

By: Senator(s) Gollott

To: Ports and Marine
Resources; Judiciary,
Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2728

1 AN ACT TO ESTABLISH AN ADMINISTRATIVE HEARING PROCEDURE FOR
2 THE COMMISSION ON MARINE 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 \$10,000.00 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 ISSUING 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, except as provided in Section 49-15-63. The
33 commission will notify the Department of Marine Resources of
34 violations to bring forward for administrative penalty processing.

35 **SECTION 2.** (1) When any allegation or charge in the form of
36 a complaint has been made against a person for violating the rules
37 and regulations of the commission and such matter has been brought

38 before the commission for administrative penalty processing, the
39 commission shall:

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

42 (b) Insure that the complaint is filed in the office of
43 the commission;

44 (c) Cause the complaint to be reviewed by the executive
45 director of the department, or his designee; and

46 (d) Send or deliver a copy of the complaint and any
47 supporting documents to the alleged violator along with a request
48 for the alleged violator to respond to the allegations within
49 thirty (30) days. The notification shall be accomplished by any
50 of the methods provided for by the Mississippi Rules of Civil
51 Procedure. Citations issued at the time of the alleged violation
52 by marine enforcement officers shall constitute sufficient notice.

53 (2) Upon receipt of the response and any supporting
54 documents from the alleged violator, the executive director, or
55 his designee, shall review all information on file to determine
56 the merit of the complaint. If the executive director, or his
57 designee, determines that the complaint lacks merit, the executive
58 director may recommend that the complaint be dismissed.

59 (3) If the executive director, or his designee, determines
60 that there are reasonable grounds to indicate that a violation has
61 occurred or if the alleged violator admits to the truth of the
62 allegations upon which the complaint is based, the executive
63 director may recommend to the commission a fine not to exceed Ten
64 Thousand Dollars (\$10,000.00) for each violation. The executive
65 director shall send a copy of the recommendation to the alleged
66 violator and the commission.

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

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

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

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

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

99 (2) In lieu of a hearing before the full commission, the
100 commission may designate one or more members of the commission or
101 a representative of the Attorney General's office to preside over
102 the hearing and render a finding and recommendation for the full
103 commission.

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

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

128 (5) At the conclusion of the hearing, the commission, upon
129 the majority vote of the members present, shall issue a written
130 opinion incorporating its findings of facts and conclusions of law
131 and any penalty that it may assess not to exceed Ten Thousand
132 Dollars (\$10,000.00) per violation. The executive officer shall
133 notify the alleged violator of the commission's decision.

134 **SECTION 4.** Failure of the alleged violator to request an
135 informal settlement conference or a hearing or to respond to the
136 complaint within thirty (30) days shall constitute a waiver of the

137 right to a hearing, and any penalties assessed by the commission
138 shall be due and payable as provided in Section 8 of this act.

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

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

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

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

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

169 (4) No relief shall be granted based upon the court's
170 finding of harmless error by the commission in complying with the
171 procedural requirements of this act. If there is a finding of
172 prejudicial error in the proceedings, the cause may be remanded
173 for a rehearing consistent with the findings of the 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, and Chapter 21 of Title 59, Mississippi
179 Code of 1972, shall be subject to the imposition of a civil
180 penalty up to Ten Thousand Dollars (\$10,000.00).

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) If the judgment is not paid within the forty-five (45)
187 days, or within such additional time as the commission may allow,
188 the commission may file suit in the chancery court of the county
189 where the defendant resides or in the case of a nonresident
190 defendant in the Chancery Court of the Second Judicial District of
191 Harrison County or any other court with appropriate jurisdiction
192 to enforce the decision of the commission and recover reasonable
193 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 as a separate article in Chapter 15, Title 49,
207 Mississippi Code of 1972.

208 **SECTION 11.** This act shall take effect and be in force from
209 and after July 1, 2005.