

By: Walls, Carlton

To: Local and Private;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3343

1 AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF
2 HOLLANDALE TO CONSTRUCT A CORRECTIONAL FACILITY LOCATED IN THE
3 CITY OR WITHIN TWO MILES THEREOF TO HOUSE FEMALE INMATES AND
4 INMATES IN NEED OF ALCOHOL AND DRUG TREATMENT SERVICES AND
5 REHABILITATION; TO AUTHORIZE THE CITY TO CONTRACT WITH THE
6 MISSISSIPPI DEPARTMENT OF CORRECTIONS, THE UNITED STATES AND ANY
7 STATE OR POLITICAL SUBDIVISIONS THEREOF FOR THE HOUSING OF
8 OFFENDERS IN THE CUSTODY OF THOSE JURISDICTIONS; TO AUTHORIZE THE
9 CITY TO CONTRACT WITH A PRIVATE ENTITY FOR THE OPERATION AND
10 MANAGEMENT OF THE CORRECTIONAL FACILITY; TO PRESCRIBE OTHER POWERS
11 AND DUTIES OF THE CITY; TO PRESCRIBE RULES AND REGULATIONS FOR THE
12 OPERATION AND MANAGEMENT OF THE FACILITY; TO REPEAL CHAPTER 987,
13 LOCAL AND PRIVATE LAWS OF 1997, WHICH AUTHORIZES THE CITY OF
14 HOLLANDALE TO CONSTRUCT A SPECIAL NEEDS CORRECTIONAL FACILITY; AND
15 FOR RELATED PURPOSES.

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

17 SECTION 1. As used in this act, unless the context otherwise
18 requires:

19 (a) "American Correctional Association Standards" means
20 standards promulgated by the American Correctional Association as
21 in effect from time to time.

22 (b) "County" means Washington County, Mississippi.

23 (c) "Governing authorities" means the Mayor and Board
24 of Aldermen of the City of Hollandale, Mississippi.

25 (d) "City" means the City of Hollandale, Mississippi.

26 (e) "Developer" means any person, firm, corporation,
27 partnership or other entity which enters into an agreement with
28 the city whereby the developer agrees to construct or procure the
29 construction of the facility.

30 (f) "Equipment" means any personal property which the
31 city determines is necessary or helpful for the operation of the
32 facility.

33 (g) "Facility" means a correctional facility or
34 facilities located within the city or within two (2) miles thereof
35 which is constructed, acquired or operated pursuant to this act
36 for housing not to exceed a combined total of seven hundred fifty
37 (750):

38 (i) Female inmates; and/or

39 (ii) Male and/or female inmates in need of
40 specialized facilities and services in connection with alcohol and
41 drug treatment and rehabilitation.

42 (h) "Management contract" means a contract between the
43 city and a private contractor for the operation and management of
44 the facility by a private contractor.

45 (i) "Private contractor" means a person or legal entity
46 which leases or subleases the facility from the city or has
47 entered into a management contract with the city pursuant to this
48 act.

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

50 SECTION 2. The city shall have all the powers necessary or
51 convenient to effectuate and carry out the provisions of this act,
52 including the following powers, in addition to others granted in
53 this act:

54 (a) To make and execute contracts and all other
55 instruments necessary or convenient for the performance of its
56 duties and the exercise of its powers under this act;

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

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

66 (d) To construct, purchase, receive, lease,
67 lease-purchase, or otherwise acquire, own, hold, improve or use
68 the facility or any item of equipment, and to enter into
69 agreements relating thereto, including, but not limited to,
70 lease/purchase and/or the sale and issuance of certificates of
71 participation, and provide for the consideration and other terms
72 and conditions that are acceptable to the city and are not in
73 conflict with the provisions of this act;

74 (e) To lease for a term not to exceed twenty-five (25)
75 years the facility or any item of equipment to a private
76 contractor for rentals and upon the terms and conditions that are
77 acceptable to the city and are not in conflict with the provisions
78 of this act, without regard to any general laws of the state
79 regulating the disposition or conveyance of an interest in public
80 property;

81 (f) To operate and manage the facility in accordance
82 with the provisions of this act and to take all actions necessary
83 in connection therewith, or alternatively to contract for a
84 primary term not to exceed twenty-five (25) years with a private
85 contractor to operate and manage the facility in accordance with
86 the provisions of this act;

87 (g) To contract for a primary term not to exceed
88 twenty-five (25) years with a public or private contractor to
89 operate and manage the health care facilities and employees of the
90 facility constructed, acquired or operated pursuant to this act;

91 (h) To borrow money and issue its obligations therefor
92 for the purpose of carrying out its powers under this act, at
93 rates of interest and upon terms and conditions that are
94 acceptable to the city and are not in conflict with the provisions
95 of this act, without regard to any general laws of the state
96 regulating the borrowing of money or issuance of obligations by
97 public bodies, provided that any obligations issued by the city
98 under this act shall be payable solely out of revenues received by

99 the city in connection with the operation or lease of the facility
100 and shall never constitute a debt or obligation of the city, the
101 county or the state;

102 (i) In connection with borrowing money and the issuance
103 of obligations as set forth in this act, the city may pledge or
104 assign the facility and its assets and revenues, enter into trust
105 indentures, deeds of trust, mortgages and security agreements,
106 contract for bond insurance and other credit enhancement devices,
107 and take any other action and enter into any other agreements as
108 the city deems necessary or appropriate, all on terms and
109 conditions that are acceptable to the city and are not in conflict
110 with the provisions of this act, without regard to any provision
111 or rule of law which would otherwise be applicable thereto;

112 (j) To make application to and contract with the United
113 States or any department thereof for any grants or loans that may
114 be applied to the costs of construction, operation or management
115 of the facility, and to comply with the terms and conditions of
116 such grants and loans;

117 (k) The city and the state, by and through the
118 Mississippi Department of Corrections, may enter into agreements
119 providing for housing, use and control of female inmates who are
120 in the custody of the state, and/or male and/or female inmates
121 requiring alcohol- and drug-related health care, treatment and
122 rehabilitation services who are in the custody of the state.
123 Provided, however, the total number of inmates at the facility
124 shall not exceed seven hundred fifty (750) offenders. The
125 Mississippi Department of Corrections may contract with the city
126 for the purposes set out in this act for a period not to exceed
127 twenty-five (25) years. The contract shall provide that the
128 Department of Corrections pay a state inmate cost per day for each
129 offender that is housed at a rate established pursuant to Section
130 47-5-1211. Said contract may further include a minimum level of
131 occupancy of state inmates which shall not exceed eighty-five

132 percent (85%), and, as an inflation factor, provide for a three
133 percent (3%) annual increase in the per diem rate.

134 (l) To contract with the United States and its
135 territories or any state or states or any political subdivision
136 thereof to provide for housing, care and control in the facility
137 of offenders in need of alcohol and drug treatment and
138 rehabilitation services or who are otherwise confined who are in
139 the custody of the jurisdiction, who do not have histories of
140 escape, and who are sentenced to terms of incarceration by a court
141 of competent jurisdiction, to enter into agreements relating
142 thereto which may extend for time periods that are acceptable to
143 the parties, notwithstanding any provision or rule of law to the
144 contrary, and to exercise all powers necessary or desirable in
145 connection with the operation of the facility, including, but not
146 limited to, the power to incarcerate offenders described above;
147 and

148 (m) If the facility houses Mississippi inmates, the
149 facility shall not displace Mississippi's inmate beds with federal
150 or another state's inmate beds unless the facility has obtained
151 prior written approval from the Commissioner of Corrections.

152 SECTION 3. The city may contract with a developer whereby
153 the developer agrees to construct or procure the construction of
154 the facility without regard to any laws of the state requiring
155 public bids for purchases, acquisitions and construction.

156 SECTION 4. (1) The facility shall be designed, constructed,
157 operated and maintained in accordance with American Correctional
158 Association Standards, and shall comply with all constitutional
159 standards of the United States and the state and with all court
160 orders applicable to the facility. Inmates in need of treatment
161 services and rehabilitation shall be housed in separate facilities
162 from other inmates for the period of time that treatment services
163 and rehabilitation are necessary for such inmates. The facility
164 shall meet the percentage of standards required for accreditation

165 of a facility by the American Correctional Association, except
166 where a contract with a private contractor requires compliance
167 with a higher percentage of nonmandatory standards.

168 (2) Notwithstanding any provision of law to the contrary,
169 the construction, operation and management of a facility shall not
170 require a certificate of need pursuant to the provisions of Title
171 41, Chapter 7, Mississippi Code of 1972.

172 SECTION 5. (1) Any person who has been convicted of a
173 felony under the laws of any jurisdiction shall not be employed by
174 the facility.

175 (2) A person shall not be employed as a corrections officer
176 at the facility unless the person has been trained in the use of
177 force and firearms in accordance with American Correctional
178 Association Standards or has satisfactorily completed the training
179 program of the Mississippi Department of Corrections or the
180 corrections training program sponsored by the local community
181 college. If a person is employed as a corrections officer by a
182 private contractor that is operating the facility pursuant to a
183 management contract, the private contractor shall cause the
184 required training to be provided.

185 (3) A corrections officer employed at the facility shall not
186 use force or firearms except while on the grounds of the facility
187 or while transporting offenders of the facility and then only
188 under the circumstances set forth in subsections (4) and (5) of
189 this section.

190 (4) A corrections officer shall not use force except such
191 nondeadly force as is reasonably necessary in the following
192 situations:

193 (a) To prevent the commission of a felony or
194 misdemeanor, including escape;

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

197 (c) To prevent serious damage to property;

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

199 (e) To prevent or quell a riot.

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

206 (6) A private contractor shall have the same standing,
207 authority, rights and responsibilities as the city in any
208 agreement, formal or informal, with local law enforcement agencies
209 concerning the latter's obligations in the event of a riot, escape
210 or other emergency situation involving the facility. To the
211 extent provided in any management contract, a private contractor
212 may exercise the powers granted to the city under this act or
213 powers pursuant to the general laws of the State of Mississippi
214 insofar as they pertain to the incarceration of offenders.

215 SECTION 6. Any offense which would be a crime if committed
216 within a correctional institution operated by the state shall be a
217 crime if committed in the facility.

218 SECTION 7. (1) Neither the state nor the city shall assume
219 jurisdiction or custody of any federal offenders or offenders from
220 other states or political subdivisions thereof who are
221 incarcerated in the facility. Such offenders shall remain subject
222 to the jurisdiction of the United States or another state or
223 political subdivision, as applicable. Neither the state nor the
224 city shall be liable for loss or injury resulting from the acts of
225 the offenders, nor shall the state or the city be liable for any
226 injuries to the offenders.

227 (2) Neither the state nor the city may be liable for any
228 actions taken by a private contractor in connection with the
229 facility, nor shall the state be liable for any debt incurred or
230 obligations issued by the city.

231 SECTION 8. (1) The facility may be operated and managed by
232 a private contractor pursuant to a management contract. The terms
233 and conditions of a management contract shall be approved by the
234 governing authorities, and, if state inmates are to be held
235 pursuant to a contract, approved by the Mississippi Department of
236 Corrections.

237 (2) A management contract may authorize a private contractor
238 to contract on behalf of the city for the incarceration of
239 offenders in the facility as set forth in Section (2)(1) of this
240 act and shall grant the private contractor any other powers that
241 are necessary or convenient for the operation and management of
242 the facility and are consistent with the provisions of this act,
243 including, but not limited to, the power to employ personnel who
244 are needed for the operation and management of the facility and to
245 provide or cause to be provided the appropriate training including
246 the use of force and firearms required by Section 5(2) of this
247 act.

248 (3) A management contract shall provide that any sovereign
249 immunity of the state, any sovereign immunity of the county, any
250 sovereign immunity of the city, or any public official immunity
251 shall not extend to the private contractor. Neither the private
252 contractor nor any insurer of the private contractor may plead the
253 defense of sovereign immunity or public official immunity in any
254 action arising out of or related to the performance of the
255 management contract.

256 (4) A management contract shall provide that the private
257 contractor shall be responsible for the reimbursement of all costs
258 and expenses incurred by the state, the county or the city in
259 connection with legal actions brought in the state by or on behalf
260 of any offender incarcerated in the facility, including, but not
261 limited to, court costs, sheriff's fees, witness fees, district
262 attorney expenses, expenses of the Office of the Attorney General,
263 indigent or public defender fees and expenses, judicial expenses,

264 court reporter expenses and damage awards.

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

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

279 SECTION 9. The state, the county or the city, or any
280 members, officers, employees or agents of the foregoing, shall not
281 be liable for a private contractor's actions or failure to act
282 while operating and managing a facility pursuant to a management
283 contract.

284 SECTION 10. (1) The city may enter into lease agreements
285 with a person or legal entity pursuant to which the city may agree
286 to lease the facility or equipment for use by the city for a
287 primary term not to exceed twenty-five (25) years. All lease
288 agreements may contain terms and conditions as the governing
289 authorities shall determine to be appropriate and in the public
290 interest, including, but not limited to, any provision with a
291 master lease-purchase agreement may contain pursuant to Section
292 31-7-10(5), Mississippi Code of 1972, may provide for the payment
293 of lease payments which include an interest component computed at
294 a rate or rates as shall be approved by the governing authorities,
295 may include an annual allocation dependency clause, may contain an
296 option granting to the city the right to purchase the leased

297 property upon the expiration of the primary term, or upon an
298 earlier date that may be agreed upon by the parties at a price as
299 set forth in or computed in accordance with the lease agreement
300 and may provide that all or any obligations thereunder are payable
301 from specified revenues pledged as security therefor.

302 (2) The city may lease publicly owned real property to a
303 person or legal entity for the purpose of enabling the person or
304 legal entity to construct the facility on the property and to
305 lease the facility to the city. A ground lease shall not be for a
306 primary term in excess of twice the primary term of the lease with
307 respect to the facility to be constructed on the real property.
308 Any public body in the state may lease, sell or otherwise convey
309 property to the city without consideration or for consideration as
310 the governing body of the public body shall determine to be
311 appropriate under the circumstances, and to enter into agreements
312 with the city relating thereto, which agreements may extend over
313 any period of time, notwithstanding any provision or rule of law
314 to the contrary.

315 (3) This section shall be full and complete authority for
316 the authorization, execution and delivery of lease agreements
317 authorized under this act, and none of the restrictions,
318 requirements, conditions and limitations of the general law of the
319 state applicable to acquisition, construction and drawing of
320 buildings or facilities shall apply to lease agreements under this
321 section, and all powers necessary to carry out provisions of this
322 section are conferred upon the city, including, but not limited
323 to, acquiring real and personal property outside the municipal
324 limits of the city.

325 SECTION 11. All obligations, including, but not limited to,
326 bonds, notes, lease-purchase agreements and other evidence of
327 indebtedness issued by the city pursuant to this act or state law
328 and all interest payable thereunder or with respect thereto, all
329 leases, trust indentures, deeds of trust, mortgages, security

330 agreements and other contracts or agreements entered into pursuant
331 to this act or state law, and all purchases required to construct
332 the facility or to acquire equipment shall be exempt from all
333 taxation in the state, including, but not limited to, sales taxes
334 and the contractor's tax imposed by Section 27-65-21, Mississippi
335 Code of 1972. As provided by general law applicable to political
336 subdivisions of the state, the facility and the revenues derived
337 from its operation shall also be exempt from all taxation in the
338 state, including, but not limited to, all ad valorem taxes levied
339 by the state or any political subdivision thereof.

340 SECTION 12. This act shall be full and complete authority for
341 the exercise of all powers and authority granted herein and no
342 requirements or restrictions of law which would otherwise be
343 applicable to acts of the city shall be applicable except as
344 expressly provided herein.

345 SECTION 13. Chapter 987, Local and Private Laws of 1997,
346 which authorizes the City of Hollandale to construct a special
347 needs correctional facility, is repealed.

348 SECTION 14. This act shall take effect and be in force from
349 and after its passage.