

By Senator Dyer

14-1096-98

1                                   A bill to be entitled  
2           An act relating to elections; amending s.  
3           101.5614, F.S.; prohibiting election officials  
4           from physically altering or remarking an  
5           original ballot; amending s. 101.591, F.S.;  
6           requiring the Department of State to audit the  
7           voting system in any county in which a recount  
8           or election contest has changed the result of  
9           an election; amending s. 101.62, F.S.;  
10          providing for the release of information  
11          relating to absentee ballots to a candidate who  
12          has filed an election contest or request for  
13          recount; amending s. 102.112, F.S.; requiring  
14          the canvassing board and the supervisor of  
15          elections if not a member of the board to  
16          certify that returns have been tabulated on a  
17          certified voting system; amending s. 102.141,  
18          F.S.; providing for the appointment of a  
19          substitute member of the county canvassing  
20          board; requiring a complete manual recount of  
21          votes in certain circumstances; providing  
22          procedures; amending s. 102.168, F.S.;  
23          providing procedures for contesting an  
24          election; amending s. 104.30, F.S.; providing a  
25          penalty for tampering with a certified voting  
26          system without prior approval of the Department  
27          of State; creating s. 102.1661, F.S.; providing  
28          for discretionary recount of ballots; repealing  
29          s. 102.166, F.S., relating to protest of  
30          election returns; repealing s. 102.167, F.S.,  
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1 relating to form for protesting election  
2 returns; providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsection (5) of section 101.5614, Florida  
7 Statutes, is amended to read:

8 101.5614 Canvass of returns.--

9 (5) If any ballot card of the type for which the  
10 offices and measures are not printed directly on the card is  
11 damaged or defective so that it cannot properly be counted by  
12 the automatic tabulating equipment, a true duplicate copy  
13 shall be made of the damaged ballot card in the presence of  
14 witnesses and substituted for the damaged ballot. Likewise, a  
15 duplicate ballot card shall be made of a defective ballot  
16 which shall not include the invalid votes. All duplicate  
17 ballot cards shall be clearly labeled "duplicate," bear a  
18 serial number which shall be recorded on the damaged or  
19 defective ballot card, and be counted in lieu of the damaged  
20 or defective ballot. If any ballot card of the type for which  
21 offices and measures are printed directly on the card is  
22 damaged or defective so that it cannot properly be counted by  
23 the automatic tabulating equipment, a true duplicate copy may  
24 be made of the damaged ballot card in the presence of  
25 witnesses and in the manner set forth above, or the valid  
26 votes on the damaged ballot card may be manually counted at  
27 the counting center by the canvassing board, whichever  
28 procedure is best suited to the system used. However, the  
29 voter's original ballot may not be physically altered or  
30 remarked by election officials. If any paper ballot is damaged  
31 or defective so that it cannot be counted properly by the

1 automatic tabulating equipment, the ballot shall be counted  
2 manually at the counting center by the canvassing board. The  
3 totals for all such ballots or ballot cards counted manually  
4 shall be added to the totals for the several precincts or  
5 election districts. No vote shall be declared invalid or void  
6 if there is a clear indication of the intent of the voter as  
7 determined by the canvassing board. After duplicating a  
8 ballot, the defective ballot shall be placed in an envelope  
9 provided for that purpose, and the duplicate ballot shall be  
10 tallied with the other ballots for that precinct.

11 Section 2. Section 101.591, Florida Statutes, is  
12 amended to read:

13 101.591 Voting system audit.--

14 (1) The Legislature, upon specific appropriation and  
15 directive, may provide for an independent audit of the voting  
16 system in any county. Within 30 days after completing the  
17 audit, the person conducting the audit shall furnish a copy of  
18 the audit to the supervisor of elections and the board of  
19 county commissioners.

20 (2) The Department of State shall audit the voting  
21 system in any county in which a recount or election contest  
22 has changed the result of an election. The Department of State  
23 shall commence the audit within 30 days after the recount or  
24 final judgment; and, within 30 days after completing the  
25 audit, the department shall furnish a copy of the audit to the  
26 supervisor of elections and the board of county commissioners.

27 (3)~~(2)~~ An audit conducted pursuant to this section  
28 ~~subsection (1)~~ shall consist of a study and evaluation of the  
29 voting system used during any primary, general, municipal, or  
30 presidential preference primary election to provide reasonable  
31 assurance that the system is properly controlled, can

1 accurately count votes, provides adequate safeguards against  
2 unauthorized manipulation and fraud, and complies with the  
3 requirements of law and rules of the Department of State.

4 Section 3. Subsection (3) of section 101.62, Florida  
5 Statutes, is amended to read:

6 101.62 Request for absentee ballots.--

7 (3) For each request for an absentee ballot received,  
8 the supervisor shall record the date the request was made, the  
9 date the absentee ballot was delivered or mailed, the date the  
10 ballot was received by the supervisor, and such other  
11 information he or she may deem necessary. This information  
12 shall be confidential and exempt from the provisions of s.  
13 119.07(1) and shall be made available to or reproduced only  
14 for a canvassing board, an election official, a political  
15 party or official thereof, a candidate who has filed  
16 qualification papers and is opposed in an upcoming election or  
17 who has filed an election contest or request for recount, and  
18 registered political committees or registered committees of  
19 continuous existence, for political purposes only.

20 Section 4. Section 102.112, Florida Statutes, is  
21 amended to read:

22 102.112 Deadline for submission of county returns to  
23 the Department of State; penalties.--

24 (1) The county canvassing board or a majority thereof  
25 shall file the county returns for the election of a federal or  
26 state officer with the Department of State immediately after  
27 certification of the election results. The canvassing board  
28 and the supervisor, if not a member of the board, shall also  
29 certify that the returns have been tabulated or accumulated on  
30 a certified voting system that has not been improved or  
31 modified since its last certification.If the returns are not

1 received by the department by 5 p.m. on the 7th day after an  
2 election, such returns may be ignored and the results on file  
3 at that time may be certified by the department.

4 (2) The department shall fine each board member \$200  
5 for each day such returns are late, the fine to be paid only  
6 from the board member's personal funds. Such fines shall be  
7 deposited into the Election Campaign Financing Trust Fund,  
8 created by s. 106.32.

9 (3) Members of the county canvassing board may appeal  
10 such fines to the Florida Elections Commission, which shall  
11 adopt rules for such appeals.

12 Section 5. Section 102.141, Florida Statutes, is  
13 amended to read:

14 102.141 County canvassing board; duties.--

15 (1) The county canvassing board shall be composed of  
16 the supervisor of elections; a county court judge, who shall  
17 act as chair; and the chair of the board of county  
18 commissioners. In the event any member of the county  
19 canvassing board is unable to serve, is a candidate who has  
20 opposition in the election being canvassed, or is an active  
21 participant in the campaign or candidacy of any candidate who  
22 has opposition in the election being canvassed, such member  
23 shall be replaced as follows:

24 (a) If no county court judge is able to serve or if  
25 all are disqualified, the chief judge of the judicial circuit  
26 in which the county is located shall appoint as a substitute  
27 member a qualified elector of the county who is not a  
28 candidate with opposition in the election being canvassed and  
29 who is not an active participant in the campaign or candidacy  
30 of any candidate with opposition in the election being  
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1 canvassed. In such event, the members of the county  
2 canvassing board shall meet and elect a chair.

3 (b) If the supervisor of elections is unable to serve  
4 or is disqualified, the chief judge of the judicial circuit in  
5 which the county is located ~~chair of the board of county~~  
6 ~~commissioners~~ shall appoint as a substitute member a qualified  
7 elector ~~member~~ of the ~~board of county commissioners~~ who is not  
8 a candidate with opposition in the election being canvassed  
9 and who is not an active participant in the campaign or  
10 candidacy of any candidate with opposition in the election  
11 being canvassed. The supervisor, however, shall act in an  
12 advisory capacity to the canvassing board.

13 (c) If the chair of the board of county commissioners  
14 is unable to serve or is disqualified, the board of county  
15 commissioners shall appoint as a substitute member one of its  
16 members who is not a candidate with opposition in the election  
17 being canvassed and who is not an active participant in the  
18 campaign or candidacy of any candidate with opposition in the  
19 election being canvassed.

20 (d) If a substitute member cannot be appointed as  
21 provided elsewhere in this subsection, the chief judge of the  
22 judicial circuit in which the county is located shall appoint  
23 as a substitute member a qualified elector of the county who  
24 is not a candidate with opposition in the election being  
25 canvassed and who is not an active participant in the campaign  
26 or candidacy of any candidate with opposition in the election  
27 being canvassed.

28 (2) The county canvassing board shall meet in a  
29 building accessible to the public in the county where the  
30 election occurred at a time and place to be designated by the  
31 supervisor of elections to publicly canvass the absentee

1 electors' ballots as provided for in s. 101.68. Public notice  
2 of the time and place at which the county canvassing board  
3 shall meet to canvass the absentee electors' ballots shall be  
4 given at least 48 hours prior thereto by publication once in  
5 one or more newspapers of general circulation in the county  
6 or, if there is no newspaper of general circulation in the  
7 county, by posting such notice in at least four conspicuous  
8 places in the county. As soon as the absentee electors'  
9 ballots are canvassed, the board shall proceed to publicly  
10 canvass the vote given each candidate, nominee, constitutional  
11 amendment, or other measure submitted to the electorate of the  
12 county, as shown by the returns then on file in the office of  
13 the supervisor of elections and the office of the county court  
14 judge.

15 (3) The canvass, except the canvass of absentee  
16 electors' returns, shall be made from the returns and  
17 certificates of the inspectors as signed and filed by them  
18 with the county court judge and supervisor, respectively, and  
19 the county canvassing board shall not change the number of  
20 votes cast for a candidate, nominee, constitutional amendment,  
21 or other measure submitted to the electorate of the county,  
22 respectively, in any polling place, as shown by the returns.  
23 All returns shall be made to the board on or before noon of  
24 the day following any primary, general, special, or other  
25 election. If the returns from any precinct are missing, if  
26 there are any omissions on the returns from any precinct, or  
27 if there is an obvious error on any such returns, the  
28 canvassing board shall order a recount of the returns from  
29 such precinct. Before canvassing such returns, the canvassing  
30 board shall examine the counters on the machines or the  
31 tabulation of the ballots cast in such precinct and determine

1 whether the returns correctly reflect the votes cast. If  
2 there is a discrepancy between the returns and the counters of  
3 the machines or the tabulation of the ballots cast, the  
4 canvassing board shall resolve the discrepancy and recount the  
5 ballots, if necessary ~~the counters of such machines or the~~  
6 ~~tabulation of the ballots cast shall be presumed correct and~~  
7 ~~such votes shall be canvassed accordingly.~~

8 (4) If the returns for any office reflect that a  
9 candidate was defeated or eliminated by one-half of a percent  
10 or less of the votes cast for such office, that a candidate  
11 for retention to a judicial office was retained or not  
12 retained by one-half of a percent or less of the votes cast on  
13 the question of retention, or that a measure appearing on the  
14 ballot was approved or rejected by one-half of a percent or  
15 less of the votes cast on such measure, the board responsible  
16 for certifying the results of the vote on such race or measure  
17 shall order a recount of the votes cast with respect to such  
18 office or measure. A recount need not be ordered with respect  
19 to the returns for any office, however, if the candidate or  
20 candidates defeated or eliminated from contention for such  
21 office by one-half of a percent or less of the votes cast for  
22 such office request in writing that a recount not be made.  
23 Each canvassing board responsible for conducting a recount  
24 shall examine the counters on the machines or the tabulation  
25 of the ballots cast in each precinct in which the office or  
26 issue appeared on the ballot and determine whether the returns  
27 correctly reflect the votes cast. If there is a discrepancy  
28 between the returns and the counters of the machines or the  
29 tabulation of the ballots cast, the canvassing board shall  
30 resolve the discrepancy and recount the ballots, if necessary  
31 ~~the counters of such machines or the tabulation of the ballots~~



1 ~~cast shall be presumed correct and such votes shall be~~  
2 ~~canvassed accordingly.~~

3 (5)(a) If the returns tabulated on electronic  
4 tabulating equipment for any office show that a candidate was  
5 defeated or eliminated by 0.1 percent or less of the votes  
6 cast for such office, that a candidate for retention to a  
7 judicial office was retained or not retained by 0.1 percent or  
8 less of the votes cast on the question of retention, or that a  
9 measure appearing on the ballot was approved or rejected by  
10 0.1 percent or less of the votes cast on such measure, the  
11 board responsible for certifying the results of the vote on  
12 such race or measure shall order a complete manual recount of  
13 the votes cast with respect to such office or measure. A  
14 recount need not be ordered with respect to the returns for  
15 any office, however, if the candidate or candidates defeated  
16 or eliminated from contention for such office by 0.1 percent  
17 or less of the votes cast for such office request in writing  
18 that a recount not be made.

19 (b) Procedures for any manual recount are as follows:

20 1. The county canvassing board shall appoint as many  
21 counting teams of at least two electors as is necessary to  
22 manually recount the ballots. A counting team must have, when  
23 possible, members of at least two political parties. A  
24 candidate involved in the race may not be a member of the  
25 counting team.

26 2. If a counting team is unable to determine a voter's  
27 intent in casting a ballot, the ballot must be presented to  
28 the county canvassing board for it to determine the voter's  
29 intent.

30 3. Any manual recount must be open to the public.

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1           (6)(a) Any candidate whose name appeared on the  
2 ballot, any political committee that supports or opposes an  
3 issue that appeared on the ballot, or any political party  
4 whose candidates' names appeared on the ballot may file a  
5 written request with the county canvassing board for a manual  
6 recount. The written request must contain a statement of the  
7 reason the manual recount is being requested and must be filed  
8 with the chair of the canvassing board within 24 hours after  
9 the time the election was certified or within 72 hours after  
10 midnight of the date the election was held, whichever occurs  
11 later.

12           (b) The county canvassing board may authorize a manual  
13 recount. If a manual recount is authorized, the county  
14 canvassing board must make a reasonable effort to notify each  
15 candidate whose race is being recounted of the time and place  
16 of such recount.

17           (c) The manual recount must include at least three  
18 precincts and at least 1 percent of the total votes cast for  
19 such candidate or issue. If there are fewer than three  
20 precincts involved in the election, all precincts must be  
21 counted. The person who requested the recount shall choose  
22 three precincts to be recounted, and, if other precincts are  
23 recounted, the county canvassing board must select the  
24 additional precincts.

25           (d) Any manual recount must be conducted in accordance  
26 with paragraph (5)(b).

27           (e) If the manual recount indicates an error in the  
28 vote tabulation which could affect the outcome of the  
29 election, the county canvassing board must:

30           1. Correct the error and recount the remaining  
31 precincts with the vote tabulation system;

1           2. Request the Department of State to verify the  
2 tabulation software; or

3           3. Manually recount all ballots.

4           (7) Before certifying or recounting the returns of the  
5 election, the canvassing board shall:

6           (a) When paper ballots are used, examine the  
7 tabulation of the paper ballots cast.

8           (b) When voting machines are used, examine the  
9 counters on the machines of nonprinter machines or the  
10 printer-pac on printer machines. If there is a discrepancy  
11 between the returns and the counters of the machines or the  
12 printer-pac, the canvassing board must resolve the  
13 discrepancy.

14           (c) When electronic or electromechanical equipment is  
15 used, the canvassing board must examine precinct records and  
16 election returns. If there is a clerical error, such error  
17 must be corrected by the county canvassing board. If there is  
18 a discrepancy that could affect the outcome of an election,  
19 the canvassing board must resolve the discrepancy and recount  
20 the ballots using the automatic tabulating equipment if  
21 necessary.

22           (8) If the county canvassing board determines the need  
23 to verify the tabulation software, the county canvassing board  
24 must request in writing that the Department of State verify  
25 the software.

26           (9) The Department of State in verifying such software  
27 shall:

28           (a) Compare the software used to tabulate the votes  
29 with the software filed with the Department of State under s.  
30 101.5607; and

31           (b) Check the election parameters.

1           (10) The Department of State shall respond to the  
2 county canvassing board within 3 working days.

3           ~~(11)(5)~~ The canvassing board may employ such clerical  
4 help to assist with the work of the board as it deems  
5 necessary, with at least one member of the board present at  
6 all times, until the canvass of the returns is completed. The  
7 clerical help shall be paid from the same fund as inspectors  
8 and other necessary election officials.

9           ~~(12)(6)~~ At the same time that the results of an  
10 election are certified to the Department of State, the county  
11 canvassing board shall file a report with the Division of  
12 Elections on the conduct of the election. The report shall  
13 contain information relating to any problems incurred as a  
14 result of equipment malfunctions either at the precinct level  
15 or at a counting location, an explanation of any modifications  
16 or improvements to the certified voting system which have not  
17 been approved by the Department of State,any difficulties or  
18 unusual circumstances encountered by an election board or the  
19 canvassing board, and any other additional information which  
20 the canvassing board feels should be made a part of the  
21 official election record. Such reports shall be maintained on  
22 file in the Division of Elections and shall be available for  
23 public inspection. The division shall utilize the reports  
24 submitted by the canvassing boards to determine what problems  
25 may be likely to occur in other elections and disseminate such  
26 information, along with possible solutions, to the supervisors  
27 of elections.

28           Section 6. Section 102.168, Florida Statutes, is  
29 amended to read:

30           102.168 Contest of election.--

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1           (1) The certification of election or nomination of any  
2 person to office, or of the result on any question submitted  
3 by referendum, may be contested in the circuit court by any  
4 unsuccessful candidate for such office or nomination thereto,  
5 or by any elector qualified to vote in the election ~~taxpayer,~~  
6 ~~respectively~~. Such contestant shall file a complaint, together  
7 with the fees prescribed in chapter 28, with the ~~clerk of the~~  
8 circuit court within 10 days after midnight of the date the  
9 last county canvassing board empowered to canvass the returns  
10 certifies the result of that election to the Secretary of  
11 State adjourns, and the complaint shall set forth the grounds  
12 on which the contestant intends to establish his or her right  
13 to such office or set aside the result of the election on a  
14 submitted referendum. The canvassing board or election board  
15 shall be the proper party defendant, and the successful  
16 candidate shall be an indispensable party to any action  
17 brought to contest the election or nomination of a candidate.

18           (2) The complaint must allege violations of federal,  
19 state, or local election laws which have resulted in a  
20 certified return that does not fairly reflect the true vote,  
21 or allege such gross errors or irregularities in the conduct  
22 of the election or the ascertainment of the result that the  
23 true vote was not reflected in the return.

24           (3) The circuit court to whom the contest is presented  
25 may fashion orders it determines necessary to ensure that the  
26 allegations of the complaint are investigated, examined, or  
27 checked and to provide any relief appropriate under the  
28 circumstances, including ordering partial or full machine or  
29 manual recounts, the inclusion or exclusion of certain ballots  
30 or classes of ballots, the holding of new elections in all or  
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1 portions of the voting districts involved, or the ouster of  
2 the officeholder and his or her replacement by the contestant.

3 Section 7. Section 104.30, Florida Statutes, is  
4 amended to read:

5 104.30 Voting machine; unlawful possession;  
6 tampering.--

7 (1) Any unauthorized person who unlawfully has  
8 possession of any voting machine or key thereof is guilty of a  
9 misdemeanor of the first degree, punishable as provided in s.  
10 775.082 or s. 775.083.

11 (2) Any person who tampers or attempts to tamper with  
12 or destroy any voting machine with the intention of  
13 interfering with the election process or the results thereof  
14 is guilty of a felony of the third degree, punishable as  
15 provided in s. 775.082, s. 775.083, or s. 775.084.

16 (3) Any person who tampers, modifies, or improves a  
17 certified voting system without prior written approval from  
18 the Department of State is guilty of a misdemeanor of the  
19 first degree, punishable as provided in s. 775.082 or s.  
20 775.083.

21 Section 8. Section 102.1661, Florida Statutes, is  
22 created to read:

23 102.1661 Discretionary recount.--Any candidate whose  
24 name appeared on the ballot, any political committee that  
25 supports or opposes an issue that appeared on the ballot, or  
26 any political party whose candidates' names appeared on the  
27 ballot may file a written request with the county canvassing  
28 board for a discretionary manual or machine recount. The  
29 written request must contain a statement of the reason the  
30 recount is being requested and must be filed with the chair of  
31 the canvassing board within 24 hours after the time the

1 election was certified or within 72 hours after midnight of  
2 the date the election was held, whichever occurs later. If the  
3 board exercises its discretion to order a manual recount, the  
4 recount must be conducted in accordance with s.102.141(5)(b).

5 Section 9. Sections 102.166 and 102.167, Florida  
6 Statutes, are repealed.

7 Section 10. This act shall take effect upon becoming a  
8 law.

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11 SENATE SUMMARY

12 Amends various sections of The Florida Election Code.  
13 Prohibits election officials from physically altering or  
14 remarking an original ballot. Requires the Department of  
15 State to audit the voting system in any county in which a  
16 recount or election contest has changed the result of an  
17 election. Provides for the release of information  
18 relating to absentee ballots to a candidate who has filed  
19 an election contest or request for recount. Requires the  
20 canvassing board and the supervisor of elections if not a  
21 member of the board to certify that returns have been  
22 tabulated on a certified voting system. Provides for the  
23 appointment of a substitute member of the county  
24 canvassing board. Requires a complete manual recount of  
25 votes in certain circumstances and provides procedures.  
26 Provides procedures for contesting an election. Provides  
27 a penalty for tampering with a certified voting system  
28 without prior approval of the Department of State.  
29 Provides for discretionary recount of ballots. Repeals s.  
30 102.166, F.S., relating to protest of election returns.  
31 Repeals s. 102.167, F.S., relating to form for protesting  
election returns.