

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 221
By: Bettencourt
State Affairs
3/21/2023
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 was 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. 221 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. 221 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.

Committee Substitute:

The committee substitute for S.B. 221 is a Legislative Council draft of the non-council draft we filed. The only change made between the filed version and the committee substitute is an updated caption.

C.S.S.B. 221 amends current law relating to requirements for certain petitions requesting an election and ballot propositions.

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 ballot proposition 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 to seek from a court a writ of mandamus to compel the governing body of a city to comply with the requirement that a ballot proposition is required to substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled, as provided by Section 273.102 if the court orders a new election under Section 233.011 (New Election Ordered if Contested Election Void).

SECTION 3. Amends Section 253.094(b), Election Code, to provide that this subsection 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 to submit the ballot proposition for review by the secretary of state (SOS) 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.

(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 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) if SOS determines that the proposition is misleading, inaccurate, or prejudicial.

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

Sec. 273.102. MANDAMUS ACTIONS. (a) Requires the court to make its determination without delay and authorizes the court to order the city to use ballot proposition language drafted by the court 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 is required to substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled.

(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 to submit to SOS for approval any ballot proposition to be voted on at an election held by the city before the fourth anniversary of the court's finding following a final nonappealable judgment containing a finding by a court that a proposition drafted by a city failed to substantially submit the question with such definiteness, certainty, and facial neutrality that the voters are not misled.

Sec. 273.104. CITY REQUIRED TO PAY FOR LEGAL SERVICES. Prohibits a city from accepting legal services relating to a proceeding under this subchapter without paying fair market value for those services, notwithstanding a home-rule city charter provision to the contrary.

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 (g), as follows:

(g) Provides 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:

(1) is eligible to have signed the petition; and

(2) 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, 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 of a municipality 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, rather than qualified, voters of the municipality equal to at least five percent of the number of registered, 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 election:

(1) 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; and

(2)-(3) makes no changes to these subdivision.

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

SECTION 12. Requires SOS to adopt a petition form as required by Section 277.005, Election Code, as added by this Act, not later than January 1, 2024.

SECTION 13. Makes application of this Act prospective to January 1, 2024.

SECTION 14. Effective date: September 1, 2023.