

SUBJECT: Requiring notice of chemical dependency treatment facilities in Houston

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Talton, Wong, A. Allen, Blake, Rodriguez

0 nays

2 absent — Bailey, Menendez

WITNESSES: For — None

Against — Penny Rayfield, Austin/Travis County Reentry Roundtable Planning Council

BACKGROUND: Local Government Code, ch. 244 governs the location of correctional and rehabilitation facilities housing persons who have committed felonies, misdemeanors, or delinquent acts. Sec. 244.002 requires state agencies, political subdivisions of the state, and private vendors operating under contract with the state or a political subdivision to notify the governing body of a city or county if they intend to construct or operate a correctional or rehabilitation facility within 1,000 feet of a residence, school, park, or place of worship.

Health and Safety Code, ch. 464 regulates facilities treating alcoholics and drug-dependent persons. 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.

Under secs. 464.003 and 464.052, certain facilities are exempted from the chapter, including:

- a facility operated by the state or federal government;
- a facility licensed by the Texas Department of Health;
- an educational program for intoxicated drivers;
- the office of a licensed health care practitioner;
- a chemical dependency counselor who does not offer a treatment program;
- twelve-step programs that do not offer treatment, do not charge participants, and in which participants remain anonymous; and
- chemical dependency programs operated by religious organizations that do not treat children and are exclusively religious in nature.

**DIGEST:**

CSHB 538 would require a person intending to construct or operate a treatment facility within 1,000 feet of an “affected property,” such as a residence, school, public park, or place of worship, in a city with a population of more than 1.5 million (Houston) to notify the governing body of that city. 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.

No later than 90 days after receiving notice of the facility, the governing body of the city could deny consent for the construction or operation of the proposed facility if it passed a resolution determining that the facility would not be in the city’s best interest. Before passing the resolution, the city would be required to hold a public hearing. If the city did not respond within the 90-day deadline, it would be understood that the city had granted consent for the construction.

The bill would not apply to an alternative disciplinary education program or an entity described by secs. 464.003 or 464.052 of the Health and Safety Code.

The bill would take effect September 1, 2005, and would apply only to the construction or operation of a facility that began on or after December 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 538 would allow the city of Houston and its residents to be better informed about plans to establish treatment facilities near sensitive locations, such as schools, and to determine whether the introduction of such facilities would be in the best interest of the affected neighborhoods. Houston residents currently have no way of knowing when a chemical

dependency treatment facility intends to locate in a particular neighborhood. Without this information, residents have no opportunity to request public hearings nor to express their concerns such plans. Access to this information is especially crucial in Houston, where, because there are no zoning ordinances, facilities may locate in residential areas.

The bill would not place any unreasonable requirements on treatment facilities. It would require only that the facility post a sign at the site and notify the city of Houston 90 days before operation or construction began. After giving such notice, the facility would be free to operate and would not need explicit approval from the city. These are similar to the posting requirements for correctional facilities, as well as to posting and notice requirements imposed upon chemical dependency treatment facilities by many other cities.

In many cases, citizens in communities already are concerned about these facilities. Providing notice and allowing people to hold a public meeting to learn more about the proposed facility would reduce misinformation and in many cases create greater acceptance of the facility. It also would increase awareness among members of the community about services available to them and their families.

CSHB 538 would not infringe on the medical privacy of treatment facility patients. The posting required by the bill would not list the specific addictions that would be treated at the facility, but only the general statement that a chemical dependency treatment facility sought to locate at the site. This kind of posting has not been found to be a violation of privacy in other cities. Moreover, once the 90 days had passed, the sign could be removed.

The bill would exempt religious-affiliated treatment facilities in order to conform to other statutes and so as not to interfere with programs such as President Bush's Faith-Based and Community Initiative.

While many cities have dealt with this issue locally, state action is needed in the case of Houston because the city has failed in its obligation to ensure that citizens have access to the information they need about their communities. Although the principle of local control is important, people's right to know about what is happening in their communities should be paramount.

OPPONENTS  
SAY:

CSHB 538 would reinforce the “not in my backyard” approach to community participation and would make it substantially more difficult for individuals and communities in Houston to receive the chemical dependency and other treatment services they need. Despite the important service that these facilities provide to individuals, families, and communities, treatment facilities often are stigmatized unfairly because of misinformation about addiction and the negative effects these facilities falsely are believed to have on a neighborhood’s crime rate and property values. Imposing posting requirements on these facilities similar to those required of correctional facilities would reinforce the notion that people seeking treatment are dangerous, increase stigmatization of the disease of addiction, and contribute to the climate of misinformation and fear - all of which would make it harder to provide the services that these individuals and communities need.

By making it easier to push these facilities out of neighborhoods, the bill also would reduce the effectiveness of the services they provide. Treatment services work best when they are located in a person’s home community near to family, social, and faith support networks. Some individuals become discouraged entirely from seeking treatment if they cannot find a facility nearby.

The posting requirements of the bill would violate the medical privacy of facility patients. In many cases, small facilities are virtually indistinguishable from surrounding homes or businesses. Requiring the proposed facility to post notice at the site would reveal that people using the facility, if constructed, were seeking treatment for a disease. With the intense stigmatization surrounding diseases of addiction, it would be wrong to disclose this private medical information.

By including places of worship among the list of affected properties, CSHB 538 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 the bill would exempt treatment centers run by religious organizations, it could keep many treatment centers isolated from places of worship that provide support to recovering addicts.

By placing specific notice and consent provisions in state law, CSHB 538 would pre-empt the authority of the city of Houston to create its own

standards regarding the location and regulation of these facilities. As a home-rule city, Houston has the authority to promulgate ordinances on issues not regulated by the state. CSHB 538 would limit the city of Houston to the regulations placed in statute, thus foreclosing the city's ability to determine the most locally appropriate guidelines.

**OTHER  
OPPONENTS  
SAY:**

The bill should exempt facilities regulated by the Department of Family and Protective Services. As it stands, the bill would apply to some facilities, such as group homes for children, that do not treat people for chemical dependency. There is no reason to subject these already strictly regulated facilities to further regulation.

**NOTES:**

The committee substitute contains bracketing language that would apply the bill only to Houston.

Similar legislation during the 2003 regular session, HB 1859 by Bohac, passed the House and initially was placed on the Senate Local and Uncontested Calendar, from which it was removed in the closing days of the session.