HOUSE BILL NO. 1652

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF HOLLANDALE TO CONSTRUCT A CORRECTIONAL FACILITY LOCATED IN THE CITY OR NOT MORE THAN TWO MILES OUTSIDE OF THE CITY LIMITS TO HOUSE MALE AND FEMALE OFFENDERS AND OFFENDERS IN NEED OF ALCOHOL AND DRUG TREATMENT SERVICES AND REHABILITATION; TO AUTHORIZE THE CITY TO CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, THE UNITED STATES AND ANY STATE OR POLITICAL SUBDIVISIONS FOR THE HOUSING OF OFFENDERS IN THE CUSTODY OF THOSE JURISDICTIONS; TO AUTHORIZE THE CITY TO CONTRACT WITH A PERSON OR A PRIVATE ENTITY FOR THE OPERATION AND MANAGEMENT OF THE CORRECTIONAL FACILITY; TO PRESCRIBE OTHER POWERS AND DUTIES OF THE CITY; TO PRESCRIBE RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE FACILITY; TO REPEAL CHAPTER 987, MISSISSIPPI LOCAL AND PRIVATE LAWS OF 1997, WHICH AUTHORIZES THE CITY OF HOLLANDALE TO CONSTRUCT A SPECIAL NEEDS CORRECTIONAL FACILITY; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

(f) "Facility" means a correctional facility or facilities located within the city or not more than two (2) miles outside of the city limits which is constructed, acquired or
operated pursuant to this act to house more than seven hundred fifty (750) offenders.

(i) Male offenders;
(ii) Female offenders; and
(iii) Male and/or female offenders in need of specialized facilities and services in connection with alcohol and drug treatment and rehabilitation.

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

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

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

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

SECTION 2. The city 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 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;

(b) To authorize the employment of 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;
(c) 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;

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

(e) To lease a facility or any item of equipment for a term not to exceed twenty-five (25) years to a private contractor for rentals and upon the terms and conditions that are acceptable to the city 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;

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

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

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

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

(j) To enter into an offender housing agreement with the state, by and through the Mississippi Department of Corrections, upon appropriation of funds by the Mississippi Legislature, to provide for the private housing, care and control of male and female offenders who are in the custody of the state and male and female offenders requiring alcohol and drug-related health care, treatment and rehabilitation services who are in the custody of the state and offenders who speak a language other than English as their native tongue. The total number of state offenders at the facility shall not exceed seven hundred fifty (750) offenders. The Mississippi Department of Corrections shall contract with the city for the purposes set out in this act for a period of twenty-five (25) years. The offender housing agreement shall provide that the Department of Corrections pay a state offender cost-per-day for each offender that is housed at a rate established under Section 47-5-1211, Mississippi Code of 1972, which shall be ten percent (10%) less than a facility at the same level and quality of service offered by the Department of Corrections as established by the Joint Legislative Committee on Performance Evaluation and Expenditure Review. The offender
housing agreement shall include a minimum level of occupancy of
state offenders of eighty-five percent (85%) and provide for a
three percent (3%) annual increase in the per diem rate. The
state shall retain responsibility for medical care and expenses
for state offenders to the extent required by law;

(k) To contract with the United States and its
territories or any state or states or any political subdivision to
provide for housing, care and control in the facility of offenders
who are otherwise confined who are in the custody of the
jurisdiction, who do not have histories of escape, and who are
sentenced to terms of incarceration by a court of competent
jurisdiction, to enter into agreements 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
the facility, including the power to incarcerate offenders
described above.

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

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

SECTION 4. (1) The facility shall be designed, constructed,
operated and maintained in accordance with American Correctional
Association Standards and shall comply with all constitutional
standards of the United States, the state and with all court
orders applicable to the facility. Offenders in need of treatment
services and rehabilitation shall be treated separately from other
offenders for the period of time that treatment services and
rehabilitation are necessary for such offenders.
(2) Notwithstanding any provision of law to the contrary, the construction, operation and management of a facility shall not require a certificate of need pursuant to the provisions of Title 41, Chapter 7, Mississippi Code of 1972.

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

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

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

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

(a) To prevent the commission of a felony or 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 or disturbance.
(5) 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.

(6) A private contractor shall have the same standing, authority, rights and responsibilities as the city 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 city under this act or powers pursuant to the general laws of the State of Mississippi as they pertain to the incarceration of offenders.

SECTION 6. 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 7. (1) Neither the state nor the city shall assume jurisdiction or custody of any federal offenders or offenders from other states or political subdivisions who are incarcerated in the facility. The offenders shall remain subject to the jurisdiction of the United States or another state or political subdivision, as applicable. Neither the state nor the city shall be liable for loss or injury resulting from the acts of the offenders, nor shall the state or the city be liable for any injuries to the offenders.

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

SECTION 8. (1) The facility shall be operated and managed by a private contractor pursuant to a management contract. The terms and conditions of a management contract shall be approved by
the governing authorities and if state offenders are to be held pursuant to a contract approved by the Mississippi Department of
Corrections.

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

(3) A management contract shall provide that any sovereign immunity of the state, any sovereign immunity of the county, any sovereign immunity of the city, or any public official immunity 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 or public official 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 city in connection with legal actions brought in the state by or on behalf of any offender incarcerated in the facility, including 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 which are adjudicated by a jury.
A management contract shall provide that the private contractor shall indemnify and hold harmless the city, 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 liability for loss or injury resulting from the acts of offenders incarcerated at the facility and liability for any injuries to the offenders which are adjudicated by a jury.

A management contract may contain any other provisions the city deems necessary or appropriate, including provisions that may be necessary to cause the management contract to comply with promulgations of the Internal Revenue Service applicable to the contract.

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

SECTION 10. (1) The city may enter into lease agreements with a person or legal entity pursuant to which the city may agree to lease the facility or equipment for use by the city for a primary term not to exceed twenty-five (25) years. All lease agreements may contain terms and conditions as the governing authorities shall determine to be appropriate and in the public interest, including 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 governing authorities, may include an annual allocation dependency clause, may contain an option granting to the city 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 city 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 city. 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 city 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 city 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 laws 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 provisions of this
section are conferred upon the city.

SECTION 11. All obligations, including bonds, notes and
other evidence of indebtedness issued by the city pursuant to this
act or state law 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 or state law, and all purchases
required to construct the facility or to acquire equipment shall
be exempt from all taxation in the state, including sales taxes
and the contractor's tax imposed by Section 27-65-21, Mississippi Code of 1972. The state shall make all offender housing agreement cost-per-day payments to a trustee bank which shall disburse funds upon requisition of private contractor. As provided by general law applicable to political subdivisions of the state, the facility and the revenues derived from its operation shall also be exempt from all taxation in the state, including all ad valorem taxes levied by the state or any political subdivision.

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

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

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