

By: Representative Clark

To: Corrections

HOUSE BILL NO. 308

1 AN ACT TO CREATE A SECTION TO PROHIBIT THE COMMISSIONER OF
 2 THE DEPARTMENT OF CORRECTIONS FROM HOUSING OFFENDERS IN PRIVATE
 3 CORRECTIONAL FACILITIES UNLESS THE COMMISSIONER ALLOWS A CERTAIN
 4 NUMBER OF INMATES TO PARTICIPATE IN JOINT STATE-COUNTY WORK
 5 PROGRAMS; TO AMEND SECTIONS 47-4-1, 47-4-11, 47-5-941, 47-5-943
 6 AND 47-5-1211, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
 7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** From the effective date of this act, the
 10 Commissioner of Corrections is prohibited from housing offenders
 11 in private correctional facilities unless the commissioner
 12 utilizes a minimum of ten percent (10%) of its eligible
 13 incarcerated offenders in joint state-county work programs that
 14 the Department of Corrections has agreed to provide offenders for
 15 such work programs.

16 **SECTION 2.** Section 47-4-1, Mississippi Code of 1972, is
 17 amended as follows:

18 47-4-1. (1) It is lawful for there to be located within
 19 Wilkinson County and Leflore County a correctional facility
 20 operated entirely by a private entity pursuant to a contractual



21 agreement between such private entity and the federal government,
22 any state, or a political subdivision of any state to provide
23 correctional services to any such public entity for the
24 confinement of inmates subject to the jurisdiction of such public
25 entity. Any person confined in such a facility pursuant to the
26 laws of the jurisdiction from which he is sent shall be considered
27 lawfully confined within this state. The private entity shall
28 assume complete responsibility for the inmates and shall be liable
29 to the State of Mississippi for any illegal or tortious actions of
30 such inmates.

31 (2) The Department of Corrections shall contract with the
32 Board of Supervisors of Leflore County for the private
33 incarceration of not more than one thousand (1,000) state inmates
34 at a facility in Leflore County. Any contract must comply with
35 the requirements of Section 47-5-1211 through Section 47-5-1227.

36 (3) It is lawful for any county to contract with a private
37 entity for the purpose of providing correctional services for the
38 confinement of federal inmates subject to the jurisdiction of the
39 United States. Any person confined in such a facility pursuant to
40 the laws of the United States shall be considered lawfully
41 confined within this state. The private entity shall assume
42 complete responsibility for the inmates and shall be liable to the
43 county or the State of Mississippi, as the case may be, for any
44 illegal or tortious actions of the inmates.



45 (4) It is lawful for there to be located within any county a
46 correctional facility operated entirely by a private entity and
47 the federal government to provide correctional services to the
48 United States for the confinement of federal inmates subject to
49 the jurisdiction of the United States. Any person confined in a
50 facility pursuant to the laws of the United States shall be
51 considered lawfully confined within this state. The private
52 entity shall assume complete responsibility for the inmates and
53 shall be liable to the State of Mississippi for any illegal or
54 tortious actions of the inmates.

55 A person convicted of simple assault on an employee of a
56 private correctional facility while such employee is acting within
57 the scope of his or her duty or employment shall be punished by a
58 fine of not more than One Thousand Dollars (\$1,000.00) or by
59 imprisonment for not more than five (5) years, or both.

60 A person convicted of aggravated assault on an employee of a
61 private correctional facility while such employee is acting within
62 the scope of his or her duty or employment shall be punished by a
63 fine of not more than Five Thousand Dollars (\$5,000.00) or by
64 imprisonment for not more than thirty (30) years, or both.

65 (5) The Department of Corrections may contract with the
66 Tallahatchie County Correctional Facility authorized in Chapter
67 904, Local and Private Laws of 1999, for the private incarceration
68 of not more than one thousand (1,000) state inmates at a facility
69 in Tallahatchie County. Any contract must comply with the



70 requirements of Section 47-5-1211 through Section 47-5-1227. No
71 state inmate shall be assigned to the Tallahatchie County
72 Correctional Facility unless the inmate cost per day is at least
73 ten percent (10%) less than the inmate cost per day for housing a
74 state inmate at a state correctional facility.

75 (6) If a private entity houses state inmates, the private
76 entity shall not displace state inmate beds with federal inmate
77 beds unless the private entity has obtained prior written approval
78 from the Commissioner of Corrections.

79 (7) It is lawful for there to be located within Leflore
80 County a correctional facility operated entirely by a private
81 entity pursuant to a contractual agreement between such private
82 entity and the federal government, the State of Mississippi, or
83 Leflore County for the incarceration of federal inmates. Such
84 correctional facility may include a separate Leflore County jail
85 which may be located on or adjacent to the correctional facility
86 site. To further the provisions of this subsection:

87 (a) Any private entity, the State of Mississippi, or
88 Leflore County may enter into any agreement regarding real
89 property or property, including, but not limited to, a lease, a
90 ground lease and leaseback arrangement, a sublease or any other
91 lease agreement or arrangement, as lessor or lessee. Such
92 agreements shall not exceed forty (40) years. The Department of
93 Corrections may enter such agreements or arrangements on behalf of
94 the State of Mississippi;



95 (b) The powers conferred under this subsection shall be
96 additional and supplemental to the powers conferred by any other
97 law. Where the provisions of this subsection conflict with other
98 law, this subsection shall control; and

99 (c) The private entity shall assume complete
100 responsibility for the inmates and shall be liable to the State of
101 Mississippi for any illegal or tortious actions of the inmates.

102 (8) From the effective date of this act, the Commissioner of
103 Corrections is prohibited from housing offenders in private
104 correctional facilities unless the commissioner utilizes a minimum
105 of ten percent (10%) of its eligible incarcerated offenders in
106 joint state-county work programs that the Department of
107 Corrections has agreed to provide offenders for such work
108 programs.

109 **SECTION 3.** Section 47-4-11, Mississippi Code of 1972, is
110 amended as follows:

111 47-4-11. Subject to the restriction provided under Section 1
112 of this act, in order for the Mississippi Department of
113 Corrections to manage funds budgeted and allocated in its
114 Contractual Services budget category, the commissioner of the
115 department shall have the authority to amend, extend and/or renew
116 the term of any lease agreement or any inmate housing agreement in
117 connection with a private correctional facility. Notwithstanding
118 any statutory limits to the contrary, such amendment, extension
119 and/or renewal may be for a length of time up to and including ten



120 (10) years as is necessary for the continued operations of such
121 facilities and implementation of the department's duties and
122 responsibilities in accordance with Title 47 of the Mississippi
123 Code of 1972, as amended.

124 **SECTION 4.** Section 47-5-941, Mississippi Code of 1972, is
125 amended as follows:

126 47-5-941. (1) In addition to any other authority granted by
127 law, the Department of Corrections may contract with the Wilkinson
128 County industrial development or economic development authority
129 for the private incarceration of not more than one thousand
130 (1,000) state inmates at a facility in Wilkinson County. Any such
131 contract must comply with Sections 47-5-1211 through 47-5-1227.

132 (2) From the effective date of this act, the Commissioner of
133 Corrections is prohibited from housing offenders in private
134 correctional facilities unless the commissioner utilizes a minimum
135 of ten percent (10%) of its eligible incarcerated offenders in
136 joint state-county work programs that the Department of
137 Corrections has agreed to provide offenders for such work
138 programs.

139 **SECTION 5.** Section 47-5-943, Mississippi Code of 1972, is
140 amended as follows:

141 47-5-943. (1) The Mississippi Department of Corrections may
142 contract with the Walnut Grove Correctional Authority or the
143 governing authorities of the Municipality of Walnut Grove, Leake
144 County, Mississippi, to provide for the private housing, care and



145 control of not more than one thousand five hundred (1,500)
146 offenders who are in the custody of the Department of Corrections
147 at a maximum security facility in Walnut Grove. A county or
148 circuit judge shall not order any offender to be housed in the
149 correctional facility authorized in Sections 47-5-943 through
150 47-5-953. Commitment of offenders shall not be to this facility,
151 but shall be to the jurisdiction of the department. The
152 commissioner shall assign newly sentenced offenders to an
153 appropriate facility consistent with public safety. Any facility
154 owned or leased by the Walnut Grove Correctional Authority or the
155 Municipality of Walnut Grove for this purpose shall be designed,
156 constructed, operated and maintained in accordance with American
157 Correctional Association standards, and shall comply with all
158 constitutional standards of the United States and the State of
159 Mississippi and with all court orders that may now or hereinafter
160 be applicable to the facility. The contract must comply with
161 Sections 47-5-1211 through 47-5-1227.

162 (2) From the effective date of this act, the Commissioner of
163 Corrections is prohibited from housing offenders in private
164 correctional facilities unless the commissioner utilizes a minimum
165 of ten percent (10%) of its eligible incarcerated offenders in
166 joint state-county work programs that the Department of
167 Corrections has agreed to provide offenders for such work
168 programs.



169 **SECTION 6.** Section 47-5-1211, Mississippi Code of 1972, is
170 amended as follows:

171 47-5-1211. (1) A contract for private correctional
172 facilities or services shall not be entered into unless the
173 contractor has demonstrated that it has:

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

176 (b) The ability to expedite the siting, design and
177 construction of correctional facilities.

178 (c) The ability to comply with applicable laws, court
179 orders and national correctional standards.

180 (d) Demonstrated history of successful operation and
181 management of other correctional facilities.

182 (2) A facility shall at all times comply with all federal
183 and state laws, and all applicable court orders.

184 (3) (a) No contract for private incarceration shall be
185 entered into unless the cost of the private operation, including
186 the state's cost for monitoring the private operation, offers a
187 cost savings of at least ten percent (10%) to the Department of
188 Corrections for at least the same level and quality of service
189 offered by the Department of Corrections.

190 (b) Beginning in 2012, and every two (2) years
191 thereafter, the Joint Legislative Committee on Performance
192 Evaluation and Expenditure Review (PEER) shall contract with a
193 certified public accounting firm to establish a state inmate cost



194 per day using financial information of the Department of
195 Corrections for the most recently completed fiscal year. The
196 state inmate cost per day shall be certified as required by this
197 section. The certified cost shall be used as the basis for
198 measuring the validity of the ten percent (10%) savings of the
199 contractor costs.

200 (c) Prior to engaging a certified public accountant,
201 the PEER Committee, in conjunction with the Department of
202 Corrections, shall develop a current cost-based model that will
203 serve as a basis for the report produced as authorized by this
204 section.

205 (4) The rates and benefits for correctional services shall
206 be negotiated based upon American Correction Association
207 standards, state law and court orders.

208 (5) From the effective date of this act, the Commissioner of
209 Corrections is prohibited from housing offenders in private
210 correctional facilities unless the commissioner utilizes a minimum
211 of ten percent (10%) of its eligible incarcerated offenders in
212 joint state-county work programs that the Department of
213 Corrections has agreed to provide offenders for such work
214 programs.

215 **SECTION 7.** Section 1 of this act shall be codified in
216 Chapter 4, Title 47, Mississippi Code of 1972.

217 **SECTION 8.** This act shall take effect and be in force from
218 and after its passage.

