

## **Senate Amendments to House Bill No. 1102**

**TO THE CLERK OF THE HOUSE:**

**THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:**

### **AMENDMENT NO. 1**

**Amend by striking all after the enacting clause and inserting in lieu thereof the following:**

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

a corporation, partnership or association in which such individual owns ten percent (10%) or less interest and, in the case of a corporation, partnership or association, there shall be counted toward such limitation any lands leased by an individual stockholder, partner or associate thereof who owns ten percent (10%) or less interest in such corporation, partnership or association.

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

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

51                   (iii) Whether lease applicant is registered with  
52 the U.S. Food & Drug Administration Interstate Certified Shellfish  
53 Shippers List for Mississippi, and the length of time the  
54 applicant has been registered;

55                   (iv) Amount of acreage to be leased; and

56                   (v) Evidence of applicant's financial ability to  
57 perform cultivation and propagation requirements.

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

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

67       \* \* \*

68                   ( \* \* \*c) The department has the authority to  
69 reconfigure the lease areas from that requested by the applicant  
70 in the manner that promotes maximum utilization of the state's  
71 resources. In the event the area requested by the applicant has  
72 to be reconfigured, the applicant has the right to refuse the  
73 reconfigured area and withdraw their application and receive a  
74 refund of their application fee.

75                   ( \* \* \*d) The department shall require that the bottoms  
76 of water areas to be leased be as definable as possible, taking

77 into consideration such factors as the shape of the body of water,  
78 permitted areas, and the condition of the bottom as to hardness or  
79 softness which would render it desirable or undesirable for the  
80 purpose of oyster cultivation.

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

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

93 (7) The terms of every lease issued hereunder shall ensure  
94 the maximum cultivation and propagation of oysters. Throughout  
95 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

department finds a lessee is not making efforts to cultivate and propagate oysters, and the lessee fails to take remedial steps to address same, such lease shall be subject to termination as provided for hereunder.

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

(9) Any lessee who pays the rent on or after the first day of January shall pay the rent due plus an additional ten percent (10%) penalty. The failure of the lessee to pay the rent punctually on or before the first of each March, ipso facto and without demand or putting in default, terminates and cancels the lease and forfeits to the department all the works, improvements, betterments, and oysters on the leased water bottom. The department may at once enter on the water bottom and take possession thereof. Such water bottom shall then be open for lease in accordance with subsections (5) through (8) of this section. Ten (10) days thereafter the department shall enter the termination, cancellation, and forfeiture on its books and give public notice thereof by publication in one (1) local paper in the county where the formerly leased water bottoms are located. On or before the first day of each February, the department shall issue a written notice of delinquency by certified mail to each lessee who has not yet paid the rent. The department shall also publish notice of such delinquency on its website.

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

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

(12) All leases made by the department under the authority of this section shall be subject to the paramount right of the state and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice 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,  
170 the municipal port commission and other port and harbor agencies,  
171 so that oyster beds shall not be planted in close proximity to  
172 navigable channels. The department or lessee shall have no right  
173 of action as against any such public body for damages accruing to  
174 any natural reef or leased reef by any necessary improvement of  
175 such channel in the interest of shipping, commerce, navigation or  
176 other purpose authorized by law.

177 (13) A lessee has the exclusive use of the water bottoms  
178 leased and all oysters and cultch grown or placed thereon.  
179 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.

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

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

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.

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Amanda White  
Secretary of the Senate