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# Commission on Marine Resources Special Session for Training

October 24, 2018

# COMMISSION ON MARINE RESOURCES HANDBOOK

## TITLE 22 PART 22

- **MCMR POWERS & DUTIES**            **§49-15-15 & §49-15-303**
- **MCMR MEMBERSHIP**                **§49-15-301**
  
- **SEAFOOD LAWS**                      **§49-15-1 *et seq.***
  
- **COASTAL WETLANDS  
PROTECTION ACT**                      **§49-27-1 *et seq.***
  
- **MARINE RESOURCES**                **§57-15-1 *et seq.***

# FORWARD

- Adopted in June 1995 - Amended 5 times.
- Last amendment – March 18, 2014.
- Addresses the general authority, function, policy and operating principles of the commission and the relationship of the commission with the executive director.
- In the event of a conflict between the handbook and statutes or regulations, the provisions in statute and regulation are controlling.
- In addition to the policies set forth in the handbook, the commission and executive director should exercise a common sense and reasonable judgment approach, in consultation with legal counsel, in carrying out the mission of the department.

# CONFLICT OF INTEREST

- §25-4-101 THROUGH §25-4-119
- A commissioner is a “public servant” and
- Shall not use the official position to obtain pecuniary benefit for their self, any relative or any business with which they are associated.
- Shall not be interested, directly or indirectly, during the term for which they shall have been chosen, or within 1 year after the expiration of the term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed, or order made by any board of which he may be or may have been a member.

# Financial Statements

- §25-4-25 THROUGH §25-4-31
- Commission members shall file financial statements as required by the Mississippi Ethics Commission

## State Property

The executive director may assign inventory items to commission members. Members are responsible for the safe keeping, care and accountability of inventory items assigned to them.

Paragraphs 3.6 & 3.7

# COMMISSION SHALL HAVE 2 OFFICERS

- Chairman and vice chairman
- Elected by majority vote of the commission
- 1 year term of office
- Elections held annually at the July meeting

Paragraphs 4.1 & 4.2

# CHAIRMAN

- Presides over regular and special commission meetings
- Assigns special responsibilities to other commission members on occasion when required
- Executes commission documents that require signature
- Performs other duties delegated by the commission
- Insures commission members adhere to the commission rules and other applicable policies
- Vice Chairman performs all duties usually performed by chairman in the chairman's absence

Paragraph 4.3

# REGULAR MONTHLY MEETINGS

- Commission will meet on the 3<sup>rd</sup> Tuesday of each month at 9:00 a.m. at the Bolton Building, 1141 Bayview Avenue, Biloxi, MS.
- The commissioners, upon a majority vote, may change the time, day and location of the scheduled monthly meeting.
- Special meetings may be called when they are justified.
- All members are strongly encouraged to attend each regular and special meeting.
- Any members who shall not attend 3 consecutive regular meetings shall be subject to removal by majority vote of the commission.



# CALLED SPECIAL MEETING

- Requests for special meeting may be made by any commission member or the executive director.
- Requests shall be directed to the chairman and specify the reason for the special meeting.
- May be conducted at locations and time designated by the chairman.
- Chairman or his designee shall, at a minimum, telephone each member and advise them of the reason for the special meeting and the time and place.
- Notice to the public shall comply with §25-41-13 and posted on the door outside the regular meeting room.
- May commence after providing at least 4 hours advance notice.

# QUORUM

- A simple majority of the commission shall constitute a quorum (3)
- Each member has 1 vote
- The act of a majority of the members present will constitute commission action.

# TELEPHONE VOTES

Requirement that official meetings be open to the public at all times may not be avoided by use of telephone polls among members of a public body to conduct official acts; however, recording of final vote by telephone is not prohibited when the vote is reduced to public record and all deliberations prior to the final vote have taken place in accordance with the open meetings act.

# AGENDA

- An agenda shall govern the conduct of business at each commission meeting.
- The commission, in consultation with the executive director, is responsible for establishing the agenda for each regular meeting.
- A tentative agenda containing a listing of items of business to be transacted and copies of documents that will be considered by the commission shall be sent by the executive director to each commission member no later than 7 days prior to each regular meeting.
- Every agenda shall include the item “other business”.

# MINUTES

- The executive director is responsible for ensuring written minutes of regular or special meetings are maintained.
- Must show members present and any final actions.
- Shall be made available for public inspection.
- Any material presented to the commission related to any matter requiring commission approval shall be maintained with the minutes.

# OPEN MEETINGS

- All meetings of the commission are declared to be open meetings and shall be open to the public at all times unless executive session is declared.
- Miss. Code ann. §25-41-1 through §25-41-17 provides the open meetings requirements.
- Hinds Cty. Bd. of Sup'rs v. Common Cause of Mississippi, 551 so. 2d 107, 110 (Miss. 1989)
- Philosophy of the OMA is that *all* deliberations, decisions and business of *all* governmental boards and commission, unless specifically excluded by statute, shall be open to the public.

# OPEN MEETINGS ACT

• No doubt there are occasions when board members would speak more frankly on some matter if only the board members were present, and no doubt there are instances in which a board member would personally prefer to speak only to his colleagues. **Of far greater importance, however, is that all public business be open to the public.** Every member of every public board and commission in this state should always bear in mind that the spirit of the act is that a citizen spectator, including any representative of the press, has just as much right to attend the meeting and see and hear everything that is going on as has any member of the board or commission. [Miss.Code ann. § 25-41-1](#); *Mayor & Aldermen of Vicksburg, supra*; *Board of Trustees v. Miss. Publishers Corp.*

A citizen spectator or news reporter is not a participant. He has no right to intrude or interfere in any manner with the discussion, deliberation or decision-making process. [Miss.Code Ann. §25-41-9](#); [Wood v. Marston, 442 so.2d 934, 941 \(Fla.1983\)](#). But he does have a right **enforceable at law** to be there and see and hear everything.

# EXECUTIVE SESSION

- §25-41-7 prescribes those matters that may be taken up during executive session:
- Personnel matters – including line item in budget which might affect the termination of an employee or employees
- Litigation
- Security personnel, plans or device
- Investigative proceedings regarding allegations of misconduct or violation of law
- Extraordinary emergency posing immediate harm or damage to persons/property within the commission's jurisdiction
- Prospective purchase, sale or leasing of lands
- Location, relocation, expansion of business or industry

Paragraph 5.9



# PROCEDURES FOR ENTERING INTO EXECUTIVE SESSION

- 1) A motion must be made to close the meeting in order to make a determination of the necessity for executive session;
- 2) A majority vote is required to close the meeting;
- 3) The chairman must announce that the meeting is closed to make a determination of the necessity for executive session;
- 4) The **ONLY** matter that can be addressed during closed session is whether or not to go into executive session to discuss a particular subject;
- 5) A motion must be made to enter into executive session;

- 6) A 3/5's majority vote is required in order to go into executive session;
- 7) The chairman or his designee must announce in open meeting that the commission is going into executive session and must state the specific reason for doing so;
- 8) While in executive session, the commission may only discuss the matter for which executive session was declared; and
- 9) The chairman must re-open the meeting at the close of executive session.

# CONDUCT OF PERSONS ATTENDING MEETINGS

- Meetings shall be conducted in an orderly and courteous manner.
- The commission may make rules and regulations for the conduct of persons attending its meetings.

## HEARINGS

From time to time the commission may conduct formal hearings into matters under its purview in accordance with the rules adopted by the commission on public hearings and/or adversarial hearings.

Paragraphs 5.10 & 5.11

# ACCESS TO THE COMMISSION

- The public shall have access to the CMR on matters within the CMR's purview.
- Individuals may contact the CMR in writing by mailing correspondence to the CMR in care of the executive director.
- Persons desiring to present a matter to the CMR at a scheduled meeting shall contact the executive director in advance so that the matter may be placed on the agenda.
- Requests must be in writing and received by the executive director at least 10 days in advance of the CMR meeting.
- The CMR may limit the number of people that may address the commission at each meeting and may limit the time of each presentation.

Paragraph 5.12

## PUBLIC COMMENTS

- Individuals who have not previously submitted a matter to be placed on the agenda may address the commission during a scheduled meeting by completing a public comments sign-in sheet prior to meeting.
- Anyone who has submitted a public comments sheet regarding a matter that is on the agenda will be called upon the discussion regarding that agenda item.
- Those who have submitted a public comments sheet regarding a matter that is not on the agenda will be called upon during the public comments segment of the meeting.

- The chairman will announce before the public comments segment the length of time each individual will be allowed.
- The time limit is set based upon the number of individuals requesting time and the length of the regular agenda.
- Individuals may not allot any unused time to another individual.
- The chairman may make any additional decisions, orders and/or rulings regarding appropriate procedure which in his judgment are necessary to maintain order and provide a fair and efficient meeting.

# RULES OF ORDER

- Commission meetings shall be guided by parliamentary procedure in **general** conformity with “Roberts Rules of Order”.
- Failure to strictly comply with parliamentary procedure shall **not** be cause for reversal of any commission action.
- **Only commission members** may raise a point of order and must do so **contemporaneously** with the objectional action.

# COMMISSION/EXECUTIVE DIRECTOR RELATIONSHIP

The flow of authority for the management of the department shall pass through the executive director and the executive director shall be the connecting link between the commission and the department.

## THE EXECUTIVE DIRECTOR SHALL:

- Submit all policies formulated by the department to the commission for their review and keep the commission informed of plans and programs;
- Be responsible for carrying out all policies adopted by the commission;
- Exercise judgment in executing his duties and the commission policies;
- Faithfully perform his duties and implement the commission policies





## ○ THE COMMISSION:

- Coordinate requests for assistance from department personnel through the executive director, the deputy director, or if they are not available, directly through the appropriate office director;
- Acknowledges the executive director must exercise judgment and gives the executive director latitude of judgment and discretion that is required; and
- Offers guidance to the executive director & evaluates the director's performance.

# EXECUTIVE DIRECTOR FUNCTIONS

- §49-15-305 defines the general authority of the executive director.
- Supervise and direct all administrative and technical activities;
- Select qualified personnel required for the operation of the agency;
- Coordinate all studies in the state with the supply, development, use and conservation of marine resources;
- Prepare and submit a full report of the department's work and recommendations to be submitted to the legislature and governor each year and at such times as may be required by the legislature or governor;

- Establish cooperative agreements with federal or state agencies; public or private institutions or person, corporation or association for studies regarding marine resources, in an amount within that appropriated for such purposes by the legislature;
- Enforce all regulations and policies adopted by the commission and all licenses and permits issued by the commission;
- Exercise all necessary powers not specifically conferred on the commission;
- Manage all fishing seasons and resources authorized by the commission or regulation; and
- Issue orders and public notices on behalf of the commission to facilitate actions taken by the commission.

# PROCEDURES FOR ENACTING REGULATIONS

Mississippi Administrative Procedures Act §25-43-1.101 *et seq.*

## THE PROCESS

- NOTICE OF INTENT – presented to the Commission
- COMMENT PERIOD - 25 DAYS
- FINAL ADOPTION – upon Commission vote
- FILED WITH SECRETARY OF STATE'S OFFICE
- NEW RULE EFFECTIVE 30 DAYS AFTER FILING
- PETITION FOR REVIEW

The same procedures are followed for repeal of an existing regulation

# NOTICE OF INTENT

- PROPOSED changes presented to the commission. **No proposed changes shall be acted upon by the CMR until the proposal is reduced to writing.**
- Changes to existing regulations must be submitted to the CMR **in advance and in context** so the CMR can fully evaluate the proposed amendment.
- The foregoing requirements may be waived if three-fifths of the members find a compelling need to proceed immediately.
- If the CMR votes to adopt the notice of intent, the NOI is filed with the secretary of state's office along with an administrative procedures filing notice designating a contact person for comments.

# COMMENT PERIOD

- After the notice of intent is filed, there must be a minimum 25 day comment period. (25-43-3.104)
- A public hearing is conducted if required by statute or requested by the commission or the executive director.
- Title 22 part 15 sets out the procedures for offering comments or contesting the proposed rules.

# FINAL ADOPTION

- After the comment period has ended, the Department reports to the Commission on the proposed rule and recommends any changes to the proposed amendment.
- The Commission shall vote on whether to adopt the rule with or without changes.
- If “substantive” changes are recommended, the regulation must go back out for public comment.
- Upon Commission approval, the regulation is filed with the Secretary of State’s Office.
- The new regulation becomes effective on the date specified by the Commission but no less than 30 days from the date the final notice is filed.

## EMERGENCY RULES AND REGULATIONS

- An emergency rule or regulation may become effective immediately upon filing with the secretary of state if the commission finds that immediate adoption is necessary because of **imminent peril to the public health, safety or welfare.**

## PETITIONS FOR REVIEW

- Any person opposed to the rule or regulation may file a petition for review before the commission within 14 days after the date of final adoption.
- Pursuant to Title 22 Part 15, the person opposing the rule must have previously objected to the proposed rule by stating their objection at a public hearing or submitting a written objection.

Paragraphs 8.6 & 8.7



# COMMISSION ACTIONS ON PETITIONS FOR REVIEW

- The commission may:
- Make a final disposition by either granting or denying the requested action without further argument;
- Request a response from the appropriate division of the department prior to making a final disposition;
- Set the matter for an evidentiary hearing; or
- Make such further order as deemed appropriate under the circumstances.

Paragraph 8.7

# POLICIES vs DIRECTIVES

## POLICIES:

- General principles to guide the executive director and department in the management of their duties and the public.
- Not time limited.
- Guidance to the department regarding the commission's expectations on MDMR operations.
- Shall not be used as a substitute for enacting statutes and regulations that affect the public.
- Formally adopted by the commission and reduced to writing.
- Requires 2/3 vote of Commissioners in attendance for passage.
- Effective immediately upon adoption by the commission at a regularly scheduled meeting.
- Maintained, compiled and indexed by the executive director in a handbook of commission policies.

Section 9.0

# DIRECTIVES

- Statements or requests issued by the commission to the executive director and the department
- Time-limited – expire with the completion of the described task or duty
- Tracked by the executive director and reported to the commission until completion
- Effective upon adoption by the commission at regularly scheduled meeting
- Requires majority vote of commissioners in attendance for passage

# COMMISSION HANDBOOK AMENDMENTS

- Handbook serves as the working bylaws of the commission
- Should be amended only when there is a compelling need
- Only the commission can amend the handbook
- Proposal to amend must be submitted to the commission at a regularly scheduled monthly meeting
- The proposed amendment shall not be considered for final action by the commission until the next regularly scheduled monthly meeting
- 3/5 of the full board must vote in favor of the proposal
- Amendments shall be effective the following month after final action



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# Open Meetings Act

§25-41-1 *et seq.*

# §25-41-1 Legislative Declaration.

- It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the *deliberations and decisions that go into the making of public policy*, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is *public business and shall be conducted at open meetings except as otherwise provided herein.*



# Hinds Cty. Bd. Of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107 (Miss. 1989)

- Every member of every public board and commission in this state should always bear in mind that the spirit of the Act is that a citizen spectator, including any representative of the press, has just as much right to attend the meeting and see and hear everything that is going on as has any member of the board or commission.
- Enforceable at law!!!

# THE BASICS

- Public meetings must be open to the public
- Executive session must follow specific procedure and only for 14 reasons outlined in § 25-41-7(4)

Note: Executive sessions are never required by the act

- Notice of meeting must be given, and minutes must be kept
- Social gatherings are not meetings, UNLESS official business is discussed.



# Miss. Code Ann. § 25-41-7(4)

- 1. Business related to personnel, the character, professional competence, and physical or mental health of a person.
- 2. Strategy sessions regarding litigation, “when an open meeting would have a detrimental effect on the litigating position” of the board
- 3. Business as to security personnel, plans or devices.
- 4. Where the board is involved in investigative proceedings regarding misconduct or illegality.
- 5. Extraordinary emergency posing immediate or irrevocable harm to persons or property.
- 6. Proposed sale, purchase or leasing of lands.
- 7. Industrial or business prospects as to location, relocation or expansion.
- 8. Employment and termination of employees, including deletion of jobs from budget. But final budgetary adoption must be in Open Meeting.

# ENFORCEMENT

- Complaint filed with Mississippi Ethics Commission
- Public body can respond to a complaint
- May dismiss complaint, make preliminary finding or hold hearing
- May order public body to comply with law
- May impose a \$500 fine for first offense and \$1,000 for subsequent offense

# DEFINITIONS

- MEETING is any gathering of a quorum, regardless of the medium (whether in person or by phone, email, text or smoke signal) to discuss a matter under the authority of the public body.
- PUBLIC BODY = Commission on Marine Resources

## Columbus City Council v. The Commercial Dispatch

- City of Columbus held 4 pairs of prearranged, nonsocial, sub-quorum gatherings to discuss city business over the course of 2 months.
- The subjects discussed did not fall under any of the statutory exceptions.
- No notice was given to the public. Newspaper reporter requested to attend. Mayor refused.
- MS Supreme Court held that the facts of this case illustrated the City's INTENT TO CIRCUMVENT OR AVOID the requirements of the Open Meetings Act.



# Significance of the Columbus Case

- Even though the ruling is “fact-specific”, going forward:
- Sub-quorum meetings cannot be used to avoid the OMA.
- Discussions outside of the public meeting should NOT be related to public business.
- Once a matter of public business has been discussed between enough board members to constitute a quorum, the OMA has likely been violated. (No phone or email polls)
- Staff members may provide information but may not be used to poll the other Commissioners.



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# CMR Portal Review

Brian Sherwood, Director - Office of Information Technology

- New DMR Email addresses
- CMR Portal walkthrough
- Mobile access

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