

By: Representative Mayo

To: Corrections

## HOUSE BILL NO. 90

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 Fund," 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 2006.

142           **SECTION 3.** This act shall take effect and be in force from  
143 and after July 1, 2005.