

By: Representatives Huddleston, Reynolds,
Mayo, McBride, Clark, Espy, Middleton

To: Local and Private
Legislation

HOUSE BILL NO. 544

1 AN ACT TO AMEND CHAPTER 904, LOCAL AND PRIVATE LAWS OF 1998,
2 AS AMENDED BY CHAPTER 1023, LOCAL AND PRIVATE LAWS OF 1999, TO
3 EXPAND THE POWERS OF THE TALLAHATCHIE COUNTY CORRECTIONAL
4 AUTHORITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Chapter 904, Local and Private Laws of 1998, as
7 amended by Chapter 1023, Local and Private Laws of 1999, is
8 amended as follows:

9 Section 1. As used in this act, unless the context otherwise
10 requires:

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

14 (b) "Authority" means the Tallahatchie County
15 Correctional Authority.

16 (c) "Board of commissioners" means the Board of
17 Commissioners of the Authority.

18 (d) "Board of supervisors" means the board of
19 supervisors of the county.

20 (e) "County" means Tallahatchie County, Mississippi.

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

24 (g) "Facility" means a jail, prison or other
25 incarceration facility located in the county which is constructed,
26 acquired or operated pursuant to this act.

27 (h) "Management contract" means a contract between the
28 authority and a private contractor for the operation and
29 management of a facility by a private contractor.

30 (i) "Private contractor" means a person or legal entity
31 which leases or subleases a facility from the authority or has
32 entered into a management contract with the authority pursuant to
33 this act.

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

35 Section 2. (1) There is created in the county a public body
36 corporate and politic to be known as the "Tallahatchie
37 Correctional Authority." The authority shall not transact any
38 business or exercise any powers under this act until the board of
39 supervisors adopts a resolution finding that it is in the public
40 interest to have the authority exercise the powers set forth in
41 this act. The resolution shall designate the manner in which
42 funds of the authority in excess of amounts needed to pay the
43 authority's operating expenses and debt service will be applied,
44 provided that none of the excess funds of the authority may inure
45 to the benefit of any private person.

46 (2) Alternatively, the board of supervisors may by
47 resolution designate a nonprofit corporation incorporated under
48 the general laws of the state to exercise the powers of the
49 authority set forth in this act, in which event the board of
50 supervisors may take all actions necessary for the nonprofit
51 corporation to be treated as acting on behalf of the county under
52 the Internal Revenue Code. The nonprofit corporation shall have,
53 in addition to the powers and authority generally exercisable by
54 nonprofit corporations in the state, all powers and authority
55 granted to the authority under this act and shall be deemed to be
56 a charitable society, for purposes of Section 27-31-1, Mississippi
57 Code of 1972. All provisions of this act applicable to
58 obligations, agreements, contracts and property of, and purchases
59 by, contracting with and leasing or conveyance of property to an

60 authority shall be applicable to obligations, agreements,
61 contracts and property of, and purchases by, contracting with and
62 leasing or conveyance of property to the nonprofit corporation.

63 Section 3. Nothing in this act shall authorize payment of
64 tax revenues or other public funds of the county to the authority.

65 Section 4. The authority shall exist until dissolved
66 pursuant to a resolution adopted by the board of supervisors.
67 Upon dissolution of the authority, title to all property owned by
68 the authority shall vest in the county. Dissolution of the
69 authority shall not adversely affect the rights of any holders of
70 obligations issued by the authority, including, but not limited
71 to, any bonds, notes or other evidences of indebtedness issued by
72 the authority or the rights of any parties to contracts with the
73 authority, including, but not limited to, leases, lease purchase
74 agreements and management contracts entered into before the date
75 of dissolution of the authority. A dissolution shall not be
76 effective at any time that any bonds, notes or other evidence of
77 indebtedness of the authority, including, but not limited to,
78 lease-purchase agreements, shall be outstanding, except to the
79 extent permitted in the documents executed in connection with the
80 initial issuance of the bonds, notes or other indebtedness.

81 Section 5. (1) All powers of the authority shall be
82 exercised by its board of commissioners to be composed of five (5)
83 members, one (1) appointed by the Tallahatchie County Board of
84 Supervisors from each supervisory district.

85 (2) (a) The initial members of the board shall serve for
86 terms of office as follows:

87 (i) Two (2) members appointed by the Tallahatchie
88 County Board of Supervisors shall serve for a term of four (4)
89 years.

90 (ii) Two (2) members appointed by the Tallahatchie
91 County Board of Supervisors shall serve for a term of three (3)
92 years.

93 (iii) One (1) member appointed by the Tallahatchie
94 County Board of Supervisors shall serve for a term of two (2)
95 years.

96 The term of each initial appointee shall begin on the first
97 day of the next month after the date that all initial appointees
98 have been appointed.

99 After the expiration of the initial terms, all subsequent
100 appointments shall be made for terms of five (5) years from the
101 expiration date of the previous term. Any vacancy that may occur
102 shall be filled in the same manner as the original appointment and
103 shall be made for the unexpired term.

104 (b) Beginning October 1, 1999, the board of supervisors
105 may authorize, by resolution duly adopted and spread upon its
106 minutes, up to four (4) additional members to be appointed to the
107 Tallahatchie County Correctional Authority, if the board of
108 supervisors determines it is in the best interest of Tallahatchie
109 County. The four (4) additional members of the board of
110 commissioners may be appointed as follows:

111 (i) The board of supervisors may delegate the
112 authority to appoint two (2) of the additional members of the
113 board of commissioners to two (2) municipalities which may each
114 appoint one (1) member of the board of commissioners. However,
115 the municipalities must be in separate judicial districts in the
116 county, each municipality must be the municipality that is nearest
117 in proximity to the correctional facility in a judicial district,
118 and at the time of the appointment, the correctional facility must
119 be constructed or in the process of being constructed.

120 (ii) A supervisor in whose judicial district a
121 correctional facility is located or in which the greater portion
122 of a correctional facility is located or in which a correctional
123 facility is in the process of being constructed may nominate an
124 additional person to become a member of the board of
125 commissioners. There shall be no more than one (1) additional

126 member of the board of commissioners per judicial district whose
127 appointment was based on a supervisor's nomination as provided in
128 this paragraph.

129 If the board of supervisors votes to expand the board of
130 commissioners as provided in this subsection, then all actions
131 brought before the board of commissioners shall only be undertaken
132 if a majority of the members of the board of commissioners who are
133 residents of each judicial district and who are voting on the
134 measure vote in favor of the action. If a majority of the members
135 of the board of commissioners who are residents of one (1) of the
136 judicial districts and who vote on the measure do not vote in
137 favor of a proposed action, then the action shall not be
138 undertaken. Also, if the board of supervisors votes to expand the
139 board of commissioners as provided in this subsection, then the
140 five (5) members of the board of commissioners who are presently
141 serving and their successors shall be residents of the supervisors
142 district in which the members resided at the time of their
143 appointment.

144 The additional members of the board of commissioners each
145 shall serve for an initial term of three (3) years. After the
146 expiration of the initial term, all subsequent appointments shall
147 be made for terms of five (5) years. The term of each initial
148 appointee shall begin on the first day of the next month after the
149 date of his appointment.

150 (3) The members of the board of commissioners shall elect
151 annually from among themselves the officers of president, vice
152 president, secretary and treasurer. The board of commissioners
153 shall adopt bylaws, rules and regulations as may be necessary to
154 govern the time, place and manner for holding subsequent meetings
155 of the board of commissioners and for the conduct of its business
156 consistent with the provisions of this act. All meetings of the
157 board of commissioners shall be conducted in accordance with
158 Section 25-41-1 et seq., Mississippi Code of 1972. Any action

159 taken by the board of commissioners shall be official at the time
160 the action is taken. Actions may be taken by the board of
161 commissioners at any regular, special or recessed meeting.

162 (4) The members of the board of commissioners shall serve
163 without compensation and shall meet at least once quarterly at a
164 time and place determined by the board of commissioners. The
165 board of commissioners shall keep minutes of its proceedings as
166 necessary to carry out its responsibilities. A quorum of the
167 board of commissioners shall consist of three (3) members.

168 (5) Except as provided in subsection (2) of this section, a
169 board member may be removed, upon recommendation by a vote of
170 three (3) members of the board of commissioners and approval by
171 the board of supervisors.

172 (6) The authority may employ an executive director,
173 technical experts and other agents and employees, permanent and
174 temporary, as it may require, and may determine their
175 qualifications, duties and compensation.

176 Section 6. * * * The authority shall have all the powers
177 necessary or convenient to effectuate and carry out the provisions
178 of this act, including the following powers in addition to others
179 granted in this act:

180 (a) To have perpetual succession as a body politic and
181 corporate exercising essential public functions until dissolved
182 pursuant to Section 4 of this act;

183 (b) To sue and be sued in its own name;

184 (c) To have an official seal and alter it at will;

185 (d) To adopt, appeal and amend bylaws, rules and
186 regulations consistent with this act, to regulate its affairs and
187 conduct its business;

188 (e) To maintain one or more offices at a place or
189 places within the county as it may designate;

190 (f) To make and execute contracts and all other
191 instruments necessary or convenient for the performance of its
192 duties and the exercise of its powers under this act;

193 (g) To employ architects, engineers, contractors,
194 developers, attorneys, inspectors, accountants, financial advisors
195 and any other advisors, consultants and agents as may be
196 necessary, in its judgment, to carry out its powers under this
197 act, and to fix their compensation;

198 (h) To procure insurance against any loss in connection
199 with its property and other assets, in amounts and from insurers
200 as it may deem advisable, and to pay premiums on any such
201 insurance;

202 (i) To construct, purchase, receive, lease,
203 lease-purchase, or otherwise acquire, own, hold, improve or use a
204 facility or any item of equipment, and to enter into agreements
205 relating thereto, including, but not limited to, sale and issuance
206 of certificates of participation, which may extend for a period of
207 time, notwithstanding any provision or rule of law to the
208 contrary, and provide for the consideration and other terms and
209 conditions that are acceptable to the authority and are not in
210 conflict with the provisions of this act, without regard to any
211 general laws of the state regulating public purchases and
212 acquisitions or restricting the time periods of agreements;

213 (j) To lease a facility or any item of equipment to a
214 private contractor for rentals and upon the terms and conditions
215 that are acceptable to the authority and are not in conflict with
216 the provisions of this act, without regard to any general laws of
217 the state regulating the disposition or conveyance of an interest
218 in public property;

219 (k) To operate and manage a facility in accordance with
220 the provisions of this act and to take all actions necessary in
221 connection therewith, or alternatively to contract with a private

222 contractor to operate and manage a facility in accordance with the
223 provisions of this act;

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

235 (m) In connection with borrowing money and issuance of
236 obligations as set forth in the preceding paragraphs (i) and (l),
237 in Section 13 of this act, and elsewhere in this act, to pledge or
238 assign its property, assets and revenues, enter into trust
239 indentures, deeds of trust, mortgages and security agreements,
240 contract for bond insurance and other credit enhancement devices,
241 and to take any other action and enter into any other agreements
242 as the authority deems necessary or appropriate, all on terms and
243 conditions that are acceptable to the authority and are not in
244 conflict with the provisions of this act, without regard to any
245 provision or rule of law which would otherwise be applicable
246 thereto; and

247 (n) To contract with the United States and its
248 territories or any state or states or any political subdivision
249 thereof to provide for housing, care and control in a facility of
250 offenders who are in the custody of the jurisdiction, * * * who do
251 not have histories of escape, and who are sentenced to terms of
252 incarceration for conviction of a felony, or who are sentenced to
253 terms of incarceration for a misdemeanor, provided that the
254 incarceration in the facility for a misdemeanor is consistent with

255 American Correctional Association Standards relating to the
256 incarceration of offenders convicted of more serious offenses, to
257 enter into agreements relating thereto which may extend for time
258 periods that are acceptable to the parties, notwithstanding any
259 provision or rule of law to the contrary, and to exercise all
260 powers necessary or desirable in connection with the operation of
261 a prison or other type of correctional facility, including, but
262 not limited to, the power to incarcerate offenders described
263 above.

264 (o) To contract with the United States and its
265 territories or any state or states or any agency or political
266 subdivision thereof to provide for housing, care and control in a
267 facility of juveniles who are found to be delinquent or in need of
268 supervision, who are in the custody of the jurisdiction and who do
269 not have histories of escape, to enter into agreements relating
270 thereto which may extend for time periods that are acceptable to
271 the parties notwithstanding any provision or rule of law to the
272 contrary, and to exercise all powers necessary or desirable in
273 connection with the operation of a correctional facility,
274 including, but not limited to, the power to incarcerate offenders
275 described in this paragraph. The facility shall be constructed in
276 accordance with American Correctional Association Standards. The
277 juvenile offenders who are housed in the facility shall remain
278 subject to the jurisdiction of the United States or another state,
279 as applicable.

280 (p) To contract with the Department of Corrections or
281 other appropriate state, federal or local entity for the
282 inspection, monitoring or provision of any assistance necessary or
283 desirable to maintain suitable, safe and secure correctional
284 facilities.

285 * * *

286 Section 7. (1) A facility shall be designed, constructed,
287 operated and maintained in accordance with American Correctional

288 Association Standards. The facility shall meet the percentage of
289 standards required for accreditation by the American Correctional
290 Association, except where a contract with a private contractor
291 requires compliance with a higher percentage of nonmandatory
292 standards.

293 (2) The facility shall comply with all constitutional
294 standards of the United States * * * and with all court orders
295 applicable to the inmates housed in the facility.

296 (3) The Department of Corrections shall place a compliance
297 officer at the facility. The authority or private contractor
298 shall provide an on-site work area for the compliance officer and
299 shall permit access to all areas of the facility and to the
300 offenders and staff at all times. The authority or private
301 contractor shall reimburse the Department of Corrections for all
302 costs incurred for the compliance officer.

303 Section 8. (1) A person shall not be employed as a
304 corrections officer at the facility unless the person has been
305 trained in the use of force and firearms in accordance with
306 American Correctional Association Standards. If a person is
307 employed as a corrections officer by a private contractor that is
308 operating a facility pursuant to a management contract, the
309 private contractor shall cause the required training to be
310 provided at its own expense.

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

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

319 (a) To prevent the commission of a felony or
320 misdemeanor, including escape;

321 (b) To defend himself or others against physical
322 assault;

323 (c) To prevent serious damage to property;

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

325 (e) To prevent or quell a riot.

326 (4) A corrections officer shall not use firearms or other
327 deadly force except as a last resort when reasonably necessary to
328 prevent the commission of a violent felony, to prevent the escape
329 of a convicted felon from custody, or to defend the officer or any
330 other person from imminent danger of death or serious bodily
331 injury.

332 (5) A private contractor shall have the same standing,
333 authority, rights and responsibilities as the authority in any
334 agreement, formal or informal, with local law enforcement agencies
335 concerning the latter's obligations in the event of a riot, escape
336 or other emergency situation involving the facility. To the
337 extent provided in any management contract, a private contractor
338 may exercise the powers granted to the authority under this act.

339 Section 9. Any offense which would be a crime if committed
340 within a correctional institution operated by the state shall be a
341 crime if committed in the facility.

342 Section 10. (1) Neither the state nor the county shall
343 assume jurisdiction or custody of any federal offenders or
344 offenders from other states who are incarcerated in the facility.
345 The offenders shall remain subject to the jurisdiction of the
346 United States or another state, as applicable. Neither the state
347 nor the county shall be liable for loss or injury resulting from
348 the acts of the offenders, nor shall the state or the county be
349 liable for any injuries to the offenders. The authority or
350 private contractor shall reimburse the Department of Corrections
351 for any expenses incurred in quelling a prison riot.

352 (2) Neither the state nor the county shall be liable for any
353 actions taken by the authority or a private contractor in

354 connection with the facility, nor shall they be liable for any
355 debt incurred or obligations issued by the authority.

356 Section 11. (1) The facility shall at all times be operated
357 and managed by a private contractor pursuant to a management
358 contract unless the board of commissioners determines that the
359 operation and management by a private contractor is not feasible
360 or desirable. The terms and conditions of a management contract
361 shall be approved by the board of commissioners.

362 (2) A management contract may authorize a private contractor
363 to contract on behalf of the authority for the incarceration of
364 offenders in the facility as set forth in Section 6(n) of this act
365 and shall grant the private contractor any other powers that are
366 necessary or convenient for the operation and management of the
367 facility and are consistent with the provisions of this act,
368 including, but not limited to, the power to employ personnel who
369 are needed for the operation and management of a facility and to
370 provide or cause to be provided the training in the use of force
371 and firearms required by Section 8(1) of this act. * * *

372 (3) A management contract shall provide that any sovereign
373 immunity of the state, any sovereign immunity of the county, any
374 sovereign immunity of the municipality or any sovereign immunity
375 of the authority shall not extend to the private contractor.
376 Neither the private contractor nor any insurer of the private
377 contractor may plead the defense of sovereign immunity in any
378 action arising out of or related to the performance of the
379 management contract.

380 (4) A management contract shall provide that the private
381 contractor shall be responsible for the reimbursement of all costs
382 and expenses incurred by the state, the county or the authority in
383 connection with legal actions brought in the state by or on behalf
384 of any offender incarcerated in the facility, including, but not
385 limited to, court costs, sheriff's fees, witness fees, district
386 attorney expenses, expenses of the Office of the Attorney General,

387 indigent or public defender fees and expenses, judicial expenses,
388 court reporter expenses and damage awards. The contract shall
389 also provide for the reimbursement of all costs and expenses
390 incurred by the Department of Corrections for maintaining a
391 compliance officer at the facility and for all costs and expenses
392 incurred by the Department of Corrections for aiding in quelling a
393 prison riot.

394 (5) A management contract shall provide that the private
395 contractor shall indemnify and hold harmless the authority, the
396 county and the state, and any officers, members, employees or
397 agents of the foregoing, for any claim or liability for damage or
398 injury to any person or property related to or arising from the
399 operation and management of a facility, including, but not limited
400 to, liability for loss or injury resulting from the acts of
401 offenders incarcerated at the facility and liability for any
402 injuries to the offenders.

403 (6) A management contract may contain any other provisions
404 the authority deems necessary or appropriate, including, but not
405 limited to, provisions that may be necessary to cause the
406 management contract to comply with promulgations of the Internal
407 Revenue Service applicable to the contract.

408 Section 12. Neither the state, the county nor the authority,
409 nor any members, officers, employees or agents of the foregoing,
410 shall be liable for a private contractor's actions or failure to
411 act while operating and managing a facility pursuant to a
412 management contract.

413 Section 13. (1) The authority or the private contractor
414 shall permit the Investigative Task Force of the Department of
415 Corrections to have full access to all areas of the facility and
416 to the offenders and staff. The investigators may exercise any
417 and all police powers provided under Section 47-5-54, Mississippi
418 Code of 1972.

419 (2) The authority or private contractor shall provide for
420 the issuance of an immediate warrant through the National Crime
421 Information Center for any offender who escapes.

422 (3) The authority or private contractor shall return any
423 offender released from the facility to the state from which the
424 offender was sent.

425 Section 14. (1) The authority may enter into lease
426 agreements with a person or legal entity pursuant to which the
427 authority may agree to lease the facility or equipment for use by
428 the authority for a primary term not to exceed thirty (30) years.
429 All lease agreements may contain terms and conditions as the Board
430 of Commissioners of the authority shall determine to be
431 appropriate and in the public interest, including, but not limited
432 to, any provision which a master lease-purchase agreement may
433 contain pursuant to Section 31-7-10(5), Mississippi Code of 1972,
434 may provide for the payment of lease payments which include an
435 interest component computed at a rate or rates as shall be
436 approved by the board of commissioners, may include an annual
437 allocation dependency clause, may contain an option granting to
438 the authority the right to purchase the leased property upon the
439 expiration of the primary term, or upon an earlier date that may
440 be agreed upon by the parties, at a price as set forth in or
441 computed in accordance with the lease agreement and may provide
442 that all or any obligations thereunder are payable from specified
443 revenues pledged as security therefor.

444 (2) The authority may lease publicly owned real property to
445 a person or legal entity for the purpose of enabling the person or
446 legal entity to construct a facility on the property and to lease
447 the facility to the authority. A ground lease shall not be for a
448 primary term in excess of twice the primary term of the lease with
449 respect to the facility to be constructed on the real property.
450 Any public body in the state may lease, sell or otherwise convey
451 property to the authority without consideration or for

452 consideration as the governing body of the public body shall
453 determine to be appropriate under the circumstances, and to enter
454 into agreements with the authority relating thereto, which
455 agreements may extend over any period of time, notwithstanding any
456 provision or rule of law to the contrary.

457 (3) This section shall be full and complete authority for
458 the authorization, execution and delivery of lease agreements
459 authorized under this act, and none of the restrictions,
460 requirements, conditions and limitations of the general law of the
461 state applicable to acquisition, construction and drawing of
462 buildings or facilities shall apply to lease agreements under this
463 section, and all powers necessary to carry out the provisions of
464 this section are conferred upon the authority.

465 Section 15. All obligations, including, but not limited to,
466 bonds, notes, lease-purchase agreements and other evidence of
467 indebtedness issued by the authority pursuant to this act and all
468 interest payable thereunder or with respect thereto, all leases,
469 trust indentures, deeds of trust, mortgages, security agreements
470 and other contracts or agreements entered into pursuant to this
471 act, and all purchases required to construct the facility or to
472 acquire equipment shall be exempt from all taxation in the state,
473 including, but not limited to, sales taxes and the contractor's
474 tax imposed by Section 27-65-21, Mississippi Code of 1972. As
475 provided by general law applicable to political subdivisions of
476 the state, a facility and the revenues derived from its operation
477 shall also be exempt from all taxation in the state, including,
478 but not limited to, all ad valorem taxes levied by the state or
479 any political subdivision thereof.

480 Section 16. This act shall be full and complete authority of
481 the exercise of all powers and authority granted herein and no
482 requirements or restrictions of law which would otherwise be
483 applicable to acts of the authority shall be applicable except as
484 expressly provided herein. No debt of the authority shall be

485 considered to be debt of the county or any other political
486 subdivision of the state for purposes of any provision or rule of
487 law restricting the amount of indebtedness of the county or such
488 other political subdivision or for any other purpose under the
489 laws of the state.

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