

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



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

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

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

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

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



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

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

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

(2) Upon receipt of the response and any supporting documents from the alleged violator, the * * * designated intake employee shall review all information on file to determine a recommendation on the merit of the complaint.

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

(2) The commission's recommendation shall then be forwarded to the executive director who will make the final decision regarding any order in issuance, denial, revocation or suspension of a permit or the issuance of a permit or modified or conditional 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 (* * *4) and
184 approved by the * * * department.

185 (* * *4) 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



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

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

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

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

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

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

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



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

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

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



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

SECTION 10. Section 49-15-405, Mississippi Code of 1972, is 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.

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



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

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

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

(5) The hearing officer's recommendation shall then be 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.

