

By: Senator(s) Ladner

To: Ports and Marine
Resources

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2263

1 AN ACT TO AMEND SECTION 49-15-27, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE AUTHORITY OF THE MISSISSIPPI DEPARTMENT OF MARINE
3 RESOURCES RELATING TO THE APPROVAL OF OYSTER LEASES; TO AMEND
4 SECTION 49-15-36, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
5 PERMITTED OYSTER LEASE AREAS NOT SUBJECT TO A LEASE SHALL REMAIN
6 OPEN TO THE PUBLIC; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 49-15-27, Mississippi Code of 1972, is
9 amended as follows:

10 49-15-27. The department is hereby granted full and complete
11 authority to lease the bottoms within its jurisdiction upon the
12 following terms and conditions:

13 (1) All areas within the department's jurisdiction, not
14 designated state-owned reefs by this chapter, including natural
15 reefs and all areas not within the boundaries of riparian property
16 owners may be leased by the department.

17 (2) All individual lessees shall be residents of the State
18 of Mississippi, or if a firm or corporation, such firm or
19 corporation shall be organized under the laws of the State of
20 Mississippi and owned by a resident of the State of Mississippi.



21 (3) No individual, corporation, partnership or association
22 may lease less than one (1) acre nor more than two thousand five
23 hundred (2,500) acres total; however, in the case of an individual
24 there shall be counted towards such limitation any lands leased by
25 a corporation, partnership or association in which such individual
26 owns ten percent (10%) or less interest and, in the case of a
27 corporation, partnership or association, there shall be counted
28 toward such limitation any lands leased by an individual
29 stockholder, partner or associate thereof who owns ten percent
30 (10%) or less interest in such corporation, partnership or
31 association.

32 (4) Individuals, firms or corporations desiring to lease
33 bottoms shall make application to the department in writing,
34 describing the area to be leased. Applications must include a
35 plat showing the proposed lease area and description of cultch
36 material type and amount to be deployed on the leased area.

37 (5) (a) Any person who qualifies and who desires to lease a
38 part of the bottom or bed of any of the waters of this state as
39 provided in this section shall present to the department a written
40 application, and pay an application fee in the amount of Fifty
41 Dollars (\$50.00). This application shall contain the name and
42 address of the applicant and a reasonably definite description of
43 the location and amount of land covered by water desired by the
44 applicant. The department shall establish a system to determine
45 qualifications of applicants. The department shall prioritize



applications based on the following criteria, each of which shall be weighted equally:

- (i) Experience in oyster reef development;
- (ii) Experience in oyster cultivation and harvesting;
- (iii) Whether lease applicant is registered with the U.S. Food & Drug Administration Interstate Certified Shellfish Shippers List for Mississippi, and the length of time the applicant has been registered;
- (iv) Amount of acreage to be leased; and
- (v) Evidence of applicant's financial ability to perform cultivation and propagation requirements.

The department shall then order an examination to determine whether the water bottoms applied for are leasable.

(b) If the applicant is found to be qualified and the area is found to be leasable, the department shall determine the acreage upon which the rent shall be fixed and enter into a lease with the applicant, who shall pay the prorated annual rent in advance for the remainder of the calendar year. If the applicant is not eligible for a lease, the department shall issue a written notice declining the application with specific reasons for same.

* * *

(* * * c) The department has the authority to reconfigure the lease areas from that requested by the applicant in the manner that promotes maximum utilization of the state's



resources. In the event the area requested by the applicant has to be reconfigured, the applicant has the right to refuse the reconfigured area and withdraw their application and receive a refund of their application fee.

(* * *d) The department shall require that the bottoms of water areas to be leased be as definable as possible, taking into consideration such factors as the shape of the body of water, permitted areas, and the condition of the bottom as to hardness or softness which would render it desirable or undesirable for the purpose of oyster cultivation.

(* * *e) A lease applicant may withdraw a lease application and receive a full refund from the department of all application fees, by submitting a written request for withdrawal to the department within ninety (90) days after the department received the application.

(6) Such leases shall be for an initial term of fifteen (15) years, with the lessee having the right of first renewal of the lease for an additional fifteen (15) years, and continue to renew at fifteen-year intervals, at the same ground rental rate so long as lessee actively cultivates and gathers oysters, and complies with the provisions of this chapter. No lease may be transferred without approval by the department of the transfer.

(7) The terms of every lease issued hereunder shall ensure the maximum cultivation and propagation of oysters. Throughout the term of every lease issued hereunder, each lessee shall add



96 cultch and make other necessary efforts to ensure the maximum
97 cultivation and propagation of oysters. The department shall
98 promulgate regulations to set forth guidelines for lessees to
99 follow to ensure the maximum cultivation and propagation of
100 oysters under the lease. The lessee shall submit a written report
101 with supporting documentation to the department of efforts to
102 cultivate and propagate oysters for the previous year. If the
103 department finds a lessee is not making efforts to cultivate and
104 propagate oysters, and the lessee fails to take remedial steps to
105 address same, such lease shall be subject to termination as
106 provided for hereunder.

107 (8) The department shall fix a ground rental rate at Three
108 Dollars (\$3.00) per acre per year. The annual rental payments
109 shall be due by December 31 for the next calendar year.

110 (9) Any lessee who pays the rent on or after the first day
111 of January shall pay the rent due plus an additional ten percent
112 (10%) penalty. The failure of the lessee to pay the rent
113 punctually on or before the first of each March, ipso facto and
114 without demand or putting in default, terminates and cancels the
115 lease and forfeits to the department all the works, improvements,
116 betterments, and oysters on the leased water bottom. The
117 department may at once enter on the water bottom and take
118 possession thereof. Such water bottom shall then be open for
119 lease in accordance with subsections (5) through (8) of this
120 section. Ten (10) days thereafter the department shall enter the



121 termination, cancellation, and forfeiture on its books and give
122 public notice thereof by publication in one (1) local paper in the
123 county where the formerly leased water bottoms are located. On or
124 before the first day of each February, the department shall issue
125 a written notice of delinquency by certified mail to each lessee
126 who has not yet paid the rent. The department shall also publish
127 notice of such delinquency on its website.

128 (10) The department shall keep an accurate chart of the
129 areas within its jurisdiction and shall mark on such chart those
130 areas which are under lease. All leases shall be marked by
131 appropriate poles, stakes or buoys of such material as will not
132 injure watercraft, at the expense of the leaseholder. The
133 department shall keep an accurate book, designated "Mississippi
134 Oyster Farms" which shall contain copies of all leases. The
135 department shall maintain a map of designated state-owned, leased
136 areas, and areas available for lease on the department's website.
137 If any lease be cancelled or expire, such fact shall be noted on
138 the face of such lease. Lessees shall be "oyster farmers" for the
139 purposes of any grants, aid, subsidies or other assistance from
140 the federal government or other governmental or private agencies.

141 (11) All funds derived from leasing shall be paid into the
142 Seafood Fund under Section 49-15-17, for use by the department to
143 further oyster production in this state, which includes plantings
144 of oysters and cultch materials.



145 (12) All leases made by the department under the authority
146 of this section shall be subject to the paramount right of the
147 state and any of its political subdivisions authorized by law, to
148 promote and develop ports, harbors, channels, industrial or
149 recreational projects, and all such leases shall contain a
150 provision that in the event such authorized public body shall
151 require the area so leased or any part thereof for such public
152 purposes, that the lease shall be terminated on reasonable notice
153 fixed by the department in such lease. On the termination of any
154 lease, the lessees shall have the right to remove any oysters
155 within the leased area within such time as may be fixed by the
156 department and in accordance with such reasonable rules and
157 regulations as the department may adopt.

158 Any person convicted of taking oysters from leased land or
159 from waters that are not of a safe sanitary quality without a
160 permit as provided in Section 49-15-37 shall, on the first
161 offense, forfeit all equipment used, exclusive of any boat or
162 boats; and be fined not to exceed Two Thousand Dollars (\$2,000.00)
163 or sentenced not to exceed one (1) year in the county jail, or
164 both. Subsequent convictions shall be punishable by forfeiture of
165 all equipment, including any boat or boats; and a fine not to
166 exceed Five Thousand Dollars (\$5,000.00) or not to exceed two (2)
167 years in prison, or both such fine and imprisonment.

168 The department is enjoined to cooperate with the Jackson
169 County Port Authority, the Harrison County Development Commission,



the municipal port commission and other port and harbor agencies, so that oyster beds shall not be planted in close proximity to navigable channels. The department or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation or other purpose authorized by law.

(13) A lessee has the exclusive use of the water bottoms leased and all oysters and cultch grown or placed thereon. However, this exclusive right is subordinate to the rights and responsibilities of the state, any political subdivision of the state, the United States, or any agency or agent thereof, to take action in furtherance of coastal protection, conservation or restoration.

(14) In order to protect the health and safety of the residents of the State of Mississippi, the terms and conditions relating to the leasing of bottoms provided in this section shall be fully applicable to any lease executed by the Mississippi Department of Marine Resources prior to April 17, 2023, and the department shall revise any lease issued prior to April 17, 2023, as necessary in order to comply with the provisions of this section.

SECTION 2. Section 49-15-36, Mississippi Code of 1972, is amended as follows:



49-15-36. (1) The Department of Marine Resources shall have full jurisdiction and control of all designated state-owned reefs and oyster bottoms of the State of Mississippi. In no event shall the department designate more than twenty percent (20%) of the permitted areas available as state-owned reefs. Permitted areas not subject to a lease under this chapter shall remain open to the public.

(2) State-owned reefs may be opened for harvest of oysters during the season on a rotating basis. If the department determines that a particular reef has been overharvested or that a high percentage of sublegal size oysters exist on a particular reef and that harvest could damage future oyster crops, the department may close designated reef areas and keep them closed during the season.

(3) The department shall promulgate regulations regarding the closing of oyster reefs to protect the public health. When that testing indicates the oysters on the closed reef are suitable for consumption, the reef shall be opened for the taking of oysters as soon as notice of that opening may be made to interested parties. The authority to open or close oyster reefs under this chapter shall be solely within the discretion of the department. The Gulf Coast Research Laboratory or other certified laboratory shall cooperate with the department and shall conduct necessary tests to determine the condition of oyster reefs at the



request of the department. The department may limit the sale of oysters for human consumption.

(4) (a) The department may issue special permits for the purpose of catching oysters outside the open season or in areas not normally open to harvest to those nonprofit organizations that are tax exempt under Section 501(c) of the United States Internal Revenue Code and which have on file with the Department of Revenue a tax exemption letter issued by the United States Internal Revenue Service.

(b) The department shall promulgate rules and regulations governing the taking of oysters by the nonprofit organization and shall issue such regulations to all organizations upon request and at the issuance of the special permit.

(5) The department shall establish a reasonable period of time for depuration of oysters replanted from restricted waters. That period of time shall be consistent with the maintenance of the public health and may vary from time to time and from one reef to another in accordance with environmental conditions.

SECTION 3. This act shall take effect and be in force from and after its passage.

