

By: Representatives Brown, Clark

To: Corrections

## HOUSE BILL NO. 1238

1 AN ACT TO PROHIBIT ANY PRIVATELY OPERATED CORRECTIONAL  
2 FACILITY FROM INCREASING ITS HOUSING CAPACITY IF THE FACILITY IS  
3 UTILIZED BY THE STATE TO HOUSE STATE OFFENDERS; TO PROHIBIT THE  
4 STATE FROM ENTERING INTO ANY NEW CONTRACTUAL AGREEMENT WITH ANY  
5 PRIVATE ENTITY FOR THE HOUSING OF STATE OFFENDERS; TO AMEND  
6 SECTIONS 47-4-1, 47-4-3, 47-4-5, 47-4-11, 47-5-1105, 47-5-1109,  
7 47-5-1115, 47-5-1207, 47-5-1211, 47-5-1213 AND 47-5-1219,  
8 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND  
9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** From and after the effective date of this act, no  
12 privately operated correctional facility that is utilized by the  
13 state to house state offenders, pursuant to Section 47-4-1, et  
14 seq. and other provisions of state law, shall increase its housing  
15 capacity, and no new contractual agreement shall be entered into  
16 by the state and any private entity for the housing of state  
17 offenders at a privately operated correctional facility.

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

20 47-4-1. (1) It is lawful for there to be located within  
21 Wilkinson County and Leflore County a correctional facility



operated entirely by a private entity pursuant to a contractual 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.



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

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

62           A person convicted of aggravated 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 Five Thousand Dollars (\$5,000.00) or by  
66       imprisonment for not more than thirty (30) years, or both.

67           (5) The Department of Corrections may contract with the  
68       Tallahatchie County Correctional Facility authorized in Chapter  
69       904, Local and Private Laws of 1999, for the private incarceration  
70       of not more than one thousand (1,000) state inmates at a facility  
71       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;



97 (b) The powers conferred under this subsection shall be  
98 additional and supplemental to the powers conferred by any other  
99 law. Where the provisions of this subsection conflict with other  
100 law, this subsection shall control; and

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

104 (8) The provisions under Section 1 of this act shall be  
105 applicable to this section.

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

108 47-4-3. (1) Subject to the limitations prescribed under  
109 Section 1 of this act, before a private correctional facility may  
110 be located in the county, the board of supervisors shall by  
111 resolution duly adopted and entered on its minutes specify the  
112 location of the facility, the nature and size of the facility, the  
113 type of inmates to be incarcerated and the identity of the private  
114 entity which will operate the facility. The board shall publish a  
115 notice as hereinafter set forth in a newspaper having general  
116 circulation in such county. Such notice shall include location of  
117 the facility, the nature and size of the facility, the type of  
118 inmates to be incarcerated and the identity of the entity which  
119 will operate the facility. Such notice shall include a brief  
120 summary of the provisions of this section pertaining to the  
121 petition for an election on the question of the location of the



private correctional facility in such county. Such notice shall be published not less than one (1) time each week for at least three (3) consecutive weeks in at least one (1) newspaper having general circulation in the county.

(2) If a petition signed by twenty percent (20%), or fifteen hundred (1500), whichever is less, of the qualified electors of the county is filed within sixty (60) days of the date of the last publication of the notice with the board of supervisors requesting that an election be called on the question of locating such facility, then the board of supervisors shall adopt a resolution calling an election to be held within such county upon the question of the location of such facility. Such election shall be held, as far as practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of the county may vote, and the ballots used at such election shall have printed thereon a brief statement of the facility to be constructed and the words "For the construction of the private correctional facility in (here insert county name) County" and "Against the construction of the private correctional facility in (here insert county name) County." The voter shall vote by placing a cross (X) or check mark (✓) opposite his choice on the proposition. When the results of the election on the question of the construction of the facility shall have been canvassed by the election commissioners of the county and certified by them to the board of supervisors, it shall be the duty of the board of



supervisors to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the construction of the facility in such county. If a majority of the qualified electors who voted in such election vote against the construction of the facility, then the facility shall not be constructed in the county.

(3) If no petition as prescribed in subsection (2) of this section is filed with the board of supervisors within sixty (60) days of the date of the last publication of the notice, the board of supervisors shall by a resolution duly adopted and entered on its minutes, state that no petition was timely filed and the board may give final approval to the location of the facility.

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

47-4-5. Subject to the limitations prescribed under Section 1 of this act, any local unit of government, or any local unit of government in cooperation with other local units of government, may enter into agreements with private sources for the operation and supervision of juvenile detention centers.

**SECTION 5.** Section 47-4-11, Mississippi Code of 1972, is amended as follows:

47-4-11. Subject to the limitations prescribed 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 6.** Section 47-5-1105, Mississippi Code of 1972, is amended as follows:

47-5-1105. (1) The commissioner is authorized to enter into contracts for a special needs correctional facility and services only as provided in Sections 47-5-1101 through 47-5-1123.

(2) No contract shall be entered into unless it offers cost savings of at least ten percent (10%) to the department.

(3) Any inmate sentenced to the custody of the department identified as having a special need may be eligible to be incarcerated in a special needs correctional facility in which a contractor is providing correctional services.

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





195 (5) The special needs facility or the site for a proposed  
196 facility must comply with all local zoning ordinances and  
197 regulations.

198 (6) The department may contract for the construction or  
199 leasing of a special needs facility. Any facility operated by a  
200 private contractor must house medium or maximum security inmates.

201 (7) The provisions under Section 1 of this act shall be  
202 applicable to this section.

203 **SECTION 7.** Section 47-5-1109, Mississippi Code of 1972, is  
204 amended as follows:

205 47-5-1109. The initial contract for the operation of a  
206 facility or for incarceration of prisoners or inmates therein  
207 shall be for a period of not more than five (5) years with an  
208 option to renew for an additional period of two (2) years.

209 Contracts for construction, purchase, or lease of a facility shall  
210 not exceed a term of fifteen (15) years. Any contract for housing  
211 beyond the initial five (5) years shall be subject to annual  
212 appropriation by the Legislature if public funds are used to  
213 finance the construction.

214 The provisions under Section 1 of this act shall be  
215 applicable to this section.

216 **SECTION 8.** Section 47-5-1115, Mississippi Code of 1972, is  
217 amended as follows:



218           47-5-1115. Subject to the limitations prescribed under  
219 Section 1 of this act, a contract for correctional services shall  
220 not be entered into unless the following requirements are met:

221           (a) The contractor provides an adequate plan of  
222 insurance, specifically including insurance for civil rights  
223 claims, as determined by an independent risk management/actuarial  
224 firm with demonstrated experience in public liability for state  
225 governments. In determining the adequacy of the plan, such firm  
226 shall determine whether:

227                   (i) The insurance is adequate to protect the state  
228 from any and all actions by a third party against the contractor  
229 or the state as a result of the contract;

230                   (ii) The insurance is adequate to protect the  
231 state against any and all claims arising as a result of any  
232 occurrence during the term of the contract; that is, the insurance  
233 is adequate on an occurrence basis, not on a claims-made basis;

234                   (iii) The insurance is adequate to assure the  
235 contractor's ability to fulfill its contract with the state in all  
236 respects, and to assure that the contractor is not limited in this  
237 ability because of financial liability which results from  
238 judgments; and

239                   (iv) The insurance is adequate to satisfy such  
240 other requirements specified by the independent risk  
241 management/actuarial firm.



(b) The sovereign immunity of the state shall not apply to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

**SECTION 9.** Section 47-5-1207, Mississippi Code of 1972, is amended as follows:

47-5-1207. (1) The State Prison Emergency Construction and Management Board shall select a suitable site or sites for a public or private facility not to exceed one thousand (1,000) beds in any of the following counties: Lauderdale, Quitman, Perry and Sharkey.

(2) The State Prison Emergency Construction and Management Board may contract for the construction, lease, acquisition, improvement, operation and management of a private correctional facility in Marshall County or Wilkinson County for the private incarceration of not more than one thousand (1,000) state inmates at the facility.

(3) The State Prison Emergency Construction and Management Board may contract with any county industrial or economic development authority or district for the construction, lease, acquisition, improvement, operation and management of a private correctional facility to be sited or constructed under Chapter 26, Laws of 1994 First Extraordinary Session.

(4) The State Prison Emergency Construction and Management Board may contract for the construction, lease, acquisition,



improvement and operation of two (2) private restitution centers, one of which may be in Bolivar County. The capacity of each restitution center shall not exceed seventy-five (75) state inmates.

(5) (a) The State Prison Emergency Construction and Management Board may contract for the special needs facility and services authorized in Sections 47-5-1101 through 47-5-1123.

(b) No later than September 15, 1994, the Joint Legislative Committee on Performance Evaluation and Expenditure Review shall determine the state medical cost per inmate day to use as a basis for measuring the validity of ten percent (10%) savings of the contractor cost.

(6) Each private contractor and private facility housing state inmates must meet the requirements of \* \* \* Sections 47-5-1211 through \* \* \* 47-5-1227.

(7) No additional emergency prisons shall be located in any city and/or county, except upon the submission to the State Prison Emergency Construction and Management Board, of a resolution signed by a majority of the governing authorities of the city and/or county, wherein the proposed prison site is to be located, approving and/or requesting that a prison facility be located at the proposed site.

(8) The provisions under Section 1 of this act shall be applicable to this section.



291           **SECTION 10.** Section 47-5-1211, Mississippi Code of 1972, is  
292 amended as follows:

293           47-5-1211. (1) Subject to the limitations prescribed under  
294 Section 1 of this act, a contract for private correctional  
295 facilities or services shall not be entered into unless the  
296 contractor has demonstrated that it has:

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

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

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

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

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

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

313                   (b) Beginning in 2012, and every two (2) years  
314 thereafter, the Joint Legislative Committee on Performance  
315 Evaluation and Expenditure Review (PEER) shall contract with a



316 certified public accounting firm to establish a state inmate cost  
317 per day using financial information of the Department of  
318 Corrections for the most recently completed fiscal year. The  
319 state inmate cost per day shall be certified as required by this  
320 section. The certified cost shall be used as the basis for  
321 measuring the validity of the ten percent (10%) savings of the  
322 contractor costs.

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

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

331 **SECTION 11.** Section 47-5-1213, Mississippi Code of 1972, is  
332 amended as follows:

333 47-5-1213. The initial contract for the operation of a  
334 facility or for incarceration of inmates therein shall be for a  
335 period of not more than five (5) years with an option to renew for  
336 an additional period of two (2) years. Contracts for  
337 construction, purchase, or lease of a facility shall not exceed a  
338 term of twenty (20) years. Such contracts shall provide that the  
339 contractor shall convey the facility to the state, at the option  
340 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. The provisions under Section 1 of this act shall be applicable to this section.

**SECTION 12.** Section 47-5-1219, Mississippi Code of 1972, is amended as follows:

47-5-1219. Subject to the limitations prescribed under Section 1 of this act, a contract for correctional services shall not be entered into unless the following requirements are met:

(a) In addition to fire and casualty insurance, the contractor provides at least Ten Million Dollars (\$10,000,000.00) of liability insurance, specifically including insurance for civil rights claims. The liability insurance shall be issued by an insurance company with a rating of at least an A- according to A.M. Best standards. In determining the adequacy of such insurance, the Department of Finance and Administration shall determine whether:

(i) The insurance is adequate to protect the state from any and all actions by a third party against the contractor or the state as a result of the contract;

(ii) The insurance is adequate to protect the state against any and all claims arising as a result of any occurrence during the term of the contract;

(iii) The insurance is adequate to assure the contractor's ability to fulfill its contract with the state in all respects, and to assure that the contractor is not limited in this



ability because of financial liability which results from judgments; and

(iv) The insurance is adequate to satisfy such other requirements specified by the independent risk management/actuarial firm.

(b) The sovereign immunity of the state shall not apply to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

(c) The contractor shall post a performance bond to assure the contractor's faithful performance of the specifications and conditions of the contract. The bond is required throughout the term of the contract. The terms and conditions must be approved by the Department of Corrections and the Department of Finance and Administration and such approval is a condition precedent to the contract taking effect.

(d) The contractor shall defend any suit or claim brought against the State of Mississippi arising out of any act or omission in the operation of a private facility, and shall hold the State of Mississippi harmless from such claim or suit. The contractor shall be solely responsible for the payment of any legal or other costs relative to any such claim or suit. The contractor shall reimburse the State of Mississippi for any costs that it may incur as a result of such claim or suit immediately upon being submitted a statement therefor by the Attorney General.





391       The duties and obligations of the contractor pursuant to this  
392 subsection shall include, but not be limited to, any claim or suit  
393 brought under any federal or state civil rights or prisoners  
394 rights statutes or pursuant to any such rights recognized by  
395 common law or case law, or federal or state constitutions.

396       Any suit brought or claim made arising out of any act or  
397 omission in the operation of a private facility shall be made or  
398 brought against the contractor and not the State of Mississippi.

399       The Attorney General retains all rights and emoluments of his  
400 office which include direction and control over any litigation or  
401 claim involving the State of Mississippi.

402       **SECTION 13.** This act shall take effect and be in force from  
403 and after its passage.

