

BILL ANALYSIS

C.S.S.B. 1039
By: Bettencourt
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, election contests can be used to remedy election irregularities. Since most election results are not contested, Texans often go without explanations to election irregularities. Tarrant County serves as an example of Texans seeking explanations, as three officials in Tarrant County launched a taskforce dedicated to investigating voter fraud.

C.S.S.B. 1039 seeks to address this desire for explanation by establishing a process for certain individuals to obtain an explanation and supporting documentation for election irregularities. Under the bill's provisions, if the explanation provided by the authority conducting the election is determined to be unsatisfactory, the requestor can ask the secretary of state for an audit. The secretary of state would then determine if an audit is needed and conduct an audit accordingly. The bill authorizes the secretary of state to address an election violation discovered during the process by bringing about a remedy to the violation, assessing civil penalties, and maintaining a record of election authorities who have been assessed a civil penalty, or appointing a conservator to oversee elections in the applicable county for two federal election cycles. The bill also authorizes the attorney general to bring an action to recover an unpaid civil penalty.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1039 amends the Election Code to authorize a person participating in an election as a candidate, county chair or state chair of a political party, presiding judge, alternate presiding judge, or head of a specific-purpose political committee that supports or opposes a ballot measure to issue a written request to the county clerk or other authority conducting the relevant election for an explanation and supporting documentation for the following:

- an action taken by an election officer that appears to violate the Election Code;
 - irregularities in results in a precinct or at a polling place or early voting polling place;
 - inadequacy or irregularity of documentation required to be maintained under the code;
- or
- discrepancies in the results of a reconciliation of ballots between the number of voters and the number of votes cast.

The bill authorizes a person to make such request only for an election held on or after the bill's effective date. The bill requires the election authority to provide the requested explanation and any supporting documentation not later than the 20th day after the date a request is received.

C.S.S.B. 1039 authorizes a requestor who is not satisfied with such explanation and supporting documentation to issue a request for further explanation and supporting documentation to the county clerk or other authority. The bill requires a county clerk or other authority to provide the additional requested explanation and any supporting documentation not later than the 10th day after the date a request is received. If the requestor is not satisfied with the additional explanation and supporting documentation, the requestor may issue a request for an audit of the issue to the secretary of state for investigation. The bill requires the request for an audit to include copies of the following:

- the requests made by the person to the county clerk or other authority conducting the election; and
- the explanations and any supporting documentation provided by the county clerk or other authority to the person.

The bill requires the secretary of state, not later than the 30th day after the date the secretary receives that information, to determine whether the submitted information sufficiently explains the identified irregularity. If the information is insufficient, the bill requires the secretary of state to immediately begin an audit of the identified irregularity at the expense of the county or other authority conducting the election. The county clerk or other such authority is required to cooperate with the office of the secretary of state and may not interfere with or obstruct the audit.

C.S.S.B. 1039 provides that, on the conclusion of the audit:

- the secretary of state must provide notice of the findings of the audit to the requestor and the county clerk or other authority conducting the election; and
- if the secretary determines that a violation has occurred, the secretary may appoint a conservator to oversee elections in the county where the violation occurred to serve for two federal election cycles.

The bill requires a county for which a conservator is appointed to pay the costs of providing the conservator, including the salary and benefits of the conservator.

C.S.S.B. 1039 authorizes the secretary of state, at the secretary's discretion, to make a determination that a violation of the Election Code has occurred solely on the basis of submitted evidence without conducting an audit. The bill requires the secretary of state 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.

C.S.S.B. 1039 requires the secretary of state to provide special notice to the county clerk or other authority conducting an election detailing any violation of the Election Code found by the secretary of state in addition to the notice of the audit findings. The bill requires the secretary of state, if the county clerk or other election authority does not remedy a violation by the 30th day after receiving notice, 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 unable to remedy the violation on behalf of the county clerk or other authority, the secretary of state must assess an additional penalty for each day the county clerk or other authority does not remedy the violation until the violation is remedied. The bill specifies that such a remedy is in addition to any other remedy available under law for a violation of the Election Code.

C.S.S.B. 1039 authorizes the attorney general to bring an action to recover an unpaid civil penalty, to be deposited in the state treasury to the credit of the general revenue fund. The bill requires the secretary of state to maintain a record of county clerks or other authorities that conduct elections who have been assessed a civil penalty and publish the record on the secretary of state's website.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1039 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision absent from the engrossed requiring a county for which a conservator is appointed to pay the costs of providing the conservator, including the salary and benefits of the conservator.