

1 SB62  
2 115018-3  
3 By Senator Barron  
4 RFD: Governmental Affairs  
5 First Read: 12-JAN-10  
6 PFD: 12/18/2009

1 SB62

2  
3  
4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to the Alabama Surface Mining Commission;  
12 to amend Sections 9-16-73, 9-16-74, 9-16-77, 9-16-78, 9-16-81,  
13 and 9-16-93, Code of Alabama 1975, to require the commission  
14 to meet once every month instead of once every 30 days; to  
15 authorize the commission to charge reasonable fees for  
16 training, examination, and certification programs; to  
17 authorize the commission to hire or contract with attorneys to  
18 serve as hearing officers; to delete the requirement that  
19 separate offices in separate facilities be provided for  
20 hearing officers; to authorize the commission to establish and  
21 charge reasonable fees for initial surface mining licenses and  
22 annual updates; and to delete the requirement that commission  
23 inspectors issue citations compelling attendance at  
24 expeditious hearings before a hearing officer upon issuance of  
25 a cessation order.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 9-16-73, 9-16-74, 9-16-77,  
2                   9-16-78, 9-16-81, and 9-16-93 of the Code of Alabama 1975, are  
3                   amended to read as follows:

4                   "§9-16-73.

5                   "(a) There is ~~hereby~~ continued as previously  
6                   established the Alabama Surface Mining Reclamation Commission  
7                   under the name of the Alabama Surface Mining Commission for  
8                   the purpose of transition in implementing and enforcing this  
9                   article and carrying out the intent and policy stated in  
10                  Section 9-16-71 ~~hereof~~. All members of the commission  
11                  appointed under authority of Section 9-16-33, shall continue  
12                  their terms as created under that section until all  
13                  reappointments and filling of vacancies have been filled in  
14                  the manner as ~~herein set out~~ provided in this section. At the  
15                  expiration of any term, that member shall continue in office  
16                  until an appointment occurs as ~~herein set out~~ provided in this  
17                  section. After February 25, 1994, no member shall serve more  
18                  than two full consecutive terms of office.

19                  "(b) The commission shall be composed of seven  
20                  members, who are fair and reasonable citizens of the state,  
21                  appointed by the Governor, with the advice and consent of the  
22                  Senate. The Governor shall initially appoint two members of  
23                  the commission for a term of five years, two members for four  
24                  years, two members for three years, and one member for two  
25                  years. All members appointed subsequently shall be appointed  
26                  for terms of five years.

1           "(1) One commission member shall be appointed from  
2 one of the three counties in Alabama which produce the  
3 greatest number of tons of surface mined coal, as indicated by  
4 the records of the State of Alabama in the complete fiscal  
5 year immediately preceding that appointment; and two  
6 commission members shall be appointed from any of the  
7 coal-producing counties in Alabama, as indicated by the  
8 records of the State of Alabama in the complete fiscal year  
9 immediately preceding that appointment. One commission member  
10 shall be appointed state at large.

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

1           "(c) Within 10 days of nomination by the Governor,  
2 each nominee shall file with the Secretary of the Senate a  
3 verified statement setting forth the following information:  
4 The names of all coal companies from whom such nominee has  
5 received any income of any sort during the 10 years  
6 immediately preceding such nomination, ~~and~~ the name or names of  
7 all coal companies in which the nominee is or in the 10 years  
8 immediately preceding such nomination has been an officer,  
9 director, stockholder, ~~and~~ or partner; and all the names of all  
10 organizations, clubs, ~~and~~ and associations of which the nominee is  
11 or in the 10 years immediately preceding such nomination has  
12 been a member. No commission member may have a direct or  
13 indirect financial interest in underground or surface coal  
14 mining operations, and may not participate in any proceeding  
15 conducted pursuant to Section 9-16-79 in which the commission  
16 member is an employee, officer, director, shareholder, ~~and~~ or  
17 partner or where any organization, club, ~~and~~ or association of  
18 which the commission member is a member, officer, agent,  
19 director, ~~and~~ or employee instigated the proceeding, is a  
20 defendant, or has any other direct interest in the outcome of  
21 the proceeding, other than as a member of commission.

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

1 be subject to the advice and consent of the Senate at the next  
2 regular or special session of the Legislature; ~~in.~~ In the  
3 event such appointee is confirmed, his or her term shall be  
4 for the balance of the vacancy so filled.

5 "(e) The commission shall appoint a ~~director~~  
6 Director of the Alabama Surface Mining Commission, who must  
7 have a working knowledge of the federal and state surface  
8 mining statutes, rules, and regulations, and shall fix his or  
9 her compensation. The commission may appoint a deputy director  
10 as an unclassified position and the compensation of such  
11 deputy director shall be fixed by the commission subject to  
12 ~~provisions of~~ the state Merit System. The director shall be  
13 the chief operating officer of the commission and shall be  
14 charged with exercising such powers, duties, and functions as  
15 may be conferred upon him or her by the commission or this  
16 article, except the director shall not have the power to  
17 promulgate, modify, suspend, or repeal any standards, rules, and  
18 or regulations provided for or authorized under this article.  
19 The director ~~is authorized,~~ subject to the approval of the  
20 commission, ~~to~~ may create such divisions of his or her office  
21 as may be necessary to carry out its functions and may employ  
22 professional, technical, legal, and or clerical personnel as may  
23 be necessary to carry out the duties and functions of the  
24 commission. ~~He may also~~ The director, with the approval of the  
25 commission, may also contract with private persons, firms, and or  
26 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~~ 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  
25 as it may consider necessary for the proper discharge of its  
26 duties.

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

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

20           "§9-16-74.

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

24           "(1) Adopt, amend, suspend, repeal, and enforce  
25 reasonably necessary rules and regulations, provided such  
26 rules and regulations shall not be more stringent than those  
27 promulgated by federal law, or rule or regulation, to control

1 surface coal mining operations consistent with this article  
2 including the declaration of public policy and legislative  
3 intent contained in Section 9-16-71. Such rules and  
4 regulations may be for the state as a whole or may vary from  
5 area to area, as may be appropriate to accomplish the policy  
6 and intent of this article and in order to take into account  
7 varying local conditions~~7.~~

8 "(2) Hold public hearings as may be specified by law  
9 relating to any aspect or matter in the administration of this  
10 article and, in connection therewith, administer oaths~~7~~ and  
11 compel the attendance of witnesses and the production of  
12 evidence. In the event of failure of any person to comply with  
13 any subpoena lawfully issued, or on the refusal of any witness  
14 to produce evidence or to testify as to any matter regarding  
15 which he or she may be lawfully interrogated, it shall be the  
16 duty of any court of competent jurisdiction, upon the  
17 application of the commission, to compel obedience by  
18 proceedings for contempt as if the disobedience occurred in  
19 such court~~7.~~

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

23 "(4) Promulgate and enforce rules, regulations, and  
24 standards requiring the training, examination, and  
25 certification of persons engaging in or directly responsible  
26 for the use of explosives for the purpose of blasting in  
27 surface coal mining. Such rules and regulations shall include,

1 but not be limited to, provisions for establishing and  
2 charging reasonable fees for the administration of these  
3 rules, regulations, and standards and for the training and  
4 examination of applicants for certification, for the renewal  
5 of certification, and for continuing education.

6 "(5) Secure through its director necessary  
7 scientific, technical, administrative, and operational  
8 services, including laboratory facilities by contract or  
9 otherwise.

10 "(6) Encourage voluntary cooperation by persons and  
11 groups to achieve the purposes of this article.

12 "(7) Encourage and conduct through its director and  
13 staff studies, investigations, and research relating to  
14 surface mining reclamation.

15 "(8) Establish and enforce coal surface mining  
16 reclamation standards for the state which may vary according  
17 to appropriate areas, provided they are not inconsistent with  
18 this article and the declaration of public policy and  
19 legislative intent contained in Section 9-16-71.

20 "(9) Collect and disseminate information and conduct  
21 educational and training programs relating to surface coal  
22 mining and reclamation of land.

23 "(10) Advise, consult, contract, and cooperate with  
24 other agencies of the state, local governments, industries,  
25 other states, interstate agencies, and the federal government  
26 and with interested persons or groups, especially, but not  
27 limited to, achieve one-stop permitting for surface coal

1 mining operations and to transfer funds to carry out  
2 reclamation activities~~7.~~

3 "(11) Consult, upon request, with any person  
4 proposing to construct, install, or otherwise acquire a  
5 surface coal mine, concerning the efficacy of construction,  
6 installation, or acquisition of such surface mine. Nothing in  
7 any such consultation shall be construed to relieve any person  
8 from compliance with this article, rules and regulations in  
9 force pursuant ~~thereto~~ to this article, or any other provision  
10 of law~~7.~~

11 "(12) Accept, receive, and administer grants or  
12 other funds or gifts from public and private agencies,  
13 including the federal government, for the purpose of carrying  
14 out any of the functions of this article. Funds received by  
15 the regulatory authority pursuant to this section shall be  
16 deposited in the State Treasury to the account of the Alabama  
17 Surface Mining Fund~~7.~~

18 "(13) Employ personnel and consultants, purchase  
19 such equipment and supplies, and lease or otherwise acquire  
20 through its director such property as may be necessary for the  
21 administration of this article. Subject to any applicable  
22 restrictions contained in law, any department or agency of the  
23 state ~~may~~, from its available resources, may provide the  
24 regulatory authority with personnel and services, with or  
25 without charge, and the regulatory authority may compensate  
26 other agencies for services~~7.~~

1           "(14) Provide for the performance by its director,  
2 deputy director, or staff and employees in the name of the  
3 commission, of any act or duty authorized by and consistent  
4 with administration of this article, except for the  
5 promulgation, modification, suspension, or repeal of  
6 standards, rules, and regulations.

7           "(15) Perform other acts and duties consistent with  
8 ~~the provisions of~~ this article as may be necessary to  
9 implement the declaration of public policy and legislative  
10 intent contained in Section 9-16-71.

11           "(16) Provide for the establishment of advisory  
12 committees, appointment and adequate compensation for  
13 membership of ~~said~~ the committees, scope of study and other  
14 duties, periods of duration, and terms of advisory members.

15           "(17) Issue, modify, or revoke orders prohibiting  
16 actions which violate this article or the rules, regulations,  
17 or standards promulgated pursuant to this article and require  
18 affirmative action to bring any surface coal mining operation  
19 into compliance with this article.

20           "(18) Issue, continue in effect, revoke, modify, or  
21 deny permits through its director and staff for the conduct of  
22 surface coal mining operations or explorations which are  
23 subject to this article.

24           "(19) Issue warnings and initiate civil or criminal  
25 actions through its director and staff as provided for in this  
26 article.

1           "(20) Acquire and maintain workers' compensation  
2 insurance in the amount prescribed by the workers'  
3 compensation laws of Alabama and such general liability  
4 insurance as may be reasonably necessary to assure adequate  
5 protection of the commission, its director, employees, and  
6 agents for lawful acts by them during the course of enforcing  
7 and administering this article~~7~~.

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

12           "b. The commission shall make every effort to obtain  
13 full reimbursement from the Director of the Office of Surface  
14 Mining Reclamation and Enforcement for the costs of performing  
15 its duties under paragraph ~~(21)a. hereof~~ a.

16           "c. If P.L. 95-87 or any rules or regulations  
17 promulgated thereunder or the federal laws it amends are  
18 adjudged unconstitutional or invalid in their application, or  
19 stayed pending litigation in any court of competent  
20 jurisdiction over surface coal mining operations in Alabama,  
21 the Alabama Surface Mining Commission shall suspend the  
22 enforcement of this article to the extent of such  
23 adjudication, unconstitutionality, inapplicability, or stay.

24           "d. If any of the commission's rules or regulations  
25 are adjudged unconstitutional or invalid in their application,  
26 or stayed pending litigation in any court of competent  
27 jurisdiction, the Alabama Surface Mining Commission shall have

1 the power to enforce any valid, constitutional, and analogous  
2 provision of the rules and regulations promulgated under P.L.  
3 95-87.

4 "e. The State of Alabama, by any provision, part, or  
5 all of this article, does not waive any rights and powers  
6 reserved to it by the Tenth Amendment to the Constitution of  
7 the United States, and this subdivision ~~(21)~~ shall not be  
8 interpreted so as to prevent the State of Alabama from  
9 protecting any and all of its rights and governmental powers  
10 through any legal action as might be determined by duly  
11 constituted officials of the State of Alabama.

12 "(22) No commission member, employee of the  
13 commission, or any other state employee performing any  
14 function or duties under this article shall have a direct or  
15 indirect financial interest in underground or surface coal  
16 mining operations. Whoever knowingly violates ~~the provisions~~  
17 ~~of the above sentence shall~~ this subdivision, upon conviction,  
18 shall be punished by a fine of not more than ~~\$2,500.00~~ two  
19 thousand five hundred dollars (\$2,500), or by imprisonment for  
20 not more than one year, or both.

21 "§9-16-77.

22 "(a) There is ~~hereby~~ created a Division of Hearings  
23 and Appeals within the Alabama Surface Mining Commission to  
24 enforce ~~the provisions of~~ this article. The division shall  
25 have such powers and authority as required by law and as  
26 delegated by the director.

1           " (b) ~~To hear and determine appeals from regulatory,~~  
2 ~~enforcement or other activities of the commission as may be~~  
3 ~~specified by law the director shall appoint one or more~~  
4 ~~impartial hearing officers. These hearing officers shall be~~  
5 ~~employees of the commission, and shall be classified personnel~~  
6 ~~in the state Merit System. These hearing officers shall also~~  
7 ~~be members in good standing of the Alabama State Bar. The~~  
8 ~~director shall also appoint and designate one hearing officer~~  
9 ~~as chief hearing officer who shall be responsible for the~~  
10 ~~assignment of cases to the hearing officers as well as the~~  
11 ~~efficient administration of the functions and duties of the~~  
12 ~~hearing officers. The commission may hire or contract with~~  
13 ~~hearing officers to hear and determine appeals from~~  
14 ~~regulatory, enforcement, or other activities of the~~  
15 ~~commission. A hearing officer shall be a member of and in good~~  
16 ~~standing with the Alabama State Bar.~~

17           "§9-16-78.

18           "(a) No hearing officer shall participate in a  
19 hearing if he or she has an interest therein. No person shall  
20 serve as a hearing officer who has any direct or indirect  
21 financial interest in an underground or surface coal mining  
22 operation or who has been employed by or represented any coal  
23 mine operator within the previous 24 months. At any such  
24 hearing all testimony shall be given under oath and be  
25 recorded, but need not be transcribed unless an appeal is  
26 made.

1           "(b) The manner in which hearings before hearing  
2 officers shall be presented and the conduct of hearings and  
3 appeals before hearing officers shall be in accordance with  
4 regulations prescribed by the regulatory authority.

5           "(c) In the discharge of ~~their~~ his or her duties  
6 under this article, any hearing officer shall have power to  
7 administer oaths, certify to official acts, take and cause to  
8 be taken depositions of witnesses, issue and serve subpoenas,  
9 compel the attendance of witnesses and the production of  
10 papers, books, accounts, payrolls, documents, records, and  
11 testimony, provide for site inspections or inspections of  
12 other operations. In the event of failure of any person to  
13 comply with any subpoena lawfully issued, or on the refusal of  
14 any witness to produce evidence or to testify as to any matter  
15 regarding which he or she may be lawfully interrogated, it  
16 shall be the duty of any court of competent jurisdiction or of  
17 the judge thereof, upon the application of the hearing officer  
18 in the name of the Alabama Surface Mining Commission to compel  
19 obedience by proceedings for contempt. Witness fees and other  
20 expenses involved in the proceedings under this article shall  
21 be paid to the extent necessary at rates specified by the  
22 director. Such expenses shall be deemed a part of the expense  
23 of administering this chapter.

24           "~~(d) Hearing officers' offices and facilities for~~  
25 ~~the holding and conducting of hearings shall be located in a~~  
26 ~~facility completely separate from the facility in which the~~  
27 ~~commission is located.~~ There shall be no ex parte

1 communications of any kind relating to commission business, or  
2 proposed or pending cases, by or with any hearing officer by  
3 any party or representative of any party, or by any employee  
4 or representative of the commission.

5 "§9-16-81.

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

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

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

24 "(1) The name of the applicant and whether the  
25 applicant is an individual, partnership, corporation, or other  
26 legal entity.

1           "(2) The legal address of the applicant for service  
2 of legal process or notice~~7.~~

3           "(3) If known, the names and addresses of the  
4 agents, subsidiaries~~,~~ or independent contractors who may be  
5 engaged in surface coal mining on behalf of the applicant on  
6 land to be affected. Any agent, subsidiary~~,~~ or independent  
7 contractor engaged by the applicant subsequent to issuance of  
8 a permit shall be identified to the regulatory authority  
9 within 30 days of its engagement. The utilization of an agent,  
10 subsidiary~~,~~ or subcontractor shall not relieve the licensee of  
11 its responsibility ~~hereunder,~~ under this article.

12           "(4) If the applicant is a partnership, corporation,  
13 association, or other business entity, the following where  
14 applicable: the names and addresses of every officer, partner,  
15 director, or person performing a function similar to a  
16 director, of the applicant, together with the name and address  
17 of any person owning of record 10 percentum or more of any  
18 class of voting stock of the applicant and a list of all names  
19 under which the applicant, partner, or principal shareholder  
20 previously operated a surface mining operation within the  
21 United States within the five-year period preceding the date  
22 of submission of the application~~7.~~

23           "(5) All names under which the applicant and persons  
24 listed in the license application previously operated or is  
25 engaging in surface coal mining within the State of Alabama,  
26 or any other state~~7.~~

1           "(6) A statement of whether the applicant, any  
2 subsidiary, affiliate, or persons controlling, controlled by,  
3 or under common control with the applicant, or any partner of  
4 the applicant, if the applicant is a partnership, or any  
5 principal officer or director, if the applicant is a  
6 corporation, has ever held a federal or any state mining  
7 permit which in the five year period prior to the date of  
8 submission of the application has been suspended or revoked or  
9 has had a mining bond or similar security deposited in lieu of  
10 bond forfeited and, if so, a brief explanation of the facts  
11 involved.

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

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

22           "(2) Demonstrate sufficient financial responsibility  
23 to reasonably assure the regulatory authority of the  
24 applicant's financial ability to execute the requirements of  
25 this article pursuant to regulations promulgated by the  
26 regulatory authority.

1           "(3) Certify by notarized statement under oath that  
2 the applicant has read and is fully familiar with ~~the~~  
3 ~~provisions of~~ this article and with all reclamation  
4 requirements contained in this article and regulations  
5 promulgated by the regulatory authority~~7.~~

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

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

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

23           "(2) A licensee with a valid license issued by the  
24 Alabama Surface Mining Reclamation Commission prior to the  
25 effective date of this article and who intends to conduct  
26 surface coal mining and reclamation operations pursuant to  
27 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  
26 inspection. The regulatory authority shall consult with all  
27 state and federal agencies charged with the enforcement of

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

9 " (b) When on the basis of an inspection by an  
10 authorized representative of the regulatory authority, the  
11 regulatory authority or its authorized representative  
12 determines that any condition or practice exists or that any  
13 permittee is in violation of any requirement of this article  
14 or any permit condition required by this article, and such  
15 violation, condition, or practice also creates an imminent  
16 danger to the health or safety of the public, or is causing or  
17 can reasonably be expected to cause significant imminent  
18 environmental harm to land, air, or water resources, the  
19 regulatory authority or its authorized representative shall  
20 immediately order a cessation of surface coal mining and  
21 reclamation operations or the portion thereof relevant to the  
22 condition, practice, or violation ~~and issue a citation for an~~  
23 ~~expeditious hearing before a hearing officer pursuant to~~  
24 ~~Sections 9-16-78 and 9-16-79~~ of this article. Such cessation  
25 order shall remain in effect until the regulatory authority or  
26 its authorized representative determines that the condition,  
27 practice, or violation has been abated, or until modified,

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

14 "(c) When on the basis of an inspection by an  
15 authorized representative of the regulatory authority, the  
16 regulatory authority or its authorized representative  
17 determines that any permittee is in violation of any  
18 requirement of this article, including any permit condition  
19 required by this article, but such violation does not create  
20 an imminent danger to the health or safety of the public or  
21 cannot be reasonably expected to cause significant, imminent  
22 environmental harm to land, air, or water resources, the  
23 regulatory authority or its authorized representative shall  
24 issue a notice to the permittee or his or her agent fixing a  
25 reasonable time, but not more than 90 days, for the abatement  
26 of the violation and providing opportunity for an informal  
27 conference. If, upon expiration of the period of time as

1 originally fixed or subsequently extended, for good cause  
2 shown and upon the written findings of the regulatory  
3 authority or its authorized representative, the regulatory  
4 authority or its authorized representative finds that the  
5 violation has not been abated, a cessation order shall  
6 immediately be issued for the relevant portion of the surface  
7 coal mining and reclamation operation including the entire  
8 operation, if relevant. Such cessation order shall remain in  
9 effect until modified, vacated, or terminated by the  
10 regulatory authority or its authorized representative pursuant  
11 to subsection (e) ~~of this section~~ or until the regulatory  
12 authority or its authorized representative determines that the  
13 violation has been abated. In the order of cessation the  
14 regulatory authority shall determine the steps necessary to  
15 abate the violation in the most expeditious manner possible  
16 and shall include the necessary measures in the order. Actions  
17 taken by the regulatory authority under this subsection may be  
18 reviewed by a hearing officer pursuant to Sections 9-16-78 and  
19 9-16-79 ~~of this article~~.

20 "(d) When, on the basis of an inspection, the  
21 regulatory authority or its authorized representative  
22 determines that a pattern of violations of any requirements of  
23 this article or any permit conditions exists or has existed,  
24 and if the regulatory authority or its authorized  
25 representative also find that such violations are caused by  
26 the unwarranted failure of the permittee to comply with any  
27 requirements of this article or any permit conditions, or that

1 such violations are willfully caused by the permittee, the  
2 regulatory authority or its authorized representative shall  
3 forthwith issue an order to show cause as to why the permit  
4 should not be suspended or revoked and shall provide  
5 opportunity for a public hearing before a hearing officer  
6 pursuant to Sections 9-16-78 and 9-16-79 ~~of this article~~. If a  
7 hearing is requested, the hearing officer shall inform all  
8 interested parties of the time and place of the hearing. Upon  
9 the permittee's failure to show cause as to why the permit  
10 should not be suspended or revoked, the hearing officer shall  
11 forthwith suspend or revoke the permit. If the hearing officer  
12 revokes the permit, the permittee shall immediately cease  
13 surface coal mining operations on the permit area and shall  
14 complete reclamation within a period specified by the hearing  
15 officer or the hearing officer shall declare as forfeited the  
16 performance bonds for the operation.

17 "(e) Notices and orders issued pursuant to this  
18 section shall set forth with reasonable specificity the nature  
19 of the violation and the remedial action required, the period  
20 of time established for abatement, and a reasonable  
21 description of the portion of the surface coal mining and  
22 reclamation operation to which the notice or order applies.  
23 Each notice or order issued under this section shall be given  
24 promptly to the permittee or his or her agent by the  
25 regulatory authority or its authorized representative who  
26 issues such notice or order and all such notices and orders  
27 shall be in writing and shall be signed by the regulatory

1 authority or such authorized representative. Any notice or  
2 order issued pursuant to this section may be modified,  
3 vacated, or terminated by the regulatory authority or its  
4 authorized representative. Provided, that any notice or order  
5 issued pursuant to this section which requires cessation of  
6 mining by the operator shall expire within 30 days of actual  
7 notice to the operator or his or her agent, unless a public  
8 hearing is held at the site or within such reasonable  
9 proximity to the site that any viewings of the site can be  
10 conducted during the course of the public hearing.

11 "(f) (1) The regulatory authority may request the  
12 Attorney General to institute a civil action for relief,  
13 including a permanent or temporary injunction, restraining  
14 order, or any other appropriate order in the circuit court for  
15 the county in which the surface coal mining and reclamation  
16 operation is located or in which the permittee thereof has his  
17 or her principal office, whenever such permittee or his or her  
18 agent does any of the following:

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

22 "b. Interferes ~~(2) interferes~~ with, hinders, or  
23 delays the regulatory authority or his or her authorized  
24 representatives in carrying out ~~the provisions of~~ this  
25 article, ~~or.~~

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

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

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

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

10           "(2) Such court shall have jurisdiction to provide  
11 such relief as may be appropriate. Temporary restraining  
12 orders shall be issued in accordance with Rule 65 of the  
13 Alabama Rules of Civil Procedure as amended. Any relief  
14 granted by the court to enforce an order under ~~clause (1) of~~  
15 ~~this subsection~~ paragraph a. shall continue in effect until  
16 the completion or final termination of all proceedings for  
17 review of such order under this article, unless, prior  
18 thereto, the circuit court granting such relief sets it aside  
19 or modifies it."

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

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Senate

Read for the first time and referred to the Senate  
committee on Governmental Affairs ..... 12-JAN-10

Read for the second time and placed on the calen-  
dar 1 amendment ..... 23-FEB-10

Read for the third time and passed as amended ... 03-MAR-10

Yeas 30  
Nays 0  
Abstaining 1

McDowell Lee  
Secretary