

1 SB296  
2 116758-1  
3 By Senator Little (Z)  
4 RFD: Energy and Natural Resources  
5 First Read: 19-JAN-10

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Currently, certain surface coal mining  
9 operations are prohibited in certain areas and  
10 lands, including within 1,000 feet of the  
11 horizontally mean high water level of Lewis Smith  
12 Lake.

13 This bill would prohibit surface coal mining  
14 operations within five miles of Lewis Smith Lake.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Section 9-16-96, Code of Alabama 1975,  
21 relating to prohibited surface coal mining operations within a  
22 certain proximity of Lewis Smith Lake; to further expand the  
23 proximity for such prohibited activities to five miles  
24 horizontally from Lewis Smith Lake on and after January 1,  
25 2010.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Section 9-16-96, Code of Alabama 1975, is  
2 hereby amended to read as follows:

3           "§9-16-96.

4           "(a) (1) The regulatory authority shall establish a  
5 planning process enabling objective decisions based upon  
6 competent and scientifically sound data and information as to  
7 which, if any, land areas of the state are unsuitable for all  
8 or certain types of surface coal mining operations pursuant to  
9 the standards set forth in subdivisions (2) and (3) of this  
10 subsection but such designation shall not prevent the mineral  
11 exploration pursuant to the article of any area so designated.

12           "(2) Upon petition pursuant to subsection (c) of  
13 this section, the regulatory authority shall designate an area  
14 as unsuitable for all or certain types of surface coal mining  
15 operations if the regulatory authority determines that  
16 reclamation pursuant to the requirements of this article is  
17 not technologically and economically feasible.

18           "(3) Upon petition pursuant to subsection (c) of  
19 this section, a surface area may be designated unsuitable for  
20 certain types of surface coal mining operations if such  
21 operations will:

22           "a. Be incompatible with existing state or local  
23 land use plans or programs; or

24           "b. Affect fragile or historic lands in which such  
25 operations could result in significant damage to important  
26 historic, cultural, scientific, and aesthetic values and  
27 natural systems; or

1            "c. Affect renewable resource lands in which such  
2 operations could result in a substantial loss or reduction of  
3 long-range productivity of water supply or of food or fiber  
4 products, and such lands to include aquifers and aquifer  
5 recharge areas; or

6            "d. Affect natural hazard lands in which such  
7 operations could substantially endanger life and property,  
8 such lands to include areas subject to frequent flooding and  
9 areas of unstable geology.

10           " (4) To comply with this section, the regulatory  
11 authority, which is the state agency responsible for surface  
12 mining lands review, must develop a process which includes:

13           "a. A data base and an inventory system which will  
14 permit proper evaluation of the capacity of different land  
15 areas of the state to support and permit reclamation of  
16 surface coal mining operations;

17           "b. A method or methods for implementing land use  
18 planning decisions concerning surface coal mining operations;  
19 and

20           "c. Proper notice, opportunities for public  
21 participation, including a public hearing prior to making any  
22 designation or redesignation, pursuant to this section.

23           " (5) Determinations of the unsuitability of land for  
24 surface coal mining, as provided for in this section, shall be  
25 integrated as closely as possible with present and future land  
26 use planning and regulation processes at the federal, state,  
27 and local levels.

1           "(6) The requirements of this section shall not  
2 apply to lands on which surface coal mining operations are  
3 being conducted on August 3, 1977, or under a permit issued  
4 pursuant to this article, or where substantial legal and  
5 financial commitments in such operation were in existence  
6 prior to January 4, 1977.

7           "(b) Any person having an interest which is or may  
8 be adversely affected shall have the right to petition the  
9 regulatory authority to have an area designated as unsuitable  
10 for surface coal mining operations or to have such a  
11 designation terminated. Such a petition shall contain  
12 allegations of facts with supporting evidence which would tend  
13 to establish the allegations. Within ten months after receipt  
14 of the petition the regulatory authority shall hold a public  
15 hearing in the locality of the affected area, after  
16 appropriate notice and publication of the date, time, and  
17 location of such hearing. After a person having an interest  
18 which is or may be adversely affected has filed a petition and  
19 before the hearing, as required by this subsection, any person  
20 may intervene by filing allegations of facts with supporting  
21 evidence which would tend to establish the allegations. Within  
22 60 days after such hearing, the regulatory authority shall  
23 issue and furnish to the petitioner and any other party to the  
24 hearing, a written decision regarding the petition, and the  
25 reasons therefor. In the event that all the petitioners  
26 stipulate agreement prior to the requested hearing, and  
27 withdraw their request, such hearing need not be held.

1           "(c) Prior to designating any land areas as  
2           unsuitable for surface coal mining operations, the regulatory  
3           authority shall prepare a detailed statement on (i) the  
4           potential coal resources of the area, (ii) the demand for coal  
5           resources, and (iii) the impact of such designation on the  
6           environment, the economy, and the supply of coal.

7           "(d) Within 30 days of the final decision of the  
8           regulatory authority, any party to the proceedings before the  
9           regulatory authority may petition the commission to review the  
10          decision. Upon request, the commission shall hold a public  
11          hearing after appropriate notice in the manner specified in  
12          Section 9-16-79 of this article at such location as the  
13          commission deems appropriate. At the hearing, any person may  
14          appear and be heard on the record. Documentary or other  
15          evidence may be received for inclusion in the record. Within  
16          30 days of the hearing, the commission shall issue a written  
17          decision affirming or reversing the decision of the regulatory  
18          authority or referring the decision back to the regulatory  
19          authority for further specific inquiry.

20          "(e) ~~After~~ Except as provided in subsection (f),  
21          after the enactment of this article and subject to valid  
22          existing rights no surface coal mining operations except those  
23          which exist on the date of enactment of this article shall be  
24          permitted:

25                 "(1) On any lands within the boundaries of units of  
26                 the National Park System, the National Wildlife Refuge  
27                 Systems, the National System of Trails, the National

1 Wilderness Preservation System, the Wild and Scenic Rivers  
2 System, including study rivers designated under Section 5(a)  
3 of the Wild and Scenic Rivers Act, National Recreation Areas  
4 designated by act of Congress; and any state park;

5 "(2) On any federal lands within the boundaries of  
6 any national forest; provided, however, that surface coal  
7 mining operations may be permitted on such lands if the  
8 Secretary of Interior finds that there are no significant  
9 recreational, timber, economic, or other values which may be  
10 incompatible with such surface mining operations and surface  
11 operations and impacts are incident to an underground coal  
12 mine;

13 "(3) Which will adversely affect any publicly owned  
14 park or places included in the National Register of Historic  
15 Sites unless approved jointly by the regulatory authority and  
16 the federal, state, or local agency with jurisdiction over the  
17 park or the historic site;

18 "(4) Within 100 feet of the outside right-of-way  
19 line of any public road, except where mine access roads or  
20 haulage roads join such right-of-way line and except that the  
21 regulatory authority may permit such roads to be relocated or  
22 the area affected to lie within 100 feet of such road, if  
23 after public notice and opportunity for public hearing in the  
24 locality a written finding is made that the interests of the  
25 public and the landowners affected thereby will be protected;  
26 or

1           "(5) Within 300 feet from any occupied dwelling,  
2 unless waived by the owner thereof, nor within 300 feet of any  
3 public building, school, church, community, or institutional  
4 building, public park, or within 100 feet of a cemetery;

5           "(6) ~~Within~~ Until December 31, 2009, within 1,000  
6 feet horizontally of the mean high water level of Lewis Smith  
7 Lake (which mean high water level shall be a topographic  
8 contour line corresponding to the spillway elevation of the  
9 Lewis Smith Lake Dam); 1,000 feet horizontally of the rim of  
10 Little River Canyon; 1,000 feet horizontally on either side of  
11 the Little River and the east, middle and west forks of the  
12 Little River.

13           "(f) On and after January 1, 2010, and subject to  
14 valid existing rights, surface coal mining operations, except  
15 those which exist on January 1, 2010, and those mining  
16 activities for which a permit has been issued, shall be  
17 prohibited within five miles horizontally on the mean high  
18 water level of Lewis Smith Lake."

19           Section 2. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.