

BILL ANALYSIS

C.S.H.B. 3332
By: Kuempel
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties suggest that greater uniformity is advisable when certain initiatives are put before the voters in order to ensure fairness for all involved. C.S.H.B. 3332 seeks to address this issue by providing for requirements for certain petitions requesting an election and ballot propositions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTIONS 4 and 8 of this bill.

ANALYSIS

C.S.H.B. 3332 amends the Election Code to require a ballot proposition proposing an amendment to a home-rule city charter or a voter-initiated initiative or referendum as requested by petition to substantially submit the applicable question with such definiteness and certainty in identifying the proposition's chief features that the voters are not misled. The bill authorizes a person, if a court orders a new election under statutory provisions relating to the ordering of a new election if a contested election is declared void, to seek from the court a writ of mandamus to compel the governing body of a city to comply with the requirement that a ballot proposition must substantially submit the question with such definiteness and certainty that the voters are not misled, as provided by the bill's provisions. The bill exempts a religious organization from the prohibition against a corporation or labor organization circulating or submitting a petition in connection with a recall election.

C.S.H.B. 3332 authorizes a registered voter eligible to vote in an election of a home-rule city, not later than the seventh day after the date on which the home-rule city publishes in the election order or by other means ballot proposition language proposing an amendment to the city charter or to a voter-initiated initiative or referendum as requested by petition, to submit the proposition for review by the secretary of state. The bill requires the secretary of state to review the proposition not later than the seventh day after the date the secretary receives the submission to determine whether the proposition substantially submits the question with such definiteness and certainty that the voters are not misled. The bill requires the city, if the secretary of state determines that the proposition fails to substantially submit the question with such definiteness and certainty that the voters are not misled, to draft a proposition to cure the defects and give notice of the new proposition using the method of giving notice prescribed for notice of an election. The bill authorizes such a proposition drafted by a city to cure the defects to be submitted to the secretary of state for review and requires the secretary of state, if the secretary

of state determines that the city has on its third attempt drafted a proposition that fails to substantially submit the question with such definiteness and certainty that the voters are not misled, to draft the ballot proposition.

C.S.H.B. 3332 requires a court of competent jurisdiction, in an action in the court seeking a writ of mandamus to compel the city's governing body to comply with the requirement that a ballot proposition must substantially submit the question with such definiteness and certainty that the voters are not misled, to make its determination without delay. The bill authorizes the court to order the city to use ballot proposition language drafted by the court and to award a plaintiff or relator who substantially prevails in such a mandamus action the party's reasonable attorney's fees, expenses, and court costs. The bill waives and abolishes governmental immunity to suit only to the extent of such created liability. The bill requires a city, following a final nonappealable judgment containing a finding by a court that a ballot proposition drafted by the city failed to substantially submit the question with such definiteness and certainty that the voters are not misled, to submit to the secretary of state for approval any proposition to be voted on at an election held by the city before the fourth anniversary of the court's finding. The bill prohibits a city from accepting legal services relating to a proceeding under the bill's ballot proposition language enforcement provisions without paying fair market value for those services. The bill authorizes the secretary of state to adopt rules as necessary to implement the bill's provisions relating to ballot proposition language enforcement.

C.S.H.B. 3332 establishes that the illegibility of a signature on a petition submitted to a home-rule city is not a valid basis for invalidating the signature if the information provided with the signature legibly provides enough information to demonstrate that the signer is eligible to have signed the petition and signed the petition on or after the 180th day before the date the petition was filed. The bill requires the secretary of state to prescribe the form and content for a petition related to a city charter amendment or city initiative or referendum election and requires the secretary to adopt that petition form not later than January 1, 2018. The bill prohibits a home-rule city that uses a form that is different from the official petition form from invalidating a petition because the petition does not contain information that the petition form failed to provide for or to require to be provided. The bill establishes that a person who circulates or submits a petition is not required to use a petition form prescribed by the secretary of state or a home-rule city but requires a petition that does not use a prescribed form to contain the substantial elements required to be provided on the prescribed form. The bill authorizes the secretary of state to adopt rules as necessary to implement provisions relating to a petition authorized or required to be filed under a law outside the Election Code in connection with an election. The bill repeals a provision that makes any requirements for the validity or verification of petition signatures in addition to those prescribed by certain Election Code provisions that are prescribed by a home-rule city charter provision or a city ordinance effective only if the charter provision or ordinance was in effect September 1, 1985.

C.S.H.B. 3332 requires the city secretary of a home-rule city that has a procedure requiring the governing body of the city to hold an election on receipt of a petition requesting the election that complies with the applicable requirements to determine the validity of a petition so received, including by verifying the petition signatures, not later than the 30th day after the date the city receives the petition. The bill prohibits a city from restricting who may collect petition signatures and authorizes a city to require a person who collects petition signatures to be a resident of the city. The bill expressly does not authorize a city to require a person who collects petition signatures to be a registered voter.

C.S.H.B. 3332 amends the Local Government Code to specify that the number of voters of a home-rule municipality that is used to determine an alternative signature threshold for a petition supporting the submission of a proposed charter amendment to voters for approval at an election is the number of registered voters of the municipality on the date of the most recent election held throughout the municipality. The bill requires the substantial copy of a proposed charter amendment included in the notice of the election to display language sought to be deleted by the

amendment as bracketed and stricken through and language sought to be added by the amendment as underlined.

C.S.H.B. 3332 requires a municipality for which a petition may be submitted requesting an election on an amendment to the municipality's charter or a voter-initiated initiative or referendum, in addition to any other notice or publication requirements, to publish the ballot proposition language to be voted on at such an election not later than the 109th day before the date of the election. The bill requires the municipality to provide on its website in an easily accessible location a clear and concise explanation of the process used to submit a petition requesting an election on an amendment to the municipality's charter or a voter-initiated initiative or referendum.

C.S.H.B. 3332 applies only to a petition submitted on or after January 1, 2018.

C.S.H.B. 3332 repeals Section 277.004, Election Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3332 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 52.072, Election Code, is amended by adding Subsection (f) to read as follows:

(f) A proposition must substantially submit the question with such definiteness and certainty that the voters are not misled.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 52.072, Election Code, is amended by adding Subsection (f) to read as follows:

(f) A ballot proposition proposing an amendment to a home-rule city charter or a voter-initiated initiative or referendum as requested by petition must substantially submit the question with such definiteness and certainty in identifying the proposition's chief features that the voters are not misled.

SECTION 2. Chapter 233, Election Code, is amended by adding Section 233.0115 to read as follows:

Sec. 233.0115. BALLOT LANGUAGE MANDAMUS ACTION. If a court orders a new election under Section 233.011, a person may seek from the court a writ of mandamus to compel the governing body of a city to comply with the requirement that a ballot proposition must substantially submit the question with such definiteness and certainty that the voters are not misled, as provided by Section 273.102.

SECTION 2. Section 253.094(b), Election Code, is amended to read as follows:
(b) A corporation or labor organization, other than a religious organization, may not make a political contribution in connection with a recall election, including the circulation and submission of a petition to call an election.

SECTION 3. Chapter 273, Election Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. BALLOT PROPOSITION LANGUAGE ENFORCEMENT PROVISIONS

Sec. 273.101. REVIEW BY SECRETARY OF STATE. (a) Not later than the seventh day after the date on which a home-rule city publishes in the election order or by other means ballot proposition language proposing an amendment to the city charter or to another city law as requested by petition, a registered voter eligible to vote in the election may submit the proposition for review by the secretary of state.

(b) The secretary of state shall review the proposition not later than the seventh day after the date the secretary receives the submission to determine whether the proposition is misleading or inaccurate.

(c) If the secretary of state determines that the proposition is misleading or inaccurate, the city shall draft a proposition to cure the defects and give notice of the new proposition using the method of giving notice prescribed for notice of an election under Section 4.003.

SECTION 3. Section 253.094(b), Election Code, is amended to read as follows:

(b) A corporation or labor organization may not make a political contribution in connection with a recall election, including the circulation and submission of a petition to call an election. This subsection does not prohibit a religious organization from circulating or submitting a petition in connection with a recall election.

SECTION 4. Chapter 273, Election Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. BALLOT PROPOSITION LANGUAGE ENFORCEMENT PROVISIONS

Sec. 273.101. REVIEW BY SECRETARY OF STATE. (a) Not later than the seventh day after the date on which a home-rule city publishes in the election order or by other means ballot proposition language proposing an amendment to the city charter or a voter-initiated initiative or referendum as requested by petition, a registered voter eligible to vote in the election may submit the proposition for review by the secretary of state.

(b) The secretary of state shall review the proposition not later than the seventh day after the date the secretary receives the submission to determine whether the proposition substantially submits the question with such definiteness and certainty that the voters are not misled.

(c) If the secretary of state determines that the proposition fails to substantially submit the question with such definiteness and certainty that the voters are not misled, the city shall draft a proposition to cure the defects and give notice of the new proposition using the method of giving notice prescribed for notice of an election under Section 4.003.

(d) A proposition drafted by a city under Subsection (c) to cure the defects may be submitted to the secretary of state under Subsection (a). If the secretary of state determines that the city has on its third attempt drafted a proposition that fails to substantially submit the question with such definiteness and certainty that the voters are not misled, the secretary of state shall draft the ballot proposition.

Sec. 273.102. MANDAMUS ACTIONS.
(a) In an action in a district court seeking a writ of mandamus to compel the city's governing body to comply with the requirement that a ballot proposition must substantially submit the question with such definiteness and certainty that the voters are not misled, the district court shall make its determination without delay and may order the city to use ballot proposition language drafted by the court.
(b) The court may award a plaintiff who substantially prevails in a mandamus action described by Subsection (a) the party's reasonable attorney's fees, expenses, and court costs.

Sec. 273.103. MANDATORY SUBMISSION TO SECRETARY OF STATE.

Sec. 273.104. CITY REQUIRED TO PAY FOR LEGAL SERVICES.

No equivalent provision.

SECTION 4. Sections 277.001, 277.002, 277.0021, 277.0022, 277.0023, 277.0024, and 277.003, Election Code, are redesignated as Subchapter A, Chapter 277, Election Code, and a heading for Subchapter A is added to read as follows:

SUBCHAPTER A. PROVISIONS RELATING TO SIGNATURES, VALIDITY, AND VERIFICATION OF PETITIONS

SECTION 5. Section 277.001, Election Code, is amended.

SECTION 6. Section 277.002, Election Code, is amended by adding Subsection (f) to read as follows:

(f) A signature on a petition submitted to a home-rule city is valid if the information provided with the signature as required by

Sec. 273.102. MANDAMUS ACTIONS.
(a) In an action in a court of competent jurisdiction seeking a writ of mandamus to compel the city's governing body to comply with the requirement that a ballot proposition must substantially submit the question with such definiteness and certainty that the voters are not misled, the court shall make its determination without delay and may order the city to use ballot proposition language drafted by the court.
(b) The court may award a plaintiff or relator who substantially prevails in a mandamus action described by Subsection (a) the party's reasonable attorney's fees, expenses, and court costs.
(c) Governmental immunity to suit is waived and abolished only to the extent of the liability created by Subsection (b).

Sec. 273.103. MANDATORY SUBMISSION TO SECRETARY OF STATE.

Sec. 273.104. CITY REQUIRED TO PAY FOR LEGAL SERVICES.

Sec. 273.105. RULES. The secretary of state may adopt rules as necessary to implement this subchapter.

SECTION 5. Substantially the same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Section 277.002, Election Code, is amended by adding Subsection (f) to read as follows:

(f) The illegibility of a signature on a petition submitted to a home-rule city is not a valid basis for invalidating the signature if

this section and other applicable law legibly provides enough information to demonstrate that the signer:

- (1) is eligible to have signed the petition;
and
- (2) signed the petition on or after the 180th day before the date the petition was filed.

SECTION 7. Subchapter A, Chapter 277, Election Code, is amended by adding Section 277.005 to read as follows:

Sec. 277.005. PETITION FORM; USE BY CITY. (a) The secretary of state shall prescribe a form, content, and procedure for a petition.

(b) A home-rule city that uses a form that is different from the official form prescribed under Subsection (a) may not invalidate a petition because the petition does not contain information that the petition form failed to provide for or to require to be provided.

No equivalent provision.

SECTION 8. Chapter 277, Election Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. SUBMISSION OF CERTAIN CITY PETITIONS

Sec. 277.031. APPLICABILITY OF SUBCHAPTER.

Sec. 277.032. CONFLICTS WITH CITY CHARTER OR OTHER LAW.

Sec. 277.033. DETERMINATION OF VALIDITY; REQUIRED ACTION. (a) The city secretary shall determine the validity of a petition submitted under this

the information provided with the signature as required by this section and other applicable law legibly provides enough information to demonstrate that the signer:

- (1) is eligible to have signed the petition;
and
- (2) signed the petition on or after the 180th day before the date the petition was filed.

SECTION 8. Subchapter A, Chapter 277, Election Code, as added by this Act, is amended by adding Sections 277.005 and 277.006 to read as follows:

Sec. 277.005. PETITION FORM; USE BY CITY AND OTHER PERSONS. (a) The secretary of state shall prescribe the form and content for a petition related to a city charter amendment or city initiative or referendum election.

(b) A home-rule city that uses a form that is different from the official form prescribed under Subsection (a) may not invalidate a petition because the petition does not contain information that the petition form failed to provide for or to require to be provided.

(c) A person who circulates or submits a petition is not required to use a petition form prescribed by the secretary of state or a home-rule city. A petition that does not use a prescribed form must contain the substantial elements required to be provided on the prescribed form.

Sec. 277.006. RULES. The secretary of state may adopt rules as necessary to implement this subchapter.

SECTION 9. Chapter 277, Election Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. SUBMISSION OF CERTAIN CITY PETITIONS

Sec. 277.031. APPLICABILITY OF SUBCHAPTER.

Sec. 277.032. CONFLICTS WITH CITY CHARTER OR OTHER LAW.

Sec. 277.033. DETERMINATION OF VALIDITY. The city secretary shall determine the validity of a petition submitted under this subchapter, including

subchapter, including by verifying the petition signatures, not later than the 30th day after the date the city receives the petition.

(b) If the city secretary determines that a petition submitted under this subchapter meets the applicable requirements or fails to make a determination within the time prescribed by Subsection (a), the city shall hold the election on the next uniform election date that allows sufficient time to comply with applicable provisions of law, including Section 3.005.

Sec. 277.034. COLLECTOR REQUIREMENTS PROHIBITED. A city may not restrict who may collect petition signatures.

SECTION 9. Sections 9.004(a) and (c), Local Government Code, are amended.

No equivalent provision.

by verifying the petition signatures, not later than the 30th day after the date the city receives the petition.

Sec. 277.034. COLLECTOR REQUIREMENTS PROHIBITED. (a) Except as provided by Subsection (b), a city may not restrict who may collect petition signatures.

(b) A city may require a person who collects petition signatures to be a resident of the city. This subsection does not authorize a city to require a person who collects petition signatures to be a registered voter.

SECTION 10. Same as introduced version.

SECTION 11. Subchapter E, Chapter 51, Local Government Code, is amended by adding Section 51.080 to read as follows:

Sec. 51.080. PUBLICATION OF INITIATIVE OR REFERENDUM BALLOT PROPOSALS. (a) This section applies to a municipality for which a petition may be submitted requesting an election on an amendment to the municipality's charter or a voter-initiated initiative or referendum.

(b) In addition to any other notice or publication requirements, a municipality shall publish the ballot proposition language to be voted on at an election described by Subsection (a) not later than the 109th day before the date of the election.

(c) The municipality must provide on its website in an easily accessible location a clear and concise explanation of the process used to submit a petition requesting an election on an amendment to the municipality's charter or a voter-initiated initiative or referendum.

SECTION 10. Section 277.004, Election Code, is repealed.

SECTION 11. Not later than January 1, 2018, the secretary of state shall adopt a petition form as required by Section 277.005, Election Code, as added by this Act.

SECTION 12. The changes in law made by this Act apply only to a petition submitted on or after January 1, 2018.

SECTION 13. This Act takes effect September 1, 2017.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.