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HOUSE BILL 1124

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO CORRECTIONAL FACILITIES; AUTHORIZING THE CORRECTIONS DEPARTMENT TO HOUSE INMATES IN A CORRECTIONAL FACILITY IN SANTA FE COUNTY; PROVIDING FOR LOCAL PUBLIC BODIES TO CONTRACT FOR PROVISION OR OPERATION OF CORRECTIONAL FACILITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"~~[NEW MATERIAL]~~ CORRECTIONS DEPARTMENT-- CONTRACT WITH SANTA FE COUNTY FOR A CORRECTIONAL FACILITY. --

A. The corrections department may contract with Santa Fe county to house up to five hundred medium security inmates in a correctional facility operated by the county or by a private independent contractor pursuant to an agreement with

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1 the county for the operation or provision and operation of the
2 facility.

3 B. A contract entered into pursuant to Subsection A
4 of this section shall include such reasonable terms and
5 conditions as the corrections department may require after
6 consultation with the general services department, provided that
7 the terms and conditions shall include provisions:

8 (1) setting comprehensive standards for
9 incarceration;

10 (2) requiring that the facility be accredited
11 by the American correctional association within one year after
12 beginning operation and remain accredited through the life of
13 the contract;

14 (3) providing for payments under the contract
15 on a per diem per inmate basis;

16 (4) providing that the employees performing the
17 functions of correctional officers, whether employed by the
18 county or by an independent contractor, shall be deemed to be
19 correctional officers for the purposes of Sections 33-1-10 and
20 33-1-11 NMSA 1978, but for no other purpose of state law, unless
21 specifically stated in the contract;

22 (5) requiring that continuation of the contract
23 is subject to annual appropriation or other availability of
24 funds; and

25 (6) providing that compliance with the contract

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1 shall be monitored by the corrections department and the
2 contract may be terminated by the corrections department for
3 material noncompliance.

4 C. A contract entered into pursuant to Subsection A
5 of this section may provide that the corrections department may
6 purchase the correctional facility at fair market value from the
7 county at any time after five years from the date of initial
8 operation of the facility."

9 Section 2. Section 13-1-98 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 71, as amended) is amended to read:

11 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The
12 provisions of the Procurement Code shall not apply to:

13 A. procurement of items of tangible personal
14 property or services by a state agency or a local public body
15 from a state agency, a local public body or external procurement
16 unit except as otherwise provided in Sections 13-1-135 through
17 13-1-137 NMSA 1978;

18 B. procurement of tangible personal property or
19 services for the governor's mansion and grounds;

20 C. printing and duplicating contracts involving
21 materials which are required to be filed in connection with
22 proceedings before administrative agencies or state or federal
23 courts;

24 D. purchases of publicly provided or publicly
25 regulated gas, electricity, water, sewer and refuse collection

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1 services;

2 E. purchases of books and periodicals from the
3 publishers or copyright holders thereof;

4 F. travel or shipping by common carrier or by
5 private conveyance or to meals and lodging;

6 G. purchase of livestock at auction rings or to the
7 procurement of animals to be used for research and
8 experimentation or exhibit;

9 H. contracts with businesses for public school
10 transportation services;

11 I. procurement of tangible personal property or
12 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
13 by the corrections industries division of the corrections
14 department pursuant to regulations adopted by the corrections
15 [~~industries~~] commission, which shall be reviewed by the
16 purchasing division of the general services department prior to
17 adoption;

18 J. minor purchases consisting of magazine
19 subscriptions, conference registration fees and other similar
20 purchases where prepayments are required;

21 K. municipalities having adopted home rule charters
22 and having enacted their own purchasing ordinances;

23 L. the issuance, sale and delivery of public
24 securities pursuant to the applicable authorizing statute, with
25 the exception of bond attorneys and general financial

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1 consultants;

2 M contracts entered into by a local public body
3 with a private independent contractor for the operation, or
4 provision and operation, of a jail or correctional facility
5 pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

6 N. contracts for maintenance of grounds and
7 facilities at highway rest stops and other employment
8 opportunities, excluding those intended for the direct care and
9 support of persons with handicaps, entered into by state
10 agencies with private, nonprofit, independent contractors who
11 provide services to persons with handicaps;

12 O. contracts and expenditures for services to be
13 paid or compensated by money or other property transferred to
14 New Mexico law enforcement agencies by the United States
15 department of justice drug enforcement administration;

16 P. contracts for retirement and other benefits
17 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; and

18 Q. contracts with professional entertainers. "

19 Section 3. Section 33-3-1 NMSA 1978 (being Laws 1865-1866,
20 Chapter 19, Section 1, as amended) is amended to read:

21 "33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL
22 ADMINISTRATOR OR INDEPENDENT CONTRACTOR--AUTHORITY TO CONTRACT
23 FOR CORRECTIONAL FACILITIES. --

24 A. The common jails shall be under the control of
25 the respective sheriffs, independent contractors or jail

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1 administrators as defined in Section 4-44-19 NMSA 1978 hired by
2 the board of county commissioners or other local public body or
3 combination thereof and ~~[the same]~~ shall be used as prisons in
4 the respective counties.

5 B. Contracts between local public bodies and private
6 independent contractors for the operation or provision and
7 operation of a jail are specifically authorized by this section;
8 provided that prior to July 1, 1987, no more than two pilot
9 projects involving private independent contractors are
10 authorized in New Mexico pursuant to Section 33-3-26 NMSA 1978.

11 C. Contracts between local public bodies and
12 independent contractors are specifically authorized for the
13 operation or provision of correctional facilities intended to
14 house any type of inmates on behalf of the corrections
15 department or other department or jurisdiction."

16 Section 4. Section 33-3-26 NMSA 1978 (being Laws 1984,
17 Chapter 22, Section 17) is amended to read:

18 "33-3-26. AGREEMENTS FOR JAILS OR CORRECTIONAL FACILITIES
19 OR FOR JAIL OR CORRECTIONAL SERVICES--PILOT PROGRAMS.--

20 A. Any county or municipality may enter into an
21 agreement, including an agreement with an independent
22 contractor, to operate or to provide and operate jail facilities
23 or correctional facilities for the care and housing of
24 prisoners; provided that prior to July 1, 1987, no more than two
25 pilot projects for operation or provision and operation of a

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1 jail by private independent contractors are [~~hereby~~] authorized
2 in New Mexico; and further provided that the attorney general
3 shall select, authorize and approve such pilot projects.

4 B. The attorney general shall monitor any pilot
5 project and shall report to the first and second sessions of the
6 thirty-seventh legislature and to the first session of the
7 thirty-eighth legislature with analyses of the pilot projects,
8 their success or failure, recommendations for modification or
9 repeal of the law and suggestions for change in any future
10 projects.

11 C. As used in this section, "correctional facility"
12 means a facility intended to house any type of inmates on behalf
13 of the corrections department or other department or
14 jurisdiction. "

15 Section 5. Section 33-3-27 NMSA 1978 (being Laws 1984,
16 Chapter 22, Section 18) is amended to read:

17 "33-3-27. JAIL AND CORRECTIONAL FACILITY AGREEMENTS--
18 APPROVAL--LIABILITY--TERMINATION--VENUE.--

19 A. No agreement with a private independent
20 contractor for the operation of a jail or a correctional
21 facility or for the incarceration of prisoners [~~therein~~] in the
22 jail or facility shall be made for a period of more than three
23 years. Agreements binding on future governing bodies for
24 construction, purchase or lease of a jail facility for not more
25 than fifteen years are [~~hereby~~] authorized.

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1 B. All agreements with private independent
2 contractors for the operation or provision and operation of
3 jails ~~[must]~~ or correctional facilities shall include a
4 performance bond and be approved in writing, prior to their
5 becoming effective, by the local government division of the
6 department of finance and administration and the office of the
7 attorney general. Disapproval may be based on any reasonable
8 grounds, including ~~[but not limited to]~~ adequacy or
9 appropriateness of the proposed plan or standards; suitability
10 or qualifications of the proposed contractor or his employees;
11 absence of required or desirable contract provisions;
12 unavailability of funds; or any other reasonable grounds
13 whatsoever, whether like or unlike the foregoing. No agreement
14 shall be valid or enforceable without ~~[such]~~ prior approval.

15 C. All agreements with private independent
16 contractors for the operation or provision and operation of
17 jails or correctional facilities shall provide for the
18 independent contractor to provide and pay for training for
19 jailers or correctional officers to meet minimum training
20 standards, which shall be specified in the contract, and shall
21 require that the independent contractor pay its correctional
22 officers wages and benefits that are comparable to the wages and
23 benefits paid by the county to county employees similarly
24 employed.

25 D. All agreements with private independent

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1 contractors for the operation or provision and operation of
2 jails or correctional facilities shall set forth comprehensive
3 standards for conditions of incarceration, either by setting
4 them forth in full as part of the contract or by reference to
5 known and respected compilations of such standards.

6 E. All agreements with private independent
7 contractors for the operation or provision and operation of
8 jails [~~must~~] or correctional facilities shall be approved in
9 writing, prior to their becoming effective, by the risk
10 management division of the general services department.
11 Approval shall be conditioned upon contractual arrangements
12 satisfactory to the risk management division for:

13 (1) the contractor's assumption of all
14 liability caused by or arising out of all aspects of the
15 provision and operation of the jail or correctional facility;
16 and

17 (2) liability insurance covering the contractor
18 and its officers, jailers, employees and agents in an amount
19 sufficient to cover all liability caused by or arising out of
20 all aspects of the provision and operation of the jail or
21 correctional facility. A copy of the proposed insurance policy
22 for the first year shall be submitted for approval with the
23 contract.

24 F. All agreements with private independent
25 contractors for the operation or provision and operation of

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1 jails or correctional facilities shall provide for termination
2 for cause by the local public body parties upon ninety days'
3 notice to the independent contractor. Such termination shall be
4 allowed for at least the following reasons:

5 (1) failure of the independent contractor to
6 meet minimum standards and conditions of incarceration, which
7 standards and conditions shall be specified in the contract; or

8 (2) failure to meet other contract provisions
9 when such failure seriously affects the operation of the jail or
10 correctional facility.

11 The reasons for termination set forth in this subsection
12 are not exclusive and may be supplemented by the parties.

13 G. Venue for the enforcement of any agreement
14 entered into pursuant to the provisions of this ~~[act]~~ section
15 shall be in the district court of the county in which the
16 facility is located or in Santa Fe county.

17 H. As used in this section, "correctional facility"
18 means a facility intended to house any type of inmates on behalf
19 of the corrections department or other department or
20 jurisdiction. "

FORTY-THIRD LEGISLATURE

FIRST SESSION

March 11, 1997

HOUSE FLOOR AMENDMENT number ___1___ to HOUSE BILL 1124

Amendment sponsored by Representative Ben Lujan

1. On page 6, strike lines 11 through 15 and insert in lieu thereof:

"C. A contract between Santa Fe county and an independent contractor is specifically authorized for the operation or provision of a correctional facility intended to house any type of inmates on behalf of the corrections department or other department or jurisdiction.".

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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HB 1124

Page 12

Ben Lujan

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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