

# 1995 RECONVENED SESSION

## HOUSE SUBSTITUTE REPRINT

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### HOUSE BILL NO.2584

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on March 27, 1995)

(Patron Prior to Substitute—Delegate Robinson)

A BILL to amend and reenact §§ 53.1-262 and 66-3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 53.1-19.1, 53.1-19.2, 66-3.1, and 66-3.2, relating to planning correctional facilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-262 and 66-3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 53.1-19.1, 53.1-19.2, 66-3.1, and 66-3.2 as follows:

§ 53.1-19.1. Planning for state correctional facilities.

A. The Department shall prepare annually a statewide forecast of the number of adult offenders expected to be committed to the state correctional system within the following ten-year period. The forecast shall include an estimate of (i) the number of offenders who will require maximum, medium or minimum custody confinement, (ii) the types of state correctional facilities needed to confine the forecasted number of adult offenders, and (iii) the number of offenders who may be placed in the Statewide Community-Based Corrections System for State-Responsible Offenders established in Article 6 ( § 53.1-67.2 et seq.) of Chapter 2.

B. The forecast prepared by the Department shall be based on a consensus forecasting process which shall include:

1. Development of forecast methodologies to be employed and alternative forecasts by a technical advisory group comprised of representatives from the Department of Corrections, the Department of Criminal Justice Services, the Virginia Criminal Sentencing Commission, the Joint Legislative Audit and Review Commission, and such experts as shall be appointed by the Secretary of Public Safety from the fields of criminal justice, population forecasting or other appropriate field of study as may be deemed necessary. The Secretary of Public Safety shall act as chairman of the technical advisory group.

2. Review and approval of the forecast by a policy advisory committee. The policy advisory committee shall include, but not be limited to, the Secretary of Public Safety, the Chairman of the Virginia Criminal Sentencing Commission, the Director of the Department of Corrections, the Director of the Department of Criminal Justice Services, the Superintendent of State Police, the Chairman of the Virginia Parole Board, the Executive Director of the State Compensation Board, the Executive Director of the Public Defender Commission, and the Executive Secretary of the Supreme Court. The policy advisory committee shall also include the following members to be appointed by the Secretary of Public Safety: at least one circuit court judge, one attorney for the Commonwealth, one sheriff, one chief of police, one member of a local or regional community criminal justice board, and one citizen at-large. In addition, the policy advisory committee shall include representation from the General Assembly in the form of the Chairmen of the House and Senate Committees for Courts of Justice, the Senate Finance Committee, the House Appropriations Committee, the Senate Rehabilitation and Social Services Committee, and the House Health, Welfare and Institutions Committee, or their designees. The Secretary of Public Safety shall serve as chairman of the policy advisory committee.

C. Copies of the forecast shall be presented by the Department to the Governor and the Chairmen of the House and Senate Committees for Courts of Justice, the Senate Finance Committee, the House Appropriations Committee, the Senate Committee on Rehabilitation and Social Services, and the House Health, Welfare and Institutions Committee on or before October 1 of each year.

D. The Department of Planning and Budget shall incorporate the estimates of the need for state correctional facilities into the executive budget prepared pursuant to Chapter 27 ( § 2.1-387 et seq.) of Title 2.1. The "Budget Bill" required by § 2.1-399 to be submitted by the Governor to the presiding officer of each house of the General Assembly shall include a statement which sets forth a plan to address the need for state correctional facilities and community-based corrections system programs to accommodate the projected population of adult offenders required to be committed to the state correctional system for the next three biennia. The plan shall also include measures to comply with the requirements of § 53.1-20 requiring the Department to receive persons convicted of a felony into the state corrections system. Each plan shall specify (i) the capital and operating costs associated with implementing the measures contained in the plan, (ii) a schedule for implementing such measures, (iii) the recommended methods of funding such measures, and (iv) the location of any state correctional facilities for which funding is requested.

§ 53.1-19.2. Siting of state correctional facilities.

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60 A. Prior to purchasing real property for purposes of constructing a state correctional facility, the  
61 Department shall notify the governing body of the locality in which the site is located of the purchase  
62 option, the intended use of the property as a correctional facility, and the size and type of facility.

63 B. Within thirty days following such notification, the local governing body or the planning  
64 commission for the locality shall provide for a period of public comment, not to exceed thirty days, with  
65 respect to the siting of the state correctional facility. The locality shall consider the effects, if any, on all  
66 the surrounding communities. Notice of such public comment period shall be published once in a  
67 newspaper of general circulation in the county, city or town in which the property is located. The  
68 Department shall pay the costs of publication of the notice.

69 C. Notwithstanding the provisions of § 53.1-19, the Board shall not purchase or otherwise acquire  
70 title to the land or property if the governing body of the county, city, or town in which the property is  
71 located adopts a resolution, within thirty days following the period of public comment in accordance  
72 with subsection B, opposing the Board's acquisition of the property for the stated use. The governing  
73 body's failure to act in accordance with subsection B or C within the time period prescribed by this  
74 statute shall be deemed approval of the acquisition of the property for the stated purpose.

75 D. Notwithstanding the provisions of subsections A through C, the Governor may, by executive order,  
76 direct the Department to proceed with the acquisition of real property for the purpose of establishing a  
77 state correctional facility when he determines that the population of inmates at state and local  
78 correctional facilities has reached such levels that a threat exists to the safety of correctional officers,  
79 jail officers, inmates or the general public.

80 E. Nothing in this section shall be construed to apply to existing state property currently used by the  
81 Department for the confinement of prisoners.

82 § 53.1-262. State correctional facilities; private contracts.

83 The Director, subject to any applicable regulations which may be promulgated by the Board pursuant  
84 to § 53.1-266 and subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.), is  
85 hereby authorized to enter into contracts with prison contractors for the financing, site selection,  
86 acquisition, construction, maintenance, leasing, management or operation of prison facilities, or any  
87 combination of those services, subject to the requirements and limitations set out below.

88 1. Contracts entered into under the terms of this chapter shall be with an entity submitting an  
89 acceptable response pursuant to a request for proposals. An acceptable response shall be one which  
90 meets all the requirements in the request for proposals. However, no contract for correctional services  
91 may be entered into unless the private contractor demonstrates that it has:

92 a. The qualifications, experience and management personnel necessary to carry out the terms of this  
93 contract;

94 b. The financial resources to provide indemnification for liability arising from prison management  
95 projects;

96 c. Evidence of past performance of similar contracts; and

97 d. The ability to comply with all applicable federal and state constitutional standards; federal, state,  
98 and local laws; court orders; and correctional standards.

99 2. Contracts awarded under the provisions of this chapter, including contracts for the provision of  
100 correctional services or for the lease or use of public lands or buildings for use in the operation of  
101 facilities, may be entered into for a period of up to thirty years, subject to the requirements for annual  
102 appropriation of funds by the Commonwealth.

103 3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the  
104 following:

105 a. Provide for internal and perimeter security to protect the public, employees and inmates;

106 b. Provide inmates with work or training opportunities while incarcerated; however, the contractor  
107 shall not benefit financially from the labor of inmates;

108 c. Impose discipline on inmates only in accordance with applicable regulations; and

109 d. Provide proper food, clothing, housing and medical care for inmates.

110 4. No contract for correctional services shall be entered into unless the following requirements are  
111 met:

112 a. The contractor provides audited financial statements for the previous five years or for each of the  
113 years the contractor has been in operation, if fewer than five years, and provides other financial  
114 information as requested; and

115 b. The contractor provides an adequate plan of indemnification, specifically including indemnity for  
116 civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public  
117 officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to  
118 deprive a prison contractor or the Commonwealth of the benefits of any law limiting exposure to  
119 liability or setting a limit on damages.

120 5. No contract for correctional services shall be executed by the Director nor shall any funds be  
121 expended for the contract unless:

a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § 53.1-266;

b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of inmates; ~~and~~

d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the services through governmental agencies.

6. A site proposed by a contractor for the construction of a prison facility shall not be subject to the approval procedure set forth in § 53.1-19; ;

*7. No contract or lease for a privately operated correctional facility shall be executed by the Department unless the location of such facility has been approved by the governing body of the locality in which the facility is located. Any potential prison contractor shall provide notice to the local governing body of the jurisdiction in which the facility is to be located of its intention to develop a prison facility. Such notice shall be made subsequent to obtaining an option to purchase real property for the purpose of constructing a prison facility, but prior to the actual purchase of such property. Upon receiving such notice, the governing body of the locality in which the facility is to be constructed shall within thirty days provide for a period of public comment not to exceed thirty days. Within thirty days after the end of the period of public comment, the governing body of the locality in which the facility is to be constructed shall adopt a resolution in support of or in opposition to the proposed site of the prison facility. Failure of the governing body to act within such time shall be deemed as support for the use of the property as described in the notice.*

§ 66-3. Powers of the Director.

The Director of the Department shall have the following general powers:

1. To employ such personnel as may be required to carry out the purposes of this title.

2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers under this title, including, but not limited to, contracts and agreements with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.

3. With the prior approval of the Governor, to enter into agreements with a public or private entity to operate a work program for ~~children~~ juveniles committed to the Department.

4. *With the prior approval of the Governor, to acquire real property, by purchase or gift, needed for new or existing state juvenile correctional facilities and for administrative and other facilities necessary to the operations of the Department, pursuant to regulations promulgated by the Board to ensure adequate public notice and local hearing.*

5. To do all acts necessary or convenient to carry out the purposes of this title.

§ 66-3.1. Planning for juvenile facilities.

A. *The Department shall prepare annually a statewide forecast of the number of juveniles expected to be committed to the Department within the following ten-year period. The forecast shall include an estimate of (i) the number of juveniles who will require maximum, medium or minimum custody confinement, (ii) the types of juvenile facilities needed to confine the forecasted number of juveniles committed to the Department, and (iii) the number of juveniles who may be placed in the community-based post-disposition programs established pursuant to § 16.1-322.1.*

B. *Copies of the forecast shall be presented by the Department to the Governor and the Chairmen of the House and Senate Committees for Courts of Justice, the Senate Finance Committee, the House Appropriations Committee, the Senate Rehabilitation and Social Services Committee and the House Health, Welfare and Institutions Committee on or before October 1 of each year.*

C. *The Department of Planning and Budget shall incorporate the estimates of the need for juvenile facilities and programs into the executive budget prepared pursuant to Chapter 27 (§ 2.1-387 et seq.) of Title 2.1. The "Budget Bill" required by § 2.1-399 to be submitted by the Governor to the presiding officer of each house of the General Assembly shall include a statement which sets forth a plan to address the need for juvenile facilities and community-based post-disposition programs to accommodate the projected population of juveniles committed to the Department for the next three biennia. Each plan shall specify (i) the capital and operating costs associated with implementing the measures contained in the plan, (ii) a schedule for implementing such measures, (iii) recommended methods of funding such measures, and (iv) the location of any juvenile facilities for which funding is requested.*

§ 66-3.2. Siting of juvenile facilities.

A. *Prior to purchasing real property for purposes of constructing a juvenile facility, the Department shall notify the governing body of the locality in which the site is located of the purchase option, the intended use of the property as a juvenile facility, and the size and type of facility.*

B. *Within thirty days following such notification, the local governing body or the planning*

183 commission for the locality shall provide for a period of public comment, not to exceed thirty days, with  
184 respect to the siting of the facility. The locality shall consider the effects, if any, on all the surrounding  
185 communities. Notice of such public comment period shall be published once in a newspaper of general  
186 circulation in the county, city or town in which the property is located. The Department shall pay the  
187 costs of publication of the notice.

188 C. The Department shall not purchase or otherwise acquire title to the land or property if the  
189 governing body of the county, city, or town in which the property is located adopts a resolution within  
190 thirty days following the period of public comment in accordance with subsection B, opposing the  
191 Department's acquisition of the property for the stated use. The governing body's failure to act in  
192 accordance with subsection B or C within the time period prescribed by this statute shall be deemed  
193 approval of the acquisition of the property for the stated purpose.

194 D. Notwithstanding the provision of subsections A through C, the Governor may, by executive order,  
195 direct the Department to proceed with the acquisition of real property for the purpose of establishing a  
196 juvenile facility when he determines that the population of juveniles at state or local juvenile facilities  
197 has reached such levels that a threat exists to the safety of Department personnel, juveniles, or the  
198 general public.

199 E. Nothing in this section shall be construed to apply to existing state property currently used by the  
200 Department for juvenile facilities.

201 **2. That an emergency exists and this act is in force from its passage.**