

By: Senator(s) Gollott, Hewes, Woodfield

To: Local and Private

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; AND FOR RELATED PURPOSES.

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

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

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

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

or facilities provided as aforesaid by the port commission, whether the same be within or without the limits of the City of D'Iberville.

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

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

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

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

Section 2. The governing authorities of the City of D'Iberville shall appoint a port commission composed of seven (7) members, all of whom shall be qualified electors of the municipality. One (1) shall be appointed from each ward of the municipality, one (1) shall be appointed by the councilman at large from the municipality at large and two (2) shall be appointed by the mayor from the municipality at large. Of the initial appointees, two (2) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of (4) years and one (1)

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

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

83 The port commissioners may be paid * * * per diem
84 compensation in the amount of Seventy Dollars (\$70.00) for each
85 day or fraction of a day spent in the discharge of official
86 duties.

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

94 The commission shall keep a minute book in which shall be
95 recorded all of its acts, orders, rules and regulations. It shall
96 be the duty of the commission to adopt rules and regulations not
97 inconsistent with law to govern its official acts. It shall be

the duty of the commission to make and publish all needful rules and regulations to govern the harbor, docks and passes within its jurisdiction, and to fix tariffs, fees, fines, penalties and forfeitures for the violations of the rules and regulations of the commission. The commission shall have the power to fix and determine all port and terminal charges, and it may enforce the collection thereof through any court of competent jurisdiction in this state. This section shall not apply to public utilities nor to railroad terminal charges covered by or carried in approved tariffs authorized by the Interstate Commerce Commission nor to lawful railroad operation and activities.

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

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

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

131 purchasers of any bonds or other obligations issued pursuant to
132 this act. The port commission shall make an annual report to the
133 municipality.

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

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

161 No interest payment shall be evidenced by more than one (1)
162 coupon and neither cancelled nor supplemental coupons shall be
163 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 purposes of the Mississippi Uniform Commercial Code, and may be validated as provided by statute.

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

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

221 Section 8. The bonds or other obligations issued by the City
222 of D'Iberville pursuant to this act shall not constitute a debt
223 within the meaning of any statutory limitation as to the amount of
224 debt which may be incurred by the municipality, nor shall such
225 bonds or other obligations be payable out of any funds other than
226 the revenue collected or collectible from the use of docks,
227 harbors and facilities of whatsoever nature, and out of the
228 receipts of the one (1) mill ad valorem tax hereinafter
229 authorized.

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

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

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

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

260 (c) To pledge all or any part of the fees, rents,
261 tolls, revenues or other charges received or receivable by the
262 port commission from any work, development or improvement to which

263 its right then exists or the right to which may thereafter come
264 into existence.

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

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

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

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

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

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

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

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

291 (l) To covenant against extending the time for the
292 payment of the interest on or principal of the bonds or other
293 obligations issued pursuant to this act directly or indirectly by
294 any means or in any manner.

295 (m) To covenant as to books of account of the port

commission and as to the inspection and audit thereof and as to the accounting methods.

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

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

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

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

(b) Such trustee shall receive and receipt for all monies paid or to be paid to it constituting the net revenues derived from the operation of the improvements and facilities authorized by this act;

(c) Such trustee shall deposit all monies received or

to be received, in a special account or accounts in a federally insured bank or banks with such provisions for security therefor as may be incorporated in any agreement or agreements entered into between the municipality and the purchaser or purchasers of any such bonds or other obligations;

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

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

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

(g) If such trustee shall fail, neglect or refuse to perform any of the duties herein imposed or that may be imposed by reason of any of the provisions of any agreement or agreements as aforesaid, such trustee, or any successor thereto, shall, on the written request of twenty percent (20%) or more in aggregate principal amount of the holder or holders of bonds or other 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.