

LD2034376

HOUSE BILL NO. 2584

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding sections numbered 53.1-19.1 through 53.1-19.10, relating to planning correctional facilities.

Patrons—Robinson, Callahan, Christian, Cooper, Crittenden, Cunningham, Jones, D.C., Jones, J.C.,
Melvin, Moss, Murphy and Spruill; Senators: Lambert, Lucas, Maxwell and Miller, Y.B.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 53.1-19.1 through 53.1-19.10 as follows:

§ 53.1-19.1. Comprehensive plan.

The Department shall conduct a statewide comprehensive study to develop a comprehensive plan for determining the need for establishing various types of correctional facilities, for selecting the location of all types of correctional facilities, and for determining the size of any correctional facility.

A. The comprehensive plan shall consider the following criteria:

- 1. Current and future estimates of offenders originating from each county, city or town;*
- 2. Current and future estimates of types of crimes committed in each county, city or town;*
- 3. The geographic location of existing state correctional facilities;*
- 4. The potential for the use or expansion of existing land or facilities owned by the Department of*

Corrections.

The comprehensive plan shall include procedures for evaluation of environmental, social, economic, transportation, land use, property value, public and social services impacts generated by the construction of a particular facility in any proposed location within the state. The comprehensive plan shall not be implemented until the General Assembly, by joint resolution, approves the comprehensive plan.

B. The Department shall recommend certification of the study by the Governor and Board within two months of its receipt.

C. Upon certification of the study by the Governor and Board, the Department shall notify those counties designated as being in need of a correctional facility.

§ 53.1-19.2. Procedure.

A. The Department shall determine the need for a correctional facility based upon the comprehensive plan developed pursuant to § 53.1-19.1.

B. Following a formal determination of need for such facilities by the Department, the Department shall publish a notice in two newspapers of general circulation closest to the proposed site within this Commonwealth that it proposes to expand an existing facility, or establish a new correctional facility in a particular town, city or county.

C. In addition to the general notice specified in this section, the Department shall further provide written notice within thirty days of the publishing of said general notice to the following officials:

- 1. The state senator and the state delegate representing the district or districts in the county, city or town where the proposed correctional facility is to be located.*
- 2. The chief elected official of the county, city or town in which the proposed correctional facility is to be located.*
- 3. Each member of the governing body of the county, city or town in which the proposed correctional facility is to be located.*
- 4. The chairman of the local school board of the school district or districts in the county, city or town in which the proposed correctional facility is to be located.*
- 5. The president of each state-supported college or university whose campus is located within the county, city or town where the proposed correctional facility is to be located.*
- 6. The sheriff of the county or city in which the proposed correctional facility is to be located.*

D. In addition to the notice required by subdivision C3 of this section, the Department, on or before the date of the issuance of said notice, shall request the chief elected official of the county in which the proposed correctional facility is to be located to create a local advisory board to assist in the identification of potential sites for the correctional facility, to act as a liaison between the Department and the local community, and to ensure that the comprehensive plan called for in § 53.1-19.1 of this title is being followed by the Department. The advisory board shall consist of no less than seven and no more than eleven citizens of the county, city or town in which the proposed correctional facility is to be

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HB2584

60 located. The citizens appointed to the advisory committee shall be fairly representative, in terms of
61 economic status, race, education and the like, of the population of the county, city or town where the
62 proposed correctional facility is to be located.

63 E. After the requirements of subsections A, B, C and D of this section are completed, and the
64 Department has identified or optioned a potential site, the Department shall hold public hearings on at
65 least two different dates in the county, city or town in which the potential site is located. The
66 Department shall participate in the hearings and shall make a reasonable effort to respond in writing to
67 concerns and questions raised on the record at the hearings. The hearing shall not be held until the
68 local advisory board created by subsection D of this section has organized or no sooner than thirty
69 days after the notice is sent pursuant to subsection C of this section, whichever occurs first.

70 F. The hearings to be conducted under subsection E of this section shall be open to the public and
71 shall be held in a place available to the general public. Any person shall be permitted to attend a
72 hearing except as otherwise provided herein. A person shall not be required as a condition of
73 attendance at a hearing to register or otherwise provide his or her name or other information. A person
74 shall be permitted to address the hearing under written procedures established by the Department. A
75 person shall not be excluded from a hearing except for a breach of peace actually committed at the
76 meeting.

77 G. The following provisions shall apply with respect to public notice of hearings required under this
78 section:

79 1. The public notice required under this section shall always contain the name of the Department, its
80 telephone number and address and shall be prominently posted at least ten days before the hearing.

81 2. A copy of the public notice shall always be posted at the Department's principal office and other
82 locations considered appropriate by the Department.

83 3. Public notice of the hearings required under this section shall be prominently posted at the circuit
84 court of the county or city in which the proposed facility is to be located at least ten days prior to each
85 hearing and shall state the date, time and place of the hearing. The required public notice of hearing
86 shall also be published at least ten days prior to the hearing in a newspaper of general circulation
87 within the county in which the proposed facility is to be located.

88 H. Minutes of each hearing, required under this section, shall be kept by the Department showing
89 the date, time, place, members of the local advisory board present, members of the local advisory board
90 absent, and a summary of the discussions at the hearing. The minutes shall be public record open to
91 public inspection and shall be available at the address designated on the posted public notices. Copies
92 of the minutes shall be available from the Department to the public at the reasonable estimated cost for
93 printing and copying.

94 I. On the basis of the information developed by the Department during the course of the site
95 selection process and after community concerns have been responded to by the Department pursuant to
96 this section, a final site determination shall be made by the Department for the proposed correctional
97 facility. The Department shall make a finding that the site determination was made in compliance with
98 this section.

99 § 53.1-19.3. Action for noncompliance with site selection process.

100 A. Any person who resides in the county, city or town which the Department has selected for a
101 correctional facility may bring an action in a court of proper jurisdiction if the Department has not
102 followed the site selection process set forth in this subchapter.

103 B. An action brought under this section shall not be maintained if it is filed more than sixty days
104 after the Department formally announces its final site selection.

105 § 53.1-19.4. Siting of additional correctional facilities; criteria; procedures.

106 A. In determining the location of a correctional facility to be built, the Department, in evaluating the
107 advantages and disadvantages of the proposed location, shall consider whether the proposed location is:

108 1. Cost-effective with respect to its proximity to other units in the system, and whether more
109 cost-effective sites are available;

110 2. Close to an area that would facilitate release of inmates to their area of residence; and

111 3. Close to an area that provides adequate educational opportunities and medical care;

112 4. Adequately accessible by inmate families for visitation purposes.

113 The following criteria shall also be considered in locating any new facility, or in the expansion of
114 any existing facility:

115 1. The availability of personnel within the local labor market;

116 2. The current capacity of facilities in the area;

117 3. The total usable and developable acreage of various sites based upon the use and purpose of the
118 facility;

119 4. The accessibility of each site to existing utility, transportation, law-enforcement, health care, fire
120 protection, refuse collection, water, and sewage disposal services;

121 5. The susceptibility of each site to flooding hazards or other adverse natural environmental

consequences, including hurricane sensitive areas and the costs of evacuation;

6. Site location in relation to desirable and undesirable proximity to other public facilities, including schools, state parks and national wildlife refuge facilities;

7. Patterns of residential growth and projected population growth; and

8. Such other criteria as the Department, in conjunction with local governments, deems appropriate.

Nothing herein shall be construed to require the Department to locate in each county the same percentage of prison beds as the percentage of inmates which the county contributes to the state correctional system. However, the cost-effectiveness of same shall be considered.

B. When the Department proposes a site for a state correctional facility, it shall request that the local government having jurisdiction over such proposed site determine whether or not the proposed site is in compliance with local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time of such request. If no such determination is made within ninety days of the request, it shall be presumed that the proposed site is in compliance with such plans, ordinances, or regulations.

C. If the local government determines within ninety days of the request that construction of a correctional facility on the proposed site does not comply with any such plan, ordinance, or regulation, the Department may request a modification of such plan, ordinance, or regulation without having an ownership interest in such property. For the purposes of this section, modification includes, but is not limited to, a variance, rezoning, special exception, or any other action of the local government having jurisdiction over the proposed site which would authorize siting of a correctional facility.

D. Upon receipt of a request for modification from the Department, the local government may recommend alternative sites to the Department and shall give notice and hold a public hearing on the request for modification in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such proceeding shall be recorded by tape or by a certified court reported and made available for transcription at the expense of any interested party.

E. When the Department requests such a modification and it is denied by the local government or there is no action on such request within ninety days of the request, the Department may appeal the decision of the local government on the requested modification of local plans, ordinances, or regulations to the Governor and Board.

F. The Governor and Board shall consider the following when determining whether to grant the appeal from the decision of the local government on the requested modification:

(i) The record of the proceedings before the local government.

(ii) Reports and studies by any other agency relating to matters within the jurisdiction of such agency which may be potentially affected by the proposed site.

(iii) The statewide study, as established in § 53.1-19.1; other existing studies; reports and information maintained by the Department as the Governor and Board may request addressing the feasibility and availability of alternative sites in the general area; and the need for a correction facility in the area based on the average number of commitments from the county to state correctional facilities for the most recent three calendar years.

G. The Governor and Board, upon determining that the local government has recommended no feasible alternative site and that the interests of the state in providing correctional facilities outweigh the concerns of the local government, shall authorize construction and operation of a correctional facility on the proposed site notwithstanding any local plan, ordinance, or regulation.

H. The Governor and Board may adopt rules of procedure to govern these proceedings.

I. The decision by the Governor and Board shall be subject to judicial review in a court of competent jurisdiction.

J. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general, special, or local, the provisions of this section are controlling.

§ 53.1-19.5. Final site selection; finding of compliance with act; transmittal of finding and notice.

On the basis of the information developed by the Department setting forth the site selection process, and after community concerns have been adequately addressed by the Department pursuant to § 53.1-19.2 C, the Department shall make a final site determination for the correctional facility. The Department shall make a finding that the site determination was made in compliance with this section. This finding and notice of final site selection shall be transmitted in writing by the Department to the local advisory board, the officials described in § 53.1-19.2, and the chairmen of the Senate and House of Delegates appropriations committees.

§ 53.1-19.6. Option to lease or purchase property; time for exercising

A. An option to lease, purchase, or use property may be obtained but shall not be exercised by the state for a correctional facility until the commission has made a final site determination and has transmitted a notice of final site selection as required in § 53.1-19.2.

B. If land or property is taken or purchased by the Board, title shall be taken in the name of the

183 *Commonwealth. The original names of all state correctional facilities shall be designated by the Board*
184 *and approved by the Governor.*

185 *§ 53.1-19.7. Action against Department for failure to abide by site selection process.*

186 *A person who resides in the county, city or town which the Department has selected as a site for a*
187 *correctional facility may bring an action in a court of proper jurisdiction against the Department if the*
188 *Department is not abiding by the site selection process provided in § 53.1-19.4.*

189 *An action brought under this section shall not be maintained if it is filed more than forty-five days*
190 *after the Department sends notification of the final site selected to the officials as required in*
191 *§ 53.1-19.2 C.*

192 *§ 53.1-19.8. Continuing relations between Department and county, city or town in which facility*
193 *located; advisory committee or Board; duties.*

194 *After a correctional facility is established, the Department shall maintain relations with the county,*
195 *city or town in which the facility is located. The Department shall request the officials notified under*
196 *§ 53.1-19.2 C to appoint an advisory committee or continue the advisory board established pursuant to*
197 *§ 53.1-19.2 D to meet with the Department and correctional facility representatives to assist in the*
198 *identification of community concerns, to assist in the identification of problems, and to recommend*
199 *methods for resolving those concerns and problems.*

200 *§ 53.1-19.9. Prior notice to General Assembly.*

201 *Prior to the selection of any site for the construction of any correctional facility, work release center,*
202 *community correctional center, privatized correctional facility, or any facility used for such purposes,*
203 *the Governor shall provide prior timely notice to the President of the Senate, Speaker of the House,*
204 *Senate Minority Leader and House Minority Leader, and the Chairmen of the Appropriations*
205 *Committees. Such notice shall precede any public announcement or announcement to private individuals.*

206 *§ 53.1-19.10. Legislative review of facilities program plans for correctional facilities.*

207 *When moneys are appropriated by the General Assembly for the construction of a new correctional*
208 *facility or for the construction of an addition to an existing correctional facility, the Department may*
209 *not begin the actual construction of any facility until the facilities program plans have been reviewed by*
210 *the budget committees of the General Assembly. The General Assembly may contract with a consultant*
211 *to provide assistance to the committees in the review of facilities program plans submitted by the*
212 *Department. The committees' review of facilities program plans for a new correctional facility shall*
213 *include, but not be limited to, whether the facilities program plans allow for a subsequent addition to*
214 *the facility and whether the plans meet the security level designation. Within thirty days after the date of*
215 *receipt of the facilities program plans from the Department, the committees shall provide the*
216 *Department with comments and suggestions concerning the plans. If the committees do not provide the*
217 *Department with comments and suggestions within such thirty-day period, the Department may proceed*
218 *with the actual construction of the correctional facility. The Department shall submit monthly reports*
219 *concerning each construction project until the project is completed. The information to be included in*
220 *the report shall be determined by the Department and the committees.*