

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

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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~~ 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