

By: Representatives Taylor, Karriem, Osborne To: Corrections

HOUSE BILL NO. 1109

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 AN EIGHTY PERCENT
 8 CAPACITY RATE HAS BEEN REACHED FOR THE HOUSING OF STATE OFFENDERS
 9 IN ALL 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 TO THE PRECEDING SECTION; AND FOR RELATED
 12 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 an eighty percent (80%) maximum capacity has been
 21 reached for housing state offenders in all regional correctional
 22 facilities.



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

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

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

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



48 confined within this state. The private entity shall assume
49 complete responsibility for the inmates and shall be liable to the
50 county or the State of Mississippi, as the case may be, for any
51 illegal or tortious actions of the inmates.

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

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

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



72 (5) The Department of Corrections may contract with the
73 Tallahatchie County Correctional Facility authorized in Chapter
74 904, Local and Private Laws of 1999, for the private incarceration
75 of not more than one thousand (1,000) state inmates at a facility
76 in Tallahatchie County. Any contract must comply with the
77 requirements of Section 47-5-1211 through Section 47-5-1227. No
78 state inmate shall be assigned to the Tallahatchie County
79 Correctional Facility unless the inmate cost per day is at least
80 ten percent (10%) less than the inmate cost per day for housing a
81 state inmate at a state correctional facility.

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

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

94 (a) Any private entity, the State of Mississippi, or
95 Leflore County may enter into any agreement regarding real
96 property or property, including, but not limited to, a lease, a



97 ground lease and leaseback arrangement, a sublease or any other
98 lease agreement or arrangement, as lessor or lessee. Such
99 agreements shall not exceed forty (40) years. The Department of
100 Corrections may enter such agreements or arrangements on behalf of
101 the State of Mississippi;

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

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

109 (8) From the effective date of this act, no contract for
110 private incarceration shall be entered into by the Department of
111 Corrections for the private incarceration of state offenders
112 unless the department first utilizes all regional correctional
113 facilities for the housing of such offenders. Contracts may only
114 be entered into by the department for the private incarceration of
115 state offenders once an eighty percent (80%) capacity rate has
116 been reached for housing state offenders in all regional
117 correctional facilities.

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

120 47-4-11. Subject to the restriction provided under Section 1
121 of this act, in order for the Mississippi Department of



122 Corrections to manage funds budgeted and allocated in its
123 Contractual Services budget category, the commissioner of the
124 department shall have the authority to amend, extend and/or renew
125 the term of any lease agreement or any inmate housing agreement in
126 connection with a private correctional facility. Notwithstanding
127 any statutory limits to the contrary, such amendment, extension
128 and/or renewal may be for a length of time up to and including ten
129 (10) years as is necessary for the continued operations of such
130 facilities and implementation of the department's duties and
131 responsibilities in accordance with Title 47 of the Mississippi
132 Code of 1972, as amended.

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

135 47-5-941. (1) In addition to any other authority granted by
136 law, the Department of Corrections may contract with the Wilkinson
137 County industrial development or economic development authority
138 for the private incarceration of not more than one thousand
139 (1,000) state inmates at a facility in Wilkinson County. Any such
140 contract must comply with Sections 47-5-1211 through 47-5-1227.

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



147 state offenders once an eighty percent (80%) capacity rate has
148 been reached for housing state offenders in all regional
149 correctional facilities.

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

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



171 be applicable to the facility. The contract must comply with
172 Sections 47-5-1211 through 47-5-1227.

173 (2) From the effective date of this act, no contract for
174 private incarceration shall be entered into by the Department of
175 Corrections for the private incarceration of state offenders
176 unless the department first utilizes all regional correctional
177 facilities for the housing of such offenders. Contracts may only
178 be entered into by the department for the private incarceration of
179 state offenders once an eighty percent (80%) capacity rate has
180 been reached for housing state offenders in all regional
181 correctional facilities.

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

184 47-5-1211. (1) A contract for private correctional
185 facilities or services shall not be entered into unless the
186 contractor has demonstrated that it has:

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

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

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

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



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

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

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

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



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

221 (5) From the effective date of this act, no contract for
222 private incarceration shall be entered into by the Department of
223 Corrections for the private incarceration of state offenders
224 unless the department first utilizes all regional correctional
225 facilities for the housing of such offenders. Contracts may only
226 be entered into by the department for the private incarceration of
227 state offenders once an eighty percent (80%) capacity rate has
228 been reached for housing state offenders in all regional
229 correctional facilities.

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

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



242 (2) From the effective date of this act, no contract for
243 private incarceration shall be entered into by the Department of
244 Corrections for the private incarceration of state offenders
245 unless the department first utilizes all regional correctional
246 facilities for the housing of such offenders. Contracts may only
247 be entered into by the department for the private incarceration of
248 state offenders once an eighty percent (80%) capacity rate has
249 been reached for housing state offenders in all regional
250 correctional facilities.

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

253 **SECTION 9.** This act shall take effect and be in force from
254 and after July 1, 2024.

