By:  Bettencourt S.B. No. 97

(In the Senate - Filed August 31, 2021; August 31, 2021, read first time and referred to Committee on State Affairs; September 1, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 2; September 1, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Birdwell        X

Campbell                  X

Hall            X

Lucio                     X

Nelson          X

Powell              X

Schwertner      X

Zaffirini           X

COMMITTEE SUBSTITUTE FOR S.B. No. 97 By:  Hall

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 Chapters 280 and 281 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 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)  Not later than the 20th day after the date a request is received under Subsection (a), a county clerk shall provide the requested explanation and any supporting documentation.

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

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

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

(f)  A person may 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)  A person to whom Section 280.001(e) applies may submit a request for an audit to the secretary of state for investigation. A request for an audit must 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)  Not later than the 30th day after the date the secretary of state receives a request for an audit under this section, the secretary must determine whether the information submitted under Subsection (a) sufficiently explains the irregularity identified under Section 280.001(a). If the information is insufficient, the secretary shall immediately begin an audit of the identified irregularity at the expense of the county.

(c)  The county clerk shall cooperate with the office of the secretary of state and may not interfere with or obstruct the audit.

(d)  On conclusion of the audit, the secretary of state shall 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)  In addition to the notice required under Section 280.002(d), the secretary of state shall 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)  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, the secretary of state shall assess a civil penalty of $500 for each violation not remedied and, if possible, remedy the violation on behalf of the county clerk. The remedy provided under this subsection is in addition to any other remedy available under law for a violation of this code.

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

(d)  The secretary of state shall maintain a record of county clerks who have been assessed a civil penalty under Subsection (b). The secretary of state shall publish the record on the secretary of state's Internet website.

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

(f)  A civil penalty collected under this section shall 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)  In this section, "committee" means an election review advisory committee.

(b)  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 may 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. A county chair may only request a review from the county clerk of the county served by the party chair.

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

(d)  The county clerk shall 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. The county clerk shall appoint an equal number of members from each list.

(e)  The committee members must be qualified voters of the county.

(f)  A review under this section shall include:

(1)  all ballots voted by mail and on election day from a number of randomly selected precincts in the county that includes:

(A)  not fewer than three precincts; and

(B)  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:

(A)  not fewer than three randomly selected early voting locations; or

(B)  if the county has fewer than three early voting locations, all early voting locations in the county.

(g)  A review under this section shall be limited to not more than five contested races or ballot measures. If there are more than five contested races or ballot measures identified in the request under Subsection (b), the county clerk shall randomly select five races or measures for review. At least one of the contested races must 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)  The committee shall begin the review not later than the 20th day after the date the county clerk receives the request under Subsection (b). The committee shall have access to ballots in the custody of the county clerk for the purpose of review under Subsection (f).

(i)  Before the committee begins the review, the secretary of state shall 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)  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, the committee shall conduct another review. A review under this subsection shall be conducted in the same manner as the initial review, except that the committee shall randomly select different precincts for review.

(k)  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, the committee shall conduct a final review. A review under this subsection shall 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)  The committee shall provide the full results of the review to:

(1)  the county clerk;

(2)  the secretary of state; and

(3)  the county chair of each political party in the county.

(m)  The secretary of state shall issue a notice of the results of the review to:

(1)  the governor;

(2)  the lieutenant governor;

(3)  the speaker of the house of representatives; and

(4)  each member of the legislature.

(n)  The notice under Subsection (m) must 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)  If the notice under Subsection (m) indicates a difference greater than the margin of error under Subsection (i), the secretary of state shall prepare a report to accompany the notice. The report must include:

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

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

(3)  recommended measures to avoid similar differences in future elections.

(p)  A notice under Subsection (m) and any accompanying report shall be posted on:

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

(2)  the county's Internet website, if the county maintains an Internet website.

(q)  This chapter expires on September 1, 2024.

SECTION 2.  A person may 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.  This Act takes effect on the 91st day after the last day of the legislative session.

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