

By: Representative Patterson

To: Local and Private
Legislation

HOUSE BILL NO. 1619

1 AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF
 2 BILOXI, MISSISSIPPI, TO MAKE IMPROVEMENTS TO THE POINT CADET
 3 PROPERTY THAT IS JOINTLY OWNED BY THE CITY AND THE STATE FOR THE
 4 PURPOSES OF ESTABLISHING A MISSISSIPPI OYSTER AQUACULTURE AND
 5 CONSERVATION CENTER WITH PUBLIC OFF-LOADING DOCK FOR OYSTERMEN AND
 6 OYSTER AQUACULTURE FARMERS, A MISSISSIPPI SEAFOOD MARKETPLACE, A
 7 MISSISSIPPI DEEP SEA FISHING TOURNAMENT AND CONSERVATION CENTER,
 8 AND RELATED FACILITIES AND USES, AND TO ISSUE MUNICIPAL REVENUE
 9 BONDS TO CONSTRUCT THESE FACILITIES AND TO AUTHORIZE CERTAIN STATE
 10 AND INSTITUTIONS OF HIGHER LEARNING (IHL) RENTS FROM THE POINT
 11 CADET LEASING FUND TO BE DISBURSED TO THE POINT CADET WATERFRONT
 12 ENTERPRISE FUND FOR FINANCING THE FACILITIES AUTHORIZED BY THIS
 13 ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** As used in this act, the following terms shall
 16 have the following meanings unless a different meaning is clearly
 17 indicated by the context in which they are used:

18 (a) "Bonds" means bonds, notes or any other evidence of
 19 indebtedness issued pursuant to this act, including any bonds
 20 issued to refund bonds.

21 (b) "City" means the City of Biloxi, Mississippi.

22 (c) "Covacevich Compromise and Settlement Agreement" or
 23 "CCSA" means that agreement, entered August 15, 2002, by and



24 between the state and city, and all existing and future amendments
25 to it.

26 (d) "Covacevich Property" means that property described
27 in the CCSA and held as a tenancy in common by the city and state,
28 in which the city holds a vested undivided one-half (1/2) interest
29 and the state holds a vested undivided one-half (1/2) interest, as
30 more fully described in the CCSA, recorded in Deed Book 390, Page
31 628, in the land records of the Chancery Clerk of the Second
32 Judicial District of Harrison County.

33 (e) "Governing authorities" means the mayor and city
34 council of the City of Biloxi, Mississippi.

35 (f) "DMR" means the Mississippi Department of Marine
36 Resources.

37 (g) "IHL" or "board of trustees" means the Board of
38 Trustees of State Institutions of Higher Learning, for itself and
39 on behalf of the University of Southern Mississippi and the Gulf
40 Coast Research Laboratory.

41 (h) "Point Cadet Compromise and Settlement Agreement"
42 or "PCCSA" means that agreement, entered August 15, 2002, by and
43 between IHL, the state, the city, and Riverboat Corporation of
44 Mississippi, a Mississippi corporation, as amended effective
45 August 1, 2010, by "Amendment to the Point Cadet Compromise and
46 Settlement Agreement" and all future amendments to PCCSA
47 (collectively, the "Point Cadet Compromise and Settlement
48 Agreement" or "PCCSA").



49 (i) "Point Cadet Property" means that certain property
50 described in the PCCSA and held as a tenancy in common by the city
51 and state, in which the city holds a vested undivided one-third
52 (1/3) interest and the state holds a vested undivided two-thirds
53 (2/3) interest (of which the state holds an undivided one-third
54 (1/3) interest for the benefit of IHL), as more fully described in
55 the PCCSA recorded in Deed Book 390, Page 600, and amendment
56 recorded as Instrument 2012 1168D-J2, in the land records of the
57 Chancery Clerk of the Second Judicial District of Harrison County.

58 (j) "Point Cadet Leasing Fund" means that certain fund
59 designated by the State Treasurer and administered by the
60 Secretary of State pursuant to the PCCSA and CCSA for the
61 collection and disbursement of rents received from the Point Cadet
62 Property and the Covacevich Property.

63 (k) "Point Cadet Waterfront Enterprise Fund" or the
64 "Enterprise Fund" means a fund to be created and administered by
65 the City of Biloxi for purposes authorized and described in this
66 act. This fund shall not be considered by the city as general
67 fund revenues but shall be an enterprise fund of the city
68 dedicated to and expended solely for the purposes specified in
69 this act.

70 (l) "Shared CCSA Rents" means the rents described in
71 the CSSA, paragraph IV(1)(b), providing for all rents in excess of
72 Three Hundred Fifty-two Thousand Dollars (\$352,000.00) to be
73 divided and disbursed one-half (1/2) to the city and one-half



74 (1/2) to the state with the state's portion to be paid to the
75 Public Trust-Tidelands Fund created under Section 29-15-9(1);
76 provided, however, from and after July 1, 2018, the division and
77 disbursements of increases, if any, in the Shared CCSA Rents above
78 the amounts collected and disbursed for the state fiscal year
79 ending June 30, 2018, shall be subject to the conditions,
80 exceptions and adjustments described in Section 2 of this act.

81 (m) "Shared PCCSA Rents" means the rents described in
82 the PCCSA, paragraphs IV(1)(b) and (2), that provides for all
83 rents in excess of Two Million Seven Hundred and Thirty-three
84 Thousand Dollars (\$2,733,000.00) to be divided and disbursed as
85 follows: one-third (1/3) to the city, one-third (1/3) to IHL,
86 one-third (1/3) to the state with the state's portion to be paid
87 to the Public Trust Tidelands Fund created by Section 29-15-9(1).

88 (n) "State" means the State of Mississippi, acting by
89 and through the Mississippi Secretary of State.

90 **SECTION 2.** For purposes of providing funds to pay costs
91 associated with planning, designing, constructing, equipping,
92 owning, operating, leasing, furnishing, improving and maintaining
93 any one or more of the centers, marketplaces, buildings,
94 equipment, facilities, and any other improvements and uses as
95 described in Section 4 of this act, and further for the purpose of
96 paying principal, premium (if any), interest and costs of issuance
97 (including, without limitation, printing and delivery costs, legal
98 fees, financial advisor fees, consultant fees, credit enhancement



99 and other expenses) for bonds authorized and issued under Section
100 5 of this act, the Secretary of State, State Treasurer, and
101 Department of Finance and Administration are directed to disburse
102 the state and IHL's Shared PCCSA Rents and the state's Shared CCSA
103 Rents, as, if and when collected by the Point Cadet Leasing Fund,
104 within thirty (30) days of collection, to the City of Biloxi for
105 deposit to the Point Cadet Waterfront Enterprise Fund, and such
106 disbursements and deposits shall be made subject to the following
107 conditions, exceptions, and adjustments:

108 (a) IHL's one-third (1/3) share of the Shared PCCSA
109 Rents shall be disbursed to the City of Biloxi for deposit to the
110 Point Cadet Waterfront Enterprise Fund for the purposes authorized
111 by this act only if, and after, IHL, in its discretion, delivers
112 written certification to the Secretary of State, Department of
113 Finance and Administration, and State Treasurer that IHL
114 authorizes such disbursements for all Shared PCCSA Rents received
115 after July 1, 2018; however, if IHL does not certify and authorize
116 its one-third (1/3) share of the Shared PCCSA Rents beginning July
117 1, 2018, to be so disbursed and dedicated, then, thereafter, IHL's
118 share of Shared PCCSA Rents shall not include any part of the
119 amount of increases in Shared PCCSA Rents above the amounts
120 collected and disbursed for the state fiscal year ending June 30,
121 2018, and for each state fiscal year thereafter, and such increase
122 shall be disbursed to the City of Biloxi for deposit to the Point
123 Cadet Waterfront Enterprise Fund. IHL is hereby authorized to



124 dedicate and use its one-third (1/3) share of the Shared PCCSA
125 Rents for all the facilities, improvements and uses in paragraph
126 2(c) of the Amendment to PCCSA that amended paragraph IV(5) of the
127 initial PCCSA.

128 (b) The state's one-third (1/3) share of the Shared
129 PCCSA Rents and the state's one-half (1/2) share of the Shared
130 CCSA Rents shall be disbursed by the Department of Finance and
131 Administration and the State Treasurer to the City of Biloxi for
132 deposit to the Point Cadet Waterfront Enterprise Fund; also, the
133 state's annual rent from the state leases described in paragraph
134 III(4) (a) of the PCCSA shall be disbursed by the Department of
135 Finance and Administration and the State Treasurer to the City of
136 Biloxi for deposit to the Point Cadet Waterfront Enterprise Fund
137 for the state fiscal year ending June 30, 2018, and each state
138 fiscal year thereafter.

139 (c) Prior to the adoption of this act, the governing
140 authorities of the city adopted, contingent upon passage of this
141 act, a binding resolution dedicating the city's one-third (1/3)
142 share of the Shared PCCSA Rents and the city's share of the Shared
143 CCSA Rents to the Point Cadet Waterfront Enterprise Fund created
144 by this act.

145 (d) Within thirty (30) days after the city receives
146 each certified annual audit of the city's revenues and
147 expenditures as described in Section 3 of this act, and in the
148 event the city's audit states, and accounts for, an excess amount



149 of revenues received over expenditures, restricted funds and any
150 reserves required to meet contractual obligations (including
151 obligations with respect to bonds issued pursuant to Section 5) in
152 the Point Cadet Waterfront Enterprise Fund, then the city shall
153 remit to the state and IHL's respective shares of the excess
154 amount in proportion to their interests as set forth in the PCCSA.

155 **SECTION 3.** (1) The city shall hold title to the Point Cadet
156 Waterfront Enterprise Fund, subject to the rights of the state and
157 IHL as provided in Section 2(d) of this act, shall hold such funds
158 separate from the general funds or any other restricted funds of
159 the city, and shall spend such funds for the purposes set forth in
160 this act.

161 (2) The city's accounting for receipts and expenditures of
162 the Point Cadet Waterfront Enterprise Fund shall be made
163 separately from the accounting of receipts and expenditures of the
164 city's general fund and any other funds of the city. The records
165 reflecting the receipts and expenditures of the Point Cadet
166 Waterfront Enterprise Fund prescribed in this act shall be
167 included in the annual audit of the city's revenues and
168 expenditures by an independent certified public accountant, and
169 the accountant shall include, as part of the annual audit, a
170 written report of the revenues and expenditures of Point Cadet
171 Waterfront Enterprise Fund to the governing authorities, the state
172 and IHL.



173 **SECTION 4.** (1) The governing authorities of the city are
174 authorized to make, or cause to be made, improvements to the Point
175 Cadet Property and/or the Covacevich Property jointly owned by the
176 city and the state, for the purposes of establishing a Mississippi
177 Oyster Aquaculture and Conservation Center; a public off-loading
178 dock in the marina adjacent to the Point Cadet Property and/or the
179 Covacevich Property, for use by oystermen that harvest from
180 natural or man-made reefs and oyster aquaculture farmers that
181 harvest from aquaculture farms established by DMR or other public
182 agencies; a Mississippi Seafood Marketplace and related waterfront
183 boardwalks, piers, structures and facilities on and/or adjacent to
184 the Point Cadet Property and/or the Covacevich Property; a
185 Mississippi Deep Sea Fishing Tournament and Conservation Center on
186 and/or adjacent to the Point Cadet Property and the Covacevich
187 Property; and/or any other buildings, equipment, facilities,
188 public recreation, family-oriented attractions, and other
189 improvements and uses that may enhance and improve any of the
190 following: public access to the Public Trust Tidelands,
191 conservation of marine resources, research and development of
192 marine resources, enhancement and improvement of commerce and jobs
193 in the oyster and other commercial seafood industries, charter
194 boat and other recreational fishing and touring vessels and
195 related industries, recreational and commercial sailing vessels
196 and related industries, fishing tournaments and festivals, and the
197 tourism and hospitality industry. Title to all improvements made



198 to the Covacevich Property with funds from the Enterprise Fund (or
199 with the proceeds of bonds issued pursuant to Section 5) shall be
200 held by the state and the city as tenants in common in the same
201 proportion that they hold title to the Covacevich Property under
202 the CCSA. Title to all improvements made to the Point Cadet
203 Property with funds from the Enterprise Fund (or with the proceeds
204 of bonds issued pursuant to Section 5) shall be held by the state
205 and the city as tenants in common in the same proportion that they
206 hold title to the Point Cadet Property under the PCCSA.

207 (2) The city may operate and maintain one or more elements
208 of improvements authorized by this section through city personnel
209 or by management agreement(s) between the city and third parties,
210 including, but not limited to, DMR, IHL, USM (Gulf Coast Research
211 Laboratory), and private for profit or nonprofit business
212 entities. If the city operates and maintains any improvements,
213 any net revenue the city collects from the operation of
214 improvements shall be paid to the Point Cadet Waterfront
215 Enterprise Fund.

216 (3) The city and state may lease one or more specific
217 parcels of the Covacevich Property and/or the Point Cadet
218 Property, and the improvements thereon, authorized by this act to
219 private for-profit or nonprofit business entities under leases
220 negotiated by the city and the Secretary of State and obtained and
221 entered according to state laws pertaining to leases of municipal
222 properties, and such leases shall require the tenants to pay rent



223 to the Point Cadet Leasing Fund and all taxes, maintenance and
224 insurance for the leased premises.

225 (4) In carrying out its rights and duties under this act,
226 the city may:

227 (a) Establish bank accounts in the name of the city in
228 any qualified state depository into which the monies of the Point
229 Cadet Waterfront Enterprise Fund shall be deposited and held
230 except for such funds as are otherwise invested as permitted by
231 this act;

232 (b) Contract for necessary goods and services, employ
233 necessary personnel, and engage the services of consultants for
234 administrative and technical assistance in carrying out its duties
235 and responsibilities under this act, and enter into other
236 contracts and/or agreements that the city determines to be
237 necessary in carrying out its duties and responsibilities under
238 this act, which are all in compliance with state laws pertaining
239 to municipal contracting generally;

240 (c) Receive into the Enterprise Fund and administer any
241 gift, concession, loan or donation of any property or money,
242 including, but not limited to, those made by the state or any
243 agency or instrumentality thereof, and spend or lend the same or
244 the income therefrom for any of the purposes of this act, and
245 comply with all lawful conditions or requirements thereof;



246 (d) Pledge or assign any income, including rents, and
247 all or part of the monies received or to be received into the
248 Enterprise Fund; and

249 (e) In addition to its investments in improvements
250 pursuant to Section 5 of this act, invest monies in the Enterprise
251 Fund in any of the investments permitted by Section 31-19-5 or
252 other applicable law, subject to the restrictions or limitations
253 set forth therein and to applicable restrictions in any contract,
254 resolution or indenture then in effect with respect to outstanding
255 bonds issued pursuant to this act.

256 **SECTION 5.** (1) For purposes of providing funds to finance,
257 reimburse or refinance costs associated with planning, designing,
258 constructing, equipping, owning, operating, leasing, furnishing,
259 improving and maintaining any one or more of the centers,
260 marketplaces, buildings, equipment, facilities, and any other
261 improvements and uses as described in Section 4 of this act, and
262 to pay the costs of issuance thereof (including, without
263 limitation, printing and delivery costs, legal fees, financial
264 advisor fees, consultant fees, credit enhancement and other
265 expenses), the city is authorized to issue, sell and deliver its
266 bonds as provided herein.

267 (2) Bonds shall be authorized by a resolution or resolutions
268 of the city and shall be dated, shall bear interest at such rate
269 or rates (which may be fixed or variable), shall mature at such
270 time or times in either serial or term form or both not exceeding



271 thirty (30) years from their date, and may be made redeemable
272 prior to maturity at such price or prices and upon such terms and
273 conditions as the city may by resolution determined. The bonds
274 shall not bear a greater overall maximum interest rate to maturity
275 than that allowed under Section 75-17-103. The bonds shall be in
276 such form and denomination or denominations and payable at such
277 place or places, either within or without the state, and may be
278 executed or authenticated in such manner, as the city may by
279 resolution determined. The city shall sell the bonds at such
280 price or prices, as it shall determine, at public or private sale.

281 (3) Bonds issued pursuant to this act shall not constitute a
282 debt of the state nor of any of its instrumentalities or political
283 subdivisions other than the city (but only to the extent provided
284 herein) and neither the state nor its instrumentalities or
285 political subdivisions shall be liable for the same. The
286 principal of, premium (if any) and interest on such bonds shall be
287 payable only from and may be secured by one or more of the
288 following: all or any part of the proceeds of bonds, those funds
289 received or to be received in the Enterprise Fund and such other
290 security authorized pursuant hereto, which may include a pledge of
291 any grant, contribution or guarantee from the federal government
292 or any corporation, association, institution or person. A pledge
293 of any of the foregoing made by the city shall be valid and
294 binding as of the moment it is made without the need of any filing
295 or recordation. The security thus pledged, including funds which



296 the Enterprise Fund receives subsequently, shall be immediately
297 subject to the pledge without the need of the physical delivery
298 thereof or of any other action, and the pledge shall be valid and
299 binding and shall prevail against any third party having a claim
300 of any kind for damages, breach of contract or other motive
301 against the city, regardless of whether the third party has been
302 notified to that effect. Neither the indenture or resolution, nor
303 any collateral contract by means of which the rights of the city
304 to any revenues are pledged or assigned, shall have to be filed or
305 registered to formalize the pledge of the same against any third
306 party, except in the official records of the city.

307 (4) The resolution or resolutions authorizing the bond issue
308 or the indenture or agreement securing the same may contain
309 provisions not inconsistent with this act which shall be part of
310 the contract with the holders of the bonds issued under the
311 resolution or resolutions or under the indenture or agreement as
312 may be found to be necessary or desirable by the city for the most
313 advantageous sale thereof, which may include, but not be limited
314 to, provisions with respect to: the security and creation of
315 pledges on the revenues and assets pledged, the creation and
316 maintenance of redemption and reserve funds, limitations regarding
317 the purposes for which the proceeds of the bonds may be used,
318 limitations regarding the issuance of additional bonds, and
319 limitations as to the adoption of amendments or supplements to the
320 resolution or resolutions or to the indenture or agreement, the



321 granting of rights, powers and privileges and the imposition of
322 obligations and responsibilities to the trustee under any
323 indenture or resolution, and the rights, powers, obligations and
324 responsibilities which shall arise in the event of the
325 noncompliance with any obligation under the resolution or
326 resolutions or under the indenture or agreement, or regarding any
327 rights, powers or privileges conferred on the bondholders as
328 security on the same, to increase the marketability of the bonds.

329 (5) The trustee under any trust indenture securing the bonds
330 may be any bank having the power of a trust company or any trust
331 company within or without the state. Such trust indenture may
332 contain such provisions for protecting and enforcing the rights
333 and remedies of the bondholders as may be reasonable and proper
334 and not in violation of law, including covenants setting forth the
335 duties of the city in relation to the exercise of its powers and
336 the custody, safekeeping and application of all money. The city
337 may provide by the trust indenture for the payment of the proceeds
338 of the bonds and the pledged revenues to the trustee under the
339 trust indenture or other depository, and for the method of
340 disbursement thereof, with such safeguards and restrictions as the
341 city may determine. All expenses incurred in carrying out the
342 trust indenture may be paid from the pledged funds. If the bonds
343 shall be secured by a trust indenture, the bondholders shall have
344 no authority to appoint a separate trustee to represent them.



345 (6) Bonds issued under this act shall not be included in the
346 limitation on indebtedness imposed in Section 21-33-303 or any
347 other limitation on indebtedness of the city.

348 (7) The city is authorized to issue bonds pursuant to this
349 act for the purpose of refunding any such bonds then outstanding.
350 The total amount of such refunding bonds shall be an amount
351 sufficient to effect the refunding, and may include an amount
352 sufficient to pay: (a) the principal amount of the refunded
353 bonds, (b) interest accrued or to accrue to the date of maturity
354 or the date of redemption of the bonds to be refunded which need
355 not necessarily be on the first available redemption date, (c) any
356 redemption premiums to be paid thereon, (d) any reasonable
357 expenses incurred in connection with such refunding, and (e) any
358 other reasonable costs deemed necessary by the city to effect the
359 refunding. The proceeds of such refunding bonds may be applied in
360 the manner determined by the city and may be placed in escrow and
361 invested, without regard to the limitations of any law to the
362 contrary, but not inconsistent with the provisions of this act, in
363 the manner and on the terms determined by the city. All such
364 refunding bonds shall be issued and secured and shall be subject
365 to the provisions of this act in the same manner and to the same
366 extent as any other bonds issued pursuant hereto.

367 (8) Interest on the bonds, and any profits obtained from
368 their sale, shall be and remain at all times exempted from the



369 payment of all taxes imposed by the state or any of its political
370 subdivisions.

371 (9) The bonds shall constitute lawful investments and may be
372 accepted as collateral for fiduciary, trust and public funds,
373 whose investment or deposit is under the authority or the control
374 of the state or of any official or officials thereof or any
375 political subdivision thereof.

376 (10) Bonds may be validated pursuant to the provisions of
377 Sections 31-13-1 et seq.

378 **SECTION 6.** No provisions of this act shall be used in any
379 proceeding or litigation, either offensively or defensively,
380 relating to any claims or interest involving any other real
381 properties or involving any claims of title or other interests of
382 IHL, the state and city arising out of the PCCSA or the CCSA.

383 **SECTION 7.** The powers and authorities conferred by this act
384 shall be regarded as supplemental and additional to powers by any
385 other laws.

386 **SECTION 8.** This act shall take effect and be in force from
387 and after July 1, 2018.

