

By: Senator(s) Gollott, Hewes, Woodfield

To: Local and Private

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3076

1 AN ACT TO AMEND CHAPTER 903, LOCAL AND PRIVATE LAWS OF 1994,
2 AS AMENDED BY CHAPTER 916, LOCAL AND PRIVATE LAWS TO 1997, TO
3 INCREASE THE PER DIEM FOR MEMBERS OF THE D'IBERVILLE PORT
4 COMMISSION; TO LIMIT THE NUMBER OF DAYS FOR WHICH SUCH
5 COMMISSIONERS MAY RECEIVE PER DIEM; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Chapter 903, Local and Private Laws of 1994, as
8 amended by Chapter 916, Local and Private Laws of 1997, is amended
9 as follows:

10 Section 1. (1) The D'Iberville Port Commission, as
11 hereinafter created, is given the authority to engage in works of
12 internal improvement, or promoting, developing, constructing,
13 maintaining and operating harbors or seaports within the state and
14 its jurisdiction, and may acquire, purchase, install, rent, lease,
15 mortgage and/or otherwise encumber, construct, own, hold,
16 maintain, equip, use, control and operate at seaports or harbors,
17 wharves, piers, docks, warehouses, cold storage facilities, water
18 and rail terminals, airplane landing fields and strips, and other
19 structures and facilities, needful for the convenient use of the
20 same in the aid of commerce and navigation, including the dredging
21 of channels and approaches to the facilities, and is authorized to
22 fill in and reclaim bottomlands where incidental and necessary to
23 the foregoing development.

24 (2) Such port commission, in connection with the exercise of
25 the foregoing works of improvement and development, shall have the
26 power and authority as an adjunct to any such work of improvement
27 or development to erect or construct such bridges, causeways or

28 structures as may be required for access to and from the harbors
29 or facilities provided as aforesaid by the port commission,
30 whether the same be within or without the limits of the City of
31 D'Iberville.

32 (3) The port commission shall have the right and authority
33 to procure, by gift, grant, purchase, or by the exercise of
34 eminent domain, and for the public purposes and uses herein
35 provided for, such land or interest therein as may be required for
36 the purposes of this act, and regardless of whether the land be
37 within or without the limits of the City of D'Iberville.

38 (4) The port commission, in the exercise of the powers
39 granted hereunder, shall have the right to provide any of the
40 aforesaid facilities alone or in collaboration and in conjunction
41 with any other public bodies, entities or commissions, as may now
42 or hereafter be established by law.

43 (5) The port commission shall have specifically the
44 authority to provide, among other harbor facilities, small craft
45 and pleasure craft harbors and facilities needed therefor,
46 including park and recreational facilities as an adjunct thereto,
47 and in order to develop and promote tourist and recreational trade
48 in the port.

49 (6) The port commission shall have the further power and
50 authority in carrying out the provisions of this act, to employ
51 engineers, attorneys and such employees as may be necessary in
52 carrying out the provisions of this act, from time to time, and
53 for the purpose of operating the facilities herein provided for,
54 and shall be authorized to prescribe reasonable compensation in
55 connection with such employment.

56 Section 2. The governing authorities of the City of
57 D'Iberville shall appoint a port commission composed of seven (7)
58 members, all of whom shall be qualified electors of the
59 municipality. One (1) shall be appointed from each ward of the
60 municipality, one (1) shall be appointed by the councilman at
61 large from the municipality at large and two (2) shall be
62 appointed by the mayor from the municipality at large. Of the
63 initial appointees, two (2) shall be appointed for a term of one
64 (1) year, two (2) for a term of two (2) years, one (1) for a term

65 of three (3) years, one (1) for a term of (4) years and one (1)
66 for a term of five (5) years; thereafter, all appointments shall
67 be for terms of five (5) years. From and after April 8, 1997, the
68 port commission shall be reconstituted as follows: The commission
69 shall be composed of six (6) members, all of whom shall be
70 qualified electors of the municipality. The governing authorities
71 of the City of D'Iberville shall appoint one (1) for a term of one
72 (1) year, one (1) for a term of two (2) years and one (1) for a
73 term of five (5) years; and the Board of Supervisors of Harrison
74 County shall appoint one (1) for a term of one (1) year, one (1)
75 for a term of two (2) years and one (1) for a term of five (5)
76 years. All appointments following the initial appointments shall
77 be for terms of five (5) years each. All appointees shall be
78 residents of the City of D'Iberville. Vacancies shall be filed by
79 the appointing authority for the unexpired term.

80 The port commission appointed pursuant to this system shall
81 have jurisdiction over the port, terminals, harbors and passes
82 leading thereto, and all vessels, boats and wharves, common
83 carriers and public utilities therein using the port.

84 The port commissioners may be paid * * * per diem
85 compensation in the amount of Seventy Dollars (\$70.00) for each
86 day or fraction of a day spent in the discharge of official
87 duties; provided, however, that such port commissioners may not
88 receive per diem for more than two (2) days in any one (1) month.

89 The port commission shall meet at a regular place to be
90 designated by the port commission for organization as a port
91 commission, after giving at least ten (10) days' notice of the
92 time and place of such meeting by publication in a newspaper
93 published or having general circulation in the City of
94 D'Iberville. The commission shall elect a president and
95 secretary, who shall be members of the commission.

96 The commission shall keep a minute book in which shall be
97 recorded all of its acts, orders, rules and regulations. It shall

98 be the duty of the commission to adopt rules and regulations not
99 inconsistent with law to govern its official acts. It shall be
100 the duty of the commission to make and publish all needful rules
101 and regulations to govern the harbor, docks and passes within its
102 jurisdiction, and to fix tariffs, fees, fines, penalties and
103 forfeitures for the violations of the rules and regulations of the
104 commission. The commission shall have the power to fix and
105 determine all port and terminal charges, and it may enforce the
106 collection thereof through any court of competent jurisdiction in
107 this state. This section shall not apply to public utilities nor
108 to railroad terminal charges covered by or carried in approved
109 tariffs authorized by the Interstate Commerce Commission nor to
110 lawful railroad operation and activities.

111 It shall be the duty of the commission to employ such help,
112 including a port director, secretary and such other help, as will
113 be necessary to carry on the business and work of such commission.

114 The port commissioners shall see that all port employees, such as
115 harbor master, pilots and any and all other necessary employees
116 for the operation of the port, perform any and all such duties as
117 required for the operation of the port, at salaries to be
118 determined by the port commission.

119 Section 3. All improvements and facilities constructed
120 pursuant to this act shall be maintained and operated under the
121 control of the port commission. The port commission shall,
122 subject to and in accordance with any agreement or agreements as
123 may be made by the City of D'Iberville with the purchaser or
124 purchasers of bonds or other obligations issued pursuant to this
125 act, prescribe, levy and collect all rents, fees, tolls, revenues
126 and/or other charges in connection with the use and occupancy of
127 the aforesaid improvements and facilities, and shall pay over all
128 net revenues derived from the operation of such improvements and
129 facilities to any trustee, or successor thereto, established as
130 hereinafter provided in this act. The net revenues shall be

deemed to be such as may be defined in any agreement or agreements entered into between the municipality and the purchaser or purchasers of any bonds or other obligations issued pursuant to this act. The port commission shall make an annual report to the municipality.

Section 4. The City of D'Iberville may, upon the adoption of a resolution to such effect, issue bonds or other obligations for any or all of the purposes provided in this act. The books of account and other sources of information pertaining to duties under the provisions of this act, or any port commission, municipality and/or county affected by this act, shall be and remain at all times open to inspection and subject to audit by the holder or holders of any bonds or other obligations issued pursuant to this act.

Section 5. Bonds or other obligations issued by the City of D'Iberville pursuant to this act shall bear such date or dates, mature at such time or times, not exceeding twenty (20) years from their respective dates, be in such denomination, be in such form, either coupon or registered, carry such registration privileges, be executed in such a manner, be payable in such medium of payment, at such place or places, and be subject to such terms of prior redemption, with or without premium, as such resolution or resolutions may provide. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1)

coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate on such bonds. Each interest rate specified in any bid must be in multiples of one-eighth of one percent ($1/8$ of 1%) or in multiples of one-tenth of one percent ($1/10$ of 1%). Such bonds shall be executed by the manual or facsimile signature of the mayor and clerk of the municipality, with the seal of the municipality affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the resolution.

The coupons may bear only the facsimile signatures of such mayor and clerk. Such bonds or other obligations may be sold at public or private sale for such price or prices as the governing body of the municipality shall determine, but in no case to exceed the rate of interest hereinbefore provided. No bonds shall be issued and sold under the provisions of this act for less than par and accrued interest.

The municipality shall have power, out of any funds available, to purchase any bonds or other obligations issued by it pursuant to this act, and all bonds or other obligations so purchased shall be cancelled, and no bonds or other obligations shall be issued in lieu thereof. In anticipation of the issuance of the definitive bonds authorized by this act, the municipality may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements, relating to their discharge by payment or by the delivery of the definitive bonds, as the municipality, by resolution of its governing body, may determine. Any bonds, interim certificates or other obligations issued pursuant to this act shall be fully negotiable within the meaning and for all the

197 purposes of the Mississippi Uniform Commercial Code, and may be
198 validated as provided by statute.

199 Section 6. The proceeds from the sale of any bonds or other
200 obligations issued pursuant to this act shall be placed to the
201 credit of the port commission in a federally insured bank or banks
202 and may be withdrawn therefrom in accordance with any agreement
203 or agreements entered into between the municipality and the
204 purchaser or purchasers of such bonds or other obligations and
205 shall be used for no other purpose than the purpose of the port
206 commission. Any officer or other person diverting or assisting to
207 divert any such funds to any other purpose or purposes than the
208 purpose or purposes originally set forth in the resolution of the
209 governing body of the municipality shall be guilty of a felony and
210 punishable accordingly, and shall be liable both personally and on
211 official bonds for such diversion.

212 Section 7. The City of D'Iberville may execute and deliver a
213 mortgage or deed of trust, in such form, with such validity and
214 with such remedies as at present authorized under the laws of the
215 State of Mississippi, on any or all properties, improvements and
216 facilities, the acquisition, construction, maintenance and/or
217 operation of which are provided for by this act. Such resolution
218 or resolutions of the municipality shall prescribe the provisions,
219 covenants and conditions of any such mortgage or deed of trust.
220 Such provisions, covenants and conditions, if not self-executing,
221 may be enforced by appropriate proceedings, either in law or in
222 equity.

223 Section 8. The bonds or other obligations issued by the City
224 of D'Iberville pursuant to this act shall not constitute a debt
225 within the meaning of any statutory limitation as to the amount of
226 debt which may be incurred by the municipality, nor shall such
227 bonds or other obligations be payable out of any funds other than
228 the revenue collected or collectible from the use of docks,
229 harbors and facilities of whatsoever nature, and out of the

230 receipts of the one (1) mill ad valorem tax hereinafter
231 authorized.

232 Section 9. Bonds or other obligations issued pursuant to
233 this act and any interest thereon or income therefrom shall be
234 exempt from all taxation, except gift, transfer and inheritance
235 taxes, insofar as may be within the power of the State of
236 Mississippi so to provide.

237 Section 10. In connection with the issuance of bonds or
238 other obligations by the City of D'Iberville pursuant to this act,
239 or in order to secure the payment of such bonds or other
240 obligations, the municipality shall have power:

241 (a) To accept grants from the United States of America
242 and agencies, instrumentalities or corporations thereof designated
243 or created to make grants or loans (hereinafter termed "federal
244 agency") pursuant to any act of the Congress of the United States,
245 for or in aid of work, development or improvement authorized by
246 this act.

247 (b) To make such contracts and execute such instruments
248 containing such provisions, covenants and conditions as in the
249 discretion of the governing authorities of the municipality may be
250 necessary, proper or advisable for the purpose of obtaining or
251 securing grants, loans or other financial assistance from any
252 federal agency; to make such further, different or additional
253 contracts and execute all instruments necessary or convenient in
254 or for the furtherance of any work, development or improvement,
255 including but not limited to all property, real and personal,
256 appurtenant thereto or connected therewith and the existing work,
257 development or improvement, if any, to which the work, development
258 or improvement authorized by this act is an extension, addition,
259 betterment or embellishment (hereinafter termed "work, development
260 or improvement") to carry out and perform the terms and conditions
261 of any such contract or instrument.

262 (c) To pledge all or any part of the fees, rents,

tolls, revenues or other charges received or receivable by the port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(d) To covenant against the pledging of all or any part of the fees, rents, tolls, revenues or other charges received or receivable by the port commission from any work, development or improvement to which its right then exists or the right to which may thereafter come into existence.

(e) To covenant against the encumbering of all or any part of any work, development or improvement or against permitting or suffering any lien thereon.

(f) To covenant as to what other or additional debt may be incurred by the municipality.

(g) To provide for the preparation, specifications, terms, form, registration, extension, execution and authentication of any bonds or other obligations, issued pursuant to this act.

(h) To provide for the replacement of lost, destroyed or mutilated bonds or other obligations issued pursuant to this act.

(i) To covenant as to the fees, rents, revenues or tolls to be charged, the amount to be raised each year or other period of time and as to the use and disbursement to be made thereof.

(j) To covenant to set aside or to pay over reserves and sinking funds and as to the disposal thereof.

(k) To redeem prior to maturity, with or without premium, bonds or other obligations issued pursuant to this act and to covenant for their prior redemption and to provide the terms and conditions thereof.

(l) To covenant against extending the time for the payment of the interest on or principal of the bonds or other obligations issued pursuant to this act directly or indirectly by

296 any means or in any manner.

297 (m) To covenant as to books of account of the port
298 commission and as to the inspection and audit thereof and as to
299 the accounting methods.

300 (n) To covenant as to the rights, liabilities, powers
301 and duties arising upon the breach by the municipality of any
302 covenant, condition or obligation assumed pursuant to this act.

303 (o) To make such covenants and do any and all such acts and
304 things as may be necessary, convenient or desirable in order to
305 secure any bonds or other obligations issued pursuant to this act,
306 or in the absolute discretion of the governing authorities of the
307 municipality, in order to make such bonds or other obligations
308 more marketable, notwithstanding that such covenants, acts or
309 things may not be enumerated herein or expressly authorized
310 herein; it being the intention hereby to give the governing
311 authorities of the municipality issuing bonds or other obligations
312 pursuant to this act the power to do all things in the issuance of
313 such bonds or other obligations and for their execution that may
314 not be inconsistent with the Constitution of the State of
315 Mississippi.

316 Section 11. The City of D'Iberville shall, so long as any
317 bonds or other obligations issued pursuant to this act remain
318 outstanding and unpaid, by resolution or resolutions duly adopted,
319 authorize and appoint a trustee, satisfactory to the purchaser or
320 purchasers of any bonds or other obligations issued pursuant to
321 this act, or any successor thereto, with the following powers and
322 duties:

323 (a) Such trustee shall receive and receipt for all
324 monies collected or to be collected as receipts from the ad
325 valorem tax hereinafter authorized;

326 (b) Such trustee shall receive and receipt for all
327 monies paid or to be paid to it constituting the net revenues
328 derived from the operation of the improvements and facilities

329 authorized by this act;

330 (c) Such trustee shall deposit all monies received or
331 to be received, in a special account or accounts in a federally
332 insured bank or banks with such provisions for security therefor
333 as may be incorporated in any agreement or agreements entered into
334 between the municipality and the purchaser or purchasers of any
335 such bonds or other obligations;

336 (d) Such trustee shall use and apply all such monies so
337 received to the payment of principal of and interest on any bonds
338 or other obligations issued by the municipality pursuant to this
339 act, as the same becomes due, and shall use and apply any surplus
340 remaining after such payment or payments for the prior redemption,
341 with or without premium, of bonds or other obligations issued by
342 the municipality pursuant to this act, or in accordance with the
343 provisions of any agreement or agreements as may be made between
344 the municipality and the purchaser or purchasers of such bonds or
345 other obligations;

346 (e) Such trustee, shall have and be vested with all
347 rights, powers and duties, in addition to the foregoing, as may be
348 provided for in any agreement or agreements between the
349 municipality issuing bonds or other obligations pursuant to this
350 act and the purchaser or purchasers of such bonds or other
351 obligations;

352 (f) Such trustee shall, by an instrument in writing,
353 accept such trust and shall file the written acceptance of such
354 trust with the clerk of the municipality;

355 (g) If such trustee shall fail, neglect or refuse to
356 perform any of the duties herein imposed or that may be imposed by
357 reason of any of the provisions of any agreement or agreements as
358 aforesaid, such trustee, or any successor thereto, shall, on the
359 written request of twenty percent (20%) or more in aggregate
360 principal amount of the holder or holders of bonds or other
361 obligations issued pursuant to this act, be removed, by resolution

duly adopted by the municipality; and in such event, it shall be the duty of any such trustee so removed to effectuate a valid transfer of all monies then in the possession or under the control of such trustee so removed to a duly appointed successor; and a failure on the part of such trustee so removed to do so shall constitute an embezzlement of such monies and shall be punishable accordingly;

(h) In the event any such trustee so appointed, or any successor thereto, shall be removed as hereinabove provided, it shall be the duty of the municipality, immediately by resolution duly adopted to appoint a trustee as successor thereto, who is satisfactory to such holder or holders of twenty percent (20%) or more in aggregate principal amount of bonds or other obligations issued pursuant to this act.

Section 12. (1) The governing authorities of the City of D'Iberville are hereby authorized and empowered, in their discretion, to annually levy a tax in an amount not to exceed one (1) mill upon all taxable property within the municipality. The avails of such tax shall be paid to the trustee appointed pursuant to Section 11 of this act; or, if there is no such trustee, the avails shall be paid to the Port Commission which may expend such funds in the performance of the duties imposed upon the commission by this act.

(2) The governing authorities of the municipality are also authorized and empowered, in their discretion, to annually contribute to a trustee appointed pursuant to Section 11 of this act, and to the Port Commission, any monies they deem appropriate out of any available funds in the municipal general fund.

SECTION 2. This act shall take effect and be in force from and after its passage.