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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 16 (as passed by the Senate)
Sponsor: Senator Jack Welborn
Committee: Criminal Justice and Urban Affairs

Date Completed: 4-12-89

RATIONALE

The Department of Corrections (DOC) Act specifies the procedures for site selection for State correctional facilities. Currently, several steps must be taken by the DOC before the State can build a correctional facility on a proposed site, but these do not include obtaining voter approval. Some people feel that the site selection procedures should include a method for residents of an area where prison construction is proposed to indicate their approval or disapproval. They contend that because the residents of a community in which a facility is to be located are the people who will be affected either positively or negatively by the site selection, those residents should be consulted. In addition, some feel that the Department of Management and Budget (DMB) should have a more active role in the site selection procedure and hearings.

CONTENT

The bill would amend the provisions of the Department of Corrections Act that specify the procedures for approval of locations for new correctional facilities, to require that the DMB participate in the site selection process and to provide for referenda on prison site selection.

The Act requires the DOC to hold a public hearing in the local unit that would be affected, after it has determined the need for a

correctional institution, published in local newspapers of general circulation a notice of intent to locate a prison facility, officially notified certain public officials of such intent, and requested the formation of a local advisory board to assist in the identification of potential sites. The bill would require that the DMB participate in the hearing along with the Department of Corrections. Under the bill, requirements pertaining to the public hearing that currently apply only to the DOC would apply to both departments. The bill further would require that the Corrections Commission publish in a local newspaper of general circulation both a notice of final site selection and a finding that the site determination was made in compliance with the Act.

Within 30 days after the transmittal of the Commission's report to certain specified public officials, a petition could be submitted to the clerk in the county of the proposed site requesting that the question of final site selection be submitted to the voters of the city, village, or township in which the selected site was located. The petition would have to be signed by a number of residents of the city, village, or township representing at least 20% of the total number of votes cast in that local unit for all candidates for Governor at the most recent gubernatorial general election. If the county clerk determined the petition to be valid, he or she then would have to order a

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referendum on the question of final site selection for the correctional facility. The referendum would have to be held at the next primary or general election or at a duly held special election. If a valid petition had been filed, the DOC would be prohibited from proceeding with plans to establish a correctional facility until the site was approved by a majority of the voters residing in the city, village, or township. The State could obtain an option to lease, purchase, or use property for the purpose of establishing a correctional facility as long as it did not exercise the option until the facility was approved by local voters. The referendum provisions would not apply to a correctional facility for which planning or construction funds were already authorized or appropriated on the bill's effective date.

The bill also would delete a provision that specifies that the DOC's site-selection comprehensive plan can not be implemented until the Legislature approves it by concurrent resolution.

MCL 791.216

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local governments. An increase in costs to the State could result from the need for additional preliminary site evaluations that would be due to more effective local opposition to facility location and from increased construction costs that would result from prolonged delays. Local units could experience expenditure increases resulting from the costs of special elections.

ARGUMENTS

Supporting Argument

The location of a correctional facility can have both real and perceived effects on the surrounding community. Those effects could be either positive or negative, depending on such things as economic impact and perceptions of the quality-of-life in the community. In any event, the voters of the community should have the right to decide whether to subject the community to such influences, since they would

be the ones either to enjoy the benefits or suffer the consequences of the action.

Supporting Argument

The issue is one of democratic values. A major development such as the construction of a prison should be based on a vote of the people, not the decision of a few bureaucrats and politicians.

Opposing Argument

The Act currently provides sufficient guarantees of community involvement in the site selection process. The requirements include the publication of notices, the notification of certain public officials, the formation of an advisory committee, and the holding of a public hearing. These requirements suggest that there is ample opportunity for citizen input. The problem is that these provisions, although specified in the Act, have not been put into effect. The Act requires implementation by a concurrent resolution to approve the Department's comprehensive plan for determining the need for, selecting the sites of, and determining the sizes of various types of correctional facilities. When and if such a resolution is adopted, the Act's current provisions, without the proposed referendum requirement, will be adequate.

Response: While the existing requirements, if implemented, would provide a forum for citizen input, they would not give the electorate the actual power to approve or disapprove a site, as the bill proposes to do.

Opposing Argument

Even in a community that strongly supports the construction of a correctional facility, small splinter groups opposed to a prison siting could gather 20% of the electorate to request a referendum. This would cause unnecessary delays in construction, or even a prohibition against construction since, some contend, those opposed to prison construction would be more likely to cast votes than those in support or indifferent.

Opposing Argument

Although the DMB has expressed a willingness to participate in community hearings, it should not be mandated by law to do so. The DMB's role in the site selection process is limited to

technical analysis of a proposed site (e.g., soil analysis and assessments of available utility services) and does not include choosing the actual site.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.