

By the Committee on Ethics and Elections; and Senator Carlton

313-1770-99

1 A bill to be entitled
2 An act relating to conducting elections and
3 ascertaining the results; amending s. 102.166,
4 F.S., relating to protests of election returns;
5 revising provisions with respect to the
6 timeframes for filing election protests and
7 requests for manual recounts; eliminating
8 protests of election returns in circuit court;
9 amending s. 102.167, F.S.; deleting the
10 provision that prescribes the form of the
11 protest of election returns to a circuit judge,
12 to conform; amending s. 102.168, F.S., relating
13 to election contests; revising the timeframe
14 for filing a contest of election; specifying
15 the grounds authorized for contesting an
16 election; specifying conditions under which a
17 statement of the grounds of contest may not be
18 rejected or dismissed for want of form;
19 providing for service of the complaint upon the
20 defendant and any other person named therein
21 and providing a timeframe for filing an answer
22 or response thereto; specifying that the
23 contestant is entitled to an immediate hearing;
24 authorizing the circuit judge to fashion any
25 orders necessary to investigate, examine, or
26 check each allegation, prevent or correct any
27 wrong, and provide any relief appropriate under
28 the 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 amending s. 102.012, F.S., relating to election
4 boards; amending s. 102.031, F.S.; requiring a
5 deputy sheriff at each polling place; providing
6 an effective date.

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

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10 Section 1. Section 102.166, Florida Statutes, is
11 amended to read:

12 102.166 Protest of election returns; procedure+
13 ~~venue~~--

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

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

24 (3) Before canvassing the returns of the election, the
25 canvassing board shall:

26 (a) When paper ballots are used, examine the
27 tabulation of the paper ballots cast.

28 (b) When voting machines are used, examine the
29 counters on the machines of nonprinter machines or the
30 printer-pac on printer machines. If there is a discrepancy
31 between the returns and the counters of the machines or the

1 printer-pac, the counters of such machines or the printer-pac
2 shall be presumed correct.

3 (c) When electronic or electromechanical equipment is
4 used, the canvassing board shall examine precinct records and
5 election returns. If there is a clerical error, such error
6 shall be corrected by the county canvassing board. If there is
7 a discrepancy which could affect the outcome of an election,
8 the canvassing board may recount the ballots on the automatic
9 tabulating equipment.

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

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

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

27 (d) The manual recount must include at least three
28 precincts and at least 1 percent of the total votes cast for
29 such candidate or issue. In the event there are less than
30 three precincts involved in the election, all precincts shall
31 be counted. The person who requested the recount shall choose

1 three precincts to be recounted, and, if other precincts are
2 recounted, the county canvassing board shall select the
3 additional precincts.

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

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

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

11 (c) Manually recount all ballots.

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

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

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

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

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

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

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1 (a) Compare the software used to tabulate the votes
2 with the software filed with the Department of State pursuant
3 to s. 101.5607; and

4 (b) Check the election parameters.

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

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

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

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

29 Section 2. Section 102.167, Florida Statutes, is
30 amended to read:

31 102.167 Form of protest of election returns.--

1 unsuccessful candidate for such office or nomination thereto
2 or any elector qualified to vote in the election related to
3 such candidacy, or by any taxpayer, respectively.

4 (2) Such contestant shall file a complaint, together
5 with the fees prescribed in chapter 28, with the clerk of the
6 circuit court within 10 days after midnight of the date the
7 last county canvassing board empowered to canvass the returns
8 certifies the results of the election being contested or
9 within 5 days after midnight of the date the last county
10 canvassing board empowered to canvass the returns certifies
11 the results of that particular election following a protest
12 pursuant to s. 102.166(1), whichever occurs later.~~adjourns,~~
13 ~~and~~

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

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

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

25 (c) Receipt of a number of illegal votes or rejection
26 of a number of legal votes sufficient to change or place in
27 doubt the result of the election.

28 (d) Proof that any elector, election official, or
29 canvassing board member was given or offered a bribe or reward
30 in money, property, or any other thing of value for the
31 purpose of procuring the successful candidate's nomination or

1 election or determining the result on any question submitted
2 by referendum.

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

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

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

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

1 (7) Any candidate, qualified elector, or taxpayer
2 presenting such a contest to a circuit judge is entitled to an
3 immediate hearing. However, the court in its discretion may
4 limit the time to be consumed in taking testimony, with a view
5 therein to the circumstances of the matter and to the
6 proximity of any succeeding primary or other election.

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

13 Section 4. Section 102.171, Florida Statutes, is
14 created to read:

15 102.171 Contest of election to Legislature.--The
16 jurisdiction to hear any contest of the election of a member
17 to either house of the Legislature is vested in the applicable
18 house. Therefore, the certification of election of any person
19 to the office of member of either house of the Legislature may
20 only be contested in the applicable house by an unsuccessful
21 candidate in accordance with the rules of that house.

22 Section 5. Subsection (1) of section 102.012, Florida
23 Statutes, 1998 Supplement, is amended to read:

24 102.012 Inspectors and clerks to conduct elections.--

25 (1) The supervisor of elections of each county, at
26 least 20 days prior to the holding of any election, shall
27 appoint two election boards for each precinct in the county;
28 however, the supervisor of elections may, in any election,
29 appoint one election board if the supervisor has reason to
30 believe that only one is necessary. ~~Each election board shall~~
31 ~~be composed of three inspectors and a clerk.~~The clerk shall

1 be in charge of, and responsible for, seeing that the election
2 board carries out its duties and responsibilities. Each
3 inspector and each clerk shall take and subscribe to an oath
4 or affirmation, which shall be written or printed, to the
5 effect that he or she will perform the duties of inspector or
6 clerk of election, respectively, according to law and will
7 endeavor to prevent all fraud, deceit, or abuse in conducting
8 the election. The oath may be taken before an officer
9 authorized to administer oaths or before any of the persons
10 who are to act as inspectors, one of them to swear the others,
11 and one of the others sworn thus, in turn, to administer the
12 oath to the one who has not been sworn. The oaths shall be
13 returned with the poll list and the returns of the election to
14 the supervisor. In all questions that may arise before the
15 members of an election board, the decision of a majority of
16 them shall decide the question. The supervisor of elections
17 of each county shall be responsible for the attendance and
18 diligent performance of his or her duties by each clerk and
19 inspector.

20 Section 6. Subsection (2) of section 102.031, Florida
21 Statutes, is amended to read:

22 102.031 Maintenance of good order at polls;
23 authorities; persons allowed in polling rooms; unlawful
24 solicitation of voters.--

25 (2) The sheriff shall deputize a deputy sheriff for
26 each polling place ~~precinct~~ who shall be present during the
27 time the polls are open and until the election is completed,
28 who shall be subject to all lawful commands of the clerk or
29 inspectors, and who shall maintain good order. The deputy may
30 summon assistance from among bystanders to aid him or her when
31 necessary to maintain peace and order at the polls.

1 Section 7. This act shall take effect July 1, 1999.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 SB 822

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7 The committee substitute includes electors entitled to vote in
8 an election in the list of persons allowed to file an election
9 contest in circuit court. The committee substitute eliminates
10 the language in the bill which provided a differentiation
11 between contests of open and closed primaries and provides
12 that jurisdiction to hear a contest of the election of a
13 member of the Legislature is vested in the applicable house.
14 Finally, the committee substitute eliminates the specific
15 number of persons making up the election board and provides
16 that a deputy sheriff must be present at each polling place,
17 rather than each precinct, during the voting hours.

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