

By: Representative Reeves

To: Oil, Gas and Other  
Minerals

## HOUSE BILL NO. 287

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 wherever 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, 2006.