

BILL ANALYSIS

S.B. 221
By: Bettencourt
Elections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Home-rule municipalities in Texas have fairly broad discretion under current law to place initiatives before voters for consideration; however, because local elections are governed by each municipality's charter, there is little uniformity in how those elections are carried out. The Supreme Court of Texas was tasked, as the result of citizen-led mandamus and recall petitions, with reviewing the actions of local governments and the ballot language used by initiatives that were put forth for voter approval. The court ultimately found that ballot language to be misleading to voters and required it to be resubmitted to voters, resulting in additional costs to taxpayers. S.B. 221 seeks to address this issue by establishing requirements for ballot proposition language and certain petitions requesting an election. The bill further provides, with respect to the prohibition in current law on a corporation or labor organization making a political contribution in connection with a recall election, including the circulation and submission of a petition to call an election, that this prohibition does not prohibit a religious organization from circulating or submitting a petition in connection with a recall election.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 221 amends the Election Code to revise requirements relating to ballot propositions and petitions. The bill requires a ballot proposition to substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled.

S.B. 221 provides for the secretary of state to review a ballot proposition to determine whether the proposition is misleading, inaccurate, or prejudicial as follows:

- authorizes a registered eligible voter to submit for such review a ballot proposition proposing an amendment to the city charter of a home-rule city or a voter-initiated initiative or referendum as requested by petition;
- establishes the deadline for submission as not later than the seventh day after the date on which the home-rule city publishes the ballot proposition language in the election order or by other means;
- requires the secretary of state to review the proposition not later than the seventh day after the date the secretary receives the submission to determine whether the proposition is misleading, inaccurate, or prejudicial; and
- if the secretary determines that the proposition is misleading, inaccurate, or prejudicial:

- requires the city to draft a proposition to cure the defects and give notice of the new proposition using the method for giving notice of an election;
- authorizes the city to submit that draft to the secretary of state for review; and
- requires the secretary to draft the ballot proposition if the secretary determines that the city has on its third attempt drafted a proposition that is misleading, inaccurate, or prejudicial.

The bill requires the ballot proposition to be reviewed by the secretary of state within seven days after receiving the proposition for review. Following a final nonappealable judgment containing a finding by a court that a ballot proposition drafted by a city failed to comply with the language requirement, the bill requires the city to 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.

S.B. 221 authorizes a person to seek a writ of mandamus from a court to compel the governing body of a city to comply with the ballot proposition language requirement if the court orders the authority that ordered a contested election to order a new election requested by petition. With respect to such a mandamus action, the bill does the following:

- requires the court to make its determination without delay;
- authorizes the court to order the city to use ballot proposition language drafted by the court;
- authorizes the court to award the plaintiff or relator who substantially prevails in the mandamus action the party's reasonable attorney's fees, expenses, and court costs; and
- establishes that governmental immunity to suit is waived and abolished only to the extent of the liability to the prevailing party created by such an award by the court.

The bill prohibits a city from accepting legal services relating to a ballot proposition proceeding without paying fair market value for those services, notwithstanding a home-rule city charter provision to the contrary.

S.B. 221 establishes 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 requisite information provided with the signature legibly provides enough information to demonstrate that the signer is eligible to have signed the petition and did so on or after the 180th day before the date the petition was filed.

S.B. 221 requires the secretary of state to prescribe a form, content, and procedure for a petition and to adopt the petition form not later than January 1, 2024. A person who circulates or submits a petition is expressly not required to use a petition form prescribed by the secretary of state or a home-rule city, but the bill requires a petition that does not use an officially prescribed form to contain the substantial elements required to be provided on the officially prescribed form. The bill prohibits a home-rule city that uses a form different than that prescribed by the secretary of state 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.

S.B. 221 repeals a provision establishing that any additional requirements for the validity or verification of petition signatures on a petition authorized or required to be filed under a law outside the Election Code in connection with an election that are prescribed by a home-rule city charter provision or a city ordinance are effective only if the charter provision or ordinance was in effect September 1, 1985. The bill establishes the following with respect 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:

- the city secretary is required to determine the validity of such a submitted petition, including by verifying the petition signatures, not later than the 30th day after the date the city receives the petition;
- the city is prohibited from restricting who may collect petition signatures; and

- the requirement and prohibition apply notwithstanding any city charter provision or other law and must not interfere with the Military and Overseas Voter Empowerment Act.

S.B. 221, with respect to the prohibition in current law on a corporation or labor organization making a political contribution in connection with a recall election, including the circulation and submission of a petition to call an election, expressly provides that this prohibition does not prohibit a religious organization from circulating or submitting a petition in connection with a recall election.

S.B. 221 amends the Local Government Code to revise requirements for the governing body of a home-rule municipality to submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition. The bill, as follows:

- changes the voters by which the petition must be signed from a number of qualified voters of the municipality equal to at least five percent of the number of qualified voters of the municipality or 20,000, whichever number is the smaller, to that amount of registered voters;
- specifies that the number of registered voters of the municipality for the purpose of determining that percentage is the number of registered voters on the date of the most recent election held throughout the municipality; and
- specifies that the substantial copy of the proposed amendment that must be included in published notice of the election is one 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.

S.B. 221 applies only to a petition submitted on or after January 1, 2024.

S.B. 221 repeals Section 277.004, Election Code.

EFFECTIVE DATE

September 1, 2023.