

1-1 By: Bettencourt S.B. No. 47  
 1-2 (In the Senate - Filed October 1, 2021; October 1, 2021,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 October 4, 2021, reported favorably by the following vote: Yeas 7,  
 1-5 Nays 2; October 4, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14		X		
1-15	X			
1-16		X		

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to processes to address election irregularities;  
 1-20 providing a civil penalty.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Title 16, Election Code, is amended by adding  
 1-23 Chapters 280 and 281 to read as follows:

1-24 CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

1-25 Sec. 280.001. REQUEST FOR EXPLANATION. (a) A person  
 1-26 described by Subsection (f) may issue a written request to the  
 1-27 county clerk or other authority conducting an election for an  
 1-28 explanation and supporting documentation for:

1-29 (1) an action taken by an election officer that  
 1-30 appears to violate this code;

1-31 (2) irregularities in results in a precinct or at a  
 1-32 polling place or early voting polling place; or

1-33 (3) inadequacy or irregularity of documentation  
 1-34 required to be maintained under this code.

1-35 (b) Not later than the 20th day after the date a request is  
 1-36 received under Subsection (a), the county clerk or other authority  
 1-37 shall provide the requested explanation and any supporting  
 1-38 documentation.

1-39 (c) A requestor who is not satisfied with the explanation  
 1-40 and supporting documentation provided under Subsection (b) may  
 1-41 issue a request for further explanation and supporting  
 1-42 documentation to the county clerk or other authority.

1-43 (d) Not later than the 10th day after the date a request is  
 1-44 received under Subsection (c), the county clerk or other authority  
 1-45 shall provide the requested explanation and any supporting  
 1-46 documentation.

1-47 (e) A requestor who is not satisfied with the explanation  
 1-48 and supporting documentation provided under Subsection (d) may  
 1-49 issue a request to the secretary of state for an audit of the issue  
 1-50 described by Subsection (a), as provided by Section 280.002.

1-51 (f) A person may make a request under this section if the  
 1-52 person participated in the relevant election as:

1-53 (1) a candidate;

1-54 (2) a county chair or state chair of a political party;

1-55 (3) a presiding judge;

1-56 (4) an alternate presiding judge; or

1-57 (5) the head of a specific-purpose political committee  
 1-58 that supports or opposes a ballot measure.

1-59 Sec. 280.002. AUDIT BY SECRETARY OF STATE. (a) A person to  
 1-60 whom Section 280.001(e) applies may submit a request for an audit to  
 1-61 the secretary of state for investigation. A request for an audit

2-1 must include copies of:

2-2 (1) the requests made by the person to the county clerk  
 2-3 or other authority conducting the election under Sections  
 2-4 280.001(a) and (c); and

2-5 (2) the explanations and any supporting documentation  
 2-6 provided by the county clerk or other authority to the person under  
 2-7 Sections 280.001(b) and (d).

2-8 (b) Not later than the 30th day after the date the secretary  
 2-9 of state receives a request for an audit under this section, the  
 2-10 secretary must determine whether the information submitted under  
 2-11 Subsection (a) sufficiently explains the irregularity identified  
 2-12 under Section 280.001(a). If the information is insufficient, the  
 2-13 secretary shall immediately begin an audit of the identified  
 2-14 irregularity at the expense of the county or other authority  
 2-15 conducting the election.

2-16 (c) The county clerk or other authority conducting the  
 2-17 election shall cooperate with the office of the secretary of state  
 2-18 and may not interfere with or obstruct the audit.

2-19 (d) On conclusion of the audit, the secretary of state shall  
 2-20 provide notice of the findings of the audit to the person who  
 2-21 submitted the request for the audit and the county clerk or other  
 2-22 authority conducting the election.

2-23 (e) The secretary of state may, in the secretary's  
 2-24 discretion, make a determination that a violation of this code has  
 2-25 occurred solely on the basis of evidence submitted under Subsection  
 2-26 (a) without conducting an audit. The secretary shall send notice of  
 2-27 the determination to the person who submitted the request for the  
 2-28 audit and to the county clerk or other authority conducting the  
 2-29 election.

2-30 Sec. 280.003. FINDING OF VIOLATION. (a) In addition to the  
 2-31 notice required under Section 280.002(d), the secretary of state  
 2-32 shall provide special notice to the county clerk or other authority  
 2-33 conducting an election detailing any violation of this code found  
 2-34 by the secretary under Section 280.002.

2-35 (b) If the county clerk or other authority conducting an  
 2-36 election does not remedy a violation detailed in a notice under  
 2-37 Subsection (a) by the 30th day after the date the clerk or other  
 2-38 authority receives the notice, the secretary of state shall assess  
 2-39 a civil penalty of \$500 for each violation not remedied and, if  
 2-40 possible, remedy the violation on behalf of the county clerk or  
 2-41 other authority. The remedy provided under this subsection is in  
 2-42 addition to any other remedy available under law for a violation of  
 2-43 this code.

2-44 (c) If the secretary of state is not able to remedy the  
 2-45 violation on behalf of the county clerk or other authority, the  
 2-46 secretary of state shall assess an additional penalty under  
 2-47 Subsection (b) for each day the county clerk or other authority does  
 2-48 not remedy the violation until the violation is remedied.

2-49 (d) The secretary of state shall maintain a record of county  
 2-50 clerks or other authorities that conduct elections who have been  
 2-51 assessed a civil penalty under Subsection (b). The secretary of  
 2-52 state shall publish the record on the secretary of state's Internet  
 2-53 website.

2-54 (e) The attorney general may bring an action under this  
 2-55 section to recover a civil penalty that has not been paid.

2-56 (f) A civil penalty collected under this section shall be  
 2-57 deposited in the state treasury to the credit of the general revenue  
 2-58 fund.

#### 2-59 CHAPTER 281. AUDIT OF 2020 GENERAL ELECTION RESULTS

2-60 Sec. 281.001. AUDIT OF RESULTS OF 2020 GENERAL ELECTION FOR  
 2-61 STATE AND COUNTY OFFICERS. (a) In this section, "committee" means  
 2-62 an election review advisory committee.

2-63 (b) A state or county chair of a political party that made  
 2-64 nominations by primary election for the last general election for  
 2-65 state and county officers may request an audit of the results of the  
 2-66 2020 general election for state and county officers by submitting a  
 2-67 written request to a county clerk. A county chair may only request  
 2-68 an audit from the county clerk of the county served by the county  
 2-69 chair.

3-1           (c) A county clerk who receives a request under this section  
3-2 shall appoint an election review advisory committee to conduct an  
3-3 audit under this chapter. The county clerk shall supervise the  
3-4 committee.

3-5           (d) The county clerk shall appoint members of the committee  
3-6 from lists of names of persons eligible for appointment submitted  
3-7 to the county clerk by the party chair of each political party that  
3-8 made nominations by primary election for the last general election  
3-9 for state and county officers. The county clerk shall determine the  
3-10 number of members necessary to conduct the audit and appoint an  
3-11 equal number of members from each list.

3-12           (e) The committee members must be qualified voters of the  
3-13 county.

3-14           (f) An audit under this section shall include:

3-15                 (1) all ballots voted by any method in a precinct or  
3-16 polling place in which the number of ballots cast exceeded the total  
3-17 number of voters accepted for voting in the precinct or at the  
3-18 polling place; and

3-19                 (2) in addition to any ballots required to be included  
3-20 under Subdivision (1):

3-21                     (A) a random selection of ballots voted by mail,  
3-22 totaling 20 percent of all ballots voted by mail in the election and  
3-23 including both the original ballot and any duplicate made of the  
3-24 ballot, and an equivalent number of carrier envelopes and the  
3-25 associated application for a ballot to be voted by mail;

3-26                     (B) a random selection of ballots voted by mail  
3-27 that were rejected, totaling 20 percent of all ballots voted by mail  
3-28 in the election that were rejected;

3-29                     (C) ballots voted on election day from randomly  
3-30 selected polling places in the county, including the greater of:

3-31                         (i) three polling places; or  
3-32                         (ii) 20 percent of election day polling  
3-33 places in the county; and

3-34                     (D) the greater of 1,000 voted ballots or 10  
3-35 percent of all ballots voted at early voting polling places from a  
3-36 number of polling places equal to:

3-37                         (i) the greater of three randomly selected  
3-38 early voting polling places or 20 percent of early voting polling  
3-39 places; or

3-40                         (ii) if the county has fewer than three  
3-41 early voting polling places, all early voting polling places in the  
3-42 county.

3-43           (g) An audit under this section shall be limited to not  
3-44 fewer than three and not more than five contested races or ballot  
3-45 measures. If there are more than five contested races or ballot  
3-46 measures identified in the request under Subsection (b), the county  
3-47 clerk shall randomly select five races or measures for audit. The  
3-48 contested races must include at least one of each of the following  
3-49 types of races, regardless of whether the type was identified in the  
3-50 request under Subsection (b):

3-51                     (1) a federal office;  
3-52                     (2) a statewide office; and  
3-53                     (3) a county office.

3-54           (h) The committee shall begin the audit not later than the  
3-55 20th day after the date the county clerk receives the request under  
3-56 Subsection (b). The committee shall have access to precinct  
3-57 election records in the custody of the county clerk for the purpose  
3-58 of an audit under Subsection (f).

3-59           (i) Before the committee begins the audit, the secretary of  
3-60 state shall determine an acceptable margin of error appropriate for  
3-61 the county based on mathematical and statistical analyses  
3-62 appropriate to the voting system used by the county.

3-63           (j) The committee shall observe any random selection made by  
3-64 the county clerk under this section.

3-65           (k) If, for any contested race or ballot measure in the  
3-66 audit, the results of the audit differ from canvassed results from  
3-67 the 2020 general election for state and county officers by an amount  
3-68 outside the margin of error determined under Subsection (i) for the  
3-69 county, the committee shall conduct another audit. An audit under

4-1 this subsection shall be conducted in the same manner as the initial  
4-2 audit.

4-3 (1) If, for any contested race or ballot measure in the  
4-4 audit under Subsection (k), the results of the audit differ from  
4-5 canvassed results from the 2020 general election for state and  
4-6 county officers by an amount outside the margin of error determined  
4-7 under Subsection (i) for the county, the committee shall conduct a  
4-8 final audit. An audit under this subsection shall be conducted in  
4-9 the same manner as the initial audit, except that:

4-10 (1) for a contested race or ballot measure under  
4-11 Subsection (g), the audit shall include the entire county; and

4-12 (2) for any other contested race, the audit shall  
4-13 include the entire district.

4-14 (m) The committee shall provide the full results of the  
4-15 audit to:

4-16 (1) the county clerk;

4-17 (2) the secretary of state; and

4-18 (3) the county chair of each political party in the  
4-19 county.

4-20 (n) The secretary of state shall issue a notice of the  
4-21 results of the audit to:

4-22 (1) the governor;

4-23 (2) the lieutenant governor;

4-24 (3) the speaker of the house of representatives; and

4-25 (4) each member of the legislature.

4-26 (o) The notice under Subsection (n) must include an  
4-27 indication whether the result of the audit:

4-28 (1) confirmed the final canvass of the 2020 general  
4-29 election for state and county officers;

4-30 (2) differed from the final canvass of the 2020  
4-31 general election for state and county officers, but by an amount  
4-32 within the margin of error determined under Subsection (i) for the  
4-33 county; or

4-34 (3) differed from the final canvass of the 2020  
4-35 general election for state and county officers by an amount outside  
4-36 the margin of error determined under Subsection (i) for the county.

4-37 (p) If the notice under Subsection (n) indicates a  
4-38 difference greater than the margin of error determined under  
4-39 Subsection (i) for the county, the secretary of state shall prepare  
4-40 a report to accompany the notice. The report must include:

4-41 (1) an analysis of the difference from the results of  
4-42 the final canvass of the 2020 general election for state and county  
4-43 officers;

4-44 (2) the likely causes of the difference from the  
4-45 results of the final canvass of the 2020 general election for state  
4-46 and county officers; and

4-47 (3) recommended measures to avoid similar differences  
4-48 in future elections.

4-49 (q) A notice under Subsection (n) and any accompanying  
4-50 report shall be posted on:

4-51 (1) the secretary of state's Internet website; and

4-52 (2) the county's Internet website, if the county  
4-53 maintains an Internet website.

4-54 (r) This chapter expires on September 1, 2024.

4-55 SECTION 2. A person may make a request under Section  
4-56 280.001, Election Code, as added by this Act, only for an election  
4-57 held on or after the effective date of this Act.

4-58 SECTION 3. This Act takes effect on the 91st day after the  
4-59 last day of the legislative session.

4-60

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