

By: Senator(s) Huggins, Gordon

To: Local and Private

SENATE BILL NO. 3211

1 AN ACT TO DELETE THE SEPTEMBER 30, 2004, REPEAL DATE ON THE
2 LEGISLATION 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, Local and Private Laws of 1997, is
8 amended as follows:

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

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

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

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

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

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

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

26 (3) (a) A contract for private incarceration shall not be
27 entered into unless the cost of the private operation, including
28 the county's cost for monitoring the private operation, offers a

29 cost savings of at least ten percent (10%) to the board of
30 supervisors for at least the same level and quality of service
31 offered by the sheriff.

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

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

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

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

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

61 (3) Private jailers, who have been appropriately certified
62 as determined by the contracting agency and trained pursuant to
63 the provisions of subsection (4), shall have the right to carry
64 and use firearms and shall exercise such authority and may use
65 deadly force to prevent an act that could result in death or
66 serious bodily injury to oneself or to another person.

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

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

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

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

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

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

92 (iii) The insurance is adequate to assure the
93 contractor's ability to fulfill its contract with the county in

all respects, and to assure that the contractor is not limited in this ability because of financial liability which results from judgments; and

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

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

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

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

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

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

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

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

138 (2) Any person violating this section shall be guilty of a
139 misdemeanor and punished by a fine of not less than Five Hundred
140 Dollars (\$500.00) but not more than One Thousand Dollars
141 (\$1,000.00).

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