

# HOUSE BILL REPORT

## HB 2640

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### As Passed Legislature

**Title:** An act relating to clarifying that facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings are not essential public facilities under the growth management act.

**Brief Description:** Clarifying that facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings are not essential public facilities under the growth management act.

**Sponsors:** Representatives Fey, Kirby, Doglio, Fitzgibbon, Orwall, Gregerson, Valdez, Peterson and Ryu.

### Brief History:

#### Committee Activity:

Environment & Energy: 1/28/20, 1/30/20 [DP].

#### Floor Activity:

Passed House: 2/12/20, 85-12.

Senate Amended.

Passed Senate: 3/4/20, 31-15.

House Concurred.

Passed House: 3/9/20, 88-8.

Passed Legislature.

### Brief Summary of Bill

- Provides that, under the Growth Management Act, essential public facilities do not include facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for punishment, correction, counseling, or rehabilitation following the conviction of a criminal offense.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** Do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Robert Hatfield (786-7117).

**Background:**

The Growth Management Act (GMA) is the comprehensive land-use-planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA (planning jurisdictions) and a reduced number of directives for all other counties and cities.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. The implementation of comprehensive plans occurs through locally adopted development regulations.

Comprehensive plans must include a process for identifying and siting essential public facilities (EPFs). Although not expressly defined in statute, the GMA specifies that EPFs include facilities that are typically difficult to site, such as airports, regional transportation facilities, state and local correctional facilities, and inpatient facilities, including substance abuse facilities. Comprehensive plans and development regulations may not preclude the siting of EPFs.

**Summary of Bill:**

Under the Growth Management Act, unless a facility is expressly listed as an essential public facility, essential public facilities do not include facilities that are operated by a private entity in which persons are detained in custody under process of law pending the outcome of legal proceedings but are not used for the primary purpose of punishment, correction, counseling, or rehabilitation following conviction of a criminal offense. This exemption does not apply to facilities detaining persons under RCW 71.09.020 (related to sexually violent predators), chapter 10.77 RCW (related to criminal insanity), or chapter 71.05 RCW (related to mental illness).

The bill applies retroactively to land-use actions imposed prior to January 1, 2018, as well as prospectively.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) This bill addresses the question of whether private detention facilities are entitled to the extraordinary protection of the essential public facilities (EPF) statute. The list of EPFs in the Growth Management Act (GMA) is of facilities that provide direct services to

the citizens of Washington. The site of one private detention facility in Tacoma is in a seismic hazard zone, is surrounded by chemical and fuel production, and is in a tsunami zone. The City of Tacoma has been reviewing land uses in the port area, and the city council has changed the zoning of the port maritime industrial district to preclude future siting of detention facilities and the expansion of the current facility. The current use would become a prior nonconforming use, which means the current facility can continue to operate but cannot expand. The decision of the city council was appealed to the Growth Management Hearings Board (GMHB), which held that it was a legislative matter. The operator of the detention facility then appealed to superior court, which remanded the case back to the GMHB. The GMHB again held that the facility was not an EPF, and that decision has again been appealed to Superior Court. This is not an issue for the courts but rather an issue for the Legislature. The Washington Supreme Court case of *Washington State Farm Bureau v. Gregoire* held that the Legislature is not prohibited from passing a law that impacts current litigation.

(Opposed) This bill represents a bad piece of public policy and would create unintended consequences. The significance of the bill is that it would be the first time the Legislature has said what is not an EPF. There are federal uses that are contemplated in the current GMA, such as airports. This bill is not a clarification of existing language. What the bill actually says is that any time a local government contemplates a private correctional facility, that facility would be barred by the EPF statute. The private detention facility in Tacoma is the best such facility in the nation; people are receiving excellent medical treatment, excellent dental treatment, and getting the best advocacy from the best legal advocates.

**Persons Testifying:** (In support) Representative Fey, prime sponsor; and Steve Victor, Tacoma City Attorney.

(Opposed) Joan Mell, GEO Group.

**Persons Signed In To Testify But Not Testifying:** None.