

- SUBJECT:** Notification for the construction of drug treatment facilities
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 7 ayes — Talton, Van Arsdale, Menendez, Bailey, Edwards, Hunter, Wong  
0 nays
- WITNESSES:** For — Charles Gabriel; Janice Gabriel  
  
Against — Will Harrell, ACLU, NAACP, and LULAC; Arturo Hernandez, Texas Association of Substance Abuse Programs
- BACKGROUND:** Health and Safety Code sec. 464.001 defines a treatment facility as:
- a public or private hospital;
  - a detoxification facility;
  - a primary, intensive, long term, ambulatory, or outpatient care facility;
  - a community mental health center;
  - a health maintenance organization;
  - a recovery center;
  - a halfway house; or
  - any other facility that offers treatment.
- Local Government Code, ch. 244 governs the location of certain facilities and shelters. Sec. 244.002 allows the governing body of a county or municipality to require notice from a correctional or rehabilitation facility housing persons who have committed felonies, misdemeanors, or delinquent acts. If the governing body has made such a request and a correctional or rehabilitation facility is to be constructed within 1,000 feet of a residence, school, church, or park, that facility must provide notice to the governing body. Under sec. 244.023, a person may not operate or construct a homeless shelter within 1,000 feet of a primary or secondary school without municipal consent.
- DIGEST:** CSHB 1859 would require a person intending to construct or operate a treatment facility within 1,000 feet of an “affected property,” such as a residence, primary or secondary school, public park, or place of worship, to

notify the governing body of the municipality in which the affected property was located. The facility operator also would have to post prominently notice of the proposed facility with an outdoor sign at the location. The person would be required to make notification no later than 90 days before construction or operation began, and notification would have to be made to each municipality in which an affected property was located.

**Municipal consent.** After complying with the notification requirements of CS HB 1859, a person could construct or operate a treatment facility provided that the governing body of a municipality did not deny its consent. A governing body could deny consent by issuing a resolution opposing the project after conducting a public hearing and determining that the facility was not in the municipality's best interest. The governing body would have to hold the public meeting no later than the 90th day after it was notified of the project and issue a resolution before the 91st day. Otherwise, municipal consent would be assumed.

**Sign specifications.** The sign notifying residents about the proposed facility would have to state the person's intent to construct or operate a treatment facility at the location and provide the person's name and address. The sign would have to be at least four by six feet in height and printed in lettering at least four inches high. If it was likely that nearby residents could not read English, the sign also would have to be printed in the primary language of those residents.

**Exemptions.** The bill would not apply to a facility operated by the state or federal government, or one licensed by the Texas Department of Health. It would not affect an educational program for intoxicated drivers, the office of a licensed health care practitioner, or a chemical dependency counselor who did not offer a treatment program. Twelve-step programs that did not offer treatment, did not charge participants, and in which participants could remain anonymous also would be exempt, as would a chemical dependency program operated by a religious organization that did not treat children and was exclusively religious in nature.

Under the bill, 1,000 feet would be measured along the shortest line between the nearest property line of the proposed location and the nearest property line of an affected property.

CSHB 1859 would apply only to the construction or operation of a facility that commenced operations after December 1, 2003.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 1859 would address an oversight in current law, under which drug treatment facilities are not required to notify the municipality in which they are located even though correctional and rehabilitation facilities and homeless shelters must post such notification. Currently, a proposed correctional or rehabilitation facility can be required to notify a municipality if the facility would be located near a home, school, church, or park. Similarly, a municipality can prevent a homeless shelter from being constructed near a school. The Legislature has recognized the importance of citizens having a say in the presence of these facilities near their homes, and CSHB 1859 reasonably would extend this right to include drug treatment facilities.

CSHB 1859 would not require a public meeting to grant consent for a treatment facility, but would give a municipality that option to evaluate whether the proposed facility was in the public interest. In some communities, there are no regulations to govern the location of drug treatment facilities, and in such cities community members can be powerless if they have concerns about the location of a drug treatment facility in their neighborhood. People have the right to know if a drug treatment facility is moving into their community, and CSHB 1859 would ensure that families were fully informed such plans for their neighborhood and were able to meaningfully protest an unwanted facility.

The bill would not place any unreasonable requirements on treatment facilities, since it would require only that the facility post a sign at the site and notify the proper municipality 90 days before operation or construction began. After such notice had been made, the facility would be free to operate and would not need explicit approval from the municipality.

By exempting religious-affiliated treatment facilities, the bill would not interfere with programs such as President Bush's Faith-Based and Community Initiative.

OPPONENTS  
SAY:

CSHB 1859 would reinforce the “not in my backyard” approach to community participation and would make it substantially more difficult for drug treatment facilities in the state to open and operate. Although these facilities provide an important service to individuals and communities struggling with the problems of chemical dependency, these facilities often are stigmatized unfairly. The Legislature should not establish new barriers to helping individuals with chemical dependency challenges and reintegrating them into society.

Because most communities in Texas already have zoning ordinances restricting and regulating the construction of chemical dependency facilities, CSHB 1859 is an unnecessary bill that would provide another layer of regulation on these facilities. Many communities already require that residents within 200 feet of a planned facility be notified by letter, and construction must be approved in public meetings of the city planning organization and city council. The 1,000 foot distance in CSHB 1859 would be substantially longer than the distances in many zoning plans, and the bill would provide little guidance to municipalities that might consider holding public meetings or denying consent. At the least, the bill should exempt municipalities that already have zoning laws to deal with the construction and operation of these facilities.

By including places of worship among the list of affected properties, CSHB 1859 would ignore the vital place that churches, synagogues, and mosques can have in the lives of individuals struggling with chemical dependency. President Bush has emphasized the important role that faith-based organizations play in addressing social problems, and while CSHB 1859 would not apply directly to religious chemical dependency centers, it could keep many treatment centers isolated from places of worship that provide support to recovering addicts.

The 90-day notification requirement in the bill would make it more difficult for treatment centers to comply with the strict requirements of government grants that often serve to fund these facilities. The bill would introduce uncertainty into the process of operating a treatment facility, and the additional requirements could impede the ability of facilities to respond to state and federal mandates.

**NOTES:**

The bill as introduced differs from the committee substitute in that it would have required a sign posted at the facility location to be two feet by two and a half feet, with lettering at least two inches in height. The original bill also would have required the facility operator to provide notice 60 days prior to construction or operation of the facility, instead of 90. The original version did not specify that the municipality would have been required to issue a resolution opposing the facility by the 91st day after the operator notified the municipality.