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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 883 (Substitute S-2 as reported)

Sponsor: Senator Dan L. DeGrow

Committee: Criminal Justice and Urban Affairs

Date Completed: 4-4-90

**RATIONALE**

Over the past decade or so, the Attorney General, on behalf of the Department of Corrections (DOC), has entered into various consent decrees pertaining to the operation of the State's prisons. Also, civil suits filed against the State by inmates in correctional facilities are quite common, and can end in out-of-court settlements. Such actions often result in great costs to the State, yet are agreed to without the input of the Legislature, which ultimately is responsible for enacting the Department's appropriations, from which those expenses are paid. Some people believe that the DOC's practice of authorizing the Attorney General to enter into potentially expensive consent decrees, in effect, enables the DOC to circumvent the appropriations process. They contend that the Legislature should have a role in the process of agreeing to DOC consent decrees.

**CONTENT**

The bill would amend the Department of Corrections law to forbid the Corrections Commission, the DOC Director, or any other DOC officer from entering into certain settlements or consent agreements or authorizing the Attorney General to do so, unless the Legislature gave prior approval by joint resolution.

The DOC and the Attorney General would have to notify the Legislature promptly, if they proposed to enter into a settlement or consent agreement in a civil action brought against the

DOC that would produce either a State obligation of more than \$200,000 or a policy decision that could affect classification, security, prisoner privileges, or staffing. The notice would have to be in writing and include a summary of the case and the reasons that the settlement or agreement would be in the State's best interests. The notification would have to be delivered to the Senate Majority and Minority Leaders, the Speaker of the House, and the House Minority Leader. No settlement or consent agreement that required such notification could be entered into without the Legislature's prior approval.

Proposed MCL 791.207a

**FISCAL IMPACT**

The bill would have an indeterminate impact on the State and no fiscal impact on local government.

**ARGUMENTS****Supporting Argument**

The DOC's and the Attorney General's practice of entering into consent agreements with Federal courts concerning Michigan's corrections policies has gone unchecked by the Legislature, whose responsibility it is to oversee the State's budget. Since those consent agreements can produce corrections policy changes that may result in great expense to the State, the Legislature should be involved with the decision of whether to enter into

them. In addition, large out-of-court settlements in civil suits against the DOC can have the same effect and also should be subject to legislative approval.

#### **Opposing Argument**

The bill goes farther than the usual course of "checks and balances" between branches of government: it may very well be a violation of the Constitution's separation of powers provision. When the Department of Attorney General represents the DOC in legal procedures, it must be free to do so without interference from the legislative branch of government. In addition, subjecting DOC policy changes to legislative approval, regardless of whether the changes resulted from consent agreements, would be an infringement on the powers and responsibilities of the executive branch.

#### **Opposing Argument**

The bill could require the Attorney General to violate principles of legal ethics. In effect, under the bill the Attorney General would be representing two clients--the DOC and the Legislature. While, an attorney can ethically represent two clients in the same proceeding, he or she cannot do so if the clients' concerns are in conflict. If the DOC and the Legislature were in disagreement about whether to enter into a consent agreement or out-of-court settlement, the Attorney General could not ethically represent both parties, yet the bill would require one of those clients to seek the other client's approval to instruct legal counsel on how to proceed.

#### **Opposing Argument**

The Attorney General already notifies the Chairpersons of the two Appropriations Committees of lawsuit settlements that exceed \$200,000, as required under the Management and Budget Act. Including such a requirement in this bill is unnecessary.

**Response:** The bill would expand upon that current requirement to mandate that such settlements receive prior approval of the Legislature.

Legislative Analyst: P. Affholter

Fiscal Analyst: B. Burghardt

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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.