
HOUSE BILL 1087

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By Representatives Upthegrove, Miloscia, O'Brien, Ruderman, Shabro, Roach, Chase, Simpson, Schual-Berke and Nixon

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1 AN ACT Relating to prohibitions on siting secure community
2 transition facilities in areas designated for residential or commercial
3 uses; amending RCW 71.09.285, 71.09.342, and 34.05.4791; adding a new
4 section to chapter 71.09 RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.09 RCW
7 to read as follows:

8 In no case shall a secure community transition facility be sited:

9 (1) In an area that has been zoned for residential or commercial
10 uses; or

11 (2) Adjacent to, immediately across a street or parking lot from,
12 or within the line of sight of a risk potential activity or facility in
13 existence at the time a site is listed for consideration. "Within the
14 line of sight" means that it is possible to reasonably visually
15 distinguish and recognize individuals.

16 **Sec. 2.** RCW 71.09.285 and 2002 c 68 s 5 are each amended to read
17 as follows:

18 (1) Except with respect to the secure community transition facility

1 established pursuant to RCW 71.09.250, the secretary shall develop
2 policy guidelines that balance the average response time of emergency
3 services to the general area of a proposed secure community transition
4 facility against the proximity of the proposed site to risk potential
5 activities and facilities in existence at the time the site is listed
6 for consideration.

7 ~~((In no case shall the policy guidelines permit location of a
8 facility adjacent to, immediately across a street or parking lot from,
9 or within the line of sight of a risk potential activity or facility in
10 existence at the time a site is listed for consideration. "Within the
11 line of sight" means that it is possible to reasonably visually
12 distinguish and recognize individuals.~~

13 ~~((3))~~ The policy guidelines shall require that great weight be
14 given to sites that are the farthest removed from any risk potential
15 activity.

16 ~~((4))~~ (3) The policy guidelines shall specify how distance from
17 the location is measured and any variations in the measurement based on
18 the size of the property within which a proposed facility is to be
19 located.

20 ~~((5))~~ (4) The policy guidelines shall establish a method to
21 analyze and compare the criteria for each site in terms of public
22 safety and security, site characteristics, and program components. In
23 making a decision regarding a site following the analysis and
24 comparison, the secretary shall give priority to public safety and
25 security considerations. The analysis and comparison of the criteria
26 are to be documented and made available at the public hearings
27 prescribed in RCW 71.09.315.

28 ~~((6))~~ (5) Policy guidelines adopted by the secretary under this
29 section shall be considered by counties and cities when providing for
30 the siting of secure community transition facilities as required under
31 RCW 36.70A.200.

32 **Sec. 3.** RCW 71.09.342 and 2002 c 68 s 9 are each amended to read
33 as follows:

34 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any
35 other law, this section preempts and supersedes local plans,
36 development regulations, permitting requirements, inspection

1 requirements, and all other laws as necessary to enable the department
2 to site, construct, renovate, occupy, and operate secure community
3 transition facilities within the borders of the following:

4 (a) Any county that had five or more persons civilly committed from
5 that county, or detained at the special commitment center under a
6 pending civil commitment petition from that county where a finding of
7 probable cause has been made, on April 1, 2001, if the department
8 determines that the county has not met the requirements of RCW
9 36.70A.200 with respect to secure community transition facilities.
10 This subsection does not apply to the county in which the secure
11 community transition facility authorized under RCW 71.09.250(1) is
12 located; and

13 (b) Any city located within a county listed in (a) of this
14 subsection that the department determines has not met the requirements
15 of RCW 36.70A.200 with respect to secure community transition
16 facilities.

17 (2) The department's determination under subsection (1)(a) or (b)
18 of this section is final and is not subject to appeal under chapter
19 34.05 or 36.70A RCW.

20 (3) In no case shall a secure community transition facility be
21 sited:

22 (a) In an area that has been zoned for residential or commercial
23 uses; or

24 (b) Adjacent to, immediately across a street or parking lot from,
25 or within the line of sight of a risk potential activity or facility in
26 existence at the time a site is listed for consideration. "Within the
27 line of sight" means that it is possible to reasonably visually
28 distinguish and recognize individuals.

29 (4) When siting a facility in a county or city that has been
30 preempted under this section, the department shall consider the policy
31 guidelines established under RCW (~~(71.09.275)~~) 71.09.285 and 71.09.290
32 and shall hold the hearings required in RCW 71.09.315.

33 (~~(4)~~) (5) Nothing in this section prohibits the department from:

34 (a) Siting a secure community transition facility in a city or
35 county that has complied with the requirements of RCW 36.70A.200 with
36 respect to secure community transition facilities, including a city
37 that is located within a county that has been preempted. If the

1 department sites a secure community transition facility in such a city
2 or county, the department shall use the process established by the city
3 or county for siting such facilities; or

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

7 ~~((+5))~~ (6)(a) A preempted city or county may propose public safety
8 measures specific to any finalist site to the department. The measures
9 must be consistent with the location of the facility at that finalist
10 site. The proposal must be made in writing by the date of:

11 (i) The second hearing under RCW 71.09.315(2)(a) when there are
12 three finalist sites; or

13 (ii) The first hearing under RCW 71.09.315(2)(b) when there is only
14 one site under consideration.

15 (b) The department shall respond to the city or county in writing
16 within fifteen business days of receiving the proposed measures. The
17 response shall address all proposed measures.

18 (c) If the city or county finds that the department's response is
19 inadequate, the city or county may notify the department in writing
20 within fifteen business days of the specific items which it finds
21 inadequate. If the city or county does not notify the department of a
22 finding that the response is inadequate within fifteen business days,
23 the department's response shall be final.

24 (d) If the city or county notifies the department that it finds the
25 response inadequate and the department does not revise its response to
26 the satisfaction of the city or county within seven business days, the
27 city or county may petition the governor to designate a person with law
28 enforcement expertise to review the response under RCW 34.05.479.

29 (e) The governor's designee shall hear a petition filed under this
30 subsection and shall make a determination within thirty days of hearing
31 the petition. The governor's designee shall consider the department's
32 response, and the effectiveness and cost of the proposed measures, in
33 relation to the purposes of this chapter. The determination by the
34 governor's designee shall be final and may not be the basis for any
35 cause of action in civil court.

36 (f) The city or county shall bear the cost of the petition to the
37 governor's designee. If the city or county prevails on all issues, the

1 department shall reimburse the city or county costs incurred, as
2 provided under chapter 34.05 RCW.

3 (g) Neither the department's consideration and response to public
4 safety conditions proposed by a city or county nor the decision of the
5 governor's designee shall affect the preemption under this section or
6 the department's authority to site, construct, renovate, occupy, and
7 operate the secure community transition facility at that finalist site
8 or at any finalist site.

9 ~~((+6))~~ (7) Until June 30, 2009, the secretary shall site,
10 construct, occupy, and operate a secure community transition facility
11 sited under this section in an environmentally responsible manner that
12 is consistent with the substantive objectives of chapter 43.21C RCW,
13 and shall consult with the department of ecology as appropriate in
14 carrying out the planning, construction, and operations of the
15 facility. The secretary shall make a threshold determination of
16 whether a secure community transition facility sited under this section
17 would have a probable significant, adverse environmental impact. If
18 the secretary determines that the secure community transition facility
19 has such an impact, the secretary shall prepare an environmental impact
20 statement that meets the requirements of RCW 43.21C.030 and 43.21C.031
21 and the rules promulgated by the department of ecology relating to such
22 statements. Nothing in this subsection shall be the basis for any
23 civil cause of action or administrative appeal.

24 ~~((+7))~~ (8) This section does not apply to the secure community
25 transition facility established pursuant to RCW 71.09.250(1).

26 **Sec. 4.** RCW 34.05.4791 and 2002 c 68 s 10 are each amended to read
27 as follows:

28 A petition brought pursuant to RCW 71.09.342~~((+5))~~ (6) shall be
29 heard under the provisions of RCW 34.05.479 except that the decision of
30 the governor's designee shall be final and is not subject to judicial
31 review.

32 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect
35 immediately.

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