

By: Representatives Broomfield, Bailey, Clarke, Ellis, Espy, Fillingane, Green, Burnett, Hines, Martinson, Stevens, Straughter, Thomas, Wells-Smith, West, Calhoun, Dedeaux, Frierson, Gibbs

To: Corrections

HOUSE BILL NO. 828

1 AN ACT TO AMEND SECTION 47-5-3, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT THE CONSTRUCTION OF ANY NEW STATE CORRECTIONAL FACILITY
3 WITHIN A CERTAIN DISTANCE FROM A SCHOOL OR CHURCH; TO AMEND
4 SECTION 47-5-20, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE
5 COMMISSIONER OF CORRECTIONS PROHIBIT THE CONSTRUCTION OF NEW
6 CORRECTIONAL FACILITIES WITHIN A CERTAIN DISTANCE FROM A SCHOOL OR
7 CHURCH; TO AMEND SECTION 19-3-41, MISSISSIPPI CODE OF 1972, TO
8 PROHIBIT THE CONSTRUCTION OF ANY NEW COUNTY JAIL WITHIN A CERTAIN
9 DISTANCE FROM A SCHOOL OR CHURCH; TO AMEND SECTION 19-7-11,
10 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
11 17-5-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE BOARD OF
12 SUPERVISORS OF ANY COUNTY AND THE GOVERNING AUTHORITIES OF ANY
13 MUNICIPALITY THAT JOINTLY CONSTRUCT ANY NEW JAIL MAY NOT DO SO
14 WITHIN A CERTAIN DISTANCE FROM A SCHOOL OR CHURCH; TO AMEND
15 SECTION 47-1-39, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE
16 CONSTRUCTION OF ANY NEW MUNICIPAL JAILS WITHIN A CERTAIN DISTANCE
17 FROM A SCHOOL OR CHURCH; TO AMEND SECTION 47-4-1, MISSISSIPPI CODE
18 OF 1972, TO PROHIBIT THE CONSTRUCTION OF ANY NEW CORRECTIONAL
19 FACILITY WITHIN A CERTAIN DISTANCE FROM A SCHOOL OR CHURCH; AND
20 FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 47-5-3, Mississippi Code of 1972, is
23 amended as follows:

24 47-5-3. The plantation known as Parchman owned by the state
25 in Sunflower and Quitman Counties, and in such other places as are
26 now or may be hereafter owned or operated by the state for
27 correctional purposes shall constitute the facilities of the
28 correctional system for the custody, punishment, confinement at
29 hard labor and reformation of all persons convicted of a felony in
30 the courts of the state and sentenced to the custody of the
31 department, and whenever the term "Penitentiary" or "State
32 Penitentiary" appears in the laws of the State of Mississippi, it
33 shall mean any facility under the jurisdiction of the Department
34 of Corrections which is used for the purposes described herein
35 subject to the provisions of Section 8 of House Bill No. _____,
36 2004 Regular Session, no facility of the correctional system may

37 be constructed, after the effective date of House Bill No. _____,
38 2004 Regular Session, within five (5) miles of a school or church.

39 **SECTION 2.** Section 47-5-20, Mississippi Code of 1972, is
40 amended as follows:

41 47-5-20. The commissioner shall have the following powers
42 and duties:

43 (a) To establish the general policy of the department;

44 (b) To approve proposals for the location of new
45 facilities, as provided in Section 47-5-3, for major renovation
46 activities, and for the creation of new programs and divisions
47 within the department as well as for the abolition of the same;
48 provided, however, that the commissioner shall approve the
49 location of no new facility unless the board of supervisors of the
50 county or the governing authorities of the municipality in which
51 the new facility is to be located shall have had the opportunity
52 with at least sixty (60) days' prior notice to disapprove the
53 location of the proposed facility. If either the board of
54 supervisors or the governing authorities shall disapprove the
55 facility, it shall not be located in that county or municipality.
56 Said notice shall be made by certified mail, return receipt
57 requested, to the members of the board or governing authorities
58 and to the clerk thereof;

59 (c) Except as otherwise provided or required by law, to
60 open bids and approve the sale of any products or manufactured
61 goods by the department according to applicable provisions of law
62 regarding bidding and sale of state property, and according to
63 rules and regulations established by the State Fiscal Management
64 Board; and

65 (d) To adopt administrative rules and regulations
66 including, but not limited to, offender transfer procedures, award
67 of administrative earned time, personnel procedures, employment
68 practices.

69 **SECTION 3.** Section 19-3-41, Mississippi Code of 1972, is
70 amended as follows:

71 19-3-41. (1) The boards of supervisors shall have within
72 their respective counties full jurisdiction over roads, ferries
73 and bridges, except as otherwise provided by Section 170 of the
74 Constitution, and all other matters of county police. They shall
75 have jurisdiction over the subject of paupers. They shall have
76 power to levy such taxes as may be necessary to meet the demands
77 of their respective counties, upon such persons and property as
78 are subject to state taxes for the time being, not exceeding the
79 limits that may be prescribed by law. They shall cause to be
80 erected and kept in good repair, in their respective counties, a
81 good and convenient courthouse and a jail. A courthouse shall be
82 erected and kept in good repair in each judicial district and a
83 jail may be erected in each judicial district. However, subject
84 to the provisions of Section 8 of House Bill No. _____, 2004
85 Regular Session, no such jail may be erected and no building may
86 be renovated for purposes of housing inmates after the effective
87 date of House Bill No. _____, 2004 Regular Session, within five (5)
88 miles of a school or church. They may close a jail in either
89 judicial district, at their discretion, where one (1) jail will
90 suffice. They shall have the power, in their discretion, to
91 prohibit or regulate the sale and use of firecrackers, roman
92 candles, torpedoes, skyrockets, and any and all explosives
93 commonly known and referred to as fireworks, outside the confines
94 of municipalities. They shall have and exercise such further
95 powers as are or shall be conferred upon them by law. They shall
96 have authority to negotiate with and contract with licensed real
97 estate brokers for the purpose of advertising and showing and
98 procuring prospective purchasers for county-owned real property
99 offered for sale in accordance with the provisions of Section
100 19-7-3.

101 (2) The board of supervisors of any county, in its
102 discretion, may contract with a private attorney or private
103 collection agent or agency to collect any type of delinquent
104 payment owed to the county including, but not limited to, past due
105 fees and fines, delinquent ad valorem taxes on personal property
106 and delinquent ad valorem taxes on mobile homes that are entered
107 as personal property on the mobile home rolls. Any such contract
108 may provide for payment contingent upon successful collection
109 efforts or payment based upon a percentage of the delinquent
110 amount collected; however, the entire amount of all delinquent
111 payments collected shall be remitted to the county and shall not
112 be reduced by any collection costs or fees. There shall be due to
113 the county from any person whose delinquent payment is collected
114 pursuant to a contract executed under this subsection an amount,
115 in addition to the delinquent payment, of not to exceed
116 twenty-five percent (25%) of the delinquent payment for
117 collections made within this state and not to exceed fifty percent
118 (50%) of the delinquent payment for collections made outside of
119 this state. However, in the case of delinquent fees owed to the
120 county for garbage or rubbish collection or disposal, only the
121 amount of the delinquent fees may be collected and no amount in
122 addition to the delinquent fees may be collected if the board of
123 supervisors of the county has notified the county tax collector
124 under Section 19-5-22 for the purpose of prohibiting the issuance
125 of a motor vehicle road and bridge privilege license tag to the
126 person delinquent in the payment of such fees. Any private
127 attorney or private collection agent or agency contracting with
128 the county under the provisions of this subsection shall give bond
129 or other surety payable to the county in such amount as the board
130 of supervisors deems sufficient. Any private attorney with whom
131 the county contracts under the provisions of this subsection must
132 be a member in good standing of The Mississippi Bar. Any private
133 collection agent or agency with whom the county contracts under

134 the provisions of this subsection must meet all licensing
135 requirements for doing business in the State of Mississippi.
136 Neither the county nor any officer or employee of the county shall
137 be liable, civilly or criminally, for any wrongful or unlawful act
138 or omission of any person or business with whom the county has
139 contracted under the provisions of this subsection. The
140 Mississippi Department of Audit shall establish rules and
141 regulations for use by counties in contracting with persons or
142 businesses under the provisions of this subsection.

143 (3) In addition to the authority granted under subsection
144 (2) of this section, the board of supervisors of any county, in
145 its discretion, may contract with one or more of the constables of
146 the county to collect delinquent criminal fines imposed in the
147 justice court of the county. Any such contract shall provide for
148 payment contingent upon successful collection efforts, and the
149 amount paid to a constable may not exceed twenty-five percent
150 (25%) of the amount which the constable collects. The entire
151 amount of all delinquent criminal fines collected under such a
152 contract shall be remitted by the constable to the clerk of the
153 justice court for deposit into the county general fund as provided
154 under Section 9-11-19. Any payments made to a constable pursuant
155 to a contract executed under the provisions of this section may be
156 paid only after presentation to and approval by the board of
157 supervisors of the county.

158 (4) If a county uses its own employees to collect any type
159 of delinquent payment owed to the county, then from and after July
160 1, 1999, the county may charge an additional fee for collection of
161 the delinquent payment provided the payment has been delinquent
162 for ninety (90) days. The collection fee may not exceed fifteen
163 percent (15%) of the delinquent payment if the collection is made
164 within this state and may not exceed twenty-five percent (25%) of
165 the delinquent payment if the collection is made outside this
166 state. In conducting collection of delinquent payments, the

167 county may utilize credit cards or electronic fund transfers. The
168 county may pay any service fees for the use of such methods of
169 collection from the collection fee, but not from the delinquent
170 payment.

171 (5) In addition to such authority as is otherwise granted
172 under this section, the board of supervisors of any county may
173 expend funds necessary to maintain and repair, and to purchase
174 liability insurance, tags and decals for, any personal property
175 acquired under the Federal Excess Personal Property Program that
176 is used by the local volunteer fire department.

177 (6) The board of supervisors of any county, in its
178 discretion, may expend funds to provide for training and education
179 of newly elected or appointed county officials before the
180 beginning of the term of office or employment of such officials.
181 Any expenses incurred for such purposes may be allowed only upon
182 prior approval of the board of supervisors. Any payments or
183 reimbursements made under the provisions of this subsection may be
184 paid only after presentation to and approval by the board of
185 supervisors.

186 (7) The board of supervisors of any county may expend funds
187 to purchase, maintain and repair equipment for the electronic
188 filing and storage of filings, files, instruments, documents and
189 records using microfilm, microfiche, data processing, magnetic
190 tape, optical discs, computers or other electronic process which
191 correctly and legibly stores and reproduces or which forms a
192 medium for storage, copying or reproducing documents, files and
193 records for use by one (1), all or any combination of county
194 offices, employees and officials, whether appointed or elected.

195 (8) In addition to the authority granted in this section,
196 the board of supervisors of any county may expend funds as
197 provided in Section 29-3-23(2).

198 (9) The board of supervisors of any county may perform and
199 exercise any duty, responsibility or function, may enter into

200 agreements and contracts, may provide and deliver any services or
201 assistance, and may receive, expend and administer any grants,
202 gifts, matching funds, loans or other monies, in accordance with
203 and as may be authorized by any federal law, rule or regulation
204 creating, establishing or providing for any program, activity or
205 service. The provisions of this paragraph shall not be construed
206 as authorizing any county, the board of supervisors of any county
207 or any member of a board of supervisors to perform any function or
208 activity that is specifically prohibited under the laws of this
209 state or as granting any authority in addition to or in conflict
210 with the provisions of any federal law, rule or regulation.

211 **SECTION 4.** Section 19-7-11, Mississippi Code of 1972, is
212 amended as follows:

213 19-7-11. If a new courthouse or jail shall be required in
214 any county, or if the courthouse or jail shall need remodeling,
215 enlarging, or repairing, the board of supervisors shall determine
216 the material, the dimensions, and the plan thereof, and may make
217 the necessary contracts for the erection, remodeling, enlarging,
218 or repairing thereof, and for furnishing the materials. However,
219 subject to the provisions of Section 8 of House Bill No. _____,
220 2004 Regular Session, no jail may be erected and no building may
221 be renovated for purposes of housing inmates after the effective
222 date of House Bill No. _____, 2004 Regular Session, within five (5)
223 miles of a school or church. The board may appoint one or more
224 commissioners to superintend the work as it progresses, which
225 commissioner or commissioners shall take care that the proper
226 materials are furnished, and that the work is faithfully performed
227 according to contract, and who, for his or their services, shall
228 receive a reasonable compensation.

229 The board of supervisors of any county having two (2)
230 judicial districts, and in which State Highways 18 and 15
231 intersect, is further authorized to issue negotiable bonds of
232 either of the judicial districts of such county for the purpose of

233 erecting, equipping, repairing, reconstructing, remodeling, and
234 enlarging the courthouse in and for the judicial district for
235 which such bonds are issued. All such bonds shall be issued in
236 like manner and subject to the same limitations and provisions as
237 are set forth by law with reference to the issuance of county-wide
238 bonds.

239 **SECTION 5.** Section 17-5-1, Mississippi Code of 1972, is
240 amended as follows:

241 17-5-1. (1) (a) The board of supervisors of any county of
242 the state and the governing authorities of any municipality within
243 such county may enter into a contract for the joint construction,
244 expansion, remodeling and/or maintenance and equipping of a jail
245 in such municipality, or within one (1) mile of the corporate
246 limits thereof, and may issue bonds of both the county and such
247 municipality in the manner provided by general statutes for the
248 issuance of county and municipal bonds for such purposes, provided
249 that in no event shall the municipality bear over fifty percent
250 (50%) of the cost of constructing, expanding, remodeling and/or
251 maintaining and equipping such jail. Such contract or future
252 contracts may provide for the continued joint use of equipping,
253 repairing, reconstructing and remodeling of such jail. Before
254 issuing any bonds for the purposes herein set forth, the board of
255 supervisors and the governing authorities of such municipality
256 shall adopt a joint resolution declaring their intention to issue
257 the same, which resolution shall state the amount and purposes of
258 the bonds to be issued, and shall fix the date upon which action
259 will be taken to provide for the issuance of such bonds. Said
260 resolution shall be published once a week for at least three (3)
261 consecutive weeks in a newspaper published in the county, the
262 first publication of such notice to be made not less than
263 twenty-one (21) days prior to the date fixed in such resolution
264 and the last publication to be made not more than seven (7) days
265 prior to such date. If twenty percent (20%) or fifteen hundred

266 (1500), whichever is less, of the qualified electors of the county
267 and municipality, respectively, shall file a written protest
268 against the issuance of such bonds on or before the date specified
269 in such resolution, then an election upon the issuance of such
270 bonds shall be called and held, and in such case such bonds or
271 other evidences of indebtedness shall not be issued unless same
272 are authorized by the affirmative vote of a majority of the
273 qualified electors of said county and municipality, respectively,
274 who vote on the proposition at such election. Notice of such
275 election shall be given by publication in like manner as is
276 provided for the publication of the initial resolution, and said
277 election shall be called, held and conducted and the returns
278 thereof made, canvassed and declared in the same manner as
279 provided by Section 19-9-1 et seq., and Section 21-33-301 et seq.,
280 respectively. If no such petition be filed protesting against the
281 issuance of said bonds, then the said board of supervisors and the
282 governing authorities of the municipality shall have the authority
283 to issue said bonds without an election.

284 (b) If the board of supervisors of any county and the
285 governing authorities of any municipality within such county
286 contract, after the effective date of House Bill No. _____, 2004
287 Regular Session, for the joint construction of a jail or the
288 remodeling of a building for the purposes of housing inmates, no
289 such jail or building may be located within five (5) miles of a
290 school or church.

291 (2) If the board of supervisors of a county and the
292 governing authorities of a municipality enter into an agreement
293 under the Regional Economic Development Act or an
294 intergovernmental agreement approved by the Attorney General for
295 the operation of a county jail, such county jail may be located
296 outside the corporate limits of the municipality and is not
297 subject to location restrictions in subsection (1). However, no
298 such county jail may be constructed, after the effective date of

299 House Bill No. _____, 2004 Regular Session, within five (5) miles
300 of a school or church.

301 **SECTION 6.** Section 47-1-39, Mississippi Code of 1972, is
302 amended as follows:

303 47-1-39. (1) The governing authorities of municipalities
304 shall have the power to construct and maintain a municipal prison,
305 and to regulate the keeping of the same and the prisoners therein,
306 and to contract with the board of supervisors, which is empowered
307 in the premises, for the use of the county jail by the
308 municipality; and to provide for the working of the streets by
309 municipal prisoners, and to contract with the county for such work
310 by county prisoners or the working of county roads by municipal
311 prisoners, or for working same on the county farms. Municipal
312 prisoners shall be worked on county roads or county farms only in
313 the county in which the municipality is situated. Males and
314 females shall be confined in separate cells or compartments.
315 Subject to the provisions of Section 8 of House Bill No. _____,
316 2004 Regular Session, no municipal prison may be constructed,
317 after the effective date of House Bill No. _____, 2004 Regular
318 Session, within five (5) miles of a school or church.

319 (2) The municipality shall pay the tuition, living and
320 travel expenses incurred by a person attending and participating
321 in the basic and continuing education courses for jail officers.

322 **SECTION 7.** Section 47-4-1, Mississippi Code of 1972, is
323 amended as follows:

324 47-4-1. (1) It is lawful for there to be located within
325 Wilkinson County and Leflore County a correctional facility
326 operated entirely by a private entity pursuant to a contractual
327 agreement between such private entity and the federal government,
328 any state, or a political subdivision of any state to provide
329 correctional services to any such public entity for the
330 confinement of inmates subject to the jurisdiction of such public
331 entity. Any person confined in such a facility pursuant to the

332 laws of the jurisdiction from which he is sent shall be considered
333 lawfully confined within this state. The private entity shall
334 assume complete responsibility for the inmates and shall be liable
335 to the State of Mississippi for any illegal or tortious actions of
336 such inmates.

337 (2) The Department of Corrections shall contract with the
338 "Delta Correctional Facility Authority," a public body authorized
339 in Chapter 852, Local and Private Laws of 1992, for the private
340 incarceration of not more than one thousand (1,000) state inmates
341 at a facility in Leflore County. Any contract must comply with
342 the requirements of Section 47-5-1211 through Section 47-5-1227.

343 (3) It is lawful for any county to contract with a private
344 entity for the purpose of providing correctional services for the
345 confinement of federal inmates subject to the jurisdiction of the
346 United States. Any person confined in such a facility pursuant to
347 the laws of the United States shall be considered lawfully
348 confined within this state. The private entity shall assume
349 complete responsibility for the inmates and shall be liable to the
350 county or the State of Mississippi, as the case may be, for any
351 illegal or tortious actions of the inmates.

352 (4) It is lawful for there to be located within any county a
353 correctional facility operated entirely by a private entity and
354 the federal government to provide correctional services to the
355 United States for the confinement of federal inmates subject to
356 the jurisdiction of the United States. However, subject to the
357 provisions of Section 8 of House Bill No. _____, 2004 Regular
358 Session, no such correctional facility may be constructed after
359 the effective date of House Bill No. _____, 2004 Regular Session,
360 within five (5) miles of a school or church. Any person confined
361 in a facility pursuant to the laws of the United States shall be
362 considered lawfully confined within this state. The private
363 entity shall assume complete responsibility for the inmates and

364 shall be liable to the State of Mississippi for any illegal or
365 tortious actions of the inmates.

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

371 A person convicted of aggravated assault on an employee of a
372 private correctional facility while such employee is acting within
373 the scope of his or her duty or employment shall be punished by a
374 fine of not more than Five Thousand Dollars (\$5,000.00) or by
375 imprisonment for not more than thirty (30) years, or both.

376 (5) If a private entity houses state inmates, the private
377 entity shall not displace state inmate beds with federal inmate
378 beds unless the private entity has obtained prior written approval
379 from the Commissioner of Corrections.

380 **SECTION 8.** This act shall not apply to and shall not affect
381 the construction of any jail or other correctional facility or the
382 renovation of any building for the purpose of housing inmates that
383 is conducted pursuant to contracts entered into before the
384 effective date of this act.

385 **SECTION 9.** This act shall take effect and be in force from
386 and after its passage.