

By: Representative Mayo

To: Corrections

HOUSE BILL NO. 90  
(As Passed the House)

1 AN ACT TO AMEND SECTION 47-5-64, MISSISSIPPI CODE OF 1972, TO  
2 INCREASE FROM THREE TO FOUR YEARS THE MAXIMUM LEASE TERM FOR WHICH  
3 THE COMMISSIONER OF CORRECTIONS MAY LEASE LAND OF DEPARTMENT OF  
4 CORRECTIONS FOR AGRICULTURAL PURPOSES; TO AMEND SECTION 47-5-66,  
5 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE DEPARTMENT OF  
6 FINANCE AND ADMINISTRATION TO HOLD AUCTIONS FOR AGRICULTURAL  
7 LEASES TO PRIVATE ENTITIES; TO REQUIRE THE DEPARTMENT OF FINANCE  
8 AND ADMINISTRATION TO FACTOR FEDERAL GOVERNMENT PAYMENTS IN  
9 LEASES; TO AUTHORIZE THE CORRECTIONS AUDITOR OF THE JOINT  
10 LEGISLATIVE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE  
11 REVIEW (PEER) TO MAKE A YEARLY REPORT TO THE CHAIRMEN OF THE  
12 CORRECTIONS COMMITTEES AND COMMISSIONER OF CORRECTIONS REGARDING  
13 LEASED LAND; TO REQUIRE THE DEPARTMENT OF FINANCE AND  
14 ADMINISTRATION TO LEASE TO CERTAIN CURRENT VENDORS AT THE FARMERS'  
15 MARKET SPACE FOR NOT MORE THAN THREE YEARS; AND FOR RELATED  
16 PURPOSES.

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

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

20 47-5-64. The Mississippi Commissioner of Corrections is  
21 hereby directed to determine the number of acres and location of  
22 land under its jurisdiction which are needed for security purposes  
23 and for Prison Agricultural Enterprises. The Commissioner of  
24 Corrections shall designate and reserve such additional land for  
25 agricultural enterprise projects of the Department of Corrections,  
26 as he deems necessary. The Mississippi Commissioner of  
27 Corrections shall then recommend to the Department of Finance and  
28 Administration the number of acres of department land which should  
29 be leased to private entities and the term of the leases. The  
30 Department of Finance and Administration shall have the authority  
31 to lease for agricultural purposes that land so recommended for  
32 not less than one (1) nor more than four (4) years, with the  
33 approval of the Public Procurement Review Board.

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

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

67 leasehold premises after receiving approval of the State  
68 Department of Finance and Administration during the term of the  
69 existing lease. For purposes of this subsection, the term  
70 improvements shall not include any work or items that are done  
71 customarily on an annual basis in the preparing, planting,  
72 growing, cultivating or harvesting of crops or other farm  
73 products. All bidders who submit a bid as prescribed in this  
74 section must include a farm practice plan when submitting such  
75 bid. Successful bidders shall take possession of their leaseholds  
76 at the time authorized by the State Department of Finance and  
77 Administration. However, rent shall be due no later than the day  
78 upon which the lessee shall assume possession of the leasehold,  
79 and shall be due on the anniversary date for each following year  
80 of the lease. The State Department of Finance and Administration  
81 may provide in any lease that rent shall be paid in full in  
82 advance or paid in installments, as may be necessary or  
83 appropriate. In addition, the State Department of Finance and  
84 Administration may accept, and the lease may provide for,  
85 assignments of federal, state, or other agricultural support  
86 payments, growing crops or the proceeds from the sale thereof,  
87 promissory notes, or any other good and valuable consideration  
88 offered by any lessee to meet the rent requirements of the lease.  
89 However, the Department of Finance and Administration, shall  
90 consider any federal government payments that are received by a  
91 lessee, and such payments shall be factored into the lease  
92 agreement before such agreement is entered into by the state and  
93 such lessee. In addition, the Department of Finance and  
94 Administration shall conduct a cost-benefit analysis with respect  
95 to such federal government payments as compared to the terms of  
96 any proposed lease, and such analysis must weigh in favor of the  
97 best interests of the taxpayers of the state before such proposed  
98 lease may be approved. If a promissory note is offered by a  
99 lessee, it shall be secured by a first lien on the crop of the

100 lessee, or the proceeds from the sale thereof. The lien shall be  
101 filed pursuant to Article 9 of the Mississippi Uniform Commercial  
102 Code and Section 1324 of the Food Security Act of 1985, as enacted  
103 or amended. If the note is not paid at maturity, it shall bear  
104 interest at the rate provided for judgments and decrees in Section  
105 75-17-7 from its maturity date until the note is paid. The note  
106 shall provide for the payment of all costs of collection and  
107 reasonable attorney's fees if default is made in the payment of  
108 the note. The payment of rent by promissory note or any means  
109 other than cash in advance shall be subject to the approval of the  
110 Public Procurement Review Board, which shall place the approval of  
111 record in the minutes of the board. There is created a special  
112 fund to be designated as the "Prison Agricultural Enterprises  
113 Fund." Any monies in hand or due from the leasing of Penitentiary  
114 lands and the sales of timber as provided in Section 47-5-56 and  
115 earmarked for the Prison Industries Fund shall be deposited to the  
116 special fund for prison agricultural enterprises. All monies in  
117 each fiscal year derived from the leasing of the Penitentiary  
118 lands and the sales of timber as provided in Section 47-5-56 shall  
119 be deposited into the special fund for the purpose of conducting,  
120 operating and managing the prison agricultural enterprises of the  
121 department. All profits derived from the prison agricultural  
122 enterprises shall be deposited into the Prison Agricultural  
123 Enterprises Fund. All profits derived from prison industries  
124 shall be placed in a special fund in the State Treasury to be  
125 known as the "Prison Industries Fund," to be appropriated each  
126 year by the Legislature to the nonprofit corporation, which is  
127 required to be organized under the provisions of Section 47-5-535,  
128 for the purpose of operating and managing the prison industries.  
129 The state shall have the rights and remedies for the security and  
130 collection of the rents given by law to landlords. Upon the  
131 execution of the agricultural leases to private entities as  
132 authorized by Section 47-5-64, the leased land shall be liable to

133 be taxed as other lands are taxed during the continuance of the  
134 lease, but in case of sale thereon for taxes, only the title of  
135 the leaseholder or his heirs or assigns shall pass by the sale.  
136 Any funds obtained by the corporation as a result of sale of goods  
137 and services manufactured and provided by it shall be accounted  
138 for separate and apart from any funds received by the corporation  
139 through appropriation from the State Legislature. All  
140 nonappropriated funds generated by the corporation shall not be  
141 subject to appropriation by the State Legislature.

142 (2) The corrections auditor of the Joint Legislative  
143 Committee on Performance Evaluation and Expenditure Review (PEER),  
144 as appointed in Section 47-5-35, may audit any land leased to a  
145 private entity, as authorized in this section, in the following  
146 areas:

147 (a) Use of the land;

148 (b) Improvements made upon the land; and

149 (c) Revenue received by the state from the leasing of  
150 the land.

151 The corrections auditor shall make a report regarding his  
152 findings before December 31 of each year to the Chairmen of the  
153 Corrections Committees of the House of Representatives and Senate  
154 and the Commissioner of Corrections.

155 (3) This section shall be repealed from and after July 1,  
156 2006.

157 **SECTION 3.** The Mississippi Department of Finance and  
158 Administration shall offer to lease to current vendors at the  
159 Farmers' Market at the location of North West Street and Woodrow  
160 Wilson their current or any available space at a fair market rate  
161 for a period of not more than three (3) years. The vendors shall  
162 be responsible for maintenance and utilities and shall have use of  
163 the cold storage facilities.

164 **SECTION 4.** This act shall take effect and be in force from  
165 and after July 1, 2005.