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SENATE BILL 1055

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

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO CORRECTIONS FACILITIES FINANCING; INCREASING THE
RATE OF THE GROSS RECEIPTS TAX FOR TWO YEARS; PROVIDING FOR
CONSTRUCTION OR ACQUISITION OF CORRECTIONS AND TREATMENT
FACILITIES; AMENDING SECTIONS OF THE NMSA 1978; MAKING
APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] FUND CREATED--PURPOSE--
APPROPRIATION.--

A. The "corrections facilities financing fund" is
created as a special fund within the state treasury. The fund
shall consist of money appropriated to the fund and gross
receipts tax revenues distributed to the fund by law. Balances
in the fund at the end of any fiscal year shall remain in the
fund, except as provided in Subsection D of this section.

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1 Earnings from investment of the fund shall be credited to the
2 fund.

3 B. Money in the corrections facilities financing
4 fund is appropriated to the property control division of the
5 general services department for the following specified
6 purposes:

7 (1) ninety-five million dollars (\$95,000,000)
8 to design, construct and equip or acquire:

9 (a) a correctional facility in Guadalupe
10 county of not more than six hundred beds, expandable to one
11 thousand two hundred beds; and

12 (b) a correctional facility in Lea county
13 of not more than one thousand two hundred beds, expandable to
14 two thousand two hundred beds;

15 (2) twenty million dollars (\$20,000,000) to
16 design, construct and equip or acquire a four-hundred-bed adult
17 male behavioral and mental health facility in the Rio Grande
18 corridor;

19 (3) two million dollars (\$2,000,000) to design,
20 construct and equip or acquire a two-hundred-fifty-bed adult
21 female reintegration facility in the Rio Grande corridor;

22 (4) ten million dollars (\$10,000,000) to
23 acquire:

24 (a) a fifty bed prefabricated juvenile
25 correctional facility at the youth development and diagnostic

1 center; and

2 (b) a fifty-bed prefabricated juvenile
3 correctional facility at the New Mexico boys' school at
4 Springer; and

5 (5) ten million dollars (\$10,000,000) to
6 design, construct and equip or acquire a three-hundred-bed
7 behavioral and mental health facility for male juveniles in the
8 Rio Grande corridor.

9 C. No contract for the construction or acquisition
10 of a facility shall be entered into pursuant to Subsection B of
11 this section unless the secretary of the contracting agency
12 certifies that the facility will be built by a primary
13 contractor and subcontractors that:

14 (1) maintain their primary places of business
15 in New Mexico;

16 (2) hire laborers for construction of the
17 facilities as employees, rather than independent contractors,
18 and who are New Mexico residents;

19 (3) provide health care benefits and
20 retirement benefits to their employees working on construction
21 of the facilities; and

22 (4) maintain apprenticeship programs for their
23 employees.

24 D. Upon certification by the secretary of the
25 contracting agency that the agency has constructed or acquired

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1 the facilities pursuant to Subsection B of this section and no
2 additional expenditures from the fund are necessary for that
3 purpose, any balance remaining in the corrections facilities
4 financing fund shall be transferred to the general fund.

5 E. Any law authorizing the distribution of taxes or
6 other revenues to the corrections facilities financing fund
7 shall not be amended or repealed or otherwise modified so as to
8 impair any contract entered into by the contracting agency
9 pursuant to which those taxes or revenues are dedicated to the
10 construction or acquisition of facilities as provided in this
11 section.

12 Section 2. A new section of the Tax Administration Act is
13 enacted to read:

14 "[NEW MATERIAL] DISTRIBUTION--CORRECTIONS FACILITIES
15 FINANCING FUND.--A distribution pursuant to Section 7-1-6.1 NMSA
16 1978 shall be made to the corrections facilities financing fund
17 administered by the corrections department equal to six million
18 dollars (\$6,000,000) of the net receipts attributable to the
19 gross receipts tax imposed pursuant to the Gross Receipts and
20 Compensating Tax Act. "

21 Section 3. Section 7-9-4 NMSA 1978 (being Laws 1966,
22 Chapter 47, Section 4, as amended) is amended to read:

23 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GROSS
24 RECEIPTS TAX".--

25 A. For the privilege of engaging in business, an

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1 excise tax equal to ~~[five percent]~~ the following percentages of
2 gross receipts is imposed on any person engaging in business in
3 New Mexico:

4 (1) from July 1, 1997 through June 10, 1999,
5 five and one-quarter percent; and

6 (2) after June 30, 1999, five percent.

7 B. The tax imposed by this section shall be referred
8 to as the "gross receipts tax".

9 Section 4. Section 33-1-17 NMSA 1978 (being Laws 1985,
10 Chapter 149, Section 1, as amended) is amended to read:

11 "33-1-17. PRIVATE CONTRACT. --

12 A. The corrections department may contract for the
13 operation of any adult female facility or for housing adult
14 female inmates in a private facility with a person or entity in
15 the business of providing correctional or jail services to
16 government entities.

17 B. The corrections department may contract with a
18 person or entity in the business of providing correctional or
19 jail services to government entities for

20 ~~[(1) a correctional facility in Guadalupe~~
21 ~~county of not less than five hundred fifty and not more than two~~
22 ~~thousand two hundred beds;~~

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

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

4 (4)] construction of a public facility to house
5 a special incarceration alternative program for adult male and
6 adult female felony offenders.

7 ~~[C. The authorization in Subsection B of this~~
8 ~~section for a correctional facility in Guadalupe county and a~~
9 ~~correctional facility in Lea, Chaves or Santa Fe county is~~
10 ~~contingent upon construction of both facilities, so that one of~~
11 ~~the facilities shall not be constructed unless both of the~~
12 ~~facilities are constructed, as nearly as practicable,~~
13 ~~simultaneously.~~

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

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

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

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

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

11 (5) that venue for the enforcement of the
12 contract shall be in the district court for Santa Fe county;

13 (6) that continuation of the contract is
14 subject to the availability of funds; and

15 (7) that compliance with the contract shall be
16 monitored by the corrections department and the contract may be
17 terminated for noncompliance.

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

24 [~~F.-~~] E. Any contract awarded pursuant to this
25 section may include terms to provide for the renovation of the

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

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

18 Section 5. Section 33-1-18 NMSA 1978 (being Laws 1990
19 (1st. S.S.), Chapter 5, Section 1, as amended) is amended to
20 read:

21 "33-1-18. [~~FUNDS~~] FUND CREATED.--There [~~are~~] is created in
22 the state treasury a special [~~funds~~] fund to be known as the
23 "corrections department building fund" [~~the "Guadalupe county~~
24 ~~prison fund" and the "New Mexico prison fund"~~]. The [~~funds~~]
25 fund shall consist of money appropriated by the legislature,

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1 from year to year, from the income of the permanent fund and
2 land income of which the penitentiary of New Mexico is the
3 beneficiary [~~and any other revenues that are appropriated to the~~
4 ~~funds, other than revenues derived from property taxes or~~
5 ~~general fund revenues~~]. Income from investment of [each
6 ~~special~~] the corrections department building fund [~~created by~~
7 ~~this section~~] shall be credited to [~~that~~] the fund."

8 Section 6. Section 33-1-19 NMSA 1978 (being Laws 1990
9 (1st. S.S.), Chapter 5, Section 2, as amended by Laws 1995,
10 Chapter 43, Section 1 and also by Laws 1995, Chapter 215,
11 Section 4) is amended to read:

12 "33-1-19. USE OF FUNDS. --

13 A. The [~~funds created in or pursuant to Section~~
14 ~~33-1-18 NMSA 1978~~] corrections department building fund shall be
15 used by the corrections department or the state board of finance
16 for the purpose of acquiring, designing, constructing or
17 equipping, by lease or lease-purchase, or by financing the
18 ownership by the corrections department through the issuance of
19 bonds or other obligations by the corrections department or the
20 state board of finance, or other means, a corrections department
21 central office complex, a personnel training academy, a special
22 incarceration alternative facility. [~~correctional facilities or~~
23 ~~any combination of these facilities, and for paying the expenses~~
24 ~~relating to the lease, lease-purchase or financing of these~~
25 ~~facilities. Before any of the funds created in Section 33-1-18~~

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1 ~~NMSA 1978 may be used for any such purpose, the state board of~~
2 ~~finance shall approve the proposed facility and the proposed use~~
3 ~~of the funds.~~

4 ~~B. The funds created in or pursuant to Section~~
5 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~
6 ~~are devoted to the following projects:~~

7 ~~(1) payment for the corrections department~~
8 ~~central office complex;~~

9 ~~(2) a correctional facility in Guadalupe county~~
10 ~~of not less than five hundred fifty and not more than two~~
11 ~~thousand two hundred beds;~~

12 ~~(3) a correctional facility in Lea, Chaves or~~
13 ~~Santa Fe county of not less than one thousand two hundred and~~
14 ~~not more than two thousand two hundred beds; and~~

15 ~~(4) design and construction of a support~~
16 ~~services building, a laundry and an infirmary at the~~
17 ~~penitentiary of New Mexico in Santa Fe.~~

18 ~~C. The use of funds designated in Subsection B of~~
19 ~~this section for a correctional facility in Guadalupe county and~~
20 ~~a correctional facility in Lea, Chaves or Santa Fe county is~~
21 ~~contingent upon construction of both facilities, so that one of~~
22 ~~the facilities shall not be constructed unless both of the~~
23 ~~facilities are constructed, as nearly as possible,~~
24 ~~simultaneously.~~

25 ~~D.] B.~~ Any balance at the end of any fiscal year in

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1 the [~~special funds created in Section 33-1-18 NMSA 1978]~~
2 corrections department building fund that [~~are~~] is not needed to
3 pay leases, loans, bonds or other financing instruments in that
4 fiscal year may be appropriated by the legislature for
5 expenditure in succeeding fiscal years by the corrections
6 department for corrections purposes. "

7 Section 7. DELAYED REPEAL. -- Section 2 of this act is
8 repealed effective August 1, 1999.

9 Section 8. EFFECTIVE DATE. --

10 A. The effective date of the provisions of Section
11 2 of this act is August 1, 1997.

12 B. The effective date of the provisions of Section
13 3 of this act is July 1, 1997.

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