

By: Representatives Frierson, Read, Janus

To: Marine Resources;
Appropriations

HOUSE BILL NO. 1466

1 AN ACT TO CREATE THE "ADMINISTRATIVE HEARING PROCEDURE FOR
2 THE COMMISSION ON MARINE RESOURCES ACT"; TO PROVIDE THE
3 REGULATIONS FOR REVIEW OF ALLEGATIONS; TO PROVIDE THE PROCEDURE
4 AND TIME LIMIT OF A HEARING; TO PROVIDE WHAT CONSTITUTES A WAIVER
5 FOR A HEARING; TO CLARIFY THE JURISDICTION OF THE COMMISSION; TO
6 PROVIDE PENALTIES FOR VIOLATIONS; TO PROVIDE A PAYMENT SCHEDULE
7 FOR PAYMENT OF PENALTIES; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** It is the purpose of this article to establish an
10 administrative hearing procedure for the Commission on Marine
11 Resources to enforce the rules and regulations of the Commission
12 on Marine Resources and Sections 49-15-1 through 49-15-321, the
13 Coastal Wetlands Protection Act, Sections 49-27-1 through
14 49-27-71, the Mississippi Boating Law of 1960, Sections 59-21-1 et
15 seq. as applied in the marine waters, Mississippi Code of 1972, as
16 amended, and such other statutes within the jurisdiction of the
17 Commission on Marine Resources. Unless specifically authorized,
18 the commission shall not seek both administrative and criminal
19 penalties against violators of the seafood laws for the same
20 offense.

21 **SECTION 2.** (1) When any allegation or charge has been made
22 against a person for violating the rules and regulations of the
23 Commission on Marine Resources, the commission shall:

24 (a) Cause the complaint to be in writing and signed by
25 the person making the charge;

26 (b) Insure that the complaint is filed in the office of
27 the Commission on Marine Resources;

28 (c) Cause the complaint to be reviewed by the Executive
29 Director of the Department of Marine Resources, or his designee;
30 and

31 (d) Send or deliver a copy of the complaint and any
32 supporting documents to the alleged violator along with a request
33 for the alleged violator to respond to the allegations within
34 thirty (30) days. Such notification shall be accomplished by any
35 of the methods provided for in Rule 4 of the Mississippi Rules of
36 Civil Procedure. Citations issued at the time of the alleged
37 violation by marine enforcement officers shall constitute
38 sufficient notice. Upon receipt of the response and any
39 supporting documents from the alleged violator, the executive
40 director, or his designee, shall screen all information on file to
41 determine the merit of the complaint or lack thereof.

42 (2) If the executive director, or his designee, determines
43 that the complaint lacks merit, the executive director may
44 recommend that the complaint be dismissed.

45 (3) If the executive director, or his designee, determines
46 that there are reasonable grounds to indicate that a violation has
47 occurred or if the alleged violator admits to the truth of the
48 allegations upon which the complaint is based, the executive
49 director may recommend to the Commission on Marine Resources a
50 fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) for
51 each violation. The executive director shall send a copy of the
52 recommendation to the alleged violator and the commission.

53 (4) (a) The alleged violator shall have fifteen (15) days
54 from receipt of the recommendation of the executive director
55 within which to file with the Commission on Marine Resources a
56 written request for an informal settlement conference with the
57 executive director, or his designee. If the alleged violator
58 requests a conference as provided herein, the executive director,
59 or his designee, shall meet with the alleged violator to discuss
60 the proposed penalty and the possibility of an agreed settlement.

61 If, in the judgment of the executive director, or his designee, a
62 reasonable settlement is reached, the recommended penalty shall be
63 revised accordingly.

64 (b) If the alleged violator and the executive director,
65 or his designee, fail to reach an agreement on the recommended
66 penalty, or if the alleged violator does not file a written
67 request for a settlement conference, the alleged violator shall
68 file within twenty (20) days of receipt of the recommendation of
69 the executive director a written request for a hearing with the
70 Commission on Marine Resources.

71 (5) The Commission on Marine Resources shall consider the
72 alleged violation and the recommendation of the Department of
73 Marine Resources at a regularly scheduled meeting of the
74 commission. In determining the amount of the penalty, the
75 Commission on Marine Resources may consider the appropriateness of
76 such penalty and the gravity of the violation. The Commission on
77 Marine Resources may issue a warning in lieu of proposing a
78 penalty.

79 **SECTION 3.** (1) The Commission on Marine Resources shall,
80 within forty (40) days of notification from the alleged violator
81 that a hearing is requested, schedule a hearing at a date, time
82 and place to be determined by the Commission on Marine Resources.
83 For good cause shown the commission may grant a continuance or
84 continuances of such hearings. Written notice of the date, time
85 and place of such hearing shall be mailed to the alleged violator
86 by registered mail, return receipt requested, no less than fifteen
87 (15) days before the time of the hearing.

88 (2) In lieu of a hearing before the full commission, the
89 commission may designate three (3) or more members of the
90 commission to preside over the hearing and render a decision for
91 the full commission.

92 (3) A duly qualified court reporter shall be in attendance
93 and shall make a full and complete transcript of the proceedings.

94 The hearing shall be closed unless the alleged violator shall
95 request a public hearing. The Commission on Marine Resources
96 shall have the right and duty to impose reasonable restrictions as
97 it may deem necessary or appropriate to ensure an orderly,
98 expeditious and impartial proceeding, and shall admit all relevant
99 and material evidence except evidence which is unduly repetitious.
100 Hearsay shall be admissible to the extent permitted by the
101 commission.

102 (4) For purposes of such hearing, the commission is hereby
103 empowered to require the attendance of witnesses, administer oaths
104 and hear testimony, either oral or documentary, for and against
105 the alleged violator. The Commission on Marine Resources shall
106 have the authority to issue subpoenas to compel the attendance of
107 witnesses and the production of books, papers, records or other
108 documentary evidence at a hearing. Subpoenas to be issued shall
109 be delivered to the sheriff of the county where they are to be
110 executed and the sheriff shall cause them to be served. In case
111 of the failure of any person to comply with any subpoena issued by
112 the commission, the commission or its authorized representative
113 may invoke the aid of any court of general jurisdiction of this
114 state. The court may thereupon order such person to comply with
115 the requirements of the subpoena. Failure to comply with the
116 order of the court may be treated as contempt thereof.

117 (5) At the conclusion of the hearing, the Commission on
118 Marine Resources upon the majority vote of the members present
119 shall issue a written opinion incorporating its findings of facts
120 and conclusions of law and any penalty that it may assess not to
121 exceed Twenty-five Thousand Dollars (\$25,000.00) per violation.
122 The executive officer shall notify the alleged violator of the
123 Commission on Marine Resources' decision.

124 **SECTION 4.** Failure of the alleged violator to request an
125 informal settlement conference or a hearing or to respond to the
126 complaint within thirty (30) days shall constitute a waiver of the

127 right to a hearing, and any penalties assessed by the Commission
128 on Marine Resources shall be due and payable as provided in
129 Section 8 of House Bill No.____, 2005 Regular Session.

130 **SECTION 5.** The Commission on Marine Resources shall have
131 jurisdiction over all persons and property necessary to administer
132 and enforce the provisions of this article, and the rules and
133 regulations of the commission. The commission may adopt rules and
134 regulations to implement the provisions of this article.

135 **SECTION 6.** (1) Any individual aggrieved by a final decision
136 of the Commission on Marine Resources shall be entitled to
137 judicial review.

138 (2) Any appeal from the commission's decision shall be filed
139 in the Chancery Court of the Second Judicial District of Harrison
140 County, Mississippi, on the record made, including a verbatim
141 transcript of the testimony at the hearing held before the
142 Commission on Marine Resources. The appeal shall be filed within
143 thirty (30) days after notification of the decision of the
144 commission is mailed or served and the proceedings in chancery
145 court shall be conducted as other matters coming before the court
146 on appeal. The appeal shall be perfected upon filing notice of
147 the appeal and by the prepayment of all estimated costs, including
148 the cost of preparation of the record of the proceedings before
149 the commission, and the filing of a bond in the sum of Five
150 Hundred Dollars (\$500.00) conditioned that if the action of the
151 commission be affirmed by the chancery court, the aggrieved party
152 shall pay the costs of the appeal to the chancery court.

153 (3) The scope of review of the chancery court in such cases
154 shall be limited to a review of the record made before the
155 Commission on Marine Resources to determine if the action of the
156 commission is unlawful for the reason that it was:

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

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

161 (4) No relief shall be granted based upon the court's
162 finding of harmless error by the commission in complying with the
163 procedural requirements of this article. In the event that there
164 is a finding of prejudicial error in the proceedings, the cause
165 may be remanded for a rehearing consistent with the findings of
166 the court.

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

169 **SECTION 7.** Each violation of the rules and regulations of
170 the Commission on Marine Resources or violations of the statutes
171 set forth in Section 49-15-1, et seq., Section 49-27-1, et seq.,
172 and Section 59-21-1 et seq. shall be subject to the imposition of
173 a civil penalty up to Twenty-Five Thousand Dollars (\$25,000.00).

174 **SECTION 8.** (1) Any penalty assessed by the Commission on
175 Marine Resources shall be due and payable within forty-five (45)
176 days of the notification of the decision. All sums of money
177 collected as a result of fines levied under this section shall be
178 disbursed as provided in Section 49-15-63(1)(d), Mississippi Code
179 of 1972.

180 (2) In the event that the judgment is not paid within the
181 forty-five (45) days, or within such additional time as the
182 commission may allow, the Commission on Marine Resources may file
183 suit in the chancery court of the county where the defendant
184 resides or in the case of a nonresident defendant in the Chancery
185 Court of the Second Judicial District of Harrison County or any
186 other court with appropriate jurisdiction to enforce the decision
187 of the Commission on Marine Resources and recover reasonable
188 attorney's fees and all court costs.

189 (3) A copy of the notification sent by the Commission on
190 Marine Resources to the violator shall be sufficient proof as to
191 the judgment of the commission.

192 **SECTION 9.** No person shall be subject to criminal
193 prosecution or to any penalty or forfeiture in a separate
194 proceeding for or on account of any transaction, matter or issue
195 concerning which he may be required to testify to or produce
196 evidence, or provide documentation, before the commission or at
197 any of its hearings or conferences, or in compliance with any
198 subpoena; however, no person testifying shall be exempt from
199 prosecution and punishment for perjury committed in so testifying.
200 **SECTION 10.** This act shall take effect and be in force from
201 and after July 1, 2005.