

By: Representative Clark

To: Corrections; County Affairs

HOUSE BILL NO. 358

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, 47-5-471, 47-5-941,
6 47-5-943, 47-5-1211 AND 47-5-1213, MISSISSIPPI CODE OF 1972, TO
7 CONFORM WITH THE PRECEDING SECTION; 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 eligible incarcerated
13 offenders in joint state-county work programs that the Department
14 of Corrections has agreed to provide offenders for such work
15 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 eligible incarcerated offenders in joint
106 state-county work programs that the Department of Corrections has
107 agreed to provide offenders for such work programs.

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

110 47-4-11. Subject to the restriction provided under Section 1
111 of this act, in order for the Mississippi Department of
112 Corrections to manage funds budgeted and allocated in its
113 Contractual Services budget category, the commissioner of the
114 department shall have the authority to amend, extend and/or renew
115 the term of any lease agreement or any inmate housing agreement in
116 connection with a private correctional facility. Notwithstanding
117 any statutory limits to the contrary, such amendment, extension
118 and/or renewal may be for a length of time up to and including ten
119 (10) years as is necessary for the continued operations of such



120 facilities and implementation of the department's duties and
121 responsibilities in accordance with Title 47 of the Mississippi
122 Code of 1972, as amended.

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

125 47-5-471. * * * Subject to the condition provided under
126 Section 1 of this act, the request of any county for eligible
127 inmates, the Department of Corrections shall make available for
128 participation in the state-county work program in the requesting
129 county any eligible inmates. Upon request and approval of such
130 request by the Department of Corrections, the requesting county
131 shall arrange for transportation of such inmates from the
132 Department of Corrections to such county. Upon receiving any
133 inmates, the county shall be responsible for all expenses related
134 to housing and caring for such inmates but shall be reimbursed by
135 the Department of Corrections at the rate prescribed under Section
136 47-5-901(2). Regardless of any eligibility criteria established
137 by the Department of Corrections, no inmate convicted of a sex
138 crime, a crime of violence as defined by Section 97-3-2, or any
139 other crime which specifically prohibits parole shall be eligible
140 for participation in the program. The requesting county may, in
141 its sole discretion, refuse any inmate deemed to present an undue
142 risk to such county.

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

145 47-5-941. (1) In addition to any other authority granted by
146 law, the Department of Corrections may contract with the Wilkinson
147 County industrial development or economic development authority
148 for the private incarceration of not more than one thousand
149 (1,000) state inmates at a facility in Wilkinson County. Any such
150 contract must comply with Sections 47-5-1211 through 47-5-1227.

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

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

159 47-5-943. (1) The Mississippi Department of Corrections may
160 contract with the Walnut Grove Correctional Authority or the
161 governing authorities of the Municipality of Walnut Grove, Leake
162 County, Mississippi, to provide for the private housing, care and
163 control of not more than one thousand five hundred (1,500)
164 offenders who are in the custody of the Department of Corrections
165 at a maximum security facility in Walnut Grove. A county or
166 circuit judge shall not order any offender to be housed in the
167 correctional facility authorized in Sections 47-5-943 through
168 47-5-953. Commitment of offenders shall not be to this facility,
169 but shall be to the jurisdiction of the department. The



170 commissioner shall assign newly sentenced offenders to an
171 appropriate facility consistent with public safety. Any facility
172 owned or leased by the Walnut Grove Correctional Authority or the
173 Municipality of Walnut Grove for this purpose shall be designed,
174 constructed, operated and maintained in accordance with American
175 Correctional Association standards, and shall comply with all
176 constitutional standards of the United States and the State of
177 Mississippi and with all court orders that may now or hereinafter
178 be applicable to the facility. The contract must comply with
179 Sections 47-5-1211 through 47-5-1227.

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

186 **SECTION 7.** Section 47-5-1211, Mississippi Code of 1972, is
187 amended as follows:

188 47-5-1211. (1) A contract for private correctional
189 facilities or services shall not be entered into unless the
190 contractor has demonstrated that it has:

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

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



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

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

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

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

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

217 (c) Prior to engaging a certified public accountant,
218 the PEER Committee, in conjunction with the Department of
219 Corrections, shall develop a current cost-based model that will

220 serve as a basis for the report produced as authorized by this
221 section.

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

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

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

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

243 (2) From the effective date of this act, the Commissioner of
244 Corrections is prohibited from housing offenders in private



245 correctional facilities unless the commissioner utilizes a minimum
246 of ten percent (10%) of eligible incarcerated offenders in joint
247 state-county work programs that the Department of Corrections has
248 agreed to provide offenders for such work programs.

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

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

