

By: Representative Ellington

To: Conservation and Water  
Resources

## HOUSE BILL NO. 1485

1 AN ACT TO ESTABLISH AN ADMINISTRATIVE HEARING PROCEDURE FOR  
2 THE COMMISSION ON NATURAL RESOURCES TO ENFORCE ITS RULES AND  
3 REGULATIONS AND ANY STATUTES WITHIN THE COMMISSION'S JURISDICTION;  
4 TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF MARINE  
5 RESOURCES SHALL REVIEW EACH COMPLAINT TO DETERMINE IF THERE ARE  
6 REASONABLE GROUNDS TO INDICATE THAT A VIOLATION HAS OCCURRED; TO  
7 PROVIDE THAT WHEN REASONABLE GROUNDS EXIST, THE EXECUTIVE DIRECTOR  
8 MAY RECOMMEND A FINE NOT TO EXCEED \$25,000.00 PER VIOLATION; TO  
9 ALLOW THE ALLEGED VIOLATOR TO REQUEST AN INFORMAL SETTLEMENT  
10 CONFERENCE WITH THE EXECUTIVE DIRECTOR AND TO ALLOW THE EXECUTIVE  
11 DIRECTOR DISCRETION TO REVISE THE RECOMMENDED PENALTY; TO ALLOW  
12 THE ALLEGED VIOLATOR TO REQUEST A HEARING BEFORE THE COMMISSION;  
13 TO REQUIRE THE COMMISSION TO SCHEDULE A HEARING UPON REQUEST OF AN  
14 ALLEGED VIOLATOR; TO REQUIRE A MAJORITY VOTE OF THE COMMISSION  
15 BEFORE ASSESSING A PENALTY AND ISSUE A WRITTEN OPINION REGARDING  
16 THE ASSESSMENT OF THE PENALTY; TO ALLOW THE WAIVER OF THE RIGHT TO  
17 AN INFORMAL SETTLEMENT CONFERENCE OR A HEARING; TO PROVIDE FOR  
18 JUDICIAL REVIEW OF ANY FINAL DECISION OF THE COMMISSION; TO  
19 AUTHORIZE THE IMPOSITION OF A CIVIL PENALTY; TO PROVIDE THAT  
20 CRIMINAL AND CIVIL PENALTIES BE PAID INTO THE SEAFOOD FUND; TO  
21 PROVIDE CRIMINAL IMMUNITY FOR WITNESSES SUBPOENAED BY THE  
22 COMMISSION; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** It is the purpose of this act to establish an  
25 administrative hearing procedure for the Commission on Marine  
26 Resources to enforce the rules and regulations of the commission  
27 and Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71,  
28 59-21-111, and such other statutes within the jurisdiction of the  
29 Commission on Marine Resources. Unless specifically authorized,  
30 the commission shall not seek both administrative and criminal  
31 penalties against violators of the statutes referred to herein for  
32 the same offense.

33 **SECTION 2.** (1) When any allegation or charge in the form of  
34 a complaint has been made against a person for violating the rules  
35 and regulations of the Commission on Marine Resources the  
36 commission shall:



37 (a) Cause the complaint to be in writing and signed by  
38 the person making the charge;

39 (b) Insure that the complaint is filed in the office of  
40 the commission;

41 (c) Cause the complaint to be reviewed by the Executive  
42 Director of the Department of Marine Resources, or his designee;  
43 and

44 (d) Send or deliver a copy of the complaint and any  
45 supporting documents to the alleged violator along with a request  
46 for the alleged violator to respond to the allegations within  
47 thirty (30) days. Such notification shall be accomplished by any  
48 of the methods provided for by the Mississippi Rules of Civil  
49 Procedure. Citations issued at the time of the alleged violation  
50 by marine enforcement officers shall constitute sufficient notice.  
51 Upon receipt of the response and any supporting documents from the  
52 alleged violator, the executive director, or his designee, shall  
53 review all information on file to determine the merit of the  
54 complaint or lack thereof.

55 (2) If the executive director, or his designee, determines  
56 that the complaint lacks merit, the executive director may  
57 recommend that the complaint be dismissed.

58 (3) If the executive director, or his designee, determines  
59 that there are reasonable grounds to indicate that a violation has  
60 occurred or if the alleged violator admits to the truth of the  
61 allegations upon which the complaint is based, the executive  
62 director may recommend to the commission a fine not to exceed  
63 Twenty-five Thousand Dollars (\$25,000.00) for each violation. The  
64 executive director shall send a copy of the recommendation to the  
65 alleged violator and the commission.

66 (4) (a) The alleged violator shall have fifteen (15) days  
67 from receipt of the recommendation of the executive director  
68 within which to file with the commission a written request for an  
69 informal settlement conference with the executive director, or his



70 designee. If the alleged violator requests a conference as  
71 provided herein, the executive director, or his designee, shall  
72 meet with the alleged violator to discuss the proposed penalty and  
73 the possibility of an agreed settlement. If, in the judgment of  
74 the executive director, or his designee, a reasonable settlement  
75 is reached, the recommended penalty shall be revised accordingly.

76 (b) If the alleged violator and the executive director,  
77 or his designee, fail to reach an agreement on the recommended  
78 penalty, or if the alleged violator does not file a written  
79 request for a settlement conference, the alleged violator shall  
80 file within twenty (20) days of receipt of the recommendation of  
81 the executive director a written request for a hearing before the  
82 commission.

83 (5) The commission shall consider the alleged violation and  
84 the recommendation of the department at a regularly scheduled  
85 meeting of the commission. In determining the amount of the  
86 penalty, the commission may consider the appropriateness of such  
87 penalty and the gravity of the violation. The commission may  
88 issue a warning in lieu of proposing a penalty.

89 **SECTION 3.** (1) The commission shall, within forty (40) days  
90 of notification from the alleged violator that a hearing is  
91 requested, schedule a hearing at a date, time and place to be  
92 determined by the commission. For good cause shown the commission  
93 may grant a continuance or continuances of such hearings. Written  
94 notice of the date, time and place of such hearing shall be mailed  
95 to the alleged violator by registered mail, return receipt  
96 requested, no less than fifteen (15) days before the time of the  
97 hearing.

98 (2) In lieu of a hearing before the full commission, the  
99 commission may designate three (3) or more members of the  
100 commission to preside over the hearing and render a decision for  
101 the full commission.



102           (3) A duly qualified court reporter shall be in attendance  
103 and shall make a full and complete transcript of the proceedings.  
104 The hearing shall be closed unless the alleged violator requests a  
105 public hearing. The commission shall have the right and duty to  
106 impose reasonable restrictions as it may deem necessary or  
107 appropriate to ensure an orderly, expeditious and impartial  
108 proceedings, and shall admit all relevant and material evidence  
109 except evidence which is unduly repetitious. Hearsay shall be  
110 admissible to the extent permitted by the commission.

111           (4) For purposes of such hearing, the commission is hereby  
112 empowered to require the attendance of witnesses, administer oaths  
113 and hear testimony, either oral or documentary, for and against  
114 the alleged violator. The commission shall have the authority to  
115 issue subpoenas to compel the attendance of witnesses and the  
116 production of books, papers, records or other documentary evidence  
117 at a hearing. Subpoenas to be issued shall be delivered to the  
118 sheriff of the county where they are to be executed and the  
119 sheriff shall serve them. In case of the failure of any person to  
120 comply with any subpoena issued by the commission, the commission  
121 or its authorized representative may invoke the aid of any court  
122 of general jurisdiction of this state. The court may thereupon  
123 order such person to comply with the requirements of the subpoena.  
124 Failure to comply with the order of the court may be treated as  
125 contempt thereof.

126           (5) At the conclusion of the hearing, the commission, upon  
127 the majority vote of the members present, shall issue a written  
128 opinion incorporating its findings of facts and conclusions of law  
129 and any penalty that it may assess not to exceed Twenty-five  
130 Thousand Dollars (\$25,000.00) per violation. The executive  
131 officer shall notify the alleged violator of the commission's  
132 decision.

133           **SECTION 4.** Failure of the alleged violator to request an  
134 informal settlement conference or a hearing or to respond to the



135 complaint within thirty (30) days shall constitute a waiver of the  
136 right to a hearing, and any penalties assessed by the commission  
137 shall be due and payable as provided in Section 49-15-417.

138       **SECTION 5.** The commission shall have jurisdiction over all  
139 persons and property necessary to administer and enforce the  
140 provisions of this act and the rules and regulations of the  
141 commission. The commission may adopt rules and regulations to  
142 implement the provisions of this act.

143       **SECTION 6.** (1) Any individual aggrieved by a final decision  
144 of the commission shall be entitled to judicial review.

145       (2) Any appeal from the commission's decision shall be filed  
146 in the Chancery Court of the Second Judicial District of Harrison  
147 County, Mississippi, on the record made, including a verbatim  
148 transcript of the testimony at the hearing held before the  
149 commission. The appeal shall be filed within thirty (30) days  
150 after notification of the decision of the commission is mailed or  
151 served, and the proceedings in chancery court shall be conducted  
152 as other matters coming before the court on appeal. The appeal  
153 shall be perfected upon filing notice of the appeal and by the  
154 prepayment of all estimated costs, including the cost of  
155 preparation of the record of the proceedings before the  
156 commission, and the filing of a bond in the sum of Five Hundred  
157 Dollars (\$500.00) conditioned that if the action of the commission  
158 be affirmed by the chancery court, the aggrieved party shall pay  
159 the costs of the appeal to the chancery court.

160       (3) The scope of review of the chancery court in such cases  
161 shall be limited to a review of the record made before the  
162 commission to determine if the action of the commission is  
163 unlawful for the reason that it was:

- 164               (a) Not supported by any substantial evidence;  
165               (b) Arbitrary or capricious; or  
166               (c) In violation of some statutory or constitutional  
167 right of the individual.



168 (4) No relief shall be granted based upon the court's  
169 finding of harmless error by the commission in complying with the  
170 procedural requirements of this act. In the event that there is a  
171 finding of prejudicial error in the proceedings, the cause may be  
172 remanded for a rehearing consistent with the findings of the  
173 court.

174 (5) Any party aggrieved by action of the chancery court may  
175 appeal to the State Supreme Court in the manner provided by law.

176 **SECTION 7.** Each violation of the rules and regulations of  
177 the commission or violations of the statutes set forth in Chapters  
178 15 and 27 of Title 49, Mississippi Code of 1972, shall be subject  
179 to the imposition of a civil penalty up to Twenty-five Thousand  
180 Dollars (\$25,000.00).

181 **SECTION 8.** (1) Any penalty assessed by the commission shall  
182 be due and payable within forty-five (45) days of the notification  
183 of the decision. All sums of money collected as a result of  
184 criminal or civil penalties levied under this act shall be paid  
185 into the Seafood Fund created and described in Section 49-15-17.

186 (2) In the event that the judgment is not paid within the  
187 forty-five (45) days, or within such additional time as the  
188 commission may allow, the commission may file suit in the chancery  
189 court of the county where the defendant resides or in the case of  
190 a nonresident defendant in the Chancery Court of the Second  
191 Judicial District of Harrison County or any other court with  
192 appropriate jurisdiction to enforce the decision of the commission  
193 and recover reasonable attorney's fees and all court costs.

194 (3) A copy of the notification sent by the commission to the  
195 violator shall be sufficient proof as to the judgment of the  
196 commission.

197 **SECTION 9.** No person shall be subject to criminal  
198 prosecution or to any penalty or forfeiture in a separate  
199 proceeding for or on account of any transaction, matter or issue  
200 concerning which he may be required to testify to or produce



201 evidence, or provide documentation, before the commission or at  
202 any of its hearings or conferences, or in compliance with any  
203 subpoena; however, no person testifying shall be exempt from  
204 prosecution and punishment for perjury committed in so testifying.

205       **SECTION 10.** The provisions of Sections 1 through 9 shall be  
206 codified in Chapter 15, Title 49, Mississippi Code of 1972.

207       **SECTION 11.** This act shall take effect and be in force from  
208 and after July 1, 2002.

