

By: Bettencourt, et al.
(Toth, et al.)

S.B. No. 1039

Substitute the following for S.B. No. 1039:

By: Capriglione

C.S.S.B. No. 1039

A BILL TO BE ENTITLED

AN ACT

relating to processes to address election irregularities;
providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 16, Election Code, is amended by adding
Chapter 280 to read as follows:

CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

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

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

(2) irregularities in results in a precinct or at a
polling place or early voting polling place;

(3) inadequacy or irregularity of documentation
required to be maintained under this code; or

(4) discrepancies in the results of a reconciliation
of ballots between the number of voters and the number of votes
cast.

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

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

5 (d) Not later than the 10th day after the date a request is
6 received under Subsection (c), the county clerk or other authority
7 shall provide the requested explanation and any supporting
8 documentation.

9 (e) A requestor who is not satisfied with the explanation
10 and supporting documentation provided under Subsection (d) may
11 issue a request to the secretary of state for an audit of the issue
12 described by Subsection (a), as provided by Section 280.002.

13 (f) A person may make a request under this section if the
14 person participated in the relevant election as:

- 15 (1) a candidate;
- 16 (2) a county chair or state chair of a political party;
- 17 (3) a presiding judge;
- 18 (4) an alternate presiding judge; or
- 19 (5) the head of a specific-purpose political committee

20 that supports or opposes a ballot measure.

21 Sec. 280.002. AUDIT BY SECRETARY OF STATE. (a) A person to
22 whom Section 280.001(e) applies may submit a request for an audit to
23 the secretary of state for investigation. A request for an audit
24 must include copies of:

- 25 (1) the requests made by the person to the county clerk
26 or other authority conducting the election under Sections
27 280.001(a) and (c); and

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

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

12 (c) The county clerk or other authority conducting the
13 election shall cooperate with the office of the secretary of state
14 and may not interfere with or obstruct the audit.

15 (d) On conclusion of the audit, the secretary of state shall
16 provide notice of the findings of the audit to the person who
17 submitted the request for the audit and the county clerk or other
18 authority conducting the election.

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

26 (f) If, following an audit, the secretary of state
27 determines that a violation of this code has occurred, the

1 secretary may appoint a conservator to oversee elections in the
2 county where the violation occurred. The conservator shall serve
3 for two federal election cycles.

4 (g) A county for which a conservator is appointed under
5 Subsection (f) shall pay the costs of providing the conservator,
6 including the salary and benefits of the conservator.

7 Sec. 280.003. FINDING OF VIOLATION. (a) In addition to the
8 notice required under Section 280.002(d), the secretary of state
9 shall provide special notice to the county clerk or other authority
10 conducting an election detailing any violation of this code found
11 by the secretary under Section 280.002.

12 (b) If the county clerk or other authority conducting an
13 election does not remedy a violation detailed in a notice under
14 Subsection (a) by the 30th day after the date the clerk or other
15 authority receives the notice, the secretary of state shall assess
16 a civil penalty of \$500 for each violation not remedied and, if
17 possible, remedy the violation on behalf of the county clerk or
18 other authority. The remedy provided under this subsection is in
19 addition to any other remedy available under law for a violation of
20 this code.

21 (c) If the secretary of state is not able to remedy the
22 violation on behalf of the county clerk or other authority, the
23 secretary shall assess an additional penalty under Subsection (b)
24 for each day the county clerk or other authority does not remedy the
25 violation until the violation is remedied.

26 (d) The secretary of state shall maintain a record of county
27 clerks or other authorities that conduct elections who have been

1 assessed a civil penalty under Subsection (b). The secretary of
2 state shall publish the record on the secretary of state's Internet
3 website.

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

6 (f) A civil penalty collected under this section shall be
7 deposited in the state treasury to the credit of the general revenue
8 fund.

9 SECTION 2. A person may make a request under Section
10 280.001, Election Code, as added by this Act, only for an election
11 held on or after the effective date of this Act.

12 SECTION 3. This Act takes effect September 1, 2023.