3/29/19 2:13 P.M.

Chapter No. 913
19/SS26/R866CS
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SENATE BILL NO. 2994

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2994

AN ACT TO AMEND CHAPTER 991, LOCAL AND PRIVATE LAWS OF 1998, AS AMENDED BY CHAPTER 915, LOCAL AND PRIVATE LAWS OF 2013, TO AUTHORIZE THE WALNUT GROVE CORRECTIONAL AUTHORITY TO PROVIDE HOUSING FOR OFFENDERS CLASSIFIED TO ANY CUSTODY LEVEL; AND FOR RELATED PURPOSES.

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

SECTION 1. Chapter 991, Local and Private Laws of 1998, as amended by Chapter 915, Local and Private Laws of 2013, is amended as follows:

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

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

(b) "Authority" means the Walnut Grove Correctional Authority.

(c) "Board of commissioners" means the board of commissioners of the authority.

(d) "Governing authorities" means the governing authorities of the city.

(e) "City" means Walnut Grove, Mississippi.

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

(g) "Facility" means a jail, prison or other incarceration facility located in the city which is constructed, acquired or operated pursuant to this act.

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

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

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

Section 2. (1) There is created in the city a public body corporate and politic to be known as the "Walnut Grove Correctional Authority." The authority shall not transact any business or exercise any powers under this act until the governing authorities adopts a resolution finding that it is in the public interest to have the authority exercise the powers set forth in this act. The resolution shall designate the manner in which funds of the authority in excess of amounts needed to pay the

authority's operating expenses and debt service will be applied, provided that none of the excess funds of the authority may inure to the benefit of any private person.

(2) Alternatively, the governing authorities may by resolution designate a nonprofit corporation incorporated under the general laws of the state to exercise the powers of the authority set forth in this act, in which event the governing authorities may take all actions necessary for the nonprofit corporation to be treated as acting on behalf of the city under the Internal Revenue Code. The nonprofit corporation shall have, in addition to the powers and authority generally exercisable by nonprofit corporations in the state, all powers and authority granted to the authority under this act and shall be deemed to be a charitable society, for purposes of Section 27-31-1, Mississippi Code of 1972. All provisions of this act applicable to obligations, agreements, contracts and property of, and purchases by, contracting with and leasing or conveyance of property to an authority shall be applicable to obligations, agreements, contracts and property of, and purchases by, contracting with and leasing or conveyance of property to the nonprofit corporation.

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

Section 4. The authority shall exist until dissolved pursuant to a resolution adopted by the governing authorities. Upon dissolution of the authority, title to all property owned by

the authority shall vest in the city. Dissolution of the authority shall not adversely affect the rights of any holders of obligations issued by the authority, including, but not limited to, any bonds, notes or other evidences of indebtedness issued by the authority or the rights of any parties to contracts with the authority, including, but not limited to, leases, lease purchase agreements and management contracts entered into before the date of dissolution of the authority. A dissolution shall not be effective at any time that any bonds, notes or other evidence of indebtedness of the authority, including, but not limited to, lease-purchase agreements, shall be outstanding, except to the extent permitted in the documents executed in connection with the initial issuance of the bonds, notes or other indebtedness.

Section 5. (1) All powers of the authority shall be exercised by its board of commissioners to be composed of five (5) members, one (1) appointed by the governing authorities of the City of Walnut Grove from each ward and one (1) appointed by the governing authorities from the municipality at large.

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

(a) Two (2) members appointed by the governing authorities of the City of Walnut Grove shall serve for a term of four (4) years.

(b) Two (2) members appointed by the governing authorities of the City of Walnut Grove shall serve for a term of three (3) years.

(c) One (1) member appointed by the governing authorities of the City of Walnut Grove shall serve for a term of two (2) years.

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

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

(3) The members of the board of commissioners shall elect annually from among themselves the officers of president, vice president, secretary and treasurer. The board of commissioners shall adopt bylaws, rules and regulations as may be necessary to govern the time, place and manner for holding subsequent meetings of the board of commissioners and for the conduct of its business consistent with the provisions of this act. All meetings of the board of commissioners shall be conducted in accordance with Section 25-41-1 et seq., Mississippi Code of 1972. Any action taken by the board of commissioners shall be official at the time

the action is taken. Actions may be taken by the board of commissioners at any regular, special or recessed meeting.

(4) The members of the board of commissioners may receive per diem compensation for attending meetings of the board of commissioners in the amount provided for in Section 37-6-13, Mississippi Code of 1972, and shall meet at least once quarterly at a time and place determined by the board of commissioners. The board of commissioners shall keep minutes of its proceedings as necessary to carry out its responsibilities. A quorum of the board of commissioners shall consist of three (3) members.

(5) A board member may be removed, upon recommendation by a vote of three (3) members of the board of commissioners and approval by the governing authorities of the city.

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

Section 6. * * * The authority shall have all the powers necessary or convenient to effectuate and carry out the provisions of this act, including the following powers in addition to others granted in this act:

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

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

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

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

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

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

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

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

(i) To construct, purchase, receive, lease, lease-purchase, or otherwise acquire, own, hold, improve or use a facility or any item of equipment, and to enter into agreements relating thereto, including, but not limited to, sale and issuance of certificates of participation, which may extend for a period of time, notwithstanding any provision or rule of law to the contrary, and provide for the consideration and other terms and

conditions that are acceptable to the authority and are not in conflict with the provisions of this act, without regard to any general laws of the state regulating public purchases and acquisitions or restricting the time periods of agreements;

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

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

(l) To borrow money and issue its obligations therefor for the purpose of carrying out its powers under this act, at rates of interest and upon terms and conditions that are acceptable to the authority and are not in conflict with the provisions of this act, without regard to any general laws of the state regulating the borrowing of money or issuance of obligations by public bodies, provided that any obligations issued by the authority shall be payable solely out of revenues received by the authority in connection with the operation or lease of a facility

and shall never constitute a debt or obligation of the city or the state;

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

(n) To contract with the United States or the State of Mississippi, or any political subdivision of the State of Mississippi, to provide for housing, care and control in a facility of offenders who are in the custody of the jurisdiction, who * * * <u>have been</u> classified * * * <u>to any custody level</u>, who do not have histories of escape, and who are sentenced to terms of incarceration for conviction of a felony, or who are sentenced to terms of incarceration for a misdemeanor, provided that the incarceration in the facility for a misdemeanor is consistent with American Correctional Association Standards relating to the incarceration of offenders convicted of more serious offenses, to

enter into agreements relating thereto which may extend for time periods that are acceptable to the parties, notwithstanding any provision or rule of law to the contrary, and to exercise all powers necessary or desirable in connection with the operation of a prison or other type of correctional facility, including, but not limited to, the power to incarcerate offenders described above; and

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

* * *

Section 7. (1) A facility shall be designed, constructed, operated and maintained in accordance with American Correctional Association Standards. The facility shall meet the percentage of standards required for accreditation by the American Correctional Association, except where a contract with a private contractor requires compliance with a higher percentage of nonmandatory standards.

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

(3) The Department of Corrections shall place a compliance officer at the facility. The authority or private contractor

shall provide an on-site work area for the compliance officer and shall permit access to all areas of the facility and to the offenders and staff at all times. The authority or private contractor shall reimburse the Department of Corrections for all costs incurred for the compliance officer.

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

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

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

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

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

(c) To prevent serious damage to property;

(d) To enforce facility regulations and orders; and

(e) To prevent or quell a riot.

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

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

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

Section 10. (1) Neither the state nor the city shall assume jurisdiction or custody of any federal offenders or offenders from other states who are incarcerated in the facility. The offenders shall remain subject to the jurisdiction of the United States or another state, as applicable. Neither the state nor the city shall be liable for loss or injury resulting from the acts of the

offenders, nor shall the state or the city be liable for any injuries to the offenders. The authority or private contractor shall reimburse the Department of Corrections for any expenses incurred in quelling a prison riot.

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

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

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

(3) A management contract shall provide that any sovereign immunity of the state, any sovereign immunity of the county, any sovereign immunity of the city or any sovereign immunity of the authority shall not extend to the private contractor. Neither the private contractor nor any insurer of the private contractor may plead the defense of sovereign immunity in any action arising out of or related to the performance of the management contract.

(4) A management contract shall provide that the private contractor shall be responsible for the reimbursement of all costs and expenses incurred by the state, the city or the authority in connection with legal actions brought in the state by or on behalf of any offender incarcerated in the facility, including, but not limited to, court costs, sheriff's fees, witness fees, district attorney expenses, expenses of the Office of the Attorney General, indigent or public defender fees and expenses, judicial expenses, court reporter expenses and damage awards. The contract shall provide for the reimbursement of all costs and expenses incurred by the Department of Corrections for maintaining a compliance officer at the facility and for all costs and expenses incurred by the Department of Corrections for aiding in quelling a prison riot.

(5) A management contract shall provide that the private contractor shall indemnify and hold harmless the authority, the city and the state, and any officers, members, employees or agents of the foregoing, for any claim or liability for damage or injury

to any person or property related to or arising from the operation and management of a facility, including, but not limited to, liability for loss or injury resulting from the acts of offenders incarcerated at the facility and liability for any injuries to the offenders.

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

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

Section 13. (1) The authority or the private contractor shall permit the Investigative Task Force of the Department of Corrections to have full access to all areas of the facility and to the offenders and staff. The investigators may exercise any and all police powers provided under Section 47-5-54, Mississippi Code of 1972.

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

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

Section 14. (1) The authority may enter into lease agreements with a person or legal entity pursuant to which the authority may agree to lease the facility or equipment for use by the authority for a primary term not to exceed thirty (30) years. All lease agreements may contain terms and conditions as the board of commissioners of the authority shall determine to be appropriate and in the public interest, including, but not limited to, any provision which a master lease-purchase agreement may contain pursuant to Section 31-7-10(5), Mississippi Code of 1972, may provide for the payment of lease payments which include an interest component computed at a rate or rates as shall be approved by the board of commissioners, may include an annual allocation dependency clause, may contain an option granting to the authority the right to purchase the leased property upon the expiration of the primary term, or upon an earlier date that may be agreed upon by the parties, at a price as set forth in or computed in accordance with the lease agreement and may provide that all or any obligations thereunder are payable from specified revenues pledged as security therefor.

(2) The authority may lease publicly owned real property to a person or legal entity for the purpose of enabling the person or legal entity to construct a facility on the property and to lease

the facility to the authority. A ground lease shall not be for a primary term in excess of twice the primary term of the lease with respect to the facility to be constructed on the real property. Any public body in the state may lease, sell or otherwise convey property to the authority without consideration or for consideration as the governing body of the public body shall determine to be appropriate under the circumstances, and to enter into agreements with the authority relating thereto, which agreements may extend over any period of time, notwithstanding any provision or rule of law to the contrary.

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

Section 15. All obligations, including, but not limited to, bonds, notes, lease-purchase agreements and other evidence of indebtedness issued by the authority pursuant to this act and all interest payable thereunder or with respect thereto, all leases, trust indentures, deeds of trust, mortgages, security agreements and other contracts or agreements entered into pursuant to this act, and all purchases required to construct the facility or to

acquire equipment shall be exempt from all taxation in the state, including, but not limited to, sales taxes and the contractor's tax imposed by Section 27-65-21, Mississippi Code of 1972. As provided by general law applicable to political subdivisions of the state, a facility and the revenues derived from its operation shall be exempt from all taxation in the state, including, but not limited to, all ad valorem taxes levied by the state or any political subdivision thereof.

Section 16. This act shall be full and complete authority of the exercise of all powers and authority granted in this act and any requirements or restrictions of law which would otherwise be applicable to acts of the authority shall not be applicable except as expressly provided in this act. Debt of the authority shall not be considered to be debt of the city or any other political subdivision of the state for purposes of any provision or rule of law restricting the amount of indebtedness of the city or any other political subdivision or for any other purpose under the laws of the state.

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

PASSED BY THE SENATE
March 19, 2019

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 22, 2019

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/29/2019 2:13pm