

BILL ANALYSIS

C.S.S.B. 1933
By: Bettencourt
Elections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Elections are the backbone of American democracy, and it is our duty to ensure that elections in Texas are run in a free, fair, and secure manner. Some recent events have called into question whether elections are being efficiently managed by local county officials. For example, in 2022, the unelected Harris County elections administrator resigned following delays in releasing vote counts and an announcement that her office failed to enter around 10,000 mail-in ballots into the election night count. She admitted in her resignation that "I didn't meet my own standard or the standard set by the commissioners court."

These county election officials with authority over election administration or voter registration are responsible to the people of Texas to do their work correctly because elections have statewide impact. C.S.S.B. 1933 seeks to address this issue by creating a process to provide the chief elections officer of the State of Texas, the secretary of state, with the ability to investigate election administration problems, provide administrative oversight, and have a process for removing ineffective county election officials.

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 rulemaking authority is expressly granted to the secretary of state in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1933 amends the Election Code to establish procedures for the secretary of state to have oversight of a county office administering elections or voter registration in the county. The bill authorizes the secretary of state's office to order administrative oversight of a county office administering elections or voter registration in the county if, as follows:

- an administrative election complaint is filed with the secretary of state;
- the secretary of state has provided notice to the county election official with authority over election administration or voter registration that such a complaint has been filed; and
- the secretary of state, after conducting an investigation, has good cause to believe that a recurring pattern of problems with election administration or voter registration exists in the county, including any recurrence of the following:
 - malfunction of voting system equipment that prevents a voter from casting a vote;
 - carelessness or official misconduct in the distribution of election supplies;
 - errors in tabulation of results that would have affected the outcome of an election;

- violations of statutory provisions regarding the time for delivering election records after the precinct returns are completed;
- discovery of properly executed voted ballots after the canvass of an election that were not counted; and
- failure to conduct maintenance activities on the lists of registered voters as required under the Election Code.

C.S.S.B. 1933 requires the secretary of state to provide notice of the complaint, including the specific allegations against the applicable election official in the complaint, to the county election official not later than the 30th day after receiving the complaint. The bill authorizes the county election official, not later than the 30th day after receiving notice of the administrative election complaint, to provide a response with any supporting documentation relating to the complaint or the allegations in the complaint to the secretary of state. If the complaint concerns an election for which voting by personal appearance has begun and the final canvass has not been completed, the county election official must provide a response not later than 72 hours after receiving notice of the complaint. With respect to the required investigation of the complaint, the bill does the following:

- authorizes the secretary of state to direct personnel in the secretary of state's office to conduct the investigation;
- requires the secretary of state to consider any response or supporting documentation provided by the county election official, if applicable;
- requires the secretary of state, if the secretary of state decides to conduct an investigation, to provide the county election official notice of the determination to conduct the investigation; and
- requires the secretary of state, after completing an investigation, to provide a report on the findings of the investigation to the county election official and to the individual who filed the complaint.

C.S.S.B. 1933 requires the secretary of state to make a determination on whether to implement administrative oversight not later than the 30th day after the earliest of the following:

- the day a response to the notice of the complaint by the county election official is received by the secretary of state;
- the last day the county election official could provide such a response to the secretary of state; or
- the day the report on the findings of an investigation is provided to the county election official.

C.S.S.B. 1933 requires the secretary of state, if the secretary of state implements administrative oversight, to provide written notice to the county election official with authority over election administration or voter registration and the county judge of the determination to implement administrative oversight in the county. The bill requires the authority of administrative oversight over a county granted to the secretary of state to include the following:

- requiring the approval and review by the secretary of state of any policies or procedures regarding the administration of elections issued by the county; and
- authorizing all appropriate personnel in the secretary of state's office to conduct in-person observations of the county election office's activities, including any activities related to election preparation, early voting, election day, and post-election day procedures.

The bill requires the county election officer subject to the administrative oversight to provide sufficient access to the appropriate personnel in the secretary of state's office to perform their duties as required. The bill requires the secretary of state to conduct the administrative oversight of a county until the earlier of December 31 of the even-numbered year following the first anniversary of the date the complaint was received or the date on which the secretary of state determines that the recurring pattern of problems with election administration or voter registration is rectified.

C.S.S.B. 1933 requires the secretary of state, once each quarter during the period the secretary of state is overseeing elections in a county, to submit a report regarding the activities of the oversight personnel to the members of the county election commission and the county attorney. The bill requires the secretary of state to deliver the required report in person to the county commissioners court if requested by the commissioners court.

C.S.S.B. 1933 authorizes the secretary of state to do the following at the conclusion of its administrative oversight:

- if the recurring pattern of problems with election administration or voter registration is not rectified or continues to impede the free exercise of a citizen's voting rights in the county, file a petition for the removal of the applicable county officer; and
- enter a written order to terminate the employment of a county elections administrator, in a county that has the position.

C.S.S.B. 1933 authorizes the secretary of state to adopt rules necessary to implement the administrative oversight of a county.

C.S.S.B. 1933 specifies that the elections subject to a randomized election audit conducted by the secretary of state immediately after the uniform election date in November of an even-numbered year are the elections held on the uniform election date. The bill authorizes the secretary of state, if the secretary of state completes such an audit of a county with a total population of less than 300,000 before the end of a two-year period, to randomly select another county in that population bracket to be audited. If not later than July 31 of the first odd-numbered year following the commencement of an audit, the audit findings demonstrate to the secretary of state that a recurring pattern of problems with election administration or voter registration exists in an audited county and the problems impede the free exercise of a citizen's voting rights, the secretary of state must publicly release the preliminary findings of the audit and recommend the county for administrative oversight and may conduct an audit of other elections held in the county in the previous two years, as determined necessary by the secretary of state.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1933 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 and the engrossed both include provisions relating to the implementation of administrative oversight procedures by the secretary of the state over county elections. While both versions of the bill include the filing of an administrative election complaint with the secretary of state as a requisite condition for the secretary of state to order the administrative oversight, the substitute includes provisions absent from the engrossed that do the following:

- require the secretary of state to provide notice of the complaint, including the specific allegations against the applicable election official in the complaint, to the county election official not later than the 30th day after receiving the complaint;
- authorize the county election official, not later than the 30th day after receiving notice of the administrative election complaint, to provide a response with any supporting documentation relating to the complaint or the allegations in the complaint to the secretary of state; and
- require the county official, if the complaint concerns an election for which voting by personal appearance has begun and the final canvass has not been completed, to provide a response not later than 72 hours after receiving notice of the complaint.

Whereas the substitute includes as a requisite condition for the secretary of state's authority to order the administrative oversight the provision of the notice to the county election official, the engrossed does not.

The substitute includes provisions absent from the engrossed that do the following with regard to an investigation of a complaint:

- authorize the secretary of state to direct personnel in the secretary of state's office to conduct the investigation;
- require the secretary of state to consider any response to the notice of the complaint or supporting documentation provided by the county election official, if applicable;
- require the secretary of state, if the secretary of state decides to conduct an investigation, to provide the county election official notice of the determination to conduct the investigation; and
- require the secretary of state, after completing an investigation, to provide a report on the findings of the investigation to the county election official and to the individual who filed the complaint.

While both the engrossed and substitute include as a requisite condition to order the oversight the secretary of state having good cause to believe that a recurring pattern of problems with election administration or voter registration exists in the county, the bill versions differ as follows:

- the substitute includes a specification absent from the engrossed that the good cause is only applicable after the secretary of state conducts an investigation of the complaint;
- the substitute omits a specification present in the engrossed that the problems with the election administration or voter registration include any of the following:
 - malfunction of voting system equipment;
 - unfair distribution of election supplies;
 - errors in tabulation of results;
 - delays in reporting election returns;
 - discovery of voted ballots after the polls close; and
 - failure to conduct maintenance activities on the lists of registered voters as required under the Election Code;
- the substitute includes instead a specification absent from the engrossed that the problems with the election administration or voter registration include any recurrence of the following:
 - malfunction of voting system equipment that prevents a voter from casting a vote;
 - carelessness or official misconduct in the distribution of election supplies;
 - errors in tabulation of results that would have affected the outcome of an election;
 - violations of statutory provisions regarding the time for delivering election records after the precinct returns are completed;
 - discovery of properly executed voted ballots after the canvass of an election that were not counted; and
 - failure to conduct maintenance activities on the lists of registered voters as required under the Election Code.

The substitute includes a requirement absent from the engrossed for the secretary of state to make a determination on whether to implement administrative oversight not later than the 30th day of the earliest of the following:

- the day a response to the notice of the complaint by the county election official is received by the secretary of state;
- the last day the county election official could provide such a response to the secretary of state; or
- the day the report on the findings of an investigation is provided to the county election official.

Whereas the engrossed required the secretary of state, on the determination that oversight is necessary, to provide written notice to the county judge and the applicable county election official of the decision to require the oversight and the designated period during which the oversight will take place, the substitute instead requires the secretary of state, if implementing the oversight, to provide written notice to the applicable official and county judge of the determination to implement the oversight. Whereas the engrossed required the oversight authority to continue until at least December 31 of the first even-numbered year following the year in which the secretary of state provides the notice, the substitute instead requires the secretary of state to conduct the oversight until the earlier of the following:

- December 31 of the even-numbered year following the first anniversary of the date the complaint was received; or
- the date on which the secretary of state determines that the recurring pattern of problems with election administration or voter registration is rectified.

Regarding the secretary of state's authority of administrative oversight over a county, the engrossed provided for the approval and review of any policies or procedures adopted by the county election office subject to the oversight, whereas the substitute provides for the approval and review of any policies or procedures regarding the administration of elections issued by the county. The substitute omits a specification in the engrossed that the requirement for the oversight authority granted to the secretary of state to authorize all appropriate personnel to conduct in-person observations of the county election office's activities includes oversight related to voter registration activities.

Whereas the engrossed required the secretary of state to submit a quarterly report regarding the activities of the oversight personnel to the applicable county election official, the county judge, the county attorney, and the chairs of the political parties holding primary elections in the county, the substitute instead requires the secretary of state to submit the report only to the members of the county election commission and the county attorney. The engrossed required the secretary of state to deliver the report in person to the county election commission or the county commissioners court if requested by the commissioners court, while the substitute only requires the report to be delivered in person to the county commissioners court upon such a request.

The substitute omits the provisions in the engrossed that did the following:

- required the secretary of state, at the conclusion of the oversight period, to issue a report to the county commissioners court regarding the following:
 - any remediation actions taken by the secretary of state during the oversight period; and
 - the secretary of state's recommendation on whether further administrative oversight of the county is necessary to ensure proper election administration and voter registration in the county;
- required the report, if the secretary of state determines that additional oversight of the county is necessary, to include a detailed plan for the additional oversight activities; and
- required the secretary of state, upon determining that no additional oversight of the county is necessary, to issue an order terminating the administrative oversight of the county.

The substitute omits the following provisions that appeared in the engrossed:

- the requirement for the secretary of state to appoint a conservator to oversee elections in the county if at the conclusion of the oversight period the secretary of state determines that the following is true:
 - the recurring pattern of problems with election administration or voter registration have not been properly remediated or continue to impede the free exercise of a citizen's voting rights in the county; and
 - an extension of administrative oversight will not properly remediate the problems; and

- an authorization for the secretary of state, if the county for which a conservator is appointed has an appointed elections administrator, to provide a written recommendation to the county election commission for the suspension or termination of the elections administrator.

Instead, the substitute includes an authorization for the secretary of state to do the following at the conclusion of administrative oversight:

- if the recurring pattern of problems with election administration or voter registration is not rectified or continues to impede the free exercise of a citizen's voting rights in the county, file a petition for the removal of the applicable county officer; and
- enter a written order to terminate the employment of a county elections administrator, in a county that has the position.

The substitute omits provisions from the engrossed authorizing the secretary of state to immediately appoint a conservator to oversee elections in a county under certain conditions, regardless of whether oversight of the county has been previously conducted, and establishing that the appointed conservator serves until the first uniform election date after the secretary of state determines the recurring pattern of problems is rectified.