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FISCAL IMPACT REPORT

SPONSOR: Thompson DATE TYPED: 03/01/01 HB 881
 SHORT TITLE: Incarceration of Out-of-State Inmates SB _____
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act, HB124, HB274, HB413; Conflicts with SB316

SOURCES OF INFORMATION

LFC Files
 Attorney General (AG)
 Corrections Department (CD)
 Children Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

HB881 imposes minimum standards upon privately-operated facilities which house ten (10) or more out-of-state or out-of-county inmates.

First, the bill defines “out-of-county inmate” essentially as an inmate that is being housed on behalf of an entity that is outside the county. It defines “out-of-state inmate” essentially as an inmate that is being housed on behalf of an entity that is outside the state. Both terms exclude inmates housed on behalf of the United States. “Privately-operated correctional facility” is defined as a correctional facility that provides security with persons employed by private (i.e., non-governmental) entities.

Second, the bill only applies to privately-operated facilities that plan to house or houses (ten (10) or more out-of-state or out-of-county inmates.

Next, the bill imposes minimum standards on such facilities including:

- 1) background checks and training requirements for correctional officers as approved by the Secretary of Corrections

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- 2) immediate oral notice and written reports of escapes and serious incidents to the Secretaries of Corrections, Public Safety, and local sheriff and police
- 3) accreditation by the American Correctional Association
- 4) submit an emergency plan for approval by the Secretary of Corrections
- 5) a written contract with the out-of-state or out-of-county entity which requires compliance with the minimum standards

Also, the bill grants the Secretary of Corrections with the authority to adopt and enforce additional rules and regulations; to inspect and monitor such facilities and to prohibit the housing of out-of-state or out-of-county inmates if the facility does not meet the standards and regulations.

Finally, the bill provides the Secretary of Corrections with immunity from lawsuits regarding his acts or omissions regarding these duties.

Significant Issues

CD reports the most significant issue is there are currently no standards or regulations that pertain to privately-operated correctional facilities in New Mexico that house inmates from outside of the state or outside of the county. New Mexico has, in the past several years, experienced a few serious problems and serious incidents at privately-operated correctional facilities involving inmates from out-of-state. This bill would put in place a mechanism to address some of these problems; and thereby enhance public safety.

Next, the bill will result in a minor to substantial increase in costs to and administrative burden upon CD. This will be due to the need to review proposed contracts, inspect and monitor facilities, and review serious incident reports.

PERFORMANCE IMPLICATIONS

According to CD, this bill could enhance the performance of the emergency response programs of the Department of Public Safety, CD, and local law enforcement agencies by imposing minimum standards on privately-operated facilities that house potentially extremely dangerous out-of-state inmates or inmates from other parts of the state; by making relevant information about these inmates readily available, and by requiring immediate notification of serious incidents.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. CD reports there will be a cost increase to the department in terms of travel, per diem and staff to inspect and monitor the facilities. Incidental expenses for postage, supplies, long distance telephone calls, etc., will increase somewhat.

On the other hand, this bill could save CD, as well as local and state law enforcement agencies substantial costs if it prevented a large-scale emergency

ADMINISTRATIVE IMPLICATIONS

According to CD, the bill will result in a substantial increase in the administrative burden on the Training Academy Division which may be required to conduct screening and training, or to approve it; as well as the staff required to inspect and monitor the private facilities. Personnel will be required to review inmate

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files; review and approve contracts, emergency plans and contracts. It is possible that additional F.T.E will be required.

On the other hand, if the bill prevents any large scale emergency situations such as an escape or riot, it could save substantial administrative resources.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

According to the AG, Section 33-3-27 applies to the facilities discussed here. To the extent that this bill requires the private operator to contract with the entity whose prisoners it is housing and specifies the terms and conditions of that contract, it overlaps and conflicts with that statute.

Additionally, to the extent this bill requires oral followed by written notification to certain officials upon the occurrence of certain events, this bill conflicts with HB 274.

TECHNICAL ISSUES

The AG reports the following technical Issues:

1. Line 6 and line 16 on page 2 refer to “Indian tribe or pueblo”. The phrase generally used is “Indian nation, tribe or pueblo”.

2. The reference to “or any private entity” at the end of line 14 and continuing into line 15 on page 2 is not meaningful, since only governmental bodies have the power to order the incarceration of any individual, and thus this phrase should be stricken.

3. In defining the term “privately operated correctional facility” this bill, at line 20 on page 2, uses the term “correctional facility”, which is defined in § 33-1-2(C) to refer to facilities for correctional care operated by the state. County or municipal facilities for housing prisoners, whether publicly or privately operated, and which are the focus of this bill, are usually referred to as “jails.”

4. Section 1(B)(2)(h), at page 4, line 10-11, requires the facility notify certain officials when there has been an erroneous release of “an inmate who was being held on behalf of the corrections department”. As discussed above, the definitions of “out-of-county” and “out-of-state” inmates do not include corrections department inmates, and thus this reference to this class of inmate should be stricken, as this kind of inmate would not be housed in the facilities to which this provision applies.

5. Section 1(B)(2)(h), at page 4, lines 9-10 only refers to the mistaken release of an out-of-state inmate. As these facilities may also hold out-of-county inmates, it may be appropriate to include that class of inmate in this notification requirement, as well.

6. Section 1(D) requires the secretary to inspect and monitor these facilities, and allows him to prohibit the housing of any out-of-state inmates in a facility that does not comply with his standards and rules (Page 6, lines 21 through page 7, line 1). As these facilities may also hold out-of-county inmates, it may be appropriate to allow the secretary to prohibit the housing of that class of inmate when a facility fails to comply with his standards and rules, as well.

OTHER SUBSTANTIVE ISSUES

The AG reports two other issues are raised by this bill. In requiring national accreditation for these facilities, this bill would allow the secretary to give a new facility up to two years to obtain accreditation. Current law requires that, when the corrections department is contracting with a private or public detention facility to hold corrections department inmates, this criteria be met within 18 months of

entering into such a contract. See § 31-20-2(G). Making the bill consistent with the statute would avoid confusion. Additionally, the immunity granted the secretary in Section 1(E) on page 7 would also exempt him from challenges if he fails to follow the procedural process required by law for adopting standards and rules (see § 9-3-7(E)), or if he fails to inspect and monitor the facilities, as required in this bill. Immunity in these types of challenges may not be appropriate, given the requirements of this bill generally.

One area of concern raised by the panel of experts in the January 14, 2000 report provided to the New Mexico legislature, secretary of corrections and attorney general was “Although not in the scope of this study, it is clear that other private facilities are being operated in New Mexico without sufficient oversight. This should be addressed as well.”

In an information brief provided by the U.S. Department of Justice based on a forum of correctional experts, legislators and others with an interest in correctional policy the following discussion occurred: “There was a consensus among forum participants that regulation of some form was both constitutional and appropriate. The most compelling reason is to assure that the operation of the private prisons does not threaten public safety. The issue of public safety is particularly sensitive when the facility is housing inmates from out-of-state. In these cases, the host-state and the local jurisdiction in which the facility is located need to be concerned about public safety issues (escapes, inmate disturbances, fires, natural disasters, work stoppages, or other labor disputes that may threaten the prison). **Attachment A** includes an excerpt of this discussion.

LAT/njw
Attachment