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FISCAL IMPACT REPORT

SPONSOR: Godbey DATE TYPED: 02/19/01 HB 413
 SHORT TITLE: Supervise Out-of-State Inmates SB _____
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB124 and SB316

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Children Youth and Families Department (CYFD)
 Attorney General (AG)

SUMMARY

Synopsis of Bill

HB413 enacts a new section of NMSA 1978, Chapter 33, Art. 1 that provides that an inmate from a jurisdiction other than NM shall not be incarcerated in a privately operated correctional facility or privately operated jail unless the facility or jail is designed to meet or exceed the appropriate classification level for the inmate and the express approval of the Secretary of Corrections has been received. Also provides that the operator of a privately operated correctional facility shall pay the county sheriff's department of the county where the facility is located a quarterly fee in the amount of 75 cents per inmate per day for each inmate from a jurisdiction other than NM. The bill does not assess a similar charge against operators of privately operated jails that house inmates from jurisdictions outside of NM.

Significant Issues

The AG reports the intended purpose of HB413 is unclear and may be ambiguous.

According to CD, HB413 imposes significant additional fiscal and administrative burdens upon the Secretary which CD will be unable to absorb.

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Also, granting the Secretary approval authority for the housing of out-of-state inmates in private facilities in New Mexico will likely result in liability claims against the Secretary when out-of-state inmates in private facilities engage in misconduct.

Finally, it is unclear how the Secretary of CD would enforce this authority.

PERFORMANCE IMPLICATIONS

CD reports unless the Secretary and CD are given sufficient resources to accomplish these additional duties, CD will be unable to implement a program to administer the bill.

FISCAL IMPLICATIONS

CD reports there is no appropriation in the bill to cover the increase in costs to CD. In addition to the need for additional F.T.E., there will be additional in-state travel costs, perhaps out-of-state travel costs, postage, supplies and materials. These increased costs will be recurring and CD will be unable to absorb them.

Since the fees provided in the bill go to the County Sheriff, this will not affect any of the CD's costs.

ADMINISTRATIVE IMPLICATIONS

According to CD the administrative impact will be to substantially increase the administrative burden upon the Secretary and/or CD employees who will be required to inspect the private jails and correctional facilities and also review the classification and history of every out-of-state inmate who is proposed for housing in such a facility. CD will be unable to absorb this additional burden and additional F.T.E. will be required to perform these new duties.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Except for the fee provision, this bill is almost identical to HB 124.

AG reports HB413 conflicts with or relates to SB 316, which prohibits, with certain specified exceptions, the incarceration or detention of out-of-state inmates in municipal or county jails, state-run correctional facilities and privately owned correctional facilities.

TECHNICAL ISSUES

The AG suggests clarifying whether the bill is intended to confer broad general authority on privately operated corrections facilities and jails to house inmates from other jurisdictions, or whether it merely places conditions on the exercise of a privately operated facility's or jail's existing statutory authority. If the bill is intended to confer general authority, it might be amended to give publicly operated jails and correctional facilities the same authority. See discussion above under "Substantive Issues".

OTHER SUBSTANTIVE ISSUES

According to AG , currently, no express statutory authority exists for housing inmates from other jurisdictions in any correctional facility or jail, whether it is publicly or privately operated, except for federal inmates, persons convicted in tribal court and out-of-state inmates covered by an interstate compact codified in NMSA 1978, Chapter 31, Article 5. In light of this circumstance, the purpose and effect of the bill are ambiguous. The bill might be interpreted to confer broad, general authority on privately operated correctional facilities and jails to house inmates from jurisdictions other than NM, in addition to imposing conditions on the exercise of that authority. An alternative interpretation would be that the bill merely imposes conditions on the current limited statutory authority of privately operated corrections facilities and jails to house inmates from other jurisdictions.

CD suggests requiring the out-of-state jurisdiction or other entity who is responsible for housing the out-of-state inmate in New Mexico to pay a fee of seventy-five cents (\$.75) per day per inmate to fund the CD or some other appropriate entity to regulate and monitor such matters.

LAT/njw