SUBJECT: Removing a member of the governing body of a general-law city

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Carter, Burnam, Clark, Ehrhardt, Hodge, Najera

0 nays

3 absent — Bailey, Edwards, Hill

WITNESSES: For — Scott Bradley, Eldridge Goins, and D.R. Redding, Town of Westlake; Bill Lewis, *The Keller Citizen*; Kelly Bradley; Susan Goins; Betty Redding; Annette Bush; Kay Shickles; Elizabeth Sheppard; Sharon Sanden

Against — None

BACKGROUND: Local Government Code, sec. 21.002 provides that when a written complaint charges an alderman of a general-law city with an act or omission that constitutes grounds for removal from office, the mayor and other aldermen constitute a court to try and determine the case against the charged alderman. When such a complaint is made against a mayor, a majority of the aldermen constitutes a court to try and determine the case against the mayor. The aldermen select an alderman to preside during the trial.

These types of proceedings are subject to rules governing a proceeding or trial in a justice court. An officer cannot, however, be removed under this section for an act committed before election to office. If two-thirds of the members of the court who are present at the trial find the defendant guilty of the charges in the complaint and find those charges sufficient grounds for removal from office, the presiding officer enters a judgment removing the charged officer and declaring the office vacant. An officer removed under this section is not eligible for reelection for two years after the date of removal.

General-law cities do not have a home-rule charter and generally have populations under 5,000.

DIGEST:

CSHB 3836 would repeal Local Government Code, sec. 21.002, governing the removal from office of a mayor or alderman in a general-law city, and would replace it with a new subchapter on the same subject.

A city officer still could not be removed for an act committed before election to office, and an officer removed under the provisions of CSHB 3836 would not be eligible for election to the same office for two years thereafter.

A district judge would have to require a petitioner to execute a bond with at least two sureties in an amount fixed by the judge. That bond would be used to pay damages and costs to the officer if the alleged grounds for removal proved untrue. The officer would have to notify the petitioner and bondsman within 90 days after the bond was executed stating the officer's intention to hold them liable for the bond. If the final judgment established the officer's right to the office, the petitioner would have to pay an amount determined by the judge to compensate the officer for damages suffered as a result of the removal action.

Removal provisions. A written petition to remove an officer would have to be filed in a district court of the county where the officer lived by any city resident not under any indictment in the county. The petition would have to be addressed to the district judge of the court and would have to cite clearly the time and place of the occurrence of each act alleged as grounds for removal with as much certainty as the nature of the case permitted.

An officer could be removed for incompetency, official misconduct, or intoxication, as long as the intoxication was not caused by drinking an alcoholic drink on the direction or prescription of a licensed physician.

The bill would define incompetency as gross ignorance or gross carelessness in the discharge of official duties or inability or unfitness to discharge official duties because of a serious mental or physical defect that did not exist at the time of the officer's election. It would define official misconduct as intentional unlawful behavior relating to official duties and intentional or corrupt failure, refusal, or neglect to perform a duty imposed by law.

After a petition for removal was filed, the person who filed it would have to apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer. If the judge refused

to issue the order for citation, the petition would be dismissed at the cost of the petitioner, who could not appeal the judge's decision or apply for a writ of mandamus.

If a judge did grant the order, the clerk would have to issue it with a certified copy of the petition, and the petitioner would have to post security for costs in the manner provided for other cases. The citation would have to order the officer to appear and answer it on a date fixed by the judge no earlier than five days after the citation was served. Disposition of this matter would take precedence over other civil matters on the court's docket. The district attorney would represent the state in a proceeding to remove an officer.

An officer would have the right to a trial by jury. In a removal case, the judge could not submit special issues to the jury but would have to instruct them to find from the evidence whether the grounds for removal were true. If the petition alleged more than one ground, the jury would have to indicate in the verdict which grounds they sustained.

Either party to a removal action could appeal the final judgment to a court of appeals. The officer would not have to post an appeal bond but could be required to post a bond for costs. An appeal of a removal action would have to take precedence over the ordinary business of the court of appeals and be decided quickly. If the judgment was not set aside or suspended, the court of appeals would have to issue its mandate within five days after the court rendered its judgment.

The conviction of an officer by a petit jury for a felony or for a misdemeanor involving misconduct would operate as an immediate removal from office. The court rendering judgment would have to include in the judgment an order removing the officer. If the officer who was removed appealed the judgment, the appeal would supersede the removal order unless the court rendered a judgment finding that the public interest required suspension.
This bill would take effect September 1, 1999, and would apply only to an officer who engaged in an act constituting grounds for removal on or after that date.

SUPPORTERS SAY:

CSHB 3836 would repeal an archaic section of the Local Government Code, enacted in 1875 by the 14th Legislature, that was brought into question by a decision of the Texas Supreme Court in April 1999. The case, *Scott Bradley*

vs. The State of Texas on the Relation of Dale White, No. 97-1135, concerned the removal of Bradley, the mayor of Westlake in Tarrant County, by the local board of aldermen. The aldermen used sec. 21.002 to remove the mayor, and the case reached the Supreme Court on September 28, 1998.

The Supreme Court held that the Westlake board of aldermen had violated Texas Rule of Civil Evidence 605 when board members who sat as judges in Bradley's removal also testified as witnesses against him.

In a concurring opinion, Justice Greg Abbott wrote that the statute governing the removal proceedings was unconstitutionally vague and thus denied Bradley due process and due course of law guaranteed by the both the U.S. and Texas constitutions. Abbott wrote:

> Sometimes a mayor's conduct necessitates removal proceedings. Nevertheless, such proceedings can reverse a majority of the local citizens' judgment as to who is best to lead them. Consequently, our state government owes a duty not only to the mayor but to his colleagues and constituents to ensure that such proceedings are neither arbitrary or unfair, and never unconstitutional. This vague and unwieldy statute fails to carry out the task. I urge the Legislature to mend it soon.

Justice Abbott said that the current removal statute "leaves it to the caprice of the aldermen — many of whom are untrained in the rules of procedure and evidence — to pick and choose which rules may apply to a removal proceeding, and to choose which rules may not apply because they are 'in conflict with' the structure of removal proceedings." A mayor subject to these removal proceedings, wrote Justice Abbott, would not know exactly which rules applied until the aldermen made their decision — a decision that might not be made until the proceedings were underway.

Justice Abbott wrote that when one is forced to apply the provision that the aldermen sit as a court and are subject to the rules governing a proceeding or trial in a justice court, "inherent ambiguities become inescapable," since a significant number of civil rules for a justice court either conflict directly with the statute's scheme for removal proceedings or provide no relevant guidance to a board of aldermen. Abbott wrote: "Whether other justice court rules apply has been and will continue to be a matter of guesswork for aldermen, mayors, and even reviewing courts, leaving a situation ripe for

'resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.'"

CSHB 3836 would eliminate these problems by replacing the troublesome section of the Local Government Code with statutes close to those that govern removal of county officers, which would not present constitutional problems. The current removal statutes for general-law cities allow city council members to sit as a court, put colleagues on trial, and act as judges, jury, and witnesses for as long as the "trial" continues. After a judgment is issued, however, they may disband so there is no possibility for appeal.

It would be better to remove an official through judicial proceedings than through a recall election, because an election in a sparsely populated area could be engineered by a small group of people with an agenda that in no way represented the interests of the majority of the area's registered voters.

OPPONENTS SAY:

Rather than allow an elected official to be removed from office by a judge or jury, it would be better to leave removal up to a recall election by the voters who elected that official and whom the official represents.

NOTES:

The original bill would have deleted Local Government Code, sec. 21.002 and provided that the voters of a general-law city could recall a member of the city's governing body in a recall election if a petition signed by 10 percent of the registered voters of the area were filed with the city clerk. It would have specified procedures for such a petition and election.