

By: Representative Reynolds

To: Local and Private  
Legislation

HOUSE BILL NO. 1736  
(As Passed the House)

1 AN ACT TO AMEND CHAPTER 904, LOCAL AND PRIVATE LAWS OF 1998,  
2 TO AUTHORIZE THE BOARD OF SUPERVISORS TO EXPAND THE BOARD OF  
3 COMMISSIONERS OF THE TALLAHATCHIE COUNTY CORRECTIONAL AUTHORITY;  
4 TO PRESCRIBE THE PROCEDURES FOR APPOINTING THE ADDITIONAL MEMBERS  
5 OF THE BOARD OF COMMISSIONERS; TO PRESCRIBE THE TERMS OF THE BOARD  
6 OF COMMISSIONERS; TO AUTHORIZE THE TALLAHATCHIE COUNTY  
7 CORRECTIONAL AUTHORITY TO CONTRACT WITH THE FEDERAL GOVERNMENT OR  
8 OTHER STATES FOR THE HOUSING OF JUVENILES WHO ARE FOUND TO BE  
9 DELINQUENT OR IN NEED OF SUPERVISION; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Chapter 904, Local and Private Laws of 1998, is  
12 amended as follows:

13 Section 1. As used in this act, unless the context otherwise  
14 requires:

15 (a) "American Correctional Association Standards" means  
16 standards promulgated by the American Correctional Association as  
17 in effect from time to time.

18 (b) "Authority" means the Tallahatchie County  
19 Correctional Authority.

20 (c) "Board of commissioners" means the Board of  
21 Commissioners of the Authority.

22 (d) "Board of supervisors" means the board of  
23 supervisors of the county.

24 (e) "County" means Tallahatchie County, Mississippi.

25 (f) "Equipment" means any personal property which the  
26 authority determines is necessary or helpful for the operation of  
27 a facility.

28 (g) "Facility" means a jail, prison or other  
29 incarceration facility located in the county which is constructed,

30 acquired or operated pursuant to this act.

31 (h) "Management contract" means a contract between the  
32 authority and a private contractor for the operation and  
33 management of a facility by a private contractor.

34 (i) "Private contractor" means a person or legal entity  
35 which leases or subleases a facility from the authority or has  
36 entered into a management contract with the authority pursuant to  
37 this act.

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

39 Section 2. (1) There is created in the county a public body  
40 corporate and politic to be known as the "Tallahatchie  
41 Correctional Authority." The authority shall not transact any  
42 business or exercise any powers under this act until the board of  
43 supervisors adopts a resolution finding that it is in the public  
44 interest to have the authority exercise the powers set forth in  
45 this act. The resolution shall designate the manner in which  
46 funds of the authority in excess of amounts needed to pay the  
47 authority's operating expenses and debt service will be applied,  
48 provided that none of the excess funds of the authority may inure  
49 to the benefit of any private person.

50 (2) Alternatively, the board of supervisors may by  
51 resolution designate a nonprofit corporation incorporated under  
52 the general laws of the state to exercise the powers of the  
53 authority set forth in this act, in which event the board of  
54 supervisors may take all actions necessary for the nonprofit  
55 corporation to be treated as acting on behalf of the county under  
56 the Internal Revenue Code. The nonprofit corporation shall have,  
57 in addition to the powers and authority generally exercisable by  
58 nonprofit corporations in the state, all powers and authority  
59 granted to the authority under this act and shall be deemed to be  
60 a charitable society, for purposes of Section 27-31-1, Mississippi  
61 Code of 1972. All provisions of this act applicable to  
62 obligations, agreements, contracts and property of, and purchases

by, contracting with and leasing or conveyance of property to an authority shall be applicable to obligations, agreements, contracts and property of, and purchases by, contracting with and leasing or conveyance of property to the nonprofit corporation.

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

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

Section 5. (1) All powers of the authority shall be exercised by its board of commissioners to be composed of five (5) members, one (1) appointed by the Tallahatchie County Board of Supervisors from each supervisory district.

(2) (a) The initial members of the board shall serve for terms of office as follows:

(i) Two (2) members appointed by the Tallahatchie County Board of Supervisors shall serve for a term of four (4) years.

(ii) Two (2) members appointed by the Tallahatchie County Board of Supervisors shall serve for a term of three (3)

96 years.

97                    (iii) One (1) member appointed by the Tallahatchie  
98 County Board of Supervisors shall serve for a term of two (2)  
99 years.

100            The term of each initial appointee shall begin on the first  
101 day of the next month after the date that all initial appointees  
102 have been appointed.

103            After the expiration of the initial terms, all subsequent  
104 appointments shall be made for terms of five (5) years from the  
105 expiration date of the previous term. Any vacancy that may occur  
106 shall be filled in the same manner as the original appointment and  
107 shall be made for the unexpired term.

108            (b) Beginning October 1, 1999, the board of supervisors  
109 may authorize, by resolution duly adopted and spread upon its  
110 minutes, up to four (4) additional members to be appointed to the  
111 Tallahatchie County Correctional Authority, if the board of  
112 supervisors determines it is in the best interest of Tallahatchie  
113 County. The four (4) additional members of the board of  
114 commissioners may be appointed as follows:

115                    (i) The board of supervisors may delegate the  
116 authority to appoint two (2) of the additional members of the  
117 board of commissioners to two (2) municipalities which may each  
118 appoint one (1) member of the board of commissioners. However,  
119 the municipalities must be in separate judicial districts in the  
120 county, each municipality must be the municipality that is nearest  
121 in proximity to the correctional facility in a judicial district,  
122 and at the time of the appointment, the correctional facility must  
123 be constructed or in the process of being constructed.

124                    (ii) A supervisor in whose judicial district a  
125 correctional facility is located or in which the greater portion  
126 of a correctional facility is located or in which a correctional  
127 facility is in the process of being constructed may nominate an  
128 additional person to become a member of the board of

commissioners. There shall be no more than one (1) additional member of the board of commissioners per judicial district whose appointment was based on a supervisor's nomination as provided in this paragraph.

If the board of supervisors votes to expand the board of commissioners as provided in this subsection, then all actions brought before the board of commissioners shall only be undertaken if a majority of the members of the board of commissioners who are residents of each judicial district and who are voting on the measure vote in favor of the action. If a majority of the members of the board of commissioners who are residents of one (1) of the judicial districts and who vote on the measure do not vote in favor of a proposed action, then the action shall not be undertaken. Also, if the board of supervisors votes to expand the board of commissioners as provided in this subsection, then the five (5) members of the board of commissioners who are presently serving and their successors shall be residents of the supervisors district in which the members resided at the time of their appointment.

The additional members of the board of commissioners each shall serve for an initial term of three (3) years. After the expiration of the initial term, all subsequent appointments shall be made for terms of five (5) years. The term of each initial appointee shall begin on the first day of the next month after the date of his appointment.

(3) The members of the board of commissioners shall elect annually from among themselves the officers of president, vice president, secretary and treasurer. The board of commissioners shall adopt bylaws, rules and regulations as may be necessary to govern the time, place and manner for holding subsequent meetings of the board of commissioners and for the conduct of its business consistent with the provisions of this act. All meetings of the board of commissioners shall be conducted in accordance with

Section 25-41-1 et seq., Mississippi Code of 1972. Any action taken by the board of commissioners shall be official at the time the action is taken. Actions may be taken by the board of commissioners at any regular, special or recessed meeting.

(4) The members of the board of commissioners shall serve without compensation and shall meet at least once quarterly at a time and place determined by the board of commissioners. The board of commissioners shall keep minutes of its proceedings as necessary to carry out its responsibilities. A quorum of the board of commissioners shall consist of three (3) members.

(5) Except as provided in subsection (2) of this section, a board member may be removed, upon recommendation by a vote of three (3) members of the board of commissioners and approval by the board of supervisors.

(6) The authority may employ an executive director, technical experts and other agents and employees, permanent and temporary, as it may require, and may determine their qualifications, duties and compensation.

Section 6. (1) The authority shall have all the powers necessary or convenient to effectuate and carry out the provisions of this act, including the following powers in addition to others granted in this act:

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

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

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

(d) To adopt, appeal and amend bylaws, rules and regulations consistent with this act, to regulate its affairs and conduct its business;

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

(f) To make and execute contracts and all other

instruments necessary or convenient for the performance of its duties and the exercise of its powers under this act;

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

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

(i) To construct, purchase, receive, lease, lease-purchase, or otherwise acquire, own, hold, improve or use a facility or any item of equipment, and to enter into agreements relating thereto, including, but not limited to, sale and issuance of certificates of participation, which may extend for a period of time, notwithstanding any provision or rule of law to the contrary, and provide for the consideration and other terms and conditions that are acceptable to the authority and are not in conflict with the provisions of this act, without regard to any general laws of the state regulating public purchases and acquisitions or restricting the time periods of agreements;

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

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

228           (1) To borrow money and issue its obligations therefor  
229 for the purpose of carrying out its powers under this act, at  
230 rates of interest and upon terms and conditions that are  
231 acceptable to the authority and are not in conflict with the  
232 provisions of this act, without regard to any general laws of the  
233 state regulating the borrowing of money or issuance of obligations  
234 by public bodies, provided that any obligations issued by the  
235 authority shall be payable solely out of revenues received by the  
236 authority in connection with the operation or lease of a facility  
237 and shall never constitute a debt or obligation of the county or  
238 the state;

239           (m) In connection with borrowing money and issuance of  
240 obligations as set forth in the preceding paragraphs (i) and (l),  
241 in Section 13 of this act, and elsewhere in this act, to pledge or  
242 assign its property, assets and revenues, enter into trust  
243 indentures, deeds of trust, mortgages and security agreements,  
244 contract for bond insurance and other credit enhancement devices,  
245 and to take any other action and enter into any other agreements  
246 as the authority deems necessary or appropriate, all on terms and  
247 conditions that are acceptable to the authority and are not in  
248 conflict with the provisions of this act, without regard to any  
249 provision or rule of law which would otherwise be applicable  
250 thereto; and

251           (n) To contract with the United States and its  
252 territories or any state or states or any political subdivision  
253 thereof to provide for housing, care and control in a facility of  
254 offenders who are in the custody of the jurisdiction, who are  
255 classified as minimum or medium security offenders, who do not  
256 have histories of escape, and who are sentenced to terms of  
257 incarceration for conviction of a felony, or who are sentenced to  
258 terms of incarceration for a misdemeanor, provided that the  
259 incarceration in the facility for a misdemeanor is consistent with  
260 American Correctional Association Standards relating to the



incarceration of offenders convicted of more serious offenses, to enter into agreements relating thereto which may extend for time periods that are acceptable to the parties, notwithstanding any provision or rule of law to the contrary, and to exercise all powers necessary or desirable in connection with the operation of a prison or other type of correctional facility, including, but not limited to, the power to incarcerate offenders described above.

(o) To contract with the United States and its territories or any state or states or any agency or political subdivision thereof to provide for housing, care and control in a facility of juveniles who are found to be delinquent or in need of supervision, who are in the custody of the jurisdiction and who do not have histories of escape, to enter into agreements relating thereto which may extend for time periods that are acceptable to the parties notwithstanding any provision or rule of law to the contrary, and to exercise all powers necessary or desirable in connection with the operation of a correctional facility, including, but not limited to, the power to incarcerate offenders described in this paragraph. The facility shall be constructed in accordance with American Correctional Association Standards. The juvenile offenders who are housed in the facility shall remain subject to the jurisdiction of the United States or another state, as applicable.

(p) To contract with the Department of Corrections or other appropriate state, federal or local entity for the inspection, monitoring or provision of any assistance necessary or desirable to maintain suitable, safe and secure correctional facilities.

(2) The authority shall not contract for the housing, care or control of maximum security offenders.

Section 7. (1) A facility shall be designed, constructed, operated and maintained in accordance with American Correctional

294 Association Standards. The facility shall meet the percentage of  
295 standards required for accreditation by the American Correctional  
296 Association, except where a contract with a private contractor  
297 requires compliance with a higher percentage of nonmandatory  
298 standards.

299 (2) The facility shall comply with all constitutional  
300 standards of the United States and the state and with all court  
301 orders applicable to the facility.

302 (3) The Department of Corrections shall place a compliance  
303 officer at the facility. The authority or private contractor  
304 shall provide an on-site work area for the compliance officer and  
305 shall permit access to all areas of the facility and to the  
306 offenders and staff at all times. The authority or private  
307 contractor shall reimburse the Department of Corrections for all  
308 costs incurred for the compliance officer.

309 Section 8. (1) A person shall not be employed as a  
310 corrections officer at the facility unless the person has been  
311 trained in the use of force and firearms in accordance with  
312 American Correctional Association Standards. If a person is  
313 employed as a corrections officer by a private contractor that is  
314 operating a facility pursuant to a management contract, the  
315 private contractor shall cause the required training to be  
316 provided at its own expense.

317 (2) A corrections officer employed at the facility shall not  
318 use force or firearms except while on the grounds of a facility or  
319 while transporting offenders of a facility and then only under the  
320 circumstances set forth in subsections (3) and (4) of this  
321 section.

322 (3) A corrections officer shall not use force except such  
323 nondeadly force as is reasonably necessary in the following  
324 situations:

325 (a) To prevent the commission of a felony or  
326 misdemeanor, including escape;

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

(c) To prevent serious damage to property;

(d) To enforce facility regulations and orders; and

(e) To prevent or quell a riot.

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

(5) A private contractor shall have the same standing, authority, rights and responsibilities as the authority in any agreement, formal or informal, with local law enforcement agencies concerning the latter's obligations in the event of a riot, escape or other emergency situation involving the facility. To the extent provided in any management contract, a private contractor may exercise the powers granted to the authority under this act.

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

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

The offenders shall remain subject to the jurisdiction of the United States or another state, as applicable. Neither the state nor the county shall be liable for loss or injury resulting from the acts of the offenders, nor shall the state or the county be liable for any injuries to the offenders. The authority or private contractor shall reimburse the Department of Corrections for any expenses incurred in quelling a prison riot.

(2) Neither the state nor the county shall be liable for any actions taken by the authority or a private contractor in

connection with the facility, nor shall they be liable for any debt incurred or obligations issued by the authority.

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

(2) A management contract may authorize a private contractor to contract on behalf of the authority for the incarceration of offenders in the facility as set forth in Section 6(n) of this act and shall grant the private contractor any other powers that are necessary or convenient for the operation and management of the facility and are consistent with the provisions of this act, including, but not limited to, the power to employ personnel who are needed for the operation and management of a facility and to provide or cause to be provided the training in the use of force and firearms required by Section 8(1) of this act. A management contract shall not authorize a private contractor to contract on behalf of the authority for the incarceration on maximum security offenders in the facility.

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

(4) A management contract shall provide that the private contractor shall be responsible for the reimbursement of all costs and expenses incurred by the state, the county or the authority in connection with legal actions brought in the state by or on behalf

of any offender incarcerated in the facility, including, but not limited to, court costs, sheriff's fees, witness fees, district attorney expenses, expenses of the Office of the Attorney General, indigent or public defender fees and expenses, judicial expenses, court reporter expenses and damage awards. The contract shall also provide for the reimbursement of all costs and expenses incurred by the Department of Corrections for maintaining a compliance officer at the facility and for all costs and expenses incurred by the Department of Corrections for aiding in quelling a prison riot.

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

(6) A management contract may contain any other provisions the authority deems necessary or appropriate, including, but not limited to, provisions that may be necessary to cause the management contract to comply with promulgations of the Internal Revenue Service applicable to the contract.

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

Section 13. (1) The authority or the private contractor shall permit the Investigative Task Force of the Department of Corrections to have full access to all areas of the facility and to the offenders and staff. The investigators may exercise any

and all police powers provided under Section 47-5-54, Mississippi Code of 1972.

(2) The authority or private contractor shall provide for the issuance of an immediate warrant through the National Crime Information Center for any offender who escapes.

(3) The authority or private contractor shall return any offender released from the facility to the state from which the offender was sent.

Section 14. (1) The authority may enter into lease agreements with a person or legal entity pursuant to which the authority may agree to lease the facility or equipment for use by the authority for a primary term not to exceed thirty (30) years.

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

(2) The authority may lease publicly owned real property to a person or legal entity for the purpose of enabling the person or legal entity to construct a facility on the property and to lease the facility to the authority. A ground lease shall not be for a primary term in excess of twice the primary term of the lease with respect to the facility to be constructed on the real property.

Any public body in the state may lease, sell or otherwise convey property to the authority without consideration or for consideration as the governing body of the public body shall determine to be appropriate under the circumstances, and to enter into agreements with the authority relating thereto, which agreements may extend over any period of time, notwithstanding any provision or rule of law to the contrary.

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

Section 15. All obligations, including, but not limited to, bonds, notes, lease-purchase agreements and other evidence of indebtedness issued by the authority pursuant to this act and all interest payable thereunder or with respect thereto, all leases, trust indentures, deeds of trust, mortgages, security agreements and other contracts or agreements entered into pursuant to this act, and all purchases required to construct the facility or to acquire equipment shall be exempt from all taxation in the state, including, but not limited to, sales taxes and the contractor's tax imposed by Section 27-65-21, Mississippi Code of 1972. As provided by general law applicable to political subdivisions of the state, a facility and the revenues derived from its operation shall also be exempt from all taxation in the state, including, but not limited to, all ad valorem taxes levied by the state or any political subdivision thereof.

Section 16. This act shall be full and complete authority of the exercise of all powers and authority granted herein and no requirements or restrictions of law which would otherwise be

492 applicable to acts of the authority shall be applicable except as  
493 expressly provided herein. No debt of the authority shall be  
494 considered to be debt of the county or any other political  
495 subdivision of the state for purposes of any provision or rule of  
496 law restricting the amount of indebtedness of the county or such  
497 other political subdivision or for any other purpose under the  
498 laws of the state.

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