

By: Representatives Straughter, Bailey,  
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To: Local and Private  
Legislation

HOUSE BILL NO. 1652

1 AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF  
 2 HOLLANDALE TO CONSTRUCT A CORRECTIONAL FACILITY LOCATED IN THE  
 3 CITY OR NOT MORE THAN TWO MILES OUTSIDE OF THE CITY LIMITS TO  
 4 HOUSE MALE AND FEMALE OFFENDERS AND OFFENDERS IN NEED OF ALCOHOL  
 5 AND DRUG TREATMENT SERVICES AND REHABILITATION; TO AUTHORIZE THE  
 6 CITY TO CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF CORRECTIONS,  
 7 THE UNITED STATES AND ANY STATE OR POLITICAL SUBDIVISIONS FOR THE  
 8 HOUSING OF OFFENDERS IN THE CUSTODY OF THOSE JURISDICTIONS; TO  
 9 AUTHORIZE THE CITY TO CONTRACT WITH A PERSON OR A PRIVATE ENTITY  
 10 FOR THE OPERATION AND MANAGEMENT OF THE CORRECTIONAL FACILITY; TO  
 11 PRESCRIBE OTHER POWERS AND DUTIES OF THE CITY; TO PRESCRIBE RULES  
 12 AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE FACILITY;  
 13 TO REPEAL CHAPTER 987, MISSISSIPPI LOCAL AND PRIVATE LAWS OF 1997,  
 14 WHICH AUTHORIZES THE CITY OF HOLLANDALE TO CONSTRUCT A SPECIAL  
 15 NEEDS CORRECTIONAL FACILITY; AND FOR RELATED PURPOSES.

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

17 SECTION 1. As used in this act, unless the context otherwise  
 18 requires:

19 (a) "American Correctional Association Standards" means  
 20 standards promulgated by the American Correctional Association as  
 21 in effect from time to time.

22 (b) "County" means Washington County, Mississippi.

23 (c) "Governing authorities" means the Mayor and Board  
 24 of Aldermen of the City of Hollandale, Mississippi.

25 (d) "City" means the City of Hollandale, Mississippi.

26 (e) "Equipment" means any personal property which the  
 27 city determines is necessary or helpful for the operation of the  
 28 facility.

29 (f) "Facility" means a correctional facility or  
 30 facilities located within the city or not more than two (2) miles  
 31 outside of the city limits which is constructed, acquired or

32 operated pursuant to this act to house more than seven hundred  
33 fifty (750) offenders.

34 (i) Male offenders;

35 (ii) Female offenders; and

36 (iii) Male and/or female offenders in need of  
37 specialized facilities and services in connection with alcohol and  
38 drug treatment and rehabilitation.

39 (g) "Offender housing agreement" means a contract  
40 between the city and the state, by and through the Mississippi  
41 Department of Corrections, required under Section 2(j) of this act  
42 for housing state offenders in the facility.

43 (h) "Management contract" means a contract between the  
44 city and a private contractor for the operation and management of  
45 the facility by a private contractor which may allow the private  
46 contractor to exercise any authority granted unto the city under  
47 this act or general law.

48 (i) "Private contractor" means a person or legal entity  
49 which leases or subleases the facility from the city or has  
50 entered into a management contract with the city under this act.

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

52 SECTION 2. The city shall have all the powers necessary or  
53 convenient to effectuate and carry out the provisions of this act,  
54 including the following powers, in addition to others granted in  
55 this act:

56 (a) To make and execute contracts and all other  
57 instruments necessary or convenient for the performance of its  
58 duties and the exercise of its powers under this act;

59 (b) To authorize the employment of architects,  
60 engineers, contractors, developers, attorneys, inspectors,  
61 accountants, financial advisors and any other advisors,  
62 consultants and agents as may be necessary in its judgment to  
63 carry out its powers under this act and to fix their compensation;

64           (c) To procure insurance against any loss in connection  
65 with its property and other assets in amounts and from insurers as  
66 it may deem advisable and to pay premiums on any such insurance;

67           (d) To construct, purchase, receive, lease,  
68 lease-purchase, or otherwise acquire, own, hold, improve or use  
69 the facility or any item of equipment and to enter into agreements  
70 relating thereto, including the sale and issuance of certificates  
71 of participation and provide for the consideration and other terms  
72 and conditions that are acceptable to the city and are not in  
73 conflict with the provisions of this act;

74           (e) To lease a facility or any item of equipment for a  
75 term not to exceed twenty-five (25) years to a private contractor  
76 for rentals and upon the terms and conditions that are acceptable  
77 to the city and are not in conflict with the provisions of this  
78 act without regard to any general laws of the state regulating the  
79 disposition or conveyance of an interest in public property;

80           (f) To contract for a primary term not to exceed  
81 twenty-five (25) years with a public or private contractor to  
82 operate and manage the facility and employees of the facility  
83 constructed, acquired or operated under this act;

84           (g) To borrow money and issue its obligations for the  
85 purpose of carrying out its powers under this act at rates of  
86 interest and upon terms and conditions that are acceptable to the  
87 city and are not in conflict with the provisions of this act  
88 without regard to any general laws of the state regulating the  
89 borrowing of money or issuance of obligations by public bodies,  
90 provided that any obligations issued by the city under this act  
91 shall be payable solely out of revenues received by the city in  
92 connection with the operation or lease of the facility and shall  
93 never constitute a debt or obligation of the city, county or  
94 state;

95           (h) In connection with borrowing money and the issuance  
96 of obligations as set forth in this act, to pledge or assign the

97 facility and its assets and revenues, enter into trust indentures,  
98 deeds of trust, mortgages and security agreements, contract for  
99 bond insurance and other credit enhancement devices, and take any  
100 other action and enter into any other agreements as the city deems  
101 necessary or appropriate, all on terms and conditions that are  
102 acceptable to the city and are not in conflict with the provisions  
103 of this act, without regard to any provision or rule of law which  
104 would otherwise be applicable;

105           (i) To make application to and contract with the United  
106 States or any department thereof for any grants or loans that may  
107 be applied to the costs of construction, operation or management  
108 of the facility or any public utility or roads and to comply with  
109 the terms and conditions of such grants and loans;

110           (j) To enter into an offender housing agreement with  
111 the state, by and through the Mississippi Department of  
112 Corrections, upon appropriation of funds by the Mississippi  
113 Legislature, to provide for the private housing, care and control  
114 of male and female offenders who are in the custody of the state  
115 and male and female offenders requiring alcohol and drug-related  
116 health care, treatment and rehabilitation services who are in the  
117 custody of the state and offenders who speak a language other than  
118 English as their native tongue. The total number of state  
119 offenders at the facility shall not exceed seven hundred fifty  
120 (750) offenders. The Mississippi Department of Corrections shall  
121 contract with the city for the purposes set out in this act for a  
122 period of twenty-five (25) years. The offender housing agreement  
123 shall provide that the Department of Corrections pay a state  
124 offender cost-per-day for each offender that is housed at a rate  
125 established under Section 47-5-1211, Mississippi Code of 1972,  
126 which shall be ten percent (10%) less than a facility at the same  
127 level and quality of service offered by the Department of  
128 Corrections as established by the Joint Legislative Committee on  
129 Performance Evaluation and Expenditure Review. The offender

130 housing agreement shall include a minimum level of occupancy of  
131 state offenders of eighty-five percent (85%) and provide for a  
132 three percent (3%) annual increase in the per diem rate. The  
133 state shall retain responsibility for medical care and expenses  
134 for state offenders to the extent required by law;

135 (k) To contract with the United States and its  
136 territories or any state or states or any political subdivision to  
137 provide for housing, care and control in the facility of offenders  
138 who are otherwise confined who are in the custody of the  
139 jurisdiction, who do not have histories of escape, and who are  
140 sentenced to terms of incarceration by a court of competent  
141 jurisdiction, to enter into agreements which may extend for time  
142 periods that are acceptable to the parties, notwithstanding any  
143 provision or rule of law to the contrary, and to exercise all  
144 powers necessary or desirable in connection with the operation of  
145 the facility, including the power to incarcerate offenders  
146 described above.

147 If the facility houses Mississippi offenders, the facility  
148 shall not displace Mississippi's offender beds with federal or  
149 another state's offender's beds unless the facility has obtained  
150 prior written approval from the Commissioner of Corrections.

151 SECTION 3. The city may contract with a developer whereby  
152 the developer agrees to construct or procure the construction of  
153 the facility without regard to any laws of the state requiring  
154 public bids for purchases, acquisitions and construction.

155 SECTION 4. (1) The facility shall be designed, constructed,  
156 operated and maintained in accordance with American Correctional  
157 Association Standards and shall comply with all constitutional  
158 standards of the United States, the state and with all court  
159 orders applicable to the facility. Offenders in need of treatment  
160 services and rehabilitation shall be treated separately from other  
161 offenders for the period of time that treatment services and  
162 rehabilitation are necessary for such offenders.

163           (2) Notwithstanding any provision of law to the contrary,  
164 the construction, operation and management of a facility shall not  
165 require a certificate of need pursuant to the provisions of Title  
166 41, Chapter 7, Mississippi Code of 1972.

167           SECTION 5. (1) Any person who has been convicted of a  
168 felony under the laws of any jurisdiction shall not be employed by  
169 the facility.

170           (2) A person shall not be employed as a corrections officer  
171 at the facility unless the person has been trained in the use of  
172 force and firearms in accordance with American Correctional  
173 Association Standards or has satisfactorily completed the training  
174 program of the Mississippi Department of Corrections or the  
175 corrections training program sponsored by the local community  
176 college. If a person is employed as a corrections officer by a  
177 private contractor that is operating the facility pursuant to a  
178 management contract, the private contractor shall cause the  
179 required training to be provided.

180           (3) A corrections officer employed at the facility shall not  
181 use force or firearms except while on the grounds of the facility  
182 or while transporting offenders of the facility and then only  
183 under the circumstances set forth in subsections (4) and (5) of  
184 this section.

185           (4) A corrections officer shall not use force except such  
186 nondeadly force as is reasonably necessary in the following  
187 situations:

188                   (a) To prevent the commission of a felony or  
189 misdemeanor, including escape;

190                   (b) To defend himself or others against physical  
191 assault;

192                   (c) To prevent serious damage to property;

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

194                   (e) To prevent or quell a riot or disturbance.

195           (5) A corrections officer shall not use firearms or other  
196 deadly force except as a last resort when reasonably necessary to  
197 prevent the commission of a violent felony, to prevent the escape  
198 of a convicted felon from custody, or to defend the officer or any  
199 other person from imminent danger of death or serious bodily  
200 injury.

201           (6) A private contractor shall have the same standing,  
202 authority, rights and responsibilities as the city in any  
203 agreement, formal or informal, with local law enforcement agencies  
204 concerning the latter's obligations in the event of a riot, escape  
205 or other emergency situation involving the facility. To the  
206 extent provided in any management contract, a private contractor  
207 may exercise the powers granted to the city under this act or  
208 powers pursuant to the general laws of the State of Mississippi as  
209 they pertain to the incarceration of offenders.

210           SECTION 6. Any offense which would be a crime if committed  
211 within a correctional institution operated by the state shall be a  
212 crime if committed in the facility.

213           SECTION 7. (1) Neither the state nor the city shall assume  
214 jurisdiction or custody of any federal offenders or offenders from  
215 other states or political subdivisions who are incarcerated in the  
216 facility. The offenders shall remain subject to the jurisdiction  
217 of the United States or another state or political subdivision, as  
218 applicable. Neither the state nor the city shall be liable for  
219 loss or injury resulting from the acts of the offenders, nor shall  
220 the state or the city be liable for any injuries to the offenders.

221           (2) Neither the state nor the city shall be liable for any  
222 actions taken by a private contractor in connection with the  
223 facility, nor shall the state be liable for any debt incurred or  
224 obligations issued by the city.

225           SECTION 8. (1) The facility shall be operated and managed  
226 by a private contractor pursuant to a management contract. The  
227 terms and conditions of a management contract shall be approved by

228 the governing authorities and if state offenders are to be held  
229 pursuant to a contract approved by the Mississippi Department of  
230 Corrections.

231 (2) A management contract shall authorize a private  
232 contractor to contract on behalf of the city for the incarceration  
233 of offenders in the facility as set forth in Section 2(k) of this  
234 act and shall grant the private contractor any other rights and  
235 powers that are necessary or convenient for the operation and  
236 management of the facility and are consistent with the provisions  
237 of this act, including the power to employ personnel who are  
238 needed for the operation and management of the facility, to  
239 provide or cause to be provided the appropriate training including  
240 the use of force and firearms required by Section 5(2) of this  
241 act, and to maintain accounting and financial records for the  
242 facility in accordance with state law and rules promulgated by the  
243 State Auditor.

244 (3) A management contract shall provide that any sovereign  
245 immunity of the state, any sovereign immunity of the county, any  
246 sovereign immunity of the city, or any public official immunity  
247 shall not extend to the private contractor. Neither the private  
248 contractor nor any insurer of the private contractor may plead the  
249 defense of sovereign immunity or public official immunity in any  
250 action arising out of or related to the performance of the  
251 management contract.

252 (4) A management contract shall provide that the private  
253 contractor shall be responsible for the reimbursement of all costs  
254 and expenses incurred by the state, the county or the city in  
255 connection with legal actions brought in the state by or on behalf  
256 of any offender incarcerated in the facility, including court  
257 costs, sheriff's fees, witness fees, district attorney expenses,  
258 expenses of the Office of the Attorney General, indigent or public  
259 defender fees and expenses, judicial expenses, court reporter  
260 expenses and damage awards which are adjudicated by a jury.



261 (5) A management contract shall provide that the private  
262 contractor shall indemnify and hold harmless the city, the county  
263 and the state, and any officers, members, employees or agents of  
264 the foregoing, for any claim or liability for damage or injury to  
265 any person or property related to or arising from the operation  
266 and management of a facility, including liability for loss or  
267 injury resulting from the acts of offenders incarcerated at the  
268 facility and liability for any injuries to the offenders which are  
269 adjudicated by a jury.

270 (6) A management contract may contain any other provisions  
271 the city deems necessary or appropriate, including provisions that  
272 may be necessary to cause the management contract to comply with  
273 promulgations of the Internal Revenue Service applicable to the  
274 contract.

275 SECTION 9. The state, the county or the city, or any  
276 members, officers, employees or agents of the foregoing, shall not  
277 be liable for a private contractor's actions or failure to act  
278 while operating and managing a facility pursuant to a management  
279 contract.

280 SECTION 10. (1) The city may enter into lease agreements  
281 with a person or legal entity pursuant to which the city may agree  
282 to lease the facility or equipment for use by the city for a  
283 primary term not to exceed twenty-five (25) years. All lease  
284 agreements may contain terms and conditions as the governing  
285 authorities shall determine to be appropriate and in the public  
286 interest, including any provision which a master lease-purchase  
287 agreement may contain pursuant to Section 31-7-10(5), Mississippi  
288 Code of 1972, may provide for the payment of lease payments which  
289 include an interest component computed at a rate or rates as shall  
290 be approved by the governing authorities, may include an annual  
291 allocation dependency clause, may contain an option granting to  
292 the city the right to purchase the leased property upon the  
293 expiration of the primary term, or upon an earlier date that may

294 be agreed upon by the parties at a price as set forth in or  
295 computed in accordance with the lease agreement and may provide  
296 that all or any obligations thereunder are payable from specified  
297 revenues pledged as security therefor.

298 (2) The city may lease publicly owned real property to a  
299 person or legal entity for the purpose of enabling the person or  
300 legal entity to construct a facility on the property and to lease  
301 the facility to the city. A ground lease shall not be for a  
302 primary term in excess of twice the primary term of the lease with  
303 respect to the facility to be constructed on the real property.  
304 Any public body in the state may lease, sell or otherwise convey  
305 property to the city without consideration or for consideration as  
306 the governing body of the public body shall determine to be  
307 appropriate under the circumstances, and to enter into agreements  
308 with the city relating thereto, which agreements may extend over  
309 any period of time, notwithstanding any provision or rule of law  
310 to the contrary.

311 (3) This section shall be full and complete authority for  
312 the authorization, execution and delivery of lease agreements  
313 authorized under this act and none of the restrictions,  
314 requirements, conditions and limitations of the general laws of  
315 the state applicable to acquisition, construction and drawing of  
316 buildings or facilities shall apply to lease agreements under this  
317 section and all powers necessary to carry out provisions of this  
318 section are conferred upon the city.

319 SECTION 11. All obligations, including bonds, notes and  
320 other evidence of indebtedness issued by the city pursuant to this  
321 act or state law and all interest payable thereunder or with  
322 respect thereto, all leases, trust indentures, deeds of trust,  
323 mortgages, security agreements and other contracts or agreements  
324 entered into pursuant to this act or state law, and all purchases  
325 required to construct the facility or to acquire equipment shall  
326 be exempt from all taxation in the state, including sales taxes

327 and the contractor's tax imposed by Section 27-65-21, Mississippi  
328 Code of 1972. The state shall make all offender housing agreement  
329 cost-per-day payments to a trustee bank which shall disburse funds  
330 upon requisition of private contractor. As provided by general  
331 law applicable to political subdivisions of the state, the  
332 facility and the revenues derived from its operation shall also be  
333 exempt from all taxation in the state, including all ad valorem  
334 taxes levied by the state or any political subdivision.

335 SECTION 12. This act shall be full and complete authority  
336 for the exercise of all powers and authority granted herein and no  
337 requirements or restrictions of law which would otherwise be  
338 applicable to acts of the city shall be applicable except as  
339 expressly provided herein.

340 SECTION 13. Chapter 987, Mississippi Local and Private Laws  
341 of 1997, which authorizes the City of Hollandale to construct a  
342 special needs correctional facility, is repealed.

343 SECTION 14. This act shall take effect and be in force from  
344 and after its passage.