

BILL ANALYSIS

S.B. 1863
By: Hughes
Elections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that Texas pioneered the use of a randomized procedural audit of elections, which is a unique tool to assure the public that elections are run according to state law. The bill sponsor has also informed the committee that procedural audits have identified substantial issues, including massive failures in one county's ability to demonstrate chain of custody for over 180,000 voted ballots, mail-in ballots that appeared to have been counted but were still sealed in their carrier envelopes, data inconsistencies across multiple platforms in the 2020 general election, inadequate training for election judges and poll workers, discrepancies between county and statewide data on mail-in ballots, a lack of election-specific security planning, and repeated deficiencies in providing necessary equipment and ballot supplies in the 2022 general election. The bill sponsor has further informed the committee that these problems would not have otherwise been detected absent a procedural audit, illustrating the need for and importance of this particular type of audit. S.B. 1863 seeks to address this issue by expanding the number of counties subject to audit by the secretary of state and by revising the procedures for conducting randomized county election audits.

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

S.B. 1863 amends the Election Code to revise the procedures by which the secretary of state is required to conduct randomized county election audits as follows:

- changes the frequency with which the audits must be conducted from immediately after the uniform election date in November of an even-numbered year to immediately after each November uniform election date;
- changes the elections that must be audited from elections held on the uniform election date in four counties during the previous two years to elections held on each November uniform election date in 16 counties; and
- requires the audit to include any election held in the preceding year in a political subdivision of a county included in the audit.

The bill requires each county and political subdivision of the state authorized to hold an election to do the following, for purposes of enabling the secretary of state to conduct such audits:

- register with the secretary of state as a county or political subdivision authorized to hold an election; and

- notify the secretary of state of each election held by the county or political subdivision not later than the 90th day before the date of the election.

S.B. 1863 increases from two to 13 the number of counties with a total population of less than 300,000 that must be randomly selected for audit and increases from two to three the number of counties with a total population of 300,000 or more that must be randomly selected for audit. The bill prohibits randomized county election audits from being conducted before the end of the period for filing a petition in an election contest or a resulting runoff for an election. The bill requires the secretary of state, in the audits performed following the elections held on the November 2025 and November 2026 uniform election dates, to include in place of one of the selected counties with a total population of 300,000 or more a county with a total population of less than 150 and establishes that this requirement expires September 1, 2031. The bill repeals the provision authorizing the secretary of state, if the secretary of state completes the audit of an applicable county before the end of a two-year period, to randomly select another county with a total population of less than 300,000 to be audited.

S.B. 1863 requires the secretary of state, in conducting randomized county election audits, to audit the following:

- the accuracy of voter registration lists;
- the registrar's compliance with voter registration list maintenance requirements;
- the procedures for testing voting equipment and voting systems before the start of tabulation, including procedures related to testing ballots and the storage and maintenance of voting equipment and voting systems;
- any chain of custody or seal documentation requirements for election records or supplies;
- the procedures for early voting by mail, including procedures related to:
 - applications for a ballot to be voted by mail;
 - early voting by mail ballot envelopes and carrier envelopes;
 - lists kept by the early voting clerk or registrar related to early voting by mail; and
 - records created or used by the early voting ballot board; and
- the procedures for provisional ballots, including procedures related to envelopes containing provisional ballots and records related to provisional ballots.

S.B. 1863 requires the county clerk or person performing the duties of a county clerk in a county or political subdivision audited in a randomized county election audit to provide all necessary documents, records, and access requested by the secretary of state. If a person willingly fails to comply with such a request, the bill authorizes the secretary of state to decline to reimburse the county or political subdivision for any state-funded election expenses for a period of not more than two years. The bill requires the secretary of state to provide notice of any such declination not later than the 10th day after the date the secretary of state determines that the person has intentionally or knowingly failed to comply with the request. The bill authorizes a county or political subdivision to appeal a determination that the county or political subdivision has intentionally or knowingly failed to comply with a request in a district court with jurisdiction over the county or political subdivision.

S.B. 1863 requires the secretary of state to issue a report on each conducted audit and to publish each report on the secretary of state's website. The bill requires the secretary of state, before issuing the report, to allow local election officials in the county or political subdivision that is the subject of the audit to review the report and provide comments to be submitted with the report. The report must include the following:

- a list of any major findings that may affect the outcome of an election;
- a determination whether any voters were determined to be disenfranchised;
- a detailed report of any major or minor findings of the audit;
- any comments provided by a local election official;
- information related to any findings, actions, or efforts taken due to a demonstrated recurring pattern of problems with election administration or voter registration; and

- any recommended changes for the election practices of the county, political subdivision, or secretary of state.

The bill establishes that the contents of the report and any documents used in conducting the audit are not subject to state public information law until the report is officially published.

S.B. 1863 requires the secretary of state to conduct a pilot program as part of the randomized county audits in which the secretary of state develops an auditing procedure that aims to account for each ballot prepared in a county and numbered as required by statutory provisions relating to ballot form. The bill requires the secretary of state, when conducting randomized county audits, to randomly select one of the counties selected with a total population of less than 300,000 to participate in the program. The bill requires the secretary of state, in conducting the audit, to do the following in addition to existing audit requirements:

- audit the randomly selected county using the auditing procedure developed under the program; and
- provide a report to the legislature noting any omissions or discrepancies discovered in the audit.

These bill provisions relating to the pilot program expire September 1, 2027.

S.B. 1863 repeals Section 127.351(d), Election Code.

EFFECTIVE DATE

September 1, 2025.