

By Senator Carlton

24-510-99

See HB

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 a circuit judge, to conform;
12 amending 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 is vested in the applicable

1 house in accordance with its rules; providing
2 applicability to certain primary elections;
3 providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

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.
31

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
31

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:

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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
16
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.
20
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.
31

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.

31

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 is vested in the applicable
16 house, as each house, pursuant to s. 2, Art. III of the State
17 Constitution, is the sole judge of the qualifications,
18 elections, and returns of its members. Therefore, the
19 certification of election of any person to the office of
20 member of either house of the Legislature may only be
21 contested in the applicable house by an unsuccessful candidate
22 for such office, in accordance with the rules of that house.
23 This section does not apply to any contest of the nomination
24 of any person for the office of member of either house of the
25 Legislature at any primary or special primary election in
26 which only those qualified electors who are registered members
27 of the political party holding such primary election may vote,
28 but it does apply to the nomination of any person for such an
29 office at any primary or special primary election in which all
30 qualified electors, regardless of party affiliation, may vote
31 as provided for in s. 5(b), Art. VI of the State Constitution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Section 5. This act shall take effect July 1, 1999.

LEGISLATIVE 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 a 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 is vested in the applicable house in accordance with its rules, and provides applicability to certain primary elections. (See bill for details.)