By:  Bettencourt S.B. No. 1589

(In the Senate - Filed March 11, 2021; March 24, 2021, read first time and referred to Committee on State Affairs; April 22, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 3; April 22, 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

COMMITTEE SUBSTITUTE FOR S.B. No. 1589 By:  Hall

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of laws relating to elections.

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

SECTION 1.  Section 31.005, Election Code, is amended to read as follows:

Sec. 31.005.  ENFORCEMENT; PROTECTION OF VOTING RIGHTS. (a) The secretary of state may take appropriate action to protect against violations of this code and to protect the voting rights of the citizens of this state from abuse by the authorities administering the state's electoral processes.

(b)  If the secretary determines that a person performing official functions in the administration of any part of the electoral processes is exercising the powers vested in that person in a manner that impedes the free exercise of a citizen's voting rights or otherwise violates a provision of this code, the secretary may order the person to correct the offending conduct. If the person fails to comply, the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general.

SECTION 2.  The heading to Chapter 34, Election Code, is amended to read as follows:

CHAPTER 34. STATE INSPECTORS AND ELECTION MARSHALS

SECTION 3.  Chapter 34, Election Code, is amended by adding Sections 34.006 and 34.007 to read as follows:

Sec. 34.006.  ELECTION MARSHALS. (a) The secretary of state shall appoint a state election marshal. The state election marshal reports to the secretary of state.

(b)  The state election marshal shall appoint election marshals for each Department of Public Safety region such that there is one election marshal for each 1,000,000 people who reside in the region. Appointments must be made not later than the 60th day before the date early voting is scheduled to begin in an election held on a uniform election date in November or a primary election. An appointment made under this section is in effect for 90 days, and may be extended by the state election marshal if the election marshal is conducting an investigation.

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

(d)  To be qualified as a state election marshal or an election marshal, a person must:

(1)  be licensed as a peace officer by the Texas Commission on Law Enforcement;

(2)  be commissioned by the Department of Public Safety; and

(3)  have received training in election law from the secretary of state.

(e)  An election marshal has the powers and duties of a state inspector under this chapter and other powers and duties as assigned by law.

(f)  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) In this section:

(1)  "Chief election marshal" means the election marshal appointed by the secretary of state for a Department of Public Safety region.

(2)  "Election marshal" means an election marshal appointed under Section 34.006.

(3)  "State inspector" means a state inspector appointed under this chapter.

(b)  A state inspector or election marshal shall promptly investigate an alleged violation of this code that is:

(1)  supported by an affidavit or unsworn declaration; and

(2)  submitted to the state inspector or chief election marshal, and if submitted to the chief election marshal, assigned to the election marshal.

(c)  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)  shall exercise all lawful means to prevent the violation from continuing or occurring;

(2)  may 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)  may also file appropriate criminal charges.

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

SECTION 4.  Section 273.001(a), Election Code, is amended to read as follows:

(a)  If two or more registered voters of the territory covered by an election or an election marshal assigned to the Department of Public Safety region that includes the territory covered by an election presents [~~present~~] affidavits alleging criminal conduct in connection with the election to the county or district attorney having jurisdiction in that territory, the county or district attorney shall investigate the allegations. [~~If the election covers territory in more than one county, the voters may present the affidavits to the attorney general, and the attorney general shall investigate the allegations.~~]

SECTION 5.  The heading to Section 273.003, Election Code, is amended to read as follows:

Sec. 273.003.  IMPOUNDING ELECTION RECORDS AND EQUIPMENT.

SECTION 6.  Section 273.003(a), Election Code, is amended to read as follows:

(a)  In the investigation of an election, a county or district attorney, [~~or~~] the attorney general, the secretary of state, or an election marshal may have impounded for the investigation the election returns, voted ballots, signature roster, and other election records or equipment.

SECTION 7.  The heading of Subchapter E, Chapter 273, Election Code, is amended to read as follows:

SUBCHAPTER E. INJUNCTIVE RELIEF AND EMERGENCY REVIEW [~~INJUNCTION~~]

SECTION 8.  Section 273.081, Election Code, is amended to read as follows:

Sec. 273.081.  INJUNCTION. (a) 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 is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring and may bring an action to obtain injunctive relief to prevent the violation from continuing or occurring.

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

SECTION 9.  Subchapter E, Chapter 273, Election Code, is amended by adding Sections 273.082 and 273.083 to read as follows:

Sec. 273.082.  DISQUALIFICATION OF JUDGE. (a) 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 this subchapter is disqualified to preside over the proceeding, unless the election official serves statewide.

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

(c)  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)  In a proceeding in which a judge is disqualified under Subsection (a), until an alternate judge is assigned to preside over the proceeding, the presiding judge of the administrative judicial region may 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) Not later than the 60th day before the date of a regular or special election, the presiding judge of each administrative judicial region shall appoint a sufficient number of visiting judges to serve as emergency election review judges to preside in actions under this section, in accordance with Chapter 74, Government Code.

(b)  A judge appointed to serve as an emergency election review judge shall receive training as specified by the secretary of state at least once a year.

(c)  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 shall be assigned to an emergency election review judge. An action under this section arising in the district or county in which the court served by an active judge appointed as an emergency election review judge has jurisdiction may not be assigned to that judge.

(d)  A request for hearing in an action heard by an emergency election review judge shall be delivered to the assigned judge who shall 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)  A hearing conducted by an emergency election review judge shall be recorded or transcribed and is subject to appellate review.

SECTION 10.  This Act takes effect September 1, 2021.

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