

HOUSE BILL REPORT

2EHB 2168

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to essential state community justice facilities.

Brief Description: Regulating siting of essential state community justice facilities.

Sponsors: Representatives Conway (co-prime sponsor), Schoesler (co-prime sponsor), O'Brien, Ballasiotes, Darneille, Kirby and Hunt.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/23/02, 2/6/02 [DPS].

Brief Summary of Substitute Bill

- Requires the development of biennial lists of counties and rural multi-county geographic areas that may contain juvenile or work release facilities.
- Requires the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) to make substantial efforts to provide for the equitable distribution of juvenile or work release facilities when developing the lists.
- Establishes public notice and hearing requirements for siting juvenile or work release facilities.
- Requires local governments to develop processes and development regulations necessary to provide for the siting of juvenile and work release facilities, and imposes requirements on local governments relating to the siting process.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

Staff: Jim Morishima (786-7191).

Background:

I. Siting Juvenile Rehabilitation Administration and Work Release Facilities

A. Juvenile Rehabilitation Facilities.

The DSHS, through its Juvenile Rehabilitation Administration (JRA), operates or contracts for community facilities or group homes for certain juveniles committed to the JRA as a result of a criminal offense. If more than three potential sites for a facility are identified, the DSHS or its contracting entity must hold at least two public hearings in each of the affected communities. Once a final site has been selected, at least one additional public hearing must be held. If the DSHS is under negotiations with a service provider and only one site is being considered, at least two public hearings must be held.

The DSHS or its contracting entity must provide at least 14 days advance notice of the meeting to:

- All newspapers of general circulation in the community;
- All radio and television stations generally available to persons in the community;
- Any school district in which the facility would be sited or whose boundary is within two miles of a proposed facility;
- Any library district in which the facility would be sited;
- Local business or fraternal organizations that request notification; and
- Any person or property owner within a one-half mile radius of the proposed facility.

B. Work Release Facilities.

The DOC operates and contracts for work-release facilities throughout the state. Once potential sites are narrowed to three or less, the DOC or its contracting entity must conduct public hearings in the affected communities. Once a final site has been selected, at least one additional public hearing must be held.

The DOC or its contracting entity must provide notice of the hearings to:

- All newspapers of general circulation in the local area and all local radio stations, television stations, and cable networks;
- Appropriate school districts, private schools, kindergartens, city and county libraries, and all other local government offices within a one-half mile radius of the proposed site or sites;
- The local chamber of commerce, local economic development agencies, and any other local organizations that request notification; and
- All residents or property owners within a half-mile radius of the proposed site or sites (in writing).

II. Land-Use Planning and Conditional Use Permits.

A. Land-Use Planning.

Counties of a certain size (and cities within those counties) must plan under the Growth Management Act (GMA). Counties and cities not required to plan under the GMA may elect to plan under the act. Currently, 29 of 39 counties plan under the GMA. Counties and cities planning under the GMA must adopt comprehensive plans and development regulations.

The comprehensive plans of counties and cities planning under the GMA must include a process for siting essential public facilities. Essential public facilities are facilities that are typically difficult to site including state and local correctional facilities, mental health facilities, group homes, and secure community transition facilities. The Office of Financial Management (OFM) must maintain a list of essential public facilities that are required or are likely to be built within six years. No GMA comprehensive plan or development regulation may preclude the siting of an essential public facility.

B. Conditional Use Permits.

Local governments have the authority to adopt and enforce ordinances relating to property development. As part of this authority, local governments issue permits for conditional uses, which are uses permitted in a specific zone only after review by the appropriate permitting authority and the imposition of permit conditions making the use compatible with other permitted uses in the zone.

Summary of Substitute Bill:

I. Siting Juvenile Rehabilitation Administration and Work Release Facilities.

A. Juvenile Rehabilitation Administration Facilities.

The DSHS must provide a biennial list of counties and rural multi-county geographic areas in which JRA facilities may be sited to the OFM and the counties on the list. In preparing the list, the DSHS must make substantial efforts to provide for the equitable distribution of the facilities by giving great weight to the locations of existing JRA facilities in each county, and the number and proportion of juvenile offenders committed to the department residing in the county or multi-county geographic area. "Equitable distribution" is defined as siting facilities in a manner that reasonably reflects the proportion of offenders sentenced from each county or multi-county geographic area, and to the extent practicable, the proportion of such offenders residing in particular jurisdictions or communities within the counties or geographic areas. Equitable distribution is a policy goal and may not be the basis of any legal challenge to the siting, construction, occupancy, or operation of a JRA facility.

Before completing the list, the DSHS must consult with local officials and conduct one public hearing in each affected county. The DSHS must also publish an annual report

that includes a map of existing and projected facilities and offender data for the counties and jurisdictions of the state. The DSHS must adopt rules on facility criteria in consultation with local governments. The DSHS must also send, along with the list of counties and rural multi-county geographic areas, the operational requirements for the facilities on the list.

The list of persons and entities the DSHS must notify of public hearings when siting a JRA facility is expanded to include:

- The appropriate legislative authorities of the affected counties, cities, and towns;
- Local government planning agencies in the affected communities;
- Private schools, kindergartens, and institutions of higher education;
- All local government offices within a one-half mile radius of the proposed site or sites; and
- Local chambers of commerce, local economic development agencies, and local organizations who request notification.

Public hearings must be conducted at least 45 days before a final decision is made. The department must consider testimony received at the public hearings and must issue a written analysis of the final selection. If local land use regulations require public notice and hearings, the DSHS is not obligated to conduct public hearings to the extent that they would be duplicative.

B. Work Release Facilities.

The DOC must provide a biennial list of counties and rural multi-county geographic areas in which work release facilities may be sited to the OFM and the counties on the list. In preparing the list, the DOC must make substantial efforts to provide for the equitable distribution of the facilities by giving great weight to the locations of existing work release facilities in each county, and the number and proportion of juvenile offenders committed to the department residing in the county or multi-county geographic area. "Equitable distribution" is defined as siting facilities in a manner that reasonably reflects the proportion of offenders sentenced from each county or multi-county geographic area, and to the extent practicable, the proportion of such offenders residing in particular jurisdictions or communities within the counties or geographic areas. Equitable distribution is a policy goal and may not be the basis of any legal challenge to the siting, construction, occupancy, or operation of a work release facility.

Before completing the list, the DOC must consult with local officials and conduct one public hearing in each affected county. The DOC must also publish an annual report that includes a map of existing and projected facilities and offender data for the counties and jurisdictions in the state. The DOC must adopt rules on facility criteria in consultation with local governments. The DOC must also send, along with the list of counties and rural multi-county geographic areas, the operational requirements for the facilities on the list.

The list of persons and entities the DOC must notify of public hearings when siting work release facilities is expanded to include:

- The appropriate legislative authorities of the affected counties, cities, and towns;
- Local government planning agencies in the affected communities; and
- Institutions of higher education;

Public hearings must be conducted at least 45 days before a final decision is made. The department must consider testimony received at the public hearings and must issue a written analysis of the final selection. If local land use regulations require public notice and hearings, the DOC is not obligated to conduct public hearings to the extent they would be duplicative.

II. Land-Use Planning and Conditional Use Permits.

A. Land-Use Planning.

Counties and cities planning under the GMA must, no later than September 1, 2002, establish a process for siting JRA facilities and work release facilities. Counties on the biennial list generated by the DSHS and the DOC must adopt development regulations that designate areas or zones that allow the siting of JRA facilities and work release facilities.

A city or county siting a JRA or work release facility must:

- Involve the DSHS (for JRA facilities) or the DOC (for work release facilities);
- Give great weight to the same equitable distribution factors the departments must use when developing the biennial list of counties; and
- Ensure that the site selected is consistent with the operational requirements for the facilities.

B. Conditional Use Permits.

As part of the permitting process for a JRA facility or work release facility, a county or city may not impose upon the DSHS or DOC any requirements beyond the facility and operational requirements developed by the agencies for the facilities. Any conditional use permit or other development application process necessary to site a facility may not exceed 120 days in length and must include an appeal process.

Substitute Bill Compared to Original Bill:

The substitute:

- Requires the development of a biennial list of counties and rural multi-county geographic areas, instead of a list of counties every six years.
- Changes the definition of "equitable distribution" to mean siting facilities in a manner that reasonably reflects the proportion of offenders sentenced from each county or

rural multi-county geographic areas. Clarifies that equitable distribution is a policy goal and not the basis of a lawsuit.

- Requires a map to be developed and updated biennially, and changes the type of information that must be maintained by the agencies to better reflect the changed definition of equitable distribution.
- Changes the equitable distribution criteria to 1) the locations of existing facilities and 2) the number and proportion committed or sentenced in the county or rural multi-county geographic area.
- Requires the agencies to submit operational requirements for the facilities along with the biennial list.
- Requires counties on the list to: 1) adopt development regulations that designate areas or zones that allow the siting of the facilities, 2) involve the agencies in the siting process, 3) consider the equitable distribution criteria, and 4) ensure that the site meets the operational requirements of the facilities.
- Requires notice of the public hearings to be sent to the appropriate legislative authorities of the affected counties, cities, and towns, instead of the counties, cities, and towns generally.
- Requires counties and cities planning under the GMA to establish a process that provides for the siting of the facilities.
- Prohibits local governments from imposing permitting requirements upon the agencies beyond the agencies' operational and facility requirements.
- Prohibits conditional use permits, special use permits, and other development application processes from taking more than 120 days, and requires the processes to have a mechanism for appeals.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available on substitute. Original bill fiscal note available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This is an important bill that contains two basic principles: notice and equitable distribution (or fair share). Agencies have not been consistent with how they site these facilities. Some jurisdictions get to keep these facilities out, while some agencies take to court. Sometimes facilities are sited with little or no notification to the communities.

(Concerns) There are already public notice requirements for juvenile facilities. The populations for JRA homes are falling. The equitable distribution requirements could interfere with the re-integration of youths into their communities. Youths released from JRA facilities need to be close to family and treatment providers. Also, the equitable

distribution requirements could violate federal law prohibiting discrimination in housing.

Testimony Against: None.

Testified: (In support) Representative Steve Conway, prime sponsor; and Randy Lewis, city of Tacoma.

(In support with amendments) Bill Phillips, Department of Corrections.

(Concerns) Cheryl Stephani, Department of Social and Health Services and Juvenile Rehabilitation Administration.