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2 118623-3  
3 By Representative Sherer  
4 RFD: Boards and Commissions  
5 First Read: 12-JAN-10  
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ENROLLED, An Act,

Relating to the Alabama Surface Mining Commission; to amend Sections 9-16-73, 9-16-74, 9-16-77, 9-16-78, 9-16-81, and 9-16-93, Code of Alabama 1975, to require the commission to meet once every month instead of once every 30 days; to authorize the commission to charge reasonable fees for training, examination, and certification programs; to authorize the commission to hire or contract with attorneys to serve as hearing officers; to delete the requirement that separate offices in separate facilities be provided for hearing officers; to authorize the commission to establish and charge reasonable fees for initial surface mining licenses and annual updates; and to delete the requirement that commission inspectors issue citations compelling attendance at expeditious hearings before a hearing officer upon issuance of a cessation order.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 9-16-73, 9-16-74, 9-16-77, 9-16-78, 9-16-81, and 9-16-93 of the Code of Alabama 1975, are amended to read as follows:

"§9-16-73.

"(a) There is ~~hereby~~ continued as previously established the Alabama Surface Mining Reclamation Commission under the name of the Alabama Surface Mining Commission for

1 the purpose of transition in implementing and enforcing this  
2 article and carrying out the intent and policy stated in  
3 Section 9-16-71 ~~hereof~~. All members of the commission  
4 appointed under authority of Section 9-16-33, shall continue  
5 their terms as created under that section until all  
6 reappointments and filling of vacancies have been filled in  
7 the manner as ~~herein set out~~ provided in this section. At the  
8 expiration of any term, that member shall continue in office  
9 until an appointment occurs as ~~herein set out~~ provided in this  
10 section. After February 25, 1994, no member shall serve more  
11 than two full consecutive terms of office.

12 "(b) The commission shall be composed of seven  
13 members, who are fair and reasonable citizens of the state and  
14 who shall reflect the racial, gender, geographic, urban/rural  
15 and economic diversity of the state, appointed by the  
16 Governor, with the advice and consent of the Senate. The  
17 Governor shall initially appoint two members of the commission  
18 for a term of five years, two members for four years, two  
19 members for three years, and one member for two years. All  
20 members appointed subsequently shall be appointed for terms of  
21 five years.

22 "(1) One commission member shall be appointed from  
23 one of the three counties in Alabama which produce the  
24 greatest number of tons of surface mined coal, as indicated by  
25 the records of the State of Alabama in the complete fiscal

1 year immediately preceding that appointment; and two  
2 commission members shall be appointed from any of the  
3 coal-producing counties in Alabama, as indicated by the  
4 records of the State of Alabama in the complete fiscal year  
5 immediately preceding that appointment. One commission member  
6 shall be appointed state at large.

7           "(2) One of the appointees to the commission shall  
8 be a professional forester duly registered pursuant to the  
9 laws of the State of Alabama with not less than 10 years'  
10 experience in professional forestry. One of the appointees to  
11 the commission shall be a professional civil or mining  
12 engineer duly registered pursuant to the laws of the State of  
13 Alabama with not less than 10 years' experience in  
14 professional engineering in surface mining or technologically  
15 related fields. One appointee to the commission shall be an  
16 attorney duly licensed to practice law in the State of Alabama  
17 having not less than 10 years' experience in the active  
18 practice of law, the majority of whose years in practice shall  
19 have been in one of the three counties in Alabama which  
20 produced the greatest number of tons of surface mined coal as  
21 indicated by the records of the State of Alabama in the  
22 complete fiscal year immediately preceding that appointment.

23           "(c) Within 10 days of nomination by the Governor,  
24 each nominee shall file with the Secretary of the Senate a  
25 verified statement setting forth the following information:

1 The names of all coal companies from whom such nominee has  
2 received any income of any sort during the 10 years  
3 immediately preceding such nomination, and the name or names of  
4 all coal companies in which the nominee is or in the 10 years  
5 immediately preceding such nomination has been an officer,  
6 director, stockholder, and or partner; and all the names of all  
7 organizations, clubs, and associations of which the nominee is  
8 or in the 10 years immediately preceding such nomination has  
9 been a member. No commission member may have a direct or  
10 indirect financial interest in underground or surface coal  
11 mining operations, and may not participate in any proceeding  
12 conducted pursuant to Section 9-16-79 in which the commission  
13 member is an employee, officer, director, shareholder, and or  
14 partner or where any organization, club, and or association of  
15 which the commission member is a member, officer, agent,  
16 director, and or employee instigated the proceeding, is a  
17 defendant, or has any other direct interest in the outcome of  
18 the proceeding, other than as a member of commission.

19 "(d) The commission shall annually elect from among  
20 its members a ~~chairman~~ chair, a ~~vice-chairman~~ vice chair, and  
21 such other officers as necessary to fulfill its duties. In the  
22 event of a vacancy among the commissioners, the Governor  
23 ~~shall~~, within 90 days of being notified of such vacancy, shall  
24 make an appointment to such vacancy, which appointment shall  
25 be subject to the advice and consent of the Senate at the next

1 regular or special session of the Legislature, ~~in.~~ In the  
2 event such appointee is confirmed, his or her term shall be  
3 for the balance of the vacancy so filled.

4 "(e) The commission shall appoint a ~~director~~  
5 Director of the Alabama Surface Mining Commission, who must  
6 have a working knowledge of the federal and state surface  
7 mining statutes, rules, and regulations, and shall fix his or  
8 her compensation. The commission may appoint a deputy director  
9 as an unclassified position and the compensation of such  
10 deputy director shall be fixed by the commission subject to  
11 ~~provisions of~~ the state Merit System. The director shall be  
12 the chief operating officer of the commission and shall be  
13 charged with exercising such powers, duties, and functions as  
14 may be conferred upon him or her by the commission or this  
15 article, except the director shall not have the power to  
16 promulgate, modify, suspend, or repeal any standards, rules, and  
17 or regulations provided for or authorized under this article.  
18 The director ~~is authorized,~~ subject to the approval of the  
19 commission, ~~to~~ may create such divisions of his or her office  
20 as may be necessary to carry out its functions and may employ  
21 professional, technical, legal, and or clerical personnel as may  
22 be necessary to carry out the duties and functions of the  
23 commission. ~~He may also~~ The director, with the approval of the  
24 commission, may also contract with private persons, firms, and or  
25 corporations to provide professional or technical assistance

1 or consultant services to assist his or her office in carrying  
2 out the purposes of this article.

3 "(f) The members of ~~said~~ the commission shall  
4 receive as compensation ~~\$75.00~~ seventy-five dollars (\$75) per  
5 day for each day of official business as approved and  
6 validated by the ~~chairman~~ chair. The ~~chairman~~ chair shall  
7 receive ~~\$100.00~~ one hundred dollars (\$100) per day for each  
8 full day he or she is occupied with business of the  
9 commission. The ~~chairman is hereby authorized to~~ chair may  
10 approve and certify expenses of every member of the commission  
11 for reimbursement pursuant to Article 2, commencing with  
12 Section 36-7-20, Chapter 7 of Title 36.

13 "(g) Five members of the commission shall constitute  
14 a quorum and recusal of a member shall not affect the quorum.  
15 The commission shall keep a complete and accurate record of  
16 all its meetings, a copy of which shall be kept on file in the  
17 office of the commission and open to public inspection. The  
18 commission shall meet at least once every ~~30 days~~ month, or at  
19 such more frequent occasions as the Governor, the ~~chairman~~  
20 chair, or director determine a session is necessary to fulfill  
21 its duties and obligations.

22 "(h) The commission shall establish and maintain its  
23 principal office in Jasper, Alabama, and establish and  
24 maintain such field offices in other coal producing counties

1 as it may consider necessary for the proper discharge of its  
2 duties.

3 "(i) Funds which are or may become available from  
4 any source, appropriations, or otherwise, to accomplish the  
5 purposes of this article shall be disbursed by the commission  
6 or by the director in accordance with rules prescribed by the  
7 commission.

8 "(j) The Governor may remove any member of the  
9 commission from office for neglect of duty, malfeasance, or  
10 misfeasance, after unanimous consent and agreement by the  
11 Lieutenant Governor, Speaker of the House of Representatives, and  
12 Attorney General of Alabama, by delivering to the member  
13 the charges against him or her in writing with at least 10  
14 days' written notice of the time and place at which the  
15 Governor will publicly hear the member, who may appear either  
16 in person or by counsel, in defense of the charges against him  
17 or her. If the member is removed from office, the Governor  
18 shall file with the Secretary of State a complete statement of  
19 the charges made against the member and a complete report of  
20 the proceedings. The action of the Governor removing a member  
21 from office is final.

22 "§9-16-74.

23 "In addition to any other powers conferred on it by  
24 law, the commission shall have the power to do all of the  
25 following:



1           "(1) Adopt, amend, suspend, repeal, and enforce  
2 reasonably necessary rules and regulations, provided such  
3 rules and regulations shall not be more stringent than those  
4 promulgated by federal law, or rule or regulation, to control  
5 surface coal mining operations consistent with this article  
6 including the declaration of public policy and legislative  
7 intent contained in Section 9-16-71. Such rules and  
8 regulations may be for the state as a whole or may vary from  
9 area to area, as may be appropriate to accomplish the policy  
10 and intent of this article and in order to take into account  
11 varying local conditions7.

12           "(2) Hold public hearings as may be specified by law  
13 relating to any aspect or matter in the administration of this  
14 article and, in connection therewith, administer oaths7 and  
15 compel the attendance of witnesses and the production of  
16 evidence. In the event of failure of any person to comply with  
17 any subpoena lawfully issued, or on the refusal of any witness  
18 to produce evidence or to testify as to any matter regarding  
19 which he or she may be lawfully interrogated, it shall be the  
20 duty of any court of competent jurisdiction, upon the  
21 application of the commission, to compel obedience by  
22 proceedings for contempt as if the disobedience occurred in  
23 such court7.

1           "(3) Issue such orders as may be necessary to  
2           effectuate the purposes of this article and enforce the same  
3           through appropriate administrative and judicial proceedings.7.

4           "(4) Promulgate and enforce rules, regulations, and  
5           standards requiring the training, examination, and  
6           certification of persons engaging in or directly responsible  
7           for the use of explosives for the purpose of blasting in  
8           surface coal mining. Such rules and regulations shall include,  
9           but not be limited to, provisions for establishing and  
10          charging reasonable fees for the administration of these  
11          rules, regulations, and standards and for the training and  
12          examination of applicants for certification, for the renewal  
13          of certification, and for continuing education.7

14          "(5) Secure through its director necessary  
15          scientific, technical, administrative, and operational  
16          services, including laboratory facilities by contract or  
17          otherwise.7.

18          "(6) Encourage voluntary cooperation by persons and  
19          groups to achieve the purposes of this article.7.

20          "(7) Encourage and conduct through its director and  
21          staff studies, investigations, and research relating to  
22          surface mining reclamation.7.

23          "(8) Establish and enforce coal surface mining  
24          reclamation standards for the state which may vary according  
25          to appropriate areas, provided they are not inconsistent with

1 this article and the declaration of public policy and  
2 legislative intent contained in Section 9-16-717.

3 "(9) Collect and disseminate information and conduct  
4 educational and training programs relating to surface coal  
5 mining and reclamation of land7.

6 "(10) Advise, consult, contract, and cooperate with  
7 other agencies of the state, local governments, industries,  
8 other states, interstate agencies, and the federal government  
9 and with interested persons or groups, especially, but not  
10 limited to, achieve one-stop permitting for surface coal  
11 mining operations and to transfer funds to carry out  
12 reclamation activities7.

13 "(11) Consult, upon request, with any person  
14 proposing to construct, install, or otherwise acquire a  
15 surface coal mine, concerning the efficacy of construction,  
16 installation, or acquisition of such surface mine. Nothing in  
17 any such consultation shall be construed to relieve any person  
18 from compliance with this article, rules and regulations in  
19 force pursuant ~~thereto~~ to this article, or any other provision  
20 of law7.

21 "(12) Accept, receive, and administer grants or  
22 other funds or gifts from public and private agencies,  
23 including the federal government, for the purpose of carrying  
24 out any of the functions of this article. Funds received by  
25 the regulatory authority pursuant to this section shall be

1 deposited in the State Treasury to the account of the Alabama  
 2 Surface Mining Fund7.

3 "(13) Employ personnel and consultants, purchase  
 4 such equipment and supplies, and lease or otherwise acquire  
 5 through its director such property as may be necessary for the  
 6 administration of this article. Subject to any applicable  
 7 restrictions contained in law, any department or agency of the  
 8 state ~~may~~, from its available resources, may provide the  
 9 regulatory authority with personnel and services, with or  
 10 without charge, and the regulatory authority may compensate  
 11 other agencies for services7.

12 "(14) Provide for the performance by its director,  
 13 deputy director, or staff and employees in the name of the  
 14 commission, of any act or duty authorized by and consistent  
 15 with administration of this article, except for the  
 16 promulgation, modification, suspension, or repeal of  
 17 standards, rules, and regulations7.

18 "(15) Perform other acts and duties consistent with  
 19 ~~the provisions of~~ this article as may be necessary to  
 20 implement the declaration of public policy and legislative  
 21 intent contained in Section 9-16-717.

22 "(16) Provide for the establishment of advisory  
 23 committees, appointment and adequate compensation for  
 24 membership of ~~said~~ the committees, scope of study and other  
 25 duties, periods of duration, and terms of advisory members7.

1           "(17) Issue, modify, or revoke orders prohibiting  
2 actions which violate this article or the rules, regulations,  
3 or standards promulgated pursuant to this article and require  
4 affirmative action to bring any surface coal mining operation  
5 into compliance with this article~~7.~~

6           "(18) Issue, continue in effect, revoke, modify, or  
7 deny permits through its director and staff for the conduct of  
8 surface coal mining operations or explorations which are  
9 subject to this article~~7.~~

10           "(19) Issue warnings and initiate civil or criminal  
11 actions through its director and staff as provided for in this  
12 article~~7.~~

13           "(20) Acquire and maintain workers' compensation  
14 insurance in the amount prescribed by the workers'  
15 compensation laws of Alabama and such general liability  
16 insurance as may be reasonably necessary to assure adequate  
17 protection of the commission, its director, employees, and  
18 agents for lawful acts by them during the course of enforcing  
19 and administering this article~~7.~~

20           "(21)a. Enforce ~~the provisions of~~ the state program,  
21 approved pursuant to Section 503 of the Federal Surface Mining  
22 Control and Reclamation Act of 1977, Public Law 95-87, 30  
23 U.S.C. 1200.

24           "b. The commission shall make every effort to obtain  
25 full reimbursement from the Director of the Office of Surface

1 Mining Reclamation and Enforcement for the costs of performing  
2 its duties under paragraph ~~(21)~~a. hereof a.

3 "c. If P.L. 95-87 or any rules or regulations  
4 promulgated thereunder or the federal laws it amends are  
5 adjudged unconstitutional or invalid in their application, or  
6 stayed pending litigation in any court of competent  
7 jurisdiction over surface coal mining operations in Alabama,  
8 the Alabama Surface Mining Commission shall suspend the  
9 enforcement of this article to the extent of such  
10 adjudication, unconstitutionality, inapplicability, or stay.

11 "d. If any of the commission's rules or regulations  
12 are adjudged unconstitutional or invalid in their application,  
13 or stayed pending litigation in any court of competent  
14 jurisdiction, the Alabama Surface Mining Commission shall have  
15 the power to enforce any valid, constitutional, and analogous  
16 provision of the rules and regulations promulgated under P.L.  
17 95-87.

18 "e. The State of Alabama, by any provision, part, or  
19 all of this article, does not waive any rights and powers  
20 reserved to it by the Tenth Amendment to the Constitution of  
21 the United States, and this subdivision ~~(21)~~ shall not be  
22 interpreted so as to prevent the State of Alabama from  
23 protecting any and all of its rights and governmental powers  
24 through any legal action as might be determined by duly  
25 constituted officials of the State of Alabama.

1           "(22) No commission member, employee of the  
2           commission, or any other state employee performing any  
3           function or duties under this article shall have a direct or  
4           indirect financial interest in underground or surface coal  
5           mining operations. Whoever knowingly violates ~~the provisions~~  
6           ~~of the above sentence shall~~ this subdivision, upon conviction,  
7           shall be punished by a fine of not more than ~~\$2,500.00~~ two  
8           thousand five hundred dollars (\$2,500), or by imprisonment for  
9           not more than one year, or both.

10           "§9-16-77.

11           "(a) There is ~~hereby~~ created a Division of Hearings  
12           and Appeals within the Alabama Surface Mining Commission to  
13           enforce ~~the provisions of~~ this article. The division shall  
14           have such powers and authority as required by law and as  
15           delegated by the director.

16           "~~(b) To hear and determine appeals from regulatory,~~  
17           ~~enforcement or other activities of the commission as may be~~  
18           ~~specified by law the director shall appoint one or more~~  
19           ~~impartial hearing officers. These hearing officers shall be~~  
20           ~~employees of the commission, and shall be classified personnel~~  
21           ~~in the state Merit System. These hearing officers shall also~~  
22           ~~be members in good standing of the Alabama State Bar. The~~  
23           ~~director shall also appoint and designate one hearing officer~~  
24           ~~as chief hearing officer who shall be responsible for the~~  
25           ~~assignment of cases to the hearing officers as well as the~~

1 ~~efficient administration of the functions and duties of the~~  
2 ~~hearing officers.~~ The commission may hire or contract with  
3 hearing officers to hear and determine appeals from  
4 regulatory, enforcement, or other activities of the  
5 commission. A hearing officer shall be a member of and in good  
6 standing with the Alabama State Bar.

7 No person shall serve as a hearing officer who has  
8 any direct or indirect financial interest in an underground or  
9 surface coal mining operation or who has been employed by or  
10 represented any coal mine operator within the previous 24  
11 months.

12 "§9-16-78.

13 "(a) No hearing officer shall participate in a  
14 hearing if he or she has an interest therein. At any such  
15 hearing all testimony shall be given under oath and be  
16 recorded, but need not be transcribed unless an appeal is  
17 made.

18 "(b) The manner in which hearings before hearing  
19 officers shall be presented and the conduct of hearings and  
20 appeals before hearing officers shall be in accordance with  
21 regulations prescribed by the regulatory authority.

22 "(c) In the discharge of ~~their~~ his or her duties  
23 under this article, any hearing officer shall have power to  
24 administer oaths, certify to official acts, take and cause to  
25 be taken depositions of witnesses, issue and serve subpoenas,



1       compel the attendance of witnesses and the production of  
2       papers, books, accounts, payrolls, documents, records, and  
3       testimony, provide for site inspections or inspections of  
4       other operations. In the event of failure of any person to  
5       comply with any subpoena lawfully issued, or on the refusal of  
6       any witness to produce evidence or to testify as to any matter  
7       regarding which he or she may be lawfully interrogated, it  
8       shall be the duty of any court of competent jurisdiction or of  
9       the judge thereof, upon the application of the hearing officer  
10      in the name of the Alabama Surface Mining Commission to compel  
11      obedience by proceedings for contempt. Witness fees and other  
12      expenses involved in the proceedings under this article shall  
13      be paid to the extent necessary at rates specified by the  
14      director. Such expenses shall be deemed a part of the expense  
15      of administering this chapter.

16               ~~"(d) Hearing officers' offices and facilities for~~  
17      ~~the holding and conducting of hearings shall be located in a~~  
18      ~~facility completely separate from the facility in which the~~  
19      ~~commission is located.~~ There shall be no ex parte  
20      communications of any kind relating to commission business, or  
21      proposed or pending cases, by or with any hearing officer by  
22      any party or representative of any party, or by any employee  
23      or representative of the commission.

24               "§9-16-81.

1           "(a) All surface coal mining operations shall be  
2 subject to ~~the provisions of~~ this article, except as excluded  
3 in Section 9-16-99.

4           "(b) No person shall engage in or carry out on lands  
5 within the state any surface coal mining operations unless  
6 such person has first obtained a license in accordance with  
7 ~~the provisions of~~ this section. The term of a license shall be  
8 continuous and shall authorize the licensee, subject to the  
9 other provisions of this article, to engage in surface coal  
10 mining operations unless the license shall be suspended or  
11 revoked in accordance with ~~the provisions of~~ this article.  
12 Suspension, revocation, or subcontracting shall in no way  
13 relieve the licensee of his or her obligation to comply with  
14 the reclamation requirement of this article.

15           "(c) An applicant for a license shall file an  
16 application in a format prescribed by and satisfactory to the  
17 regulatory authority which shall contain, among other things,  
18 the following information:

19           "(1) The name of the applicant and whether the  
20 applicant is an individual, partnership, corporation, or other  
21 legal entity.

22           "(2) The legal address of the applicant for service  
23 of legal process or notice.

24           "(3) If known, the names and addresses of the  
25 agents, subsidiaries, or independent contractors who may be

1 engaged in surface coal mining on behalf of the applicant on  
2 land to be affected. Any agent, subsidiary, or independent  
3 contractor engaged by the applicant subsequent to issuance of  
4 a permit shall be identified to the regulatory authority  
5 within 30 days of its engagement. The utilization of an agent,  
6 subsidiary, or subcontractor shall not relieve the licensee of  
7 its responsibility ~~hereunder,~~ under this article.

8 "(4) If the applicant is a partnership, corporation,  
9 association, or other business entity, the following where  
10 applicable: the names and addresses of every officer, partner,  
11 director, or person performing a function similar to a  
12 director, of the applicant, together with the name and address  
13 of any person owning of record 10 percentum or more of any  
14 class of voting stock of the applicant and a list of all names  
15 under which the applicant, partner, or principal shareholder  
16 previously operated a surface mining operation within the  
17 United States within the five-year period preceding the date  
18 of submission of the application~~.~~

19 "(5) All names under which the applicant and persons  
20 listed in the license application previously operated or is  
21 engaging in surface coal mining within the State of Alabama,  
22 or any other state~~.~~

23 "(6) A statement of whether the applicant, any  
24 subsidiary, affiliate, or persons controlling, controlled by,  
25 or under common control with the applicant, or any partner of

1 the applicant, if the applicant is a partnership, or any  
 2 principal officer or director, if the applicant is a  
 3 corporation, has ever held a federal or any state mining  
 4 permit which in the five year period prior to the date of  
 5 submission of the application has been suspended or revoked or  
 6 has had a mining bond or similar security deposited in lieu of  
 7 bond forfeited and, if so, a brief explanation of the facts  
 8 involved.

9 "(d) The applicant ~~shall~~, as a condition to  
 10 obtaining a license, shall satisfy the regulatory authority,  
 11 pursuant to reasonable standards and regulations to be  
 12 promulgated by it, of the applicant's ability to comply with  
 13 ~~the provisions of~~ this article, which standards shall require  
 14 the applicant to:

15 "(1) Demonstrate that it has available to it  
 16 sufficient technical skill to assure compliance with ~~the~~  
 17 ~~provisions of~~ this article and the regulations adopted  
 18 pursuant ~~hereto,~~ to this article.

19 "(2) Demonstrate sufficient financial responsibility  
 20 to reasonably assure the regulatory authority of the  
 21 applicant's financial ability to execute the requirements of  
 22 this article pursuant to regulations promulgated by the  
 23 regulatory authority~~7.~~

24 "(3) Certify by notarized statement under oath that  
 25 the applicant has read and is fully familiar with ~~the~~

1 ~~provisions of~~ this article and with all reclamation  
 2 requirements contained in this article and regulations  
 3 promulgated by the regulatory authority~~7.~~

4 "(4) Certify that the applicant will obtain and will  
 5 furnish the regulatory authority evidence of having obtained  
 6 such permits as may be required prior to commencing operation  
 7 under any permit which may be issued under this article to the  
 8 applicant.

9 "(e) The regulatory authority shall have 45 days to  
 10 investigate and to consider the application and issue the  
 11 license or an order denying its issuance, setting out  
 12 deficiencies and reasons why the license was not issued and  
 13 what corrective action should be taken.

14 "(f) (1) The initial fee for a license shall be  
 15 ~~\$1,000.00~~ a reasonable amount as established by rule of the  
 16 commission and shall be submitted with the application.  
 17 Licenses shall be updated annually ~~pursuant to regulations~~  
 18 upon payment of an annual license update fee, in a reasonable  
 19 amount as established by the commission, and compliance with  
 20 any applicable rules of the commission.

21 "(2) A licensee with a valid license issued by the  
 22 Alabama Surface Mining Reclamation Commission prior to the  
 23 effective date of this article and who intends to conduct  
 24 surface coal mining and reclamation operations pursuant to  
 25 this article must reapply to the regulatory authority for a

1 license within 90 days of the effective date of this article.  
2 The fee for such application shall be ~~\$200.00~~ two hundred  
3 dollars (\$200) and shall be in lieu of the ~~\$1,000.00~~ initial  
4 licensing fee. The license shall be granted provided that no  
5 prior licensee shall be eligible to receive a license until  
6 all outstanding and delinquent fines, fees, penalties, or  
7 other debts owed to the Alabama Surface Mining Reclamation  
8 Commission by the prior licensee shall have been paid in full  
9 to the regulatory authority. Licenses may be granted with  
10 specific conditions or restrictions.

11 "§9-16-93.

12 "(a) Whenever, on the basis of any information  
13 available to it, including receipt of information from any  
14 person, the regulatory authority has reason to believe that  
15 any person is in violation of any requirement of this article  
16 or any permit condition required by this article, the  
17 regulatory authority shall immediately order an inspection of  
18 the surface coal mining operation at which the alleged  
19 violation is occurring unless the same information is  
20 available to the regulatory authority as a result of a  
21 previous inspection. When the inspection results from  
22 information provided to the regulatory authority by any  
23 person, the regulatory authority shall notify such person when  
24 the inspection is proposed to be carried out and such person  
25 shall be allowed to accompany the inspector during the

1 inspection. The regulatory authority shall consult with all  
2 state and federal agencies charged with the enforcement of  
3 mine safety regulations and shall ensure that the person  
4 accompanying the inspector complies with appropriate safety  
5 standards and regulations. The regulatory authority shall  
6 provide that the person accompanying the inspector assumes the  
7 risk of personal injury where such injury results from conduct  
8 of the operator which is neither negligent nor intentional and  
9 where the person accompanying the inspector fails to comply  
10 with appropriate safety standards and regulations.

11 "(b) When on the basis of an inspection by an  
12 authorized representative of the regulatory authority, the  
13 regulatory authority or its authorized representative  
14 determines that any condition or practice exists or that any  
15 permittee is in violation of any requirement of this article  
16 or any permit condition required by this article, and such  
17 violation, condition, or practice also creates an imminent  
18 danger to the health or safety of the public, or is causing or  
19 can reasonably be expected to cause significant imminent  
20 environmental harm to land, air, or water resources, the  
21 regulatory authority or its authorized representative shall  
22 immediately order a cessation of surface coal mining and  
23 reclamation operations or the portion thereof relevant to the  
24 condition, practice, or violation ~~and issue a citation for an~~  
25 ~~expeditious hearing before a hearing officer pursuant to~~

1 ~~Sections 9-16-78 and 9-16-79~~ of this article. Such cessation  
2 order shall remain in effect until the regulatory authority or  
3 its authorized representative determines that the condition,  
4 practice, or violation has been abated, or until modified,  
5 vacated, or terminated by the regulatory authority or its  
6 authorized representative pursuant to subsection (e) ~~of this~~  
7 ~~section~~ or by the hearing officer. Where the regulatory  
8 authority finds that the ordered cessation of surface coal  
9 mining and reclamation operations, or any portion thereof,  
10 will not completely abate the imminent danger to the health or  
11 safety of the public or the significant, imminent  
12 environmental harm to land, air, or water resources, the  
13 regulatory authority ~~shall~~, in addition to the cessation  
14 order, shall impose affirmative obligations on the operator  
15 requiring him or her to take whatever steps the regulatory  
16 authority deems necessary to abate the imminent danger or the  
17 significant, imminent harm.

18 "(c) When on the basis of an inspection by an  
19 authorized representative of the regulatory authority, the  
20 regulatory authority or its authorized representative  
21 determines that any permittee is in violation of any  
22 requirement of this article, including any permit condition  
23 required by this article, but such violation does not create  
24 an imminent danger to the health or safety of the public or  
25 cannot be reasonably expected to cause significant, imminent



1 environmental harm to land, air, or water resources, the  
2 regulatory authority or its authorized representative shall  
3 issue a notice to the permittee or his or her agent fixing a  
4 reasonable time, but not more than 90 days, for the abatement  
5 of the violation and providing opportunity for an informal  
6 conference. If, upon expiration of the period of time as  
7 originally fixed or subsequently extended, for good cause  
8 shown and upon the written findings of the regulatory  
9 authority or its authorized representative, the regulatory  
10 authority or its authorized representative finds that the  
11 violation has not been abated, a cessation order shall  
12 immediately be issued for the relevant portion of the surface  
13 coal mining and reclamation operation including the entire  
14 operation, if relevant. Such cessation order shall remain in  
15 effect until modified, vacated, or terminated by the  
16 regulatory authority or its authorized representative pursuant  
17 to subsection (e) ~~of this section~~ or until the regulatory  
18 authority or its authorized representative determines that the  
19 violation has been abated. In the order of cessation the  
20 regulatory authority shall determine the steps necessary to  
21 abate the violation in the most expeditious manner possible  
22 and shall include the necessary measures in the order. Actions  
23 taken by the regulatory authority under this subsection may be  
24 reviewed by a hearing officer pursuant to Sections 9-16-78 and  
25 9-16-79 ~~of this article~~.

1           "(d) When, on the basis of an inspection, the  
2 regulatory authority or its authorized representative  
3 determines that a pattern of violations of any requirements of  
4 this article or any permit conditions exists or has existed,  
5 and if the regulatory authority or its authorized  
6 representative also find that such violations are caused by  
7 the unwarranted failure of the permittee to comply with any  
8 requirements of this article or any permit conditions, or that  
9 such violations are willfully caused by the permittee, the  
10 regulatory authority or its authorized representative shall  
11 forthwith issue an order to show cause as to why the permit  
12 should not be suspended or revoked and shall provide  
13 opportunity for a public hearing before a hearing officer  
14 pursuant to Sections 9-16-78 and 9-16-79 ~~of this article~~. If a  
15 hearing is requested, the hearing officer shall inform all  
16 interested parties of the time and place of the hearing. Upon  
17 the permittee's failure to show cause as to why the permit  
18 should not be suspended or revoked, the hearing officer shall  
19 forthwith suspend or revoke the permit. If the hearing officer  
20 revokes the permit, the permittee shall immediately cease  
21 surface coal mining operations on the permit area and shall  
22 complete reclamation within a period specified by the hearing  
23 officer or the hearing officer shall declare as forfeited the  
24 performance bonds for the operation.

1           "(e) Notices and orders issued pursuant to this  
2 section shall set forth with reasonable specificity the nature  
3 of the violation and the remedial action required, the period  
4 of time established for abatement, and a reasonable  
5 description of the portion of the surface coal mining and  
6 reclamation operation to which the notice or order applies.  
7 Each notice or order issued under this section shall be given  
8 promptly to the permittee or his or her agent by the  
9 regulatory authority or its authorized representative who  
10 issues such notice or order and all such notices and orders  
11 shall be in writing and shall be signed by the regulatory  
12 authority or such authorized representative. Any notice or  
13 order issued pursuant to this section may be modified,  
14 vacated, or terminated by the regulatory authority or its  
15 authorized representative. Provided, that any notice or order  
16 issued pursuant to this section which requires cessation of  
17 mining by the operator shall expire within 30 days of actual  
18 notice to the operator or his or her agent, unless a public  
19 hearing is held at the site or within such reasonable  
20 proximity to the site that any viewings of the site can be  
21 conducted during the course of the public hearing.

22           "(f) (1) The regulatory authority may request the  
23 Attorney General to institute a civil action for relief,  
24 including a permanent or temporary injunction, restraining  
25 order, or any other appropriate order in the circuit court for

1 the county in which the surface coal mining and reclamation  
2 operation is located or in which the permittee thereof has his  
3 or her principal office, whenever such permittee or his or her  
4 agent does any of the following:

5 "a. Violates ~~(1) violates~~ or fails or refuses to  
6 comply with any order or decision issued by the regulatory  
7 authority under this article, ~~or.~~

8 "b. Interferes ~~(2) interferes~~ with, hinders, ~~or~~  
9 delays the regulatory authority or his or her authorized  
10 representatives in carrying out ~~the provisions of this~~  
11 article, ~~or.~~

12 "c. Refuses ~~(3) refuses~~ to admit such authorized  
13 representative to the mine, ~~or.~~

14 "d. Refuses ~~(4) refuses~~ to permit inspection of the  
15 mine by such authorized representative, ~~or.~~

16 "e. Refuses ~~(5) refuses~~ to furnish any information  
17 or report requested by the regulatory authority in furtherance  
18 of ~~the provisions of this article~~ ~~or.~~

19 "f. Refuses ~~(6) refuses~~ to permit access to, and  
20 copying of, such records as the regulatory authority  
21 determines necessary in carrying out ~~the provisions of this~~  
22 article.

23 "(2) Such court shall have jurisdiction to provide  
24 such relief as may be appropriate. Temporary restraining  
25 orders shall be issued in accordance with Rule 65 of the

1 Alabama Rules of Civil Procedure as amended. Any relief  
2 granted by the court to enforce an order under ~~clause (1) of~~  
3 ~~this subsection~~ paragraph a. shall continue in effect until  
4 the completion or final termination of all proceedings for  
5 review of such order under this article, unless, prior  
6 thereto, the circuit court granting such relief sets it aside  
7 or modifies it."

8 Section 2. This act shall become effective on the  
9 first day of the third month following its passage and  
10 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 11-MAR-10, as amended.

Greg Pappas  
Clerk

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Senate

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14-APR-10

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Passed