HOUSE BILL NO. 103

AN ACT TO CREATE A SECTION TO PROHIBIT THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS FROM HOUSING OFFENDERS IN PRIVATE CORRECTIONAL FACILITIES UNLESS THE COMMISSIONER ALLOWS A CERTAIN NUMBER OF INMATES TO PARTICIPATE IN JOINT STATE-COUNTY WORK PROGRAMS; TO AMEND SECTIONS 47-4-1, 47-4-11, 47-5-471, 47-5-941, 47-5-943, 47-5-1211 AND 47-5-1213, MISSISSIPPI CODE OF 1972, TO CONFORM WITH THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(3) It is lawful for any county to contract with a private entity for the purpose of providing correctional services for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in such a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the county or the State of Mississippi, as the case may be, for any illegal or tortious actions of the inmates.
(4) It is lawful for there to be located within any county a correctional facility operated entirely by a private entity and the federal government to provide correctional services to the United States for the confinement of federal inmates subject to the jurisdiction of the United States. Any person confined in a facility pursuant to the laws of the United States shall be considered lawfully confined within this state. The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

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

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

(5) The Department of Corrections may contract with the Tallahatchie County Correctional Facility authorized in Chapter 904, Local and Private Laws of 1999, for the private incarceration of not more than one thousand (1,000) state inmates at a facility in Tallahatchie County. Any contract must comply with the
requirements of Section 47-5-1211 through Section 47-5-1227. No state inmate shall be assigned to the Tallahatchie County Correctional Facility unless the inmate cost per day is at least ten percent (10%) less than the inmate cost per day for housing a state inmate at a state correctional facility.

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

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

(a) Any private entity, the State of Mississippi, or Leflore County may enter into any agreement regarding real property or property, including, but not limited to, a lease, a ground lease and leaseback arrangement, a sublease or any other lease agreement or arrangement, as lessor or lessee. Such agreements shall not exceed forty (40) years. The Department of Corrections may enter such agreements or arrangements on behalf of the State of Mississippi;
(b) The powers conferred under this subsection shall be additional and supplemental to the powers conferred by any other law. Where the provisions of this subsection conflict with other law, this subsection shall control; and
(c) The private entity shall assume complete responsibility for the inmates and shall be liable to the State of Mississippi for any illegal or tortious actions of the inmates.

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

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

47-4-11. Subject to the restriction provided under Section 1 of this act, in order for the Mississippi Department of Corrections to manage funds budgeted and allocated in its Contractual Services budget category, the commissioner of the department shall have the authority to amend, extend and/or renew the term of any lease agreement or any inmate housing agreement in connection with a private correctional facility. Notwithstanding any statutory limits to the contrary, such amendment, extension and/or renewal may be for a length of time up to and including ten
(10) years as is necessary for the continued operations of such
facilities and implementation of the department's duties and
responsibilities in accordance with Title 47 of the Mississippi
Code of 1972, as amended.

SECTION 4. Section 47-5-471, Mississippi Code of 1972, is
amended as follows:

47-5-471. Subject to the restriction provided under Section
1 of this act, upon the request of any county for eligible
inmates, the Department of Corrections shall make available for
participation in the state-county work program in the requesting
county any eligible inmates. Upon request and approval of such
request by the Department of Corrections, the requesting county
shall arrange for transportation of such inmates from the
Department of Corrections to such county. Upon receiving any
inmates, the county shall be responsible for all expenses related
to housing and caring for such inmates. The Department of
Corrections shall not be obligated to pay the county for any costs
associated with housing or caring for such inmates, while the
inmates are in the custody of the county for the purposes of the
state-county work program. Regardless of any eligibility criteria
established by the Department of Corrections, no inmate convicted
of a sex crime, a crime of violence as defined by Section 97-3-2,
or any other crime which specifically prohibits parole shall be
eligible for participation in the program. The requesting county
may, in its sole discretion, refuse any inmate deemed to present
an undue risk to such county.

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

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

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

SECTION 6. Section 47-5-943, Mississippi Code of 1972, is
amended as follows:

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

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

SECTION 7. Section 47-5-1211, Mississippi Code of 1972, is
amended as follows:
47-5-1211. (1) A contract for private correctional facilities or services shall not be entered into unless the contractor has demonstrated that it has:

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

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

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

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

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

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

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

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

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

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

SECTION 8. Section 47-5-1213, Mississippi Code of 1972, is amended as follows:

47-5-1213. (1) The initial contract for the operation of a facility or for incarceration of inmates therein shall be for a period of not more than five (5) years with an option to renew for an additional period of two (2) years. Contracts for
construction, purchase, or lease of a facility shall not exceed a term of twenty (20) years. Such contracts shall provide that the contractor shall convey the facility to the state, at the option of the state, for a total consideration of One Dollar ($1.00).

Any contract for housing shall be subject to annual appropriation by the Legislature.

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

SECTION 9. Section 1 of this act shall be codified in Chapter 4, Title 47, Mississippi Code of 1972.

SECTION 10. This act shall take effect and be in force from and after its passage.