
HOUSE BILL 1733

State of Washington 60th Legislature 2007 Regular Session

By Representatives Conway, Kirby, Darneille and Chase

Read first time 01/26/2007. Referred to Committee on Human Services.

1 AN ACT Relating to essential state community justice facilities;
2 amending RCW 72.05.020, 72.05.400, 72.65.010, 72.65.220, and
3 36.70A.200; adding a new section to chapter 72.05 RCW; adding a new
4 section to chapter 72.65 RCW; adding a new section to chapter 36.70A
5 RCW; adding a new section to chapter 36.70 RCW; and declaring an
6 emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 72.05.020 and 1998 c 269 s 2 are each amended to read
9 as follows:

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

11 (1) "Community facility" means a group care facility operated for
12 the care of juveniles committed to the department under RCW 13.40.185.
13 A county detention facility that houses juveniles committed to the
14 department under RCW 13.40.185 pursuant to a contract with the
15 department is not a community facility.

16 (2) "Department" means the department of social and health
17 services.

18 (3) "Equitable distribution" or "distribute equitably" means siting
19 or locating community facilities in a manner that reasonably reflects

1 the proportion of juveniles sentenced to the department from each
2 county or rural multicounty geographic area designated by the
3 department, and, to the extent practicable, the proportion of such
4 juveniles residing in particular jurisdictions or communities within
5 such counties or geographic areas. Equitable distribution is a policy
6 goal, not a basis for any legal challenge to the siting, construction,
7 occupancy, or operation of any facility anywhere in the state.

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

11 ((4)) (5) "Service provider" means the entity that operates a
12 community facility.

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

15 (1) The department shall prepare a projected list of counties and
16 rural multicounty geographic areas in which community facilities need
17 to be sited during the fiscal year beginning July 1, 2007, and every
18 biennium thereafter starting with the biennium beginning July 1, 2008,
19 and transmit the list to the office of financial management and the
20 counties on the list. The list may be updated as needed. In preparing
21 the list, the department shall make substantial efforts to provide for
22 the equitable distribution of community facilities among counties. The
23 department shall give great weight to the following factors in
24 determining equitable distribution:

25 (a) The locations of existing community facilities owned or
26 operated by, or operated under contract with, the department in each
27 county;

28 (b) The number and proportion of juvenile offenders committed to
29 the department residing in the county or rural multicounty geographic
30 area; and

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

34 (2)(a) In preparing the list required under subsection (1) of this
35 section, the department shall:

36 (i) Give great weight to the factors identified in subsection (1)
37 of this section;

1 (ii) Use the information contained in the most recent edition of
2 the report required under subsection (4) of this section; and

3 (iii) Use the criteria adopted under subsection (7) of this
4 section.

5 (b) Prior to finalizing the list of projected community facilities
6 required under subsection (1) of this section, the department shall
7 consult with the county legislative authorities of each county
8 identified on the list. The department shall also hold at least one
9 public hearing within each such county or rural multicounty geographic
10 area, including, if known, the affected part of the county.

11 (3) The department shall submit, along with the list required under
12 subsection (1) of this section, the operational requirements for the
13 facilities on the list to the office of financial management and the
14 counties on the list.

15 (4) To carry out the purposes of subsection (1) of this section,
16 the department shall, no later than July 1, 2007, develop a map of the
17 state that identifies the locations of existing facilities and the
18 counties or rural multicounty geographic areas needing projected
19 facilities identified in subsection (1) of this section during the
20 biennium. The department shall update the map at least once per
21 biennium. The department shall also maintain data on the number and
22 proportion of juvenile offenders identified in subsection (1)(b) and
23 (c) of this section and shall biennially publish a report including the
24 most recent version of the map and offender data for the counties and
25 rural multicounty geographic areas.

26 (5) 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 adopt development regulations that designate areas or
30 zones that allow the siting of each projected community facility on the
31 list within the county using its process for siting essential public
32 facilities under RCW 36.70A.200 and section 8 of this act.

33 (6) 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 adopt development regulations that designate areas or
37 zones that allow the siting of each projected community facility on the

1 list within the county using the procedures established in section 9 of
2 this act.

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

5 **Sec. 3.** RCW 72.05.400 and 1998 c 269 s 5 are each amended to read
6 as follows:

7 (1) Whenever the department operates, or the secretary enters a
8 contract to operate, a community facility, the community facility may
9 be operated only after the public notification and opportunities for
10 review and comment as required by this section.

11 (2) The secretary shall establish a process for early and
12 continuous public participation in establishing or relocating community
13 facilities. The process shall include, at a minimum, public meetings
14 in the local communities affected, as well as opportunities for written
15 and oral comments, in the following manner:

16 (a) If there are more than three sites initially selected as
17 potential locations and the selection process by the secretary or a
18 service provider reduces the number of possible sites for a community
19 facility to no fewer than three, the secretary or the chief operating
20 officer of the service provider shall notify the public of the possible
21 siting and hold at least two public hearings in each community where a
22 community facility may be sited at least forty-five days before a final
23 selection is made.

24 (b) When the secretary or service provider has determined the
25 community facility's location, the secretary or the chief operating
26 officer of the service provider shall hold at least one additional
27 public hearing in the community where the community facility will be
28 sited.

29 (c) When the secretary has entered negotiations with a service
30 provider and only one site is under consideration, then at least two
31 public hearings shall be held.

32 (d) To provide adequate notice of((τ)) and opportunity for
33 interested persons to comment on((τ)) a proposed location, the
34 secretary or the chief operating officer of the service provider shall
35 make a good faith effort to provide at least fourteen days' advance
36 notice of the ((~~meeting to~~)) public hearings to at least the following:

1 (i) The appropriate legislative authorities of the affected
2 counties, cities, and towns;

3 (ii) Local government planning agencies in the affected
4 communities;

5 (iii) All newspapers of general circulation in the ((community,))
6 local area and all radio stations and television stations generally
7 available to persons in the community((,)) where the potential site is
8 located;

9 (iv) Any school district, private school, or kindergarten in which
10 the community facility would be sited or whose boundary is within two
11 miles of a proposed community facility, any institution of higher
12 education, any library district ((in which the community facility would
13 be sited, local business or fraternal organizations that request
14 notification from the secretary or agency, and any person or property
15 owner within a one half mile radius of the proposed community
16 facility)), and all other local government offices within a one-half
17 mile radius of the proposed site or sites;

18 (v) The local chamber of commerce, local economic development
19 agencies, and any other local organizations that request such
20 notification from the department; and

21 (vi) Written notification to all residents and property owners
22 within a one-half mile radius of the proposed site or sites.

23 (3) The notice required under subsection (2) of this section must
24 also inform the public that any interested person or entity, including
25 a local government entity, is invited to submit written comments
26 regarding a proposed location, including comments regarding whether the
27 site meets the equitable distribution and other statutory requirements
28 for the facility. Written comments must be submitted not later than
29 thirty days following the date notice is issued pursuant to subsection
30 (2) of this section.

31 (4) The department must consider the testimony received at the
32 public hearings and any written comments submitted before making a
33 final selection of the site for the location or relocation of a
34 community facility. The department shall issue a written analysis of
35 the final selection, including how the selection was consistent with
36 the requirements of section 2 of this act.

37 (5) Before initiating ((this)) the process in subsection (2) of
38 this section, the department shall contact local government planning

1 agencies in the communities containing the proposed community facility.
2 The department shall coordinate with local government agencies to
3 ensure that opportunities are provided for effective citizen input and
4 to reduce the duplication of notice and meetings.

5 ~~((+3))~~ (6) The secretary shall not issue a license to any service
6 provider until the service provider submits proof that the requirements
7 of this section have been met.

8 ~~((+4))~~ (7) If local government land use regulations require that
9 a special use or conditional use permit be submitted and approved
10 before a community facility can be sited, and the process for obtaining
11 the permit includes public notice and hearing requirements similar to
12 those required under this section, the requirements of this section
13 shall not apply to the extent they would duplicate requirements under
14 the local land use regulations.

15 (8) This section shall apply only to community facilities sited
16 after September 1, 1998.

17 **Sec. 4.** RCW 72.65.010 and 1992 c 7 s 56 are each amended to read
18 as follows:

19 As used in this chapter, the following terms shall have the
20 following meanings:

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

22 (2) "Equitable distribution" or "distribute equitably" means siting
23 or locating work release facilities in a manner that reasonably
24 reflects the proportion of offenders sentenced to the custody or
25 supervision of the department by the courts of each county or rural
26 multicounty geographic area designated by the department, and, to the
27 extent practicable, the proportion of such offenders residing in
28 particular jurisdictions or communities within such counties or rural
29 multicounty geographic areas. Equitable distribution is a policy goal,
30 not a basis for any legal challenge to the siting, construction,
31 occupancy, or operation of any facility anywhere in the state.

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

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

1 (~~(3)~~) (5) "State correctional institutions" shall mean and
2 include all state adult correctional facilities established pursuant to
3 law under the jurisdiction of the department for the treatment of
4 convicted felons sentenced to a term of confinement.

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

9 ~~(5)~~) (6) "Superintendent" (~~(shall)~~) means the superintendent of a
10 state correctional institution, camp or other facility now or hereafter
11 established under the jurisdiction of the department pursuant to law.

12 NEW SECTION. Sec. 5. A new section is added to chapter 72.65 RCW
13 to read as follows:

14 (1) The department shall prepare a projected list of counties and
15 rural multicounty geographic areas in which work release facilities
16 need to be sited during the fiscal year beginning July 1, 2007, and
17 every biennium thereafter starting with the biennium beginning July 1,
18 2008, and transmit the list to the office of financial management and
19 the counties on the list. The list may be updated as needed. In
20 preparing the list, the department shall make substantial efforts to
21 provide for the equitable distribution of work release facilities among
22 counties. The department shall give great weight to the following
23 factors in determining equitable distribution:

24 (a) The locations of existing residential facilities owned or
25 operated by, or operated under contract with, the department in each
26 county;

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

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

33 (2)(a) In preparing the list required under subsection (1) of this
34 section, the department shall:

35 (i) Give great weight to the factors identified in subsection (1)
36 of this section;

1 (ii) Use the information contained in the most recent edition of
2 the report required under subsection (4) of this section; and

3 (iii) Use the criteria adopted under subsection (7) of this
4 section.

5 (b) Prior to finalizing the list of projected work release
6 facilities required under subsection (1) of this section, the
7 department shall consult with the county legislative authorities of
8 each county identified on the list. The department also shall hold at
9 least one public hearing within each such county or rural multicounty
10 geographic area, including, if known, the affected part of the county
11 or rural multicounty geographic area.

12 (3) The department shall submit, along with the list required under
13 subsection (1) of this section, the operational requirements for the
14 facilities on the list to the office of financial management and the
15 counties on the list.

16 (4) To carry out the purposes of subsection (1) of this section,
17 the department shall, no later than July 1, 2007, develop a map of the
18 state that identifies the locations of existing facilities and the
19 counties or rural multicounty geographic areas needing projected
20 facilities identified in subsection (1) of this section during the
21 biennium. The department shall update the map at least once per
22 biennium. The department shall also maintain data on the number and
23 proportion of offenders identified in subsection (1)(b) and (c) of this
24 section and shall biennially publish a report including the most recent
25 version of the map and offender data for the counties and rural
26 multicounty geographic areas.

27 (5) A county, and any county designated by the department within a
28 rural multicounty geographic area, that is included on the list
29 required under subsection (1) of this section planning under RCW
30 36.70A.040 shall adopt development regulations that designate areas or
31 zones that allow the siting of each projected work release facility on
32 the list within the county using its process for siting essential
33 public facilities under RCW 36.70A.200 and section 8 of this act.

34 (6) A county, and any county designated by the department within a
35 rural multicounty geographic area, that is included on the list
36 required under subsection (1) of this section not planning under RCW
37 36.70A.040 shall adopt development regulations that designate areas or

1 zones that allow the siting of each projected work release facility on
2 the list within the county using the procedures established in section
3 9 of this act.

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

6 **Sec. 6.** RCW 72.65.220 and 1997 c 348 s 1 are each amended to read
7 as follows:

8 (1) The department or a private or public entity under contract
9 with the department may establish or relocate for the operation of a
10 work release or other community-based facility only after (~~public~~
11 ~~notifications and local public meetings have been completed consistent~~
12 ~~with~~) meeting the requirements of this section.

13 (2) The department and other state agencies responsible for siting
14 department-owned, operated, or contracted facilities shall establish a
15 process for early and continuous public participation in establishing
16 or relocating work release or other community-based facilities. This
17 process shall include public meetings in the local communities
18 affected, opportunities for written and oral comments, and wide
19 dissemination of proposals and alternatives, including at least the
20 following:

21 (a) When the department or a private or public entity under
22 contract with the department has selected three or fewer sites for
23 final consideration of a department-owned, operated, or contracted work
24 release or other community-based facility, the department or
25 contracting organization shall make public notification and conduct at
26 least two public hearings in each of the local communities (~~of the~~
27 ~~final three or fewer proposed sites~~) where such a facility may be
28 sited at least forty-five days before a final selection is made. An
29 additional public hearing after public notification shall also be
30 conducted in the local community selected as the final proposed site.

31 (b) (~~Notifications required under this section shall be provided~~
32 ~~to~~) To provide adequate notice of and opportunity for interested
33 persons to comment on a proposed location, the department or
34 contracting entity shall make a good faith effort to provide at least
35 fourteen days' advance notice of the public hearings to at least the
36 following:

1 (i) The appropriate legislative authorities of the affected
2 counties, cities, and towns;

3 (ii) Local government planning agencies in the affected
4 communities;

5 (iii) All newspapers of general circulation in the local area and
6 all ((local)) radio stations((,)) and television stations((, and cable
7 networks)) generally available to persons in the community where the
8 potential site is located;

9 ((+iii)) (iv) Appropriate school districts, private schools,
10 kindergartens, institutions of higher education, city and county
11 libraries, and all other local government offices within a one-half
12 mile radius of the proposed site or sites;

13 ((+iii)) (v) The local chamber of commerce, local economic
14 development agencies, and any other local organizations that request
15 such notification from the department; and

16 ((+iv) In writing)) (vi) Written notification to all residents
17 ((and/or)) and property owners within a one-half mile radius of the
18 proposed site or sites.

19 (3) The notice required under subsection (2) of this section must
20 also inform the public that any interested person or entity, including
21 a local government entity, is invited to submit written comments
22 regarding a proposed location, including comments regarding whether the
23 site meets the equitable distribution and other statutory requirements
24 for the facility. Written comments must be submitted not later than
25 thirty days following the date notice is issued pursuant to subsection
26 (2) of this section.

27 (4) The department must consider the testimony received at the
28 public hearings and any written comments submitted before making a
29 final selection of the site for the location or relocation of a work
30 release facility. The department shall issue a written analysis of the
31 final selection, including how the selection was consistent with the
32 requirements of section 5 of this act.

33 (5) When the department contracts for the operation of a work
34 release or other community-based facility that is not owned or operated
35 by the department, the department shall require as part of its contract
36 that the contracting entity comply with all the public notification and
37 public hearing requirements as provided in this section for each
38 located and relocated work release or other community-based facility.

1 (6) If local government regulations require that a special use or
2 conditional use permit be submitted and approved before a work release
3 facility can be sited, and the process for obtaining the permit
4 includes public notice and hearing requirements similar to those
5 required under this section, the requirements of this section shall not
6 apply to the extent they would duplicate requirements under the local
7 land use regulations.

8 **Sec. 7.** RCW 36.70A.200 and 2002 c 68 s 2 are each amended to read
9 as follows:

10 (1) The comprehensive plan of each county and city that is planning
11 under RCW 36.70A.040 shall include a process for identifying and siting
12 essential public facilities. Essential public facilities include those
13 facilities that are typically difficult to site, such as airports,
14 state education facilities and state or regional transportation
15 facilities as defined in RCW 47.06.140, state and local correctional
16 facilities, solid waste handling facilities, and in-patient facilities
17 including substance abuse facilities, mental health facilities, group
18 homes, and secure community transition facilities as defined in RCW
19 71.09.020.

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

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

31 (4) Each county planning under RCW 36.70A.040, in cooperation with
32 the cities located in whole or in part within the county, and each city
33 planning under RCW 36.70A.040 shall, when it next amends its
34 comprehensive plan, but in no case later than the deadline specified in
35 RCW 36.70A.130, establish a process, or amend its existing process, for
36 identifying and siting essential public facilities, and adopt or amend
37 its development regulations as necessary to provide for the siting of

1 community facilities as defined in RCW 72.05.020 and work release and
2 other facilities operated by or under contract with the department of
3 corrections. When siting a community facility under chapter 72.05 RCW
4 or a work release facility under chapter 72.65 RCW, a county or city
5 shall follow, in addition to requirements of the process for siting
6 essential public facilities established under this section, the
7 requirements established in section 8 of this act.

8 (5) The office of financial management shall maintain a list of
9 those essential state public facilities that are required or likely to
10 be built within the next six years. The office of financial management
11 may at any time add facilities to the list.

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

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

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

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

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

27 (b) A consideration for grants or loans provided under RCW
28 43.17.250(2); or

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

31 NEW SECTION. Sec. 8. A new section is added to chapter 36.70A RCW
32 to read as follows:

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

36 (a) Involve the department of social and health services in the
37 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(3) 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 5(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 5(3) 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(3) of this act and
21 the facility criteria established under section 2(7) 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 5(3) of this act and the
26 facility criteria established under section 5(7) of this act.

27 (4) Any conditional use permit, special use permit, or any other
28 development application process necessary to site a community facility
29 or work release facility may not exceed one hundred twenty days and
30 must include an appeal process.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.70 RCW
32 to read as follows:

33 (1) When providing for the siting of a community facility under
34 chapter 72.05 RCW, a county or city 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(3) of this act.

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

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

10 (b) Make a substantial effort to provide for the equitable
11 distribution of work release facilities by giving great weight to the
12 factors in section 5(1) (a) through (c) of this act; and

13 (c) Ensure that any location identified is consistent with the
14 operational requirements established by the department of corrections
15 under section 5(3) of this act.

16 (3)(a) As part of the permitting process for a community facility
17 under chapter 72.05 RCW, a county or city may not impose upon the
18 department of social and health services any requirements beyond the
19 operational requirements established under section 2(3) of this act and
20 the facility criteria established under section 2(7) of this act.

21 (b) As part of the permitting process for a work release facility
22 under chapter 72.65 RCW, a county or city may not impose upon the
23 department of corrections any requirements beyond the operational
24 requirements established under section 5(3) of this act and the
25 facility criteria established under section 5(7) of this act.

26 (4) Any conditional use permit, special use permit, or any other
27 development application process necessary to site a community facility
28 or work release facility may not exceed one hundred twenty days and
29 must include an appeal process.

30 NEW SECTION. **Sec. 10.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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