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**HOUSE BILL 274**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Rhonda S. King**

**AN ACT**

**RELATING TO CORRECTIONS; PROVIDING FOR DISCLOSURE OF  
INFORMATION PERTAINING TO CERTAIN INMATES INCARCERATED IN A  
COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONAL FACILITY;  
REQUIRING THE DEVELOPMENT OF A WRITTEN EMERGENCY RESPONSE PLAN  
FOR A COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONAL  
FACILITY; REQUIRING PROSPECTIVE CORRECTIONAL OFFICERS AT A  
COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONAL FACILITY TO  
PARTICIPATE IN A SIMILAR TRAINING PROGRAM AS THAT REQUIRED FOR  
STATE CORRECTIONAL OFFICERS; REQUIRING NOTICE WHEN CERTAIN  
INCIDENTS OCCUR AT A COUNTY-OPERATED OR PRIVATELY OPERATED  
CORRECTIONAL FACILITY; AMENDING AND ENACTING SECTIONS OF THE  
NMSA 1978.**

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

**Section 1. Section 33-1-17 NMSA 1978 (being Laws 1985,**

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1 Chapter 149, Section 1, as amended) is amended to read:

2 "33-1-17. PRIVATE CONTRACT. --

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

8 B. The corrections department may contract with a  
9 person or entity in the business of providing correctional or  
10 jail services to government entities for:

11 (1) a correctional facility in Guadalupe  
12 county of not less than five hundred fifty and not more than  
13 two thousand two hundred beds;

14 (2) a correctional facility in Lea, Chaves or  
15 Santa Fe county of not less than one thousand two hundred and  
16 not more than two thousand two hundred beds;

17 (3) design and construction of a support  
18 services building, a laundry and an infirmary at the  
19 penitentiary of New Mexico in Santa Fe; or

20 (4) construction of a public facility to  
21 house a special incarceration alternative program for adult  
22 male and adult female felony offenders.

23 C. The authorization in Subsection B of this  
24 section for a correctional facility in Guadalupe county and a  
25 correctional facility in Lea, Chaves or Santa Fe county is

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1 contingent upon construction of both facilities, so that one  
2 of the facilities shall not be constructed unless both of the  
3 facilities are constructed, as nearly as practicable,  
4 simultaneously.

5 D. The corrections department shall solicit  
6 proposals and award any contract under this section in  
7 accordance with the provisions of the Procurement Code. The  
8 contract shall include such terms and conditions as the  
9 corrections department may require after consultation with the  
10 general services department; provided that the terms and  
11 conditions shall include provisions:

12 (1) setting forth comprehensive standards for  
13 conditions of incarceration;

14 (2) that the contractor assumes all liability  
15 caused by or arising out of all aspects of the provision or  
16 operation of the facility;

17 (3) for liability insurance or other proof of  
18 financial responsibility acceptable to the general services  
19 department covering the contractor and its officers, employees  
20 and agents in an amount sufficient to cover all liability  
21 caused by or arising out of all aspects of the provision or  
22 operation of the facility;

23 (4) that the contractor shall provide the  
24 secretary of corrections, the secretary of public safety and  
25 the county sheriff for the county in which the correctional

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1 facility is located with the following information, which  
2 shall be kept confidential, regarding an out-of-state inmate,  
3 including a federal inmate, who is incarcerated in the  
4 facility for more than one hundred twenty days:

5 (a) the state or territory of the  
6 United States or the country in which the inmate was  
7 convicted;

8 (b) the criminal offense for which the  
9 inmate was convicted; and

10 (c) the original classification level  
11 for the inmate;

12 (5) that the contractor, subject to  
13 consultation with and final approval by the secretary of  
14 corrections, shall prepare a written emergency response plan  
15 for the correctional facility. The contractor shall provide  
16 copies of the emergency response plan to the secretary of  
17 corrections, the secretary of public safety, the county  
18 sheriff for the county in which the correctional facility is  
19 located and the governing bodies for the municipality and  
20 county in which the correctional facility is located;

21 (6) that the contractor, as a condition of  
22 employment, shall require all his prospective correctional  
23 officers to successfully complete, as a minimum, a training  
24 program with the same standards as the training program that  
25 is required of correctional officers who are employed at

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1 state-operated correctional facilities. If the contractor  
2 participates in the same program that is required of state  
3 correctional officers, the contractor shall reimburse the  
4 state for the expense of having his prospective correctional  
5 officers participate in the training program;

6 (7) that the warden of the correctional  
7 facility shall immediately notify the secretary of  
8 corrections, the secretary of public safety and the county  
9 sheriff for the county in which the facility is located when  
10 an inmate escapes from the facility, when a hostage situation  
11 occurs at the facility, when a firearm is discharged at the  
12 facility or when a disturbance involving five or more inmates  
13 occurs at the facility;

14 ~~[(4)]~~ (8) for termination for cause upon  
15 ninety days' notice to the contractor for failure to meet  
16 contract provisions when such failure seriously affects the  
17 availability or operation of the facility;

18 ~~[(5)]~~ (9) that venue for the enforcement of  
19 the contract shall be in the district court for Santa Fe  
20 county;

21 ~~[(6)]~~ (10) that continuation of the contract  
22 is subject to the availability of funds; and

23 ~~[(7)]~~ (11) that compliance with the contract  
24 shall be monitored by the corrections department and the  
25 contract may be terminated for noncompliance.

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

7           F. Any contract awarded pursuant to this section  
8 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  
13 Section 13-1-91 NMSA 1978 nor shall it be subject to the  
14 requirements of Section 13-1-150 NMSA 1978 or of the Capital  
15 Program Act, review by the staff architect of the property  
16 control division of the general services department pursuant  
17 to Section 15-3-20 NMSA 1978 or regulation by the director of  
18 that division pursuant to Section 15-3-11 NMSA 1978.

19           G. 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  
23 of that contract to be employed by that contractor in any  
24 position for which they qualify before that position is  
25 offered to any person not employed by that facility prior to

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1 that date. "

2 Section 2. A new section of Chapter 33, Article 1 NMSA  
3 1978 is enacted to read:

4 " [NEW MATERIAL] COUNTY-OPERATED OR PRIVATELY OPERATED  
5 CORRECTIONAL FACILITY--NO CONTRACT BETWEEN THE CORRECTIONS  
6 DEPARTMENT AND OWNER OF THE FACILITY--REQUIREMENTS. --When a  
7 correctional facility in this state is county-operated or  
8 privately operated, but the corrections department does not  
9 have a contract with the owner of the facility for the  
10 incarceration of state inmates, the warden of the facility  
11 shall:

12 A. provide the secretary of corrections, the  
13 secretary of public safety and the county sheriff for the  
14 county in which the correctional facility is located with the  
15 following information, which shall be kept confidential,  
16 regarding an out-of-state inmate, including a federal inmate,  
17 who is incarcerated in the facility for more than one hundred  
18 twenty days:

- 19 (1) the state or territory of the United  
20 States or the country in which the inmate was convicted;  
21 (2) the criminal offense for which the inmate  
22 was convicted; and  
23 (3) the original classification level for the  
24 inmate;

25 B. prepare a written emergency response plan for

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1 the correctional facility. The warden shall provide copies of  
2 the emergency response plan to the secretary of corrections,  
3 the secretary of public safety, the county sheriff for the  
4 county in which the correctional facility is located and the  
5 governing bodies for the municipality and county in which the  
6 correctional facility is located;

7 C. as a condition of employment, require all  
8 prospective correctional officers to successfully complete, as  
9 a minimum, a training program with the same standards as the  
10 training program that is required for officers employed at  
11 state-operated facilities; and

12 D. immediately notify the secretary of  
13 corrections, the secretary of public safety and the county  
14 sheriff for the county in which the correctional facility is  
15 located when an inmate escapes from the facility, when a  
16 hostage situation occurs at the facility, when a firearm is  
17 discharged at the facility or when a disturbance involving  
18 five or more inmates occurs at the facility. "

19 Section 3. EFFECTIVE DATE. -- The effective date of the  
20 provisions of this act is July 1, 2001.

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