

By: Representative Reynolds

To: Local and Private
Legislation

HOUSE BILL NO. 1736
(As Sent to Governor)

1 AN ACT TO AMEND CHAPTER 904, LOCAL AND PRIVATE LAWS OF 1998,
2 TO AUTHORIZE THE BOARD OF SUPERVISORS TO EXPAND THE BOARD OF
3 COMMISSIONERS OF THE TALLAHATCHIE COUNTY CORRECTIONAL AUTHORITY;
4 TO PRESCRIBE THE PROCEDURES FOR APPOINTING THE ADDITIONAL MEMBERS
5 OF THE BOARD OF COMMISSIONERS; TO PRESCRIBE THE TERMS OF THE BOARD
6 OF COMMISSIONERS; TO AUTHORIZE THE TALLAHATCHIE COUNTY
7 CORRECTIONAL AUTHORITY TO CONTRACT WITH THE FEDERAL GOVERNMENT OR
8 OTHER STATES FOR THE HOUSING OF JUVENILES WHO ARE FOUND TO BE
9 DELINQUENT OR IN NEED OF SUPERVISION; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Chapter 904, Local and Private Laws of 1998, is
12 amended as follows:

13 Section 1. As used in this act, unless the context otherwise
14 requires:

15 (a) "American Correctional Association Standards" means
16 standards promulgated by the American Correctional Association as
17 in effect from time to time.

18 (b) "Authority" means the Tallahatchie County
19 Correctional Authority.

20 (c) "Board of commissioners" means the Board of
21 Commissioners of the Authority.

22 (d) "Board of supervisors" means the board of
23 supervisors of the county.

24 (e) "County" means Tallahatchie County, Mississippi.

25 (f) "Equipment" means any personal property which the
26 authority determines is necessary or helpful for the operation of
27 a facility.

28 (g) "Facility" means a jail, prison or other
29 incarceration facility located in the county which is constructed,

30 acquired or operated pursuant to this act.

31 (h) "Management contract" means a contract between the
32 authority and a private contractor for the operation and
33 management of a facility by a private contractor.

34 (i) "Private contractor" means a person or legal entity
35 which leases or subleases a facility from the authority or has
36 entered into a management contract with the authority pursuant to
37 this act.

38 (j) "State" means the State of Mississippi.

39 Section 2. (1) There is created in the county a public body
40 corporate and politic to be known as the "Tallahatchie
41 Correctional Authority." The authority shall not transact any
42 business or exercise any powers under this act until the board of
43 supervisors adopts a resolution finding that it is in the public
44 interest to have the authority exercise the powers set forth in
45 this act. The resolution shall designate the manner in which
46 funds of the authority in excess of amounts needed to pay the
47 authority's operating expenses and debt service will be applied,
48 provided that none of the excess funds of the authority may inure
49 to the benefit of any private person.

50 (2) Alternatively, the board of supervisors may by
51 resolution designate a nonprofit corporation incorporated under
52 the general laws of the state to exercise the powers of the
53 authority set forth in this act, in which event the board of
54 supervisors may take all actions necessary for the nonprofit
55 corporation to be treated as acting on behalf of the county under
56 the Internal Revenue Code. The nonprofit corporation shall have,
57 in addition to the powers and authority generally exercisable by
58 nonprofit corporations in the state, all powers and authority
59 granted to the authority under this act and shall be deemed to be
60 a charitable society, for purposes of Section 27-31-1, Mississippi
61 Code of 1972. All provisions of this act applicable to
62 obligations, agreements, contracts and property of, and purchases

63 by, contracting with and leasing or conveyance of property to an
64 authority shall be applicable to obligations, agreements,
65 contracts and property of, and purchases by, contracting with and
66 leasing or conveyance of property to the nonprofit corporation.

67 Section 3. Nothing in this act shall authorize payment of
68 tax revenues or other public funds of the county to the authority.

69 Section 4. The authority shall exist until dissolved
70 pursuant to a resolution adopted by the board of supervisors.
71 Upon dissolution of the authority, title to all property owned by
72 the authority shall vest in the county. Dissolution of the
73 authority shall not adversely affect the rights of any holders of
74 obligations issued by the authority, including, but not limited
75 to, any bonds, notes or other evidences of indebtedness issued by
76 the authority or the rights of any parties to contracts with the
77 authority including, but not limited to, leases, lease purchase
78 agreements and management contracts entered into before the date
79 of dissolution of the authority. A dissolution shall not be
80 effective at any time that any bonds, notes or other evidence of
81 indebtedness of the authority, including, but not limited to,
82 lease-purchase agreements, shall be outstanding, except to the
83 extent permitted in the documents executed in connection with the
84 initial issuance of the bonds, notes or other indebtedness.

85 Section 5. (1) All powers of the authority shall be
86 exercised by its board of commissioners to be composed of five (5)
87 members, one (1) appointed by the Tallahatchie County Board of
88 Supervisors from each supervisory district.

89 (2) (a) The initial members of the board shall serve for
90 terms of office as follows:

91 (i) Two (2) members appointed by the Tallahatchie
92 County Board of Supervisors shall serve for a term of four (4)
93 years.

94 (ii) Two (2) members appointed by the Tallahatchie
95 County Board of Supervisors shall serve for a term of three (3)

96 years.

97 (iii) One (1) member appointed by the Tallahatchie
98 County Board of Supervisors shall serve for a term of two (2)
99 years.

100 The term of each initial appointee shall begin on the first
101 day of the next month after the date that all initial appointees
102 have been appointed.

103 After the expiration of the initial terms, all subsequent
104 appointments shall be made for terms of five (5) years from the
105 expiration date of the previous term. Any vacancy that may occur
106 shall be filled in the same manner as the original appointment and
107 shall be made for the unexpired term.

108 (b) Beginning October 1, 1999, the board of supervisors
109 may authorize, by resolution duly adopted and spread upon its
110 minutes, up to four (4) additional members to be appointed to the
111 Tallahatchie County Correctional Authority, if the board of
112 supervisors determines it is in the best interest of Tallahatchie
113 County. The four (4) additional members of the board of
114 commissioners may be appointed as follows:

115 (i) The board of supervisors may delegate the
116 authority to appoint two (2) of the additional members of the
117 board of commissioners to two (2) municipalities which may each
118 appoint one (1) member of the board of commissioners. However,
119 the municipalities must be in separate judicial districts in the
120 county, each municipality must be the municipality that is nearest
121 in proximity to the correctional facility in a judicial district,
122 and at the time of the appointment, the correctional facility must
123 be constructed or in the process of being constructed.

124 (ii) A supervisor in whose judicial district a
125 correctional facility is located or in which the greater portion
126 of a correctional facility is located or in which a correctional
127 facility is in the process of being constructed may nominate an
128 additional person to become a member of the board of

129 commissioners. There shall be no more than one (1) additional
130 member of the board of commissioners per judicial district whose
131 appointment was based on a supervisor's nomination as provided in
132 this paragraph.

133 If the board of supervisors votes to expand the board of
134 commissioners as provided in this subsection, then all actions
135 brought before the board of commissioners shall only be undertaken
136 if a majority of the members of the board of commissioners who are
137 residents of each judicial district and who are voting on the
138 measure vote in favor of the action. If a majority of the members
139 of the board of commissioners who are residents of one (1) of the
140 judicial districts and who vote on the measure do not vote in
141 favor of a proposed action, then the action shall not be
142 undertaken. Also, if the board of supervisors votes to expand the
143 board of commissioners as provided in this subsection, then the
144 five (5) members of the board of commissioners who are presently
145 servng and their successors shall be residents of the supervisors
146 district in which the members resided at the time of their
147 appointment.

148 The additional members of the board of commissioners each
149 shall serve for an initial term of three (3) years. After the
150 expiration of the initial term, all subsequent appointments shall
151 be made for terms of five (5) years. The term of each initial
152 appointee shall begin on the first day of the next month after the
153 date of his appointment.

154 (3) The members of the board of commissioners shall elect
155 annually from among themselves the officers of president, vice
156 president, secretary and treasurer. The board of commissioners
157 shall adopt bylaws, rules and regulations as may be necessary to
158 govern the time, place and manner for holding subsequent meetings
159 of the board of commissioners and for the conduct of its business
160 consistent with the provisions of this act. All meetings of the
161 board of commissioners shall be conducted in accordance with

162 Section 25-41-1 et seq., Mississippi Code of 1972. Any action
163 taken by the board of commissioners shall be official at the time
164 the action is taken. Actions may be taken by the board of
165 commissioners at any regular, special or recessed meeting.

166 (4) The members of the board of commissioners shall serve
167 without compensation and shall meet at least once quarterly at a
168 time and place determined by the board of commissioners. The
169 board of commissioners shall keep minutes of its proceedings as
170 necessary to carry out its responsibilities. A quorum of the
171 board of commissioners shall consist of three (3) members.

172 (5) Except as provided in subsection (2) of this section, a
173 board member may be removed, upon recommendation by a vote of
174 three (3) members of the board of commissioners and approval by
175 the board of supervisors.

176 (6) The authority may employ an executive director,
177 technical experts and other agents and employees, permanent and
178 temporary, as it may require, and may determine their
179 qualifications, duties and compensation.

180 Section 6. (1) The authority shall have all the powers
181 necessary or convenient to effectuate and carry out the provisions
182 of this act, including the following powers in addition to others
183 granted in this act:

184 (a) To have perpetual succession as a body politic and
185 corporate exercising essential public functions until dissolved
186 pursuant to Section 4 of this act;

187 (b) To sue and be sued in its own name;

188 (c) To have an official seal and alter it at will;

189 (d) To adopt, appeal and amend bylaws, rules and
190 regulations consistent with this act, to regulate its affairs and
191 conduct its business;

192 (e) To maintain one or more offices at a place or
193 places within the county as it may designate;

194 (f) To make and execute contracts and all other

195 instruments necessary or convenient for the performance of its
196 duties and the exercise of its powers under this act;

197 (g) To employ architects, engineers, contractors,
198 developers, attorneys, inspectors, accountants, financial advisors
199 and any other advisors, consultants and agents as may be
200 necessary, in its judgment, to carry out its powers under this
201 act, and to fix their compensation;

202 (h) To procure insurance against any loss in connection
203 with its property and other assets, in amounts and from insurers
204 as it may deem advisable, and to pay premiums on any such
205 insurance;

206 (i) To construct, purchase, receive, lease,
207 lease-purchase, or otherwise acquire, own, hold, improve or use a
208 facility or any item of equipment, and to enter into agreements
209 relating thereto, including, but not limited to, sale and issuance
210 of certificates of participation, which may extend for a period of
211 time, notwithstanding any provision or rule of law to the
212 contrary, and provide for the consideration and other terms and
213 conditions that are acceptable to the authority and are not in
214 conflict with the provisions of this act, without regard to any
215 general laws of the state regulating public purchases and
216 acquisitions or restricting the time periods of agreements;

217 (j) To lease a facility or any item of equipment to a
218 private contractor for rentals and upon the terms and conditions
219 that are acceptable to the authority and are not in conflict with
220 the provisions of this act, without regard to any general laws of
221 the state regulating the disposition or conveyance of an interest
222 in public property;

223 (k) To operate and manage a facility in accordance with
224 the provisions of this act and to take all actions necessary in
225 connection therewith, or alternatively to contract with a private
226 contractor to operate and manage a facility in accordance with the
227 provisions of this act;

228 (1) To borrow money and issue its obligations therefor
229 for the purpose of carrying out its powers under this act, at
230 rates of interest and upon terms and conditions that are
231 acceptable to the authority and are not in conflict with the
232 provisions of this act, without regard to any general laws of the
233 state regulating the borrowing of money or issuance of obligations
234 by public bodies, provided that any obligations issued by the
235 authority shall be payable solely out of revenues received by the
236 authority in connection with the operation or lease of a facility
237 and shall never constitute a debt or obligation of the county or
238 the state;

239 (m) In connection with borrowing money and issuance of
240 obligations as set forth in the preceding paragraphs (i) and (l),
241 in Section 13 of this act, and elsewhere in this act, to pledge or
242 assign its property, assets and revenues, enter into trust
243 indentures, deeds of trust, mortgages and security agreements,
244 contract for bond insurance and other credit enhancement devices,
245 and to take any other action and enter into any other agreements
246 as the authority deems necessary or appropriate, all on terms and
247 conditions that are acceptable to the authority and are not in
248 conflict with the provisions of this act, without regard to any
249 provision or rule of law which would otherwise be applicable
250 thereto; and

251 (n) To contract with the United States and its
252 territories or any state or states or any political subdivision
253 thereof to provide for housing, care and control in a facility of
254 offenders who are in the custody of the jurisdiction, who are
255 classified as minimum or medium security offenders, who do not
256 have histories of escape, and who are sentenced to terms of
257 incarceration for conviction of a felony, or who are sentenced to
258 terms of incarceration for a misdemeanor, provided that the
259 incarceration in the facility for a misdemeanor is consistent with
260 American Correctional Association Standards relating to the

261 incarceration of offenders convicted of more serious offenses, to
262 enter into agreements relating thereto which may extend for time
263 periods that are acceptable to the parties, notwithstanding any
264 provision or rule of law to the contrary, and to exercise all
265 powers necessary or desirable in connection with the operation of
266 a prison or other type of correctional facility, including, but
267 not limited to, the power to incarcerate offenders described
268 above.

269 (o) To contract with the United States and its
270 territories or any state or states or any agency or political
271 subdivision thereof to provide for housing, care and control in a
272 facility of juveniles who are found to be delinquent or in need of
273 supervision, who are in the custody of the jurisdiction and who do
274 not have histories of escape, to enter into agreements relating
275 thereto which may extend for time periods that are acceptable to
276 the parties notwithstanding any provision or rule of law to the
277 contrary, and to exercise all powers necessary or desirable in
278 connection with the operation of a correctional facility,
279 including, but not limited to, the power to incarcerate offenders
280 described in this paragraph. The facility shall be constructed in
281 accordance with American Correctional Association Standards. The
282 juvenile offenders who are housed in the facility shall remain
283 subject to the jurisdiction of the United States or another state,
284 as applicable.

285 (p) To contract with the Department of Corrections or
286 other appropriate state, federal or local entity for the
287 inspection, monitoring or provision of any assistance necessary or
288 desirable to maintain suitable, safe and secure correctional
289 facilities.

290 (2) The authority shall not contract for the housing, care
291 or control of maximum security offenders.

292 Section 7. (1) A facility shall be designed, constructed,
293 operated and maintained in accordance with American Correctional

294 Association Standards. The facility shall meet the percentage of
295 standards required for accreditation by the American Correctional
296 Association, except where a contract with a private contractor
297 requires compliance with a higher percentage of nonmandatory
298 standards.

299 (2) The facility shall comply with all constitutional
300 standards of the United States and the state and with all court
301 orders applicable to the facility.

302 (3) The Department of Corrections shall place a compliance
303 officer at the facility. The authority or private contractor
304 shall provide an on-site work area for the compliance officer and
305 shall permit access to all areas of the facility and to the
306 offenders and staff at all times. The authority or private
307 contractor shall reimburse the Department of Corrections for all
308 costs incurred for the compliance officer.

309 Section 8. (1) A person shall not be employed as a
310 corrections officer at the facility unless the person has been
311 trained in the use of force and firearms in accordance with
312 American Correctional Association Standards. If a person is
313 employed as a corrections officer by a private contractor that is
314 operating a facility pursuant to a management contract, the
315 private contractor shall cause the required training to be
316 provided at its own expense.

317 (2) A corrections officer employed at the facility shall not
318 use force or firearms except while on the grounds of a facility or
319 while transporting offenders of a facility and then only under the
320 circumstances set forth in subsections (3) and (4) of this
321 section.

322 (3) A corrections officer shall not use force except such
323 nondeadly force as is reasonably necessary in the following
324 situations:

325 (a) To prevent the commission of a felony or
326 misdemeanor, including escape;

327 (b) To defend himself or others against physical
328 assault;

329 (c) To prevent serious damage to property;

330 (d) To enforce facility regulations and orders; and

331 (e) To prevent or quell a riot.

332 (4) A corrections officer shall not use firearms or other
333 deadly force except as a last resort when reasonably necessary to
334 prevent the commission of a violent felony, to prevent the escape
335 of a convicted felon from custody, or to defend the officer or any
336 other person from imminent danger of death or serious bodily
337 injury.

338 (5) A private contractor shall have the same standing,
339 authority, rights and responsibilities as the authority in any
340 agreement, formal or informal, with local law enforcement agencies
341 concerning the latter's obligations in the event of a riot, escape
342 or other emergency situation involving the facility. To the
343 extent provided in any management contract, a private contractor
344 may exercise the powers granted to the authority under this act.

345 Section 9. Any offense which would be a crime if committed
346 within a correctional institution operated by the state shall be a
347 crime if committed in the facility.

348 Section 10. (1) Neither the state nor the county shall
349 assume jurisdiction or custody of any federal offenders or
350 offenders from other states who are incarcerated in the facility.

351 The offenders shall remain subject to the jurisdiction of the
352 United States or another state, as applicable. Neither the state
353 nor the county shall be liable for loss or injury resulting from
354 the acts of the offenders, nor shall the state or the county be
355 liable for any injuries to the offenders. The authority or
356 private contractor shall reimburse the Department of Corrections
357 for any expenses incurred in quelling a prison riot.

358 (2) Neither the state nor the county shall be liable for any
359 actions taken by the authority or a private contractor in

360 connection with the facility, nor shall they be liable for any
361 debt incurred or obligations issued by the authority.

362 Section 11. (1) The facility shall at all times be operated
363 and managed by a private contractor pursuant to a management
364 contract unless the board of commissioners determines that the
365 operation and management by a private contractor is not feasible
366 or desirable. The terms and conditions of a management contract
367 shall be approved by the board of commissioners.

368 (2) A management contract may authorize a private contractor
369 to contract on behalf of the authority for the incarceration of
370 offenders in the facility as set forth in Section 6(n) of this act
371 and shall grant the private contractor any other powers that are
372 necessary or convenient for the operation and management of the
373 facility and are consistent with the provisions of this act,
374 including, but not limited to, the power to employ personnel who
375 are needed for the operation and management of a facility and to
376 provide or cause to be provided the training in the use of force
377 and firearms required by Section 8(1) of this act. A management
378 contract shall not authorize a private contractor to contract on
379 behalf of the authority for the incarceration on maximum security
380 offenders in the facility.

381 (3) A management contract shall provide that any sovereign
382 immunity of the state, any sovereign immunity of the county, any
383 sovereign immunity of the municipality or any sovereign immunity
384 of the authority shall not extend to the private contractor.
385 Neither the private contractor nor any insurer of the private
386 contractor may plead the defense of sovereign immunity in any
387 action arising out of or related to the performance of the
388 management contract.

389 (4) A management contract shall provide that the private
390 contractor shall be responsible for the reimbursement of all costs
391 and expenses incurred by the state, the county or the authority in
392 connection with legal actions brought in the state by or on behalf

393 of any offender incarcerated in the facility, including, but not
394 limited to, court costs, sheriff's fees, witness fees, district
395 attorney expenses, expenses of the Office of the Attorney General,
396 indigent or public defender fees and expenses, judicial expenses,
397 court reporter expenses and damage awards. The contract shall
398 also provide for the reimbursement of all costs and expenses
399 incurred by the Department of Corrections for maintaining a
400 compliance officer at the facility and for all costs and expenses
401 incurred by the Department of Corrections for aiding in quelling a
402 prison riot.

403 (5) A management contract shall provide that the private
404 contractor shall indemnify and hold harmless the authority, the
405 county and the state, and any officers, members, employees or
406 agents of the foregoing, for any claim or liability for damage or
407 injury to any person or property related to or arising from the
408 operation and management of a facility, including, but not limited
409 to, liability for loss or injury resulting from the acts of
410 offenders incarcerated at the facility and liability for any
411 injuries to the offenders.

412 (6) A management contract may contain any other provisions
413 the authority deems necessary or appropriate, including, but not
414 limited to, provisions that may be necessary to cause the
415 management contract to comply with promulgations of the Internal
416 Revenue Service applicable to the contract.

417 Section 12. Neither the state, the county nor the authority,
418 nor any members, officers, employees or agents of the foregoing,
419 shall be liable for a private contractor's actions or failure to
420 act while operating and managing a facility pursuant to a
421 management contract.

422 Section 13. (1) The authority or the private contractor
423 shall permit the Investigative Task Force of the Department of
424 Corrections to have full access to all areas of the facility and
425 to the offenders and staff. The investigators may exercise any

426 and all police powers provided under Section 47-5-54, Mississippi
427 Code of 1972.

428 (2) The authority or private contractor shall provide for
429 the issuance of an immediate warrant through the National Crime
430 Information Center for any offender who escapes.

431 (3) The authority or private contractor shall return any
432 offender released from the facility to the state from which the
433 offender was sent.

434 Section 14. (1) The authority may enter into lease
435 agreements with a person or legal entity pursuant to which the
436 authority may agree to lease the facility or equipment for use by
437 the authority for a primary term not to exceed thirty (30) years.

438 All lease agreements may contain terms and conditions as the
439 Board of Commissioners of the authority shall determine to be
440 appropriate and in the public interest, including, but not limited
441 to, any provision which a master lease-purchase agreement may
442 contain pursuant to Section 31-7-10(5), Mississippi Code of 1972,
443 may provide for the payment of lease payments which include an
444 interest component computed at a rate or rates as shall be
445 approved by the board of commissioners, may include an annual
446 allocation dependency clause, may contain an option granting to
447 the authority the right to purchase the leased property upon the
448 expiration of the primary term, or upon an earlier date that may
449 be agreed upon by the parties, at a price as set forth in or
450 computed in accordance with the lease agreement and may provide
451 that all or any obligations thereunder are payable from specified
452 revenues pledged as security therefor.

453 (2) The authority may lease publicly owned real property to
454 a person or legal entity for the purpose of enabling the person or
455 legal entity to construct a facility on the property and to lease
456 the facility to the authority. A ground lease shall not be for a
457 primary term in excess of twice the primary term of the lease with
458 respect to the facility to be constructed on the real property.

459 Any public body in the state may lease, sell or otherwise convey
460 property to the authority without consideration or for
461 consideration as the governing body of the public body shall
462 determine to be appropriate under the circumstances, and to enter
463 into agreements with the authority relating thereto, which
464 agreements may extend over any period of time, notwithstanding any
465 provision or rule of law to the contrary.

466 (3) This section shall be full and complete authority for
467 the authorization, execution and delivery of lease agreements
468 authorized under this act, and none of the restrictions,
469 requirements, conditions and limitations of the general law of the
470 state applicable to acquisition, construction and drawing of
471 buildings or facilities shall apply to lease agreements under this
472 section, and all powers necessary to carry out the provisions of
473 this section are conferred upon the authority.

474 Section 15. All obligations, including, but not limited to,
475 bonds, notes, lease-purchase agreements and other evidence of
476 indebtedness issued by the authority pursuant to this act and all
477 interest payable thereunder or with respect thereto, all leases,
478 trust indentures, deeds of trust, mortgages, security agreements
479 and other contracts or agreements entered into pursuant to this
480 act, and all purchases required to construct the facility or to
481 acquire equipment shall be exempt from all taxation in the state,
482 including, but not limited to, sales taxes and the contractor's
483 tax imposed by Section 27-65-21, Mississippi Code of 1972. As
484 provided by general law applicable to political subdivisions of
485 the state, a facility and the revenues derived from its operation
486 shall also be exempt from all taxation in the state, including,
487 but not limited to, all ad valorem taxes levied by the state or
488 any political subdivision thereof.

489 Section 16. This act shall be full and complete authority of
490 the exercise of all powers and authority granted herein and no
491 requirements or restrictions of law which would otherwise be

492 applicable to acts of the authority shall be applicable except as
493 expressly provided herein. No debt of the authority shall be
494 considered to be debt of the county or any other political
495 subdivision of the state for purposes of any provision or rule of
496 law restricting the amount of indebtedness of the county or such
497 other political subdivision or for any other purpose under the
498 laws of the state.

499 SECTION 2. This act shall take effect and be in force from
500 and after its passage.