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SENATE BILL 21

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 1999

INTRODUCED BY

Phil A. Griego

AN ACT

**RELATING TO CORRECTIONS; PROVIDING FOR DISCLOSURE OF
INFORMATION PERTAINING TO CERTAIN INMATES INCARCERATED IN A
COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONS FACILITY;
REQUIRING THE DEVELOPMENT OF A WRITTEN EMERGENCY RESPONSE PLAN
FOR A COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONS
FACILITY; REQUIRING PROSPECTIVE CORRECTIONAL OFFICERS AT A
COUNTY-OPERATED OR PRIVATELY OPERATED CORRECTIONS 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
CORRECTIONS 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
contingent upon construction of both facilities, so that one
of the facilities shall not be constructed unless both of the
facilities are constructed, as nearly as practicable,
simultaneously.

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

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

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

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

(4) that the contractor shall provide the secretary of corrections, the secretary of public safety and the county sheriff for the county in which the corrections facility is located with the following information, which shall be kept confidential, regarding an out-of-state inmate, including a federal inmate, who is incarcerated in the facility for more than one hundred twenty days:

(a) the state or territory of the United States or the country in which the inmate was

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1 convicted;

2 (b) the criminal offense for which the
3 inmate was convicted; and

4 (c) the original classification level
5 for the inmate;

6 (5) that the contractor, subject to
7 consultation with and final approval by the secretary of
8 corrections, shall prepare a written emergency response plan
9 for the corrections facility. The contractor shall provide
10 copies of the emergency response plan to the secretary of
11 corrections, the secretary of public safety, the county
12 sheriff for the county in which the corrections facility is
13 located and the governing bodies for the municipality and
14 county in which the corrections facility is located;

15 (6) that the contractor, as a condition of
16 employment, shall require all his prospective correctional
17 officers to successfully complete, as a minimum, a training
18 program with the same standards as the training program that
19 is required of correctional officers who are employed at
20 state-operated corrections facilities. If the contractor
21 participates in the same program that is required of state
22 correctional officers, the contractor shall reimburse the
23 state for the expense of having his prospective correctional
24 officers participate in the training program;

25 (7) that the warden of the corrections

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1 facility shall immediately notify the secretary of
2 corrections, the secretary of public safety and the county
3 sheriff for the county in which the facility is located when
4 an inmate escapes from the facility, when a hostage situation
5 occurs at the facility, when a firearm is discharged at the
6 facility or when a disturbance involving five or more inmates
7 occurs at the facility;

8 [+4+] (8) for termination for cause upon
9 ninety days' notice to the contractor for failure to meet
10 contract provisions when such failure seriously affects the
11 availability or operation of the facility;

12 [+5+] (9) that venue for the enforcement of
13 the contract shall be in the district court for Santa Fe
14 county;

15 [+6+] (10) that continuation of the contract
16 is subject to the availability of funds; and

17 [+7+] (11) that compliance with the contract
18 shall be monitored by the corrections department and the
19 contract may be terminated for noncompliance.

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

 F. Any contract awarded pursuant to this section
may include terms to provide for the renovation of the
facility or for the construction of new buildings. Work

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1 performed pursuant to such terms and conditions shall not be
2 considered a capital project as defined in Section 15-3-23.3
3 NMSA 1978 or a state public works project as defined in
4 Section 13-1-91 NMSA 1978 nor shall it be subject to the
5 requirements of Section 13-1-150 NMSA 1978 or of the Capital
6 Program Act, review by the staff architect of the property
7 control division of the general services department pursuant
8 to Section 15-3-20 NMSA 1978 or regulation by the director of
9 that division pursuant to Section 15-3-11 NMSA 1978.

9 G. Any contract entered into by the corrections
10 department with a private contractor to operate an existing
11 facility shall include a provision securing the right of all
12 persons employed by that facility prior to the effective date
13 of that contract to be employed by that contractor in any
14 position for which they qualify before that position is
15 offered to any person not employed by that facility prior to
16 that date."

16 **Section 2. A new section of Chapter 33, Article 1 NMSA
17 1978 is enacted to read:**

18 **"[NEW MATERIAL] COUNTY-OPERATED OR PRIVATELY OPERATED
19 CORRECTIONS FACILITY--NO CONTRACT BETWEEN THE CORRECTIONS
20 DEPARTMENT AND OWNER OF THE FACILITY--REQUIREMENTS.--When a
21 corrections facility in this state is county-operated or
22 privately operated, but the corrections department does not
23 have a contract with the owner of the facility for the
24 incarceration of state inmates, the warden of the facility
25 shall:**

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1 A. provide the secretary of corrections, the
2 secretary of public safety and the county sheriff for the
3 county in which the corrections facility is located with the
4 following information, which shall be kept confidential,
5 regarding an out-of-state inmate, including a federal inmate,
6 who is incarcerated in the facility for more than one hundred
7 twenty days:

8 (1) the state or territory of the United
9 States or the country in which the inmate was convicted;

10 (2) the criminal offense for which the inmate
11 was convicted; and

12 (3) the original classification level for the
13 inmate;

14 B. prepare a written emergency response plan for
15 the corrections facility. The warden shall provide copies of
16 the emergency response plan to the secretary of corrections,
17 the secretary of public safety, the county sheriff for the
18 county in which the corrections facility is located and the
19 governing bodies for the municipality and county in which the
20 corrections facility is located;

21 C. as a condition of employment, require all
22 prospective correctional officers to successfully complete, as
23 a minimum, a training program with the same standards as the
24 training program that is required for officers employed at
25 state-operated facilities; and

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1 D. immediately notify the secretary of
2 corrections, the secretary of public safety and the county
3 sheriff for the county in which the corrections facility is
4 located when an inmate escapes from the facility, when a
5 hostage situation occurs at the facility, when a firearm is
6 discharged at the facility or when a disturbance involving
7 five or more inmates occurs at the facility. "

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