

2SSB 5070 - H AMD TO HS COMM AMD (5070-S2.E AMH HS H3165.2) **774**
By Representative Conway

1 On page 15, after line 25, strike section 402 and insert the
2 following:

3 "NEW SECTION. **Sec. 402.** A new section is added to chapter
4 72.65 RCW to read as follows:

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

17 (a) The locations of existing residential facilities owned or
18 operated by, or operated under contract with, the department in
19 each county;

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

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

26 (2) The department shall submit, along with the list required
27 under subsection (1) of this section, the operational requirements
28 for the facilities on the list to the office of financial
29 management and the counties on the list. The operational
30 requirements must be consistent with the facility criteria
31 established under subsection (5) of this section.

1 (3)(a) A county that is included on the list required under
2 subsection (1) of this section planning under RCW 36.70A.040 shall
3 provide notice to every city within the county that the county has
4 received notice required under subsection (1) of this section and
5 that the location chosen for the facility may be within the city.
6 The notice must be provided by the county to the cities within
7 thirty days of the county receiving the notice required under
8 subsection (1) of this section.

9 (b) A county, and any county designated by the department
10 within a rural multicounty geographic area, that is included on the
11 list required under subsection (1) of this section planning under
12 RCW 36.70A.040 shall, in cooperation with its cities, site of each
13 projected work release facility or community justice center on the
14 list within the county using its process for siting essential
15 public facilities under RCW 36.70A.200 and section 404 of this act.

16 (4)(a) A county that is included on the list required under
17 subsection (1) of this section not planning under RCW 36.70A.040
18 shall provide notice to every city within the county that the
19 county has received notice required under subsection (1) of this
20 section and that the location chosen for the facility may be within
21 the city. The notice must be provided by the county to the cities
22 within thirty days of the county receiving the notice required
23 under subsection (1) of this section.

24 (b) A county, and any county designated by the department
25 within a rural multicounty geographic area, that is included on the
26 list required under subsection (1) of this section not planning
27 under RCW 36.70A.040 shall, in cooperation with its cities, site
28 each projected work release facility or community justice center on
29 the list within the county using the procedures established in
30 section 405 of this act.

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

33 (6) For the purposes of sections 402 through 406 of this act,
34 the following definitions apply:

35 (a) "Equitable distribution" or "distribute equitably" means
36 siting or locating work release, community justice centers, or
37 other community-based facilities in a manner that reasonably
38 reflects the proportion of offenders sentenced to the custody or
39 supervision of the department by the courts of each county or rural

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

8 (b) "Operational requirements" means the type of facility
9 proposed, the number of persons the facility is intended to house,
10 the number of staff persons necessary to operate the facility, the
11 approximate size of the buildings and premises necessary for the
12 facility, as well as a description of the operations, programmatic
13 and treatment opportunities that the facility will offer.

14
15 **Sec. 403.** RCW 36.70A.200 and 2002 c 68 s 2 are each amended
16 to read as follows:

17 (1) The comprehensive plan of each county and city that is
18 planning under RCW 36.70A.040 shall include a process for
19 identifying and siting essential public facilities. Essential
20 public facilities include those facilities that are typically
21 difficult to site, such as airports, state education facilities and
22 state or regional transportation facilities as defined in RCW
23 47.06.140, state and local correctional facilities, solid waste
24 handling facilities, and in-patient facilities including substance
25 abuse facilities, mental health facilities, group homes, and secure
26 community transition facilities as defined in RCW 71.09.020.

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

34 ~~((+3+))~~(b) Any city or county not planning under RCW
35 36.70A.040 shall, not later than September 1, 2002, establish a
36 process for siting secure community transition facilities and adopt
37 or amend its development regulations as necessary to provide for
38 the siting of such facilities consistent with statutory
39 requirements applicable to these facilities.

1 ~~((+4))~~(3)(a) Each county planning under RCW 36.70A.040, within
2 twelve months of receiving notice that the county has been included
3 on the list of projected potential sites for a community justice
4 center or a work release facility, and in cooperation with the
5 cities or counties in which the potential site is located, shall
6 establish a process, or amend its existing process, for identifying
7 and siting essential public facilities, and adopt or amend its
8 development regulations as necessary to provide for the siting of
9 community justice centers under section 401 of this act and work
10 release facilities operated by or under contract with the
11 department of corrections. When siting a community justice center
12 or a work release facility, a county shall follow, in addition to
13 requirements of the process for siting essential public facilities
14 established under this section, the requirements established in
15 section 404 of this act.

16 (b) Any county not planning under RCW 36.70A.040, within twelve
17 months of receiving notice that the county has been included on the
18 list of projected potential sites for a community justice center or
19 a work release facility, and in cooperation with the cities or
20 counties in which the potential site is located, shall establish a
21 process, or amend its existing process, for identifying and siting
22 essential public facilities, and adopt or amend its development
23 regulations as necessary to provide for the siting of community
24 justice centers under section 401 of this act and work release
25 facilities operated by or under contract with the department of
26 corrections. When siting a community justice center or a work
27 release facility, a county shall follow, in addition to
28 requirements of the process for siting essential public facilities
29 established under this section, the requirements established in
30 section 405 of this act.

31 (4) The office of financial management shall maintain and by
32 the first of each year, provide to counties needing to site them,
33 a list of those essential state public facilities that are required
34 or likely to be built within the next six years. The office of
35 financial management may at any time add facilities to the list.

36 (5) No local comprehensive plan or development regulation may
37 preclude the siting of essential public facilities.

38 (6) No person may bring a cause of action for civil damages
39 based on the good faith actions of any county or city to provide

1 for the siting of secure community transition facilities in
2 accordance with this section and with the requirements of chapter
3 12, Laws of 2001 2nd sp. sess. For purposes of this subsection,
4 "person" includes, but is not limited to, any individual, agency as
5 defined in RCW 42.17.020, corporation, partnership, association,
6 and limited liability entity.

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

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

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

13 (b) A consideration for grants or loans provided under RCW
14 43.17.250(2); or

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

17 NEW SECTION. **Sec. 404.** A new section is added to chapter
18 36.70A RCW to read as follows:

19 (1) When providing for the siting of an essential public
20 facility that is a community justice center under section 401 of
21 this act or work release facility under chapter 72.65 RCW counties
22 and cities shall:

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

24 (b) Make a substantial effort to provide for the equitable
25 distribution of work release facilities by giving great weight to
26 the factors in section 402(1) of this act; and

27 (c) Ensure that any location identified is consistent with the
28 operational requirements established by the department of
29 corrections under section 402(2) of this act.

30 (2) As part of the permitting process for a community justice
31 center under section 401 of this act or a work release facility
32 under chapter 72.65 RCW, a county or city may not impose upon the
33 department of corrections any requirements beyond the following:

34 (a) The operational requirements established under section
35 402(2) of this act;

36 (b) The facility criteria established under section 402(5) of
37 this act;

1 (c) Any regulations, permitting requirements, inspection
2 requirements or other laws in effect at the time the county
3 provides notice to the city required under section 402 of this
4 act; and

5 (d) Any regulations, permitting requirements, inspection
6 requirements, or other laws, created after the effective date of
7 this act, that do not have the affect of precluding the siting or
8 operational requirements of the facility.

9 (3) If the department of corrections adheres to all
10 responsibilities in RCW 72.65.010 and section 402 of this act, any
11 process for conditional use permits, special use permits, or any
12 other development application necessary to site a community
13 facility or work release facility may not exceed one hundred twenty
14 days after submittal of a full and complete application.
15 Additionally, the process must include an appeal process. The
16 appeal process is not required to be concluded within the one
17 hundred twenty days after the submittal of the application.

18 NEW SECTION. **Sec. 405.** A new section is added to chapter
19 36.70 RCW to read as follows:

20 (1) When providing for the siting of a community justice
21 center under section 401 of this act or a work release facility
22 under chapter 72.65 RCW, a county and city planning under this
23 chapter shall:

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

25 (b) Make a substantial effort to provide for the equitable
26 distribution of community justice centers and work release
27 facilities by giving great weight to the factors in section 402(1)
28 of this act; and

29 (c) Ensure that any location identified is consistent with the
30 operational requirements established by the department of
31 corrections under section 402(2) of this act.

32 (2) As part of the permitting process for a community justice
33 center under section 402 of this act or a work release facility
34 under chapter 72.65 RCW, a county or city may not impose upon the
35 department of corrections any requirements beyond the following:

36 (a) The operational requirements established under section
37 402(2) of this act;

1 (b) The facility criteria established under section 402(5) of
2 this act;

3 (c) Any regulations, permitting requirements, inspection
4 requirements or other laws in effect at the time the county
5 provides notice to the city required under section 402 of this
6 act; and

7 (d) Any regulations, permitting requirements, inspection
8 requirements, or other laws, created after the effective date of
9 the act, that do not have the affect of precluding the siting or
10 operational requirements of the facility.

11
12 NEW SECTION. **Sec. 406.** A new section is added to chapter
13 36.70A RCW to read as follows:

14 (1) If the department determines that twelve months have
15 passed since the city or county received notice that the county had
16 been included on the list of projected potential sites for a
17 community justice center or work release facility, and the county
18 and cities within have failed to establish a process for siting a
19 community justice center or work release facility, notwithstanding
20 RCW 36.70A.103 or any other law, this section preempts and
21 supersedes the following as necessary to enable the department of
22 corrections to site, construct, renovate, occupy, and operate a
23 community justice center or work release facility within the
24 county:

25 (a) local plans, development regulations, permitting
26 requirements, and inspection requirements in effect at the time the
27 county provided notice to the city as required under section 402 of
28 this act; and

29 (b) all other laws created after the county provided notice
30 to the cities as required under section 402 of this act that have
31 the effect of precluding the siting or operation of the facility.

32 (2)(a) A county or city must identify the geographic area for
33 siting of the community facility under chapter 72.05 RCW or the
34 work release facility under chapter 72.65 RCW within one hundred
35 twenty days following the establishment of the process for siting
36 the community or work release facility.

37 (b) If the process for siting the community or work release
38 facility has been developed prior to the time the county or city
39 receives notice under section 402 of this act, the county or city

1 must identify the geographic area for the siting of the community
2 justice center or work release facility within one hundred twenty
3 days of receiving notice from the department of corrections that is
4 required under section 402 of this act.

5 (c) If the department determines that a county failed to
6 identify the geographic area for siting of a community justice
7 center or work release facility as required in subsections (a) and
8 (b) of this subsection, notwithstanding RCW 36.70A.103 or any other
9 law, this subsection (c) preempts and supersedes the following as
10 necessary to enable the department of corrections to site,
11 construct, renovate, occupy, and operate a community justice center
12 or work release facility within the county:

13 (i) Local plans, development regulations, permitting
14 requirements, and inspection requirements in effect at the time the
15 county provided notice to the city as required under section 402 of
16 this act; and

17 (ii) All other laws created after the county provided notice
18 to the cities as required under section 402 of this act that have
19 the effect of precluding the siting or operation of the facility.

20 (3) The department of corrections' determinations under
21 subsections (1) and (2) of this section are final and are not
22 subject to appeal under chapter 34.05 RCW or this chapter.

23 (4) Nothing in this section prohibits the department of
24 corrections from:

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

33 (b) Consulting with a city or county that has been preempted
34 under this section regarding the siting of a community justice
35 center or work release facility.

36
37 **Sec. 407.** RCW 34.05.030 and 2006 c 300 s 4 are each amended to
38 read as follows:

39 (1) This chapter shall not apply to:

- 1 (a) The state militia, or
2 (b) The board of clemency and pardons, (~~or~~)
3 (c) The department of corrections or the indeterminate
4 sentencing review board with respect to persons who are in their
5 custody or are subject to the jurisdiction of those agencies

6 (d) The department of corrections determinations under section
7 406 of this act.

8 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not
9 apply:

10 (a) To adjudicative proceedings of the board of industrial
11 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

12 (b) Except for actions pursuant to chapter 46.29 RCW, to the
13 denial, suspension, or revocation of a driver's license by the
14 department of licensing;

15 (c) To the department of labor and industries where another
16 statute expressly provides for review of adjudicative proceedings
17 of a department action, order, decision, or award before the board
18 of industrial insurance appeals;

19 (d) To actions of the Washington personnel resources board or
20 the director of personnel;

21 (e) To adjustments by the department of revenue of the amount
22 of the surcharge imposed under RCW 82.04.261; or

23 (f) To the extent they are inconsistent with any provisions of
24 chapter 43.43 RCW.

25 (3) Unless a party makes an election for a formal hearing
26 pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through
27 34.05.598 do not apply to a review hearing conducted by the board
28 of tax appeals.

29 (4) The rule-making provisions of this chapter do not apply to:

30 (a) Reimbursement unit values, fee schedules, arithmetic
31 conversion factors, and similar arithmetic factors used to
32 determine payment rates that apply to goods and services purchased
33 under contract for clients eligible under chapter 74.09 RCW; and

34 (b) Adjustments by the department of revenue of the amount of
35 the surcharge imposed under RCW 82.04.261.

36 (5) All other agencies, whether or not formerly specifically
37 excluded from the provisions of all or any part of the
38 Administrative Procedure Act, shall be subject to the entire act.

1 NEW SECTION. **Sec. 408.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

5 Renumber the sections consecutively and correct the internal
6 references accordingly

EFFECT: Requires DOC to give notice of the potential sites for
community justice centers and work release facilities and to
equitably distribute the location of such facilities.

Requires the counties to establish a process to site the
facility and identify the geographic area for the facility. If
the counties fail to establish the siting process, or fail to
identify the geographic area for siting the facility, the state
may preempt the counties and site the facility.