

By: Representative Bentz

To: Local and Private
Legislation

HOUSE BILL NO. 1786

1 AN ACT TO AMEND CHAPTER 903, LOCAL AND PRIVATE LAWS OF 1994,
2 AS LAST AMENDED BY CHAPTER 993, LOCAL AND PRIVATE LAWS OF 1999, TO
3 AUTHORIZE THE D'IBERVILLE PORT COMMISSION AND THE GOVERNING
4 AUTHORITIES OF THE CITY OF D'IBERVILLE TO ENTER INTO ANY
5 AGREEMENTS, EXECUTE ANY DOCUMENTS AND TAKE ANY ACTIONS NECESSARY
6 TO TRANSFER TO THE CITY OF D'IBERVILLE ALL POWERS, DUTIES,
7 LIABILITIES AND ASSETS OF THE COMMISSION; TO PROVIDE THAT ONCE THE
8 COMMISSION AND THE CITY HAVE ENTERED INTO SUCH AGREEMENTS,
9 EXECUTED SUCH DOCUMENTS AND TAKEN SUCH ACTIONS THE CITY SHALL HAVE
10 ALL OF THE POWERS AND DUTIES AUTHORIZED TO BE PERFORMED AND
11 EXERCISED BY THE COMMISSION, THE COMMISSION SHALL BE DISSOLVED AND
12 THE TERMS OF THE MEMBERS OF THE COMMISSION SHALL EXPIRE; AND FOR
13 RELATED PURPOSES.

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

15 **SECTION 1.** Chapter 903, Local and Private Laws of 1994, as
16 amended by Chapter 916, Local and Private Laws of 1997, as amended
17 by Chapter 993, Local and Private Laws of 1999, is amended as
18 follows:

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

33 (2) Such port commission, in connection with the exercise of
34 the foregoing works of improvement and development, shall have the
35 power and authority as an adjunct to any such work of improvement
36 or development to erect or construct such bridges, causeways or
37 structures as may be required for access to and from the harbors
38 or facilities provided as aforesaid by the port commission,
39 whether the same be within or without the limits of the City of
40 D'Iberville.

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

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

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

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

65 Section 2. (1) The governing authorities of the City of
66 D'Iberville shall appoint a port commission composed of seven (7)
67 members, all of whom shall be qualified electors of the
68 municipality. One (1) shall be appointed from each ward of the
69 municipality, one (1) shall be appointed by the councilman at
70 large from the municipality at large and two (2) shall be
71 appointed by the mayor from the municipality at large. Of the
72 initial appointees, two (2) shall be appointed for a term of one
73 (1) year, two (2) for a term of two (2) years, one (1) for a term
74 of three (3) years, one (1) for a term of (4) years and one (1)
75 for a term of five (5) years; thereafter, all appointments shall
76 be for terms of five (5) years. From and after April 8, 1997, the
77 port commission shall be reconstituted as follows: The commission
78 shall be composed of six (6) members, all of whom shall be
79 qualified electors of the municipality. The governing authorities
80 of the City of D'Iberville shall appoint one (1) for a term of one
81 (1) year, one (1) for a term of two (2) years and one (1) for a
82 term of five (5) years; and the Board of Supervisors of Harrison
83 County shall appoint one (1) for a term of one (1) year, one (1)
84 for a term of two (2) years and one (1) for a term of five (5)
85 years. All appointments following the initial appointments shall
86 be for terms of five (5) years each. All appointees shall be
87 residents of the City of D'Iberville. Vacancies shall be filed by
88 the appointing authority for the unexpired term.

89 (2) The port commission appointed pursuant to this system
90 shall have jurisdiction over the port, terminals, harbors and
91 passes leading thereto, and all vessels, boats and wharves, common
92 carriers and public utilities therein using the port.

93 (3) The port commissioners may be paid per diem compensation
94 in the amount of Seventy Dollars (\$70.00) for each day or fraction
95 of a day spent in the discharge of official duties.

96 (4) The port commission shall meet at a regular place to be
97 designated by the port commission for organization as a port

98 commission, after giving at least ten (10) days' notice of the
99 time and place of such meeting by publication in a newspaper
100 published or having general circulation in the City of
101 D'Iberville. The commission shall elect a president and
102 secretary, who shall be members of the commission.

103 (5) The commission shall keep a minute book in which shall
104 be recorded all of its acts, orders, rules and regulations. It
105 shall be the duty of the commission to adopt rules and regulations
106 not inconsistent with law to govern its official acts. It shall
107 be the duty of the commission to make and publish all needful
108 rules and regulations to govern the harbor, docks and passes
109 within its jurisdiction, and to fix tariffs, fees, fines,
110 penalties and forfeitures for the violations of the rules and
111 regulations of the commission. The commission shall have the
112 power to fix and determine all port and terminal charges, and it
113 may enforce the collection thereof through any court of competent
114 jurisdiction in this state. This section shall not apply to
115 public utilities nor to railroad terminal charges covered by or
116 carried in approved tariffs authorized by the Interstate Commerce
117 Commission nor to lawful railroad operation and activities.

118 (6) It shall be the duty of the commission to employ such
119 help, including a port director, secretary and such other help, as
120 will be necessary to carry on the business and work of such
121 commission. The port commissioners shall see that all port
122 employees, such as harbor master, pilots and any and all other
123 necessary employees for the operation of the port, perform any and
124 all such duties as required for the operation of the port, at
125 salaries to be determined by the port commission.

126 (7) (a) The D'Iberville Port Commission and the governing
127 authorities of the City of D'Iberville are authorized to enter
128 into any agreements, execute any documents and take any actions
129 necessary to transfer to the City of D'Iberville all powers,
130 duties, liabilities and assets of the commission provided for by

Chapter 903, Local and Private Laws of 1994, as last amended by Chapter 993, Local and Private Laws of 1999, and are authorized to enter into any agreements, execute any documents and take any actions as may be necessary to carry out the provisions of any agreements entered into between the commission and the city before the effective date of House Bill No. 1786, 2005 Regular Session.

(b) Once the commission and the city have entered into the agreements, executed the documents and taken the actions necessary to effect the provisions of paragraph (a) of this subsection, then:

(i) The city shall have all of the powers and duties authorized to be performed and exercised by the commission under Chapter 903, Local and Private Laws of 1994, as last amended by Chapter 993, Local and Private Laws of 1999;

(ii) The commission shall be dissolved and the terms of the members of the commission shall expire upon such dissolution; and

(iii) The terms "D'Iberville Port Commission," "port commission" and "commission," wherever such terms appear in this act, shall mean the governing authorities of the City of D'Iberville.

(c) Any agreements entered into between the D'Iberville Port Commission and the City of D'Iberville before the effective date of House Bill No. 1786, 2005 Regular Session, regarding the direction, management and operation of the business, assets and activities of the commission are hereby ratified, approved, validated and confirmed.

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 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

197 specified in the bid; all bonds of the same maturity shall bear
198 the same rate of interest from date to maturity; all interest
199 accruing on such bonds so issued shall be payable semiannually or
200 annually, except that the first interest coupon attached to any
201 such bond may be for any period not exceeding one (1) year.

202 No interest payment shall be evidenced by more than one (1)
203 coupon and neither cancelled nor supplemental coupons shall be
204 permitted. The lowest interest rate specified for any bonds
205 issued shall not be less than seventy percent (70%) of the highest
206 interest rate specified for the same bond issue. The interest
207 rate of any one (1) interest coupon shall not exceed the maximum
208 interest rate on such bonds. Each interest rate specified in any
209 bid must be in multiples of one-eighth of one percent ($1/8$ of 1%)
210 or in multiples of one-tenth of one percent ($1/10$ of 1%). Such
211 bonds shall be executed by the manual or facsimile signature of
212 the mayor and clerk of the municipality, with the seal of the
213 municipality affixed thereto. At least one (1) signature on each
214 bond shall be a manual signature, as specified in the resolution.
215 The coupons may bear only the facsimile signatures of such mayor
216 and clerk. Such bonds or other obligations may be sold at public
217 or private sale for such price or prices as the governing body of
218 the municipality shall determine, but in no case to exceed the
219 rate of interest hereinbefore provided. No bonds shall be issued
220 and sold under the provisions of this act for less than par and
221 accrued interest.

222 The municipality shall have power, out of any funds
223 available, to purchase any bonds or other obligations issued by it
224 pursuant to this act, and all bonds or other obligations so
225 purchased shall be cancelled, and no bonds or other obligations
226 shall be issued in lieu thereof. In anticipation of the issuance
227 of the definitive bonds authorized by this act, the municipality
228 may issue interim certificates. Such interim certificates shall
229 be in such form, contain such terms, conditions or provisions,

230 bear such date or dates, and evidence such agreement or
231 agreements, relating to their discharge by payment or by the
232 delivery of the definitive bonds, as the municipality, by
233 resolution of its governing body, may determine. Any bonds,
234 interim certificates or other obligations issued pursuant to this
235 act shall be fully negotiable within the meaning and for all the
236 purposes of the Mississippi Uniform Commercial Code, and may be
237 validated as provided by statute.

238 Section 6. The proceeds from the sale of any bonds or other
239 obligations issued pursuant to this act shall be placed to the
240 credit of the port commission in a federally insured bank or banks
241 and may be withdrawn therefrom in accordance with any agreement or
242 agreements entered into between the municipality and the purchaser
243 or purchasers of such bonds or other obligations and shall be used
244 for no other purpose than the purpose of the port commission. Any
245 officer or other person diverting or assisting to divert any such
246 funds to any other purpose or purposes than the purpose or
247 purposes originally set forth in the resolution of the governing
248 body of the municipality shall be guilty of a felony and
249 punishable accordingly, and shall be liable both personally and on
250 official bonds for such diversion.

251 Section 7. The City of D'Iberville may execute and deliver a
252 mortgage or deed of trust, in such form, with such validity and
253 with such remedies as at present authorized under the laws of the
254 State of Mississippi, on any or all properties, improvements and
255 facilities, the acquisition, construction, maintenance and/or
256 operation of which are provided for by this act. Such resolution
257 or resolutions of the municipality shall prescribe the provisions,
258 covenants and conditions of any such mortgage or deed of trust.
259 Such provisions, covenants and conditions, if not self-executing,
260 may be enforced by appropriate proceedings, either in law or in
261 equity.

262 Section 8. The bonds or other obligations issued by the City
263 of D'Iberville pursuant to this act shall not constitute a debt
264 within the meaning of any statutory limitation as to the amount of
265 debt which may be incurred by the municipality, nor shall such
266 bonds or other obligations be payable out of any funds other than
267 the revenue collected or collectible from the use of docks,
268 harbors and facilities of whatsoever nature, and out of the
269 receipts of the one (1) mill ad valorem tax hereinafter
270 authorized.

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

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

280 (a) To accept grants from the United States of America
281 and agencies, instrumentalities or corporations thereof designated
282 or created to make grants or loans (hereinafter termed "federal
283 agency") pursuant to any act of the Congress of the United States,
284 for or in aid of work, development or improvement authorized by
285 this act.

286 (b) To make such contracts and execute such instruments
287 containing such provisions, covenants and conditions as in the
288 discretion of the governing authorities of the municipality may be
289 necessary, proper or advisable for the purpose of obtaining or
290 securing grants, loans or other financial assistance from any
291 federal agency; to make such further, different or additional
292 contracts and execute all instruments necessary or convenient in
293 or for the furtherance of any work, development or improvement,
294 including but not limited to all property, real and personal,

295 appurtenant thereto or connected therewith and the existing work,
296 development or improvement, if any, to which the work, development
297 or improvement authorized by this act is an extension, addition,
298 betterment or embellishment (hereinafter termed "work, development
299 or improvement") to carry out and perform the terms and conditions
300 of any such contract or instrument.

301 (c) To pledge all or any part of the fees, rents,
302 tolls, revenues or other charges received or receivable by the
303 port commission from any work, development or improvement to which
304 its right then exists or the right to which may thereafter come
305 into existence.

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

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

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

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

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

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

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

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

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

336 (m) To covenant as to books of account of the port
337 commission and as to the inspection and audit thereof and as to
338 the accounting methods.

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

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

355 Section 11. The City of D'Iberville shall, so long as any
356 bonds or other obligations issued pursuant to this act remain
357 outstanding and unpaid, by resolution or resolutions duly adopted,
358 authorize and appoint a trustee, satisfactory to the purchaser or
359 purchasers of any bonds or other obligations issued pursuant to

360 this act, or any successor thereto, with the following powers and
361 duties:

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

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

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

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

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

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

394 (g) If such trustee shall fail, neglect or refuse to
395 perform any of the duties herein imposed or that may be imposed by
396 reason of any of the provisions of any agreement or agreements as
397 aforesaid, such trustee, or any successor thereto, shall, on the
398 written request of twenty percent (20%) or more in aggregate
399 principal amount of the holder or holders of bonds or other
400 obligations issued pursuant to this act, be removed, by resolution
401 duly adopted by the municipality; and in such event, it shall be
402 the duty of any such trustee so removed to effectuate a valid
403 transfer of all monies then in the possession or under the control
404 of such trustee so removed to a duly appointed successor; and a
405 failure on the part of such trustee so removed to do so shall
406 constitute an embezzlement of such monies and shall be punishable
407 accordingly;

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

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

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

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