

By: Walls, Carlton

To: Local and Private;  
Appropriations

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 may provide that the  
128 Department of Corrections pay a fee per offender that is housed at  
129 an initial per diem rate established by the Performance Evaluation  
130 and Expenditure Review Committee of the Legislature. Said  
131 contract may further include a minimum level of occupancy of state

132 inmates which shall not exceed eighty-five percent (85%), and, as  
133 an inflation factor, provide for a three percent (3%) annual  
134 increase in the per diem rate.

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

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

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

157           SECTION 4. (1) The facility shall be designed, constructed,  
158 operated and maintained in accordance with American Correctional  
159 Association Standards, and shall comply with all constitutional  
160 standards of the United States and the state and with all court  
161 orders applicable to the facility. The facility shall meet the  
162 percentage of standards required for accreditation of a facility  
163 by the American Correctional Association, except where a contract  
164 with a private contractor requires compliance with a higher

165 percentage of nonmandatory standards.

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

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

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

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

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

191 (a) To prevent the commission of a felony or  
192 misdemeanor, including escape;

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

195 (c) To prevent serious damage to property;

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

197 (e) To prevent or quell a riot.

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

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

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

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

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

229           SECTION 8. (1) The facility may be operated and managed by  
230 a private contractor pursuant to a management contract. The terms

231 and conditions of a management contract shall be approved by the  
232 governing authorities, and, if state inmates are to be held  
233 pursuant to a contract, approved by the Mississippi Department of  
234 Corrections.

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

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

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

263 (5) A management contract shall provide that the private



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

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

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

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

297 set forth in or computed in accordance with the lease agreement  
298 and may provide that all or any obligations thereunder are payable  
299 from specified revenues pledged as security therefor.

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

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

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

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

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

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

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