

SENATE BILL REPORT

ESSB 6594

As Passed Senate, February 19, 2002

Title: An act relating to the implementation of the recommendations of the joint select committee on the equitable distribution of secure community transition facilities.

Brief Description: Implementing the recommendations of the joint select committee on the equitable distribution of secure community transition facilities.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Carlson, Costa, Hargrove and Long; by request of Jt Select Comm on the Equitable Distrib of Secure Community Transition Facil).

Brief History:

Committee Activity: Human Services & Corrections: 1/31/02, 2/7/02 [DPS].

Ways & Means: 2/11/02, 2/12/02 [DPS (HSC)].

Passed Senate: 2/19/02, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6594 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Hewitt, Kastama, Kohl-Welles, Long and Stevens.

Staff: Fara Daun (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6594 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fairley, Vice Chair; Hewitt, Honeyford, Kline, Kohl-Welles, Long, Parlette, Poulsen, Rasmussen, Roach, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley and Zarelli.

Staff: Bryon Moore (786-7726)

Background: In 2001, the Legislature passed 3ESSB 6151. The bill was enacted and became effective June 26, 2001. The act established the Joint Select Committee for Equitable Distribution of Secure Community Transition Facilities (Committee). The Committee was charged with reviewing and making any necessary revisions to the provisions for equitable distribution of secure community transition facilities (SCTFs) and sections 213 through 218 and 222 of the act, which establish the basic siting and operating criteria. The Committee was also charged with recommending a method for determining possible mitigation for future SCTFs. The Committee was mandated to provide a report to the Governor and to the chairs

of the Senate Committee on Human Services and Corrections and the House Committee on Criminal Justice and Corrections including any recommended legislation. The report included the text of this legislation.

During the hearings, significant concerns were raised that local governments were unable to comply with the underlying requirement to plan for SCTFs under the essential public facilities law, in large part due to concerns about civil liability for complying with that law. There was also a great deal of public comment by some county commissioners during the time that the Committee was meeting that expressed an unwillingness to site under any circumstances, and expressed a desire for some form of preemption. Local governments were not all in agreement on the degree of preemption desired. At the same time, Department of Social and Health Services (DSHS) reported to the Committee that some local governments were considering making the siting and staffing requirements substantially more restrictive than contemplated by the Legislature in the adoption of the underlying bill and that meeting the requirements, even if possible, would greatly exceed the appropriated funding.

A second major concern was the requirement that DSHS endeavor to site in a manner that achieved a five-minute law enforcement response time. Law enforcement testified that this was not possible in most, if not all jurisdictions. Law enforcement also testified that geography was not how response time was determined and that this provision drove SCTFs into areas where they posed the greatest risk to public safety. They were also concerned with liability under this provision and others.

Summary of Bill: No person may bring a cause of action for civil damages against a county or city based on the good faith actions of a county or city to provide siting for SCTFs in accordance with the law. Eligibility for the planning grant provided under existing law is extended to 120 days after the effective date of this act. Planning and incentive grants provided in existing law are subject to appropriation by the Legislature. Any county notified under 3ESSB 6151 that DSHS expected to site beds in that county by May 2007 that fails to complete adoption of their development regulations for SCTFs as required under the existing essential public facilities law by October 1, 2002, is preempted. A determination that a city or county is preempted is final and not subject to appeal under the Administrative Procedure Act or the Growth Management Act. DSHS may site SCTFs within a preempted county without regard to development regulations, permitting requirements or any other law. This preemption provision also applies to the cities within the 12 counties that were notified. DSHS may continue to consult with a city or county that has been preempted.

Where a city or county adopts development regulations in accordance with the law, DSHS must comply with those regulations to site an SCTF in that city or county. Cities and counties may not adopt development regulations more restrictive than the requirements that the state has imposed on DSHS in areas where the state has established specific requirements for the siting or operation of SCTFs. Regulations that are more restrictive than the statutory requirements enacted by the state are void.

DSHS must hold siting hearings in preempted cities and counties. A preempted city or county may propose public safety measures specific to a particular site. The proposal must be in writing and delivered to DSHS by the hearing date. DSHS must respond to the proposed measures in writing within 15 business days. If the city or county finds the response inadequate, they may notify the department within 15 business days of the specific

responses they find inadequate and the department must respond to the alleged inadequacies within seven business days. If the city or county fails to notify the department within 15 days, the department's response is final. If the DSHS response is not revised to the satisfaction of the city or county, the city or county may petition the Governor to appoint a designee with law enforcement experience for an emergency hearing under the Administrative Procedure Act. The Governor's designee hears the petition and makes a determination within 30 days. The decision of the Governor's designee is final and not subject to judicial review. The county or city must bear the cost of the petition. If the city or county prevails on all issues, DSHS must reimburse the costs. The department's consideration of the proposed conditions may not be construed to affect the preemption.

Law enforcement must respond to calls regarding residents of SCTFs as high priority calls, and a law enforcement officer who responds reasonably and in good faith to such a call shall not be held liable for civil damages based on the acts of the resident or the actions of the officer during the response. This immunity extends to the officer's employing city or county.

School bus stops are risk potential activities or facilities, but do not include bus stops established primarily for public transit.

A person with whom a resident has, or has had, a dating relationship is not eligible to be an escort.

At the request of local government, DSHS must enter into a long-term contract memorializing the agreements between the state and the local government related to the operation of the facility. Any contract regarding mitigation must be separate. The contract must include language stating that the contract does not obligate the state to continue operating any aspect of the civil commitment program under Chapter 71.09 RCW or to operate the SCTF if sufficient funds are not appropriated by the Legislature. It also must include language stating that a local government is not obligated to operate an SCTF. A city or county may contract with DSHS to operate an SCTF.

Mitigation for future facilities is limited to four categories:

- One-time training on the establishment of an SCTF: This training includes training for law enforcement and administrative staff and training by law enforcement of SCTF staff. Reimbursement is limited to wages and benefits for the city or county staff while being trained by the state and costs associated with preparation and delivery of training to SCTF staff.
- Information coordination refers to coordination between law enforcement agencies and between law enforcement and the SCTF related to facility residents. Reimbursement is limited to start-up costs.
- One-time capital costs are off-site costs associated with a need for increased security in specific locations and are limited to actual costs.
- Incident response costs are criminal justice costs associated with residents who violate conditions or who commit new crimes. Incident response costs do not include costs associated with civil cases based on the actions of a resident.

Appropriation: None.

Fiscal Note: Requested on January 23, 2002.

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

Testimony For (Human Services & Corrections): This is the product of the Joint Select Committee and reflects those efforts to address the provisions of the legislation and the concerns of local government. While they are not excited about having these facilities, the counties understand the court order and the state's responsibility to find sites. Counties would like amendments to sections four, seven, and nine of the legislation related to public safety concerns. Some counties believe that the DSHS guidelines are not sufficient to protect public safety. Counties support the limitations on liability. Thurston County would like to site on state land next to a correctional facility and is concerned that this is precluded by the underlying legislation and would like to address that issue. Some counties want to be preempted. Cowlitz County proposes amendments that would raise the minimum facility size. DSHS has been forced to engage in litigation at every site and wants to be included in the exemption language related to siting lawsuits. This litigation includes current litigation over whether the "all other laws" language currently in statute includes the State Environmental Policy Act (SEPA). The court found that it did not and this language needs to be amended to include SEPA and other similar laws that can be used to delay projects. DSHS is concerned that there is no restraint on the terms the local government could demand in the long term agreements contemplated under section 11.

Testimony Against (Human Services & Corrections): None.

Testified (Human Services & Corrections): Senator Don Carlson (sponsor); Jean Wessman, Association of Washington Counties (pro/concerns); Gary Nelson, Snohomish County (pro/concerns); Dan Wood, Grays Harbor County (pro/amendments); Kevin O'Sullivan, Thurston County (pro/amendments); Jeff Rasmussen, Cowlitz County (pro/amendments); Tim Brown, DSHS (pro/concerns).

Testimony For (Ways & Means): This legislation, resulting from the hard work of the Joint Select Committee, provides the necessary financial incentives for local jurisdictions to work with the state in siting Secure Community Transition Facilities (SCTF). The federal court requires that additional SCTFs be sited beyond the one currently located on McNeil Island. This bill provides the ability to do that. Recent experience seems to suggest that the preemption language is required if the state is going to be able to site these facilities. This is a serious step, but a necessary one.

Testimony Against (Ways & Means): The provisions related to establishing an administrative appeals process through the State Patrol might need some technical work.

Testified (Ways & Means): Senator Don Carlson, prime sponsor; Dick Van Wagenen, Governor's Policy Office (pro/concerns).

House Amendment(s): For facilities sited under the exemption from SEPA, DSHS must site construct, operate and occupy in an environmentally responsible manner and must make a threshold determination whether an SCTF sited under a preemption would have a significant

adverse environmental impact. If so, DSHS must prepare an environmental impact statement that meets the requirements of SEPA and the rules adopted by the Department of Ecology. This requirement is not a basis for any civil cause of action or administrative appeal.

The provisions clarifying that the preemption of "all other laws" includes SEPA, the Shorelines Act and the Hydraulics Code and setting forth the preemption in those statutes expire June 30, 2009.

The list of preempted counties is shortened by six counties, by limiting it to those counties with at least five persons committed or detained pending commitment on April 1, 2001. Those counties are: King, Snohomish, Thurston, Clark, Kitsap and Spokane.

There are two technical corrections.