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SENATE BILL 404

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

MICHAEL S. SANCHEZ

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONAL FACILITIES; ELIMINATING THE
AUTHORIZATIONS AND FINANCING FOR CERTAIN CORRECTIONAL
FACILITIES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 AND
LAWS 1995.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 33-1-17 NMSA 1978 (being Laws 1985,
Chapter 149, Section 1, as amended) is amended to read:

"33-1-17. PRIVATE CONTRACT. --

A. The corrections department may contract for the
operation of any adult female facility or for housing adult
female inmates in a private facility with a person or entity in
the business of providing correctional or jail services to
government entities.

B. The corrections department may contract with a

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1 person or entity in the business of providing correctional or
2 jail services to government entities for:

3 ~~[(1) a correctional facility in Guadalupe~~
4 ~~county of not less than five hundred fifty and not more than two~~
5 ~~thousand two hundred beds;~~

6 ~~(2) a correctional facility in Lea, Chaves or~~
7 ~~Santa Fe county of not less than one thousand two hundred and~~
8 ~~not more than two thousand two hundred beds;~~

9 ~~(3)]~~ (1) design and construction of a support
10 services building, a laundry and an infirmary at the
11 penitentiary of New Mexico in Santa Fe; or

12 ~~[(4)]~~ (2) construction of a public facility to
13 house a special incarceration alternative program for adult male
14 and adult female felony offenders.

15 ~~[C. The authorization in Subsection B of this~~
16 ~~section for a correctional facility in Guadalupe county and a~~
17 ~~correctional facility in Lea, Chaves or Santa Fe county is~~
18 ~~contingent upon construction of both facilities, so that one of~~
19 ~~the facilities shall not be constructed unless both of the~~
20 ~~facilities are constructed, as nearly as practicable,~~
21 ~~simultaneously.~~

22 ~~D.]~~ C. The corrections department shall solicit
23 proposals and award any contract under this section in
24 accordance with the provisions of the Procurement Code. The
25 contract shall include such terms and conditions as the

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1 corrections department may require after consultation with the
2 general services department; provided that the terms and
3 conditions shall include provisions:

4 (1) setting forth comprehensive standards for
5 conditions of incarceration;

6 (2) that the contractor assumes all liability
7 caused by or arising out of all aspects of the provision or
8 operation of the facility;

9 (3) for liability insurance or other proof of
10 financial responsibility acceptable to the general services
11 department covering the contractor and its officers, employees
12 and agents in an amount sufficient to cover all liability caused
13 by or arising out of all aspects of the provision or operation
14 of the facility;

15 (4) for termination for cause upon ninety days'
16 notice to the contractor for failure to meet contract provisions
17 when such failure seriously affects the availability or
18 operation of the facility;

19 (5) that venue for the enforcement of the
20 contract shall be in the district court for Santa Fe county;

21 (6) that continuation of the contract is
22 subject to the availability of funds; and

23 (7) that compliance with the contract shall be
24 monitored by the corrections department and the contract may be
25 terminated for noncompliance.

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1 ~~[E.]~~ D. When the contractor begins operation of a
2 facility for which private contractor operation is authorized,
3 his employees performing the functions of correctional officers
4 shall be deemed correctional officers for the purposes of
5 Sections 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose
6 of state law, unless specifically stated.

7 ~~[F.]~~ E. Any contract awarded pursuant to this
8 section may include terms to provide for the renovation of the
9 facility or for the construction of new buildings. Work
10 performed pursuant to such terms and conditions shall not be
11 considered a capital project as defined in Section 15-3-23.3
12 NMSA 1978 or a state public works project as defined in Section
13 13-1-91 NMSA 1978 nor shall it be subject to the requirements of
14 Section 13-1-150 NMSA 1978 or of the Capital Program Act, review
15 by the staff architect of the property control division of the
16 general services department pursuant to Section 15-3-20 NMSA
17 1978 or regulation by the director of that division pursuant to
18 Section 15-3-11 NMSA 1978.

19 ~~[G.]~~ F. Any contract entered into by the corrections
20 department with a private contractor to operate an existing
21 facility shall include a provision securing the right of all
22 persons employed by that facility prior to the effective date of
23 that contract to be employed by that contractor in any position
24 for which they qualify before that position is offered to any
25 person not employed by that facility prior to that date."

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1 Section 2. Section 33-1-18 NMSA 1978 (being Laws 1990
2 (1st. S.S.), Chapter 5, Section 1, as amended) is amended to
3 read:

4 "33-1-18. [FUNDS] FUND CREATED. -- ~~[There are created in the~~
5 ~~state treasury special funds to be known as]~~ The "corrections
6 department building fund" ~~[the "Guadalupe county prison fund"~~
7 ~~and the "New Mexico prison fund"]~~ is created in the state
8 treasury. The ~~[funds shall consist]~~ fund consists of money
9 appropriated by the legislature, from year to year, from the
10 income of the permanent fund and land income of which the
11 penitentiary of New Mexico is the beneficiary ~~[and any other~~
12 ~~revenues that are appropriated to the funds, other than revenues~~
13 ~~derived from property taxes or general fund revenues. Income~~
14 ~~from investment of each special fund created by this section~~
15 ~~shall be credited to that fund].~~ No other funds of the state
16 shall be deposited or paid into the corrections department
17 building fund. "

18 Section 3. Section 33-1-19 NMSA 1978 (being Laws 1990
19 (1st. S.S.), Chapter 5, Section 2, as amended by Laws 1995,
20 Chapter 43, Section 1 and also by Laws 1995, Chapter 215,
21 Section 4) is amended to read:

22 "33-1-19. USE OF FUNDS. -- ~~[A.]~~ The ~~[funds created in or~~
23 ~~pursuant to Section 33-1-18 NMSA 1978]~~ corrections department
24 building fund shall be used by the corrections department ~~[or~~
25 ~~the board of finance]~~ solely for the purpose of acquiring

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1 ~~[designing, constructing or equipping]~~ by lease ~~[or lease-~~
2 ~~purchase, or by financing the ownership by the corrections~~
3 ~~department through the issuance of bonds or other obligations by~~
4 ~~the corrections department or the board of finance]~~ or other
5 means a corrections department central office complex, a
6 personnel training academy, a special incarceration alternative
7 facility, ~~[correctional facilities]~~ a support services building,
8 a laundry and an infirmary at the penitentiary of New Mexico in
9 Santa Fe or any combination of these facilities ~~[and for paying~~
10 ~~the expenses relating to the lease, lease purchase or financing~~
11 ~~of these facilities. Before any of the funds created in Section~~
12 ~~33-1-18 NMSA 1978 may be used for any such purpose, the state~~
13 ~~board of finance shall approve the proposed facility and the~~
14 ~~proposed use of the funds.~~

15 B. ~~The funds created in or pursuant to Section~~
16 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~
17 ~~are devoted to the following projects:~~

18 (1) ~~payment for the corrections department~~
19 ~~central office complex;~~

20 (2) ~~a correctional facility in Guadalupe county~~
21 ~~of not less than five hundred fifty and not more than two~~
22 ~~thousand two hundred beds;~~

23 (3) ~~a correctional facility in Lea, Chaves or~~
24 ~~Santa Fe county of not less than one thousand two hundred and~~
25 ~~not more than two thousand two hundred beds; and~~

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1 ~~(4) design and construction of a support~~
2 ~~services building, a laundry and an infirmary at the~~
3 ~~penitentiary of New Mexico in Santa Fe.~~

4 ~~C. The use of funds designated in Subsection B of~~
5 ~~this section for a correctional facility in Guadalupe county and~~
6 ~~a correctional facility in Lea, Chaves or Santa Fe county is~~
7 ~~contingent upon construction of both facilities, so that one of~~
8 ~~the facilities shall not be constructed unless both of the~~
9 ~~facilities are constructed, as nearly as possible,~~
10 ~~simultaneously.~~

11 ~~D. Any balance at the end of any fiscal year in the~~
12 ~~special funds created in Section 33-1-18 NMSA 1978 that are not~~
13 ~~needed to pay leases, loans, bonds or other financing~~
14 ~~instruments in that fiscal year may be appropriated by the~~
15 ~~legislature for expenditure in succeeding fiscal years by the~~
16 ~~corrections department for corrections purposes]. No other~~
17 ~~funds from any source whatsoever shall be used for the~~
18 ~~acquisition of such facilities."~~

19 Section 4. REPEAL. --

20 A. Section 7-27-5.22 NMSA 1978 (being Laws 1995,
21 Chapter 215, Section 2) is repealed.

22 B. Laws 1995, Chapter 214, Sections 2 and 3 are
23 repealed.

1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 JANUARY 29, 1996
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7 Mr. Presi dent:
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9 Your COMMI TTEES' COMMI TTEE, to whom has been referred
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11 SENATE BILL 404
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13 has had it under consideration and finds same to be GERMANE, PURUSANT
14 TO CONSTITUI ONAL PROVISIONS, and thence referred to the JUDI CIARY
15 COMMI TTEE.
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17 Respectfully submi tted,
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23 SENATOR MANNY M. ARAGON, Chai rman
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