

WATER LOG



A Legal Reporter of the
Mississippi-Alabama Sea Grant Consortium

Contents:

- Is Mississippi Gambling With the Environment?
— William Harrison
- Case Brief: *Secretary of the Interior v. Sweet Home Chapter of Communities for a Great Oregon*, 115 S.Ct. 2407 (1995).
— Bradley Peacock
- Case Brief: *Mississippi Casino Operators Association v. Mississippi Gaming Commission*, 654 So. 2d 892 (Miss. 1995).
— Melissa S. Baria

Plus . . .

- How A Bill Becomes A Law In Mississippi
- Mississippi Legislative Update 1995

And more . . .

Volume 15, Number 2, 1995
Mississippi-Alabama Sea Grant Legal Program

WATER LOG

WATER LOG is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its purpose is to increase public awareness and understanding of coastal problems and issues.

If you would like to receive future issues of WATER LOG free of charge, please send your name and address to: Mississippi-Alabama Sea Grant Legal Program, University of Mississippi Law Center, University, MS 38677. We welcome suggestions for topics you would like to see covered in WATER LOG.

This work is a result of research sponsored in part by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce under Grant Number NA16RG0155-02, the Mississippi-Alabama Sea Grant Consortium, the State of Mississippi, and the University of Mississippi Law Center. The U.S. Government and the Mississippi-Alabama Sea Grant Consortium are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its sub-agencies.

Interim Editor: William Harrison

Production Assistant: Niler P. Franklin



Writers:

Melissa S. Baria
Bradley Peacock
Mike Orr

University of Mississippi Law Center - University, MS 38677

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

MASGP-95-002-02

This publication is printed on recycled paper

Editorial Note:

This summer Laura Howorth took a position at Florida State University. Her excellent writing skills and ability to capture the essence of a story as editor of the WATER LOG will be sorely missed. We wish her luck in her new career.

I have been filling in this summer as the interim editor. Recently, John Duff was selected from a highly competitive field of applicants to serve as Research Counsel to the Mississippi-Alabama Sea Grant Legal Program. In that capacity he will assume the role of Editor for WATER LOG. He also serves as the Chair to SeaNet, the national organization of attorneys working on Sea Grant related issues. Mr. Duff earned his J.D. at Suffolk University in Boston and his LL.M. in Law and Marine Affairs at the University of Washington in Seattle. His experience includes practice on marine, environmental and international issues. We welcome him to the helm of WATER LOG.

William Harrison

Is Mississippi Gambling With the Environment?

by William Harrison

INTRODUCTION

Mississippi has one of the fastest growing economies in the nation due largely to the growth of its newest industry, casino gaming. Casinos have infused millions of dollars into the state's economy. Construction of a casino in Mississippi can cost well over 100 million dollars. Investment involves permit applications, construction, and labor. Development in areas that previously served as cotton fields, hunting land and boat docks has an enormous impact. However, this impact is not always positive.

Mississippi is a popular area for casino developers because of its "wide open" system of regulation; lenient taxes on casinos; and, the relatively inexpensive start up costs. In Las Vegas, casino projects may cost as much as 750 million dollars to be competitive. In Mississippi the cost is substantially less, but competition spurs larger developments. Smaller casinos are finding it harder to compete with the bigger, more glitzy developments.

Casinos in Mississippi directly employ more than 29,000 people and prompt countless indirect jobs. Tunica County,

once called "America's Ethiopia", had been one of the poorest counties in the United States for years. Today, however, the median income for a family has almost tripled and there are more jobs than there are people to fill them.

MISSISSIPPI REQUIREMENTS

Casino development involves more than economic issues. One of the greatest controversies during the gaming explosion in Mississippi is the question of how the casinos affect Mississippi's environment. Casinos in Mississippi are required by law to be on the Mississippi River, in navigable waters within a county bordering the Mississippi River, or in the navigable waters south of Harrison, Hancock, and Jackson counties. Counties had the option of excluding casinos through a referendum when the casino gaming law passed. These restrictions were meant to keep casinos from proliferating throughout the state. However, this has resulted in an industry, required by law, to be located in some of Mississippi's most sensitive environmental areas. Casinos, which are said to have the approximate environmental impact of a small town, located initially in areas that were previously cropland or industrial zones. However, once these areas are occupied the only place to turn will be the more pristine wetland areas.

In Mississippi, a casino developer must obtain a permit from the Mississippi Gaming Commission. After filing a Notice of Intent, the applicant submits a site assessment and files an application (including a \$5000 fee). The Gaming Commission then holds a hearing on the site and conducts an investigation concerning the location of the property; nearby land use; potential construction on the site; and, approval of the applicable agencies. Agencies which must approve the casino's plan include the United States Army Corps of Engineers, the United States Coast Guard, the Mississippi Department of Transportation, the Mississippi Department of Environmental Quality, the Mississippi Bureau of Marine Resources, the local Board of Supervisors, and other local agencies. Following agency approval and a successful background check on the owners and operators, the Commission may approve a casino.

FEDERAL REQUIREMENTS

Because casinos are required by law to be located on navigable waters, part of the development process involves obtaining permits from the Corps of Engineers. The regulation of the Corps is based on Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403) which prohibits the obstruction or alteration of navigable waters without a

permit; Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. § 1413)--which deals with the dumping of dredge material into ocean waters; and, Section 404 of the Clean Water Act (33 U.S.C. § 1344).

The §404 permit allows the dredging and filling of a wetland required to construct a casino site. In approving this type of permit, the Corps will look at the environmental impact of the new construction as well as less damaging alternatives to the proposed plan. In most cases, the Corps has examined each site separately and approved the plan.

As part of the permit process, a developer may be required to undertake a mitigation project to lessen any harm caused by the destruction of project site wetlands. Casinos in Mississippi have worked on several mitigation projects, ranging from small individual mitigation projects to large scale creation of a mitigation bank. The largest proposed mitigation site is in Tunica County. Several casinos in Tunica County, encouraged by an environmental organization, the Mississippi River Coalition, proposed a 2300 acre mitigation bank. It would have been the second largest mitigation bank in the southeastern United States behind the one developed by Walt Disney World in Florida. However, EPA refused to approve the casino plan, citing poor planning of the mitigation project. With the closing of several casinos and competition heating up, the casinos appear less enthusiastic about this project.

The Corps must also consider the National Environmental Policy Act (NEPA) in assessing whether the project will have a major environmental impact. The purpose of NEPA is to inform the public and to force government decisionmakers to look at the potential impacts of a proposed federal action. If the Corps determines that the action is not likely to result in a serious environmental impact, a Finding of No Significant Impact (FONSI) is issued. If the Corps determines a major impact likely, NEPA would require the preparation of an Environmental Impact Statement (EIS), discussing at length the current and potential environmental impacts of a project. A comprehensive EIS could take several years and potentially halt any further casino development until the EIS is complete.

Calls by environmentalists for an EIS, however, have gone unanswered. The Corps has only issued Environmental Assessments which have found no significant impact. The Corps insists that casinos, through their mitigation projects, have only improved the environment. They have generally looked only at the specific project for which approval is being sought, without examining the surrounding circumstances such as secondary development, the cumulative impact of the casinos, and other effects.

IMPACTS OF CASINO GROWTH

There are two main areas where casino development has concentrated. The main concentration along the Mississippi River is in Tunica County. Located less than a hundred miles south of Memphis, Tennessee, Tunica County hosts twelve casinos. The other concentration of casinos is located on the Gulf Coast, where there are currently thirteen casinos in operation.

The loss of wooded acreage and wetlands along the Mississippi River has been a growing concern. Most of the casinos along the Mississippi River are built on the river side of the levee. The wetlands adjacent to the river provide habitat for bald eagles, the interior least tern, the gulf sturgeon, the pallid sturgeon, and a multitude of other wildlife. Some of the animals are on the endangered or threatened species list. This area is also one of the most important in the migratory waterfowl's flight southward. Destruction of sand bars, reduction of water quality and disturbance of nesting sites due to dredge and fill and construction activities at a site can have an adverse impact on all these animals. A barge that is hundreds of tons in weight in the middle of what was once a cotton field can permanently alter the environment in many ways.

Casinos in Tunica, according to an Environmental Assessment issued by the Corps in 1994, have affected 128.13 acres of wetlands. Individual mitigation projects by casinos equal 165.5 acres of enhanced or created wetlands. Based solely on an acre by acre basis, casinos are doing their job in promoting a "no net loss of wetlands" policy. However, an acre by acre replacement is not always an equal replacement. Species of animals and plants may be lost, and newly created wetlands are not always successfully sustained. Poor management and land restrictions may lead to negative results. However, if the casinos replace the lost acreage with similarly situated lands and provide good management over the restored or created wetlands, the environmental impact can be minimized.

Abandoned casinos are another major problem faced by the sensitive Mississippi environment. When a casino barge pulls out after hitting hard economic times, they leave behind acres of asphalt parking lots, outbuildings, and platforms. The parking lots are impervious surfaces, and can present a problem of non-point source pollution. Run-off that would normally sink into the ground now can erode nearby terrain, washing out gullies. This problem has only affected the casinos in Tunica County so far, but as economic fallout from casino closings spreads throughout the state, the effects could be far-reaching.

The Corps of Engineers office in Memphis has issued a regulation requiring new casino applicants in their district

to post a \$5,000 to \$10,000 letter of credit in order to clean up the site if the casino leaves. This regulation would not alter permits already granted, so its effect would only be felt by future applicants. This letter of credit requirement gives casinos an extra incentive to stay. If they do pull out, the harm can be minimized.

The Gulf Coast casino market presents its own set of environmental problems. As casinos occupy more and more commercial sites and these zones become scarce, casino barges move into previously undeveloped and residential areas. Some local residents and environmentalists have argued that the domino effect of casino development could result in upsetting the fragile balance of the wetlands that animals use to breed and eat. Other problems are increased traffic, more residents, and higher risk of harm due to hurricanes.

Much of the nation's wetlands are located in coastal areas. The coastal wetlands in Mississippi provide habitat for countless species of shrimp, crawfish, birds and other animals. The Gulf Coast shore is the second most productive marine habitat in the United States behind Alaska. The recreational and commercial fishing industries depend on the shrimp and fish that come out of these waters. Without the protection of these wetlands there is no buffer zone between the sea and inland waters.

EPA has proposed a color-coded zoning of the coastal area that relates the various degree of protection the area needs. Green zones would be industrial and commercial land with little resistance to permit approval. Amber zones would be more sensitive land such as beaches that would require more strict permit review. Red zones would indicate the most environmentally sensitive areas such as pristine wetlands and undeveloped lands. Although permit approval would not be precluded in this area, applicants would undergo the most strict review. This system of zoning by EPA mirrors the Mississippi Coastal Plan.

Two environmental groups, the Gulf Islands Conservancy and the Center for Marine Conservation, filed a NEPA violation suit in November of 1994 against the Corps of Engineers because the Mobile, Alabama office failed to issue an Environmental Impact Statement for several coastal casino sites. The groups contended that approval of the current site would pave the way for future permit approval in environmentally sensitive areas. They also charged that the Corps failed to consider the cumulative impact of casinos along the Mississippi Gulf Coast. The groups seek to bar any future development until completion of a full EIS to determine the environmental impact of casino development on the Mississippi Gulf Coast.

The sewage and drainage infrastructure for many communities has also been strained by casino development.

Casinos discharge on average about 250,000 gallons of water per day. Many casino areas have been working with tight budgets on updating treatment plants. Mississippi has already been under attack from EPA regarding the state's wastewater treatment program. These overburdened treatment facilities, if continuously allowed to operate at dangerous levels, could discharge untreated sewage into coastal waters.

Secondary development is another concern to environmentalists throughout the state. The Mississippi Gaming Commission established a new regulation requiring that twenty-five percent of development money spent by casinos must be used for secondary development such as theaters, restaurants, hotels, and parking lots. Although this regulation will encourage the casinos to stay rather than pull out when the going gets tough, it also requires more impacts on the land. This regulation applies to casinos throughout the state, even those already operating.

As casino analyst Jason Ader stated in the Memphis Business Journal, "What's critical to the long-term viability of the Mississippi market is other amenities, other attractions. That's what's going to create tourism traffic and demand." Golf courses, road construction, theme parks, theaters, and other development is needed to make the Mississippi casino market into something more than a day trip area. Mississippi needs to attract the high rollers and become a nationwide destination in order to maintain its positive growth rate. With more money invested in secondary development, casinos are also less likely to pull up anchor and leave when business slows down. However, this secondary development could have far reaching effects on the environment, if Mississippi is not careful.

One of the biggest challenges to an environmentally sound casino industry is interagency communication. Agencies such as the Department of Wildlife, Fisheries, and Parks (DWFP); the Corps of Engineers; the Mississippi Department of Environmental Quality (DEQ); and EPA need to better coordinate their efforts to steer Mississippi in the best possible direction. Mississippi is at a crucial phase in its history, and harmony between the various responsible agencies is needed to help Mississippi through this precarious time. When the DEQ is having a problem getting wastewater treatment compliance, the Gaming Commission needs to listen and work towards getting the problem resolved.

The public should also have an input. It is the citizens that have to live with the environmental effects of decisions made by the Corps, the Mississippi Gaming Commission, and EPA. Citizens should not have to bear the burden while casinos reap the profit.

CONCLUSION

Casinos have been an economic boon to Mississippi. However, we should not let Mississippi's newest industry have their way at the expense of the environment. We must develop regulation that promotes both the health of the casino industry and the health of Mississippi's environment.

Mississippi must not let poor planning destroy one of its most valuable resources, the environment. While it is hard to say no to an industry that has done so much for a stalled economy, the state ought to say no to avoidable harm to Mississippi's environment. □

William Harrison is a second year law student at the University of Mississippi School of Law and Interim Editor of the WATER LOG.

The views expressed in this article are those of the author and do not necessarily represent the view of the editors or the Mississippi-Alabama Sea Grant Consortium.

Secretary of the Interior v. Sweet Home Chapter of Communities for a Great Oregon, 115 S.Ct. 2407 (1995).

by Bradley Peacock

INTRODUCTION

The Endangered Species Act (Act) assembles various protective measures designed to protect certain plant and animal species. Animals designated as endangered or threatened by the Secretary of the Interior (Secretary) are subsequently entitled to the safeguards provided by the Act. Among these animals are the red-cockaded woodpecker and the northern spotted owl. The instant case centers around these animals. Respondents argue that protection provided for these two species under the Act has resulted in economic injury to those dependent on the forest products industries in the Pacific Northwest and Southeast.

FACTS

Section 9 of the Endangered Species Act (16 U.S.C. § 1538) makes it unlawful for a person to "take" a threatened or endangered species. The Act defines the statutory term "take" in Section 3(19):

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. 16 U.S.C. § 1532(19).

The Act does not, however, spell out the terms it uses to define "harm." Since the passage of the Act by Congress in 1973, the Secretary has implemented regulations which interpret the statutory term "harm:"

Harm in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. 50 CFR § 17.3 (1974).

The issue presented in this case raises the question of whether the Secretary exceeded his authority under the Act by promulgating this regulation.

The action was brought by a group of small landowners, logging companies, and families (respondents) who depend on the forest industries in the Pacific Northwest and Southeastern United States. Respondents sought a declaratory judgment by challenging the validity of the Secretary's regulation defining "harm," specifically citing the inclusion of habitat modification and degradation in the definition. The complaint asserted that application of the "harm" regulation to the redcockaded woodpecker, an endangered species, and the northern spotted owl, a threatened species, resulted in economic damage to respondents.

In order to support their contention that Congress did not purport the word "take" to include habitat modification, the respondents offered three arguments. First, they submitted that the Senate, before passing the Act, deleted language which would have defined "take" to include "destruction, modification, or curtailment of [the] habitat or range" of wildlife or fish. Second, respondents pointed out that the Act included an authorization for the federal government to buy private land in order to prevent habitat degradation. According to the respondents, this authorization was included in the Act to be an exclusive check against habitat modification on private property. In their third argument, respondents asserted that the court should not broadly interpret "take" to include habitat modification because the Senate added the term "harm" to the definition of "take" in a floor amendment without debate.

The District Court rejected each of these arguments and entered summary judgment for petitioners. The Court of Appeals reversed the District Court's holding and found for the respondents. The United States Supreme Court granted *certiorari* to review the case.

DISCUSSION

In a 6-3 decision, the Supreme Court reversed the Court of Appeals. The Court held that the Secretary reasonably construed Congress' intent when he defined "harm" to include habitat modification. Justice Stevens, writing for the majority, found that the Act provided three reasons for supporting the Secretary's interpretation. First, the usual meaning of "harm" logically encompasses habitat modification that results in actual injury or death to members of an endangered or threatened species. The majority explained that unless "harm" dictates indirect as well as direct injuries, the word has no meaning that does

not duplicate that of other words used in the Act to define "take." Second, the Court noted that the Act is meant to provide broad, comprehensive protection for endangered and threatened species. Stevens reasoned that the extensive purpose which the Act embodies provides support for the reasonableness of the Secretary's definition. Third, the Court referred to a 1982 Congressional act which authorized the Secretary to issue permits for takings that the Act would otherwise prohibit "if such a taking is incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity." 16 U.S.C. § 1538. This authorization strongly suggests Congress understood that the Act prohibited indirect and deliberate takings.

Stevens subsequently noted several errors made at the appellate level which led to the Court of Appeals decision. He found that the appellate court's basic premise was flawed in that several of the words surrounding "harm" in the Act's definition of "take" refer to actions or effects which do not require direct applications of force. Stevens also commented, "to the extent that [the Court of Appeals] read an intent or purpose requirement into the definition of 'take', it ignored the Act's express provision that a 'knowing' action is enough to violate the Act." Finally, the Court disagreed with the Court of Appeals' method of employing *noscitur a sociis* (deriving meaning from the surrounding words) to allow "harm" the same function as other words in the definition, and thus deny it any exclusive meaning.

The Court also discussed the underlying policy employed in rendering this decision. Stevens explained that with the promulgation of the Act, Congress delegated wide administrative and interpretive power to the Secretary. This broad discretion comes through a realization of the expertise and knowledge needed to define and list endangered and threatened species - an attention to detail that exceeds the province of Congress. Thus, since Congress gave the Secretary such discretion, the Court will be particularly reluctant to substitute its own views. The Court essentially adopted a low scrutiny standard of review for this case and deferred to the Secretary.

DISSENT

In a dissenting opinion, Justice Scalia argued that the majority's decision imposes unfairness to the point of financial ruin to landowners. He acknowledges that the Act forbids the hunting and killing of endangered animals, and that it provides federal land and funds for the acquisition of private lands to preserve the habitat of endangered animals. Justice Scalia disagreed, however, with the Court's holding that the hunting and killing prohibition incidentally preserves habitat on private lands.

The dissent points out several aspects of the Secretary's regulation which, they believe, do not comport with the Act. First, the regulation interprets the statute to prohibit habitat modification that is "no more than the cause-in-fact of death or injury to wildlife." Thus, any significant habitat modification which produces death or injury by impairing behavioral patterns is unlawful, without considering the foreseeability or chain of causality which lead to the death or injury. Another disputed point concerns the feature of the regulation that encompasses injury inflicted upon populations of the protected species, not just individual animals. Scalia notes that the regulation's definition of injury is "significantly impairing essential behavioral patterns, including breeding." 50 CFR § 17.3 (1994). The dissent argues that impairment of breeding does not injure living creatures, but simply prevents them from propagating.

Scalia reiterates the Act is a work of legislation that forbids all persons to hunt or injure endangered animals. The cost of this prevention, Scalia believes, was intended to be placed upon the public at large, and not upon "fortuitously" accountable individual landowners. The dissent contends that the Secretary's regulation drastically sways from the intent of the Endangered Species Act, and has no textual support or congressional consideration.

CONCLUSION

This case concerns a controversial and often debated subject that raises persuasive arguments on both sides of the issue. One side contends that enforcement of the Endangered Species Act involves holding individual landowners accountable for significant habitat modification. The opposing argument seeks to limit the burden placed on the landowner and transfer cost to the government and to the public at large. The burden of balancing this scale of opposing policy is a difficult one, but this case favors allocating the cost to the individual landowner. □

Bradley Peacock is a second year law student at the University of Mississippi School of Law and Research Associate with the Mississippi-Alabama Sea Grant Legal Program.

The views expressed in this article are those of the author and do not necessarily represent the view of the editors or the Mississippi-Alabama Sea Grant Consortium.

Mississippi Casino Operators Association v. Mississippi Gaming Commission, 654 So. 2d 892 (Miss. 1995).

by Melissa S. Baria

The Gaming Commission regulation prohibiting gaming on rivers and streams emptying into bays on Mississippi Gulf Coast prohibits siting of casino on artificial inlets created by dredging dry land and diverting waters through man-made channels

INTRODUCTION

Pine Hills Development Partnership (Gold Star casino) and Lone Star Pine Hills Corporation (Lone Star) submitted applications to the Mississippi Gaming Commission (Commission) for gaming licenses, in accordance with the Mississippi Gaming Control Act. The companies proposed a man-made artificial watercourse, located on the shore of the eastern side of the Hancock and Harrison county border. Their plan would divert waters 1/4 mile from the St. Louis Bay (located in Harrison and Hancock counties in Mississippi) to an artificial cove in Harrison county. The Commission approved the site, and the Mississippi Casino Operators Association (MCOA) appealed to the circuit court. They argued that the Commission's decision approving the site was contrary to Miss. Code Ann. § 97-33-1(a) and the Commission's own Regulation No. 2, which require gaming to be confined to waters south of the southernmost counties in Mississippi. The circuit court affirmed the Commission's decision reasoning the Commission was vested with the authority to determine the propriety of gaming sites. MCOA appealed.

DISCUSSION

In 1990, the Mississippi Legislature authorized gaming along the shores of the Mississippi Gulf Coast and in counties bordering the Mississippi River. As to the Gulf Coast counties, the Mississippi Code authorizes gaming

[o]n a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the

State of Mississippi, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79. Miss. Code Ann. § 97-33-1(a).

Although section 97-33-1(a) allows for gaming in the waters south of the three most southern counties in the State, it fails to specifically define the location of these waters. The Gulf Coast gaming provision does not expressly state that gaming is allowed in navigable waters *within* counties which border on the Gulf of Mexico.

The Mississippi Supreme Court held in *Pinkton v. State*, 481 So. 2d 306, 309 (Miss. 1985), that when interpreting a statute, it must first look to the words of that statute. But even after looking to the words in the statute, the court must adopt the interpretation which best fits the intended meaning of the statute.

A literal reading of this statute may mean that gaming is prohibited as far south as the Gulf Islands, since these islands are part of the most southern counties. It would seem impossible to be both in the State of Mississippi and south of the most southern counties because the state line and the county lines are coterminous. This interpretation would render all current and future gaming sites illegal with the exception of those sites in the river counties. This is surely not what was meant by the authors of the statute.

In attempting to adopt rules consistent with a reasonable interpretation of the statute, the Commission set out Regulation No. 2 which gives definition to the words "waters south of the three most southern counties." The regulation states:

Waters within the State of Mississippi which lie adjacent to the three (3) most southern counties of the State. In addition to the Mississippi Sound, this would include St. Louis Bay, Biloxi Bay and Pascagoula Bay. However, the rivers and bayous leading into these bays, including, but not limited to the Jourdan River, Wolf River, Bernard Bayou, Tchoutachabouffa River, Pascagoula River and Escapatawpa [sic] are not within the authorized area. In determining where the river ends and the bay begins, an imaginary line shall be drawn from the foremost land mass at the intersection on the river and bay, straight across the river to the foremost land mass of the intersection on the other side.

The canal upon which Lone Star and Gold Strike proposed to situate a gaming vessel was to be man-made. Because Regulation No. 2 does not speak of artificial inlets, Lone Star and Gold Strike argued that the proposed site was permissible. Although Regulation No. 2 prohibits gaming in the rivers and streams which are naturally occurring and empty into the bay, the court found no distinction between naturally occurring inlets and the artificial one proposed. By allowing the companies to construct this artificial inlet, the Commission essentially contradicted its own Regulation No. 2.

CONCLUSION

The Supreme Court held that Regulation No. 2, limiting permissible sites to the Mississippi Sound, St. Louis Bay, Pascagoula Bay and the Biloxi Bay is a reasonable interpretation of the statute. Obviously, the site proposed and approved by the Commission in the case at issue does not fall within any of these areas, nor is the site even on water. The statute clearly requires an approved site to be on water. Here, the site is on land which the applicants propose to dredge.

The proposed site was deemed unlawful and the Commission's approval was reversed. □

Melissa S. Baria is a second year law student at the University of Mississippi School of Law and Research Associate with the Mississippi-Alabama Sea Grant Legal Program.

The views expressed in this article are those of the author and do not necessarily represent the view of the editors or the Mississippi-Alabama Sea Grant Consortium.

How A Bill Becomes A Law in Mississippi

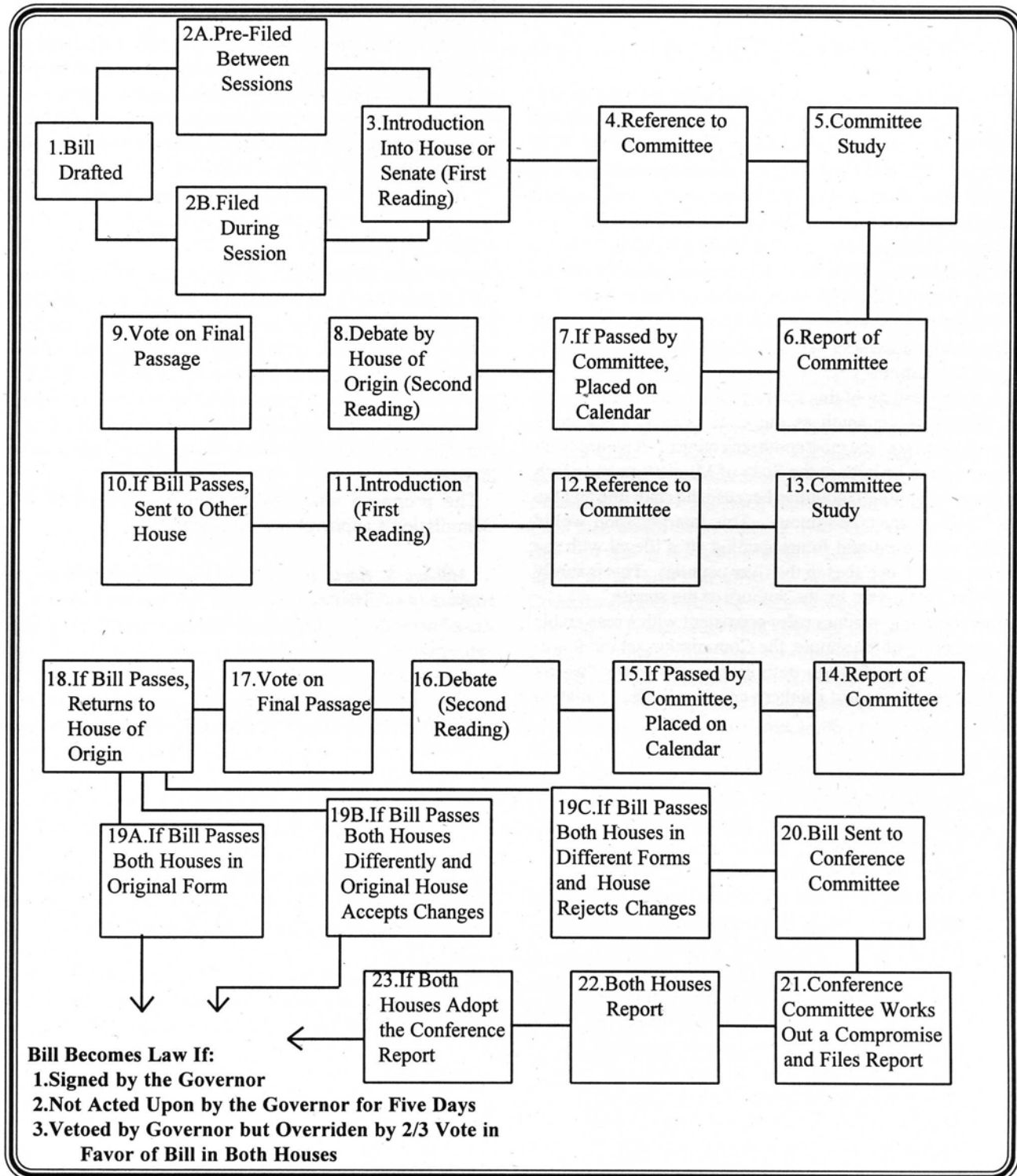


Chart by William Harrison

Mississippi Legislative Update 1995

edited by John Duff

The following is a short description of some of the coastal and marine legislation enacted by the Mississippi legislature during the 1995 session.

1995 Mississippi Laws 439

Approved March 21, 1995.

Effective July 1, 1995.

Transfers Boat and Water Safety Commission duties related to marine waters to the Commission on Marine Resources and calls on the Commission on Marine Resources to adopt enforcement rules and regulations.

1995 Mississippi Laws 453

Approved March 21, 1995.

Effective March 21, 1995.

Deletes certain exemptions to the coastal wetlands permit requirements including the exemption on coastal wetlands within five feet of private property.

1995 Mississippi Laws 454

Approved March 21, 1995.

Effective March 21, 1995.

Contains a number of technical amendments to conform fish and game laws under the re-organization transferring certain powers to the Marine Resources Commission.

1995 Mississippi Laws 458

Approved March 21, 1995.

Effective March 21, 1995.

Grants regulatory authority to the Marine Resources Commission and provides that regulations of the Commission on Marine Resources shall supercede regulations adopted by the Commission on Wildlife, Fisheries and Parks under its former powers related to marine resources.

1995 Mississippi Laws 505

Approved March 28, 1995.

Effective July 1, 1995.

Authorizes the Commission on Environmental Quality to issue water use warnings or declare water use caution area under certain conditions and clarifies certain duties of the Commission relating to water.

1995 Mississippi Laws 611

Approved April 7, 1995.

Effective July 1, 1995.

Restricts gill nets and trammel nets from use in certain waters as specified by law, and provides for penalties upon proof of violation. The law also requires the Commission on Marine Resources and the Commission on Wildlife, Fisheries and Parks to enter into a Memorandum of Understanding for coordinating law enforcement activities.

1995 Mississippi Laws 620

Approved April 7, 1995.

Effective July 1, 1995.

Establishes the "Alcohol Boating Safety Act" which prohibits drunken boating and deems operators to impliedly consent to testing by conservation officers.

LAGNIAPPE

A Little Something Extra

The Mobile Bay in Alabama has been accepted into the National Estuary Program by EPA. This program is designed to give federal funding to much needed estuaries all around the nation. After their original proposal was turned down, Alabama came back and succeeded in getting federal approval for its inclusion as a project.