TEXAS MUNICIPAL LEAGUE

LEGISLATIVE POLICY COMMITTEE *on* BALLOT PROPOSITIONS

November 30, 2018
10:30 a.m.
Texas Municipal Center
Austin, Texas

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1821 Rutherford Lane
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Texas Municipal League
Ballot Proposition Legislative Committee

Membership

Chair: John Love, III, Councilmember, Midland

Steve Adler, Mayor, Austin
Ed Broussard, City Manager, Tyler
Kathy Davis, City Attorney, Killeen
Derrick Freeman, Mayor, Port Arthur
Stephen Haynes, Mayor, Brownwood
Latrelle Joy, Councilmember, Lubbock
Perla Lara, City Secretary, McAllen
Paige Mims, City Attorney, Plano
Ron Nirenberg, Mayor, San Antonio
Miles Risley, City Attorney, Corpus Christi
Chris Watts, Mayor, Denton
Lee Woodward, City Secretary, Huntsville

Meeting Agenda

1. Call to Order
2. Introductions
3. Staff Briefing
4. Consideration of Discussion Topics
5. Discussion of Additional Related Issues of Importance to Committee Members
6. Other Business
7. Adjourn

Topics for Committee Discussion

Introduction

It is often said that city government in Texas is the government closest to the people. To take that a step further, a strong argument can be made that city government in home rule cities is the most accountable and accessible level of government in Texas. Not only do voters have a direct say in how the government operates through the charter adoption and amendment process, but home rule cities are the only form of government in the state where participatory democracy actions like initiative and referendum are permitted.

Of interest to this Committee are the three primary ways that local regulations can be directly implemented by city voters: initiative, referendum, or initiated charter amendment. These direct democracy tools can generally be summarized as follows:

- **Initiative** – The power of citizens to propose ordinances to the council, and, if the council fails to adopt the proposed ordinance, to power adopt or reject it at a city election.

- **Referendum** – The power of citizens to require a city council to reconsider an adopted ordinance, and, if the council fails to repeal the ordinance, the power to approve or reject it at a city election.

- **Voter-initiated charter amendments** – State law requires a city council to hold an election on a proposed charter amendment if the council receives a petition signed by the lesser of five percent of the qualified voters of the city or 20,000 voters.

The history of initiative and referendum in Texas can be traced back to some of the early special legislative charters enacted by the Texas Legislature.

In 1901, a commission form of government was installed in Galveston, and the adopted charter established a five-member elected board, which replaced the previous governing body that was comprised of a mayor and 16 aldermen elected by wards. The new form of government was generally praised, though some maintained concerns that the new form of government concentrated power amongst too small of a governing body. In response, the legislature began placing initiative, referendum, and recall in almost all of the special legislative charters issued to cities after 1907. This continued through the adoption of the home rule amendment to the Texas Constitution in 1912. The home rule amendment prohibited the incorporation of a city by special act, and more importantly, gave cities with more than 5,000 inhabitants the power to adopt its own charter if approved by city voters.

According to the 2008 TML Home Rule Charter Survey, initiative and referendum provisions are present in 88 percent of city charters. Despite of the ubiquity of these direct democracy procedures in home rule charters, the survey shows that only 14 percent of all home rule cities were forced into an initiative, referendum, and recall elections in the five years leading up to the survey. Pursuant to state law, all home rule charters can be amended by petition of city voters. (The "Adoption and Amendment of Home Rule Charters" and "Initiative, Referendum, and Recall" chapters of TML's Texas Home Rule Charters book are included in Appendix A.)

As politics at all levels of government have gravitated towards populism, the use of direct democracy measures in Texas cities has seemingly increased in recent years. Whether the number of local elections on policy matters has actually increased in number, or just have highlighted more controversial political issues, city governments have come under increased scrutiny in relation to these elections in recent years. Not only are lawsuits related to ballot language and other issues commonplace with initiative, referendum, and charter amendment elections, but so too is legislation preempting the will of the voters for successful popular elections that run counter to the political views of some in the Texas Legislature.

Underlying many policy debates at the Capitol is the basic question of the proper roles for elected officials and citizens in city government. How much deference should be given to the notion of representative democracy in our local communities? How much trust should be placed in locally-elected officials to represent the needs of their constituents and make the policy decisions that citizens may not have the time or experience to fully grasp? Should there be an avenue for citizens to directly formulate policy? If we value direct democracy tools as an organization, to what extent (if any) should they be limited in the interest of good government and fiscal responsibility?

This Committee's goal is to provide direction to League staff as to how to best handle legislation relating to the increasingly-scrutinized relationship of city governments and local voters regarding voter-initiated elections. That direction can be provided by answering at least two questions: (1) should TML consider taking a position on legislation that either curtails or expands initiative and referendum in home rule cities; and/or (2) should TML take a position on legislation that requires the Secretary of State to review local ballot language?

<u>Issues No. 1: Should TML consider taking a position on legislation that either curtails or expands initiative and referendum in home rule cities?</u>

Some legislators are fond of saying that the "ultimate form of local control" is the voters. If recent history is any indication, this conviction seems to apply only if the same legislators happen to agree with the decision made by the voters. Some in the legislature seemingly believe that increased voter involvement in policy matters is a good thing, until it isn't.

This strange dichotomy seems to illustrate the complicated questions involving citizen initiative and referendum elections. For example, consider two high profile local initiative elections in the last few years. When the Denton city council refused to adopt a voter-petitioned fracking ban ordinance in 2014, the question on the adoption of the ordinance went to the voters. Nearly 59 percent of Denton voters voted in favor of the ordinance. Despite Denton voters convincingly approving a fracking ban ordinance, in 2015 the Texas Legislature passed H.B. 40, which effectively preempts many city ordinance provisions regulating oil and gas operations within the city limits. To summarize, all Texas cities had their "hands slapped" for an ordinance a single city council didn't even want to adopt.

Two years later, the opposite story played out regarding Austin's regulation of ride sharing companies. The Austin city council refused to adopt a petitioned-for ordinance that would have eliminated a city requirement that ride-sharing drivers submit to fingerprint-based criminal background checks. The ordinance went to an election, where 56 percent of voters opposed the petitioned ordinance, thereby choosing to subject Uber and Lyft drivers to a fingerprint-based background check. Uber and Lyft withdrew from the Austin market, and the Texas Legislature responded to the local election by passing H.B. 100 in 2017, which preempted local ridesharing regulations, including fingerprinting requirements.

In addition to legislation that specifically preempted cities from regulating fracking and ride-sharing, respectively, other legislative efforts at limiting cities' initiative and referendum authority were considered. For instance, following the Denton fracking ban ordinance, H.B. 2595 was filed in 2015. The bill would have prohibited a city from holding an election on the enactment or repeal of an ordinance or charter provision that restricts the right of any person to use or access the person's private property for economic gain. The League testified neutral on the bill, and it was ultimately approved by the House. It failed to pass the Senate.

Similarly, H.B. 540 was considered in 2015. That bill would have required a city to submit any initiative or referendum ballot proposals to the attorney general for legal review and to determine if the passage of the measure would cause a taking of private property, in which case the election could not be held. The bill died in committee. Both H.B. 540 and H.B. 2595 appear to be one-time responses to the Denton fracking ban ordinance because neither proposal resurfaced in 2017. Even so, the bills and successful preemption efforts indicate that some legislators are willing to attempt to override the will of the voters under certain circumstances.

More recently, other charter amendments, and initiative and referendum issues, have sparked controversy and litigation at the local level. Texas courts (and sometimes charter language itself) have consistently held that the rights of initiative and referendum cannot be exercised for ordinances or regulations that have a prerequisite process, such as notice and hearing, or that require a complex fact and data analysis. In Austin, the city was sued

because it refused to put a charter amendment related to a rewrite of the city's land development code on the ballot. Similarly, in Plano, the city has a case pending before the Texas Supreme Court regarding the city's refusal to submit the city's comprehensive land use plan to the voters at a referendum election.

This recent litigation could result in related legislation in 2019. If, for instance, Plano is required to present its comprehensive land use plan to the voters, that could have far-reaching implications for other cities whose land use decisions are based on comprehensive plans. And, if Plano prevails based upon existing case law, it is entirely possible that legislation will be introduced to authorize initiative and referendum elections on comprehensive plans. In response to the Plano comprehensive plan debate in particular, legislation has been filed the last two sessions that would expressly preempt some charter provisions governing the city's ability impose requirements on the filing of petitions and the review of those petitions. Those bills included H.B. 2762 (Laubenberg) in 2015 and H.B. 907 (Shaheen) in 2017. The 2017 legislation, for example, would have provided that: (1) a petition regarding the repeal of an order, ordinance, or resolution must be filed not later than the 90th day after the later of the date on which the order, ordinance, or resolution finally passed or was published; (2) the city secretary must review the petition not later than the 30th day after the date of the receipt of the petition; (3) if the secretary determines the petition is invalid, the secretary shall return the petition to one of the petition 's proponents with the written reasons for rejection; (4) if the petition's proponents seek to remedy the petition, they shall return the petition to the secretary not later than the 30th day after the date of the receipt of the rejected petition; and (5) a city must make available on the official website, if any, of the city a petition form that complies with state law and the city's ordinances, orders, and other resolutions that apply to the filing of a petition.

The 2018 November ballot contained other contentious propositions in cities across the state, as well. The City of San Antonio considered a handful of citizen-initiated charter amendments, including one that limits the pay and service time of the city manager. The City of Houston held an election on a citizen-initiated charter amendment that requires the city to increase firefighter pay to an amount equal to the pay of Houston police officers. On the ballot in Arlington was a citizen-initiated charter amendment that imposes council term limits, and – more controversially – apply them retroactively to current councilmembers. All three propositions passed and the ballot language for each is included in Appendix B. Meanwhile, in Austin, citizens were able to force the question of requiring the city to conduct an annual "efficiency audit" and a proposition requiring an election and waiting period prior to the adoption of any new land development code onto the ballot. Both were voted down and the ballot language for each is included in Appendix B.

In every one of the above elections, it is safe to assume that some, if not a majority of, city officials disagreed with the policy position held by petitioners who forced the items on the ballot. While city officials from TML member cities may feel strongly about these issues, the larger question for purposes of this Committee is whether the League should

actually take a position to curtail the ability of citizens to force these sometimes contrarian policy stances before the voters?

On one hand, the initiative and referendum process potentially puts the strongly held beliefs of a few before the larger electorate at significant cost to the city (and city taxpayers). City officials are prohibited by Section 255.003 of the Texas Election Code from using public funds to advocate for or against the passage of ballot propositions. (They can advocate individually and/or use city funds to produce materials that "factually describe" the effects of a proposition.) That limitation may increase the likelihood that voters hear only the loudest voices on a given proposition in the days leading up to the election, thus introducing a bias to the voting public.

On the other hand, city officials maintain a philosophical "high-ground" of sorts by legitimately being able to stake claim to city government being the closest to the people, in part due to the control city residents have over policy decisions in a home rule city. Even if petitioners' ideas may run counter to what the city council or majority of the electorate view as good government, the very fact that the ideas can be publicly debated and decided by the voters highlights the vital role cities play in Texas.

The Committee should consider whether TML should take a position on legislation that either curtails or expands initiative and referendum in home rule cities?

Issue No. 2: Should TML take a position on legislation that requires the Secretary of State to review local ballot language?

Prior to the 2017 legislative session, the lieutenant governor charged the Senate Intergovernmental Relations Committee with studying the following topic:

> Local Ordinance Integrity: Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law.

When the committee met regarding the charge, it became clear that some legislators want more state regulation of ballot language used in initiative, referendum, and home rule charter amendment elections, which sometimes become highly contentious. Proponents argue that these reforms are necessary due recent case law striking down ballot language proposed by cities.

The interim charge to the Senate Intergovernmental Relations Committee culminated in 2017 with the filing of S.B. 488 by Bettencourt and its companion H.B. 3332 by Kuempel. S.B. 488 made it furthest of the two companion bills. It was approved by the full Senate and House Elections Committee, but was never considered on the House floor. In short, S.B. 488 would have authorized the Secretary of State to review home rule city ballot language and required cities to make changes to the ballot language based on that review. Even more troubling, the bill would have required cities to pay reasonable attorney's fees, expenses, and court costs to a prevailing plaintiff in a suit challenging the ballot language, even if the city were using language recommended by the Secretary of State.

With highly-charged political issues on a ballot, a pro-forma legal challenge to the ballot language by the opponents of a given measure is always a distinct possibility. As the only level of government in Texas that is subject to initiative and referendum elections, home-rule cities are uniquely targeted by proposals like S.B. 488. The irony of S.B. 488 is that the Texas legislature – a body that has never even come close to adopting direct democracy measures at the state level (like many other states have) – is attempting to punish home rule cities for their best efforts at managing voter-approved procedures for heightened accountability and transparency.

At a recent interim committee hearing, Senator Paul Bettencourt (R – Houston) indicated his intent to re-file his ballot language legislation from 2017. According to Senator Bettencourt, city officials are drafting "purposely misleading" ballot language, presumably in an attempt to sway voters one way or the other.

Senator Bettencourt's renewed focus on city ballot propositions was based on three recent lawsuits, described here:

- The City of Austin received a petition to call an election on the implementation of a city land use plan. The petition required any new land use plan to include a waiting period and voter approval before it could go into effect. The city's ballot language provided that the waiting period could be "up to three years." The plaintiffs sued the city over this language, arguing that the city's ballot language should have excluded the length of the waiting period. The Texas Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)

- The City of Austin received a petition to mandate the city to conduct an annual "efficiency audit." The city's ballot language included the cost of each proposed efficiency audit, estimated at $1 - $5 million. The plaintiffs argued that the inclusion of the cost was misleading political commentary on the proposed requirement. The Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)

- The City of Houston hadn't even finalized its ballot language for an upcoming charter amendment election prior to being sued over the proposed language. The proposition was to establish a dedicated fund for street and drainage infrastructure spending. The lawsuit claimed that *proposed* ballot language didn't comply with the common-law ballot language standard requiring that the "key features" be included in the language. (The original language didn't state that the funding would come from fees on city residents.) The city ultimately adopted ballot language that referenced the drainage charges. The Supreme Court rejected plaintiffs' challenge. (Note: this proposition was passed by the voters.)

Senator Bettencourt mentioned the lawsuits above as justification for re-filing legislation like S.B. 488 in 2019. What's ironic about that? The Supreme Court of Texas dismissed the lawsuits and determined that the language drafted by the cities was in accordance with current legal standards.

What should we make of the increased (and perhaps misplaced) scrutiny of city ballot language? If nothing else, it reflects the increased litigiousness of plaintiffs when political measures are on the ballot. When controversial political issues are put up to a vote, it's common for interests on either side of the issue to – as a matter of practice – file a lawsuit challenging the ballot language. This "sue first, ask questions later" approach is apparent in the recent legal challenges in Austin and Houston. In the Houston lawsuit, the city was actually sued *before it even adopted any ballot language in the first place*.

The other aspect of these challenges is that, when it comes to participatory democracy measures like initiative and referendum in Texas, cities are the only game in town. Home rule cities are the only level of government in Texas that actually gives voters the ability to directly shape public policy. State government provides no such mechanism. That begs the question of whether the state legislature should be involved at all?

Several other states allow for initiative and referendum at a statewide level. Some of those states have ballot language review boards and independent third parties that attempt to craft "neutral" ballot language. Even they receive legal challenges. For example, Colorado allows citizens to place initiatives on statewide ballots. Colorado law requires a "ballot title board," consisting of the secretary of state, attorney general, and director of legislative counsel, to determine that ballot language is fair and not misleading. Citizens can appeal the approved language directly to the Colorado Supreme Court. In spite of those procedures, over 40 legal challenges have been filed in the last two years.

In any case, the notion that Texas city officials are deliberately trying to mislead voters is misplaced. (Any legislator who believes differently might want to grab a pen and paper and give a shot to drafting a ballot proposition that doesn't upset either side.) If recent litigation is any indication, Texas cities have made every effort to conform to current legal standards when drafting ballot language.

The Committee should consider whether TML should take a position on legislation that requires the Secretary of State to review local ballot language? More specifically, the Committee may wish to recommend positions on: (1) legislation that would authorize or require a third party like a state agency to review and potentially rewrite local ballot propositions; and (2) legislation that would require cities to pay attorney's fees, expenses, and court costs if a court finds the city has improperly drafted ballot language.

Appendices

Appendix A

4 Adoption and amendment of home rule charters

Having discussed the concept and history of home rule and the restrictions of state law upon charters, we now turn to a brief description of procedures for adopting a new charter and amending an existing charter. This chapter content is primarily for neophytes in city government, but it seems prudent to repeat some basic information because a few Texas cities have misread some of the requirements in the Constitution and/or statutes. As an example: One city adopted charter amendments in three successive years, despite the constitutional requirement that charters be altered or amended no more often than once every two years. Another city interpreted the statute on amending the charter to permit amendment by ordinance; the councilmembers used this interpretation to give themselves a pay raise by an ordinance. A charter can be amended only by the voters, of course.

Establishing the population of the city (first charter)

Before the governing body takes any action in regard to a charter commission, it must determine that its city is over 5,000 inhabitants and hence eligible under the constitution to adopt a home rule charter. If the preceding U.S. Census recorded a population of at least 5,001, the city qualifies. The city council can state this fact in its ordinance calling for a vote on framing a new charter, in accordance with Section 9.002 (d) (discussed in more detail later). (See Appendix D, which includes Texas Local Government Code, Sections 9.002 and 9.003, spelling out requirements for adoption of a new charter).

If the last official census recorded less than 5,001 inhabitants, the city council must make a good faith finding that the city has grown to 5,001 or more. To do this, cities generally have used an unofficial census conducted by civil volunteers, or have used utility connections with a multiplier. Cities should consult with legal counsel prior to making the finding. Improper evidence has led some cities into legal trouble on the issue. For example, in *City of Granite Shoals. v. Ted Winder*, 280 S.W.3d 550 (Tex. App. – Austin 2009), a city councilmember testified that the city simply multiplied the number of utility connections by three (a number allegedly selected at random). The court concluded possible bad faith because the city did not use demographics or census data to determine the multiplier. After establishing by one of these or other reasonable means that the city has more than 5,000 inhabitants, the council is ready to consider the question of electing or appointing a charter commission to frame a charter for the city.

Adopting the city's first charter

Section 9.002 of the Local Government Code provides two different methods of selecting a charter commission to draft a first-time charter. One way is for the governing body to provide for an election that gives the voters an opportunity to elect a charter commission to draft a charter, and at that same election, to choose the members of that charter commission. That same Section 9.002 provides that the charter commission may be chosen in another way. This method will be discussed later.

Elected charter commission

To begin the elected charter commission process, the governing body must adopt an ordinance by a vote of not less than two-thirds of its membership to submit this question to a vote of its citizenry: "Shall a commission be chosen to frame a new charter?" If the governing body does not pass such an ordinance voluntarily, it may be required to do so if presented with a petition signed by at least ten percent of the qualified voters of the municipality.

The elected commission approach is not the only way to choose a commission, but it may still be the best way in that it gives the voters an opportunity to indicate whether they really want to proceed with the drafting of a charter.

Section 9.002 (b) reads: "The election ordinance shall provide for the election to be held on the date of the municipality's next general election scheduled after the 30th day but on or before the 90th day after the ordinance is adopted. However, if no general election is scheduled during that period that allows sufficient time to comply with other requirements of the law, the election shall be ordered for the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs after the 30th day after the date the ordinance is adopted and published in a newspaper in the municipality."

Section (c) provides that the same election shall provide for the election from the city at large of a charter commission to draft a charter if a majority of the qualified voters voting on the question of choosing a charter commission approve the question. This sentence has generally been interpreted as requiring the two questions of framing a new charter and selecting the members of the charter commission to be asked separately, though they may be on the same ballot. The commission must consist of at least 15 members, but if it has more than 15 members, it may not have more than one member for each 3,000 residents of the city. The ballot may not contain any party designation.

Alternative to elected commission

Section 9.002 (d) provides for an alternative way of choosing a charter commission for a first-time charter. The alternative way has been used more frequently in recent years. To reduce the opportunity for misinterpretation, it is best to quote this subsection directly:

> (d) The provisions of Subsections (a), (b), and (c) regarding the selection of a charter commission to do not apply to the first charter election in a municipality if:
>
> (1) (a) the governing body of the municipality selects a charter commission;
>
> (b) a charter commission is selected at a mass meeting; or
>
> (c) the mayor of the municipality appoints a charter commission; and
>
> (2) the charter commission has proceeded with the formation of a charter for the municipality.

Adoption of a new charter (not the first charter)

There is no question regarding the selection of a charter commission when a city that previously has adopted a charter decides to completely rewrite the document and adopt a new charter. The provisions of 9.002 (a) through (c) must be followed requiring an elected charter commission.

The definition of a "completely new" charter has not been litigated. Cities have adopted numerous amendments to an existing charter, including changing the form of government and/or the election of the governing body, as well as many other changes, and have done so under the statutes covering "charter amendments," not the requirements for a new charter. The record for number of amendments at one election appears to be 81, submitted by one Texas city at a 2006 election, with 80 amendments being approved by voters. If such an election is not contested by a citizen, there appears to be no upper limit to the changes that can be made by amendment.

Preparing for the charter commission election

Several different ordinances must be passed, ballots must be prepared, and other specific steps must be taken to hold and then report the results of the charter commission election. Because these requirements can change from year to year, samples of those documents are not included here but may be obtained from the Texas Municipal League by contacting the TML Legal Department.

Guidelines for the charter commission

If a majority of those voting at the charter commission election favor creating a charter commission, the 15 or more members of that body can proceed with drafting a proposed charter. A charter commission is a very unusual governmental body. Most cities will not have such a group more than a few times in a 100-year period. Many of the individuals involved in the work will be serving on a governmental body for the only time in their lives. Because of the Commission's unusual nature, the National Civic League has published a Guide for Charter Commissions to accompany its Model City Charter (see Bibliography). Both publications can be ordered from the National Civic League through its Web site at www.ncl.org/publications.

OVER 30 - DON'T APPLY!

We submit herewith the original copy of a proposed Home Rule Charter for the City of _____ drafted by the Charter Commission elected by the people on April 5, ____.

We urge that the Council, having taken the initiative in recommending the Charter Commission for this purpose, endorse this proposed Charter unanimously to the citizens of _____ for adoption.

We recommend the following steps for the Charter:

1. Send to City Attorney for legality.
2. Hire young lady to retype with enough copies for City Council.
3. Have Council approved printing of Charter.
4. Return to Charter Commission to take to printer in form they have planned to use for readability.
5. Mail to citizens of _____.
6. Call election for February 17, ____.

Preclearance under the Voting Rights Act of 1965

The city must obtain "preclearance" of the charter election from the U.S. Attorney General's Office. Section 5 of the federal Voting Rights Act prohibits the enforcement of any voting qualification or procedure with respect to voting rights unless it is approved by the U.S. Department of Justice or by the U.S. District Court of the District of Columbia. The simpler process for gaining approval is to submit the proposed changes to the U.S. Attorney General's Office. The approval process is designed to ensure that the proposed changes in the election process will not have the effect of denying or

abridging the right to vote "on account of race or color or membership in a language minority group." 42 U.S.C. Section 1973c. If you have any questions about the preclearance process, it may be helpful to visit the U.S. Department of Justice Web site at:

www.usdoj.gov/crt/voting/sec_5/guidelines.php.

Additional questions may be answered by speaking with a Civil Rights Analyst at the U.S. Attorney General's Office by calling (202) 307-2767.

Preclearance submission may now be submitted electronically through the following Web site address:

www.usdoj.gov/crt/voting/sec_5/making.php

Preclearance submissions may be submitted by regular mail to the following address:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Preclearance submissions may be submitted by overnight express mail to the following address:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
1800 G St., NW
Washington, D.C. 20006

Submitting the new charter to voters

At the completion of its work, the charter commission notifies the governing body and submits its proposed charter to that body and to the citizens of the city. The governing body has no authority to change any of the work of the elected commission (or the appointed commission if it is operating under the provisions of Section 9.002 (d)). To emphasize the point, we repeat that in the case of a NEW charter, the governing body has no authority to change any of the provisions of the proposed document.

Section 9.003 prescribes the election data for consideration of the charter, and the governing body must set the election in accordance with these provisions.

This same section provides that a copy of the proposed charter shall be mailed to each registered voter of the city at least 30 days before the election.

The section also states that the charter shall be prepared by the commission so that each subject within it may be voted on separately–to the extent practicable. As a matter of practice, no charter to our memory has been submitted in any way except as a complete document with the voters asked to vote "for" or "against" the document as a whole. This requires voters to accept the parts they dislike or to oppose them along with the parts they favor.

Such a "one-vote" submission may appear to be somewhat unfair to the voters. However, it is virtually impossible to separate sections of the charter and then make provisions in the document for alternatives. Because of this difficulty, no court, to our knowledge, has ever turned down a charter adoption because the document was submitted to the citizens as "all or none."

Charter adoption: results and voter turnout

A total of 61 cities have adopted first-time charters since the publication of this document in 1994. These 61 first-time charters adopted in the past 15 years are a reflection of the tremendous growth of the state, particularly in the metropolitan areas.

Charter amendments

Charter amendment elections are held much more frequently than elections for new charters. Some cities have had numerous amendment elections over the past 50 years while others have been content to stick with the original document. Very few communities have their original charter in place. Most have found it necessary to modify the original document with amendments to provide for the best administration of their cities It appears the city with the oldest charter in Texas with no amendments is the City of Hearne, being adopted in 1964. Other communities have older charters and have not amended their charters for decades, including the City of Stamford which adopted its charter in 1918 with the last amendment occurring in 1955, and the City of Gorman which adopted its charter in 1920 and last amended it in 1960.

When a city holds a charter amendment election and adopts one or more amendments, it must wait a full two years before holding another such election. Section 41.0041 of the Texas Election Code allows a few days leeway in holding some elections which require a certain waiting period, but this law does not apply to charter amendment elections since they are controlled by the constitution.

Procedure for amendment election

Charter amendment elections are precipitated in one of two ways: (1) the governing body on its own motion may submit one or more amendments to the electorate, or (2) the governing body must submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified vot-

ers equal to at least five percent of the number of qualified voters of the municipality, or 20,000, whichever is the smaller. (See Appendix D for complete wording of statutory requirements.)*

Charter amendment elections usually result from the first procedure above. In most cases, this is preceded by a charter revision commission appointed by the governing body. State statutes do not address charter revision bodies. The commission may be any number of individuals, may meet for as short or long a time as the governing body allows, and usually is given a specific charge by the governing body to look at one or more specific charter provisions that the governing body thinks may need to be changed.

A significant difference between the elected first charter commission and the appointed charter revision commission is that in the latter case, the governing body has no obligation to accept any of the recommendations of the appointed revision commission for changes in the current charter. As a matter of practical politics, however, governing bodies generally give strong weight to the findings of the commission, even though it is not unusual to find some deviation from the recommendations when the election is actually called.

Preclearance under the Voting Rights Act of 1965

Charter amendment elections must be precleared by the U.S. Attorney General's Office. See section under Adoption of New Charters for procedure.

The charter amendment election

Requirements for ordering the amendment election and publishing required notices are all contained in Section 9.004, LGC. Although the notice in the newspaper is required to be a "substantial copy" of the proposed amendment, most cities include actual charter language to be changed in that notice, and this procedure is recommended to give voters full knowledge of what they are voting on.

Section 9.004 also states that any "amendment may not contain more than one subject." This requirement has troubled city officials through the years, but has generally been resolved through logical interpretation of the term "one subject." For example, if a city is changing the form of government to a council-manager form, most cities have included in one amendment the provisions for appointment of the manager and all related language, even though such language may appear in several different articles of the charter. Similarly, when cities have desired to eliminate sections that are in conflict with state law, the general practice has been to consider the "conflict with state law" as the one subject, and cite various sections in the charter affected, but all under one amendment to the charter. Neither of these practices has been challenged to our knowledge.

Approval of amendment(s) by the voters

If the voters of the city approve one or more amendments, the governing body must enter an order in the records of the city (minutes of a council meeting) declaring the adoption of the charter amendment(s).

In addition, as soon as practicable, the mayor or chief executive officer of the city must certify to the Secretary of State an authenticated copy of the amendment(s) under the city's seal showing the approval by the voters of the city.

15 Initiative, referendum, and recall

15

The words are used so often together, one can almost see them as one word: initiativereferendumandrecall! They really are three separate facets of direct democracy or direct legislation, and you generally find provisions for all three in a charter. The citizens of California helped make initiative and recall household words. The public generally hears information regarding recalls in relationship to gubernatorial recalls. California, the most infamous of the recall states, received a great deal of attention in 2003 when Gray Davis was removed from office. This led the way for Governor Arnold Schwarzenegger to be elected to the top spot in California. In the last few years, members of local governing bodies in Texas have been the subject of recall elections as well. The trend has been for a dissatisfied public to utilize their rights as provided for in the city charter.

Introduction

All three of these actions begin with a citizen petition to the governing body, and all three can lead to a vote by the people. An initiative petition asks the city council to act on a specific issue when it has not done so previously. If the petition is valid, the council must adopt it or submit it to a vote of the people. Petitioners welcome council adoption, which is faster. A referendum petition asks the city council to reverse an action already taken or proposed. The council can rescind the ordinance or submit it to a vote of the people. A recall petition asks the city council to call an election for a vote on removal of one or more councilmembers from office. If the targeted officials resign, an election is unnecessary.

Although an election is the final possibility in all three situations, petitioners are delighted with any council or individual action that avoids an election.

Early history of initiative, referendum and recall (I R & R)

These three tools for direct citizen participation in government are residuals of prerevolutionary debates and, particularly, of the drafting of the federal constitution.[34] The debate participants, our founders, argued the merits of "direct" democracy with maximum citizen participation versus the merits of "representative" democracy with elected representatives of the people as the predominant decision-makers. The direct democracy proponents, led by Benjamin Franklin and Thomas Jefferson, lost the debate to James Madison and John Adams. Thus, our U.S. Constitution and our state constitutions are instruments of representative democracy with periodic elections in which the people name the leaders to represent their interests.

State constitutions were not submitted to the people for ratification until early in the nineteenth century. Texas went directly to the voters in 1845 for a pre-annexation vote on its draft constitution, and again five years later with a referendum to determine the location of the capital.

The movement toward greater use of initiative, referendum, and recall (IR&R) at the state level gained impetus in 1892 when endorsement of initiative and referendum at the state level was included in the platform of the Populist Party at its first national convention. In 1898, states began incorporating these direct methods into law. Oregon was first, followed during the next ten years by seven more states. By 1912, a total of 15 states had adopted both initiative and referendum and three more states had adopted one or the other.

The recall also appeared early in America. The 1780 Massachusetts Constitution stipulated that delegates to the Congress of the United States could be recalled at any time within their one-year terms, and others could be chosen and commissioned in their place.[35]

In the late 1800s, recall was considered to be primarily a weapon against governors and the executive branch generally; whereas, initiative and referendum were being targeted to the legislative branch. Since governors at the turn of the century were more highly thought of than legislators, the recall movement did not have the impetus that the other two mechanisms had. Also, the states could not decide if members of the judiciary should or should not be included in the list of officials subject to recall. For these and other reasons, the move to adopt recall along with initiative and referendum did not materialize as quickly.

Texas, ironically, has no provision for any of the three citizen participation methods to be used at the state level, but about 100 years ago, shortly after the advent of commission government at the local level in Texas, the legislature began placing one or more of the three methods in the charters it issued. And to this day, the legislature has not enacted any law to block or even impede the use of the methods by home rule cities.

I R & R at the local level

The circumstances surrounding the arrival and installation in 1901 of the commission form of government in Galveston may have been the instigating factor for the addition of one or more of these three "direct" citizen processes in early Texas charters. The commission form utilized a five-member elected board that served as both legislative and executive branch and was acclaimed and embraced nationwide. The short ballot (in Galveston, it was five elected members of the governing body elected at large who replaced a mayor and 16 aldermen elected by wards) appealed to citizens. Praise

was widespread for its "businesslike" approach to city government.

To offset the criticism that the new form concentrated power in too few hands, the Texas Legislature began placing one or more of three "direct" methods in almost all of the special legislative charters issued to cities, beginning in 1907. All three features were placed in the Dallas and Fort Worth special legislative charters enacted in 1907, the Amarillo and Waco charters passed in 1909, and the Austin charter in 1911. Although all five of these cities, plus a host of others, changed from commission to council-manager forms of government in the next few years, IR&R remained in their charters.

NCL Model Charter

The eighth and latest edition of the NCL model city charter provides a comprehensive section that addresses a variety of issues regarding IR&R including: general authority, commencement of proceeding, petitions, procedures for filing, suspension of effect of ordinance, action on petitions, and the results of the election. Below is the language provided on General Authority from the NCL Model Charter:

> **General Authority for Initiative, Citizen Referendum, and Recall.**
> **(1) Initiative.** The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.
> **(2) Citizen Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.
> **(3) Recall.** The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

Charter provisions today

Today, an overwhelming number of Texas city charters call for all three, with the recall provision being the most prevalent; it is found in 93 percent of city charters. The initiative and referendum are provided for in 88 percent of charters. In virtually every charter, IR&R are the subjects of a separate article. Several cities make requirements that apply to all three items. Seguin authorizes the city secretary to use a sampling to check signatures against the voter registration list when the petition names exceed 1,000. There must be a minimum of a 25 percent sample. Several cities have provisions for a minimum turnout before the election will be declared successful, and a couple of cities require a second petition in the case of initiative and referendum. These provisions state that if the petitioners submit one petition and the city council fails to act, the petitioners must then go back and get additional signatures to force an election.

After an initiative or referendum is successful, cities provide various ways for reversing that decision. A few cities state that the council, within months, can simply reverse the decision without an extraordinary vote of any kind. But most charters provide a waiting period before the council can take any action to reverse the vote, and several charters require a majority or greater vote of the total council to reverse the action even after a waiting period. Some charters prohibit petitioners from coming forward on the same question more often than every six months.

Cities are almost evenly split over use of a petitioners' committee (usually five or ten persons). Proponents of such a committee argue that requiring a committee places clear responsibility for the undertaking of initiative or referendum proceedings. Opponents find fault, however, in the fact that such a committee is given the authority to speak for hundreds or thousands of petitioners, and may agree to a city council compromise ordinance without consulting with the petition signers.

In some instances, charter writers have tried to save a little verbiage by combining petition percentages and other common language covering all three actions into one section, stating that it is speaking for all three mechanisms at once. This can be done if handled very carefully, but several charters trying to do this have confused the requirements. Even though it means repeating some requirements, the clearest and cleanest way to state the charter requirements is to do so one at a time for each of the three. In this way, there can be no doubt about meaning.

Finally, when reading the following charts regarding the percentage of signatures required to file a valid petition, it should be remembered that many cities, in addition to requiring a certain percentage of voter signatures, require a minimum number of signatures. The charter frequently provides that the petition must contain the greater of these two: a percentage or a minimum number.

Initiative provisions in charters

Most of the charters that provide for initiative prohibit petitions being presented to the council that address appropriating funds or authorizing the levying of taxes. Occasionally, a charter prohibits other initiated actions that the framers of the charter felt were inappropriate for citizen initiation.

Requirements on the number of required signatures vary widely. Some cities appear to purposely make it very difficult for voters to initiate ordinances; others have made it fairly easy. The actual requirements reported are:

Figure 15-1: Signature requirements for initiative*
Number of cities requiring "X" percent of all registered voters or of the number voting in the most recent election

	Registered Voters		Most Recent Election	
Percent:	**1994**	**2008**	**1994**	**2008**
3%	.5	1.0	0	0
5%	2.5	2.0	.5	1.0
10%	14.0	18.0	4.0	3.0
15%	9.0	8.0	3.5	3.0
20%	7.0	9.5	15.0	13.0
25%	6.0	2.0	19.0	20.0
30%	2.5	3.0	10.0	9.0
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	.5	1.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	.5
60%	0	.5	0	0

*Reading the chart: Using line 2 in the left-hand column, the figure means that signatures representing five percent of the voters must be secured; six cities require five percent of the registered voters; one city requires five percent of the last vote.

Referendum provisions in charters

Many cities and court decisions have declared several areas "off limits" for referendum petitions. Many charters prohibit referendum petitions on: (1) levying taxes, (2) appropriating funds, (3) ordinances fixing rates and charges for utilities, (4) annexations, and (5) ordinances authorizing the issuance of bonds that have been authorized by a vote of the people. Some cities prohibit referendum petitions relating to personnel and administrative matters. The requirements regarding the number of signatures is usually the same as for initiative petitions.

Figure 15-2: Signature requirements for referendum*
Number of cities requiring "X" percent of all registered voters or of the number voting in the most recent election

	Registered Voters		Most Recent Election	
Percent:	**1994**	**2008**	**1994**	**2008**
3%	.5	1.0	0	0
5%	2.0	1.5	.5	1.5
10%	13.5	16.0	3.0	3.0
15%	9.0	7.0	3.0	3.0
20%	6.0	11.0	16.0	12.5
25%	7.0	3.0	21.0	21.0
30%	3.0	3.0	10.0	10.5
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	0	0.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	0
60%	0	0	0	0

*See explanation under Initiative for example of using this figure.

Recall provisions in charters

The recall sections of charters have several provisions unique to that device. In less than 5 percent of charters, anywhere from one-tenth to one-half of all the petitioners must swear in the petition that they voted for the councilmember now the subject of their recall. In even fewer charters, candidates to replace the councilmember are listed on the ballot, so that if the citizens vote to recall the councilmember, the individual on the ballot with the most votes is elected at that same election to succeed the recalled individual.

Charters also vary as to whether accusations against a councilmember in a recall petition can be general or must list specific causes for action. North Richland Hills' charter carries a notation immediately under Article XV on recall stating, "Note: Recall article of this charter has, by implication, been held to be invalid by a district court of Tarrant County in 1991." According to the city attorney of North Richland Hills, the City of Lake Worth had copied the recall provision of North Richland Hills. This provision states:

> Any city official elected by the people, shall be subject to recall and removal from office by the qualified voters of the city on grounds of incompetency, misconduct, or malfeasance in office.

A petition drive attempted to recall a councilmember in Lake Worth in 1991, and the court ruled that the provision was vague and unenforceable. This was a state district court decision that was not appealed. Therefore, the case's value as precedent is minimal.

Most charter provisions on recall have a statement

that if the mayor or city council does not call a recall election when presented with a valid petition, the county judge shall discharge these duties. Still other charters attempt to place this duty on the district judge. These requirements also present problems because a city does not have the authority to prescribe duties for a county or district judge. The better remedy may be for the charter to provide that any citizen could file with the appropriate court for a writ of mandamus to force the city to call the election.

Finally, charters with recall provisions do have some restrictions on use. First, 55 percent of charters give a newly elected mayor or councilmember a few months on the job before they can be the subject of a recall petition. Our survey showed this grace period generally to be six months.

Similarly, 26 percent of charters provide that after having weathered a recall election, a councilmember may not be subjected to another recall election within a certain period of time. Our review of the charters showed an array of "waiting periods." Again, six months was the norm, but the time frames ranged anywhere from one month to one year.

To save money on an election, 12 percent of charters make a specific provision that recall petitions will not be honored within a specified period before the person in question will come up for election. These times range anywhere from three months to one year, with three months being the most common, followed by six months.

Finally, there are Texas charters which provide that a councilmember will not be subject to a recall election more than once during a term of office. The survey results in this regard are:

Figure 15-3: Signature requirements for referendum*
Number of cities requiring "X" percent of all registered voters or of the number voting in the most recent election

	Registered Voters		Most Recent Election	
Percent:	**1994**	**2008**	**1994**	**2008**
3%	0	1.0	0	0
5%	1.5	2.0	0	1.0
10%	9.0	18.0	1.0	3.0
15%	5.0	8.0	.5	2.5
16%	0	0	.5	.5
20%	6.0	9.5	7.5	13.0
25%	6.0	2.0	10.0	20.0
30%	8.0	3.0	20.0	9.0
33/33.3%	.5	.5	1.0	.5
35%	2.0	.5	2.0	0
40%	2.5	.5	2.5	1.0
50%	1.0	.5	5.0	2.0
51%	.5	1.0	8.0	.5
60%	0	.5	0	0

*See explanation under Initiative for example of using this figure.

I R & R in action

Our survey (Appendix A), which was sent to key officials in every Texas home rule city, asked how many times each of the three provisions had been used in the last five years. We chose five years because we felt institutional memory in most cities might not extend back beyond that period of time.

Initiative results from the survey

The initiative was reported to be used in 24 cities, a total of 41 propositions were presented to the voters, resulting in 31 propositions being approved by voters, seven being turned down by the voters, and three petitions being found invalid. The subject of the measures presented by the citizens varied widely–from an ethics ordinance to no smoking ordinances, as well as funding for facilities. But the largest number of petitions dealt with freezing property taxes for senior citizens and disabled veterans (authorized by separate state law), all of which were approved.

Referendum results from the survey

Eleven cities reported use of the referendum in the past five years. A total of 15 propositions were placed on the ballot with 10 being approved, three failing, and two instances where the city council took action, thereby removing the issue from the election process. We attempted to eliminate all charter and bond issue votes; our interest was in the traditional use of the referendum petition. Here again, the diversity in subject matter represented all sorts of issues, such as the sale of alcoholic beverages in city parks.

Recall results from the survey

Twelve cities reported recall elections in the past five years, with disappointing results for petitioners. Of the 28 individuals that were subject to recall, only twelve recall elections resulted in turning out the individual involved; whereas, the remaining 16 elections resulted in a failure to recall. One city reported that while the recall election may have failed, none of the candidates subject to the recall vote were elected in subsequent elections.

Summary of survey results

Clinton Rogers Woodruff wrote words in 1911 that are still being used by advocates of the three mechanisms. He said there had been too few IR&R elections up to that time to justify a sound conclusion, and then added, "it may, however, be fairly argued that their existence constitutes a substantial, and on the whole, an effective safeguard. Their value rests in their existence, rather than in their use."[36] This appears to be the case in Texas today, with only 14 percent of all home rule cities being forced into IR&R elections in the last five years.

Appendix B

Examples of November 2018 Ballot Propositions*

San Antonio:

- Proposition A – Failed: Shall the City Charter be amended to expand the types of ordinances that may be subject to referendum including appropriation of money, levying a tax, granting a franchise, fixing public utility rates, zoning and rezoning of property; increase the number of days within which a petition may be filed seeking a referendum on an ordinance passed by council from forty to one hundred eighty days after passage of the ordinance; and to provide that no more than twenty thousand signatures of registered voters are required for a referendum petition instead of ten percent of those electors qualified to vote at the last regular municipal election?
- Proposition B – Passed: Shall the City Charter be amended to limit the term the City Manager may serve to no longer than eight years, limit the compensation of the City Manager to no more than ten times the annual salary furnished to the lowest paid full-time city employee, and to require a supermajority vote to appoint the City Manager?
- Proposition C – Passed: Shall the City Charter be amended to provide the International Association of Fire Fighters Local 624 with unilateral authority to require the City to participate in binding arbitration of all issues in dispute with the Association within forty-five days of the City's receipt of the Association's written arbitration request?

Houston:

- Proposition A – Passed: Shall the Houston City Charter be amended to establish a Dedicated Pay-As-You-Go Fund, to be used for the enhancement, improvement, and ongoing renewal of Houston's drainage and streets, funded annually from the following sources: (i) developer impact fees; (ii) drainage charges, to property owners or users, to recover costs of providing drainage to benefitting real properties; (iii) a portion of the City's ad valorem tax levy; and (iv) third-party contracts, grants, or payments earmarked or dedicated to drainage or streets?
- Proposition B - Passed: Shall the City Charter of the City of Houston be amended by adding a separate section that reads as follows: The City of Houston shall compensate City firefighters in a manner and amount that is at least equal and comparable by rank and seniority with the compensation provided City police officers including…

Austin:

- Proposition J – Failed: Shall a City ordinance be adopted to require both a waiting period and subsequent voter approval period, a total of up to three years, before future comprehensive revisions of the City's land development code become effective?
- Proposition K – Failed: Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require

an efficiency study of the City's operational and fiscal performance performed by a third-party audit consultant, at an estimated cost of $1 million - $5 million?

Arlington:

- Proposition E – Passed: Addition of Section 9 of Article IV of the City Charter to provide that no person shall serve as Mayor for more than three elected terms and no person shall serve as a Council Member for more than three elected terms and under no circumstances may any person ever serve for more than twelve years in combination as a Council Member and Mayor and the term that each person as Mayor or as a Council Member is currently filling and all terms served prior to that current term shall be counted for purposes of determining whether three terms have been served and the renumbering of the existing Section 9 to Section 10.

*Of interesting, every bond proposition on any ballot was approved (54 bond propositions in 17 cities.)

Appendix C

By: Bettencourt, et al. (Kuempel) S.B. No. 488

Substitute the following for S.B. No. 488:

By: Laubenberg C.S.S.B. No. 488

A BILL TO BE ENTITLED

AN ACT

relating to requirements for certain petitions requesting an election and ballot propositions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 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 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. Following a final nonappealable judgment containing a finding by a court that a ballot proposition drafted by a city failed to substantially submit the question with such definiteness and certainty that the voters are not misled, the city shall 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.

Sec. 273.104. CITY REQUIRED TO PAY FOR LEGAL SERVICES. Notwithstanding a home-rule city charter provision to the contrary, a city may not accept legal services relating to a proceeding under this subchapter without paying fair market value for those services.

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

SECTION 5. Sections 277.001, 277.002, 277.0021, 277.0022, 277.0023, 277.0024, and 277.003, Election Code, are designated as Subchapter A, Chapter 277, Election Code, and a heading is added to Subchapter A to read as follows:

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

SECTION 6. Section 277.001, Election Code, is amended to read as follows:

Sec. 277.001. APPLICABILITY OF SUBCHAPTER [~~CHAPTER~~]. This subchapter [~~chapter~~] applies to a petition authorized or required to be filed under a law outside this code in connection with an election.

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 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. This subchapter applies to 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.

Sec. 277.032. CONFLICTS WITH CITY CHARTER OR OTHER LAW. The provisions of this subchapter apply notwithstanding any city charter provision or other law.

Sec. 277.033. DETERMINATION OF VALIDITY. The city secretary shall determine the validity of a petition submitted under this subchapter, including 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. A city requirement authorized under this subsection does not apply to a petition relating to a local option election under Chapter 501.

SECTION 10. Sections 9.004(a) and (c), Local Government Code, are amended to read as follows:

(a) The governing body of a municipality on its own motion may submit a proposed charter amendment to the municipality's qualified voters for their approval at an election. The governing body shall submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of registered [~~qualified~~] voters of the

municipality equal to at least five percent of the number of registered [~~qualified~~] voters of the municipality on the date of the most recent election held throughout the municipality or 20,000, whichever number is the smaller.

(c) Notice of the election shall be published in a newspaper of general circulation published in the municipality. The notice must:

(1) include a substantial copy of the proposed amendment in which language sought to be deleted by the amendment is bracketed and stricken through and language sought to be added by the amendment is underlined;

(2) include an estimate of the anticipated fiscal impact to the municipality if the proposed amendment is approved at the election; and

(3) be published on the same day in each of two successive weeks, with the first publication occurring before the 14th day before the date of the election.

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 12. Section 277.004, Election Code, is repealed.

SECTION 13. 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 14. The changes in law made by this Act apply only to a petition submitted on or after January 1, 2018.

SECTION 15. This Act takes effect September 1, 2017.