

By: Representative Hood (By Request)

To: Corrections

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1470

1 AN ACT TO CREATE A SECTION TO PROVIDE THAT NO CONTRACT FOR
2 PRIVATE INCARCERATION SHALL BE ENTERED INTO BY THE DEPARTMENT OF
3 CORRECTIONS FOR THE PRIVATE INCARCERATION OF STATE OFFENDERS
4 UNLESS THE DEPARTMENT FIRST UTILIZES ALL REGIONAL CORRECTIONAL
5 FACILITIES FOR THE HOUSING OF SUCH OFFENDERS; TO PROVIDE THAT
6 CONTRACTS MAY ONLY BE ENTERED INTO BY THE DEPARTMENT FOR THE
7 PRIVATE INCARCERATION OF STATE OFFENDERS ONCE THE MAXIMUM CAPACITY
8 HAS BEEN REACHED FOR THE HOUSING OF STATE OFFENDERS IN ALL
9 REGIONAL CORRECTIONAL FACILITIES; TO AMEND SECTIONS 47-4-1,
10 47-4-11, 47-5-941, 47-5-943, 47-5-1211 AND 47-5-1213, MISSISSIPPI
11 CODE OF 1972, TO CONFORM WITH THE PRECEDING SECTION; AND FOR
12 RELATED PURPOSES.

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

14 **SECTION 1.** From the effective date of this act, no contract
15 for private incarceration shall be entered into by the Department
16 of Corrections for private incarceration of state offenders unless
17 the department first utilizes all regional correctional facilities
18 for the housing of such offenders. Contracts may only be entered
19 into by the department for private incarceration of state
20 offenders once the maximum capacity has been reached for housing
21 state offenders in all regional correctional facilities.

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



24 47-4-1. (1) It is lawful for there to be located within
25 Wilkinson County and Leflore County a correctional facility
26 operated entirely by a private entity pursuant to a contractual
27 agreement between such private entity and the federal government,
28 any state, or a political subdivision of any state to provide
29 correctional services to any such public entity for the
30 confinement of inmates subject to the jurisdiction of such public
31 entity. Any person confined in such a facility pursuant to the
32 laws of the jurisdiction from which he is sent shall be considered
33 lawfully confined within this state. The private entity shall
34 assume complete responsibility for the inmates and shall be liable
35 to the State of Mississippi for any illegal or tortious actions of
36 such inmates.

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

42 (3) It is lawful for any county to contract with a private
43 entity for the purpose of providing correctional services for the
44 confinement of federal inmates subject to the jurisdiction of the
45 United States. Any person confined in such a facility pursuant to
46 the laws of the United States shall be considered lawfully
47 confined within this state. The private entity shall assume
48 complete responsibility for the inmates and shall be liable to the



49 county or the State of Mississippi, as the case may be, for any
50 illegal or tortious actions of the inmates.

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

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

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

71 (5) The Department of Corrections may contract with the
72 Tallahatchie County Correctional Facility authorized in Chapter
73 904, Local and Private Laws of 1999, for the private incarceration



74 of not more than one thousand (1,000) state inmates at a facility
75 in Tallahatchie County. Any contract must comply with the
76 requirements of Section 47-5-1211 through Section 47-5-1227. No
77 state inmate shall be assigned to the Tallahatchie County
78 Correctional Facility unless the inmate cost per day is at least
79 ten percent (10%) less than the inmate cost per day for housing a
80 state inmate at a state correctional facility.

81 (6) If a private entity houses state inmates, the private
82 entity shall not displace state inmate beds with federal inmate
83 beds unless the private entity has obtained prior written approval
84 from the Commissioner of Corrections.

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

93 (a) Any private entity, the State of Mississippi, or
94 Leflore County may enter into any agreement regarding real
95 property or property, including, but not limited to, a lease, a
96 ground lease and leaseback arrangement, a sublease or any other
97 lease agreement or arrangement, as lessor or lessee. Such
98 agreements shall not exceed forty (40) years. The Department of



99 Corrections may enter such agreements or arrangements on behalf of
100 the State of Mississippi;

101 (b) The powers conferred under this subsection shall be
102 additional and supplemental to the powers conferred by any other
103 law. Where the provisions of this subsection conflict with other
104 law, this subsection shall control; and

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

108 (8) From the effective date of this act, no contract for
109 private incarceration shall be entered into by the Department of
110 Corrections for the private incarceration of state offenders
111 unless the department first utilizes all regional correctional
112 facilities for the housing of such offenders. Contracts may only
113 be entered into by the department for the private incarceration of
114 state offenders once the maximum capacity has been reached for
115 housing state offenders in all regional correctional facilities.

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

118 47-4-11. Subject to the restriction provided under Section 1
119 of this act, in order for the Mississippi Department of
120 Corrections to manage funds budgeted and allocated in its
121 Contractual Services budget category, the commissioner of the
122 department shall have the authority to amend, extend and/or renew
123 the term of any lease agreement or any inmate housing agreement in



124 connection with a private correctional facility. Notwithstanding
125 any statutory limits to the contrary, such amendment, extension
126 and/or renewal may be for a length of time up to and including ten
127 (10) years as is necessary for the continued operations of such
128 facilities and implementation of the department's duties and
129 responsibilities in accordance with Title 47 of the Mississippi
130 Code of 1972, as amended.

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

133 47-5-941. (1) In addition to any other authority granted by
134 law, the Department of Corrections may contract with the Wilkinson
135 County industrial development or economic development authority
136 for the private incarceration of not more than one thousand
137 (1,000) state inmates at a facility in Wilkinson County. Any such
138 contract must comply with Sections 47-5-1211 through 47-5-1227.

139 (2) From the effective date of this act, no contract for
140 private incarceration shall be entered into by the Department of
141 Corrections for the private incarceration of state offenders
142 unless the department first utilizes all regional correctional
143 facilities for the housing of such offenders. Contracts may only
144 be entered into by the department for the private incarceration of
145 state offenders once the maximum capacity has been reached for
146 housing state offenders in all regional correctional facilities.

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



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

170 (2) From the effective date of this act, no contract for
171 private incarceration shall be entered into by the Department of
172 Corrections for the private incarceration of state offenders
173 unless the department first utilizes all regional correctional



174 facilities for the housing of such offenders. Contracts may only
175 be entered into by the department for the private incarceration of
176 state offenders once the maximum capacity has been reached for
177 housing state offenders in all regional correctional facilities.

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

180 47-5-1211. (1) A contract for private correctional
181 facilities or services shall not be entered into unless the
182 contractor has demonstrated that it has:

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

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

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

189 (d) Demonstrated history of successful operation and
190 management of other correctional facilities.

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

193 (3) (a) No contract for private incarceration shall be
194 entered into unless the cost of the private operation, including
195 the state's cost for monitoring the private operation, offers a
196 cost savings of at least ten percent (10%) to the Department of
197 Corrections for at least the same level and quality of service
198 offered by the Department of Corrections.



199 (b) Beginning in 2012, and every two (2) years
200 thereafter, the Joint Legislative Committee on Performance
201 Evaluation and Expenditure Review (PEER) shall contract with a
202 certified public accounting firm to establish a state inmate cost
203 per day using financial information of the Department of
204 Corrections for the most recently completed fiscal year. The
205 state inmate cost per day shall be certified as required by this
206 section. The certified cost shall be used as the basis for
207 measuring the validity of the ten percent (10%) savings of the
208 contractor costs.

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

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

217 (5) From the effective date of this act, no contract for
218 private incarceration shall be entered into by the Department of
219 Corrections for the private incarceration of state offenders
220 unless the department first utilizes all regional correctional
221 facilities for the housing of such offenders. Contracts may only
222 be entered into by the department for the private incarceration of



223 state offenders once the maximum capacity has been reached for
224 housing state offenders in all regional correctional facilities.

225 **SECTION 7.** Section 47-5-1213, Mississippi Code of 1972, is
226 amended as follows:

227 47-5-1213. (1) The initial contract for the operation of a
228 facility or for incarceration of inmates therein shall be for a
229 period of not more than five (5) years with an option to renew for
230 an additional period of two (2) years. Contracts for
231 construction, purchase, or lease of a facility shall not exceed a
232 term of twenty (20) years. Such contracts shall provide that the
233 contractor shall convey the facility to the state, at the option
234 of the state, for a total consideration of One Dollar (\$1.00).
235 Any contract for housing shall be subject to annual appropriation
236 by the Legislature.

237 (2) From the effective date of this act, no contract for
238 private incarceration shall be entered into by the Department of
239 Corrections for the private incarceration of state offenders
240 unless the department first utilizes all regional correctional
241 facilities for the housing of such offenders. Contracts may only
242 be entered into by the department for the private incarceration of
243 state offenders once the maximum capacity has been reached for
244 housing state offenders in all regional correctional facilities.

245 **SECTION 8.** Section 1 of this act shall be codified in
246 Chapter 4, Title 47, Mississippi Code of 1972.



247 **SECTION 9.** This act shall take effect and be in force from
248 and after July 1, 2019, and shall stand repealed from and after
249 June 30, 2019.

