

2SHB 1733 - H AMD 400

By Representative Conway

ADOPTED 03/13/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 72.05.020 and 1998 c 269 s 2 are each amended to read
4 as follows:

5 As used in this chapter, unless the context requires otherwise:

6 (1) "Community facility" means a group care facility operated for
7 the care of juveniles committed to the department under RCW 13.40.185.
8 A county detention facility that houses juveniles committed to the
9 department under RCW 13.40.185 pursuant to a contract with the
10 department is not a community facility.

11 (2) "Department" means the department of social and health
12 services.

13 (3) "Equitable distribution" or "distribute equitably" means siting
14 or locating community facilities in a manner that reasonably reflects
15 the proportion of juveniles sentenced to the department from each
16 county or rural multicounty geographic area designated by the
17 department, and, to the extent practicable, the proportion of such
18 juveniles residing in particular jurisdictions or communities within
19 such counties or geographic areas. Equitable distribution is a policy
20 goal, not a basis for any legal challenge to the siting, construction,
21 occupancy, or operation of any facility anywhere in the state.

22 (4) "Juvenile" means a person under the age of twenty-one who has
23 been sentenced to a term of confinement under the supervision of the
24 department under RCW 13.40.185.

25 (~~(4)~~) (5) "Service provider" means the entity that operates a
26 community facility.

27 NEW SECTION. Sec. 2. A new section is added to chapter 72.05 RCW
28 to read as follows:

29 (1) The department shall prepare a projected list of counties and

1 rural multicounty geographic areas in which community facilities need
2 to be sited during the fiscal year beginning July 1, 2007, and every
3 biennium thereafter starting with the biennium beginning July 1, 2008,
4 and transmit the list to the office of financial management and the
5 counties on the list. The list may be updated as needed. In preparing
6 the list, the department shall make substantial efforts to provide for
7 the equitable distribution of community facilities among counties. The
8 department shall give great weight to the following factors in
9 determining equitable distribution:

10 (a) The locations of existing community facilities owned or
11 operated by, or operated under contract with, the department in each
12 county;

13 (b) The number and proportion of juvenile offenders committed to
14 the department residing in the county or rural multicounty geographic
15 area; and

16 (c) The number of juvenile registered sex offenders classified as
17 level II or III and juvenile sex offenders registered as homeless per
18 thousand persons residing in the county.

19 (2) The department shall submit, along with the list required under
20 subsection (1) of this section, the operational requirements for the
21 facilities on the list to the office of financial management and the
22 counties on the list.

23 (3) A county, and any county designated by the department within a
24 rural multicounty geographic area, that is included on the list
25 required under subsection (1) of this section planning under RCW
26 36.70A.040 shall, in cooperation with its cities, allow the siting of
27 each projected community facility on the list within the county using
28 its process for siting essential public facilities under RCW 36.70A.200
29 and section 6 of this act. The process shall allow the siting of a
30 facility within twelve months of receiving notice that the county has
31 been included on the list.

32 (4) A county, and any county designated by the department within a
33 rural multicounty geographic area, that is included on the list
34 required under subsection (1) of this section not planning under RCW
35 36.70A.040 shall, in cooperation with its cities, allow the siting of
36 each projected community facility on the list within the county using
37 the procedures established in section 7 of this act. The process shall

1 allow the siting of a facility within twelve months of receiving notice
2 that the county or city has been included on the list.

3 (5) The department shall, by rule, adopt facility criteria and
4 shall consult with local governments in such rule making.

5 **Sec. 3.** RCW 72.65.010 and 1992 c 7 s 56 are each amended to read
6 as follows:

7 As used in this chapter, the following terms shall have the
8 following meanings:

9 (1) "Department" (~~shall~~) means the department of corrections.

10 (2) "Equitable distribution" or "distribute equitably" means siting
11 or locating work release facilities in a manner that reasonably
12 reflects the proportion of offenders sentenced to the custody or
13 supervision of the department by the courts of each county or rural
14 multicounty geographic area designated by the department, and, to the
15 extent practicable, the proportion of such offenders residing in
16 particular jurisdictions or communities within such counties or rural
17 multicounty geographic areas. Equitable distribution is a policy goal,
18 not a basis for any legal challenge to the siting, construction,
19 occupancy, or operation of any facility anywhere in the state.

20 (3) "Prisoner" means a person either male or female, convicted of
21 a felony and sentenced by the superior court to a term of confinement
22 and treatment in a state correctional institution under the
23 jurisdiction of the department.

24 (4) "Secretary" (~~shall~~) means the secretary of corrections.

25 ~~((3))~~ (5) "State correctional institutions" shall mean and
26 include all state adult correctional facilities established pursuant to
27 law under the jurisdiction of the department for the treatment of
28 convicted felons sentenced to a term of confinement.

29 ~~((4) "Prisoner" shall mean a person either male or female,~~
30 ~~convicted of a felony and sentenced by the superior court to a term of~~
31 ~~confinement and treatment in a state correctional institution under the~~
32 ~~jurisdiction of the department.~~

33 ~~(5))~~ (6) "Superintendent" (~~shall~~) means the superintendent of a
34 state correctional institution, camp or other facility now or hereafter
35 established under the jurisdiction of the department pursuant to law.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 72.65 RCW
2 to read as follows:

3 (1) The department shall prepare a projected list of counties and
4 rural multicounty geographic areas in which work release facilities
5 need to be sited during the fiscal year beginning July 1, 2007, and
6 every biennium thereafter starting with the biennium beginning July 1,
7 2008, and transmit the list to the office of financial management and
8 the counties on the list. The list may be updated as needed. In
9 preparing the list, the department shall make substantial efforts to
10 provide for the equitable distribution of work release facilities among
11 counties. The department shall give great weight to the following
12 factors in determining equitable distribution:

13 (a) The locations of existing residential facilities owned or
14 operated by, or operated under contract with, the department in each
15 county;

16 (b) The number and proportion of adult offenders sentenced to the
17 custody or supervision of the department by the courts of the county or
18 rural multicounty geographic area; and

19 (c) The number of adult registered sex offenders classified as
20 level II or III and adult sex offenders registered as homeless per
21 thousand persons residing in the county.

22 (2) The department shall submit, along with the list required under
23 subsection (1) of this section, the operational requirements for the
24 facilities on the list to the office of financial management and the
25 counties on the list.

26 (3) A county, and any county designated by the department within a
27 rural multicounty geographic area, that is included on the list
28 required under subsection (1) of this section planning under RCW
29 36.70A.040 shall, in cooperation with its cities, allow the siting of
30 each projected work release facility on the list within the county
31 using its process for siting essential public facilities under RCW
32 36.70A.200 and section 6 of this act.

33 (4) A county, and any county designated by the department within a
34 rural multicounty geographic area, that is included on the list
35 required under subsection (1) of this section not planning under RCW
36 36.70A.040 shall, in cooperation with its cities, allow the siting of
37 each projected work release facility on the list within the county
38 using the procedures established in section 7 of this act.

1 (5) The department shall, by rule, adopt facility criteria and
2 shall consult with local governments in such rule making.

3 **Sec. 5.** RCW 36.70A.200 and 2002 c 68 s 2 are each amended to read
4 as follows:

5 (1) The comprehensive plan of each county and city that is planning
6 under RCW 36.70A.040 shall include a process for identifying and siting
7 essential public facilities. Essential public facilities include those
8 facilities that are typically difficult to site, such as airports,
9 state education facilities and state or regional transportation
10 facilities as defined in RCW 47.06.140, state and local correctional
11 facilities, solid waste handling facilities, and in-patient facilities
12 including substance abuse facilities, mental health facilities, group
13 homes, and secure community transition facilities as defined in RCW
14 71.09.020.

15 (2) Each county and city planning under RCW 36.70A.040 shall, not
16 later than September 1, 2002, establish a process, or amend its
17 existing process, for identifying and siting essential public
18 facilities and adopt or amend its development regulations as necessary
19 to provide for the siting of secure community transition facilities
20 consistent with statutory requirements applicable to these facilities.

21 (3) Any city or county not planning under RCW 36.70A.040 shall, not
22 later than September 1, 2002, establish a process for siting secure
23 community transition facilities and adopt or amend its development
24 regulations as necessary to provide for the siting of such facilities
25 consistent with statutory requirements applicable to these facilities.

26 (4) Within twelve months of receiving notice that the county has
27 been included on the list of projected potential sites for a work
28 release facility or community facility for juvenile offenders, each
29 county, in cooperation with the cities located in whole or in part
30 within the county, and each city planning under RCW 36.70A.040 shall,
31 when it next amends its comprehensive plan, but in no case later than
32 the deadline specified in RCW 36.70A.130, establish a process, or amend
33 its existing process, for identifying and siting essential public
34 facilities, and adopt or amend its development regulations as necessary
35 to provide for the siting of community facilities as defined in RCW
36 72.05.020 and work release and other facilities operated by or under
37 contract with the department of corrections. When siting a community

1 facility under chapter 72.05 RCW or a work release facility under
2 chapter 72.65 RCW, a county or city shall follow, in addition to
3 requirements of the process for siting essential public facilities
4 established under this section, the requirements established in section
5 6 of this act.

6 (5) The office of financial management shall maintain and by the
7 first of each year, provide to counties and cities needing to site
8 them, a list of those essential state public facilities that are
9 required or likely to be built within the next six years. The office
10 of financial management may at any time add facilities to the list.

11 ~~((+5))~~ (6) No local comprehensive plan or development regulation
12 may preclude the siting of essential public facilities.

13 ~~((+6))~~ (7) No person may bring a cause of action for civil damages
14 based on the good faith actions of any county or city to provide for
15 the siting of secure community transition facilities in accordance with
16 this section and with the requirements of chapter 12, Laws of 2001 2nd
17 sp. sess. For purposes of this subsection, "person" includes, but is
18 not limited to, any individual, agency as defined in RCW 42.17.020,
19 corporation, partnership, association, and limited liability entity.

20 ~~((+7))~~ (8) Counties or cities siting facilities pursuant to
21 subsection (2) or (3) of this section shall comply with RCW 71.09.341.

22 ~~((+8))~~ (9) The failure of a county or city to act by the deadlines
23 established in subsections (2) and (3) of this section is not:

24 (a) A condition that would disqualify the county or city for
25 grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

26 (b) A consideration for grants or loans provided under RCW
27 43.17.250(2); or

28 (c) A basis for any petition under RCW 36.70A.280 or for any
29 private cause of action.

30 NEW SECTION. Sec. 6. A new section is added to chapter 36.70A RCW
31 to read as follows:

32 (1) When providing for the siting of an essential public facility
33 that is a community facility under chapter 72.05 RCW, a county or city
34 planning under this chapter shall:

35 (a) Involve the department of social and health services in the
36 siting process;

1 (b) Make a substantial effort to provide for the equitable
2 distribution of community facilities by giving great weight to the
3 factors in section 2(1) (a) through (c) of this act; and

4 (c) Ensure that any location identified is consistent with the
5 operational requirements established by the department of social and
6 health services under section 2(2) of this act.

7 (2) When providing for the siting of an essential public facility
8 that is a work release facility under chapter 72.65 RCW, a county or
9 city planning under this chapter shall:

10 (a) Involve the department of corrections in the siting process;

11 (b) Make a substantial effort to provide for the equitable
12 distribution of work release facilities by giving great weight to the
13 factors in section 4(1) (a) through (c) of this act; and

14 (c) Ensure that any location identified is consistent with the
15 operational requirements established by the department of corrections
16 under section 4(2) of this act.

17 (3)(a) As part of the permitting process for a community facility
18 under chapter 72.05 RCW, a county or city may not impose upon the
19 department of social and health services any requirements beyond the
20 operational requirements established under section 2(2) of this act and
21 the facility criteria established under section 2(5) of this act.

22 (b) As part of the permitting process for a work release facility
23 under chapter 72.65 RCW, a county or city may not impose upon the
24 department of corrections any requirements beyond the operational
25 requirements established under section 4(2) of this act and the
26 facility criteria established under section 4(5) of this act.

27 (4) If the department of social and health services adheres to all
28 responsibilities in section 2 of this act and RCW 72.05.400, and the
29 department of corrections adheres to all responsibilities in RCW
30 72.65.010 and section 4 of this act, any conditional use permit,
31 special use permit, or any other development application process
32 necessary to site a community facility or work release facility may not
33 exceed one hundred twenty days after submittal of a full and complete
34 application, and must include an appeal process.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70 RCW
36 to read as follows:

1 (1) When providing for the siting of a community facility under
2 chapter 72.05 RCW, a county or city planning under this chapter shall:

3 (a) Involve the department of social and health services in the
4 siting process;

5 (b) Make a substantial effort to provide for the equitable
6 distribution of community facilities by giving great weight to the
7 factors in section 2(1) (a) through (c) of this act; and

8 (c) Ensure that any location identified is consistent with the
9 operational requirements established by the department of social and
10 health services under section 2(2) of this act.

11 (2) When providing for the siting of a work release facility under
12 chapter 72.65 RCW, a county and city planning under this chapter shall:

13 (a) Involve the department of corrections in the siting process;

14 (b) Make a substantial effort to provide for the equitable
15 distribution of work release facilities by giving great weight to the
16 factors in section 4(1) (a) through (c) of this act; and

17 (c) Ensure that any location identified is consistent with the
18 operational requirements established by the department of corrections
19 under section 4(2) of this act.

20 (3)(a) As part of the permitting process for a community facility
21 under chapter 72.05 RCW, a county or city may not impose upon the
22 department of social and health services any requirements beyond the
23 operational requirements established under section 2(2) of this act and
24 the facility criteria established under section 2(5) of this act.

25 (b) As part of the permitting process for a work release facility
26 under chapter 72.65 RCW, a county or city may not impose upon the
27 department of corrections any requirements beyond the operational
28 requirements established under section 4(2) of this act and the
29 facility criteria established under section 4(5) of this act.

30 (4) If the department of social and health services adheres to all
31 responsibilities in section 2 of this act and RCW 72.05.400, and the
32 department of corrections adheres to all responsibilities in RCW
33 72.65.010 and section 4 of this act, any conditional use permit,
34 special use permit, or any other development application process
35 necessary to site a community facility or work release facility may not
36 exceed one hundred twenty days after submittal of a full and complete
37 application, and must include an appeal process.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A RCW
2 to read as follows:

3 (1) After twelve months have passed since the city or county
4 receives notice that the county has been included on the list of
5 projected potential sites for a work release facility or community
6 facility for juvenile offenders, and the county and cities within have
7 failed to establish a process for siting a work release facility or
8 community facility for juvenile offenders, notwithstanding RCW
9 36.70A.103 or any other law, this section preempts and supersedes local
10 plans, development regulations, permitting requirements, inspection
11 requirements, and all other laws as necessary to enable the department
12 of corrections to site, construct, renovate, occupy, and operate a work
13 release facility or to enable the department of social and health
14 services to operate a community facility for juvenile offenders within
15 the county.

16 (2) The department of corrections or department of social and
17 health services determinations under subsection (1) of this section are
18 final and are not subject to appeal under chapter 34.05 RCW or this
19 chapter.

20 (3) Nothing in this section prohibits the department of corrections
21 or department of social and health services from:

22 (a) Siting a work release or community facility for juvenile
23 offenders in a city or county that has complied with the requirements
24 of RCW 36.70A.200 with respect to these facilities, including a city
25 that is located within a county that has been preempted. If the
26 department sites a work release facility or community facility for
27 juvenile offenders in such a city or county, the department shall use
28 the process established by the city or county for siting such
29 facilities; or

30 (b) Consulting with a city or county that has been preempted under
31 this section regarding the siting of a secure community transition
32 facility.

33 NEW SECTION. **Sec. 9.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately."

5 Correct the title.

EFFECT: Removes all changes in the second substitute bill and
replaces it with the language in the substitute bill that was reported
out of the Human Services Committee, except that all language changing
the notice requirements for siting essential public facilities is
removed.

 Requires the development of biennial lists of counties and rural
multi-county geographic areas in which juvenile facilities or adult
work release facilities may be sited.

 Requires the Department of Social and Health Services and the
Department of Corrections to make substantial efforts to provide for
the equitable distribution of juvenile facilities or adult work release
facilities when developing the lists.

 Requires local governments to develop processes and development
regulations necessary to provide for the siting of juvenile facilities
and adult work release facilities, and imposes requirements on local
governments relating to the siting process.

 Allows the state to preempt local government if they fail to create
a process to site the juvenile facilities or work release facilities.

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