

## BILL ANALYSIS

Senate Research Center  
87R27307 MLH-D

C.S.S.B. 1430  
By: Bettencourt  
State Affairs  
5/17/2021  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Greater uniformity is advisable when certain initiatives are put before the voters in order to ensure fairness for all involved. Home-rule municipalities in Texas have fairly broad discretion to place initiatives before voters for consideration; however, there is little uniformity in the processes used due to local elections being governed by each municipality's charter. The Supreme Court of Texas has recently been tasked, as the result of citizen-led mandamus and recall petitions, with reviewing the actions of local governments and the ballot language used when initiatives were put forth. The court ultimately found that voters were being misled by the ballot language and required that referendums be resubmitted to voters, resulting in additional costs to taxpayers.

S.B. 1430 seeks to address these issues by providing for requirements for certain petitions requesting an election and ballot propositions. In order to guarantee citizens uniform and fair elections, S.B. 1430 outlines the process that must be followed by home-rule municipalities to propose charter amendments and citizen-driven petition referendums, and establishes safeguards to ensure that ballot language accurately describes the proposition being placed before voters. Specifically, the bill standardizes forms and removes overly broad restrictions when submitting petitions, removes ambiguous statutory language and establishes a uniform process for citizen-driven referendums, and allows an objective review of ballot language before being put to voters.

S.B. 1430 requires:

- Clear language of a ballot being placed before voters must meet the standard of definiteness and certainty, as directed in the Supreme Court of Texas in *Reynolds Land & Cattle Co. v. McCabe*, 12 S.W. 165 (Tex. 1888) and *Dacus v. Parker*, 466 S.W.3d 820, 825-26 (Tex. 2015), with added protection against bias with an additional requirement of facial neutrality;
- Publishing the language of charter amendments prior to being placed on a ballot, and creating statutory petition requirements that are easily understood by voters;
- Removing restrictions on who can collect signatures and prohibit exclusion of petitions based on illegibility, and creating a standard form for use by residents for referendum or recall petitions;
- Providing a cost-effective option for citizens to question proposed charter amendment language via the secretary of state so they do not have to pursue costly litigation over ballot language;
- Creating a "rocket docket" in state district court for expedited review upon filing of a mandamus petition, and allowing a court to rewrite ballot language if the court deems the language inaccurate;
- Prohibiting free legal services by entities with lucrative city contracts, and ensuring that residents who prevail in mandamus actions have access to legal fees from the municipality;

- Removing home-rule municipalities' authority to write their own ballot language for a period of four years if they have been found in the past to continuously act in bad faith; and
- Amending current statutes to allow religious institutions to circulate petitions for recall or charter changes.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1430 amends current law relating to requirements for certain petitions requesting an election and ballot propositions and to related procedures and provisions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 52.072, Election Code, by adding Subsection (g), to require that a proposition that is to appear on the ballot substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled.

SECTION 2. Amends Chapter 233, Election Code, by adding Section 233.0115, as follows:

Sec. 233.0115. **BALLOT LANGUAGE MANDAMUS ACTION.** Authorizes a person, if a court orders a new election under Section 233.011 (New Election Ordered if Contested Election Void), to 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, certainty, and facial neutrality that the voters are not misled, as provided by Section 273.102.

SECTION 3. Amends Section 253.094(b), Election Code, to provide that this subsection (relating to prohibiting a corporation or labor organization from making a political contribution in connection with a recall election, including the circulation and submission of a petition to call an election) does not prohibit a religious organization from circulating or submitting a petition in connection with a recall election.

SECTION 4. Amends Chapter 273, Election Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. BALLOT PROPOSITION LANGUAGE ENFORCEMENT PROVISIONS**

Sec. 273.101. **REVIEW BY SECRETARY OF STATE.** (a) Authorizes a registered voter eligible to vote in the election, 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, to submit the proposition for review by the secretary of state (SOS).

(b) Requires SOS to review the proposition not later than the seventh day after the date SOS receives the submission to determine whether the proposition is misleading, inaccurate, or prejudicial.

(c) Requires the city, if SOS determines that the proposition is misleading, inaccurate, or prejudicial, to 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 (Method of Giving Notice).

(d) Authorizes a proposition drafted by a city under Subsection (c) to cure the defects to be submitted to SOS under Subsection (a). Requires SOS, if SOS

determines that the city has on its third attempt drafted a proposition that is misleading, inaccurate, or prejudicial, to draft the ballot proposition.

Sec. 273.102. MANDAMUS ACTIONS. (a) Provides that, 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, certainty, and facial neutrality that the voters are not misled, the court is required to make its determination without delay and is authorized to order the city to use ballot proposition language drafted by the court.

(b) Authorizes the court to 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) Provides that 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. Requires the city, 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, certainty, and facial neutrality that the voters are not misled, to submit to SOS 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. Prohibits a city, notwithstanding a home-rule city charter provision to the contrary, from accepting legal services relating to a proceeding under this subchapter without paying fair market value for those services.

SECTION 5. Amends Chapter 277, Election Code, by designating Sections 277.001, 277.002, 277.0021, 277.0022, 277.0023, 277.0024, and 277.003 as Subchapter A and adding a subchapter heading, to read as follows:

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

SECTION 6. Amends Section 277.001, Election Code, as follows:

Sec. 277.001. New heading: APPLICABILITY OF SUBCHAPTER. Provides that this subchapter, rather than Chapter 277 (Petition Prescribed by Law Outside Code), applies to a petition authorized or required to be filed under a law outside this code in connection with an election.

SECTION 7. Amends Section 277.002, Election Code, by adding Subsection (f), to provide that 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 Section 277.002 (Validity of Petition Signatures) and other applicable law legibly provides enough information to demonstrate that the signer is eligible to have signed the petition, and signed the petition on or after the 180th day before the date the petition was filed.

SECTION 8. Amends Subchapter A, Chapter 277, Election Code, as added by this Act, by adding Section 277.005, as follows:

Sec. 277.005. PETITION FORM; USE BY CITY AND OTHER PERSONS. (a) Requires SOS to prescribe a form, content, and procedure for a petition.

(b) Prohibits a home-rule city that uses a form that is different from the official form prescribed under Subsection (a) from invalidating a petition because the petition does not contain information that the petition form failed to provide for or to require to be provided.

(c) Provides that a person who circulates or submits a petition is not required to use a petition form prescribed by SOS or a home-rule city. Requires that a petition that does not use an officially prescribed form contain the substantial elements required to be provided on the officially prescribed form.

SECTION 9. Amends Chapter 277, Election Code, by adding Subchapter B, as follows:

**SUBCHAPTER B. SUBMISSION OF CERTAIN CITY PETITIONS**

Sec. 277.031. **APPLICABILITY OF SUBCHAPTER.** Provides that 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.** Provides that the provisions of this subchapter apply notwithstanding any city charter provision or other law.

Sec. 277.033. **DETERMINATION OF VALIDITY.** Requires the city secretary to 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.** Prohibits a city from restricting who is authorized to collect petition signatures.

SECTION 10. Amends Sections 9.004(a) and (c), Local Government Code, as follows:

(a) Requires the governing body to 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 voters, rather than qualified voters, of the municipality equal to at least five percent of the number of registered voters, rather than 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) Requires that the notice of the election 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.

SECTION 11. Repealer: Section 277.004 (Effect of City Charter or Ordinance), Election Code.

SECTION 12. Requires SOS, not later than January 1, 2022, to adopt a petition form as required by Section 277.005, Election Code, as added by this Act.

SECTION 13. Provides that the changes in law made by this Act apply only to a petition submitted on or after January 1, 2022.

SECTION 14. Effective date: September 1, 2021.