

1 HB75  
2 118623-2  
3 By Representative Sherer  
4 RFD: Boards and Commissions  
5 First Read: 12-JAN-10  
6 PFD: 01/06/2010

ENGROSSED

A BILL

TO BE ENTITLED

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

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

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

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

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

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

1 corporations to provide professional or technical assistance  
2 or consultant services to assist his or her office in carrying  
3 out the purposes of this article.

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

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

23                 "(h) The commission shall establish and maintain its  
24 principal office in Jasper, Alabama, and establish and  
25 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,  
12 and 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 conditions.7.

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 oaths, 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 court.7.

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

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

11                         "(5) Secure through its director necessary  
12 scientific, technical, administrative, and operational  
13 services, including laboratory facilities by contract or  
14 otherwise. –

15                         "(6) Encourage voluntary cooperation by persons and  
16 groups to achieve the purposes of this article. –

17                         "(7) Encourage and conduct through its director and  
18 staff studies, investigations, and research relating to  
19 surface mining reclamation. –

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

1                         "(9) Collect and disseminate information and conduct  
2 educational and training programs relating to surface coal  
3 mining and reclamation of land.  

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

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

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

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

10                         "(14) Provide for the performance by its director,  
11 deputy director, or staff and employees in the name of the  
12 commission, of any act or duty authorized by and consistent  
13 with administration of this article, except for the  
14 promulgation, modification, suspension,7 or repeal of  
15 standards, rules, and regulations.7.

16                         "(15) Perform other acts and duties consistent with  
17 ~~the provisions of~~ this article as may be necessary to  
18 implement the declaration of public policy and legislative  
19 intent contained in Section 9-16-71.7.

20                         "(16) Provide for the establishment of advisory  
21 committees, appointment and adequate compensation for  
22 membership of ~~said~~ the committees, scope of study and other  
23 duties, periods of duration,7 and terms of advisory members.7.

24                         "(17) Issue, modify, or revoke orders prohibiting  
25 actions which violate this article or the rules, regulations,  
26 or standards promulgated pursuant to this article and require

1 affirmative action to bring any surface coal mining operation  
2 into compliance with this article7.

3 "(18) Issue, continue in effect, revoke, modify, or  
4 deny permits through its director and staff for the conduct of  
5 surface coal mining operations or explorations which are  
6 subject to this article7.

7 "(19) Issue warnings and initiate civil or criminal  
8 actions through its director and staff as provided for in this  
9 article7.

10 "(20) Acquire and maintain workers' compensation  
11 insurance in the amount prescribed by the workers'  
12 compensation laws of Alabama and such general liability  
13 insurance as may be reasonably necessary to assure adequate  
14 protection of the commission, its director, employees, and  
15 agents for lawful acts by them during the course of enforcing  
16 and administering this article7.

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

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

25 "c. If P.L. 95-87 or any rules or regulations  
26 promulgated thereunder or the federal laws it amends are

1 adjudged unconstitutional or invalid in their application, or  
2 stayed pending litigation in any court of competent  
3 jurisdiction over surface coal mining operations in Alabama,  
4 the Alabama Surface Mining Commission shall suspend the  
5 enforcement of this article to the extent of such  
6 adjudication, unconstitutionality, inapplicability, or stay.

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

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

22                    "(22) No commission member, employee of the  
23 commission, or any other state employee performing any  
24 function or duties under this article shall have a direct or  
25 indirect financial interest in underground or surface coal  
26 mining operations. Whoever knowingly violates ~~the provisions~~

1 of the above sentence shall this subdivision, upon conviction,  
2 shall be punished by a fine of not more than \$2,500.00 two  
3 thousand five hundred dollars (\$2,500), or by imprisonment for  
4 not more than one year, or both.

5 "§9-16-77.

6 "(a) There is hereby created a Division of Hearings  
7 and Appeals within the Alabama Surface Mining Commission to  
8 enforce ~~the provisions of~~ this article. The division shall  
9 have such powers and authority as required by law and as  
10 delegated by the director.

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

1                   No person shall serve as a hearing officer who has  
2                   any direct or indirect financial interest in an underground or  
3                   surface coal mining operation or who has been employed by or  
4                   represented any coal mine operator within the previous 24  
5                   months.

6                   "§9-16-78.

7                   "(a) No hearing officer shall participate in a  
8                   hearing if he or she has an interest therein. At any such  
9                   hearing all testimony shall be given under oath and be  
10                  recorded, but need not be transcribed unless an appeal is  
11                  made.

12                  "(b) The manner in which hearings before hearing  
13                  officers shall be presented and the conduct of hearings and  
14                  appeals before hearing officers shall be in accordance with  
15                  regulations prescribed by the regulatory authority.

16                  "(c) In the discharge of their his or her duties  
17                  under this article, any hearing officer shall have power to  
18                  administer oaths, certify to official acts, take and cause to  
19                  be taken depositions of witnesses, issue and serve subpoenas,  
20                  compel the attendance of witnesses and the production of  
21                  papers, books, accounts, payrolls, documents, records, and  
22                  testimony, provide for site inspections or inspections of  
23                  other operations. In the event of failure of any person to  
24                  comply with any subpoena lawfully issued, or on the refusal of  
25                  any witness to produce evidence or to testify as to any matter  
26                  regarding which he or she may be lawfully interrogated, it

1 shall be the duty of any court of competent jurisdiction or of  
2 the judge thereof, upon the application of the hearing officer  
3 in the name of the Alabama Surface Mining Commission to compel  
4 obedience by proceedings for contempt. Witness fees and other  
5 expenses involved in the proceedings under this article shall  
6 be paid to the extent necessary at rates specified by the  
7 director. Such expenses shall be deemed a part of the expense  
8 of administering this chapter.

9                 "(d) ~~Hearing officers' offices and facilities for~~  
10 ~~the holding and conducting of hearings shall be located in a~~  
11 ~~facility completely separate from the facility in which the~~  
12 ~~commission is located.~~ There shall be no ex parte  
13 communications of any kind relating to commission business, or  
14 proposed or pending cases, by or with any hearing officer by  
15 any party or representative of any party, or by any employee  
16 or representative of the commission.

17                 "§9-16-81.

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

21                 "(b) No person shall engage in or carry out on lands  
22 within the state any surface coal mining operations unless  
23 such person has first obtained a license in accordance with  
24 ~~the provisions of~~ this section. The term of a license shall be  
25 continuous and shall authorize the licensee, ~~subject to the~~  
26 other provisions of this article, to engage in surface coal

1 mining operations unless the license shall be suspended or  
2 revoked in accordance with ~~the provisions of~~ this article.  
3 Suspension, revocation, or subcontracting shall in no way  
4 relieve the licensee of his or her obligation to comply with  
5 the reclamation requirement of this article.

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

10 "(1) The name of the applicant and whether the  
11 applicant is an individual, partnership, corporation, or other  
12 legal entity.  
13 "(2) The legal address of the applicant for service  
14 of legal process or notices.  
15 "(3) If known, the names and addresses of the  
16 agents, subsidiaries, or independent contractors who may be  
17 engaged in surface coal mining on behalf of the applicant on  
18 land to be affected. Any agent, subsidiary, or independent  
19 contractor engaged by the applicant subsequent to issuance of  
20 a permit shall be identified to the regulatory authority  
21 within 30 days of its engagement. The utilization of an agent,  
22 subsidiary, or subcontractor shall not relieve the licensee of  
23 its responsibility hereunder, under this article.  
24 "(4) If the applicant is a partnership, corporation,  
25 association, or other business entity, the following where  
26 applicable: the names and addresses of every officer, partner,

1 director, or person performing a function similar to a  
2 director, of the applicant, together with the name and address  
3 of any person owning of record 10 percentum or more of any  
4 class of voting stock of the applicant and a list of all names  
5 under which the applicant, partner, or principal shareholder  
6 previously operated a surface mining operation within the  
7 United States within the five-year period preceding the date  
8 of submission of the application.7.

9 "(5) All names under which the applicant and persons  
10 listed in the license application previously operated or is  
11 engaging in surface coal mining within the State of Alabama,  
12 or any other state.7.

13 "(6) A statement of whether the applicant, any  
14 subsidiary, affiliate, or persons controlling, controlled by7  
15 or under common control with the applicant, or any partner of  
16 the applicant, if the applicant is a partnership, or any  
17 principal officer or director, if the applicant is a  
18 corporation, has ever held a federal or any state mining  
19 permit which in the five year period prior to the date of  
20 submission of the application has been suspended or revoked or  
21 has had a mining bond or similar security deposited in lieu of  
22 bond forfeited and, if so, a brief explanation of the facts  
23 involved.

24 "(d) The applicant shall, as a condition to  
25 obtaining a license, shall satisfy the regulatory authority,  
26 pursuant to reasonable standards and regulations to be

1 promulgated by it, of the applicant's ability to comply with  
2 ~~the provisions of~~ this article, which standards shall require  
3 the applicant to:

4                 "(1) Demonstrate that it has available to it  
5 sufficient technical skill to assure compliance with ~~the~~  
6 ~~provisions of~~ this article and the regulations adopted  
7 pursuant ~~hereto, to this article.~~

8                 "(2) Demonstrate sufficient financial responsibility  
9 to reasonably assure the regulatory authority of the  
10 applicant's financial ability to execute the requirements of  
11 this article pursuant to regulations promulgated by the  
12 regulatory authority~~r.~~

13                 "(3) Certify by notarized statement under oath that  
14 the applicant has read and is fully familiar with ~~the~~  
15 ~~provisions of~~ this article and with all reclamation  
16 requirements contained in this article and regulations  
17 promulgated by the regulatory authority~~r.~~

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

23                 "(e) The regulatory authority shall have 45 days to  
24 investigate and to consider the application and issue the  
25 license or an order denying its issuance, setting out

1           deficiencies and reasons why the license was not issued and  
2           what corrective action should be taken.

3                         "(f) (1) The initial fee for a license shall be  
4                         \$1,000.00 a reasonable amount as established by rule of the  
5                         commission and shall be submitted with the application.  
6                         Licenses shall be updated annually ~~pursuant to regulations~~  
7                         upon payment of an annual license update fee, in a reasonable  
8                         amount as established by the commission, and compliance with  
9                         any applicable rules of the commission.

10                         "(2) A licensee with a valid license issued by the  
11                         Alabama Surface Mining Reclamation Commission prior to the  
12                         effective date of this article and who intends to conduct  
13                         surface coal mining and reclamation operations pursuant to  
14                         this article must reapply to the regulatory authority for a  
15                         license within 90 days of the effective date of this article.  
16                         The fee for such application shall be ~~\$200.00 two hundred~~  
17                         dollars (\$200) and shall be in lieu of the ~~\$1,000.00~~ initial  
18                         licensing fee. The license shall be granted provided that no  
19                         prior licensee shall be eligible to receive a license until  
20                         all outstanding and delinquent fines, fees, penalties, or  
21                         other debts owed to the Alabama Surface Mining Reclamation  
22                         Commission by the prior licensee shall have been paid in full  
23                         to the regulatory authority. Licenses may be granted with  
24                         specific conditions or restrictions.

25                         "§9-16-93.

1                             "(a) Whenever, on the basis of any information  
2 available to it, including receipt of information from any  
3 person, the regulatory authority has reason to believe that  
4 any person is in violation of any requirement of this article  
5 or any permit condition required by this article, the  
6 regulatory authority shall immediately order an inspection of  
7 the surface coal mining operation at which the alleged  
8 violation is occurring unless the same information is  
9 available to the regulatory authority as a result of a  
10 previous inspection. When the inspection results from  
11 information provided to the regulatory authority by any  
12 person, the regulatory authority shall notify such person when  
13 the inspection is proposed to be carried out and such person  
14 shall be allowed to accompany the inspector during the  
15 inspection. The regulatory authority shall consult with all  
16 state and federal agencies charged with the enforcement of  
17 mine safety regulations and shall ensure that the person  
18 accompanying the inspector complies with appropriate safety  
19 standards and regulations. The regulatory authority shall  
20 provide that the person accompanying the inspector assumes the  
21 risk of personal injury where such injury results from conduct  
22 of the operator which is neither negligent nor intentional and  
23 where the person accompanying the inspector fails to comply  
24 with appropriate safety standards and regulations.

25                             "(b) When on the basis of an inspection by an  
26 authorized representative of the regulatory authority, the

1 regulatory authority or its authorized representative  
2 determines that any condition or practice exists or that any  
3 permittee is in violation of any requirement of this article  
4 or any permit condition required by this article, and such  
5 violation, condition, or practice also creates an imminent  
6 danger to the health or safety of the public, or is causing or  
7 can reasonably be expected to cause significant imminent  
8 environmental harm to land, air, or water resources, the  
9 regulatory authority or its authorized representative shall  
10 immediately order a cessation of surface coal mining and  
11 reclamation operations or the portion thereof relevant to the  
12 condition, practice, or violation ~~and issue a citation for an~~  
13 ~~expeditious hearing before a hearing officer pursuant to~~  
14 ~~Sections 9-16-78 and 9-16-79~~ of this article. Such cessation  
15 order shall remain in effect until the regulatory authority or  
16 its authorized representative determines that the condition,  
17 practice, or violation has been abated, or until modified,  
18 vacated, or terminated by the regulatory authority or its  
19 authorized representative pursuant to subsection (e) ~~of this~~  
20 ~~section~~ or by the hearing officer. Where the regulatory  
21 authority finds that the ordered cessation of surface coal  
22 mining and reclamation operations, or any portion thereof,  
23 will not completely abate the imminent danger to the health or  
24 safety of the public or the significant, imminent  
25 environmental harm to land, air, or water resources, the  
26 regulatory authority ~~shall~~, in addition to the cessation

1 order, shall impose affirmative obligations on the operator  
2 requiring him or her to take whatever steps the regulatory  
3 authority deems necessary to abate the imminent danger or the  
4 significant, imminent harm.

5 "(c) When on the basis of an inspection by an  
6 authorized representative of the regulatory authority, the  
7 regulatory authority or its authorized representative  
8 determines that any permittee is in violation of any  
9 requirement of this article, including any permit condition  
10 required by this article, but such violation does not create  
11 an imminent danger to the health or safety of the public or  
12 cannot be reasonably expected to cause significant, imminent  
13 environmental harm to land, air, or water resources, the  
14 regulatory authority or its authorized representative shall  
15 issue a notice to the permittee or his or her agent fixing a  
16 reasonable time, but not more than 90 days, for the abatement  
17 of the violation and providing opportunity for an informal  
18 conference. If, upon expiration of the period of time as  
19 originally fixed or subsequently extended, for good cause  
20 shown and upon the written findings of the regulatory  
21 authority or its authorized representative, the regulatory  
22 authority or its authorized representative finds that the  
23 violation has not been abated, a cessation order shall  
24 immediately be issued for the relevant portion of the surface  
25 coal mining and reclamation operation including the entire  
26 operation, if relevant. Such cessation order shall remain in

1 effect until modified, vacated, or terminated by the  
2 regulatory authority or its authorized representative pursuant  
3 to subsection (e) ~~of this section~~ or until the regulatory  
4 authority or its authorized representative determines that the  
5 violation has been abated. In the order of cessation the  
6 regulatory authority shall determine the steps necessary to  
7 abate the violation in the most expeditious manner possible  
8 and shall include the necessary measures in the order. Actions  
9 taken by the regulatory authority under this subsection may be  
10 reviewed by a hearing officer pursuant to Sections 9-16-78 and  
11 ~~9-16-79 of this article.~~

12 "(d) When, on the basis of an inspection, the  
13 regulatory authority or its authorized representative  
14 determines that a pattern of violations of any requirements of  
15 this article or any permit conditions exists or has existed,  
16 and if the regulatory authority or its authorized  
17 representative also find that such violations are caused by  
18 the unwarranted failure of the permittee to comply with any  
19 requirements of this article or any permit conditions, or that  
20 such violations are willfully caused by the permittee, the  
21 regulatory authority or its authorized representative shall  
22 forthwith issue an order to show cause as to why the permit  
23 should not be suspended or revoked and shall provide  
24 opportunity for a public hearing before a hearing officer  
25 pursuant to Sections 9-16-78 and 9-16-79 ~~of this article.~~ If a  
26 hearing is requested, the hearing officer shall inform all

1 interested parties of the time and place of the hearing. Upon  
2 the permittee's failure to show cause as to why the permit  
3 should not be suspended or revoked, the hearing officer shall  
4 forthwith suspend or revoke the permit. If the hearing officer  
5 revokes the permit, the permittee shall immediately cease  
6 surface coal mining operations on the permit area and shall  
7 complete reclamation within a period specified by the hearing  
8 officer or the hearing officer shall declare as forfeited the  
9 performance bonds for the operation.

10                 "(e) Notices and orders issued pursuant to this  
11 section shall set forth with reasonable specificity the nature  
12 of the violation and the remedial action required, the period  
13 of time established for abatement, and a reasonable  
14 description of the portion of the surface coal mining and  
15 reclamation operation to which the notice or order applies.  
16 Each notice or order issued under this section shall be given  
17 promptly to the permittee or his or her agent by the  
18 regulatory authority or its authorized representative who  
19 issues such notice or order and all such notices and orders  
20 shall be in writing and shall be signed by the regulatory  
21 authority or such authorized representative. Any notice or  
22 order issued pursuant to this section may be modified,  
23 vacated, or terminated by the regulatory authority or its  
24 authorized representative. Provided, that any notice or order  
25 issued pursuant to this section which requires cessation of  
26 mining by the operator shall expire within 30 days of actual

1 notice to the operator or his or her agent, unless a public  
2 hearing is held at the site or within such reasonable  
3 proximity to the site that any viewings of the site can be  
4 conducted during the course of the public hearing.

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

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

16 "b. Interferes (2) ~~interferes~~ with, hinders, or  
17 delays the regulatory authority or his or her authorized  
18 representatives in carrying out ~~the provisions of~~ this  
19 article, or.

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

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

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

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

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

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

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3

House of Representatives

4 Read for the first time and re-  
5 ferred to the House of Representa-  
6 tives committee on Boards and Com-  
7 missions ..... 12-JAN-10

8

9 Read for the second time and placed  
10 on the calendar with 1 substitute  
11 and ..... 17-FEB-10

12

13 Read for the third time and passed  
14 as amended ..... 11-MAR-10

15 Yeas 101, Nays 0, Abstains 0

16

17

18

19

Greg Pappas  
Clerk