Senate Research Center

87R11761 SLB-F

S.B. 1589
By: Bettencourt
State Affairs
4/16/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, during elections a number of violations of the Texas Election Code are committed and there is no enforcement activity. This lack of enforcement is due to a number of reasons, however, largely due to the lack of Election Code knowledgeable law enforcement personnel. Across the state there have been instances of candidates loitering within the 100 feet mark to greet voters and some have even created a rally to force the alternate judge to leave the poll; poll watchers are prevented from viewing activity that they are entitled to view; election administrators are not providing necessary information; postal workers are holding mail ballots; poll watchers are observing how voters are voting and reporting it to the voters' employer; and intimidation of nursing residents.

Election violations are sporadically reported to the secretary of state (SOS), who contacts the alleged violator in an attempt to stop the violation. However, SOS does not have any law enforcement personnel to investigate violations. Typically, the only recourse for SOS is to send a strongly worded e-mail or turn the irregular activity over to the attorney general. The irregular activity is noted and maintained to be used in an election contest, but very little action is taken against the violator of the Election Code. Election contests only occur when the race is close, even though there may have been egregious violations of the code. There is very little to discourage violators from repeating the same bad behavior again and again.

S.B. 1589 would provide an avenue for SOS to immediately address election violations as they are occurring. The bill provides for an election marshal appointed by SOS from the Department of Public Safety. This election marshal would ensure that election marshals are trained and ready to respond to election violations across the state in an expeditious manner.

Not only would S.B. 1589 provide for an election marshal, it would also provide for emergency judges to be able to hear cases within three hours of reporting during early voting and within one hour during election day. These judges would be appointed by the eleven (11) regional administrative law judges across the state.

Additionally, S.B. 1589 provides a cause of action to enjoin a party from continuing the alleged violation behavior.

As proposed, S.B. 1589 amends current law relating to the enforcement of laws relating to elections.

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 the heading to Chapter 34, Election Code, to read as follows:

CHAPTER 34. STATE INSPECTORS AND ELECTION MARSHALS

SECTION 2. Amends Chapter 34, Election Code, by adding Sections 34.006 and 34.007, as follows:

Sec. 34.006. ELECTION MARSHALS. (a) Requires the secretary of state (SOS) to appoint a state election marshal. Provides that the state election marshal reports to SOS.

(b) Requires the state election marshal to appoint election marshals for each Department of Public Safety (DPS) region such that there is one election marshal for each 250,000 people who reside in the region. Requires that the number of marshals appointed for a region under this section be updated following every decennial census. Requires that appointments made after an update following a decennial census be made not later than the 60th day before the date early voting is scheduled to begin in the first election occurring after the release of the census data.

(c) Requires the state election marshal to designate an election marshal in each DPS region as the chief election marshal for the region. Requires the chief election marshal for a region to assign election marshals to each alleged violation of this code occurring in the region as described by Section 34.007.

(d) Requires a person, to be qualified as a state election marshal or an election marshal, to be licensed as a peace officer by the Texas Commission on Law Enforcement and have received training in election law from the secretary of state.

(e) Provides that an election marshal has the powers and duties of a state inspector under Chapter 34 and other powers and duties as assigned by law.

(f) Provides that the name, county of residence, and contact information for the purpose of official business of each election marshal and the state election marshal are public information.

Sec. 34.007. INVESTIGATION BY STATE INSPECTORS AND ELECTION MARSHALS. (a) Defines "chief election marshal," "election marshal," and "state inspector."

(b) Requires a state inspector or election marshal to promptly investigate an alleged violation of this code that is supported by an affidavit or unsworn declaration and submitted to the state inspector or chief election marshal, and if submitted to the chief election marshal, assigned to the election marshal.

(c) Provides that if an election marshal investigates an alleged violation of this code and finds probable cause exists that a violation of this code is occurring or is likely to occur, the election marshal:

(1) is required to exercise all lawful means to prevent the violation from continuing or occurring;

(2) is authorized to seek such orders, processes, or warrants from a court that the election marshal finds necessary to prevent the violation from continuing or occurring; and

(3) is authorized to also file appropriate criminal charges.

(d) Requires that nothing in this section be interpreted to affect the right of a candidate or political party to file a civil action under other law.

SECTION 3. Amends Section 273.001(a), Election Code, as follows:

(a) Requires the county or district attorney, if two or more registered voters of the territory covered by an election or an election marshal assigned to the DPS region that includes the territory covered by an election presents affidavits alleging criminal conduct in connection with the election to the county or district attorney having jurisdiction in that territory, to investigate the allegations. Deletes existing text authorizing the voters, if the election covers territory in more than one county, to present the affidavits to the attorney general, and requiring the attorney general to investigate the allegations.

SECTION 4. Amends the heading to Section 273.003, Election Code, to read as follows:

Sec. 273.003. IMPOUNDING ELECTION RECORDS AND EQUIPMENT.

SECTION 5. Amends Section 273.003(a), Election Code, to authorize certain officials, including SOS or an election marshal, in the investigation of an election, to have impounded for the investigation certain materials, including election equipment.

SECTION 6. Amends the heading of Subchapter E, Chapter 273, Election Code, to read as follows:

SUBCHAPTER E. INJUNCTIVE RELIEF AND EMERGENCY REVIEW

SECTION 7. Amends Section 273.081, Election Code, as follows:

Sec. 273.081. INJUNCTION. (a) Creates this subsection from existing text. Entitles a person, including a candidate, a political party, or a state, county, or precinct chair of a political party, who is being harmed or is in danger of being harmed by a violation or threatened violation of this code to appropriate injunctive relief to prevent the violation from continuing or occurring, and authorizes such persons to bring an action to obtain injunctive relief to prevent the violation from continuing or occurring.

(b) Authorizes a court, in connection with an action for injunctive relief filed under Subsection (a), to issue subpoenas of persons or property and order the inspection or impoundment of election records or equipment.

SECTION 8. Amends Subchapter E, Chapter 273, Election Code, by adding Sections 273.082 and 273.083, as follows:

Sec. 273.082. DISQUALIFICATION OF JUDGE. (a) Provides that the judge of a district or county court with jurisdiction over any geographic area served by an election official who is a party in a proceeding for injunctive relief under Subchapter E is disqualified to preside over the proceeding, unless the election official serves statewide.

(b) Requires the clerk of the court, if a petition is filed in a proceeding in which a judge may be disqualified under Subsection (a), to promptly call the filing to the attention of the judge. Requires the judge, if the judge determines that the judge is disqualified under Subsection (a), to promptly request the presiding judge of the administrative judicial region to assign an alternate judge to preside over the proceeding.

(c) Provides that a judge who resides in the geographic area served by the election official who is a party under Subsection (a) is not eligible for assignment as an alternate judge for the proceeding.

(d) Authorizes the presiding judge of the administrative judicial region, in a proceeding in which a judge is disqualified under Subsection (a), until an alternate judge is assigned to preside over the proceeding, to take any action in the proceeding otherwise authorized by law, including the issuance of temporary relief.

Sec. 273.083. EMERGENCY REVIEW OF ELECTION ACTIVITY. (a) Requires the presiding judge of each administrative judicial region, not later than the 60th day before the date of a regular or special election, to appoint a sufficient number of visiting judges to serve as emergency election review judges to preside in actions under Section 273.083, in accordance with Chapter 74 (Court Administration Act), Government Code.

(b) Requires a judge appointed to serve as an emergency election review judge to receive training as specified by SOS at least once a year.

(c) Requires that an action filed by a candidate in an election or a political party or state, county, or precinct chair of a political party that has a candidate in an election that alleges a violation of this code in that election and requests emergency injunctive relief to prevent the alleged violation from continuing or occurring be assigned to an emergency election review judge. Prohibits an action under Section 273.083 arising in the district or county in which the court served by an active judge appointed as an emergency election review judge has jurisdiction from being assigned to that judge.

(d) Requires that a request for hearing in an action heard by an emergency election review judge be delivered to the assigned judge who is required to promptly conduct a hearing, by electronic means or otherwise, to begin no later than:

(1) three hours after the judge receives a written hearing request filed not earlier than the 45th day before the date of the election and not later than the last day of in-person early voting; or

(2) one hour after the judge receives a written hearing request filed not earlier than the last day of in-person early voting and not later than the final canvass of an election.

(e) Requires that a hearing conducted by an emergency election review judge be recorded or transcribed and provides that the hearing is subject to appellate review.

SECTION 9. Effective date: September 1, 2021.