

By: Bettencourt

S.B. No. 47

A BILL TO BE ENTITLED

1 AN ACT
2 relating to processes to address election irregularities;
3 providing a civil penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Title 16, Election Code, is amended by adding
6 Chapters 280 and 281 to read as follows:

7 CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

8 Sec. 280.001. REQUEST FOR EXPLANATION. (a) A person
9 described by Subsection (f) may issue a written request to the
10 county clerk or other authority conducting an election for an
11 explanation and supporting documentation for:

12 (1) an action taken by an election officer that
13 appears to violate this code;

14 (2) irregularities in results in a precinct or at a
15 polling place or early voting polling place; or

16 (3) inadequacy or irregularity of documentation
17 required to be maintained under this code.

18 (b) Not later than the 20th day after the date a request is
19 received under Subsection (a), the county clerk or other authority
20 shall provide the requested explanation and any supporting
21 documentation.

22 (c) A requestor who is not satisfied with the explanation
23 and supporting documentation provided under Subsection (b) may
24 issue a request for further explanation and supporting

1 documentation to the county clerk or other authority.

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

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

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

- 12 (1) a candidate;
- 13 (2) a county chair or state chair of a political party;
- 14 (3) a presiding judge;
- 15 (4) an alternate presiding judge; or
- 16 (5) the head of a specific-purpose political committee
17 that supports or opposes a ballot measure.

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

22 (1) the requests made by the person to the county clerk
23 or other authority conducting the election under Sections
24 280.001(a) and (c); and

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

1 (b) Not later than the 30th day after the date the secretary
2 of state receives a request for an audit under this section, the
3 secretary must determine whether the information submitted under
4 Subsection (a) sufficiently explains the irregularity identified
5 under Section 280.001(a). If the information is insufficient, the
6 secretary shall immediately begin an audit of the identified
7 irregularity at the expense of the county or other authority
8 conducting the election.

9 (c) The county clerk or other authority conducting the
10 election shall cooperate with the office of the secretary of state
11 and may not interfere with or obstruct the audit.

12 (d) On conclusion of the audit, the secretary of state shall
13 provide notice of the findings of the audit to the person who
14 submitted the request for the audit and the county clerk or other
15 authority conducting the election.

16 (e) The secretary of state may, in the secretary's
17 discretion, make a determination that a violation of this code has
18 occurred solely on the basis of evidence submitted under Subsection
19 (a) without conducting an audit. The secretary shall send notice of
20 the determination to the person who submitted the request for the
21 audit and to the county clerk or other authority conducting the
22 election.

23 Sec. 280.003. FINDING OF VIOLATION. (a) In addition to the
24 notice required under Section 280.002(d), the secretary of state
25 shall provide special notice to the county clerk or other authority
26 conducting an election detailing any violation of this code found
27 by the secretary under Section 280.002.

1 (b) If the county clerk or other authority conducting an
2 election does not remedy a violation detailed in a notice under
3 Subsection (a) by the 30th day after the date the clerk or other
4 authority receives the notice, the secretary of state shall assess
5 a civil penalty of \$500 for each violation not remedied and, if
6 possible, remedy the violation on behalf of the county clerk or
7 other authority. The remedy provided under this subsection is in
8 addition to any other remedy available under law for a violation of
9 this code.

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

15 (d) The secretary of state shall maintain a record of county
16 clerks or other authorities that conduct elections who have been
17 assessed a civil penalty under Subsection (b). The secretary of
18 state shall publish the record on the secretary of state's Internet
19 website.

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

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

25 CHAPTER 281. AUDIT OF 2020 GENERAL ELECTION RESULTS

26 Sec. 281.001. AUDIT OF RESULTS OF 2020 GENERAL ELECTION FOR
27 STATE AND COUNTY OFFICERS. (a) In this section, "committee" means

1 an election review advisory committee.

2 (b) A state or county chair of a political party that made
3 nominations by primary election for the last general election for
4 state and county officers may request an audit of the results of the
5 2020 general election for state and county officers by submitting a
6 written request to a county clerk. A county chair may only request
7 an audit from the county clerk of the county served by the county
8 chair.

9 (c) A county clerk who receives a request under this section
10 shall appoint an election review advisory committee to conduct an
11 audit under this chapter. The county clerk shall supervise the
12 committee.

13 (d) The county clerk shall appoint members of the committee
14 from lists of names of persons eligible for appointment submitted
15 to the county clerk by the party chair of each political party that
16 made nominations by primary election for the last general election
17 for state and county officers. The county clerk shall determine the
18 number of members necessary to conduct the audit and appoint an
19 equal number of members from each list.

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

22 (f) An audit under this section shall include:

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

27 (2) in addition to any ballots required to be included

1 under Subdivision (1):

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

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

10 (C) ballots voted on election day from randomly
11 selected polling places in the county, including the greater of:

12 (i) three polling places; or
13 (ii) 20 percent of election day polling
14 places in the county; and

15 (D) the greater of 1,000 voted ballots or 10
16 percent of all ballots voted at early voting polling places from a
17 number of polling places equal to:

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

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

24 (g) An audit under this section shall be limited to not
25 fewer than three and not more than five contested races or ballot
26 measures. If there are more than five contested races or ballot
27 measures identified in the request under Subsection (b), the county

1 clerk shall randomly select five races or measures for audit. The
2 contested races must include at least one of each of the following
3 types of races, regardless of whether the type was identified in the
4 request under Subsection (b):

- 5 (1) a federal office;
- 6 (2) a statewide office; and
- 7 (3) a county office.

8 (h) The committee shall begin the audit not later than the
9 20th day after the date the county clerk receives the request under
10 Subsection (b). The committee shall have access to precinct
11 election records in the custody of the county clerk for the purpose
12 of an audit under Subsection (f).

13 (i) Before the committee begins the audit, the secretary of
14 state shall determine an acceptable margin of error appropriate for
15 the county based on mathematical and statistical analyses
16 appropriate to the voting system used by the county.

17 (j) The committee shall observe any random selection made by
18 the county clerk under this section.

19 (k) If, for any contested race or ballot measure in the
20 audit, the results of the audit differ from canvassed results from
21 the 2020 general election for state and county officers by an amount
22 outside the margin of error determined under Subsection (i) for the
23 county, the committee shall conduct another audit. An audit under
24 this subsection shall be conducted in the same manner as the initial
25 audit.

26 (l) If, for any contested race or ballot measure in the
27 audit under Subsection (k), the results of the audit differ from

1 canvassed results from the 2020 general election for state and
2 county officers by an amount outside the margin of error determined
3 under Subsection (i) for the county, the committee shall conduct a
4 final audit. An audit under this subsection shall be conducted in
5 the same manner as the initial audit, except that:

6 (1) for a contested race or ballot measure under
7 Subsection (g), the audit shall include the entire county; and

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

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

12 (1) the county clerk;

13 (2) the secretary of state; and

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

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

18 (1) the governor;

19 (2) the lieutenant governor;

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

21 (4) each member of the legislature.

22 (o) The notice under Subsection (n) must include an
23 indication whether the result of the audit:

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

26 (2) differed from the final canvass of the 2020
27 general election for state and county officers, but by an amount

1 within the margin of error determined under Subsection (i) for the
2 county; or

3 (3) differed from the final canvass of the 2020
4 general election for state and county officers by an amount outside
5 the margin of error determined under Subsection (i) for the county.

6 (p) If the notice under Subsection (n) indicates a
7 difference greater than the margin of error determined under
8 Subsection (i) for the county, the secretary of state shall prepare
9 a report to accompany the notice. The report must include:

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

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

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

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

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

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

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

24 SECTION 2. A person may make a request under Section
25 280.001, Election Code, as added by this Act, only for an election
26 held on or after the effective date of this Act.

27 SECTION 3. This Act takes effect on the 91st day after the

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1 last day of the legislative session.