

By: Representative Anderson (122nd)

To: Marine Resources

## HOUSE BILL NO. 661

1       AN ACT TO REVISE THE ADMINISTRATIVE HEARING PROCEDURE FOR THE  
2 MISSISSIPPI DEPARTMENT OF MARINE RESOURCES; TO AMEND SECTION  
3 49-15-401, MISSISSIPPI CODE OF 1972, TO DESIGNATE AN INTAKE  
4 EMPLOYEE WITHIN THE DEPARTMENT OF MARINE RESOURCES; TO AMEND  
5 SECTION 49-15-403, MISSISSIPPI CODE OF 1972, TO PROVIDE THE POWERS  
6 AND DUTIES OF THE DESIGNATED INTAKE EMPLOYEE; TO AMEND SECTION  
7 49-15-411, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT NO RELIEF  
8 SHALL BE GRANTED BASED UPON THE COURT'S FINDING OF HARMLESS ERROR  
9 BY THE DEPARTMENT IN COMPLYING WITH CERTAIN PROCEDURAL  
10 REQUIREMENTS; TO AMEND SECTION 49-15-417, MISSISSIPPI CODE OF  
11 1972, TO CLARIFY THAT PERSONS COME BEFORE THE DEPARTMENT, NOT  
12 COMMISSION; TO AMEND SECTIONS 49-27-33 AND 49-27-35, MISSISSIPPI  
13 CODE OF 1972, TO CLARIFY THE AUTHORITY OF THE COMMISSION TO MAKE  
14 RECOMMENDATIONS; TO AMEND SECTION 49-27-37, MISSISSIPPI CODE OF  
15 1972, TO REQUIRE WRITTEN RECOMMENDATIONS OF THE COMMISSION  
16 INCORPORATING ITS FINDINGS AND REASONS; TO CLARIFY THE EXECUTIVE  
17 DIRECTOR OF THE DEPARTMENT OF MARINE RESOURCES' FINAL DECISION  
18 MAKING AUTHORITY; TO AMEND SECTION 49-27-51, MISSISSIPPI CODE OF  
19 1972, TO CLARIFY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
20 MARINE RESOURCES' FINAL DECISION MAKING AUTHORITY; TO AMEND  
21 SECTION 49-15-67, MISSISSIPPI CODE OF 1972, TO CONFORM; TO BRING  
22 FORWARD SECTIONS 49-15-405 AND 49-27-41, MISSISSIPPI CODE OF 1972,  
23 FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

25       **SECTION 1.** Section 49-15-401, Mississippi Code of 1972, is  
26 amended as follows:

27       49-15-401. (1) It is the purpose of this article to  
28 establish an administrative hearing procedure for the Mississippi

29 Department of Marine Resources to enforce the rules and  
30 regulations set forth in Title 22 of the Administrative Code and  
31 Sections 49-15-1 through 49-15-321, \* \* \* 59-21-111, and such  
32 other statutes within the jurisdiction of the Department of Marine  
33 Resources. Sections 49-27-1 through 49-27-71 shall control the  
34 administrative hearing procedure for the Coastal Wetlands  
35 Protection Act. Unless specifically authorized, the department  
36 shall not seek both administrative and criminal penalties against  
37 violators of the statutes referred to herein for the same offense,  
38 except as provided in Section 49-15-63.

39 (2) The Department of Marine Resources shall designate an  
40 intake employee within the department for the purpose of  
41 administering this article. The powers and duties of the  
42 designated intake employee are provided in Section 49-15-403.

43 **SECTION 2.** Section 49-15-403, Mississippi Code of 1972, is  
44 amended as follows:

45 49-15-403. (1) When any allegation or charge in the form of  
46 a complaint has been made against a person for violations pursuant  
47 to the authorities outlined in Section 49-15-401 and such matter  
48 has been brought before the department for administrative penalty  
49 processing, the department shall:

50 (a) Cause the complaint to be in writing, signed by the  
51 person and/or office making the charge and include the recommended  
52 fine;



53 (b) Ensure that the complaint is filed with the \* \* \*  
54 designated intake employee;

55 (c) Cause the \* \* \* designated intake employee to  
56 review the complaint; and

68       (3) If the \* \* \* designated intake employee's review  
69 determines that the complaint lacks merit, the \* \* \* designated  
70 intake employee may recommend \* \* \* dismissal of the complaint.

71       \* \* \* If the \* \* \* designated intake employee determines that  
72       there are reasonable grounds to indicate that a violation has  
73       occurred or if the alleged violator admits to the truth of the  
74       allegations upon which the complaint is based, the \* \* \*  
75       designated intake employee may recommend \* \* \* imposing a fine not  
76       to exceed Ten Thousand Dollars (\$10,000.00) for each violation.  
77       The \* \* \* designated intake employee shall send a copy of \* \* \*

78       his or her written recommendation to the commission for review and  
79       recommendation to the executive director who will make the final  
80       decision regarding the complaint.

81           (4) The alleged violator shall have fifteen (15) days from  
82 receipt of the finding and imposed fine of the executive director  
83 within which to file a written request for an informal settlement  
84 conference with the executive director, or his designee. If the  
85 alleged violator requests a conference, the executive director, or  
86 his designee, shall meet with the alleged violator to discuss the  
87 proposed penalty and the possibility of an agreed settlement. The  
88 alleged violator may present evidence and written or oral comments  
89 at the executive director's conference. The alleged violator may  
90 be represented by legal counsel, at his or her own expense. If,  
91 in the judgment of the executive director, or his designee, a  
92 reasonable settlement is reached, the recommended penalty shall be  
93 revised accordingly. The executive director shall make the final  
94 decision regarding the penalty to be issued, which may include  
95 dismissal of the complaint, issuance of a warning in lieu of a  
96 penalty or a monetary penalty not to exceed Ten Thousand Dollars  
97 (\$10,000.00) for each violation. If a request for information  
98 settlement is not received within the timeframe provided, the  
99 executive director's recommended fine will be the final decision.

100           **SECTION 3.** Section 49-15-411, Mississippi Code of 1972, is  
101 amended as follows:



102        49-15-411. (1) Any individual aggrieved by a final decision  
103 of the executive director shall be entitled to judicial review.

104        (2) Any appeal from the executive director's decision shall  
105 be filed in the Chancery Court of the Second Judicial District of  
106 Harrison County, Mississippi, on the record made, including a  
107 verbatim transcript of the testimony at the hearing held before  
108 the hearing officer. The appeal shall be filed within thirty (30)  
109 days after notification of the final decision of the executive  
110 director is mailed or served, and the proceedings in chancery  
111 court shall be conducted as other matters coming before the court  
112 on appeal. The appeal shall be perfected upon filing notice of  
113 the appeal and by the prepayment of all estimated costs, including  
114 the cost of preparation of the record of the proceedings before  
115 the executive director, and the filing of a bond in the sum of  
116 Five Hundred Dollars (\$500.00) conditioned that if the executive  
117 director's final decision be affirmed by the chancery court, the  
118 aggrieved party shall pay the costs of the appeal to the chancery  
119 court.

120        (3) The scope of review of the chancery court in such cases  
121 shall be limited to a review of the record made before the  
122 executive director's final decision to determine if the decision  
123 is unlawful for the reason that it was:

124                (a) Not supported by any substantial evidence;  
125                (b) Arbitrary or capricious; or



126 (c) In violation of some statutory or constitutional  
127 right of the individual.

128 (4) No relief shall be granted based upon the court's  
129 finding of harmless error by the \* \* \* department in complying  
130 with the procedural requirements of this article. If there is a  
131 finding of prejudicial error in the proceedings, the cause may be  
132 remanded for a rehearing consistent with the findings of the  
133 court.

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

136 **SECTION 4.** Section 49-15-417, Mississippi Code of 1972, is  
137 amended as follows:

138 49-15-417. No person shall be subject to criminal  
139 prosecution or to any penalty or forfeiture in a separate  
140 proceeding for or on account of any transaction, matter or issue  
141 concerning which he may be required to testify to or produce  
142 evidence, or provide documentation, before the \* \* \* department or  
143 at any of its hearings or conferences, or in compliance with any  
144 subpoena; however, no person testifying shall be exempt from  
145 prosecution and punishment for perjury committed in so testifying.

146 **SECTION 5.** Section 49-27-33, Mississippi Code of 1972, is  
147 amended as follows:

148 49-27-33. The commission, after reasonable notice in writing  
149 to the holder of a permit and after a hearing in the manner as  
150 provided in Sections 49-27-15 through 49-27-21 of this chapter,



151 shall recommend to suspend or revoke a permit if it finds that the  
152 applicant has not substantially complied with one or more of the  
153 conditions or limitations set forth in the permit or has exceeded  
154 the scope of the activities as set forth in the application.

155 **SECTION 6.** Section 49-27-35, Mississippi Code of 1972, is  
156 amended as follows:

157 49-27-35. The commission shall state, upon its record, its  
158 findings and reasons for all \* \* \* recommendations given pursuant  
159 to Sections 49-27-23 through 49-27-37. When a permit is granted  
160 or modified, the commission shall describe the public interest to  
161 be served by granting or modifying the permit. When a permit or  
162 modification is denied, the commission shall describe the public  
163 interest which would be adversely affected by granting or  
164 modifying the permit.

165 **SECTION 7.** Section 49-27-37, Mississippi Code of 1972, is  
166 amended as follows:

167 49-27-37. (1) The commission shall issue a written  
168 recommendation incorporating its findings and reasons for all  
169 actions recommended pursuant to Section 49-27-23 through 49-27-37.

170 (2) The commission's recommendation shall then be forwarded  
171 to the executive director who will make the final decision  
172 regarding any order in issuance, denial, revocation or suspension  
173 of a permit or the issuance of a permit or modified or conditional  
174 permit.



175           (3) The \* \* \* department shall send a copy of any order in  
176 issuance, denial, revocation or suspension of a permit to the  
177 parties stated in Section 49-27-17, and such orders must be sent  
178 within ninety (90) days from the receipt of a complete  
179 application, or within ninety (90) days from an amendment to the  
180 application as provided by Section 49-27-11(2), in the case of  
181 granting or denying or thirty (30) days from the date of the  
182 hearing in the case of suspension or revocation, unless an  
183 extension is requested as provided in subsection (\* \* \*<sup>4</sup>) and  
184 approved by the \* \* \* department.

185           (\* \* \*<sup>4</sup>) An applicant may request, in writing, additional  
186 extensions up to ninety (90) days for the processing of an  
187 application.

188           **SECTION 8.** Section 49-27-51, Mississippi Code of 1972, is  
189 amended as follows:

190           49-27-51. (1) (a) If a person in violation of this chapter  
191 submits a proper application for any unauthorized work and the  
192 commission determines that the work has been conducted in  
193 accordance with the public policy as set forth in Section 49-27-3,  
194 the commission \* \* \* may recommend issuing after-the-fact  
195 authorization for the work.

196           (b) For conducting the work without first obtaining a  
197 current and valid permit and other violations of this chapter, the  
198 commission may \* \* \* recommend ordering and \* \* \* levying a  
199 penalty of not less than Fifty Dollars (\$50.00) nor more than Five



200       Hundred Dollars (\$500.00) per day for each day the violation has  
201       existed for residential type regulated activity and a penalty of  
202       not less than One Thousand Dollars (\$1,000.00) nor more than Ten  
203       Thousand Dollars (\$10,000.00) per day for each day the violation  
204       has existed for commercial and industrial type regulated activity.

205                (c) The commission shall issue a written recommendation  
206       incorporating its findings and reasons for all actions and  
207       recommendations pursuant to this section.

208                (d) The commission's recommendation shall then be  
209       forwarded to the executive director who will make the final  
210       decision regarding any after-the-fact authorization, order or levy  
211       of a penalty.

212               (2) If the person continues the violation, the Attorney  
213       General of the State of Mississippi at the request of the \* \* \*  
214       department, a district attorney having jurisdiction, or a county  
215       attorney having jurisdiction may initiate the civil or criminal  
216       actions, or both civil and criminal actions, as described in this  
217       chapter against the person.

218               (3) The Attorney General, \* \* \* department, district  
219       attorney or county attorney may initiate action to enjoin any  
220       person in violation of this chapter.

221               **SECTION 9.** Section 49-15-67, Mississippi Code of 1972, is  
222       amended as follows:

223               49-15-67. (1) (a) Any party may file an appeal from the  
224       decision of the \* \* \* department with the Chancery Court of



225 Harrison County, Second Judicial District. The appeal shall be  
226 filed within thirty (30) days of the decision of the \* \* \*  
227 department. An appeal to the chancery court shall not stay the  
228 execution of an order of the \* \* \* department. Any party  
229 aggrieved by an order of the \* \* \* department may petition the  
230 chancery court for an appeal with supersedeas and the court shall  
231 grant a hearing on the petition, and upon good cause shown may  
232 grant the appeal with supersedeas. If granted, the appellant  
233 shall be required to post a bond with sufficient sureties  
234 according to law in an amount to be determined by the court.

235 (b) If the court finds that the order appealed from is  
236 supported by substantial evidence, is not arbitrary and capricious  
237 and does not violate constitutional rights, the court shall affirm  
238 the order of the \* \* \* department.

239 (2) Upon the filing of an appeal, the clerk of the chancery  
240 court shall serve notice upon the \* \* \* department. The \* \* \*  
241 department shall within sixty (60) days from the service of the  
242 notice, or within such additional time as the court may for cause  
243 allow, certify to the court the record in the case. The record  
244 shall include transcript of all testimony, objections, exhibits or  
245 copies thereof, pleadings, proceedings, orders, findings and  
246 opinions entered in the case. However, the parties and \* \* \*  
247 department may stipulate that only a specified portion of the  
248 record shall be certified to the court as the record on appeal.



249 (3) If, upon hearing the appeal, it appears to the court  
250 that any testimony has been improperly excluded by the \* \* \*  
251 department or that the facts disclosed by the record are  
252 insufficient for the equitable disposition of the appeal, the  
253 court shall refer the case back to the \* \* \* department to take  
254 such evidence as the court may direct and report the evidence to  
255 the court with the \* \* \* department's findings of fact and  
256 conclusions of law.

257           **SECTION 10.** Section 49-15-405, Mississippi Code of 1972, is  
258           brought forward as follows:

49-15-405. (1) If the alleged violator requests a formal hearing within thirty (30) days from the receipt of the finding and imposed fine, or within fifteen (15) days from the receipt of the executive director's decision following the information settlement, the executive director shall designate a representative of the Attorney General's office to preside over the hearing and render a finding and recommendation as provided in this section.

267 (2) A duly qualified court reporter shall be in attendance  
268 and shall make a full and complete transcript of the proceedings.  
269 The hearing shall be closed unless the alleged violator requests a  
270 public hearing. The hearing officer shall have the right and duty  
271 to impose reasonable restrictions as he may deem necessary or  
272 appropriate to ensure orderly, expeditious and impartial  
273 proceedings, and shall admit all relevant and material evidence



274 except evidence which is unduly repetitious. Hearsay shall be  
275 admissible to the extent permitted by the hearing officer.

276 (3) For purposes of such hearing, the hearing officer is  
277 hereby empowered to require the attendance of witnesses,  
278 administer oaths and hear testimony, either oral or documentary,  
279 for and against the alleged violator. The hearing officer shall  
280 have the authority to issue subpoenas to compel the attendance of  
281 witnesses and the production of books, papers, records or other  
282 documentary evidence at a hearing. Subpoenas to be issued shall  
283 be delivered to the sheriff of the county where they are to be  
284 executed and the sheriff shall serve them. In case of the failure  
285 of any person to comply with any subpoena issued by the hearing  
286 officer, the hearing officer may invoke the aid of any court of  
287 general jurisdiction of this state. The court may thereupon order  
288 such person to comply with the requirements of the subpoena.  
289 Failure to comply with the order of the court may be treated as  
290 contempt thereof.

291 (4) At the conclusion of the hearing, the hearing officer  
292 shall issue a written recommendation incorporating his findings of  
293 facts and conclusions of law regarding whether a violation has  
294 occurred and the appropriate penalty, if any, that he may assess  
295 not to exceed Ten Thousand Dollars (\$10,000.00) per violation.

296 (5) The hearing officer's recommendation shall then be  
297 forwarded to the executive director who will make the final

298 decision regarding whether a violation has occurred and the  
299 appropriate penalty, if any.

300 (6) The executive director's final decision shall be  
301 delivered to the alleged violator.

302 **SECTION 11.** Section 49-27-41, Mississippi Code of 1972, is  
303 brought forward as follows:

304 49-27-41. Such appeal shall be brought by a complaint in  
305 writing, stating fully the reasons therefor, signed by an  
306 authorized party, and shall be served at least twelve (12) days  
307 before the return date upon the commission and upon all parties  
308 having an interest adverse to the appellant as designated under  
309 subsection (a) of Section 49-27-39. Such appeals shall be brought  
310 to the next return day of the court after the filing of such  
311 appeal or may be returned to a day set by fiat of the court. A  
312 cost bond must be posted with sufficient sureties payable to the  
313 state in the sum of not less than One Hundred Dollars (\$100.00)  
314 nor more than Five Hundred Dollars (\$500.00), to be fixed in the  
315 order appealed from and to be filed with and approved by the  
316 executive director of the commission, who shall forthwith certify  
317 the same, together with a certified copy of the transcription  
318 record of the proceedings in the matter to the chancery court to  
319 which the appeal is taken, which shall thereupon become the record  
320 of the cause. An appeal to the chancery court as provided herein  
321 shall not stay the execution of an order of the commission. Any  
322 party aggrieved by an order of the commission may petition the



323 chancery court for an appeal with supersedeas and the chancellor  
324 shall grant a hearing on the petition, and upon good cause shown  
325 may grant the appeal with supersedeas in which case the appellant  
326 shall be required to post a bond with sufficient sureties  
327 according to law in an amount to be determined by the chancellor.

328         **SECTION 12.** This act shall take effect and be in force from  
329 and after July 1, 2025.

