

BILL ANALYSIS

Senate Research Center

H.B. 3836
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Intergovernmental Relations
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Engrossed

DIGEST

On April 8, 1999, in the case of Scott Bradley v. The State of Texas on the Relation of Dale White, the Supreme Court of Texas ruled in favor of Bradley, a mayor who was unlawfully removed from office through Section 21.002(f), Local Government Code. Some officials in small towns have used this statute to put colleagues on trial, using vague procedures and allowing themselves to act as judges, jury, and witnesses. H.B. 3836 clarifies the removal proceedings for members of the governing body of a general-law municipality.

PURPOSE

As proposed, H.B. 3836 clarifies the removal proceedings for members of the governing body of a general-law municipality.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 21, Local Government Code, by designating Section 21.001 as Subchapter A and adding a heading, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 21, Local Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. REMOVAL OF MEMBER OF GOVERNING BODY OF GENERAL-LAW MUNICIPALITY

Sec. 21.021. **APPLICABILITY.** Provides that this subchapter applies only to a general-law municipality.

Sec. 21.022. **DEFINITIONS.** Defines "district attorney," "incompetency," "officer," and "official misconduct."

Sec. 21.023. **REMOVAL FROM OFFICE.** Authorizes the district judge to remove an officer of the municipality from office.

Sec. 21.024. **NO REMOVAL BEFORE ACTION.** Prohibits an officer from being removed for an act the officer committed before election to office.

Sec. 21.025. **GENERAL GROUNDS FOR REMOVAL.** Authorizes an officer to be removed from office for incompetency, official misconduct, or intoxication on or off duty caused by drinking an alcoholic beverage. Provides that intoxication is not a ground for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.

Sec. 21.026. **PETITION FOR REMOVAL.** Provides that a proceeding for the removal of an officer is begun by filing a written petition for removal in a district court in the county in which the officer resides. Authorizes any resident of the municipality who has lived for at least six months

in the municipality and who is not currently under indictment in the county in which the municipality is located to file the petition. Requires at least one of the parties who files the petition to swear to it at or before the filing. Requires the petition to be addressed to the district judge of the court in which it is filed, to specify the grounds alleged for the removal of the officer in plain and intelligible language, and to cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

Sec. 21.027. CITATION OF OFFICER. Requires the person filing the petition to apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer. Prohibits action, if the application for the order is made during the term of the court, from being taken on the petition until the order is granted and entered in the minutes of the court. Requires the judge, if the application is made during the vacation of the court, to indicate on the petition the action taken and to have the action entered in the minutes of the court at the next term. Requires the petition, if the judge refuses to issue the order for citation, to be dismissed at the cost of the person filing the petition. Prohibits the person from taking an appeal from the judge's decision or applying for a writ of mandamus. Requires the clerk, if the judge grants the order for citation, to issue the citation with a certified copy of the petition. Requires the judge to require the person filing the petition to post security for costs in the manner provided for other cases. Requires the citation to order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served. Provides that the time is computed as is in other suits. Requires disposition of this action by the district court to take precedence over other civil matters on the court's docket.

Sec. 21.028. BOND. Requires the judge to require the person filing the petition to execute a bond, with at least two good and sufficient sureties, in an amount fixed by the judge and conditioned as required by the judge. Requires the bond to be used to pay damages and costs to the officer if the grounds for removal are found at trial to be insufficient or untrue. Requires the officer to serve written notice on the person who filed the petition and that person's bondsman within 90 days of the execution of the bond stating that the officer intends to hold them liable on the bond and stating the grounds for that liability. Requires the person filing the petition, if the final judgment establishes the officer's right to the office, to pay the officer an amount determined by the judge as appropriate to compensate the officer for the damages suffered as a result of the removal action.

Sec. 21.029. TRIAL. Requires an officer to have the right to trial by jury. Requires the trial for the removal of an officer and the proceedings connected with the trial to be conducted as much as possible in accordance with the rules and practice of the court in other civil cases, in the name of the State of Texas, and on the relation of the person filing the petition. Prohibits the judge, in a removal case, from submitting special issues to the jury. Requires the judge, under a proper charge applicable to the facts of the case, to instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. Requires the jury, if the petition alleges more than one ground for removal, to indicate in the verdict which grounds are sustained by the evidence and which are not sustained. Requires the district attorney to represent the state in a proceeding for the removal of an officer.

Sec. 21.030. APPEAL. Authorizes either party to a removal action to appeal the final judgment to the court of appeals in the manner provide for other civil cases. Provides that the officer is not required to post an appeal bond but may be required to post a bond for costs. Provides that an appeal of a removal action takes precedence over the ordinary business of the court of appeals, and requires the appeal to be decided with all convenient dispatch. Requires the court of appeals, if the trial court judgment is not set aside or suspended, to issue its mandate in the case not later than the fifth day after the date the court renders its judgment.

Sec. 21.031. REMOVAL BY CRIMINAL CONVICTION. Provides that the conviction of an officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office. Requires the court rendering judgment in the case to include in the judgment an order removing the officer. Provides that if the removed officer appeals the judgment, the appeal supersedes the order of removal unless the court that renders the judgment finds that it is in the public interest to suspend the removed officer pending the appeal. Requires the court, if the court finds that the public interest requires suspension, to suspend the removed officer.

Sec. 21.032. REELECTION PROHIBITED FOR CERTAIN PERIOD. Provides that an officer removed is not eligible for reelection to the same office before the second anniversary of the date of the removal.

SECTION 3. Repealer: Section 21.002 (Removal of Mayor or Alderman in General-Law Municipality), Local Government Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 1999.

SECTION 6. Emergency clause.