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HOUSE BILL 1907

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By Representatives Ahern, Lovick, Benson, Anderson, Orcutt, Upthegrove, McMahan, Gombosky, Pettigrew, Holmquist, Chase, Mielke, Roach, Sump, Campbell, Schindler, Wood, Crouse, Cox, Schoesler, Pflug and Nixon

Read first time 02/14/2003. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to siting of secure community transition  
2 facilities; amending RCW 71.09.285, 71.09.342, and 34.05.4791; creating  
3 a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 71.09.285 and 2002 c 68 s 5 are each amended to read  
6 as follows:

7 (1) Except with respect to the secure community transition facility  
8 established pursuant to RCW 71.09.250, the secretary shall develop  
9 policy guidelines that balance the average response time of emergency  
10 services to the general area of a proposed secure community transition  
11 facility against the proximity of the proposed site to risk potential  
12 activities and facilities in existence at the time the site is listed  
13 for consideration.

14 (2) In no case shall the policy guidelines permit location of a  
15 facility (~~adjacent to, immediately across a street or parking lot~~  
16 ~~from, or~~) within (~~the line of sight~~) five thousand feet of a risk  
17 potential activity or facility in existence at the time a site is  
18 listed for consideration. (~~"Within the line of sight" means that it~~

1 ~~is possible to reasonably visually distinguish and recognize~~  
2 ~~individuals.))~~

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

6 (4) The policy guidelines shall specify how distance from the  
7 location is measured and any variations in the measurement based on the  
8 size of the property within which a proposed facility is to be located.

9 (5) The policy guidelines shall establish a method to analyze and  
10 compare the criteria for each site in terms of public safety and  
11 security, site characteristics, and program components. In making a  
12 decision regarding a site following the analysis and comparison, the  
13 secretary shall give priority to public safety and security  
14 considerations. The analysis and comparison of the criteria are to be  
15 documented and made available at the public hearings prescribed in RCW  
16 71.09.315.

17 (6) Policy guidelines adopted by the secretary under this section  
18 shall be considered by counties and cities when providing for the  
19 siting of secure community transition facilities as required under RCW  
20 36.70A.200.

21 **Sec. 2.** RCW 71.09.342 and 2002 c 68 s 9 are each amended to read  
22 as follows:

23 (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any  
24 other law, this section preempts and supersedes local plans,  
25 development regulations, permitting requirements, inspection  
26 requirements, and all other laws as necessary to enable the department  
27 to site, construct, renovate, occupy, and operate secure community  
28 transition facilities within the borders of the following:

29 (a) Any county that had five or more persons civilly committed from  
30 that county, or detained at the special commitment center under a  
31 pending civil commitment petition from that county where a finding of  
32 probable cause has been made, on April 1, 2001, if the department  
33 determines that the county has not met the requirements of RCW  
34 36.70A.200 with respect to secure community transition facilities.  
35 This subsection does not apply to the county in which the secure  
36 community transition facility authorized under RCW 71.09.250(1) is  
37 located; and

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

5 (2) The department's determination under subsection (1)(a) or (b)  
6 of this section is final and is not subject to appeal under chapter  
7 34.05 or 36.70A RCW.

8 (3) In no case shall a secure community transition facility be  
9 sited within five thousand feet of a risk potential activity or  
10 facility in existence at the time a site is listed for consideration.

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

15 (~~(4)~~) (5) Nothing in this section prohibits the department from:

16 (a) Siting a secure community transition facility in a city or  
17 county that has complied with the requirements of RCW 36.70A.200 with  
18 respect to secure community transition facilities, including a city  
19 that is located within a county that has been preempted. If the  
20 department sites a secure community transition facility in such a city  
21 or county, the department shall use the process established by the city  
22 or county for siting such facilities; or

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

26 (~~(5)~~) (6)(a) A preempted city or county may propose public safety  
27 measures specific to any finalist site to the department. The measures  
28 must be consistent with the location of the facility at that finalist  
29 site. The proposal must be made in writing by the date of:

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

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

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

37 (c) If the city or county finds that the department's response is  
38 inadequate, the city or county may notify the department in writing

1 within fifteen business days of the specific items which it finds  
2 inadequate. If the city or county does not notify the department of a  
3 finding that the response is inadequate within fifteen business days,  
4 the department's response shall be final.

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

10 (e) The governor's designee shall hear a petition filed under this  
11 subsection and shall make a determination within thirty days of hearing  
12 the petition. The governor's designee shall consider the department's  
13 response, and the effectiveness and cost of the proposed measures, in  
14 relation to the purposes of this chapter. The determination by the  
15 governor's designee shall be final and may not be the basis for any  
16 cause of action in civil court.

17 (f) The city or county shall bear the cost of the petition to the  
18 governor's designee. If the city or county prevails on all issues, the  
19 department shall reimburse the city or county costs incurred, as  
20 provided under chapter 34.05 RCW.

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

27 ~~((+6+))~~ (7) Until June 30, 2009, the secretary shall site,  
28 construct, occupy, and operate a secure community transition facility  
29 sited under this section in an environmentally responsible manner that  
30 is consistent with the substantive objectives of chapter 43.21C RCW,  
31 and shall consult with the department of ecology as appropriate in  
32 carrying out the planning, construction, and operations of the  
33 facility. The secretary shall make a threshold determination of  
34 whether a secure community transition facility sited under this section  
35 would have a probable significant, adverse environmental impact. If  
36 the secretary determines that the secure community transition facility  
37 has such an impact, the secretary shall prepare an environmental impact  
38 statement that meets the requirements of RCW 43.21C.030 and 43.21C.031

1 and the rules promulgated by the department of ecology relating to such  
2 statements. Nothing in this subsection shall be the basis for any  
3 civil cause of action or administrative appeal.

4 ~~((7))~~ (8) This section does not apply to the secure community  
5 transition facility established pursuant to RCW 71.09.250(1).

6 **Sec. 3.** RCW 34.05.4791 and 2002 c 68 s 10 are each amended to read  
7 as follows:

8 A petition brought pursuant to RCW 71.09.342(~~(5)~~) (6) shall be  
9 heard under the provisions of RCW 34.05.479 except that the decision of  
10 the governor's designee shall be final and is not subject to judicial  
11 review.

12 NEW SECTION. **Sec. 4.** The provisions of this act are retroactive  
13 and apply to all sites and possible sites for secure community  
14 transition facilities selected on, before, or after the effective date  
15 of this act except for the facility sited under RCW 71.09.250(1).

16 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 immediately.

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