

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 97  
By: Bettencourt  
State Affairs  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Election irregularities occur in every election cycle. Some irregularities are greater than others. However, the goal should be to identify the irregularities and improve access, security, processes, documentation, and accuracy with each election.

Under current law, election irregularities are mostly addressed if there is an election contest, which happens rarely. The result is irregularities that are identified by election judges, candidates, proponent/opponents of a measure, and party chairs are not always attended to, and create a lack of confidence in the system.

During the November 2020 election, there were a number of irregularities giving rise to concerns of the accuracy of the results of the election.

Examples of irregularities include:

- incorrect reporting of daily results during early voting;
- singular polls staying open much later than other polls;
- electronic poll books providing incorrect/incomplete information;
- lack of chain of custody documentation for live ballots;
- poll workers not qualifying voters adequately;
- more votes in a precinct than voters in a precinct or polling location; and
- poll watchers were obstructed from being able to observe election activity.

S.B. 97 would provide a vehicle, going forward, for election judges, candidates, and proponents/opponents of a measure to inquire with the county election officials about identified irregularities and get a rationale for the irregularity and hopefully a plan to improve the situation. If the county is unable to provide a satisfactory reason, the inquirer could raise the issue to the secretary of state (SOS).

Once at SOS, the inquiry would be reviewed and, if necessary, an audit regarding the specific issue identified would be initiated. If a violation of the Election Code is identified, SOS will notify the county and work to get the issue resolved.

Additionally, in the event there are counties where the candidates are concerned that the results of the November 2020 election were inadequate, the political party chairs would be able to request a sample review of the ballots in their county. The results of this review would be submitted to SOS, which would then draft a report and share the report with the county, political party chairs, speaker of the house, lieutenant governor, and governor.

In general, the committee substitute to S.B. 97 simplifies the responsibility and clarifies the qualifications of the review team. In the committee substitute, the review team member is required to be a qualified voter of the county.

The responsibility of determining the acceptable margin of error has been transferred to SOS, rather than the review team.

Additionally, the committee substitute removes the responsibility of the review team to capture ballot styles for each precinct and early voting polling location reviewed.

C.S.S.B. 97 amends current law relating to processes to address election irregularities and provides 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 SOS for investigation. Requires that a request for an audit 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 SOS, not later than the 30th day after the date 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 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 SOS and prohibits the county clerk from interfering with or obstructing the audit.

(d) Requires 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 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 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 SOS, if 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 SOS to maintain a record of county clerks who have been assessed a civil penalty under Subsection (b) and to publish the record on 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 that a civil penalty collected under this section 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. Authorizes a county chair to 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 qualified voters of the county.

(f) Requires that a review under this section 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 20 percent of the total number of precincts in the county; and

(2) the greater of 1,000 voted ballots or 10 percent of all ballots voted at an early voting location from a number of locations equal to not fewer than 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 that a review under this section 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 that at least one of the contested races 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 SOS, before the committee begins the review, to determine an acceptable margin of error appropriate for the county based on mathematical and statistical analyses appropriate to the voting system used by 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. Requires that a review under this subsection 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 that a review under this subsection 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 is required to include the entire county; and

(2) for any other contested race, the review is required to include the entire district.

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

(m) Requires 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.

(n) Requires that the notice under Subsection (m) 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).

(o) Requires SOS, if the notice under Subsection (m) indicates a difference greater than the margin of error under Subsection (i), to prepare a report to accompany the notice. Requires that the report 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.

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

(q) 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.