

SUBJECT: Required notice for correctional or rehabilitation facilities location

COMMITTEE: Corrections — favorable, without amendment

VOTE: 5 ayes — Allen, Hopson, Haggerty, Mabry, Stick

0 nays

2 absent — Alonzo, Farrar

WITNESSES: For — Maxine Aaronson, Texas Neighborhoods Together

Against — None

On — Bryan Collier, Texas Department of Criminal Justice - Parole Division;
Christian Ninaud, Sunset Advisory Commission

BACKGROUND: Chapter 244 of the Local Government Code, subchapter A allows county and city governing bodies to deny consent for the location of certain correctional or rehabilitation facilities proposed to be within 1,000 feet of a residential area, school, public park, or place of worship. The subchapter expires on September 1, 2003, and the Sunset Advisory commission was required to review it not later than January 1, 2003.

The subchapter applies to correctional and rehabilitation facilities, such as probation and parole offices, and residential facilities operated, or contracted for, by the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission (TYC), or other political subdivisions of the state. By definition, these facilities house persons convicted of misdemeanors or felonies or children found to have engaged in delinquent conduct.

County and city governing bodies must be notified when TDCJ, TYC, or a private vendor under contract with the state plans to build or operate a correctional or rehabilitation facility in their area if the county and city governments request such notice in writing. If requested, the state agency or private vendor must give notice no later than 60 days before construction or operation of the facility. In addition, the agency or vendor must post a sign at

the proposed location to inform the public of its intent to build or operate a correctional facility at that site. County or city governments have 60 days from the receipt of notice to veto the facility's proposed location. To deny consent, the county or city must conduct a public hearing on the matter, determine that the proposed location is not in the best interest of the county or city, and adopt a resolution to that effect. Otherwise, consent is presumed to be granted.

Under sec. 244.006, many correctional facilities are exempt from the subchapter, including county jails, expansions of TDCJ and TYC facilities, probation and parole offices located in commercial areas, and all facilities operating or planned for construction before September 1, 1997. Juvenile detention facilities operated by a county, as well as juvenile justice alternative education facilities, also are exempted.

Government Code, sec. 509.010 requires the community justice assistance division of TDCJ, a private vendor, or the county or municipality, to provide at least 30 days' notice and hold a public meeting before taking action to establish and maintain community corrections facilities. Sec. 508.119 requires the pardons and paroles division of TDCJ, or a vendor under contract to finance, construct, or operate a community residential facility, to provide at least 30 days' notice and hold a public hearing before establishing a community residential facility, significantly increasing its capacity, or changing the use of a community residential facility.

DIGEST:

HB 1331 would repeal Local Government Code, sec. 244.005, to eliminate the requirement that county or municipal governing bodies submit a written request to receive notice regarding the location of correctional or rehabilitation facilities in their area. The bill also would amend sec. 244.002, to make notice mandatory without such a request.

The bill would specify that the notice must include a statement of the intent to construct or operate a correctional or rehabilitation facility within 1,000 feet of a residential area, school, public park, or place of worship, a description of the proposed location of the facility, and a statement that this subchapter would govern the procedure for notice of and consent to the facility.

HB 1331 would amend sec. 244.004, to allow the public hearing requirement under the subchapter to be met by a public meeting held under Government Code, sec. 509.010 or 508.119, if TDCJ received written approval from the county or municipal governing body and if, during the public meeting, a determination was made about whether operating the facility in the proposed location would be in the best interest of the county or municipality. The municipal or county governing body would have the discretion to hold a separate hearing, or it could adopt a resolution without a separate hearing stating that the operation of a correctional or rehabilitation facility was not in the best interest of the county or municipality.

HB 1331 would repeal the sunset review provision and September 1, 2003 expiration date of the subchapter. The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

HB 1331 would implement the recommendations of the Sunset Advisory Commission concerning correctional or rehabilitation subchapter. By preserving Local Government Code, Ch. 244, subchapter A, HB 1331 would continue to allow county and city governing bodies to control where correctional or rehabilitation facilities may be located in their areas. Local governing bodies need a mechanism to prevent facilities serving people with known criminal backgrounds from operating near children in residential areas, schools, public parks, or places of worship. Even though its use has been limited, this subchapter remains necessary because the significant recent growth of the TDCJ population could lead to an expansion of facilities.

The state has not had any difficulty in building or relocating correctional facilities due to this subchapter. Furthermore, this subchapter would be reviewed again in 2009 as part of the sunset review of TDCJ. If any problems arose between now and then with regard to building or relocating correctional facilities, those problems could be addressed at that time.

Eliminating the exemption for probation or parole offices in commercial areas would place an additional burden on the state. TDCJ already tries to avoid locating these offices near residential areas, but sometimes there are no appropriate alternatives, particularly in large cities. Among other considerations, parole offices need to be accessible to offenders who rely on city bus lines. According to the parole division of TDCJ, there currently are

63 parole offices located in commercial areas, and the impact of eliminating this exemption would be significant. The exemption should not give rise to confusion because commercial areas are defined clearly by city zoning laws.

HB 1331 would require the state to be proactive in notifying county and city governing bodies about proposed facilities rather than requiring governing bodies to request notice. It would prevent municipal and county officials from forfeiting their right to hold a public meeting on the proposed facility, and possibly to veto it, simply because they were not aware of a proposed facility. Requiring written notice from county and city governing bodies places an undue burden on them.

HB 1331 would prevent cost overruns and delays that could result from a county or municipality requesting notice and then exercising a veto late in the process, after TDCJ had begun planning a particular site, had contracted with a vendor, and had begun construction. Under current law, if a municipality or county requested notice late in the process, the construction would have to be halted for 60 days while the local review occurred, at great cost to the state. By beginning the 60-day local review period after the state provided mandatory notice, HB 1331 would allow the state to plan facilities and move forward on contracts with certainty that notice had been provided and the process could not be interrupted down the line.

By allowing certain public hearings under the Government Code to satisfy the public hearing requirement under this subchapter, HB 1331 would prevent duplicate meetings from occurring. It is a waste of time for county or city governing bodies and TDCJ each to hold a separate public meeting about the same facility, especially when the hearings would serve the same purpose and involve the same local officials, contracted vendors, and state agency staff. HB 1331 would maintain the opportunity for public input but reduce the potential for holding duplicate meetings.

**OPPONENTS
SAY:**

The continued existence of Local Government Code, Ch. 244, subchapter A could prevent TDCJ and TYC from constructing or relocating facilities when the correctional population grew beyond current capacity. Although the subchapter has not been used much to date, that could change with the significant recent growth of the TDCJ population.

This subchapter is not necessary. At the time of the sunset review in August 2002, no county or city governing bodies had vetoed the location of a facility, and only one county had held a public meeting about the relocation of a facility.

**OTHER
OPPONENTS
SAY:**

HB 1331 at least should remove the exemption under Local Government Code, sec. 244.006 for probation or parole offices located in commercial use areas. This exemption leaves neighborhoods that have a small amount of retail use, such as in the inner city, vulnerable to having persons with known criminal records in their vicinity. Municipalities are denied the right to consider whether it is in the best interests of their neighborhoods to host such facilities, and possibly to veto decisions to place facilities there. This bill also would not define commercial use, which could lead to confusion.

NOTES:

The companion bill, SB 267 by Lucio, was referred to the Senate Government Organization Committee on February 17.