

By: Senator(s) Gollott

To: Ports and Marine Resources

SENATE BILL NO. 2945

1 AN ACT TO BRING FORWARD SECTIONS 29-1-107 AND 29-15-9,  
2 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF AMENDING TO ENSURE  
3 THAT POST-KATRINA USE OF PUBLIC TRUST TIDELANDS WILL INCLUDE  
4 COMMERCIAL SEAFOOD INDUSTRY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 29-1-107, Mississippi Code of 1972,  
7 brought forward as follows:

8 29-1-107. (1) The Secretary of State with the approval of  
9 the Governor shall, as far as practicable, rent or lease all lands  
10 belonging to the state, except as otherwise provided by law for a  
11 period of not exceeding one (1) year, and account for the rents  
12 therefrom in the same manner as money received from the sale of  
13 state lands, provided that no state land shall be rented or leased  
14 to individuals, corporations, partnerships, or association of  
15 persons for hunting or fishing purposes. Property belonging to  
16 the state in municipalities, even though it may have been  
17 subdivided into lots, blocks, divisions, or otherwise escheated or  
18 was sold to the state by such description, may likewise be leased  
19 or rented by the Secretary of State under the terms provided above  
20 for other state lands, and the rents accounted for in the same  
21 manner. The state shall have all the liens, rights and remedies  
22 accorded to landlords in Sections 89-7-1 through 89-7-125; said  
23 leases and rental contracts shall automatically terminate on the  
24 date provided in said leases or contracts.

25 (2) (a) The Secretary of State, with the approval of the  
26 Governor, may rent or lease surface lands, tidelands or submerged  
27 lands owned or controlled by the State of Mississippi lying in or  
28 adjacent to the Mississippi Sound or Gulf of Mexico or streams

29 emptying therein, for a period not exceeding forty (40) years for  
30 rental payable to the state annually. However, the term of any  
31 lease of state public trust tidelands to a person possessing a  
32 license under the Mississippi Gaming Control Act shall be governed  
33 by the provisions of subsection (4) of this section.

34 (b) The lessee under such agreement may construct such  
35 necessary items for marking channels, docking, wharfing, mooring  
36 or fleeting vessels which shall be in aid of navigation and not  
37 obstructions thereto.

38 (c) A lessee of record may be given the option to renew  
39 for an additional period not to exceed twenty-five (25) years;  
40 however, the term of a renewal for a lease of state public trust  
41 tidelands to a person possessing a gaming license under the  
42 Mississippi Gaming Control Act shall be governed by the provisions  
43 of subsection (4) of this section. The holder of a lease of  
44 Public Trust Tidelands, at the expiration thereof, shall have a  
45 prior right, exclusive of all other persons, to re-lease as may be  
46 agreed upon between the holder of the lease and the Secretary of  
47 State.

48 (d) Leases shall provide for review and rent  
49 adjustments at each fifth anniversary tied either to the All Urban  
50 Consumer Price Index-All Items (CPI) or to an appraisal which  
51 deducts the value of any improvements by the lessee which  
52 substantially enhance the value of the land. In the case where  
53 the initial rental was based on the value set by the ad valorem  
54 tax rolls, then the rent review and adjustment clause shall be  
55 likewise based on the value set by such tax rolls. In the event  
56 that the lessor and lessee cannot agree on a rental amount, the  
57 lease may be cancelled at the option of the lessor. The lessee  
58 shall, within thirty (30) days after execution of a sublease or  
59 assignment, file a copy thereof, including the total consideration  
60 therefor, with the Secretary of State. This paragraph shall not  
61 apply to a lease of state public trust tidelands or submerged

62 lands to a person possessing a gaming license under the  
63 Mississippi Gaming Control Act who operates a gaming establishment  
64 on such tidelands.

65 (3) Provided, however, the current occupants of public trust  
66 tidelands that were developed after the determinable mean  
67 high-water line nearest the effective date of the Coastal Wetlands  
68 Protection Law shall pay an annual rental based on the fair market  
69 value as determined by the assessed valuation of the property.  
70 The holder of a lease of Public Trust Tidelands, at the expiration  
71 thereof, shall have a prior right, exclusive of all other persons,  
72 to re-lease as may be agreed upon between the holder of the lease  
73 and the Secretary of State.

74 (4) (a) This section shall apply to any person possessing a  
75 license under the Mississippi Gaming Control Act who operates a  
76 gaming establishment in any of the three (3) most southern  
77 counties of the state.

78 (b) The following shall apply to all leases of state  
79 public trust tidelands executed by such a licensee:

80 (i) Every lease executed after August 29, 2005,  
81 shall be for a period of thirty (30) years for rental payable to  
82 the state annually.

83 (ii) By operation of this section, any lease  
84 executed before August 29, 2005, may, at the option of the lessee,  
85 either remain at the term stated in the original execution of the  
86 lease or be converted to a thirty-year term lease, beginning on  
87 such date after August 29, 2005, that the lessee either resumes or  
88 begins permanent gaming activities as approved by the Mississippi  
89 Gaming Commission, and the lessee shall be required to comply with  
90 all other provisions of the lease. Should the lessee choose to  
91 operate in a structure that is not on state public trust tidelands  
92 and that is on property contiguous to tidelands leased by the  
93 lessee, the lessee shall be required to comply with all other  
94 provisions of the lease and shall be exempt from the assessment

95 provided for in paragraph (c) of this subsection. Easements for  
96 and rights-of-way for public streets and highways shall not be  
97 construed to interrupt the contiguous nature of a parcel of  
98 property. In the event that a lessee does not elect either to  
99 remain bound by the original term of the lease or to convert the  
100 lease to a thirty-year term, the Secretary of State may lease the  
101 state public trust tidelands that are the subject of the lease to  
102 any other person or entity.

103 (iii) Leases shall provide for review and rent  
104 adjustments at each annual anniversary tied to the All Urban  
105 Consumer Price Index-All Items (CPI). In the case of the renewal  
106 of a lease after the expiration of the original thirty-year term  
107 under this subsection, each renewal shall be for a term of thirty  
108 (30) years. The base rate to which the CPI shall apply for  
109 purposes of executing the subsequent lease shall be negotiated by  
110 the lessee with the Secretary of State.

111 (c) (i) Except as otherwise provided in this  
112 paragraph, any person possessing a license under the Mississippi  
113 Gaming Control Act who does not lease public trust tidelands from  
114 the state or any of its political subdivisions, and who operates a  
115 gaming establishment in any of the three (3) most southern  
116 counties of the state, shall pay an annual in-lieu tidelands  
117 assessment to the Public Trust Tidelands Assessments Fund  
118 (hereinafter referred to as "fund") created in Section 29-15-10,  
119 in the amount and manner provided for in this paragraph.

120 For calendar year 2006, the annual in-lieu tidelands  
121 assessment paid by the licensee to the fund shall be:

122 1. Four Hundred Thousand Dollars  
123 (\$400,000.00), if the capital investment in the part of the  
124 structure in which licensed gaming activities are conducted is  
125 Fifty Million Dollars (\$50,000,000.00) or less.

126 2. Four Hundred Fifty Thousand Dollars  
127 (\$450,000.00), if the capital investment in the part of the

128 structure in which licensed gaming activities are conducted is  
129 equal to or more than Fifty Million Dollars (\$50,000,000.00) but  
130 less than Sixty Million Dollars (\$60,000,000.00).

131                   3. Five Hundred Thousand Dollars  
132 (\$500,000.00), if the capital investment in the part of the  
133 structure in which licensed gaming activities are conducted is  
134 equal to or more than Sixty Million Dollars (\$60,000,000.00) but  
135 less than Seventy-five Million Dollars (\$75,000,000.00).

136                   4. Six Hundred Thousand Dollars  
137 (\$600,000.00), if the capital investment in the part of the  
138 structure in which licensed gaming activities are conducted is  
139 equal to or more than Seventy-five Million Dollars  
140 (\$75,000,000.00) but less than One Hundred Million Dollars  
141 (\$100,000,000.00).

142                   5. Seven Hundred Thousand Dollars  
143 (\$700,000.00), if the capital investment in the part of the  
144 structure in which licensed gaming activities are conducted is  
145 equal to or more than One Hundred Million Dollars  
146 (\$100,000,000.00) but less than One Hundred Twenty-five Million  
147 Dollars (\$125,000,000.00).

148                   6. Seven Hundred Fifty Thousand Dollars  
149 (\$750,000.00), if the capital investment in the part of the  
150 structure in which licensed gaming activities are conducted is  
151 equal to or more than One Hundred Twenty-five Million Dollars  
152 (\$125,000,000.00).

153           For each calendar year thereafter, the Secretary of State  
154 shall review and adjust the value of the capital investment and  
155 the annual in-lieu tidelands assessment due. Such review and  
156 adjustment shall be tied to the CPI.

157                   (ii) This paragraph shall not apply to a gaming  
158 licensee if the licensee conducts gaming in a structure that is  
159 located on property that is leased from the Mississippi State Port  
160 at Gulfport or any political subdivision of the state, or to a

161 licensee who conducts gaming in a structure that is located on  
162 property that is leased to the licensee jointly by the State of  
163 Mississippi and the City of Biloxi; however, with regard to  
164 property owned by a political subdivision of the state, this  
165 exception shall only apply to property owned by the political  
166 subdivision on August 29, 2005, if legal gaming could have been  
167 conducted on such property on that date.

168 (iii) This paragraph shall not apply to a gaming  
169 licensee if the licensee conducts gaming in a structure that is  
170 located on property that is not leased from the State of  
171 Mississippi and/or a political subdivision of the State of  
172 Mississippi and is not on state public trust tidelands, and if the  
173 licensee conducted gaming on that property before August 29, 2005.

174 **SECTION 2.** Section 29-15-9, Mississippi Code of 1972,  
175 brought forward as follows:

176 29-15-9. (1) There is created in the State Treasury a  
177 special fund to be known as the "Public Trust Tidelands Fund."  
178 The fund shall be administered by the Secretary of State as  
179 trustee.

180 (2) Any funds derived from lease rentals of tidelands and  
181 submerged lands, except those funds derived from mineral leases,  
182 or funds previously specifically designated to be applied to other  
183 agencies, shall be transferred to the special fund. However,  
184 funds derived from lease rentals may be used to cover the  
185 administrative cost incurred by the Secretary of State. Any  
186 remaining funds derived from lease rentals shall be disbursed pro  
187 rata to the local taxing authorities for the replacement of lost  
188 ad valorem taxes, if any. Then, any remaining funds shall be  
189 disbursed to the commission for new and extra programs of  
190 tidelands management, such as conservation, reclamation,  
191 preservation, acquisition, education or the enhancement of public  
192 access to the public trust tidelands or public improvement  
193 projects as they relate to those lands.

194           (3) Any funds that are appropriated as separate line items  
195 in an appropriation bill for tideland programs or projects  
196 authorized under this section for political subdivisions or other  
197 agencies shall be disbursed as provided in this subsection.

198           (a) The Department of Marine Resources shall make  
199 progress payments in installments based on the work completed and  
200 material used in the performance of a tidelands project only after  
201 receiving written verification from the political subdivision or  
202 agency. The political subdivision or agency shall submit  
203 verification of the work completed or materials in such detail and  
204 form that the department may require.

205           (b) The Department of Marine Resources shall make funds  
206 available for the purpose of using such funds as a match or  
207 leverage for federal or other funds that are available for the  
208 designated tidelands project.

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