

BILL ANALYSIS

Senate Research Center
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S.B. 97
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, for most election irregularities, the only way to address the election irregularity is through a civil or criminal action. Irregularities might include a failure to use appropriate documentation, a failure to follow Election Code procedures, inconsistent reporting, or a polling location that remains open much later than other polling locations. Currently, there are limited processes to bring these issues to light and be addressed.

In order to ensure that irregularities are identified and addressed, there needs to be a process to recognize issues and correct them for future elections. S.B. 97 would provide a vehicle for election judges, candidates, proponents/opponents of a measure, and political party chairs the opportunity to seek answers regarding observed irregularities. This group would work with the county clerks, election administrators, and the secretary of state to improve the quality of elections and everyone's confidence in elections.

Additionally, in the November 2020 election, there were a significant number of irregularities that occurred yet were not addressed, leaving many with questions about the election process. S.B. 97 would provide a mechanism to perform a sample review of the November 2020 election to identify any significant irregularity.

As proposed, S.B. 97 amends current law relating to processes to address election irregularities; providing a civil penalty.

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 Title 16, Election Code, by adding Chapters 280 and 281, as follows:

CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

Sec. 280.001. REQUEST FOR EXPLANATION. (a) Authorizes a person described by Subsection (f) to issue a written request to the county clerk for an explanation and supporting documentation for:

- (1) an action taken by an election officer that appears to violate this code;
- (2) irregularities in precinct results; or
- (3) inadequacy or irregularity of documentation required to be maintained under this code.

(b) Requires a county clerk to provide the requested explanation and any supporting documentation not later than the 20th day after the date a request is received under Subsection (a).

(c) Authorizes a requestor who is not satisfied with the explanation and supporting documentation provided under Subsection (b) to issue a request for further explanation and supporting documentation to the county clerk.

(d) Requires the county clerk to provide the requested explanation and any supporting documentation not later than the 10th day after the date a request is received under Subsection (c).

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

(f) Authorizes a person to make a request under this section if the person participated in the relevant election as:

- (1) a candidate;
- (2) a county chair of a political party;
- (3) a presiding judge;
- (4) an alternate presiding judge; or
- (5) the head of a specific-purpose political committee that supports or opposes a ballot measure.

Sec. 280.002. AUDIT BY SECRETARY OF STATE. (a) Authorizes a person to whom Section 280.001(e) applies to submit a request for an audit to the SOS for investigation. Requires a request for an audit to include copies of:

- (1) the requests made by the person to the person's county clerk under Sections 280.001(a) and (c);
- (2) the explanations provided by the county clerk to the person under Sections 280.001(b) and (d); and
- (3) any supporting documentation provided by the county clerk to the person under Sections 280.001(b) and (d).

(b) Requires the SOS, not later than the 30th day after the date the SOS receives a request for an audit under this section, to determine whether the information submitted under Subsection (a) sufficiently explains the irregularity identified under Section 280.001(a). Requires the SOS, if the information is insufficient, to immediately begin an audit of the identified irregularity at the expense of the county.

(c) Requires the county clerk to cooperate with the office of the SOS and prohibits the county clerk from interfering with or obstructing the audit.

(d) Requires the SOS, on conclusion of the audit, to provide notice of the findings of the audit to the person who submitted the request for the audit and the county clerk.

Sec. 280.003. FINDING OF VIOLATION. (a) Requires the SOS, in addition to the notice required under Section 280.002(d), to provide special notice to a county clerk detailing any violation of this code found during the conduct of an audit under Section 280.002.

(b) Requires the SOS, if the county clerk does not remedy a violation detailed in

a notice under Subsection (a) by the 30th day after the date the clerk receives the notice, to assess a civil penalty of \$500 for each violation not remedied and, if possible, remedy the violation on behalf of the county clerk. Provides that the remedy provided under this subsection is in addition to any other remedy available under law for a violation of this code.

(c) Requires the SOS, if the SOS is not able to remedy the violation on behalf of the county clerk, to assess an additional penalty under Subsection (b) for each day the county clerk does not remedy the violation until the violation is remedied.

(d) Requires the SOS to maintain a record of county clerks who have been assessed a civil penalty under Subsection (b) and to publish the record on the SOS's Internet website.

(e) Authorizes the attorney general to bring an action under this section to recover a civil penalty that has not been paid.

(f) Requires a civil penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund.

CHAPTER 281. REVIEW OF 2020 GENERAL ELECTION RESULTS

Sec. 281.001. REVIEW OF RESULTS OF 2020 GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) Defines "committee."

(b) Authorizes a state or county chair of a political party that made nominations by primary election for the last general election for state and county officers to request a review of the results of the 2020 general election for state and county officers by submitting a written request to a county clerk. Provides that a county chair may only request a review from the county clerk of the county served by the party chair.

(c) Requires a county clerk that receives a request under this section to appoint an election review advisory committee (committee) to conduct a review under this chapter and to supervise the committee.

(d) Requires the county clerk to appoint members of the committee from lists of names of persons eligible for appointment submitted to the county clerk by the party chair of each political party that made nominations by primary election for the last general election for state and county officers. Requires the county clerk to appoint an equal number of members from each list.

(e) Requires the committee members to be:

(1) qualified voters of the county; and

(2) selected with the intent that the committee contain expertise in advanced mathematics, voting systems, statistics, computer software operations, and methods of random selection.

(f) Requires a review under this section to include:

(1) all ballots voted by mail and on election day from a number of randomly selected precincts in the county that includes not fewer than three precincts and not more than two percent of the total number of precincts in the county; and

(2) the greater of 1,000 voted ballots or one percent of all ballots voted at an early voting location from a number of locations equal to three randomly selected early voting locations or, if the county has fewer than

three early voting locations, all early voting locations in the county.

(g) Requires a review under this section to be limited to not more than five contested races or ballot measures. Requires the county clerk, if there are more than five contested races or ballot measures identified in the request under Subsection (b), to randomly select five races or measures for review. Requires at least one of the contested races to be a race for:

- (1) electors for president and vice president of the United States;
- (2) a federal office;
- (3) a statewide office;
- (4) state senator; or
- (5) state representative.

(h) Requires the committee to begin the review not later than the 20th day after the date the county clerk receives the request under Subsection (b). Requires the committee to have access to ballots in the custody of the county clerk for the purpose of review under Subsection (f).

(i) Requires the committee, before beginning the review, to determine an acceptable margin of error appropriate for the county.

(j) Requires the committee, if, for any contested race or ballot measure in the review, the results of the review differ from canvassed results from the 2020 general election for state and county officers by an amount outside the margin of error determined under Subsection (i) for the county, to conduct another review. Provides that a review under this subsection is required to be conducted in the same manner as the initial review, except that the committee is required to randomly select different precincts for review.

(k) Requires the committee, if, for any contested race or ballot measure in the review under Subsection (j), the results of the review differ from canvassed results from the 2020 general election for state and county officers by an amount outside the margin of error determined under Subsection (i) for the county, to conduct a final review. Requires a review under this subsection to be conducted in the same manner as the initial review, except that:

- (1) for a contested race under Subsections (g)(1) through (3), the review shall include the entire county; and
- (2) for any other contested race, the review shall include the entire district.

(l) Requires the committee to maintain a list of each ballot style voted in a precinct or early voting location. Requires the committee to note any ballot style voted in a precinct or early voting location that contains a race or ballot measure not applicable to the precinct or early voting location at which the ballot was voted.

(m) Requires the committee to provide the full results of the review to the county clerk, the SOS, and the county chair of each political party in the county.

(n) Requires the SOS to issue a notice of the results of the review to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature.

(o) Requires the notice under Subsection (n) to include an indication whether the result of the review:

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

(2) differed from the final canvass of the 2020 general election for state and county officers, but by an amount within the margin of error identified under Subsection (i); or

(3) differed from the final canvass of the 2020 general election for state and county officers by an amount outside the margin of error identified under Subsection (i).

(p) Requires the SOS, if the notice under Subsection (n) indicates a difference greater than the margin of error under Subsection (i), to prepare a report to accompany the notice. Requires the report to include an analysis of the difference from the results of the final canvass of the 2020 general election for state and county officers; the likely causes of the difference from the results of the final canvass of the 2020 general election for state and county officers; and recommended measures to avoid similar differences in future elections.

(q) Requires a notice under Subsection (n) and any accompanying report to be posted on the SOS's Internet website and the county's Internet website, if the county maintains an Internet website.

(r) Provides that this chapter expires on September 1, 2024.

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

SECTION 3. Effective date: the 91st day after the last day of the legislative session.