

- SUBJECT:** Validating municipal government actions
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 9 ayes — Carter, Bailey, Burnam, Clark, Edwards, Ehrhardt, Hill, Hodge, Najera
0 nays
- WITNESSES:** For — Susan Horton, Texas Municipal League; Joe Paniagua, Fort Worth City Council; Diane Wetherbee, City of Plano; Charles Evans, Dallas/Fort Worth Airport Board
Against — None
- BACKGROUND:** Since 1934, the Legislature periodically has enacted legislation retroactively validating certain municipal actions, such as annexations or incorporations, that may have violated procedural requirements.

A general validating bill usually is introduced in each legislative session because the validating act applies only to governmental acts and proceedings that have occurred before a date set by the statute. For the first time in decades, the 75th Legislature did not enact a validation statute.
- DIGEST:** CSHB 485 would validate governmental acts or proceedings of a municipality taken before March 1, 1999. The bill would not apply to governmental acts or proceedings held invalid by a final judgment of a court if that litigation was filed on or before March 1, 1999.

The bill would not validate:
- ! any governmental act or proceeding that was void at the time it occurred;
 - ! any governmental act or proceeding, federal or state, that was a misdemeanor or felony at the time it occurred;
 - ! an incorporation or attempted incorporation of a city or an annexation or attempted annexation of territory by a city within the incorporated boundaries or extraterritorial jurisdiction of another city that occurred

without the consent of the other city in violation of the Local Government Code; or

- ! an ordinance that, at the time it was passed, was preempted by a state or federal statute, including certain provisions of the Alcoholic Beverage Code.

The bill also would not apply to any matter that, as of the bill's effective date, was involved in litigation ultimately resulting in the matter being held invalid by a final court judgment or that already had been held invalid.

CSHB 485 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

The Legislature routinely enacts legislation to validate past municipal actions such as annexations and incorporations. Blanket ratification prevents legal challenges based on nonsubstantive, technical, or procedural grounds. The Local Government Code lays out many detailed procedural requirements for annexation, incorporation, and other governmental acts, and these provisions occasionally provide pitfalls for cities.

Small cities without large legal departments are particularly vulnerable to legal challenges on nonsubstantive grounds. Validation legislation frees these cities from future exposure to harassing lawsuits based on technicalities.

Validation statutes are somewhat similar to the "enrolled bill rule" that applies to bills enacted by the Legislature. That rule, as described in the Texas Legislative Council Drafting Manual, provides that if an enrolled bill appears valid on its face, the court may not, in most cases, look to determine whether its enactment was procedurally correct.

The bill specifically states that it would not validate any local ordinances that violate certain Alcoholic Beverage Code provisions. Many city ordinances govern the zoning and location of establishments that sell alcoholic beverages. CSHB 485 would make it clear that if these ordinances violated the Alcoholic Beverage Code, they would not be validated by this bill. This should allay fears that the bill might have some unintended impact on this area of the law.

The Legislature should consider validation statutes every two years so that cities are not issued a blanket approval for their actions, allowing them to avoid legislative scrutiny. When such a bill comes before the Legislature, lawmakers may refuse to validate certain actions, such as an annexation by a city that had adopted no service plan. Legislators would not have this chance if a bill were enacted that merely set a period of time after which all acts and proceedings would be validated automatically.

OPPONENTS
SAY:

It would be more efficient to enact legislation that would validate governmental acts or proceedings once and for all, by providing that an act or proceeding would be validated automatically, for example, a year after it was enacted. This would create a “statute of limitations” understood both by cities and by those who want to challenge their acts. All parties would know that an act could be challenged for only one year — or whatever period the Legislature deemed appropriate — after enactment, but that afterwards, the act would be protected from legal challenges on procedural grounds.

This “statute of limitations” would give those with sincere complaints the time to react but would cut off those who tried to use procedural irregularities to avoid obeying the law. Such a bill also would free legislators from having to enact another validation statute.

In the case of an annexation by a city that fails to provide those annexed with a promised service plan, a person affected by that annexation could sue the city regardless of whether or not the act was validated. Courts would not validate acts that violate contracts, agreements, or ordinances or that in any way go beyond procedural irregularities. People who have been victims of those kinds of actions have many avenues of legal recourse.

NOTES:

The original bill would have validated all acts or proceedings a year after their effective date, as long as a lawsuit to invalidate them had not been filed on or before the first anniversary of that date.

The companion bill, SB 654 by Madla, has been referred to the Senate Intergovernmental Relations Committee.

A related bill, HB 790 by Capelo, which would validate municipal government acts and proceedings taken before June 1, 1999, has been referred to the House Urban Affairs Committee. Another related bill, HB 1847 by

Hill, which would validate certain water district actions, was reported favorably from the House Natural Resources Committee on March 31.

During the 1997 session, a similar municipal validation bill, SB 1454 by Lucio, passed the Senate on the Local and Uncontested Calendar, but died in the House on a point of order late in the session.