

By Representative Carlton

1                                   A bill to be entitled  
2           An act relating to election protests and  
3           contests; amending s. 102.166, F.S., relating  
4           to protests of election returns; revising  
5           provisions with respect to the timeframes for  
6           filing election protests and requests for  
7           manual recounts; eliminating protests of  
8           election returns in circuit court; amending s.  
9           102.167, F.S.; deleting the provision that  
10          prescribes the form of the protest of election  
11          returns to circuit judge, to conform; amending  
12          s. 102.168, F.S., relating to election  
13          contests; revising the timeframe for filing a  
14          contest of election; specifying the grounds  
15          authorized for contesting an election;  
16          specifying conditions under which a statement  
17          of the grounds of contest may not be rejected  
18          or dismissed for want of form; providing for  
19          service of the complaint upon the defendant and  
20          any other person named therein and providing a  
21          timeframe for filing an answer or response  
22          thereto; specifying that the contestant is  
23          entitled to an immediate hearing; authorizing  
24          the circuit judge to fashion any orders  
25          necessary to investigate, examine, or check  
26          each allegation, prevent or correct any wrong,  
27          and provide any relief appropriate under the  
28          circumstances; creating s. 102.171, F.S.;  
29          codifying that jurisdiction to hear a contest  
30          of the election of a member to either house of  
31          the Legislature at any general or special

1 election is vested in the applicable house in  
2 accordance with its rules; providing an  
3 effective date.  
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5 Be It Enacted by the Legislature of the State of Florida:  
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7 Section 1. Section 102.166, Florida Statutes, is  
8 amended to read:

9 102.166 Protest of election returns; procedure+  
10 ~~venue~~.--

11 (1) Any candidate for nomination or election, or any  
12 elector qualified to vote in the election related to such  
13 candidacy, shall have the right to protest the returns of the  
14 election as being erroneous by filing with the appropriate  
15 canvassing board a sworn, written protest.

16 (2) Such protest shall be filed with the canvassing  
17 board prior to the time the canvassing board certifies the  
18 results for the office being protested ~~adjourns~~ or within 5  
19 days after midnight of the date the election is held,  
20 whichever ~~last~~ occurs later.

21 (3) Before canvassing the returns of the election, the  
22 canvassing board shall:

23 (a) When paper ballots are used, examine the  
24 tabulation of the paper ballots cast.

25 (b) When voting machines are used, examine the  
26 counters on the machines of nonprinter machines or the  
27 printer-pac on printer machines. If there is a discrepancy  
28 between the returns and the counters of the machines or the  
29 printer-pac, the counters of such machines or the printer-pac  
30 shall be presumed correct.  
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1           (c) When electronic or electromechanical equipment is  
2 used, the canvassing board shall examine precinct records and  
3 election returns. If there is a clerical error, such error  
4 shall be corrected by the county canvassing board. If there is  
5 a discrepancy which could affect the outcome of an election,  
6 the canvassing board may recount the ballots on the automatic  
7 tabulating equipment.

8           (4)(a) Any candidate whose name appeared on the  
9 ballot, any political committee that supports or opposes an  
10 issue which appeared on the ballot, or any political party  
11 whose candidates' names appeared on the ballot may file a  
12 written request with the county canvassing board for a manual  
13 recount. The written request shall contain a statement of the  
14 reason the manual recount is being requested.

15           (b) Such request must be filed with the canvassing  
16 board prior to the time the canvassing board certifies the  
17 results for the office being protested ~~adjourns~~ or within 72  
18 hours after midnight of the date the election was held,  
19 whichever occurs later.

20           (c) The county canvassing board may authorize a manual  
21 recount. If a manual recount is authorized, the county  
22 canvassing board shall make a reasonable effort to notify each  
23 candidate whose race is being recounted of the time and place  
24 of such recount.

25           (d) The manual recount must include at least three  
26 precincts and at least 1 percent of the total votes cast for  
27 such candidate or issue. In the event there are less than  
28 three precincts involved in the election, all precincts shall  
29 be counted. The person who requested the recount shall choose  
30 three precincts to be recounted, and, if other precincts are  
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1 recounted, the county canvassing board shall select the  
2 additional precincts.

3 (5) If the manual recount indicates an error in the  
4 vote tabulation which could affect the outcome of the  
5 election, the county canvassing board shall:

6 (a) Correct the error and recount the remaining  
7 precincts with the vote tabulation system;

8 (b) Request the Department of State to verify the  
9 tabulation software; or

10 (c) Manually recount all ballots.

11 (6) Any manual recount shall be open to the public.

12 (7) Procedures for a manual recount are as follows:

13 (a) The county canvassing board shall appoint as many  
14 counting teams of at least two electors as is necessary to  
15 manually recount the ballots. A counting team must have, when  
16 possible, members of at least two political parties. A  
17 candidate involved in the race shall not be a member of the  
18 counting team.

19 (b) If a counting team is unable to determine a  
20 voter's intent in casting a ballot, the ballot shall be  
21 presented to the county canvassing board for it to determine  
22 the voter's intent.

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

27 (9) When the Department of State verifies such  
28 software, the department shall:

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

1 (b) Check the election parameters.

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

4 ~~(11) Any candidate for nomination or election, or any~~  
5 ~~elector qualified to vote in the election related to such~~  
6 ~~candidacy, shall have the right to protest the returns of the~~  
7 ~~election or the practices attendant thereto as being~~  
8 ~~fraudulent by presenting to any circuit judge of the circuit~~  
9 ~~wherein such fraud is alleged to have occurred a sworn,~~  
10 ~~written protest. If it is alleged that fraudulent returns or~~  
11 ~~practices exist in more than one county, venue for such~~  
12 ~~protest shall be in any such county wherein such fraud is~~  
13 ~~alleged to have occurred.~~

14 ~~(a) The protest shall be presented to a circuit judge~~  
15 ~~prior to the time the canvassing board adjourns or within 5~~  
16 ~~days after midnight of the date the election occurs, whichever~~  
17 ~~last occurs.~~

18 ~~(b) The circuit judge to whom the protest is presented~~  
19 ~~shall have authority to fashion such orders as he or she may~~  
20 ~~deem necessary to ensure that such allegation is investigated,~~  
21 ~~examined, or checked; to prevent or correct such fraud; or to~~  
22 ~~provide any relief appropriate under such circumstances. Any~~  
23 ~~candidate or elector presenting such a protest to a circuit~~  
24 ~~judge shall be entitled to an immediate hearing thereon or to~~  
25 ~~any appropriate relief.~~

26 Section 2. Section 102.167, Florida Statutes, is  
27 amended to read:

28 102.167 Form of protest of election returns.--

29 ~~(1)~~ The form of the "Protest of Election Returns to  
30 Canvassing Board" shall be as follows:

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PROTEST OF ELECTION RETURNS TO  
CANVASSING BOARD

...., Florida  
...., 19....

As provided in Section 102.166(1), Florida Statutes, I,  
.... of .... County, Florida, believe the election returns  
from Precinct No. .... in the .... election 19.... are  
erroneous.

I hereby protest the canvass of such returns by the  
.... Canvassing Board, and request that said returns be  
investigated, examined, checked, and corrected by said  
Canvassing Board. The basis for this protest is .....

Under penalties of perjury, I swear (or affirm) that I have  
read the foregoing and that the facts alleged are true, to the  
best of my knowledge and belief.

...(Signature of person protesting election returns)...

~~(2) The form of the "Protest of Election Returns to  
Circuit Judge" shall be as follows:~~

~~PROTEST OF ELECTION RETURNS TO  
CIRCUIT JUDGE~~

1 ..... Florida  
2 ..... 19....  
3 ~~As provided in Section 102.166(2), Florida Statutes, I,~~  
4 ~~.... of .... Florida, being a qualified elector in Precinct~~  
5 ~~No. .... of .... County, Florida, believe the election returns~~  
6 ~~from Precinct No. .... in the .... election of .... 19.... are~~  
7 ~~fraudulent.~~  
8 I hereby protest against the canvass of such returns by  
9 the .... Canvassing Board, and request that said returns be  
10 investigated, examined, checked, and corrected. The basis for  
11 this protest is .....  
12 .....  
13 .....  
14 .....  
15 .....  
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17 Under penalties of perjury, I swear (or affirm) that I have  
18 read the foregoing and that the facts alleged are true, to the  
19 best of my knowledge and belief.  
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21 ~~...(Signature of person protesting election returns)...~~  
22 Section 3. Section 102.168, Florida Statutes, is  
23 amended to read:  
24 102.168 Contest of election.--  
25 (1) Except as provided in s. 102.171, the  
26 certification of election or nomination of any person to  
27 office, or of the result on any question submitted by  
28 referendum, may be contested in the circuit court by any  
29 unsuccessful candidate for such office or nomination thereto,  
30 or by any taxpayer, respectively.  
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1           (2) Such contestant shall file a complaint, together  
2 with the fees prescribed in chapter 28, with the clerk of the  
3 circuit court within 10 days after midnight of the date the  
4 last county canvassing board empowered to canvass the returns  
5 certifies the results of the election being contested or  
6 within 5 days after midnight of the date the last county  
7 canvassing board empowered to canvass the returns certifies  
8 the results of that particular election following a protest  
9 pursuant to s. 102.166(1), whichever occurs later.~~adjourns,~~  
10 ~~and~~

11           (3) The complaint shall set forth the grounds on which  
12 the contestant intends to establish his or her right to such  
13 office or set aside the result of the election on a submitted  
14 referendum. The grounds for contesting an election under this  
15 section are:

16           (a) Misconduct, fraud, or corruption on the part of  
17 any election official or any member of the canvassing board  
18 sufficient to change or place in doubt the result of the  
19 election.

20           (b) Ineligibility of the successful candidate for the  
21 nomination or office in dispute at the time of the election.

22           (c) Receipt of a number of illegal votes or rejection  
23 of a number of legal votes sufficient to change or place in  
24 doubt the result of the election.

25           (d) Proof that any elector, election official, or  
26 canvassing board member was given or offered a bribe or reward  
27 in money, property, or any other thing of value for the  
28 purpose of procuring the successful candidate's nomination or  
29 election or determining the result on any question submitted  
30 by referendum.

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1       (e) Any other cause or allegation which, if sustained,  
2 would show that a person other than the successful candidate  
3 was the person duly nominated or elected to the office in  
4 question or that the outcome of the election on a question  
5 submitted by referendum was contrary to the result declared by  
6 the canvassing board or election board.

7       (4) The canvassing board or election board shall be  
8 the proper party defendant, and the successful candidate shall  
9 be an indispensable party to any action brought to contest the  
10 election or nomination of a candidate.

11       (5) A statement of the grounds of contest may not be  
12 rejected, nor the proceedings dismissed, by the court for any  
13 want of form if the grounds of contest provided in the  
14 statement are sufficient to clearly inform the defendant of  
15 the particular proceeding or cause for which the nomination or  
16 election is contested.

17       (6) A copy of the complaint shall be served upon the  
18 defendant and any other person named therein in the same  
19 manner as in other civil cases under the laws of this state.  
20 Within 10 days after the complaint has been served, the  
21 defendant must file an answer admitting or denying the  
22 allegations on which the contestant relies or stating that the  
23 defendant has no knowledge or information concerning the  
24 allegations, which shall be deemed a denial of the  
25 allegations, and must state any other defenses, in law or  
26 fact, on which the defendant relies. If an answer is not filed  
27 within the time prescribed, the defendant may not be granted a  
28 hearing in court to assert any claim or objection that is  
29 required by this subsection to be stated in an answer.

30       (7) Any candidate or elector presenting such a contest  
31 to a circuit judge is entitled to an immediate hearing.

1 However, the court in its discretion may limit the time to be  
2 consumed in taking testimony, with a view therein to the  
3 circumstances of the matter and to the proximity of any  
4 succeeding primary or other election.

5 (8) The circuit judge to whom the contest is presented  
6 may fashion such orders as he or she deems necessary to ensure  
7 that each allegation in the complaint is investigated,  
8 examined, or checked, to prevent or correct any alleged wrong,  
9 and to provide any relief appropriate under such  
10 circumstances.

11 Section 4. Section 102.171, Florida Statutes, is  
12 created to read:

13 102.171 Contest of election to Legislature.--The  
14 jurisdiction to hear any contest of the election of a member  
15 to either house of the Legislature at any general or special  
16 election is vested in the applicable house, as each house,  
17 pursuant to s. 2, Art. III of the State Constitution, is the  
18 sole judge of the qualifications, elections, and returns of  
19 its members. Therefore, the certification of election of any  
20 person to the office of member of either house of the  
21 Legislature may only be contested in the applicable house by  
22 an unsuccessful candidate for such office, in accordance with  
23 the rules of that house. This section does not apply to any  
24 contest of the nomination of any person for the office of  
25 member of either house of the Legislature at any primary or  
26 special primary election.

27 Section 5. This act shall take effect July 1 of the  
28 year in which enacted.

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HOUSE SUMMARY

Revises provisions with respect to the timeframes for filing election protests and requests for manual recounts. Eliminates protests of election returns in circuit court, and deletes the provision prescribing the form of the protest of election returns to circuit judge, to conform. Revises the timeframe for filing a contest of election. Specifies the grounds authorized for contesting an election, and specifies conditions under which a statement of the grounds of contest may not be rejected or dismissed for want of form. Provides for service of the complaint upon the defendant and any other person named therein, and provides a timeframe for filing an answer or response thereto. Specifies that the contestant is entitled to an immediate hearing, and authorizes the circuit judge to fashion any orders necessary to investigate, examine, or check each allegation, prevent or correct any wrong, and provide any relief appropriate under the circumstances. Codifies that jurisdiction to hear a contest of the election of a member to either house of the Legislature at any general or special election is vested in the applicable house in accordance with its rules. See bill for details.