

## **BILL ANALYSIS**

C.S.H.B. 179  
By: Márquez  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In the Texas public education system, communities elect school board members who exercise a great deal of authority that includes establishing and structuring education programs, ensuring schools are held accountable to the community, and strongly advocating for continuous advancements in student learning. However, interested parties assert that school board members sometimes have made decisions that were not in the best interest of the students and that there is no straightforward process for communities to remove such a school board member. These parties contend that the magnitude of the authority and influence that a school board member exercises in a community creates a strong need for accountability. For this purpose, C.S.H.B. 179 seeks to provide a process that allows voters in a community to recall a school board member.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 179 amends the Education Code to authorize recalling from office a member of a school district board of trustees for an act of malfeasance or misconduct while in office, a violation of the trustee's oath of office, failure to perform duties prescribed by law, or wilful misuse, conversion, or misappropriation, without authority, of public property or public funds entrusted to or associated with the office of the trustee. The bill prohibits a member of a school district board of trustees from being recalled on the basis of the trustee's discretionary performance of a lawful act or prescribed duty. The bill requires the board of trustees of a school district to order a recall election for a trustee if the board is presented with a petition that meets the applicable requirements and is certified as valid.

C.S.H.B. 179 sets out requirements and related deadlines for such a petition and its verification by the secretary of the board, including a requirement that the secretary of the board, not later than the fifth day after the date the petition is submitted to the secretary, file an application with a district court in the county in which the school district is primarily located requesting a hearing to determine if sufficient facts exist to support the allegations regarding the grounds on which the petition for a recall election is based. The bill specifies that the board or secretary is not required to take such action if the trustee named in the petition resigns the office of trustee. The bill requires a district court that receives such an application to hold such a hearing and sets out the provisions related to such a hearing, including its cancellation or discontinuance under certain circumstances.

C.S.H.B. 179 requires the secretary, if the court determines that sufficient facts exist and the recall process may proceed, to certify in writing to the board, not later than the 15th day after the date the secretary receives notice of such determination, whether the petition is valid or invalid, based on the secretary's review of the signatures on the petition. The bill requires the secretary

to state, if the secretary determines the petition is invalid, each reason for that determination.

C.S.H.B. 179 requires the board to order that an election be held in the school district on a specified date if the secretary certifies that a petition is valid, sets a deadline for the issuance of the order, and prohibits the board from ordering the election if the term of the trustee named in the petition expires before the first anniversary of the date the secretary certifies the petition is valid. The bill requires the board to state in the order the issue to be voted on at the election. The bill specifies that the board is not required to order an election if the trustee named in the petition resigns the office of trustee and authorizes the board to cancel the election if the trustee resigns after the board orders the election but before the election is held. The bill sets out the required language for the ballot proposition.

C.S.H.B. 179 establishes, if the majority of votes received in a recall election are for the recall of the trustee, that the office held by the trustee becomes vacant immediately on the canvassing of the votes. The bill requires that the vacancy be filled as provided by statutory provisions relating to a vacancy on an independent school district's board of trustees, except as provided by the bill's provision requiring the board, if a majority of the members of the board are recalled in a single recall election, to, not later than the 30th day after the date on which the vacancies on the board occur as a result of the recall election, order a special election to be held on a date specified in the order to fill the vacancies. The bill requires the county judge of the county in which the school district is primarily located, if the board fails to comply with that requirement, to order the special election and requires that the expenses of the special election be paid by the district, regardless of whether the election is ordered by the board or the county judge. The bill specifies that a trustee recalled under the bill's provisions continues to serve in accordance with the Texas Constitution until the trustee's successor qualifies for the office of trustee. The bill prohibits the board from ordering a recall election for a trustee who has been the subject of a previous recall election during the trustee's current term.

#### **EFFECTIVE DATE**

January 1, 2014, if the constitutional amendment authorizing elections for the recall of independent school district trustees is approved by the voters.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 179 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Chapter 11, Education Code, is amended by adding Subchapter I to read as follows:

##### SUBCHAPTER I. RECALL OF MEMBERS OF BOARDS OF TRUSTEES

Sec. 11.401. DEFINITION.

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 11, Education Code, is amended by adding Subchapter I to read as follows:

##### SUBCHAPTER I. RECALL OF MEMBERS OF BOARDS OF TRUSTEES

Sec. 11.401. DEFINITION.

Sec. 11.402. GROUNDS FOR RECALL.

(a) A member of a school district board of trustees may be recalled from office for:

(1) an act of malfeasance or misconduct while in office;

(2) a violation of the trustee's oath of office;

(3) failure to perform duties prescribed by law; or

(4) wilful misuse, conversion, or misappropriation, without authority, of public property or public funds entrusted to or associated with the office of trustee.

(b) A member of a school district board of trustees may not be recalled on the basis of the trustee's discretionary performance of a lawful act or prescribed duty.

Sec. 11.402. ORDERING ELECTION.

Sec. 11.403. PETITION. (a) A petition for a recall election must have a statement substantially as follows preceding the space reserved for signatures on each page:

"This petition is to require that an election be held in (name of school district) on the recall of trustee (name of trustee).

(b) A petition may not name more than one trustee.

(c) To be considered valid under Section 11.404, a petition must be signed by a number of registered voters residing in the school district equal to or greater than 10 percent of the number of votes cast in the most recent general election for trustees in the district.

(d) Each person signing a petition must enter beside the person's signature the date the voter signs the petition. A signature may not be counted if the date of signature is earlier than:

(1) the 180th day after the date the trustee's current term began; or

(2) the 90th day before the date the petition is submitted to the board of trustees.

(e) Each person signing a petition must provide the person's current voter registration number, printed name, and residential address, including zip code.

Sec. 11.404. VERIFICATION OF PETITION. (a) Not later than the fifth day after the date a petition for a recall election is received in the office of the board of trustees, the board shall submit the petition to the secretary of the board for verification. If the petition is to require a recall election

Sec. 11.403. ORDERING ELECTION.

Sec. 11.404. PETITION. (a) A petition for a recall election must have, preceding the space reserved for signatures on each page, the following:

(1) a statement substantially as follows: "This petition is to require that an election be held in (name of school district) on the recall of trustee (name of trustee)."; and

(2) a brief description of the grounds under Section 11.402 on which the petition is based.

(b) A petition may not name more than one trustee.

(c) To be considered valid under Section 11.407, a petition must be signed by a number of registered voters residing in the school district equal to or greater than 20 percent of the number of votes cast in the most recent general election for trustees in the district.

(d) Each person signing a petition must enter beside the person's signature the date the voter signs the petition. A signature may not be counted if the date of signature is earlier than:

(1) the 180th day after the date the trustee's current term began; or

(2) the 90th day before the date the petition is submitted to the board of trustees.

(e) Each person signing a petition must provide the person's current voter registration number, printed name, and residential address, including zip code.

Sec. 11.405. ACTION ON PETITION. (a) Not later than the fifth day after the date a petition for a recall election is received in the office of the board of trustees, the board shall submit the petition to the secretary of the board.

If the petition is to require a recall election

for the trustee who serves as secretary, the board shall appoint an acting secretary to perform the secretary's duties under this section.

(b) The secretary shall determine whether the petition is signed by the required number of registered voters in the school district as provided by Section 11.403(c).

Not later than the 30th day after the date the petition is submitted, the secretary shall certify in writing to the board of trustees whether the petition is valid or invalid.

If the secretary determines the petition is invalid, the secretary shall state each reason for that determination.

No equivalent provision.

for the trustee who serves as secretary, the board shall appoint an acting secretary to perform the secretary's duties under this subchapter.

(b) Not later than the fifth day after the date the petition is submitted to the secretary, the secretary shall:

(1) begin the process of determining whether the petition is signed by the required number of registered voters in the school district as provided by Section 11.404(c); and

(2) file an application with a district court in the county in which the school district is primarily located requesting a hearing and determination under Section 11.406.

(c) The board of trustees or secretary of the board is not required to take action in accordance with this section if the trustee named in the petition resigns the office of trustee.

Sec. 11.407. CERTIFICATION OF PETITION VALIDITY OR INVALIDITY.

If the court determines under Section 11.406 that sufficient facts exist and the recall process may proceed, the secretary of the board of trustees,

not later than the 15th day after the date the secretary receives notice of the court's determination, shall

certify in writing to the board of trustees whether the petition is valid or invalid, based on the secretary's review of the signatures on the petition.

If the secretary determines the petition is invalid, the secretary shall state each reason for that determination.

Sec. 11.406. COURT HEARING REGARDING GROUNDS FOR RECALL.

(a) A district court that receives an application under Section 11.405(b)(2) shall conduct a hearing to determine if sufficient facts exist to support the allegations regarding the grounds under Section 11.402 on which the petition is based.

(b) The court must conduct the hearing not later than the 10th day after the date the court receives the application.

(c) The court shall give notice of the hearing to the trustee named in the petition and other interested parties.

(d) After conducting the hearing, the court

shall determine if sufficient facts exist to support the allegations regarding the grounds under Section 11.402 on which the petition is based and inform the secretary of the board of trustees of the court's determination. If the court does not find that sufficient facts exist, the recall process terminates and no further action may be taken as a result of the petition.

(e) The district court is not required to conduct a hearing and make the determination required by this section if the trustee named in the petition resigns the office of trustee, and the court may cancel a hearing scheduled to begin after the date of resignation or discontinue a hearing in progress on the date of resignation, as applicable.

Sec. 11.405. DATE OF ELECTION; ORDER. (a) If the secretary certifies that a petition is valid, the board of trustees shall, not later than the 30th day after the date of certification, order that an election be held in the school district on the first Saturday after the 62nd day following the date the board orders the election. Section 41.001(a), Election Code, does not apply to an election ordered under this subchapter.

(b) If the term of the trustee to whom the petition relates expires before the 75th day after the date the secretary certifies the petition is valid, the board may not order the election.

(c) The board shall state in the order the issue to be voted on at the election.

Sec. 11.408. DATE OF ELECTION; ORDER. (a) If the secretary certifies that a petition is valid, the board of trustees shall, not later than the 30th day after the date of certification, order that an election be held in the school district on the first Saturday after the 62nd day following the date the board orders the election. Section 41.001(a), Election Code, does not apply to an election ordered under this subchapter.

(b) If the term of the trustee named in the petition expires before the first anniversary of the date the secretary certifies the petition is valid, the board may not order the election.

(c) The board shall state in the order the issue to be voted on at the election.

(d) The board of trustees is not required under Subsection (a) to order an election if the trustee named in the petition resigns the office of trustee. If the trustee resigns after the board orders the election but before the election is held, the board may cancel the election.

Sec. 11.406. BALLOT PROPOSITION.

Sec. 11.407. RESULTS OF ELECTION; VACANCY. If the majority of the votes received in a recall election are for the recall of the trustee, the office held by the trustee becomes vacant effective immediately on the canvassing of the votes. The vacancy is filled as provided by Section 11.060.

Sec. 11.409. BALLOT PROPOSITION.

Sec. 11.410. RESULTS OF ELECTION; VACANCY. (a) If the majority of votes received in a recall election are for the recall of the trustee, the office held by the trustee becomes vacant immediately on the canvassing of the votes. The vacancy shall be filled as provided by Section 11.060, except as provided by Subsection (c).

(b) Notwithstanding Subsection (a), a

trustee recalled under this subchapter continues to serve in accordance with Section 17, Article XVI, Texas Constitution, until the trustee's successor qualifies for the office of trustee.

(c) If a majority of the members of the board of trustees are recalled in a single recall election under this subchapter, the board of trustees shall, not later than the 30th day after the date on which the vacancies on the board occur as a result of the recall election, order a special election to be held on a date specified in the order to fill the vacancies. If the board fails to comply with this subsection, the county judge of the county in which the school district is primarily located shall order the special election. The expenses of the special election shall be paid by the district, regardless of whether the election is ordered by the board or the county judge.

Sec. 11.408. MULTIPLE RECALL ATTEMPTS PROHIBITED.

SECTION 2. This Act takes effect January 1, 2014, but only if the constitutional amendment proposed by the 83rd Legislature, Regular Session, 2013, authorizing elections for the recall of independent school district trustees, is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

Sec. 11.411. MULTIPLE RECALL ATTEMPTS PROHIBITED.

SECTION 2. Same as introduced version.