

By: Representative Gunn

To: Ways and Means

HOUSE BILL NO. 1483

1 AN ACT TO AMEND SECTIONS 57-80-7 AND 57-80-9, MISSISSIPPI
2 CODE OF 1972, TO REVISE CERTAIN PROVISIONS RELATING TO
3 APPLICATIONS MADE BY COUNTIES FOR CERTIFICATES OF PUBLIC
4 CONVENIENCE AND NECESSITY UNDER THE GROWTH AND PROSPERITY ACT; TO
5 REVISE THE TYPES OF INCENTIVES THAT MAY BE PROVIDED TO APPROVED
6 BUSINESS ENTERPRISES UNDER THE GROWTH AND PROSPERITY ACT; TO BRING
7 FORWARD SECTION 57-80-5, MISSISSIPPI CODE OF 1972, WHICH DEFINES
8 CERTAIN TERMS UNDER THE GROWTH AND PROSPERITY ACT, FOR PURPOSES OF
9 POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 17-1-1, 17-1-3,
10 17-1-5, 17-1-7, 17-1-9, 17-1-11, 17-1-13, 17-1-15, 17-1-17,
11 17-1-19, 17-1-21, 17-1-23 AND 17-1-25, MISSISSIPPI CODE OF 1972,
12 WHICH RELATE TO THE GENERAL ZONING AUTHORITY OF MUNICIPALITIES AND
13 COUNTIES, FOR PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD
14 SECTIONS 17-2-1, 17-2-3, 17-2-4, 17-2-5, 17-2-7 AND 17-2-9,
15 MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE ADOPTION OF BUILDING
16 CODES BY MUNICIPALITIES AND COUNTIES, FOR PURPOSES OF POSSIBLE
17 AMENDMENT; TO BRING FORWARD SECTIONS 17-17-1, 17-17-2, 17-17-3,
18 17-17-5, 17-17-7, 17-17-9, 17-17-11, 17-17-13, 17-17-15, 17-17-17,
19 17-17-19, 17-17-27, 17-17-29, 17-17-31, 17-17-33, 17-17-35,
20 17-17-37, 17-17-39, 17-17-41, 17-17-43, 17-17-45, 17-17-47,
21 17-17-48, 17-17-49, 17-17-51, 17-17-53, 17-17-54, 17-17-55,
22 17-17-57, 17-17-59, 17-17-63, 17-17-65 AND 17-17-67, MISSISSIPPI
23 CODE OF 1972, WHICH RELATE TO SOLID WASTE DISPOSAL, FOR PURPOSES
24 OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 21-27-203,
25 21-27-205, 21-27-207, 21-27-211, 21-27-213, 21-27-215, 21-27-217,
26 21-27-219 AND 21-27-221, MISSISSIPPI CODE OF 1972, WHICH RELATE TO
27 MUNICIPAL AND DOMESTIC WATER AND WASTEWATER SYSTEMS, FOR PURPOSES
28 OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 21-37-3, 21-37-5,
29 21-37-6 AND 21-37-15, MISSISSIPPI CODE OF 1972, WHICH RELATE TO
30 MUNICIPAL LAWS REGARDING PARKING, SIDEWALKS AND DOCKS, FOR
31 PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTIONS 51-8-57
32 AND 51-35-305, MISSISSIPPI CODE OF 1972, WHICH RELATE TO WATER
33 MANAGEMENT AND MUNICIPALITIES, FOR PURPOSES OF POSSIBLE AMENDMENT;
34 AND FOR RELATED PURPOSES.



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

36 **SECTION 1.** Section 57-80-7, Mississippi Code of 1972, is
37 amended as follows:

38 57-80-7. (1) From and after December 31, 2000, the
39 following counties may apply to the MDA for the issuance of a
40 certificate of public convenience and necessity:

41 (a) Any county of this state which has an annualized
42 unemployment rate that is at least two hundred percent (200%) of
43 the state's unemployment rate as of December 31 of any year after
44 December 31, 2000, as determined by the Mississippi Department of
45 Employment Security's most recently published data;

46 (b) Any county of this state in which thirty percent
47 (30%) or more of the population of the county is at or below the
48 federal poverty level according to the official data compiled by
49 the United States Census Bureau as of August 30, 2000, for
50 counties that apply before December 31, 2002, or the most recent
51 official data compiled by the United States Census Bureau for
52 counties that apply from and after December 31, 2002; or

53 (c) Any county of this state having an eligible
54 supervisors district.

55 (2) (a) The application, at a minimum, must contain (a) the
56 Mississippi Department of Employment Security's most recently
57 published figures that reflect the annualized unemployment rate of
58 the applying county as of December 31 or the most recent official
59 data by the United States Census Bureau required by subsection (1)



60 of this section, as the case may be, and (b) an order or
61 resolution of the county consenting to the designation of the
62 county as a growth and prosperity county.

63 (b) The county must indicate whether its application
64 for the issuance of a certificate of public convenience and
65 necessity is being made for purposes of allowing only the tax
66 exemptions authorized in this chapter, only the incentives
67 authorized in Section 57-80-9(2) or whether it is made for the
68 purposes of allowing both the tax exemptions and incentives. If a
69 county applies for and is issued a certificate of public
70 convenience and necessity allowing only the tax exemptions
71 authorized in this chapter or only the incentives authorized in
72 Section 57-80-9(2), it may apply at a later date for the purpose
73 of allowing the tax exemptions or other incentives, as the case
74 may be, for which it did not previously apply and receive a
75 certificate of convenience and necessity.

76 (c) A county issued a certificate of public convenience
77 and necessity before July 1, 2018, may submit an application for
78 the purpose of allowing the incentives authorized in Section
79 57-80-9(2).

80 (3) Any municipality of a designated growth and prosperity
81 county or within an eligible supervisors district and not more
82 than eight (8) miles from the boundary of the county that meets
83 the criteria of subsection (1)(b) of this section may by order or



84 resolution of the municipality consent to participation in the
85 Growth and Prosperity Program.

86 (4) No incentive or tax exemption shall be given under this
87 chapter without the consent of the affected county or
88 municipality.

89 **SECTION 2.** Section 57-80-9, Mississippi Code of 1972, is
90 amended as follows:

91 57-80-9. (1) (a) Upon the issuance by the MDA of its
92 certificate of public convenience and necessity, designating
93 certain counties as growth and prosperity counties, any approved
94 business enterprise in any such a growth and prosperity county or
95 any approved business enterprise located within an eligible
96 supervisors district within eight (8) miles of the boundary of the
97 county that meets the criteria of Section 57-80-7(1)(b) shall be
98 exempt from all local taxes levied by the county and all state
99 taxes for a period of ten (10) years or until December 31, 2029,
100 whichever occurs first, and upon consent of any municipality
101 within such county or within such supervisors district and not
102 more than eight (8) miles from the boundary of the county that
103 meets the criteria of Section 57-80-7(1)(b), shall be exempt from
104 all local taxes levied by such municipality for a period of ten
105 (10) years or until December 31, 2029, whichever occurs first;
106 however, if the business enterprise is located in an area that has
107 been declared by the Governor to be a disaster area and as a
108 direct result of the disaster the business enterprise is unable to



109 utilize the exemption from state taxes, the MDA may extend the
110 duration of the exemption from state taxes for not more than two
111 (2) years or until December 31, 2029, whichever occurs first. Any
112 business enterprise that has property or equipment purchased
113 utilizing the state tax exemption that is damaged or destroyed as
114 a result of the disaster may purchase replacement equipment and
115 component building materials exempt from sales and use tax.

116 (* * *b) The following conditions, along with any
117 other conditions the MDA shall promulgate from time to time by
118 rule or regulation, shall apply to such exemptions: (* * *i) any
119 exemption provided under this chapter is nontransferable and
120 cannot be applied, used or assigned to any other person or
121 business or tax account; (* * *ii) no approved business
122 enterprise may claim or use the exemption granted under this
123 chapter unless that enterprise is in full compliance with all
124 state and local tax laws, and related ordinances and resolutions;
125 and (* * *iii) the approved business enterprise must enter into
126 an agreement with the MDA which sets out, at a minimum the
127 performance requirements of the approved business enterprise
128 during the term of the exemption and provisions for the recapture
129 of all or a portion of the taxes exempted if the performance
130 requirements of the approved business enterprise are not met.

131 (* * *c) Upon entering into such an agreement, the MDA
132 shall forward such agreement to the Department of Revenue and the
133 affected local taxing authorities so that the exemption can be



134 implemented. The Department of Revenue shall promulgate rules and
135 regulations, in accordance with the Mississippi Administrative
136 Procedures Law, for the implementation of both local and state
137 exemptions granted under this chapter.

138 (2) (a) Upon the issuance by the MDA of its certificate of
139 public convenience and necessity, designating certain counties as
140 growth and prosperity counties, any approved business enterprise
141 in any such a growth and prosperity county or any approved
142 business enterprise located within an eligible supervisors
143 district within eight (8) miles of the boundary of the county that
144 meets the criteria of Section 57-80-7(1)(b) shall be eligible to
145 request and negotiate with the board of supervisors and/or
146 municipal governing authorities, as the case may be, with regard
147 to relief from any or all of zoning, planning and/or other
148 requirements provided under (i) Sections 17-1-1 through 17-1-25,
149 (ii) Sections 17-2-1 through 17-2-9, (iii) Sections 17-17-1
150 through 17-17-67, excluding Sections 17-17-15, 17-17-48, 17-17-49,
151 17-17-51 and 17-17-53, (iv) Sections 21-27-203 through 21-27-221,
152 (v) Sections 21-37-3, 21-37-5, 21-37-6 and 21-37-15, (vi) Section
153 51-8-57, and (vii) Section 51-35-305, as the case may be. If the
154 board of supervisors and/or municipal governing authorities agree
155 to approve such request for incentives of the approved business
156 enterprise and adopt a resolution or ordinance approving the
157 request, then any or all of the applicable provisions of such
158 sections of law shall not apply to the approved business



159 enterprise for a period of ten (10) years or until December 31,
160 2030, whichever occurs first.

161 (b) The following conditions, along with any other
162 conditions the MDA shall promulgate from time to time by rule or
163 regulation, shall apply to such incentives under this subsection
164 (2): (i) any incentive provided under this subsection (2) is
165 nontransferable and cannot be applied, used or assigned to any
166 other person or business; (ii) no approved business enterprise may
167 claim or use the incentive under this subsection (2) unless that
168 enterprise is in full compliance with all state and local tax
169 laws, and related ordinances and resolutions; and (iii) the
170 approved business enterprise must enter into an agreement with the
171 MDA which sets out, at a minimum the performance requirements of
172 the approved business enterprise during the term of the incentive
173 and for the termination of the incentive if the performance
174 requirements of the approved business enterprise are not met.

175 (c) Upon entering into such an agreement, the MDA shall
176 forward such agreement to the applicable county, municipality,
177 agency, department or other entity so that the incentive can be
178 implemented.

179 (* * *3) Any business enterprise that relocates its present
180 operation and jobs to a growth and prosperity county or an
181 eligible supervisors district and not more than eight (8) miles
182 from the boundary of the county that meets the criteria of Section
183 57-80-7(1) (b) from another county in the state shall not receive



184 any of the tax exemptions or other incentives granted in this
185 chapter.

186 (* * *4) If the annualized unemployment rate in a growth
187 and prosperity county falls below one hundred fifty percent (150%)
188 of the state's annualized unemployment rate for three (3)
189 consecutive calendar years and less than thirty percent (30%) of
190 the population of the county is at or below the federal poverty
191 level according to the most recent official data compiled by the
192 United States Census Bureau as of December 31 of the third of such
193 consecutive calendar years, the tax exemptions and other
194 incentives authorized under this chapter may not be granted to
195 additional business enterprises.

196 **SECTION 3.** Section 57-80-5, Mississippi Code of 1972, is
197 brought forward as follows:

198 57-80-5. As used in this chapter, the following words and
199 phrases shall have the meanings ascribed herein unless the context
200 clearly indicates otherwise:

201 (a) "Approved business enterprise" means any business
202 enterprise seeking to locate or expand in a growth and prosperity
203 county, which business enterprise is approved by the MDA.

204 (b) "Business enterprise" means any new or expanded (i)
205 industry for the manufacturing, processing, assembling, storing,
206 warehousing, servicing, distributing or selling of any products or
207 goods, including products of agriculture; (ii) enterprises for
208 research and development, including, but not limited to,



209 scientific laboratories; or (iii) such other businesses or
210 industry as will be in furtherance of the public purposes of this
211 chapter as determined by the MDA and which creates a minimum of
212 ten (10) jobs. "Business enterprise" does not include retail or
213 gaming businesses or electrical generation facilities.

214 (c) "Eligible supervisors district" means:

215 (i) A supervisors district:

216 1. As such district exists on January 1,
217 2001, in which thirty percent (30%) or more of such district's
218 population as of June 30, 2000, is at or below the federal poverty
219 level according to the official data compiled by the United States
220 Census Bureau as of June 30, 2000, or the official 1990 census
221 poverty rate data (the official 1990 census poverty rate data
222 shall not be used to make any such determination after December
223 31, 2002); or

224 2. In which thirty percent (30%) or more of
225 such district's population is at or below the federal poverty
226 level according to the latest official data compiled by the United
227 States Census Bureau;

228 (ii) Which is contiguous to a county that meets
229 the criteria of Section 57-80-7(1)(b); and

230 (iii) Which is located in a county which has been
231 issued a certificate of public convenience and necessity under
232 this chapter.



233 (d) "Growth and prosperity counties" means those
234 counties which meet the requirements of this chapter and which
235 have by resolution or order given its consent to participate in
236 the Growth and Prosperity Program.

237 (e) "Local tax" means any county or municipal ad
238 valorem tax imposed on the approved business enterprise pursuant
239 to law, except the school portion of the tax and any portion of
240 the tax imposed to pay the cost of providing fire and police
241 protection.

242 (f) "Local taxing authority" means any county or
243 municipality which by resolution or order has given its consent to
244 participate in the Growth and Prosperity Program acting through
245 its respective board of supervisors or the municipal governing
246 board, council, commission or other legal authority.

247 (g) "MDA" means the Mississippi Development Authority.

248 (h) "State tax" means:

249 (i) Any sales and use tax imposed on the business
250 enterprise pursuant to law related to the purchase of component
251 building materials and equipment for initial construction of
252 facilities or expansion of facilities in a growth and prosperity
253 county or supervisors districts, as the case may be;

254 (ii) All income tax imposed pursuant to law on
255 income earned by the business enterprise in a growth and
256 prosperity county, or supervisors district, as the case may be;



257 (iii) Franchise tax imposed pursuant to law on the
258 value of capital used, invested or employed by the business
259 enterprise in a growth and prosperity county, or supervisors
260 district, as the case may be; and

261 (iv) Any sales and use tax imposed on the lease of
262 machinery and equipment acquired in the initial construction to
263 establish the facility or for an expansion, including, but not
264 limited to, leases in existence prior to January 1, 2001, as
265 certified by the MDA, in a growth and prosperity county, or
266 supervisors district, as the case may be.

267 **SECTION 4.** Section 17-1-1, Mississippi Code of 1972, is
268 brought forward as follows:

269 17-1-1. The following words, whenever used in this chapter,
270 shall, unless a different meaning clearly appears from the
271 context, have the following meanings:

272 (a) "Municipality" means any incorporated city, town or
273 village within the state.

274 (b) "Governing authority" or "governing authorities,"
275 in the case of counties, means the board of supervisors of the
276 county, and, in the case of municipalities, means the council,
277 board, commissioners or other legislative body charged by law with
278 governing the municipality.

279 (c) "Comprehensive plan" means a statement of public
280 policy for the physical development of the entire municipality or



281 county adopted by resolution of the governing body, consisting of
282 the following elements at a minimum:

283 (i) Goals and objectives for the long-range
284 (twenty (20) to twenty-five (25) years) development of the county
285 or municipality. Required goals and objectives shall address, at
286 a minimum, residential, commercial and industrial development;
287 parks, open space and recreation; street or road improvements;
288 public schools and community facilities.

289 (ii) A land use plan which designates in map or
290 policy form the proposed general distribution and extent of the
291 uses of land for residences, commerce, industry, recreation and
292 open space, public/quasi-public facilities and lands. Background
293 information shall be provided concerning the specific meaning of
294 land use categories depicted in the plan in terms of the
295 following: residential densities; intensity of commercial uses;
296 industrial and public/quasi-public uses; and any other information
297 needed to adequately define the meaning of such land use codes.
298 Projections of population and economic growth for the area
299 encompassed by the plan may be the basis for quantitative
300 recommendations for each land use category.

301 (iii) A transportation plan depicting in map form
302 the proposed functional classifications for all existing and
303 proposed streets, roads and highways for the area encompassed by
304 the land use plan and for the same time period as that covered by
305 the land use plan. Functional classifications shall consist of



306 arterial, collector and local streets, roads and highways, and
307 these classifications shall be defined on the plan as to minimum
308 right-of-way and surface width requirements; these requirements
309 shall be based upon traffic projections. All other forms of
310 transportation pertinent to the local jurisdiction shall be
311 addressed as appropriate. The transportation plan shall be a
312 basis for a capital improvements program.

313 (iv) A community facilities plan as a basis for a
314 capital improvements program including, but not limited to, the
315 following: housing; schools; parks and recreation; public
316 buildings and facilities; and utilities and drainage.

317 (d) "Amateur radio service" means those individuals and
318 stations licensed by the Federal Communications Commission to
319 broadcast amateur radio signals regardless of the transmission
320 mode.

321 **SECTION 5.** Section 17-1-3, Mississippi Code of 1972, is
322 brought forward as follows:

323 17-1-3. (1) Except as otherwise provided in Article VII of
324 the Chickasaw Trail Economic Development Compact described in
325 Section 57-36-1, for the purpose of promoting health, safety,
326 morals, or the general welfare of the community, the governing
327 authority of any municipality, and, with respect to the
328 unincorporated part of any county, the governing authority of any
329 county, in its discretion, are empowered to regulate the height,
330 number of stories and size of building and other structures, the



331 percentage of lot that may be occupied, the size of the yards,
332 courts and other open spaces, the density of population, and the
333 location and use of buildings, structures and land for trade,
334 industry, residence or other purposes, but no permits shall be
335 required with reference to land used for agricultural purposes,
336 including forestry activities as defined in Section 95-3-29(2)(c),
337 or for the erection, maintenance, repair or extension of farm
338 buildings or farm structures, including forestry buildings and
339 structures, outside the corporate limits of municipalities. The
340 governing authority of each county and municipality may create
341 playgrounds and public parks, and for these purposes, each of such
342 governing authorities shall possess the power, where requisite, of
343 eminent domain and the right to apply public money thereto, and
344 may issue bonds therefor as otherwise permitted by law.

345 (2) Local land use regulation ordinances involving the
346 placement, screening, or height of amateur radio antenna
347 structures must reasonably accommodate amateur communications and
348 must constitute the minimum practicable regulation to accomplish
349 local authorities' legitimate purposes of addressing health,
350 safety, welfare and aesthetic considerations. Judgments as to the
351 types of reasonable accommodation to be made and the minimum
352 practicable regulation necessary to address these purposes will be
353 determined by local governing authorities within the parameters of
354 the law. This legislation supports the amateur radio service in



355 preparing for and providing emergency communications for the State
356 of Mississippi and local emergency management agencies.

357 **SECTION 6.** Section 17-1-5, Mississippi Code of 1972, is
358 brought forward as follows:

359 17-1-5. Except as otherwise provided in Article VII of the
360 Chickasaw Trail Economic Development Compact described in Section
361 57-36-1, in the exercise and enforcement of the powers conferred
362 by Sections 17-1-1 through 17-1-27, inclusive, each county and
363 each municipality within the county may act independently one from
364 the other, or, in the exercise of discretion, the governing
365 authority of any county and the governing authority of any
366 municipality located within the county may act jointly in order to
367 attain uniformity and consistency in the zoning regulations for
368 the areas to be affected.

369 **SECTION 7.** Section 17-1-7, Mississippi Code of 1972, is
370 brought forward as follows:

371 17-1-7. Except as otherwise provided in Article VII of the
372 Chickasaw Trail Economic Development Compact described in Section
373 57-36-1, for the purposes set forth in Section 17-1-3, the
374 governing authority of each municipality and county may divide the
375 municipality or county into zones of such number, shape and area
376 as may be deemed best suited to carry out the purposes of Sections
377 17-1-1 through 17-1-27, inclusive. Within the zones created, the
378 governing authority of each municipality and county may, subject
379 to the restrictions with respect to agricultural lands and farm



380 buildings or structures as set out in Section 17-1-3, regulate and
381 restrict the erection, construction, reconstruction, alteration,
382 repair or use of buildings, structures or land. All regulations
383 shall be uniform for each class or kind of buildings throughout
384 each zone, but regulations in one zone may differ from those in
385 other zones.

386 **SECTION 8.** Section 17-1-9, Mississippi Code of 1972, is
387 brought forward as follows:

388 17-1-9. Zoning regulations shall be made in accordance with
389 a comprehensive plan, and designed to lessen congestion in the
390 streets; to secure safety from fire, panic and other dangers; to
391 provide adequate light and air; to prevent the overcrowding of
392 land; to avoid undue concentration of population; to facilitate
393 the adequate provision of transportation, water, sewerage,
394 schools, parks and other public requirements. Such regulations
395 shall be made with reasonable consideration, among other things,
396 to the character of the district and its peculiar suitability for
397 particular uses, and with a view to conserving the value of
398 buildings, and encouraging the most appropriate use of land
399 throughout such municipality.

400 **SECTION 9.** Section 17-1-11, Mississippi Code of 1972, is
401 brought forward as follows:

402 17-1-11. (1) (a) The governing authority of each
403 municipality and county may provide for the preparation, adoption,
404 amendment, extension and carrying out of a comprehensive plan for



405 the purpose of bringing about coordinated physical development in
406 accordance with present and future needs and may create,
407 independently or jointly, a local planning commission with
408 authority to prepare and propose (a) a comprehensive plan of
409 physical development of the municipality or county; (b) a proposed
410 zoning ordinance and map; (c) regulations governing subdivisions
411 of land; (d) building or set back lines on streets, roads and
412 highways; and (e) recommendations to the governing authorities of
413 each municipality or county with regard to the enforcement of and
414 amendments to the comprehensive plan, zoning ordinance,
415 subdivision regulations and capital improvements program. The
416 governing authority of each municipality and county may, in its
417 discretion, pay to each member of a planning commission a per diem
418 in an amount as determined by such governing authority for each
419 day, or portion thereof, spent in the performance of his duties;
420 however, no member of a planning commission may be paid more than
421 One Hundred Twenty Dollars (\$120.00) in the aggregate per month.

422 (b) The definition of "comprehensive plan" set forth in
423 paragraph (c) of Section 17-1-1 shall not be construed to affect,
424 or to require the amendment of, any plan adopted by a county or
425 municipality prior to July 1, 1988, which plan does not
426 specifically conform to the minimum elements of a comprehensive
427 plan required in such definition.

428 (2) The governing authority of each municipality and county
429 may adopt, amend and enforce the comprehensive plan, zoning



430 ordinance, subdivision regulations and capital improvements
431 program as recommended by the local planning commission after a
432 public hearing thereon as provided by Section 17-1-15.

433 (3) In the performance of its duties, the local planning
434 commission may cooperate with, contract with, or accept funds from
435 federal, state or local agencies or private individuals or
436 corporations and may expend such funds and carry out such
437 cooperative undertakings and contracts.

438 (4) Any comprehensive plan established under this section
439 shall not contain any provision which conflicts with Article VII
440 of the Chickasaw Trail Economic Development Compact described in
441 Section 57-36-1.

442 **SECTION 10.** Section 17-1-13, Mississippi Code of 1972, is
443 brought forward as follows:

444 17-1-13. The governing authority of each county or
445 municipality may, in order to more effectively carry out its
446 requisite zoning and planning activities, utilize the services of
447 any appropriate local or regional planning commission, and it may
448 consider, act upon or otherwise make use of the suggestions,
449 proposals or recommendations of any such appropriate local or
450 regional planning commission. Also, in carrying out its zoning
451 and planning duties, the governing authority of each county and
452 municipality may utilize the services of any appropriate municipal
453 or county engineering department or the services of an advisory
454 committee of citizens of such number as may be deemed appropriate



455 to recommend the boundaries of the various original districts and
456 appropriate regulations to be enforced therein. A preliminary
457 report may be made, and public hearings thereon before submitting
458 its final report, may be had.

459 **SECTION 11.** Section 17-1-15, Mississippi Code of 1972, is
460 brought forward as follows:

461 17-1-15. The governing authority of each municipality and
462 county shall provide for the manner in which the comprehensive
463 plan, zoning ordinance (including the official zoning map)
464 subdivision regulations and capital improvements program shall be
465 determined, established and enforced, and from time to time,
466 amended, supplemented or changed. However, no such plan,
467 ordinance (including zoning boundaries), regulations or program
468 shall become effective until after a public hearing, in relation
469 thereto, at which parties in interest, and citizens, shall have an
470 opportunity to be heard. At least fifteen (15) days' notice of
471 the time and place of such hearing shall be published in an
472 official paper, or a paper of general circulation, in such
473 municipality or county.

474 **SECTION 12.** Section 17-1-17, Mississippi Code of 1972, is
475 brought forward as follows:

476 17-1-17. Zoning regulations, restrictions and boundaries
477 may, from time to time, be amended, supplemented, changed,
478 modified or repealed upon at least fifteen (15) days' notice of a
479 hearing on such amendment, supplement, change, modification or



480 repeal, said notice to be given in an official paper or a paper of
481 general circulation in such municipality or county specifying a
482 time and place for said hearing. The governing authorities or any
483 municipal agency or commission, which by ordinance has been
484 theretofore so empowered, may provide in such notice that the same
485 shall be held before the city engineer or before an advisory
486 committee of citizens as hereinafter provided and if the hearing
487 is held before the said engineer or advisory committee it shall
488 not be necessary for the governing body to hold such hearing but
489 may act upon the recommendation of the city engineer or advisory
490 committee. Provided, however, that any party aggrieved with the
491 recommendation of the city engineer or advisory committee shall be
492 entitled to a public hearing before the governing body of the
493 city, with due notice thereof after publication for the time and
494 as provided in this section. The governing authorities of a
495 municipality which had a population in excess of one hundred forty
496 thousand (140,000) according to the 1960 census, or of a
497 municipality which is the county seat of a county bordering on the
498 Gulf of Mexico and the State of Alabama or of a municipality which
499 had a population in excess of forty thousand (40,000) according to
500 the 1970 census and which is within a county bordering on the Gulf
501 of Mexico may enact an ordinance restricting such hearing to the
502 record as made before the city engineer or advisory committee of
503 citizens as hereinabove provided.



504 In case of a protest against such change signed by the owners
505 of twenty percent (20%) or more, either of the area of the lots
506 included in such proposed change, or of those immediately adjacent
507 to the rear thereof, extending one hundred sixty (160) feet
508 therefrom or of those directly opposite thereto, extending one
509 hundred sixty (160) feet from the street frontage of such opposite
510 lots, such amendment shall not become effective except by the
511 favorable vote of three-fifths (3/5) of the members of the
512 legislative body of such municipality or county who are not
513 required by law or ethical considerations to recuse themselves.

514 **SECTION 13.** Section 17-1-19, Mississippi Code of 1972, is
515 brought forward as follows:

516 17-1-19. In case any building or structure is erected,
517 constructed, reconstructed, altered, repaired, converted or
518 maintained, or any building, structure, or land, is used in
519 violation of the zoning law or of any ordinance or other
520 regulation made under authority conferred hereby, the proper local
521 authorities of any county or municipality, in addition to other
522 remedies, may institute any appropriate action or proceedings, to
523 prevent such unlawful erection, construction, reconstruction,
524 alteration, repair, conversion, maintenance or use, to restrain,
525 correct, or abate such violation, to prevent the occupancy of said
526 building, structure or land, or to prevent any illegal act,
527 conduct, business, or use in or about such premises.



528 **SECTION 14.** Section 17-1-21, Mississippi Code of 1972, is
529 brought forward as follows:

530 17-1-21. Except as otherwise provided in Article VII of the
531 Chickasaw Trail Economic Development Compact described in Section
532 57-36-1, whenever the provisions of any other statute or local
533 ordinance or regulation require a greater width or size of yards,
534 courts or other open spaces, or require a lower height of
535 building, or a less number of stories, or a greater percentage of
536 lot to be left unoccupied, or impose other standards higher than
537 are required by the regulations made under the authority of
538 Sections 17-1-1 through 17-1-27, inclusive, the provisions of such
539 other statute, or local ordinance or regulation shall govern;
540 otherwise the provisions of the regulations made under the
541 authority of Sections 17-1-1 through 17-1-27, inclusive, shall be
542 controlling.

543 **SECTION 15.** Section 17-1-23, Mississippi Code of 1972, is
544 brought forward as follows:

545 17-1-23. (1) When new subdivisions are laid out, the
546 governing authority of each municipality or county may, before
547 allowing dedication, impose such terms as may be deemed necessary
548 to make the provisions of Sections 17-1-1 through 17-1-27,
549 inclusive, effective, and such governing authorities may receive
550 easements in the land affected whereby such sections may be made
551 effective.



552 (2) The board of supervisors of any county may order that no
553 plat of a subdivision shall be recorded until it has been approved
554 by the board of supervisors, and the board of supervisors shall
555 have power to require the installation of utilities and laying out
556 of streets in subdivisions or to accept performance bonds in lieu
557 thereof; the board of supervisors of any county bordering on the
558 State of Tennessee having a population of more than sixty-seven
559 thousand nine hundred (67,900) but less than seventy thousand
560 (70,000) according to the 1990 federal census and having a land
561 area of more than four hundred seventy (470) square miles but less
562 than five hundred (500) square miles may also, in lieu thereof,
563 require the deposit of monies with the county which shall be
564 placed in a special interest-bearing account in the county
565 treasury, and such board of supervisors at the appropriate time
566 shall spend monies from such account solely for the purpose of
567 constructing or improving the roads and other infrastructure
568 within the subdivision with respect to which the deposit or
569 deposits were made.

570 (3) The governing authorities of a municipality may provide
571 that any person desiring to subdivide a tract of land within the
572 corporate limits shall submit a map and plat of such subdivision,
573 and a correct abstract of title of the land platted, to said
574 governing authorities, to be approved by them before the same
575 shall be filed for record in the land records of the county; and
576 where the municipality has adopted an ordinance so providing, no



577 such map or plat of any such subdivision shall be recorded by the
578 chancery clerk unless same has been approved by said governing
579 authorities. In all cases where a map or plat of the subdivision
580 is submitted to the governing authorities of a municipality, and
581 is by them approved, all streets, roads, alleys and other public
582 ways set forth and shown on said map or plat shall be thereby
583 dedicated to the public use, and shall not be used otherwise
584 unless and until said map or plat is vacated in the manner
585 provided by law, notwithstanding that said streets, roads, alleys
586 or other public ways have not been actually opened for the use of
587 the public. If any easement dedicated pursuant to the provisions
588 of this section for a street, road, alley or other public purpose
589 is determined to be not needed for the public purpose, the
590 easement may be declared abandoned, and ownership of the fee
591 underlying the easement shall revert, regardless of the date of
592 dedication, to the adjoining property owner or owners at the time
593 of abandonment. Ownership of such easement shall extend to the
594 centerline of said abandoned street, road or public way. Such
595 abandonment and reversion shall not affect any private easements
596 which might exist.

597 (4) If the owner of any land which shall have been laid off,
598 mapped or platted as a city, town or village, or addition thereto,
599 or subdivision thereof, or other platted area, whether inside or
600 outside a municipality, desires to alter or vacate such map or
601 plat, or any part thereof, he may petition the board of



602 supervisors of the county or the governing authorities of the
603 municipality for relief in the premises, setting forth the
604 particular circumstances of the case and giving an accurate
605 description of the property, the map or plat of which is to be
606 vacated or altered and the names of the persons to be adversely
607 affected thereby or directly interested therein. However, before
608 taking such action, the parties named shall be made aware of the
609 action and must agree in writing to the vacation or alteration.
610 Failure to gain approval from the parties named shall prohibit the
611 board of supervisors or governing authorities from altering or
612 vacating the map or plat, or any part thereof. Any alterations of
613 a plat or map must be recorded in the appropriate location and a
614 note shall be placed on the original plat denoting the altered or
615 revised plat. No land shall be subdivided nor shall the map or
616 plat of any land be altered or vacated in violation of any duly
617 recorded covenant running with the land. Any municipality which
618 shall approve such a vacation or alteration pursuant to this
619 section shall be exempt from the sale of surplus real property
620 provisions as set forth in Section 21-17-1.

621 (5) Subdivision regulation under this section shall not
622 conflict with Article VII of the Chickasaw Trail Economic
623 Development Compact described in Section 57-36-1.

624 **SECTION 16.** Section 17-1-25, Mississippi Code of 1972, is
625 brought forward as follows:



626 17-1-25. The governing authorities of each municipality or
627 county of the state, in their discretion, may accept in the name
628 of such municipality or county, for maintenance, any road or
629 roads, or street or streets, as shall be completed to acceptable
630 specifications established by such governing authorities of a
631 municipality or county of each such subdivision or subdivisions as
632 shall be located within the corporate limits of a municipality or
633 the boundaries of a county.

634 By acceptance of such street or road by such governing
635 authorities, even though such subdivision shall not be completed
636 as proposed or platted, such municipality or county shall not be
637 bound to accept in part or in its entirety such subdivision when
638 it shall be completed except as provided by regular procedures by
639 ordinance or regulation of such municipality or county.

640 **SECTION 17.** Section 17-2-1, Mississippi Code of 1972, is
641 brought forward as follows:

642 17-2-1. (1) The counties of Jackson, Harrison, Hancock,
643 Stone and Pearl River, including all municipalities therein, shall
644 enforce, on an emergency basis, all the wind and flood mitigation
645 requirements prescribed by the 2003 International Residential Code
646 and the 2003 International Building Code, as supplemented.

647 (2) Except as otherwise provided in subsection (4) of this
648 section, emergency wind and flood building requirements imposed in
649 this section shall remain in force until the county board of
650 supervisors or municipal governing authorities, as the case may



651 be, adopts as minimum mandatory codes the latest editions of the
652 codes described in subsection (3)(a) of this section. Except as
653 otherwise provided in subsection (4) of this section, the wind and
654 flood mitigation requirements imposed by this section shall be
655 enforced by the county board of supervisors or municipal governing
656 authorities, as the case may be.

657 (3) (a) A county board of supervisors or municipal
658 governing authorities, as the case may be, described in subsection
659 (1) of this section shall adopt as minimum codes the latest
660 editions of the following:

661 (i) International Building Code and the standards
662 referenced in that code for regulation of construction within
663 these counties. The appendices of that code may be adopted as
664 needed, but the specific appendix or appendices must be referenced
665 by name or letter designation at the time of adoption.

666 (ii) International Residential Code (IRC) and the
667 standards referenced in that code are included for regulation of
668 construction within these counties. The appendices of that code
669 may be adopted as needed, but the specific appendix or appendices
670 must be referenced by name or letter designation at the time of
671 adoption, with the exception of Appendix J, Existing Buildings and
672 Structures, which is hereby adopted by this reference.

673 (b) In addition to any other codes required under this
674 section, a county board of supervisors or municipal governing
675 authorities, as the case may be, described in subsection (1) of



676 this section may adopt the latest editions of any of the
677 following:

678 (i) Codes established by the Mississippi Building
679 Code Council.

680 (ii) Other codes addressing matters such as
681 electrical, plumbing, mechanical, fire and fuel gas.

682 (4) The provisions of this section shall go into effect
683 thirty (30) days from the effective date of this chapter.
684 However, within sixty (60) days after the provisions of this
685 section go into effect, the board of supervisors of a county
686 and/or the governing authorities of any municipality within a
687 county, upon resolution duly adopted and entered upon its minutes,
688 may choose not to be subject to the code requirements imposed
689 under this section.

690 **SECTION 18.** Section 17-2-3, Mississippi Code of 1972, is
691 brought forward as follows:

692 17-2-3. (1) There is hereby created the Mississippi
693 Building Codes Council. Each member of the council shall be
694 appointed by the executive director of his respective professional
695 association unless otherwise stated herein. Each member shall
696 serve for a term of three (3) years and until a successor is
697 appointed and qualifies. No person who has previously been
698 convicted of a felony in this state or any other state may be
699 appointed to the council. From and after July 1, 2009, all
700 members of the council shall be residents of the State of



701 Mississippi. The terms of the members serving on the council on
702 April 26, 2011, shall expire on July 1, 2011. The council is
703 hereby reconstituted and shall consist of the following eleven
704 (11) members with terms beginning on July 1, 2011:

705 (a) One (1) representative of the American Institute of
706 Architects of Mississippi;

707 (b) One (1) representative of the Associated General
708 Contractors of Mississippi;

709 (c) One (1) representative of the Mississippi
710 Manufactured Housing Association;

711 (d) One (1) representative of the Building Officials
712 Association of Mississippi;

713 (e) Two (2) representatives of the Home Builders
714 Association of Mississippi;

715 (f) One (1) representative of the Associated Builders
716 and Contractors of Mississippi;

717 (g) One (1) representative of the American Council of
718 Engineering Companies of Mississippi;

719 (h) One (1) representative of the Mississippi Municipal
720 League;

721 (i) One (1) representative of the Mississippi
722 Association of Supervisors; and

723 (j) The Mississippi State Fire Marshal, or his
724 designee, to serve ex officio, nonvoting.



725 (2) A vacancy must be filled in the manner of the original
726 appointment for the unexpired portion of the term.

727 (3) Any member with unexcused absences for more than three
728 (3) consecutive meetings shall be replaced by his sponsoring
729 organization.

730 (4) The State Fire Marshal shall convene the first meeting
731 of the reconstituted council before October 1, 2011, and shall act
732 as temporary chairman until the council elects from its members a
733 chairman and vice chairman. The council shall adopt regulations
734 consistent with this chapter. A meeting may be called by the
735 chairman on his own initiative, but must be called by him at the
736 request of three (3) or more members of the council. Each member
737 must be notified by the chairman in writing of the time and place
738 of the meeting at least seven (7) days before the meeting. Four
739 (4) members constitute a quorum. Each meeting is open to the
740 public. An official decision of the council may be made only by a
741 vote of at least two-thirds (2/3) of those members in attendance
742 at the meeting.

743 (5) The council shall adopt by reference and amend only one
744 (1) of the last three (3) editions of the following as
745 discretionary statewide minimum codes:

746 (a) International Building Code and the standards
747 referenced in that code for regulation of construction within this
748 state. The appendices of that code may be adopted as needed, but



749 the specific appendix or appendices must be referenced by name or
750 letter designation at the time of adoption.

751 (b) International Residential Code (IRC) and the
752 standards referenced in that code are included for regulation of
753 construction within this state. The appendices of that code may
754 be adopted as needed, but the specific appendix or appendices must
755 be referenced by name or letter designation at the time of
756 adoption, with the exception of Appendix J, Existing Buildings and
757 Structures, which is hereby adopted by this reference.

758 (c) Other codes addressing matters such as electrical,
759 plumbing, mechanical, fire and fuel gas.

760 (6) The initial code or codes adopted by this council under
761 the provisions of this section shall be completed no later than
762 July 1, 2007.

763 (7) Notwithstanding any other provision of law, the council
764 shall not enact any ordinance, bylaw, order, building code or rule
765 requiring the installation of a multipurpose residential fire
766 protection sprinkler system or any other fire sprinkler protection
767 system in a new or existing one- or two-family dwelling. However,
768 the county boards of supervisors and municipal governing
769 authorities may adopt, modify and enforce codes adopted by the
770 council, including the adoption of codes which require the
771 installation of fire protection sprinkler systems in any
772 structure.



773 (8) On or before December 1, 2012, the council shall furnish
774 to all members of the Legislature a report to be considered during
775 the 2013 Regular Session that provides findings and
776 recommendations for building and construction standards as the
777 mandatory statewide minimum codes. The council shall make its
778 recommendation from one (1) of the last three (3) editions of the
779 following:

780 (a) International Building Code and the standards
781 referenced in that code for regulation of construction within this
782 state. The appendices of that code may be adopted as needed, but
783 the specific appendix or appendices must be referenced by name or
784 letter designation at the time of adoption.

785 (b) International Residential Code (IRC) and the
786 standards referenced in that code are included for regulation of
787 construction within this state. The appendices of that code may
788 be adopted as needed, but the specific appendix or appendices must
789 be referenced by name or letter designation at the time of
790 adoption.

791 (c) Other codes addressing matters such as electrical,
792 plumbing, mechanical, fire and fuel gas.

793 **SECTION 19.** Section 17-2-4, Mississippi Code of 1972, is
794 brought forward as follows:

795 17-2-4. (1) Except as provided in Section 17-2-1(1) and
796 subsection (3) of this section, a county board of supervisors or
797 municipal governing authority shall adopt and amend as minimum



798 codes one (1) of the following as the State Uniform Construction
799 Code:

800 (a) One (1) of the last three (3) adopted editions of
801 the International Building Code (IBC) and any specific appendix or
802 appendices as adopted and amended by the Mississippi Building
803 Codes Council;

804 (b) One (1) of the last three (3) adopted editions of
805 the International Residential Code (IRC), and any specific
806 appendix or appendices as adopted and amended by the Mississippi
807 Building Codes Council, with the exception of those provisions
808 that require the installation of a multipurpose residential fire
809 protection sprinkler system or any other fire sprinkler protection
810 system in a new or existing one- or two-family dwelling;

811 (c) Other codes addressing matters such as electrical,
812 plumbing, mechanical, fire and fuel gas, and any specific appendix
813 or appendices as adopted and amended by the Mississippi Building
814 Codes Council.

815 (2) In addition to the codes required under this section,
816 subject to the provisions of subsection (3) of this section, a
817 county or municipality may adopt construction codes that are not
818 less stringent than the codes adopted in subsection (1) of this
819 section.

820 (3) Within one hundred twenty (120) days after the
821 provisions of this section go into effect, the board of
822 supervisors of a county and/or the governing authorities of any



823 municipality within a county, upon resolution duly adopted and
824 entered upon its minutes, may choose not to be subject to the code
825 requirements imposed under this section.

826 (4) These provisions do not apply to those buildings exempt
827 from enforcement in Section 17-2-7 and Section 17-2-9.

828 (5) These provisions do not apply to manufactured homes or
829 mobile homes as defined in Section 75-49-3.

830 **SECTION 20.** Section 17-2-5, Mississippi Code of 1972, is
831 brought forward as follows:

832 17-2-5. (1) Any county board of supervisors or municipal
833 governing authority that adopts building codes after July 1, 2008,
834 shall adopt as minimum codes any codes established and promulgated
835 by the Mississippi Building Codes Council.

836 (2) Any county board of supervisors or municipal governing
837 authority that has adopted construction codes published before
838 January 1, 2000, shall, no later than July 1, 2010, adopt as
839 minimum codes any codes established and promulgated by the
840 Mississippi Building Codes Council.

841 (3) Any codes adopted by a board of supervisors or municipal
842 governing authority under this section shall be enforced by the
843 board of supervisors or municipal governing authority, as the case
844 may be.

845 (4) Municipalities and counties may establish agreements
846 with other governmental entities of the state or certified
847 third-party providers to issue permits and enforce state building



848 codes in order to provide the services required by Chapter 524,
849 Laws of 2007. The council may assist in arranging for
850 municipalities, counties or third-party providers the provision of
851 services required by Chapter 524, Laws of 2007, if a written
852 request from the governing authority of the county or municipality
853 is submitted to the council.

854 **SECTION 21.** Section 17-2-7, Mississippi Code of 1972, is
855 brought forward as follows:

856 17-2-7. (1) For purposes of this section, "farm structure"
857 means a structure that is constructed on a farm, other than a
858 residence or a structure attached to it, for use on the farm,
859 including, but not limited to, barns, sheds and poultry houses,
860 but not public livestock areas. For purposes of this section,
861 "farm structure" does not include a structure originally
862 qualifying as a "farm structure" but later converted to another
863 use.

864 (2) The governing body of a county or municipality shall not
865 enforce that portion of any building code established and/or
866 imposed under Sections 17-2-1 through 17-2-5 that regulates the
867 construction or improvement of a farm structure.

868 (3) The provisions of this section do not apply unless,
869 before constructing or improving a farm structure, the person
870 owning the property on which the structure is to be constructed
871 files an affidavit with the county or municipal official
872 responsible for enforcing the building code stating that the



873 structure is being constructed as a farm structure. The affidavit
874 must include a statement of purpose or intended use of the
875 proposed structure or addition.

876 (4) This section does not affect the authority of the
877 governing body of a county or municipality to issue building
878 permits before an affidavit for the construction or improvement of
879 a farm structure is filed under subsection (3) of this section.

880 (5) The provisions of this section shall not apply to any
881 floodplain management ordinances or regulations necessary for
882 eligibility for the National Flood Insurance Program, and such
883 floodplain management ordinances or regulations shall apply
884 retroactively to any construction or improvement permit granted
885 for any structure exempted under this section before May 22, 2012.

886 **SECTION 22.** Section 17-2-9, Mississippi Code of 1972, is
887 brought forward as follows:

888 17-2-9. (1) The governing authority of any county or
889 municipality shall not enforce any portion of any building codes
890 established and/or imposed under Sections 17-2-1 through 17-2-5
891 that regulates the construction or improvement of industrial
892 facilities that are engaged in activities designated as
893 manufacturing (sectors 31-33), utilities (sector 22),
894 telecommunications (sector 517), bulk stations and materials
895 (sector 422710), crude oil pipelines (sector 486110), refined
896 petroleum products pipelines (sector 486910), natural gas
897 pipelines (sector 486210), other pipelines (sector 486990) and



898 natural gas processing plants (sector 211112), under the North
899 American Industry Classification System (NAICS).

900 (2) The governing authority of any county or municipality
901 shall not enforce any portion of any building codes established
902 and/or imposed under Sections 17-2-1 through 17-2-5 which
903 regulates the construction or improvement of buildings located on
904 nonpublic fairgrounds or the construction or improvement of
905 buildings located on the Neshoba County Fairgrounds in Neshoba
906 County, Mississippi.

907 (3) The governing authority of any county or municipality
908 shall not enforce any portion of any building codes established
909 and/or imposed under Sections 17-2-1 through 17-2-5 which
910 regulates the construction or improvement of a private unattached
911 outdoor recreational structure, such as a hunting or fishing camp.
912 In order for a structure to qualify as a "hunting camp" or
913 "fishing camp" under the provisions of this subsection, the owner
914 must file with the board of supervisors of the county in which the
915 structure is located his signed affidavit stating under oath that
916 the structure is a hunting camp or fishing camp, as the case may
917 be, that he is the owner or an owner of the camp and that the camp
918 is located in an unincorporated area of the county within, near or
919 in close proximity to land upon which hunting or fishing
920 activities legally may take place.

921 (4) The governing authority of any county or municipality
922 shall not enforce any portion of any building codes established



923 and/or imposed under Sections 17-2-1 through 17-2-5 which
924 regulates the construction or improvement of manufactured housing
925 built according to the Federal Manufactured Home Construction and
926 Safety Standards Act.

927 (5) The governing authority of Pearl River County or any
928 municipality within such county shall not enforce any portion of
929 any building codes established and/or imposed under Sections
930 17-2-1 through 17-2-5 which prohibits the use of or requires
931 building permit approval for the use of salvage lumber or green
932 cut timber in building construction provided such timber is for
933 personal use and is not for sale.

934 (6) The provisions of this section shall not apply to any
935 floodplain management ordinances or regulations necessary for
936 eligibility for the National Flood Insurance Program, and such
937 floodplain management ordinances or regulations shall apply
938 retroactively to any construction or improvement permit granted
939 for any structure exempted under this section before May 22, 2012.

940 **SECTION 23.** Section 17-17-1, Mississippi Code of 1972, is
941 brought forward as follows:

942 17-17-1. This chapter shall be known as the "Solid Wastes
943 Disposal Law of 1974."

944 **SECTION 24.** Section 17-17-2, Mississippi Code of 1972, is
945 brought forward as follows:

946 17-17-2. The administration and enforcement of the Solid
947 Wastes Disposal Law of 1974 are hereby transferred from the State



948 Board of Health to the Mississippi Commission on Environmental
949 Quality and the Mississippi Department of Environmental Quality.
950 All personnel, records, property, equipment and funds allocated to
951 the State Board of Health exclusively for the administration and
952 enforcement of the Solid Wastes Disposal Law of 1974, as amended,
953 are hereby transferred to and placed under the supervision and
954 control of the Mississippi Department of Environmental Quality.

955 **SECTION 25.** Section 17-17-3, Mississippi Code of 1972, is
956 brought forward as follows:

957 17-17-3. For purposes of this chapter, the following words
958 shall have the definitions ascribed herein unless the context
959 requires otherwise:

960 (a) "Agency" means any controlling agency, public or
961 private, elected, appointed or volunteer, controlling and
962 supervising the collection and/or disposal of solid wastes.

963 (b) "Ashes" means the solid residue from burning of
964 wood, coal, coke or other combustible materials used for heating,
965 or from incineration of solid wastes, but excepting solid residue
966 the storage or disposition of which is controlled by other
967 agencies.

968 (c) "Commercial hazardous waste management facility"
969 means any facility engaged in the storage, treatment, recovery or
970 disposal of hazardous waste for a fee and which accepts hazardous
971 waste from more than one (1) generator. A facility (i) which is
972 designed principally for treatment of aqueous hazardous wastes and



973 residue; and (ii) which is situated within an industrial park or
974 area; and (iii) which disposes of no hazardous waste within the
975 State of Mississippi shall not constitute a commercial hazardous
976 waste management facility for purposes of Section 17-17-151(3) (a)
977 only.

978 (d) "Commercial nonhazardous solid waste management
979 facility" means any facility engaged in the storage, treatment,
980 processing or disposal of nonhazardous solid waste for
981 compensation or which accepts nonhazardous solid waste from more
982 than one (1) generator not owned by the facility owner.

983 (e) "Commercial oil field exploration and production
984 waste disposal" means storage, treatment, recovery, processing,
985 disposal or acceptance of oil field exploration and production
986 waste from more than one (1) generator or for a fee.

987 (f) "Commercial purpose" means for the purpose of
988 economic gain.

989 (g) "Commission" means the Mississippi Commission on
990 Environmental Quality.

991 (h) "Composting or compost plant" means an officially
992 controlled method or operation whereby putrescible solid wastes
993 are broken down through microbic action to a material offering no
994 hazard or nuisance factors to public health or well-being.

995 (i) "Department" means the Mississippi Department of
996 Environmental Quality.



997 (j) "Disposal" means the discharge, deposit, injection,
998 dumping, spilling, leaking or placing of any solid waste or
999 hazardous waste into or on any land or water so that such solid
1000 waste or hazardous waste or any constituent thereof may enter the
1001 environment or be emitted into the air or discharged into any
1002 waters, including groundwaters.

1003 (k) "Executive director" means the Executive Director
1004 of the Mississippi Department of Environmental Quality.

1005 (l) "Garbage" means putrescible animal and vegetable
1006 wastes resulting from the handling, preparation, cooking and
1007 consumption of food, including wastes from markets, storage
1008 facilities, handling and sale of produce and other food products,
1009 and excepting such materials that may be serviced by garbage
1010 grinders and handled as household sewage.

1011 (m) "Hazardous wastes" means any waste or combination
1012 of waste of a solid, liquid, contained gaseous, or semisolid form
1013 which because of its quantity, concentration or physical, chemical
1014 or infectious characteristics, may (i) cause, or significantly
1015 contribute to an increase in mortality or an increase in serious
1016 irreversible or incapacitating reversible illness; or (ii) pose a
1017 substantial present or potential hazard to human health or the
1018 environment when improperly treated, stored, transported, disposed
1019 of, or otherwise managed which are listed by the Environmental
1020 Protection Agency as hazardous wastes which exceed the threshold
1021 limits set forth in the Environmental Protection Agency



1022 regulations for classifying hazardous waste. Such wastes include,
1023 but are not limited to, those wastes which are toxic, corrosive,
1024 flammable, irritants, strong sensitizers, or which generate
1025 pressure through decomposition, heat or other means. Such wastes
1026 do not include those radioactive materials regulated pursuant to
1027 the Mississippi Radiation Protection Law of 1976, appearing in
1028 Section 45-14-1 et seq.

1029 (n) "Hazardous waste management" means the systematic
1030 control of the collection, source separation, storage,
1031 transportation, processing, treatment, recovery and disposal of
1032 hazardous waste.

1033 (o) "Head" means the head of the Office of Pollution
1034 Control of the Mississippi Department of Environmental Quality or
1035 his designee.

1036 (p) "Health department" means the Mississippi State
1037 Health Department and every county or district health department.
1038 "Health officer" means the state or affected county health officer
1039 or his designee.

1040 (q) "Manifest" means the form used for identifying the
1041 quantity, composition, origin, routing and destination of
1042 hazardous waste during its transport.

1043 (r) "Office" means the Office of Pollution Control of
1044 the Mississippi Department of Environmental Quality.

1045 (s) "Open dump" means any officially recognized place,
1046 land or building which serves as a final depository for solid



1047 wastes, whether or not burned or buried, which does not meet the
1048 minimum requirements for a sanitary landfill, except approved
1049 incinerators, compost plants and salvage yards.

1050 (t) "Permit board" means the permit board created by
1051 Section 49-17-28.

1052 (u) "Person" means any individual, trust, firm,
1053 joint-stock company, public or private corporation (including a
1054 government corporation), partnership, association, state, or any
1055 agency or institution thereof, municipality, commission, political
1056 subdivision of a state or any interstate body, and includes any
1057 officer or governing or managing body of any municipality,
1058 political subdivision, or the United States or any officer or
1059 employee thereof.

1060 (v) "Pollution Emergency Fund" means the fund created
1061 under Section 49-17-68.

1062 (w) "Rubbish" means nonputrescible solid wastes
1063 (excluding ashes) consisting of both combustible and
1064 noncombustible wastes. Combustible rubbish includes paper, rags,
1065 cartons, wood, furniture, rubber, plastics, yard trimmings, leaves
1066 and similar materials. Noncombustible rubbish includes glass,
1067 crockery, metal cans, metal furniture and like materials which
1068 will not burn at ordinary incinerator temperatures (not less than
1069 1600 degrees F.).

1070 (x) "Sanitary landfill" means a controlled area of land
1071 upon which solid waste is deposited, and is compacted and covered



1072 with no on-site burning of wastes, and so located, contoured,
1073 drained and operated so that it will not cause an adverse effect
1074 on public health or the environment.

1075 (y) "Solid wastes" means any garbage, refuse, sludge
1076 from a waste treatment plant, water supply treatment plant or air
1077 pollution control facility and other discarded material, including
1078 solid, liquid, semisolid or contained gaseous material resulting
1079 from industrial, commercial, mining and agricultural operations,
1080 and from community activities, but does not include solid or
1081 dissolved material in domestic sewage, or solid or dissolved
1082 materials in irrigation return flows or industrial discharges
1083 which are point sources subject to permits under Section 402 of
1084 the Federal Water Pollution Control Act, as amended (86 Stat.
1085 880), or source, special nuclear or by-product material as defined
1086 by the Atomic Energy Act of 1954.

1087 (z) "Storage" means the containment of wastes, either
1088 on a temporary basis or for a period of years, except as provided
1089 in 40 C.F.R. 263.12, in such a manner as not to constitute
1090 disposal of such wastes.

1091 (aa) "Transport" means the movement of wastes from the
1092 point of generation to any intermediate points, and finally to the
1093 point of ultimate storage or disposal.

1094 (bb) "Treatment" means any method, technique or
1095 process, including neutralization, designed to change the
1096 physical, chemical or biological character or composition of any



1097 solid waste in order to neutralize such character or composition
1098 of any solid waste, neutralize such waste or render such waste,
1099 safer for transport, amenable for recovery, amenable for storage
1100 or reduced in volume.

1101 (cc) "Treatment facility" means a location at which
1102 waste is subjected to treatment and may include a facility where
1103 waste has been generated.

1104 (dd) "Unauthorized dump" means any collection of solid
1105 wastes either dumped or caused to be dumped or placed on any
1106 property either public or private, whether or not regularly used.
1107 An abandoned automobile, large appliance, or similar large item of
1108 solid waste shall be considered as forming an unauthorized dump
1109 within the meaning of this chapter, but not the careless,
1110 scattered littering of smaller individual items as tires, bottles,
1111 cans and the like. An unauthorized dump shall also mean any solid
1112 waste disposal site which does not meet the regulatory provisions
1113 of this chapter.

1114 **SECTION 26.** Section 17-17-5, Mississippi Code of 1972, is
1115 brought forward as follows:

1116 17-17-5. (1) After December 31, 1992, the board of
1117 supervisors and/or municipal governing body shall provide for the
1118 collection and disposal of garbage and the disposal of rubbish.
1119 The board of supervisors and/or municipal governing body may
1120 provide such collection or disposal services by contract with
1121 private or other controlling agencies, and the service may include



1122 house-to-house service or the placement of regularly serviced and
1123 controlled bulk refuse receptacles within reasonable distance from
1124 the farthest affected household, and the wastes disposed of in a
1125 manner acceptable to the department and within the meaning of this
1126 chapter. The board of supervisors and/or municipal governing body
1127 shall have the power to and are hereby authorized to enter into
1128 contracts related in any manner to the collection and
1129 transportation of solid wastes for a term of up to six (6) years
1130 and to enter into contracts related in any manner to the
1131 generation and sale of energy generated from solid waste, and
1132 contracts for treatment, processing, distribution, recycling,
1133 elimination or disposal of solid wastes for a term of up to thirty
1134 (30) years. The municipal governing body of any municipality is
1135 authorized to regulate the disposal of garbage and rubbish in
1136 sanitary landfills, as provided in Section 21-19-1, Mississippi
1137 Code of 1972.

1138 (2) In the event an unincorporated area which is annexed by
1139 a municipality is being provided collection and disposal of
1140 garbage and rubbish under contract with private or other
1141 controlling agencies, the municipality shall annex the area
1142 subject to the contract for the remainder of the term of the
1143 contract, but not to exceed five (5) years.

1144 **SECTION 27.** Section 17-17-7, Mississippi Code of 1972, is
1145 brought forward as follows:



1146 17-17-7. Garbage and rubbish containing garbage shall be
1147 disposed of by sanitary landfill, approved incineration,
1148 composting, or by other means now available or which may later
1149 become available as approved by the department and under the
1150 supervision and control of a governmental, private or other agency
1151 acting within the provisions of this chapter.

1152 **SECTION 28.** Section 17-17-9, Mississippi Code of 1972, is
1153 brought forward as follows:

1154 17-17-9. No garbage, or rubbish containing garbage or other
1155 putrescible materials, or hazardous wastes shall be burned except
1156 in approved incinerators meeting the necessary temperature
1157 requirements and air pollution controls as now established or may
1158 later be established. The open burning of rubbish shall be
1159 permitted only under controlled circumstances where sanitary
1160 landfill and landfill is not feasible, and not in proximity to
1161 sanitary landfill or landfill operations where spread of fire to
1162 these operations may be a hazard in the opinion of the controlling
1163 agency.

1164 **SECTION 29.** Section 17-17-11, Mississippi Code of 1972, is
1165 brought forward as follows:

1166 17-17-11. Trucks or other vehicles engaged in the business
1167 of hauling solid waste shall be so covered, secured or sealed that
1168 there will be no loss during haulage to cause littering of streets
1169 and highways or cause a nuisance or hazard to the public health.



1170 **SECTION 30.** Section 17-17-13, Mississippi Code of 1972, is
1171 brought forward as follows:

1172 17-17-13. Nothing in this chapter shall prevent an
1173 individual or firm from disposing of solid waste from his own
1174 household or business upon his own land, provided such wastes are
1175 not hazardous as defined in Section 17-17-3(i) and provided such
1176 household or business is located and situated in the State of
1177 Mississippi.

1178 Provided, however, this exemption shall not operate to
1179 prevent the conduct of any waste disposal site investigation or
1180 inventory required by applicable state or federal law, rule or
1181 regulation, and further shall not operate to exclude from the
1182 regulatory provisions of this chapter any solid waste determined
1183 by the department to have characteristics that constitute an
1184 endangerment to the environment or the public health, safety or
1185 welfare, or any site used for the disposal of such solid waste.

1186 **SECTION 31.** Section 17-17-15, Mississippi Code of 1972, is
1187 brought forward as follows:

1188 17-17-15. (1) Hazardous wastes shall not be handled or
1189 disposed of along with or in the same site or adjoining site as
1190 ordinary wastes unless specifically approved as exempted waste by
1191 the department. These shall be disposed of by special
1192 incinerators, separate landfills, or other means dictated by the
1193 particularities of the hazardous waste involved, as determined by
1194 the department or other responsible agency. The department may,



1195 in its discretion, maintain a field office at any treatment or
1196 disposal facility that receives hazardous wastes directly or
1197 indirectly from more than one (1) generator. However, the
1198 department shall maintain a field office at any commercial
1199 off-site multiuser hazardous waste incinerator designed to
1200 incinerate multiple nonhomogeneous types of wastes, and the cost
1201 of operating such field office shall be borne by the owner of such
1202 commercial hazardous waste incinerator. The field office, when
1203 required, shall be located in adequate accommodations provided by
1204 the facility owner and shall be staffed with department regulatory
1205 personnel as deemed necessary by the department. In exercising
1206 its discretion to determine the need for a field office,
1207 regulatory staff and support equipment, the department shall
1208 consider, at a minimum, the type and amount of hazardous waste
1209 received and also the type of facility. All fees shall be
1210 established by the department and shall be in addition to any
1211 other fees provided by law. The fee prescribed by the department
1212 shall be in an amount not less than the actual operating expenses
1213 of the permanent field office and shall be in addition to any
1214 other fees required by law.

1215 (2) In addition to considering all applicable state and
1216 federal laws and regulations, the Mississippi Pollution Control
1217 Permit Board shall not issue a permit for the establishment or
1218 operation of a commercial hazardous waste landfill for the
1219 disposal of hazardous waste (as defined by Section 17-17-3,



1220 Mississippi Code of 1972), in the State of Mississippi until the
1221 Environmental Protection Agency makes a final determination,
1222 pursuant to the Federal Hazardous and Solid Waste Amendments of
1223 1984, Public Law No. 98-616, that each waste to be placed in such
1224 landfill is suitable for land disposal.

1225 **SECTION 32.** Section 17-17-17, Mississippi Code of 1972, is
1226 brought forward as follows:

1227 17-17-17. The formation of unauthorized dumps is hereby
1228 declared to be a public nuisance per se, menacing public health
1229 and unlawful, and any person who forms an unauthorized dump shall
1230 be punished as provided in Section 17-17-29. Existing dumps shall
1231 be eliminated by removal or on-site burial.

1232 **SECTION 33.** Section 17-17-19, Mississippi Code of 1972, is
1233 brought forward as follows:

1234 17-17-19. Rodents and insects of public health importance,
1235 as rats, flies, mosquitoes and the like shall be controlled in a
1236 manner satisfactory to the health department; and the closing out
1237 or conversion to sanitary landfill operations of existing open
1238 dumps shall, where deemed necessary by the health officer, be
1239 accompanied by an adequate rat eradication program to prevent the
1240 spread of rodents to nearby properties.

1241 **SECTION 34.** Section 17-17-27, Mississippi Code of 1972, is
1242 brought forward as follows:

1243 17-17-27. (1) The department shall exercise such
1244 supervision over restrictions, equipment, methodology and



1245 personnel in the management of solid wastes as may be necessary to
1246 enforce sanitary requirements; and the commission shall adopt such
1247 rules and regulations as may be needed to specify methodology and
1248 procedures to meet the requirements of this chapter, which shall
1249 include at a minimum:

1250 (a) Criteria for the determination of whether any waste
1251 or combination of wastes is hazardous for the purposes of this
1252 chapter;

1253 (b) Rules and regulations for the storage, treatment
1254 and disposal of solid wastes;

1255 (c) Rules and regulations for the transportation,
1256 containerization and labeling of hazardous wastes, which rules
1257 shall be consistent with those issued by the United States
1258 Department of Transportation;

1259 (d) Rules and regulations specifying the terms and
1260 conditions under which the Permit Board shall issue, modify,
1261 suspend, revoke or deny such permits as may be required by this
1262 chapter. Such rules and regulations shall include, and not by way
1263 of limitation, specific authority for the Permit Board to consider
1264 the financial capability and performance history of an applicant;

1265 (e) Rules and regulations establishing standards and
1266 procedures for the safe storage or transportation of hazardous
1267 waste and for the safe operation and maintenance of hazardous
1268 waste treatment or disposal facilities or sites or equipment;



1269 (f) A listing of those wastes or combinations of wastes
1270 which are not compatible, and which may not be stored or disposed
1271 of together;

1272 (g) Procedures and requirements for the use of a
1273 manifest during the transport of hazardous wastes;

1274 (h) Standards for financial responsibility to cover the
1275 liability, closure and post-closure of any site and perpetual care
1276 of a commercial hazardous waste landfill. Rules and regulations
1277 promulgated hereunder may include, and not by way of limitation,
1278 requirements for maintaining liability insurance coverage if such
1279 coverage is not required under rules and regulations promulgated
1280 by the United States Environmental Protection Agency;

1281 (i) Rules and regulations establishing minimum
1282 distances within which any hazardous waste disposal facility may
1283 be located from any municipality, school, residence, church or
1284 health care facility;

1285 (j) Other rules and regulations as the commission deems
1286 necessary to manage hazardous wastes in the state, provided that
1287 such rules and regulations shall be equivalent to the United
1288 States Environmental Protection Agency's rules and regulations.

1289 (2) In complying with this section the commission shall
1290 consider the variations within this state in climate, geology,
1291 population density and such other factors as may be relevant to
1292 the management of hazardous wastes. It is the intent of the
1293 Legislature that commercial hazardous waste landfills be located



1294 on those sites which, by virtue of their geologic conditions,
1295 provide a high degree of environmental protection. In carrying
1296 out the intent of this provision, the commission is authorized to
1297 adopt siting criteria for commercial hazardous waste landfills
1298 which are more stringent or extensive in scope, coverage and
1299 effect than the rules and regulations promulgated by the United
1300 States Environmental Protection Agency.

1301 (3) Except as hereinafter provided, hazardous wastes shall
1302 not be disposed of in this state by the use of underground
1303 injection methods, as herein defined according to 40 CFR
1304 260.10(74) to mean "subsurface emplacement of fluids through a
1305 bored, drilled, or driven well, or through a dug well, where the
1306 depth of the dug well is greater than the largest surface
1307 dimension." This prohibition shall not apply to the disposal on
1308 the generation site of hazardous wastes generated in the
1309 production of oil or gas or in a commercial or manufacturing
1310 operation. Commercial hazardous waste underground injection wells
1311 designed or intended to dispose of multiple nonhomogeneous types
1312 of wastes from multiple sources other than the owner of the well
1313 are hereby prohibited in the State of Mississippi.

1314 A commercial hazardous waste landfill shall not be located on
1315 the same site or within one thousand (1,000) feet of an existing
1316 or abandoned ordinary waste disposal site, unless the hazardous
1317 waste to be disposed of in said commercial landfill is
1318 specifically approved as exempted.



1319 (4) After promulgation of the regulations required under
1320 this section, no person shall construct, substantially alter or
1321 operate any solid waste treatment or disposal facility or site,
1322 nor shall any person store, treat or dispose of any hazardous
1323 waste without first obtaining a permit from the Permit Board for
1324 such facility, site or activity. However, no person shall
1325 construct any new hazardous waste treatment or disposal facility
1326 or site or substantially alter any such existing facility or site,
1327 nor shall the Permit Board issue a permit for any such
1328 construction or alteration, until the commission has promulgated
1329 rules and regulations under the provisions of subsection (1)(j) of
1330 this section. Said rules and regulations shall be equivalent to
1331 counterpart rules and regulations of the Environmental Protection
1332 Agency whether now in effect or hereinafter promulgated. Any
1333 person who has made an application for a permit for an existing
1334 facility under this section shall be treated as having been issued
1335 such permit until such time as final administrative disposition of
1336 such application has been made unless the cause of such delay is
1337 the result of the failure of the applicant to furnish information
1338 reasonably required or requested in order to process the
1339 application.

1340 (5) Any permit issued under this section may be revoked by
1341 the issuing agency at any time when the permittee fails to comply
1342 with the terms and conditions of the permit. Where the obtaining
1343 of or compliance with any permit required under this section



1344 would, in the judgment of the department, cause undue or
1345 unreasonable hardship to any person, the department may issue a
1346 variance from these requirements. In no case shall the duration
1347 of any such variance exceed one (1) year. Renewals or extensions
1348 may be given only after an opportunity has been given for public
1349 comment on each such renewal or extension.

1350 (6) Information obtained by the commission concerning
1351 environmental protection including, but not limited to,
1352 information contained in applications for solid or hazardous waste
1353 disposal permits shall be public information and shall be made
1354 available upon proper request. Other information obtained by the
1355 commission, department, or Permit Board in the administration of
1356 Sections 17-17-1 through 17-17-47 concerning trade secrets,
1357 including, but not limited to, marketing or financial information,
1358 treatment, transportation, storage or disposal processes or
1359 devices, methods of manufacture, or production capabilities or
1360 amounts shall be kept confidential if and only if: (a) a written
1361 confidentiality claim is made when the information is supplied;
1362 (b) such confidentiality claim allows disclosure to authorized
1363 department employees and/or the United States Environmental
1364 Protection Agency (EPA); and (c) such confidentiality claim is
1365 determined by the commission to be valid. If the confidentiality
1366 claim is denied, the information sought to be covered thereby
1367 shall not be released or disclosed, except to the Environmental
1368 Protection Agency, until the claimant has been notified in writing



1369 and afforded an opportunity for a hearing and appeal therefrom, as
1370 with other orders of the commission. Disclosure of confidential
1371 information by the EPA shall be governed by federal law and EPA
1372 regulations. Misappropriation of a trade secret shall be governed
1373 by the Mississippi Uniform Trade Secrets Act, Sections 75-26-1
1374 through 75-26-19.

1375 (7) Anyone making unauthorized disclosure of information
1376 determined to be confidential as herein provided shall be liable
1377 in a civil action for damages arising therefrom and shall also be
1378 guilty of a misdemeanor punishable as provided by law.

1379 (8) Notwithstanding any other provision of this chapter, the
1380 executive director, upon receipt of information that the
1381 generation, storage, transportation, treatment or disposal of any
1382 solid waste may present an imminent and substantial hazard to the
1383 public health or to the environment, may take any legal, equitable
1384 or other action, including injunctive relief, necessary to protect
1385 the health of such persons or the environment.

1386 **SECTION 35.** Section 17-17-29, Mississippi Code of 1972, is
1387 brought forward as follows:

1388 17-17-29. (1) Any person found by the commission violating
1389 any of the provisions of Sections 17-17-1 through 17-17-47, or any
1390 rule or regulation or written order of the commission in pursuance
1391 thereof, or any condition or limitation of a permit, shall be
1392 subject to a civil penalty of not more than Twenty-five Thousand
1393 Dollars (\$25,000.00) for each violation, such penalty to be



1394 assessed and levied by the commission after a hearing. Appeals
1395 from the imposition of the civil penalty may be taken to the
1396 chancery court in the same manner as appeals from orders of the
1397 commission. If the appellant desires to stay the execution of a
1398 civil penalty assessed by the commission, he shall give bond with
1399 sufficient resident sureties of one or more guaranty or surety
1400 companies authorized to do business in this state, payable to the
1401 State of Mississippi, in an amount equal to double the amount of
1402 any civil penalty assessed by the commission, as to which the stay
1403 of execution is desired, conditioned, if the judgment shall be
1404 affirmed, to pay all costs of the assessment entered against the
1405 appellant. Each day upon which such violation occurs shall be
1406 deemed a separate and additional violation.

1407 (2) In lieu of, or in addition to, the penalty provided in
1408 subsection (1) of this section, the commission shall have the
1409 power to institute and maintain in the name of the state any and
1410 all proceedings necessary or appropriate to enforce the provisions
1411 of Sections 17-17-1 through 17-17-47, rules and regulations in
1412 force pursuant thereto, and orders and permits made and issued
1413 under those sections, in the appropriate circuit, chancery, county
1414 or justice court of the county in which venue may lie. The
1415 commission may obtain mandatory or prohibitory injunctive relief,
1416 either temporary or permanent, and in cases of imminent and
1417 substantial hazard as set forth in Section 17-17-27, it shall not
1418 be necessary in such cases that the state plead or prove (a) that



1419 irreparable damage would result if the injunction did not issue;
1420 (b) that there is no adequate remedy at law; or (c) that a written
1421 complaint or commission order has first been issued for the
1422 alleged violation.

1423 (3) Any person who violates any of the provisions of, or
1424 fails to perform any duty imposed by, Sections 17-17-1 through
1425 17-17-47, or any rule or regulation issued hereunder, or who
1426 violates any order or determination of the commission promulgated
1427 pursuant to such sections, and causes the death of wildlife shall
1428 be liable, in addition to the penalties provided in subsections
1429 (1) and (2) of this section, to pay to the state an additional
1430 amount equal to the sum of money reasonably necessary to replenish
1431 such wildlife as determined by the commission after consultation
1432 with the Mississippi Commission on Wildlife, Fisheries and Parks.
1433 Such amount may be recovered by the commission on behalf of the
1434 state in a civil action brought in the appropriate county or
1435 circuit court of the county in which venue may lie.

1436 (4) Any person creating, or responsible for creating,
1437 through misadventure, happenstance, or otherwise, an immediate
1438 necessity for remedial or clean-up action involving solid waste
1439 shall be liable for the cost of such remedial or clean-up action
1440 and the commission may recover the cost of same by a civil action
1441 brought in the circuit court of the county in which venue may lie.
1442 This penalty may be recovered in lieu of or in addition to the



1443 penalties provided in subsections (1), (2) and (3) of this
1444 section.

1445 In the event of the necessity for immediate remedial or
1446 clean-up action, the commission may contract for same and advance
1447 funds from the Pollution Emergency Fund to pay the costs thereof,
1448 such advancements to be repaid to the Pollution Emergency Fund
1449 upon recovery by the commission as provided herein.

1450 (5) Any person who knowingly violates any provision of this
1451 chapter or violates any order issued by the commission under the
1452 authority of this chapter shall, upon conviction, be guilty of a
1453 misdemeanor and shall be subject to a fine of not more than
1454 Twenty-five Thousand Dollars (\$25,000.00) for each day of
1455 violation or to imprisonment not to exceed one (1) year, or both.
1456 Each day's violation shall constitute a separate offense.

1457 (6) All fines, penalties and other sums recovered or
1458 collected by the commission for and in behalf of the state under
1459 this section shall be deposited in the Pollution Emergency Fund
1460 established by Sections 49-17-61 through 49-17-70, and the
1461 commission is authorized to receive and accept, from any and all
1462 available sources whatsoever, additional funds to be deposited in
1463 such fund and expended for the purpose of remedial, cleanup or
1464 abatement actions involving the introduction of solid waste upon
1465 or into the land, air or waters of this state in violation of
1466 Sections 17-17-1 through 17-17-47, any rule or regulation or



1467 written order of the commission in pursuance thereof, or any
1468 condition or limitation of a permit.

1469 (7) In determining the amount of any penalty under this
1470 chapter, the commission shall consider at a minimum:

1471 (a) The willfulness of the violation;

1472 (b) Any damage to air, water, land or other natural
1473 resources of the state or their uses;

1474 (c) Costs of restoration and abatement;

1475 (d) Economic benefit as a result of noncompliance;

1476 (e) The seriousness of the violation, including any
1477 harm to the environment and any hazard to the health, safety and
1478 welfare of the public;

1479 (f) Past performance history; and

1480 (g) Whether the noncompliance was discovered and
1481 reported as the result of a voluntary self-evaluation. If a
1482 person discovers as a result of a voluntary self-evaluation,
1483 information related to noncompliance with an environmental law and
1484 voluntarily discloses that information to the department,
1485 commission or any employee thereof, the commission shall, to the
1486 greatest extent possible, reduce a penalty, if any, determined by
1487 the commission, except for economic benefit as a result of
1488 noncompliance, to a de minimis amount if all of the following are
1489 true:

1490 (i) The disclosure is made promptly after
1491 knowledge of the information disclosed is obtained by the person;



1492 (ii) The person making the disclosure initiates
1493 the appropriate corrective actions and pursues those corrective
1494 actions with due diligence;

1495 (iii) The person making the disclosure cooperates
1496 with the commission and the department regarding investigation of
1497 the issues identified in the disclosure;

1498 (iv) The person is not otherwise required by an
1499 environmental law to make the disclosure to the commission or the
1500 department;

1501 (v) The information was not obtained through any
1502 source independent of the voluntary self-evaluation or by the
1503 department through observation, sampling or monitoring;

1504 (vi) The noncompliance did not result in a
1505 substantial endangerment threatening the public health, safety or
1506 welfare or the environment; and

1507 (vii) The noncompliance is not a repeat violation
1508 occurring at the same facility within a period of three (3) years.
1509 "Repeat violation" in this subparagraph means a second or
1510 subsequent violation, after the first violation has ceased, of the
1511 same statutory provision, regulation, permit condition, or
1512 condition in an order of the commission.

1513 (8) Any provision of this section and chapter regarding
1514 liability for the costs of cleanup, removal, remediation or
1515 abatement of any pollution, hazardous waste or solid waste shall



1516 be limited as provided in Section 49-17-42 and rules adopted
1517 thereto.

1518 (9) Any person who violates Section 49-17-603, shall, in
1519 addition to any other penalties, be subject to the penalties
1520 provided in this section.

1521 **SECTION 36.** Section 17-17-31, Mississippi Code of 1972, is
1522 brought forward as follows:

1523 17-17-31. The provisions of this chapter are supplemental
1524 and in addition to Section 21-19-1 and Sections 19-5-17 through
1525 19-5-27, Mississippi Code of 1972.

1526 **SECTION 37.** Section 17-17-33, Mississippi Code of 1972, is
1527 brought forward as follows:

1528 17-17-33. Counties, municipal and private companies are
1529 hereby authorized to participate in applicable approved regional
1530 solid waste disposal, recycling and recovery systems.

1531 **SECTION 38.** Section 17-17-35, Mississippi Code of 1972, is
1532 brought forward as follows:

1533 17-17-35. Authorized employees or representatives of the
1534 department shall be authorized to enter and inspect generating,
1535 treating, storage, transportation and disposal equipment,
1536 facilities or sites to determine proper treatment, storage,
1537 transportation and/or disposal. Employees and/or representatives
1538 of the department shall be authorized to enter and inspect at any
1539 time vehicles transporting or disposing of wastes as outlined in
1540 this section.



1541 **SECTION 39.** Section 17-17-37, Mississippi Code of 1972, is
1542 brought forward as follows:

1543 17-17-37. The solid wastes involved shall become the lawful
1544 property of the local governments and/or commercial enterprises
1545 involved at the point of collection and in the absence of
1546 contractual provisions to the contrary, shall become the property
1547 of the operator of an approved system upon delivery to such
1548 operator whether delivery be at a transfer station or at a
1549 processing plant.

1550 **SECTION 40.** Section 17-17-39, Mississippi Code of 1972, is
1551 brought forward as follows:

1552 17-17-39. Nothing in Sections 17-17-33 through 17-17-41
1553 shall be construed to prohibit local governments from the
1554 construction or operation of approved sanitary landfills, or of
1555 any other heretofore or hereafter approved solid waste disposal
1556 system, it being the intent of Sections 17-17-33 through 17-17-41
1557 that their provisions shall be supplementary to, and not
1558 restrictive of, any previously authorized solid waste disposal
1559 system, facility or operation, nor of any other such system,
1560 facility or operation which may be authorized in the future.

1561 **SECTION 41.** Section 17-17-41, Mississippi Code of 1972, is
1562 brought forward as follows:

1563 17-17-41. Nothing in Sections 17-17-33 through 17-17-41
1564 shall be construed to prohibit private enterprise or other
1565 agencies from the construction or operation of recycling plants or



1566 to prohibit the sale or gift of solid wastes to private enterprise
1567 or other agencies by local governments.

1568 **SECTION 42.** Section 17-17-43, Mississippi Code of 1972, is
1569 brought forward as follows:

1570 17-17-43. The procedures whereby the commission or an
1571 employee thereof may obtain a hearing before the commission on a
1572 violation of any provision of Sections 17-17-1 through 17-17-41
1573 and Section 17-17-47 or of a regulation or of any order of the
1574 commission or whereby any interested person may obtain a hearing
1575 on matters within the jurisdiction of the commission or a hearing
1576 on any order of the commission shall be as prescribed in Sections
1577 49-17-31 through 49-17-41.

1578 Further, all proceedings before the permit board of the
1579 bureau of pollution and control shall be conducted in the manner
1580 prescribed by Section 49-17-29.

1581 **SECTION 43.** Section 17-17-45, Mississippi Code of 1972, is
1582 brought forward as follows:

1583 17-17-45. In addition to any other remedies that might now
1584 be available, any person or interested party aggrieved by an order
1585 of the commission or of the permit board of the bureau of
1586 pollution control shall have the right to perfect an appeal to the
1587 appropriate chancery court in the manner set forth in Sections
1588 49-17-41 and 49-17-29.

1589 **SECTION 44.** Section 17-17-47, Mississippi Code of 1972, is
1590 brought forward as follows:



1591 17-17-47. (1) Notwithstanding any other provisions
1592 contained in this chapter, the State Oil and Gas Board shall
1593 continue to exercise the exclusive authority to make rules and
1594 regulations and issue permits governing the noncommercial disposal
1595 of oil field waste products and shall continue to exercise the
1596 exclusive authority to regulate Class II underground injection
1597 wells in accordance with the provisions of Section 53-1-17;
1598 provided, however, that to the extent that such oil field
1599 exploration and production waste products may likewise constitute
1600 hazardous wastes under the provisions of this chapter, such rules
1601 and regulations shall be subject to the approval of the commission
1602 in order to insure that they are consistent with the requirements
1603 of this chapter and the Resource Conservation and Recovery Act of
1604 1976 (Public Law 94-580).

1605 (2) The commission shall have the exclusive authority to
1606 regulate the commercial disposal of oil field exploration and
1607 production waste products subject to limitations set out in
1608 subsection (1) of this section.

1609 **SECTION 45.** Section 17-17-48, Mississippi Code of 1972, is
1610 brought forward as follows:

1611 17-17-48. It is the intent of this Legislature that the
1612 Mississippi Energy and Transportation Board shall have
1613 jurisdiction over state nuclear waste policy, activities and
1614 siting, including the long-term or temporary storage and/or
1615 disposal of high-level radioactive and transuranic waste, in



1616 accordance with the provisions of Sections 17-17-48 through
1617 17-17-51 and Chapter 49 of Title 57, Mississippi Code of 1972.

1618 **SECTION 46.** Section 17-17-49, Mississippi Code of 1972, is
1619 brought forward as follows:

1620 17-17-49. (1) No salt dome or other geologic structures
1621 within the jurisdiction of the State of Mississippi shall be the
1622 site of long-term or terminal disposal, or long-term storage for
1623 high-level radioactive wastes or other high-level radioactive
1624 material of any nature by any person, until the state has
1625 exhausted its administrative and legislative authority under the
1626 provisions of this section and Chapter 49 of Title 57, Mississippi
1627 Code of 1972, and the provisions of P.L. 97-425.

1628 (2) Whoever violates the provisions of this section, upon
1629 conviction thereof, shall be punished by a fine of One Thousand
1630 Dollars (\$1,000.00) for each day upon which the violation occurred
1631 or by imprisonment in the county jail not to exceed six (6)
1632 months, or both. Upon violation or upon reasonable belief of
1633 violation of this section, the State Attorney General shall
1634 institute proceedings for injunctive relief in the chancery court
1635 of the county in which the violation occurred to require the
1636 immediate cessation of any testing, on-site evaluation or any
1637 other site evaluation or selection procedure regarding possible
1638 use of any salt dome or geologic structure within the jurisdiction
1639 of the State of Mississippi, the immediate cessation of
1640 transportation of high-level radioactive waste or other high-level



1641 radioactive material to the site, and the immediate removal from
1642 the State of Mississippi of such materials already located on the
1643 site.

1644 (3) (a) Any person, governmental entity, or any other
1645 entity desiring to use Mississippi salt domes or other geologic
1646 structures within the state for the disposal of radioactive wastes
1647 shall make notification to the Governor, the Legislature, and,
1648 pursuant to the provisions of Sections 17-17-48 through 17-17-51
1649 and Chapter 49 of Title 57, Mississippi Code of 1972, the State
1650 Energy and Transportation Board. Such person, governmental
1651 entity, or other entity shall include with the aforementioned
1652 notification the selection method with evaluative criteria to be
1653 used and the methods and procedures of exploration to be used in
1654 selecting a site for a disposal facility. Such person,
1655 governmental entity, or other entity shall conduct such studies
1656 where specifically mandated to do so by this section in
1657 coordination with the above-mentioned state agencies, and shall
1658 assume the cost of any studies required by this section or
1659 required by the state agencies empowered to enforce the provisions
1660 of this section, whether or not the agencies or such person or
1661 entity actually conducts the study.

1662 (b) Such person, governmental entity, or other entity
1663 desiring to establish a waste facility as defined in paragraph (a)
1664 of this subsection shall conduct studies as follows to determine
1665 the feasibility of using Mississippi salt domes or other geologic



1666 structures within the state for the disposal of radioactive
1667 wastes. A hydrogeologic and geologic study shall be conducted.
1668 All basic data and documentation pertinent to all aspects of such
1669 studies together with any conclusions shall be presented as
1670 accumulated to the Governor, the Legislature, and, pursuant to the
1671 provisions of Sections 17-17-48 through 17-17-51 and Chapter 49 of
1672 Title 57, Mississippi Code of 1972, the State Energy and
1673 Transportation Board.

1674 (c) Such person, governmental entity, or other entity
1675 desiring to establish a waste facility as defined in paragraph (a)
1676 of this subsection shall conduct an environmental impact survey in
1677 conjunction with the Bureau of Pollution Control of the Department
1678 of Natural Resources or its successor. Copies of this completed
1679 survey shall be presented to the Governor, the Legislature, and
1680 the State Energy and Transportation Board.

1681 (d) Such person, governmental entity, or other entity
1682 desiring to establish a waste facility as defined in paragraph (a)
1683 of this subsection shall conduct a socioeconomic impact survey in
1684 conjunction with the University Research Center. Such survey
1685 shall include, but not be limited to, the allocation of costs
1686 regarding roads, bridges, relocation of persons and properties,
1687 and the effect on local tax revenues. Copies of this completed
1688 survey shall be sent to the Governor, the Legislature, and the
1689 State Energy and Transportation Board.



1690 (4) Upon the completion of such thorough technological,
1691 environmental and socioeconomic studies as required in subsection
1692 (3) of this section, the Governor shall consult with
1693 representatives of the agencies mentioned herein and with
1694 representatives of the affected county, including, but not limited
1695 to, the board of supervisors. The Governor shall thereafter
1696 determine the advisability of such facility at the proposed site.
1697 If the Governor's decision after such consultations is favorable
1698 to the establishment of the nuclear waste disposal site, he shall
1699 advise the Legislature of his decision regarding creation of such
1700 disposal facility. If the Governor's decision, after such
1701 consultations, is not favorable to the establishment of the
1702 nuclear waste storage and/or disposal facility, and after the
1703 President has recommended a site in the State of Mississippi for
1704 development as a repository, test and evaluation facility, interim
1705 storage facility or monitored, retrievable storage facility, the
1706 Governor shall notify the Legislature of that decision and either
1707 the Governor or the Legislature shall prepare and transmit to the
1708 Speaker of the United States House of Representatives and the
1709 President Pro Tempore of the United States Senate a notice of
1710 disapproval of the site recommendation. The notice of disapproval
1711 shall contain a statement of those reasons for objection to the
1712 site recommendation. All such disposal or storage shall be made
1713 in strict adherence to guidelines established by the federal



1714 government, the Division of Radiological Health of the State Board
1715 of Health and the provisions of this section.

1716 **SECTION 47.** Section 17-17-51, Mississippi Code of 1972, is
1717 brought forward as follows:

1718 17-17-51. Nothing in Sections 17-17-48 through 17-17-51 or
1719 in Chapter 49 of Title 57, Mississippi Code of 1972, prohibits or
1720 is intended to prohibit the shipment, receipt, use or on-site
1721 storage of nuclear fuel assemblies to a facility licensed by the
1722 Nuclear Regulatory Commission, or the transportation from the
1723 facility of spent nuclear fuel assemblies to a licensed
1724 reprocessing plant or to a licensed away-from-reactor storage
1725 facility.

1726 Provided further, that nothing in Sections 17-17-48 through
1727 17-17-51 or in Chapter 49 of Title 57, Mississippi Code of 1972,
1728 prohibits or is intended to prohibit the on-site storage of
1729 low-level radioactive waste that is generated at a facility
1730 licensed by the Nuclear Regulatory Commission.

1731 **SECTION 48.** Section 17-17-53, Mississippi Code of 1972, is
1732 brought forward as follows:

1733 17-17-53. (1) On or before July 15 of each year, the owner
1734 or operator of every commercial hazardous waste management
1735 facility shall file with the State Tax Commission and the
1736 department a statement, verified by oath, showing by category the
1737 total amounts of hazardous waste managed for a fee at the facility



1738 during the preceding calendar year, and shall at the same time pay
1739 to the State Tax Commission a sum equal to:

1740 (a) Ten Dollars (\$10.00) per ton for hazardous waste
1741 generated and disposed of in the state by landfilling or any other
1742 means of land disposal and for hazardous waste generated and
1743 stored for one (1) year or more in the state;

1744 (b) Two Dollars (\$2.00) per ton for hazardous waste
1745 generated and treated in the state and for hazardous waste
1746 generated and stored for less than one (1) year in the state; and

1747 (c) One Dollar (\$1.00) per ton for hazardous waste
1748 generated and recovered in the state.

1749 (2) For all hazardous waste generated outside of the state
1750 and received at a commercial hazardous waste management facility
1751 during the preceding calendar year, each owner or operator of a
1752 commercial hazardous waste management facility shall pay to the
1753 State Tax Commission an amount equal to the per-ton fee imposed on
1754 the management of out-of-state waste by the state from which the
1755 hazardous waste originated, but in any event no less than the
1756 per-ton fees described in subsection (1) of this section.

1757 (3) (a) For the purposes of this section, the term
1758 "commercial hazardous waste management facility" shall not include
1759 any manufacturing facility that uses hazardous waste as fuel as
1760 part of its manufacturing process.

1761 (b) This subsection shall stand repealed from and after
1762 December 31, 1996.



1763 (4) All monies received by the State Tax Commission
1764 hereunder shall be appropriated and utilized as follows:

1765 (a) Thirty-five percent (35%) shall be remitted to the
1766 Department of Environmental Quality to be held for the perpetual
1767 care and maintenance account of commercial facilities for the
1768 management of hazardous or nonhazardous solid waste.

1769 (b) Thirty-five percent (35%) shall be remitted to the
1770 department to defray costs of the waste minimization program and
1771 evaluation of uncontrolled sites.

1772 (c) Subject to the provisions of Section 17-17-55, all
1773 other funds shall be paid to the general fund of the municipality
1774 or county within which the facility is located.

1775 (5) All administrative provisions of the Mississippi Sales
1776 Tax Law, including those which fix damages, penalties and interest
1777 for nonpayment of taxes and for noncompliance with the provisions
1778 of such chapter, and all other duties and requirements imposed
1779 upon taxpayers, shall apply to all persons liable for fees under
1780 the provisions of this chapter, and the Tax Commissioner shall
1781 exercise all the power and authority and perform all the duties
1782 with respect to taxpayers under this chapter as are provided in
1783 the Mississippi Sales Tax Law except where there is a conflict,
1784 then the provisions of this chapter shall control.

1785 (6) Each generator of greater than two hundred twenty (220)
1786 pounds of hazardous waste in any calendar month, each transporter
1787 of hazardous waste, and the owner or operator of any facility for



1788 the treatment, storage, recycling or disposal of hazardous waste
1789 shall report annually by a date determined by the department on
1790 forms provided by the department the types and amounts of
1791 hazardous waste generated, managed and/or shipped during the
1792 preceding calendar year. To the extent practicable, the
1793 department shall adopt forms consistent with biennial report forms
1794 used by the United States Environmental Protection Agency.

1795 **SECTION 49.** Section 17-17-54, Mississippi Code of 1972, is
1796 brought forward as follows:

1797 17-17-54. (1) (a) There is created in the State Treasury a
1798 fund to be designated as the Uncontrolled Site Evaluation Trust
1799 Fund, referred to in this section as "fund," to be administered by
1800 the Executive Director of the Department of Environmental Quality.

1801 (b) Monies in the fund shall be utilized to pay
1802 reasonable direct and indirect costs associated with the
1803 administration and evaluation of uncontrolled sites, including,
1804 but not limited to, the reasonable costs of the following
1805 activities:

1806 (i) Reviewing plans, specifications, engineering
1807 reports and other documents related to site assessments,
1808 preliminary assessments, site investigations, remedial
1809 investigations, feasibility studies, remedy selection, remedial
1810 design, remedial actions, site specific risk assessments and
1811 operation and maintenance;



1812 (ii) Establishing cleanup levels and objectives
1813 and risk targets and reviewing cleanup alternatives and
1814 technologies;

1815 (iii) Administering the uncontrolled sites
1816 program, including, but not limited to, collecting and analyzing
1817 data, conducting site inspections and site monitoring activities,
1818 maintaining a computerized database, of site inventories and
1819 status, and providing any necessary further action or no further
1820 action letters;

1821 (iv) Preparing generally applicable or relevant
1822 and appropriate requirements or guidance;

1823 (v) Conducting other activities directly related
1824 to the administration and evaluation of uncontrolled sites.

1825 (c) Expenditures may be made from the fund upon
1826 requisition by the executive director of the department.

1827 (d) The fund shall be treated as a special trust fund.
1828 Interest earned on the principal therein shall be credited by the
1829 treasurer to the fund.

1830 (e) The fund may receive monies from any available
1831 public or private source, including, but not limited to,
1832 collection of fees, interest, grants, taxes, public and private
1833 donations, judicial actions and appropriated funds.

1834 (f) Monies in the fund at the end of the fiscal year
1835 shall be retained in the fund for use in the next succeeding
1836 fiscal year.



1837 (2) (a) There is hereby created the Uncontrolled Site
1838 Voluntary Evaluation Program to provide for the administration and
1839 evaluation of uncontrolled sites. If any person has a legal or
1840 equitable interest in a site within the jurisdiction of the
1841 uncontrolled sites program at the department, and that site is not
1842 currently under expedited review or evaluation, that person may
1843 request that the department accelerate such review by considering
1844 the site under the voluntary evaluation program. The department
1845 shall determine the eligibility of an uncontrolled site for
1846 inclusion into the voluntary evaluation program. The site may be
1847 placed in the voluntary program if:

1848 (i) The department accepts the site for the
1849 voluntary review and evaluation; and

1850 (ii) The person pays to the department the fees as
1851 specified in a fee schedule adopted by the commission.

1852 (b) The owner of an uncontrolled site who participates
1853 in the voluntary program shall pay all costs of any actions
1854 associated with the administration and evaluation of the site.

1855 (c) The commission shall set by order a schedule of
1856 fees and costs for the Uncontrolled Site Voluntary Evaluation
1857 Program.

1858 (d) All monies collected under this section shall be
1859 deposited into the fund.



1860 (3) The commission may delegate to the department
1861 responsibility for the collection of uncontrolled site
1862 administration and evaluation fees.

1863 (4) All uncontrolled site administration and evaluation fees
1864 shall be due before a date specified by the department in an
1865 invoice which shall be no less than thirty (30) days following the
1866 invoice date. If any part of an uncontrolled site administration
1867 and evaluation fees imposed is not paid within thirty (30) days
1868 after the due date, a penalty of up to twenty-five percent (25%)
1869 of the amount due may be imposed and be added thereto. Any
1870 penalty collected under this section shall be deposited into the
1871 fund. If the department has to pursue legal action to collect
1872 fees incurred, reasonable attorneys' fees and costs may be
1873 assessed against the nonpaying party.

1874 (5) Any person required to pay a fee under this section who
1875 disagrees with the calculation or applicability of the fee may
1876 petition the commission for a hearing in accordance with Section
1877 49-17-35. Any hearing shall be in accordance with the provisions
1878 of Section 49-17-33.

1879 (6) Fees collected under this section shall not supplant or
1880 reduce in any way the General Fund appropriation to the Department
1881 of Environmental Quality.

1882 (7) The department may suspend any activities or actions
1883 related to the administration or evaluation of an uncontrolled
1884 site if the person fails to meet any condition or requirement or



1885 fails to pay any required fees or penalties imposed under the
1886 voluntary evaluation program.

1887 (8) Nothing in this section affects any existing program at
1888 the department or affects any authority of the commission or
1889 department to take any action authorized by law.

1890 **SECTION 50.** Section 17-17-55, Mississippi Code of 1972, is
1891 brought forward as follows:

1892 17-17-55. There is hereby created within the State Treasury
1893 a revolving fund to be known as the "Hazardous Waste Facility Site
1894 Revolving Loan Fund," which shall be administered by the
1895 Department of Economic and Community Development, for the purpose
1896 of making loans to municipalities or counties in which commercial
1897 hazardous waste facilities permitted pursuant to Section 49-17-28
1898 et seq. are located. Such loans shall be made for the purpose of
1899 constructing roads, railroads, utilities or the purchase and
1900 development of lands for industrial purposes. Any municipality or
1901 county within which such a facility is sited may make application
1902 for a loan from the Hazardous Waste Facility Site Revolving Loan
1903 Fund, and the Department of Economic and Community Development is
1904 hereby authorized and empowered to adopt and put into effect all
1905 reasonable rules and regulations that it may deem necessary to
1906 carry out the provisions of this section, which shall include,
1907 without limitation, the following:

1908 (a) Procedures for applying for the loans;



1909 (b) Selection criteria for evaluating if a proposed
1910 facility meets Mississippi's needs and for choosing between
1911 various loan applications;

1912 (c) Procedures for funding and retiring loans; and

1913 (d) Procedures to be followed if default occurs in the
1914 repayment of loans.

1915 In addition, the Department of Economic and Community
1916 Development is empowered to designate that any part or all of
1917 those funds to be disbursed pursuant to Section 17-17-53(2) (c) be
1918 paid directly against the principal balance of any loan
1919 outstanding hereunder.

1920 **SECTION 51.** Section 17-17-57, Mississippi Code of 1972, is
1921 brought forward as follows:

1922 17-17-57. (1) For the purposes of this section, the
1923 following words shall have the meaning ascribed herein unless the
1924 context clearly requires otherwise:

1925 (a) "Discharge" shall include leakage, seepage or other
1926 release of any hazardous material.

1927 (b) "Hazardous materials" shall include all materials
1928 and substances which are now or hereafter designated or defined as
1929 hazardous by any state or federal law or by regulation of any
1930 state or federal agency.

1931 (c) "Person" shall include any individual, partnership,
1932 corporation, association or other entity.



1933 (2) Notwithstanding any provision of law to the contrary, no
1934 person who in good faith and in the exercise of reasonable care,
1935 and not in anticipation or expectation of receiving compensation
1936 therefor, renders assistance or advice in mitigating or attempting
1937 to mitigate the effects of an actual or threatened discharge of
1938 hazardous materials, or in preventing, cleaning up or disposing of
1939 or in attempting to prevent, clean up or dispose of any such
1940 discharge, shall be subject to civil liabilities or penalties as a
1941 result of any act committed in good faith and in the exercise of
1942 reasonable care or omission in good faith and in the exercise of
1943 reasonable care by such person in rendering emergency assistance,
1944 or advice.

1945 (3) Nothing in subsection (2) of this section shall be
1946 construed to limit the liability of any person for any act not
1947 directly related to the assistance or advice in mitigating or
1948 attempting to mitigate the effects of an actual or threatened
1949 discharge of hazardous materials, or in preventing, cleaning up or
1950 disposing of or in attempting to prevent, clean up or dispose of
1951 any such discharge.

1952 (4) The immunities provided in subsection (2) of this
1953 section shall not apply to any person whose act or omission caused
1954 in whole or in part such actual or threatened discharge and who
1955 would otherwise be liable therefor.

1956 (5) Nothing in subsection (2) of this section shall be
1957 construed to limit or otherwise affect the liability of any person



1958 for damages resulting from such person's gross negligence, or from
1959 such person's reckless, wanton or intentional conduct.

1960 **SECTION 52.** Section 17-17-59, Mississippi Code of 1972, is
1961 brought forward as follows:

1962 17-17-59. (1) In order to insure adequate capacity to meet
1963 local needs for the management of solid wastes generated locally,
1964 to protect the public health and welfare of the people of the
1965 State of Mississippi and to enable the state to study, consider
1966 and implement a comprehensive statewide nonhazardous solid waste
1967 management plan, there is hereby imposed a moratorium commencing
1968 on April 2, 1990, and ending upon the approval date of a local
1969 nonhazardous solid waste management plan for the area within the
1970 approved plan on the processing of permit applications, the
1971 issuance of permits for new or expanded municipal solid waste
1972 facilities and the transfer of existing permits for the
1973 incineration, treatment, processing or disposal of municipal solid
1974 wastes. Except as otherwise provided in this section, the
1975 moratorium shall also apply to all applications for permits and
1976 transfers of permits for new or expanded municipal solid waste
1977 management facilities and the transfer of existing permits for
1978 incineration, treatment, processing or disposal facility pending
1979 before the Permit Board during the moratorium period.

1980 (2) For the purposes of this section, the term "municipal
1981 solid waste" means municipal solid waste as defined in Section



1982 17-17-205, but does not include ash or scrubber sludge from the
1983 generation of electric power or steam.

1984 (3) The Permit Board created in Section 49-17-28 is hereby
1985 authorized and empowered to make exceptions to the moratorium
1986 imposed by this section and allow the processing of permit
1987 applications, issuance of permits and the transfer of permits if
1988 the Permit Board, in its discretion, determines that a local need
1989 exists for a new or expanded municipal solid waste incinerator,
1990 treatment, processing or disposal facility in order to:

1991 (a) Comply with the federal law or regulations of the
1992 United States Environmental Protection Agency;

1993 (b) Alleviate or resolve a condition resulting from an
1994 existing municipal solid waste facility having reached its
1995 capacity for the disposal of locally generated solid wastes;

1996 (c) Alleviate or resolve a condition which threatens or
1997 is likely to threaten the environment; or

1998 (d) Alleviate or resolve a condition in which the
1999 closure of an existing municipal solid waste facility, or the
2000 transfer of an existing permit, is in the best interests of the
2001 public in order to adequately manage locally generated municipal
2002 solid wastes.

2003 (4) If the Permit Board grants an exception from the
2004 moratorium for a new or expanded municipal solid waste landfill
2005 facility for which a permit application is pending on April 2,
2006 1990, the processing of the application for the permit shall



2007 resume at the stage of the administrative review process existing
2008 on April 2, 1990.

2009 (5) The moratorium imposed by this section shall not apply
2010 to:

2011 (a) The processing by personnel of the Mississippi
2012 Department of Environmental Quality of permit applications for the
2013 recycling of municipal solid wastes up to the time that the
2014 personnel of the Mississippi Department of Environmental Quality
2015 make their recommendations on such permit applications to the
2016 Permit Board.

2017 (b) Solid waste incineration, treatment, processing or
2018 disposal facilities owned and operated by the generator of the
2019 solid waste for the incineration, treatment, processing or
2020 disposal of the generator's solid waste only.

2021 (c) Applications for reissuance of permits for existing
2022 nonhazardous solid waste facilities.

2023 (d) Application for permits for any facility consistent
2024 with an approved local nonhazardous solid waste management plan
2025 for a county or region.

2026 **SECTION 53.** Section 17-17-63, Mississippi Code of 1972, is
2027 brought forward as follows:

2028 17-17-63. (1) There is created in the State Treasury a fund
2029 designated as the Mississippi Nonhazardous Solid Waste Corrective
2030 Action Trust Fund for the purpose of providing funds for
2031 emergency, preventive or corrective actions which may be required



2032 or determined necessary by the department of any nonhazardous
2033 solid waste disposal facility that received, in whole or in part,
2034 household waste and closed before the effective date of Title 40
2035 of the Code of Federal Regulations, Section 258.

2036 (2) The trust fund shall be administered by the executive
2037 director. The commission shall promulgate rules and regulations
2038 for the administration of the fund and for a system of priorities
2039 for related projects eligible for funding. Only the facilities
2040 meeting the criteria in subsection (1) are eligible for funding.

2041 (3) The commission may escalate, expend or utilize funds in
2042 the trust fund for the following purposes:

2043 (a) To take whatever emergency action is necessary or
2044 appropriate to assure that the public health or safety is not
2045 threatened whenever there is a release or substantial threat of a
2046 release of contaminants from any source within the permitted area
2047 of an eligible facility;

2048 (b) To take preventive or corrective actions where the
2049 release of contaminants from any source within the permitted area
2050 of an eligible facility which presents an actual or potential
2051 threat to human health or the environment including, but not
2052 limited to, closure and post-closure care of an eligible facility;

2053 (c) To take any actions as may be necessary to monitor
2054 and provide post-closure care of any eligible facility, including
2055 preventive and corrective actions, without regard to identity or
2056 solvency of the owner thereof; and



2057 (d) To set aside ten percent (10%) annually to provide
2058 grants for regional recycling cooperatives formed by local
2059 governments for the purpose of jointly participating in the
2060 collection, processing and marketing of recyclables. The
2061 commission shall establish regulations regarding the eligibility
2062 and distribution of the regional recycling cooperative grants.

2063 (4) The fund may not be used to pay for the normal costs of
2064 closure and post-closure care of an eligible facility or where no
2065 release or substantial threat of a release of contaminants has
2066 been found by the commission.

2067 (5) Expenditures may be made from the fund upon requisition
2068 by the executive director.

2069 (6) The fund shall be treated as a special trust fund.
2070 Interest earned on the principal in the fund shall be credited by
2071 the department to the fund, unless funds allocated under Section
2072 17-17-219(3) (a) (i) are being paid to the Local Governments Solid
2073 Waste Assistance Fund. If those funds are being paid to the Local
2074 Governments Solid Waste Assistance Fund, the department shall
2075 credit the earned interest to the Local Governments Solid Waste
2076 Assistance Fund.

2077 (7) The fund may receive monies from any available public or
2078 private source including, but not limited to, collection of fees,
2079 interest, grants, taxes, public and private donations, petroleum
2080 violation escrow funds or refunds and appropriated funds.



2081 (8) The department shall transfer any balance in the fund on
2082 July 1, 1997, in excess of Five Million Dollars (\$5,000,000.00) to
2083 the Local Governments Solid Waste Assistance Fund.

2084 **SECTION 54.** Section 17-17-65, Mississippi Code of 1972, is
2085 brought forward as follows:

2086 17-17-65. (1) There is created in the State Treasury a fund
2087 designated as the Local Governments Solid Waste Assistance Fund,
2088 referred to in this section as "fund," to be administered by the
2089 executive director of the department.

2090 (2) The fund shall be used to provide grants to counties,
2091 municipalities, regional solid waste management authorities or
2092 multicounty entities as provided in subsection (5) of this section
2093 for one or more of the following purposes:

2094 (a) Cleanup of existing and future unauthorized dumps
2095 on public or private property, subject to the limitation in
2096 subsection (4) of this section;

2097 (b) Establishment of a collection center or program for
2098 white goods, recyclables or other bulky rubbish waste not managed
2099 by local residential solid waste collection programs;

2100 (c) Provision of public notice and education related to
2101 the proper management of solid waste, including recycling;

2102 (d) Payment of a maximum of fifty percent (50%) of the
2103 cost of employing a local solid waste enforcement officer;

2104 (e) Distribution and use as grants to regional solid
2105 waste management authorities, counties and municipalities for



2106 implementation of household hazardous waste collection programs,
2107 in accordance with Sections 17-17-439 through 17-17-445. The
2108 grants shall not exceed seventy-five percent (75%) of eligible
2109 project costs as established by the commission;

2110 (f) Development of other local solid waste management
2111 program activities associated with the prevention, enforcement or
2112 abatement of unauthorized dumps, as approved by the commission;
2113 and

2114 (g) Provide assistance to counties and municipalities
2115 for the establishment of regional recycling centers at regional
2116 correctional facilities.

2117 (3) The commission shall earmark ten percent (10%) of the
2118 amount deposited in the fund annually to be used to make grants to
2119 counties, municipalities, regional solid waste management
2120 authorities or multicounty entities to assist in defraying the
2121 cost of preparing solid waste management plans required by Section
2122 17-17-227. The commission shall award these grants according to
2123 the merit of grant proposals received by the commission and the
2124 level of need and timeliness of the requirement for the county or
2125 regional solid waste management authority to update its solid
2126 waste management plan.

2127 (4) If a person is found to be responsible for creating an
2128 unauthorized dump, the grantee shall make a reasonable effort to
2129 require that person to clean up the property before expending any
2130 monies from the fund to clean up the property. If the grantee is



2131 unable to locate the person responsible for creating the dump, or
2132 if the grantee determines that person is financially or otherwise
2133 incapable of cleaning up the property, the grantee may use the
2134 monies from the fund to clean up the property and shall make a
2135 reasonable effort to recover from the responsible person any funds
2136 expended.

2137 (5) (a) Of monies annually deposited in the fund and any
2138 balance remaining in the fund, the commission shall annually
2139 allocate monies as follows:

2140 (i) One-half (1/2) of the deposited funds and
2141 remaining balance shall be allocated to each county based on the
2142 percentage of state aid road mileage as established by the
2143 Mississippi Department of Transportation State Aid road formula.

2144 (ii) One-half (1/2) of the deposited funds and
2145 remaining balance shall be made available to counties or
2146 municipalities for grants on a competitive basis.

2147 (b) The department shall notify the president of the
2148 board of supervisors of each county in writing of the amount
2149 allocated under paragraph (a) (i) of this subsection and that
2150 additional funds are available on a competitive basis as provided
2151 under paragraph (a) (ii) of this subsection.

2152 (c) Upon receipt of a scope of work and cost proposal
2153 acceptable to the commission, the commission shall award a grant
2154 to a county up to the allocated amount for that county under
2155 paragraph (a) (i) of this subsection. The commission may award



2156 additional grant funds from monies available under paragraph
2157 (a) (ii) of this subsection based upon the acceptable scope of work
2158 and cost proposal.

2159 (d) The commission may award grants to a regional solid
2160 waste management authority or other multicounty entity upon
2161 submission of a consolidated scope of work and cost proposal
2162 acceptable to the commission and authorized by the member
2163 counties. Upon submission of a scope of work and cost proposal,
2164 the commission may award grants to municipalities from monies
2165 available under paragraph (a) (ii) of this subsection.

2166 (e) No grantee shall use more than three percent (3%)
2167 of funds provided under this section to defray the costs of
2168 administration of the grant.

2169 (6) The department may use up to three percent (3%) of
2170 monies annually deposited in the fund and of any balance remaining
2171 in the fund to provide for the administration of this section.

2172 (7) Expenditures may be made from the fund upon requisition
2173 by the executive director of the department.

2174 (8) The fund shall be treated as a special trust fund.
2175 Interest earned on the principal in the fund shall be credited by
2176 the department to the fund.

2177 (9) The fund may receive monies from any available public or
2178 private source, including, but not limited to, collection of fees,
2179 interest, grants, taxes, public and private donations, judicial
2180 actions and appropriated funds.



2181 (10) Monies in the fund at the end of the fiscal year shall
2182 be retained in the fund for use in the succeeding fiscal year.

2183 (11) The commission may consolidate any grant provided under
2184 this section with any grant provided under the waste tire
2185 management program or the Right-Way-To-Throw-Away Program. Funds
2186 provided through any consolidated grant shall be used in
2187 accordance with the program under which the funds are provided.

2188 (12) Funds provided under this section shall not be used to
2189 pay any costs of the establishment or operation of a landfill,
2190 rubbish disposal site or other type of solid waste disposal
2191 facility, for the routine collection of garbage or to collect any
2192 fees assessed under Section 19-5-21 or 21-19-2.

2193 (13) The commission shall not provide any funds under this
2194 section to any grantee with an inadequate garbage or rubbish
2195 collection or disposal system as required under Section 19-5-17 or
2196 21-19-1.

2197 **SECTION 55.** Section 17-17-67, Mississippi Code of 1972, is
2198 brought forward as follows:

2199 17-17-67. (1) Any person who purposely or recklessly
2200 disposes of any hazardous waste in violation of this chapter which
2201 contaminates a drinking water source to the extent that it is
2202 unsafe for human consumption, as determined by the state agency
2203 charged with the responsibility of regulating safe drinking water
2204 for human consumption; or any person who purposely or recklessly
2205 disposes of any hazardous waste in violation of this chapter and



2206 who knows that he places another person in imminent danger of
2207 death or serious bodily injury shall, upon conviction, be guilty
2208 of a felony, and shall be subject to imprisonment for a term of
2209 not less than one (1) year nor more than ten (10) years, and shall
2210 also be subject to a fine of not less than Five Thousand Dollars
2211 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) for
2212 each day of violation or both fine and imprisonment. The fine
2213 shall not exceed a total of One Million Dollars (\$1,000,000.00).

2214 (2) For purposes of this section, a person acts purposely
2215 with respect to a material element of an offense when:

2216 (a) If the element involves the nature of his conduct
2217 or a result thereof, it is his conscious object to engage in
2218 conduct of that nature or to cause such a result; and

2219 (b) If the element involves the attendant
2220 circumstances, he is aware of the existence of such circumstances
2221 or he believes or hopes that they exist.

2222 (3) For purposes of this section, a person acts recklessly
2223 with respect to a material element of an offense when he
2224 consciously disregards a substantial and unjustifiable risk that
2225 the material element exists or will result from his conduct. The
2226 risk must be of such a nature and degree that, considering the
2227 nature and purpose of the actor's conduct and the circumstances
2228 known to him, its disregard involves a gross deviation from the
2229 standard of conduct that a law-abiding person would observe in the
2230 actor's situation.



2231 (4) This section shall not apply to any person holding a
2232 permit from the Department of Environmental Quality and acting
2233 within the scope of that permit.

2234 **SECTION 56.** Section 21-27-203, Mississippi Code of 1972, is
2235 brought forward as follows:

2236 21-27-203. For purposes of Sections 21-27-201 through
2237 21-27-221, the following terms shall have the meanings ascribed
2238 herein, unless the context shall otherwise require:

2239 (a) "Association" means the Mississippi Water and
2240 Pollution Control Operator's Association, Inc.

2241 (b) "Board" means the Mississippi State Board of
2242 Health.

2243 (c) "Commission" means the Mississippi Commission on
2244 Environmental Quality.

2245 (d) "Community water system" means a public water
2246 system serving piped water for human consumption to fifteen (15)
2247 or more individual service connections used by year-round
2248 consumers or regularly serving twenty-five (25) or more individual
2249 consumers year-round, including, but not limited to, any
2250 collection, pretreatment, treatment, storage and/or distribution
2251 facilities or equipment used primarily as part of, or in
2252 connection with, that system, regardless of whether or not the
2253 components are under the ownership or control of the operator of
2254 the system.



2255 (e) "Commercial Class I rubbish site" means a permitted
2256 rubbish site which accepts for disposal Class I rubbish, as
2257 defined by the commission, for compensation or from more than one
2258 (1) generator.

2259 (f) "Nontransient, noncommunity water system" means a
2260 public water system that is not a community water system and that
2261 regularly serves at least twenty-five (25) of the same persons
2262 over six (6) months per year.

2263 (g) "Operator" means the person who directly supervises
2264 and is personally responsible for the daily operation and
2265 maintenance of a wastewater facility, community water system,
2266 nontransient, noncommunity water system or commercial nonhazardous
2267 solid waste management landfill.

2268 (h) "Person" means the state or any agency or
2269 institution of the state, any municipality, political subdivision,
2270 public or private corporation, individual, partnership,
2271 association or other entity, including any officer or governing or
2272 managing body of any municipality, political subdivision, or
2273 public or private corporation, or the United States or any officer
2274 or employee of the United States.

2275 (i) "Pollution" means contamination or other alteration
2276 of the physical, chemical or biological properties of any waters
2277 of the state, including change in temperature, taste, color,
2278 turbidity or odor of the waters, or the discharge of any liquid,



2279 gaseous, solid, radioactive or other substance or heat into any
2280 waters of the state.

2281 (j) "Wastewater facilities" means pipelines or
2282 conduits, pumping stations, force mains, treatment plants, lagoons
2283 or any other structure, device, appurtenance or facility, whether
2284 operated individually or in any combination, used for collecting,
2285 treating and/or disposing of municipal or domestic wastewater, by
2286 either surface or underground methods, which is required to have a
2287 permit under Section 49-17-29.

2288 (k) "Waters of the state" means all waters within the
2289 jurisdiction of this state, including all streams, lakes, ponds,
2290 impounding reservoirs, marshes, watercourses, waterways, wells,
2291 springs, irrigation systems, drainage systems and all other bodies
2292 or accumulations of water, surface and underground, natural or
2293 artificial, situated wholly or partly within or bordering upon the
2294 state, and such coastal waters as are within the jurisdiction of
2295 the state, except lakes, ponds or other surface waters which are
2296 wholly landlocked and privately owned.

2297 **SECTION 57.** Section 21-27-205, Mississippi Code of 1972, is
2298 brought forward as follows:

2299 21-27-205. (1) The board shall classify all municipal and
2300 domestic water collection, storage, treatment and/or distribution
2301 systems actually used or intended for use as community water
2302 systems or nontransient, noncommunity water systems according to
2303 size, type, character of water to be treated, number of service



2304 connections, and other physical conditions affecting the operation
2305 and maintenance of those systems, and also according to the degree
2306 of skill, knowledge, training and experience required of the
2307 operators of those systems to ensure competent, efficient
2308 operation and maintenance of such systems and protection of public
2309 health.

2310 (2) The commission shall classify all municipal and domestic
2311 wastewater facilities according to size, type, character of
2312 wastewater to be treated, and other physical conditions affecting
2313 the operation and maintenance of the facilities, and also
2314 according to the degree of skill, knowledge, training and
2315 experience required of the operators of the facilities to ensure
2316 competent, efficient operation and maintenance of the facilities
2317 and prevention of pollution of waters of the state.

2318 (3) The commission shall establish reciprocal certification
2319 arrangements with other states and private companies that
2320 establish training and certification programs for operators of
2321 commercial nonhazardous solid waste management landfills that meet
2322 or exceed the requirements of the commercial nonhazardous solid
2323 waste management landfill operator training and certification
2324 program established by the commission.

2325 (4) The commission may establish reciprocal certification
2326 arrangements with other states and private companies that
2327 establish training and certification programs for operators of
2328 commercial Class I rubbish sites that meet or exceed the



2329 requirements of the commercial Class I rubbish site operator
2330 training and certification program established by the commission.

2331 **SECTION 58.** Section 21-27-207, Mississippi Code of 1972, is
2332 brought forward as follows:

2333 21-27-207. Both the board and commission may adopt, modify,
2334 repeal and promulgate, after due notice and hearing, and may make
2335 exceptions to and grant exemptions and variances from and may
2336 enforce those rules, regulations and procedures as are necessary
2337 or appropriate to effectuate the duties and responsibilities of
2338 these agencies arising under Sections 21-27-201 through 21-27-221.
2339 The rules, regulations and procedures shall include, but not be
2340 limited to, the following: criteria for classifying municipal and
2341 domestic community water systems, nontransient, noncommunity water
2342 systems and wastewater facilities; qualifications for operators of
2343 community water systems, nontransient, noncommunity water systems
2344 and wastewater facilities; certification of operators of
2345 commercial Class I rubbish sites; procedures for examining or
2346 testing applicants for operator certificates; procedures and fees
2347 for issuing, reissuing, modifying, revoking or terminating
2348 operator certificates; and reciprocal certification of operators
2349 certified in other states having certification requirements not
2350 less stringent than those established by the board and commission.
2351 Any increase in the fees charged by the board under this section
2352 shall be in accordance with the provisions of Section 41-3-65.



2353 **SECTION 59.** Section 21-27-211, Mississippi Code of 1972, is
2354 brought forward as follows:

2355 21-27-211. (1) It is unlawful to operate or cause to be
2356 operated any wastewater facility or community water system covered
2357 under Sections 21-27-201 through 21-27-221 unless the operator of
2358 that facility or system holds a current certificate of competency
2359 issued by the board or commission, as provided by Sections
2360 21-27-201 through 21-27-221, in a classification corresponding to
2361 the classification of the facility or system. After July 1, 1998,
2362 it shall be unlawful to operate or cause to be operated any
2363 nontransient, noncommunity water system covered under Sections
2364 21-27-201 through 21-27-221, unless the operator of that system
2365 holds a current certificate of competency issued by the board. If
2366 an operator is lost due to illness, death, resignation, discharge
2367 or other legitimate cause, the owner or president of the governing
2368 board of the facility or system shall immediately notify either
2369 the board or commission, as the case may be. The facility or
2370 system may continue to operate without a certified operator on an
2371 interim basis for a period not to exceed one hundred eighty (180)
2372 days, except for good cause shown upon petition to the responsible
2373 agency. The board or the commission, as the case may be, may
2374 grant, upon petition of the facility or system, an extension of
2375 the interim operating period not to exceed an additional one
2376 hundred eighty (180) days for good cause shown.



2377 (2) It is unlawful to operate or cause to be operated any
2378 commercial nonhazardous solid waste management landfill permitted
2379 under Section 49-17-29 unless the operator of that facility holds
2380 a current certificate of competency issued by the commission, as
2381 provided by Sections 21-27-201 through 21-27-221. However, in the
2382 event of the loss of an operator due to illness, death,
2383 resignation, discharge or other legitimate cause, notice shall be
2384 immediately given to the commission and the continued operation of
2385 the facility without a certified operator may proceed on an
2386 interim basis for a period not to exceed one hundred eighty (180)
2387 days, except for good cause shown upon petition to the commission.

2388 (3) After June 30, 2005, it is unlawful to operate or cause
2389 to be operated any commercial Class I rubbish site, unless the
2390 operator of that facility holds a certificate of competency issued
2391 by the commission under Sections 21-27-201 through 21-27-221.
2392 However, in the event of the loss of an operator due to illness,
2393 death, resignation, discharge or other legitimate cause, notice
2394 shall be immediately given to the commission and the continued
2395 operation of the facility without a certified operator may proceed
2396 on an interim basis for a period not to exceed one hundred eighty
2397 (180) days, except for good cause shown upon petition to the
2398 commission.

2399 **SECTION 60.** Section 21-27-213, Mississippi Code of 1972, is
2400 brought forward as follows:



2401 21-27-213. (1) Notwithstanding any provision of Sections
2402 21-27-201 through 21-27-221 to the contrary, any person who is an
2403 operator of a municipal or domestic wastewater facility or
2404 community water system on July 1, 1986, may, on or before June 30,
2405 1987, apply to the board or commission for, and shall be issued,
2406 an operator's certificate without examination or proof of other
2407 qualifications, if the application is accompanied by an affidavit
2408 of the owner of the facility or system verifying the status of the
2409 applicant. Any certificate so issued shall be valid only for the
2410 particular facility being operated by the applicant, and then only
2411 so long as the facility remains in the same or a lower
2412 classification as at the time the application is filed.

2413 (2) Notwithstanding any provision of Sections 21-27-201
2414 through 21-27-221 to the contrary, any person who is an operator
2415 of a nontransient, noncommunity water system on July 1, 1997, may,
2416 before June 30, 1998, apply to the board for an operator's
2417 certificate without examination. The application shall be
2418 accompanied by an affidavit of the owner of the system verifying
2419 the status of the applicant. The board shall consider the
2420 performance history of any system operated by the applicant in
2421 determining whether to issue a certificate under this subsection.
2422 Upon review of the performance history and the application, the
2423 board may grant or deny the issuance of a certificate under this
2424 subsection. Any certificate issued under this subsection shall be



2425 valid only for the particular facility being operated by the
2426 applicant.

2427 **SECTION 61.** Section 21-27-215, Mississippi Code of 1972, is
2428 brought forward as follows:

2429 21-27-215. Notwithstanding any provision of Sections
2430 21-27-201 through 21-27-221 to the contrary, holders of valid
2431 certificates of competency obtained through examination under the
2432 voluntary certification program sponsored by the association may,
2433 on or before June 30, 1987, apply to the board or commission for,
2434 and shall be issued, an operator's certificate issued under the
2435 provisions of Sections 21-27-201 through 21-27-221 without further
2436 examination or proof of other qualifications, provided such
2437 state-issued certificate shall be valid only for the class of
2438 facility covered by the association certificate.

2439 **SECTION 62.** Section 21-27-217, Mississippi Code of 1972, is
2440 brought forward as follows:

2441 21-27-217. (1) Any person found by the board or commission,
2442 as the case may be, or any duly designated hearing officer
2443 appointed thereby, violating any of the provisions of Sections
2444 21-27-201 through 21-27-221, or any rule or regulation promulgated
2445 by the board or commission hereunder, or any order issued by the
2446 board or commission in the exercise of their authority and duties
2447 hereunder, shall be subject to a civil penalty of not less than
2448 One Hundred Dollars (\$100.00) nor more than One Thousand Dollars
2449 (\$1,000.00), for each violation, such penalty to be levied and



2450 assessed by the board or commission or designated hearing officer.
2451 Appeals from such actions may be taken as provided hereinafter.
2452 Each day upon which a violation occurs shall be deemed a separate
2453 and additional violation.

2454 In determining the amount of any monetary penalty assessed
2455 hereunder, the board or commission or duly appointed hearing
2456 officer shall consider all factors bearing upon the violation,
2457 including but not limited to, any resulting actual or probable
2458 pollution of the lands and/or waters of the state and/or
2459 endangerment to public health, and the nature and extent thereof,
2460 any violation of the terms or conditions of permits issued by the
2461 board or commission for the affected facility, and any actual or
2462 probable damage to the affected facility caused by improper
2463 operation thereof.

2464 (2) In lieu of, or in addition to, the penalty provided in
2465 subsection (1) of this section, the board and commission shall
2466 have power to institute and maintain in the name of the state any
2467 and all proceedings necessary or appropriate to enforce the
2468 provisions of Sections 21-27-201 through 21-27-221, rules and
2469 regulations in force pursuant hereto, and orders and operator
2470 certifications made and issued hereunder, in the appropriate
2471 circuit, chancery, county or justice court of the county in which
2472 venue may lie. The board and commission may obtain mandatory or
2473 prohibitory injunctive relief, either temporary or permanent.



2474 (3) Any person found guilty of violating any provision of
2475 Sections 21-27-201 through 21-27-221, upon conviction, shall be
2476 punished by a fine of not less than One Hundred Dollars (\$100.00)
2477 nor more than One Thousand Dollars (\$1,000.00) per day of
2478 violation.

2479 **SECTION 63.** Section 21-27-219, Mississippi Code of 1972, is
2480 brought forward as follows:

2481 21-27-219. (1) Whenever the board or commission or an
2482 employee thereof has reason to believe that a violation of any
2483 provision of a regulation or of any order of the board or
2484 commission has occurred, the board or commission may cause a
2485 written complaint to be served upon the alleged violator or
2486 violators. The complaint shall specify the provisions of Sections
2487 21-27-201 through 21-27-221 or regulation or order alleged to have
2488 been violated and the facts alleged to constitute a violation
2489 thereof, and shall require that the alleged violator appear before
2490 the board or commission, or any duly designated hearing officer
2491 appointed thereby, at a time and place specified in the notice and
2492 answer the charges complained of. The time of appearance before
2493 the board or commission or designated hearing officer shall be not
2494 less than thirty (30) days from the date of the service of the
2495 complaint.

2496 (2) The board or commission or designated hearing officer
2497 shall afford an opportunity for a fair hearing to the alleged
2498 violator or violators at the time and place specified in the



2499 complaint. On the basis of the evidence produced at the hearing,
2500 the board or commission or designated hearing officer shall make
2501 findings of fact and conclusions of law and enter such order as in
2502 its opinion will best further the purposes of Sections 21-27-201
2503 through 21-27-221 and shall give written notice of such order to
2504 the alleged violator, and the board or commission or designated
2505 hearing officer may assess such penalties as hereinbefore
2506 provided.

2507 (3) Except as otherwise expressly provided, any notice or
2508 other instrument issued by or under authority of the board or
2509 commission or designated hearing officer may be served on any
2510 person affected thereby personally or by publication, and proof of
2511 such service may be made in like manner as in case of service of a
2512 summons in a civil action, such proof to be filed in the office of
2513 the board or commission; or such service may be made by mailing a
2514 copy of the notice, order or other instrument by certified mail,
2515 directed to the person affected at his last known post office
2516 address as shown by the files or records of the board or
2517 commission, and proof thereof may be made by the affidavit of the
2518 person who did the mailing, filed in the office of the board or
2519 commission.

2520 (4) In conducting the hearings provided in this section, any
2521 member of the board or commission, or the chief administrative
2522 officer thereof, or the duly designated hearing officer, shall
2523 have the authority to issue subpoenas to appear and give



2524 testimony, to produce records, or both, and in case of contumacy
2525 or refusal to obey a notice of hearing or subpoena issued
2526 hereunder, the circuit court shall have jurisdiction upon
2527 application of the board or commission or its representative to
2528 issue an order requiring obedience to the hearing notice or
2529 subpoena of the board or commission or designated hearing officer.
2530 Any failure to obey such court order may be punished by such court
2531 as contempt thereof. Any member of the board or commission, or
2532 the chief administrative officer thereof, or the designated
2533 hearing officer, may administer oaths. A verbatim record of the
2534 hearing shall be made. Witnesses who are subpoenaed shall receive
2535 the same fees and mileage as in civil actions.

2536 (5) Any person aggrieved by the decision of the board or
2537 commission to issue, deny, modify or revoke any operator
2538 certification hereunder shall be entitled to a full hearing before
2539 the board or commission or duly designated hearing officer
2540 appointed thereby in the same manner as provided hereinabove, and
2541 appeals from such actions shall be in the same manner as provided
2542 hereinafter.

2543 **SECTION 64.** Section 21-27-221, Mississippi Code of 1972, is
2544 brought forward as follows:

2545 21-27-221. (1) Any person aggrieved by the final decision
2546 of any duly designated hearing officer appointed by the board or
2547 commission as a result of any hearing held under the provisions of
2548 Sections 21-27-201 through 21-27-221 may, within thirty (30) days



2549 of receipt of written notice of the action of the hearing officer,
2550 appeal such final decision to the full board or commission, as the
2551 case may be, by filing therewith a written notice of appeal. No
2552 cost bond or other security shall be required to perfect such
2553 appeal. The hearing officer shall forthwith prepare and submit to
2554 the board or commission the record made at the hearing, which
2555 shall thereupon become the record of the cause. Appeals to the
2556 board or commission shall be considered only upon the record made
2557 before the hearing officer. The board or commission shall review
2558 all findings of fact and conclusions of law of the hearing
2559 officer, together with any penalties levied, and may affirm,
2560 modify or reverse and remand the decision of the hearing officer,
2561 as may be determined to be necessary or appropriate. Appeals from
2562 the final decision of the board or commission shall be perfected
2563 as hereinafter provided.

2564 (2) Any person aggrieved by the final decision of the board
2565 or commission as a result of any hearing held under the provisions
2566 of Sections 21-27-201 through 21-27-221, including hearings
2567 requested incidental to the issuance, denial, modification or
2568 revocation of any operator certification issued hereunder, may,
2569 within thirty (30) days of receipt of written notice of the action
2570 of the board or commission, appeal such final decision to the
2571 chancery court of the county of the situs in whole or in part of
2572 the subject matter by giving a cost bond with sufficient sureties,
2573 payable to the state in the sum of not less than One Hundred



2574 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to
2575 be fixed by the board or commission and to be filed with and
2576 approved by the chief administrative officer of the appropriate
2577 agency, who shall forthwith certify the same together with a
2578 certified copy of the record made before the board or commission
2579 or designated hearing officer in the matter to the chancery court
2580 to which the appeal is taken, which shall thereupon become the
2581 record of the cause. An appeal to the chancery court as provided
2582 herein shall not stay the decision of the board or commission.
2583 The aggrieved party may, within such thirty (30) days, petition
2584 the said chancery court for an appeal with supersedeas and the
2585 chancellor shall grant a hearing on said petition and upon good
2586 cause shown may grant such appeal with supersedeas; the appellant
2587 shall be required to post a supersedeas bond with sufficient
2588 sureties according to law in an amount to be determined by the
2589 chancellor. Appeals shall be considered only upon the record as
2590 made before the board or commission. The chancery court shall
2591 always be deemed open for hearing of such appeals and the
2592 chancellor may hear the same in termtime or in vacation at any
2593 place in his district, and the same shall have precedence over all
2594 civil cases, except election contests. The chancery court shall
2595 review all questions of law and of fact. If no prejudicial error
2596 be found, the matter shall be affirmed. If prejudicial error be
2597 found, the same shall be reversed, and the chancery court shall
2598 remand the matter to the board or commission for appropriate



2599 action as may be indicated or necessary under the circumstances.
2600 Appeals may be taken from the chancery court to the Supreme Court
2601 in the manner as now required by law, except that if a supersedeas
2602 is desired by the party appealing to the chancery court, he may
2603 apply therefor to the chancellor thereof, who shall award a writ
2604 of supersedeas, without additional bond, if in his judgment
2605 material damage is not likely to result thereby; but otherwise, he
2606 shall require such supersedeas bond as he deems proper, which
2607 shall be payable to the state for damage.

2608 **SECTION 65.** Section 21-37-3, Mississippi Code of 1972, is
2609 brought forward as follows:

2610 21-37-3. (1) Except as otherwise provided in subsection (2)
2611 of this section, the governing authorities of municipalities shall
2612 have the power to exercise full jurisdiction in the matter of
2613 streets, sidewalks, sewers, and parks; to open and lay out and
2614 construct the same; and to repair, maintain, pave, sprinkle,
2615 adorn, and light the same.

2616 (2) Section 3, House Bill 1184, 2003 Regular Session, shall
2617 govern the use of electric personal assistive mobility devices (as
2618 defined in Section 63-3-103) on streets and sidewalks.

2619 **SECTION 66.** Section 21-37-5, Mississippi Code of 1972, is
2620 brought forward as follows:

2621 21-37-5. The governing authorities of municipalities shall
2622 have the power to cause sidewalks to be constructed and
2623 maintained, to determine the material, plans, specifications and



2624 grades of the same, and to levy and collect taxes, by special
2625 assessment, for the payment of the same.

2626 **SECTION 67.** Section 21-37-6, Mississippi Code of 1972, is
2627 brought forward as follows:

2628 21-37-6. Every municipality shall install ramps at
2629 crosswalks, in both business and residential areas, when making
2630 new installations of sidewalks, curbs or gutters, or improving or
2631 replacing existing sidewalks, curbs or gutters, so as to make the
2632 transition from street to sidewalk easily negotiable for
2633 physically handicapped persons in wheelchairs and for other
2634 persons who may have difficulty in making the required step up or
2635 down from curb level to street level.

2636 The term "ramps" as used herein means a sloping asphalt or
2637 concrete surface, from the level of the sidewalk or curb to the
2638 level of the street at curbside, extending outward and downward
2639 from the curb to the street for such a distance, at such an angle,
2640 and at such a width as will facilitate the movement up and down
2641 such ramps of persons in wheelchairs or persons who have
2642 difficulty in stepping up or down between curb level and street
2643 level.

2644 **SECTION 68.** Section 21-37-15, Mississippi Code of 1972, is
2645 brought forward as follows:

2646 21-37-15. The governing authorities of municipalities shall
2647 have the power to construct all needful improvements in the
2648 harbor; to control, guide, or deflect the current of a river; to



2649 repair and regulate public wharves and docks; to charge and
2650 collect levee rates and wharfage on firewood, lumber, timber,
2651 logs, shingles, staves, posts, laths, and other articles brought
2652 to the port of such municipality; and to set aside or lease
2653 portions of the wharf for special purposes. However, a permit to
2654 use any portion of a wharf or a lease of the same shall not be
2655 granted for a term exceeding twenty-five years.

2656 **SECTION 69.** Section 51-8-57, Mississippi Code of 1972, is
2657 brought forward as follows:

2658 51-8-57. When any district is created within three (3) miles
2659 of the corporate boundaries of any existing municipality, the
2660 municipality is empowered to require such district to construct
2661 and maintain all facilities, whether purchased or constructed, to
2662 standards commensurate with those of the adjoining municipality;
2663 provided, however, the governing authorities of the municipalities
2664 may specifically waive compliance with any or all of such
2665 requirements.

2666 **SECTION 70.** Section 51-35-305, Mississippi Code of 1972, is
2667 brought forward as follows:

2668 51-35-305. Flood and drainage control districts may now or
2669 hereafter be organized in this state under the provisions of this
2670 article, in the manner hereinafter provided, whenever any part of
2671 such district lies wholly or partially in or adjacent to any part
2672 of a municipality having a population of ten thousand (10,000) or
2673 more inhabitants at the time of the filing of the petition to



2674 create such district. For the purposes of determining population
2675 of any municipality, the last completed census prior to the filing
2676 of such petition shall be presumed to be the population of such
2677 municipality at the time of the filing of such petition. Each
2678 flood and drainage control district shall be an agency of the
2679 state and a body politic and corporate, and may be composed of one
2680 or more entire municipalities or a part or parts thereof, one or
2681 more entire counties or a part or parts thereof, or any
2682 combination of counties and municipalities or a part or parts
2683 thereof.

2684 **SECTION 71.** This act shall take effect and be in force from
2685 and after July 1, 2018.

