

By: Representative Clark

To: Local and Private
Legislation;
Appropriations

HOUSE BILL NO. 1488

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