

By: Representative Bowles

To: Local and Private
Legislation

HOUSE BILL NO. 1694
(As Sent to Governor)

1 AN ACT TO AUTHORIZE THE CHICKASAW COUNTY BOARD OF SUPERVISORS
2 TO CONTRACT WITH A PRIVATE ENTITY FOR THE CONSTRUCTION, LEASE,
3 ACQUISITION, IMPROVEMENT, OPERATION AND MANAGEMENT OF A PRIVATE
4 COUNTY JAIL; AND FOR RELATED PURPOSES.

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

6 SECTION 1. The Chickasaw County Board of Supervisors, in
7 their discretion, may contract with a private entity for the
8 construction, lease, acquisition, improvement, operation and
9 management of a private county jail.

10 SECTION 2. (1) A contract for the private operation of a
11 county jail shall not be entered into unless the contractor has
12 demonstrated that it has:

13 (a) The qualifications, experience and management
14 personnel necessary to carry out the terms of the contract.

15 (b) The ability to expedite the siting, design and
16 construction of a private county jail.

17 (c) The ability to comply with applicable federal and
18 state laws, court orders and national correctional standards.

19 (d) A history of successful operation and management of
20 other private county jails.

21 (2) A jail shall at all times comply with all federal and
22 state laws, and all applicable court orders.

23 (3) (a) A contract for private incarceration shall not be
24 entered into unless the cost of the private operation, including
25 the county's cost for monitoring the private operation, offers a
26 cost savings of at least ten percent (10%) to the board of
27 supervisors for at least the same level and quality of service

28 offered by the sheriff.

29 (b) The board of supervisors shall contract annually
30 with a certified public accounting firm to establish a county
31 offender cost per day for a comparable county jail. The county
32 offender cost per day shall be certified annually. The certified
33 cost shall be used as the basis for measuring the validity of the
34 ten percent (10%) savings of the contractor costs.

35 (4) The rates and benefits for correctional services shall
36 be negotiated based upon American Correction Association
37 Standards, state law and court orders.

38 SECTION 3. The initial contract for the operation of a jail
39 or for incarceration of offenders therein shall be for a period of
40 not more than five (5) years with an option to renew for an
41 additional period of two (2) years. Contracts for construction,
42 purchase, or lease of a jail shall not exceed a term of twenty
43 (20) years. The contracts shall provide that the contractor shall
44 convey the jail to the county, at the option of the county, for a
45 total consideration of One Dollar (\$1.00). Any contract for
46 housing shall be subject to annual appropriation by the board of
47 supervisors.

48 SECTION 4. (1) A contractor's employees serving as
49 "jailers" shall be allowed to use force only while on the grounds
50 of a jail, while transporting offenders, and while pursuing
51 escapees from a jail.

52 (2) Private jailers may use only such nondeadly force as the
53 circumstances require in the following situations: to prevent the
54 commission of a felony or misdemeanor, including escape; to defend
55 oneself or others against physical assault; to prevent serious
56 damage to property; to enforce institutional regulations and
57 orders; and to prevent or quell a riot.

58 (3) Private jailers, who have been appropriately certified
59 as determined by the contracting agency and trained pursuant to
60 the provisions of subsection (4), shall have the right to carry
61 and use firearms and shall exercise such authority and may use
62 deadly force to prevent an act that could result in death or
63 serious bodily injury to oneself or to another person.

64 (4) Private jailers shall be trained in the use of force and

65 the use of firearms, in accordance with American Correction
66 Association Standards and shall be trained, at the private
67 contractor's expense, for at least the minimum number of hours
68 that public personnel are currently trained.

69 SECTION 5. All employees of a jail operated pursuant to this
70 act must receive, at a minimum, the same quality and quantity of
71 training as that required by the state, for sheriffs and deputy
72 sheriffs. All training expenses shall be the responsibility of
73 the contractor.

74 SECTION 6. A contract for jail services shall not be entered
75 into unless the following requirements are met:

76 (a) In addition to fire and casualty insurance, the
77 contractor shall provide at least Five Million Dollars
78 (\$5,000,000.00) of liability insurance, specifically including
79 insurance for civil rights claims. The liability insurance shall
80 be issued by an insurance company with a rating of at least an A-
81 according to A.M. Best Standards. In determining the adequacy of
82 such insurance, the board of supervisors shall determine whether:

83 (i) The insurance is adequate to protect the
84 county from any and all actions by a third party against the
85 contractor or the county as a result of the contract;

86 (ii) The insurance is adequate to protect the
87 county against any and all claims arising as a result of any
88 occurrence during the term of the contract;

89 (iii) The insurance is adequate to assure the
90 contractor's ability to fulfill its contract with the county in
91 all respects, and to assure that the contractor is not limited in
92 this ability because of financial liability which results from
93 judgments; and

94 (iv) The insurance is adequate to satisfy such
95 other requirements specified by an independent risk
96 management/actuarial firm.

97 (b) The sovereign immunity of the state or the county

98 shall not apply to the contractor. Neither the contractor nor the
99 insurer of the contractor may plead the defense of sovereign
100 immunity in any action arising out of the performance of the
101 contract.

102 (c) The contractor shall post a performance bond to
103 assure the contractor's faithful performance of the specifications
104 and conditions of the contract. The bond is required throughout
105 the term of the contract. The terms and conditions must be
106 approved by the board of supervisors and the approval is a
107 condition precedent to the contract taking effect.

108 (d) The contractor shall defend any suit or claim
109 brought against Chickasaw County arising out of any act or
110 omission in the operation of a private jail and shall hold the
111 county harmless from the claim or suit. The contractor shall be
112 solely responsible for the payment of any legal or other costs
113 relative to any such claim or suit. The contractor shall
114 reimburse the county for any costs that it may incur as a result
115 of the claim or suit immediately upon being submitted a statement
116 therefor by the board of supervisors.

117 The duties and obligations of the contractor pursuant to this
118 subsection shall include, but not be limited to, any claim or suit
119 brought under any federal or state civil rights or offenders'
120 rights statutes or pursuant to any rights recognized by common law
121 or case law, or federal or state constitutions.

122 Any suit brought or claim made arising out of any act or
123 omission in the operation of a private jail shall be made or
124 brought against the contractor and not the board of supervisors.

125 SECTION 7. A plan shall be developed and certified by the
126 commissioner which demonstrates the method by which the county
127 would resume control of the jail upon contract termination.

128 SECTION 8. (1) A public official or an employee of the
129 county, who has duties or responsibilities related to the
130 contracting, constructing, leasing, acquiring or operating a

131 private jail, may not become an employee, consultant or contract
132 vendor to a private entity, which provides the jail or services to
133 the county within one (1) year after the termination of his
134 service or employment.

135 (2) Any person violating this section shall be guilty of a
136 misdemeanor and punished by a fine of not less than Five Hundred
137 Dollars (\$500.00) but not more than One Thousand Dollars
138 (\$1,000.00).

139 SECTION 9. This act shall take effect and be in force from
140 and after its passage.