

By: Representative Horan

To: Corrections

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 863

1 AN ACT TO BRING FORWARD SECTIONS 47-5-531 THROUGH 47-5-575,
2 MISSISSIPPI CODE OF 1972, WHICH ESTABLISHES THE MISSISSIPPI PRISON
3 INDUSTRIES ACT OF 1990, FOR THE PURPOSES OF AMENDMENT; TO BRING
4 FORWARD SECTION 47-5-1251, MISSISSIPPI CODE OF 1972, WHICH CREATES
5 THE PRISON INDUSTRY ENHANCEMENT PROGRAM, FOR THE PURPOSES OF
6 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 47-5-531, Mississippi Code of 1972, is
9 brought forward as follows:

10 47-5-531. Sections 47-5-531 through 47-5-575 shall be known
11 as the "Mississippi Prison Industries Act of 1990."

12 **SECTION 2.** Section 47-5-533, Mississippi Code of 1972, is
13 brought forward as follows:

14 47-5-533. (1) It is the finding of the Legislature that
15 prison industry programs of the State Department of Corrections
16 are uniquely different from other programs operated or conducted
17 by other departments in that it is essential to the state that the
18 prison industry programs provide inmates with useful activities
19 that can lead to meaningful employment after release in order to
20 assist in reducing the return of inmates to the system.



21 (2) It is further the finding of the Legislature that the
22 mission of a prison industry program is:

23 (a) To reduce the cost of state government by operating
24 prison industries primarily with inmate labor, which industries do
25 not seek to unreasonably compete with private enterprise;

26 (b) To serve the rehabilitative goals of the state by
27 duplicating as nearly as possible, the operating activities of a
28 free-enterprise type of profit-making enterprise; and

29 (c) To serve the security goals of the state by
30 reducing the idleness of inmates and by providing an incentive for
31 good behavior while in prison.

32 **SECTION 3.** Section 47-5-535, Mississippi Code of 1972, is
33 brought forward as follows:

34 47-5-535. (1) Except as otherwise specifically provided by
35 law, it is the intent of the Legislature that a nonprofit
36 corporation be organized and formed, within sixty (60) days from
37 April 4, 1990, to lease and manage the prison industry programs of
38 the Mississippi Correctional Industries. The corporation created
39 and established shall be a body politic and corporate, may acquire
40 and hold real and personal property, may receive, hold and
41 dispense monies appropriated to it by the Legislature of the State
42 of Mississippi received from the federal government, received from
43 the sale of products, goods, and services which it produces, and
44 received from any other sources whatsoever.



45 (2) Except as otherwise specifically provided by law, it is
46 the further intent of the Legislature that the nonprofit
47 corporation shall create any additional prison industry program as
48 it deems fit, and any such program shall be created in compliance
49 with the provisions of Sections 47-5-531 through 47-5-575.

50 (3) Except as otherwise specifically provided by law, it is
51 the further intent of the Legislature that such nonprofit
52 corporation shall have exclusive rights to operate any prison
53 industry program and when such corporation is lawfully formed, no
54 other public or private entity shall be allowed to carry out the
55 provisions of Sections 47-5-531 through 47-5-575.

56 (4) It is the further intent of the Legislature, that the
57 nonprofit corporation which is required to be organized and formed
58 under Sections 47-5-531 through 47-5-575 shall locate and operate
59 prison industries at any state correctional facility with the
60 approval of the Commissioner of Corrections. It is the intent of
61 the Legislature that the nonprofit corporation locate and operate
62 such industries in an orderly and expeditious manner. Such
63 corporation may locate and operate prison industries at other
64 prison satellites, at community work centers in the state, at any
65 private correctional facility which houses state inmates and at
66 any regional correctional facility as authorized under Section
67 47-5-931. No industrial prison program shall be located at a site
68 other than state prison facilities approved by the commissioner.



69 (5) It is the further intent of the Legislature that the
70 nonprofit corporation shall not have any rights to operate a
71 program under the prison agricultural enterprises and shall not
72 create a prison industry program that duplicates a prison
73 agricultural enterprises program or product.

74 (6) It is the further intent of the Legislature that the
75 department retain exclusive rights to conduct all prison
76 agricultural and related enterprises.

77 **SECTION 4.** Section 47-5-537, Mississippi Code of 1972, is
78 brought forward as follows:

79 47-5-537. The Secretary of State, or his designee, shall
80 assist the Department of Corrections and the Department of Finance
81 and Administration in the formation of the nonprofit corporation,
82 and within sixty (60) days after the formation of the corporation,
83 the corporation shall apply for exemption from federal tax under
84 the provisions of Section 501(c)(3) of the Internal Revenue Code
85 of 1986, as amended. Any program of the Division of Vocational
86 Rehabilitation of the State Department of Human Services shall not
87 be classified as prison industries under the provisions Sections
88 47-5-531 through 47-5-575.

89 **SECTION 5.** Section 47-5-539, Mississippi Code of 1972, is
90 brought forward as follows:

91 47-5-539. For the purposes of Sections 47-5-531 through
92 47-5-575, the following terms shall have the following meanings
93 unless the context shall provide otherwise:



94 (a) "Corporation" means the private nonprofit
95 corporation which is required to be organized and formed to carry
96 out the provisions of Sections 47-5-531 through 47-5-575 regarding
97 prison industries.

98 (b) "Department" means the State Department of
99 Corrections.

100 (c) "Inmate" means any person incarcerated within any
101 state correctional facility.

102 (d) "Prison industry program" means any program which
103 is considered to be a part of any prison industry in this state.

104 (e) "Prison agricultural enterprises" means all
105 agricultural endeavors as defined in Section 47-5-353.

106 **SECTION 6.** Section 47-5-541, Mississippi Code of 1972, is
107 brought forward as follows:

108 47-5-541. (1) The corporation shall be governed by a board
109 of directors. The board of directors of the nonprofit corporation
110 shall be composed of the following eleven (11) members who shall
111 be appointed by the Governor with the advice and consent of the
112 Senate: one (1) representative of the manufacturing industry, one
113 (1) representative of the agriculture industry, one (1)
114 representative of the banking and finance industry, one (1)
115 representative of the labor industry, one (1) representative from
116 the marketing industry and six (6) members from the state at
117 large. In addition, the State Commissioner of Corrections and the
118 President of Mississippi Delta Community College shall be ex



119 officio members of the board of directors with full voting
120 privileges. In making initial appointments, three (3) members
121 shall be appointed for a term of two (2) years; four (4) members
122 shall be appointed for a term of three (3) years; and four (4)
123 members shall be appointed for a term of four (4) years; to be
124 designated by the Governor at the time of appointment; and all
125 succeeding terms shall be for four (4) years from the expiration
126 date of the previous term. Initial appointments shall be made
127 within thirty (30) days after passage of Sections 47-5-531 through
128 47-5-575. Any vacancy shall be filled by the Governor, with the
129 advice and consent of the Senate. The officers of the corporation
130 shall consist of a chairman, vice chairman and a
131 secretary-treasurer. The officers shall be selected by the
132 members of the board. However, the Commissioner of Corrections
133 and the President of Mississippi Delta Community College shall not
134 be eligible to serve as an officer of the corporation.

135 (2) The board of directors shall select and employ a chief
136 executive officer of the corporation who shall serve at the
137 pleasure of the board. The board shall set the compensation of
138 the chief executive officer. The chief executive officer shall be
139 responsible for the general business and entire operations of the
140 corporation, and shall be responsible for operating the
141 corporation in compliance with the bylaws of the corporation and
142 in compliance with any provision of law. The board shall be
143 authorized and empowered to do only those acts provided by law and



144 by the bylaws of the corporation. Except as otherwise
145 specifically provided by law, such board shall have the authority
146 to establish prison industries, to cease the operation of any
147 industry which it deems unsuitable or unprofitable, to enter into
148 any lease or contract for the corporation and it shall have the
149 full authority to establish prices for any industry good.

150 (3) No member of the board of directors shall vote on any
151 matter that comes before the board that could result in pecuniary
152 benefit for himself or for any entity in which such member has an
153 interest.

154 (4) In addition to the board of directors, an advisory board
155 may be set up for the benefit of each industry which is
156 established pursuant to the provisions of Sections 47-5-531
157 through 47-5-575. Such boards shall be advisory only, and may be
158 set up in the discretion of the board of directors of the
159 corporation.

160 (5) Each member of the board of directors of the corporation
161 shall receive per diem as provided in Section 25-3-69 for each day
162 or fraction thereof spent in actual discharge of his official
163 duties and shall be reimbursed for mileage and actual expenses
164 incurred in the performance of his official duties in accordance
165 with the requirements of Section 25-3-41, Mississippi Code of
166 1972.

167 (6) The board of directors shall make and publish policies,
168 rules and regulations governing all business functions, including



169 but not limited to accounting, marketing, purchasing and
170 personnel, not inconsistent with the terms of Sections 47-5-531
171 through 47-5-575, as may be necessary for the efficient
172 administration and operation of the corporation.

173 (7) The chief executive officer of the corporation shall:

174 (a) Employ all necessary employees of the corporation
175 and dismiss them as is necessary;

176 (b) Administer the daily operations of the corporation;

177 (c) Upon approval of the board of directors, execute
178 any contracts on behalf of the corporation; and

179 (d) Take any further actions which are necessary and
180 proper toward the achievement of the corporation purposes.

181 (8) A member of the board of directors of the corporation
182 shall not be liable for any civil damages for any personal injury
183 or property damage caused to a person as a result of any acts or
184 omissions committed in good faith in the exercise of their duties
185 as members of the board of directors of the corporation, except
186 where a member of the board engages in acts or omissions which are
187 intentional, willful, wanton, reckless or grossly negligent.

188 **SECTION 7.** Section 47-5-543, Mississippi Code of 1972, is
189 brought forward as follows:

190 47-5-543. (1) Within sixty (60) days after the formation of
191 the corporation pursuant to the provisions of Section 47-5-535,
192 the State Department of Corrections shall lease to the corporation
193 all existing prison industries including the buildings, land,



194 furnishings, equipment and other chattel used in the operation of
195 such industries. Such lease shall be agreed upon by the State
196 Department of Corrections, State Department of Finance and
197 Administration and the corporation. The initial term of such
198 lease shall not exceed six (6) years, provided that such lease may
199 be renewed for additional successive terms of years not to exceed
200 six (6) years in any one (1) renewal. No sublease to the
201 corporation shall be in excess of that amount for which the
202 department is obligated to pay under any lease agreement with any
203 other state agency. Any receivable and remaining funds shall be
204 transferred to the corporation after the payment of any existing
205 liabilities. No operating loss of any type shall be transferred
206 to the corporation. The State Department of Corrections shall
207 continue to manage and operate the prison industries until such
208 industries are leased to the corporation. When leasing any prison
209 industry program to the corporation, the corporation shall
210 exercise a reasonable effort to employ any personnel of the State
211 Department of Corrections who are currently involved in any prison
212 industry program being leased to the corporation. Before the
213 leasing of the prison industries, buildings, lands and other items
214 mentioned herein to the corporation, the State Auditor of Public
215 Accounts shall perform a comprehensive audit of all the items and
216 things mentioned herein which are to be leased by the department
217 to the corporation. The corporation may expand, eliminate,
218 suspend or alter any of its industries as it sees fit.



219 (2) Any lands, buildings, equipment, furnishings, livestock,
220 supplies and vehicles used in the department's farming operations
221 which were leased or transferred to the nonprofit corporation
222 under subsection (1) shall be transferred to the department. Any
223 personnel in the department's farming operations employed by the
224 nonprofit corporation who desire to be reassigned to the
225 department and who are under state service may be reassigned to
226 the department.

227 (3) The department is not required to lease land, buildings,
228 equipment, furnishings or other chattel used in its prison
229 agricultural enterprises.

230 **SECTION 8.** Section 47-5-545, Mississippi Code of 1972, is
231 brought forward as follows:

232 47-5-545. Except as otherwise specifically provided by law,
233 after the commissioning and implementation of a marketing
234 feasibility study for any proposed new prison industry, the
235 corporation may establish such prison industry. Before any new
236 industry is established, the corporation shall hold a hearing to
237 determine the impact such industry may have on the private sector
238 market. The corporation shall provide adequate and advance notice
239 regarding the nature, time, date and place of such hearing. After
240 the hearing which is required under this section, the corporation
241 may commence negotiations with the State Department of
242 Corrections, with the Secretary of State, or his designee, serving



243 as a mediator, regarding the leasing of land and other chattels
244 for the purpose of establishing any new industry.

245 **SECTION 9.** Section 47-5-547, Mississippi Code of 1972, is
246 brought forward as follows:

247 47-5-547. Except as otherwise specifically provided by law,
248 any training program or auxiliary program associated with any
249 existing prison industry shall be transferred to the corporation.
250 The corporation is empowered and authorized to establish in
251 participation with the Mississippi Delta Community College, any
252 training or auxiliary program for existing prison industries or
253 for any industries which the corporation might create.

254 Mississippi Delta Community College shall provide assistance in
255 business planning, marketing and analysis of existing or projected
256 industries. These industrial services shall be contracted with
257 appropriate community colleges when these industries are developed
258 at other correction sites.

259 **SECTION 10.** Section 47-5-549, Mississippi Code of 1972, is
260 brought forward as follows:

261 47-5-549. Any service or item manufactured, processed, grown
262 or produced by the corporation from its prison industries may be
263 furnished or sold to any legislative, executive or judicial branch
264 of the state, any political subdivision or any governing authority
265 of the state, any other state, any school, college or university
266 of the state, any foreign government, any agency of the federal
267 government or to any private entity. The corporation shall make



268 reasonable efforts to purchase raw materials from in-state
269 vendors. The prices for industry-made products shall be
270 established by the board of directors of the corporation or its
271 designee.

272 **SECTION 11.** Section 47-5-551, Mississippi Code of 1972, is
273 brought forward as follows:

274 47-5-551. In the event the corporation is dissolved or its
275 lease of any prison industry program expires or is otherwise
276 terminated, all property relating to such prison industry program
277 which ceases to function because of such termination or
278 dissolution, including all funds, buildings, land, furnishings,
279 equipment and other chattels subsequently purchased or otherwise
280 acquired by the corporation in connection with its continued
281 operation of that program, automatically reverts to full ownership
282 by the department.

283 **SECTION 12.** Section 47-5-553, Mississippi Code of 1972, is
284 brought forward as follows:

285 47-5-553. Before any prison industry may commence
286 operations, the chief executive officer of the corporation must
287 communicate with the Commissioner of Corrections regarding the
288 proper security for the facility. If at anytime the Commissioner
289 of Corrections recognizes a need for improvement in the security
290 at any facility, then he or she shall communicate to the
291 corporation regarding what improvements are needed for the
292 facility to be properly secured. The corporation shall furnish



293 its own security within the parameters of any prison industry work
294 area.

295 **SECTION 13.** Section 47-5-555, Mississippi Code of 1972, is
296 brought forward as follows:

297 47-5-555. The department shall, subject to the necessary
298 security requirements and the needs of the corporation, provide to
299 the corporation sufficient inmate labor for the various prison
300 industry programs. The department may adopt rules and regulations
301 as may be necessary to govern the use of inmates by the
302 corporation. The corporation shall establish policies and
303 procedures, subject to the approval of the department, relating to
304 the use of inmates in the prison industry programs.

305 **SECTION 14.** Section 47-5-557, Mississippi Code of 1972, is
306 brought forward as follows:

307 47-5-557. Any inmate who performs work for the corporation,
308 except those inmates employed by the corporation in the Prison
309 Industry Enhancement Program under Section 47-5-1251, shall not be
310 deemed an agent, employee or involuntary servant of the
311 corporation while performing such work or while going to and from
312 work or other specified areas.

313 **SECTION 15.** Section 47-5-559, Mississippi Code of 1972, is
314 brought forward as follows:

315 47-5-559. The corporation shall submit to the Governor and
316 the Legislature, on or before January 1 of each year, a report on
317 the status of the correctional work programs, including but not



318 limited to the programs and funds which have been transferred to
319 the corporation, the programs and funds to be taken over within
320 the next year and the proposed use of the profits from such
321 programs, a breakdown of the amount of noninmate labor used, work
322 subcontracted to other vendors, use of consultants, finished goods
323 purchased for resale, and the number of inmates working in the
324 correctional work programs at the time of the report. In
325 addition, the corporation shall submit to the department, the
326 Governor and the Legislature an annual independently audited
327 financial statement and such other information as may be requested
328 by the Legislature together with recommendations from the
329 corporation relating to provisions for reasonable tax incentives
330 to private enterprises that employ inmates, parolees or former
331 inmates who have participated in correctional work programs. The
332 department shall include, as a portion of its annual report, a
333 report on post-release job placement and the rate of subsequent
334 contact with the correctional system for those inmates who have
335 participated in the correctional work programs operated by the
336 corporation and by the department. Beginning January 1, 1991, the
337 State Auditor shall conduct an annual financial audit of the
338 corporation in conjunction with an independent audit conducted by
339 the corporation's auditors. The State Auditor and the legislative
340 PEER committee shall also conduct a biennial performance audit of
341 the corporation for the period beginning January 1, 1991, through
342 January 1, 1993, and thereafter upon the joint request of the



343 Senate Corrections Committee, House Penitentiary Committee, Senate
344 Finance Committee, and House Ways and Means Committee.

345 **SECTION 16.** Section 47-5-561, Mississippi Code of 1972, is
346 brought forward as follows:

347 47-5-561. (1) In addition to its other powers, the
348 corporation shall have the power to request, through the
349 department, an appropriation of general revenue funds for the
350 purposes of operation of, addition to or renovation of facilities
351 or correctional work programs at the various correctional
352 institutions; however, upon receipt of such appropriation, the
353 rental paid by the corporation for the operation of or such new
354 remodeled or renovated facilities or the operation of a
355 correctional work program shall be sufficient to amortize its cost
356 over a period of five (5) years.

357 (2) The corporation shall maintain those prison industries
358 funds in excess of that amount necessary for sustaining quarterly
359 or monthly operations of the corporation in an interest-bearing
360 account best serving the proper management of corporation funds
361 and earning the maximum amount of interest allowed by law. The
362 corporation shall cause monies from the interest-bearing account
363 to be deposited quarterly or monthly into the corporation's
364 checking account in order to pay the legal debts of the
365 corporation, approved for payment by the corporation.

366 **SECTION 17.** Section 47-5-563, Mississippi Code of 1972, is
367 brought forward as follows:



368 47-5-563. (1) The department may adopt such rules as may be
369 necessary to govern the use of inmates by the corporation;
370 however, such rules shall be related only to the need for
371 security, inmate projections, and efficient operation of each
372 institution.

373 (2) The corporation, with the input of the department, shall
374 establish policies and procedures subject to the approval of the
375 department's legal counsel relating to the use of inmates in the
376 correctional work programs.

377 (3) All such policies and procedures adopted by the
378 department and the corporation shall be placed on file in the
379 Office of the Secretary of State.

380 **SECTION 18.** Section 47-5-565, Mississippi Code of 1972, is
381 brought forward as follows:

382 47-5-565. To carry out the provisions of Sections 47-5-531
383 through 47-5-575, the provisions of Sections 47-5-301 et seq., and
384 47-5-501 et seq., Mississippi Code of 1972, the corporation shall
385 authorize the transfer and expending of monies from the Prison
386 Industries Fund.

387 **SECTION 19.** Section 47-5-567, Mississippi Code of 1972, is
388 brought forward as follows:

389 47-5-567. Except as otherwise specifically provided by law,
390 no inmate shall be eligible for unemployment compensation or
391 workmen's compensation whether employed by the corporation or by
392 any other private enterprise operating on the grounds of a



393 correctional institution or elsewhere where such employment shall
394 be a part of a correctional work program or work release program
395 of either the corporation or the department.

396 **SECTION 20.** Section 47-5-569, Mississippi Code of 1972, is
397 brought forward as follows:

398 47-5-569. (1) Except as otherwise specifically provided by
399 law, if the department leases a single correctional work program
400 at any correctional institution to the corporation, the
401 corporation shall lease all such correctional work programs at
402 that institution. Any rent paid by the corporation to the
403 department shall be deposited in a correctional programs trust
404 fund for enhancement of education and training, post-release job
405 placement, and other correctional purposes related to the purposes
406 of Sections 47-5-531 through 47-5-575.

407 (2) All leases of department-owned land for the funding or
408 operations of the corporation shall be subject to the approval of
409 the corporation, the Mississippi Department of Corrections and the
410 Public Procurement Review Board.

411 (3) This section shall not apply to any program within the
412 prison agricultural enterprises operated by the department.

413 **SECTION 21.** Section 47-5-571, Mississippi Code of 1972, is
414 brought forward as follows:

415 47-5-571. Except as otherwise specifically provided by law,
416 no goods, wares, services or merchandise manufactured, mined or
417 offered in whole or in part by prisoners shall be sold or offered



418 by any person or other authority except by the corporation, as
419 authorized by Sections 47-5-531 through 47-5-575.

420 **SECTION 22.** Section 47-5-573, Mississippi Code of 1972, is
421 brought forward as follows:

422 47-5-573. (1) In adopting or modifying master plans for
423 correctional work programs, and in the administration of the
424 Department of Corrections, it shall be the objective of the
425 department to develop a logical sequence of vocational training,
426 employment by correctional work programs, and post-release job
427 placement for inmates participating in correctional work programs.

428 (2) The Department of Corrections shall establish guidelines
429 for the development of correctional work programs.

430 (3) The needs of the corporation shall be considered by the
431 department when assigning and transferring prisoners to
432 correctional institutions. The following criteria shall be used
433 when assigning and transferring inmates:

434 (a) Skills of the inmate relevant to the corporation's
435 industries;

436 (b) Security classification of the inmate relevant to
437 the type of corporation's industry;

438 (c) Duration of availability of the inmate for
439 employment by the corporation;

440 (d) Establishment of a concept of potentially
441 rehabilitative inmate.



442 **SECTION 23.** Section 47-5-575, Mississippi Code of 1972, is
443 brought forward as follows:

444 47-5-575. Any records or reports which relate to the
445 financial aspect or operations of the corporation, with the
446 exception of any trade secrets, shall be considered as public
447 records and shall be subject to the provisions of the Mississippi
448 Public Records Act of 1983.

449 **SECTION 24.** Section 47-5-1251, Mississippi Code of 1972, is
450 brought forward as follows:

451 47-5-1251. (1) There is created the "Prison Industry
452 Enhancement Program," through which the Department of Corrections
453 may contract with the nonprofit corporation organized and formed
454 under the "Mississippi Prison Industries Act of 1990" to employ
455 offenders within the custody of the department or prison
456 industries. The offenders must be under the supervision of the
457 department at all times while working. The offenders shall be
458 paid, by the entity or entities, wages at a rate which is not less
459 than that paid for similar work in the locality in which the work
460 is performed. The wages may be subject to deductions which shall
461 not, in the aggregate, exceed eighty percent (80%) of gross wages.
462 The deductions shall be limited to the following:

- 463 (a) To pay federal, state and local taxes;
- 464 (b) To pay reasonable charges for room and board as
465 determined by regulations issued by the Commissioner of
466 Corrections;



467 (c) To support the offender's family pursuant to state
468 statute, court order or agreement by the offender; and

469 (d) To pay contributions equaling not less than five
470 percent (5%) but not more than twenty percent (20%) of the
471 offender's gross wages into the Crime Victims' Compensation Fund
472 as created in Section 99-41-29.

473 (2) Notwithstanding any other provision of the law to the
474 contrary, the offenders shall not be qualified to receive any
475 payments for unemployment compensation while incarcerated.
476 However, the offenders shall not solely by their status as
477 offenders be deprived of the right to participate in benefits made
478 available by the federal or state government to other individuals
479 on the basis of their employment, such as workers' compensation.

480 (3) Offenders who participate in the employment must do so
481 voluntarily and must agree in advance to the specific deductions
482 made from gross wages pursuant to this section and to all other
483 financial arrangements or benefits resulting from participation in
484 the employment.

485 (4) The Department of Corrections shall develop rules and
486 regulations to meet the criteria established by the Bureau of
487 Justice Assistance under the Prison Industry Enhancement
488 Certification Program.

489 **SECTION 25.** This act shall take effect and be in force from
490 and after July 1, 2022, and shall be repealed from and after June
491 30, 2022.

