

BILL ANALYSIS

H.B. 782
By: Swanson
Elections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Home-rule municipalities in Texas have fairly broad discretion to place initiatives before voters for consideration, but there is little uniformity in the processes used due to local elections being governed by each municipality's charter. The Texas Supreme Court was recently tasked, as the result of citizen-led mandamus and recall petitions, with reviewing the actions of local governments and the ballot language used with these initiatives. The court ultimately found that voters were being misled by the ballot language and required certain referendums to be resubmitted to voters, resulting in additional costs to taxpayers. H.B. 782 seeks to make elections fairer and more uniform 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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 782 amends the Election Code to require the wording of a ballot proposition prescribed by an authority ordering an election to substantially submit the applicable question with such definiteness and certainty that the voters are not misled. The bill authorizes a person to seek from the court a writ of mandamus to compel the governing body of a city to comply with this requirement if a court orders a new election under state law because a contested election is declared void. 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.

H.B. 782 sets out the following with regard to the review of a ballot proposition by the secretary of state:

- authorizes an eligible registered voter to timely submit for secretary of state review a home-rule city's appropriately published ballot proposition language proposing an amendment to the city charter or to a voter-initiated initiative or referendum as requested by petition;
- requires the secretary of state to timely review the proposition to determine whether the proposition is misleading or inaccurate;
- requires the city to draft a proposition to cure the defects and give appropriate notice of the new proposition on a secretary of state determination that the proposition is misleading or inaccurate;

- authorizes the curative proposition to be timely submitted to the secretary of state by an eligible voter for secretary of state review; and
- requires the secretary of state to draft the ballot proposition, if the secretary of state determines that the city has on its third attempt drafted a proposition that is misleading or inaccurate.

H.B. 782 sets out the following with regard to mandamus actions and continuing review:

- requires a court of competent jurisdiction, in an action 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;
- authorizes the court to order the city to use ballot proposition language drafted by the court;
- authorizes the court 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;
- waives and abolishes sovereign and governmental immunity to the extent of such liability; and
- requires the 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.

H.B. 782 sets out provisions relating to a petition authorized or required to be filed under law outside of the Election Code in connection with an election as follows:

- provides for the conditions under which the illegibility of a signature on a petition submitted to a home-rule city is not a valid basis for invalidating the signature;
- requires the secretary of state to prescribe a form, content, and procedure for a petition and requires the secretary of state to adopt that petition form not later than January 1, 2022;
- prohibits a home-rule city that uses a form that is different from that 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; and
- establishes that a person who circulates or submits a petition is not required to use the official form but requires a petition that does not use the official form to contain the substantial elements required on the official form.

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.

H.B. 782 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 the petition, including by verifying the petition signatures, not later than the 30th day after the date the city receives the petition. The requirement applies without regard to any city charter provisions or law. The bill prohibits a city from restricting who may collect petition signatures.

H.B. 782 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 the 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.

H.B. 782 applies only to a petition submitted on or after January 1, 2022.

H.B. 782 repeals Section 277.004, Election Code.

EFFECTIVE DATE

September 1, 2021.