

By: Senator(s) Gordon

To: Local and Private

SENATE BILL NO. 3202

1 AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF CHICKASAW
 2 COUNTY, MISSISSIPPI, TO CONSTRUCT A CORRECTIONAL FACILITY LOCATED
 3 IN THE COUNTY TO HOUSE MALE AND FEMALE OFFENDERS; TO AUTHORIZE THE
 4 COUNTY TO CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF CORRECTIONS,
 5 THE UNITED STATES AND ANY STATE OR POLITICAL SUBDIVISIONS FOR THE
 6 HOUSING OF OFFENDERS IN THE CUSTODY OF THOSE JURISDICTIONS; TO
 7 AUTHORIZE THE COUNTY TO CONTRACT WITH A PERSON OR A PRIVATE ENTITY
 8 FOR THE OPERATION AND MANAGEMENT OF THE CORRECTIONAL FACILITY; TO
 9 PRESCRIBE OTHER POWERS AND DUTIES OF THE COUNTY; TO PRESCRIBE
 10 RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE
 11 FACILITY; AND FOR RELATED PURPOSES.

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

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

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

18 (b) "County" means Chickasaw County, Mississippi.

19 (c) "Board of supervisors" means the Board of
20 Supervisors of Chickasaw County, Mississippi.

21 (d) "Equipment" means any personal property which the
22 county determines is necessary or helpful for the operation of the
23 facility.

24 (e) "Facility" means a correctional facility or
25 facilities located within the county which is constructed, leased,
26 acquired or operated pursuant to this act to house two hundred
27 fifty (250) male and/or female offenders.

28 (f) "Offender housing agreement" means a contract
29 between the county and the state, by and through the Mississippi

30 Department of Corrections, required under Section 2(j) of this act
31 for housing state offenders in the facility.

32 (g) "Management contract" means a contract between the
33 county and a private contractor for the operation and management
34 of the facility by a private contractor which may allow the
35 private contractor to exercise any authority granted unto the
36 county under this act or general law.

37 (h) "Private contractor" means a person or legal entity
38 which leases or subleases the facility from the county or has
39 entered into a management contract with the county under this act.

40 (i) "State" means the State of Mississippi.

41 SECTION 2. The county shall have all the powers necessary or
42 convenient to effectuate and carry out the provisions of this act,
43 including the following powers, in addition to others granted in
44 this act:

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

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

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

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

63 (e) To lease a facility or any item of equipment for a
64 term not to exceed twenty-five (25) years to a private contractor
65 for rentals and upon the terms and conditions that are acceptable
66 to the county and are not in conflict with the provisions of this
67 act without regard to any general laws of the state regulating the
68 disposition or conveyance of an interest in public property;

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

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

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

93 (i) To make application to and contract with the United
94 States or any department thereof for any grants or loans that may
95 be applied to the costs of construction, operation or management

96 of the facility or any public utility or roads and to comply with
97 the terms and conditions of such grants and loans;

98 (j) To enter into an offender housing agreement with
99 the state, by and through the Mississippi Department of
100 Corrections, upon appropriation of funds by the Mississippi
101 Legislature, to provide for the private housing, care and control
102 of male and/or female offenders who are in the custody of the
103 state and offenders who speak a language other than English as
104 their native tongue. The total number of state offenders at the
105 facility shall not exceed two hundred fifty (250) offenders as
106 established in the offender housing agreement. The Mississippi
107 Department of Corrections shall contract with the county for the
108 purposes set out in this act for a period of twenty-five (25)
109 years. The offender housing agreement shall provide that the
110 Department of Corrections pay a state offender cost-per-day for
111 each offender that is housed at a rate established under Section
112 47-5-1211, Mississippi Code of 1972, which shall be ten percent
113 (10%) less than a facility at the same level and quality of
114 service offered by the Department of Corrections as established by
115 the Joint Legislative Committee on Performance Evaluation and
116 Expenditure Review. The offender housing agreement shall include
117 a minimum level of occupancy of state offenders of eighty-five
118 percent (85%) and provide for a three percent (3%) annual increase
119 in the per diem rate. The state shall retain responsibility for
120 medical care and expenses for state offenders to the extent
121 required by law; and

122 (k) To contract with the United States and its
123 territories or any state or states or any political subdivision to
124 provide for housing, care and control in the facility of offenders
125 who are otherwise confined who are in the custody of the
126 jurisdiction, who do not have histories of escape, and who are
127 sentenced to terms of incarceration by a court of competent
128 jurisdiction, to enter into agreements which may extend for time

129 periods that are acceptable to the parties, notwithstanding any
130 provision or rule of law to the contrary, and to exercise all
131 powers necessary or desirable in connection with the operation of
132 the facility, including the power to incarcerate offenders
133 described above.

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

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

142 SECTION 4. (1) The facility shall be designed, constructed,
143 operated and maintained in accordance with American Correctional
144 Association Standards and shall comply with all constitutional
145 standards of the United States, the state and with all court
146 orders applicable to the facility. Offenders in need of treatment
147 services and rehabilitation shall be treated separately from other
148 offenders for the period of time that treatment services and
149 rehabilitation are necessary for such offenders.

150 (2) Notwithstanding any provision of law to the contrary,
151 the construction, operation and management of a facility shall not
152 require a certificate of need pursuant to the provisions of Title
153 41, Chapter 7, Mississippi Code of 1972.

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

157 (2) A person shall not be employed as a corrections officer
158 at the facility unless the person has been trained in the use of
159 force and firearms in accordance with American Correctional
160 Association Standards or has satisfactorily completed the training
161 program of the Mississippi Department of Corrections or the

162 corrections training program sponsored by the local community
163 college. If a person is employed as a corrections officer by a
164 private contractor that is operating the facility pursuant to a
165 management contract, the private contractor shall cause the
166 required training to be provided.

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

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

175 (a) To prevent the commission of a felony or
176 misdemeanor, including escape;

177 (b) To defend himself or others against physical
178 assault;

179 (c) To prevent serious damage to property;

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

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

182 (5) A corrections officer shall not use firearms or other
183 deadly force, except as a last resort when reasonably necessary to
184 prevent the commission of a violent felony, to prevent the escape
185 of a convicted felon from custody, or to defend the officer or any
186 other person from imminent danger of death or serious bodily
187 injury.

188 (6) A private contractor shall have the same standing,
189 authority, rights and responsibilities as the county in any
190 agreement, formal or informal, with local law enforcement agencies
191 concerning the latter's obligations in the event of a riot, escape
192 or other emergency situation involving the facility. To the
193 extent provided in any management contract, a private contractor
194 may exercise the powers granted to the county under this act or

195 powers pursuant to the general laws of the State of Mississippi as
196 they pertain to the incarceration of offenders.

197 SECTION 6. Any offense which would be a crime if committed
198 within a correctional institution operated by the state shall be a
199 crime if committed in the facility.

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

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

213 SECTION 8. (1) The facility shall be operated and managed
214 by a private contractor pursuant to a management contract. The
215 terms and conditions of a management contract shall be approved by
216 the board of supervisors and if state offenders are to be held
217 pursuant to a contract approved by the Mississippi Department of
218 Corrections.

219 (2) A management contract shall authorize a private
220 contractor to contract on behalf of the county for the
221 incarceration of offenders in the facility as set forth in Section
222 2(k) of this act and shall grant the private contractor any other
223 rights and powers that are necessary or convenient for the
224 operation and management of the facility and are consistent with
225 the provisions of this act, including the power to employ
226 personnel who are needed for the operation and management of the
227 facility, to provide or cause to be provided the appropriate

228 training including the use of force and firearms required by
229 Section 5(2) of this act, and to maintain accounting and financial
230 records for the facility in accordance with state law and rules
231 promulgated by the State Auditor.

232 (3) A management contract shall provide that any sovereign
233 immunity of the state, or any political subdivisions thereof, or
234 any public official immunity shall not extend to the private
235 contractor. Neither the private contractor nor any insurer of the
236 private contractor may plead the defense of sovereign immunity or
237 public official immunity in any action arising out of or related
238 to the performance of the management contract.

239 (4) A management contract shall provide that the private
240 contractor shall be responsible for the reimbursement of all costs
241 and expenses incurred by the state or any political subdivisions
242 thereof in connection with legal actions brought in the state by
243 or on behalf of any offender incarcerated in the facility,
244 including court costs, sheriff's fees, witness fees, district
245 attorney expenses, expenses of the Office of the Attorney General,
246 indigent or public defender fees and expenses, judicial expenses,
247 court reporter expenses and damage awards which are adjudicated by
248 a jury.

249 (5) A management contract shall provide that the private
250 contractor shall indemnify and hold harmless the state and any
251 political subdivisions thereof, and any officers, members,
252 employees or agents of the foregoing, for any claim or liability
253 for damage or injury to any person or property related to or
254 arising from the operation and management of a facility, including
255 liability for loss or injury resulting from the acts of offenders
256 incarcerated at the facility and liability for any injuries to the
257 offenders which are adjudicated by a jury.

258 (6) A management contract may contain any other provisions
259 the county deems necessary or appropriate, including provisions
260 that may be necessary to cause the management contract to comply

261 with promulgations of the Internal Revenue Service applicable to
262 the contract.

263 SECTION 9. The state or any political subdivisions thereof,
264 or any members, officers, employees or agents of the foregoing,
265 shall not be liable for a private contractor's actions or failure
266 to act while operating and managing a facility pursuant to a
267 management contract.

268 SECTION 10. (1) The county may enter into lease agreements
269 with a person or legal entity pursuant to which the county may
270 agree to lease the facility or equipment for use by the county for
271 a primary term not to exceed twenty-five (25) years. All lease
272 agreements may contain terms and conditions as the board of
273 supervisors shall determine to be appropriate and in the public
274 interest, including any provision which a master lease-purchase
275 agreement may contain pursuant to Section 31-7-10(5), Mississippi
276 Code of 1972, may provide for the payment of lease payments which
277 include an interest component computed at a rate or rates as shall
278 be approved by the board of supervisors, may include an annual
279 allocation dependency clause, may contain an option granting to
280 the county the right to purchase the leased property upon the
281 expiration of the primary term, or upon an earlier date that may
282 be agreed upon by the parties at a price as set forth in or
283 computed in accordance with the lease agreement and may provide
284 that all or any obligations thereunder are payable from specified
285 revenues pledged as security therefor.

286 (2) The county may lease publicly owned real property to a
287 person or legal entity for the purpose of enabling the person or
288 legal entity to construct a facility on the property and to lease
289 the facility to the county. A ground lease shall not be for a
290 primary term in excess of twice the primary term of the lease with
291 respect to the facility to be constructed on the real property.
292 Any public body in the state may lease, sell or otherwise convey
293 property to the county without consideration or for consideration

294 as the governing body of the public body shall determine to be
295 appropriate under the circumstances, and to enter into agreements
296 with the county relating thereto, which agreements may extend over
297 any period of time, notwithstanding any provision or rule of law
298 to the contrary.

299 (3) This section shall be full and complete authority for
300 the authorization, execution and delivery of lease agreements
301 authorized under this act and none of the restrictions,
302 requirements, conditions and limitations of the general laws of
303 the state applicable to acquisition, construction and drawing of
304 buildings or facilities shall apply to lease agreements under this
305 section and all powers necessary to carry out provisions of this
306 section are conferred upon the county.

307 SECTION 11. All obligations, including bonds, notes and
308 other evidence of indebtedness issued by the county pursuant to
309 this act or state law and all interest payable thereunder or with
310 respect thereto, all leases, trust indentures, deeds of trust,
311 mortgages, security agreements and other contracts or agreements
312 entered into pursuant to this act or state law, and all purchases
313 required to construct the facility or to acquire equipment shall
314 be exempt from all taxation in the state, including sales taxes
315 and the contractor's tax imposed by Section 27-65-21, Mississippi
316 Code of 1972. The state shall make all offender housing agreement
317 cost-per-day payments to a trustee bank which shall disburse funds
318 upon requisition of the private contractor. As provided by
319 general law applicable to political subdivisions of the state, the
320 facility and the revenues derived from its operation shall also be
321 exempt from all taxation in the state, including all ad valorem
322 taxes levied by the state or any political subdivision.

323 SECTION 12. This act shall be full and complete authority
324 for the exercise of all powers and authority granted herein and no
325 requirements or restrictions of law which would otherwise be

326 applicable to acts of the county shall be applicable except as
327 expressly provided herein.

328 SECTION 13. This act shall take effect and be in force from
329 and after its passage.