (\$5,000.00) or imprisoned in the county jail not more than one (1)
497 year, or both.

498 Whenever any such land or property is leased for oil and gas
499 and/or other minerals, such lease contract shall provide for a
500 lease royalty to the state of at least three-sixteenths (3/16) of
501 such oil and gas or other minerals, same to be paid in the manner
502 prescribed by the commission. Of the monies received in
503 connection with the execution of such leases, five-tenths of one
504 percent (5/10 of 1%) shall be retained in a special fund to be
505 appropriated by the Legislature, One Hundred Thousand Dollars
506 (\$100,000.00) of which amount to be used by the commission for the
507 administration of the leasing and permitting under this section,
508 and the remainder of such amount shall be deposited into the
509 Education Trust Fund, created in Section 206A, Mississippi
510 Constitution of 1890; and two percent (2%) shall be paid into a
511 special fund to be designated as the "Gulf and Wildlife Protection
512 Fund," to be appropriated by the Legislature, one-half (1/2)
513 thereof to be apportioned as follows: an amount which shall not
514 exceed One Million Dollars (\$1,000,000.00) shall be used by the
515 Mississippi Department of Wildlife, Fisheries and Parks and the
516 Mississippi Department on Marine Resources solely for the purpose
517 of cleanup, remedial or abatement actions involving pollution as a
518 result of the exploration or production of oil or gas, and any
519 amount in excess of such One Million Dollars (\$1,000,000.00) shall
520 be deposited into the Education Trust Fund, created in Section
521 206A, Mississippi Constitution of 1890. The remaining one-half
522 (1/2) of such Gulf and Wildlife Protection Fund to be apportioned
523 as follows: an amount which shall not exceed One Million Dollars
524 (\$1,000,000.00) shall be used by the Mississippi Commission on
525 Wildlife, Fisheries and Parks and the Mississippi Department on
526 Marine Resources for use first in the prudent management,
527 preservation, protection and conservation of existing waters,

528 lands and wildlife of this state and then, provided such purposes
529 are accomplished, for the acquisition of additional waters and
530 lands and any amount in excess of such One Million Dollars
531 (\$1,000,000.00) shall be deposited into the Education Trust Fund,
532 created in Section 206A, Mississippi Constitution of 1890.
533 However, in the event that the Legislature is not in session to
534 appropriate funds from the Gulf and Wildlife Protection Fund for
535 the purpose of cleanup, remedial or abatement actions involving
536 pollution as a result of the exploration or production of oil or
537 gas, then the Mississippi Department of Wildlife, Fisheries and
538 Parks and the Mississippi Department on Marine Resources may make
539 expenditures from this special fund account solely for said
540 purpose. The commission may lease the submerged beds for sand and
541 gravel on such a basis as it may deem proper, but where the waters
542 lie between this state and an adjoining state, there must be a
543 cash realization to this state, including taxes paid for such sand
544 and gravel, equal to that being had by such adjoining state, in
545 all cases the requisite consents therefor being lawfully obtained
546 from the United States.

547 The Department of Environmental Quality is authorized to
548 employ competent engineering personnel to survey the territorial
549 waters of this state in the Mississippi Sound and the Gulf of
550 Mexico and to prepare a map or plat of such territorial waters,
551 divided into blocks of not more than six thousand (6,000) acres
552 each with coordinates and reference points based upon longitude
553 and latitude surveys. The commission is authorized to adopt such
554 survey, plat or map for leasing of such submerged lands for
555 mineral development; and such leases may, after the adoption of
556 such plat or map, be made by reference to the map or plat, which
557 shall be on permanent file with the commission and a copy thereof
558 on file in the Office of the State Oil and Gas Board.

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

561 49-2-9. (1) Effective July 1, 1979, the commission shall
562 have the following powers and duties:

563 (a) To formulate the policy of the department regarding
564 natural resources within the jurisdiction of the department;

565 (b) To adopt, modify, repeal, and promulgate, after due
566 notice and hearing, and where not otherwise prohibited by federal
567 or state law, to make exceptions to and grant exemptions and
568 variances from, and to enforce rules and regulations implementing
569 or effectuating the powers and duties of the commission under any
570 and all statutes within the commission's jurisdiction, and as the
571 commission may deem necessary to prevent, control and abate
572 existing or potential pollution;

573 (c) To apply for, receive and expend any federal or
574 state funds or contributions, gifts, devises, bequests or funds
575 from any other source;

576 (d) To commission or conduct studies designed to
577 determine alternative methods of managing or using the natural
578 resources of this state, in a manner to insure efficiency and
579 maximum productivity;

580 (e) To enter into, and to authorize the executive
581 director to execute with the approval of the commission,
582 contracts, grants and cooperative agreements with any federal or
583 state agency or subdivision thereof, or any public or private
584 institution located inside or outside the State of Mississippi, or
585 any person, corporation or association in connection with carrying
586 out the provisions of this chapter; but this authority under this
587 chapter and under any and all statutes within the commission's
588 jurisdiction, except those statutes relating to the Bureau of
589 Recreation and Parks, shall not include contracts, grants or
590 cooperative agreements which do not develop data or information
591 usable by the commission, or which provide goods, services or
592 facilities to the commission or any of its bureaus, and shall

593 exclude any monies for special interest groups for purposes of
594 lobbying or otherwise promoting their special interests; and

595 (f) To discharge such other duties, responsibilities
596 and powers as are necessary to implement the provisions of this
597 chapter.

598 (2) The Mississippi Development Authority, Office of Geology
599 and Energy Resources shall be responsible for program management,
600 procurement, development and maintenance of the Mississippi
601 Digital Earth Model, which should include the following seven (7)
602 core data layers of a digital land base computer model of the
603 State of Mississippi:

604 (a) Geodetic control;

605 (b) Elevation and bathymetry;

606 (c) Orthoimagery;

607 (d) Hydrography;

608 (e) Transportation;

609 (f) Government boundaries; and

610 (g) Cadastral. With respect to the cadastral layer,
611 the authority and responsibility of the Mississippi Development
612 Authority, Office of Geology and Energy Resources shall be limited
613 to compiling information submitted by counties.

614 For all seven (7) framework layers, the Mississippi
615 Development Authority, Office of Geology and Energy Resources
616 shall be the integrator of data from all sources and the guarantor
617 of data completeness and consistency and shall administer the
618 council's policies and standards for the procurement of remote
619 sensing and geographic information system data by state and local
620 governmental entities.

621 **SECTION 10.** Section 49-17-28, Mississippi Code of 1972, is
622 amended as follows:

623 49-17-28. (1) There is created a Permit Board for the
624 purpose of issuing, reissuing, modifying, revoking or denying,
625 under the conditions, limitations and exemptions prescribed in

626 Section 49-17-29: (a) permits to control or prevent the discharge
627 of contaminants and wastes into the air and waters of the state;
628 (b) permits required under the Solid Wastes Disposal Law of 1974
629 (Title 17, Chapter 17); (c) permits required under Sections 51-3-1
630 through 51-3-55; (d) water quality certifications required by
631 Section 401 of the federal Clean Water Act; and (e) all other
632 permits within the jurisdiction of the Permit Board. The
633 membership of the Permit Board shall be composed of the Chief of
634 the Bureau of Environmental Health of the State Board of Health,
635 or his designee; the Executive Director of the Department of
636 Wildlife, Fisheries and Parks, or his designee; the Head of the
637 Office of Land and Water Resources of the Department of
638 Environmental Quality, or his designee; the Supervisor of the
639 State Oil and Gas Board, or his designee; the Executive Director
640 of the Department of Marine Resources, or his designee; the Head
641 of the Office of Geology and Energy Resources of the Mississippi
642 Development Authority, or his designee; the Commissioner of
643 Agriculture and Commerce, or his designee; a retired professional
644 engineer knowledgeable in the engineering of water wells and water
645 supply systems, to be appointed by the Governor for a term
646 concurrent with that of the Governor and until his successor is
647 appointed and qualified; and a retired water well contractor, to
648 be appointed by the Governor for a term concurrent with that of
649 the Governor and until his successor is appointed and qualified.
650 The retired professional engineer and the retired water well
651 contractor shall only vote on matters pertaining to the Office of
652 Land and Water Resources.

653 (2) Members of the Permit Board who are officers and
654 employees of the state shall receive no compensation for their
655 services on the board, but other board members shall receive per
656 diem compensation as provided in Section 25-3-69. All board
657 members shall be reimbursed for actual and necessary expenses,

658 including mileage, incurred in the performance of their official
659 duties as provided in Section 25-3-41.

660 (3) In implementing the authority granted under this section
661 for the Permit Board to act on water quality certifications
662 required by Section 401 of the federal Clean Water Act, the Permit
663 Board shall authorize the Executive Director of the Department of
664 Environmental Quality to make decisions on issuance, reissuance,
665 denial, modification and revocation of water quality
666 certifications on projects which the department has received no
667 written adverse comments. The Permit Board may authorize the
668 executive director to make decisions on water quality
669 certifications for other projects. A decision of the executive
670 director made under this authority shall be a decision of the
671 Permit Board and shall be subject to a formal hearing and an
672 appeal as provided in Section 49-17-29.

673 **SECTION 11.** Section 53-7-5, Mississippi Code of 1972, is
674 amended as follows:

675 53-7-5. For the purposes of this chapter, the following
676 terms shall have the meanings ascribed in this section, except
677 where the context otherwise requires:

678 (a) "Affected area" means any area from which any
679 materials are removed or are to be removed in a surface mining
680 operation and upon which any materials are to be deposited. The
681 affected area includes all areas affected by the construction of
682 new roads, or the improvement or use of existing roads other than
683 public roads to gain access and to haul materials.

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

687 (c) "As recorded in the minutes of the Permit Board"
688 means the date of the Permit Board meeting at which the action
689 concerned is taken by the Permit Board.

690 (d) "Commission" means the Mississippi Commission on
691 Environmental Quality.

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

695 (f) "Executive director" means the Executive Director
696 of the Mississippi Department of Environmental Quality.

697 (g) "Exploration activity" means the disturbance of the
698 surface or subsurface for the purpose of determining the location,
699 quantity or quality of a deposit of any material, except the
700 drilling of test holes or core holes of twelve (12) inches or less
701 in diameter.

702 (h) "Formal hearing" means a hearing on the record, as
703 recorded and transcribed by a court reporter, before the
704 commission or Permit Board where all parties to the hearing are
705 allowed to present witnesses, cross-examine witnesses and present
706 evidence for inclusion into the record, as appropriate under rules
707 promulgated by the commission or Permit Board.

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

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

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

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

716 (m) "Material" means bentonite, metallic ore, mineral
717 clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay,
718 clay gravel, stone, chalk, and any other materials designated by
719 the commission.

720 (n) "Nearest approximate original contour" means that
721 surface configuration achieved by backfilling and grading of the
722 surface-mined area so that it substantially resembles the surface

723 configuration of the land before mining and blends into and
724 complements the drainage pattern of the surrounding terrain, with
725 all highwalls, spoil piles and water-collecting depressions
726 eliminated, to the extent practicable, unless contained in an
727 approved reclamation plan.

728 (o) "Operator" means the person that is to engage or
729 that is engaged in a surface mining operation, whether on a
730 permanent, continuous basis, or for a limited period of time and
731 for a specific or ancillary purpose, including any person whose
732 permit or coverage under a general permit has expired or been
733 suspended or revoked.

734 (p) "Overburden" means all materials which are removed
735 to gain access to other materials in the process of surface
736 mining, including the material before or after its removal by
737 surface mining.

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

740 (r) "Permit area" means all the area designated in the
741 permit application or application for coverage under a general
742 permit and shall include all land affected by the surface mining
743 operations during the term of the permit and may include any
744 contiguous area which the operator proposes to surface mine
745 thereafter.

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

748 (t) "Person" means any individual, trust, firm,
749 joint-stock company, public or private corporation, joint venture,
750 partnership, association, cooperative, state, or any agency or
751 institution thereof, municipality, commission, political
752 subdivision of a state or any interstate body, and includes any
753 officer or governing or managing body of any municipality,
754 political subdivision, or the United States or any officer or
755 employee of the United States.

756 (u) "Public hearing" means a public forum organized by
757 the commission, department or Permit Board for the purpose of
758 providing information to the public regarding a surface mining and
759 reclamation operation and at which members of the public are
760 allowed to make comments or ask questions or both of the
761 commission, department or the Permit Board regarding a proposed
762 operation or permit.

763 (v) "Reclamation" means work necessary to restore an
764 area of land affected by surface mining to a useful, productive
765 and beneficial purpose, the entire process being designed to
766 restore the land to a useful, productive and beneficial purpose,
767 suitable and amenable to surrounding land and consistent with
768 local environmental conditions in accordance with the standards
769 set forth in this chapter.

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

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

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

780 (z) "Surface mining operation" or "operation" means the
781 activities conducted at a mining site, including extraction,
782 storage, processing and shipping of materials and reclamation of
783 the affected area. This term does not include the following: the
784 dredging and removal of oyster shells from navigable bodies of
785 water; the dredging and removal of any materials from the bed of
786 navigable streams, when the activity is regulated and permitted
787 under an individual permit by the United States Corps of
788 Engineers; the extraction of hydrocarbons in a liquid or gaseous

789 state by means of wells, pipe, or other on-site methods; the
790 off-site transportation of materials; exploration activities;
791 construction activities at a construction site; or any other
792 exception adopted by the commission in its regulations.

793 (aa) "Topsoil" means the organic or inorganic matter
794 naturally present on the surface of the earth which has been
795 subjected to and influenced by genetic and environmental factors
796 of parent material, climate, macroorganisms and microorganisms,
797 and topography, all acting over a period of time, and that is
798 necessary for the growth and regeneration of vegetation on the
799 surface of the earth.

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

803 **SECTION 12.** Section 53-9-105, Mississippi Code of 1972, is
804 amended as follows:

805 53-9-105. (1) The Mississippi Development Authority,
806 through the Office of Geology, shall establish and maintain a
807 state reclamation program for abandoned mines which complies with
808 Subchapter IV of the federal Surface Mining Control and
809 Reclamation Act of 1977, 30 USCS 1231 through 1243.

810 (2) For any year in which the department intends to conduct
811 abandoned mine lands reclamation with amounts held in the
812 Abandoned Mine Lands Reclamation Account, the executive director
813 shall submit to the secretary an application for the support of
814 the state program and implementation of specific reclamation
815 projects. Such requests shall include information required by the
816 secretary. This may include, but is not limited to:

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

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

819 (c) A statement of the estimated benefits in such terms
820 as: number of acres restored, miles of stream improved, acres of
821 surface lands protected from subsidence, population protected from

822 subsidence, air pollution, hazards of mine and coal refuse
823 disposal area fires;

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

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

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

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

836 (3) The reported costs for each proposed project shall
837 include: actual construction costs, actual operation and
838 maintenance costs of permanent facilities, planning and
839 engineering costs, construction inspection costs, and other
840 necessary administrative expenses.

841 (4) The executive director shall make reports on operations
842 of the reclamation program as required by the secretary or by
843 Congress.

844 (5) The executive director shall at all times accept and
845 consider comments regarding annual grant applications and the
846 eligibility, priority ranking and selection of lands for
847 reclamation. At least thirty (30) days prior to the submission of
848 each annual grant application to the secretary, the executive
849 director shall provide for a public hearing and shall publish a
850 notice regarding the proposed grant application and the public
851 hearing in a newspaper of general circulation in the state. The
852 public notice shall state that a hearing will be held, generally
853 outline the grant application, and solicit comments regarding the
854 application. A listing and identification of all projects

855 included in the grant application shall be mailed to all persons
856 who have requested written notification of the annual grant
857 application and shall be available to any person upon request. At
858 the public hearing for review of an annual grant application, any
859 person may appear before the executive director or his or her
860 designee and be heard on the record. The executive director may
861 receive documentary or other evidence for inclusion in the record.
862 The executive director shall fix a time for the closing of the
863 record and may, in his discretion, receive other comments or
864 evidence that he deems appropriate after the public hearing and
865 before the closing of the record. A copy of the record shall be
866 included with the grant application to the secretary.

867 (6) The state shall not be liable under any provision of
868 federal law for any costs or damages as a result of action taken
869 or omitted in the course of carrying out the state reclamation
870 program approved by the secretary. This subsection shall not
871 preclude liability for costs or damages as a result of gross
872 negligence or intentional misconduct by the state. Reckless,
873 willful or wanton misconduct shall constitute gross negligence.
874 However, nothing in this subsection shall be deemed to waive any
875 immunity provided by Mississippi law to the state or its
876 employees, or to waive the protection afforded the state by the
877 Eleventh Amendment to the United States Constitution.

878 **SECTION 13.** Section 49-2-16, Mississippi Code of 1972, is
879 brought forward as follows:

880 49-2-16. (1) The head of the Office of Geology and Energy
881 Resources shall be a geologist, petroleum engineer or energy
882 engineer of established reputation with a minimum of a bachelor's
883 degree in geology, petroleum engineering or energy engineering or
884 a field related thereto.

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

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

891 (4) The head of the Division of Regional Water Resources of
892 the Office of Land and Water Resources shall have a minimum of six
893 (6) years' experience in a field related to the division's
894 function.

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

898 **SECTION 14.** Section 53-7-41, Mississippi Code of 1972, is
899 brought forward as follows:

900 53-7-41. (1) The Permit Board, based upon the provisions of
901 this chapter, may issue, reissue, deny, modify, revoke, cancel,
902 rescind, suspend or transfer a permit for a surface mining
903 operation. The head of the Office of Geology and Energy Resources
904 shall abstain in any action taken by the Permit Board under this
905 chapter.

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

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

910 (a) The Permit Board finds that the reclamation as
911 required by this chapter cannot be accomplished by means of the
912 proposed reclamation plan;

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

916 (c) The Permit Board finds that the proposed mining
917 operation will cause pollution of any water of the state or of the
918 ambient air of the state in violation of applicable state and
919 federal laws and regulations;

920 (d) The applicant has had any other permit issued under
921 this chapter revoked, or any bond or deposit posted to comply with
922 this chapter forfeited, and the conditions causing the permit to
923 be revoked or the bond or deposit to be forfeited have not been
924 corrected to the satisfaction of the Permit Board;

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

928 (f) The operation will likely adversely affect any
929 public highway or road unless the operation is intended to
930 stabilize or repair the public road or highway; or

931 (g) The applicant is unable to meet the public
932 liability insurance or performance bonding requirements of this
933 chapter.

934 (4) The Permit Board shall deny a permit if the Permit Board
935 finds by clear and convincing evidence on the basis of the
936 information contained in the permit application or obtained by
937 on-site inspection that the proposed operation cannot comply with
938 this chapter or rules and regulations adopted under this chapter
939 or that the proposed method of operation, road system
940 construction, shaping or revegetation of the affected area cannot
941 be carried out in a manner consistent with this chapter and
942 applicable state and federal laws, rules and regulations.

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

947 (6) The Permit Board may authorize the executive director,
948 under any conditions the Permit Board may prescribe, to make
949 decisions on permit issuance, reissuance, modification, rescission
950 or cancellation under this chapter. A decision by the executive
951 director is a decision of the Permit Board and shall be subject to
952 formal hearing and appeal as provided in Section 49-17-29. The

953 executive director shall report all permit decisions to the Permit
954 Board at its next regularly scheduled meeting and those decisions
955 shall be deemed as recorded in the minutes of the Permit Board at
956 that time.

957 (7) The Permit Board may cancel a permit at the request of
958 the operator, if the operator does not commence operations under
959 the permit by stripping, grubbing or mining any part of the permit
960 area. The Permit Board may rescind a permit, if, because of a
961 change in post-mining use of the land by the landowner, the
962 completion of the approved reclamation plan by the operator is no
963 longer feasible. If a permit is canceled or rescinded, the
964 remaining portion of the bond or deposit required under Section
965 53-7-37 shall be returned to the operator as soon as possible.

966 **SECTION 15.** Section 53-9-7, Mississippi Code of 1972, is
967 brought forward as follows:

968 53-9-7. For the purposes of this chapter, the following
969 terms shall have the meaning ascribed in this section unless the
970 context requires otherwise:

971 (a) "Abandoned mine lands" means lands and waters
972 affected by the mining or processing of coal before August 3,
973 1977, or affected by the mining or processing of noncoal minerals,
974 including, but not limited to, sand, gravel, clay and soil, before
975 August 3, 1977, and abandoned or left in either an unreclaimed or
976 inadequately reclaimed condition, and for which there is no
977 continuing reclamation responsibility required under state or
978 federal law, and which continue in the present condition
979 substantially to degrade the quality of the environment, to
980 prevent or damage the beneficial use of land or water resources,
981 or to endanger the health or safety of the public. Abandoned mine
982 lands also means those lands and waters described by 30 USCS
983 1232(g)(4), 30 USCS 1233(D)(1) and 30 USCS 1239.

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

987 (c) "Approximate original contour" means that surface
988 configuration achieved by backfilling and grading of the mined
989 area so that the reclaimed area, including any terracing or access
990 roads, closely resembles the general surface configuration of the
991 land before mining and blends into and complements the drainage
992 pattern of the surrounding terrain, with all highwalls and spoil
993 piles eliminated. Water impoundments may be allowed if the Permit
994 Board determines that the impoundments are in compliance with
995 Section 53-9-45(2)(g).

996 (d) "As recorded in the minutes of the Permit Board"
997 means the date of the Permit Board meeting at which the action
998 concerned is taken by the Permit Board.

999 (e) "Coal" means combustible carbonaceous rock,
1000 classified as anthracite, bituminous, subbituminous, or lignite by
1001 the American Society of Testing and Materials.

1002 (f) "Commission" means the Mississippi Commission on
1003 Environmental Quality.

1004 (g) "Department" means the Mississippi Department of
1005 Environmental Quality.

1006 (h) "Executive director" means the executive director
1007 of the department.

1008 (i) "Exploration operations" means the disturbance of
1009 the surface or subsurface before surface coal mining and
1010 reclamation operations begin for the purpose of determining the
1011 location, quantity or quality of a coal deposit, and the gathering
1012 of environmental data to establish the conditions of the area
1013 before the beginning of surface coal mining and reclamation
1014 operations.

1015 (j) "Federal act" means the Surface Mining Control and
1016 Reclamation Act of 1977, as amended, which is codified as Section
1017 1201 et seq. of Title 30 of the United States Code.

1018 (k) "Formal hearing" means a hearing on the record, as
1019 recorded and transcribed by a court reporter, before the
1020 commission or Permit Board where all parties to the hearing are
1021 allowed to present witnesses, cross-examine witnesses and present
1022 evidence for inclusion into the record, as appropriate under rules
1023 promulgated by the commission or Permit Board.

1024 (l) "Imminent danger to health and safety of the
1025 public" means the existence of any condition or practice, or any
1026 violation of a permit or other requirement of this chapter, in a
1027 surface coal mining and reclamation operation, which could
1028 reasonably be expected to cause substantial physical harm to
1029 persons outside the permit area before that condition, practice or
1030 violation can be abated. A reasonable expectation of death or
1031 serious injury before abatement exists if a rational person
1032 subjected to the same conditions or practices giving rise to the
1033 peril would not expose himself or herself to the danger during the
1034 time necessary for abatement.

1035 (m) "Interested party" means any person claiming an
1036 interest relating to the surface coal mining operation and who is
1037 so situated that the person may be affected by that operation, or
1038 in the matter of regulations promulgated by the commission, any
1039 person who is so situated that the person may be affected by the
1040 action.

1041 (n) "Lignite" means consolidated lignite coal having
1042 less than eight thousand three hundred (8,300) British thermal
1043 units per pound, moist and mineral matter free.

1044 (o) "Operator" means any person engaged in coal mining
1045 who removes or intends to remove more than two hundred fifty (250)
1046 tons of coal from the earth by coal mining within twelve (12)
1047 consecutive calendar months in any one (1) location.

1048 (p) "Permit" means a permit to conduct surface coal
1049 mining and reclamation operations issued under this chapter.

1050 (q) "Permit area" means the area of land indicated on
1051 the approved map submitted by the operator with the permit
1052 application which area of land shall be covered by the operator's
1053 performance bond.

1054 (r) "Permit Board" means the Permit Board created under
1055 Section 49-17-28.

1056 (s) "Person" means an individual, partnership,
1057 association, society, joint venture, joint-stock company, firm,
1058 company, corporation, cooperative or other business organization
1059 and any agency, unit or instrumentality of federal, state or local
1060 government, including any publicly owned utility or publicly owned
1061 corporation.

1062 (t) "Prime farmland" means that farmland as defined by
1063 the United States Secretary of Agriculture on the basis of factors
1064 such as moisture availability, temperature regime, chemical
1065 balance, permeability, surface layer composition, susceptibility
1066 to flooding and erosion characteristics, and which historically
1067 have been used for intensive agricultural purposes, and as
1068 published in the federal register.

1069 (u) "Public hearing," "informal hearing" or "public
1070 meeting" means a public forum organized by the commission,
1071 department or Permit Board for the purpose of providing
1072 information to the public regarding a surface coal mining and
1073 reclamation operation or regulations proposed by the commission
1074 and at which members of the public are allowed to make comments or
1075 ask questions or both of the commission, department or the Permit
1076 Board.

1077 (v) "Reclamation plan" means a plan submitted by an
1078 applicant for a permit which sets forth a plan for reclamation of
1079 the proposed surface coal mining operations under this chapter.

1080 (w) "Revision" means any change to the permit or
1081 reclamation plan that does not significantly change the effect of
1082 the mining operation on either those persons impacted by the
1083 permitted operations or on the environment, including, but not
1084 limited to, incidental boundary changes to the permit area or a
1085 departure from or change within the permit area, incidental
1086 changes in the mining method or incidental changes in the
1087 reclamation plan.

1088 (x) "Secretary" means the Secretary of the United
1089 States Department of Interior.

1090 (y) "State" means the State of Mississippi.

1091 (z) "State geologist" means the head of the Office of
1092 Geology and Energy Resources of the department or a successor
1093 office.

1094 (aa) "State reclamation program" means the Mississippi
1095 program for abandoned mine reclamation provided for in this
1096 chapter.

1097 (bb) "Surface coal mining and reclamation operations"
1098 means surface coal mining operations and all activities necessary
1099 and incident to the reclamation of those operations.

1100 (cc) "Surface coal mining operations" means:

1101 (i) Activities conducted on the surface and
1102 immediate subsurface of lands in connection with a surface coal
1103 mine, surface operations and surface impacts incident to an
1104 underground coal mine, the products of which enter commerce or the
1105 operations of which directly or indirectly affect commerce. These
1106 activities include, but are not limited to:

1107 (A) Excavation for the purpose of obtaining
1108 coal including common methods such as contour, strip, auger,
1109 mountaintop removal, boxcut, open pit and area mining;

1110 (B) The use of explosives and blasting, in
1111 situ distillation or retorting, leaching or other chemical or
1112 physical processing; and

1113 (C) The cleaning, concentrating or other
1114 processing or preparation, and the loading of coal for commerce at
1115 or near the mine site.

1116 These activities do not include exploration operations
1117 subject to Section 53-9-41.

1118 (ii) Areas upon which the activities occur or
1119 where the activities disturb the natural land surface. These
1120 areas shall also include, but are not limited to:

1121 (A) Any adjacent land the use of which is
1122 incidental to any activities;

1123 (B) All lands affected by the construction of
1124 new roads or the improvement or use of existing roads to gain
1125 access to the site of any activities and for haulage;

1126 (C) All lands affected by excavations,
1127 workings, impoundments, dams, ventilation shafts, entryways,
1128 refuse banks, dumps, stockpiles, overburden piles, spoil banks,
1129 culm banks, tailings, holes or depressions, repair areas, storage
1130 areas, processing areas, shipping areas and other areas upon which
1131 are sited structures, facilities or other property or materials on
1132 the surface resulting from or incident to the activities.

1133 (dd) "Unwarranted failure to comply" means the failure
1134 of a permittee to prevent or abate the occurrence of any violation
1135 of a permit, this chapter or any regulation promulgated under this
1136 chapter due to indifference, lack of diligence or lack of
1137 reasonable care.

1138 **SECTION 16.** This act shall take effect and be in force from
1139 and after July 1, 2005.