

LAWS RELATING TO NAVIGATION

University of Mississippi Law Center

MISSISSIPPI-ALABAMA
SEA GRANT CONSORTIUM

MASGP-74-036



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Preliminary Draft

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University of Mississippi

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MASGP-74-036

FOREWORD

This volume is one of ten representing a compilation of Mississippi laws which most significantly affect the use and development of the state's marine and coastal zone. This project was conceived and substantially completed by Professor Frank L. Maraist of the University of Mississippi Law Center under the auspices of Mississippi-Alabama Sea Grant Consortium and the University of Mississippi.

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Oxford, Mississippi
December 31, 1974

I. RIVERINE NAVIGATION

1. CHANNELS

A. State Constitutional Control.

The Mississippi Constitution of 1890 limits the power of the legislature to authorize permanent obstructions of navigable waters;¹ however, the construction, under proper authority, of draw bridges and booms and chutes for logs is permitted, provided such construction does not prevent the safe passage of vessels or logs, under regulations provided by law.²

The legislature cannot pass local, private or special laws in any of the following enumerated cases; such matters may be provided for only by general laws:

- (a) Granting to any person, corporation, or association the right to have any ferry, bridge, road or fish trap,
- (b) Matters relating to stock-laws, water courses and fences.³

B. State Statutory Control.

It is the public policy of the state to aid and encourage the promotion, development, improvement, and expansion of the state's ports, harbors and inland waterways.⁴ Streams, channels, and inlets that are at least five miles long, three feet deep, and thirty feet wide are deemed to be public waterways of the State upon which the public has the right to fish and engage in water sports. Those utilizing these waterways, however, may not disturb the adjoining banks or pollute the waters.⁵

If any person permanently obstructs any of the navigable waters of the state, he shall be guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$50 or by imprisonment in the county jail

for not more than 30 days, or both.⁶

The Mississippi Boating Act of 1960 provides broad state statutory control over both riverine and coastal navigation. For example, any vessel operating on the navigable water of the state must carry a Coast Guard approved life preserver for each person on board.⁷ Also, each vessel must have a paddle and, for night operation, a light sufficient to make its presence known (or to comply with federal regulations of vessels of such classification).⁸ No vessel shall be operated unless it is in a safe and seaworthy condition; in addition, all vessels operating in the Mississippi Sound or Coastal/tidal waters must comply with all applicable federal regulations.⁹ No vessel shall be operated in a reckless or negligent manner, at an unreasonable speed, by a physically or mentally incompetent operator, by an intoxicated operator, or while overloaded. These code provisions apply to surfboards, aquaplanes, motorboats, waterships, and other watercraft and vessels.¹⁰

Any boat which is towing a skier must have a lookout above the age of 10 years in addition to the operator except when participating in an official regatta, motorboat race, marine parade, tournament or exhibition.¹¹

Vessels propelled by machinery in excess of ten (10) horsepower, whether or not such machinery is the principle source of power, using the territorial and/or navigable waters of the state and every vessel using the high seas in the State of Mississippi must be properly numbered.¹² However, certain vessels need not be numbered under Mississippi Law: (1) foreign vessels temporarily using state navigable waters; (2) public vessels of the United States; (3) state and municipal vessels; (4) ships lifeboats; (5) vessels

designated by the appropriate federal authorities; (6) vessels used exclusively for racing; (7) vessels operating under temporary certificates; (8) vessels covered by a number issued under federal laws or another state (up to 90 consecutive days.)¹³ Owners of livery boats may obtain certificates of number for all such vessels by paying a single fee plus twenty-five cents for each additional livery boat; each to bear a separate and distinct number.¹⁴

Any person who violates the Mississippi Boating Act of 1960 is guilty of a misdemeanor and subject to the following penalties: (1) for violation of Miss. Code Ann. §§ 59-21-29 to 59-21-33, incl., 59-21-55, 59-21-81 to 59-21-87, incl., 59-21-111 to 59-21-129, incl. (changing numbers, etc) a fine of not less than \$10 nor more than \$100. The owners and/or operator of a vessel shall be civilly liable for any injury or damage proximately resulting from the negligent failure of such owner or operator to comply with the provisions of the Mississippi Boating Act of 1960.¹⁵ This does not limit any cause of action maintainable at common law, maritime law, or in admiralty, but shall be cumulative and supplemental.¹⁶

Railroad companies have the power to construct, maintain or operate their railroads under, over, and across any body of water, whether navigable or not, which lies across their routes.¹⁷ Also, they are vested with power to erect, use, and maintain bridges over such water.¹⁸ However, whenever a navigable body of water is crossed by a bridge, there must be maintained a draw or swing in the bridge sufficient to allow the passage of boats and water craft.¹⁹ Railroad companies may also establish such transfers, landings,

wharves, approaches, and inclines as may be convenient or necessary in transferring their cargo to watercraft.²⁰

Telephone or telegraph companies are authorized to set up posts and fixtures along and across any waters or canals, but they must be constructed so as not to be dangerous to persons or property, nor interfere with the common use of such waters.²¹

Persons or firms engaged in construction across or adjacent to navigable waters must remove any bush, trees or debris (occasioned by their activities), that constitute an obstruction to the waterway.^{21a}

The Governor of the State of Mississippi is authorized to enter into a pact and/or agreement with the State of Alabama, entitled The Tombigbee-Tennessee Water Development compact.²² The purpose of the compact is to promote the development of a navigable waterway connecting the Tennessee and Tombigbee Rivers in order to establish a joined interstate authority to assist in these efforts.²³

C. State Agencies.

The term "watercourse" has been defined as any natural lake, river, creek, cut or other natural body of fresh water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes without outlet to which only one landowner is riparian.²⁴ Any person desiring to build a dam or reservoir on a watercourse must obtain a written statement from the Board of Water Commissioners that such construction will not affect plans for the proper utilization of the water resources of the state.²⁵

Navigable waters of the state often come under the control of individual state, county or municipal commissions. For example, the State Oil and Gas Board regulates the use of navigable waters for the transportation of oil, or other minerals.²⁶ Persons, firms or corporations engaged in the transportation, exploration, or production of minerals have the right to construct, operate and maintain facilities incident to such operations in any of the navigable waters of the state only after obtaining a permit from the State Oil and Gas Board.²⁷ However, these persons or firms having the right to construct, operate and maintain facilities, for the transportation or production of minerals, in, on, under, or across land which is submerged (or whenever the tide may ebb and flow) are subject to the following: (a) the paramount right of the United States to control commerce and navigation; (b) the right of the public to make free use of the waters; and (c) the restrictions and prohibitions contained in Section 81 of the Mississippi Constitution of 1890.²⁸

The Mississippi Boat and Water Safety Commission has primary responsibility for the control and/or investigation of accidents occurring on the navigable waters of the state (fresh and salt-water).²⁹ In case of a boating accident involving a motorboat operated for pleasure or any other motorcraft where death, injury resulting in 72 hour incapability, or damage in excess of \$100 results, the operator shall file an accident report with the sheriff of the county in which the accident occurred. (Accidents include, but are not limited to capsizing, collision, floundering, flooding, fire explosion, and disappearance of a vessel other than by theft.)³⁰ When death results from a boating accident, a written report shall be submitted within 48 hours after the

accident.³¹ Such reports must be filed in quadruplicate. The sheriff keeps one and forwards the rest to the Mississippi Boat and Water Safety Commission which consolidates all reports and transmits them to appropriate federal agencies.³² Operators of vessels involved in boating accidents are required to remain on the scene until all necessary aid has been furnished to injured persons.³³

It should be noted that the powers of the Mississippi Boat and Water Safety Commission are applicable only to routes that are solely under the jurisdiction of the State of Mississippi. These powers are not applicable to the Mississippi Sound or the Coastal or tidal routes of the states which are under the concurrent jurisdiction of the Mississippi Marine Conservation Commission and the United States Coast Guard.³⁴

As stated above, the Mississippi Constitution of 1890 limits the power of the legislature to authorize permanent obstructions of navigable waters.³⁵ However, the Board of Commissioners of the Water Resource Management District has the right to obstruct or dam up any natural water course other than as provided by section 81, Mississippi Constitution of 1890.³⁶ The Board has the power to construct and maintain bypasses for conveyance of surplus or flood waters through shorter routes by means of canals, ditches, floodways, levees, or other artificial means from tributaries of natural streams to their main watercourses and from one point in a natural watercourse to another.³⁷ However, such bypasses must empty the water directly into the same watercourse to which it would naturally flow, or into the back-

water area of another watercourse within 35 miles from the mouth thereof.³⁸ The Commission also has control and management of all swampland districts and has the power and authority to maintain existing drainage channels; in addition, they have the power to control and operate with any appropriate agency of the United States government to improve and maintain channels.³⁹

The Pat Harrison Waterway Commission is empowered to do any and all things necessary in making a survey of the Pascagoula, Leaf, and Chicksaw Rivers, Tallahala Creek, and their tributaries, in order to promote the establishment of barge canals linking the cities of Meridian, Hattiesburg, Laurel and other cities along these rivers to the Gulf of Mexico.⁴⁰ Each county represented on the commission is authorized to improve all or part of such waterways within the respective county for navigation or flood control purposes.⁴¹

The Tombigbee Valley Authority is authorized to do all things necessary to survey that portion of the Tombigbee River located within the state of Mississippi in order to investigate the possibility of developing that portion of the river which comprises a segment from the Tennessee River on the North, through Mississippi and Alabama to the Gulf of Mexico at Mobile, Alabama.⁴² These surveys will be considered in the opening of a water route from the Northern headwaters of the Tombigbee River (particularly the last branch of the Tombigbee River and its tributaries) and the Tennessee River.⁴³

The Mississippi Agriculture and Industrial Board has the power to

dam inland waterways.⁴⁴ The carrying out of the corporate purposes of the Mississippi A & I Board and such State Inland Port Authority is, in all respects, for the benefit of the people of the state and is a public purpose.⁴⁵ The A&I Board has the power to use, equip, maintain and control channels, and to dredge, deepen, extend and widen channels, rivers, and waterways.⁴⁶ The Board also has the power to use, control and operate waterways and channels.⁴⁷ In addition, it has the power to dredge, deepen, extend, widen, or enlarge rivers, channels and waterways, dam inland waterways, and establish water basins.⁴⁸

The Board may also make application to the Mississippi Boat and Water Safety Commission for special rules and regulations with reference to the operation, equipment or safety of vessels on any waters (except coastal) within the territorial limits or authorized jurisdiction of the Board.⁴⁹

The act authorizing the exertion of power by the Mississippi A&I Board does not repeal any existing laws of the state; nor shall the act be in derogation of any existing laws.⁵⁰

D. County Control.

Control and supervision of navigation in fresh water is often vested in the county through which any river may run.⁵¹ The Board of Supervisors of any county through which any part of a river may run, touch, or border, or upon which the United States has a navigation project (including channel clearing or improvement, cut-offs, levees, dams, etc.) may agree and give assurance to any United States agency to (1) provide land or easements necessary for the project, (2) hold the United States free from damage due

to the construction, (3) maintain and operate the works after completion pursuant to the terms of federal laws relating to navigation on navigable streams.⁵²

E. Municipal Control.

The governing authorities of municipalities have the power to establish, alter and change the channels of streams or watercourses, and to bridge the same, whenever so doing will promote the health, comfort and convenience of the inhabitants of the municipality.⁵³ However, whenever the cost therefor is equal to 1/4 of the taxes of previous years (levied for general revenue purposes) the work is not authorized until it is adopted by a majority of voters of the community. The bonds to raise money for work must be issued by the municipality in accordance with statutory provisions.⁵⁴

2. PORTS AND HARBORS.

A. State Constitutional Control.

The Mississippi Legislature shall never authorize the permanent obstruction of any of the navigable waters of the state, and they may provide for the removal of such obstructions as now exist whenever the public welfare demands.⁵⁵ However, this does not prevent the construction, under proper authority, of draw bridges for railroads, or other roads, nor the construction of "booms and chutes" for logs in such a manner as not to prevent the safe passage of vessels or logs.⁵⁶ Specifically, telephone or telegraph companies are authorized to set up posts and fixtures along and across any waters or canals; however, they shall be so constructed so as not to be dangerous to persons or property, nor interfere with the common use of such waters.⁵⁷

B. State Statutory Control.

It is the public policy of the State of Mississippi to aid the industrial development and economy of the state through the acquisition, promotion, development, improvement and expansion of inland ports and attendant industrial sites.⁵⁸ It is also the public policy of the state to aid and encourage the promotion, development, improvement, and expansion of the state's ports, harbors and inland waterways.⁵⁹

Any port commission existing under Miss. Code Ann. §§ 59-7-101, et seq. and any other port commission or port authority which has not been expressly granted such powers may exercise all powers granted to county port authorities under Miss. Code Ann. §§ 59-9-15 to 59-9-35, and in addition may acquire and operate gas, electric, water, sewage or other public utility systems.⁶⁰

The State Ports and Harbors Act is not to be deemed to be in derogation of any existing law.⁶¹ Further, the [State Ports and Harbors] Act is to be construed as supplemental and cumulative and is not meant to repeal, limit, or restrict any other public body or statute heretofore or hereinafter enacted providing for the establishment, support, financing and maintenance of port commissions, authorities or other local agencies having jurisdiction over ports, rivers, channels and waterways unless the Act specifically provides otherwise.⁶²

C. State Agencies.

The Mississippi Agricultural and Industrial Board is vested with broad discretion and latitude in the exercise of its duties to effect the public policy

of the State Ports and Harbors Act and the State Inland Ports Act.⁶³ The carrying out of the corporate purpose of the Mississippi A & I Board and the State Port Authority and State Inland Port Authorities is, in all respects, for the benefit of the people of the state and is a public purpose.⁶⁴

When a county or city port or harbor agency applies for state ownership, the Mississippi A & I Board conducts an independent analysis of the port or harbor, and if it determines that state ownership is feasible, negotiates a conveyance to the state.⁶⁵ Any agreement providing for conveyance of an entire port or harbor between the A & I Board and a city or county port authority must be approved by a majority of the electors in the city or county affected.⁶⁶ Any port or harbor (and facilities) conveyed to the state is operated by the A & I Board acting through a State Port Authority for the port or harbor which is not responsible to the city or county, but rather solely to the Agricultural and Industrial Board.⁶⁷

The State Port Authority consists of five (5) qualified electors of the city or county in which the port or harbor is located; the terms of office are staggered - one new member appointed annually for a five year term. These members are entitled to the same compensation authorized by law for the Port Commission or other authority having jurisdiction.⁶⁸

Any state port authority shall be an agency of the state, and have, in addition to the powers granted under the State Port and Harbors Act, the same jurisdiction, rights, powers and duties of the Port Commission or other port or harbor agencies having statutory jurisdiction of the harbor on

the date of conveyance to the State.⁶⁹

The Mississippi Agricultural and Industrial Board shall occupy the same relationship to the State Port Authority as did the city or county to the former port commission, or authority.⁷⁰ The A & I Board has the power to acquire and control ports; also, it may dam inland waterways, establish water basins, and deepen, extend or widen rivers.⁷¹

To acquire lands or rights of way, the Mississippi Agricultural and Industrial Board may purchase, negotiate or condemn, and if it proceeds by eminent domain, it follows the procedure adopted for counties, municipalities or corporations under Mississippi law. However, the board cannot acquire land without the consent of the owners unless actual necessity is alleged and proven.⁷² The title to all property acquired by the board vests in the State of Mississippi.⁷³ Provisions dealing with the issuance of state bonds for acquisition of land under the State Ports and Harbors Act are enumerated in sections 59-5-91 to 59-5-51, incl., and 59-5-59 to 59-5-63, incl., of the Mississippi Code.⁷⁴

The carrying out of the corporate purpose of the Mississippi Agricultural and Industrial Board and State Port Authorities is, in all respects, for the benefit of the people of the State of Mississippi and is a public purpose. The A & I Board and State Port Authorities perform an essential governmental function in the exercise of the powers conferred upon them by the State Ports and Harbors Act.⁷⁵

The Mississippi Agricultural and Industrial Board and State Port

Authority may jointly set aside or lease lands, roads, docks, sheds, warehouses, elevators, compresses, floating dry docks, graving docks, marine railways, tugboats or other improvements to public or private individuals, firms, or corporations for ninety-nine years (and they may sell the same).⁷⁶

The Board must approve the consideration given for leases of State Port Authority facilities. That consideration may either be monetary or in the form of employment preference to residents of the area. Also, such property may be leased free of ad valorem taxes for the period authorized by law.⁷⁷

The Board may take no action in building, constructing, acquiring, or developing any state-owned inland port unless the Tennessee Valley Authority or other governmental agency agrees to furnish at least seventy-five percent (75%) of the cost of building, acquiring, or developing said port.⁷⁸ The A & I Board may contract with any governmental agency (local, state, federal or combinations thereof) for the acquisition and development of any state owned inland port if certain conditions are met.⁷⁹ When a county or port or harbor agency applies to have the state operate the port or harbor, the A & I Board causes an independent study to be made of the potential for development of the port, and if it is found to be in the public interest, the Board may negotiate the acquisition.⁸⁰

Any port or harbor or part thereof and all facilities, structures, lands or other improvements, leased by, acquired by, or conveyed to the state, is operated by the Mississippi Agricultural and Industrial Board - acting through the State Inland Port Authority for such port or harbor.⁸¹

State Inland Port Authorities are vested with the same jurisdiction,

rights, powers, and duties vested by law in other port authorities within the state, but any conflicts of laws shall be governed by the State Inland Port Act.⁸²

Membership on a State Inland Port Authority is as follows: (1) One member from the county where the port is situated and one member from each contiguous county [appointed by boards of supervisors] plus one extra from any one of the participating counties; (2) the governor appoints one member from each participating county. In the event that the contracting agency is any water management district, the boards shall be made up of the following: One member from the county where the port is located, one from each contiguous county [appointed by boards of supervisors], and one member from each county above appointed by the governor - plus - one additional member.⁸³

The Mississippi Agricultural and Industrial Board has the power to acquire land and easements by purchase, negotiation or condemnation. The power of eminent domain applies not only as to all property of private persons and corporations, but also to property already devoted to public use, including leaseholds but excepting levee boards, drainage districts, and flood control agencies. However, the board may not acquire property without the consent of the owner unless actual necessity is alleged and proven.⁸⁴

The A & I Board is authorized to accept donations of land, rights therein, and material required for the maintenance or development of any port or harbor.⁸⁵ The title to all lands acquired by the Board under the authority of the State Inland Port Act vests in the State of Mississippi.⁸⁶ Sections 59-17-35 to 45, incl., and 59-17-51 to 55, incl., of the Miss. Code deal with the issuance of bonds by the Board in conjunction with State Inland Ports.⁸⁷

The Mississippi Agricultural and Industrial Board consists of the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, two state senators appointed by the Lieutenant Governor, two state representatives appointed by the Speaker of the House, the Commissioner of Agriculture, the State Chemist, the State Geologist, as ex officio members; (also 25 persons selected from the state at large and appointed by the governor for four year terms or until the governor's term of office expires).⁸⁸

The Mississippi Agricultural and Industrial Board has the power to hold, maintain, equip, use, control and operate ports, harbors, waterways and channels and may dredge, deepen, extend, widen, or enlarge any port, harbor, river, channel or waterway.⁸⁹ The Board also has the power to purchase, install, lease, construct, own, hold, maintain, use, equip, and operate wharves, piers, docks, quays, elevators, compresses, bulk loading and unloading facilities, warehouses, marine railways, air and rail terminals and roadway and approaches thereto.⁹⁰

The Board has the power to acquire, purchase, install, lease, construct, own, hold, maintain, use, equip, control and operate docks, floating dry docks, tugboats and water terminals.⁹¹ The Board and the State Land Port Authority may set aside, lease, or sell floating dry docks, graving docks, or tugboats to individuals, firms, or corporations - public and private. Leases shall be for a maximum of 99 years.⁹²

Any industrial lease of lands may be executed upon such terms and conditions and for such monetary rental or other considerations as may be found adequate by the Board. Any covenants for the lessee to make expenditures must be recited in the lease.⁹³

The Mississippi Agricultural and Industrial Board has the power to reclaim submerged lands.⁹⁴

While State Inland Port Authorities are given all powers and jurisdiction of other state port authorities, in the event of conflict, the State Inland Port Authority is governed by provisions of the State Inland Port Act.⁹⁵ The State Ports and Harbors Act does not specifically exclude applicability to an inland port, albeit there is an Inland Port Act (§§ 59-17-1, et seq.) - therefore it might be possible for an inland port to be established under the State Ports and Harbors Act without the 75% financing by Tennessee Valley Authority or other governmental agency. [See Miss. Code Ann. § 59-17-11 (1972)]⁹⁶

The provisions of this act do not repeal, amend, limit or restrict statutes heretofore or hereinafter enacted regarding establishment, support, financing, and maintenance of port commissions, authorities, or other local agencies having jurisdiction over harbors, ports, rivers, channels, and waterways. . . the provisions are supplemental and cumulative in nature and do not repeal or limit authority granted to any public body.⁹⁷

D. County Control.

The Board of Supervisors of any county having a port of entry is authorized to appropriate money for the use and benefit of the port. Such monies are expended by the port commission with the approval of the Board of Supervisors.⁹⁸

The power of the county board of supervisors to issue bonds to finance harbor improvements is outlined in Miss. Code Ann. §§ 59-7-105 to 123 and Miss. Code Ann. §§ 59-7-111 to 123. Any county (qualifying under § 59-7-103) which calls for federal project construction has the power to acquire land

and easements by purchase and by eminent domain and to give assurances to the federal government when required.⁹⁹

E. County Agencies.

The purpose of the establishment of county and municipal port commissions is to promote industrial development, develop fisheries, promote commerce and navigation and relieve unemployment.¹⁰⁰ These commissions have jurisdiction over harbors, ports and passes leading thereto.¹⁰¹

The Commissions may make application to the Mississippi Boat and Water Safety Commission for special rules and regulations with reference to the operation, equipment, or safety of vessels on any waters (except coastal) within the territorial limits or authorized jurisdiction of the board.¹⁰² Any person, vessel, firm or corporation acting as or employing a harbormaster, pilot boatman, stevedore, surveyor, watchman, policeman, ship agent or ship Chandler may be required to be duly authorized and licensed by the County Port Commission.¹⁰³ Harbormasters must pay an annual license fee to the County Port Commission not to exceed \$50.00. The Port Commission will also fix the fees for piloting inward and outward from the port in an amount not unduly burdensome on shipping; the commission will also set fees for docking, shifting, and boarding.¹⁰⁴

Any county maintaining a port or harbor agency which desires state ownership of the port or harbor is authorized to hire engineers to survey the assets and liabilities, ascertain reasonable market value of the land and revenues resulting from operations in the present and after projected expansion.¹⁰⁵ Any county may enter contracts, leases, or agreements with the

board to improve a port or harbor and to obtain state government financing in some cases. However, if state financing is made available, the governor may appoint two additional members of the respective agency for the life of the state bonds.¹⁰⁶

County Port Commissions have jurisdiction over the port, terminals, harbors and passes leading thereto, all vessels, boats and wharves, common carriers and public utilities therein.¹⁰⁷ The duties and powers of county port commissions are those set forth in §§ 59-1-9 and 59-1-27 of the Mississippi Code (as amended) except that the salary of the Port Director is subject to the approval of the Board of Supervisors.¹⁰⁸

The County Port Commission is required to make recommendations to the board of supervisors concerning expenditures to be made for improvement, promotion, development, construction, maintenance, and operation of the harbor; and the commission must submit an annual budget to be approved by the Board of Supervisors.¹⁰⁹

Port Commissions of ports of entry must make annual reports to the governor, legislature, and board of supervisors; such reports must include all improvements made in the port of entry.¹¹⁰

The County Port Commission may be given by the board of supervisors jurisdiction over harbor projects conducted by the federal government.¹¹¹ The board of supervisors requires the county port commission to report not less than quarterly nor more often than monthly.¹¹² The board of supervisors may issue bonds both for making additions to harbor facilities,¹¹³ and for improving established harbor facilities.¹¹⁴

County Port Commissions may make application to the Mississippi Boat and Water Safety Commission for special rules and regulations with reference to the operation, equipment, or safety of vessels on any waters [except coastal] within its territorial limits or authorized jurisdiction.¹¹⁵

The county port commission has jurisdiction over common carriers and public utilities within the port.¹¹⁶ Contracting stevedores must pay an annual privilege tax of not more than \$500.00 per year as set by the county port commissions. The commission shall also set licensing fees not to exceed \$50.00 per year for pilots, boatmen, stevedores, surveyors, watchmen, police, ship agents, ship chandlers and any other employees performing services for public shipping.¹¹⁷ It shall be unlawful to work without being duly licensed.¹¹⁸

County Port Commissions have the power to sell or lease any lands (acquired) for industrial purposes integrated to water transportation or to the United States for needed land owned by the U. S. or other valuable consideration.¹¹⁹ The county port commission may sell reclaimed land for industrial purposes, as long as it does not interfere with commerce, navigation, and is in the best public interest.¹²⁰ Such sales may be by special warranty deed or lease (not to exceed 99 years); all such sales must be approved by a two-thirds vote of the county port commission.¹²¹ Port commissions leasing or selling reclaimed lands for industrial purposes must receive adequate consideration such as improvements on the land, construction thereon, or the hiring of local workers.¹²² The term industry (as used in Miss. Code Ann.

§ 59-1-19 which allows port commissions to sell reclaimed land) means operations aiding in the development of fisheries, commerce, navigation, shipping and all forms of manufacturing enterprises.¹²³

County port commissions have jurisdiction and control over all land within and adjacent to any river, bay, or natural lake which is now or was below the high tide mark.¹²⁴

F. Municipal Control.

Any municipality having a port of entry may make improvements, including deepening of any port or harbor.¹²⁵ Municipal port commissions have jurisdiction over port and passes leading thereto.¹²⁶ Municipal port commissions have five members, all of whom must live in the municipality; two are appointed by the governor, two by the governing authority of the municipality, and one by the county board of supervisors. They serve for a five-year term.¹²⁷

The governing authorities of municipalities have the power to construct all needful improvements in the harbor; to control, guide, or deflect the current of a river; to repair and regulate public wharves and docks; to change and collect levee rates; and, to set aside or lease portions of the wharf for special purposes.¹²⁸ However, a permit or lease of a wharf shall not be granted for a term exceeding twenty-five years.¹²⁹

Any city in Mississippi having a seaport or harbor designated as a port of entry by the U. S. Government has a Harbor Commission which is known as a port commission. All members of the commission should be

skilled in maritime affairs; the governor appoints one member, the county board of supervisors appoints one member, the mayor and aldermen or mayor and board of commissioners appoint three. Their term is for four years.¹³⁰

Municipal port commissions have jurisdiction over the port, terminals and harbors and passes leading thereto.¹³¹ The commission may also pass rules and regulations not inconsistent with the law. The commissioners may act as port wardens, and they must publish rules relating to docks, passes, tariffs, fees, fines, penalties; the courts may be used to enforce such rules. It is also their duty to see that employees carry out their duties, to appoint pilots and require bond (up to \$5,000) from them, and replace them for failure to perform.¹³²

Municipal port commissions have jurisdiction and control of all land within or adjacent to any river, bay, or natural lake which is now (or was) below the high tide mark. (Also, any other land acquired by purchase, lease, or eminent domain.)¹³³ Harbormasters must pay an annual license fee to the port commission not to exceed \$50.00. The commission also sets the fee for piloting inward and outward from the port in an amount not unduly burdensome on shipping. The commission also sets fees for docking, shifting, and boarding.¹³⁴

The mayor and aldermen, or mayor and board of commissioners of any city having a port of entry are authorized to appropriate money for the port commission who can expend it with the approval of the municipal authorities where the port is located.¹³⁵

Municipal port commissions have the power to construct and improve harbors; dredge; acquire, construct and repair wharves and docks; own, construct, and lease sheds, warehouses, elevators, compresses, floating dry docks, marine railways, tugboats and other aids to commerce. These may be leased for special purposes for not more than 25 years and for industrial purposes for not more than 99 years. The municipal port authority may get lands by reclamation, eminent domain, grant or purchase. ¹³⁶

Municipal ports which engage in traffic of foreign commodities and/or have a harbor depth of 20 feet or more are empowered to improve, promote, develop, construct, dredge and maintain harbors; to also, construct and operate wharves, docks, and grain elevators, cotton compresses, warehouses, floating dry docks, marine railways, tugboats, cold storage facilities and water and air terminals. The improvement work must remain under the management and control of the municipality, and the entire cost cannot exceed \$1,000,000. ¹³⁷

Municipal port commissions must report improvements to the governor, legislature, municipal governing authority and board of supervisors annually. ¹³⁸ They also have the authority to issue bonds for harbor improvement. ¹³⁹ All improvements made under this statute(s) shall be operated by the port commission. ¹⁴⁰

Municipalities (having a harbor having not less than eight (8) seafood industries) which maintains a channel and/or harbor depth of not less than eight (8) feet, have the power to construct harbors, build bridges, causeways,

support facilities, and to reclaim land.¹⁴¹ Municipal port commissions are controlled by the governing authorities of the municipality.¹⁴² These commissions have jurisdiction over ports, terminals, harbors, passes leading thereto, and all vessels, boats, wharves, common carriers, and public utilities within the port.¹⁴³ Municipal port commissions established under Miss. Code Ann. § 59-7-405 shall report annually to the governor, legislature and municipality.¹⁴⁴

Municipal port commissions, acting jointly with the municipal government, may negotiate contracts for repairs and maintenance of piers, docks, warehouses, grain elevators, or any other property under their jurisdiction.¹⁴⁵

The governing authorities of municipalities have the power to construct all needful improvements in the harbor; to control, guide, or deflect the current of a river. They may also repair and regulate public wharves and docks, charge and collect levee rates, and set aside or lease portions of wharves for special purposes. However, a permit or lease of a wharf shall not be granted for a term exceeding twenty-five (25) years.¹⁴⁶ Municipalities also have the power to own, operate and regulate piers, bath houses and like structures for public recreation.¹⁴⁷ In addition municipal port commissions have the power to acquire, construct and repair wharves and docks, and they may own, construct, lease, and maintain sheds, warehouses, elevators and compresses.¹⁴⁸

Municipal port commissions also have the power to own and operate marine railways, tugboats, floating dry docks, and graving docks.¹⁴⁹ Contracting stevedores shall pay an annual privilege tax of not more than \$500.00 per

year as set by the commission. The municipal port commission will also set licensing fees not to exceed \$50 per year for pilots, boatsmen, stevedores, surveyors, watchmen, police, ship agents, ship chandlers, or any other employees performing services for public shipping. It is unlawful for them to work without being duly licensed.¹⁵⁰ Municipalities having a port of entry trafficking in foreign commerce and having a harbor depth of 20 or more feet may acquire, construct or lease floating docks, marine railways, rail terminals and cold storage facilities.¹⁵¹ Municipalities having a harbor and having not less than eight seafood industries and a harbor depth of eight feet or more have the power, either themselves or through a commission, to construct and operate cold storage facilities, rail terminals and airplane landing fields.¹⁵²

The governing authorities of any municipality bordering on the Mississippi Sound or Gulf of Mexico in which there is located, in whole or in part, a port or harbor through which any commerce flows (and which has in its corporate limits one or more industries engaged in the seafood industry) is authorized to create a commission.¹⁵³ Municipal port commissions may sell reclaimed land for industrial purposes, as long as it does not interfere with commerce or navigation and is in the best public interest. Sales by special warranty deed or leases (not to exceed 99 years) are authorized. Sales must be approved by a two-thirds vote of the commission.¹⁵⁴ Port commissions leasing or selling reclaimed lands for industrial purposes must receive adequate consideration such as improvements to the land, construction thereon, or the employment of local workers.¹⁵⁵ The term industry (as used in Miss.

Code Ann. §§ 59-1-13 to 59-1-25, allowing port commissions to sell or lease reclaimed land) means operations aiding in the development of fisheries, commerce, navigation and shipping as well as all forms of manufacturing enterprises.¹⁵⁶

Port commissions may cooperate and assist any authorized municipality (having a certificate of public convenience and necessity) in the establishment of industry by the municipality, and may convey or lease land to the municipality for such purposes.¹⁵⁷ Any conveyance from port commission to municipalities for the establishment of industry shall reserve to the port commission all minerals therein except sand, clay, and gravel.¹⁵⁸ Municipal port commissions may rent facilities to industry for a term of up to 99 years; the industry is requested to employ local workers and they may serve as consideration for the lease.¹⁵⁹

Municipal Port Commissions have jurisdiction and control over all land within or adjacent to any river, bay or natural lake which is now or ever was below the high tide mark and also over any other land acquired by purchase, lease or eminent domain.¹⁶⁰ The commissions have the power to dredge in any direction and to reclaim submerged lands.¹⁶¹

The Urban Flood and Damage Control Districts may divert, change, or alter the flow of any river with dams, levees, channels, reservoirs, etc., and may reclaim overflow lands.¹⁶²

Municipal bridge and park commissions may acquire an island or islands (in whole or in part) situated in the Gulf of Mexico or the Mississippi

Sound (if the island lies within three leagues of the nearest point of the corporate limits of the municipality involved). Acquisition may be by eminent domain or gift or purchase - for use as parks, recreational activities or harbor development.¹⁶³

The governing authorities of municipalities shall have the power to construct all needful improvements in the harbor; to control, guide, or deflect the current of a river, to repair and regulate public wharves and docks, to charge and collect levee rates, and set aside or lease portions of the wharf for special purposes; however, a permit or lease of a wharf shall not be granted for a term exceeding 25 years.¹⁶⁴

3. LANDINGS

A. State Constitutional Control.

Although the legislature has broad power concerning the establishment, use, and management of landings, the scope of any legislation must not conflict with Mississippi Constitution of 1890, Article 4, Section 81. Basically, this provision of the Constitution prevents the legislature from authorizing the permanent obstruction of any navigable waters of the state, and it provides for the removal of such obstruction as now exist whenever the public welfare demands.¹⁶⁵ For example, whenever a railroad constructs and maintains a bridge over navigable waters, there must be a sufficient swing or draw in the bridge to allow the passage of boats and water craft.¹⁶⁶ More applicable to railroad companies in connection with landings is the fact that they may establish transfers, wharves, approaches and inclines as are convenient or necessary in transferring cargo to water craft.¹⁶⁷

B. County Control.

The preliminary steps that are required for the establishment of a landing within a county are simple. The first requirement is that the county must border on a navigable river.¹⁶⁸ The first procedural step is that a minimum of three (3) residents of the county must petition the Board of Supervisors to set aside a lot of ground on the bank of the river for use as a landing. The Board then appoints three (3) of its members to determine if a landing is needed for the public convenience; if so, the Board sets aside a lot of ground, not exceeding two acres, at a point most convenient to the public, as a landing.¹⁶⁹

After the committee makes its investigation, it makes its report to the board of supervisors. The board sets a time and place for the hearing of the committee's report, and the sheriff takes a notice of the time and place of the hearing to the owner of the land to be taken at least five days prior to the meeting. If the owner is a non-resident, notification may be by publication. The board of supervisors may accept or reject the committee's report or order another examination. As to the owner of the land, after once being served with notice, he shall take notice of all future proceedings.¹⁷⁰

If the board of supervisors accepts the committee's report, it directs the sheriff to call twelve disinterested freeholders to serve as jurors in order to assess the damages to the landowner whose land it being taken by condemnation for use as a landing.¹⁷¹ The board may accept or reject the findings of the jury; however, if the findings are accepted, the damages must be paid prior to the taking of the property.¹⁷²

Any dissatisfied owner (as to damages awarded) may appeal to the Circuit Court of the district in which the county is located. The Circuit Court may review as to matters of law, award a trial de novo as to the amount of damages, remand to the board of supervisors for a new assessment of damages, or make any other orders which are proper.¹⁷³

After the land has been condemned, damages paid, and buildings and fences erected for use in connection with the landing, it is unlawful for any person to use the property for any other purpose than as a landing.¹⁷⁴ Any person misusing the property is subject to a penalty of \$500, and any right to the use of the facilities shall be forfeited.¹⁷⁵

C. County Agencies.

When a landing is established by a board of supervisors, the board is authorized to lease all or a portion of the landing for a period not exceeding five (5) years. The lessee is required to execute a bond, payable to the county, in a penalty sum of not less than \$500 for failure to obey the terms of the lease or legal duties. Although the board sets the schedule for rates and charges, no lease executed by the board of supervisors may abridge the right of a person to handle his own freight at the landing without charge.¹⁷⁶ The schedule of rates and charges must be conspicuously posted on the premises, and any overcharge shall subject the lessee to penalty of \$20.¹⁷⁷

If the board of supervisors (except in coastal counties) desires to have special rules and regulations with regard to the operation, equipment or safety of vessels on the waters around the landing, it must make application

to the Commissioner of the Mississippi Boat and Water Safety Commission.¹⁷⁸

Once land has been set aside as a landing by the board of supervisors, the applicants for the landing may erect warehouses, sheds or other buildings necessary for the reception, storage or shipment of freight. The lots shall be substantially enclosed, provided with suitable gates, and kept in good repair.¹⁷⁹

Miss. Code Ann. § 59-1-15 (1972) explains the leasing of a lot or landing by a board of supervisors. The lease may not exceed a term of five (5) years, and the lessee may only transact general receiving and forwarding business. The Board is to fix the schedule of rates and charges, and require the lessee to execute a bond payable to the county for failure to obey the terms of the lease and legal duties. The lease may not abridge the right of a person to handle his own freight at the landing free of charge. Certain penalties are also provided for the overcharge of rates and charges as set by the Board.¹⁸⁰

CHAPTER I

FOOTNOTES

[Unless otherwise provided all footnotes are to
Miss. Code Ann. (1972)]

1. Miss. Const. Act IV, § 81 (1890) (It has been held that what constitutes navigable waters is a question of local and not federal law. See Culley v. Pearl River Industrial Comm., 234 Miss. 788, 108 So. 2d 390 (1959).
2. Id.
3. Miss. Const. Act IV § 90 (1890).
4. § 59-5-3.
5. General Laws of Ms. Chapter 361 (1972).
6. § 97-15-45.
7. § 59-21-81.
8. Id.
9. § 59-21-81.
10. § 59-21-83.
11. § 59-21-87.
12. § 59-21-5.
13. Id.
14. 59-21-27.
15. §§ 59-21-153, 157.
16. § 59-21-163.
17. § 77-9-179.
18. Id.
19. Id.

20. Id.
21. § 77-9-711; See also Southern Bell Telephone v. City of Meridian,
131 So. 2d 666 (1961).
- 21a. Gen. Laws of Ms. Chapter 473 (1972).
22. § 51-27-11.
23. Id.
24. § 51-3-3.
25. § 51-3-39.
26. § 53-3-71.
27. Id.
28. § 53-3-75.
29. § 59-21-53.
30. § 59-21-51.
31. § 59-21-53.
32. Id.
33. § 59-21-55.
34. § 59-21-117.
35. Miss. Const. Art. IV § 81 (1890).
36. Id.
37. § 51-35-171.
38. Id.
39. § 51-33-203.
40. § 51-15-3.

41. Id.
42. § 51-13-3.
43. Id.
44. § 59-5-11.
45. § 59-17-7.
46. § 59-5-11.
47. § 59-17-13.
48. Id.
49. § 59-21-129.
50. § 59-17-5.
51. § 19-5-91.
52. Id.
53. § 21-19-13.
54. Id.
55. Miss. Const. Art. IV, § 81 (1890).
56. Id.
57. § 77-9-71; see also Southern Bell Telephone v. City of Meridian,
131 So. 2d 666 (1961).
58. § 59-17-3.
59. Id.
60. § 59-5-31.
61. § 59-5-5.
62. Id.

63. § 59-5-9.
64. § 59-5-7.
65. § 59-5-17.
66. § 59-5-19.
67. § 59-5-21.
68. Id.
69. Id.
70. Id.
71. § 59-5-11.
72. § 59-5-39.
73. Id.
74. § 59-5-41 to 51, incl. and § 59-5-59 to 63, incl.
75. § 59-5-7.
76. § 59-5-35.
77. Id.
78. § 59-17-11.
79. § 59-17-19.
80. § 59-17-17.
81. § 59-17-23.
82. Id.
83. Id.
84. 59-17-33.
85. Id.

86. Id.
87. § 59-17-35 to 45 and § 59-17-51 to 55, all incl.
88. § 57-1-3.
89. § 59-17-13.
90. Id.
91. Id.
92. § 59-17-29.
93. § 59-17-29.
94. § 59-17-13.
95. § 59-17-23.
96. § 59-17-1, et seq.
97. § 59-17-5.
98. § 59-1-31.
99. § 59-7-203.
100. § 59-1-13.
101. § 59-1-9.
102. § 59-21-129.
103. § 59-1-43.
104. § 59-1-39.
105. § 59-5-15.
106. § 59-5-23, 29.
107. § 59-7-125.
108. § 59-7-129.
109. § 59-7-131.

110. § 59-7-7.
111. § 59-7-205.
112. § 59-7-209; Warren Co. Port Com. v. Farrell Construction Co.,
395 Fed. 901 (1968).
113. § 59-7-309, 11.
114. § 59-7-501.
115. § 59-21-129.
116. § 59-7-125.
117. § 59-1-39.
118. Id.
119. § 59-7-211.
120. § 59-1-19; See Etel v. City of Pascagoula, 240 So. 2d 700 (Miss. 1970);
Treuting v. Bridge & Park Commission of Biloxi, Miss., 199 So. 2d 629
(Miss. 1967).
122. § 59-1-21.
123. § 59-1-15, see note 120, supra.
124. § 59-1-17; see note 120, supra.
125. § 59-3-1.
126. § 59-7-407.
127. Id.
128. § 21-37-15.
129. Id.
130. § 59-1-1, 3; Simpson v. City of Gulfport, 121 So. 2w 409 (Miss. 1960).

131. § 59-1-1; *Simpson v. City of Gulfport*, 121 So. 2d 409 (Miss. 1960).
132. § 59-1-9, *Simpson v. City of Gulfport*, 121 So. 2d 409 (Miss. 1960)
textual change.
133. § 59-1-17; See *Treuting*, note 120, supra.
134. § 59-1-39.
135. § 59-1-29, note textual change.
136. § 59-3-1.
137. § 59-7-5.
138. § 59-7-7.
139. § 59-7-9 to 21.
140. § 59-7-307.
141. § 59-7-405.
142. Id.
143. § 59-7-407.
144. § 59-7-413.
145. § 59-1-11.
146. § 21-37-15.
147. § 21-37-13.
148. § 59-3-1.
149. Id.
150. § 59-1-39.
151. § 59-7-305.
152. § 59-7-405
153. § 59-11-1.
154. § 59-1-19; 240 So. 2d 703.

- 155. § 59-1-21.
 - 156. § 59-1-15; See, Treuting, note 120, supra.
 - 157. § 59-1-23.
 - 158. § 59-1-25.
 - 159. § 59-3-11.
 - 160. § 59-1-17; See Treuting, note 120, supra.
 - 161. § 59-3-1.
 - 162. § 51-35-315.
 - 163. § 55-7-13.
 - 164. § 21-37-15.
 - 165. Miss. Const. Art. IV, § 81.
 - 166. § 77-9-179.
 - 167. Id.
 - 168. 59-19-1.
 - 169. § 59-19-1.
 - 170. § 59-19-3.
 - 171. § 59-19-5.
 - 172. Id., see also Pearson v. Johnson, 54 Miss. 259.
 - 173. § 59-19-9.
 - 174. § 59-19-11.
 - 175. Id.
 - 176. § 59-19-15.
 - 177. Id.
 - 178. 59-21-129.
 - 179. § 59-19-11.
 - 180. § 59-19-15.
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II. COASTAL NAVIGATION

I. CHANNELS

A. State Constitutional Control.

Mississippi Constitution of 1890, Article IV, § 81, prevents the permanent obstruction of any of the navigable waters of this state. Power is also given to remove any obstruction that now exists whenever the public welfare demands such removal. However, this section does not prevent properly constructed drawbridges for railroads, or other roads, booms or chutes for logging purposes that do not interfere with navigation, safe passage of vessels, or proper logging methods.¹ Subject to § 81, the Board of Commissioners of the Water Resource Management District has the right to obstruct or dam up any natural water course.² Furthermore, they have the right to construct and maintain bypasses for conveying surplus or flood waters by shorter routes by means of canals, ditches, floodways, levees or other artificial means. The latter ways shall run from the tributaries of natural streams to their main watercourses and from one point in a natural watercourse to another point. However, the bypass shall pass the diverted water directly into the same watercourse into which it would have naturally flowed, or into the backwater area of another watercourse within thirty-five (35) miles from the mouth thereof.³

B. State Statutory Control.

The governing authorities of municipalities within this state have the power to establish, alter and change the channels of streams or watercourses,

and to place bridges over them. However, this may only be done when it will promote the health, comfort and convenience of the municipalities' inhabitants.⁴ Whenever changes of this nature are undertaken by a municipality, and the cost thereof is equal to one/quarter (1/4) of the taxes of the previous year levied for general revenue purposes, the work is not authorized until a majority of the voters of such community vote in favor of the project.⁵

Riparian owners of land bordering on the Mississippi Sound and/or the Gulf of Mexico have the right to plant and gather oysters in front of such land.⁶ Planting and gathering of oysters may be done to a point 750 yards from the shore, but no person shall plant within a natural channel so that it interferes with navigation.⁷ Stakes may be set up to designate the bounds of the plantation as long as they are made of some type materials that will not damage watercraft or interfere with navigation.⁸

Under Miss. Code Ann. § 77-9-711 (1972), telephone and telegraph companies are authorized to set up poles and other fixtures along and across any waters or canals. This may be done as long as the poles or fixtures are not dangerous to persons or property, or interfere with the common use of such waters.⁹

Railroad companies have the power to construct, maintain, and operate their railroads under, over, and across any navigable or non-navigable body of water.¹⁰ Whenever a navigable body of water is crossed by a bridge, a draw or swing, leaving sufficient space to allow the passage of boats and water craft must be maintained by the railroad. Such companies may also establish transfers, landings, wharves, approaches and inclines which may

be convenient and necessary in the transfer of cargo to watercraft.¹¹

Generally, the control and use of all water resources within the jurisdiction of Mississippi is in the state for the benefit of the people. Public and private funds for the promotion of the beneficial use of water resources are vested so that the best interests of the people are served. The state takes such measures as shall effectuate the full utilization and protection of the water resources of Mississippi.¹² The public policy of the state is to aid and encourage the promotion, development, improvement and expansion of the state's ports, harbors, and inland waterways.¹³ Under the State Ports and Harbors Act,¹⁴ the Agricultural and Industrial Board is granted wide discretion and latitude in exercising its duties to carry out the above public policy.

2. PORTS AND HARBORS.

A. State Constitutional Control.

There may be no permanent obstruction of navigable waters of the state, including ports and harbors.¹⁵ However, properly built drawbridges, booms, and chutes for lotting may be built as long as they do not prevent the safe passage of vessels.¹⁶ Telephone and telegraph companies may set up ports and fixtures around ports and harbors as long as they do not present a danger to persons or property, nor interfere with the common use of such waters.¹⁷ Where ports and harbors are located on the Mississippi Sound or other coastal waters, the counties and municipalities in which they are located may adopt ordinances setting forth special rules and regulations with reference to the operation, equipment, and safety of vessels and motor boats, setting forth

the reasons why such are necessary.¹⁸

B. State Statutory Control.

Counties and municipalities bordering on the Mississippi Sound or other coastal waters have the power to adopt ordinances setting out special rules and regulations concerning the operation, equipment in and safe use of vessels and water boats within its jurisdiction.¹⁹ The ordinance shall also contain the reason why such special rules are necessary. Additionally, the Mississippi legislature has also provided for small craft harbors to be operated within jurisdiction of this state. Miss. Code Ann. § 21-27-15 (1972) gives the governing authorities of a municipality broad powers in the use and operation of the harbor. They have the power to make all needful improvements to the harbor; control, guide, or deflect the current of river; repair and regulate public wharves and docks; collect and charge levee rates; and to set aside or lease portions of the charf for special purposes not exceeding 25 years.²⁰ Although counties and municipalities bordering on coastal water may make their own special rules and regulations concerning operation, equipment and safety of vessels and motorboats within their jurisdiction,²¹ other areas must make application to the Mississippi Boat and Water Safety Commission for the same or similar rules and regulations.²²

The public policy of the State of Mississippi is to encourage the expansion and development of its harbors and ports²³ as well as its water resources.²⁴ Any legislation concerning harbors and ports is construed liberally, and wide discretion is to be given public authorities to carry out the purposes of the legislation.²⁵

Miss. Code Ann. § 59-5-3 (1972) states, "It is . . . the public policy of the state to aid and encourage the promotion, development, improvement, and expansion of the state's ports, harbors and inland waterways." Under the State Ports and Harbors Act, the Agricultural and Industrial Board is vested with broad discretion and latitude in the exercise of its duties to effect the public policy of the Act.²⁶ The State Port Authority Act was set up to benefit the people of the State of Mississippi and is a public purpose.²⁷ Broad discretion and powers are granted to the Agricultural and Industrial Board to carry out the purpose of the Act.²⁸

The purpose of the establishment of county and municipal port commissions is to promote industrial development, development of fisheries, commerce, navigation, and to relieve unemployment.²⁹

C. State Agencies.

Under the State Ports and Harbors Act, the Agricultural and Industrial Board³⁰ has full power and control over any State Port Authority. A State Port Authority consists of five (5) qualified electors of the city or county in which the port or harbor is located.³¹ The terms of office are staggered; one new member is appointed annually for a term of five years.³²

Any city or county maintaining a port or harbor agency which desires state ownership of the port or harbor must hire a competent engineer to conduct a survey.³³ The survey must show the assets and liabilities of the harbor or port, reasonable market value of the land, and revenues resulting from operation in the present and after the proposed expansion.³⁴

When a county or city port or harbor agency makes application to the Agricultural and Industrial Board for state ownership of the port or harbor, the Board conducts an independent analysis of the port/harbor. If this analysis shows that state ownership is feasible, the Board may negotiate with the county or municipality for conveyance to the state.³⁵ Before an entire harbor or port may be conveyed to the state, the transfer must be approved by a majority of the qualified electors in the city or county affected who vote in the special election.³⁶

Any city or county or any two jointly may enter into contracts, leases or agreements with the Agricultural and Industrial Board to improve a port or harbor and obtain state financing in some cases.³⁷ Where state financing is obtained, the Governor may appoint two additional members to the port or harbor agency for the life of the state lands.³⁸

The members of the State Port Authority are organized in the same manner and are entitled to the same compensation authorized by law for the Port Commission or Authority formerly having jurisdiction.³⁹ After the port or harbor comes under state jurisdiction and control, the Agricultural and Industrial Board occupies the same relationship to the State Port Authority as did the city or county to the former Port Commission or Authority.⁴⁰

Any state port authority is an agency of the state. It has not only the powers granted under the State Port and Harbors Act, but also the same jurisdiction, rights, powers and duties of the Port Commission or other port or harbor agency having jurisdiction on the date of conveyance to the State.⁴¹ After conveyance of the port or harbor, (and facilities), to the state, the A & I

Board operates the same through a State Port Authority. The port authority is responsible to the Board.⁴²

Title to all property acquired by the A & I Board under the State Ports and Harbors Act vests in the State of Mississippi.⁴³ The Board acting through a State Port Authority is vested with full jurisdiction of all lands within and adjacent to state-owned or operated ports, harbors, rivers, channels, and waterways as long as the land is below the mean high tide mark and it not within the jurisdiction of any other public body.⁴⁴

Lands and rights of way may be acquired by the Agricultural and Industrial Board by purchase, negotiation, or condemnation. When the Board proceeds by eminent domain, it must follow the procedure required of counties, municipalities, and corporations under Mississippi law. However, the Board may not acquire land without the consent of the owner unless an actual necessity for the land is alleged and proven.⁴⁵

Under Miss. Code Ann. § 59-5-31, any port commission existing under Miss. Code Ann. § 59-7-103, et seq. and any other port commission or port authority which has not been expressly granted such powers, may exercise all powers granted to county port authorities or development commissions under Mississippi law § 59-9-15. They are further granted the right to acquire and operate gas, electric, water, sewage and other public utility systems.⁴⁶

The Agricultural and Industrial Board must approve the consideration for leases executed by the State Port Authority of any of its facilities. The consideration may be either monetary or in the form of employment preferences to residents of the area, etc., and the property may be leased free of

ad valorem taxes for the period authorized by law.⁴⁷ The ad valorem exemption, when stipulated in the lease, may also apply when the lessee erects, installs, improves or locates structures and other permanent facilities for port, harbor, commercial or industrial purposes.⁴⁸ Additionally, the A & I Board has the power to reclaim submerged lands.⁴⁹

The State Port Authority has the right to make all necessary tariffs, rules and regulations for the necessary operation of the port, harbor, channels and facilities of the port or harbor. One example of the use of this power is Tariff 2-B of the Mississippi State Port Authority at Gulfport.

Under Tariff 2-B, Item 115, the Port Authority at Gulfport is under the direction of a Port Director. The port director is appointed jointly by the Agricultural and Industrial Board and the Mississippi State Port Authority at Gulfport.⁵¹

All rates, rules and regulations set forth in the tariff apply equally to traffic on the waterways and facilities. The Authority is the sole judge as to the interpretation of the tariff.⁵² The use of waterways and facilities under the jurisdiction of the Authority constitutes consent to the terms and conditions of their tariff.⁵³ It also evidences an agreement on the part of all vessels (their owners and agents) to pay all charges specified and to be governed by all rules and regulations.⁵⁴

The Port Director has the authority to order the removal or relocation of any vessel. Every vessel or watercraft must at all times have a person on board the ship to move it if so ordered. It is unlawful to refuse to obey the port director.

Any users of the Port Authority are held to be responsible for any damage done to the Port Authority. Damage is repaired and billed against the user at cost plus 20%.⁵⁵ The Port Authority is not responsible for loss of freight or injury thereto from delay, damage in storage from sprinkling systems, rodents, Acts of God or civil insurrection. All vessels agree to indemnify the Authority for damages resulting from their operation. None of the rates and charges published in the tariff include insurance. It is carried by the owners.⁵⁶

The Authority has the right to estimate and collect charges in advance from parties with unestablished credit.⁵⁷ All bills are due on presentation and failure to pay results in a vessel, its owners and agents being placed on a delinquent list. Whenever carriers, vessels, owners or other users of the facilities of the port are placed on the delinquent list, they may be denied further use of the facilities until all such charges have been paid.⁵⁸ All vessels must present statements of cargo loaded or unloaded on special forms. This is done within 48 hours after the cargo arrives or after sailing. Failure to observe this procedure also results in the vessel being placed on the delinquent list.⁵⁹ Vessels, their owners or agents, firms, corporations or individuals using the Authority's facilities are required to furnish manifests of cargo and other data necessary to permit assessment of all charges.⁶⁰ The Authority has the right to sell unclaimed or refused cargo for accrued charges after notice to the parties.⁶¹

The Mississippi Port Authority at Gulfport constitutes a pilot board for the governing of the Gulfport pilots.⁶²

The State Port Authority at Gulfport has the power to promulgate rules, regulations, charges, etc. concerning the use of the Gulfport Harbor. Tariff 2-B of the State Port Authority at Gulfport contains certain rules and regulations concerning the use of the harbor proper. Some of them are:

(a) It is a misdemeanor for any vessel over 250 net registered tons to enter and use the waterways without being piloted under the direction of a licensed pilot, except American vessels laden with coastwise cargo not destined to a foreign port.⁶³

(b) It is unlawful for a vessel to permit excessive smoke, cleaning of boilers, or blowing tubes while the vessel is in the turning basin or at berth.⁶⁴

(c) Maximum speed for all ocean going vessels shall not exceed five (5) miles per hour while passing any wharf, dock or moored craft.⁶⁵

(d) It is unlawful for any person, firm or corporation, whether as principal, servant, agent, employee or otherwise, to anchor any vessel in the turning basin or channel except in cases of actual emergency.⁶⁶

(e) Throwing ballast, rubbish, dunnage, or anything into the waterways is strictly prohibited. No vessel may discharge ballast at the warves unless permission is obtained from the Port Authority.⁶⁷

(f) It is unlawful for any person to discharge into waterways either directly or through sewers any sewage offal, garbage, dead animals, gaseous liquids, or solid matter; oil, gasoline, residuum of gas; calcium carbide, trade waste, tar or refuse; or any other matter capable of producing floating matter on the surface, sediment or odors and gases of putrefaction.⁶⁸

(g) Vessels and barges lying at wharves or docks shall display lights

from sunset to sunrise and those anchored in the waterways shall conform to navigation rules - barges displaying a white light visible all around the horizon.⁶⁹

(h) Pilotage fee for the waterways is \$. 25 per draft foot inward and \$. 25 per draft foot outward plus certain additional charges.⁷⁰

The Agricultural and Industrial Board has the power to operate ports, harbors, waterways, and to dredge, deepen, extend, widen or enlarge any port, harbor or waterways and to establish water basins.⁷¹ It also has the power to acquire, control, and construct: wharves, piers, docks, elevators, tipplers, compresses, bulk loading and unloading facilities and warehouses.⁷² Some of the representative rules and regulations of the above facilities of the State Port Authority at Gulfport are as follows:

(a) All cargo vessels, barges, or their owners or agents desiring berths and/or marginal tracks and sheddage shall make application as far in advance as possible on prescribed forms. The forms shall specify the date of docking or sailing and the nature and quantity of cargo to be handled. The Port authority has the right to decline any application at its discretion.⁷³

(b) Vessels shall dock at their prearranged berth on a first come - first served basis, unless otherwise mutually agreed by all parties concerned.⁷⁴

(c) When the berths are congested, the Port Authority has the authority to require a vessel to be worked around-the-clock; any vessel which refuses may be required to vacate its berth and placed last on the list of waiting vessels.⁷⁵

(d) The Port Authority has the right to control the storage, loading,

unloading and handling of all freight on and in its facilities.⁷⁶

(e) Steamship agents, stevedores, freight handlers and other users of wharves and warehouses are responsible for cleaning the facilities that they use. When the latter areas are left uncleaned, the Authority may have the areas properly cleaned at the expense of the users plus twenty percent.⁷⁷

(f) Common carriers and users of the facilities contract to pay for wharfage and storage on such goods at the rates provided by the Authority. Rates are to be collected either from the carrier vessel or other user of the facility.⁷⁸

(g) Smoking is only allowed in designated areas. Smoking is also prohibited on the decks of vessels loading or unloading dangerous or hazardous commodities while at any wharf.⁷⁹

(h) Explosives shall not be discharged or loaded without permission. Acids, coal oils, and empty gasoline and distillate drums must be promptly removed from wharves and such products may be stored only at specified areas. Vessels may take gas or distillate on board only between 8:00 a. m. and 5:00 p. m. when the vessel is ready to depart.⁸⁰

(i) In the event of an impending hurricane, owners of cargo in open areas must take protective measures for that cargo and other property which may be affected. If the owner fails to act, the Authority will act, and it will charge the owner therefor.⁸¹ Of course, the Port Authority has rates for the use of the wharves, docks, compressers, etc.⁸²

D. County Agencies.

The board of supervisors of any county bordering on the Mississippi

Sound or the Gulf of Mexico is authorized to establish a County Port and Harbor Commission.⁸³ When the Port Commission is located on the Mississippi Sound or Gulf of Mexico, the commission's membership shall be as follows: two (2) members chosen by the Governor [one from each municipality in the county]; five (5) members are chosen by the board of supervisors [one (1) from each supervisor's district]. The terms of office run concurrent with that of the person who nominated the member. All members of the commission must be qualified electors of the county.⁸⁴ If the port commission is located outside of a municipality, the board of supervisors appoints four (4) members.⁸⁵ Miss. Code Ann. § 59-7-125 (1972) provides that membership on a county port commission is as follows: all must be county residents: one (1) appointed by the Governor, two (2) by the board of supervisors and two (2) by the governing authorities of the municipality in which the port is located, if such municipality is the county seat. If the latter provision does not apply, then the board of supervisors appoints four (4) members. The term of office of the commission members is four (4) years.⁸⁶ The County Port and Harbor Commission is controlled by the board of supervisors of the respective counties.⁸⁷

The duties and powers of the County Port Commission are set forth in Miss. Code Ann. §§ 59-1-9 to 59-1-27, as amended. The salary of the port director is subject to the approval of the board of supervisors.⁸⁸ The Port Commission has jurisdiction over the port, terminals, harbors and passes leading thereto, all vessels, boats, wharves, common carriers and public utilities therein.⁸⁹

Miss. Code Ann. § 59-11-7 gives the Port Commission all the powers granted by Miss. Code Ann. Chapter 9 of Title 59, however, the Port Commission does not receive a portion of the state ad valorem tax (exemption) without having an approved application from the State Commission of Budget and Accounting which considers the feasibility of the project.⁹⁰ The County Port and Harbor Commission has jurisdiction over ports, terminals, channels, and passes leading thereto, and additionally over all vessels, boats, wharves, common carriers and public utilities within the county.⁹¹

Any port commission existing under Miss. Code Ann. § 59-7-3 and any other port commission or authority which has not been expressly granted such powers, exercises all powers granted to county port authorities under Miss. Code Ann. §§ 59-9-15 to 59-9-35. They also acquire and operate gas, electric, water, sewerage, or other public utility systems.⁹²

Counties and municipalities on the Mississippi Sound or other coastal waters are authorized to adopt ordinances setting out special rules and regulations with reference to the operation, equipment and safety of vessels and motor boats and the reasons why such special rules are necessary.⁹³

The board of supervisors require the county port commission to report to them not less than quarterly nor more often than monthly.⁹⁴ Port commissions of ports of entry make annual reports to the Governor, Legislature, and board of supervisors or governing authorities of the municipality concerning any improvements made.⁹⁵

The county port commission makes recommendations to the board of supervisors concerning expenditures to be made for improvements, promotion,

development, construction, maintenance, etc., of the harbor. They also submit an annual budget to the board of supervisors to be approved by the Board.⁹⁶

The board of supervisors of any county having a port of entry is authorized to appropriate money for the use and benefit of the port. The funds are to be expended by the port commission with the approval of the board of supervisors.⁹⁷

Boards of supervisors of counties bordering on the Mississippi Sound or Gulf of Mexico, which have an assessed value of less than \$5,000,000 or more than \$8,000,000, may issue bonds for the following: (1) harbor improvements, (2) harbor development, (3) breakwaters, (4) wharves and docks, (5) recreational centers, and (6) all buildings and land deemed necessary by the board of supervisors for the enumerated purposes.⁹⁸ When harbor improvements are made, the board of supervisors purchases all necessary land and rights-of-way, and pays for the same from proceeds of the issued bonds. To aid in the acquisition of land, the board has the power of eminent domain.⁹⁹

After the harbor improvements are made, the board of supervisors operates and maintains the harbor facilities. It makes and enforces rules and regulations for operation and maintenance, and fixes and collects charges for the use of facilities. On the bonds that are issued, the board of supervisors may pledge the payment of principal and interest from the net income and revenue from the operation of the facilities.¹⁰⁰

Not only does the County Port Commission have jurisdiction over

harbor projects conducted by the federal government,¹⁰¹ but it may also acquire land and easements by purchase or eminent domain, and give assurances to the federal government when necessary.¹⁰²

Any lease executed by a port commission or port authority for port, harbor, commercial, or industrial improvements by such lessee may be free of state, county and municipal ad valorem taxes for the period authorized by law, if it is so stipulated in the lease.¹⁰³ All structures, improvements and other permanent facilities erected, installed, or located by the lessee may also be free of the ad valorem taxes if so stipulated in the lease.

Miss. Code Ann. § 59-1-41 makes it unlawful for any vessel over 250 tons net registered tonnage to enter harbors or passes without being piloted by a licensed pilot. All vessels are subject to compulsory pilotage except American vessels not destined for foreign ports.¹⁰⁵ Harbor masters must pay an annual license fee to the port commission which is not to exceed \$50.00. The commission will fix the fees for piloting inward and outward from the port, but the amount may not be unduly burdensome on shipping. The commission will also set fees for docking, shifting, and boarding.¹⁰⁶

Any person, vessel, firm or corporation acting as or employing a harbor master, pilot, stevedore, watchman, ship agent, ship Chandler, etc. or other employee, which may be required by the commission; must be duly authorized, qualified and licensed by the port commission.¹⁰⁷

Any port commission or authority created by law in any county or municipality of this state is authorized to assist and cooperate with such county or municipality to effectuate the purposes of the Agricultural and Industrial

Board Act.¹⁰⁸ County port commissions may join the Rivers and Harbors Association of Mississippi.¹⁰⁹ Additionally, the county port commission makes recommendations to the board of supervisors concerning expenditures made for improvements and maintenance¹¹⁰ and has jurisdiction over terminals, wharves, docks, etc.¹¹¹ Contracting stevedores pay an annual privilege tax of not more than \$500 as set by the commission. The commission also sets licensing fees, not to exceed \$50.00 per year for pilots, boatsmen, stevedores, surveyors, watchmen, police, ship agents and ship chandlers or any other employees performing services for public shipping. It is unlawful to work without being duly licensed.¹¹²

The term "industry" (as used in Miss. Code Ann. § 59-1-19 allowing port commissions to sell reclaimed land) means operations which aid in the development of fisheries, commerce, navigation, shipping, as well as all forms of manufacturing enterprises.¹¹³

Any land reclaimed by a county port commission may be sold or set aside for industrial purposes. This may be done as long as it does not interfere with commerce or navigation and is in the best interest of the public. A sale may be by warranty deed or a lease not exceeding 99 years. Either disposition of land must be approved by 2/3 affirmative vote of the port commission.¹¹⁴

When a port commission sells or leases land for industrial purposes, it must be for adequate consideration, such as, improving the land, construction thereon or preferential hiring of local workers.¹¹⁵

A county port commission has the power to sell or lease any lands which it acquires for industrial purposes integrated to water transportation. It may also sell to the United States with no limitation whatsoever in exchange for needed land owned by the United States, or other valuable consideration.¹¹⁶ It also has jurisdiction and control of all land within or adjacent to any river, bay or natural lake which is now or was below the high tide mark.¹¹⁷

In any county bordering on the Mississippi Sound or Gulf of Mexico in which is located a municipality having a channel, harbor, or port of entry where commodities are exported to foreign nations and where the channel, harbor, or port is to a depth of not less than twenty (20) feet, the board of supervisors of the county may establish a county port authority or, if the county has four (4) incorporated municipalities, the authority is called the Development Commission.¹¹⁸ This authority or commission is controlled and supervised by board of supervisors of the county.¹¹⁹

The membership of a county port authority consists of seven (7) qualified residents of such county. Two (2) of the members are appointed by the Governor and five are appointed by the board of supervisors with at least one (1) member from each supervisor's district bordering the Mississippi Sound or the Gulf of Mexico.¹²⁰ A county development commission consists of eleven (11) members with two (2) members appointed by the Governor, five (5) members appointed by the board of supervisors with at least one member from each supervisor's district bordering on the Mississippi Sound or Gulf of Mexico, and four (4) members appointed, one (1) each by the governing authorities of the four (4) incorporated municipalities.¹²¹ The term of office for each is

four years or until a qualified successor is appointed.¹²²

A county port authority or development commission, pursuant to resolutions adopted by the commission and the governing body of the municipality where the port is located, exercise joint and concurrent jurisdiction of any lands described in such resolution which are within the commission's jurisdiction jointly with the municipality.¹²³ This jurisdiction includes all lands lying within or adjacent to any river, bay, or natural lake, or lands, below mean high tide marks, within or adjacent to any port or harbor controlled by the authority or commission.¹²⁴ Additionally, the authority or commission has the power to reclaim any lands by filling, dredging, or other means and may sell, lease or dispose of the reclaimed land for development or operation of the port with the mineral rights of any reclaimed state land remaining in the state.¹²⁵

The jurisdiction of the authority or commission also extends to port terminals, harbors, channels, and all vessels and boats using the same which are not under the jurisdiction of a municipal port commission or are by resolution within the joint and concurrent jurisdiction of both the municipal and county authorities.¹²⁶ Facilities in the harbors, not privately owned, or in connection with industrial operations, are under the management and control of the authority and other governmental agencies or subdivisions acting jointly with it.¹²⁷

Being under the control and supervision of the board of supervisors, it is the duty of the authority or commission to make recommendations to the board concerning the expenditures, maintenance, and development of harbor

or port facilities, and to submit a proposed budget for the operation of the harbor and port facilities annually.¹²⁸

A county port authority or development commission has authority to buy, purchase, lease, or acquire all facilities, land, and equipment for the useful operation of a harbor and such other structures, lands, property, and rights useful in aid of commerce and industrial purposes.¹²⁹ The authority or commission also has power to set aside or lease all or portions of harbor facilities for a term not exceeding twenty-five (25) years.¹³⁰ The authority or commission may sell, lease, or otherwise dispose of shipyards ship building facilities, machinery and equipment and land or harbor operations to others, but if leased, the lease cannot exceed 99 years. Before disposition of such property can be made a two-thirds affirmative vote of the authority or commission is required.¹³¹ Any unused lands may be sold or leased to others for industrial purposes so long as navigation, fishing, and commerce are not impeded and there is a two-thirds affirmative vote of the authority or commission.¹³² Again, no lease of such property is to exceed 99 years.¹³³ The terms, conditions for disposition of this unused land must be found adequate by the authority or commission and approved by the board of supervisors.¹³⁴

The authority or commission may lease any development for the manufacture of ships, vessels, shipyards, ship components, fuel, and materials. Where such lease is in excess of ten (10) years the lessee is required to pay ad valorem taxes.¹³⁵

The authority or commission has the power to reclaim, dredge, and fill any submerged lands or tidelands belonging to the State of Mississippi.

Additionally, with approval of the Attorney General and the Governor, the State may convey title to these lands to the county, reserving all oil, gas and other mineral rights to the state.¹³⁶ These reclaimed lands may be developed and utilized by an authority or commission for any industrial purpose so long as no natural or normal channel is obstructed which interferes with normal navigation.¹³⁷

Any transaction concerning land under the jurisdiction of the authority or commission, but with title to said land in the county, is consummated only when authorized jointly by the authority or commission in an order or resolution.¹³⁸

The board of supervisors acting through the authority or commission may establish industrial parks with defined boundaries and provide facilities incidental to the use of such lands. The facilities may be sold or leased and rules and regulations governing their use may be made.¹³⁹ These industrial operations are defined as, but not limited to, enterprises that will aid development of fisheries, shipyard operations, commerce, navigation, or shipping in the port, as well as forms of manufacturing enterprises.¹⁴⁰ The board, acting through the authority or commission and the governing authorities of the municipality in which the port is located, may jointly enter into contracts for the development, construction, repair and operation of any seaports for the development, construction, repair and operation of any seaports, wharves, piers, docks, elevators, warehouses, floating dry docks, and any facilities, and lands useful to the port in aid of commerce.¹⁴¹

Any city, county, authorized port, or harbor agency acting jointly or

separately may contract with the board of supervisors for improvements, developments, expansion, and operation of any port, harbor, or inland waterway.¹⁴² All such improvements made by the board of supervisors under the laws conferring on it the authority to engage in port, harbor, or channel improvements or developments are under the jurisdiction of the county port authority or development commission.¹⁴³ Additionally, the board of supervisors, acting through the authority or commission, and the governing authorities of the municipality where the port is located, acting through its port commission may jointly enter into construction and maintenance contracts for all necessary facilities and lands needed for the convenient use of the port in the aid of commerce.¹⁴⁴

The board of supervisors, acting through the authority or commission, may contract with firms, persons, and corporations which own or purchase land benefited by the authority or commission obligating the county to construct, develop, improve, or expand channels and other navigation at the county's expense.¹⁴⁵ It may also enter into contracts with persons, firms, or corporations relative to future development and use of property owned by persons, firms or corporations and may accept assurances from the same persons, firms, or corporations or the United States or any agency that the county will be held harmless on account of agreements with them.¹⁴⁶ The authority or commission may grant ad valorem tax exemptions in leases for port, harbor, commercial, or industrial improvements now or hereafter in effect. The period for the state, county, or city ad valorem tax exemption is stated in the lease.¹⁴⁷

The authority or commission acting with the city or county or alone may enter into contracts, leases, or agreements with the Agricultural and Industrial Board relating to improvements or expansions of any port, harbor or inland waterway. The Board may study and modify the proposed agreements and does not accept terms and agreements unless they protect and promote public interest.¹⁴⁸ The Board may join with the county, to the extent that funds are available, in contracting for development but in no case does the A & I Board contribute over 80% of the cost of the development or exceed \$4,000,000 for any one county.¹⁴⁹

In the letting of contracts and advertisements of bids the authority and board of supervisors comply with the general requirements of the laws of this state governing advertisements of bids and letting of contracts by the board of supervisors.¹⁵⁰ The authority or commission, person, firm or corporation entering into any authorized contract is able to sue or be sued in any court of competent jurisdiction to enforce any right arising out of such contract.¹⁵¹

The county, through the authority or commission, has the right of eminent domain, and, in connection therewith, determines the amount and character of the land or estate to be acquired and the public necessity for it.¹⁵² This decision is not open to attack except for abuse of discretion or fraud on the part of the authority or commission.¹⁵³

The A & I Board, after obtaining a report showing a project feasible, may contract with any governmental agency; state, federal or local, or any combination thereof, for acquisition or development of any state-owned inland

inland port. Before entering a contract, not less than three (3) counties must levy a tax upon all taxable property, real and personal, within these counties for the purpose of bonds issued for the project and any deficiencies occurring in operation or obligations incurred by the Board for the port authority.¹⁵⁴ On receipt of an application made by an authorized county or agency to operate a port or harbor project, the A & I Board makes an independent survey of feasibility of such proposed project. If the Board finds the plan feasible, practical, and in the public interest, and can be operated economically under state ownership and the revenues therefrom are sufficient to make operation by the state self-liquidating, the Board may negotiate with participating counties or agencies for state acquisition of whole or part of such port or harbor.¹⁵⁵

Any port authority desiring state ownership of such port or harbor, or any part of it, may employ competent engineers to prepare an analysis and survey of the assets, liabilities, and operation, to be submitted to the A & I Board.¹⁵⁶ On receipt of an application for state ownership of any port or harbor, or a part thereof, the Agricultural and Industrial Board makes an independent determination and appraisal of the survey presented by applicant. If the Board finds the project practical and feasible, it may contract with the authority or commission and redeem issued bonds by the issuance of new state bonds.¹⁵⁷

All city, county, district and state ports, harbors and water systems and any other agency (municipalities and boards of supervisors included) may become affiliated with the Rivers and Harbors Association of Mississippi.¹⁵⁸

The board of supervisors which has a planned development of any port,

harbor, or waterway may, with approval of the Agricultural and Industrial Board, issue obligation bonds for a maximum principal amount of two million dollars (\$2,000,000) for funds to dredge channels and harbors and other necessary facilities required for or incidental to the construction, outfitting, dry docking or repair of ships or vessels.¹⁵⁹

Nothing in the act allowing creation of a county port authority or county Development commission affects or defeats any claim, suit, cause of action, appeal, right or interest in and to lands or beach front property on the Gulf of Mexico which existed prior to the effective date of such act.¹⁶⁰ The Act is designed to supplement existing laws concerning ports.¹⁶¹

Issuance of bonds for construction and improvements of harbors is also dealt with in the act allowing creation of the authority or commission.¹⁶²

The county port authority or development commission has jurisdiction over all lands lying within or adjacent to any river, bay, or natural lake, below mean high tides marks, which lies within or adjacent to any port or harbor within the authority or commission's jurisdiction.¹⁶³ The board of supervisors and the municipal authorities acting jointly or individually through their respective port authorities may contract for construction and repair of all facilities necessary in the ports for the aid of commerce.¹⁶⁴

The authority or commission has the power to deepen any part of the harbor to extend, enlarge, or add to the same by dredging in any direction, including inland.¹⁶⁵ The harbor, ports, and channels may not be of a depth of less than twenty (20) feet.¹⁶⁶ The Agricultural and Industrial Board shall assist and supervise the dredging of said channels and harbors and funds shall

be paid out of the "Agricultural and Industrial Dredging and Site Preparation Fund" by the State Treasurer.¹⁶⁷

The authority or commission also rebuilds and restores to its previous width and height any sloping beach or sand beach pumped in or dredged to protect a public highway and extending along the beach or shore of any body of tidewater.¹⁶⁸

The authority or commission may purchase, construct, and maintain wharves, piers, docks, elevators, warehouses, etc., for use in the port.¹⁶⁹

The authority or commission may also lease all or portions of such harbor facilities for a term not exceeding twenty-five years.¹⁷⁰

The authority or commission may sell, lease, or otherwise dispose of shipyards, ship building facilities, machinery and equipment, dredges and facilities, land acquired for industrial or harbor operations, to individuals, firms, or corporations for industrial operations.¹⁷² No such lease may be in excess of ninety-nine (99) years and disposition of any property requires a two-thirds affirmative vote of the members of the authority or commission.¹⁷³ It may also acquire, operate, and maintain roadways, marine railways, ships, shipyards, and such other facilities and equipment required or incidental to the operation of the port.¹⁷⁶ Public utilities, such as gas, electricity, water, and sewage may be owned, operated, and maintained by it.¹⁷⁷

Revenue bonds, not general obligations bonds, may be issued to pay for such transportation, power, or communication facilities or the facilities may be sold or leased.¹⁷⁸ The A & I Board is to assist and supervise site preparation for such facilities.¹⁷⁹

The county port authority or development commission may establish a comprehensive plan for the industrial development of the port, as well as make rules and regulations to enforce compliance with the plan.¹⁸⁰ The industries may include but are not limited to, industries which aid in the development of fisheries, shipyard operations, commerce, navigation or shipping in the port, as well as all forms of manufacturing enterprises.¹⁸¹

The board of supervisors and the authority with the approval of the A & I Board may jointly, lease for not more than 99 years, sell, or otherwise dispose of any facilities constructed or acquired for use on port lands.¹⁸² The Board also assists and supervises preparation of sites for construction of such facilities necessary or incidental to the construction, outfitting, and repair of ships or vessels.¹⁸³

Any lands not used for port purposes may be sold by the authority for industrial operations so long as its use does not impede navigation, commerce, or fishing.¹⁸⁴ Any such lease or sale of the lands must be authorized by the board of supervisors.¹⁸⁵ The terms of such sales or leases are approved by the authority and the board of supervisors.¹⁸⁶ Such leases may contain options to purchase at or prior to the end of the lease.¹⁸⁷ Exemptions may be granted from all state, county, and municipal ad valorem taxes in leases of improvements and structures within the authority's control.¹⁸⁸

A county, acting through its authority, has the right to reclaim submerged lands.¹⁸⁹ Any dredged, filled in or reclaimed submerged lands, and tidelands conveyed by the state to a county may be used for industrial purposes so long as no natural channel is obstructed.¹⁹⁰ With the approval of the A & I

Board, the board of supervisors, acting jointly with the authority, has the power to lease (not to exceed ninety-nine (99) years), sell, or otherwise dispose of all reclaimed land to the state or others.¹⁹¹

The authority has the power to obligate the county by contract with persons, firms, or corporations owning or agreeing to purchase property within the area benefited by the port for construction, operation, development or expansion of channels or other navigation projects by the county at its expense for a period not to exceed ninety-nine (99) years, or so long as such persons use the property for industrial purposes.¹⁹² If the contract for lease extends for more than ten (10) years, the exemption from ad valorem taxes does not extend past that first ten (10) years.

It also has the power to advertise for bids and let contracts for the construction or operation of structures and facilities and land under this act.¹⁹³ Where the rentals in a lease or monetary consideration for a deed are sufficient to fully repay cost of the land described in the deed or contract for sale of land, it may be negotiated without necessity of advertising and obtaining competitive bids.¹⁹⁴

The authority or county may not acquire property by eminent domain without the consent of the owner. If it acquires such consent, its determination as to the amount and character of the land to be acquired is only open to dispute for manifold abuse of discretion and fraud.¹⁹⁵

The authority may dredge, fill in, and reclaim submerged lands and tidelands belonging to the state.¹⁹⁶ The State Land Commissioner may, with the approval of the Governor and the Attorney General, convey to such county

the filled or reclaimed land and issue the state's patent for it, reserving all oil, gas, and mineral rights to the state.¹⁹⁷

E. Municipal Control.

The basic statute that deals with the establishment of a municipal port commission is Miss. Code Ann. § 59-1-1 (1972).¹⁹⁸ Authority is given any city in Mississippi having a seaport or harbor designated as a port of entry by the United States government to have a harbor commission known as a port commission.¹⁹⁹ Most of the members of this commission must be skilled in maritime affairs. The members are appointed as follows: one (1) by the Governor, one (1) by the Board of Supervisors, three (3) by the governing authorities of the municipality. The term of office is four (4) years.²⁰⁰

There are three other statutes which deal with establishing harbors or ports within municipalities.²⁰¹ Any municipal port which engages in traffic of foreign commodities which has a harbor depth of twenty (20) feet or more, is empowered to improve, promote, develop, construct, maintain harbors, and dredge for the latter reasons. The municipality is further empowered to construct and operate wharves, docks, grain elevators, etc. The improvement work remains under the management and control of the municipality and the entire cost cannot exceed \$1,000,000.00.²⁰⁷ Miss. Code Ann. § 59-7-5 (1972) in that the municipality may act by itself or through a commission. It gives the municipality the power to construct, own, operate, purchase, and mortgage: wharves, piers, grain elevators, marine railways, cold storage facilities, air and water terminals. There is no monetary limitation mentioned in this statute.²⁰³

Any municipality maintaining a harbor or channel at a depth of not less than eight (8) feet and which has not less than eight (8) seafood industries has the power to construct harbors, etc. ; build bridges, causeways; support facilities; reclaim lands, etc.²⁰⁴

A municipal port commission has five (5) members all of whom live in the municipality. The members are appointed as follows: two (2) appointed by the Governor, two (2) by the governing authorities of the municipality, and one (1) by the county board of supervisors. The term of office is five (5) years.²⁰⁵ The commission is controlled by the governing authorities of the municipality.

The commission must make annual reports to the Governor, state legislature, and the governing authorities of the municipality.²⁰⁶

The authority and powers of the municipal port commission are broadened by Miss. Code Ann. § 59-5-31 (1972). This statute gives any port commission all powers granted to county port authorities under Miss. Code Ann. §§ 59-9-15 to 59-9-35. The authorities may also acquire and operate gas, electric, water sewerage or public utility systems.²⁰⁷

Counties and municipalities bordering on the Mississippi Sound or other coastal waters have the power to enact ordinances setting forth rules and regulations concerning the operation, equipment and safety of vessels and motorboats. They must set forth the reasons why these special rules are necessary.²⁰⁸

The municipal port commission has jurisdiction over the ports and passes leading thereto,²⁰⁹ and all vessels, terminals, boats, wharves, common carriers and public utilities within the port.²¹⁰

The municipal port commission passes rules and regulations, not inconsistent with the law, concerning the use of the port and its facilities. The commissioners may act as port wardens and pilot commissioners, fix tariffs, fees, fines, penalties and use of the courts to enforce them.²¹¹

The port commission keeps a minute book. In the book they record all acts, orders, rules and regulations that they adopt. It is the duty of the commission to fix rates and tariffs for the port and all port and terminal charges, but this power does not extend to public utilities or railroad terminal charges.²¹²

Municipal port commissions have the right to construct and improve the harbor and all its facilities. The power includes dredging and acquisition of land by reclamation, eminent domain, grant or purchase. The commission may lease any of its facilities for special purposes for a period not exceeding 25 years, and for industrial purposes for a period not to exceed 99 years.²¹³

A special statute dealing with harbor improvement is Miss. Code Ann. § 59-13-15 (1972). This statute gives any county bordering the Mississippi Sound or Gulf of Mexico with an assessed valuation of \$45,000,000 (and having a channel or harbor whose depth is more than 4-1/2 feet and seafoot canning plants for shrimp oysters, etc.) the right to levy a tax not exceeding one (1) mill on each dollar of assessed valuation of taxable property to aid in the development and improvement of such harbor or channel.²¹⁴

Municipalities having a harbor and at least eight (8) seafood industries and a harbor depth of 8 feet or over, have the right to dredge and reclaim lands.²¹⁵ There are several statutes that deal with the issuance of bonds

for harbor construction and improvements.²¹⁶ All improvements made by a municipal port commission are reported annually to the Governor, state legislature, and municipal governing authorities.²¹⁷ Any money appropriated by the governing authorities for a municipal port commission which is a port of entry may be spent as the commission sees fit with the approval of the governing authorities of the municipality.²¹⁸

All leases executed by the municipal port commission may contain stipulations that exempt the lessee from paying state, county and municipal ad valorem taxes for the period authorized by law.²¹⁹

To effectuate the purposes of the Agricultural and Industrial Board Act, a municipal port commission is authorized to assist and cooperate with the county and municipality in which it is located.²²⁰

The municipal port commission may, acting jointly with the municipal government, negotiate contracts for repairs and maintenance of piers, docks, warehouses, grain elevators or any other property under their jurisdiction.²²¹

Municipalities alone or jointly, which desire to establish a "standard" industrial park may acquire land, build streets, wharfs, docks, terminals, install water and sewage facilities and do other essential things. The municipality can also sell or lease the developed district.²²²

Municipalities having a port of entry trafficking in foreign commerce and having a harbor depth of 20 or more feet can construct, lease, own, or maintain wharves, docks, quays, grain elevators and cotton compresses.²²³ Those municipalities having a harbor of a depth of 8 feet or more, having not less than 8 seafood industries, have the power to, either themselves or through

a port commission, construct, own, maintain wharves, piers, docks and warehouses.²²⁴

The governing authorities of a municipality have the power to construct all needful improvements in the harbor, to control, guide or deflect the current of a river, to repair and regulate public wharves and docks, to charge and collect levee rates and to set aside or lease portions of the wharf for special purposes. However, a permit or lease of a wharf is not granted for a term exceeding 25 years.²²⁵

Municipalities also have the power to own, operate and regulate piers, pavilions, bath houses and like structures for public recreation.²²⁶ They also have power to acquire, construct and repair wharves and docks or construct, lease and maintain sheds, warehouses, elevators, and compresses.²²⁷ They have the power to own and operate, under the commission, marine railways, tugboats, floating dry docks and docks.

Contracting stevedores must pay an annual privilege tax of not more than \$500 per year as set by the port commission, which also sets licensing fees not to exceed \$50 per year for pilots, boatsmen, stevedores, surveyors, watchmen, police, ship agents, and ship chandlers or any other employee performing services for public shipping. It is unlawful to work without being duly licensed.²²⁸

Municipalities which have a port of entry handling foreign commerce and having a harbor depth of 20 or more feet can construct and lease floating docks, marine railways, rail terminals, and cold storage facilities.²²⁹ Those municipalities which have a harbor of a depth of 8 feet or more, and not less than 8 seafoot industries have the power to, either themselves or through a

port commission, construct and operate cold storage facilities, water and rail terminals and airplane landing fields.²³⁰

Port commissions may cooperate and assist authorized municipalities in the establishment of industry by the municipalities, and may convey or lease land to them for such purposes. It is necessary, however, that the municipality possess a certificate of public convenience and necessity.²³²

Municipal port commissions may sell or lease reclaimed land for industrial purposes, so long as it does not interfere with commerce or navigation, when it is in the best public interest, and is approved by a 2/3 vote of the commission. Sale is made by special warranty deed, and any lease is not to exceed 99 years.²³³ The term "industry", as used in this paragraph, refers to operations aiding in the development of fisheries, commerce, navigation, and shipping, as well as all forms of manufacturing enterprise.²³⁴

Port commissions leasing or selling reclaimed lands for industrial purposes must do so for an adequate consideration. Weighable factors include improvement of the land, placement of erections thereon, and the hiring of local workers.²³⁵ Any conveyance made to a municipality reserves to the port commission all minerals therein except sand, clay and gravel.²³⁶

Municipal port commissions may also rent facilities directly to industry for a term of up to 99 years. The industry is requested to employ local workers; this may serve as consideration for the lease.²³⁷

Board of supervisors are authorized to erect seawalls, breakwaters, sand or earth fills, sand beaches, etc. , to protect roads fronting on beach shore or tide-water.²³⁸

Municipal port commissions have jurisdiction and control of all land within or adjacent to any river, bay or national lake which is now or was below the high tide mark, and any other land acquired by purchase, lease or eminent domain.²³⁹ Municipal port commissions have power to dredge in any direction and to reclaim submerged lands.²⁴⁰

Counties and municipalities on the Mississippi Sound or other coastal waters are authorized to adopt ordinances setting forth special rules and regulations with reference to the operation, equipment or safety of vessels and motorboats in such waters, setting out the reasons why such special rules are necessary.²⁴¹ Municipalities also have jurisdiction over small craft harbors located within municipal limits.²⁴²

Any municipality of 10,000 people which borders either the Gulf of Mexico or Mississippi Sound, has the power to acquire land by purchase, gift, reclamation, or otherwise, for use as a municipal small craft harbor.²⁴³ Qualifying municipalities may issue bonds for the construction of such harbors²⁴⁴ and improvements thereon, which are operated by the creating municipality.²⁴⁵ Municipal small craft harbors are authorized to join the Rivers and Harbors Association of Mississippi.²⁴⁶

The following are rules of the Biloxi Small Craft Harbor Port Commission and may be used as examples:

The Commission has liens on boats for all rents, damages and services rendered (Rule 18);

The Commission is not responsible for loss due to theft, vandalism, fire or weather (Rule 21);

The harbormaster is authorized as a deputy sheriff and member of the Biloxi Police Force (Rule 33).

The rules of the Biloxi Small Craft Harbor Port Commission continue as follows:

[B]oat operators in the Yacht Basin must avoid damage to the facilities or other boats and are responsible for wake and any damage the boat might cause. The owner of the boat causing such damage is responsible even if the boat is driven by his agent, a guest or a family member (Rule 1);

The speed limit in the Yacht Basin is 3 miles per hour (Rule 2);

No swimming, diving or skiing is permitted within the Basin (Rule 12);

No unnecessary noises or disturbance is allowed aboard boats within the harbor, (Rule 5);

Trailers and vehicles must be parked in an orderly manner, (Rule 19).

The governing authorities of the municipalities have the power to construct all needful improvements in the harbor, to control, guide or deflect the currents of a river, to repair and regulate public wharves and docks, to charge and collect levee rates . . . , and to set aside or lease portions of the wharf for special purposes. However, a permit or lease of a wharf is not granted for a term exceeding 25 years.²⁴⁷

Such powers are indicated in the Rules of the Biloxi Small Craft Harbor Port Commission, which appear as follows:

No alterations whatsoever may be made to any berth, slip, stall, pier, etc., by any boat owner or operator, (Rule 3);

Any damage to boats, piers, etc., is repaired at the expense of the boat owner doing the damaging, (Rule 4);

No pollution or trash may be strewn on the docks or anywhere else in the harbor, (Rule 5);

No signs or markings may be made or placed on any dock or pier without permission, (Rule 6);

When docked, boat cabins must be locked and anchors are not dropped if a boat is tied in its berth, (Rule 1);

No repairs to boats may be done in the docks or piers, nor may tenders or barges be stored there, (Rule 10);

The Bilosi Port Commission is not responsible for damage to any vessels or equipment docked at the harbor, (Rule 11);

The Commission may move in or remove boats from the facility, (Rule 15);

Those other than boat owners wishing to board a boat must have written permission from the owner, (Rule 16);

Absence of a boat from its berth for longer than 3 days requires notification to the harbormaster, (Rule 17);

Fish cleaning and storage is not allowed on the pier, dock or

boats therein, (Rule 20);

No animals are allowed on piers, docks, or parking lots except on a leash, (Rule 23);

All visiting vessels must register with the harbormaster before they tie up in the Basin, (Rule 26);

Use of the recreation area is limited to daylight hours, (Rule 28);

Parking in the boat hoist area is limited to 24 hours, (Rule 29).

Boat refueling is only done at designated fuel dock areas, (Rule 8);

No smoking is allowed at the fueling dock, (Rule 9);

No repair work may be done on dock side area, (Rule 10);

No spotlights, floodlights, etc. may be connected to the electric facilities of the port without permission, (Rule 13);

The port commission reserves the right to control all parking on land and water approaches, (Rule 14);

No dry storage of boats or equipment is allowed without permission, (Rule 30);

The overhead cradle boat hoist has a weight limit of 6000 lbs. , and the mast electrical hoist weight limit is 2000 lbs. All vessels are responsible for it, (Rule 32).

Municipalities have the power to gain land, for use as a small craft harbor, by reclamation.

3. LANDINGS.

A. State Constitutional and Statutory Control.

The Mississippi Constitution provides that the state may not authorize the obstruction of navigable water and, when the public welfare demands, should remove any existing obstruction.²⁴⁹ Bridges for railroads and roads may, however, be constructed over waterways as long as they do not interrupt the passage of vessels or boats on the waterways.²⁵⁰

Counties and municipalities on the Mississippi Sound or other coastal water are authorized to adopt ordinances setting out special rules and regulations concerning the operation, equipment, or safety of vessels and motor-boats in the State's waters.²⁵¹

The control and use of the waters of the state shall be up to the state which shall take such measures as well as effectuate full utilization and protection of the water resources for the best interest and general welfare of the people of Mississippi.²⁵²

B. County and Municipal Control.

In any county bordering on a bayou, bay, or inlet, three or more residents may petition the board of supervisors to set aside a lot on such water as a landing would be convenient for the public and, if so, the board selects a lot not exceeding two acres at the point most convenient to the public. The board of supervisors conducts a meeting for the purpose of establishing landings and giving notice to the owners of land to be taken days previous to the meeting. The board directs twelve disinterested landowners to assess damages to the landowner whose land is taken. If the board accepts the assessment of damages,

it is paid before any use is made of the land. If the landowner is dissatisfied with the award, he may appeal to the circuit court who reviews matters of law and may award a trial de novo on the damages. Once construction of the landing facilities or other constructions in connection with it has begun, any use of the property or fixtures on it for other than landing facilities is punishable by fine. The board of supervisors may lease the lot or landing for a period not exceeding five (5) years to be used in general receiving and forwarding. Only certain rates may be charged by the lessee and overcharges are punishable by fine. 253

Once land has been condemned and damages paid to the owner, applicants for the landing may erect warehouses, sheds, and other buildings necessary for the reception, storage, or shipment of freight. The landings must be substantially enclosed, provided with suitable gates, and kept in good repair. The board of supervisors may lease a lot for a landing for a term not exceeding five (5) years for the purpose of general forwarding and receiving business. A schedule of rates is fixed by the board and a penalty of a fine is paid for overcharges. 254

CHAPTER II

FOOTNOTES

(Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972).

1. Miss. Constitution of 1890, Art. 4, § 81.
2. § 51-35-171.
3. Id.
4. § 21-19-13.
5. Id.
6. § 49-15-9.
7. Id.
8. Id.
9. § 77-9-711; So. Bell Telephone v. City of Meridian, 131 So. 2d 666 (Miss. 1961).
10. § 77-9-179.
11. Id.
12. § 51-3-1; See U. S. v. Harrison County, Miss., 399 F. 2d 485 (1968).
13. § 59-5-3.
14. § 59-5-1.
15. Miss. Consti. Art. 4, § 81 (1890).
16. Id.
17. § 77-9-711.
18. § 59-21-129.
19. Id.
20. § 21-37-15.

21. § 59-21-129.
22. Id.
23. § 59-9-1.
24. § 51-3-1.
25. § 59-9-3.
26. § 59-5-9.
27. § 59-5-7.
28. § 59-5-9.
29. § 59-1-13.
30. § 57-1-3.
31. § 59-5-21.
32. Id.
33. § 59-5-15.
34. Id.
35. § 59-5-17.
36. §59-5-19.
37. § 59-5-23, 25.
38. § 59-5-29.
39. § 59-5-21.
40. Id.
41. Id.
42. Id.
43. § 59-5-39.
44. § 59-5-11.

45. § 59-5-39; See also, International Paper Company v. Miss. State Highway Dept. , 271 So. 2d 395 (1912).
46. Miss. State Port Auth. Tariff 2-B, Item 115.
47. § 59-5-35.
48. § 59-5-31.
49. § 59-5-11.
50. Miss. State Port Authority at Gulfport, Tariff 2-B, Item 115.
51. Id., Item 120.
52. Id. , Item 125.
53. Id.
54. Id.
55. Id. , Item 150.
56. Id. , Item 180.
57. Id. , Item 190.
58. Id., Item 195.
59. Id. , Item 205.
60. Id. , Item 210.
61. Id. , Item 245.
62. Id. , Item 300.
63. Id. , Item 305.
64. Id. , Item 240.
65. Id. , Item 160.
66. Id. , Item 170.
67. Id. , Item 235.
68. Id. , Item 230.

69. Id. , Item 165.
70. Id. , Item 310.
71. § 59-5-11.
72. Id.
73. Miss. State Port Authority at Gulfport, Tariff 2-B, Item 135.
74. Id. , Item 140.
75. Id. , Item 265.
76. Id. , Item 130.
77. Id. , Item 225.
78. Id. , Item 185.
79. Id. , Item 215.
80. Id. , Item 255.
81. Id. , Item 250.
82. Id. , Items 420, 340, § VIII, § V, 256, 335.
83. § 59-11-1.
84. § 59-11-3.
85. § 59-7-205.
86. § 59-7-125.
87. § 59-11-1.
88. § 59-9-15.
89. § 59-7-125.
90. § 59-11-7.
91. § 59-11-5.
92. § 59-5-31.

93. § 59-21-129.
94. § 59-7-209; Warren Co. Port Comm. v. Farreul Construction Co., 395 F. 2d 901 (1968).
95. § 59-7-7.
96. § 59-7-131.
97. § 59-1-31.
98. § 59-13-1.
99. § 59-13-11.
100. § 59-13-13.
101. § 59-7-205.
102. § 59-7-203.
103. § 59-5-31.
104. Id.
105. § 59-1-41.
106. § 59-1-39.
107. § 59-1-43.
108. § 57-1-49.
109. § 59-1-33.
110. § 59-7-131.
111. § 59-7-407, § 59-11-5, § 59-7-125.
112. § 59-1-39.
113. § 59-1-15.
114. § 59-1-19.
115. § 59-1-21.
116. § 59-7-211.

117. § 59-1-17.
118. § 59-9-7.
119. § 59-9-17
120. § 59-9-9.
121. Id.
122. Id.
123. § 59-9-29.
124. Id.
125. Id.
126. § 59-9-7.
127. § 59-9-17.
128. § 59-9-27.
129. § 59-9-17, 19.
130. § 59-9-19.
131. Id.
132. § 59-9-31.
133. Id.
134. § 59-9-33.
135. § 59-9-35.
136. § 59-9-67(1).
137. § 59-9-21.
138. Id.
139. § 59-9-23.
140. § 59-9-5.

141. § 59-9-57.
 142. § 59-9-27.
 143. Id.
 144. § 59-9-25.
 145. § 59-9-19.
 146. § 59-9-19(c).
 147. § 59-5-35.
 148. § 59-5-23.
 149. § 59-9-71(2).
 150. § 59-9-19(b).
 151. § 59-9-85.
 152. § 59-9-19(b).
 153. Id.
 154. § 59-17-19.
 155. § 59-17-17.
 156. § 59-5-15.
 157. § 59-5-17.
 158. § 59-1-35.
 159. 59-9-65(1).
 160. § 59-9-17 (Editor's note § 2).
 161. § 59-9-3.
 162. §§ 59-9-37, 57, 59 to 63, 77 to 79, 65 to 75, and 83.
 163. § 59-9-29.
 164. § 59-9-25.
 165. § 59-9-17.
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- 166. § 59-9-7.
- 167. § 59-9-71(1).
- 168. § 59-9-21.
- 169. § 59-9-17.
- 170. § 59-9-19(c).
- 171. § 59-9-71(1).
- 172. § 59-9-19(b).
- 173. Id.
- 174. § 59-9-17.
- 175. § 59-9-23.
- 176. § 59-9-17.
- 177. § 59-5-31.
- 178. § 59-9-23.
- 179. § 59-9-71(1).
- 180. 59-9-23.
- 181. § 59-9-5.
- 182. § 59-9-67(3).
- 183. § 59-9-71(1).
- 184. § 59-9-31.
- 185. Id.
- 186. 59-9-33.
- 187. Id.
- 188. § 59-5-31.
- 189. § 59-9-21.
- 190. Id.

191. § 59-9-67(2).
192. § 59-9-19(d).
193. § 59-9-35.
194. § 59-9-19(b).
195. Id.
196. § 59-9-21.
197. Id.
198. § 59-1-1; See *Simpson v. City of Gulfport*, 121 So. 2d 409 (Miss. 1960).
199. Id.
200. § 59-1-3, note textual change.
201. §§ 59-7-5, 59-7-305, 59-7-405.
202. § 59-7-5.
203. § 59-7-305.
204. § 59-7-405.
205. § 59-7-407.
206. §§ 59-7-413, 59-7-307.
207. § 59-5-31.
208. § 59-21-129.
209. § 59-7-407.
210. Id.
211. § 59-1-9.
212. § 59-7-411.
213. § 59-3-1.
214. § 59-13-15.

- 215. § 59-7-405.
- 216. § 59-7-415, 417, 419, 423, 425, 427, 429.
- 217. § 59-7-7.
- 218. § 59-1-29.
- 219. § 59-5-31.
- 220. §57-1-49.
- 221. § 59-1-11.
- 222. § 57-1-17.
- 223. § 59-7-305.
- 224. § 59-7-405.
- 225. § 21-37-15.
- 226. § 21-37-13.
- 227. § 59-3-1.
- 228. § 59-1-39.
- 229. § 59-7-305.
- 230. § 59-7-405.
- 231. § 57-5-17.
- 232. § 59-1-23; *Treuting v. Bridge and Park Commission*, 199 So. 2d 627 (1962).
- 233. § 59-1-19.
- 234. § 59-1-15.
- 235. § 59-1-21.
- 236. § 59-1-25.
- 237. § 59-3-1.

- 238. § 65-33-1.
- 239. § 59-1-17; also Treuting v. Bridge and Park Commission, 199 So. 2d 627 (1967).
- 240. § 59-3-1; also Treuting v. Bridge and Park Commission, 199 So. 2d 627 (1967).
- 241. § 59-21-129.
- 242. § 59-15-1.
- 243. § 59-15-1.
- 244. §§ 59-15-5 to 19.
- 245. § 59-15-3.
- 246. § 59-1-33.
- 247. § 21-37-15.
- 248. § 59-15-1.
- 249. Miss. Const. Art. 4, § 81 (1890).
- 250. § 77-9-179.
- 251. § 59-21-129.
- 252. § 51-3-1.
- 253. §§ 59-19-1, through 59-19-15.
- 254. §§ 59-19-11, 15.

III. AIR NAVIGATION.

The Mississippi Agricultural and Industrial Board has the power to own, construct, lease and control air terminals within the state.¹ Although the Board is directed, as are municipalities and other state agencies, to aid the Mississippi Aeronautics Commission,² it appears to be the only political subdivision of the state granted the power to own and operate airports, that is not required to obtain the Aeronautic Commission's approval before submitting airport plans to the United States government.³

Counties and municipalities may construct airports and acquire lands by any legal means.⁴ They may also acquire existing airports by any legal means (including eminent domain) unless the airport is owned by another municipality or agency.⁵ Additionally, they may acquire land outside the airport proper to remove obstacles to air navigation, and to establish, maintain, and acquire airports over or in any public waters by reclaiming submerged lands.⁶

A county port authority or development commission may own, operate, and construct air terminals.⁷ Like counties and municipalities, they may use any legal means to acquire property to carry out their needs.⁸ Because the authority has the right to lease and sell land and facilities under its control for industrial purposes, it appears that air terminals may be under the control of public or private persons, firms, or corporations.⁹

The purpose of the Mississippi Aeronautics Commission is to encourage and assist aeronautical development within this state . . . including recommenda-

tion of legislation, financial assistance, and checking locations of airports.¹⁰

The Aeronautics Commission consists of three (3) members each of which is appointed by the Governor. Each member comes from a separate Supreme Court District, and serves a term of six (6) years.¹¹

One of the main functions of the Aeronautics Commission is to cooperate with the United States Government and work within any laws, rules and regulations that it has.¹² Along this same line, any municipality may appoint the commission as its agent for the receipt and disbursement of federal and state funds made available for airport construction.¹³ The commission approves proposed airport sites, except United States airports. It may hold public hearings on the site before issuing its certificate of approval.¹⁴

The commission has the power to investigate accidents, subpoena witnesses, and administer oaths;¹⁵ however, none of its investigation reports are admissible as evidence.¹⁶ Counties and municipal airport authorities may acquire air navigation facilities.¹⁷

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 59-17-13.
2. § 61-1-41.
3. § 61-1-33.
4. § 61-5-5.
5. Id.
6. § 61-3-15.
7. § 59-9-17.
8. § 59-9-19.
9. Id.
10. § 61-1-13.
11. § 61-1-5.
12. § 61-1-17.
13. § 61-5-15.
14. § 61-1-31.
15. § 61-1-35.
16. § 61-1-37.
17. § 61-3-15.

