
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1733

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Conway, Kirby, Darneille and Chase)

READ FIRST TIME 03/05/07.

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

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

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

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

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

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

17 (3) "Equitable distribution" or "distribute equitably" means siting
18 or locating community facilities in a manner that reasonably reflects
19 the proportion of juveniles sentenced to the department from each

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

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

10 ((+4)) (5) "Service provider" means the entity that operates a
11 community facility.

12 NEW SECTION. Sec. 2. A new section is added to chapter 72.05 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 community facilities need
16 to be sited during the fiscal year beginning July 1, 2007, and every
17 biennium thereafter starting with the biennium beginning July 1, 2008,
18 and transmit the list to the office of financial management and the
19 counties on the list. The list may be updated as needed. In preparing
20 the list, the department shall make substantial efforts to provide for
21 the equitable distribution of community facilities among counties. The
22 department shall give great weight to the following factors in
23 determining equitable distribution:

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

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

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

33 (2) The department shall submit, along with the list required under
34 subsection (1) of this section, the operational requirements for the
35 facilities on the list to the office of financial management and the
36 counties on the list.

1 (3) A county, and any county designated by the department within a
2 rural multicounty geographic area, that is included on the list
3 required under subsection (1) of this section planning under RCW
4 36.70A.040 shall, in cooperation with its cities, allow the siting of
5 each projected community facility on the list within the county using
6 its process for siting essential public facilities under RCW 36.70A.200
7 and section 6 of this act. The process shall allow the siting of a
8 facility within twelve months of receiving notice that the county has
9 been included on the list.

10 (4) A county, and any county designated by the department within a
11 rural multicounty geographic area, that is included on the list
12 required under subsection (1) of this section not planning under RCW
13 36.70A.040 shall, in cooperation with its cities, allow the siting of
14 each projected community facility on the list within the county using
15 the procedures established in section 7 of this act. The process shall
16 allow the siting of a facility within twelve months of receiving notice
17 that the county or city has been included on the list.

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

20 **Sec. 3.** RCW 72.65.010 and 1992 c 7 s 56 are each amended to read
21 as follows:

22 As used in this chapter, the following terms shall have the
23 following meanings:

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

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

35 (3) "Prisoner" means a person either male or female, convicted of
36 a felony and sentenced by the superior court to a term of confinement

1 and treatment in a state correctional institution under the
2 jurisdiction of the department.

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

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

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

12 (+5)) (6) "Superintendent" (~~(shall)~~) means the superintendent of a
13 state correctional institution, camp or other facility now or hereafter
14 established under the jurisdiction of the department pursuant to law.

15 NEW SECTION. Sec. 4. A new section is added to chapter 72.65 RCW
16 to read as follows:

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

27 (a) The locations of existing residential facilities owned or
28 operated by, or operated under contract with, the department in each
29 county;

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

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

36 (2) The department shall submit, along with the list required under

1 subsection (1) of this section, the operational requirements for the
2 facilities on the list to the office of financial management and the
3 counties on the list.

4 (3) A county, and any county designated by the department within a
5 rural multicounty geographic area, that is included on the list
6 required under subsection (1) of this section planning under RCW
7 36.70A.040 shall, in cooperation with its cities, allow the siting of
8 each projected work release facility on the list within the county
9 using its process for siting essential public facilities under RCW
10 36.70A.200 and section 6 of this act.

11 (4) A county, and any county designated by the department within a
12 rural multicounty geographic area, that is included on the list
13 required under subsection (1) of this section not planning under RCW
14 36.70A.040 shall, in cooperation with its cities, allow the siting of
15 each projected work release facility on the list within the county
16 using the procedures established in section 7 of this act.

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

19 **Sec. 5.** RCW 36.70A.200 and 2002 c 68 s 2 are each amended to read
20 as follows:

21 (1) The comprehensive plan of each county and city that is planning
22 under RCW 36.70A.040 shall include a process for identifying and siting
23 essential public facilities. Essential public facilities include those
24 facilities that are typically difficult to site, such as airports,
25 state education facilities and state or regional transportation
26 facilities as defined in RCW 47.06.140, state and local correctional
27 facilities, solid waste handling facilities, and in-patient facilities
28 including substance abuse facilities, mental health facilities, group
29 homes, and secure community transition facilities as defined in RCW
30 71.09.020.

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

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

6 (4) Within twelve months of receiving notice that the county has
7 been included on the list of projected potential sites for a work
8 release facility or community facility for juvenile offenders, each
9 county, in cooperation with the cities located in whole or in part
10 within the county, and each city planning under RCW 36.70A.040 shall,
11 when it next amends its comprehensive plan, but in no case later than
12 the deadline specified in RCW 36.70A.130, establish a process, or amend
13 its existing process, for identifying and siting essential public
14 facilities, and adopt or amend its development regulations as necessary
15 to provide for the siting of community facilities as defined in RCW
16 72.05.020 and work release and other facilities operated by or under
17 contract with the department of corrections. When siting a community
18 facility under chapter 72.05 RCW or a work release facility under
19 chapter 72.65 RCW, a county or city shall follow, in addition to
20 requirements of the process for siting essential public facilities
21 established under this section, the requirements established in section
22 6 of this act.

23 (5) The office of financial management shall maintain and by the
24 first of each year, provide to counties and cities needing to site
25 them, a list of those essential state public facilities that are
26 required or likely to be built within the next six years. The office
27 of financial management may at any time add facilities to the list.

28 ~~((+5+))~~ (6) No local comprehensive plan or development regulation
29 may preclude the siting of essential public facilities.

30 ~~((+6+))~~ (7) No person may bring a cause of action for civil damages
31 based on the good faith actions of any county or city to provide for
32 the siting of secure community transition facilities in accordance with
33 this section and with the requirements of chapter 12, Laws of 2001 2nd
34 sp. sess. For purposes of this subsection, "person" includes, but is
35 not limited to, any individual, agency as defined in RCW 42.17.020,
36 corporation, partnership, association, and limited liability entity.

37 ~~((+7+))~~ (8) Counties or cities siting facilities pursuant to
38 subsection (2) or (3) of this section shall comply with RCW 71.09.341.

1 (~~(8)~~) (9) The failure of a county or city to act by the deadlines
2 established in subsections (2) and (3) of this section is not:

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

5 (b) A consideration for grants or loans provided under RCW
6 43.17.250(2); or

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

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A RCW
10 to read as follows:

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

14 (a) Involve the department of social and health services in the
15 siting process;

16 (b) Make a substantial effort to provide for the equitable
17 distribution of community facilities by giving great weight to the
18 factors in section 2(1) (a) through (c) of this act; and

19 (c) Ensure that any location identified is consistent with the
20 operational requirements established by the department of social and
21 health services under section 2(2) of this act.

22 (2) When providing for the siting of an essential public facility
23 that is a work release facility under chapter 72.65 RCW, a county or
24 city planning under this chapter shall:

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

26 (b) Make a substantial effort to provide for the equitable
27 distribution of work release facilities by giving great weight to the
28 factors in section 4(1) (a) through (c) of this act; and

29 (c) Ensure that any location identified is consistent with the
30 operational requirements established by the department of corrections
31 under section 4(2) of this act.

32 (3)(a) As part of the permitting process for a community facility
33 under chapter 72.05 RCW, a county or city may not impose upon the
34 department of social and health services any requirements beyond the
35 operational requirements established under section 2(2) of this act and
36 the facility criteria established under section 2(5) of this act.

1 (b) As part of the permitting process for a work release facility
2 under chapter 72.65 RCW, a county or city may not impose upon the
3 department of corrections any requirements beyond the operational
4 requirements established under section 4(2) of this act and the
5 facility criteria established under section 4(5) of this act.

6 (4) If the department of social and health services adheres to all
7 responsibilities in section 2 of this act and RCW 72.05.400, and the
8 department of corrections adheres to all responsibilities in RCW
9 72.65.010 and section 4 of this act, any conditional use permit,
10 special use permit, or any other development application process
11 necessary to site a community facility or work release facility may not
12 exceed one hundred twenty days after submittal of a full and complete
13 application, and must include an appeal process.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70 RCW
15 to read as follows:

16 (1) When providing for the siting of a community facility under
17 chapter 72.05 RCW, a county or city planning under this chapter shall:

18 (a) Involve the department of social and health services in the
19 siting process;

20 (b) Make a substantial effort to provide for the equitable
21 distribution of community facilities by giving great weight to the
22 factors in section 2(1) (a) through (c) of this act; and

23 (c) Ensure that any location identified is consistent with the
24 operational requirements established by the department of social and
25 health services under section 2(2) of this act.

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

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

29 (b) Make a substantial effort to provide for the equitable
30 distribution of work release facilities by giving great weight to the
31 factors in section 4(1) (a) through (c) of this act; and

32 (c) Ensure that any location identified is consistent with the
33 operational requirements established by the department of corrections
34 under section 4(2) of this act.

35 (3)(a) As part of the permitting process for a community facility
36 under chapter 72.05 RCW, a county or city may not impose upon the

1 department of social and health services any requirements beyond the
2 operational requirements established under section 2(2) of this act and
3 the facility criteria established under section 2(5) of this act.

4 (b) As part of the permitting process for a work release facility
5 under chapter 72.65 RCW, a county or city may not impose upon the
6 department of corrections any requirements beyond the operational
7 requirements established under section 4(2) of this act and the
8 facility criteria established under section 4(5) of this act.

9 (4) If the department of social and health services adheres to all
10 responsibilities in section 2 of this act and RCW 72.05.400, and the
11 department of corrections adheres to all responsibilities in RCW
12 72.65.010 and section 4 of this act, any conditional use permit,
13 special use permit, or any other development application process
14 necessary to site a community facility or work release facility may not
15 exceed one hundred twenty days after submittal of a full and complete
16 application, and must include an appeal process.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A RCW
18 to read as follows:

19 (1) After twelve months have passed since the city or county
20 receives notice that the county has been included on the list of
21 projected potential sites for a work release facility or community
22 facility for juvenile offenders, and the county and cities within have
23 failed to establish a process for siting a work release facility or
24 community facility for juvenile offenders, notwithstanding RCW
25 36.70A.103 or any other law, this section preempts and supersedes local
26 plans, development regulations, permitting requirements, inspection
27 requirements, and all other laws as necessary to enable the department
28 of corrections to site, construct, renovate, occupy, and operate a work
29 release facility or to enable the department of social and health
30 services to operate a community facility for juvenile offenders within
31 the county.

32 (2) The department of corrections or department of social and
33 health services determinations under subsection (1) of this section are
34 final and are not subject to appeal under chapter 34.05 RCW or this
35 chapter.

36 (3) Nothing in this section prohibits the department of corrections
37 or department of social and health services from:

1 (a) Siting a work release or community facility for juvenile
2 offenders in a city or county that has complied with the requirements
3 of RCW 36.70A.200 with respect to these facilities, including a city
4 that is located within a county that has been preempted. If the
5 department sites a work release facility or community facility for
6 juvenile offenders in such a city or county, the department shall use
7 the process established by the city or county for siting such
8 facilities; or

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

12 NEW SECTION. **Sec. 9.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 10.** 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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