

By: Bohac, Bailey, Allen of Harris, Talton,
Edwards

H.B. No. 538

A BILL TO BE ENTITLED

AN ACT

relating to the construction or operation of treatment facilities near certain residential and community properties in certain municipalities; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 244, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. TREATMENT FACILITIES

Sec. 244.051. DEFINITIONS. In this subchapter:

(1) "Affected property" means property that is located in a municipality and that is:

(A) residential property;

(B) a primary or secondary school;

(C) a public park or public recreation area of the state or a political subdivision of the state; or

(D) a church, synagogue, or other place of worship.

(2) "Treatment facility" has the meaning assigned by Section 464.001, Health and Safety Code.

Sec. 244.052. APPLICABILITY. (a) This subchapter applies only to affected property in a municipality with a population of more than 1.5 million.

(b) This subchapter does not apply to:

(1) a disciplinary alternative education program

1 under Section 37.008, Education Code, that is licensed under
2 Chapter 464, Health and Safety Code, to provide chemical dependency
3 treatment services; or

4 (2) an entity described by Section 464.003 or 464.052,
5 Health and Safety Code.

6 Sec. 244.053. NOTICE OF PROPOSED LOCATION. (a) A person
7 who intends to construct or operate a treatment facility within
8 1,000 feet of an affected property shall:

9 (1) notify the governing body of the municipality in
10 which the affected property is located; and

11 (2) send notice by certified mail to the owner of each
12 affected property located within 1,000 feet of the location of the
13 proposed treatment facility.

14 (b) The property owners to whom notice is required to be
15 given under Subsection (a)(2) are determined by the most recent
16 certified tax appraisal roll of the county in which the property is
17 located. If the property is owned by a public entity, the notice
18 must be provided to the governing body of the public entity that
19 owns the property.

20 (c) The notice under Subsection (a) must:

21 (1) state that the person is intending to construct or
22 operate a treatment facility;

23 (2) provide the location of the proposed facility;

24 (3) provide the name and business address of the
25 person sending the notice; and

26 (4) include educational materials related to the
27 services to be provided by the proposed facility.

1 (d) If required by the municipality in which the affected
2 property described by Subsection (a)(2) is located, the notice and
3 the educational materials provided to the owners of that property
4 must be printed in both English and a language other than English if
5 it is likely that a substantial number of the residents in the area
6 speak as their primary language a language other than English.

7 (e) A person must give the notice required by this section
8 not later than the 90th day before the date the person begins
9 construction or operation of the treatment facility.

10 (f) A person who is required to provide notice under this
11 section and fails to provide the notice commits an offense. Each
12 failure to provide notice to a municipality or property owner
13 constitutes a separate offense. An offense under this subsection
14 is a Class C misdemeanor.

15 Sec. 244.054. CONSTRUCTION OR OPERATION OF FACILITY. After
16 complying with the notice requirements of Section 244.053, a person
17 may construct or operate a treatment facility within 1,000 feet of
18 an affected property only if the governing body of the municipality
19 does not issue a resolution under Section 244.055 denying the
20 municipality's consent to the construction or operation.

21 Sec. 244.055. LOCAL CONSENT. (a) The municipality denies
22 consent to the construction or operation of a treatment facility
23 within 1,000 feet of an affected property if the governing body
24 determines by resolution after a public hearing that the treatment
25 facility would be located within 1,000 feet of an affected property
26 and that the construction or operation of the facility is not in the
27 best interest of the municipality. The governing body must hold the

1 public hearing under this subsection not later than the 90th day
2 after the date it receives the notice required by Section 244.053.

3 (b) If the governing body of the municipality does not issue
4 the resolution described by Subsection (a) before the 91st day
5 after the date it receives the notice required by Section 244.053,
6 the municipality is considered to consent to the construction or
7 operation of a treatment facility within 1,000 feet of an affected
8 property.

9 Sec. 244.056. DISTANCE MEASUREMENT. For purposes of this
10 subchapter, distance is measured along the shortest straight line
11 between the nearest property line of the proposed location for a
12 treatment facility and the nearest property line of an affected
13 property.

14 SECTION 2. The change in law made by this Act by the
15 addition of Subchapter C, Chapter 244, Local Government Code,
16 applies only to the construction or operation of a treatment
17 facility that begins on or after December 1, 2005. Construction or
18 operation of a treatment facility that begins before December 1,
19 2005, is governed by the law in effect immediately before September
20 1, 2005, and that law is continued in effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2005.