

**\*\*\*Pending\*\*\***

**AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 3343**

**By Senator(s) Committee**

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

18           **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF**  
19 **MISSISSIPPI:**

20           **SECTION 1. As used in this act, unless the context otherwise**

21 **requires:**

22           **(a) "American Correctional Association Standards" means**  
23 **standards promulgated by the American Correctional Association as in**  
24 **effect from time to time.**

25           **(b) "County" means Washington County, Mississippi.**

26           **(c) "Governing authorities" means the Mayor and Board of**  
27 **Aldermen of the City of Hollandale, Mississippi.**

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

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

33           **(f) "Equipment" means any personal property which the city**  
34 **determines is necessary or helpful for the operation of the facility.**

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

39                   **(i) Female inmates; and/or**

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

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

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

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

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

62                   **(c) To procure insurance against any loss in connection**

63 **with its property and other assets, in amounts and from insurers as it**  
64 **may deem advisable, and to pay premiums on any such insurance;**

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

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

77 **an interest in public property;**

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

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

87 **(h) To borrow money and issue its obligations therefor for**  
88 **the purpose of carrying out its powers under this act, at rates of**  
89 **interest and upon terms and conditions that are acceptable to the city**  
90 **and are not in conflict with the provisions of this act, without regard to**

91 **any general laws of the state regulating the borrowing of money or**  
92 **issuance of obligations by public bodies, provided that any obligations**  
93 **issued by the city under this act shall be payable solely out of**  
94 **revenues received by the city in connection with the operation or lease**  
95 **of the facility and shall never constitute a debt or obligation of the city,**  
96 **the county or the state;**

97 **(i) In connection with borrowing money and the issuance of**  
98 **obligations as set forth in this act, the city may pledge or assign the**  
99 **facility and its assets and revenues, enter into trust indentures, deeds**  
100 **of trust, mortgages and security agreements, contract for bond**  
101 **insurance and other credit enhancement devices, and take any other**  
102 **action and enter into any other agreements as the city deems**  
103 **necessary or appropriate, all on terms and conditions that are**  
104 **acceptable to the city and are not in conflict with the provisions of this**

105 **act, without regard to any provision or rule of law which would**  
106 **otherwise be applicable thereto;**

107 **(j) To make application to and contract with the United**  
108 **States or any department thereof for any grants or loans that may be**  
109 **applied to the costs of construction, operation or management of the**  
110 **facility, and to comply with the terms and conditions of such grants**  
111 **and loans;**

112 **(k) The city and the state, by and through the Mississippi**  
113 **Department of Corrections, may enter into agreements providing for**  
114 **housing, use and control of female inmates who are in the custody of**  
115 **the state, and/or male and/or female inmates requiring alcohol- and**  
116 **drug-related health care, treatment and rehabilitation services who are**  
117 **in the custody of the state. Provided, however, the total number of**  
118 **inmates at the facility shall not exceed seven hundred fifty (750)**



119 **offenders. The Mississippi Department of Corrections may contract**  
120 **with the city for the purposes set out in this act for a period not to**  
121 **exceed twenty-five (25) years. The contract shall provide that the**  
122 **Department of Corrections pay a state inmate cost per day for each**  
123 **offender that is housed at a rate established pursuant to Section**  
124 **47-5-1211. Said contract may further include a minimum level of**  
125 **occupancy of state inmates which shall not exceed eighty-five percent**  
126 **(85%), and, as an inflation factor, provide for a three percent (3%)**  
127 **annual increase in the per diem rate.**

128 **(l) To contract with the United States and its territories or**  
129 **any state or states or any political subdivision thereof to provide for**  
130 **housing, care and control in the facility of offenders in need of alcohol**  
131 **and drug treatment and rehabilitation services or who are otherwise**  
132 **confined who are in the custody of the jurisdiction, who do not have**

133 **histories of escape, and who are sentenced to terms of incarceration**  
134 **by a court of competent jurisdiction, to enter into agreements relating**  
135 **thereto which may extend for time periods that are acceptable to the**  
136 **parties, notwithstanding any provision or rule of law to the contrary,**  
137 **and to exercise all powers necessary or desirable in connection with**  
138 **the operation of the facility, including, but not limited to, the power to**  
139 **incarcerate offenders described above; and**

140 **(m) If the facility houses Mississippi inmates, the facility**  
141 **shall not displace Mississippi's inmate beds with federal or another**  
142 **state's inmate beds unless the facility has obtained prior written**  
143 **approval from the Commissioner of Corrections.**

144 **SECTION 3. The city may contract with a developer whereby the**  
145 **developer agrees to construct or procure the construction of the**  
146 **facility without regard to any laws of the state requiring public bids for**

147 purchases, acquisitions and construction.

148           **SECTION 4. (1) The facility shall be designed, constructed,**  
149 **operated and maintained in accordance with American Correctional**  
150 **Association Standards, and shall comply with all constitutional**  
151 **standards of the United States and the state and with all court orders**  
152 **applicable to the facility. Inmates in need of treatment services and**  
153 **rehabilitation shall be housed in separate facilities from other inmates**  
154 **for the period of time that treatment services and rehabilitation are**  
155 **necessary for such inmates. The facility shall meet the percentage of**  
156 **standards required for accreditation of a facility by the American**  
157 **Correctional Association, except where a contract with a private**  
158 **contractor requires compliance with a higher percentage of**  
159 **nonmandatory standards.**

160           **(2) Notwithstanding any provision of law to the contrary, the**

161 **construction, operation and management of a facility shall not require**  
162 **a certificate of need pursuant to the provisions of Title 41, Chapter 7,**  
163 **Mississippi Code of 1972.**

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

166 **(2) A person shall not be employed as a corrections officer at the**  
167 **facility unless the person has been trained in the use of force and**  
168 **firearms in accordance with American Correctional Association**  
169 **Standards or has satisfactorily completed the training program of the**  
170 **Mississippi Department of Corrections or the corrections training**  
171 **program sponsored by the local community college. If a person is**  
172 **employed as a corrections officer by a private contractor that is**  
173 **operating the facility pursuant to a management contract, the private**  
174 **contractor shall cause the required training to be provided.**

175           **(3) A corrections officer employed at the facility shall not use**  
176 **force or firearms except while on the grounds of the facility or while**  
177 **transporting offenders of the facility and then only under the**  
178 **circumstances set forth in subsections (4) and (5) of this section.**

179           **(4) A corrections officer shall not use force except such**  
180 **nondeadly force as is reasonably necessary in the following situations:**

181                   **(a) To prevent the commission of a felony or misdemeanor,**  
182 **including escape;**

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

184                   **(c) To prevent serious damage to property;**

185                   **(d) To enforce facility regulations and orders; and**

186                   **(e) To prevent or quell a riot.**

187           **(5) A corrections officers shall not use firearms or other deadly**  
188 **force except as a last resort when reasonably necessary to prevent the**

189 **commission of a violent felony, to prevent the escape of a convicted**  
190 **felon from custody, or to defend the officer or any other person from**  
191 **imminent danger of death or serious bodily injury.**

192 **(6) A private contractor shall have the same standing, authority,**  
193 **rights and responsibilities as the city in any agreement, formal or**  
194 **informal, with local law enforcement agencies concerning the latter's**  
195 **obligations in the event of a riot, escape or other emergency situation**  
196 **involving the facility. To the extend provided in any management**  
197 **contract, a private contractor may exercise the powers granted to the**  
198 **city under this act or powers pursuant to the general laws of the State**  
199 **of Mississippi insofar as they pertain to the incarceration of offenders.**

200 **SECTION 6. Any offense which would be a crime if committed**  
201 **within a correctional institution operated by the state shall be a crime if**  
202 **committed in the facility.**

203           **SECTION 7. (1) Neither the state nor the city shall assume**  
204 **jurisdiction or custody of any federal offenders or offenders from other**  
205 **states or political subdivisions thereof who are incarcerated in the**  
206 **facility. Such offenders shall remain subject to the jurisdiction of the**  
207 **United States or another state or political subdivision, as applicable.**  
208 **Neither the state nor the city shall be liable for loss or injury resulting**  
209 **from the acts of the offenders, nor shall the state or the city be liable**  
210 **for any injuries to the offenders.**

211           **(2) Neither the state nor the city may be liable for any actions**  
212 **taken by a private contractor in connection with the facility, nor shall**  
213 **the state be liable for any debt incurred or obligations issued by the**  
214 **city.**

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

217 **conditions of a management contract shall be approved by the**  
218 **governing authorities, and, if state inmates are to be held pursuant to a**  
219 **contract, approved by the Mississippi Department of Corrections.**

220 **(2) A management contract may authorize a private contractor to**  
221 **contract on behalf of the city for the incarceration of offenders in the**  
222 **facility as set forth in Section (2)(1) of this act and shall grant the**  
223 **private contractor any other powers that are necessary or convenient**  
224 **for the operation and management of the facility and are consistent**  
225 **with the provisions of this act, including, but not limited to, the power**  
226 **to employ personnel who are needed for the operation and**  
227 **management of the facility and to provide or cause to be provided the**  
228 **appropriate training including the use of force and firearms required by**  
229 **Section 5(2) of this act.**

230 **(3) A management contract shall provide that any sovereign**



231 **immunity of the state, any sovereign immunity of the county, any**  
232 **sovereign immunity of the city, or any public official immunity shall not**  
233 **extend to the private contractor. Neither the private contractor nor any**  
234 **insurer of the private contractor may plead the defense of sovereign**  
235 **immunity or public official immunity in any action arising out of or**  
236 **related to the performance of the management contract.**

237 **(4) A management contract shall provide that the private**  
238 **contractor shall be responsible for the reimbursement of all costs and**  
239 **expenses incurred by the state, the county or the city in connection**  
240 **with legal actions brought in the state by or on behalf of any offender**  
241 **incarcerated in the facility, including, but not limited to, court costs,**  
242 **sheriff's fees, witness fees, district attorney expenses, expenses of the**  
243 **Office of the Attorney General, indigent or public defender fees and**  
244 **expenses, judicial expenses, court reporter expenses and damage**

245 **awards.**

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

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

259           **SECTION 9. The state, the county or the city, or any members,**  
260 **officers, employees or agents of the foregoing, shall not be liable for a**  
261 **private contractor's actions or failure to act while operating and**  
262 **managing a facility pursuant to a management contract.**

263           **SECTION 10. (1) The city may enter into lease agreements with a**  
264 **person or legal entity pursuant to which the city may agree to lease the**  
265 **facility or equipment for use by the city for a primary term not to**  
266 **exceed twenty-five (25) years. All lease agreements may contain terms**  
267 **and conditions as the governing authorities shall determine to be**  
268 **appropriate and in the public interest, including, but not limited to, any**  
269 **provision with a master lease-purchase agreement may contain**  
270 **pursuant to Section 31-7-10(5), Mississippi Code of 1972, may provide**  
271 **for the payment of lease payments which include an interest**  
272 **component computed at a rate or rates as shall be approved by the**

273 **governing authorities, may include an annual allocation dependency**  
274 **clause, may contain an option granting to the city the right to purchase**  
275 **the leased property upon the expiration of the primary term, or upon an**  
276 **earlier date that may be agreed upon by the parties at a price as set**  
277 **forth in or computed in accordance with the lease agreement and may**  
278 **provide that all or any obligations thereunder are payable from**  
279 **specified revenues pledged as security therefor.**

280 **(2) The city may lease publicly owned real property to a person**  
281 **or legal entity for the purpose of enabling the person or legal entity to**  
282 **construct the facility on the property and to lease the facility to the city.**

283 **A ground lease shall not be for a primary term in excess of twice the**  
284 **primary term of the lease with respect to the facility to be constructed**  
285 **on the real property. Any public body in the state may lease, sell or**  
286 **otherwise convey property to the city without consideration or for**

287 **consideration as the governing body of the public body shall**  
288 **determine to be appropriate under the circumstances, and to enter into**  
289 **agreements with the city relating thereto, which agreements may**  
290 **extend over any period of time, notwithstanding any provision or rule**  
291 **of law to the contrary.**

292 **(3) This section shall be full and complete authority for the**  
293 **authorization, execution and delivery of lease agreements authorized**  
294 **under this act, and none of the restrictions, requirements, conditions**  
295 **and limitations of the general law of the state applicable to acquisition,**  
296 **construction and drawing of buildings or facilities shall apply to lease**  
297 **agreements under this section, and all powers necessary to carry out**  
298 **provisions of this section are conferred upon the city, including, but**  
299 **not limited to, acquiring real and personal property outside the**  
300 **municipal limits of the city.**

301           **SECTION 11. All obligations, including, but not limited to, bonds,**  
302 **notes, lease-purchase agreements and other evidence of indebtedness**  
303 **issued by the city pursuant to this act or state law and all interest**  
304 **payable thereunder or with respect thereto, all leases, trust indentures,**  
305 **deeds of trust, mortgages, security agreements and other contracts or**  
306 **agreements entered into pursuant to this act or state law, and all**  
307 **purchases required to construct the facility or to acquire equipment**  
308 **shall be exempt from all taxation in the state, including, but not limited**  
309 **to, sales taxes and the contractor's tax imposed by Section 27-65-21,**  
310 **Mississippi Code of 1972. As provided by general law applicable to**  
311 **political subdivisions of the state, the facility and the revenues derived**  
312 **from its operation shall also be exempt from all taxation in the state,**  
313 **including, but not limited to, all ad valorem taxes levied by the state or**  
314 **any political subdivision thereof.**

315           **SECTION 12. This act shall be full and complete authority for the**  
316 **exercise of all powers and authority granted herein and no**  
317 **requirements or restrictions of law which would otherwise be**  
318 **applicable to acts of the city shall be applicable except as expressly**  
319 **provided herein.**

320           **SECTION 13. Chapter 987, Local and Private Laws of 1997, which**  
321 **authorizes the City of Hollandale to construct a special needs**  
322 **correctional facility, is repealed.**

323           **SECTION 14. This act shall take effect and be in force from and**  
324 **after its passage.**