

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1039
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State Affairs
4/3/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Election irregularities occur in every election cycle. S.B. 1039 would establish a civil administrative review process to identify and remedy irregularities and improve access, security, processes, documentation, and accuracy with each election. Under current law, election irregularities are mostly addressed if there is an election contest, which happens rarely. The result is irregularities that are identified by election judges, candidates, proponents/opponents of a measure, and party chairs are not always attended to, and create a lack of confidence in the system.

S.B. 1039 would provide a vehicle, going forward, for election judges, candidates, and proponents/opponents of a measure to inquire with the county election officials about identified irregularities and get a rationale for the irregularity and hopefully a plan to improve the situation. If the county is unable to provide a satisfactory reason, the inquirer could raise the issue with the Secretary of State (SOS). Once at SOS, the inquiry would be reviewed and, if necessary, an audit regarding the specific issue identified would be initiated.

If a violation of the Election Code is identified, the SOS will notify the county and work to get the issue resolved. Lastly, S.B. 1039 will provide an avenue for the SOS's office to appoint a conservator to oversee elections for two federal election cycles.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1039 amends current law relating to processes to address election irregularities and provides a civil penalty.

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 Title 16, Election Code, by adding Chapter 280, as follows:

CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

Sec. 280.001. REQUEST FOR EXPLANATION. (a) Authorizes a person described by Subsection (f) to 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;
- (3) inadequacy or irregularity of documentation required to be maintained under this code; or

(4) discrepancies in the results of a reconciliation of ballots between the number of voters and the number of votes cast.

(b) Requires the county clerk or other authority to provide the requested explanation and any supporting documentation not later than the 20th day after the date a request is received under Subsection (a).

(c) Authorizes a requestor who is not satisfied with the explanation and supporting documentation provided under Subsection (a) to issue a request for further explanation and supporting documentation to the county clerk or other authority.

(d) Requires the county clerk or other authority to provide the requested explanation and any supporting documentation not later than the 10th day after the date a request is received under Subsection (c).

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

(f) Authorizes a person to 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) Authorizes a person to whom Section 280.001(e) applies to submit a request for an audit to SOS for investigation. Requires that a request for an audit 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) Requires SOS to determine whether the information submitted under Subsection (a) sufficiently explains the irregularity identified under Section 280.001(a) not later than the 30th day after the date SOS receives a request for an audit under this section. Requires SOS to immediately begin an audit of the identified irregularity at the expense of the county or other authority conducting the election if the information is insufficient.

(c) Requires the county clerk or other authority conducting the election to cooperate with the office of SOS and prohibits interference with or obstruction of the audit.

(d) Requires SOS to 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 on conclusion of the audit.

(e) Authorizes SOS to make, in SOS's discretion, a determination that a violation of this code has occurred solely on the basis of evidence submitted under Subsection (a) without conducting an audit. Requires SOS 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 this election.

(f) Authorizes SOS to appoint a conservator to oversee elections in the county election precinct where the violation occurred if, following an audit, SOS determines that a violation of this code has occurred. Requires the conservator to serve for two federal election cycles.

Sec. 280.003. FINDING OF VIOLATION. (a) Requires SOS to provide special notice to the county clerk or other authority conducting an election detailing any violation of this code found by SOS under Section 280.002, in addition to the notice required under Section 280.002(d).

(b) Requires SOS 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 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. Provides that the remedy provided under this subsection is in addition to any other remedy available under law for a violation of this code.

(c) Requires SOS to 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 if SOS is not able to remedy the violation on behalf of the county clerk or other authority.

(d) Requires SOS to maintain a record of county clerks or other authorities that conduct elections who have been assessed a civil penalty under Subsection (b). Requires SOS to publish the record on SOS's Internet website.

(e) Authorizes the attorney general to bring an action under this section to recover a civil penalty that has not been paid.

(f) Requires that a civil penalty collected under this section be deposited in the state treasury to the credit of the general reserve fund.

SECTION 2. Makes application of Section 280.001, Election Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.