

By: Representatives Mayo, Whittington, Ward To: Corrections

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1401

1 AN ACT TO AMEND SECTION 47-5-64, MISSISSIPPI CODE OF 1972, TO
2 INCREASE FROM THREE TO EIGHT YEARS THE MAXIMUM LEASE TERM FOR
3 WHICH THE COMMISSIONER OF CORRECTIONS MAY LEASE LAND OF DEPARTMENT
4 OF CORRECTIONS FOR AGRICULTURAL PURPOSES; TO AMEND SECTION
5 47-5-66, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE
6 DEPARTMENT OF FINANCE AND ADMINISTRATION TO HOLD AUCTIONS FOR
7 AGRICULTURAL LEASES TO PRIVATE ENTITIES; TO REQUIRE THE
8 CORRECTIONS AUDITOR OF THE JOINT LEGISLATIVE COMMITTEE ON
9 PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (PEER) TO MAKE A
10 YEARLY REPORT TO THE CHAIRMEN OF THE CORRECTIONS COMMITTEES AND
11 COMMISSIONER OF CORRECTIONS REGARDING LEASED LAND; AND FOR RELATED
12 PURPOSES.

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

14 **SECTION 1.** Section 47-5-64, Mississippi Code of 1972, is
15 amended as follows:

16 47-5-64. The Mississippi Commissioner of Corrections is
17 hereby directed to determine the number of acres and location of
18 land under its jurisdiction which are needed for security purposes
19 and for Prison Agricultural Enterprises. The Commissioner of
20 Corrections shall designate and reserve such additional land for
21 agricultural enterprise projects of the Department of Corrections,
22 as he deems necessary. The Mississippi Commissioner of
23 Corrections shall then recommend to the Department of Finance and
24 Administration the number of acres of department land which should
25 be leased to private entities and the term of the leases. The
26 Department of Finance and Administration shall have the authority
27 to lease for agricultural purposes that land so recommended for
28 not less than one (1) nor more than eight (8) years, with the
29 approval of the Public Procurement Review Board.

30 **SECTION 2.** Section 47-5-66, Mississippi Code of 1972, is
31 amended as follows:

32 47-5-66. (1) It shall be the duty of the State Department
33 of Finance and Administration, with the approval of the Public
34 Procurement Review Board, to lease lands at public contract upon
35 the submission of two (2) or more sealed bids to the State
36 Department of Finance and Administration after having advertised
37 the land for rent in newspapers of general circulation published
38 in Jackson, Mississippi; Memphis, Tennessee; the county in which
39 the land is located, and contiguous counties for a period of not
40 less than two (2) successive weeks. The first publication shall
41 be made not less than ten (10) days before the date of the public
42 contract, and the last publication shall be made not more than
43 seven (7) days before that date. The State Department of Finance
44 and Administration may reject any and all bids. Bids received in
45 response to the advertisement shall be opened at the State
46 Department of Finance and Administration. The State Department of
47 Finance and Administration, at its option, may reject all bids or
48 accept the highest and best bid received in response to the
49 advertisement, or the State Department of Finance and
50 Administration may hold an auction among those who submitted bids
51 in response to the advertisement. If the State Department of
52 Finance and Administration elects to hold an auction, no bidder
53 shall be granted any preference. The opening bid at the auction
54 shall be the highest bid received in response to the
55 advertisement. If the State Department of Finance and
56 Administration receives an acceptable bid in response to the
57 advertisement and elects not to hold an auction among those
58 submitting bids, then the holder of the existing lease may submit
59 a second bid in an amount not less than one hundred five percent
60 (105%) of the highest acceptable bid received if the holder of the
61 existing lease: (a) submitted a bid in response to the
62 advertisement, and (b) constructed or made improvements on the
63 leasehold premises after receiving approval of the State
64 Department of Finance and Administration during the term of the

65 existing lease. For purposes of this subsection, the term
66 improvements shall not include any work or items that are done
67 customarily on an annual basis in the preparing, planting,
68 growing, cultivating or harvesting of crops or other farm
69 products. Successful bidders shall take possession of their
70 leaseholds at the time authorized by the State Department of
71 Finance and Administration. However, rent shall be due no later
72 than the day upon which the lessee shall assume possession of the
73 leasehold, and shall be due on the anniversary date for each
74 following year of the lease. The State Department of Finance and
75 Administration may provide in any lease that rent shall be paid in
76 full in advance or paid in installments, as may be necessary or
77 appropriate. In addition, the State Department of Finance and
78 Administration may accept, and the lease may provide for,
79 assignments of federal, state, or other agricultural support
80 payments, growing crops or the proceeds from the sale thereof,
81 promissory notes, or any other good and valuable consideration
82 offered by any lessee to meet the rent requirements of the lease.
83 If a promissory note is offered by a lessee, it shall be secured
84 by a first lien on the crop of the lessee, or the proceeds from
85 the sale thereof. The lien shall be filed pursuant to Article 9
86 of the Mississippi Uniform Commercial Code and Section 1324 of the
87 Food Security Act of 1985, as enacted or amended. If the note is
88 not paid at maturity, it shall bear interest at the rate provided
89 for judgments and decrees in Section 75-17-7 from its maturity
90 date until the note is paid. The note shall provide for the
91 payment of all costs of collection and reasonable attorney's fees
92 if default is made in the payment of the note. The payment of
93 rent by promissory note or any means other than cash in advance
94 shall be subject to the approval of the Public Procurement Review
95 Board, which shall place the approval of record in the minutes of
96 the board. There is created a special fund to be designated as
97 "the Prison Agricultural Enterprises Fund." Any monies in hand or

98 due from the leasing of Penitentiary lands and the sales of timber
99 as provided in Section 47-5-56 and earmarked for the Prison
100 Industries Fund shall be deposited to the special fund for prison
101 agricultural enterprises. All monies in each fiscal year derived
102 from the leasing of the Penitentiary lands and the sales of timber
103 as provided in Section 47-5-56 shall be deposited into the special
104 fund for the purpose of conducting, operating and managing the
105 prison agricultural enterprises of the department. All profits
106 derived from the prison agricultural enterprises shall be
107 deposited into the Prison Agricultural Enterprises Fund. All
108 profits derived from prison industries shall be placed in a
109 special fund in the State Treasury to be known as the Prison
110 Industries Funds, to be appropriated each year by the Legislature
111 to the nonprofit corporation, which is required to be organized
112 under the provisions of Section 47-5-535, for the purpose of
113 operating and managing the prison industries. The state shall
114 have the rights and remedies for the security and collection of
115 the rents given by law to landlords. Upon the execution of the
116 agricultural leases to private entities as authorized by Section
117 47-5-64, the leased land shall be liable to be taxed as other
118 lands are taxed during the continuance of the lease, but in case
119 of sale thereon for taxes, only the title of the leaseholder or
120 his heirs or assigns shall pass by the sale. Any funds obtained
121 by the corporation as a result of sale of goods and services
122 manufactured and provided by it shall be accounted for separate
123 and apart from any funds received by the corporation through
124 appropriation from the State Legislature. All nonappropriated
125 funds generated by the corporation shall not be subject to
126 appropriation by the State Legislature.

127 (2) The corrections auditor of the Joint Legislative
128 Committee on Performance Evaluation and Expenditure Review (PEER),
129 as appointed in Section 47-5-35, shall audit any land leased to a

130 private entity, as authorized in this section, in the following
131 areas:

132 (a) Use of the land;

133 (b) Improvements made upon the land; and

134 (c) Revenue received by the state from the leasing of
135 the land.

136 The corrections auditor shall make a report regarding his
137 findings before December 31 of each year to the Chairmen of the
138 Corrections Committees of the House of Representatives and Senate
139 and the Commissioner of Corrections.

140 (3) This section shall be repealed from and after July 1,
141 2004.

142 **SECTION 3.** This act shall take effect and be in force from
143 and after July 1, 2004.