

HB 119: Initiatives, Referenda, and Other Political Activities (Rep. Brad Daw)

Legislative Purpose of the Bill: HB 119 makes substantial changes to the Election Code regarding a ballot proposition, initiative, and referendum. The bill, in part, outlines the content, preparation, and publication of an information pamphlet for a proposed initiative or referendum. HB 119 also establishes requirements for holding a public hearing on a proposed or pending local initiative or referendum. The bill ties the petition signature thresholds to percentages of the number of active voters in the political subdivision, rather than to all votes cast for candidates of President of the United States at the last Presidential election. HB 119 outlines potential reasons a legislative body may determine that an initiative or referendum is not legally referable to voters. If the body determines it is not legally referable, the bill describes the appeal process for the sponsors. The bill establishes procedures and requirements specific to a referendum for a local land use law and defines “land use law.”

HB 119 also outlines when a municipality may expend public funds to gather information for and respond directly to individuals who make a direct inquiry regarding a ballot proposition, initiative, or referendum. The bill allows a public entity to conduct research, and to collect and compile information or arguments. An elected or appointed official may use research, information, and arguments to advocate for or against a ballot proposition, proposed initiative, or referendum on a website or another medium that is not owned or controlled by the public entity. HB 119 establishes a process for a public entity to make information available to the public under certain limitations.

The Lieutenant Governor will create instructional materials on initiatives and referenda and will publish the information on the Lieutenant Governor’s website.

Municipal Impact/what you need to do: The three biggest areas of municipal impact are on the thresholds, timing of the local direct democracy process, and communication.

Thresholds/VPAs

First, the data set for computing thresholds will be based on active voters instead of turnout in the most recent presidential election. The Lt. Governor’s office will create an annual list of active voters that every city and county can use for purposes of identifying the thresholds for initiatives and referendums. The state will also use active voters for purposes of state initiatives and referendums.

Second, the bill modifies the percentages necessary using active voters to qualify for the ballot to make them relatively consistent with the current thresholds using presidential voter turnout.

Third, by January 1, 2020 (again on January 1, 2022, and every 10 years after the census is completed), metro townships with a population of 65,000+ and a city of the first or second class must divide their metro township or city into eight contiguous and compact voter participation areas of substantially equal population. Metro townships with a population of 10,000+ and a city of the third or fourth class must divide the township or city into four voter participation areas (VPAs). Voter participation areas must follow precinct boundaries. Consequently, cities and counties must work together to finalize the maps. For a referendum or initiative to qualify for the ballot, petitioners must gather sufficient signatures according to the signature thresholds from 75% of the VPAs (6 out of 8 or 3 out of 4). If a city elects their council members by district, then the districts qualify as VPAs and the city need not create new VPAs. The 75% threshold still applies. For example, if a city elects 5 council members by district, then signature

gatherers must meet the threshold in 75% -- or 4 out of 5—of the districts. Townships under 10,000, cities of the fifth class (1,001-10,000), and towns (1-1,000) are exempt from VPAs.

Even though cities of the fifth class and towns may not create VPAs, the thresholds for the number of signatures necessary to qualify for the ballot slightly increased for both legislative acts generally and land use acts specifically in HB 119. The new thresholds in a city of the fifth class is 25% for all legislative acts independent of land use and 35% for a land use action. The new thresholds for a town is 35% for all legislative acts independent of land use and 40% for a land use action.

Please note that even though the bill goes into effect in May 2019, the deadline to create VPAs is not until January 1. That said, establishing VPAs prior to a potential referendum or initiative in your city may help keep the VPAs independent of the emotion surrounding the referendum or initiative.

Timing and process

The local direct democracy process officially begins when five sponsors file a petition within seven days of the legislative act. However, the filing of the petition starts a 20 day pause. During the 20 days, the city must determine whether the petition is constitutionally referable (i.e. is the act legislative or administrative?). Likewise, the city must prepare a Proposition Information Pamphlet, complete with arguments for and against the proposed initiative and referendum, the ballot title, the fiscal impact, and the legal analysis. When the 20 day pause ends and the city declares the act to be referable, then the 45-day signature gathering process begins. The clerk must provide a signature packet to the sponsors and the packet now must include a date of when the signature is affixed. Signature gatherers must submit signatures within 7 days of the date of signature.

Communication:

The act modified the Political Activities of Public Entities Act to clarify how city leaders can communicate with constituents about referendums and initiatives.

The general rule that a public entity may not use public expenditures to influence (advocate/campaign for or against) a ballot proposition still continues. However, the law now provides clarity and surety about the exceptions to the rule. Those exceptions include:

- Preparation and publishing of materials required by law (proposition information pamphlet, voter information pamphlet, fiscal impact, legal analysis);
- Response to an inquiry from the public;
- Research about the ballot proposition; and
- Sharing of that research on a website for which public funds do not pay.

A city may provide links on the city website and through other communication channels (i.e. utility bill, newsletter) to the pamphlets, fiscal impact, and legal analysis. The city may also provide links to the other website that the public funds do not pay for so long as the city also provides links to a website that referendum sponsors provide. In other words, the city can be the “one stop shop” for all information about the ballot proposition, for and against, so long as the city provides notice to referendum sponsors and equal access to the communication.

Likewise, the general rule about not using public email to advocate for or against the ballot proposition continues but with clarification about the exceptions. For example, an individual may use a public email to respond to a direct inquiry, in internal communication with legal counsel or another public entity, in



communication with referendum sponsors, or in communication with property owners affected by a proposed land use referendum. If someone is accused of using their public email in a manner that violates the law, the county clerk is no longer the adjudicator and the code is no longer silent on due process. Instead, the Lieutenant Governor serves as the adjudicator and must give the accused an opportunity to be heard and to defend himself/herself.

On a related note, if cities hold public meetings to discuss the proposed referendum or initiative, then the city must provide equal opportunity within reason for all sides to participate.

ULCT Action/Future Trend: ULCT initiated deliberation on this bill with the bill sponsor and many stakeholders beginning in November 2016. ULCT's Cameron Diehl and Roger Tew led the internal ULCT task force which consisted of mayors, council members, city managers, city attorneys, city recorders, county clerks, and staff from the Lieutenant Governor's office. The ULCT Board of Directors made this issue a top priority and sought to improve the ability of city leaders to explain why they voted the way that they voted. After all, a referendum is a response to the official vote by local elected officials. Meanwhile, Rep. Daw sought to clarify that public funds could not be used to campaign for or against referendums. All sides agreed that the process needed to be modernized. We ultimately found consensus in HB 119. With several high-profile referendums about local land use decisions, we expect to see HB 119 in action frequently. Team ULCT welcomes input about how the law is functioning.

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