

By: Representatives Moak,
Peranich, Espy

To: Gaming; Sel Cmte on
Hurricane Recovery

HOUSE BILL NO. 44
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 29-1-107, MISSISSIPPI CODE OF 1972,
2 TO SET FORTH THE REQUIREMENTS FOR THE LEASE OF STATE TIDELANDS OR
3 SUBMERGED LANDS BY ANY PERSON POSSESSING A LICENSE UNDER THE
4 GAMING CONTROL ACT WHO OPERATES A GAMING ESTABLISHMENT IN ANY OF
5 THE THREE MOST SOUTHERN COUNTIES OF THE STATE; TO REQUIRE THE
6 PAYMENT OF AN IN-LIEU TIDELANDS ASSESSMENT BY ANY PERSON
7 POSSESSING A LICENSE UNDER THE GAMING CONTROL ACT WHO OPERATES A
8 GAMING ESTABLISHMENT IN ANY OF THE THREE MOST SOUTHERN COUNTIES OF
9 THE STATE, AND WHO DOES NOT LEASE STATE PUBLIC TRUST TIDELANDS; TO
10 PROVIDE CERTAIN EXCEPTIONS TO THE PAYMENT OF THE IN-LIEU TIDELANDS
11 ASSESSMENT; TO CREATE THE PUBLIC TRUST TIDELANDS ASSESSMENTS FUND
12 AND PROVIDE THE MANNER IN WHICH MONEY IN THE FUND MAY BE UTILIZED;
13 AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 29-1-107, Mississippi Code of 1972, is
16 amended as follows:

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

32 leases and rental contracts shall automatically terminate on the
33 date provided in said leases or contracts.

34 (2) (a) The Secretary of State, with the approval of the
35 Governor, may rent or lease surface lands, tidelands or submerged
36 lands owned or controlled by the State of Mississippi lying in or
37 adjacent to the Mississippi Sound or Gulf of Mexico or streams
38 emptying therein, for a period not exceeding forty (40) years for
39 rental payable to the state annually. However, the term of any
40 lease of state public trust tidelands to a person possessing a
41 license under the Mississippi Gaming Control Act shall be governed
42 by the provisions of subsection (4) of this section.

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

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

57 (d) * * * Leases shall provide for review and rent
58 adjustments at each fifth anniversary tied either to the All Urban
59 Consumer Price Index-All Items (CPI) or to an appraisal which
60 deducts the value of any improvements by the lessee which
61 substantially enhance the value of the land * * *. In the case
62 where the initial rental was based on the value set by the ad
63 valorem tax rolls, then the rent review and adjustment clause
64 shall be likewise based on the value set by such tax rolls. In

65 the event that the lessor and lessee cannot agree on a rental
66 amount, the lease may be cancelled at the option of the lessor.
67 The lessee shall, within thirty (30) days after execution of a
68 sublease or assignment, file a copy thereof, including the total
69 consideration therefor, with the Secretary of State. This
70 paragraph shall not apply to a lease of state public trust
71 tidelands or submerged lands to a person possessing a gaming
72 license under the Mississippi Gaming Control Act who operates a
73 gaming establishment on such tidelands.

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

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

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

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

92 (ii) By operation of this section, any lease
93 executed before August 29, 2005, may, at the option of the lessee,
94 either remain at the term stated in the original execution of the
95 lease or be converted to a thirty-year term lease, beginning on
96 such date after August 29, 2005, that the lessee either resumes or
97 begins permanent gaming activities as approved by the Mississippi

98 Gaming Commission, and the lessee shall be required to comply with
99 all other provisions of the lease. Should the lessee choose to
100 operate in a structure that is not on state public trust tidelands
101 and that is on property contiguous to tidelands leased by the
102 lessee, the lessee shall be required to comply with all other
103 provisions of the lease and shall be exempt from the assessment
104 provided for in paragraph (c) of this subsection. Easements for
105 and rights-of-way for public streets and highways shall not be
106 construed to interrupt the contiguous nature of a parcel of
107 property. In the event that a lessee does not elect either to
108 remain bound by the original term of the lease or to convert the
109 lease to a thirty-year term, the Secretary of State may lease the
110 state public trust tidelands that are the subject of the lease to
111 any other person or entity.

112 (iii) Leases shall provide for review and rent
113 adjustments at each annual anniversary tied to the All Urban
114 Consumer Price Index-All Items (CPI). In the case of the renewal
115 of a lease after the expiration of the original thirty-year term
116 under this subsection, each renewal shall be for a term of thirty
117 (30) years. The base rate to which the CPI shall apply for
118 purposes of executing the subsequent lease shall be negotiated by
119 the lessee with the Secretary of State.

120 (c) (i) Except as otherwise provided in this
121 paragraph, any person possessing a license under the Mississippi
122 Gaming Control Act who does not lease public trust tidelands from
123 the state or any of its political subdivisions, and who operates a
124 gaming establishment in any of the three (3) most southern
125 counties of the state, shall pay an annual in-lieu tidelands
126 assessment to the Public Trust Tidelands Assessments Fund
127 (hereinafter referred to as "fund") created in Section 2 of House
128 Bill No. 44, Fifth Extraordinary Session of 2005, in the amount
129 and manner provided for in this paragraph.

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

132 1. Four Hundred Thousand Dollars
133 (\$400,000.00), if the capital investment in the part of the
134 structure in which licensed gaming activities are conducted is
135 Fifty Million Dollars (\$50,000,000.00) or less.

136 2. Four Hundred Fifty Thousand Dollars
137 (\$450,000.00), 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 Fifty Million Dollars (\$50,000,000.00) but
140 less than Sixty Million Dollars (\$60,000,000.00).

141 3. Five Hundred Thousand Dollars
142 (\$500,000.00), if the capital investment in the part of the
143 structure in which licensed gaming activities are conducted is
144 equal to or more than Sixty Million Dollars (\$60,000,000.00) but
145 less than Seventy-five Million Dollars (\$75,000,000.00).

146 4. Six Hundred Thousand Dollars
147 (\$600,000.00), if the capital investment in the part of the
148 structure in which licensed gaming activities are conducted is
149 equal to or more than Seventy-five Million Dollars
150 (\$75,000,000.00) but less than One Hundred Million Dollars
151 (\$100,000,000.00).

152 5. Seven Hundred Thousand Dollars
153 (\$700,000.00), if the capital investment in the part of the
154 structure in which licensed gaming activities are conducted is
155 equal to or more than One Hundred Million Dollars
156 (\$100,000,000.00) but less than One Hundred Twenty-five Million
157 Dollars (\$125,000,000.00).

158 6. Seven Hundred Fifty Thousand Dollars
159 (\$750,000.00), if the capital investment in the part of the
160 structure in which licensed gaming activities are conducted is
161 equal to or more than One Hundred Twenty-five Million Dollars
162 (\$125,000,000.00).

163 For each calendar year thereafter, the Secretary of State
164 shall review and adjust the value of the capital investment and
165 the annual in-lieu tidelands assessment due. Such review and
166 adjustment shall be tied to the CPI.

167 (ii) This paragraph shall not apply to a gaming
168 licensee if the licensee conducts gaming in a structure that is
169 located on property that is leased from the Mississippi State Port
170 at Gulfport or any political subdivision of the state, or to a
171 licensee who conducts gaming in a structure that is located on
172 property that is leased to the licensee jointly by the State of
173 Mississippi and the City of Biloxi; however, with regard to
174 property owned by a political subdivision of the state, this
175 exception shall only apply to property owned by the political
176 subdivision on August 29, 2005, if legal gaming could have been
177 conducted on such property on that date.

178 (iii) This paragraph shall not apply to a gaming
179 licensee if the licensee conducts gaming in a structure that is
180 located on property that is not leased from the State of
181 Mississippi and/or a political subdivision of the State of
182 Mississippi and is not on state public trust tidelands, and if the
183 licensee conducted gaming on that property before August 29, 2005.

184 **SECTION 2.** (1) There is created in the State Treasury a
185 special fund to be known as the "Public Trust Tidelands
186 Assessments Fund." The purpose of the fund is to ensure that
187 monies derived from the public trust tidelands assessments shall
188 be used for the benefit of preserving and protecting the tidelands
189 and submerged lands found within the three (3) most southern
190 counties of the state. One (1) specific purpose of the fund is to
191 ensure that the annual payment made by the state for the purchase
192 of Deer Island shall continue uninterrupted until the purchase
193 transaction is completed. The fund shall be administered by the
194 Secretary of State, as trustee. None of the funds that are in the
195 special fund or that are required to be deposited into the special

196 fund shall be transferred, diverted or in any other manner
197 expended or used for any purpose other than those purposes
198 specified in this section.

199 (2) (a) Any funds derived from assessments made pursuant to
200 Section 29-1-107(4)(c) shall be deposited into the special fund.

201 (b) Funds paid pursuant to paragraph (a) of this
202 subsection may be appropriated by the Legislature in an amount
203 necessary to cover the administrative cost incurred by the
204 Mississippi Commission on Marine Resources. Any remaining funds
205 shall be disbursed by the commission for new and extra programs of
206 tidelands management, such as conservation, reclamation,
207 preservation, acquisition, education or the enhancement of public
208 access to the public trust tidelands or public improvement
209 projects as they relate to those lands.

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

214 (a) The Department of Marine Resources shall make
215 progress payments in installments based on the work completed and
216 material used in the performance of a tidelands project only after
217 receiving written verification from the political subdivision or
218 agency. The political subdivision or agency shall submit
219 verification of the work completed or materials in such detail and
220 form that the department may require.

221 (b) The Department of Marine Resources shall make funds
222 available for the purpose of using such funds as a match or
223 leverage for federal or other funds that are available for the
224 designated tidelands project.

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