

1 A bill to be entitled
2 An act relating to postelection audits; repealing s.
3 101.591, F.S., relating to audits of the voting system of
4 any county; repealing s. 101.5911, F.S., relating to
5 rulemaking authority for procedures regarding audits of a
6 voting system; creating s. 101.592, F.S.; requiring that
7 the Secretary of State appoint an independent postelection
8 audit team each year; requiring that the Secretary of
9 State direct hand-to-eye counts of certain ballots;
10 requiring that county election officials conduct such
11 counts; requiring that audits be conducted for certain
12 elections; authorizing the audit team to conduct audits of
13 certain elections at its discretion; requiring that the
14 number of audits conducted exceed a specified minimum;
15 requiring that each county canvassing board appoint a
16 postelection audit official from within the board's
17 membership; providing for the calculation of audit units;
18 providing for audits of records produced by electronic
19 voting machines that do not produce voter-verifiable paper
20 records; defining the term "audit unit"; providing a
21 maximum number of ballots that may be included in a single
22 audit; providing for the storage and publication of
23 election results; providing for membership of the audit
24 team; excluding certain persons from serving as a member
25 of the audit team; requiring that each county, the audit
26 team, and the Secretary of State perform certain actions
27 before commencing an audit; providing procedures and
28 requirements for audits; providing that another audit unit

29 | may be selected for audit if the results of an initial
 30 | audit are found to be unusable; requiring that an
 31 | investigation be conducted of such unusable audits;
 32 | requiring that the Secretary of State, county, audit team,
 33 | and canvassing board take certain actions based on the
 34 | results of each audit; requiring that the results of an
 35 | audit be announced publicly and published; requiring that
 36 | an announcement of audit results include certain
 37 | information; requiring that the public be allowed to
 38 | observe the audit process; creating s. 101.593, F.S.;
 39 | requiring that the Department of state adopt rules to
 40 | administer postelection audits; requiring that the audit
 41 | team provide technical assistance in the preparation of
 42 | rules related to audits; requiring that the department
 43 | review rules for certain purposes; providing an effective
 44 | date.

45 |

46 | Be It Enacted by the Legislature of the State of Florida:

47 |

48 | Section 1. Section 101.591, Florida Statutes, as amended
 49 | by section 8 of chapter 2007-30, Laws of Florida, is repealed.

50 | Section 2. Section 101.5911, Florida Statutes, is
 51 | repealed.

52 | Section 3. Section 101.592, Florida Statutes, is created
 53 | to read:

54 | 101.592 Postelection audits.--

55 | (1) Notwithstanding any law or rule to the contrary, the
 56 | Secretary of State shall appoint an independent postelection

57 audit team each year. The Secretary of State shall direct random
58 hand-to-eye counts of voter-verifiable paper ballots. Such
59 counts shall be conducted by appropriate county election
60 officials. Audits shall be conducted for each election held for
61 a federal office, the Governor, the Lieutenant Governor, a
62 member of the Cabinet, a member of the Legislature, and for at
63 least two additional statewide elections, referenda, or
64 judicial-retention votes, which shall be randomly selected by
65 software-independent means at a public meeting pursuant to
66 subsection (5). Other statewide, county, or municipal elections,
67 referenda, or judicial-retention votes may be audited at the
68 audit team's discretion. In each county, the audit shall be
69 conducted in at least 2 percent of the audit units in which each
70 audited election appears on the ballot. Before each election,
71 each county canvassing board shall appoint a postelection audit
72 official who is a member of the county canvassing board as the
73 county's official point of contact with the Secretary of State
74 and the audit team throughout the postelection audit. To meet
75 the requirements with respect to each audited contest pursuant
76 to subsection (4), the Secretary of State shall direct each
77 county to audit its pro rata share of the total number of
78 randomly selected audit units as determined by the audit team.
79 If any county's share of such selected audit units is calculated
80 to be other than a whole number of audit units, such quantity
81 shall be rounded up to the next greater whole number. Any audit
82 units randomly selected for auditing from the entire population
83 of audit units in a county may be used to audit any contest
84 appearing on the ballot in such audit units.

85 (a) Cast-vote records produced by direct-recording
86 electronic voting machines that do not produce voter-verifiable
87 paper records shall be audited for purposes of this section by
88 comparing the tallies of the cast-vote records to the tallies
89 reflected in the printed results tape.

90 (b) For purposes of this section, the term "audit unit"
91 means the voter-verifiable paper ballots counted by a single
92 piece of certified voting equipment used to tabulate votes, or a
93 batch of such ballots collected and counted as prescribed
94 pursuant to paragraph (4) (e). The maximum number of ballots in
95 any single audit unit may not exceed 5,000. All electronic vote
96 counts with respect to any audit unit which are used to
97 determine the election results reported by the counties must be
98 securely stored at the time they are produced and made available
99 promptly for subsequent comparison to the hand-to-eye counts of
100 the corresponding audit units selected for auditing. Vote counts
101 shall also be reported by precinct pursuant to s. 101.573.

102 (2) The membership of the audit team shall be at the
103 discretion of the Secretary of State, but must consist of three
104 persons, at least one of whom must have verifiable expertise in
105 the field of statistics. At least one member must have
106 verifiable expertise in the field of auditing. A person is
107 ineligible to serve as a member of the audit team if he or she
108 currently or has during the immediately preceding 2 years:

109 (a) Served as an employee of, or reported to, the
110 department;

HB 1521

2008

111 (b) Served in any position on any political campaign or
112 committee for any party, candidate, or issue that has appeared
113 on any ballot in this state; or

114 (c) Served as an officer or employee of, or provided any
115 goods or services to, any entity that designs, manufactures, or
116 services any voting systems or parts thereof used in this state.

117 (3) Before commencing the audit procedures pursuant to
118 subsection (4):

119 (a) Each county shall forward to the Secretary of State a
120 report of its ballot accounting performed in the election on a
121 standard form prepared for this purpose.

122 1. The report must include a summary and detailed
123 information regarding the results of the ballot accounting,
124 including all outstanding discrepancies and investigations
125 related thereto, and the reasons for all outstanding
126 discrepancies, if known.

127 2. Ballot accounting reports shall account for all used,
128 unused, spoiled, provisional, and absentee ballots and for all
129 paper ballot stock prepared for use in the election, including
130 election-day, absentee, early voting, provisional, and overseas
131 ballots.

132 (b) The Secretary of State and the audit team shall review
133 the county ballot accounting reports to determine if the number
134 of ballots cast accurately reflects voter turnout.

135 (c) The Secretary of State, based on the recommendation of
136 a majority of the audit team, may order additional audits,
137 pursuant to paragraph (4) (g), or other investigations based upon
138 the review of county ballot accounting reports.

139 (4) The Secretary of State, based on the recommendation of
140 a majority of the audit team and pursuant to subsection (1),
141 shall require county election officials to conduct an audit of
142 the results of an election in accordance with the following
143 procedures:

144 (a) Any procedure designed or adopted by the Secretary of
145 State shall be implemented to ensure with at least 99 percent
146 statistical power that for each federal, gubernatorial, or other
147 audited statewide contest, a 100 percent manual recount of the
148 voter-verifiable paper ballots would not alter the electoral
149 outcome as reported by the audit. For all state legislative
150 racers, and for county and municipal elections held in 100 or
151 more election precincts, any procedure designed or adopted by
152 the Secretary of State shall be implemented to ensure with at
153 least 90 percent statistical power that a 100 percent manual
154 recount of the voter-verifiable paper ballots would not alter
155 the electoral outcome as reported by the audit. Such procedures
156 designed, adopted, or implemented by the Secretary of State to
157 achieve statistical power shall be based upon scientifically
158 reasonable assumptions with respect to each audited election,
159 including, but not limited to, the possibility that within any
160 audit unit up to 20 percent of the total votes cast may have
161 been counted for a candidate or ballot position other than the
162 one intended by the voters, and that the number of votes cast
163 per audit unit varies.

164 (b) Any procedure designed, adopted, or implemented by the
165 Secretary of State for each county and municipal contest held in
166 fewer than 100 election precincts, but more than a single

HB 1521

2008

167 election precinct, shall be conducted in at least two audit
168 units.

169 (c) Within a reasonable period of time after the final
170 vote count of an election has been tabulated and announced, the
171 Secretary of State, based on the recommendation of a majority of
172 the audit team, shall determine the number of audit units in the
173 state, separated by county, in which audits shall be conducted
174 pursuant to this section, and inform each county canvassing
175 board using a standard form. Such information shall be posted on
176 the Secretary of State's website immediately after it is
177 delivered to the county canvassing boards. Within 48 hours after
178 receiving direction from the Secretary of State, each county
179 canvassing board shall conduct a public meeting for the purpose
180 of selecting audit units to be audited according to the
181 Secretary of State's direction. The meeting shall be noticed at
182 least 24 hours in advance on that county's website and at each
183 election office and the main county government building in that
184 county. An audit shall commence within 24 hours after each
185 county's random selection of audit units.

186 (d) With respect to votes cast at the polling place or
187 early voting site on or before the date of an election other
188 than an election conducted by provisional ballot, the Secretary
189 of State shall direct a hand-to-eye count of the voter-
190 verifiable paper ballots of the selected audit units used at
191 such polling places or early voting sites and compare those
192 counts with the electronic counts of such votes produced and
193 retained pursuant to paragraph (1) (b).

194 (e) With respect to the votes cast other than at the
195 polling place or early voting site on or before the date of an
196 election, or any other votes counted electronically before, on,
197 or after the date of an election, including overseas ballots,
198 the Secretary of State shall direct a hand-to-eye count of the
199 voter-verifiable paper ballots as follows:

200 1. If the number of such ballots to be counted on a single
201 certified piece of voting equipment does not exceed the maximum
202 audit unit size as prescribed in paragraph (1)(b), the county
203 supervisor of elections shall cause such votes to be audited in
204 the manner prescribed in paragraph (d).

205 2. If the number of such ballots to be counted on a single
206 certified piece of voting equipment exceeds the maximum audit
207 unit size prescribed in paragraph (1)(b), the county supervisor
208 of elections shall divide the ballots into batches to be used as
209 audit units as described in paragraph (1)(b) before each
210 election. Each batch shall contain approximately the average
211 number of ballots cast in the audit units residing at the
212 polling places within the county, but need not be associated
213 with any particular election precinct or polling place. The
214 number of ballots in the final batch may be fewer than the
215 average number, but may not be fewer than 10 ballots. Overseas
216 ballots arriving after election day shall be included in the
217 audit units if they are counted electronically. As the ballots
218 comprising each batch are counted electronically, each batch
219 shall be assigned a unique identification number. Immediately
220 after counting the ballots comprising each batch, a cumulative
221 summary vote tally report containing the batch's unique

HB 1521

2008

222 identification number, the vote totals of the batch, and, if
223 necessary, all previously counted batches in the election, shall
224 be produced and retained as prescribed in paragraph (1)(b). The
225 reports are subject to the same secure chain of custody as the
226 ballots comprising the batches and shall be used by the county
227 canvassing board to determine the electronic vote tally for each
228 batch. The audit team shall compare the sum of the vote tallies
229 of all the reports to the official results announced by the
230 county, investigate any discrepancies, and report any unresolved
231 discrepancies, including the reasons for such discrepancies, if
232 known. The canvassing board shall promptly report to the audit
233 team its total number of audit units once known. The audit team
234 shall include all the audit units from each county in the random
235 selection process and if an audit unit is selected, such unit
236 shall be audited in the same manner provided in paragraph (d)
237 for audit units residing at polling places. However, during such
238 audits, the hand-to-eye counts shall be compared to the
239 electronic vote tallies derived from the batch reports.

240 (f) The selection of the audit units to be audited shall
241 be made using a uniform distribution in which all audit units in
242 which an audited election is held have an equal chance of being
243 selected. Selection of audit units for county and municipal
244 elections held in fewer than 100 election precincts and state
245 legislative elections may be made randomly using a nonuniform
246 distribution to be determined by the Secretary of State, based
247 on the recommendation of a majority of the audit team. In every
248 10th polling place in which an audit unit is selected pursuant
249 to paragraph (d), one direct-recording electronic voting machine

HB 1521

2008

250 shall be audited in accordance with paragraph (1)(a).
251 Notwithstanding the requirements set forth in this paragraph,
252 the audit team may initiate, direct, or conduct an audit of any
253 audit unit not randomly selected for auditing for which a
254 majority of the audit team determines, from the unaudited
255 election results, a review of ballot accounting, past election
256 results, or other data, that there is a substantial possibility
257 that a complete hand-to-eye count or review of ballot accounting
258 would alter the outcome of one or more contests.

259 (g) If the Secretary of State, based on a recommendation
260 of a majority of the audit team, determines that any of the
261 hand-to-eye counts conducted under this section indicates a
262 substantial possibility that a complete hand-to-eye count would
263 alter the outcome of any contest in the state, the Secretary of
264 State shall direct hand-to-eye counts pursuant to this section
265 in such additional audit units as he or she considers
266 appropriate to resolve any such possibility. Notwithstanding any
267 requirements to the contrary, additional hand-to-eye counts
268 shall be conducted if in the initial audit conducted pursuant to
269 this section any discrepancy or discrepancies attributable to
270 the electronic counting system could alter the vote share of any
271 candidate or ballot contest by one-tenth of 1 percent or more of
272 the hand-counted votes in the sample. Under such circumstances,
273 the audit of the election shall use the same number of audit
274 units as the initial audit and shall be conducted under the same
275 procedures used to conduct the initial audit. However, if the
276 initial audit comprises more than one-half the total number of
277 audit units in the election, such audit shall be a full hand-to-

278 eye count of the remaining unaudited election precincts and
 279 audit units. Further hand-to-eye counts shall be conducted if
 280 any discrepancy or discrepancies attributable to the electronic
 281 counting system detected by the initial or subsequent escalated
 282 audit indicates a substantial possibility that a complete hand-
 283 to-eye recount would alter the outcome of the audited election.
 284 Discrepancies resulting from marginally marked ballots accepted
 285 by the county canvassing board pursuant to s. 102.166(4) may not
 286 be considered when making the determination of whether the
 287 voting system has met the standard of acceptable performance for
 288 any audit unit. If the Secretary of State directs the county to
 289 perform a subsequent escalated audit, the county canvassing
 290 board shall conduct such audit within 48 hours after receiving
 291 such direction.

292 (h) If the voter-verifiable paper ballots in any audit
 293 unit are found to be unusable for an audit for any reason
 294 whatsoever, another audit unit used in the same election shall
 295 be selected at random by the county canvassing board to replace
 296 the original audit unit in the audit sample. All such selections
 297 shall be made randomly at a public meeting pursuant to
 298 subsection (5). An investigation to determine the reason the
 299 voter-verifiable paper ballots were compromised and unusable
 300 shall be conducted immediately, and the results of the
 301 investigation shall be made public upon completion.

302 (i) As soon as practicable after the completion of an
 303 audit conducted pursuant to this section, but no later than
 304 11:59 p.m. on the 7th day after the date of certification of the
 305 election by the county canvassing board, the Secretary of State,

306 based on approval of a majority of the audit team, shall
 307 announce publicly and publish the results of the audit and
 308 include in the announcement a comparison of the results of the
 309 election in the audit units as determined by the postelection
 310 audit and the final vote count in the county as announced by the
 311 county canvassing boards, including:

312 1. A list, by audit unit, of any discrepancies between the
 313 county's unofficial results and the postelection audit results;

314 2. The initial vote count and any subsequent manual counts
 315 of the voter-verifiable paper ballots;

316 3. Explanations for such discrepancies, if any; and

317 4. Tallies of all overvotes, undervotes, or their
 318 equivalents, blank ballots, spoiled ballots, and cancellations
 319 recorded on the voter-verifiable paper record.

320 (5) Each public meeting and all ballot counting conducted
 321 in the performance of postelection audits pursuant to this
 322 section shall be conducted in a manner allowing public
 323 observation of the entire process. If space is limited, the
 324 canvassing board may comply with this subsection through use of
 325 live audio and video equipment or other means providing for
 326 public observation of the entire process.

327 Section 4. Section 101.593, Florida Statutes, is created
 328 to read:

329 101.593 Rulemaking authority for postelection audit
 330 procedures.--

331 (1) The Department of State shall adopt rules to
 332 administer the provisions of s. 101.592, including the standard
 333 forms required to administer postelection audits.

HB 1521

2008

334 (2) The audit team appointed by the Secretary of State
335 pursuant to s. 101.592 shall provide technical assistance in the
336 preparation of rules related to postelection audits.

337 (3) The department shall review rules as necessary for the
338 purpose of addressing new procedures in law, new voting systems
339 and methods, new statistical formulae, new sample selection
340 methods, improvements revealed by previous audits, and other
341 methods to improve efficacy of such procedures.

342 Section 5. This act shall take effect July 1, 2008.