

By the Committee on Ethics and Elections; and Senators Posey, Brown-Waite, Dyer, Lawson, Bronson, Sebesta and Smith

313-1665-01

1 A bill to be entitled
2 An act relating to election recounts; amending
3 s. 97.021, F.S.; defining the terms "overvote"
4 and "undervote"; amending s. 101.5614, F.S.;
5 clarifying the standard for counting votes on
6 spoiled ballots; clarifying the timing of
7 official election returns; amending s. 102.141,
8 F.S.; modifying deadlines for submitting
9 unofficial returns; revising requirements for
10 an automatic machine recount; amending s.
11 102.166, F.S.; substantially modifying
12 standards and procedures for manual recounts;
13 providing an effective date.

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

16
17 Section 1. Present subsections (18) through (27) of
18 section 97.021, Florida Statutes, are redesignated as
19 subsections (19) through (28), respectively, present
20 subsections (28) through (30) are redesignated as subsections
21 (30) through (32), respectively, and new subsections (18) and
22 (29) are added to that section to read:

23 97.021 Definitions.--For the purposes of this code,
24 except where the context clearly indicates otherwise, the
25 term:

26 (18) "Overvote" means that the elector marks or
27 designates more names than there are persons to be elected to
28 an office or designates more than one answer to a ballot
29 measure.

30 (29) "Undervote" means that the elector does not
31 properly designate any choice for an office or ballot measure.

1 Section 2. Subsections (5), (6), and (8) of section
2 101.5614, Florida Statutes, are amended to read:

3 101.5614 Canvass of returns.--

4 (5) If any ballot card of the type for which the
5 offices and measures are not printed directly on the card is
6 damaged or defective so that it cannot properly be counted by
7 the automatic tabulating equipment, a true duplicate copy
8 shall be made of the damaged ballot card in the presence of
9 witnesses and substituted for the damaged ballot. Likewise, a
10 duplicate ballot card shall be made of a defective ballot
11 which shall not include the invalid votes. All duplicate
12 ballot cards shall be clearly labeled "duplicate," bear a
13 serial number which shall be recorded on the damaged or
14 defective ballot card, and be counted in lieu of the damaged
15 or defective ballot. If any ballot card of the type for which
16 offices and measures are printed directly on the card is
17 damaged or defective so that it cannot properly be counted by
18 the automatic tabulating equipment, a true duplicate copy may
19 be made of the damaged ballot card in the presence of
20 witnesses and in the manner set forth above, or the valid
21 votes on the damaged ballot card may be manually counted at
22 the counting center by the canvassing board, whichever
23 procedure is best suited to the system used. If any paper
24 ballot is damaged or defective so that it cannot be counted
25 properly by the automatic tabulating equipment, the ballot
26 shall be counted manually at the counting center by the
27 canvassing board. The totals for all such ballots or ballot
28 cards counted manually shall be added to the totals for the
29 several precincts or election districts. No vote shall be
30 declared invalid or void if there is a clear indication on the
31 ballot that the voter has made a definite choice ~~of the intent~~

1 ~~of the voter~~ as determined by the canvassing board. After
2 duplicating a ballot, the defective ballot shall be placed in
3 an envelope provided for that purpose, and the duplicate
4 ballot shall be tallied with the other ballots for that
5 precinct.

6 (6) If there is no clear indication on the ballot that
7 the voter has made a definite choice for an office or ballot
8 ~~measure, if an elector marks more names than there are persons~~
9 ~~to be elected to an office or if it is impossible to determine~~
10 ~~the elector's choice,~~ the elector's ballot shall not be
11 counted for that office or measure, but the ballot shall not
12 be invalidated as to those names or measures which are
13 properly marked.

14 (8) The return printed by the automatic tabulating
15 equipment, to which has been added the return of write-in,
16 absentee, and manually counted votes, shall constitute the
17 official return of the election upon certification by the
18 canvassing board. Upon completion of the count, the returns
19 shall be open to the public. A copy of the returns may be
20 posted at the central counting place or at the office of the
21 supervisor of elections in lieu of the posting of returns at
22 individual precincts.

23 Section 3. Present subsections (5) and (6) of section
24 102.141, Florida Statutes, are redesignated as subsections (7)
25 and (8), respectively, present subsection (4) is amended and
26 redesignated as subsection (6), subsection (3) is amended, and
27 new subsections (4) and (5) are added to that section to read:

28 102.141 County canvassing board; duties.--

29 (3) The canvass, except the canvass of absentee
30 electors' returns, shall be made from the returns and
31 certificates of the inspectors as signed and filed by them

1 with the county court judge and supervisor, respectively, and
2 the county canvassing board shall not change the number of
3 votes cast for a candidate, nominee, constitutional amendment,
4 or other measure submitted to the electorate of the county,
5 respectively, in any polling place, as shown by the returns.
6 All returns shall be made to the board on or before 2 a.m.
7 ~~noon~~ of the day following any primary, general, special, or
8 other election. If the returns from any precinct are missing,
9 if there are any omissions on the returns from any precinct,
10 or if there is an obvious error on any such returns, the
11 canvassing board shall order a recount of the returns from
12 such precinct. Before canvassing such returns, the canvassing
13 board shall examine the counters on the machines or the
14 tabulation of the ballots cast in such precinct and determine
15 whether the returns correctly reflect the votes cast. If
16 there is a discrepancy between the returns and the counters of
17 the machines or the tabulation of the ballots cast, the
18 counters of such machines or the tabulation of the ballots
19 cast shall be presumed correct and such votes shall be
20 canvassed accordingly.

21 (4) The canvassing board shall submit unofficial
22 returns to the Department of State for each federal,
23 statewide, state, or multi-county office or ballot measure no
24 later than noon on the day after any primary, general,
25 special, or other election.

26 (5) If the county canvassing board determines that the
27 unofficial returns may contain a counting error in which the
28 vote tabulation system failed to count votes that were
29 properly marked in accordance with the instructions on the
30 ballot, the county canvassing board shall:

31

1 (a) Correct the error and recount the affected ballots
2 with the vote tabulation system; or

3 (b) Request that the Department of State verify the
4 tabulation software. When the Department of State verifies
5 such software, the department shall compare the software used
6 to tabulate the votes with the software filed with the
7 department pursuant to s. 101.5607 and check the election
8 parameters.

9 ~~(6)(4)~~ If the unofficial returns ~~for any office~~
10 reflect that a candidate for any office was defeated or
11 eliminated by one-half of a percent or less of the votes cast
12 for such office, that a candidate for retention to a judicial
13 office was retained or not retained by one-half of a percent
14 or less of the votes cast on the question of retention, or
15 that a measure appearing on the ballot was approved or
16 rejected by one-half of a percent or less of the votes cast on
17 such measure, the board responsible for certifying the results
18 of the vote on such race or measure shall order a recount of
19 the votes cast with respect to such office or measure. A
20 recount need not be ordered with respect to the returns for
21 any office, however, if the candidate or candidates defeated
22 or eliminated from contention for such office by one-half of a
23 percent or less of the votes cast for such office request in
24 writing that a recount not be made.

25 (a) In counties using electronic or electromechanical
26 voting systems that use ballot cards or paper ballots, each
27 canvassing board responsible for conducting a recount shall
28 put each ballot through the automatic tabulating equipment for
29 each precinct in which the office or issue appeared on the
30 ballot and determine whether the returns correctly reflect the
31 votes cast. Immediately before the start of the recount and

1 after completion of the count, a test of the tabulating
2 equipment shall be conducted as provided in s. 101.5612(2).
3 If the test indicates no error, the recount tabulation of the
4 ballots cast shall be presumed correct and such votes shall be
5 canvassed accordingly. If an error is detected, the cause
6 therefor shall be ascertained and corrected and the recount
7 repeated, as necessary. The canvassing board shall immediately
8 report the error, along with the cause of the error and the
9 corrective measures being taken, to the Department of State.
10 No later than 11 days after the election, the canvassing board
11 shall file a separate incident report with the Department of
12 State, detailing the resolution of the matter and identifying
13 any measures that will avoid a future recurrence of the error.

14 (b) In counties not using electronic or
15 electromechanical voting systems that utilize ballot cards or
16 paper ballots, each canvassing board responsible for
17 conducting a recount shall examine the counters on the
18 machines or the tabulation of the ballots cast in each
19 precinct in which the office or issue appeared on the ballot
20 and determine whether the returns correctly reflect the votes
21 cast. If there is a discrepancy between the returns and the
22 counters of the machines or the tabulation of the ballots
23 cast, the counters of such machines or the tabulation of the
24 ballots cast shall be presumed correct and such votes shall be
25 canvassed accordingly.

26 (c) The canvassing board shall submit a second set of
27 unofficial returns to the Department of State for each
28 federal, statewide, state, or multi-county office or ballot
29 measure no later than noon on the second day after any
30 election in which a recount was conducted pursuant to this
31 subsection. If the canvassing board is unable to complete the

1 recount prescribed in this subsection by the deadline, the
2 second set of unofficial returns submitted by the canvassing
3 board shall be identical to the initial unofficial returns and
4 the submission shall also include a detailed explanation of
5 why it was unable to timely complete the recount. However,
6 the canvassing board shall complete the recount prescribed in
7 this subsection, along with any manual recount prescribed in
8 s. 102.166, and certify election returns in accordance with
9 the requirements of this chapter.

10 Section 4. Section 102.166, Florida Statutes, is
11 amended to read:

12 102.166 Manual recounts ~~Protest of election returns;~~
13 ~~procedure.--~~

14 (1) If the second set of unofficial returns pursuant
15 to s. 102.141 indicate that a candidate for any office was
16 defeated or eliminated by one-quarter of a percent or less of
17 the votes cast for such office, that a candidate for retention
18 to a judicial office was retained or not retained by
19 one-quarter of a percent or less of the votes cast on the
20 question of retention, or that a measure appearing on the
21 ballot was approved or rejected by one-quarter of a percent or
22 less of the votes cast on such measure, the board responsible
23 for certifying the results of the vote on such race or measure
24 shall order a manual recount of the overvotes and undervotes
25 cast in the entire geographic jurisdiction of such office or
26 ballot measure.

27 (2)(a) If the second set of unofficial returns
28 pursuant to s. 102.141 indicate that a candidate for any
29 office was defeated or eliminated by between one-quarter and
30 one-half of a percent of the votes cast for such office, that
31 a candidate for retention to judicial office was retained or

1 not retained by between one-quarter and one-half of a percent
2 of the votes cast on the question of retention, or that a
3 measure appearing on the ballot was approved or rejected by
4 between one-quarter and one-half of a percent of the votes
5 cast on such measure, any such candidate, the political party
6 of such candidate, or any political committee that supports or
7 opposes such ballot measure is entitled to a manual recount of
8 the overvotes and undervotes cast in the entire geographic
9 jurisdiction of such office or ballot measure, provided that:

10 1. A request for a manual recount is made by 5 p.m. on
11 the second day after the election; and

12 2. At the time of the request, the requesting party
13 posts a bond in an amount prescribed by rule of the Department
14 of State, which shall be forfeited if the outcome of the
15 election does not change.

16 (b) For federal, statewide, state, and multi-county
17 racess and ballot issues, requests for a manual recount shall
18 be made in writing to the state Elections Canvassing
19 Commission. For all other races and ballot issues, requests
20 for a manual recount shall be made in writing to the county
21 canvassing board.

22 (c) Upon receipt of an appropriate, timely request
23 accompanied by an adequate bond, the Elections Canvassing
24 Commission or county canvassing board shall immediately order
25 a manual recount of overvotes and undervotes in all affected
26 jurisdictions.

27 (d) The Department of State shall adopt rules
28 prescribing the amount of the bond required to be posted when
29 requesting a manual recount. The amount of the bond shall
30 cover the overall cost to conduct the recount. The rules may
31

1 provide for formulas to calculate the costs of an election
2 recount, based on factors such as:

- 3 1. Number of ballots involved;
- 4 2. Number of counties involved;
- 5 3. Type of voting system involved;
- 6 4. Geographic location of the recount;
- 7 5. Timeframe to conduct the recount; and
- 8 6. Any other factor that may affect the cost of the

9 recount.

10
11 The department shall solicit information from each county as
12 to recount costs, and shall consider such information in
13 adopting the rules. The department's rules shall also provide
14 procedures for posting of the bond and the distribution of
15 funds to the affected counties upon forfeiture.

16 (3)(a) Any hardware or software used to identify and
17 sort overvotes and undervotes for a given race or ballot
18 measure must be certified by the Department of State as part
19 of the voting system pursuant to s. 101.015. Any such hardware
20 or software must be capable of simultaneously counting votes.
21 For certified voting systems, the department shall certify
22 such hardware or software by July 1, 2002. If the department
23 is unable to certify such hardware or software for a certified
24 voting system by July 1, 2002, the department shall adopt
25 rules prescribing procedures for identifying and sorting such
26 overvotes and undervotes. The department's rules may provide
27 for the temporary use of hardware or software whose sole
28 function is identifying and sorting overvotes and undervotes.

29 (b) This subsection does not preclude the department
30 from certifying hardware or software after July 1, 2002.

31

1 (c) Overvotes and undervotes shall be identified and
2 sorted while recounting ballots as prescribed in s. 102.141,
3 if the hardware or software for this purpose has been
4 certified or the department's rules so provide.

5 ~~(1) Any candidate for nomination or election, or any~~
6 ~~elector qualified to vote in the election related to such~~
7 ~~candidacy, shall have the right to protest the returns of the~~
8 ~~election as being erroneous by filing with the appropriate~~
9 ~~canvassing board a sworn, written protest.~~

10 ~~(2) Such protest shall be filed with the canvassing~~
11 ~~board prior to the time the canvassing board certifies the~~
12 ~~results for the office being protested or within 5 days after~~
13 ~~midnight of the date the election is held, whichever occurs~~
14 ~~later.~~

15 ~~(3) Before canvassing the returns of the election, the~~
16 ~~canvassing board shall:~~

17 ~~(a) When paper ballots are used, examine the~~
18 ~~tabulation of the paper ballots cast.~~

19 ~~(b) When voting machines are used, examine the~~
20 ~~counters on the machines of nonprinter machines or the~~
21 ~~printer-pac on printer machines. If there is a discrepancy~~
22 ~~between the returns and the counters of the machines or the~~
23 ~~printer-pac, the counters of such machines or the printer-pac~~
24 ~~shall be presumed correct.~~

25 ~~(c) When electronic or electromechanical equipment is~~
26 ~~used, the canvassing board shall examine precinct records and~~
27 ~~election returns. If there is a clerical error, such error~~
28 ~~shall be corrected by the county canvassing board. If there is~~
29 ~~a discrepancy which could affect the outcome of an election,~~
30 ~~the canvassing board may recount the ballots on the automatic~~
31 ~~tabulating equipment.~~

1 ~~(4)(a) Any candidate whose name appeared on the~~
2 ~~ballot, any political committee that supports or opposes an~~
3 ~~issue which 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 shall contain a statement of the~~
7 ~~reason the manual recount is being requested.~~

8 ~~(b) Such request must be filed with the canvassing~~
9 ~~board prior to the time the canvassing board certifies the~~
10 ~~results for the office being protested or within 72 hours~~
11 ~~after midnight of the date the election was held, whichever~~
12 ~~occurs later.~~

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

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

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

29 ~~(a) Correct the error and recount the remaining~~
30 ~~precincts with the vote tabulation system;~~

31

1 ~~(b) Request the Department of State to verify the~~
2 ~~tabulation software; or~~

3 ~~(c) Manually recount all ballots.~~

4 ~~(4)(6)~~ Any manual recount shall be open to the public.

5 (5)(a) A vote for a candidate or ballot measure shall
6 be counted if there is a clear indication on the ballot that
7 the voter has made a definite choice.

8 (b) The Department of State shall adopt specific rules
9 for each certified voting system prescribing what constitutes
10 a "clear indication on the ballot that the voter has made a
11 definite choice."

12 ~~(6)(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 whether
20 the ballot contains a clear indication that the voter has made
21 a definite choice ~~a voter's intent in casting a ballot~~, the
22 ballot shall be presented to the county canvassing board for a
23 determination ~~it to determine the voter's intent.~~

24 (c) The Department of State shall adopt detailed rules
25 prescribing additional recount procedures for each certified
26 voting system which shall be uniform to the extent
27 practicable. The rules shall address, at a minimum, the
28 following areas:

- 29 1. Security of ballots during the recount process;
30 2. Time and place of recounts;
31 3. Public observance of recounts;

1 4. Objections to ballot determinations;
2 5. Record of recount proceedings; and
3 6. Procedures relating to candidate and petitioner
4 representatives.

5 ~~(8) If the county canvassing board determines the need~~
6 ~~to verify the tabulation software, the county canvassing board~~
7 ~~shall request in writing that the Department of State verify~~
8 ~~the software.~~

9 ~~(9) When the Department of State verifies such~~
10 ~~software, the department shall:~~

11 ~~(a) Compare the software used to tabulate the votes~~
12 ~~with the software filed with the Department of State pursuant~~
13 ~~to s. 101.5607; and~~

14 ~~(b) Check the election parameters.~~

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

17 Section 5. This act shall take effect January 1, 2002.

18

19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 SB 1122

22

23 The Committee Substitute for Senate Bill 1122 differs from the
24 original bill in that it: requires the same manner of recount
25 to be conducted in the entire geographic jurisdictions of the
26 affected race or ballot question; adopts non-discretionary,
27 numeric guidelines for when an automatic machine recount and a
28 manual recount will be conducted; clarifies and makes uniform
29 the statutory standard for when a vote will count; directs the
30 Department of State to adopt rules containing uniform recount
31 procedures and substandards for each certified voting system.

27

28

29

30

31