

Senate Amendments to House Bill No. 90

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

33 47-5-66. (1) It shall be the duty of the State Department
34 of Finance and Administration, with the approval of the Public
35 Procurement Review Board, to lease lands at public contract upon
36 the submission of two (2) or more sealed bids to the State
37 Department of Finance and Administration after having advertised
38 the land for rent in newspapers of general circulation published
39 in Jackson, Mississippi; Memphis, Tennessee; the county in which
40 the land is located; and contiguous counties for a period of not

41 less than two (2) successive weeks. The first publication shall
42 be made not less than ten (10) days before the date of the public
43 contract, and the last publication shall be made not more than
44 seven (7) days before that date. The State Department of Finance
45 and Administration may reject any and all bids. Bids received in
46 response to the advertisement shall be opened at the State
47 Department of Finance and Administration. The State Department of
48 Finance and Administration, at its option, may reject all bids or
49 accept the highest and best bid received in response to the
50 advertisement, or the State Department of Finance and
51 Administration may hold an auction among those who submitted bids
52 in response to the advertisement. If the State Department of
53 Finance and Administration elects to hold an auction, no bidder
54 shall be granted any preference. The opening bid at the auction
55 shall be the highest bid received in response to the
56 advertisement. If the State Department of Finance and
57 Administration receives an acceptable bid in response to the
58 advertisement and elects not to hold an auction among those
59 submitting bids, then the holder of the existing lease may submit
60 a second bid in an amount not less than one hundred five percent
61 (105%) of the highest acceptable bid received if the holder of the
62 existing lease: (a) submitted a bid in response to the
63 advertisement, and (b) constructed or made improvements on the
64 leasehold premises after receiving approval of the State
65 Department of Finance and Administration during the term of the
66 existing lease. For purposes of this subsection, the term
67 improvements shall not include any work or items that are done
68 customarily on an annual basis in the preparing, planting,
69 growing, cultivating or harvesting of crops or other farm
70 products. All bidders who submit a bid as prescribed in this
71 section must include a farm practice plan when submitting such
72 bid. Successful bidders shall take possession of their leaseholds
73 at the time authorized by the State Department of Finance and
74 Administration. However, rent shall be due no later than the day
75 upon which the lessee shall assume possession of the leasehold,

76 and shall be due on the anniversary date for each following year
77 of the lease. The State Department of Finance and Administration
78 may provide in any lease that rent shall be paid in full in
79 advance or paid in installments, as may be necessary or
80 appropriate. In addition, the State Department of Finance and
81 Administration may accept, and the lease may provide for,
82 assignments of federal, state, or other agricultural support
83 payments, growing crops or the proceeds from the sale thereof,
84 promissory notes, or any other good and valuable consideration
85 offered by any lessee to meet the rent requirements of the lease.
86 However, the Department of Finance and Administration shall
87 consider any federal government payments that are received by a
88 lessee, and such payments shall be factored into the lease
89 agreement before such agreement is entered into by the state and
90 such lessee. In addition, the Department of Finance and
91 Administration shall conduct a cost-benefit analysis with respect
92 to such federal government payments as compared to the terms of
93 any proposed lease, and such analysis must weigh in favor of the
94 best interests of the taxpayers of the state before such proposed
95 lease may be approved. If a promissory note is offered by a
96 lessee, it shall be secured by a first lien on the crop of the
97 lessee, or the proceeds from the sale thereof. The lien shall be
98 filed pursuant to Article 9 of the * * * Uniform Commercial Code
99 and Section 1324 of the Food Security Act of 1985, as enacted or
100 amended. If the note is not paid at maturity, it shall bear
101 interest at the rate provided for judgments and decrees in Section
102 75-17-7 from its maturity date until the note is paid. The note
103 shall provide for the payment of all costs of collection and
104 reasonable attorney's fees if default is made in the payment of
105 the note. The payment of rent by promissory note or any means
106 other than cash in advance shall be subject to the approval of the
107 Public Procurement Review Board, which shall place the approval of
108 record in the minutes of the board. There is created a special
109 fund to be designated as the "Prison Agricultural Enterprises
110 Fund." Any monies in hand or due from the leasing of Penitentiary

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

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

144 (a) Use of the land;

145 (b) Improvements made upon the land; and

146 (c) Revenue received by the state from the leasing of
147 the land.

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

152 * * *

153 **SECTION 3.** This act shall take effect and be in force from
154 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 47-5-64, MISSISSIPPI CODE OF 1972, TO
2 INCREASE FROM 3 TO 8 YEARS THE MAXIMUM LEASE TERM FOR WHICH THE
3 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; AND FOR RELATED PURPOSES.

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John O. Gilbert
Secretary of the Senate