

By: Representatives Straughter, Bailey,
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To: Local and Private
Legislation

HOUSE BILL NO. 1652

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 NOT MORE THAN TWO MILES OUTSIDE OF THE CITY LIMITS TO
4 HOUSE MALE AND FEMALE OFFENDERS AND OFFENDERS IN NEED OF ALCOHOL
5 AND DRUG TREATMENT SERVICES AND REHABILITATION; TO AUTHORIZE THE
6 CITY TO CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF CORRECTIONS,
7 THE UNITED STATES AND ANY STATE OR POLITICAL SUBDIVISIONS FOR THE
8 HOUSING OF OFFENDERS IN THE CUSTODY OF THOSE JURISDICTIONS; TO
9 AUTHORIZE THE CITY TO CONTRACT WITH A PERSON OR A PRIVATE ENTITY
10 FOR THE OPERATION AND MANAGEMENT OF THE CORRECTIONAL FACILITY; TO
11 PRESCRIBE OTHER POWERS AND DUTIES OF THE CITY; TO PRESCRIBE RULES
12 AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE FACILITY;
13 TO REPEAL CHAPTER 987, MISSISSIPPI LOCAL AND PRIVATE LAWS OF 1997,
14 WHICH AUTHORIZES THE CITY OF HOLLANDALE TO CONSTRUCT A SPECIAL
15 NEEDS CORRECTIONAL FACILITY; AND 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) "Equipment" means any personal property which the
27 city determines is necessary or helpful for the operation of the
28 facility.

29 (f) "Facility" means a correctional facility or
30 facilities located within the city or not more than two (2) miles
31 outside of the city limits which is constructed, acquired or

32 operated pursuant to this act to house more than seven hundred
33 fifty (750) offenders.

34 (i) Male offenders;

35 (ii) Female offenders; and

36 (iii) Male and/or female offenders in need of
37 specialized facilities and services in connection with alcohol and
38 drug treatment and rehabilitation.

39 (g) "Offender housing agreement" means a contract
40 between the city and the state, by and through the Mississippi
41 Department of Corrections, required under Section 2(j) of this act
42 for housing state offenders in the facility.

43 (h) "Management contract" means a contract between the
44 city and a private contractor for the operation and management of
45 the facility by a private contractor which may allow the private
46 contractor to exercise any authority granted unto the city under
47 this act or general law.

48 (i) "Private contractor" means a person or legal entity
49 which leases or subleases the facility from the city or has
50 entered into a management contract with the city under this act.

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

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

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

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

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

67 (d) To construct, purchase, receive, lease,
68 lease-purchase, or otherwise acquire, own, hold, improve or use
69 the facility or any item of equipment and to enter into agreements
70 relating thereto, including the sale and issuance of certificates
71 of 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 a facility or any item of equipment for a
75 term not to exceed twenty-five (25) years to a private contractor
76 for rentals and upon the terms and conditions that are acceptable
77 to the city and are not in conflict with the provisions of this
78 act without regard to any general laws of the state regulating the
79 disposition or conveyance of an interest in public property;

80 (f) To contract for a primary term not to exceed
81 twenty-five (25) years with a public or private contractor to
82 operate and manage the facility and employees of the facility
83 constructed, acquired or operated under this act;

84 (g) To borrow money and issue its obligations for the
85 purpose of carrying out its powers under this act at rates of
86 interest and upon terms and conditions that are acceptable to the
87 city and are not in conflict with the provisions of this act
88 without regard to any general laws of the state regulating the
89 borrowing of money or issuance of obligations by public bodies,
90 provided that any obligations issued by the city under this act
91 shall be payable solely out of revenues received by the city in
92 connection with the operation or lease of the facility and shall
93 never constitute a debt or obligation of the city, county or
94 state;

95 (h) In connection with borrowing money and the issuance
96 of obligations as set forth in this act, to pledge or assign the

97 facility and its assets and revenues, enter into trust indentures,
98 deeds of trust, mortgages and security agreements, contract for
99 bond insurance and other credit enhancement devices, and take any
100 other action and enter into any other agreements as the city deems
101 necessary or appropriate, all on terms and conditions that are
102 acceptable to the city and are not in conflict with the provisions
103 of this act, without regard to any provision or rule of law which
104 would otherwise be applicable;

105 (i) To make application to and contract with the United
106 States or any department thereof for any grants or loans that may
107 be applied to the costs of construction, operation or management
108 of the facility or any public utility or roads and to comply with
109 the terms and conditions of such grants and loans;

110 (j) To enter into an offender housing agreement with
111 the state, by and through the Mississippi Department of
112 Corrections, upon appropriation of funds by the Mississippi
113 Legislature, to provide for the private housing, care and control
114 of male and female offenders who are in the custody of the state
115 and male and female offenders requiring alcohol and drug-related
116 health care, treatment and rehabilitation services who are in the
117 custody of the state and offenders who speak a language other than
118 English as their native tongue. The total number of state
119 offenders at the facility shall not exceed seven hundred fifty
120 (750) offenders. The Mississippi Department of Corrections shall
121 contract with the city for the purposes set out in this act for a
122 period of twenty-five (25) years. The offender housing agreement
123 shall provide that the Department of Corrections pay a state
124 offender cost-per-day for each offender that is housed at a rate
125 established under Section 47-5-1211, Mississippi Code of 1972,
126 which shall be ten percent (10%) less than a facility at the same
127 level and quality of service offered by the Department of
128 Corrections as established by the Joint Legislative Committee on
129 Performance Evaluation and Expenditure Review. The offender

130 housing agreement shall include a minimum level of occupancy of
131 state offenders of eighty-five percent (85%) and provide for a
132 three percent (3%) annual increase in the per diem rate. The
133 state shall retain responsibility for medical care and expenses
134 for state offenders to the extent required by law;

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

147 If the facility houses Mississippi offenders, the facility
148 shall not displace Mississippi's offender beds with federal or
149 another state's offender's beds unless the facility has obtained
150 prior written approval from the Commissioner of Corrections.

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

155 SECTION 4. (1) The facility shall be designed, constructed,
156 operated and maintained in accordance with American Correctional
157 Association Standards and shall comply with all constitutional
158 standards of the United States, the state and with all court
159 orders applicable to the facility. Offenders in need of treatment
160 services and rehabilitation shall be treated separately from other
161 offenders for the period of time that treatment services and
162 rehabilitation are necessary for such offenders.

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

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

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

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

185 (4) A corrections officer shall not use force except such
186 nondeadly force as is reasonably necessary in the following
187 situations:

188 (a) To prevent the commission of a felony or
189 misdemeanor, including escape;

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

192 (c) To prevent serious damage to property;

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

194 (e) To prevent or quell a riot or disturbance.

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

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

210 SECTION 6. Any offense which would be a crime if committed
211 within a correctional institution operated by the state shall be a
212 crime if committed in the facility.

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

221 (2) Neither the state nor the city shall be liable for any
222 actions taken by a private contractor in connection with the
223 facility, nor shall the state be liable for any debt incurred or
224 obligations issued by the city.

225 SECTION 8. (1) The facility shall be operated and managed
226 by a private contractor pursuant to a management contract. The
227 terms and conditions of a management contract shall be approved by

228 the governing authorities and if state offenders are to be held
229 pursuant to a contract approved by the Mississippi Department of
230 Corrections.

231 (2) A management contract shall authorize a private
232 contractor to contract on behalf of the city for the incarceration
233 of offenders in the facility as set forth in Section 2(k) of this
234 act and shall grant the private contractor any other rights and
235 powers that are necessary or convenient for the operation and
236 management of the facility and are consistent with the provisions
237 of this act, including the power to employ personnel who are
238 needed for the operation and management of the facility, to
239 provide or cause to be provided the appropriate training including
240 the use of force and firearms required by Section 5(2) of this
241 act, and to maintain accounting and financial records for the
242 facility in accordance with state law and rules promulgated by the
243 State Auditor.

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

252 (4) A management contract shall provide that the private
253 contractor shall be responsible for the reimbursement of all costs
254 and expenses incurred by the state, the county or the city in
255 connection with legal actions brought in the state by or on behalf
256 of any offender incarcerated in the facility, including court
257 costs, sheriff's fees, witness fees, district attorney expenses,
258 expenses of the Office of the Attorney General, indigent or public
259 defender fees and expenses, judicial expenses, court reporter
260 expenses and damage awards which are adjudicated by a jury.

261 (5) A management contract shall provide that the private
262 contractor shall indemnify and hold harmless the city, the county
263 and the state, and any officers, members, employees or agents of
264 the foregoing, for any claim or liability for damage or injury to
265 any person or property related to or arising from the operation
266 and management of a facility, including liability for loss or
267 injury resulting from the acts of offenders incarcerated at the
268 facility and liability for any injuries to the offenders which are
269 adjudicated by a jury.

270 (6) A management contract may contain any other provisions
271 the city deems necessary or appropriate, including provisions that
272 may be necessary to cause the management contract to comply with
273 promulgations of the Internal Revenue Service applicable to the
274 contract.

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

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

294 be agreed upon by the parties at a price as set forth in or
295 computed in accordance with the lease agreement and may provide
296 that all or any obligations thereunder are payable from specified
297 revenues pledged as security therefor.

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

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

319 SECTION 11. All obligations, including bonds, notes and
320 other evidence of indebtedness issued by the city pursuant to this
321 act or state law and all interest payable thereunder or with
322 respect thereto, all leases, trust indentures, deeds of trust,
323 mortgages, security agreements and other contracts or agreements
324 entered into pursuant to this act or state law, and all purchases
325 required to construct the facility or to acquire equipment shall
326 be exempt from all taxation in the state, including sales taxes

327 and the contractor's tax imposed by Section 27-65-21, Mississippi
328 Code of 1972. The state shall make all offender housing agreement
329 cost-per-day payments to a trustee bank which shall disburse funds
330 upon requisition of private contractor. As provided by general
331 law applicable to political subdivisions of the state, the
332 facility and the revenues derived from its operation shall also be
333 exempt from all taxation in the state, including all ad valorem
334 taxes levied by the state or any political subdivision.

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

340 SECTION 13. Chapter 987, Mississippi Local and Private Laws
341 of 1997, which authorizes the City of Hollandale to construct a
342 special needs correctional facility, is repealed.

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