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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PRISONS; PROHIBITING CONTRACTS WITH PRIVATE PRISON OPERATORS; REPEALING THE PRIVATELY OPERATED CORRECTIONAL FACILITIES OVERSIGHT ACT.

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]~~ CONTRACTS PROHIBITED.--

~~[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 person or entity in the business of providing correctional or~~

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1 ~~jail services to government entities for:~~

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

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

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

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

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

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

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1 ~~general services department; provided that the terms and~~
2 ~~conditions shall include provisions:~~

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

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

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

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

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

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

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

25 ~~E. When the contractor begins operation of a~~

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

6 F. ~~Any contract awarded pursuant to this section~~
7 ~~may include terms to provide for the renovation of the facility~~
8 ~~or for the construction of new buildings. Work performed~~
9 ~~pursuant to such terms and conditions shall not be considered a~~
10 ~~capital project or a state public works project as defined in~~
11 ~~Section 13-1-91 NMSA 1978 nor shall it be subject to the~~
12 ~~requirements of Section 13-1-150 NMSA 1978, review by the staff~~
13 ~~architect of the facilities management division of the general~~
14 ~~services department or regulation by the director of that~~
15 ~~division pursuant to Section 15-3B-6 NMSA 1978.~~

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

24 A. Except as provided in Subsection B of this
25 section, the state or any unit of local government shall not

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1 contract with a private contractor or private vendor for the
2 provision of services relating to the operation of a
3 correctional facility or the incarceration of persons in the
4 custody of the corrections department or county jails.

5 B. This section does not apply to:

6 (1) state work release centers that provide
7 separate care or special treatment operated in whole or part by
8 private contractors; or

9 (2) contracts for ancillary services,
10 including medical services, education services, facilities and
11 equipment repair and maintenance, or other services not
12 directly related to the ownership, management or operation of
13 security services in a correctional facility."

14 SECTION 2. REPEAL.--Sections 33-15-1 through 33-15-4 NMSA
15 1978 (being Laws 2001, Chapter 169, Sections 1 through 4, as
16 amended) are repealed.