

1-1 By: Bettencourt, Hughes S.B. No. 1039  
 1-2 (In the Senate - Filed February 17, 2023; March 3, 2023,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 April 5, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 2; April 5, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14		X		
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19			X	

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1039 By: Hughes

1-21 A BILL TO BE ENTITLED  
 1-22 AN ACT

1-23 relating to processes to address election irregularities;  
 1-24 providing a civil penalty.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Title 16, Election Code, is amended by adding  
 1-27 Chapter 280 to read as follows:

1-28 CHAPTER 280. REQUEST TO ADDRESS ELECTION IRREGULARITY

1-29 Sec. 280.001. REQUEST FOR EXPLANATION. (a) A person  
 1-30 described by Subsection (f) may issue a written request to the  
 1-31 county clerk or other authority conducting an election for an  
 1-32 explanation and supporting documentation for:

1-33 (1) an action taken by an election officer that  
 1-34 appears to violate this code;

1-35 (2) irregularities in results in a precinct or at a  
 1-36 polling place or early voting polling place;

1-37 (3) inadequacy or irregularity of documentation  
 1-38 required to be maintained under this code; or

1-39 (4) discrepancies in the results of a reconciliation  
 1-40 of ballots between the number of voters and the number of votes  
 1-41 cast.

1-42 (b) Not later than the 20th day after the date a request is  
 1-43 received under Subsection (a), the county clerk or other authority  
 1-44 shall provide the requested explanation and any supporting  
 1-45 documentation.

1-46 (c) A requestor who is not satisfied with the explanation  
 1-47 and supporting documentation provided under Subsection (b) may  
 1-48 issue a request for further explanation and supporting  
 1-49 documentation to the county clerk or other authority.

1-50 (d) Not later than the 10th day after the date a request is  
 1-51 received under Subsection (c), the county clerk or other authority  
 1-52 shall provide the requested explanation and any supporting  
 1-53 documentation.

1-54 (e) A requestor who is not satisfied with the explanation  
 1-55 and supporting documentation provided under Subsection (d) may  
 1-56 issue a request to the secretary of state for an audit of the issue  
 1-57 described by Subsection (a), as provided by Section 280.002.

1-58 (f) A person may make a request under this section if the  
 1-59 person participated in the relevant election as:

1-60 (1) a candidate;

- 2-1 (2) a county chair or state chair of a political party;
- 2-2 (3) a presiding judge;
- 2-3 (4) an alternate presiding judge; or
- 2-4 (5) the head of a specific-purpose political committee
- 2-5 that supports or opposes a ballot measure.

2-6 Sec. 280.002. AUDIT BY SECRETARY OF STATE. (a) A person  
2-7 to whom Section 280.001(e) applies may submit a request for an audit  
2-8 to the secretary of state for investigation. A request for an  
2-9 audit must include copies of:

2-10 (1) the requests made by the person to the county clerk  
2-11 or other authority conducting the election under Sections  
2-12 280.001(a) and (c); and

2-13 (2) the explanations and any supporting documentation  
2-14 provided by the county clerk or other authority to the person under  
2-15 Sections 280.001(b) and (d).

2-16 (b) Not later than the 30th day after the date the secretary  
2-17 of state receives a request for an audit under this section, the  
2-18 secretary must determine whether the information submitted under  
2-19 Subsection (a) sufficiently explains the irregularity identified  
2-20 under Section 280.001(a). If the information is insufficient, the  
2-21 secretary of state shall immediately begin an audit of the  
2-22 identified irregularity at the expense of the county or other  
2-23 authority conducting the election.

2-24 (c) The county clerk or other authority conducting the  
2-25 election shall cooperate with the office of the secretary of state  
2-26 and may not interfere with or obstruct the audit.

2-27 (d) On conclusion of the audit, the secretary of state shall  
2-28 provide notice of the findings of the audit to the person who  
2-29 submitted the request for the audit and the county clerk or other  
2-30 authority conducting the election.

2-31 (e) The secretary of state may, in the secretary's  
2-32 discretion, make a determination that a violation of this code has  
2-33 occurred solely on the basis of evidence submitted under Subsection  
2-34 (a) without conducting an audit. The secretary of state shall send  
2-35 notice of the determination to the person who submitted the request  
2-36 for the audit and to the county clerk or other authority conducting  
2-37 the election.

2-38 (f) If, following an audit, the secretary of state  
2-39 determines that a violation of this code has occurred, the  
2-40 secretary may appoint a conservator to oversee elections in the  
2-41 county where the violation occurred. The conservator shall serve  
2-42 for two federal election cycles.

2-43 Sec. 280.003. FINDING OF VIOLATION. (a) In addition to  
2-44 the notice required under Section 280.002(d), the secretary of  
2-45 state shall provide special notice to the county clerk or other  
2-46 authority conducting an election detailing any violation of this  
2-47 code found by the secretary under Section 280.002.

2-48 (b) If the county clerk or other authority conducting an  
2-49 election does not remedy a violation detailed in a notice under  
2-50 Subsection (a) by the 30th day after the date the clerk or other  
2-51 authority receives the notice, the secretary of state shall assess  
2-52 a civil penalty of \$500 for each violation not remedied and, if  
2-53 possible, remedy the violation on behalf of the county clerk or  
2-54 other authority. The remedy provided under this subsection is in  
2-55 addition to any other remedy available under law for a violation of  
2-56 this code.

2-57 (c) If the secretary of state is not able to remedy the  
2-58 violation on behalf of the county clerk or other authority, the  
2-59 secretary shall assess an additional penalty under Subsection (b)  
2-60 for each day the county clerk or other authority does not remedy the  
2-61 violation until the violation is remedied.

2-62 (d) The secretary of state shall maintain a record of county  
2-63 clerks or other authorities that conduct elections who have been  
2-64 assessed a civil penalty under Subsection (b). The secretary of  
2-65 state shall publish the record on the secretary of state's Internet  
2-66 website.

2-67 (e) The attorney general may bring an action under this  
2-68 section to recover a civil penalty that has not been paid.

2-69 (f) A civil penalty collected under this section shall be

3-1 deposited in the state treasury to the credit of the general revenue  
3-2 fund.

3-3 SECTION 2. A person may make a request under Section  
3-4 280.001, Election Code, as added by this Act, only for an election  
3-5 held on or after the effective date of this Act.

3-6 SECTION 3. This Act takes effect September 1, 2023.

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