

BILL ANALYSIS

Senate Research Center
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S.B. 47
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, for most election irregularities, the only way to address the 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 any other polling locations. Currently, there are limited processes to bring to light and address these issues.

In order to ensure that election irregularities are identified and addressed, there needs to be a process to recognize issues and correct them for future elections. S.B. 47 would provide a vehicle for election judges, candidates, proponents/opponents of a measure, and political party chairs to seek answers regarding observed irregularities. This group would work with 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. 47 would provide a mechanism to perform an audit of the November 2020 election to identify any significant irregularity.

As proposed, S.B. 47 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 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; or
- (3) inadequacy or irregularity of documentation required to be maintained under this code.

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

(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 or other authority.

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

(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 or state 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 county clerk or other authority conducting the election under Sections 280.001(a) and (c); and

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

(b) Requires SOS to determine, not later than the 30th day after the date the secretary receives a request for an audit under this section, 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 or other authority conducting the election.

(c) Requires the county clerk or other authority conducting the election to cooperate with the office of SOS and prohibits the clerk or other authority 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 or other authority conducting the election.

(e) Authorizes SOS to, in SOS's discretion, make a determination that a violation of this code has occurred solely on the basis of evidence submitted under Subsection (a) without conducting an audit. Requires SOS to send notice of the determination to the person who submitted the request for the audit and to the county clerk or other authority conducting the election.

Sec. 280.003. FINDING OF VIOLATION. (a) Requires SOS to, in addition to the notice required under Section 280.002(d), provide special notice to the county clerk or other authority conducting an election detailing any violation of this code found by SOS under Section 280.002.

(b) Requires SOS to assess a civil penalty of \$500 for each violation not remedied and, if possible, remedy the violation on behalf of the county clerk or other authority if the county clerk or other authority conducting an election does not remedy a violation detailed in a notice under Subsection (a) by the 30th day after the date the clerk or other authority receives the notice. 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 or other authority, to assess an additional penalty under Subsection (b) for each day the county clerk or other authority does not remedy the violation until the violation is remedied.

(d) Requires SOS to maintain a record of county clerks or other authorities that conduct elections who have been assessed a civil penalty under Subsection (b). Requires SOS 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. AUDIT OF 2020 GENERAL ELECTION RESULTS

Sec. 281.001. AUDIT OF RESULTS OF 2020 GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) Defines "committee" for this section.

(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 an audit 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 an audit from the county clerk of the county served by the county chair.

(c) Requires a county clerk who receives a request under this section to appoint an election review advisory committee (committee) to conduct an audit under this chapter. Requires the county clerk 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 determine the number of members necessary to conduct the audit and appoint an equal number of members from each list.

(e) Requires that the committee members be qualified voters of the county.

(f) Requires that an audit under this section include:

(1) all ballots voted by any method in a precinct or polling place in which the number of ballots cast exceeded the total number of voters accepted for voting in the precinct or at the polling place; and

(2) in addition to any ballots required to be included under Subdivision (1):

(A) a random selection of ballots voted by mail, totaling 20 percent of all ballots voted by mail in the election and including both the original ballot and any duplicate made of the ballot, and an equivalent number of carrier envelopes and the associated application for a ballot to be voted by mail;

(B) a random selection of ballots voted by mail that were rejected, totaling 20 percent of all ballots voted by mail in the election that were rejected;

(C) ballots voted on election day from randomly selected polling places in the county, including the greater of three polling places or 20 percent of election day polling places in the county; and

(D) the greater of 1,000 voted ballots or 10 percent of all ballots voted at early voting polling places from a number of polling places equal to the greater of three randomly selected early voting polling places or 20 percent of early voting polling places or, if the county has fewer than three early voting polling places, all early voting polling places in the county.

(g) Requires that an audit under this section be limited to not fewer than three and 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 audit. Requires that the contested races include at least one of each of the following types of races, regardless of whether the type was identified in the request under Subsection (b):

(1) a federal office;

(2) a statewide office; and

(3) a county office.

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

(i) Requires SOS 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 before the committee begins the audit.

(j) Requires the committee to observe any random selection made by the county

clerk under this section.

(k) Requires the committee to conduct another audit if, for any contested race or ballot measure in the audit, the results of the audit 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. Requires that an audit under this subsection be conducted in the same manner as the initial audit.

(l) Requires the committee to conduct a final audit if, for any contested race or ballot measure in the audit under Subsection (k), the results of the audit 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. Requires that an audit under this subsection be conducted in the same manner as the initial audit, except that:

(1) for a contested race or ballot measure under Subsection (g), the audit is required to include the entire county; and

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

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

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

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

(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 determined under Subsection (i) for the county; 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 determined under Subsection (i) for the county.

(p) Requires SOS to prepare a report to accompany the notice under Subsection (n) if the notice under indicates a difference greater than the margin of error determined under Subsection (i) for the county. Requires that the report 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.

(q) Requires that a notice under Subsection (n) and any accompanying report be posted on 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.