

By: Senator(s) Hewes

To: Ports and Marine
Resources

SENATE BILL NO. 2804
(As Sent to Governor)

1 AN ACT TO TRANSFER THE DUTIES, POWERS, PERSONNEL AND
2 RESOURCES OF THE MARINE LAW ENFORCEMENT DIVISION OF THE DEPARTMENT
3 OF WILDLIFE, FISHERIES AND PARKS TO THE DEPARTMENT OF MARINE
4 RESOURCES; TO AMEND SECTIONS 49-4-7, 49-15-3, 49-15-11, 49-15-21,
5 49-15-301 AND 63-11-19, MISSISSIPPI CODE OF 1972, TO CONFORM; TO
6 FURTHER AMEND SECTION 49-15-21, MISSISSIPPI CODE OF 1972, TO
7 CLARIFY THE POLICE POWERS OF THE MARINE LAW ENFORCEMENT OFFICERS;
8 AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. Section 49-15-3, Mississippi Code of 1972, is
11 amended as follows:

12 49-15-3. As used in this chapter, the term:

13 (a) "Commission" means the Mississippi Commission on
14 Marine Resources.

15 (b) "Department" means the Department of Marine
16 Resources.

17 (c) "Domicile" means a person's principal or primary
18 place of abode in which a person's habitation is fixed and to
19 which the person, whenever absent, has the present intention of
20 returning after a departure of absence therefrom, regardless of
21 the duration of the absence. The burden of proving domicile in
22 the State of Mississippi shall be on the person claiming that
23 status. A person holding a current driver's license shall be
24 deemed to be domiciled within the state issuing the license. If a
25 person does not hold a current driver's license the following
26 evidence may be considered in establishing, but is not necessarily
27 determinative of domicile: residence for income or other tax
28 purposes, homestead exemption receipt or other means prescribed by
29 the commission. In the case of minors, domicile of the parents

30 shall be used as evidence of the minor's domicile.

31 (d) "Game fish" means cobia, also known as ling or
32 lemonfish (rachycentron canadum). The cobia is classified as game
33 fish.

34 (e) "Illegal oysters" means:

35 (i) All untagged shell stock;

36 (ii) Shell oysters obtained from uncertified shops
37 or dealers or from an unlicensed catcher;

38 (iii) Oysters obtained from waters not declared
39 safe and sanitary by the department, except those oysters caught
40 by the commission for re-laying or under private leases pursuant
41 to Section 49-15-27;

42 (iv) Shucked oysters obtained from uncertified
43 shops or repackers.

44 (f) "Inspector" means the chief inspector, the
45 assistant chief inspector, * * * deputy inspector, bureau director
46 and certified enforcement officer employed by the
47 department * * *.

48 (g) "Natural reefs" means any bottom under the
49 jurisdiction of the commission of one or more acres on which
50 oysters grow naturally, or have grown naturally, in a quantity
51 sufficient to warrant commercial fishing as a means of livelihood,
52 or have been used in such a manner within a period of ten (10)
53 years next preceding the time the bottoms may come up for
54 determination by the commission.

55 (h) "Resident" means a person, firm or corporation that
56 is domiciled in this state.

57 (i) "Seafood" means all oysters, saltwater fish,
58 saltwater shrimp, diamondback terrapin, sea turtle, crabs and all
59 other species of marine or saltwater animal life existing or
60 living in the waters within the territorial jurisdiction of the
61 State of Mississippi.

62 (j) "Tonging reefs" means any bottom under the
63 jurisdiction of the commission designated by the commission as an
64 area in which oysters may only be taken by use of hand tongs.

65 SECTION 2. Section 49-15-11, Mississippi Code of 1972, is
66 amended as follows:

67 49-15-11. (1) The Mississippi Department of Marine
68 Resources is hereby established and full power is vested in the
69 department to manage, control, supervise, enforce and direct any
70 matters pertaining to saltwater aquatic life and marine resources
71 under the jurisdiction of the commission. The Department of
72 Wildlife, Fisheries and Parks shall transfer all powers, duties,
73 employees, equipment, buildings, facilities, inventory and
74 resources of the * * * marine * * * law enforcement * * * division
75 to the Department of Marine Resources.

76 (2) The Executive Director of the Department of Marine
77 Resources shall have the authority to internally reorganize the
78 Department of Marine Resources with persons meeting established
79 qualifications for comparable positions of duty and responsibility
80 including, but not limited to, the deputy director, division
81 chiefs, biologists and other personnel. For a period of one (1)
82 year after July 1, 1994, the personnel actions of the executive
83 director shall be exempt from State Personnel Board rules,
84 regulations and procedures in order to give the executive director
85 flexibility in making an order, effective and timely
86 reorganization of the Department of Marine Resources.

87 (3) Whenever the terms "Mississippi Marine Conservation
88 Commission," "Marine Conservation Commission," "Bureau of Marine
89 Resources" and "Mississippi Marine Resources Council" appear in
90 any state law, they shall mean the "Mississippi Commission on
91 Marine Resources."

92 SECTION 3. (1) The Department of Marine Resources and the
93 Department of Wildlife, Fisheries and Parks shall comply with
94 Sections 5-11-1 through 5-11-5 in the transfer of the marine law
95 enforcement division.

96 (2) (a) All personnel actions initiated as a result of the
97 transfer of law enforcement officers shall be subject to the State
98 Personnel Board rules, regulations and procedures. The executive
99 director shall implement a merit promotion system for all law

100 enforcement officers. The merit promotion system shall be based
101 on an individual's merit and length of service.

102 (b) The transfer of personnel shall be commensurate
103 with the number and classification of positions (PINS) allocated
104 to the Division of Marine Law Enforcement on January 1, 1999. The
105 transfer shall also include direct support, clerical, data
106 processing, communications and boating safety pins and resources.

107 SECTION 4. Section 49-15-21, Mississippi Code of 1972, is
108 amended as follows:

109 49-15-21. (1) The executive director * * * shall appoint
110 the necessary enforcement officers for the administration of this
111 chapter. The salary of all enforcement officers employed shall be
112 as determined by the State Personnel Board. However, the members
113 of the Enforcement Officers' Reserve Unit created in subsection
114 (4) shall serve without pay, and shall not be employees of the
115 State of Mississippi for purposes of the State Personnel System,
116 the Workers' Compensation Law, the Public Employees' Retirement
117 System or the State Employees' Life and Health Insurance Plan.

118 (2) All enforcement officers shall be experienced and
119 qualified persons thoroughly familiar with the seafood business
120 and shall be at least twenty-one (21) years of age and be a high
121 school graduate or its equivalent. The enforcement officers
122 shall diligently enforce all laws and regulations for the
123 protection, propagation, preservation or conservation of all
124 saltwater aquatic life of the State of Mississippi, and they are
125 hereby constituted peace officers of the State of Mississippi,
126 with full police power and jurisdiction to enforce all laws of
127 the State of Mississippi and all regulations adopted and
128 promulgated by the commission. Enforcement officers may
129 exercise such powers in any county of the State of Mississippi
130 and on any waters of the state, and they are hereby authorized
131 to carry firearms or other weapons, concealed or otherwise, and
132 they shall investigate all persons, corporations and otherwise

133 who are alleged to have violated any laws, and make affidavits,
134 arrests and serve papers of any court of competent jurisdiction,
135 in like manner as is provided for sheriffs and deputy sheriffs,
136 when the same shall be in connection with the enforcement of the
137 seafood laws of the State of Mississippi and such other laws and
138 regulations of this state as the commission * * * may designate.

139 The enforcement officers may seize at any time aquatic life
140 caught, taken or transported in a manner contrary to the laws of
141 this state, and may confiscate and dispose of the same. Any net
142 or other paraphernalia used or employed in connection with a
143 violation may be seized, and forfeiture proceedings may be
144 instituted pursuant to Sections 49-7-251 through 49-7-257.

145 Enforcement officers may draft the aid of captains, crews and
146 boats or licensed vessels to enforce this chapter and may,
147 without warrant, board and search vessels or vehicles. The
148 application for any license or permit from the commission to
149 catch, fish, take, transport or handle or process any form of
150 aquatic life, or the taking, catching, transporting or handling
151 or processing of any and all aquatic life in this state shall
152 constitute acquiescence and agreement upon the part of the
153 owners, captains and crews, employers and dealers to the
154 provisions of this chapter and the agreement that enforcement
155 officers may exercise the authority granted under the provisions
156 hereof.

157 (3) Prior to entering into performance of their duties or
158 delegations or as soon after appointment as possible, each
159 enforcement officer, at the expense of the commission * * *, shall
160 attend and complete an appropriate curriculum in the field of law
161 enforcement at the Mississippi Law Enforcement Officers' Training
162 Academy or other law enforcement training program approved under
163 Section 45-6-7. However, members of the Enforcement Officers'
164 Reserve Unit created in subsection (4) of this section may attend
165 the Mississippi Law Enforcement Officers' Training Academy at the

166 expense of the commission * * * if it deems the training necessary
167 or desirable. No enforcement officer shall be entitled to payment
168 of salary after the first six (6) months in office if he has
169 either failed to attend the academy or has failed to comply with
170 other qualifications or successfully complete any law enforcement
171 qualification examinations as the director deems necessary. The
172 enforcement officers shall, on a periodic basis, be required to
173 attend additional advanced courses in law enforcement in order
174 that they will be properly improved and trained in the modern,
175 technical advances of law enforcement.

176 (4) (a) There is hereby created an Enforcement Officers'
177 Reserve Unit, hereinafter termed "the reserve," to assist the
178 enforcement officers in the performance of their duties under this
179 chapter. The reserve shall consist of volunteers who are approved
180 by the chief inspector or his designated representative, and the
181 members of the reserve shall serve without pay. Reserve officers
182 shall be in such numbers as determined by the enforcement needs,
183 with the maximum strength of reserve officers limited to the same
184 number as enforcement officers.

185 (b) To be eligible for membership in the reserve, an
186 applicant must be twenty-one (21) years of age, be a high school
187 graduate or its equivalent, be in good physical condition, have a
188 Mississippi driver's license, be in good standing with the
189 community, be available for training and duty, not be a member of
190 any police, auxiliary police, civil defense, or private security
191 agency, have never been convicted of a felony, and have one (1) of
192 the following:

193 (i) An honorable discharge or honorable separation
194 certificate from one (1) of the United States military services;

195 (ii) Three (3) years of responsible post-high
196 school work experience that required the ability to deal
197 effectively with individuals and groups of persons;

198 (iii) Successful completion of sixty (60) semester

199 hours at an accredited college or university; or

200 (iv) The qualifications as are outlined in this
201 section for enforcement officers.

202 Members of the immediate family of enforcement officers shall
203 not be eligible for the reserve unless a special waiver is
204 granted.

205 Upon acceptance into the reserve, members shall receive a
206 temporary appointment for one (1) year. During this year of
207 temporary status, members must successfully complete the required
208 training and must qualify on the same firearms course as
209 enforcement officers.

210 (c) The reserve shall be under the leadership and
211 direction of the assistant chief inspector, who may designate an
212 enforcement officer to coordinate the actions of the reserve. The
213 training of the reserve shall be conducted by an enforcement
214 officer. The reserve shall meet at least once each month for the
215 purpose of training and transacting any business as may come
216 before it. The chief inspector shall be notified in writing of
217 all meetings of the reserve and the time and place of the meetings
218 shall be recorded with the chief inspector. The chief inspector
219 shall prepare a reserve officer's manual with the advice and
220 consent of the commission * * *. The manual shall include, but is
221 not limited to, the following: activities and operations,
222 training, administration and duties. During active service, the
223 reserve shall be under the direction of the chief inspector or his
224 designated representative. When a reserve officer is on active
225 duty and assigned to a specific enforcement officer, he shall be
226 under the direct supervision of that officer. Reserve officers
227 serve at the discretion of the chief inspector and may be
228 dismissed by him or by a board of inquiry appointed by the
229 commission * * *. Reserve officers shall furnish their own
230 uniforms and other personal equipment if the commission * * * does
231 not provide such items.

232 (d) The commission * * * may, by regulation, require
233 members of the Enforcement Officers' Reserve Unit to attend
234 officer reserve training programs conducted by county or municipal
235 agencies.

236 (e) The commission * * * may issue uniforms to such
237 reserve officers and may authorize the issuance of any state
238 equipment necessary for the reserve officers to adequately assist
239 law enforcement officers. The commission * * * shall develop a
240 reserve officer identification system to accomplish the issuance
241 of such items in accordance with the State Auditor guidelines.

242 (f) If the commission * * * determines that a member of
243 the Enforcement Officers' Reserve Unit may attend a training
244 program as authorized under this section, it shall require that
245 reserve officer to sign an agreement, prior to attending a
246 training program, which shall stipulate that if the reserve
247 officer accepts employment from any other public or private law
248 enforcement agency within three (3) years after completion of his
249 training program, the reserve officer or the respective hiring law
250 enforcement agency shall reimburse the department for the total
251 cost of his training program. By October 1 of each year, the
252 department * * * shall provide the Game and Fish Committee of the
253 Mississippi House of Representatives and the Ports and Marine
254 Resources Committee of the Mississippi Senate a listing which
255 contains each name and the respective cost of training each
256 reserve officer received during the previous year.

257 SECTION 5. Section 49-15-301, Mississippi Code of 1972, is
258 amended as follows:

259 49-15-301. (1) The Mississippi Commission on Marine
260 Resources is hereby established and full power is vested in the
261 commission to regulate all matters pertaining to all saltwater
262 aquatic life and marine resources. The commission shall
263 administer the Coastal Wetlands Protection Law and the Public
264 Trust Tidelands Act. The power and duties of the commission shall

265 be exercised through the Department of Marine Resources. * * *

266 (2) On July 1, 2002, the commission shall be reconstituted.
267 The terms of the nonseafood industry member and the member of the
268 Commission on Wildlife, Fisheries and Parks shall expire July 1,
269 2002. The remaining five (5) members serving on July 1, 2002
270 shall compose the reconstituted commission and shall continue to
271 serve until the expiration of their terms. The reconstituted
272 Mississippi Commission on Marine Resources shall consist of five
273 (5) members to be appointed as follows:

274 (a) The Governor shall appoint five (5) members who
275 shall be residents of Jackson, Harrison and Hancock Counties with
276 the advice and consent of the Senate. The Governor shall appoint
277 at least one (1) member from each county but not more than two (2)
278 members from any one (1) county. The members designated in
279 subparagraphs (i), (ii) and (iv) * * * must be a resident of the
280 county where the business he is appointed to represent is located.

281 (b) The commission shall be composed as follows:

282 (i) One (1) member shall be a commercial seafood
283 processor.

284 (ii) One (1) member shall be a commercial
285 fisherman.

286 (iii) One (1) member shall be a recreational
287 sports fisherman.

288 (iv) One (1) member shall be a charter boat
289 operator.

290 (v) One (1) member shall be a member of an
291 incorporated nonprofit environmental organization.

292 * * *

293 (c) Of the initial members appointed by the Governor,
294 the members designated in subparagraphs (i),(ii) and (iii) shall
295 serve for an initial term of two (2) years and one (1) member
296 shall be appointed from each county. The members designated in
297 subparagraphs (iv) and (v) * * * shall serve an initial term of

298 four (4) years * * *. All terms after the initial terms shall be
299 for a period of four (4) years. * * *

300 (d) Any vacancy in the office of an appointed member of
301 the commission shall be filled by appointment by the Governor for
302 the balance of the unexpired term.

303 (3) Each member shall have a demonstrated history of
304 involvement in the matter of jurisdiction for which he is
305 appointed to represent and his employment and activities must not
306 conflict with the matter of jurisdiction represented. A member
307 shall not have a record of conviction of violation of fish and
308 game or seafood laws or regulations within the five (5) years
309 preceding his appointment or a record of any felony conviction.
310 After July 1, 1999, if a member is convicted of a violation of the
311 seafood laws during his term, his office shall be deemed vacant
312 and the Governor shall fill the vacancy as provided in this
313 section.

314 (4) The commission shall elect a chairman who shall preside
315 at all meetings of the commission, and the commission shall also
316 elect a vice-chairman who shall serve in the absence or inability
317 of the chairman. * * *

318 (5) Each member shall be paid actual and necessary expenses
319 incurred in attending meetings of the commission and in performing
320 his duties away from his domicile under assignment by the
321 commission. In addition, members shall receive the per diem
322 authorized in Section 25-3-69, Mississippi Code of 1972.

323 (6) The commission shall adopt rules and regulations
324 governing times and places of meetings and shall adopt bylaws
325 governing the manner of conducting its business. Each member
326 shall take the oath prescribed by Section 268 of the Mississippi
327 Constitution of 1890 and shall, before assuming office, enter into
328 bond in the amount of Thirty Thousand Dollars (\$30,000.00), to be
329 approved by the Secretary of State conditioned according to law
330 and payable to the State of Mississippi.

331 (7) The commission shall not take any action, except by vote
332 in meeting assembled, and such action shall be included in the
333 minutes of the commission. A majority of the members shall
334 constitute a quorum of the commission.

335 (8) The commission, through the Department of Marine
336 Resources, shall devise a plan to make licenses available in each
337 coastal county.

338 (9) (a) There is hereby created a marine resources
339 technical advisory council composed of the Executive Director of
340 the Gulf Coast Research Lab, or his designee; the Executive
341 Director of the Department of Environmental Quality, or his
342 designee; and the Executive Director of the Department of
343 Wildlife, Fisheries and Parks, or his designee.

344 (b) The council shall give technical assistance to the
345 commission.

346 (10) For purposes of this section the following definitions
347 apply:

348 (a) "Charter boat operator" means an individual who
349 operates a vessel for hire guiding sports fishermen for a fee and
350 is duly licensed to engage in such activity in the State of
351 Mississippi.

352 (b) "Commercial fisherman" means a fisherman who sells,
353 barter or exchanges any or all of his catch or who is paid for
354 attempting to catch marine species, and is duly licensed to engage
355 in commercial fishing.

356 (c) "Commercial seafood processor" means an individual
357 who engages in the business of purchasing seafood products and
358 preparing them for resale and who is duly licensed to engage in
359 such commercial activity in the State of Mississippi.

360 (d) "Incorporated environmental nonprofit organization"
361 means an organization duly incorporated in any state as a
362 nonprofit organization and whose stated goals and purposes are the
363 conservation of natural resources.

364 * * *

365 (e) "Recreational sports fisherman" means an individual
366 who catches or harvests marine species only for recreation or
367 personal consumption and not for sale. The individual must
368 possess a saltwater sports fishing license, be a member of an
369 incorporated nonprofit sports fishing organization and not possess
370 a commercial fishing or seafood processor license.

371 SECTION 6. Section 63-11-19, Mississippi Code of 1972, is
372 amended as follows:

373 63-11-19. A chemical analysis of the person's breath, blood
374 or urine, to be considered valid under the provisions of this
375 section, shall have been performed according to methods approved
376 by the State Crime Laboratory created pursuant to Section 45-1-17
377 and the Commissioner of Public Safety and performed by an
378 individual possessing a valid permit issued by the State Crime
379 Laboratory for making such analysis. The State Crime Laboratory
380 and the Commissioner of Public Safety are authorized to approve
381 satisfactory techniques or methods, to ascertain the
382 qualifications and competence of individuals to conduct such
383 analyses, and to issue permits which shall be subject to
384 termination or revocation at the discretion of the State Crime
385 Laboratory. The State Crime Laboratory shall not approve the
386 permit required herein for any law enforcement officer other than
387 a member of the State Highway Patrol, a sheriff or his deputies, a
388 city policeman, an officer of a state-supported institution of
389 higher learning campus police force, a security officer appointed
390 and commissioned pursuant to the Pearl River Valley Water Supply
391 District Security Officer Law of 1978, a national park ranger, a
392 national park ranger technician, a military policeman stationed at
393 a United States military base located within this state other than
394 a military policeman of the Army or Air National Guard or of
395 Reserve Units of the Army, Air Force, Navy or Marine Corps, a
396 marine law enforcement officer employed by the Department of

397 Marine Resources, or a conservation officer employed by the
398 Mississippi Department of Wildlife, Fisheries and Parks. The
399 permit given a conservation officer or a marine law enforcement
400 officer shall authorize such officer to administer tests only for
401 violations of Sections 59-23-1 through 59-23-7.

402 The State Crime Laboratory shall make periodic, but not less
403 frequently than quarterly, tests of the methods, machines or
404 devices used in making chemical analysis of a person's breath as
405 shall be necessary to ensure the accuracy thereof, and shall issue
406 its certificate to verify the accuracy of the same.

407 SECTION 7. Section 49-4-7, Mississippi Code of 1972, is
408 amended as follows:

409 49-4-7. The commission * * * shall establish and appoint
410 advisory committees for * * * Parks and Recreation and * * *
411 Wildlife and Fisheries. The advisory committees shall aid the
412 commission * * * in formulating policies, discussing problems and
413 considering other matters related to these * * * areas as
414 designated by the commission.

415 The department is designated as the single state agency to
416 receive and expend any federal funds * * * made available for
417 matters within the jurisdiction of the department.

418 The department shall be responsible for conserving, managing,
419 developing and protecting the wildlife and freshwater fisheries
420 resources of the state * * *. The department shall coordinate all
421 functions of state government related to wildlife and fisheries
422 resources that are within the jurisdiction of the department.

423 SECTION 8. Section 59-21-111, Mississippi Code of 1972, is
424 amended as follows:

425 59-21-111. (1) The Mississippi Commission on Wildlife,
426 Fisheries and Parks shall be the Mississippi Boat and Water Safety
427 Commission, and shall exercise the duties and responsibilities of
428 the Mississippi Boat and Water Safety Commission through the
429 Mississippi Department of Wildlife, Fisheries and Parks, insofar

430 as practicable under the provisions of Chapter 4 of Title 49,
431 Mississippi Code of 1972; except on marine waters under the
432 jurisdiction of the Commission on Marine Resources.

433 (2) The Commission on Marine Resources shall exercise the
434 duties and responsibilities of the Mississippi Boat and Water
435 Safety Commission through the Mississippi Department of Marine
436 Resources on the marine waters of the state. The Commission on
437 Marine Resources shall not exercise any powers related to
438 numbering of undocumented vessels. Those powers are vested
439 exclusively in the Commission on Wildlife, Fisheries and Parks.

440 SECTION 9. This act shall take effect and be in force from
441 and after July 1, 1999.