

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

22 operated entirely by a private entity pursuant to a contractual
23 agreement between such private entity and the federal government,
24 any state, or a political subdivision of any state to provide
25 correctional services to any such public entity for the
26 confinement of inmates subject to the jurisdiction of such public
27 entity. Any person confined in such a facility pursuant to the
28 laws of the jurisdiction from which he is sent shall be considered
29 lawfully confined within this state. The private entity shall
30 assume complete responsibility for the inmates and shall be liable
31 to the State of Mississippi for any illegal or tortious actions of
32 such inmates.

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

38 (3) It is lawful for any county to contract with a private
39 entity for the purpose of providing correctional services for the
40 confinement of federal inmates subject to the jurisdiction of the
41 United States. Any person confined in such a facility pursuant to
42 the laws of the United States shall be considered lawfully
43 confined within this state. The private entity shall assume
44 complete responsibility for the inmates and shall be liable to the
45 county or the State of Mississippi, as the case may be, for any
46 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



72 requirements of Section 47-5-1211 through Section 47-5-1227. No
73 state inmate shall be assigned to the Tallahatchie County
74 Correctional Facility unless the inmate cost per day is at least
75 ten percent (10%) less than the inmate cost per day for housing a
76 state inmate at a state correctional facility.

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

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

89 (a) Any private entity, the State of Mississippi, or
90 Leflore County may enter into any agreement regarding real
91 property or property, including, but not limited to, a lease, a
92 ground lease and leaseback arrangement, a sublease or any other
93 lease agreement or arrangement, as lessor or lessee. Such
94 agreements shall not exceed forty (40) years. The Department of
95 Corrections may enter such agreements or arrangements on behalf of
96 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



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

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



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

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

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

161 47-4-5. Subject to the limitations prescribed under Section
162 1 of this act, any local unit of government, or any local unit of
163 government in cooperation with other local units of government,
164 may enter into agreements with private sources for the operation
165 and supervision of juvenile detention centers.

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

168 47-4-11. Subject to the limitations prescribed under Section
169 1 of this act, in order for the Mississippi Department of
170 Corrections to manage funds budgeted and allocated in its
171 Contractual Services budget category, the commissioner of the



172 department shall have the authority to amend, extend and/or renew
173 the term of any lease agreement or any inmate housing agreement in
174 connection with a private correctional facility. Notwithstanding
175 any statutory limits to the contrary, such amendment, extension
176 and/or renewal may be for a length of time up to and including ten
177 (10) years as is necessary for the continued operations of such
178 facilities and implementation of the department's duties and
179 responsibilities in accordance with Title 47 of the Mississippi
180 Code of 1972, as amended.

181 **SECTION 6.** Section 47-5-1105, Mississippi Code of 1972, is
182 amended as follows:

183 47-5-1105. (1) The commissioner is authorized to enter into
184 contracts for a special needs correctional facility and services
185 only as provided in Sections 47-5-1101 through 47-5-1123.

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

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

192 (4) The rates and benefits for correctional services shall
193 be negotiated by the commissioner based upon American Correction
194 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:

47-5-1109. The initial contract for the operation of a facility or for incarceration of prisoners or 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 fifteen (15) years. Any contract for housing beyond the initial five (5) years shall be subject to annual appropriation by the Legislature if public funds are used to 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.

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

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

248 47-5-1207. (1) The State Prison Emergency Construction and
249 Management Board shall select a suitable site or sites for a
250 public or private facility not to exceed one thousand (1,000) beds
251 in any of the following counties: Lauderdale, Quitman, Perry and
252 Sharkey.

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

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



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

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

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

279 (6) Each private contractor and private facility housing
280 state inmates must meet the requirements of * * * Sections
281 47-5-1211 through * * * 47-5-1227.

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

289 (8) The provisions under Section 1 of this act shall be
290 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).



341 Any contract for housing shall be subject to annual appropriation
342 by the Legislature. The provisions under Section 1 of this act
343 shall be applicable to this section.

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

346 47-5-1219. Subject to the limitations prescribed under
347 Section 1 of this act, a contract for correctional services shall
348 not be entered into unless the following requirements are met:

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

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

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

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



366 ability because of financial liability which results from
367 judgments; and

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

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

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

382 (d) The contractor shall defend any suit or claim
383 brought against the State of Mississippi arising out of any act or
384 omission in the operation of a private facility, and shall hold
385 the State of Mississippi harmless from such claim or suit. The
386 contractor shall be solely responsible for the payment of any
387 legal or other costs relative to any such claim or suit. The
388 contractor shall reimburse the State of Mississippi for any costs
389 that it may incur as a result of such claim or suit immediately
390 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.

