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HOUSE BILL 454

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JERRY LEE ALWIN

AN ACT

**RELATING TO FINANCING OF CORRECTIONAL FACILITIES; AUTHORIZING
THE ISSUANCE OF SEVERANCE TAX BONDS AND NEW MEXICO FINANCE
AUTHORITY REVENUE BONDS FOR ACQUISITION OF CORRECTIONAL
FACILITIES; AUTHORIZING THE CORRECTIONS DEPARTMENT TO ENTER
INTO CONTRACTS TO HOUSE INMATES; CREATING A FUND; REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978; REPEALING A SECTION OF
LAWS 1995; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.**

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

**Section 1. CORRECTIONAL FACILITIES ACQUISITION FUND
CREATED. --**

**A. The "correctional facilities acquisition fund"
is created in the state treasury. The fund shall consist of
severance tax bond proceeds, New Mexico finance authority
revenue bond proceeds and appropriations to the fund. Except**

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1 as provided in Subsection C of this section, balances in the
2 fund at the end of any fiscal year shall remain in the fund.
3 Earnings from investment of the fund shall be credited to the
4 fund.

5 B. Money in the correctional facilities
6 acquisition fund is available for appropriation by the
7 legislature for the acquisition of correctional facilities.

8 C. Upon certification by the secretary of
9 corrections and the secretary of general services to the
10 department of finance and administration that no additional
11 money is needed from the correctional facilities acquisition
12 fund for the acquisition of correctional facilities, any
13 balances remaining in the fund shall be transferred to the
14 general fund.

15 Section 2. CONTRACT TO HOUSE ADULT INMATES IN TREATMENT
16 OR SPECIAL PROGRAM FACILITIES. --

17 A. The corrections department shall solicit
18 proposals for the purpose of entering into a contract with a
19 private detention facility pursuant to Subsection G of Section
20 31-20-2 NMSA 1978 to operate both an adult female
21 reintegration facility and an in-prison substance abuse
22 treatment facility for adult male inmates.

23 B. The facility contracting with the corrections
24 department pursuant to Subsection A of this section shall:

25 (1) be privately financed, designed,

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1 constructed and operated by the contractor; provided that a
2 facility financed by bonds issued pursuant to the Industrial
3 Revenue Bond Act or the County Industrial Revenue Bond Act and
4 sold to the contractor shall be privately financed by the
5 contractor for the purposes of this paragraph;

6 (2) consist of a two-hundred-fifty-bed adult
7 female reintegration facility and a four-hundred-bed adult
8 male in-prison substance abuse treatment facility located
9 adjacent to each other in a correctional complex located in
10 the middle Rio Grande corridor; and

11 (3) certify that the facility was built by a
12 primary contractor and subcontractors that:

13 (a) maintain their primary places of
14 business in New Mexico;

15 (b) hired laborers for construction of
16 the facility as employees, rather than as independent
17 contractors, and who are New Mexico residents;

18 (c) provided health care benefits,
19 retirement benefits and unemployment insurance to their
20 employees working on construction of the facility; and

21 (d) maintain apprenticeship programs
22 for their employees.

23 C. The corrections department shall solicit
24 proposals and award any contract pursuant to this section in
25 accordance with the provisions of the Procurement Code. The

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

5 (1) set forth comprehensive standards for
6 conditions of incarceration;

7 (2) require the facility to meet or exceed
8 corrections department standards and meet appropriate
9 certification requirements within one year after beginning
10 operation and remain accredited through the life of the
11 contract;

12 (3) require the contractor to assume all
13 liability caused by or arising out of all aspects of the
14 provision or operation of the facility;

15 (4) require liability insurance or other
16 proof of financial responsibility acceptable to the general
17 services department that covers the contractor and its
18 officers, employees and agents in an amount sufficient to
19 cover all liability caused by or arising out of all aspects of
20 the provision or operation of the facility;

21 (5) require termination for cause upon ninety
22 days' notice to the contractor for failure to meet contract
23 provisions when such failure seriously affects the
24 availability or operation of the facility;

25 (6) provide that venue for enforcement of the

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1 contract shall be in the district court for Santa Fe county;

2 (7) require continuation of the contract to
3 be subject to the availability of funds;

4 (8) provide that compliance with the contract
5 shall be monitored by the corrections department and the
6 contract may be terminated for noncompliance; and

7 (9) payments under the contract shall be made
8 only on a per diem per inmate basis.

9 D. As used in this section, "middle Rio Grande
10 corridor" means Santa Fe County, Sandoval county, Cibola
11 county, Valencia county, Socorro county, Bernalillo county and
12 Torrance county.

13 Section 3. NEW MEXICO FINANCE AUTHORITY--PUBLIC PROJECT
14 APPROVAL.--Pursuant to the provisions of Section 6-21-6 NMSA
15 1978, the legislature authorizes the New Mexico finance
16 authority to issue and sell revenue bonds in installments or
17 at one time in an amount not to exceed fifteen million dollars
18 (\$15,000,000) payable solely from the public project revolving
19 fund for the acquisition of correctional facilities on terms
20 and conditions established by the authority when the
21 corrections department certifies the need for the issuance of
22 the bonds. The net proceeds from the sale of the bonds shall
23 be deposited in the correctional facilities acquisition fund
24 for appropriation by the legislature for acquisition of
25 correctional facilities.

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1 Section 4. SEVERANCE TAX BONDS--PURPOSE. --The state
2 board of finance shall issue and sell severance tax bonds in
3 compliance with the Severance Tax Bonding Act in an amount not
4 to exceed forty-four million dollars (\$44,000,000) when the
5 corrections department certifies the need for the issuance of
6 the bonds. The state board of finance shall schedule the
7 issuance and sale of the bonds in the most expeditious and
8 economical manner possible upon a finding by the board that
9 the project has been developed sufficiently to justify the
10 issuance and that the project can proceed to contract within a
11 reasonable time. The state board of finance shall further
12 take the appropriate steps necessary to comply with the
13 Internal Revenue Code of 1986, as amended. The proceeds from
14 the sale of the bonds shall be deposited in the correctional
15 facilities acquisition fund for appropriation by the
16 legislature for acquisition of correctional facilities. Any
17 unexpended or unencumbered balance remaining six months after
18 completion of a project shall revert to the severance tax
19 bonding fund. If the corrections department has not certified
20 the need for the issuance of the bonds by the end of fiscal
21 year 2000, the authorization provided in this section shall be
22 void.

23 Section 5. MIDDLE RIO GRANDE CORRIDOR CORRECTIONAL
24 FACILITY STUDY. --

25 A. The corrections department shall conduct a

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1 study of the feasibility of locating a six-hundred-bed medium
2 security correctional facility for adult male inmates adjacent
3 to a correctional complex in the middle Rio Grande corridor
4 consisting of four hundred in-prison substance abuse treatment
5 beds for adult males and two hundred fifty female
6 reintegration beds for adult females. The study shall focus
7 on a comparison of the advantages, cost-savings and other
8 differences between private and public operation of the medium
9 security facility, which would be located adjacent to a
10 correctional complex that includes an in-prison substance
11 abuse facility and a female reintegration facility, and the
12 feasibility of public and private sharing of infrastructure or
13 services among areas in the central campus of that
14 correctional complex.

15 B. The corrections department shall present the
16 results of the study, including its findings and
17 recommendations, to the appropriate interim legislative
18 committee dealing with corrections and the legislative finance
19 committee prior to November 1, 1998 and to the first session
20 of the forty-fourth legislature.

21 C. As used in this section, "middle Rio Grande
22 corridor" means Santa Fe county, Sandoval county, Cibola
23 county, Valencia county, Socorro county, Bernalillo county and
24 Torrance county.

25 Section 6. APPROPRIATION--HOUSING INMATES IN CIBOLA

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1 COUNTY-- CONTRACT PROVISIONS. --

2 A. Two million dollars (\$2,000,000) is
3 appropriated from the general fund to the corrections
4 department for expenditure in fiscal year 1999 to contract
5 with Cibola county to house additional inmates at the Cibola
6 county corrections center. Any unexpended or unencumbered
7 balance remaining at the end of fiscal year 1999 shall revert
8 to the general fund.

9 B. The contract entered into pursuant to
10 Subsection A of this section shall provide:

11 (1) that the total number of state inmates
12 housed at the Cibola county corrections center shall equal
13 five hundred fifty-two medium-security inmates and one hundred
14 seventy-six minimum-restrict inmates; and

15 (2) that the corrections department shall not
16 reduce the number of inmates housed at the Cibola county
17 corrections center below the numbers specified in Paragraph
18 (1) of this subsection unless it has first removed all
19 similarly classified state inmates from all other private,
20 county-operated or out-of-state correctional facilities.

21 Section 7. APPROPRIATION--GENERAL FUND. -- Eight million
22 five hundred thousand dollars (\$8,500,000) is appropriated
23 from the general fund to the correctional facilities
24 acquisition fund for expenditure in fiscal year 1998 and
25 subsequent fiscal years for acquisition of correctional

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1 facilities. Any unexpended or unencumbered balance remaining
2 in the correctional facilities acquisition fund after any
3 fiscal year shall not revert to the general fund.

4 Section 8. ACQUISITION OF CORRECTIONAL FACILITIES--
5 CONDITIONS-- APPROPRIATIONS. --

6 A. Sixty-seven million five hundred thousand
7 dollars (\$67,500,000) is appropriated from the correctional
8 facilities acquisition fund to the property control division
9 of the general services department for expenditure in fiscal
10 years 1998 through 2000 in the following amounts for the
11 following purposes:

12 (1) thirty-five million dollars (\$35,000,000)
13 to acquire an eight-hundred-bed correctional facility in the
14 middle Rio Grande corridor that is expandable to one thousand
15 two hundred beds; and

16 (2) thirty-two million five hundred thousand
17 dollars (\$32,500,000) to acquire a six-hundred-bed
18 correctional facility in the middle Rio Grande corridor that
19 is expandable to nine hundred beds.

20 B. As used in this section, "middle Rio Grande
21 corridor" means Santa Fe county, Sandoval county, Cibola
22 county, Valencia county, Socorro county, Bernalillo county and
23 Torrance county.

24 C. The county in which a correctional facility is
25 to be located pursuant to Subsection A of this section shall

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1 provide land for the facility site and arrange for utilities,
2 roads and related infrastructure needs to the property line of
3 the facility site in the form of in-kind contributions.

4 D. No contract for the acquisition of a facility
5 shall be entered into pursuant to Subsection A of this section
6 unless the secretary of corrections certifies that the
7 facility will be built by a primary contractor and
8 subcontractors that:

9 (1) maintain their primary places of business
10 in New Mexico;

11 (2) hire laborers for construction of the
12 facility as employees, rather than as independent contractors,
13 and who are New Mexico residents;

14 (3) provide health care benefits, retirement
15 benefits and unemployment insurance to their employees working
16 on construction of the facility; and

17 (4) maintain apprenticeship programs for
18 their employees.

19 Section 9. 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, Section 2 is repealed.

23 Section 10. EMERGENCY.--It is necessary for the public
24 peace, health and safety that this act take effect
25 immediately.

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 13, 1998
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 454
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 TAXATION AND REVENUE COMMITTEE.

17 Respectfully submitted,
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21 _____
22 Thomas P. Foy, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 9 For 1 Against

11 Yes: 9

12 No: Larranaga

13 Excused: Carpenter, Mallory, Sanchez

14 Absent: None

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