

By: Representatives Bondurant, Howell

To: Local and Private
Legislation

HOUSE BILL NO. 336

1 AN ACT TO AMEND CHAPTER 999, LAWS OF 1997, TO EXTEND THE
2 REPEALER ON THE LAW THAT AUTHORIZES THE GRENADA COUNTY BOARD OF
3 SUPERVISORS TO CONTRACT WITH A PRIVATE ENTITY FOR THE
4 CONSTRUCTION, LEASE, ACQUISITION, IMPROVEMENT, OPERATION AND
5 MANAGEMENT OF A PRIVATE COUNTY JAIL; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Chapter 999, Laws of 1997, is amended as follows:

8 Section 1. The Grenada County Board of Supervisors, in their
9 discretion, may contract with a private entity for the
10 construction, lease, acquisition, improvement, operation and
11 management of a private county jail.

12 Section 2. (1) A contract for the private operation of a
13 county jail shall not be entered into unless the contractor has
14 demonstrated that it has:

15 (a) The qualifications, experience and management
16 personnel necessary to carry out the terms of the contract.

17 (b) The ability to expedite the siting, design and
18 construction of a private county jail.

19 (c) The ability to comply with applicable federal and
20 state laws, court orders and national correctional standards.

21 (d) A history of successful operation and management of
22 other private county jails.

23 (2) A jail shall at all times comply with all federal and
24 state laws, and all applicable court orders.

25 (3) (a) A contract for private incarceration shall not be
26 entered into unless the cost of the private operation, including
27 the county's cost for monitoring the private operation, offers a
28 cost savings of at least ten percent (10%) to the board of

29 supervisors for at least the same level and quality of service
30 offered by the sheriff.

31 (b) The board of supervisors shall contract annually
32 with a certified public accounting firm to establish a county
33 offender cost per day for a comparable county jail. The county
34 offender cost per day shall be certified annually. The certified
35 cost shall be used as the basis for measuring the validity of the
36 ten percent (10%) savings of the contractor costs.

37 (4) The rates and benefits for correctional services shall
38 be negotiated based upon American Correction Association
39 Standards, state law and court orders.

40 Section 3. The initial contract for the operation of a jail
41 or for incarceration of offenders therein shall be for a period of
42 not more than five (5) years with an option to renew for an
43 additional period of two (2) years. Contracts for construction,
44 purchase or lease of a jail shall not exceed a term of twenty (20)
45 years. The contracts shall provide that the contractor shall
46 convey the jail to the county, at the option of the county, for a
47 total consideration of One Dollar (\$1.00). Any contract for
48 housing shall be subject to annual appropriation by the board of
49 supervisors.

50 Section 4. (1) A contractor's employees serving as
51 "jailers" shall be allowed to use force only while on the grounds
52 of a jail, while transporting offenders and while pursuing
53 escapees from a jail.

54 (2) Private jailers may use only such nondeadly force as the
55 circumstances require in the following situations: to prevent the
56 commission of a felony or misdemeanor, including escape; to defend
57 oneself or others against physical assault; to prevent serious
58 damage to property; to enforce institutional regulations and
59 orders; and to prevent or quell a riot.

60 (3) Private jailers, who have been appropriately certified
61 as determined by the contracting agency and trained pursuant to

62 the provisions of subsection (4), shall have the right to carry
63 and use firearms and shall exercise such authority and may use
64 deadly force to prevent an act that could result in death or
65 serious bodily injury to oneself or to another person.

66 (4) Private jailers shall be trained in the use of force and
67 the use of firearms, in accordance with American Correction
68 Association Standards and shall be trained, at the private
69 contractor's expense, for at least the minimum number of hours
70 that public personnel are currently trained.

71 Section 5. All employees of a jail operated pursuant to this
72 act must receive, at a minimum, the same quality and quantity of
73 training as that required by the state, for sheriffs and deputy
74 sheriffs. All training expenses shall be the responsibility of
75 the contractor.

76 Section 6. A contract for jail services shall not be entered
77 into unless the following requirements are met:

78 (a) In addition to fire and casualty insurance, the
79 contractor shall provide at least Five Million Dollars
80 (\$5,000,000.00) of liability insurance, specifically including
81 insurance for civil rights claims. The liability insurance shall
82 be issued by an insurance company with a rating of at least an A-
83 according to A.M. Best Standards. In determining the adequacy of
84 such insurance, the board of supervisors shall determine whether:

85 (i) The insurance is adequate to protect the
86 county from any and all actions by a third party against the
87 contractor or the county as a result of the contract;

88 (ii) The insurance is adequate to protect the
89 county against any and all claims arising as a result of any
90 occurrence during the term of the contract;

91 (iii) The insurance is adequate to assure the
92 contractor's ability to fulfill its contract with the county in
93 all respects, and to assure that the contractor is not limited in

94 this ability because of financial liability which results from
95 judgments; and

96 (iv) The insurance is adequate to satisfy such
97 other requirements specified by an independent risk
98 management/actuarial firm.

99 (b) The sovereign immunity of the state or the county
100 shall not apply to the contractor. Neither the contractor nor the
101 insurer of the contractor may plead the defense of sovereign
102 immunity in any action arising out of the performance of the
103 contract.

104 (c) The contractor shall post a performance bond to
105 assure the contractor's faithful performance of the specifications
106 and conditions of the contract. The bond is required throughout
107 the term of the contract. The terms and conditions must be
108 approved by the board of supervisors and the approval is a
109 condition precedent to the contract taking effect.

110 (d) The contractor shall defend any suit or claim
111 brought against Grenada County arising out of any act or omission
112 in the operation of a private jail and shall hold the county
113 harmless from the claim or suit. The contractor shall be solely
114 responsible for the payment of any legal or other costs relative
115 to any such claim or suit. The contractor shall reimburse the
116 county for any costs that it may incur as a result of the claim or
117 suit immediately upon being submitted a statement therefor by the
118 board of supervisors.

119 The duties and obligations of the contractor pursuant to this
120 subsection shall include, but not be limited to, any claim or suit
121 brought under any federal or state civil rights or offenders'
122 rights statutes or pursuant to any rights recognized by common law
123 or case law, or federal or state constitutions.

124 Any suit brought or claim made arising out of any act or
125 omission in the operation of a private jail shall be made or
126 brought against the contractor and not the board of supervisors.

127 Section 7. A plan shall be developed and certified by the
128 commissioner which demonstrates the method by which the county
129 would resume control of the jail upon contract termination.

130 Section 8. (1) A public official or an employee of the
131 county, who has duties or responsibilities related to the
132 contracting, constructing, leasing, acquiring or operating a
133 private jail, may not become an employee, consultant or contract
134 vendor to a private entity, which provides the jail or services to
135 the county within one (1) year after the termination of his
136 service or employment.

137 (2) Any person violating this section shall be guilty of a
138 misdemeanor and punished by a fine of not less than Five Hundred
139 Dollars (\$500.00) but not more than One Thousand Dollars
140 (\$1,000.00).

141 Section 9. This act shall stand repealed on September 30,
142 2008.

143 Section 10. This act shall take effect and be in force from
144 and after its passage * * *.

145 **SECTION 2.** This act shall take effect and be in force from
146 and after its passage.