

Chapter No. 538

12/SS01/R1101SG

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## ***SENATE BILL NO. 2786***

Originated in Senate

*L. Welch*

Secretary

SENATE BILL NO. 2786

AN ACT TO AMEND SECTIONS 47-5-64 AND 47-5-66, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO LEASE PUBLIC LAND LOCATED AT THE MISSISSIPPI STATE PENITENTIARY; TO PROVIDE THAT LEASE PAYMENTS FOR SUCH PROJECTS SHALL BE DEPOSITED INTO THE PRISON AGRICULTURAL ENTERPRISE FUND WITH 15% EARMARKED FOR THE PUBLIC SCHOOLS OF SUNFLOWER COUNTY; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 47-5-64, Mississippi Code of 1972, is amended as follows:

47-5-64. (1) The commissioner is hereby directed to determine the number of acres and location of land under the department's jurisdiction that are needed for security purposes, for Prison Agricultural Enterprises and for nonagricultural purposes. The commissioner shall designate and reserve such additional land for agricultural or nonagricultural enterprise projects of the department, as he deems necessary. The commissioner shall then recommend to the Department of Finance and Administration the number of acres of department land that should be leased to private entities and the term of the leases.

(2) The Department of Finance and Administration is authorized to lease for agricultural purposes that Penitentiary land so recommended for not less than three (3) nor more than eight (8) years, with the approval of the Public Procurement Review Board.

(3) The Department of Finance and Administration, with the approval of the Governor, the Secretary of State and the Commissioner of the Department of Corrections, is authorized to lease Penitentiary land for power generation projects or other

commercial or industrial projects at the same time that it leases the land as prescribed in Section 47-5-64(2). The Department of Finance and Administration is authorized to negotiate all aspects of leases or related agreements executed under this subsection consistent with the following:

(a) The period of the lease term combined with the term of renewal shall not exceed forty (40) years.

(b) Any lease or renewal lease shall:

(i) Provide for periodic rent adjustments throughout the term of the lease; and

(ii) Require the lessee to provide a decommissioning and restoration bond or other security securing the lessee's obligation to remove all aboveground and underground facilities to a depth of at least three (3) feet underground and to restore the surface to a condition similar to its condition before the commencement of the lease.

(c) Any lease or renewal lease may provide for any combination of the following: base rent, bonuses, percentage of income payments, royalty payments or other terms and conditions that the Department of Finance and Administration deems necessary to maintain a fair and equitable return to the state and to protect the leased land throughout the term of the lease or renewal lease.

(d) Oil, gas and mineral rights in the leased land shall be reserved to the State of Mississippi.

(e) This subsection does not authorize the sale or transfer of title to any state lands.

(f) The Department of Finance and Administration may charge fees and expenses, not to exceed costs, incurred in administering this subsection.

(g) Any monies derived from leasing lands under this subsection shall be deposited to the Prison Agricultural Enterprise Fund as provided in Section 47-5-66.

**SECTION 2.** Section 47-5-66, Mississippi Code of 1972, is amended as follows:

47-5-66. (1) Except as provided in Section 47-5-64(3), it shall be the duty of the Department of Finance and Administration, with the approval of the Public Procurement Review Board, to lease lands at public contract upon the submission of two (2) or more sealed bids to the Department of Finance and Administration after having advertised the land for rent in newspapers of general circulation published in Jackson, Mississippi; Memphis, Tennessee; the county in which the land is located; and contiguous counties for a period of not less than two (2) successive weeks. The first publication shall be made not less than ten (10) days before the date of the public contract, and the last publication shall be made not more than seven (7) days before that date. The Department of Finance and Administration may reject any and all bids. If all bids on a tract or parcel of land are rejected, the Department of Finance and Administration may then advertise for new bids on that tract or parcel of land. Successful bidders shall take possession of their leaseholds at the time authorized by the Department of Finance and Administration. However, rent shall be due no later than the day upon which the lessee shall assume possession of the leasehold, and shall be due on the anniversary date for each following year of the lease. The Department of Finance and Administration may provide in any lease that rent shall be paid in full in advance or paid in installments, as may be necessary or appropriate. In addition, the Department of Finance and Administration may accept, and the lease may provide for, assignments of federal, state or other agricultural support payments, growing crops or the proceeds from the sale thereof, promissory notes, or any other good and valuable consideration offered by any lessee to meet the rent requirements of the lease. If a promissory note is offered by a lessee, it shall be secured by a first lien on the crop of the lessee, or the

proceeds from the sale thereof. The lien shall be filed pursuant to Article 9 of the Uniform Commercial Code and Section 1324 of the Food Security Act of 1985, as enacted or amended. If the note is not paid at maturity, it shall bear interest at the rate provided for judgments and decrees in Section 75-17-7 from its maturity date until the note is paid. The note shall provide for the payment of all costs of collection and reasonable attorney's fees if default is made in the payment of the note. The payment of rent by promissory note or any means other than cash in advance shall be subject to the approval of the Public Procurement Review Board, which shall place the approval of record in the minutes of the board.

(2) There is created a special fund to be designated as the "Prison Agricultural Enterprises Fund" and to be used for the purpose of conducting, operating and managing the agricultural and nonagricultural enterprises of the department. Any monies derived from the leasing of Penitentiary lands, from the sales of timber as provided in Section 47-5-56, from the prison's agricultural enterprises or earmarked for the Prison Industries Fund shall be deposited to the special fund \* \* \*. However, fifteen percent (15%) of the monies derived from the leasing of Penitentiary lands under Section 47-5-64(3) shall be deposited to a special fund to be distributed annually on a student pro rata basis to the public schools located in Sunflower County by the Department of Finance and Administration.

(3) All profits derived from prison industries shall be placed in a special fund in the State Treasury to be known as the "Prison Industries Fund," to be appropriated each year by the Legislature to the nonprofit corporation, which is required to be organized under the provisions of Section 47-5-535, for the purpose of operating and managing the prison industries.

(4) The state shall have the rights and remedies for the security and collection of the rents given by law to landlords.

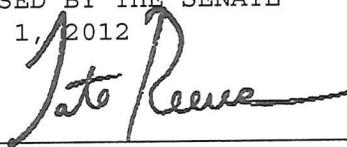
(5) Lands leased for agricultural purposes under Section 47-5-64(2) shall be subject to a fee-in-lieu of ad valorem taxes, including taxes levied for school purposes. The fee-in-lieu shall be Nine Dollars (\$9.00) per acre. Upon the execution of the agricultural leases to private entities as authorized by Section 47-5-64(2), the Department of Finance and Administration shall collect the in lieu fee and shall forward the fees to the tax collector in which the land is located. The tax collector shall disburse the fees to the appropriate county or municipal governing authority on a pro rata basis. The sum apportioned to a school district shall not be less than the school district's pro rata share based upon the proportion that the millage imposed for the school district by the appropriate levying authority bears to the millage imposed by the levying authority for all other county or municipal purposes. Any funds obtained by the corporation as a result of sale of goods and services manufactured and provided by it shall be accounted for separate and apart from any funds received by the corporation through appropriation from the State Legislature. All nonappropriated funds generated by the corporation shall not be subject to appropriation by the State Legislature.

(6) Any land leased, as provided under Section 47-5-64(2), shall not be leased for an amount less than would be received if such land were to be leased under any federal loan program. In addition, all leases shall be subject to the final approval of the Public Procurement Review Board before such leases are to become effective.

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SECTION 3. This act shall take effect and be in force from  
and after July 1, 2012.

PASSED BY THE SENATE  
May 1, 2012



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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
April 30, 2012



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



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GOVERNOR

5-22-12

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