

By: Bettencourt

S.B. No. 97

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

1 requested explanation and any supporting documentation.

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

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

8 (1) a candidate;

9 (2) a county chair of a political party;

10 (3) a presiding judge;

11 (4) an alternate presiding judge; or

12 (5) the head of a specific-purpose political committee
13 that supports or opposes a ballot measure.

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

18 (1) the requests made by the person to the person's
19 county clerk under Sections 280.001(a) and (c);

20 (2) the explanations provided by the county clerk to
21 the person under Sections 280.001(b) and (d); and

22 (3) any supporting documentation provided by the
23 county clerk to the person under Sections 280.001(b) and (d).

24 (b) Not later than the 30th day after the date the secretary
25 of state receives a request for an audit under this section, the
26 secretary must determine whether the information submitted under
27 Subsection (a) sufficiently explains the irregularity identified

1 under Section 280.001(a). If the information is insufficient, the
2 secretary shall immediately begin an audit of the identified
3 irregularity at the expense of the county.

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

6 (d) On conclusion of the audit, the secretary of state shall
7 provide notice of the findings of the audit to the person who
8 submitted the request for the audit and the county clerk.

9 Sec. 280.003. FINDING OF VIOLATION. (a) In addition to the
10 notice required under Section 280.002(d), the secretary of state
11 shall provide special notice to a county clerk detailing any
12 violation of this code found during the conduct of an audit under
13 Section 280.002.

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

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

26 (d) The secretary of state shall maintain a record of county
27 clerks who have been assessed a civil penalty under Subsection (b).

1 The secretary of state shall publish the record on the secretary of
2 state's Internet website.

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

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

8 CHAPTER 281. REVIEW OF 2020 GENERAL ELECTION RESULTS

9 Sec. 281.001. REVIEW OF RESULTS OF 2020 GENERAL ELECTION
10 FOR STATE AND COUNTY OFFICERS. (a) In this section, "committee"
11 means an election review advisory committee.

12 (b) A state or county chair of a political party that made
13 nominations by primary election for the last general election for
14 state and county officers may request a review of the results of the
15 2020 general election for state and county officers by submitting a
16 written request to a county clerk. A county chair may only request a
17 review from the county clerk of the county served by the party
18 chair.

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

23 (d) The county clerk shall appoint members of the committee
24 from lists of names of persons eligible for appointment submitted
25 to the county clerk by the party chair of each political party that
26 made nominations by primary election for the last general election
27 for state and county officers. The county clerk shall appoint an

1 equal number of members from each list.

2 (e) The committee members must be:

3 (1) qualified voters of the county; and

4 (2) selected with the intent that the committee
5 contain expertise in:

6 (A) advanced mathematics;

7 (B) voting systems;

8 (C) statistics;

9 (D) computer software operations; and

10 (E) methods of random selection.

11 (f) A review under this section shall include:

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

15 (A) not fewer than three precincts; and

16 (B) not more than two percent of the total number
17 of precincts in the county; and

18 (2) the greater of 1,000 voted ballots or one percent
19 of all ballots voted at an early voting location from a number of
20 locations equal to:

21 (A) three randomly selected early voting
22 locations; or

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

25 (g) A review under this section shall be limited to not more
26 than five contested races or ballot measures. If there are more than
27 five contested races or ballot measures identified in the request

1 under Subsection (b), the county clerk shall randomly select five
2 races or measures for review. At least one of the contested races
3 must be a race for:

4 (1) electors for president and vice president of the
5 United States;

6 (2) a federal office;

7 (3) a statewide office;

8 (4) state senator; or

9 (5) state representative.

10 (h) The committee shall begin the review not later than the
11 20th day after the date the county clerk receives the request under
12 Subsection (b). The committee shall have access to ballots in the
13 custody of the county clerk for the purpose of review under
14 Subsection (f).

15 (i) Before beginning the review, the committee shall
16 determine an acceptable margin of error appropriate for the county.

17 (j) If, for any contested race or ballot measure in the
18 review, the results of the review differ from canvassed results
19 from the 2020 general election for state and county officers by an
20 amount outside the margin of error determined under Subsection (i)
21 for the county, the committee shall conduct another review. A
22 review under this subsection shall be conducted in the same manner
23 as the initial review, except that the committee shall randomly
24 select different precincts for review.

25 (k) If, for any contested race or ballot measure in the
26 review under Subsection (j), the results of the review differ from
27 canvassed results from the 2020 general election for state and

1 county officers by an amount outside the margin of error determined
2 under Subsection (i) for the county, the committee shall conduct a
3 final review. A review under this subsection shall be conducted in
4 the same manner as the initial review, except that:

5 (1) for a contested race under Subsections (g)(1)
6 through (3), the review shall include the entire county; and

7 (2) for any other contested race, the review shall
8 include the entire district.

9 (1) The committee shall maintain a list of each ballot style
10 voted in a precinct or early voting location. The committee shall
11 note any ballot style voted in a precinct or early voting location
12 that contains a race or ballot measure not applicable to the
13 precinct or early voting location at which the ballot was voted.

14 (m) The committee shall provide the full results of the
15 review to:

16 (1) the county clerk;

17 (2) the secretary of state; and

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

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

22 (1) the governor;

23 (2) the lieutenant governor;

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

25 (4) each member of the legislature.

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

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

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

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

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

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

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

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

21 (q) A notice under Subsection (n) and any accompanying
22 report shall be posted on:

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

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

26 (r) This chapter expires on September 1, 2024.

27 SECTION 2. A person may make a request under Section

S.B. No. 97

1 280.001, Election Code, as added by this Act, only for an election
2 held on or after the effective date of this Act.

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