

By: Representative Clark

To: Local and Private  
Legislation;  
Appropriations

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1488

1 AN ACT TO AMEND CHAPTER 1022, LOCAL AND PRIVATE LAWS OF 1996,  
2 TO AUTHORIZE THE HOLMES COUNTY CORRECTIONAL FACILITY AUTHORITY TO  
3 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS TO HOUSE STATE INMATES  
4 IN A PRIVATE CORRECTIONAL FACILITY LOCATED IN HOLMES COUNTY; AND  
5 FOR RELATED PURPOSES.

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

7 SECTION 1. Chapter 1022, Local and Private Laws of 1996, is  
8 amended as follows:

9 Section 1. As used in this act, unless the context otherwise  
10 requires:

11 (a) "American Correctional Association Standards" means  
12 standards promulgated by the American Correctional Association as  
13 in effect from time to time.

14 (b) "Authority" means the Holmes County Correctional  
15 Facility Authority.

16 (c) "Board of commissioners" means the board of  
17 commissioners of the authority.

18 (d) "Board of supervisors" means the Board of  
19 Supervisors of Holmes County, Mississippi.

20 (e) "County" means Holmes County, Mississippi.

21 (f) "Equipment" means any personal property which the  
22 authority determines is necessary or helpful for the operation of  
23 a facility.

24 (g) "Facility" means a jail, prison or other  
25 incarceration facility located in the county which is constructed,  
26 acquired or operated pursuant to this act.

27 (h) "Management contract" means a contract between the

28 authority and a private contractor for the operation and  
29 management of a facility by a private contractor.

30 (i) "Private contractor" means a person or legal entity  
31 which leases or subleases a facility from the authority or has  
32 entered into a management contract with the authority pursuant to  
33 this act.

34 (j) "State" means the State of Mississippi.

35 Section 2. (1) There is created in Holmes County,  
36 Mississippi, a public body corporate and politic to be known as  
37 the "Holmes County Correctional Facility Authority." The  
38 authority shall not transact any business or exercise any powers  
39 under this act until the board of supervisors adopts a resolution  
40 finding that it is in the public interest to have the authority  
41 exercise the powers set forth in this act. The resolution shall  
42 provide for the number and manner of appointment of members of a  
43 board of commissioners to govern the authority, provide for the  
44 terms of office and compensation of the commissioners, provide  
45 mechanisms for the replacement and removal of any member of the  
46 board of commissioners, and designate the manner in which funds of  
47 the authority in excess of amounts needed to pay the authority's  
48 operating expenses and debt service will be applied, provided that  
49 none of the excess funds of the authority may inure to the benefit  
50 of any private person.

51 (2) Alternatively, the board of supervisors may by  
52 resolution designate a nonprofit corporation incorporated under  
53 the general laws of the state to exercise the powers of the  
54 authority set forth in this act, in which event the board of  
55 supervisors may take all actions necessary for the nonprofit  
56 corporation to be treated as acting on behalf of the county under  
57 the Internal Revenue Code. The nonprofit corporation shall have,  
58 in addition to the powers and authority generally exercisable by  
59 nonprofit corporations in the state, all powers and authority  
60 granted to the authority under this act and shall be deemed to be

61 a charitable society, for purposes of Section 27-31-1, Mississippi  
62 Code of 1972. All provisions of this act applicable to  
63 obligations, agreements, contracts and property of, and purchases  
64 by, contracting with and leasing or conveyance of property to an  
65 authority shall be applicable to obligations, agreements,  
66 contracts and property of, and purchases by, contracting with and  
67 leasing or conveyance of property to the nonprofit corporation.

68 Section 3. Nothing in this act shall authorize payment of  
69 tax revenues or other public funds of the county to the authority.

70 Section 4. The authority shall exist until dissolved  
71 pursuant to a resolution adopted by the board of supervisors.  
72 Upon dissolution of the authority, title to all property owned by  
73 the authority shall vest in the county. Dissolution of the  
74 authority shall not adversely affect the rights of any holders of  
75 obligations issued by the authority, including, but not limited  
76 to, any bonds, notes or other evidences of indebtedness issued by  
77 the authority or the rights of any parties to contracts with the  
78 authority including, but not limited to, leases, lease purchase  
79 agreements and management contracts entered into before the date  
80 of dissolution of the authority. A dissolution shall not be  
81 effective at any time that any bonds, notes or other evidence of  
82 indebtedness of the authority, including, but not limited to,  
83 lease-purchase agreements, are outstanding, except to the extent  
84 permitted in the documents executed in connection with the initial  
85 issuance of the bonds, notes or other indebtedness.

86 Section 5. (1) The powers of the authority shall be  
87 exercised by its board of commissioners. A majority of the  
88 commissioners shall constitute a quorum for the purpose of  
89 conducting business and exercising the powers of the authority and  
90 for all other purposes. Action may be taken by the authority upon  
91 a vote of a majority of the commissioners present.

92 (2) The authority may employ an executive director,  
93 technical experts and other agents and employees, permanent and

94 temporary, as it may require, and may determine their  
95 qualifications, duties and compensation.

96 Section 6. The authority shall have all the powers necessary  
97 or convenient to effectuate and carry out the provisions of this  
98 act, including the following powers in addition to others granted  
99 in this act:

100 (a) To have perpetual succession as a body politic and  
101 corporate exercising essential public functions until dissolved  
102 pursuant to Section 4 of this act;

103 (b) To sue and be sued in its own name;

104 (c) To have an official seal and alter it at will;

105 (d) To adopt, appeal and amend bylaws, rules and  
106 regulations, not inconsistent with this act, to regulate its  
107 affairs and conduct its business;

108 (e) To maintain one or more offices at a place or  
109 places within the county as it may designate;

110 (f) To make and execute contracts and all other  
111 instruments necessary or convenient for the performance of its  
112 duties and the exercise of its powers under this act;

113 (g) To employ architects, engineers, contractors,  
114 developers, attorneys, inspectors, accountants, financial advisors  
115 and any other advisors, consultants and agents as may be  
116 necessary, in its judgment, to carry out its powers under this  
117 act, and to fix their compensation;

118 (h) To procure insurance against any loss in connection  
119 with its property and other assets, in amounts and from insurers  
120 as it may deem advisable, and to pay premiums on any such  
121 insurance;

122 (i) To construct, purchase, receive, lease,  
123 lease-purchase, or otherwise acquire, own, hold, improve or use a  
124 facility or any item of equipment, and to enter into agreements  
125 relating thereto, including, but not limited to, sale and issuance  
126 of certificates of participation, which may extend for a period of

127 time, notwithstanding any provision or rule of law to the  
128 contrary, and provide for the consideration and other terms and  
129 conditions that are acceptable to the authority and are not in  
130 conflict with the provisions of this act, without regard to any  
131 general laws of the state regulating public purchases and  
132 acquisitions or restricting the time periods of agreements;

133 (j) To lease a facility or any item of equipment to a  
134 private contractor for rentals and upon the terms and conditions  
135 that are acceptable to the authority and are not in conflict with  
136 the provisions of this act, without regard to any general laws of  
137 the state regulating the disposition or conveyance of an interest  
138 in public property;

139 (k) To operate and manage a facility in accordance with  
140 the provisions of this act and to take all actions necessary in  
141 connection therewith, or alternatively to contract with a private  
142 contractor to operate and manage a facility in accordance with the  
143 provisions of this act;

144 (l) To borrow money and issue its obligations therefor  
145 for the purpose of carrying out its powers under this act, at  
146 rates of interest and upon terms and conditions that are  
147 acceptable to the authority and are not in conflict with the  
148 provisions of this act, without regard to any general laws of the  
149 state regulating the borrowing of money or issuance of obligations  
150 by public bodies, provided that any obligations issued by the  
151 authority shall be payable solely out of revenues received by the  
152 authority in connection with the operation or lease of a facility  
153 and shall never constitute a debt or obligation of the county or  
154 the state;

155 (m) In connection with borrowing money and issuance of  
156 obligations as set forth in the preceding paragraphs (i) and (l),  
157 in Section 13 of this act, and elsewhere in this act, to pledge or  
158 assign its property, assets and revenues, enter into trust  
159 indentures, deeds of trust, mortgages and security agreements,

160 contract for bond insurance and other credit enhancement devices,  
161 and to take any other action and enter into any other agreements  
162 as the authority deems necessary or appropriate, all on terms and  
163 conditions that are acceptable to the authority and are not in  
164 conflict with the provisions of this act, without regard to any  
165 provision or rule of law which would otherwise be applicable  
166 thereto; and

167           (n) To contract with the United States and its  
168 territories or the State of Mississippi or any political  
169 subdivision thereof to provide for housing, care and control in a  
170 facility of offenders who are in the custody of the jurisdiction,  
171 who do not have histories of escape, and who are sentenced to  
172 terms of incarceration for conviction of a felony, or who are  
173 sentenced to terms of incarceration for a misdemeanor, provided  
174 that the incarceration in the facility for a misdemeanor is  
175 consistent with American Correctional Association Standards  
176 relating to the incarceration of offenders convicted of more  
177 serious offenses, to enter into agreements relating thereto which  
178 may extend for time periods that are acceptable to the parties,  
179 notwithstanding any provision or rule of law to the contrary, and  
180 to exercise all powers necessary or desirable in connection with  
181 the operation of a prison or other type of correctional facility,  
182 including, but not limited to, the power to incarcerate offenders  
183 described above.

184           Section 7. (1) A facility shall be designed, constructed,  
185 operated and maintained in accordance with American Correctional  
186 Association Standards. The facility shall meet the percentage of  
187 standards required for accreditation by the American Correctional  
188 Association, except where a contract with a private contractor  
189 requires compliance with a higher percentage of nonmandatory  
190 standards.

191           (2) The facility shall comply with all constitutional  
192 standards of the United States and the state and with all court

193 orders applicable to the facility.

194           Section 8. (1) Any person who has been convicted of a  
195 felony under the laws of any jurisdiction shall not be employed at  
196 the facility.

197           (2) A person shall not be employed as a corrections officer  
198 at the facility unless the person has been trained in the use of  
199 force and firearms in accordance with American Correctional  
200 Association Standards. If a person is employed as a corrections  
201 officer by a private contractor that is operating a facility  
202 pursuant to a management contract, the private contractor shall  
203 cause the required training to be provided at its own expense.

204           (3) A corrections officer employed at the facility shall not  
205 use force or firearms except while on the grounds of a facility or  
206 while transporting offenders of a facility and then only under the  
207 circumstances set forth in subsections (4) and (5) of this  
208 section.

209           (4) A corrections officer shall not use force except such  
210 nondeadly force as is reasonably necessary in the following  
211 situations:

212                   (a) To prevent the commission of a felony or  
213 misdemeanor, including escape;

214                   (b) To defend himself or others against physical  
215 assault;

216                   (c) To prevent serious damage to property;

217                   (d) To enforce facility regulations and orders; and

218                   (e) To prevent or quell a riot.

219           (5) A corrections officer shall not use firearms or other  
220 deadly force except as a last resort when reasonably necessary to  
221 prevent the commission of a violent felony, to prevent the escape  
222 of a convicted felon from custody, or to defend the officer or any  
223 other person from imminent danger of death or serious bodily  
224 injury.

225           (6) A private contractor shall have the same standing,

226 authority, rights and responsibilities as the authority in any  
227 agreement, formal or informal, with local law enforcement agencies  
228 concerning the latter's obligations in the event of a riot, escape  
229 or other emergency situation involving the facility. To the  
230 extent provided in any management contract, a private contractor  
231 may exercise the powers granted to the authority under this act.

232 Section 9. Any offense which would be a crime if committed  
233 within a correctional institution operated by the state shall be a  
234 crime if committed in the facility.

235 Section 10. (1) Neither the state nor the county shall  
236 assume jurisdiction or custody of any federal offenders or  
237 offenders from other states who are incarcerated in the facility.

238 The offenders shall remain subject to the jurisdiction of the  
239 United States or another state, as applicable. Neither the state  
240 nor the county shall be liable for loss or injury resulting from  
241 the acts of the offenders, nor shall the state or the county be  
242 liable for any injuries to the offenders.

243 (2) Neither the state nor the county shall be liable for any  
244 actions taken by the authority or a private contractor in  
245 connection with the facility, nor shall they be liable for any  
246 debt incurred or obligations issued by the authority.

247 Section 11. (1) The facility shall at all times be operated  
248 and managed by a private contractor pursuant to a management  
249 contract unless the board of commissioners determines that the  
250 operation and management by a private contractor is not feasible  
251 or desirable. The terms and conditions of a management contract  
252 shall be approved by the board of commissioners.

253 (2) A management contract may authorize a private contractor  
254 to contract on behalf of the authority for the incarceration of  
255 offenders in the facility as set forth in Section 6(n) of this act  
256 and shall grant the private contractor any other powers that are  
257 necessary or convenient for the operation and management of the  
258 facility and are consistent with the provisions of this act,



259 including, but not limited to, the power to employ personnel who  
260 are needed for the operation and management of a facility and to  
261 provide or cause to be provided the training in the use of force  
262 and firearms required by Section 8(2) of this act.

263 (3) A management contract shall provide that any sovereign  
264 immunity of the state, any sovereign immunity of the county, any  
265 sovereign immunity of the municipality or any sovereign immunity  
266 of the authority shall not extend to the private contractor.  
267 Neither the private contractor nor any insurer of the private  
268 contractor may plead the defense of sovereign immunity in any  
269 action arising out of or related to the performance of the  
270 management contract.

271 (4) A management contract shall provide that the private  
272 contractor shall be responsible for the reimbursement of all costs  
273 and expenses incurred by the state, the county or the authority in  
274 connection with legal actions brought in the state by or on behalf  
275 of any offender incarcerated in the facility, including, but not  
276 limited to, court costs, sheriff's fees, witness fees, district  
277 attorney expenses, expenses of the Office of the Attorney General,  
278 indigent or public defender fees and expenses, judicial expenses,  
279 court reporter expenses and damage awards.

280 (5) A management contract shall provide that the private  
281 contractor shall indemnify and hold harmless the authority, the  
282 county and the state, and any officers, members, employees or  
283 agents of the foregoing, for any claim or liability for damage or  
284 injury to any person or property related to or arising from the  
285 operation and management of a facility, including, but not limited  
286 to, liability for loss or injury resulting from the acts of  
287 offenders incarcerated at the facility and liability for any  
288 injuries to the offenders.

289 (6) A management contract may contain any other provisions  
290 the authority deems necessary or appropriate, including, but not  
291 limited to, provisions that may be necessary to cause the

292 management contract to comply with promulgations of the Internal  
293 Revenue Service applicable to the contract.

294 Section 12. Neither the state, the county nor the authority,  
295 nor any members, officers, employees or agents of the foregoing,  
296 shall be liable for a private contractor's actions or failure to  
297 act while operating and managing a facility pursuant to a  
298 management contract.

299 Section 13. (1) The authority may enter into lease  
300 agreements with a person or legal entity pursuant to which the  
301 authority may agree to lease the facility or equipment for use by  
302 the authority for a primary term not to exceed thirty (30) years.

303 All lease agreements may contain terms and conditions as the  
304 board of commissioners of the authority shall determine to be  
305 appropriate and in the public interest, including, but not limited  
306 to, any provision which a master lease-purchase agreement may  
307 contain pursuant to Section 31-7-10(5), Mississippi Code of 1972,  
308 may provide for the payment of lease payments which include an  
309 interest component computed at a rate or rates as shall be  
310 approved by the board of commissioners, may include an annual  
311 allocation dependency clause, may contain an option granting to  
312 the authority the right to purchase the leased property upon the  
313 expiration of the primary term, or upon an earlier date that may  
314 be agreed upon by the parties, at a price as set forth in or  
315 computed in accordance with the lease agreement and may provide  
316 that all or any obligations thereunder are payable from specified  
317 revenues pledged as security therefor.

318 (2) The authority may lease publicly owned real property to  
319 a person or legal entity for the purpose of enabling the person or  
320 legal entity to construct a facility on the property and to lease  
321 the facility to the authority. A ground lease shall not be for a  
322 primary term in excess of twice the primary term of the lease with  
323 respect to the facility to be constructed on the real property.  
324 Any public body in the state may lease, sell or otherwise convey

325 property to the authority without consideration or for  
326 consideration as the governing body of the public body shall  
327 determine to be appropriate under the circumstances, and to enter  
328 into agreements with the authority relating thereto, which  
329 agreements may extend over any period of time, notwithstanding any  
330 provision or rule of law to the contrary.

331 (3) This section shall be full and complete authority for  
332 the authorization, execution and delivery of lease agreements  
333 authorized under this act, and none of the restrictions,  
334 requirements, conditions and limitations of the general law of the  
335 state applicable to acquisition, construction and drawing of  
336 buildings or facilities shall apply to lease agreements under this  
337 section, and all powers necessary to carry out the provisions of  
338 this section are conferred upon the authority.

339 Section 14. All obligations, including, but not limited to,  
340 bonds, notes, lease-purchase agreements and other evidence of  
341 indebtedness issued by the authority pursuant to this act and all  
342 interest payable thereunder or with respect thereto, all leases,  
343 trust indentures, deeds of trust, mortgages, security agreements  
344 and other contracts or agreements entered into pursuant to this  
345 act, and all purchases required to construct the facility or to  
346 acquire equipment shall be exempt from all taxation in the state,  
347 including, but not limited to, sales taxes and the contractor's  
348 tax imposed by Section 27-65-21, Mississippi Code of 1972. As  
349 provided by general law applicable to political subdivisions of  
350 the state, a facility and the revenues derived from its operation  
351 shall also be exempt from all taxation in the state, including,  
352 but not limited to, all ad valorem taxes levied by the state or  
353 any political subdivision thereof.

354 Section 15. This act shall be full and complete authority of  
355 the exercise of all powers and authority granted herein and no  
356 requirements or restrictions of law which would otherwise be  
357 applicable to acts of the authority shall be applicable except as

358 expressly provided herein. No debt of the authority shall be  
359 considered to be debt of the county or any other political  
360 subdivision of the state for purposes of any provision or rule of  
361 law restricting the amount of indebtedness of the county or such  
362 other political subdivision or for any other purpose under the  
363 laws of the state.

364 Section 16. In addition to any other authority granted by  
365 law, the Department of Corrections may contract with the Holmes  
366 County Correctional Facility Authority for the private  
367 incarceration of not more than one thousand (1,000) state inmates  
368 at a facility in Holmes County. Any such contract must comply  
369 with the provisions of Sections 47-5-1211 through 47-5-1227,  
370 Mississippi Code of 1972.

371 SECTION 2. This act shall take effect and be in force from  
372 and after its passage.