

Hurricane Katrina's Impact on the Mississippi Gulf Coast Gaming Industry:  
Validation Through Destruction

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I. Introduction

Those who have spent time on the Mississippi Gulf Coast in recent years could not help but hear the saga of 1969's Hurricane Camille, of those that stayed behind to welcome the storm with doomed "hurricane parties," and of unparalleled danger, destruction and death visited on the Mississippi Gulf Coast. However, the events of August 29, 2006, rendered Camille an afterthought in the region's history.

On that date, as Hurricane Katrina approached the shoreline of Mississippi and Louisiana, Category 4 winds encountered near-perfect tidal conditions, resulting in a maximum tidal surge wreaking havoc of Biblical proportions upon the Mississippi Gulf Coast.

In 1969, Camille devastated a community best known as a quiet vacation getaway for residents of the Deep South. The gaming then-present was conducted illegally and only with the tacit consent of the local authorities. Thus, it is interesting to note that the region truly did not begin its recovery from Hurricane Camille until the first legal dockside casino opened its doors in Biloxi in 1992. The product of a political compromise, the Mississippi Gaming Control Act of 1990 provided that gaming could legally be conducted on the Mississippi Gulf Coast

[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 of 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). This language is inherently ambiguous, as there are no waters located both “adjacent to Mississippi” and “south of the three (3) most southern counties in the State of Mississippi,” as the southern boundary of the three most southern counties is identical to the southern boundary of the state.

Faced with this ambiguity, the Mississippi Gaming Commission promulgated a regulation to further define legal locations for casino gaming on the Mississippi Gulf Coast as

[w]aters 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, bayous, lakes and back bays leading into these bays, including but not limited to the Jourdan River, Wolf River, Bernard Bayou, Tchoutacabouffa River, Pascagoula River and Escatawpa River, Biloxi River, Big Lake and Back Bay of Biloxi 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 of the river and bay, straight across the river to the foremost land mass of the intersection on the other side. In determining where Back Bay of Biloxi ends and Biloxi Bay begins, an imaginary line shall be drawn beginning at a point 1200 feet west of the center line of Interstate 110 on the northern shore to a point on the center line of Interstate 110 on the southern shore.

MGC Reg. II., B., Section 2(a)(1). After an initial period in which docked riverboats dotted the Mississippi Gulf Coast, casinos on floating barges practically indistinguishable from land-based structures became the norm.

In the span of a few short years, Mississippi established itself as the third largest gaming jurisdiction (in terms of revenue) behind Nevada and New Jersey, and the second largest gaming jurisdiction (in terms of casino square footage) behind Nevada. In 2005, twelve casinos were operating on the Mississippi Gulf Coast, with a thirteenth scheduled to open on September 1.

Katrina’s impact on Mississippi and Louisiana left thousands dead and hundreds of thousands homeless, and levied untold billions of dollars in damage. Homes, infrastructure and

places of employment were in many instances completely destroyed. The thirteen casino facilities on the Mississippi Gulf Coast were no exception. By this time, gaming had become an integral part of the economy of the State of Mississippi, most particularly in the regions where gaming facilities were located. The post-Katrina condition of these casinos ranged from complete destruction to severe damage; none escaped the storm's wrath, and all were rendered incapable of operating or providing sustained employment to the populace.

Given the importance of casino gaming on the economy of the Mississippi Gulf Coast, Governor Haley Barbour and many others were convinced that gaming operations seeking to rebuild their broken facilities or develop new facilities on the Mississippi Gulf Coast should be permitted to move inland, if not to escape destruction from a future hurricane, to at least minimize damage to the degree politically possible. Although not a novel idea, it was a controversial one, as many in the State of Mississippi bristled at the thought of casinos moving inland lest they migrate throughout the state's territory. Nonetheless, the Governor called a Fifth Extraordinary Session of the Mississippi Legislature in 2005 to focus upon Katrina-related relief measures, and House Bill 45 was introduced, proposing the legitimization of a limited form of shore-based gaming in Mississippi.

## II. House Bill 45

Introduced by Bobby Moak, Chairman of the House Gaming Committee, House Bill 45 was as controversial as they come. Passing the House by a vote of 61 to 53 and the Senate by a vote of 29 to 21, the measure was signed into law by Governor Barbour on October 17, 2005, and the Mississippi Gulf Coast's gaming industry had overnight become amphibian by process of law.

The portion of House Bill 45 germane to this discussion permitted gaming activities

[i]n a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of 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, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or in part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

House Bill 45, Mississippi Legislature Fifth Extraordinary Session 2005, Section 1(b).

This legislation had the following impact:

- Gaming could now be conducted within 800 feet of the mean high water line of those areas of the Mississippi Gulf Coast previously eligible for dockside gaming;
- This 800-foot distance could be extended further inland in Harrison County to the southern boundary of the right-of-way of U.S. Highway 90, for the purpose of including all of the area located within the Mississippi State Port at Gulfport;
- The area in which gaming activities could be conducted must be “adjacent” to the mean high water line, meaning that the parcel(s) upon which gaming activities are conducted must possess a contiguous connection to the mean high water line; and



- Easements and rights-of-way for public streets and highways cannot destroy the contiguous nature of a parcel or parcels, nor may the width of such easements and rights-of-way count in the calculation of the distance of 800 feet.

### III. Mississippi Gaming Commission Regulation

It subsequently fell upon the Mississippi Gaming Commission to amend its Regulations to provide for the change in law occasioned by House Bill 45. This is easier said than done, as application of the unique characteristics of the geography of the Mississippi Gulf Coast to House Bill 45 presented a Pandora's Box of possibilities - a gaming attorney's playground as well as a gaming regulator's nightmare. Of particular concern was implementing House Bill 45's legislative changes without placing at a disadvantage those existing licensees who choose to rebuild over the water, while at the same time encouraging competition and new development.

On January 19, 2006, the Mississippi Gaming Commission released for public notice a proposed amendment to its siting Regulation, which includes the following new language:

Gaming establishments in the three (3) most southern counties in the State of Mississippi are permitted to be permanent inland structures. No point in the gaming area may be more than eight hundred (800) feet from the nineteen (19) year mean high water line. Harrison County establishments south of Highway 90 may exceed the eight hundred (800) foot measurement up to the southern boundary of Highway 90. All public easements and rights-of-way for public streets and highways may be excluded from the eight hundred (800) foot measurement. Any point of reference used to determine the 800 foot distance from the mean high water line must be located on the applicant or licensee's premises. The applicant or licensee must own and /or lease the land that is contiguous both to the parcel used to conduct gaming and the point of reference used to determine the mean high water line, and this land must be shown to be an integral part of the project. The Commission has final authority in reviewing and approving each site as it pertains to meeting the requirements of this regulation.

MGC Reg. II., A., Section 3(h) (proposed). The Commission is currently accepting public comment on the proposed amendment, and passage of an amendment in substantially the same form is expected at an upcoming Commission meeting.

The Regulation amendment clarifies the following points:

- The 800-foot distance may be measured from any point along the mean high water line controlled by the applicant/licensee. In other words, the eligible area for shore-based gaming may be determined by measuring 800-foot radial arcs from every point on the mean high water line controlled by the applicant/licensee.
- The land that contains the mean high water line must be shown to the Commission to be an “integral part of the project.” This requirement is intended to insure that a parcel’s connection to the mean high water line is not a sham, the only purpose of which would be to provide such a connection.

#### IV. Aftermath

Although the Commission’s Regulation amendment addresses a few of House Bill 45’s ambiguities, no piece of legislation or regulation on this subject matter can successfully predict every possible permutation of the geography of the Mississippi Gulf Coast, and the next few years will no doubt bring numerous instances of applicants seeking to dissect the subject legislative and regulatory language in order to gain a competitive advantage. The Commission will have its hands full regulating the location of the Mississippi Gulf Coast gaming facilities during this time period.

Three of Biloxi’s casinos reopened in December 2005. One chose to rebuild over the water, and the two others established temporary gaming facilities over land by converting existing hotel lobby and convention center areas. The revenue figures for January 2006 for these three casinos (\$64 million) are astounding, considering such revenue represents approximately 54% of what all twelve Coast casinos enjoyed in pre-Katrina January 2005. Although much of this performance must be attributable to pent-up demand, it surely is indicative of the resiliency

of the region and foreshadows that the Mississippi Gulf Coast gaming industry will, in a few short years, eclipse its pre-Katrina success story.

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