

SENATE JOURNAL

EIGHTY-SEVENTH LEGISLATURE — SECOND CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

SEVENTH DAY

(Continued)

(Thursday, September 2, 2021)

AFTER RECESS

The Senate met at 2:26 p.m. and was called to order by the President.

Senator Lucio offered the invocation as follows:

Grant us Your spirit, Lord our God, that we may discern Your good, acceptable, and perfect will. Give us joy in fighting on Your side, so that what is good, acceptable, and perfect may be given to the world. Wherever we are and whatever work we do, give us zeal to serve You and be guided by You so that Your will may be done and Your kingdom come, so that already today we may find happiness even though only in hope. Amen.

BILL AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bill and resolutions in the presence of the Senate after the caption had been read:

HB 9 (Signed subject to Art. III, Sec. 49-a, Texas Constitution), **HCR 9**, **HCR 10**, **HCR 11**, **HCR 12**.

COMMITTEE SUBSTITUTE SENATE BILL 97 ON SECOND READING

Senator Bettencourt moved to suspend the regular order of business and Senate Rule 7.12(a) to take up for consideration **CSSB 97** at this time on its second reading:

CSSB 97, Relating to processes to address election irregularities; providing a civil penalty.

The motion prevailed by the following vote: Yeas 18, Nays 13.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, Seliger, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Bettencourt offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 97** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 281.001(d), Election Code, between "shall" and "appoint" (page 2, line 64), insert "determine the number of members necessary to conduct the review and".

(2) In SECTION 1 of the bill, in added Section 281.001(f), Election Code, strike Subdivision (1) (page 2, line 69 through page 3, line 5) and substitute the following:

(1) all ballots voted in-person during early voting and on election day from each precinct in the county where the number of ballots cast exceeded the total number of voters who were accepted for voting at an early voting location or polling place in the precinct;

(2) all ballots voted by mail and on election day from an additional number of randomly selected precincts in the county that includes the greater of:

(A) three precincts; or

(B) 20 percent of the remaining number of precincts in the county; and

(3) In SECTION 1 of the bill, in added Section 281.001(f), Election Code (page 3, line 6), renumber subsequent Subdivisions of Subsection (f) accordingly.

(4) In SECTION 1 of the bill, in added Section 281.001, Election Code, strike Subsection (g) (page 3, lines 13 through 24) and substitute the following:

(g) A review under this section shall be limited to not fewer than three and not more than five contested races or ballot measures. If there are more than five contested races or ballot measures identified in the request under Subsection (b), the county clerk shall randomly select five races or measures for review. The contested races must include at least one of each of the following types of races, regardless of whether the type was identified in the request under Subsection (b):

(1) a federal office;

(2) a statewide office; and

(3) a county office.

(5) In SECTION 1 of the bill, in added Section 281.001(k), Election Code, in Subdivision (1) (page 3, lines 49 and 50), strike "race under Subsections (g)(1) through (3)" and substitute "race or ballot measure under Subsection (g)".

The amendment to **CSSB 97** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Johnson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 97** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, adding Chapter 280, Election Code, at the end of Section 280.001 (page 1, between lines 56 and 57), insert the following:

(g) A person who makes a request under Subsection (e) shall, at the time the person makes the request, post a bond that is payable to the county if an audit resulting from the request does not result in a finding of a violation, and is in an amount sufficient to compensate the county for costs incurred in the course of responding to a request made under Subsections (a) and (c).

(2) In SECTION 1 of the bill, adding Chapter 281, Election Code, at the end of Section 281.001(b) (page 2, between lines 55 and 56), insert the following:

(b-1) A state or county chair who makes a request under this section shall, at the time the chair makes the request, post a bond that is payable to the county if the resulting review does not result in a notice with an indication under Subsection (n)(3), and is in an amount sufficient to compensate the county for the cost of the review.

The amendment to **CSSB 97** was read and failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Seliger, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Springer, Taylor.

CSSB 97 as amended was passed to engrossment by the following vote: Yeas 17, Nays 14.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Seliger, West, Whitmire, Zaffirini.

REMARKS ORDERED PRINTED

On motion of Senator Springer and by unanimous consent, the remarks regarding **CSSB 97** were ordered reduced to writing and printed in the *Senate Journal* as follows:

President: Senator Bettencourt, you're recognized to suspend the regular order of business on Committee Substitute for Senate Bill 97.

Senator Bettencourt: Thank you, Mr. President and Members. The Committee Substitute for Senate Bill 97 establishes a civil administrative review process to identify and remedy election irregularities, improve access, security, and accuracy with each election cycle. Under current law, election irregularities are usually only addressed in rare events of an election contest. These documented irregularities can include incorrect reporting of daily results during early voting, certain polling locations staying open later than others, lack of chain of custody, and documentation for live ballots, and especially, as we heard in testimony in the hearing, more votes than voters in a precinct, which is apparently occurring somewhat, you know, somewhat regularly across the state, and many more. The result is that irregularities identified by election judges, candidates, and parties are not always resolved, creating lack of confidence in our elections. So, the Committee Substitute to Senate Bill 97

provides a vehicle for certain election participants to inquire with county election officials. They'll seek an explanation or resolution or identify any irregularity or violation of the Election Code. They'll have 20 days to respond to that as the election official, if not, then there'll be another 10-day period of a second request. If there's been no response or if the response has not been complete, then it will be up to the Secretary of State to decide after that to make a judgment as to where the corrections review further, up to, and triggering an audit. And at this time, Mr. President and Members, I'd be happy to take any questions, but I move to suspend the printing rule, the regular order of business to take up and consider the Committee Substitute to Senate Bill 97.

President: Senator Hinojosa, what purpose? Senator Huffman and Creighton, can you just part the waters there a moment? Thank you.

Senator Hinojosa: Will Senator Bettencourt yield for a couple of questions?

President: Do you yield?

Senator Bettencourt: Always, Sir.

Senator Hinojosa: Senator Bettencourt, I guess I'm trying to see what your bill really does. Are we talking about doing an audit of the 2020 election?

Senator Bettencourt: No, we are talking about the ability to go back and look at election irregularities of the 2020 election. This is not, this is specific to having a request from somebody that's been involved in the process, county chairs, you know, candidates, et cetera. And they can ask their county clerk or, i.e., their election administrator, that they see an irregularity and get a response to that. And I'll use the example that we've talked about on the floor many times, Senator Hinojosa, is Harris County. Harris County has still an unexplained 1,884 more votes than on the voter roster. And even though people in this body, including the President, have asked for an explanation, and there was actually a complaint filed, the Secretary of State looked at it and said, well, we're not sure this is criminal, but we don't really have the ability to order, you know, anything else. And that's really what Senate Bill 97 does, is that if there's an irregularity, ask the question, you don't have to go to a lawsuit, get a response. If you need a clarification ask again, and then let the Secretary of State determine whether there's a need for an audit.

Senator Hinojosa: So, can anybody file a complaint?

Senator Bettencourt: Excuse me?

Senator Hinojosa: Can anybody file a complaint requesting an audit?

Senator Bettencourt: No. We limited it to those that are involved in the elections process. Specifically, and I'll read here in a second, give me a chance: candidate, county chair of political party, presiding judge, alternate judge, and the head of a special purpose political committee that supports or opposes a ballot measure.

Senator Hinojosa: And those who filed a complaint, would they be the ones to decide whether or not to appeal to the Secretary of State?

Senator Bettencourt: Well, they certainly can, under this they would ask, we'll use a simple example. Precinct 62 in a county has more actual voters than registered voters. Okay? We're actually going to take an amendment. There's, I got one technical amendment on that coming to make that clear that if somebody wanted an audit of that, it should be included in an audit. Because it's an obvious question, whether it's from the Valley to the Red River, if we have a precinct that has more votes than registered voters, we should know what's going on. They would ask, they would have 20 days for the election official to respond. If the response was adequate, that would be the end of it. If they ask again, they have another 10 days. And then at that point in time, Secretary of State can look, make, under their discretion, make the decision whether an audit is required.

Senator Hinojosa: And who would do the audit?

Senator Bettencourt: Well, the county obviously does the audit. And if I could, the audits, we talked about this in the committee hearing. When I was a voter registrar, as well as, this continues to this day, there are audits that the county does. For example, the registration side looks for people that have no registration but yet they're voting. On the, on the clerk side they look for people that are, quote, allegedly voted twice. And those reports are already ongoing so we took testimony from former election officials that actually in Harris County, in last decade, they actually did a full audit of the entire roll. It took 50 people two weeks to do it.

Senator Hinojosa: So, will Senate Bill 97, it would allow for the audit of a presidential election that President Trump won here in Texas?

Senator Bettencourt: No, it would be specific to an irregularity that somebody would say, again, for a county that has a precinct that has more votes than registered or like an existing complaint in Harris County that there's 1,884 more votes than there are voter roster on early ballot, excuse me, drive-through voting.

Senator Hinojosa: Didn't we address this issue in Senate Bill 1?

Senator Bettencourt: There was a, there was one amendment that was ruled out of order. What's in the bill now, I'm going from memory, is that we will audit four counties randomly, two below 135,000 in population and two above 135,000 in population. This basically opens up a civil administrative review of specific issues that really doesn't exist in the code right now.

Senator Hinojosa: Here is what really concerns me, I don't want to end up having the same mess, the same mess that is happening right now in Arizona. As you well know, it's become the laughing stock of the nation, what they're doing in Arizona. Even the Republican leadership points out to all the incompetence of that audit.

Senator Bettencourt: Senator, I'm already in a publication saying that this is not an Arizona-style audit. That's already in print. Okay? So, I'm saying it again on the floor. You look for what are good operational techniques, you use them. And if there are questions that are unanswered about the election process, you should have the ability to answer. And so, this is designed to get specific questions answered on specific irregularities. And that's what the purpose of the bill is.

Senator Hinojosa: You know, I would hope that you would look forward, you want to do that into the future. What you're doing now is going back into the past only because of all the misrepresentations being made about the election being stolen. And here in Texas the former Secretary of State said we had one of the most secure elections ever in the history of the state. And I think President Trump won by a huge margin here in Texas. And even the Republican Party won more seats in the Texas Legislature, same thing with the Congress. So, I'm really, it seems like we're chasing and creating, trying to solve a problem that really doesn't exist and create more issues and problems in terms of our election process we have in place.

Senator Bettencourt: And, Senator, we've known each other a while and this really, this bill I can summarize in, what gets measured gets fixed. Okay? What gets measured gets fixed. You've heard me say it on the Finance Committee, you know, dozens of times. And what we are seeing are some irregularities. And I'll just run through from the Secretary of State what they say. Okay? Because they testified at the meeting yesterday, and we just got this from them. Chain of custody complaints in Midland, 2019 during a recount, 836 votes were missing due to failure of chain of custody documentation. Dallas County, due to lack of chain of custody thumb drives with votes on them were later found in a drawer in a primary election. Harris County we've discussed. And Bexar County, lack of chain of custody when mail ballots were picked up from some early voting locations. And what Director Ingram said yesterday was that chain of custody was widespread. And again, this is actually, Senator Hinojosa, this sets up a structure for the future. It just happens to be right now the last election we can look at is 2020. We'll have an amendment that will specify that when the audit's done, that you pick a federal race, a state race, and a countywide race to look at. That'll be up to the county clerk to do it.

Senator Hinojosa: One more question, and it is that this audit pretty much started after the last presidential election, that the election was stolen statewide. You know, that's after 60 lawsuits were filed in different courts throughout the nation. Some of the cases we know all the way up to the United States Supreme Court, and there was no fraud found, and there was, the counts were pretty much in line with the requirements of the election laws in our country.

Senator Bettencourt: This bill, Senate Bill 97, is about election irregularities, giving a chance for the people involved to ask the question, I think there's a 1,884 vote discrepancy in Harris County. It looks very documented. The Secretary of State agrees there's a discrepancy. There's no way to ask the question under the current Election Code. This is not about anything else except what gets measured gets fixed. Because if we know why they've had the discrepancy, we can fix the problem in the future. And, Senator, this comes from me doing this for 20 years ago when I used to do these reports. I know we have people that allegedly vote twice. I know that there's people that have voted that haven't been registered. These are audits that are already ongoing at the county level. And I think it's important to codify this now to go forward because that's what the vast majority of the bill is, is looking at a process to go forward. Because we've all heard of stories of more votes in a precinct, you know, all over the state. Let's just ask the question why, so we can fix it and not have to have that be a detriment to public confidence in the election.

Senator Hinojosa: Well, you know, we can use all kinds of euphemisms, irregularities, fraud, more votes than registered to vote, but the reality is that throughout the nation you have a lot of Republican legislators demanding audit of the election returns that are really creating a lot of doubt on an election that was secure. Not only do we have the former Attorney General testify before Congress, this one of the most secure elections we ever had in the nation, Homeland Security Secretary testified to the same testimony, saying this was the most secure election. Now, we're going back and trying to open up an election that happened in 2020. You want to move forward, then move forward, but let it be. Just accept the results, and let's move on. Here we are again and again, messing around with this issue when we have other things we need to address that I think are more important than having to back to an election that's already, where a majority of people have spoken as to who would be our United States President.

Senator Bettencourt: Okay. And, Senator, this is, okay, this isn't a criminal proceeding. It's not a election challenge lawsuit. This is an administrative procedure to be able to ask questions about irregularities. And, Senator, I haven't mentioned the word fraud here, there's not, the word fraud is not in this document. What we're trying to do is that if something, what gets measured gets fixed. If there's an issue, let's be able to ask a question, have the appropriate election official respond, and then if there's an issue, let the Secretary of State order an audit. That's, that to me is just transparent, good government because we're looking at, because look, right now, people have asked, we still don't have the answer to all that 1,884 unexplained votes in Harris County. But this would set up a procedure whether it was, you know, from the Sabine to the, you know, to the Rio Grande, to the Red River, to wherever, that if somebody that's an election judge, and we heard testimony of this yesterday, they told their, they were an alternate judge, they asked the judge involved why is there more votes than there are people registered in the precinct. And, you know, and that's the type of question we should be unafraid to ask and answer in a transparent election system.

Senator Hinojosa: Well, it seems very similar to what is going on in Arizona that this will result in Senate Bill 97. In Arizona, it's not a criminal investigation, but it's also irregularities. And people can use irregularities, they can use the word fraud, they can use different kinds of euphemisms. The result is the same, that you want to, back to audit the election of 2020 and into the future. Every time that someone is not happy or satisfied, they can bring up some kind of questions, can bring up any question. And if you're not happy and satisfied with the response you get from your local election officials, what happens is you go to Secretary of State, and who knows if it's a Democratic Secretary of State or a Republican Secretary of State, it shouldn't make a difference. I think that when there's election fraud there are other ways of addressing this without doing all those audits that are going to waste a lot of time, a lot of money, a lot of resources and place doubt in our voters in terms of the integrity of our elections. But thank you very much, Senator Bettencourt, for answering my questions.

President: Senator Seliger, for what purpose?

Senator Seliger: A few questions of the author, please.

President: Senator Bettencourt, do you yield?

Senator Bettencourt: Certainly.

Senator Seliger: Senator Bettencourt, would you make clear what the distinction is between a recount and an audit? It is, it's interesting particularly under the context that we saw a full recount in Georgia that seemed to reach some conclusions and then an audit in Arizona that has shown absolutely nothing. What's the difference between the two?

Senator Bettencourt: Well, Senator, the recount provision in Georgia, from what I understand, is triggered by a specific margin. I, off the top of my head, I believe it's, maybe it's half a percent. When there's that close of election, they have an automatic recount. So, that actually affects the election result. If the recount comes back and it overturns the election that certainly would be the basis for, you know, for someone else taking whatever position is on the ballot at that time. An audit, here as I apply it, okay, is simply like what the county clerks and the county tax assessors have already been doing which is looking at a specific area and an irregularity and doing, effectively doing a report on it. Because, again, what's gets measured gets fixed. The two audits that I used to engage in as a voter registrar, one was, literally, if you had people voting that weren't registered and that was what the voter registrar turned into the district attorney. On the county clerk side, they turned in what was allegedly voted twice, the people they could determine were voting twice in the election. So, that's the type of irregularities, that's probably the better example than certainly a recount does not apply to this bill.

Senator Seliger: Would a recount show that?

Senator Bettencourt: What's that?

Senator Seliger: If somebody go, one of the recount show that if somebody goes into a polling place and signs in one place and signs up in another—

Senator Bettencourt: Without—

Senator Seliger: —is the recount going to show that?

Senator Bettencourt: —probably not because generally recounts are time pressure sensitive and they're looking at validating the number of votes, looking, make sure they haven't missed certain boxes. They, generally, aren't trying and as speaking of recounts that I've been involved in, generally, don't have the time to go back and look at a lot of voting status. But that's just the rule that I've observed.

Senator Seliger: If they don't have the time to do that, why would we assume they would have the time to go through the process outlined in SB 97?

Senator Bettencourt: Well, I think that we took testimony yesterday that even in Harris County, they went back and did an audit of the voter roll, and the former election official stated that it took two weeks of time, the better part of 50 people to do a complete audit of a presidential election. So, that would be at the high end of what we're talking about here, however, again, if we're looking at an audit of a precinct that has more voters than a registered voter, and then what's on the registered voter list that should only take, you know, a couple of people a couple of days to analyze.

Senator Seliger: Would you explain again why it is this bill proposes an audit of the 2020 election?

Senator Bettencourt: It's not of the, of the in total 2020 election. Okay? It's the ability for people to look at specific irregularities and in the 2020 election because the last election that we've had on file. And it's designed to, you know, take a complaint from, you know, let's say we'll use the Midland example, okay, for example because that's pretty well documented. If in the 2019 recount, 836 votes were missed due to a failure of chain of custody documentation by code, the officials had to accept the recount numbers, which everyone knew was incorrect, and then this is a way for us to trigger an audit so we would know what's wrong and how to fix it for the future.

Senator Seliger: But the question resolved in Midland was done by a recount.

Senator Bettencourt: Right. And the results were contested and during that event a lost box of ballots was found. That was during the recount. So, somebody could have said, hey, what went wrong to lose the box? You know, how did we lose a box of votes? And then if the response came back to the complainant and they were happy with it, great, if not, it would go to the discretion of the Secretary of State. And I hope as Senator Hinojosa pointed out, whether it's Democrat or Republican doesn't matter what appointee is, they would use the discretion to decide whether that would trigger. But if it's just as this report said, they found the lost box and they knew how they found it, that would probably have ended the question on the irregularity.

Senator Seliger: So, are you saying that this audit of the 2020 election does not impose any of the remedies found otherwise in this—

Senator Bettencourt: I, sorry—

Senator Seliger: —bill?

Senator Bettencourt: —could you restate?

Senator Seliger: The, does this mean that the, this audit of the 2020 election then would include no of the remedies that are included in this bill?

Senator Bettencourt: None of the remedies. No, I mean, what the bill does is set up a civil procedure to look at irregularities to ask the question and then to trigger an audit if there, if Secretary of State believes that there needs to be one. If a county is uncompliant at all, I mean there is a penalty but that would be somebody just, well, in my mind not responding to the question.

Senator Seliger: But the point is, does the remedies that appear here, including those fines, do they apply to an audit proposed for the 2020 election as well?

Senator Bettencourt: Well, they could if the bill was passed. And that, if you go through the procedure of asking a question, then asking a question again, then the Secretary take, determining there had to be an audit, and there's an audit that shows there's obviously some problem with procedures or with a interpretation, Election Code, whatever the problem is. And then, that for some reason the county clerk, election administrator refuses to comply, yes, there could be a penalty.

Senator Seliger: On, in Section 2, line 6, when it says a person may make a request under this section if the person participated in the relevant election as a candidate, county chair, political party, presiding judge, and alternate presiding judge or the head of a specific purpose political committee. So, take a specific purpose political committee that exists in Austin, may take positions that support or oppose a measure anywhere around the state, can they impose this audit anywhere in the State of Texas?

Senator Bettencourt: Umh, the intent is for it to be jurisdiction specific. Now, I'm going to use, because I'll use the example Matt Mackowiak, who came and testified. Okay? He was, in fact I mentioned this in testimony, he basically asked, you know, he said that he thought the bill was great because there are unanswered questions. He also recently co-chaired, as you know, a citizen-led campaign to overturn a ballot initiative, I mean a camping ordinance from the City of Austin on a bipartisan measure. They could have filed a complaint on election irregularity at that time if they wished to under this bill.

Senator Seliger: But according to the wording in this, a county chair of a political party could institute this action in any county or district in the, in the state. There's nothing that precludes it.

Senator Bettencourt: Umh—

Senator Seliger: This is not a prerogative exist anywhere else that I can think of. So, if the county chair of Montgomery County for some reason doesn't like what went on in Childress County, they can then ask and receive an audit.

Senator Bettencourt: —umh, that would not be the author's intent, and we are taking an amendment on some of the language in this slightly, Senator. I mean, clearly a state political party chair could challenge the whole state.

Senator Seliger: Umh hmm.

Senator Bettencourt: If they wish.

Senator Seliger: On line, I don't have a line number. It's 3, 3 dash 1, it says if the information is, the audit is insufficient. Who determines whether or not it's insufficient?

Senator Bettencourt: Well, ultimately, for this the Secretary of State would.

Senator Seliger: When it talks about that audit will be expense of the county, is that not an unfunded mandate on county?

Senator Bettencourt: No. I, we have to look at this as if there truly is an election irregularity and that there is something wrong with the procedures that the county is doing, and the Secretary of State does order the audit, and the audit is clear. Then at this point of time I think that as a former election official, I would say that I, if I, if it's my error, I'll fix it because, again, what's gets measured gets fixed. Now, we can—

Senator Seliger: If there's no error, who pays for it?

Senator Bettencourt: If there's no error, right now the county would pay for it.

Senator Seliger: And that's not an unfunded mandate?

Senator Bettencourt: Well, and that's something that we can discuss in the future because I have a feeling we'll be able to discuss this bill in the future.

Senator Seliger: In Paragraph (h), if the county clerk does not remedy a violation, detail—

Senator Bettencourt: Senator, could you tell me what page or give me a—

Senator Seliger: It's on page 2 of 4.

Senator Bettencourt: Okay.

Senator Seliger: Line 3-18.

Senator Bettencourt: Okay, hold on. Okay. Is this the committee shall begin the review?

Senator Seliger: No, Sir. If a county clerk does not remedy a violation detailed in a notice under Subsection (a) by the 30th day after the day the civil penalty of \$500, it has to do with the civil penalty.

Senator Bettencourt: Okay, I'm in Section (b) where I say by the, Section—

Senator Seliger: Section (b)'s correct.

Senator Bettencourt: Right, okay. Right, if the county clerk does not remedy a violation detailed in notice under Subsection (a) by the 30th day after the clerk receives the notice, the Secretary of State shall assess a civil penalty for each violation not remedied. And remember the remedy for the irregularity is the audit and then you have a violation and then you have a penalty. So, it takes quite a few steps to get to that level.

Senator Seliger: This, when we talk about the civil penalty for each violation, is that imposed against the county clerk or against the office?

Senator Bettencourt: I believe because we're using the county clerk definition as the officeholder that there's also another part of the code that includes election officers it's against the office itself.

Senator Seliger: And is there any appeal of that fine or civil penalty?

Senator Bettencourt: No, not under this statute, but obviously, there could be, you know, it could be handled judicially if necessary.

Senator Seliger: The next line sort of confuses me because if the Secretary of State is not able to remedy the violation on behalf of the county clerk, the Secretary shall access an additional penalty.

Senator Bettencourt: Well, but remember that's the Secretary of State using their judgment to see if it has been remedied. It's really up to the election official to make the remedy itself.

Senator Seliger: But it says if the Secretary of State is not able to remedy the violation. Why would we penalize the county clerk again, if it's the Secretary of State that is not able to remedy the situation?

Senator Bettencourt: Okay, well again, if possible, remedy the violation on behalf of the county clerk is in that paragraph, too. Okay? And then the remedy provided under the Subsection in addition to any other remedies available under law for violation of this code. So, remedy the violation on behalf of the county clerk. So, I think that obviously involves the county clerk directly.

Senator Seliger: Then at the bottom of the page when it talks about the people in the election committee—

Senator Bettencourt: Ah.

Senator Seliger: —shall be, and this is line 5-5, 5-6, 5-7, it says it, that the committee contains expertise in advanced mathematics, voting systems, statistics, computer software operations, and methods of random selection. And I think you intend for those criteria to be discreet and discriminating ones. What happens in a small rural county where you really can't point out somebody that is, has expertise in voting systems? We can always say that when it comes to computer software operations any available 13-year-old will do—

Senator Bettencourt: Ha.

Senator Seliger: —but I don't think that's the point here—

Senator Bettencourt: Sen—

Senator Seliger: —what about in a rural county where people without these specialized, this specialized knowledge and skill simply cannot be detected.

Senator Bettencourt: Senator, can I ask what draft number you're using?

Senator Seliger: I took the one right off the computer of the bill as it came out—

Senator Bettencourt: 21.244.72? Down on the lower right hand corner.

Senator Seliger: It is, I'm afraid I, I have a long cord, you tell me.

Senator Bettencourt: No, okay, that's right. This is called cooperative work here. I think it's the right one.

Senator Seliger: And I accept that, are you saying that that particular passage does not exist in the, in the—

Senator Bettencourt: Well, I could read it by finding it, but we're trying to get you the version that was voted out of the committee. I'm just rescanning it to make sure I don't see anything but just a flash reading it, I don't. We're going to take, Senator, maybe this, we're going to, out of suggestion from Senator Taylor, there's some language about the committee as appointed by the county clerk and we've got an amendment coming. So, we can take a look at that amendment language. That may take care of it.

Senator Seliger: Okay. Those are my questions. Thank you very much for your patience.

Senator Bettencourt: Thank you.

President: Senator Bettencourt moves suspension of the regular rules and the printing rules. Secretary will call the roll.

(Roll call)

President: 18 ayes and 13 nays, rules are suspended. Chair lays out on second reading Committee Substitute for Senate Bill 97. Secretary will read the caption.

Secretary of the Senate: Committee Substitute 97, relating to processes to address election irregularities.

President: Following amendment. Secretary will read the amendment.

Secretary of the Senate: Floor Amendment No. 1 by Bettencourt.

President: Senator Bettencourt, you're recognized on your amendment. Senator Bettencourt—

Senator Bettencourt: I—

President: —you're recognized on your amendment. Do you have it?

Senator Bettencourt: Alright. Mr. President, I believe we can proceed.

President: Whenever you're ready, Senator.

Senator Bettencourt: Thank you. Mr. President and Members, this amendment is a perfecting amendment based upon testimony we heard in State Affairs Committee yesterday. First, the amendment ensures that should a review of a 2020 election result be initiated in a county, included will be all precincts where the total number of ballots cast exceeded the number of votes who voted. I think that is clearly common sense on its face. The amendment also makes minor clarification of the intent of the bill including to Senator Seliger's question, the Committee Clerk determines the number of election review committee members, additional clarity and number precincts to be sampled by adding whichever is greater between three and a higher number and then sampling of races to be reviewed. As I've mentioned in the debate, with discussion of him, of one federal, one state, and one countywide election. Amendment is obviously acceptable to the author. I move adoption.

President: Any objection. Hearing none, the amendment is adopted. The following amendment, Secretary will read the amendment.

Secretary of the Senate: Floor Amendment No. 2 by Johnson.

President: Senator Johnson, you're recognized.

Senator Johnson: Thank you, Mr. President. Senator Bettencourt, your bill raises some concerns that we might have people who have not the greatest in motivations or perhaps aren't seeing things so clearly that just create harassing requests for audits. I understand the intent of the bill is far from that. It's just to really make sure that our systems function well. Had I thought this amendment up sooner, I'd have talked to you about this. I actually think it's a good amendment. Your expression suggests it's not, but just hear me out here. What this does, it's essentially a loser pay, Senator Bettencourt, like our judicial system. All this says is that if we go through this process, if you want the audit and you request information from the county clerk and you get documents and then you go back and you ask more and you get more documents and then you go to the Secretary of the State and the Secretary of the State says, no, this is nothing, there's nothing here, you have to reimburse the county so that

it's not an unfunded mandate, reimburse the county for the expenses of having borne that harassing inquiry, in the event that it is a harassing inquiry. So, it's a safety valve to let your bill operate, you intend it to instead of being abused.

Senator Bettencourt: Senator, Senator Johnson, sorry.

Senator Johnson: Yes, Senator.

Senator Bettencourt: If we had the time to discuss this, I would have said that it, this is really unnecessary. Remember the steps were simply this. If there's a regularity, somebody writes a request to the county official, the election official, if they don't get complete clarity from that, they can write again another request and then at the discretion of the Secretary of State. So, if there was, the Secretary of State will make and it held the decision, I believe on that. And at no time would I, would I accept having a bond posted for an election matter like this. It's just not, it's just not appropriate.

Senator Johnson: But with a bond, it's in the amount that it cost the county to respond to these harassing requests, which in this instance the Secretary of State as you've set it up, will have determined that this was a frivolous inquiry. That's why we're having to—

Senator Bettencourt: Well, right—

Senator Johnson: —reimburse the county.

Senator Bettencourt: —well, but at that point, there's no audit, there's no audit.

Senator Johnson: No, but it's, the county has already gone to the trouble of responding to this person twice.

Senator Bettencourt: Well, but remember that's just life in government. This is open government.

Senator Johnson: It's, today it's not life in government, but after this bill, it becomes life in government. We're going to have—

Senator Bettencourt: Well—

Senator Johnson: —to spend more and raise property taxes to do it, and I don't think people want to do that.

Senator Bettencourt: —well, Senator Johnson, with all due respect, as a tax assessor in charge of the largest voter roll in the state and the third largest in America, I took these requests all the time and answered it. So, with that, with great respect to that comment, I just want to say that I'll be opposing the amendment urging the membership to vote "no" on Floor Amendment No. 2.

Senator Johnson: Thank you, Members. I urge you to vote "yes."

President: Secretary will call the roll.

(Roll call)

President: 14 ayes and 17 nays, the amendment fails. You're recognized for a motion to engrossment.

Senator Bettencourt: Thank you, Mr. President. I move Senate Bill, the Committee Substitute to Senate Bill 97 to engrossment.

President: When ready, the Secretary will call the roll.

(Roll call)

President: 19 ayes and 12 nays, bill passes to engrossment.

Senator Bettencourt: Thank you, Mr. President and Members.

President: Senator Springer, what was your motion before?

Senator Springer: Yes, I'd like to move that all the comments on Senate Bill 97 be reduced to writing and placed in the Journal.

President: Any objections? Hearing none, motion adopted. Members, a clarification. That's why we need to check the votes. The vote was 17-14 to passage to engrossment. We'll hold there until the next time you have an opportunity to vote the bill out.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 58 by Buckingham, In memory of Margaret McLeod Hunter.

SR 59 by Buckingham, In memory of Willie Fae Atkinson.

SR 61 by Zaffirini and Hancock, In memory of David Lee Espinoza.

Congratulatory Resolutions

SR 56 by Lucio, Recognizing Vanguard Academy for hosting a September 11, 2001, Remembrance Ceremony.

SR 57 by Lucio, Recognizing Gabriela and Timothy Cowen on the birth of their sons, Jameson Luke Cowen, Hudson Oliver Cowen, and Kingston Hugh Cowen.

SR 60 by Buckingham, Recognizing Natura Resources LLC, Abilene Christian University, and NEXTRA for their research.

ADJOURNMENT

On motion of Senator Zaffirini, the Senate at 3:13 p.m. adjourned, in memory of Michael DiTeresa, until 3:15 p.m. today.

