

By: Representative Ladner

To: Marine Resources

HOUSE BILL NO. 594
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 49-27-5, MISSISSIPPI CODE OF 1972, TO
2 AMEND THE COASTAL WETLANDS PROTECTION ACT TO DEFINE "ORDINARY HIGH
3 WATER MARK" TO MEAN A MARK ON THE SHORE DETERMINED BY THE
4 DEPARTMENT STAFF, ESTABLISHED BY FLUCTUATIONS IN WATER LEVEL AND
5 INDICATED BY PHYSICAL AND BIOLOGICAL CHARACTERISTICS INCLUDING,
6 BUT NOT LIMITED TO, WATER STAINS, CHANGES IN THE CHARACTER OF THE
7 SOIL, SCOUR LINES, PRESENCE OF DEBRIS LINES, CHANGES IN PLANT
8 COMMUNITIES AND OTHER APPROPRIATE MEANS THAT CONSIDER THE
9 CHARACTERISTICS OF THE SURROUNDING AREA; TO REVISE THE DEFINITION
10 OF "COASTAL WETLANDS" TO MEAN ALL PUBLICLY OWNED LANDS SUBJECT TO
11 THE EBB AND FLOW OF THE TIDE, WHICH ARE BELOW THE ORDINARY HIGH
12 WATER MARK, ALL PUBLICLY OWNED ACCRETIONS ABOVE THE ORDINARY HIGH
13 WATER MARK AND ALL PUBLICLY OWNED SUBMERGED WATER BOTTOMS BELOW
14 THE ORDINARY HIGH WATER MARK AND INCLUDES THE FLORA AND FAUNA ON
15 THE WETLANDS AND IN THE WETLANDS; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 49-27-5, Mississippi Code of 1972, is
18 amended as follows:

19 49-27-5. (a) "Coastal wetlands" means all publicly-owned
20 lands subject to the ebb and flow of the tide; which are below
21 the * * * ordinary high * * * water mark; all publicly-owned
22 accretions above the * * * ordinary high * * * water mark and all
23 publicly-owned submerged water-bottoms below the * * * ordinary



24 high * * * water mark and includes the flora and fauna on the
25 wetlands and in the wetlands.

26 (b) "Department" means the Department of Marine Resources.

27 (c) "Regulated activity" means any of the following
28 activities:

29 (i) The dredging, excavating or removing of soil, mud,
30 sand, gravel, flora, fauna or aggregate of any kind from any
31 coastal wetland;

32 (ii) The dumping, filling or depositing of any soil,
33 stones, sand, gravel, mud, aggregate of any kind or garbage,
34 either directly or indirectly, on or in any coastal wetlands;

35 (iii) Killing or materially damaging any flora or fauna
36 on or in any coastal wetland;

37 (iv) The erection on coastal wetlands of structures
38 which materially affect the ebb and flow of the tide; and

39 (v) The erection of any structure or structures on
40 suitable sites for water dependent industry.

41 (d) "Dredging" means the removal or displacement by any
42 means of soil, sand, gravel, shells or other material, whether of
43 intrinsic value or not, from coastal wetlands.

44 (e) "Executive director" means the Executive Director of the
45 Department of Marine Resources.

46 (f) "Filling" means either the displacement of waters by the
47 deposition into coastal wetlands of soil, sand, gravel, shells or
48 other material; or the artificial alteration of water levels or



49 water currents by physical structures, drainage ditches or
50 otherwise.

51 (g) "Person" means any natural person, partnership, joint
52 stock company, corporation, unincorporated association or society,
53 or the state and any agency thereof, or any county, municipality
54 or political subdivision, or any other corporation of any
55 character whatsoever.

56 (h) "Commission" means the Mississippi Advisory Commission
57 on Marine Resources.

58 (i) "Water dependent industry" means those commercial,
59 industrial or manufacturing activities which, for purposes basic
60 to their existence must occur or locate on or adjacent to the
61 estuaries, sounds, channels, shores or marshlands of the coast.
62 "Suitable sites for water dependent industry" means those areas of
63 land which are suitable for the development of water dependent
64 industry because of their proximity to waters of navigable depth,
65 size and configuration, topography, soil conditions and access to
66 other means of transportation. After consultation with local
67 governments, port authorities, development commissions, port and
68 harbor commissions and other interested parties, and after full
69 consideration of zoning ordinances duly adopted by local
70 governments, the * * * department shall designate those sites it
71 deems suitable for water dependent industry. The definition of
72 "suitable sites for water dependent industry" shall be limited to,
73 but not necessarily inclusive of, waterfront sites owned by county



74 port authorities, development commissions and port and harbor
75 commissions, and to areas that are now or are later made to be
76 within one thousand (1,000) feet of the centerline of any natural
77 or maintained channel having a depth of seven (7) feet or greater
78 at mean low water. However, additional sites may be included in
79 the definition of suitable sites for water dependent industry with
80 the concurrence of the board of supervisors in the county
81 affected.

82 (j) "Ordinary High Water Mark (OHWM)" means a mark on the
83 shore determined by the department staff, established by
84 fluctuations in water level and indicated by physical and
85 biological characteristics including, but not limited to, water
86 stains, changes in the character of the soil, scour lines,
87 presence of debris lines, changes in plant communities and other
88 appropriate means that consider the characteristics of the
89 surrounding area. The determination of OHWM shall not be made by
90 the department staff during high tide where the above referenced
91 characteristics are not observable. OHWM is not the same as mean
92 high water and shall not be used for determination of the boundary
93 between private property and public trust tidelands or for any
94 purpose other than regulated activity as defined in this section.

95 **SECTION 2.** This act shall take effect and be in force from
96 and after July 1, 2021.

