By:  Bettencourt S.B. No. 47

(In the Senate - Filed October 1, 2021; October 1, 2021, read first time and referred to Committee on State Affairs; October 4, 2021, reported favorably by the following vote: Yeas 7, Nays 2; October 4, 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

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 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)  Not later than the 20th day after the date a request is received under Subsection (a), the county clerk or other authority 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 or other authority.

(d)  Not later than the 10th day after the date a request is received under Subsection (c), the county clerk or other authority 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 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)  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 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)  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 or other authority conducting the election.

(c)  The county clerk or other authority conducting the election 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 or other authority conducting the election.

(e)  The secretary of state may, in the secretary'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. The secretary shall 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) In addition to the notice required under Section 280.002(d), the secretary of state shall provide special notice to the county clerk or other authority conducting an election detailing any violation of this code found by the secretary under Section 280.002.

(b)  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, 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 or other authority. 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 or other authority, the secretary of state shall 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)  The secretary of state shall maintain a record of county clerks or other authorities that conduct elections 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. AUDIT OF 2020 GENERAL ELECTION RESULTS

Sec. 281.001.  AUDIT 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 an audit 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 an audit from the county clerk of the county served by the county chair.

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

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

(f)  An audit under this section shall 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:

(i)  three polling places; or

(ii)  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:

(i)  the greater of three randomly selected early voting polling places or 20 percent of early voting polling places; or

(ii)  if the county has fewer than three early voting polling places, all early voting polling places in the county.

(g)  An audit under this section shall be limited to not fewer than three and 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 audit. The contested races must 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)  The committee shall begin the audit not later than the 20th day after the date the county clerk receives the request under Subsection (b). The committee shall have access to precinct election records in the custody of the county clerk for the purpose of an audit under Subsection (f).

(i)  Before the committee begins the audit, 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)  The committee shall observe any random selection made by the county clerk under this section.

(k)  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, the committee shall conduct another audit. An audit under this subsection shall be conducted in the same manner as the initial audit.

(l)  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, the committee shall conduct a final audit. An audit under this subsection shall 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 shall include the entire county; and

(2)  for any other contested race, the audit shall include the entire district.

(m)  The committee shall provide the full results of the audit to:

(1)  the county clerk;

(2)  the secretary of state; and

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

(n)  The secretary of state shall issue a notice of the results of the audit to:

(1)  the governor;

(2)  the lieutenant governor;

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

(4)  each member of the legislature.

(o)  The notice under Subsection (n) must 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)  If the notice under Subsection (n) indicates a difference greater than the margin of error determined under Subsection (i) for the county, 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.

(q)  A notice under Subsection (n) 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.

(r)  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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