

By: Representatives Robinson (84th), Malone,
Snowden, Young

To: Local and Private
Legislation

HOUSE BILL NO. 1764

1 AN ACT TO AMEND CHAPTER 964, LOCAL AND PRIVATE LAWS OF 1996,
2 TO INCREASE THE NUMBER OF BEDS FROM 1,000 TO 1,500 THAT ARE
3 AUTHORIZED FOR THE EAST MISSISSIPPI CORRECTIONAL FACILITY
4 AUTHORITY TO CONTRACT FOR THE HOUSING OF STATE INMATES IN
5 LAUDERDALE COUNTY; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Chapter 964, Local and Private Laws of 1996, is
8 amended as follows:

9 Section 1. As used in this act, unless the context otherwise
10 requires:

11 (a) "American Correctional Association Standards" means
12 standards promulgated by the American Correctional Association as
13 in effect from time to time.

14 (b) "Authority" means the East Mississippi Correctional
15 Facility Authority.

16 (c) "Board of commissioners" means the Board of
17 Commissioners of the Authority.

18 (d) "Board of supervisors" means the board of
19 supervisors of the county.

20 (e) "County" means Lauderdale County, Mississippi.

21 (f) "Equipment" means any personal property which the
22 authority determines is necessary or helpful for the operation of
23 a facility.

24 (g) "Facility" means a jail, prison or other
25 incarceration facility located in the county which is constructed,
26 acquired or operated pursuant to this act.

27 (h) "Management contract" means a contract between the
28 authority and a private contractor for the operation and
29 management of a facility by a private contractor.

30 (i) "Private contractor" means a person or legal entity
31 which leases or subleases a facility from the authority or has
32 entered into a management contract with the authority pursuant to
33 this act.

34 (j) "State" means the State of Mississippi.

35 Section 2. (1) There is created in the county a public body
36 corporate and politic to be known as the "East Mississippi
37 Correctional Facility Authority." The authority shall not
38 transact any business or exercise any powers under this act until
39 the board of supervisors adopts a resolution finding that it is in
40 the public interest to have the authority exercise the powers set
41 forth in this act. The resolution shall designate the manner in
42 which funds of the authority in excess of amounts needed to pay
43 the authority's operating expenses and debt service will be
44 applied, provided that none of the excess funds of the authority
45 may inure to the benefit of any private person.

46 (2) Alternatively, the board of supervisors may by
47 resolution designate a nonprofit corporation incorporated under
48 the general laws of the state to exercise the powers of the
49 authority set forth in this act, in which event the board of
50 supervisors may take all actions necessary for the nonprofit
51 corporation to be treated as acting on behalf of the county under
52 the Internal Revenue Code. The nonprofit corporation shall have,
53 in addition to the powers and authority generally exercisable by
54 nonprofit corporations in the state, all powers and authority
55 granted to the authority under this act and shall be deemed to be
56 a charitable society, for purposes of Section 27-31-1, Mississippi
57 Code of 1972. All provisions of this act applicable to
58 obligations, agreements, contracts and property of, and purchases
59 by, contracting with and leasing or conveyance of property to an

60 authority shall be applicable to obligations, agreements,
61 contracts and property of, and purchases by, contracting with and
62 leasing or conveyance of property to the nonprofit corporation.

63 Section 3. Nothing in this act shall authorize payment of
64 tax revenues or other public funds of the county to the authority.

65 Section 4. The authority shall exist until dissolved
66 pursuant to a resolution adopted by the board of supervisors.
67 Upon dissolution of the authority, title to all property owned by
68 the authority shall vest in the county. Dissolution of the
69 authority shall not adversely affect the rights of any holders of
70 obligations issued by the authority, including, but not limited
71 to, any bonds, notes or other evidences of indebtedness issued by
72 the authority or the rights of any parties to contracts with the
73 authority including, but not limited to, leases, lease purchase
74 agreements and management contracts entered into before the date
75 of dissolution of the authority. A dissolution shall not be
76 effective at any time that any bonds, notes or other evidence of
77 indebtedness of the authority, including, but not limited to,
78 lease-purchase agreements, shall be outstanding, except to the
79 extent permitted in the documents executed in connection with the
80 initial issuance of the bonds, notes or other indebtedness.

81 Section 5. (1) All powers of the authority shall be
82 exercised by its board of commissioners to be composed of the
83 following:

84 (a) Three (3) members appointed by the Lauderdale
85 County Board of Supervisors; and

86 (b) Two (2) members appointed by the governing
87 authorities of the City of Meridian.

88 (2) The initial members of the board shall serve for terms
89 of office as follows:

90 (a) One (1) member appointed by the Lauderdale County
91 Board of Supervisors shall serve for a term of three (3) years.

92 (b) One (1) member appointed by the Lauderdale County
93 Board of Supervisors shall serve for a term of two (2) years.

94 (c) One (1) member appointed by the Lauderdale County
95 Board of Supervisors shall serve for a term of one (1) year.

96 (d) One (1) member appointed by the governing
97 authorities of the City of Meridian shall serve for a term of
98 three (3) years.

99 (e) One (1) member appointed by the governing
100 authorities of the City of Meridian shall serve for a term of two
101 (2) years.

102 The term of each initial appointee shall begin on the first
103 day of the next month after the date that all initial appointees
104 have been appointed.

105 After the expiration of the initial terms, all subsequent
106 appointments shall be made for terms of four (4) years from the
107 expiration date of the previous term. Any vacancy that may occur
108 shall be filled in the same manner as the original appointment and
109 shall be made for the unexpired term.

110 (3) The members of the board shall elect annually from among
111 themselves the officers of president, vice president, secretary
112 and treasurer. The board shall adopt bylaws, rules and
113 regulations as may be necessary to govern the time, place and
114 manner for holding subsequent meetings of the board and for the
115 conduct of its business, not inconsistent with the provisions of
116 this act. All meetings of the board shall be conducted in
117 accordance with Section 25-41-1 et seq., Mississippi Code of 1972.
118 Any action taken by the board of directors shall be official at
119 the time the action is taken. Actions may be taken by the board
120 of directors at any regular, special or recessed meeting.

121 (4) The members of the board shall serve without
122 compensation and shall meet at least once quarterly at a time and
123 place determined by the board. The board shall keep minutes of

124 its proceedings as necessary to carry out its responsibilities. A
125 quorum of the board shall consist of three (3) members.

126 (5) A board member may be removed, upon recommendation by a
127 vote of three (3) of the board members and approval by the
128 governing body which made the appointment.

129 (6) The authority may employ an executive director,
130 technical experts and other agents and employees, permanent and
131 temporary, as it may require, and may determine their
132 qualifications, duties and compensation.

133 Section 6. The authority shall have all the powers necessary
134 or convenient to effectuate and carry out the provisions of this
135 act, including the following powers in addition to others granted
136 in this act:

137 (a) To have perpetual succession as a body politic and
138 corporate exercising essential public functions until dissolved
139 pursuant to Section 4 of this act;

140 (b) To sue and be sued in its own name;

141 (c) To have an official seal and alter it at will;

142 (d) To adopt, appeal and amend bylaws, rules and
143 regulations, not inconsistent with this act, to regulate its
144 affairs and conduct its business;

145 (e) To maintain one or more offices at a place or
146 places within the county as it may designate;

147 (f) To make and execute contracts and all other
148 instruments necessary or convenient for the performance of its
149 duties and the exercise of its powers under this act;

150 (g) To employ architects, engineers, contractors,
151 developers, attorneys, inspectors, accountants, financial advisors
152 and any other advisors, consultants and agents as may be
153 necessary, in its judgment, to carry out its powers under this
154 act, and to fix their compensation;

155 (h) To procure insurance against any loss in connection
156 with its property and other assets, in amounts and from insurers

157 as it may deem advisable, and to pay premiums on any such
158 insurance;

159 (i) To construct, purchase, receive, lease,
160 lease-purchase, or otherwise acquire, own, hold, improve or use a
161 facility or any item of equipment, and to enter into agreements
162 relating thereto, including, but not limited to, sale and issuance
163 of certificates of participation, which may extend for a period of
164 time, notwithstanding any provision or rule of law to the
165 contrary, and provide for the consideration and other terms and
166 conditions that are acceptable to the authority and are not in
167 conflict with the provisions of this act, without regard to any
168 general laws of the state regulating public purchases and
169 acquisitions or restricting the time periods of agreements;

170 (j) To lease a facility or any item of equipment to a
171 private contractor for rentals and upon the terms and conditions
172 that are acceptable to the authority and are not in conflict with
173 the provisions of this act, without regard to any general laws of
174 the state regulating the disposition or conveyance of an interest
175 in public property;

176 (k) To operate and manage a facility in accordance with
177 the provisions of this act and to take all actions necessary in
178 connection therewith, or alternatively to contract with a private
179 contractor to operate and manage a facility in accordance with the
180 provisions of this act;

181 (l) To borrow money and issue its obligations therefor
182 for the purpose of carrying out its powers under this act, at
183 rates of interest and upon terms and conditions that are
184 acceptable to the authority and are not in conflict with the
185 provisions of this act, without regard to any general laws of the
186 state regulating the borrowing of money or issuance of obligations
187 by public bodies, provided that any obligations issued by the
188 authority shall be payable solely out of revenues received by the
189 authority in connection with the operation or lease of a facility

190 and shall never constitute a debt or obligation of the county or
191 the state;

192 (m) In connection with borrowing money and issuance of
193 obligations as set forth in the preceding paragraphs (i) and (l),
194 in Section 13 of this act, and elsewhere in this act, to pledge or
195 assign its property, assets and revenues, enter into trust
196 indentures, deeds of trust, mortgages and security agreements,
197 contract for bond insurance and other credit enhancement devices,
198 and to take any other action and enter into any other agreements
199 as the authority deems necessary or appropriate, all on terms and
200 conditions that are acceptable to the authority and are not in
201 conflict with the provisions of this act, without regard to any
202 provision or rule of law which would otherwise be applicable
203 thereto; and

204 (n) To contract with the United States and its
205 territories or any state or states or any political subdivision
206 thereof to provide for housing, care and control in a facility of
207 offenders who are in the custody of the jurisdiction, who do not
208 have histories of escape, and who are sentenced to terms of
209 incarceration for conviction of a felony, or who are sentenced to
210 terms of incarceration for a misdemeanor, provided that the
211 incarceration in the facility for a misdemeanor is consistent with
212 American Correctional Association Standards relating to the
213 incarceration of offenders convicted of more serious offenses, to
214 enter into agreements relating thereto which may extend for time
215 periods that are acceptable to the parties, notwithstanding any
216 provision or rule of law to the contrary, and to exercise all
217 powers necessary or desirable in connection with the operation of
218 a prison or other type of correctional facility, including, but
219 not limited to, the power to incarcerate offenders described
220 above.

221 Section 7. (1) A facility shall be designed, constructed,
222 operated and maintained in accordance with American Correctional

223 Association Standards. The facility shall meet the percentage of
224 standards required for accreditation by the American Correctional
225 Association, except where a contract with a private contractor
226 requires compliance with a higher percentage of nonmandatory
227 standards.

228 (2) The facility shall comply with all constitutional
229 standards of the United States and the state and with all court
230 orders applicable to the facility.

231 Section 8. (1) A person shall not be employed as a
232 corrections officer at the facility unless the person has been
233 trained in the use of force and firearms in accordance with
234 American Correctional Association Standards. If a person is
235 employed as a corrections officer by a private contractor that is
236 operating a facility pursuant to a management contract, the
237 private contractor shall cause the required training to be
238 provided at its own expense.

239 (2) A corrections officer employed at the facility shall not
240 use force or firearms except while on the grounds of a facility or
241 while transporting offenders of a facility and then only under the
242 circumstances set forth in subsections (3) and (4) of this
243 section.

244 (3) A corrections officer shall not use force except such
245 nondeadly force as is reasonably necessary in the following
246 situations:

247 (a) To prevent the commission of a felony or
248 misdemeanor, including escape;

249 (b) To defend himself or others against physical
250 assault;

251 (c) To prevent serious damage to property;

252 (d) To enforce facility regulations and orders; and

253 (e) To prevent or quell a riot.

254 (4) A corrections officer shall not use firearms or other

255 deadly force except as a last resort when reasonably necessary to
256 prevent the commission of a violent felony, to prevent the escape
257 of a convicted felon from custody, or to defend the officer or any
258 other person from imminent danger of death or serious bodily
259 injury.

260 (5) A private contractor shall have the same standing,
261 authority, rights and responsibilities as the authority in any
262 agreement, formal or informal, with local law enforcement agencies
263 concerning the latter's obligations in the event of a riot, escape
264 or other emergency situation involving the facility. To the
265 extent provided in any management contract, a private contractor
266 may exercise the powers granted to the authority under this act.

267 Section 9. Any offense which would be a crime if committed
268 within a correctional institution operated by the state shall be a
269 crime if committed in the facility.

270 Section 10. (1) Neither the state nor the county shall
271 assume jurisdiction or custody of any federal offenders or
272 offenders from other states who are incarcerated in the facility.
273 The offenders shall remain subject to the jurisdiction of the
274 United States or another state, as applicable. Neither the state
275 nor the county shall be liable for loss or injury resulting from
276 the acts of the offenders, nor shall the state or the county be
277 liable for any injuries to the offenders.

278 (2) Neither the state nor the county shall be liable for any
279 actions taken by the authority or a private contractor in
280 connection with the facility, nor shall they be liable for any
281 debt incurred or obligations issued by the authority.

282 Section 11. (1) The facility shall at all times be operated
283 and managed by a private contractor pursuant to a management
284 contract unless the board of commissioners determines that the
285 operation and management by a private contractor is not feasible
286 or desirable. The terms and conditions of a management contract
287 shall be approved by the board of commissioners.

288 (2) A management contract may authorize a private contractor
289 to contract on behalf of the authority for the incarceration of
290 offenders in the facility as set forth in Section 6(n) of this act
291 and shall grant the private contractor any other powers that are
292 necessary or convenient for the operation and management of the
293 facility and are consistent with the provisions of this act,
294 including, but not limited to, the power to employ personnel who
295 are needed for the operation and management of a facility and to
296 provide or cause to be provided the training in the use of force
297 and firearms required by Section 8(1) of this act.

298 (3) A management contract shall provide that any sovereign
299 immunity of the state, any sovereign immunity of the county, any
300 sovereign immunity of the municipality or any sovereign immunity
301 of the authority shall not extend to the private contractor.
302 Neither the private contractor nor any insurer of the private
303 contractor may plead the defense of sovereign immunity in any
304 action arising out of or related to the performance of the
305 management contract.

306 (4) A management contract shall provide that the private
307 contractor shall be responsible for the reimbursement of all costs
308 and expenses incurred by the state, the county or the authority in
309 connection with legal actions brought in the state by or on behalf
310 of any offender incarcerated in the facility, including, but not
311 limited to, court costs, sheriff's fees, witness fees, district
312 attorney expenses, expenses of the Office of the Attorney General,
313 indigent or public defender fees and expenses, judicial expenses,
314 court reporter expenses and damage awards.

315 (5) A management contract shall provide that the private
316 contractor shall indemnify and hold harmless the authority, the
317 county and the state, and any officers, members, employees or
318 agents of the foregoing, for any claim or liability for damage or
319 injury to any person or property related to or arising from the
320 operation and management of a facility, including, but not limited

321 to, liability for loss or injury resulting from the acts of
322 offenders incarcerated at the facility and liability for any
323 injuries to the offenders.

324 (6) A management contract may contain any other provisions
325 the authority deems necessary or appropriate, including, but not
326 limited to, provisions that may be necessary to cause the
327 management contract to comply with promulgations of the Internal
328 Revenue Service applicable to the contract.

329 Section 12. Neither the state, the county nor the authority,
330 nor any members, officers, employees or agents of the foregoing,
331 shall be liable for a private contractor's actions or failure to
332 act while operating and managing a facility pursuant to a
333 management contract.

334 Section 13. (1) The authority may enter into lease
335 agreements with a person or legal entity pursuant to which the
336 authority may agree to lease the facility or equipment for use by
337 the authority for a primary term not to exceed thirty (30) years.
338 All lease agreements may contain terms and conditions as the Board
339 of Commissioners of the Authority shall determine to be
340 appropriate and in the public interest, including, but not limited
341 to, any provision which a master lease-purchase agreement may
342 contain pursuant to Section 31-7-10(5), Mississippi Code of 1972,
343 may provide for the payment of lease payments which include an
344 interest component computed at a rate or rates as shall be
345 approved by the board of commissioners, may include an annual
346 allocation dependency clause, may contain an option granting to
347 the authority the right to purchase the leased property upon the
348 expiration of the primary term, or upon an earlier date that may
349 be agreed upon by the parties, at a price as set forth in or
350 computed in accordance with the lease agreement and may provide
351 that all or any obligations thereunder are payable from specified
352 revenues pledged as security therefor.

353 (2) The authority may lease publicly owned real property to
354 a person or legal entity for the purpose of enabling the person or
355 legal entity to construct a facility on the property and to lease
356 the facility to the authority. A ground lease shall not be for a
357 primary term in excess of twice the primary term of the lease with
358 respect to the facility to be constructed on the real property.
359 Any public body in the state may lease, sell or otherwise convey
360 property to the authority without consideration or for
361 consideration as the governing body of the public body shall
362 determine to be appropriate under the circumstances, and to enter
363 into agreements with the authority relating thereto, which
364 agreements may extend over any period of time, notwithstanding any
365 provision or rule of law to the contrary.

366 (3) This section shall be full and complete authority for
367 the authorization, execution and delivery of lease agreements
368 authorized under this act, and none of the restrictions,
369 requirements, conditions and limitations of the general law of the
370 state applicable to acquisition, construction and drawing of
371 buildings or facilities shall apply to lease agreements under this
372 section, and all powers necessary to carry out the provisions of
373 this section are conferred upon the authority.

374 Section 14. All obligations, including, but not limited to,
375 bonds, notes, lease-purchase agreements and other evidence of
376 indebtedness issued by the authority pursuant to this act and all
377 interest payable thereunder or with respect thereto, all leases,
378 trust indentures, deeds of trust, mortgages, security agreements
379 and other contracts or agreements entered into pursuant to this
380 act, and all purchases required to construct the facility or to
381 acquire equipment shall be exempt from all taxation in the state,
382 including, but not limited to, sales taxes and the contractor's
383 tax imposed by Section 27-65-21, Mississippi Code of 1972. As
384 provided by general law applicable to political subdivisions of
385 the state, a facility and the revenues derived from its operation

386 shall also be exempt from all taxation in the state, including,
387 but not limited to, all ad valorem taxes levied by the state or
388 any political subdivision thereof.

389 Section 15. This act shall be full and complete authority of
390 the exercise of all powers and authority granted herein and no
391 requirements or restrictions of law which would otherwise be
392 applicable to acts of the authority shall be applicable except as
393 expressly provided herein. No debt of the authority shall be
394 considered to be debt of the county or any other political
395 subdivision of the state for purposes of any provision or rule of
396 law restricting the amount of indebtedness of the county or such
397 other political subdivision or for any other purpose under the
398 laws of the state.

399 Section 16. In addition to any other authority granted by
400 law, the Department of Corrections may contract with the East
401 Mississippi Correctional Facility Authority for the private
402 incarceration of not more than one thousand five hundred (1,500)
403 state inmates at a facility in Lauderdale County. Any such
404 contract must comply with the provisions of Sections 47-5-1211
405 through 47-5-1227.

406 Section 17. This act shall take effect and be in force from
407 and after its passage.

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