

SUBJECT: Revising procedures and regulations relating to municipalities

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 8 ayes — Carter, Bailey, Burnam, Callegari, Ehrhardt, Hill, E. Jones, Najera
0 nays
1 absent — Edwards

WITNESSES: For — *Registered, but did not testify:* Shanna Igo, Texas Municipal League
Against — None

BACKGROUND: **Security for government funds.** Government Code, chapter 2257 governs the type, level, substitution, possession, release, and method of valuation of the security necessary to secure the deposit of municipal funds. The chapter does not allow personal bonds to be used as security for government funds. Local Government Code, sec. 105.031(c) does permit the use of personal bonds to secure municipal funds, and secs. 105.032 and 105.052 describe the requirements for these personal bonds.

Abandoned or unclaimed property. Two codes contain provisions relating to abandoned or unclaimed property: Property Code, chapters 72, 74, 75, and 76, which contain general provisions, and Code of Criminal Procedure, art. 18.17, which governs the disposition of abandoned or unclaimed personal property seized by a peace officer.

Elections due to vacancies. Under Local Government Code, sec. 24.026(b), a municipality must hold a special election if vacancies exist in the offices of the mayor and a commissioner or of two commissioners at the same time. The election is governed by chapter 8, subchapter A, if the city incorporated as a Type C municipality, but is governed by subchapter B if the city changed to a Type C municipality.

Removal of a member of the governing body of a municipality. Local Government Code, chapter 21 contains provisions relating to the removal of

a member of the governing body of a municipality for incompetence, official misconduct, or intoxication. Sec. 21.024 limits the applicability of these provisions by prohibiting the removal of an officer for an act the officer committed before election or reelection to office. Sec. 21.031(a) provides that an officer convicted by a petit jury for a felony or a misdemeanor involving official misconduct is removed from office immediately.

Liability insurance purchased by a municipality. Local Government Code, sec. 142.006 requires a city to provide peace officers and firefighters motor-vehicle liability insurance in the amount required by Transportation Code, chapter 601, currently \$15,000 for damage to or destruction of property of others in any one accident. However, sec. 142.005(c) prohibits a municipality from purchasing liability insurance in excess of \$5,000 for injury to or destruction of property of others in any one incident.

Notice requirement for issuing certificates of obligation. Under Local Government Code, sec. 271.049, a municipality must publish notice of its intention to issue certificates of obligation. Subsection (d) specifies exceptions to this requirement in cases of public calamity, public health necessity, unforeseen damage to public property or equipment, a contract for personal or professional services, or work done by the employees of the issuer and paid for as the work progresses.

Annexation procedures. Under Local Government Code, sec. 43.906(a), a municipality must apply to the U.S. Department of Justice at least 90 days before the effective date of an annexation for preclearance of any voting change that would result from the annexation.

Workhouses and houses of correction. Local Government Code, sec. 341.902 authorizes a Type A municipality to build a workhouse or house of correction.

DIGEST: HB 1265 would amend various provisions of the Local Government, Government, and Criminal Procedure codes that pertain to municipalities.

Security for government funds. The bill would repeal Local Government Code, secs. 105.031(c), 105.032, and 105.052, thereby removing personal bonds as a permitted security for government funds.

Abandoned or unclaimed property. HB 1265 would add subsection (j) to Code of Criminal Procedure, art. 18.17 to exempt abandoned or unclaimed personal property seized by a peace officer from Property Code, chapters 72, 74, 75, and 76.

Elections due to vacancies. HB 1265 would amend Local Government Code, sec. 24.026(b) to specify that a special election held due to vacancies in the offices of both the mayor and a commissioner or of two commissioners at the same time would be governed by the provisions of Chapter 8, subchapter A, rather than specifying two different subchapters depending on the type of city.

Removal of a member of the governing body of a municipality. HB 1265 would amend Local Government Code, sec. 21.024 so that the prohibition against removing an officer for an act the officer committed before election to office would apply only when that act was a matter of public record or otherwise known to voters. The bill also would amend sec. 21.031(a) to require immediate removal of all officers convicted of felonies or misdemeanors involving official misconduct, rather than removing only those convicted by a petit jury, as in current law.

Liability insurance purchased by a municipality. HB 1265 would amend Local Government Code, sec. 142.005(c) to increase from \$5,000 to \$15,000 the amount of liability insurance a city may purchase for injury to or destruction of property of others in any one incident.

Notice requirement for issuing certificates of obligation. HB 1265 would amend Local Government Code, sec. 271.049 to remove work done by the employees of the issuer of a certificate of obligation paid for as the work progresses as an exception to the notice requirements for issuing certificates of obligation.

Annexation procedures. HB 1265 would amend Local Government Code, sec. 43.906(a) to require that a municipality apply to the U.S. Department of Justice for preclearance of any voting change that would result from an annexation on the earliest date permitted under federal law.

Workhouses and houses of correction. HB 1265 would amend Local Government Code, sec. 341.902 to replace all references to a workhouse or house of correction with the term “jail.”

HB 1265 also would:

- ! specify that a reference to a governing body of a municipality or a member of a governing body of a municipality applies to these entities and individuals regardless of the name given by the municipality to its governing body and the body’s members;
- ! specify that 75 percent of the members of a panel of a board of adjustment, not 75 percent of the entire board, must be present when hearing a case; and
- ! amend Local Government Code, sec. 141.031, which specifies base salaries of members of police and fire departments based on city size, so that only one subsection applies to a city with a population of 175,000.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 1265 would clarify, modernize, and remove many contradictions in the Local Government, Government, and Criminal Procedure codes. The changes proposed in the bill are primarily technical and “cleanup” corrections that would reduce confusion in these codes. The only policy changes proposed by the bill would resolve contradictions or harmonize the code with current practice; these are not substantial changes because they are the result of previous acts of the Legislature.

Security for government funds. The sections of the Local Government Code that permit and regulate the use of personal bonds as security for government funds clearly contradict Government Code, chapter 2257, which prohibits the use of personal bonds as security for government funds. Chapter 2257 states that the chapter prevails over any other law relating to security for a deposit of public funds to the extent of any conflict. HB 1265 would remove this conflict by repealing the conflicting sections of the Local Government Code. Moreover, personal bonds are a particularly risky form of security and do not match the intent of the statute to offer security for municipal funds. As banks no longer use personal bonds for security, this bill would not have a negative effect on the banking industry.

Abandoned or unclaimed property. HB 1265 would clarify that the two codes relating to abandoned or unclaimed personal property, which contain conflicting procedures, are separate and do not apply to the same property.

Elections due to vacancies. HB 1265 would remove confusion in the Local Government Code by designating a single subchapter to govern a special election called due to a vacancy in the offices of both the mayor and a commissioner or two commissioners at the same time. The two subchapters named in current law are nearly identical, so designating either one of them as the governing subchapter would make no substantial change.

Removal of a member of the governing body of a municipality. Local Government Code, sec. 21.024 is a form of the old “forgiveness doctrine,” which provided that an officer could not be removed from office for an act the officer committed before election, including reelection, to office if that act had been known at the time of the election. However, current law leaves out the requirement that voters had to be aware of the act at the time of the election. An official who has committed a crime, such as embezzling public funds, should not be able to avoid removal simply because the act was not discovered until after the election. This amendment would restore the original intent of the law and would ensure that officials who have committed a crime can be removed from office. This provision only would relate to those grounds for removal named throughout the chapter, all of which relate either to official duties, incompetency, or intoxication.

Local Government Code, sec. 21.031(a) now requires immediate removal from office only for an officer convicted by a petit jury for a felony or a misdemeanor involving official misconduct. It makes no clear provision for an officer who simply pleads guilty to the court or is found guilty at a bench trial. An official should not be able to avoid removal from office by pleading guilty or choosing a bench trial. HB 1265 would ensure that all officers convicted of felonies or misdemeanors involving official misconduct are removed from office.

Liability insurance purchased by a municipality. HB 1265 would remove the contradiction between a section of the Local Government Code that requires a city to provide peace officers and firefighters motor-vehicle liability insurance in the amount of \$15,000 to cover any one accident and a

section that prohibits a municipality from purchasing liability insurance in excess of \$5,000 to cover any one incident. This change would equalize the two statutes at the higher amount. Sec. 142.006 should take precedence because it was considered more recently and amended by the Legislature, indicating that the Legislature regards \$15,000 as the minimum acceptable amount of liability insurance.

Notice requirement for issuing certificates of obligation. HB 1265 would remove confusion in the Local Government Code by removing the one exception that is not an emergency situation or governed by a separate set of codes.

Annexation procedures. HB 1265 would conform Local Government Code, sec. 43.906(a) to U.S. Department of Justice policy concerning the federal Voting Rights Act. The department will not consider a request for preclearance of any voting change that would result from an annexation until the annexation ordinance has been enacted. The requirement in sec. 43.906(a) that a municipality apply to the department at least 90 days before the effective date of an annexation often requires a city to apply before that city has completed action on the annexation ordinance, when the department will not consider the request. By amending this statute to require the city to apply at the earliest date permitted under federal law, HB 1265 would remove this conflict with federal policy.

Workhouses and houses of correction. HB 1265 would modernize the Local Government Code by replacing archaic references to a workhouse or house of correction with the modern term, jail.

OPPONENTS
SAY:

HB 1265 would make several policy changes that could decrease a city's flexibility and should be carefully considered by the Legislature.

Security for government funds. HB 1265 could decrease a city's flexibility to deposit public funds by removing one of the forms of security a bank, credit union, or savings association may use to secure that deposit. Even though personal bonds are not used as security, there is no reason to remove this option.

Abandoned or unclaimed property. HB 1265 would exempt abandoned or unclaimed personal property seized by peace officers from the more stringent protections provided in the Property Code. Therefore, it could possibly place a person's property rights at greater risk.

Liability insurance purchased by the municipality. HB 1265 could increase a city's insurance premiums by requiring a city to buy more liability coverage if that city had obeyed the regulation imposed in Local Government Code, sec. 142.005(c) prohibiting a municipality from buying liability insurance in excess of \$5,000 to cover any one incident.

NOTES:

The committee substitute differs from the filed version by restoring part of Local Government Code, sec. 271.056, relating to exemptions from advertising requirements for competitive bids, that had been struck in the original.