

# FINAL BILL REPORT

## ESSB 6594

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Synopsis as Enacted

**Brief Description:** Implementing the recommendations of the joint select committee on the equitable distribution of secure community transition facilities.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Carlson, Costa, Hargrove and Long; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil).

**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**  
**House Committee on Criminal Justice & Corrections**  
**House Committee on Appropriations**

**Background:** In 2001, the Legislature passed 3ESSB 6151. The bill was enacted and became effective June 26, 2001. The act established the Joint Select Committee for Equitable Distribution of Secure Community Transition Facilities (Committee). The Committee was charged with reviewing and making any necessary revisions to the provisions for equitable distribution of secure community transition facilities (SCTFs) and sections 213 through 218 and 222 of the act, which establish the basic siting and operating criteria. The Committee was also charged with recommending a method for determining possible mitigation for future SCTFs. The Committee was mandated to provide a report to the Governor and to the chairs of the Senate Committee on Human Services and Corrections and the House Committee on Criminal Justice and Corrections including any recommended legislation. The report included the text of this legislation.

During the hearings, significant concerns were raised that local governments were unable to comply with the underlying requirement to plan for SCTFs under the essential public facilities law, in large part due to concerns about civil liability for complying with that law. There was also a great deal of public comment by some county commissioners while the Committee was meeting that expressed an unwillingness to site SCTFs under any circumstances, and expressed a desire for some form of preemption. Local officials were not all in agreement on the degree of preemption desired and some expressed a desire for continued participation after preemption. At the same time, Department of Social and Health Services (DSHS) reported to the Committee that some local governments were considering making the siting and staffing requirements substantially more restrictive than contemplated by the Legislature in the adoption of the underlying bill and that meeting the requirements, even where possible, would greatly exceed the appropriated funding. There was discussion about the scope of the preemption in the underlying bill and testimony that the Governor's proposed language was expanded prior to passage to cover the State Environmental Policy Act (SEPA) and that a trial court had not interpreted the language in that manner.

A second major concern was the requirement that DSHS endeavor to site in a manner that achieved a five-minute law enforcement response time. Law enforcement testified that this

was not possible in most, if not all, jurisdictions. Law enforcement also testified that geography was not how response time was determined and that this provision drove SCTFs into areas where they posed the greatest risk to public safety. They were also concerned with liability under this provision and others.

**Summary:** No person may bring a cause of action for civil damages against a county or city based on the good faith actions of a county or city to provide siting for SCTFs in accordance with the law. Eligibility for the planning grant provided under existing law is extended to 120 days after the effective date of this act. Planning and incentive grants provided in existing law are subject to appropriation by the Legislature. Any county, which had at least five persons detained or committed under Chapter 71.09 RCW as of April 1, 2001, that was notified under 3ESSB 6151 that DSHS expected to site beds in that county by May 2007 and fails to complete adoption of their development regulations for SCTFs as required under the existing essential public facilities law by October 1, 2002, is preempted. Affected counties are: King, Snohomish, Thurston, Clark, Kitsap and Spokane. A determination that a city or county is preempted is final and not subject to appeal under the Administrative Procedure Act or the Growth Management Act. DSHS may site SCTFs within a preempted county without regard to development regulations, permitting requirements or any other law including SEPA, the Shorelines Act, and the Hydraulics Code. This preemption provision also applies to the cities within the six counties. DSHS may continue to consult with a city or county that has been preempted. Preemption does not make a city or county ineligible for specified grants, loans, or pledges and is not a basis for a private cause of action or an appeal under RCW 43.17.250(2).

For facilities sited under the exemption from SEPA, DSHS must site construct, operate and occupy in an environmentally responsible manner and must make a threshold determination whether an SCTF sited under a preemption would have a significant adverse environmental impact. If so, DSHS must prepare an environmental impact statement that meets the requirements of SEPA and the rules adopted by the Department of Ecology. This requirement is not a basis for any civil cause of action or administrative appeal and expires June 30, 2009.

The provisions clarifying that the preemption of "all other laws" includes SEPA, the Shorelines Act and the Hydraulics Code and setting forth the preemption in those statutes expire June 30, 2009.

Where a city or county adopts development regulations in accordance with the law, DSHS must comply with those regulations to site an SCTF in that city or county. Cities and counties may not adopt development regulations more restrictive than the requirements that the state has imposed on DSHS where the state has established specific requirements for the siting or operation of SCTFs. Regulations that are more restrictive than the statutory requirements enacted by the state are void.

DSHS must hold siting hearings in preempted cities and counties. A preempted city or county may propose public safety measures specific to a particular site. The proposal must be in writing and delivered to DSHS by the hearing date. DSHS must respond to the proposed measures in writing within 15 business days. If the city or county finds the response inadequate, they may notify the department within 15 business days of the specific responses they find inadequate and the department must respond to the alleged inadequacies

within seven business days. If the city or county fails to notify the department within 15 days, the department's response is final. If the DSHS response is not revised to the satisfaction of the city or county, the city or county may petition the Governor to appoint a designee with law enforcement experience for an emergency hearing under the Administrative Procedure Act. The Governor's designee must hear the petition and then must make a determination within 30 days. The Governor's designee shall consider the DSHS response, and the effectiveness and cost of the proposed measures in relation to the purposes of civil commitment. The decision by the Governor's designee is final and not subject to judicial review. The county or city must bear the cost of the petition. If the city or county prevails on all issues, DSHS must reimburse the costs. The department's consideration of the proposed conditions may not be construed to affect the preemption.

Law enforcement must respond to calls regarding residents of SCTFs as high priority calls, and a law enforcement officer who responds reasonably and in good faith to such a call shall not be held liable for civil damages based on the acts of the resident or the actions of the officer during the response. This immunity extends to the officer's employing city or county.

School bus stops are risk potential activities or facilities, but do not include bus stops established primarily for public transit.

A person with whom a resident has, or has had, a dating relationship is not eligible to be an escort.

At the request of local government, DSHS must enter into a long-term contract memorializing the agreements between the state and the local government related to the operation of the facility. Any contract regarding mitigation must be separate. The contract must include language stating that the contract does not obligate the state to continue operating any aspect of the civil commitment program under Chapter 71.09 RCW or to operate the SCTF if sufficient funds are not appropriated by the Legislature. It also must include language stating that a local government is not obligated to operate an SCTF. A city or county may contract with DSHS to operate an SCTF.

Mitigation for future facilities is limited to four categories:

- One-time training on the establishment of an SCTF: This training includes training for law enforcement and administrative staff and training by law enforcement of SCTF staff. Reimbursement is limited to wages and benefits for the city or county staff while being trained by the state and costs associated with preparation and delivery of training to SCTF staff.
- Information coordination: This refers to coordination between law enforcement agencies and between law enforcement and the SCTF related to facility residents. Reimbursement is limited to start-up costs.
- One-time capital costs: These are off-site costs associated with a need for increased security in specific locations and are limited to actual costs.

- Incident response costs: These are criminal justice costs associated with residents who violate conditions or who commit new crimes. Incident response costs do not include costs associated with civil cases based on the actions of a resident.

**Votes on Final Passage:**

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| Senate | 49 | 0                     |
| House  | 55 | 41 (House amended)    |
| Senate | 29 | 15 (Senate concurred) |

**Effective:** March 21, 2002