

BILL ANALYSIS

S.B. 1870
By: Perry
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2024, the attorney general launched lawsuits against multiple cities for adopting non-prosecution policies that violate Texas laws concerning marijuana possession and distribution. The bill author has informed the committee that several local governments have adopted policies and ordinances in the last few years that are designed to decriminalize controlled substances or instruct law enforcement or prosecutors not to enforce state drug laws, and that although the lawsuits are still pending, this is a growing trend across Texas. S.B. 1870 seeks to address this issue by prohibiting certain local entities from adopting or enforcing an ordinance, order, rule, policy, or other measure under which the entity will not fully enforce state drug laws and consumable hemp product laws or placing an item on a ballot that would provide that the entity will not fully enforce such a law. The bill authorizes members of the public to submit complaints to the attorney general regarding local entities that fail to comply with those prohibitions and establishes civil penalties for noncompliance.

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. 1870 amends the Local Government Code to revise the provision prohibiting the governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney from adopting a policy under which the entity will not fully enforce laws relating to drugs, including the Texas Controlled Substances Act and the Texas Dangerous Drug Act, and federal law. Specifically, the bill does the following:

- includes constables among the entities subject to the prohibition;
- changes the conduct that is prohibited to the adoption or enforcement of an ordinance, order, rule, policy, or other measure under which the entity will not fully enforce state laws relating to drugs or consumable hemp products; and
- accordingly includes Health and Safety Code provisions relating to the manufacture, distribution, and sale of consumable hemp products among the specified state laws.

The bill introduces the term "local entity" to describe the entities subject to that prohibition. The bill also prohibits such a local entity from placing an item on a ballot, including a municipal charter or charter amendment, that would provide that the local entity will not fully enforce a state law relating to drugs or consumable hemp products.

S.B. 1870 authorizes a citizen residing in Texas to file a complaint with the attorney general in the form and manner prescribed by the attorney general if the citizen asserts facts that support an allegation that a local entity has violated the previously described prohibitions relating to local entity enforcement of drug and consumable hemp product laws. The bill requires the citizen to submit with the complaint a sworn statement that to the best of the citizen's knowledge all of the facts asserted in the complaint are true and correct. The bill requires the attorney general to do the following:

- develop a form that a citizen residing in Texas may use to submit such a complaint; and
- publish the complaint form on the attorney general's website.

If, in response to a valid citizen complaint or in the attorney general's own discretion, the attorney general determines that a violation of the prohibitions has occurred, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County, in a county that is represented or served wholly or partly by the local entity alleged to have committed a violation, or in a county that is adjacent to such a county to compel the local entity to comply with the prohibitions. The bill prohibits an action that is brought by the attorney general under these provisions in an authorized venue from being transferred to a different venue without the written consent of the attorney general. The bill establishes that an appeal of an action brought under these provisions is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal and requires the appellate court to render its final order or judgment with the least possible delay.

S.B. 1870 makes a local entity that is found by a court to have knowingly violated the prohibition against the adoption or enforcement of certain measures liable to the state for a civil penalty in an amount not less than \$25,000 for the first violation and \$50,000 for each subsequent violation. The bill also creates a civil penalty in the same amount for a local entity that is found by a court to have knowingly violated the prohibition against placing certain items on a ballot. The bill establishes the following:

- each day of a continuing violation is a separate violation;
- a violation is considered to continue until the local entity proves by clear and convincing evidence that the violation has been remedied;
- a local entity may incur a penalty for a violation of the prohibition against the adoption or enforcement of certain measures and a penalty for a violation of the prohibition against placing certain items on a ballot; and
- a local entity's governmental immunity to suit and from liability is waived to the extent of liability created by these provisions, and a local entity may not assert official immunity as a defense to an action brought under the bill.

The bill authorizes the attorney general to seek such a civil penalty regardless of whether a citizen submitted a complaint under the bill's provisions.

S.B. 1870 applies only to a cause of action that accrues on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.