

By Senator Justice

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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

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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:

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49 section 8 of chapter 2007-30, Laws of Florida, is repealed.

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 Section 101.5911, Florida Statutes, is repealed.

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

53 101.592 Postelection audits.--

54 (1) Notwithstanding any law or rule to the contrary, the
55 Secretary of State shall appoint an independent postelection
56 audit team each year. The Secretary of State shall direct random
57 hand-to-eye counts of voter-verifiable paper ballots. Such counts
58 shall be conducted by appropriate county election officials.

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

84 (a) Cast-vote records produced by direct-recording
85 electronic voting machines that do not produce voter-verifiable
86 paper records shall be audited for purposes of this section by

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87 comparing the tallies of the cast-vote records to the tallies
88 reflected in the printed results tape.

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

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

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

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

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

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

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

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

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

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

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

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

143 (a) Any procedure designed or adopted by the Secretary of
144 State shall be implemented to ensure with at least 99 percent

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

162 (b) Any procedure designed, adopted, or implemented by the
163 Secretary of State for each county and municipal contest held in
164 fewer than 100 election precincts, but more than a single
165 election precinct, shall be conducted in at least two audit
166 units.

167 (c) Within a reasonable period of time after the final vote
168 count of an election has been tabulated and announced, the
169 Secretary of State, based on the recommendation of a majority of
170 the audit team, shall determine the number of audit units in the
171 state, separated by county, in which audits shall be conducted
172 pursuant to this section, and inform each county canvassing board
173 using a standard form. Such information shall be posted on the

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174 Secretary of State's website immediately after it is delivered to
175 the county canvassing boards. Within 48 hours after receiving
176 direction from the Secretary of State, each county canvassing
177 board shall conduct a public meeting for the purpose of selecting
178 audit units to be audited according to the Secretary of State's
179 direction. The meeting shall be noticed at least 24 hours in
180 advance on that county's website and at each election office and
181 the main county government building in that county. An audit
182 shall commence within 24 hours after each county's random
183 selection of audit units.

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

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

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

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203 2. If the number of such ballots to be counted on a single
204 certified piece of voting equipment exceeds the maximum audit
205 unit size prescribed in paragraph (1) (b), the county supervisor
206 of elections shall divide the ballots into batches to be used as
207 audit units as described in paragraph (1) (b) before each
208 election. Each batch shall contain approximately the average
209 number of ballots cast in the audit units residing at the polling
210 places within the county, but need not be associated with any
211 particular election precinct or polling place. The number of
212 ballots in the final batch may be fewer than the average number,
213 but may not be fewer than 10 ballots. Overseas ballots arriving
214 after election day shall be included in the audit units if they
215 are counted electronically. As the ballots comprising each batch
216 are counted electronically, each batch shall be assigned a unique
217 identification number. Immediately after counting the ballots
218 comprising each batch, a cumulative summary vote tally report
219 containing the batch's unique identification number, the vote
220 totals of the batch, and, if necessary, all previously counted
221 batches in the election, shall be produced and retained as
222 prescribed in paragraph (1) (b). The reports are subject to the
223 same secure chain of custody as the ballots comprising the
224 batches and shall be used by the county canvassing board to
225 determine the electronic vote tally for each batch. The audit
226 team shall compare the sum of the vote tallies of all the reports
227 to the official results announced by the county, investigate any
228 discrepancies, and report any unresolved discrepancies, including
229 the reasons for such discrepancies, if known. The canvassing
230 board shall promptly report to the audit team its total number of
231 audit units once known. The audit team shall include all the

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232 audit units from each county in the random selection process and
233 if an audit unit is selected, such unit shall be audited in the
234 same manner provided in paragraph (d) for audit units residing at
235 polling places. However, during such audits, the hand-to-eye
236 counts shall be compared to the electronic vote tallies derived
237 from the batch reports.

238 (f) The selection of the audit units to be audited shall be
239 made using a uniform distribution in which all audit units in
240 which an audited election is held have an equal chance of being
241 selected. Selection of audit units for county and municipal
242 elections held in fewer than 100 election precincts and state
243 legislative elections may be made randomly using a nonuniform
244 distribution to be determined by the Secretary of State, based on
245 the recommendation of a majority of the audit team. In every 10th
246 polling place in which an audit unit is selected pursuant to
247 paragraph (d), one direct-recording electronic voting machine
248 shall be audited in accordance with paragraph (1)(a).
249 Notwithstanding the requirements set forth in this paragraph, the
250 audit team may initiate, direct, or conduct an audit of any audit
251 unit not randomly selected for auditing for which a majority of
252 the audit team determines, from the unaudited election results, a
253 review of ballot accounting, past election results, or other
254 data, that there is a substantial possibility that a complete
255 hand-to-eye count or review of ballot accounting would alter the
256 outcome of one or more contests.

257 (g) If the Secretary of State, based on a recommendation of
258 a majority of the audit team, determines that any of the hand-to-
259 eye counts conducted under this section indicates a substantial
260 possibility that a complete hand-to-eye count would alter the

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261 outcome of any contest in the state, the Secretary of State shall
262 direct hand-to-eye counts pursuant to this section in such
263 additional audit units as he or she considers appropriate to
264 resolve any such possibility. Notwithstanding any requirements to
265 the contrary, additional hand-to-eye counts shall be conducted if
266 in the initial audit conducted pursuant to this section any
267 discrepancy or discrepancies attributable to the electronic
268 counting system could alter the vote share of any candidate or
269 ballot contest by one-tenth of 1 percent or more of the hand-
270 counted votes in the sample. Under such circumstances, the audit
271 of the election shall use the same number of audit units as the
272 initial audit and shall be conducted under the same procedures
273 used to conduct the initial audit. However, if the initial audit
274 comprises more than one-half the total number of audit units in
275 the election, such audit shall be a full hand-to-eye count of the
276 remaining unaudited election precincts and audit units. Further
277 hand-to-eye counts shall be conducted if any discrepancy or
278 discrepancies attributable to the electronic counting system
279 detected by the initial or subsequent escalated audit indicates a
280 substantial possibility that a complete hand-to-eye recount would
281 alter the outcome of the audited election. Discrepancies
282 resulting from marginally marked ballots accepted by the county
283 canvassing board pursuant to s. 102.166(4) may not be considered
284 when making the determination of whether the voting system has
285 met the standard of acceptable performance for any audit unit. If
286 the Secretary of State directs the county to perform a subsequent
287 escalated audit, the county canvassing board shall conduct such
288 audit within 48 hours after receiving such direction.

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

299 (i) As soon as practicable after the completion of an audit
300 conducted pursuant to this section, but no later than 11:59 p.m.
301 on the 7th day after the date of certification of the election by
302 the county canvassing board, the Secretary of State, based on
303 approval of a majority of the audit team, shall announce publicly
304 and publish the results of the audit and include in the
305 announcement a comparison of the results of the election in the
306 audit units as determined by the postelection audit and the final
307 vote count in the county as announced by the county canvassing
308 boards, including:

- 309 1. A list, by audit unit, of any discrepancies between the
310 county's unofficial results and the postelection audit results;
- 311 2. The initial vote count and any subsequent manual counts
312 of the voter-verifiable paper ballots;
- 313 3. Explanations for such discrepancies, if any; and
- 314 4. Tallies of all overvotes, undervotes, or their
315 equivalents, blank ballots, spoiled ballots, and cancellations
316 recorded on the voter-verifiable paper record.

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

324 Section 4. Section 101.593, Florida Statutes, is created to
325 read:

326 101.593 Rulemaking authority for postelection audit
327 procedures.--

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

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

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

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