

SUBJECT: Establishing a process to obtain explanations of election irregularities

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Smith, Burrows, Capriglione, DeAyala, Swanson

2 nays — Bucy, Manuel

2 absent — E. Morales, Vo

SENATE VOTE: On final passage (April 13) — 18 - 12

WITNESSES: For — Cindy Siegel, Harris County Republican Party; Robert L. Green, Travis County Republican Party Election Integrity Committee for Legislation; Ed Johnson; Ken Moore; Alexie Swirsky; Lucy Trainor (*Registered, but did not testify*: Tisha Crow, Ector County Republican Party; John Beckmeyer, RPT; Andrew Eller, State Republican Executive Committee SD24, Republican Party of Texas; Chuck DeVore, Texas Public Policy Foundation; Dawn Bednarz; Michael Belsick; Paul Gregory; Russell Hayter; Dana Oakes)

Against — Andrew Hendrickson, ACLU of Texas; Katya Ehresman, Common Cause Texas; Luis Figueroa, Every Texan; Linda Curtis, League of Independent Voters of Texas; Stephanie Swanson, League of Women Voters of TX; Amber Mills, MOVE Texas Action Fund; Chris Davis, Texas Association of Elections Administrators; Emily Eby French, Texas Civil Rights Project; Brenda Cruz, Texas Democratic Party; Susana Carranza; Rosemarie Clouston; Charles Crews; Laura Martinez; Joanne Richards (*Registered, but did not testify*: David Weinberg, Brennan Center For Justice; TJ Patterson, City of Fort Worth; Paul Sugg, Harris County Commissioners Court; Kevin Hale, Libertarian Party of Texas; Joey Bennett, Secure Democracy USA; Patricia Shipton, Secure Elections Project; Emily Amps, Texas AFL-CIO; Joshua Houston, Texas Impact; Bob Libal, The Sentencing Project; Cicely Kay, Travis County Commissioners Court; Cynthia Van Maanen, Travis County Democratic Party; and 15 individuals)

On — Christina Adkins, Texas Secretary of State

BACKGROUND: Some have suggested that there should be a process for certain individuals to obtain an explanation and supporting documentation for election irregularities.

DIGEST: CSSB 1039 would allow certain individuals to request from the county clerk or other authority conducting an election for an explanation and supporting documentation for:

- an action taken by an election officer that appeared 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; or
- discrepancies in the results of a reconciliation of ballots between the number of voters and the number of votes cast.

A person could make a request if the person participated in the relevant election as:

- a candidate;
- a county or state chair of a political party;
- a presiding judge;
- an alternate presiding judge; or
- the head of a specific-purpose political committee that supported or opposed a ballot measure.

Within 20 days after the request was received, the county clerk or other authority would be required to provide the requested explanation and any supporting documentation. A requestor who was not satisfied with the explanation and supporting documentation could issue a request for further explanation and supporting documentation. Within 10 days after the request was received, the county clerk or other authority would be

required to provide the requested explanation and any supporting documentation.

A requestor who was not satisfied with the further explanation and supporting documentation provided could issue a request to the secretary of state for an audit of the issue. A request for an audit would be required to include copies of the requests made by the person to the county clerk or other authority conducting the election and the provided explanations and any supporting documentation.

Within 30 days after the secretary of state received a request for an audit, the secretary would be required to determine whether the submitted information sufficiently explained the irregularity. If the information was insufficient, the secretary of state would be required 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 authority conducting the election would be required to cooperate with the secretary of state and could not interfere with or obstruct the audit. On the conclusion of the audit, the secretary of state would be required to provide notice of the findings to the person who submitted the request for the audit and the county clerk or other authority conducting the election.

The secretary of state could make a determination that a violation of the Election Code had occurred solely on the basis of submitted evidence without conducting an audit. The secretary of state would be required 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.

If the secretary of state determined that a violation had occurred following an audit, the secretary could appoint a conservator to oversee elections in the county where the violation occurred. The conservator would be required to serve for two federal election cycles. A county for which a conservator was appointed would be required to pay the costs of providing the conservator, including the salary and benefits of the conservator.

In addition to the required notice, the secretary of state would be required 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. If the county clerk or other authority conducting an election did not remedy a violation detailed in a notice within 30 days of receiving the notice, the secretary of state would be required to assess a civil penalty of \$500 for each violation not remedied and, if possible, remedy the violation. If the secretary of state was not able to remedy the violation, the secretary would be required to assess an additional penalty for each day the county clerk or other authority did not remedy the violation.

The secretary of state would be required to maintain a record of county clerks or other authorities that conducted elections who had been assessed a civil penalty. The secretary of state would be required to publish the record on its website. The attorney general could bring an action to recover a civil penalty that had not been paid, which would have to be deposited to the general revenue fund.

The bill would take effect September 1, 2023, and a person could make a request only for an election held on or after that date.

NOTES:

According to the Legislative Budget Board, CSSB 1039 would have a negative impact of about \$1 million to general revenue related funds during fiscal 2024-25.